

University of Mississippi

eGrove

Electronic Theses and Dissertations

Graduate School

1-1-2011

Conversational circles influencing athletic policymaking during development, implementation, litigation, and enforcement of Title IX of the Education Amendments of 1972 of the Civil Rights Act of 1965

Jeannie Mae Lane
University of Mississippi

Follow this and additional works at: <https://egrove.olemiss.edu/etd>



Part of the [Educational Administration and Supervision Commons](#)

Recommended Citation

Lane, Jeannie Mae, "Conversational circles influencing athletic policymaking during development, implementation, litigation, and enforcement of Title IX of the Education Amendments of 1972 of the Civil Rights Act of 1965" (2011). *Electronic Theses and Dissertations*. 1414.
<https://egrove.olemiss.edu/etd/1414>

This Dissertation is brought to you for free and open access by the Graduate School at eGrove. It has been accepted for inclusion in Electronic Theses and Dissertations by an authorized administrator of eGrove. For more information, please contact egrove@olemiss.edu.

CONVERSATIONAL CIRCLES INFLUENCING ATHLETIC POLICYMAKING DURING
DEVELOPMENT, IMPLEMENTATION, LITIGATION, AND ENFORCEMENT OF TITLE
IX OF THE EDUCATION AMENDMENTS OF 1972 OF THE CIVIL RIGHTS ACT OF 1965
[JUNE 1972 – JUNE 2010]

A Dissertation
presented in partial fulfillment of requirements
for the degree of Doctor of Philosophy
in the Department of Leadership and Counselor Education
The University of Mississippi

by

Jeannie M. Lane

May 2011

Copyright Jeannie M. Lane 2011
ALL RIGHTS RESERVED

ABSTRACT

The purpose of this historical research was to identify and describe distinct conversational circles developing in separate and overlapping decision-making communities during the implementation and enforcement of Title IX of the Education Amendments of 1972 to the Civil Rights Act of 1964. Specifically, the study focused on identifying conversational circles that emerged in legislative, judicial, print media, and educational spheres. These Conversational Circles appeared to influence gender equity policy making in college and university athletics throughout the United States. Specific attention in this dissertation was turned to legislative, judicial development and media coverage in *The New York Times*, *The Chronicle of Higher Education* and *The N.C.A.A. News*. Important to this research was the freedom to recognize specific conversational circles and the impact these circles had on expanding the athletic opportunity for women in intercollegiate athletics as historically documented by various court documents, special interest groups' activities and news, higher education policy changes and agency studies. Judicial decisions drove most athletic policy decisions on the state and local level and within district court lines.

In October 2002, Title IX was re-named to posthumously honor Congresswoman Patsy T. Mink. Title IX is known as the Patsy T. Mink Equal Opportunity in Education Act.¹

¹ U.S. House of Representatives, "House Passes Resolution to Rename Title IX after Patsy Mink," October 9, 2002, <http://www.house.gov/abercrombie/news/mink02f.htm> (accessed March 5, 2008).

DEDICATION

This dissertation is dedicated to my friend, Margaret Ann Fisher Godwin (1959 – 2004).

Ann encouraged me as I pursued this degree course work and dissertation. She always supported my educational efforts even when they got in the way of our shopping adventures. To Ann's son, *my godson*, Lane Scott Godwin, I also dedicate this dissertation.

ACKNOWLEDGMENTS

I would like to begin by thanking my parents, Perry Joe and Mary Pollan Lane, who have always encouraged me to seek to know more about the world. They instilled in me a sense of curiosity, love of language, and a work ethic giving me the basic tools to start and eventually finish this dissertation. To my sister, Mari Jo Williamson, and my brothers, Raymond D. Lane and Kenneth W. Lane, I would like to express appreciation for their belief in me and confidence that I could successfully complete what I started. To the other members of my cheering section called family, I appreciate the love and comfort you give to me.

I would especially like to thank my University of Mississippi doctoral dissertation committee, Dr. Tim Letzring, Dr. Sparky Reardon, Dr. Buddy Arrington, and Dr. Whitney Webb for their support and careful reading of this historical dissertation. Their interest in the subject matter and in my development as an independent scholar created in me a sense of destiny as I finally completed a volume of work that spanned more years than it should have because I could not bring it to a close.

To my boss, Dr. Debbie Norris, and office mates—current and former—Debbie DePriest, Laura Rogers, Taheera Hoskins, Elnora Lewis Scott, Carol Clendenon, Cassandra Sessoms, Marilyn Allen, Sherry Bobo, and Cindy Betz, I would truly like to give thanks. I have been able to carry on daily functions with their help and assistance as I have worked on this degree and dissertation. Their interest and support sustained me when I felt I could no longer keep myself going in this academic pursuit.

There are so many Mississippi College faculty and staff members who contributed to my success by cheering me on from the ranks. I would like to thank Linda Taylor, Patty Tadlock, Stacie Jones, Ann Long, Cindy Hampton, Vicki McCann, Anna Warren, Judy Graham and her husband Charles, Donna Winstead, Jim King, Lynda Street, Ken Gilliam, Cheli Brunson, Joseph Odenwald and Cynda Golden—now we can talk about more interesting things than just me and my “book” in the days to come. One MC staffer who especially comes to mind is Tommy Lee Alexander, housekeeper. Tommy Lee would chat with me on the elevator and in my office about my “book” and would always be interested in whether or not I was actively writing. His singular encouragement helped me strive to finish this book. Dr. Wayne VanHorn and Dr. Mary Jean Padgett cheered me on to the finish line. Dr. Curtis Summerlin and Dr. Tom Williams were instrumental in giving me the confidence and the academic tools to advance my project.

Retired Mississippi College employees, like Bonnie Anders Langford, Bettye Stewart, and Doc Quick understood the struggle I was experiencing and had a way of raising my spirits when they were at low ebb. I appreciated the way Bonnie Langford has always propped me up with stories from episodes of our years working together. Dr. Ann McFarland asked me about the dissertation almost daily until she retired from Mississippi College.

The reference librarians at Mississippi College, Ann Weill, Susan Newman, Carolyn Hodges, Carol Williams, and Carolyn Hood were helpful to me in finding those hard to reach resources as they dubbed me a “hunter-gatherer researcher.” I enjoyed collecting resources that probably could have been left on the microfiche and microfilm machines and they thought I’d never be able to finish. They listened to me, gave me advice and access to new databases. They

tirelessly collected interlibrary loan requests all the way through the gathering stages of this effort.

Throughout this journey, my friends, Dr. K. Anita Gowin, Dr. David G. Miller, and Mrs. Cynthia M. Tucker have championed my cause. They fed me in mind, body, and spirit. They have listened to me attentively and aided me in editing when I needed eyes to see what I could not. They never tired of gently nudging me back toward the goal when I would choose to go astray.

Other friends have supported me through this journey and I would like to acknowledge their influence on my success. Linda Lytal, Lorraine Caldwell, Mary Lane Reed and Ann Weill have brought me much joy and diversion when I needed it most.

I would like to thank Dr. Edward McMillan, historian and my former boss, for all the things he taught me about university administration and leadership in graduate education. His recommendation to Dr. Howell Todd, President of Mississippi College, gave me a remarkable opportunity to serve on the new Mississippi College Strategic Planning Committee with Dr. Lloyd “Bo” Roberts, Dr. Bettye Coward, Dr. Edward McMillan, Dr. Van Dyke “Doc” Quick, and Dr. Charles E. Martin when so many things were happening at MC while I pursued my coursework for the doctorate in higher education at the University of Mississippi. These consummate professional educators dedicated to Christian higher education broadened my horizons and helped me shape my decision making skills.

I would also like to acknowledge the inspiration the cohort of University of Mississippi students in the Ph.D. program were to me during course work and dissertation phases. Drs. Jean

Dona, Mitzi Norris, Bill Smith, Jean Denson, Elizabeth Franklin, Marilyn Beach, Paul Johnson, and Kathy Wasson supported me during my class experiences and cheered me on long after they earned their degrees.

Drs. John Watson and Jim Payne will be remembered as quality professors who shaped and challenged my mind. They were not your conventional professors. They prepared higher education administrators to deal with the ambiguity in the profession and practice. Thank you, Dr. Payne, for introducing us to The Graves Theory. It has been a useful theory to help me solve problems and meet needs of people I encounter in higher education. Dr. Tim Letzring and Dr. Randy Bass gave me opportunity to build a strong foundation upon which to explore the profession. I would like to thank other professionals at the University of Mississippi, Kim Chrestman, Jo Stark, Veta Taylor, and Candace Oswalt who have answered questions for me and have been most helpful to this commuter student. They always treated me with respect and dignity when I didn't have a clue about what I was supposed to be doing.

Dr. Bill Townsend and Dr. Susan Lofton influenced me through dissertations they completed and made available on ProQuest. I was grateful to find examples of historical studies that had successfully maneuvered the scrutiny of the University of Mississippi higher education faculty.

I would like to express appreciation for friends who have had to wait in the wings while I finished this degree. Sheela Takkallapalli of Jackson and Tammy, Tim and Patrick Waltman of Clinton have patiently waited for me to make time for them as have the Godwins of Starkville,

and the Lands in Union, MS. I look forward to having the freedom to make time for these friends.

Lastly, I would like to thank the person who talked me into this doctoral pursuit in the first place. Friend and former co-worker Tom Washburn challenged me to join him in working on the Ph.D. at Ole Miss during the time when they taught classes in Jackson, Mississippi. Had it not been for his encouragement, I never would have started the academic journey that is now complete.

TABLE OF CONTENTS

	PAGE
ABSTRACT	ii
DEDICATION	iii
ACKNOWLEDGEMENTS	iv
I. INTRODUCTION	1
II. REVIEW OF TITLE IX RELATED LITERATURE	22
III. <i>PLESSY V. FERGUSON</i> TO PETER HOLMES' MEMO 1896 – 1975	94
IV. THE <i>BRAVE NEW WORLD</i> OF TITLE IX COMPLIANCE 1976—1979	144
V. THE STRUGGLE TO MAKE TITLE IX WORK 1980—1990	186
VI. WRESTLING WITH TITLE IX 1991 – 2002	242
VII. RETALIATION PROTECTION AND SURVEYS 2003 – 2010	327
VIII. TITLE IX LOOKING BACK AND LOOKING FORWARD	364
REFERENCE LIST	387
APPENDICES	478
VITA	497

LIST OF FIGURES

Figure 1.1.	Berkhofer Model	15
Figure 1.2.	Major Components of Mallon’s “What is History?” Model	16

APPENDICES

Appendix A	Time Line of Historical and Legal Events Relating to Title IX Development, Implementation and Enforcement	478
Appendix B	Title IX Conversational Circles Model	486
Appendix C	Doonesbury Cartoons	489-490
Appendix D	Historical Research Models Used in Formulating Title IX Conversational Circles Model	
	D.1. Sterling Semantic Net: What is History?	492
	D.2. Peterbene Semantic Net: What is History?	494
	D.3. Mallon Semantic Net: What is History?	495

CHAPTER I

INTRODUCTION

The 1970s paradigm for achieving gender equity in educational programs and activities receiving federal funds in the United States, commonly known as Title IX, frustrated and encouraged higher education administrators and constituents for many decades. Title IX of the Education Amendments of 1972 of the Civil Rights Act of 1964 (Title IX) was signed into law by President Richard M. Nixon on June 23, 1972 as part of Public Law 92-318.² For the first thirty years different circles of interested parties continually attempted to scrutinize, define and understand this broad-based gender equity statute. Debates occurred throughout various levels of legislative, judicial, educational, athletic and print media systems in the United States. Title IX, the statute patterned after Title VI, was initiated legislatively in 1972 by the 92nd Congress. The Office for Civil Rights (O.C.R.), then part of the Department of Health, Education and Welfare (H.E.W.), was charged with writing Title IX regulations and overseeing enforcement.³ Title IX once signed into law was ceremoniously acknowledged by sitting United States presidents.⁴ Title IX was interpreted by interscholastic and intercollegiate athletic associations⁵ and university governing bodies. Regulatory and enforcement agencies as well as the federal and state judiciary⁶ scrutinized the law. Title IX was challenged or embraced by special interest

² R.M. Nixon. *Nixon Archives Presidential Papers*, June 23, 1972, 208 (accessed February 21, 2002).

³ Senator Birch Bayh of Indiana, Analysis of Laws Prohibiting Sex Discrimination in Higher Education, 92nd Cong., 118 *Cong. Rec.* 1972: 24683-24685.

⁴ The White House. "Clinton to Expand Reach of Title IX Through Executive Order," *The White House Bulletin*, June 17, 1997.

⁵ N.C.A.A. News, "NCAA Discusses Growing Women's Sports with A.I.A.W.," *N.C.A.A. News*, November 1, 1974, <http://web1ncaa.org> (accessed March 28, 2008).

⁶ *Cohen v. Brown University*, No. 92-2483; 991 F.2d 888; 1993 U.S. App. LEXIS 7912 (April 16, 1993).

groups⁷ and at times considered shrouded in mystery or deemed unnecessary by different news reporting organizations in the public press.⁸

Since the 1970s, history has repeated itself as gender-related issues of access and equality in employment, academic and athletic opportunities re-appeared sparking new debates each decade about scholarships, resources to outfit team sports, contact sports, proportionality and revenue-generating sports versus non-revenue generating sports.⁹ Issues presenting themselves in this dissertation deal with such things as an acceptable definition of the words “equality,” “program” and “participant” as applied to athletics, the limits to place on football and other contact sports and whether congressional intent that appeared in the original Title IX legislative debate was followed in the regulatory language of the statute. Much public debate ensued about the number of scholarships for each gender, budget allocation for the non-contact sports and women’s athletics. Quota concerns, developing judicial interpretation of Title IX, the fate of revenue generating versus non-revenue generating sports, and whether it was acceptable for universities to make male sports team cuts to comply with Title IX equality mandates were other issues under review. Attempts to level the playing field were left unresolved after years of political posturing and rhetorical attention by legislative and executive branches. Expanding opportunities for females, the identified ‘underrepresented gender,’ as a way to cure their disenfranchised status in academia, athletics and employment closely followed any Title IX discussion.¹⁰

⁷ *Women’s Equity Action League, et al., v. Cavazos*, Nos. 88-5065, Consolidated Nos. 88-5068, 88-5069, 88-5070, 88-5071, 88-5088 U.S. Court of Appeals for District of Columbia Circuit, 285 U.S. App. D.C. 48; 906 F.2d 742; 1990 U.S. App. LEXIS 10154; 54 Empl. Prac. Dec. (CCH) P 40,054 June 26, 1990, decided.

⁸ G.S. White, Jr., “Colleges Mystified by Title IX Fund Rules,” *New York Times*, December 15, 1978: 27. Microfilm.

⁹ N. Amdur, “Title IX’s Effect on College and School Sports.” *New York Times*, March 14, 1975. Microfilm.

¹⁰ M. Roach, “Is Title IX Scoring Many Points in the Field of Women’s School Sports?” *New York Times*, August 14, 1977. Microfilm.

Interscholastic athletics (elementary and secondary education levels) and intercollegiate athletics (post-secondary, college and university levels) attempted to follow historically significant gender parity mandates created by Title IX regulations as revealed in the Office for Civil Rights memo from Director Peter Holmes.¹¹ This historical study focused specific attention on the conversational circles developing and influencing policymaking for intercollegiate women's athletics.

While compiling and analyzing data and event coverage about gender-specific social and athletic development regarding Title IX, a historical timeline of events was assembled. Events occurring during the first thirty years of Title IX focusing on higher education in general and intercollegiate athletics in particular helped create the awareness that four distinct and complex conversational circles emerged. (See Title IX Time/Event Continuum, Appendix A). The circles of conversation evolving from this timeline were legislative, judicial, educational and print media. (See Conversational Circles of Title IX Model, Appendix B). These invisible circles of influence, extant in society at the time of Title IX's creation, developed and were debated simultaneously. The controversial and emotionally-charged application of federal gender equity policy to interscholastic and intercollegiate athletics as well as a multitude of other gender issues related to opportunity in academics and employment developed slowly after Title IX was enacted.¹² Compliance with Title IX, in regard to athletic opportunity on interscholastic and intercollegiate levels, was tied to continued receipt of federal funding for educational institutions receiving public dollars.¹³ The focus of this dissertation was mainly on

¹¹ Peter E. Holmes, "Elimination of Sex Discrimination in Athletic Programs. Memorandum to Chief State School Officers, Superintendents of Local Educational Agencies and College and University Presidents. September 1975," ERIC ED 119583 (accessed September 22, 2008).

¹² B. Sandler, "What Women Really Want on College Campuses," *Chronicle of Higher Education*, April 24, 1972. Microfilm.

¹³ U.S. Department of Health, Education and Welfare, "Elimination of Sex Discrimination in Athletic Programs," *40 Federal Register* (1975). Microfiche.

conversational circles taking place in the legislative, judicial arenas but included attention to selected educational and print media influences.

Congressional hearings on women's issues held in 1970, recurring debates about an equal rights amendment to the U.S. Constitution and the need for gender reform¹⁴ established the basis for one of the first functional pre-Title IX conversations in legislative circles. Representative Edith Green and Senator Birch Bayh championed the women's equity cause in their respective houses of Congress.¹⁵ Months of congressional debate ensued before Congress readied the legislation containing the sex-equity provision for President Nixon to sign. In Bayh's "Analysis of Laws Prohibiting Sex Discrimination in Higher Education," The Office for Civil Rights (O.C.R.) then housed in the Department of Health, Education and Welfare (H.E.W.) was charged with writing the guiding regulations for implementation and parameters for enforcement of Title IX.¹⁶ As an agency, O.C.R. gave breadth and depth to the statute as first-draft regulations were released for public review and comment in 1974.¹⁷

Preceding the Judicial Conversations were those found in the legislative arena. The principles encircling the Title IX paradigm began as part of a grassroots effort to open a national and legitimate discussion during congressional hearings held by Representative Edith Green during the summer of 1970. The hearings were about the lack of opportunity for females in educational and vocational programming choices and the need for governmental intervention to force societal change.¹⁸ The simple, yet forceful principle that social change can be motivated

¹⁴ J.E. Shields, Ed., "Controversy Over the 'Equal Rights Amendment,'" *Congressional Digest* 50, no.1, 1971: 1.

¹⁵ B. Bayh, "Analysis of Laws Prohibiting Sex Discrimination in Higher Education," 92nd Cong., *118 Congressional Record*, 1972: 24683-24685.

¹⁶ *Ibid.*

¹⁷ U.S. Department of Health, Education and Welfare, "Elimination of Sex Discrimination in Athletic Programs," *40 Federal Register* (1975). Microfiche.

¹⁸ U.S. Senate, "Analysis of Laws Prohibiting Sex Discrimination in Higher Education," 92nd Cong., *118 Cong. Rec.*, 1972: 24683-24685.

by federal funding availability, as seen in strides made in other civil rights legislation almost a decade earlier, gave rise to the decision to pattern Title IX after Title VI of the Civil Rights Act of 1964.¹⁹

The second distinctive conversational circle, Judicial, in many respects actually pre-dated the Title IX statute itself. This conversation was used as one of the focal points of this dissertation. Precedent-setting litigation in America's struggle with Civil Rights spanned a number of decades. Judicial opinions and decisions dating back to *Plessey v. Ferguson* (1896)²⁰ were considered while researching materials for this historical dissertation. Important Title IX adjudication began with the 1979 U.S. Supreme Court decision: *Cannon v. University of Chicago*,²¹ determining a citizen's private right to bring suit under the auspices of Title IX. Title IX legal challenges slowly gained attention in the athletic establishment. The 1980s and 1990s witnessed a litigation explosion²² with significant Supreme Court decisions sparking not only national policy changes, but also congressional reaction. Decisions defining "programs" affected by Title IX regulations, such as *Grove City College v. Bell*, served to weaken the statute. Originally, Grove City College refused to sign Title IX forms required by H.E.W. and were in jeopardy of losing federal funding for their students.²³ Later courts narrowly defined program specific parameters, thus protecting athletics from Title IX's reach in *Grove City College v. Bell*.²⁴ The weakening of the statute by the courts returned acute congressional attention to the

¹⁹ *Ibid.*

²⁰ *Plessey v. Ferguson*, No. 210, 163 U.S. 537; 16 S. Ct. 1138; 1896 U.S. LEXIS 3390; 41 L. Ed. (May 18, 1896).

²¹ *Cannon v. University of Chicago*, no.77-926; 441 U.S. 677; 99 S. Ct. 1946; 1979 U.S. LEXIS 183; 50 L.Ed. 2d 397, (May 14, 1979).

²² D. Heckman, "The Explosion of Title IX Legal Activity in Intercollegiate Athletics During 1992-93: Defining The 'Equal Opportunity' Standard," 1994 *Det. C.L. Rev.* 953.

²³ N.C.A.A. News, "U.S. Judge Hears Grove City Case," *N.C.A.A. News*, vol. 15, no. 11, September 30, 1979: 2.

²⁴ *Grove City College v. Bell*, No. 82-792; 465 U.S. 555; 104 S. Ct. 1211; 1984 U.S. LEXIS 153; 79 L.Ed. 2d 516, (February 28, 1984).

matter. Congress responded by strengthening Title IX through passing *The Civil Rights Restoration Act of 1987*, an attempt to check the judiciary's power into balance, negating the *Grove City College* decision.²⁵

The Judicial Conversation directly influenced athletic policymaking at all educational levels. Federal district and appellate court decisions stimulated policy decisions in defined geographic areas as outlined in the United States Federal Court system. The U.S. Supreme Court (Supreme Court) decisions generated mandates for change throughout federal circuits and/or across the nation forcing new public behavior regarding gender equity. The Judicial Conversation remained active as challenges were made to the soundness and authority of Title IX and its regulatory interpretation as it applied to athletics.

Judges in the courts of appeal were responsible for defining and refining the new law as its constitutional soundness was tried at various levels in the judiciary system. Practicing lawyers and those preparing to become lawyers discussed judicial decisions related to Title IX in an extensive collection of law reviews published during the first thirty years of the gender equity statute. cursory review of the primary Title IX-related law cases and select secondary law review sources served as a historical foundation and extensive portion of this important Title IX conversation.

The Educational Conversational circle included professional journalists covering changes in educational policy, special interest groups proffering change, and educational professionals creating a body of knowledge as they investigated and marked changes in athletics and its administration. Educational and athletic administrators reacted to instruction on what policy changes must occur to comply with Title IX regulations. As a way to capture a section of the university student voice, cursory review of doctoral dissertations produced during the study

²⁵ *The Civil Rights Restoration Act of 1987*, codified at 20 U.S.C. (1687).

parameters was introduced within the context of the Educational Conversation. In 1977, *The Chronicle of Higher Education* brought attention to Title IX as the 1978 deadline for collegiate athletic compliance loomed in the distance.²⁶ Special interest groups, athletic associations and higher education agencies joined the conversation as opportunity to participate in sports programming for females increased. History of Title IX unfolded as short-term and longitudinal studies were launched by governmental agencies, athletic associations, and women's rights groups to track the record of success or failure of athletic program expansion for the underrepresented gender. Each group claimed bragging rights for the success of Title IX, or condemned the statute for the unpopular changes and lack of overall success. One report, "Open To All: Title IX at Thirty" was researched and prepared by the Secretary of Education's Commission on Opportunity in Athletics and was released in February 2003. The fifteen-member commission, co-chaired by Ted Leland and Cynthia Cooper-Dyke, reported the commission's assessment of Title IX compliance and enforcement as it sought recommendations for improvement through the use of town meetings to reach out to the various publics made up of experts, supporters and consumers of athletic equity.²⁷

A Print Media conversation developed in the early stages of Title IX implementation, compliance and enforcement. This conversation increased general public awareness and interest in gender equity as applied to interscholastic and intercollegiate athletics. The drama and scope of this broad-based public law became the topic of sensationalized public conversations in newspapers, athletic association trade papers, and educational news publications. Reporting daily, weekly or bi-monthly about Title IX events, decisions on gender bias kept the public

²⁶ C. M. Fields, "July 31: Title IX Deadline." *Chronicle of Higher Education*, November 14, 1977. Microfilm.

²⁷ U.S. Department of Education, "Secretary's Commission for Opportunity in Athletics Open to All: Title IX at Thirty," Washington D.C. 2002. U.S. Department of Education Website, <http://www.ed.gov/inits/commionsboard/athletics/> (accessed February 16, 2004).

interest piqued. *The New York Times*, *The N.C.A.A. News* and *The Chronicle of Higher Education* were among the first news print organizations to report Title IX's athletic policy ramifications to the general public or their specific membership and have been chosen as historical touchstones for use throughout this study.²⁸ A protest in 1976 grabbed public attention as Yale female athletes presented themselves, upper body clothing stripped away, showing letters painted on their bodies spelling the words "Title IX." This event, taking place in the director's office, helped these women athletes heighten awareness about the lack of adequate shower facilities available to them at this prestigious university.²⁹ Media outlets such as *The New York Times*, *The Washington Post*, *The Los Angeles Times*, *The Atlanta Journal and Constitution*, *The Chronicle of Higher Education* and *The N.C.A.A. News* dedicated room in their publications to foster public debate and increase awareness as they multiplied the number of reports and features included in their pages. However, use of print media, secondary source material, in this historical dissertation was limited to *The New York Times*, *The N.C.A.A. News*, and *The Chronicle of Higher Education*. This source category itself established an unofficial debate and rebuttal to government proclamations and court decision creating a vehicle for status updates, compliance and investigative reporting about gender equity matters facing the general public.

Conversational circles developing during the first thirty-nine years of Title IX were distinct and isolated, as well as insulated and interrelated, creating an atmosphere of disjuncture that hindered full local, regional and national compliance with the Title IX statute as seen in congressional reaction³⁰ to judicial action in *Grove City College v. Bell*.³¹ Complaints from individuals and special interest groups forced compliance as university athletic programs were

²⁸ E. Shanahan, "H.E.W. Proposes Rules to Outlaw Schools' Sex Bias: Regulations Would Require Fundamental Changes in Programs of Athletics," *New York Times*, June 19, 1974. Microfilm.

²⁹ "Yale Women Strip to Protest Lack of Crew's Showers." *New York Times*, March 4, 1976. Microfilm.

³⁰ *The Civil Rights Restoration Act of 1987*.

³¹ *Grove City College v. Bell*.

investigated by The Office for Civil Rights. A national reactionary dialogue in the print media influenced the general public but had little effect on the judicial decisions based on fact.

From tracing development of these circles, interested parties involved in athletic policymaking may gain insight in order to correct mistakes of earlier implementation, giving rise to a future of less contentious and emotionally-driven compliance with a law passed almost forty years ago. Close study of the historical timeline shows a progression from heightened awareness of socially acceptable gender-bias in athletics as group access to general athletic opportunity in the 1970s expands, closely followed by attention to individual university team equities in programming driven by resources available as O.C.R. issued unpopular Title IX 1979 Policy Interpretation.

This dissertation principally focused on historical events documented by primary legislative and judicial sources and selected educational and print media resources produced during the 1970s and later from which the idea of conversational circles aspects of Title IX emerged. Attention was paid to documents produced by entities involved in debating and creating Title IX's parameters, the agencies that regulated and enforced Title IX, the courts given the task to review Title IX and the educational programs, personnel and constituents affected by it.

Statement of Purpose

The purpose of this historical research was to identify and describe distinctive conversational circles developing in separate and overlapping decision-making communities during the thirty-year implementation of Title IX of the Education Amendments of 1972 to the Civil Rights Act of 1964. Initially, the study focused on conversational circles that emerged in legislative, judicial, educational and print media spheres, separately and collectively from June

1972 – June 2010 which appeared to influence athletic gender equity policymaking in colleges and universities throughout the United States. Specifically, the legislative, judicial arenas with attention paid to selected print media and educational conversations became the primary scope of the following chapters of this dissertation. In October 2002, Title IX was renamed to posthumously honor one of its co-authors, Representative Patsy T. Mink of Hawaii. Title IX is also known as the Patsy T. Mink Equal Opportunity in Education Act.³²

Important to this historical research was the search for the specific impact these conversational circles had on the expansion of athletic opportunity for women in intercollegiate athletics. This advancement was measured by various reports generated by the National Collegiate Athletic Association, Women’s Sports Foundation, the National Organization for Women, longitudinal studies, periodic congressional hearings, annual reports from O.C.R. to Congress, milestone federal reports and compliance reports from educational institutions.

Significance of the Study

Title IX of the Education Amendments of 1972 to the Civil Rights Act of 1964 legitimized a national conversation on issues surrounding gender equity related to expanding opportunity in educational programs and activities and employment in American society. This study presented for educators, administrators and interested readers a new angle for processing information, specific details and records concerning historical events, documents, legal opinions, precedents and decisions. A fresh perspective about Title IX and intercollegiate athletic policy making was presented. This historical and insightful analysis of Title IX records may function as a useful guide to academic and athletic administrators, parents and athletes, law makers and members of the judiciary interested in learning about the dynamics of conversational features

³² U.S. House of Representatives, “House Passes Resolution to Rename Title IX after Patsy Mink,” October 9, 2002, <http://www.house.gov/abercrombie/news/mink02f.htm> (accessed March 5, 2008).

and information sharing among groups identified in this study. As a result of this academic endeavor, this historical study expanded opportunity for future researchers to explore fully other conversations presented.

This historical study that distinct and separate conversational circles developed during the span of Title IX's first thirty-eight years offered a novel approach to examining the influence of conversation from groups in public policy-making roles as they interacted within and beyond their circles of influence. This shared information revealed various aspects about gender equity policy formulation affecting intercollegiate athletics. Higher education administrators and athletic personnel, government regulators and members of the judiciary as well as the general public contributed to the conversations and may gain valuable insight from exposure to the recurring themes, issues, challenges, myths and barriers that plagued and continued to plague full implementation of gender equity in intercollegiate athletics mandated by the regulatory tenets of Title IX.

The researcher clearly denoted use of historical data and records gathered from legislative, executive and judicial sources including, but not limited to: agency regulations, agency interpretations, agency clarifications, presidential executive orders, congressional records, administrative memos, agency year-end reports, federal mandates, legal decisions, court opinions and law reviews. Lesser attention is paid to the vast educational and print media in this study. The researcher used materials from print-media news outlets which were selected from an extensive array of newspaper articles, professional journal articles, and longitudinal reports printed on the subject, pre-existing interviews and letters.

Limitations

This study focused on the historical and legal sequencing of events since Nixon signed Title IX into law in 1972 until the summer of 2010. It included information from October 2002 when it was renamed by Congress to Honor Representative Patsy T. Mink of Hawaii. The focus was mainly on conversational circles taking place in the legislative, judicial arenas but included attention to selected educational and print media influences. While the other circles of influence were important to the overall historical development of Title IX, this researcher, who does not hold a law degree, set parameters to include the most verifiable primary sources found in circuit, district and Supreme Court transcripts.

Electronic data gathering services were used [LexisNexis, Academic University, Ebscohost, Project Muse, ncaa.org, JStor, *The New York Times* and *The Chronicle of Higher Education*] when available to retrieve primary documents, legal opinions, newspaper and journal articles and news wire releases. Microfiche and microfilm editions of government documents, law reviews, and newspaper entries were used when electronic retrieval was not available. Newspaper choices, i.e., *The New York Times*, *The N.C.A.A. News* and *The Chronicle of Higher Education*, were made based on circulation, reputation, and coverage of national, regional and professional issues were addressed.

Legislative historical documents included review of congressional hearings, Federal Register entries and presidential library materials. Legal decisions included those having broad-based national application or definition regarding Title IX, in general and to athletics, in specific. Some precedent setting legal opinions were discussed that pre-dated the Title IX statute. Circuit and District cases were reviewed systematically as they added depth to the conversation.

Title IX related cases were chosen based on the following criteria:

- 1) cases that were in the appellate system;

- 2) cases that were related to intercollegiate athletics in some way;
- 3) cases presented to and decided by the U.S. Supreme Court;
- 4) cases that resulted in major news coverage or were subjects of multiple law reviews; and
- 5) cases that were important decisions bent on changing social behavior of the general public.

Research was performed and data were gathered without interviewing persons or parties who were responsible for formulation of athletic guidelines, federal policy, legal opinions or who participated in, or were terminated from athletic opportunities from 1972-2010.

Sources of Data

Data sources for this historical study were organized chronologically for review creating conversational circles. Primary data collection involved reading court decisions and transcripts identified as precedents to, interpretations of, or important defining concepts in an evolving Title IX cache of related litigation. Primary sources included court transcripts and opinions, government sponsored hearings, congressional records and agency regulations. A large number of secondary sources were available in print media, educational journals, law reviews and government documents which served the important function of time-line placement and event sequencing from which a selection of materials was made offering a depth and breadth to the study, filling in historical conversations that would otherwise have been overlooked.

The Legislative Conversation used proceedings from Congressional hearings and United States House of Representatives and United States Senate debate leading up to Title IX's passage and subsequent reviews of Title IX at various stages in the thirty-eight history presented in this study. Other important sources were the Code of Federal Regulations (C.F.R.), various

instructive manuals, policy applications and interpretations authorized by the Department of Health, Education and Welfare (D.H.E.W.) which later became, the Department of Education (D.E.). The Institutional Self-Assessment Guide in Intercollegiate Athletics and other self-evaluation tools produced by the American Council on Education, multiple year-end reports to Congress produced by the Office for Civil Rights and the O.C.R. policy interpretations and clarification letters were also sources available for use in this study.

The Judicial Conversation, primary sources such as Title IX Federal District Appeals Court decisions and United States Supreme Court opinions were reviewed and presented. Secondary judicial sources included topical law journals and reviews specializing in higher education and/or women and sports law. Examples of such secondary sources were: *University Law and Education*, *Journal of College and University Law*, *Legal Issues in Collegiate Athletics*, *Women's Rights Law Reporter*, *Harvard Women's Law Journal*, *DePaul University Entertainment & Sports and Entertainment Law Journal*, *Texas Journal of Women & Law*, *Sports Lawyers Journal*, *Marquette Sports Law Journal*, and *Seton Hall Journal of Sport Law*. The influence these publications had on policy making can only be inferred because of their use in the training of lawyers and future judges, school administrators, and athletic administrative personnel. Suggestions and speculative opinions were made by those writing the reviews and oftentimes, while these were interesting and at times compelling, they were not necessarily related to official Title IX judicial mandates.

The Educational Conversation cut across all aspects of the other Title IX conversational circles because this was the area in which the interpreted regulations had the most intense impact as athletic opportunities for females increased. Secondary sources were written for the benefit of constituents in this conversation. Items already mentioned such as policy manuals, self-

evaluation procedures, and memoranda authorizing enforcement or non-compliance investigations, and essays defining what Title IX means were part of the information stream fed to this circle. The resulting court decisions, federal regulatory changes, and presidential mandates directly affected the users in this system.

The Print-Media Conversation, the largest body of secondary source work available, was often biased and unscientific, therefore, less reliable than much of the qualitative historical data presented. The impact of the print-media conversation on athletic policy was not measured scientifically for this study. Inferences to the secondary source newspapers such as *The New York Times*, and *The N.C.A.A. News*, were used as needed as was the educational news source, *The Chronicle of Higher Education*. This conversation was available to the general public more often and in greater volume than other printed materials produced by the courts and federal government. Assuming the sheer size of circulation this circle of information enjoyed, it was considered an important conversational vehicle used in heightening Title IX compliance awareness for educators, parents, athletes, coaches and other interested persons in gender issues for athletic application.

Methodology

In an attempt to properly trace the important legislative, judicial, educational and print media events comprising Title IX, one must first arrive at an applicable working definition of History. In *The Oxford English Dictionary*, the definition for the word “History” appears in nine distinct contexts. For the purpose of this study, “history [is] a written narrative constituting a continuous methodical record, in order of time, of important or public events, esp. those connected with a particular country, people, individual.”³³ Since Title IX exists because of a

³³ J.A. Simpson and E.S.C. Weiner, Preparers, “history,” *The Oxford English Dictionary*, Vol. III, Hat-Intervacuum, Oxford: Clarendon Press, 1989:261.

series of important public events (congressional hearings, legislative action, public interest, presidential attention) and is connected with a people (over-represented and under-represented genders in the United States), it is worthy of scholarly efforts to document Title IX’s historical development as an influence on policy making in athletics.

For a project this large, spanning almost forty years of public attention and action, further meanings, methodologies and processes become part of the working definition of history. The founding principles, the population served and affected, the variety of governmental entities involved in creating, regulating, implementing, policing and interpreting Title IX’s formative years break into the aforementioned sets of conversational circles—legislative, judicial, educational and print-media. These circles and their closely aligned spheres of influence offered a path to understanding changes [or lack thereof] in gender equity in educational and employment opportunities in the United States after the passage of Title IX.

Therefore, to meet the diverse informational schema, another definition of history outlined the operational context of conversational circles. R. Berkhofer drew a simplified observation model of history. Berkhofer stated, “That first task of the historian, accordingly, is to study the actor, his interpretation, and his action.”³⁴ This model, illustrated in Fig. 1.1, provides a simplistic analysis of major events.

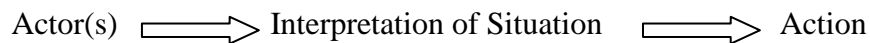


Fig. 1.1 Berkhofer Model³⁵

More in-depth treatment of historicizing complex events and issues over time can be better defined by the collaborative work of G. Leinhardt, C. Stainton and S. M. Virji. Their definition of history, borne out of study using practicing historians and classroom teachers,

³⁴ R. J. Berkhofer, Jr., “Behavioral Categories of Historical Analysis,” in *A Behavioral Approach to Historical Analysis*. New York: The Free Press, 1969.

³⁵ *Ibid.*, Berkhofer, 1969.

outlined parameters necessary to historically consider topics such as Title IX in breadth and depth. Leinhardt, Stainton and Virji’s work present first in “A Sense of History” appearing in a 1994 issue of *Educational Psychologist* and later in Leinhardt, Beck and Stainton’s textbook on teaching and learning in history. This model revealed important dimensions to consider as topics about Title IX will be presented historically in this study. They defined “history” and “the making of history” as processes. Building on the work of Mallon, a noted historian, and comparing two models of inquiry used by noted classroom teachers, Sterling and Peterbene, the meaning of process was illustrated in their “A Sense of History” research article. Leinhardt, Stainton and Virji concluded that “History is a process of constructing, reconstructing, and interpreting past events, ideas, and institutions from surviving or inferential evidence in order to understand and make meaningful who and what we are today.”³⁶ Their use of the major components of Mallon’s “What is history?” Model, shown in Figure 1.2, presented the dynamic interaction of history based on past event reconstruction, dialogue and present concerns.

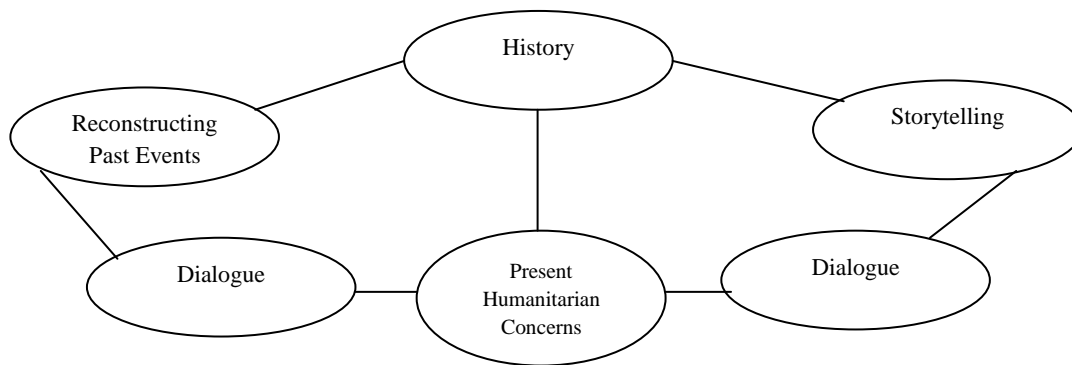


Fig. 1.2 Major Components of Mallon’s “What is History?” Model³⁷

Full models they reviewed and compared were included in the appendices [Appendix D] of this dissertation and provided a basis for conversational circle models chosen for this study.

³⁶ G. Leinhardt, C. Stainton and S.M. Virji, “A Sense of History,” *Educational Psychologist* 29, (1994): 88

³⁷ *Ibid.*, Leinhardt, Stainton, Virji, 217.

Leinhardt, Stainton, and Virji reported their findings in conversational terms indicating that: “The process involves dialogues with alternative voices from the past itself, with the recorders of the past, with the present interpreters. The process also involves constructing coherent, powerful narratives that describe and interpret the events, as well as skillful analyses of quantitative and qualitative information, from a theoretical perspective.”³⁸

The term “conversational circles” has appeared in titles of books, on websites, in community building materials, second language acquisition techniques and in internet chat rooms for many years. Applying the conversational circle concept to an historical study of Title IX brings a fresh approach to the interpretation of gender policy making in athletics. For the purposes of this dissertation, the term “conversational circles” was applied to the large communities of legislators, judicial personnel, educational policymakers, constituents of athletics, and organizations directly affecting or affected by the implementation of Title IX.

With these definitions of history-processing in mind, applied to Title IX, within the context of conversational circles, a natural mode of investigation emerged. The methodology employed in this study, historical research, solidified the foundation for processing the aforementioned conversational circles. The researcher concluded that ample data sources and types survived through time to substantiate the premise outlined in this purpose statement. Current data and historically occurring data were assembled and referenced through search of primary and secondary reserves of information located in public domain, governmental, judicial and other electronic retrieval collections and microfiche/microfilm. Data were assessed by using external scrutiny—based on reputation of the source—and internal evaluation of material to determine the validity and authenticity of information included as underlying documents for this study. No historical data were manipulated because of the *post facto* nature of reports, law cases,

³⁸ *Ibid.*, Leinhardt, Stainton, Virji, 88.

reviews, articles and stories found on topics related to Title IX. New information continued to become part of on-going historical development debates, making it necessary to cut off selective data gathering as the period leading up to Title IX's passage in 1972 until the summer of 2010.

The documentation style used for this study was based on the *Chicago Manual of Style*, 15th Edition and *The Bluebook: A Uniform System of Citation*, 17th Edition. Footnotes were used at the bottom of each page with renumbering beginning for each chapter. A complete reference list appears at the end of the document, before the appendices. The author's last name and initials appear in the footnotes and reference list and judicial references carry the full history of the case the first time it is mentioned and then an abbreviated version followed in subsequent references within chapters.

A methodically compact analysis of legal cases dealing with Title IX and athletics, clustered with a review of other historically occurring documents was performed to better understand issues related to Title IX and the impact on policymaking in athletics. Achieving this required perusing legal cases, academic and professional law reviews, newspaper reports, specialized journal articles, governmental and agency reports. A Title IX database using Microsoft ACCESS software was established to sort information and issues chronologically, topically, and by source.

Resulting chapters were arranged in chronological order to show the unfolding and interrelated conversations with the greatest emphasis placed on the judicial influence and selected print media resources. To confirm the veracity of the study, increase consistency and validate historically accurately occurring events and patterns of interaction and isolation, many primary sources were used. Organizing chronologically across primary and secondary sources served to triangulate and identify significant historical events in the decades under review.

Definitions

Conversational Circles

The term Conversational Circles refers to separate conversations taking place in and across spheres of influence in society that developed Title IX as it was first conceived, attached to legislation, signed into law and regulated in the legislative and executive branches of the United States federal government. Other conversations developed along the lines of judicial review, print-media and educational circles of influence. See Appendix A “Conversational Circles of Title IX Model” for a visually descriptive model of the spheres of influence as mentioned.

Education Department (ED)

Education Department refers to the United States Education Department, created in 1980, which eventually housed the Office for Civil Rights, the regulatory agency for Title IX of the Education Amendments of 1972.

Department of Health, Education and Welfare (HEW)

Department of Health, Education and Welfare identified the original agency housing the Office for Civil Rights when Title IX of the Education Amendments of 1972 became law.

Implied Rights of Action (*Cannon v. University of Chicago*)

Implied Rights of Action, the outcome of *Cannon v. University of Chicago*, gave individuals the authority to bring legal action against entities for alleged violations of Title IX.

Office for Civil Rights (O.C.R.)

Office for Civil Rights, also identified as O.C.R., is the agency in the United States federal government empowered to write regulations, create procedures, interpret policy, review complaints filed by citizens and remedy violations related to Title IX enforcement.

Title IX of the Education Amendments of 1972 (Title IX)

For the purposes of this study, the focus from Title IX of the Education Amendments of 1972 will be related to intercollegiate athletics. The main focus will be on the policies regarding the prohibition of gender discrimination in educational institutions receiving federal financial assistance and intercollegiate athletics.

Patsy T. Mink Equal Opportunity in Education Act

For the purposes of this study, this event provides an upper limit date (2002) for material reviewed in later chapters in this dissertation. In October 2002 Title IX was renamed to posthumously honor co-author, Patsy T. Mink. Title IX is now also known as the Patsy T. Mink Equal Opportunity in Education Act.

CHAPTER II

TITLE IX: REVIEW OF RELATED LITERATURE

While the number of independent scholarly materials available concerning Title IX is limited, there were definitive works for consideration in an array of print and electronic media formats. To establish the original intent of Title IX legislation and implementation congressional hearings, federal regulations, drafts of federal regulations and comments appended by the public, implementation suggestions and progress reports from the United States government were reviewed.

To determine early legal theory and scholarship, an extensive collection of court decisions and law reviews were identified and cursorily reviewed. Court decisions, pre-Title IX cases dealing with Civil Rights, were introduced as well as those cases that defined various issues in the formative year of judicial review of Title IX. During the second and third decades, landmark cases and decisions that disclosed the historical development and application of Title IX case law appeared. In law reviews, law students, lawyers, judges and other law professionals debated, reported and speculated about Title IX issues, legal points and decisions. These reviews indirectly influenced Title IX's legal as well as historical development between 1970 and 2010.

Theses, doctoral dissertations, professional journals and trade news papers available for perusal presented scholarship on a variety of Title IX topics, including periodic progress or renewed efforts to make progress. Advocacy groups and university faculty continued to conduct studies, maintain print and internet resources for mass distribution of information about Title IX. Linda Jean Carpenter, Ph.D., J.D., and R. Vivian Acosta, Ph.D., (2006), released results of their

on-going national longitudinal study for years 1977—2006, showing participating rising rates for female collegiate athletes.³⁹

Examples of real people making a difference in the early years of Title IX's history included Billie Jean King's⁴⁰ zealous influence heightening America's awareness of gender inequity in sports when she challenged myths about female performance limits in a tennis match with Bobby Riggs in the fall of 1973. Bernice Sandler's fundamental efforts to access equal employment opportunities in higher education created awareness in the public eye so that Congress, society and the legal system addressed gender disparity in multiple arenas.⁴¹

As this study began, the following legal writings, legislative and regulatory materials, newspapers, journal articles and reports were considered. Evidence presented during this discovery phase lead to marking key legislation, events and court decisions so that attention to the social flow of information and circles of influence became apparent and therefore served as the foundation and focus early in this study. After sensible deliberation, for the express purpose of this historical dissertation, events and writings judged to have most significant influence were positioned on a timeline continuum (Appendix A). Selected events and writings, concisely identified below with minimal detail, will be more fully discussed in chapters to follow. As the study narrowed its focus, most attention was paid to legal and judicial review materials from the federal court system and news-related items that documented debates, events and regulatory changes.

³⁹ L. J. Carpenter and R.V. Acosta, *Women In Intercollegiate Sport: A Longitudinal, National Study Twenty-Nine Year Update 1977-2006*, <http://webpages.charter.net/womeninsport/> (accessed April 8, 2006).

⁴⁰ Title IX, "Recent News: Special Message from Billie Jean King [interview]," Exercise My Rights. <http://www.titleix.info/> (accessed April 8, 2006).

⁴¹ Sandler, B.R. "'Too Strong for a Woman' – The Five Words that Created Title IX," (1997). <http://www.bernicessandler.com/id44.htm> (accessed April 8, 2006). Originally appeared in Spring 1997 issue of *About Women on Campus*, former newsletter of the National Association for Women in Education.

Congressional Record

Significant discussion presented during the 91st and 92nd Congresses on issues related to gender equity appeared in the United States 117 and 118 volumes of *The Congressional Record*. Debates, references to proceedings and committee hearings led by Representative Edith Green, Senator George McGovern, and Senator Birch Bayh recorded in *The Congressional Record* showed notable support for gender equity reform.⁴² Important documents, statistical information, letters and articles were recorded in this vital historical resource showing supporting debate over reform in higher education that ensued during the formation of amendments to Senate and House bills that eventually grounded the Title IX statute. Scrutiny of these historical records helped define initial conversations involving interest in social and higher education reform as congressional intent and level of public involvement in supporting gender equity were documented.⁴³

Close scrutiny of these pages resulted in identifying stereotypical gender roles and trends in force at the time legislation containing Title IX was being debated. Senator McGovern expressed concern for women and their changing roles in society since childbearing was no longer the main focus of young women's aspirations and career goals. Senator Bayh presented evidence showing a reversal of progress in the educational and occupational opportunity for females. Senator Bayh reiterated in the text that gender discrimination was more wide-spread and socially acceptable than racial discrimination.⁴⁴

During the initial proceedings and debate in the Senate, more emphasis was placed on exclusion by virtue of religious organizations and single-sex institutions than definition of

⁴² *Congressional Record*, Proceedings and Debates of the 92nd Congress, 2nd session, *Congressional Record*, Volumes 117 and 118.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

programs required to become compliant under the pending legislation so that athletics as a separate entity was not mentioned until much later in this conversation.⁴⁵

Federal Legislation

In spring 1972, the United States Congress endorsed legislation, later signed into law by President Richard M. Nixon in June 1972, banning sex-discrimination in educational programs and activities in institutions that received federal funding.⁴⁶

Title IX of the Education Amendments of 1972 started its journey as statute 20 United States Code (U.S.C.) § 1681 et. Seq. codified while the Department of Health, Education and Welfare (H.E.W.) was the supervising authority at first as 45 Code of Federal Regulations (C.F.R.) and then in 1999 when the Department of Education (D.E.) was created it moved to 34 C.F.R. Part 106.⁴⁷ The regulations outlined the responsibilities the citizens of the United States had in achieving equity in various areas where historically gender-based discrimination occurred (i.e., employment, vocational choices, education and athletics). Senator John Tower (1974) attempted to curtail the scope of Title IX as it applied to athletic programming. His amendment failed to exempt revenue-producing sports from the reach of the anti-sex discrimination law.⁴⁸ In June of that same year, H.E.W. issued proposed Title IX regulations for public review. They invited comment from the public and received an overwhelming response of comments related to athletic programming.⁴⁹ Senator J.K. Javits proposed an alternate and acceptable amendment in July 1974 that focused attention on Title IX coverage in its regulations and the characteristics of

⁴⁵ *Ibid.*

⁴⁶ Richard M. Nixon, Nixon Archives, *Presidential Papers*, June 23, 1972: 208 (accessed February 21, 2002).

⁴⁷ Title IX, 34 C.F.R. 106.41 and 34 C.F.R. 106.37 (c), as cited in website: <http://www.titleix.info/> (accessed April 8, 2006).

⁴⁸ J. Tower, "Tower Amendment," *120 Congressional Record* 15322-15323, (1974).

⁴⁹ H.E.W., 1974.

particular college sports.⁵⁰ H.E.W. distributed Title IX regulations for executive approval in 1975. President Gerald Ford signed Title IX regulatory policies in May, 1975. When H.E.W. sent Title IX regulations back to Congress in early June, 1975 there were several failed attempts to dismantle it. A variety of senators and representatives proposed amendments trying to alter the regulations during July 1975. These attempts were recorded in 121 Congressional Record and committee proceedings from the 94th Congress, 1st session. Title IX regulations became law July 21, 1975 and deadlines for compliance were issued to elementary (by July 1976) and secondary schools (by July 1978) for expected compliance.⁵¹ In 1976 Senator James McClure attempted to pass legislation which included limitations to Title IX's meaning and scope⁵² and Senator Birch Bayh influenced senators to reject this amendment.⁵³ In continuing efforts to slice athletics from Title IX's coverage, Senator Jesse Helms unsuccessfully recycled former amendments in 1977.⁵⁴ In December 1978, H.E.W. sent a draft of the latest Title IX interpretation as it intersected with intercollegiate athletics inviting general public comment before final publication. By the following year, December 1979, H.E.W. produced their final version of policy governing Title IX and intercollegiate athletics. It appeared in *44 Federal Register* and was distributed for use by schools and universities assessing their compliance with gender discrimination in athletic programming.⁵⁵

⁵⁰ J. K. Javits, "Javits Amendment," Sen. Conf. Rep. No. 1026, 934d Cong., 2nd Sess.4271 (1974) as cited in website: <http://www.titleix.info/> (accessed April 8, 2006).

⁵¹ *121 Congressional Record* 19, 209; 21,865; 22,940, (1975), as cited in website: <http://www.titleix.info/> (accessed April 8, 2006).

⁵² J. McClure, *122 Congressional Record* 18,135 (1976), as cited in website: <http://www.titleix.info/> (accessed April 8, 2006).

⁵³ B. Bayh, *122 Congressional Record* 28,147, (1976), as cited in website: <http://www.titleix.info/> (accessed April 8, 2006).

⁵⁴ J. S. Helms, 2146 and S. 535 (January 31, 1977), as cited in website: <http://www.titleix.info/> (accessed April 8, 2006).

⁵⁵ U.S. Department of Health, Education and Welfare, "Title IX and Intercollegiate Athletics," *44 Federal Register*, 71413, et. Seq. (December 11, 1979). Microfiche.

Rebuttal to the judicial decision held by the U.S. Supreme Court in *Grove City College v. Bell*, limited Title IX policing authority in athletic programming. Congress responded by authorizing the Civil Rights Restoration Act of 1987, re-establishing Title IX scrutiny over sex discrimination practices in athletic programming.⁵⁶ In 1993 Senator Mosley-Braun introduced the Equity in Athletics Disclosure Act in Senate Bill 1468 as Representative Collins proposed it as House Bill 921. Congress approved the Equity in Athletics Disclosure Act (E.A.D.A.) mandating that co-educational universities and colleges who accepted federal funding collect and share information about athletic programming annually. Much of the requested information paralleled requirements based on Title IX regulations. The first E.A.D.A. reporting cycle deadline was set for 1996.⁵⁷ In mid-1995 Representative Dennis Hastert lodged complaints about Title IX and the impact on male sports participation which resulted in additional congressional hearings. O.C.R. Assistant Secretary Norma V. Cantu indicated that cases investigated after 1989 resulted in no schools being forced to reduce the number of male athletic teams. No changes to Title IX occurred based on the Hastert hearings.⁵⁸ In July 1995 Representative Porter introduced H.R. 2127 considering 1996 funding for the U.S. Department of Education. Representative Hastert attached an amendment that would bar O.C.R.'s use of funds to continue Title IX enforcement at institutions of higher learning until O.C.R. clarified Title IX regulations.⁵⁹ More congressional hearings ensued in October 1995 as the Senate

⁵⁶ *The Civil Rights Restoration Act of 1987*, codified at 20 U.S.C. (1687).

⁵⁷ *Equity in Athletics Disclosure Act*, codified at 20 U.S.C. (1092) (g).

⁵⁸ U.S. House of Representatives Committee on Economic and Educational Opportunities, Subcommittee on Post-Secondary Education, Training and Lifelong Learning, "Hearing on Title IX of the Education Amendments of 1972: Hearing Before the Subcommittee on Postsecondary Education, Training and Lifelong Learning of the Committee on Economic and Educational Opportunities," House of Representatives, One Hundred Fourth Congress, first session, hearing held in Washington D.C., May 9, 1995.

⁵⁹ Department of Education's Appropriations Act of 1996, H.R. 2127 July 27, 1995 as cited in website: <http://www.titleix.info/> (accessed April 8, 2006).

Commerce Committee heard testimony from Hastert and Cantu.⁶⁰ In 2002, to mark thirty years of Title IX progress, the Senate held hearings to review progress made by Title IX implementation.⁶¹

Studies Requested by Members of Congress

The Government Accounting Office (also known as The Government Accountability Office) produced reports upon the request of Congressional leaders. In October 1996 the study, “Intercollegiate Athletic Status of Efforts to Promote Gender Equity” appeared.⁶² By June 1999 the study, “Intercollegiate Athletics: Comparison of Selected Characteristics of Men’s and Women’s Programs”⁶³ was available and in March 2001, the study, “Intercollegiate Athletic Four-Year Colleges’ Experiences Adding and Discontinuing Teams” was offered.⁶⁴

Agency Regulations and Communiqués

Regulations, brochures, and various other communiqués were found under the Title IX of the Education Amendments of 1972 resource section of the U.S. Department of Education, Office for Civil Rights (O.C.R.) website. In 1974, M. Blaufarb completed a manual for administrators, coaches, athletic directors and teachers of physical education working in athletic programs at high schools, colleges and universities.⁶⁵ In September 1975, O.C.R. Director Peter

⁶⁰ Senate Commerce Committee Hearing, October 18, 1995, as cited in website <http://www.titleix.info/> (accessed April 8, 2006).

⁶¹ U.S. Senate Committee on Health, Education, Labor and Pensions, “Title IX [Microform]: Building On 30 Years Of Progress: Hearing Before The Committee On Health, Education, Labor And Pensions, On Examining The Implementation And Progress Of Title IX Of The Education Amendments Act Of 1972, Which Prohibits Sex Discrimination In All Aspects Of Education,” United States Senate, One Hundred Seventh Congress, Second Session, June 27, 2002. Microform.

⁶² United States General Accounting Office, *Intercollegiate Athletics, Status of Efforts to Promote Gender Equity*, (GAO/HEHS-97-10). 1996.

⁶³ United States General Accounting Office, *Intercollegiate Athletics, Comparison of Selected Characteristics of Men’s and Women’s Programs*, (USGAO/HEHS 99-3R). (1999).

⁶⁴ United State General Accounting Office, *Intercollegiate Athletics Four-Year Colleges’ Experiences Adding and Discontinuing Teams*, (GAO-01-297). (2001).

⁶⁵ M. Blaufarb, “Complying with Title IX of the Education Amendments of 1972 in Physical Education, High School Sports Programs. A Manual on Physical Education and Sports Programs for Administrators, Athletic

Holmes issued an informational memorandum to “Chief State School Officers, Superintendents of Local Educational Agencies and College and University Presidents,” regarding the obligation to comply with Title IX in eliminating gender discrimination in athletic programming.⁶⁶ Also in 1975, volume 40 of the *Federal Register* contained the H.E.W. guide for eliminating gender discrimination in athletics.⁶⁷ While affiliated with the Department of Health, Education and Welfare, O.C.R. issued, “A Policy Interpretation: Title IX and Intercollegiate Athletics”, in response to the complaints it received about institutions of higher learning and the general failure to comply with initial Title IX regulations in athletics. The 1979 regulatory interpretation included clarification of responsibility on scholarship, programming, expenditures, supplies and interest-tracking in intercollegiate athletics.⁶⁸ The U.S. Department of Education (D.E.) was established in 1980 and Title IX enforcement management was assigned to its Office for Civil Rights, creating the change in codification in the *Code of Federal Regulations*, 34 C.F.R. Part 106.⁶⁹

By July, 1980, O.C.R. issued an “Interim Title IX Investigator’s Manual” governing Title IX compliance for use in their regional offices.⁷⁰ The “Title IX Grievance Procedures: An Introductory Manual” was developed and published in 1987 to help schools understand their obligations to comply with newly established Title IX complaint procedures and their duty to

Directors, Coaches and Teachers in Local Education Agencies and for Personnel in General Physical Education Programs in Colleges and Universities,” ERIC ED 129741.1974. Microfiche.

⁶⁶ P. E. Holmes, “Memorandum to Chief State School Officers, Superintendents of Local Educational Agencies and Colleges and Universities,” (September 1975).
<http://www.ed.gov/about/offices/list/ocr/docs/holmes.html>.

⁶⁷ U.S. Department of Health, Education and Welfare, “Elimination of Sex Discrimination in Athletic Programs,” *40 Federal Register* (1975). Microfiche.

⁶⁸ Office of Secretary, Office for Civil Rights, “Title IX of the Education Amendments of 1972; a Policy Interpretation: Title IX and Intercollegiate Athletics,” *44 Federal Register*, No. 239, (December 11, 1979). Microfiche.

⁶⁹ U.S. Department of Education, Office for Civil Rights “34 C.F.R., Part 106,” *45 Federal Register*, 30,955, et. Seq. (May 9, 1980). Microfiche.

⁷⁰ U.S. Department of Education, Office for Civil Rights, “Interim Title IX Investigator’s Manual,” ERIC document ED (1980). Microfiche.

appoint a Title IX compliance officer for their organization.⁷¹ By 1990 O.C.R. released a final version of the “Title IX Investigator’s Manual” written by Bonnett and Lamar.⁷² During 1991, O.C.R. developed a publication featuring non-discrimination in employment practices in education. This pamphlet gave a summary for the general public and employers to use to become more informed about various civil rights policy including Title IX and how it affected hiring practices.⁷³ Also in 1991, in an effort to help the general public understand Title IX, the pamphlet “The Guidance Counselor’s Role in Ensuring Equal Educational Opportunity” was produced and distributed. This pamphlet explained in detail the importance counseling young people played in accomplishing goals fostered in this civil rights legislation. Attention to the counseling profession itself and what to look for to ensure their own compliance with federal regulations was part of this publication.⁷⁴ Annual reports maintained by O.C.R. available online included the *Annual Reports to Congress of the Office for Civil Rights* for 1995—2007. O.C.R. was charged with reporting their policy and enforcement activities annually. Annual reports 1992-1994 were available upon request in paper-copy format.⁷⁵

In the fall of 1995, O.C.R. drafted a “Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test” in response to House and Senate attempts to quash funding for Title IX policy enforcement. This clarification was issued from the Department of Education,

⁷¹ U.S. Department of Education, Office for Civil Rights, “Title IX Grievance Procedures: An Introductory Manual,” ERIC Document ED (1987). Microfiche.

⁷² V. Bonnette and D. Lamar, “Title IX Investigator’s Manual,” U.S. Department of Education, Office for Civil Rights, (April 2, 1990). Microfiche.

⁷³ U.S. Department of Education, Office for Civil Rights, “Non-Discrimination in Employment Practices in Education,” (1991). <http://www.edu.gov/about/offices/list/ocr/docs/hq53e8.html>. (accessed June 15, 2002).

⁷⁴ U.S. Department of Education, Office for Civil Rights, “The Guidance Counselor’s Role in Ensuring Equal Educational Opportunity,” (1991). <http://www.ed.gov/about/offices/list/ocr/docs/hq43ef.html>.

⁷⁵ U.S. Department of Education, Office for Civil Rights, “Office for Civil Rights Annual Reports to Congress” (2006), <http://www.ed.gov/about/offices/list/ocr/congress.html>. (accessed August 15, 2007).

Office for Civil Rights in January 1996.⁷⁶ That same year the first Equity in Athletics Disclosure Act (E.A.D.A.) reports were filed by colleges and universities.⁷⁷ As a way to mark the twenty-fifth anniversary of the passing of Title IX, a publication was released by O.C.R. and the U.S. Department of Education: “Title IX: 25 Years of Progress” presenting information on various indicators of progress in education, employment and athletic opportunities related to gender participation rates.⁷⁸

In July 1998, O.C.R. issued a letter to Bowling Green State University in Bowling Green, Kentucky regarding equity in scholarship distribution based on gender proportionality of participation. This letter, under the authority of M.F. O’Shea, was considered the official clarification policy related to athletic scholarships and intercollegiate athletics.⁷⁹ In the “Impact of the Civil Rights Law” brochure, last updated in 1999, the O.C.R. included Title IX as one of the civil rights laws it presented. In this discussion, there were various efforts and venues where civil rights laws made significant strides to eliminate discrimination, increase access, and remove barriers for the underrepresented gender.⁸⁰ A “Notice of Non-Discrimination” was issued in 1999 guiding institutions to alert the public of their compliance efforts and identifying who the compliance office was and how to contact that institutional official in case members of the public needed to report a gender discrimination infraction.⁸¹ The U.S. Department of Justice issued a *Title IX Legal Manual* in 2001. This manual presented historical, practical and program-specific

⁷⁶ U.S. Department of Education, Office for Civil Rights, “Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test,” (January 16, 1996).
<http://www.ed.gov/about/offices/list/ocr/docs/clarific.html#two> (accessed August 15, 2007).

⁷⁷ N.C.A.A. “N.C.A.A. Equity in Athletics Disclosure Act,”
http://www.ncaa.org/library/research/gender_equity_study/1997-98/introduction.pdf (accessed August 15, 2007).

⁷⁸ U.S. Department of Education, Office for Civil Rights, “Title IX: 25 Years of Progress,” (1997).
<http://www.ed.gov/pubs/TitleIX/title.html> (accessed August 15, 2007).

⁷⁹ M. F. O’Shea, “Dear Colleague Letter: Bowling Green State University,” (July 23, 1998).
<http://www.ed.gov/about/offices/list/ocr/docs/bowlgrn.html> (accessed April 10, 2010).

⁸⁰ U.S. Department of Education, Office for Civil Rights, “Impact of the Civil Rights Laws,” (1999).
<http://www.ed.gov/about/offices/list/docs/impact.html> (accessed August 15, 2007).

⁸¹ U.S. Department of Education, Office for Civil Rights, “Notice of Non-Discrimination,” (1999).
<http://www.ed.gov/about/offices/list/ocr/docs/nondisc.html>. (accessed August 15, 2007).

information to federal agencies involved in Title IX compliance efforts. Title IX's expansive reach across programs receiving federal funds prompted the creation of this manual.⁸² In 2002, the Department of Education appointed a 15-member committee to study the progress made by Title IX. Ted Leland and Cynthia Cooper-Dyke served as co-chairs of the committee. In February 2003, they submitted a report, issued by the Department of Education called "'Open to All' Title IX at Thirty."⁸³

Legal Decisions

Legal decisions were the crux of the interpretation of what Title IX of the Education Amendments of 1972 had become, what power it had to offer or how the regulations overstepped their authority and went beyond the intent of legislators who initially conceived it. Here is a review of the court decisions pre-dating and then following Title IX's enactment in 1972. For the purposes of this study, unless otherwise indicated, cases for consideration end with the thirtieth anniversary of Title IX (2002). Chapter Eight of this dissertation will contain a cursory update to present of legal decision related to Title IX.

Beginning the discourse in the judicial conversational circle was a case from 1896, *Plessy v. Ferguson*, upholding the doctrine of "separate but equal" accommodation based on racial segregation.⁸⁴ Plessy, a man of mixed racial heritage, was ejected from a train when he refused to leave a section reserved for white passengers. He was jailed and charged with violating a Louisiana law allowing railway companies to separate passengers by race into different train cars or by a partition. The Supreme Court of the United States (Supreme Court) upheld the Louisiana

⁸² U.S. Department of Justice, Civil Rights Division, "Title IX Legal Manual," (2001). Washington, D.C., <http://usdoj.gov/crt/cor/coord/ixlegal.htm> (accessed August 15, 2007).

⁸³ U.S. Department of Education, Office for Civil Rights, "'Open to All' Title IX at Thirty," (February 2003). Washington D.C. <http://www.ed.gov/about/bdscomm/list/athletics/title9report.pdf> (accessed August 15, 2007).

⁸⁴ *Plessy v. Ferguson*, No. 210, 163 U.S. 537; 16 S. Ct. 1138; 1896 U.S. LEXIS 3390; 41 L. Ed. (May 18, 1896).

law thereby upholding the “separate but equal” doctrine as law.⁸⁵ *Plessy v. Ferguson* was later discredited by the 1954 Supreme Court decision in *Brown v. Board of Education of Topeka*.⁸⁶ In a more modern setting, the “separate but equal” doctrine informed gender equity issues when applied to all levels of athletic participation funded by federal dollars.⁸⁷ *Briggs Et Al. v Elliott Et Al.* was in itself a case about the quality of the separate schools maintained in South Carolina.⁸⁸ *Gebhart v. Belton* involved the denying of access to several Negro children to schools maintained for Caucasian pupils by Board of Education policy in Claymont Special School District in New Castle County, Delaware.⁸⁹

In 1954 school districts operating under the “separate but equal” doctrine were instructed to stop segregating students based on race because it violated their 14th Amendment right to equal protection by the landmark decision *Brown Et Al. v. Board of Education of Topeka Et Al.* The Supreme Court ruled that whether school officials were providing separate but equal facilities and services to children of different races, that the “separate but equal” doctrine had no standing in current public school operations and that the opportunity for education provided by the state must be available to all citizens on equal grounds.⁹⁰ A desegregation related case appearing years later, *Board of Public Instruction of Taylor County Florida v. Finch*, 414 F.2d 1068, 1079-79 (5th Cir. 1969) dealt with civil rights violations in a school district in Florida which had not de-segregated their school district to a point that satisfied H.E.W.⁹¹

⁸⁵ *Ibid.*

⁸⁶ *Brown Et Al. v Board of Education of Topeka Et Al.*, No. 1, 347 U.S. 483; 74 S. Ct. 686; 1954 U.S. LEXIS 2094; 98 L. Ed. 873; Ohio Op. 326; 38 A.L.R. 2d 1180 (May 17, 1954).

⁸⁷ V. P. Croudace and S.A. Desmarais, “Where the Boys Are: Can Separate Be Equal in School Sports?” 58 *S. Cal. L. Rev.* 1985:1425.

⁸⁸ *Briggs Et Al v. Elliott Et Al.*, No. 273, 342 U.S. 350; 72 S. Ct. 327; 152 U.S. LEXIS 2486; 96 L.Ed. 392, (January 28, 1952).

⁸⁹ *Gebhart v. Belton*, 91 A.2d 137; 1952 Del. LEXIS 117; Del. Ch. 144 (August 28, 1952).

⁹⁰ *Brown Et Al. v Board of Education of Topeka Et Al.*

⁹¹ H.E.W., “Education Programs and Activities Receiving or Benefitting from Financial Assistance: Non-Discrimination Based on Sex. Part 2,” *Federal Register* v39 n120 p. 22228, June 20, 1974. Microfiche.

Cases in the 1970s began recognizing the basic civil rights of females. The decade included the passing of the Title IX statute and ended with a case that recognized the private right of action for cases involving Title IX claims. Most cases listed in this section did not involve Title IX claims directly but showed a growing awareness of the need for females to access areas in past instances that had been off-limits to them. In *Reed v. Reed* (1971), the Reeds were separated when their adopted son died. Both parents wished to be appointed executor/executrix of their deceased son's estate.⁹²

Brenden v. Independent School District (1972) involved girls being denied access to athletic competition as members of boys' teams. The court held in favor of the girls.⁹³ On appeal in the Eighth Circuit, the panel of judges agreed with the findings at the district court level in *Brenden v. Independent School District*.⁹⁴ The basis for *Frontiero v. Richardson* in 1973 was that a military service woman applied for additional benefits for her husband who was dependent on her income and resources while he was a college student. Her request was denied when she was not able to show that she provided for more than half of her husband's support—the burden male military counterparts did not have to prove about their civilian wives.⁹⁵

Bednar v. Nebraska School Activities Association (1976) brought forth the question of irreparable harm to Miss Bednar if denied opportunity to participate in cross-country skiing competition at the state level.⁹⁶ In the case, *Craig v. Boren* (1976), age difference between males

⁹² *Reed v. Reed, Administrator*, No. 70-4, 404 U.S. 71; 92 S. Ct. 251; 1971 U.S. LEXIS 8; 30 L.Ed. 2d 255, (November 22, 1971).

⁹³ *Brenden v. Independent School District*, No. 4-72 Civ. 201; 342 F. Supp. 1224; 1972 U.S. Dist. LEXIS 13955, May 1, 1972.

⁹⁴ *Brenden v. Independent School District*, No. 72-1287; 477 F.2d 1292; 1973 U.S. App. LEXIS 10454; 23 A.L.R. Fed 649, January 8, 1973, submitted, April 18, 1973, decided.

⁹⁵ *Frontiero v. Richardson*, No. 71-1694, 411 U.S. 677; 93 S. Ct. 1764; 1973 U.S. LEXIS 153; 36 L. Ed. 2d 583; 9 Fair Empl. Prac. Cas (BNA) 1253; 5 Empl. Prac. Dec. (CCH) P8609, January 17, 1973, Argued May 14, 1973, Decided.

⁹⁶ *Bednar v. Nebraska School Activities Association*, No. 75-1773; 531 F.2d 922; 1976 U.S. App. LEXIS 12441, March 1, 1976 submitted, March 11, 1976, decided.

and females in an Oklahoma statute regulating the sale of non-intoxicating beer was argued. The Supreme Court could not find that the age differences between gender classifications for the sale of the beer would serve important government objectives and that the State of Oklahoma could not discriminate when regulating the sale of alcohol to males and females.⁹⁷ *Kampmeier v. Nyquist*, even though not a Title IX case, was included here because it dealt with access to sports participation by a school-aged child with an eye impairment. The Kampmeiers claimed that being prohibited from playing a contact sport infringed on their rights under the Rehabilitation Act of 1973 and violated equal protection guaranteed by the 14th Amendment. The U.S. Court of Appeals for the Second Circuit upheld the lower court's ruling because the plaintiffs could not show that they could participate in a contact sport and be safe from incurring permanent damage to Kampmeier's functioning eye.⁹⁸ Miss Cape, in *Cape v. Tennessee Secondary School Athletic Association*, wished to play basketball by rules and conditioning requirements that would prepare her for basketball programs at the collegiate level in order to complete for scholarships. At the time she competed, the Tennessee Secondary School Athletic Association recognized half-court competition for girls among other restrictions that impeded Miss Cape's full development as a basketball player.⁹⁹ Another case concerning eye impairment, *Swiderski v. Board of Education, City School District of Albany*, involved a petition to allow a high school-aged girl to participate in athletics. The school district opposed the request because of the liability and possibility of injury to Swiderski's other eye. The court ruled in favor of the petitioner because of the compelling nature of the supporting affidavits from medical experts. The provisions were that

⁹⁷ *Craig v. Boren*, No. 75-628; 429 U.S. 190; 97 S. Ct. 451; 1976 U.S. LEXIS 83; 50 L. Ed. 2d 397, (December 20, 1976).

⁹⁸ *Kampmeier v. Nyquist*, Docket No. 76-7383, No. 509 – September Term 1976; 553 F.2d 296; 1977 U.S. App. LEXIS 13808, (April 15, 1977).

⁹⁹ *Cape v. Tennessee Secondary School Athletic Association*, No. 77-1153, 563 F.2d 793; 1977 App. LEXIS 11308, October 3, 1977, Decided.

Swiderski's non-impaired eye must be protected at all times and a parental waiver of liability to the school in the event an injury was sustained.¹⁰⁰ *N.C.A.A. v. Califano* was an attempt by the National Collegiate Athletic Association (N.C.A.A.) to shield itself and its 707 member colleges and universities from the Title IX regulations and the Department of Health, Education and Welfare's (H.E.W.) enforcement of them on college and university athletic programs that received no federal financial assistance.¹⁰¹ *Lefel v. Wisconsin* involved girls who wished to try out for boys interscholastic sports teams. This class action suit involved the sports of baseball, swimming and tennis and it was found that the Wisconsin Interscholastic Athletic Association violated the equal protection clause of the 14th Amendment when it provided support for male teams and did not provide access to team participation or fielding of a team for females.¹⁰² In a reverse discrimination case, *Gomes v Rhode Island* which barred males from participating on female teams, Gomes, sued the Rhode Island Interscholastic League, for the privilege of participating on the women's volleyball team where no male team existed.¹⁰³ In 1979, the Supreme Court made a decision on the case of *Cannon v. University of Chicago*, a case first presented in 1976, testing an individual's private right to sue under Title IX of the Education Amendments of 1972. *Cannon v. University of Chicago* had nothing to do with athletics but was one of the first significant legal decisions related to Title IX. Even though it dealt with

¹⁰⁰ *Swiderski v. Board of Education, City School District of Albany*, 95 Misc. 2d 931; 408 N.Y.S. 2d 744; 1978 N.Y. Misc. LEXIS 2530 (September 5, 1978).

¹⁰¹ *N.C.A.A. v. Califano*, Civil Action No. 76-32-C2; 444 F. Supp. 425; 1978 U.S. Dist. LEXIS 20275 (January 19, 1978).

¹⁰² *Lefel v. Wisconsin*, Nos. 750C-174, 73-C-269; 444 F. Supp. 1117; 1978 U.S. Dist. LEXIS 20061, (January 19, 1978).

¹⁰³ *Gomes v. Rhode Island Interscholastic League*, Civ. A. No. 79-0158; 469 F. Supp. 659; 1979 U.S. Dist. LEXIS 12685, (May 1, 1979).

admission to medical school matters rather than intercollegiate athletics, the case paved the way for litigation based on gender discrimination claims in athletics.¹⁰⁴

The 1980s opened the door to litigation as females sought access to the opportunity to participate in athletic competition in greater numbers. Throughout the 1980s the definitions of what Title IX actually covered in terms of “program” and what constituted “equity” were debated by the courts. *Pavey v. University of Alaska*, involved female students at the University of Alaska who allegedly were being discriminated against in athletics under Title IX and the due process and equal protection clauses of the 14th Amendment.¹⁰⁵ *North Haven Board of Education v. Bell* addressed employment discrimination based on gender in programs receiving federal funds and established that Title IX of the Education Amendments of 1972 may be used to address claims by employees.¹⁰⁶ In *Mississippi University for Women v. Hogan*, a male prospective nursing student applied for admission to the Mississippi University for Women (M.U.W.), an historically single-sex institution of higher education catering traditionally to the female student.¹⁰⁷ As part of *Haffer v. Temple University*, the University claimed that its athletic programs were not funded by federal dollars and not bound by Title IX regulations.¹⁰⁸ *O’Connor v. Board of Education* dealt with policies for maintaining separate basketball teams for each gender.¹⁰⁹ *Hillsdale College v. H.E.W.* involved a refusal on the private college’s part to file the “Assurance of Compliance with Title IX Regulations” (H.E.W. Form 639A) with the

¹⁰⁴ *Cannon v. University of Chicago*, No. 77-926; 441 U.S. 677; 99 S. Ct. 1946; 1979 U.S. LEXIS 36; 60 L.Ed. 2d 560; 19 Empl. Prac. Dec. (CCH) P9202, (May 14, 1979).

¹⁰⁵ *Pavey v. University of Alaska*, Civ. No. A79-19; 490 F. Supp. 1011; 1980 Dist. LEXIS 11746; 31 Fed. R. Serv. 2d (Callaghan) 543, (June 9, 1980).

¹⁰⁶ *North Haven Board of Education v. Bell*, No. 80-986; 456 U.S. 512; 102 S. Ct. 1912; 1982 U.S. LEXIS 105; 72 L. Ed. 2d 299; 50 U.S. L. W. 4501; 28 Fair Empl. Prac. Cas. (BNA) 1393; 28 Empl. Prac. Dec. (CCH) P25, 120; 28 Empl. Prac. Dec. (CCH) P32, 675, (May 17, 1982).

¹⁰⁷ *Mississippi University for Women v. Hogan*, No. 81-406; 458 U.S. 718; 102 S. Ct. 3331; 1982 U.S. LEXIS 157; 73 L. Ed. 2d 1090; 50 U.S. L. W. 5068; 29 Empl. Prac. Dec. (CCH) P 32, 868 (July 1, 1982).

¹⁰⁸ *Haffer v. Temple University*, No. 82-149; 688 F.2d 14; 1982 U.S. App. LEXIS 25850 (September 7, 1982).

¹⁰⁹ *O’Connor v. Board of Education of School District 23*, No. 80 C 5660; 545 F. Supp. 376; 1982 U.S. Dist. LEXIS 14129, (August 12, 1982).

Department of Health, Education and Welfare.¹¹⁰ *Grove City College v. Bell* featured another private college who refused to comply with H.E.W.'s Assurance of Title IX Compliance.¹¹¹ In *Minor v. Northville Public Schools*, Minor, a physical education teacher and part-time coach, sought permission to sue her school district for claims under Title VII and for Title IX gender-based discrimination on pay received for part-time coaching contracts.¹¹² In *Blair v. Washington State University*, female athletes and their coaches accused Washington State University of sex-discrimination practices.¹¹³

By the 1990s, universities were grappling with the reality of budgeting and seeking Title IX compliance. Cases like *Franklin v. Gwinnette County Public Schools* brought a new level of outcome. Not only were female voices being heard, but money for intentional discrimination was on the docket. Many university administrators chose to cut programs and dealt with the fallout from those decisions. R. B. Ginsberg described a twenty year effort in *Women's Equity Action League (W.E.A.L.) v. Cavazos*, brought by the member of W.E.A.L. to seek remedy from government agencies that was not the judiciary's to grant.¹¹⁴ The most important fact that came from *Franklin v Gwinnette County Public Schools* decision was that for the first time under Title IX, monetary damages would be available as remedy for intentional sex-discrimination.¹¹⁵ In *Favia v. Indiana University of Pennsylvania*, the University discontinued two women's athletic

¹¹⁰ *Hillsdale College v. Department of Health, Education and Welfare*, No. 80-3207; 696 F.2d 418; 1982 U.S. App. LEXIS 23243, (December 16, 1982).

¹¹¹ *Grove City College v. Bell*, No. 82-792; 465 U.S. 555; 104 S. Ct. 1211; 1984 U.S. LEXIS 158; 79 L.Ed. 2d 516; 52 U.S. L. W. 4283; 33 Empl. Prac. Dec. (CCH) P34,158, (February 28, 1984).

¹¹² *Minor v. Northville Public Schools*, No. 81-40371; 605 F. Supp. 1185; 1985 U.S. Dist. LEXIS 21279; 1 Fed. R. Serv. 3d (Callaghan) 481; 39 Fair Empl. Prac. Cas. (BNA) 677, (March 28, 1985).

¹¹³ *Blair v. Washington State University*, No. 50591-8; 108 Wn. 2d 558; 740 P. 2d 1379; 1987 Wash. LEXIS 1159, (August 6 1987).

¹¹⁴ *Women's Equity Action League v. Cavazos*, No. 88-5065, Consolidated Nos. 88-6068, 88-5069, 88-5070, 88-5071, 88-5088; 285 U.S. App. D.C. 48; 906 F. 2d 742; 1990 U.S. App. LEXIS 10154; 54 Empl. Prac. Dec. (CCH) P40, 054 (Jun3 26, 1990).

¹¹⁵ *Franklin v. Gwinnette County Public Schools*, No. 90-918; 503 U.S. 60; 112 S. Ct. 1028; 1992 U.S. LEXIS 1375; 117 L.Ed. 2d 208; 60 U.S. L. W. 4167; 59 Fair Empl. Prac. Cas. (BNA) 213; 58 Empl. Prac. Dec. (CCH) P41, 293; 92 Cal. Daily Op. Service 1594; 92 Daily Journal DAR 2551; 6 Fla Law W. Fed. S 16 (February 26, 1992).

sport teams.¹¹⁶ Colgate University refused to field a women's ice hockey team on the varsity level which prompted court action in *Cook v. Colgate University*.¹¹⁷ In 1993, the United States Court of Appeals for the First Circuit handed down a Title IX decision in what was referred to as a watershed case—*Cohen v. Brown University*. Brown University discontinued varsity status for women's gymnastics and volleyball based on budgetary restrictions.¹¹⁸ Colorado State University Board of Agriculture was ordered to reinstate the women's fast pitch softball program at Colorado State University by the district court.¹¹⁹ Collegiate wrestlers brought suit against their university in *Gonyo v. Drake University* after their intercollegiate wrestling team was discontinued in order to make efforts to comply with Title IX. The wrestlers were not successful in their bid to have their program reinstated.¹²⁰ *Bowers v. Baylor University* involved the female coach, Bowers, and her termination, reinstatement as coach and subsequent termination based on her claims of sex-discrimination.¹²¹ *Bartges v. University of North Carolina at Charlotte* was brought by a female coach who initially volunteered for the position of assistant women's basketball coach then was offered a coaching job in women's softball.¹²² In *United States v. Virginia*, the historically all-male Virginia Military Institute (V.M.I.) denied admissions to a woman interested in becoming a cadet.¹²³ *Beasley v. Alabama State University* involved a

¹¹⁶ *Favia v. Indiana University of Pennsylvania*, Civil Action No. 92-2045; 812 F. Supp. 578; 1992 U.S. Dist. LEXIS 21117 (November 2, 1992).

¹¹⁷ *Cook v. Colgate University*, 90-CV-411; 802 F. Supp. 737; 1992 U.S. Dist. LEXIS 14951, (September 28, 1992).

¹¹⁸ *Cohen v. Brown University*, No. 92-2483; 991 F. 2d 888; 1993 U.S. App. LEXIS 7912, (April 16, 1993).

¹¹⁹ *Roberts v. Colorado State Board of Agriculture*, No. 93-1052, No. 93-1086; 998 F. 2d 824; 1993 U.S. App. LEXIS 16957 (July 7, 1993).

¹²⁰ *Gonyo v. Drake University*, Civil No. 4-93-70470; 879 F. Supp. 1000; 1995 U.S. Dist. LEXIS 3820, (March 10, 1995).

¹²¹ *Bowers v. Baylor University*, Civil No. W-94-CA-154; 862 F. Supp. 142; 1994 U.S. Dist. LEXIS 12484, (August 11, 1994).

¹²² *Bartges v. University of North Carolina at Charlotte*, 3:94CV113-P; 908 F. Supp. 1312; 1995 U.S. Dist. LEXIS 19469; 70 Fair Empl. Prac. Cas. (BNA) 1643, (November 6, 1995).

¹²³ *United States v. Virginia*, No. 94-1941; 518 U.S. 515; 116 S. Ct. 2264; 1996 U.S. LEXIS 4259; 135 L. Ed. 2d 735; 64 U.S. L. W. 4538; 96 Cal. Daily Op. Service 4694; 96 Daily Journal DAR 7573; 10 Fla. Law W. Fed S. 93, (June 26, 1996).

former female student and athlete.¹²⁴ *Lowrey v. Texas A & M University System*, charged that Tarleton State University and several of its officials had practiced sex-discrimination while Lowery was employed there and struck back at her in retaliation when she filed a complaint.¹²⁵ *Boucher v. Syracuse University* included claims that Syracuse did not accommodate interests of female athletes by fielding varsity teams in which they were interested in participating and that the benefits and scholarships received by varsity female athletes were not equal to that of male athletes.¹²⁶ Male athletes brought suit in *Harper v. Board of Regents, Illinois State University* when on the basis of Illinois State University's Title IX audit and plan, men's wrestling and soccer programs were eliminated as varsity sports and women's soccer remained a varsity sport in efforts to comply with Title IX regulations.¹²⁷ Based on findings in *Neal v. California State University*, universities could use tactics including reduction of male sporting teams to bring about gender equity under Title IX regulations.¹²⁸ *Stanley v. University of Southern California* concerned a basketball coach's various claims, one of which included a Title IX violation stemming from contract negotiations that failed between Stanley and the athletic director.¹²⁹

In the new millennium: The Fifth Circuit Court of Appeals found in *Pederson v. Louisiana State University* that Louisiana State University (L.S.U.) intentionally discriminated

¹²⁴ *Beasley v. Alabama State University*, Civil Action No. 96-T-473-N; 996 F. Supp. 1117; 1997 U.S. Dist. LEXIS 8342, (June 9, 1997).

¹²⁵ *Lowrey v. Texas A & M University System*, Civil Action No. H-96-0834; 11 F. Supp. 2d 895; 1998 U.S. Dist. LEXIS 8757, (May 27, 1998).

¹²⁶ *Boucher v. Syracuse University*, Docket No. 97-7678; 164 F. 3d 113; 1999 U.S. App. LEXIS 90; 42 Fed. R. Serv. 3d (Callaghan) 659, (January 6, 1999).

¹²⁷ *Harper v. Board of Regents, Illinois State University*, Case No. 95-1371; 35 F. Supp. 2d 1118; 1999 U.S. Dist. LEXIS 1591, (February 3, 1999).

¹²⁸ *Neal v. Board of Regents*, No. 99-1561; 198 F. 3d 633 U.S. App. LEXIS 31969, (December 3, 1999).

¹²⁹ *Stanley v. University of Southern California*, Nos. 95-55466, 95-56250, 96-5500; 178 F. 3d 1069; 1999 U.S. App. LEXIS 11170; 79 Fair Empl. Prac. Cas. (BNA) 1616; 138 Lab. Cas. (CCH) P33, 881; 76 Empl. Prac. Dec. (CCH) Pr6, 014, 44 Fed. R. Serv. 3d (Callaghan) 311; 99 Cal. Daily Op. Service 4192; 99 Daily Journal DAR 5278, (June 2, 1999, Filed).

against female student athletes who brought suit when L.S.U. did not provide athletic opportunities that were tailored to their interest and abilities.¹³⁰

Law Reviews

A law review, according to the definition given by Boston College Academic Services is a “student-edited, scholarly publication that contains contributions from legal scholars, practitioners, judges and law students.”¹³¹ This conversational vehicle was used by law students in training law professionals in practice to review law, its judicial interpretations and suppositions. During the decade of the 1970s, interest in Title IX and law review preparation was in its infancy. Prior to the passing of Title IX regulations, the conversations started with equal educational opportunity and sex-discrimination¹³² and state action involved with private universities¹³³ dealing with issues in higher education and federal financial aid.¹³⁴ After the passage of Title IX, Ruth Bader Ginsberg offered a voice in the conversation with her review, “Gender and the Constitution,” which appeared in the *New York Law Journal* in 1973.¹³⁵ One of the first reviews post-Title IX passage to tie equality issues and intercollegiate athletics together appeared in 1974 featuring gender comparisons between athletics and cheerleading.¹³⁶ The National Collegiate Athletic Association (N.C.A.A.) and Title IX came together as a law review topic for conversation in 1976.¹³⁷ Attention turned in 1976 and 1977 to the struggle at private

¹³⁰ *Pederson v. Louisiana State University*. No. 94-30680, No. 95-30777, No. 96-30310, No. 97-30427, No. 97-30719; 213 F. 3d 858; 2000 U.S. App. LEXIS 12019; 46 Fed. R. Serv. 3d (Callaghan) 1254, (June 1, 2000).

¹³¹ Boston College Academic Services, “Glossary of BC Law Terms,” <http://www.bc.edu/schools/law/services/academic/glossary.html>. (accessed February 16, 2008).

¹³² “Sex Discrimination in College Admissions: The Quest for Equal Educational Opportunities.” *56 Ia L. Rev.*, October 1970:209.

¹³³ R. C. Schubert, “State Action and Private Universities,” *24 Rutgers L.Rev.* December 1970:323.

¹³⁴ W. D. Ford, “Constitutional Implications of Federal Aid to Higher Education,” *1 U.L. & Education*, October 1972:513-540.

¹³⁵ R. B. Ginsberg, “Gender and the Constitution,” *New York Law Journal*, November 1973:170.

¹³⁶ C. Rusch, “Equality in Athletics: The Cheerleader vs. The Athlete,” *South Dakota Law Review*, 19, 428-446.

¹³⁷ J. V. Koch, “Title IX and the N.C.A.A.,” *3 West St. U. L. Rev.*, 1976:250-261.

educational institutions with sex discrimination¹³⁸ and private colleges' academic freedom as it related to Title IX.¹³⁹ Intercollegiate athletics and Title IX,¹⁴⁰ as well as a judicial review of N.C.A.A. bylaw 12-1¹⁴¹ entered the discourse as time ripened for legal scrutiny of the infant law and its regulations.

In 1979, a law review appeared discussing the question of whether under Title IX there is an implied private right to sue when federally funded programs are involved in gender related discrimination.¹⁴² During the same year, Title IX discussions increased to include Office for Civil Rights, political intervention and intercollegiate athletics,¹⁴³ as reviewer, Jensen, asked if the Department of Health, Education and Welfare (H.E.W.) had become more interested in the push for gender equality in athletics.¹⁴⁴

By the end of the 1970s and the beginning of the 1980s, Title IX issues were reaching courts of law¹⁴⁵ and the constitutional outcome from *Cannon v. University of Chicago* regarding the private right of action,¹⁴⁶ also known as implied right of action¹⁴⁷ or implied right to private cause of action¹⁴⁸ were popular themes for early Title IX law reviewers. In 1982, N.C.A.A. had

¹³⁸ Kentucky Law Journal, "Title IX Sex Discrimination Regulations: Impact on Private Education," 65 *Ky. L.J.* 1976:656-711.

¹³⁹ Urban Law Annual, "Title IX Sex Discrimination: Private Colleges and Academic Freedom." 18 *Urban L. Ann.* 1977:107-137.

¹⁴⁰ T.A. Cox, "Intercollegiate Athletics and Title IX," *George Washington Law Review* 46(1), 1977:34-64.

¹⁴¹ Alabama Law Review, "Judicial Review of the N.C.A.A. Bylaw 12-1," 29 *Ala. L. Rev.* 1978:547-62.

¹⁴² University of Cincinnati Law Review, "Implied Right to Sue," 48 *U. Cin. L. Rev.* 1047-57.

¹⁴³ F. Farmer, "Selling the Adams Criteria: The Response of O.C.R. to Political Intervention in Adams v Califano (430 F. Supp 118)," 22 *How. L. J.* 1979:417-425.

¹⁴⁴ J. E. Jensen, "Title IX and Intercollegiate Athletics: H.E.W. Gets Serious About Equality in Sports?" *New England Law Journal.* 15(3), 1979:573-596.

¹⁴⁵ D. I. Thompson, "Title IX of the Education Amendments of 1972: Issues Reach the Courts," *Washburn Law Journal* 18(2), 1979:310-324.

¹⁴⁶ UMKCL Review, "Constitutional Law: Cannon v. University of Chicago (99 S. Ct. 1946): Civil Rights and Private Wrongs, A New Remedy," 48 *UMKC L. Rev.*, 1980:487-501.

¹⁴⁷ Duquesna Law Review, "Civil Rights-Sex Discrimination, Title IX of the Education Amendments of 1972, Implied Right of Action," 18 *Duquesna L. Rev.*, 1980:983-998.

¹⁴⁸ Journal of Urban Law, "Civil Rights, Sex Discrimination, Title IX of the Education Amendments of 1972 Contains an Implied Right to Private Cause of Action," 58 *Det. J. Urb. L.*, 1980:74-94.

developed an enforcement program¹⁴⁹ that law reviewers were talking about along with the law suits student athletes were bringing against institutions of higher education.¹⁵⁰

P.J. Van de Graff returned to the financial aid and congressional intent question in his review of the conflicting legal interpretations of *Hillsdale College v. H.E.W.* Van de Graff also discussed the meaning of “program” as it related to federal funding received by schools and termination of authority held by H.E.W. when programs were found to be violating Title IX.¹⁵¹ J. Krakora pointed out, at the time the article was written in 1983, that in order for plaintiffs to succeed in their claim, they must connect the discrimination they suffered with the particular program within the university that received direct federal funding. At the time this review was written athletic departments were not directly receiving federal funds.¹⁵² C.S. Lewis, in *Fordham Law Review* 51, called for expanding the reading of Title IX to include an entire institution and involve all forms of federal aid then exempted from scrutiny.¹⁵³ M. Brownfield, challenged congressional leaders in 1983 to clear up Title IX intent because issues of compliant practices were extended to private institutions. Brownfield held that using the financial aid system to enforce compliance was not a good focus.¹⁵⁴ A.E. Freedman presented a general gender classification discussion and the United State Supreme Court justices who supported them.¹⁵⁵ In 1983, R. J. Waicukauski offered a collection of essays growing out of the 1981

¹⁴⁹ Arizona Law Review, “N.C.A.A.: Fundamental Fairness and the Enforcement Program,” *23 Ariz. L. Rev.*, 1980:1065-1102.

¹⁵⁰ Arizona Law Review, “Suits by Student Athletes Against Colleges for Obstructing Educational Opportunity,” *24 Ariz. L. R.* 1982:467-496.

¹⁵¹ P. J. Van de Graff, “The Program-Specific Reach of Title IX,” *83 Colum. L. Rev.*, 1983:1210.

¹⁵² J. Krakora, “The Application of Title IX to School Athletic Programs,” *68 Cornell L. Rev.*, 1983:222.

¹⁵³ C. S. Lewis, “Title IX of the 1972 Education Amendments Harmonizing Its Restrictive Language with its Broad Remedial Purpose,” *51 Fordham L. Rev.*, 1983:1043.

¹⁵⁴ M. Brownfield, “Title IX of the Education Amendments of 1972: Setting Limits on Agency Jurisdiction,” *52 U. Cin. L. Rev.*, 1983:819.

¹⁵⁵ A E. Freedman, “Sex Equity, Sex Differences and the Supreme Court,” *Yale L. J.*, 1983:913.

Indiana University Conference on Law and Sports.¹⁵⁶ K. Czapansky discussed North Haven and Grove City decisions and the action by congressional leaders to broaden the intent of Title IX legislation after Grove City.¹⁵⁷

D.M. Piche in the summer of 1985 offered another review of *Grove City v. Bell*, suggesting the need for further legislation that would expressly define the scope and meaning of program or activity for colleges subject to Title IX on program-specific basis.¹⁵⁸ B.B. Tiesenga continued discussion on the Grove City decision seeing it as encroaching on liberties of private colleges.¹⁵⁹ Croudace and Desmarais asked: Can separate but equal efforts to affect gender equity be enough by looking at the equal protection clause as it applied to the then current practice of separate athletic programs for males and females?¹⁶⁰ P.S. Woods questioned whether reverse discrimination had a place in redressing gender discrimination of the past.¹⁶¹ B.G. George recommended looking at the entire athletic program to determine compliance to Title IX.¹⁶² R. Yasser offered a compelling notion about the inability The N.C.A.A. had to govern amateur sports and offered a blueprint for reform in intercollegiate athletics.¹⁶³ J. K. Johnson argued the validity of the three-pronged test used to assess whether a university meets Title IX compliance in athletic programs on the basis of previous judicial decisions in *Cohen*, *Roberts*

¹⁵⁶ R. J. Waicukauski, "Law and Amateur Sports," 96 *Har. L. Rev.*, 1983:1495.

¹⁵⁷ K. Czapansky, "*Grove City College v. Bell*: Touchdown or Touchback?" 43 *Md. L. Rev.*, 1984:379.

¹⁵⁸ D. M. Piche, "*Grove City College v. Bell* and Program Specificity: Narrowing the Scope of Federal Civil Rights States," 34 *Cath. U.L. Rev.*, 1985:1087.

¹⁵⁹ B. B. Tiesenga, "Title IX and the Outer Limits of Spending Powers *Grove City College v. Bell* 104 S. Ct. 1211 (1984)," 61 *Chi.-Kent L. Rev.*, 1985:711.

¹⁶⁰ V. P. Croudace and S.A. Desmarais, "Where the Boys Are: Can Separate Be Equal in School Sports?" 58 *S. Cal. L. Rev.*, 1985:1425.

¹⁶¹ P. S. Woods, "Boys Muscling in on Girls' Sports," 53 *Ohio St. L. J.*, 1992:891.

¹⁶² B. G. George, "Miles To Go and Promises to Keep: A Case Study in Title IX," 64 *U. Colo. L. Rev.*, 1993:555.

¹⁶³ R. A. Yasser, "Comprehensive Blueprint for the Reform of Intercollegiate Athletics," 3 *Marq. Sports L. J.*, 1993:123.

and Favia.¹⁶⁴ W. B. Connoly, Jr. and J. D. Adelman pointed out mistakes made in *Roberts v. Colorado State University*. One defining point they made was that congressional intent of Title IX did not include using student body ratios to achieve gender equity.¹⁶⁵ R. L. Marshall shared ramifications of the judicial decision *Cohen v. Brown University*.¹⁶⁶ T. J. Wilde presented factors contributing to a heightened awareness about reasons intercollegiate athletics exist and the inevitable changes driven by legal and social forces favoring growth in gender equity in sports.¹⁶⁷

C.C. Claussen introduced new venues opening in Title IX litigation which included a new emphasis on coaching salaries.¹⁶⁸ A. Richardson discussed *Cohen v. Brown University* along with general budgetary concerns for intercollegiate athletics 20 years after Title IX was enacted. Richardson likened *Cohen v. Brown* to a two-edged sword.¹⁶⁹ M.B. Petriella discussed Colgate's issues with gender equity and injunctive relief tactics available to them while awaiting the decision on another gender equity case.¹⁷⁰ C. L. Hollinger, Jr., looked at the 1979 Office for Civil Rights Policy Statement that included the three-pronged test and *Kelly v. Board of Trustees of the University of Illinois* and reverse discrimination.¹⁷¹ D. Heckman referred to the explosion

¹⁶⁴ J. K. Johnson, "Title IX and Intercollegiate Athletics: Current Judicial Interpretation of the Standards of Compliance," 74 *B. U. L. Rev.*, 1994:553.

¹⁶⁵ W. B. Connoly, Jr. and J.D. Adelman, "A University's Defense to a Title IX Gender Equity in Athletics Lawsuit: Congress Never Intended Gender Equity Based on Study Body Ratios," 71 *U. Det. Mercy L. Rev.*, 1994:845.

¹⁶⁶ R. L. Marshall, "Case Comments: *Cohen v. Brown University*. The First Circuit Breaks New Ground Regarding Title IX's Application to Intercollegiate Athletics," 28 *Ga. L. Rev.*, 1994:837.

¹⁶⁷ T. J. Wilde, "Gender Equity in Athletics: Coming of Age in the 90's," 4 *Marq. Sports L. J.*, 1994:217.

¹⁶⁸ C. C. Classen, "Title IX and Employment Discrimination in Coaching Intercollegiate Athletics," 12 *U. Miami Ent. & Sports L. Rev.*, 1994:149.

¹⁶⁹ A. Richardson, "Sports Law: *Cohen v. Brown* A Title IX Lesson for Colleges and Universities on Gender Equity," 47 *Okla. L. Rev.*, 1994:161.

¹⁷⁰ M. B. Petriella, "Injunctive Relief—Title IX—An Interim Preliminary Injunction Reinstating Varsity Status to Demoted Collegiate Athletic Teams Is Available When that Team Alleges a Title IX Violation and Litigation is Pending—*Cohen v. Brown University*, 991 F. 2d 888 (1st Cir. 1993)," 4 *Seton Hall J. Sports L.*, 1994:595.

¹⁷¹ C. L. Hollinger, Jr., "Case note: Are Male College Sports in Jeopardy? A Look at *Kelly v. Board of Trustees of the University of Illinois*," 21 *S.U. L. Rev.*, 1994:151.

of litigation in the 1990's. Heckman referred to coach-related litigation, collecting for damages and emerging issues in light of equal opportunity. Heckman also offered a checklist of what universities should do to minimize falling prey to compliance audits.¹⁷² W. H. Webb, Jr. offered comments on various cases such as *Grove City v. Bell*, *Cohen v. Brown University* and *Roberts v. Colorado State Board of Agriculture*.¹⁷³ L.S.C. Hanson compiled a selected bibliography related to law and sports.¹⁷⁴ M. Harries contemplated 20 years of Title IX by seeing athletics grow into what Congress intended.¹⁷⁵ G. Szul presented comments on coaches pay issues including Stanley's attempt to show evidence of compensation disparity.¹⁷⁶ D. K. Stillmach advocated that the path to equality in collegiate athletics was through the courts.¹⁷⁷ J. Judge, D. O'Brien and T. O'Brien explained California's struggle to become Title IX compliant.¹⁷⁸ D. Mahoney directed attention to reverse discrimination as a negative result from enforcing Title IX in a proportional scheme.¹⁷⁹ J. P. Ferrier revisited Title IX since 1979 O.C.R. Policy Interpretation was issued to try to gauge real change in gender equity in order to see if there was room to

¹⁷² D. Heckman, "The Explosion of Title IX Legal Activity in Intercollegiate Athletics during 1992-1993 Defining the 'Equal Opportunity Standard,'" *1994 Det. C.L. Rev.*, 1994:953.

¹⁷³ W. H. Webb, Jr., "Case Comments: Sports Law—Cohen v. Brown University: The Promulgation of Gender Equity in Intercollegiate Athletics," *25 U. Mem. L. Rev.*, 1994:351.

¹⁷⁴ L. S. C. Hanson, "Sports, Athletics and the Law: A Selected Topical Bibliography of Legal Resources Published During 1990s," *4 Seton Hall J. Sports L.*, 1994:763.

¹⁷⁵ M. Harris, "Hitting 'Em Where It Hurts: Using Title IX Litigation to Bring Gender Equity to Athletics," *72 Denv. U. L. Rev.*, 1994:57.

¹⁷⁶ G. Szul, "Sports Law: Sex Discrimination and the Equal Pay Act in Athletic Coaching," *5 J. Art & Ent. Law*, 1994:161.

¹⁷⁷ D. K. Stillmach, "Title IX The Mandate for Equality in Collegiate Athletics," *41 Wayne L. Rev.*, 1994:203.

¹⁷⁸ J. Judge, D. O'Brien and T. O'Brien, "Perspective: Gender Equity in the 1990's: An Athletic Administrator's Survival Guide to Title IX and Gender Equity Compliance," *5 Seton Hall J. Sports L.*, 1995:313.

¹⁷⁹ D. Mahoney, "Note and Comment: Taking a Shot at the Title: A Critical Review of Judicial and Administrative Interpretations of Title IX as Applied to Intercollegiate Athletic Programs," *27 Conn. L. Rev.*, 1995:943.

improve the overall Act.¹⁸⁰ A.A. Ingram reviewed N.C.A.A. legislation which could have changed the need for judicial remedy as it related to Title IX and intercollegiate athletics.¹⁸¹

C. Raymond promoted discussion of legal activity and Title IX with focus on use of class action suits, prioritizing and balancing equity against programs and avoiding the award of monetary damages whenever possible.¹⁸² J. Hudson argued that schools should not necessarily build programs for equity at the expense of raiding those programs generating substantial revenue.¹⁸³ P. Anderson reminded schools about strategies that ran counter to Title IX compliance and some practices that were acceptable to promote compliance.¹⁸⁴ R. C. Farrell submitted a discussion of efforts to make football exempt from Title IX compliance.¹⁸⁵ D. Aronberg promoted a discussion of practices of athletic administrators and their efforts. Aronberg also asserted that court-enforced compliance was beginning to eliminate men's athletic opportunities in order to make way for women's. He urged the reinvention of O.C.R. policy.¹⁸⁶ S.F. Ross, K. Kahrs, and F. Heinrich conveyed proceedings from their panel discussion at the University of Illinois reviewing gender equity.¹⁸⁷ D.H. Moon, after reviewing Title IX law suits, questioned whether it was time to legislatively amend Title IX to take into account financial ability of schools to expand programs for compliance.¹⁸⁸

¹⁸⁰ J. P. Ferrier, "Comment: Title IX Leaves Some Athletes Asking, 'Can We Play Too?'" *44 Cath. U. L. Rev.*, 1995:841.

¹⁸¹ A. A. Ingram, "Civil Rights: Title IX and College Athletics: Is There a Viable Compromise?" *48 Okla. L. Rev.*, 1995:755.

¹⁸² C. Raymond, "Comment: Title IX Litigation in the 1990's: The Courts Need a Game Plan," *18 Seattle Univ. L. R.*, 1995:665.

¹⁸³ J. Hudson, "Comment: Complying with Title IX of the Education Amendments of 1972: The Never-Ending Race to the Finish Line," *5 Seton Hall J. Sports L.*, 1995:575.

¹⁸⁴ P. Anderson, "Article: Football Schools' Guide to Title IX Compliance," *2 Sports Law J.*, 1995:75.

¹⁸⁵ R. C. Farrell, "Article: Title IX or College Football?" *32 Hous. L. Rev.*, 1995:993.

¹⁸⁶ D. Aronberg, "Crumbling Foundations: Why Recent Judicial and Legislative Challenges to Title IX May Signal Its Demise," *47 Fla. L. Rev.*, 1995:133.

¹⁸⁷ S. F. Ross, K. Kahrs and F. Heinrich, "Panel Discussion: Rededication Panel Discussion on Gender Equity and Intercollegiate Athletics," *1995 U. Ill. L. Rev.*, 1995:133.

¹⁸⁸ D. H. Moon, "Gender Inequity? Analysis of Title IX Lawsuits in Intercollegiate Athletics," *6 J. Art & Ent. Law*, 1995:87.

T. Davis directed institutions of higher learning to answer the question of their academic mission which he avowed should, in turn, drive the institution's decisions about gender equity and athletics.¹⁸⁹ B. G. George pointed out the need for intercollegiate athletics to continue to seriously pursue their Title IX responsibility even in times of budgetary constraints.¹⁹⁰ M. Straubel advised and heightened awareness that unnecessary harm (to males) was a side effect of Title IX at high school and college levels.¹⁹¹ D.G. Duncan suggested creation of a strategy formulation to accept cuts in some men's sports programs while learning to leave football out of the formula. Duncan endorsed use of the O.C.R. Policy Interpretation as it stood.¹⁹² M.J. Yelnosky directed attention to controversy surrounding use of baseball metaphors in legal writing.¹⁹³ D. C. Wilson weighed the importance of Title IX to intercollegiate athletics gender equity efforts against its application as an affirmative action outcome and high-stake big-time athletics stakeholders.¹⁹⁴ D. Brake and E. Catlin acknowledged Title IX successes and struggles with football and congressional interest in weakening Title IX's power.¹⁹⁵ M. J. Kane directed attention to media's marginal coverage of female athletes' efforts since Title IX was enacted.¹⁹⁶ J. H. Orleans questioned whether it was time to redefine O.C.R. regulations based on significant

¹⁸⁹ T. Davis, "A Model of Institutional Governance for Intercollegiate Athletics," *1995 Wis. L. Rev.*, 1995:599.

¹⁹⁰ B. G. George, "Who Plays and Who Pays: Defining Equality in Intercollegiate Athletics," *1995 Wis. L. Rev.*, 1995:647.

¹⁹¹ M. Straubel, "Gender Equity, College Sports, Title IX and Group Rights: A Coach's View," *62 Brooklyn L. Rev.*, 1996:1039.

¹⁹² D. G. Duncan, "Gender Equity in Women's Athletics," *64 U. Cinn. L. Rev.*, 1996:1027.

¹⁹³ M. J. Yelnosky, "If you Write it (S)he Will Come: Judicial Opinions, Metaphors, Baseball and 'The Sex Stuff,'" *28 Conn. L. Rev.*, 1996:813.

¹⁹⁴ D. C. Wilson, "Parity Bowl IX: Barrier Breakers v. Common Sense Makers and the Serpentine Struggle for Gender Diversity in Collegiate Athletics," *27 Cumb. Rev.* 1996:397.

¹⁹⁵ D. Brake and E. Catlin, "Setting a Course for College Athletics: The Path of Most Resistance The Long Road Toward Gender Equity in Intercollegiate Athletics," *3 Duke J. Gender L. & Pol'y*, 1996:51.

¹⁹⁶ M. J. Kane, "Setting a Course for College Athletics: Media Coverage of the Post Title IX Female Athlete: A feminist Analysis of Sport, Gender and Power," *3 Duke J. Gender L. & Pol'y*, 1996:95.

changes made in society and athletics since Title IX was invoked as an equivocator.¹⁹⁷ M. W. Gray focused on creating a mathematical equation to determine a true compliance margin for substantial proportionality in cases involving Title IX and intercollegiate athletics.¹⁹⁸ J. C. Weistart saw proportional representation as only part of the battle in gender equity.¹⁹⁹ J. J. Whalen discussed the N.C.A.A. Task Force pre- and post-survey preparation and the results about university resources used to create compliance with Title IX.²⁰⁰ T.S. Evans disclosed what could be gained or lost by making significant changes to football when trying to achieve Title IX equity.²⁰¹ S. A. Mota conveyed to readers the cost to universities to litigate for and against court-ordered Title IX compliance and the cost a university would incur to directly fix the gender equity problem in athletics²⁰² based on Brown University's information. R. K. Smith asserted the unintended fallout when seeking gender equity could include racial disparity. Smith offered suggestions to combat this trend.²⁰³

M. J. McPhillips discussed women and their attempts to play baseball and form their own league where no opportunity had existed before for women to participate in a traditionally male non-contact sport.²⁰⁴ R. D'Augustine called for change in Title IX enforcement suggesting several ways to update rules of engagement for a tempered interpretation to encourage

¹⁹⁷ J. H. Orleans, "Setting a Course for College Athletics: An End to the Odyssey: Equal Athletic Opportunity for Women," 3 *Duke J. Gender L. & Pol'y*, 1996:131.

¹⁹⁸ M. W. Gray, "Setting a Course for College Athletics: The Concept of Substantial Proportionality in Title IX Athletic Cases," 3 *Duke J. Gender L. & Pol'y*, 1996:165.

¹⁹⁹ J. C. Weistart, "Setting a Course for College Athletics: Can Gender Equity Find a Place in Commercialized College Sports?" 3 *Duke J. Gender L. & Pol'y*, 1996:191.

²⁰⁰ J. J. Whalen, "Spring Symposium: Issues Facing College Athletics: Gender Equity or Title IX?" 5 *Kan. J.L. & Pub. Pol'y*, 1996:65.

²⁰¹ T. J. Evans, "Spring Symposium: Issues Facing College Athletics: Title IX and Intercollegiate Athletics: A Primer on Current Legal Issues," 5 *Kan J. L. & Pub. Pol'y*, 1996:55.

²⁰² S. A. Mota, "Title IX Intercollegiate Athletics: The First Circuit Holds Brown University Not In Compliance," 14 *U. Miami Ent. & Sports L. Rev.*, 1996:152.

²⁰³ R. K. Smith, "When Ignorance is Not Bliss: In Search of Racial and Gender Equity in Intercollegiate Athletics," 61 *Mo. L. Rev.*, 1996:329.

²⁰⁴ M. J. McPhillips, "'Girls of Summer: A Comprehensive Analysis of the Past, Present and Future of Women in Baseball and a Roadmap to Litigating a Successful Gender Discrimination Case,'" 6 *Seton Hall J. Sports L.*, 1996:329.

proportionality between the genders in athletic opportunity in intercollegiate arenas.²⁰⁵ J. Judge, D. O'Brien and T. O'Brien suggested compensation package outlines for coaching salaries to avoid issues between genders.²⁰⁶ S. Otos took a look at the proportion of athletic injuries by gender occurring and the impact the injuries had on participation.²⁰⁷ C.P. Beveridge concluded after discussing cuts of men's athletic teams that parity of interest in athletic participation starts in grade school. Beveridge recommended that opportunities to participate in athletics must be introduced at early stages of childhood in order for interest to grow.²⁰⁸ J.R. Parkinson discussed the vulnerability of men's sports experience as a result of 1979 Title IX Policy Interpretation which included the three-part test. Parkinson cited the steps that N.C.A.A. took when it created the Gender-Equity Task Force in 1992.²⁰⁹

In the winter of 1997 an article appeared in the *New York School Journal of Human Rights* suggesting that after twenty-five years of Title IX activity that equalizing coaches' salaries was still not a priority in intercollegiate athletics.²¹⁰ R. K. Smith advocated women's football to ease Title IX compliance issues.²¹¹ K. G. J. Pillai debated the validity of applying strict scrutiny arguments to gender and racial issues.²¹² D. Heckman reviewed significant legal action based on legal decisions in Title IX cases between 1994 and 1997 and how contradictory these rulings sometimes appear to be. Heckman made eleven distinct points about Title IX

²⁰⁵ R. D'Augustine, "'A Loosely Laced Buskin?' The Department of Education Policy Interpretation for Applying Title IX to Intercollegiate Athletics," *6 Seton Hall J. Sports L.*, 1996:469.

²⁰⁶ J. Judge, D. O'Brien and T. O'Brien, "Pay Equity: A Legal and Practical Approach to the Compensation of College Coaches," *6 Seton Hall J. Sports L.*, 1996:549.

²⁰⁷ S. Otos, "Cohen v. Brown University: Sports in the Legal Arena," *3 Sports Law L.*, 1996:14.

²⁰⁸ C. P. Beveridge, "Title IX and Intercollegiate Athletics: When School Cut Men's Athletic Teams," *1996 U. Ill. L. Rev.*, 1996:809.

²⁰⁹ J. R. Parkinson, "Grappling with Gender Equity," *Wm & Mary Bill of Rts. L.*, 1996:75.

²¹⁰ New York Law School Journal of Human Rights, "The Opportunity to Play Ball: Title IX University Compliance and Equal Pay," *13 N.Y.L. Sch. J. Hum. Rts.*, 1997:347.

²¹¹ R. K. Smith, "Sports Law as a Reflection of Society's Laws and Values: Solving the Title IX Conundrum with Women's Football," *38 S. Tex. L. Rev.*, 1997:1057.

²¹² K. G. J. Pillai, "Phantom of Strict Scrutiny," *31 New Eng. L. Rev.*, 1997:397.

related-action and the consequences experienced between 1994 and 1997.²¹³ D. Heckman also published “Scoreboard: A Concise Chronological Twenty-five Year History of Title IX Involving Intercollegiate and Interscholastic Athletics,” in the 21st year issue of *Seton Hall Journal of Sport Law*.²¹⁴ C. Spitz presented a diatribe about unintentional and negative effects on men’s and women’s intercollegiate athletics based on interpretation of Title IX regulations and subsequent judicial decisions. Spitz suggested reducing overall football budgets. This, Spitz argued, would allow expansion of female athletic interest without reducing minor male sport team opportunities.²¹⁵ One of the ideas M. Kelman contended was that athletic ability alone should not drive distribution of resources.²¹⁶ Among the four perspectives J.E. Jay offered, one advised the creation of a female sports participation model that was not based on the male sports participation model.²¹⁷ R. Yasser and S. J. Schiller touted that Owasso Consent Decree as a model for Title IX compliance. Yasser and Schiller noted Owasso Consent Degree conveys empowerment to the organization administering interscholastic athletic programming—giving opportunity to address gender-related grievances before they become litigious.²¹⁸ E. G. Bernardo, II discussed and disagreed with quota system-like findings in the *Cohen v. Brown University* decision.²¹⁹ R. Yasser and S. J. Schilling offered another read on the Owasso Case in light of questions about equal opportunity, unequal treatment and discrimination in Owasso’s

²¹³ D. Heckman, “On the Eve of Title IX’s 25th Anniversary: Sex Discrimination in the Gym and Classroom,” *21 Nova L. Rev.*, 1997:545.

²¹⁴ D. Heckman, “Scoreboard: A Concise Chronological Twenty-Five Year History of Title IX Involving Interscholastic and Intercollegiate Athletics,” *21 Seton Hall J. Sport L.*, 1997:391.

²¹⁵ C. Spitz, “Gender Equity in Intercollegiate Athletics as Mandated by Title IX of the Education Act of 1972: Fair or Foul?” *21 Seton Hall J. Sport L.*, 1997:621.

²¹⁶ M. Kelman, “(Why) Does Gender Equity in College Athletics Entail Gender Equity,” *7 S. Cal. Rev. L. & Women’s Stud.*, 1997:63.

²¹⁷ J. E. Jay, “Women’s Participation in Sports: Four Feminist Perspectives,” *7 Tex. J. of Women & L.*, 1997:1.

²¹⁸ R. Yasser and S. J. Schiller, “Gender Equity in Interscholastic Sports: A Case Study,” *33 Tulsa L.J.* 273, 1997: 9968.

²¹⁹ E. G. Bernardo, II, “Unsportsmanlike Conduct: Title IX and *Cohen v. Brown University*,” *2 Roger Williams U. L. Rev.*, 1997:305.

interscholastic programming.²²⁰ G. M. Mowery heightened awareness about gender-related coaching personnel issues regarding hiring and called for planning and balance, in search of quality athletic coaching personnel.²²¹ L. J. Kolpin cited broad interpretation of Title IX leading to improved gender representation in intercollegiate athletic opportunity and access. Kolpin also reviewed improved Olympic performance outcomes for female athletes attributable to Title IX. Kolpin advocated a move for improving quality of coaching for women's athletics.²²² A discussion of cheerleading as a classified athletic sport is included by The Harvard Law Review Association in "Cheering on Women and Girls in Sports: Using Title IX to Fight Gender Role Oppression" in the 1997 issue.²²³ Despite gender equity strides in athletics, J. R. Martin submitted in an essay that higher education still had improvement to make in gender-related progress in its overall programming as it continued tracking females into low status areas of study.²²⁴

T.S. Bredthauer asked if true progress had been made under the auspices of Title IX, twenty-five years after it was signed into law. Bredthauer indicated various negative scenarios created by Title IX's expanded policy interpretation.²²⁵ M. Hammond stressed that adopting a wise spending philosophy across the athletic department lines could increase opportunity for all sports so that Title IX would be interpreted as Congress intended and not reduce male athletic

²²⁰ R. Yasser and S. J. Schiller, "Gender Equality in Athletics: The New Battleground of Interscholastic Sports," *15 Cardozo Arts & Eng. L. J.*, 1997:371.

²²¹ G. W. Mowery, "Creating Equal Opportunity for Female Coaches: Affirmative Action Under Title IX," *U. Cin. L. Rev.*, 1997:283.

²²² L. J. Kolpin, "Has Title IX Delivered an 'Air Ball' to Coaches of Women's Athletics?" *45 Drake L. Rev.*, 1997:253.

²²³ The Harvard Law Review Association, "Cheering on Women and Girls in Sports: Using Title IX to Fight Gender Role Oppression," *110 Harvard L. Rev.*, 1997:1627.

²²⁴ J. R. Martin, "Bound for the Promised Land: The Gendered Character of Higher Education," *4 Duke Gender L. & Pol'y*, 1997:3.

²²⁵ T. S. Bredthauer, "Twenty-Five Years Under Title IX: Have We Made Progress?" *31 Creighton L. Rev.*, 1998:1107.

program participation rates.²²⁶ T. J. Johnson blamed the judiciary for their inconsistent rulings causing a lack of universal Title IX compliance in high school athletics after twenty-five years.²²⁷ T. J. Ellington, S. K. Higashi, J. K. Kim and M. M. Murakami directed attention to the use of strict scrutiny when applied to gender discrimination and in writings involving Justice Ruth Bader Ginsburg.²²⁸ B. L. Porto suggested using a different, non-commercial model for athletic participation which would in turn help achieve gender equity.²²⁹ T. R. Cheesebrough discussed Title IX and *Cohen v. Brown University*. In his argument Cheesebrough formulated that ability and interest drives gender equity pursuits.²³⁰ R. Yasser and S. J. Schilling heightened awareness of the difficulty encountered by law professionals, when representing interscholastic clients as they attempted to collect fees for their services in gender equity cases.²³¹ T. M. Evans provided information about the forgotten female athletes in gender-equity pursuits: African American Women.²³² D.C. Wilson revealed roles played by the National Collegiate Athletic Association (N.C.A.A.) and how this ultimately affected the efforts to achieve gender equity in athletics.²³³ J. H. Blumberg looked at the outcome from *Cohen v. Brown University* and Title IX compliance.²³⁴ D. Robinson weighed the protection offered by Title IX against its robustness to

²²⁶ M. Hammond, "Substantial Proportionality Not Required: Achieving Title IX Compliance Without Reducing Participation in Collegiate Athletics," 87 *Ky. L. J.*, 1998:793.

²²⁷ T. J. Johnson, "Throwing Like a Girl: Constitutional Implications of Title IX Regarding Gender Discrimination in High School Athletic Programs," 18 *N. Ill. U. L. Rev.*, 1998:575.

²²⁸ T. J. Ellington, S.K. Higashi, J.K. Kim and M.M. Murakami, "Justice Ruth Bader Ginsburg and Gender Discrimination," 20 *Hawaii L. Rev.*, 1998:699.

²²⁹ B. L. Porto, "Completing the Revolution: Title IX as a Catalyst for an Alternate Model of College Sports," 8 *Seton Hall J. Sports L.*, 1998:351.

²³⁰ T. R. Cheesbrough, "Cohen v. Brown: I am Woman, Hear Me Score," 5 *Vill. Sports & Ent. L. J.*, 1998:295.

²³¹ R. Yasser and S.J. Schiller, "Gender Equity in Interscholastic Sports The Final Saga: The Fight for Attorney's Fees," 34 *Tulsa L. J.*, 1998:85.

²³² T. M. Evans, "In the Title IX Race Toward Gender Equity the Black Female Athlete is Left to Finish Last: The Lack of Access for the 'Invisible Woman,'" 42 *How. L. J.*, 1998:105.

²³³ D. C. Wilson, "Title IX's Collegiate Sports Application Raises Serious Questions Regarding The Role of the N.C.A.A.," 31 *J. Marshall L. Rev.*, 1998:1303.

²³⁴ J. H. Blumberg, "Brown University Violated Title IX in Not Providing Women Equality Opportunity in Intercollegiate Athletics—*Cohen v. Brown* 101 *F.ed* 155 (1st Cir. 1996)," 31 *Suffolk U. L. Rev.*, 1998:987.

deal with issues related to contact sports and asked if women preferred their sports in segregation from men's programs.²³⁵

R. R. Hunt concluded that Clune's Political Model of Implementation paralleled distinctive points in the debate about athletic policy and Title IX during its progression and interpretation.²³⁶ S. Setty looked at Office for Civil Rights (O.C.R.), Title IX and the chasm that remained between true compliance and continuing violations of the gender equity mandate.²³⁷ B.G. George examined N.C.A.A., Title IX and gender equity as applied to scholarship distribution in athletics.²³⁸ J. Filippone argued that building female participation rates in athletics should not be at the expense of their male counterparts.²³⁹ R. Whitehead, W. Block and L. Hardin pointed out that forcing females to take part in athletic competition, patterned after a male model, in sports they were not necessarily interested in, constituted a form of slavery.²⁴⁰ T. Davis discussed reform of college athletics into a professional division so that universities could develop those who wished to pursue academics separately from those who wished to excel athletically and not necessarily take part in the academic rigor of the university.²⁴¹ E. M. Doherty warned of abuses and injuries to young female athletes who were exposed to motivational forces with little protection available to them. Doherty enumerated eating disorders, unhealthy attachments to coaches as parental figures and total athletic burn-out from

²³⁵ D. Robinson, "A League of Their Own: Do Women Want Sex-Segregated Sports?" *9 J. Contemp. Legal Issues*, 1998:321.

²³⁶ R. R. Hunt, "Implementation and Modification of Title IX Standards: The Evolution of Athletic Policy," *1999 BYU Ed. & L. J.*, 1999:51.

²³⁷ S. Setty, "Leveling the Playing Field: Reforming the Office for Civil Rights to Achieve Better Title IX Enforcement," *32 Colum. J. L. & Soc. Probs.*, 1999:331.

²³⁸ B. G. George, "Sports Law in the 21st Century: Title IX and the Scholarship Dilemma," *9 Marq. Sports L. J.*, 1999:273.

²³⁹ J. Filippone, "Title IX in the Nineties," *15 N.Y.L. Sch. J. Hum. Rts.*, 1999:561.

²⁴⁰ R. Whithead, W. Block and L. Hardin, "Gender Equity in Athletics: Should We Adopt a Non-Discriminatory Model?" *30 U. Tol. L. Rev.*, 1999:223.

²⁴¹ T. Davis, "Sports Law in the 21st Century: Inter collegiate Athletics in the Next Millennium: A Framework Evaluating Reform Proposals," *9 Marq. Sports L. J.*, 1999:253.

over-zealous training requirements as dangers young female athletes could encounter.²⁴² J. L. Botelho commented on Providence College's efforts to become Title IX compliant in the wake of *Cohen v. Brown University*. Botelho, claiming Providence as her *alma mater*, disagreed with methods used for compliance which included reducing opportunities for male athletes in order to achieve Title IX proportionality.²⁴³ E. C. Dudley, Jr. and G. Rutherglen argued that the proportionality level of Title IX compliance should be eliminated and replaced with a more flexible standard of measure. They disagree with the university practice of eliminating minor male sports to increase athletic opportunities for females.²⁴⁴ L. Labinger reported on her address to Rutgers Law School when she discussed *Brown University v. Cohen*, legislative history and misconceptions about Title IX.²⁴⁵

R. A. Jurewitz called for Title IX reform, basically the proportionality prong of the three-part test from the 1979 O.C.R. Policy Interpretation. Jurewitz invoked the need for Congressional intent to be established or re-asserted as it related to Title IX enforcement.²⁴⁶ The Honorable D.E. Shelton discussed the simple problem and the simple solution that ought to be applied to Title IX. Shelton cited the language in *Cook v. Colgate* regarding equality in athletics and law as not a luxury, but an essential element in not only athletics but society at large. Shelton strongly protested eliminating athletic opportunities for one gender to create

²⁴² E. M. Doherty, "Winning Isn't Everything. . . It's the Only Thing: A Critique of Teenaged Girls' Participation in Sports," *10 Marq. Sports L. J.*, 1999:127.

²⁴³ J. L. Botelho, "The Cohen Court's Reading of Title IX: Does it Really Promote a *De facto* Quota Scheme?" *33 New Eng. L. Rev.*, 1999:743.

²⁴⁴ E. C. Dudley, Jr. and G. Rutherglen, "Ironies, Inconsistencies and Intercollegiate Athletics: Title IX, Title VII and Statistical Evidence of Discrimination," *1 Va. J. Sports L.*, 1999:130.

²⁴⁵ L. Labinger, "Title IX and Athletics: A discussion of *Brown University v. Cohen* by Plaintiff's Counsel, An Address by Lynnette Labinger Rutgers Law School—Newark, October 21, 1998," *20 Women's Rights L. Rep.*, 1999:85.

²⁴⁶ R. A. Jurewitz, "Playing at Even Strength: Reforming Title IX Enforcement in Intercollegiate Athletics," *8 Am. U.J. Gender Soc. Pol'y & L.*, 2000: 283.

opportunities for another.²⁴⁷ M.P. Hammer directed attention to N.C.A.A. and the continued haggling over whether N.C.A.A. was bound by the tenants of Title IX.²⁴⁸ R. K. Smith developed an historical look at N.C.A.A. and its role as regulator of who certifies eligibility for players to compete in intercollegiate athletics.²⁴⁹ A. Crouse offered a proposal for revoking the contact sports exception in Title IX based on her analysis of *Mercer v. Duke University*.²⁵⁰ M. Federbush advised readers to scrutinize gender equity efforts in publically funded institutions of higher learning. Federbush proposed using a model of competition similar to that used in The Olympics instead of Title IX.²⁵¹ S. J. Clark presented two law professors' points-of-view on Title IX noting the mixed messages coming out of the conversation regarding Title IX and its application to athletic gender equity.²⁵² D. Brake pointed out educational institutions of higher learning nurture an underlying culture hostile to women in athletics. Brake called for creating a theory of engagement that factored in differences and levels of interests in athletics between genders. Even after twenty-eight years, athletics, according to Brake, was still a male-dominated entity.²⁵³ J. Lamber addressed expectations and reality as a result of Title IX's implementation. Lamber reformulated the argument for equality in that Title IX went beyond other Civil Rights statutes to ensure that equal opportunity was made available to women in sports.²⁵⁴ K. L.

²⁴⁷ Honorable D. E. Shelton, "Equally Bad is not Good: Allowing Title IX 'Compliance' By the Elimination of Men's Collegiate Sports," *34 U. Mich. J. L. Ref.*, 2001:253.

²⁴⁸ M. P. Hammer, "Bump, Set, Spiked: Determining Whether the National Collegiate Athletic Association is a Recipient of Federal Funds Under Title IX *National Collegiate Athletic Ass'n v. Smith*," *65 Mo. L. Rev.*, 2000:773.

²⁴⁹ R. K. Smith, "A Brief History of the National Collegiate Athletic Association's Role in Regulating Intercollegiate Athletics," *11 Marq. Sports L. Rev.*, 2000:1655.

²⁵⁰ A. Crouse, "Equal Athletic Opportunity: An Analysis of *Mercer v. Duke University* and A Proposal to Amend the Contact Sport Exception to Title IX," *84 Minn. L. Rev.*, 2000:1655.

²⁵¹ M. Federbush, "An 'Olympics' Approach: A More Equitable Approach to Athletics than Title IX Offers," *34 Mich. J. L. Ref.*, 2000:265.

²⁵² S. J. Clark, "Competing in the 21st Century: Title IX, Gender Equity and Athletics: Introducing the Mixed Messages of Title IX," *34 U. Mich. J. L. Ref.*, 2000:1.

²⁵³ D. Brake, "The Struggle for Sex Equity in Sport and the Theory Behind Title IX," *34 U. Mich. J. L. Ref.*, 2000:13.

²⁵⁴ J. Lamber, "Gender and Intercollegiate Athletics: Data and Myths," *34 U. Mich. J. L. Ref.*, 2000:151.

Schoepfer suggested that scholarshiped athletes were employees of an institution for whom they were contracted to play, thereby falling under the jurisdiction of Title VII.²⁵⁵ S. Sangree discussed the bearing that the contact sports exemption had on the overall value placed on females as athletes and members of society.²⁵⁶ S. Masterson outlined the state of Georgia's attempt to require compliance with gender equity measures in elementary and secondary education tied to financial incentives passed in their state legislature.²⁵⁷ J. R. Heller made a compelling argument against using the 1979 O.C.R. Policy Interpretation to solve Title IX issues in the judiciary. Heller called for a return to the language of the original statute not the agency regulatory interpretation of said legislation.²⁵⁸ K. S. Simons debated the principles of true equality, entitlements and distribution of resources.²⁵⁹ B. Osborne and M. Yarbrough addressed the university coaches pay disparities historically driven by gender. Osborne and Yarbrough examined the Equal Employment Opportunity Commission (E.E.O.C.) sex discrimination guidelines issued in 1997 against other acts and titles dealing with equal pay issues.²⁶⁰ A discussion of what constitutes state action, making parties amenable to certain laws and regulations at state and federal levels, appeared in 2000 in *Seton Hall Journal of Sport Law* connecting the Tennessee Secondary School Athletic Association and Brentwood Academy case

²⁵⁵ K. L. Schoepfer, "Title VII: An Alternate Remedy for Gender Inequity in Intercollegiate Athletics," *11 Marq. Sports L. Rev.*, 2000:107.

²⁵⁶ S. Sangree, "Title IX and the Contact Sports Exemption: Gender Stereotypes in a Civil Rights Statute," *32 Conn. L. Rev.*, 2000:381.

²⁵⁷ S. Masterson, "Elementary and Secondary Education: Prohibit Discrimination Based on Gender in Elementary and Secondary School Athletics Programs Under the 'Quality Basic Education Act'; Amend Certain Provisions Relating to Grants and Other Disbursements of Fund by the Department of Community Affairs," *17 Ga. St. U. L. Rev.*, 2000:168.

²⁵⁸ J. R. Heller, "Stepping Back to Punt: Favoring Internal Agency Interpretations Over Title IX and its Regulations," *12 J. L. & Pub. Pol'y.*, 2000:179.

²⁵⁹ K. W. Simons, "The Logic of Egalitarian Norms," *80 B.U.L. Rev.*, 2000:693.

²⁶⁰ B. Osborne and M. Yarbrough, "Pay Equity for Coaches and Athletic Administrators," *34 Mich. J. L. Ref.*, 2000:231.

as an example.²⁶¹ Also appearing in the *Seton Hall Journal of Sport Law* was a comment directing attention to contact sports exception and the outcomes from *Mercer v. Duke University* that strengthened Title IX's protection against gender discrimination.²⁶² F. M. Duffy attempted to heighten awareness about the negative effects of the male athletic competition model on true athletic gender equity. Duffy stated that culturally, as a society, we are not willing to solve the underlying issues plaguing Title IX compliance.²⁶³ T. T. Tygart ascertained the fine line athletic administrations at every level of competition have to monitor for equal distribution of resources to both genders participating in athletic competition and that private donations are not exempt from scrutiny under gender equity focus.²⁶⁴ T. M. Rowland outlined issues of control that the N.C.A.A. was subject to indirectly through member university ties.²⁶⁵

M. Torrey followed the three decades of Title IX and the effects that liberal feminism had had to drive compliance with the gender equity statute.²⁶⁶ M. K. Starace recounted the negative impact gender equity efforts had had on men's non-revenue producing sports.²⁶⁷ S.E. Gohl discussed the judicial remedies that should have been available for male athletes under the backlash and lack of opportunity they experienced because of gender equity efforts focused on building female participation in athletics.²⁶⁸ S. Campbell interpreted intentional gender

²⁶¹ *Seton Hall Journal of Sport Law*, "Absent Strong Connections to a State Government, A High School Athletic Association Cannot be Construed as a State Actor—*Brentwood Academy v. Tennessee School Athletics Ass'n*, 180 *F.ed* 758 (6th Cir. 1999, cert. granted, 120 *S. Ct.* 1156), 10 *Seton Hall J. Sport L.*, 2000:457.

²⁶² *Seton Hall Journal of Sport Law*, "The Scope of Title IX: Protection Gains Yardage as Courts Continue to Tackle the Contact Sports Exception," 10 *Seton Hall J. Sport L.*, 2000:415.

²⁶³ F. M. Duffy, "Twenty-Seven Years Post Title IX: Why Gender Equity in College Athletics Does Not Exist," 19 *Quinnipiac L. Rev.*, 2000:67.

²⁶⁴ T. T. Tygart, "Title IX: The Monitoring of Private Athletic Donations," 53 *Okla. L. Rev.*, 2000:57.

²⁶⁵ R. M. Rowland, "Leveling the Playing Field: The N.C.A.A. Should be Subject to Title IX," 7 *Sports L. J.*, 2000:143.

²⁶⁶ M. Torrey, "Thirty Years," 22 *Women's Rights' L. Rep.*, 2001:147.

²⁶⁷ M. K. Starace, "Reverse Discrimination Under Title IX: Do Men Have a Sporting Chance?" 8 *Vill. Sports & Ent. L. Forum*, 2001:189.

²⁶⁸ S. E. Gohl, "A Lesson in English and Gender: Title IX and the Male Student-Athlete," 50 *Duke L. J.*, 2001:1123.

discrimination standards as found in *Horner v. Kentucky High School Athletic Association*.²⁶⁹ C. R. DeLourdes recounted the reach of Title IX outside the educational athletic arena and the opportunities afforded the underrepresented gender in other athletic venues outside the university and public elementary and secondary schools.²⁷⁰ E.A. Haggerty marveled at the recurring claims of Title IX violations in athletics at educational institutions after the law had been in existence since 1972. Haggerty noted that civil rights legislation takes a long time for society to get the message that it is here to stay and that progress is made in little steps forward.²⁷¹ S. R. Rosner pointed out the financial advantages of creating women's rowing teams and other emerging sports to help educational institutions choose athletic opportunities for female athletes as they continue to comply with regulations of Title IX.²⁷² C.P. Reuscher discussed the Title IX history and purpose in an attempt to find a way to honor congressional intent for Title IX excluding use of the remedy to reduce existing athletic programs.²⁷³ H. J. Nicholson and M. F. Maschino traced the roots of the organization, Girls Incorporated® to bring attention to social barriers that keep young females from attaining their true potential.²⁷⁴ A.D. Mathewson presented the plight of the African American female whose stereotypical role as athlete served as an obstacle to overcome in order to become a social representative for promoting anti-discrimination efforts.²⁷⁵ R. Reaves follows with a discussion of gender and racial roles being separate social issues when

²⁶⁹ S. Campbell, "Compensatory Damages are not Available for a Title IX Violation Without Showing of Intentional Discrimination *Horner v. Kentucky High School Athletic Ass'n* 206 F.ed 685 (6th Cir. 2000). *11 Seton Hall J. Sports L.* 177.

²⁷⁰ C. R. De Lourdes, "In Search of a Level Playing Field *Baca v. City of Los Angeles* as a Step Toward Gender Equity in Girl's Sports Beyond Title IX," *24 Harv. Women's L. J.*, 2001:139.

²⁷¹ E. A. Haggerty, "Title IX-Federally Funded Educational Institutions Failed to Effectively Accommodate Female Student Athletics Due to Intentional Discrimination Based on Stereotypes Assuming Their Interests and Abilities," *11 Seton Hall J. Sport L.*, 2001:373.

²⁷² S. R. Rosner, "The Growth of N.C.A.A. Women's Rowing: A Financial, Ethical and Legal Analysis," *11 Seton Hall J. Sport L.*, 2001:297.

²⁷³ C. P. Reuscher, "Comment: Giving the Bat Back to Casey: Suggestions to Reform Title IX's Inequitable Application to Intercollegiate Athletics," *35 Akron L. Rev.*, 2001:117.

²⁷⁴ H. J. Nicholson, H.J. and M. F. Maschino, "Special Issue: Education Law And Policy: Strong, Smart, And Bold Girls:The Girls Incorporated(R) Approach To Education," *29 Fordham Urb. L.J.*, 2001:561.

²⁷⁵ A. D. Mathewson, "Grooming Crossovers," *4 J. Gender Race & Just.*, 2001:225.

women are coached by males. The African American woman may be at the greater disadvantage and experience more harassment and discrimination because of their gender and ethnic attributes.²⁷⁶ P.A. Cain discussed historical implications of Title IX and N.C.A.A.'s roles to make changes in gender equity in athletics. Cain attempted to couch the discussion historically in an effort to help constituents understand the lack of complete gender parity in athletics.²⁷⁷ S.A. Elliott and D. S. Mason proposed an alternative model for consideration to replace proportionality measures that often created need to reduce existing athletic teams to bring programs into compliance or continued compliance.²⁷⁸ A. Bauer discussed the state of Title IX in 2001 as being out of focus. Bauer stated that unless focus shifted away from collegiate level program that a continued decline in gender parity progress in athletics would occur. Two points Bauer offered in the discussion were negative outcomes based on meeting interests of women athletes who did not possess the level of athletic prowess of men's programs and that by using a pseudo-affirmative action scheme the fallout from male program closures would continue. The focus Bauer endorsed was a further development of interscholastic programs.²⁷⁹

J. A. Baird offered a look at sexual orientation harassment and discrimination found in athletics.²⁸⁰ A. F. Oloya continued the conversation about Title IX and inequity in athletics in both public and private organizations.²⁸¹ M.R. Weiss encouraged the use of The Equal Pay Act or Title VII when accusing an organization of disparity in athletic coaches' pay based on gender.

²⁷⁶ R. Reaves, ARTICLE: "There's No Crying in Baseball": Sports and the Legal and Social Construction of Gender," 4 *J. Gender Race & Just.*, 2001:283.

²⁷⁷ P.A. Cain, "COMMENTARY: Women, Race, and Sports: Life Before Title IX," 4 *J. Gender Race & Just.*, 2001:337.

²⁷⁸ S. A. Elliott and D. S. Mason, ARTICLE: Gender Equity in Intercollegiate Athletics: An Alternative Model to Achieving Title IX Compliance," 11 *J. Legal Aspects Of Sport*, 2001:1.

²⁷⁹ A. Bauer, "NOTE: If You Build it, They Will Come: Establishing Title IX Compliance in Interscholastic Sports as a Foundation for Achieving Gender Equity," 7 *Wm. & Mary J. of Women & L.*, 2001:983.

²⁸⁰ J. A. Baird, "Playing It Straight: An Analysis of Current Legal Protections to Combat Homophobia and Sexual Orientation Discrimination in Intercollegiate Athletics," 17 *Berkeley Women's L.J.* 2002:31.

²⁸¹ A. F. Oloya, "Fourth Annual Review Of Gender And Sexuality Law: Education Law Chapter: Athletics," 4 *Geo. J. Gender & L.*, 2002:377.

Weiss lists various elements from the E.E.O.C. Guidelines for reader consideration.²⁸² P.N. Findlay addressed the harm caused by a system attempting to achieve parity with proportional goals set. Findlay endorsed a system that would include and encourage participation in sports even if athletic skills are not up to varsity standards. In order to develop and accommodate interests of both genders in sports, a greater number of girls need to participate in team sports.²⁸³ L. Tatum called upon the N.C.A.A. as an organization to monitor and control gender equity in athletic competition high school.²⁸⁴ J. Lamber in 2000 sampled various institutions of higher learning to review their Title IX plans for compliance and changes in sports department structure and find out what compliance strategies they were using to meet the standards.²⁸⁵ B.G. George posed questions about possible gender remedies which would allow men to field teams established for women, where no men's teams exist. George supposed the need for limits to keep men from taking over the team membership based on their possible ability to possess skill domination over female members. George considered scenarios where all sport teams would be made up of 50% of each gender.²⁸⁶

Newspaper Articles

In this section, perusing the articles that appear in the print media conversation create the historical progression of Title IX of the Educational Amendments of 1972 as the story begins to unfold for the general public. Article details will be reported in the appropriate chapter organized by decade. *The N.C.A.A. News* reported to its membership in March 1, 1974 that

²⁸² M. R. Weiss, "Comment: Pay Equity For Intercollegiate Coaches: Exploring The EEOC Enforcement Guidelines," *13 Marq. Sports L. Rev.*, 2002:149.

²⁸³ P. N. Findlay, "ARTICLE: The Case for Requiring a Proportionality Test to Assess Compliance with Title IX in High School Athletics," *23 N. Ill. U. L. Rev.*, 2002:29.

²⁸⁴ L. Tatum, "COMMENT: Girls in Sports: Love of the Game Must Begin at an Early Age to Achieve Equality," *12 Seton Hall J. Sports L.*, 2002:281.

²⁸⁵ J. Lamber, Article: Intercollegiate Athletics: The Program Expansion Standard Under Title IX's Policy Interpretation," *12 S. Cal. Rev. L. & Women's Stud.*, 2002:31.

²⁸⁶ B. G. George, "ARTICLE: Fifty/Fifty: Ending Sex Segregation in School Sports," *63 Ohio St. L.J.*, 2002/2003:1107.

“HEW Regulations Threaten College Athletics.”²⁸⁷ Later that month, *The N.C.A.A. News* featured headline “Colleges Seek Input to Title IX.”²⁸⁸ By April Issues of the editors of the *The N.C.A.A. News* look forward to the “Redraft of Title IX Regulations Due”²⁸⁹ and a guest editorial by a spokesman for the National Federation of State High School Associations asserted “High Schools Also Decry Title IX”²⁹⁰ in spring 1974. Three entries revealed the N.C.A.A.’s attention to Title IX as “N.C.A.A. Council Adopts Resolutions on Senate Bill, Women’s Sports”²⁹¹ appeared on page 1, “On Women’s Sports RESOLUTION,”²⁹² appeared on page three and sentiments Don Canham, athletic director at the University of Michigan asserted in a copy of his letter to HEW Secretary Caspar Weinberger, appeared under the heading “Opposition Forwarded To Title IX Regulations”²⁹³ on page six. In June, 1974, a *New York Times* article entitled, “HEW Proposes Rules to Outlaw Sex Bias,” set the tone for athletic changes brought on by Title IX regulations²⁹⁴ as it caught general public readers’ interest and attention on page one.

By August 1, 1974, *The N.C.A.A. News* was reporting to their membership about “Weinberger Responds to Questions Concerning Title IX”²⁹⁵ and N.C.A.A. legislative committee

²⁸⁷ R, James, (Ed.), “HEW Regulation Threaten College Athletics,” *N.C.A.A. News*, vol. 11, no.3, March 1, 1974:2-3. <http://web1.ncaa.org> (accessed March 28, 2008).

²⁸⁸ N.C.A.A. News, “Colleges Seek Input to Title IX,” *N.C.A.A. News*, vol. 11, no. 4, March 15, 1974:1. <http://web1.ncaa.org> (accessed March 28, 2008).

²⁸⁹ N.C.A.A. News, “Redraft of Title IX Regulations Due,” *N.C.A.A. News*, vol. 11, no. 5, April 15, 1974:1. <http://web1.ncaa.org> (accessed March 28, 2008).

²⁹⁰ J. Roberts, “Guest Editorial: High Schools Also Decry Title IX,” *N.C.A.A. News*, vol. 11, no. 5, April 15, 1974: 2. <http://web1.ncaa.org> (accessed March 28, 2008).

²⁹¹ N.C.A.A. News, “NCAA Council Adopts Resolutions on Senate Bills, Women’s Sports,” vol. 11, no. 6, May 15, 1974: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

²⁹² N.C.A.A. News, “On Women’s Sports RESOLUTION,” vol. 11, no. 6, May 15, 1974: 3. <http://web1.ncaa.org> (accessed March 28, 2008).

²⁹³ N.C.A.A. News, “Opposition Forwarded To Title IX Regulations,” vol. 11, no. 6, May 15, 1974: 6. <http://web1.ncaa.org> (accessed March 28, 2008).

²⁹⁴ E. Shanahan, “HEW Proposes Rules to Outlaw Sex Bias,” *New York Times*, June 19, 1974: 1, 32. Microfiche.

²⁹⁵ C. A. Weinberger, “Weinberger Responds to Questions Concerning IX,” *N.C.A.A. News*, vol. 11, no 8. August 1, 1974: 4. <http://web1.ncaa.org> (accessed March 28, 2008).

chair “James Reviews N.C.A.A. Position on Title IX.”²⁹⁶ Later in August 1974, *N.C.A.A. News* editor, D. Daniel, presented an editorial, “Title IX Regulations Extreme,”²⁹⁷ and featured a reprint of S. Watson’s article from the *Daily Citizen* (Arizona) pointing out “Title IX Regulations Confuse All but a Very Few People.”²⁹⁸ The N.C.A.A. showed keen interest in tracking Congressional activity making note of the senate and house bills, their purpose, their sponsor and an N.C.A.A. comment included by R. James in the article “Legislative Committee Keeps Up with Bills,”²⁹⁹ which was followed by a letter from Bowling Green State University’s athletic director, R. Young, to Honorable Representative Delbert L. Latta. Editor Daniel pointed out that HEW’s Title IX regulations were something to fight against agreeing with the sentiments found in R. Young’s “Title IX Letter Shows Effort Needed in Battle.”³⁰⁰ D. Daniel gave an editorial viewpoint “Logic Lacking in Title IX Guidelines.”³⁰¹ Also the results from the fourth Survey on Sports and Recreational Programs was shared with readers showing varsity women’s participation increased over the last report in 1971-72.³⁰²

The N.C.A.A. News revealed their satisfaction with Title IX when “Title IX Comments [were] Submitted to HEW”³⁰³ appeared. In October of 1974 and noted a guest editorial

²⁹⁶ R. James, “James Reviews NCAA Position to Title IX,” *N.C.A.A. News*, vol. 11, no. 8, August 1, 1974: 1, 4. <http://web1.ncaa.org> (accessed March 28, 2008).

²⁹⁷ D. Daniel, “Title IX Regulations Extreme,” *N.C.A.A. News*, vol. 11, no. 9, August 15, 1974: 2 <http://web1.ncaa.org>. (accessed March 28, 2008).

²⁹⁸ S. Watson, “Title IX Regulations Confuse All But a Very Few People,” as cited from *N.C.A.A. News*, vol. 11, no. 9 August 15, 1974:2. <http://web1.ncaa.org> (accessed March 28, 2008).

²⁹⁹ R. James, “Congressional Scorecard: Legislative Committee Keeps up with Bills,” *N.C.A.A. News*, vol. 11, no. 9, August 15, 1974: 3. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁰⁰ D. Daniel, (Ed), “Title IX Letter Shows Effort Needed in Battle,” *N.C.A.A. News*, vol. 11, no. 9, August 15, 1974: 5. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁰¹ D. Daniel, (Ed), “Logic Lacking in Title IX Guidelines,” *N.C.A.A. News*, vol. 11, no. 9, August 15, 1974:8. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁰² N.C.A.A. News, “Sports Participation Study Reflects Significant Increases,” *N.C.A.A. News*, vol. 11, no. 9, August 15, 1974: 8. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁰³ N.C.A.A. News, “Title IX Comments Submitted to HEW,” *N.C.A.A. News*, vol. 11, no. 11, October 15, 1974:1,5. <http://web1.ncaa.org> (accessed March 28, 2008).

promoting that “High Schools Denounce Title IX.”³⁰⁴ *The N.C.A.A. News* also conveyed information regarding the newly formed Penn-Mar Conference of Intercollegiate Athletics For Women.³⁰⁵ *The N.C.A.A. News* also enlightened readers featuring Garry Trudeau’s cartoon in two installments featuring a football team discussing Title IX survey requirements in “Doonesbury Bewildered by Title IX.”³⁰⁶ By November 1, 1974 “N.C.A.A. discusses Growing Women’s Sports with AIAW”³⁰⁷ and the second installment of Doonesbury cartoons ran.³⁰⁸

In January, 1975, *The New York Times* reentered the conversation with “College Heads Ponder Athletic Costs, Ethics and Title IX,”³⁰⁹ and “Women are a Problem to N.C.A.A.”³¹⁰ *The N.C.A.A. News* printed “Sen. Tower Comments on Title IX Regulations” featuring the letter Tower sent to Peter Holmes, Director of OCR, outlining the serious flaws in the regulations.³¹¹ D. Daniel remarked in the Editor’s View “HEW Challenge Unauthorized”³¹² as J. Hall’s gave an anecdotal account of male and female athletes on UCLA and USC campuses as “Women’s Athletics Gain Acceptance on Campus” was reprinted from a news article featured in *The Los Angeles Times*.³¹³ An interesting tidbit is included on page 4 attributed to an Associated Press

³⁰⁴NFSHSA, “High Schools Denounce Title IX,” *N.C.A.A. News*, vol. 11, no. 11, October 15, 1974:2. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁰⁵ N.C.A.A. News, “Women’s Conference Begins in Pennsylvania and Maryland,” *N.C.A.A. News*, vol. 11, no. 11, October 15, 1974: 2. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁰⁶ G. Trudeau, “Doonesbury Bewildered by Title IX,” *N.C.A.A. News*, vol. 11, no 11, October 15, 1974:2. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁰⁷ N.C.A.A. News, “NCAA Discusses Growing Women’s Sports with A.I.A.W.,” *N.C.A.A. News*, vol. 11, no. 12, November 1, 1974: 2. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁰⁸ G. Trudeau, “Doonesbury Bewildered by Title IX,” *N.C.A.A. News*, vol. 11, no 12, November 1, 1974:6. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁰⁹ G. S. White, Jr., “College Heads Ponder Athletics Costs, Ethics and Title IX,” *New York Times*, January 6, 1975:37, 39. Microfilm.

³¹⁰ G. S. White, Jr. , “Women are a Problem for N.C.A.A.,” *New York Times*, January 7, 1975:39, 41. Microfilm.

³¹¹ D. Daniel, “Sen. Tower Comments on Title IX Regulations,” *N.C.A.A. News*, vol. 12, no. 1, January 1, 1975:1, 4. <http://web1.ncaa.org> (accessed March 28, 2008).

³¹² D. Daniel, “HEW Challenge Unauthorized,” *N.C.A.A. News*, vol. 12, no. 1, January 1, 1975: 2. <http://web1.ncaa.org> (accessed March 28, 2008).

³¹³ J. Hall, “Women’s Athletics Gain Acceptance on Campus,” *N.C.A.A. News*, vol. 12, no. 1, January 1, 1975:2. <http://web1.ncaa.org> (accessed March 28, 2008).

release with Representative Edith Green asserting that Title IX regulations were not as Congress intended and that “HEW [went] Overboard on Title IX.”³¹⁴

February 1974 issues of *The N.C.A.A. News* directed attention to “Women’s Sports and N.C.A.A.” as historical progression of The N.C.A.A. and The A.I.A.W. made decisions about women’s athletics from 1963 to 1973 and the A.I.A.W.’s interest in equal but separate programming.³¹⁵ W. E. Davis of Idaho State University enlightened readers of *The N.C.A.A. News* with his insightful questions and tongue-in cheek delivery of a two-part series “Title IX: Assassination or Assimilation?”³¹⁶ This was strategically placed opposite the address side of the folded newsletter to heighten interest in reading the article.

Another set of articles from *The New York Times* followed in March of 1975 announcing “A Bill to Give Women Equal Rights in College Sports sent to President”³¹⁷ and “Title IX’s Effect on College and School Sports”³¹⁸ *The N.C.A.A. News* reports to its member institutions in March of 1975 that “Title IX Sent to White House: HEW Mum on Guidelines Content”³¹⁹ and another excerpt from U.S. Representative Edith Green from a February 1975 comment in *The American School Board Journal* was reported in “Title IX Author Considered Guidelines ‘Interference.’”³²⁰ The second installment ran in March 1975 from W.E. Davis’ two part series:

³¹⁴E. Green, “HEW ‘Overboard’ On Title IX,” as quoted from Associated Press release, November 24, 1974. *N.C.A.A. News*, vol. 12, no. 1, January 1975:4. <http://web1.ncaa.org> (accessed March 28, 2008).

³¹⁵N.C.A.A. News, “Women’s Sports and NCAA,” *N.C.A.A. News*, vol. 12, no. 2, February 1974:1-2. <http://web1.ncaa.org> (accessed March 28, 2008).

³¹⁶W. E. Davis, “Title IX Assassination or Assimilation?” *N.C.A.A. News*, vol.12, no. 3, February 15, 1975:8. <http://web1.ncaa.org> (accessed March 28, 2008).

³¹⁷New York Times, “A Bill to Give Women Equal Rights in College Sports sent to President,” *New York Times*, March 1 1975:16. Microfilm.

³¹⁸N. Amdur, “Title IX’s Effect on College and School Sports,” *New York Times*, March 14, 1975:32. Microfilm.

³¹⁹N.C.A.A. News, “Title IX Send to White House; HEW Mum on Guidelines’ Content,” *N.C.A.A. News*, Vol. 12, no. 4, March 15, 1975:1. <http://web1.ncaa.org> (accessed March 28, 2008).

³²⁰E. Green, “Title IX Author Considers Guidelines ‘Interference,’” *N.C.A.A. News*, Vol. 12, no. 4, March 15, 1975:2. <http://web1.ncaa.org> (accessed March 28, 2008).

“Title IX Assassination or Assimilation?”³²¹ Editors from *The N.C.A.A. News* featured excerpts from Caspar Weinberger’s letter to the President regarding Title IX regulation in the article “With Little History, Debate or Thought.”³²² Editor D. Daniel announced in mid-May 1975 that “A Report on Women’s Intercollegiate Athletics [had been] Distributed.”³²³ This report prepared the way for The N.C.A.A. and The A.I.A.W. to jointly oversee compliance of Title IX into their existing programming.

Later in May of 1975, *The New York Times* reported “College Experiment Offered Women”³²⁴ followed by an announcement that “HEW Halts Individual Bias Inquires.”³²⁵ *The N.C.A.A. News* revealed to its membership that the “Final Title IX Version Approved by the President”³²⁶ still did not address exemptions they had sought and advised that “Title IX Needs Action By Congress”³²⁷ as the regulations were scheduled to go back to Congress for a matching of statute to regulation. A few days later in June 1975, *The New York Times* revealed that “Title IX Rules Issued for Equality in Sports”³²⁸ and before the end of June they were reporting to the public that “Title IX Rules Underfire.”³²⁹ In mid-July *The N.C.A.A. News* lead story “Long-Debated Title IX Regulations Not Rejected by Congress”³³⁰ conveyed compliance deadlines

³²¹ W. E. Davis, “Title IX Assassination or Assimilation?, Part 2,” *N.C.A.A. News*, Vol. 12, no. 4, March 15, 1975:3. <http://web1.ncaa.org> (accessed March 28, 2008).

³²² N.C.A.A. News, “With Little History, Debate or Thought,” *N.C.A.A. News*, vol. 12, no. 5, April 15, 1975:1,3. <http://web1.ncaa.org> (accessed March 28, 2008).

³²³ N.C.A.A. News, “A Report on Women’s Intercollegiate Athletics Distributed,” *N.C.A.A. News*, Vol. 12, no. 6, May 15, 1975 2. <http://web1.ncaa.org> (accessed March 28, 2008).

³²⁴ J. Searcy, “College Experiment Offered Women,” *New York Times*, May 18, 1975:S5. Microfilm.

³²⁵ N. Hicks, “HEW Halts Individual Bias Inquires,” *New York Times*, May 30, 1975:29. www.nytimesarchives.com (accessed August 11, 2008).

³²⁶ N.C.A.A. News, “Final Title IX Version Approved by the President,” *N.C.A.A. News*, Vol. 12, no. 7, June 1, 1975:2, 4. <http://web1.ncaa.org> (accessed March 28, 2008).

³²⁷ N.C.A.A. News, “Title IX Needs Action By Congress,” *N.C.A.A. News*, Vol. 12, no. 7, June 1, 1975:2, 4. <http://web1.ncaa.org> (accessed March 28, 2008).

³²⁸ G. Eskenazi, “Title IX Rules Issued for Equality in Sports,” *New York Times*, June 4, 1975:29, 30. Microfilm.

³²⁹ *New York Times*, “Title IX Rules Underfire,” *New York Times*, June 18, 1975:25, 27. Microfilm.

³³⁰ N.C.A.A. News, “Long-Debated Title IX Regulations Not Rejected by Congress,” *N.C.A.A. News*, vol. 12, no. 8, July 15, 1975:1. <http://web1.ncaa.org> (accessed March 28, 2008)

were firm and that efforts by athletic stakeholders to abort the regulation had failed. The editorial featured in the same issue “About Women’s Athletics,”³³¹ cited reasons such as income, quotas, segregation, overreach and hostility that Title IX enactment brought to the athletic venue. The first August issue of *The N.C.A.A. News* featured “Ford Would ‘Welcome’ More Title IX Hearings”³³² which implied President Gerald Ford’s concern with Title IX as written yet he maintained that he endorsed efforts to end sex discrimination in athletics. Ford invited Congress to hold hearings to further study Title IX as applied to collegiate athletics. Also in the August issue the article “Fuzak Questions Title IX Consistency with The Law,”³³³ appeared which contained portions of N.C.A.A. President, John A. Fuzak’s words used when he address the congressional subcommittee hearing citing facts The N.C.A.A. holds as reasons Title IX did not apply to them or athletics in general.

The N.C.A.A. News informed the membership that “Title IX Amendments [were] Alive”³³⁴ in a James O’Hara bill regarding changes recommend to Title IX. Oregon State Athletic Direction “Jim Barnett Cites Title IX as One Reason for Resignation”³³⁵ began coverage about fallout from Title IX as *The N.C.A.A. News* also revealed “Illinois Supports Tower Amendment”³³⁶ in congressional subcommittee testimony about use of athletic funds. In the same month, excerpts of comments John A. Fuzak made before the Senate in hearings on the Tower Amendment in “N.C.A.A. Viewpoint on Title IX Clarified by President Fuzak appeared

³³¹ N.C.A.A. News, “About Women’s Athletics,” *N.C.A.A. News*, vol. 12, no. 8, July 15, 1975:2. <http://web1.ncaa.org> (accessed March 28, 2008).

³³² N.C.A.A. News, “Ford Would ‘Welcome’ More Title IX Hearings,” *N.C.A.A. News*, vol. 12, no. 9, August 1, 1975:1. <http://web1.ncaa.org> (accessed March 28, 2008).

³³³ J. A. Fuzak, “Fuzak Questions Title IX Consistency with the Law,” *N.C.A.A. News*, vol. 12, no. 9, August 1, 1975:8. <http://web1.ncaa.org> (accessed March 28, 2008).

³³⁴ N.C.A.A. News, “Title IX Amendments Alive,” *N.C.A.A. News*, vol. 12, no. 11, September 1, 1975:1. <http://web1.ncaa.org> (accessed March 28, 2008).

³³⁵ N.C.A.A. News, “Jim Barnett Cites Title IX as One Reason for Resignation,” *N.C.A.A. News*, vol. 12, no. 11, September 1, 1975:4. <http://web1.ncaa.org> (accessed March 28, 2008).

³³⁶ N.C.A.A. News, “Illinois Supports Tower Amendment,” *N.C.A.A. News*, vol. 12, no. 11, September 1, 1975:6. <http://web1.ncaa.org> (accessed March 28, 2008).

in print.”³³⁷ Fuzak lent support for the Tower bill, expressed deep concern over ways member institutions could meet demands and accused HEW of ‘Economic Insanity’ as related to running athletic programs.

In the fall of 1975 different viewpoints were starting to appear in *New York Times* articles as “One view of Title IX: Detrimental to Women”³³⁸ and football fans weighed in “View of Sports ‘Football, It Pays the Bills, Son.’”³³⁹ *The N.C.A.A. News* commented regarding “Guidance on Title IX Issued by OCR Staff” involved N.C.A.A. reaction to the clarification of guidelines by OCT from legal counsel R.T. Thomas.³⁴⁰ News of federal regulatory enforcement was reported in *The N.C.A.A. News* in December, 1975 in “Non-Compliance with Title IX Announced by BYU and Hillsdale.”³⁴¹

By late 1975 references were being made to how far girls had come on the athletic playing field in “Girls on the Athletic Field: Small Gains, Long Way to the Goal.”³⁴² The A.I.A.W. and The N.C.A.A. featured key issues in *The N.C.A.A. News* “Women’s Resolutions” which disclosed discussion about who should regulate men and women’s sports.³⁴³ In “N.C.A.A. Rules Do Not Apply To All Female Athletics” *The N.C.A.A. News* revealed decisions about intra-organizational regulatory power regarding genders in respect to A.I.A.W. and N.C.A.A.

³³⁷ N.C.A.A. News, “NCAA Viewpoint on Title IX Clarified by President Fuzak,” *N.C.A.A. News*, vol. 12, no. 12, September 15, 1975:7. <http://web1.ncaa.org> (accessed March 28, 2008).

³³⁸ L. A. Gurka, “One View of Title IX: Detrimental to Women,” *New York Times*, sec. 2, September 28, 1975:5. Microfilm.

³³⁹ R. J. Sabock, “View of Sports ‘Football, It Pays the Bills, Son,’” *New York Times*, sec. 5, October 5, 1975:2. Microfilm.

³⁴⁰ R. T. Thomas, “Guidance on Title IX Issued by OCR Staff,” *N.C.A.A. News*, vol. 12, no. 13, October 1, 1975:1,2. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁴¹ N.C.A.A. News, “Non-Compliance with Title IX Announced by BYU and Hillsdale,” *N.C.A.A. News*, vol. 12, no. 17, December 1, 1975:3. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁴² N. Brozan, “Girls on the Athletic Field: Small Gains, Long Way to the Goal,” *New York Times*, January 12, 1976:22. Microfilm.

³⁴³ N.C.A.A. News, “Women’s Resolutions,” *N.C.A.A. News*, vol. 12, no. 18, January 1, 1976:3. <http://web1.ncaa.org> (accessed March 28, 2008).

regulatory structure.³⁴⁴ By mid-February *The N.C.A.A. News* revealed to membership “N.C.A.A. Challenges Validity of HEW’s Title IX” announcing that The N.C.A.A. filed a lawsuit against HEW.³⁴⁵

An event that galvanized attention to intercollegiate athletic sex discrimination enlightened the general public in the article, “Yale Women Strip to Protest a Lack of Crew’s Showers,”³⁴⁶ featured in March, 1976 in *The New York Times*. *The N.C.A.A. News* editor provided a “Summary of Principal Legal Cases Involving N.C.A.A. 1971-1976.”³⁴⁷ It did not list the N.C.A.A. v. Califano action. In July 1976 the N.C.A.A. announced “First Women Athletes Awarded Postgraduate Scholarships.”³⁴⁸ Followed by editorial J. W. Shaffer, “Finally, Mr. President,” which lauded President Ford’s reaction to the latest HEW Title IX ruling. Also in this editorial, Shaffer updated the organization on progress on lawsuit as he opines HEW unofficial propaganda released to explain Title IX while Terrell Bell was Commissioner of Education.³⁴⁹

By September of 1976, another progress report appeared in *The New York Times* “Title IX Progress: Little Has Changed.”³⁵⁰ In mid-November, “Title IX Suit Moves At Slow Court Pace,” updating membership on the lack of resolution with their lawsuit against HEW.³⁵¹

³⁴⁴ N.C.A.A. News, “NCAA Rules Do Not Apply To All Female Athletics,” *N.C.A.A. News*, vol. 13, no. 2, February 1, 1976:1,7. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁴⁵ N.C.A.A. News, “NCAA Challenges Validity of HEW’s Title IX,” *N.C.A.A. News*, vol. 13, no. 3, February 15, 1976:1,3. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁴⁶ New York Times, “Yale Women Strip to Protest a Law of Crew’s Showers,” *New York Times*, March 4, 1976:33. Microfilm.

³⁴⁷ N.C.A.A. News, “Summary of Principal Legal Cases Involving N.C.A.A. 1971-1976,” *N.C.A.A. News*, March 1976. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁴⁸ N.C.A.A. News, “First Women Athletes Awarded Post Graduate Scholarships,” *N.C.A.A. News*, vol. 13, no. 8, July 15, 1976:1,8. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁴⁹ J. W. Shaffer, “Finally, Mr. President,” *N.C.A.A. News*, vol. 13, no. 8, July 15, 1976:2. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁵⁰ C. L. Hogan, “Title IX Progress: Little Has Changed,” *New York Times*, sec. 5, September 26, 1976:2. Microfilm.

³⁵¹ N.C.A.A. News, “Title IX Suit Moves at Slow Court Pace,” *N.C.A.A. News*, vol. 13, no. 14, November 15, 1976:3. <http://web1.ncaa.org> (accessed March 28, 2008).

In April 1977, *N.C.A.A. News* was quick to report that “Title IX Employment Rules Held Invalid by Judge” which gave hope to the association members that their claim may invalidate other portions of Title IX.³⁵² The editorial featured the same sentiments in “Overreach by HEW.”³⁵³ *The N.C.A.A. News* carried statements by “Califano [as he] Describes HEW Document as ‘Unofficial’” which referred to a contracted publication “Competitive Athletics: In Search of Equal Opportunity.” Califano denied it was endorsed as a directive from HEW.³⁵⁴ A quick blurb in *The N.C.A.A. News* “Fourteen Title IX Books Not ‘Interpretive’” followed the trend of HEW as disclaimer to undermine external publications funded by HEW on the subjects of Title IX or gender equity which in turn were not officially endorsed as policy by HEW.³⁵⁵

August, 1977 *The New York Times* reported that a “Guide Takes Students Through Title IX”³⁵⁶ became available and that the state of “Maryland is Putting Girls on the School Football Line,”³⁵⁷ which is followed by the question: “Is Title IX Scoring Many Points in the Field of Women’s School Sports?”³⁵⁸ More questions arise about the validity of Title IX efforts as by the deadline the question is posed: “July 21: Deadline Or Dead End?”³⁵⁹ “Title IX Guidelines are

³⁵² N.C.A.A. News, “Title IX Employment Rules Held Invalid by Judge,” *N.C.A.A. News*, vol. 14, no. 4, April 1977:1. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁵³ N.C.A.A. News, “Overreach by HEW,” *N.C.A.A. News*, vol. 14, no. 4, April 1977:2. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁵⁴ N.C.A.A. News, “Califano Describes HEW Document as ‘Unofficial,’” *N.C.A.A. News*, vol. 14, no. 5, May 15, 1977:2. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁵⁵ N.C.A.A. News, “Fourteen Title IX Books Not ‘Interpretive,’” *N.C.A.A. News*, vol. 14, no. 6, July 15, 1977:3. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁵⁶ M. Roach, “Guide Takes Students Through Title IX,” *New York Times*, sec. 5, August 7, 1977:8. Microfilm.

³⁵⁷ M. Roach, “Maryland is Putting Girls on School Football Line,” *New York Times*, August 14, 1977: sec. 5, 7. Microfilm.

³⁵⁸ M. Roach, “Is Title IX Scoring Many Points in the Field of Women’s School Sports?” *New York Times*, September 27, 1977:51. Microfilm.

³⁵⁹ M. Policy, “July 21: Deadline or Dead End?” *New York Times*, sec. 5, July 16, 1978:2. Microfilm.

Issued for Equal Sports Expenditures”³⁶⁰ wakes the nation up to the fact that “Colleges Mystified by Title IX Fund Rules.”³⁶¹

February 1978 featured an editorial by D. Pickle in *The N.C.A.A. News* “The Other Side of Title IX” discussing anti-sex discrimination as applied to uni-sex sporting teams, as the note, buried in page 11, “U.S. Judge Dismisses N.C.A.A.’s Title IX Suit.”³⁶² Later that spring, *The N.C.A.A. News* reprinted excerpts from B. Olmstead’s column from the *Chicago Sun-Times* “The Title IX Runaround.”³⁶³ In “Title IX Provisions Solely for Students” the reporter featured attempts by H.E.W. to enforce Title IX at Seattle University based on employment discrimination claims made by the nursing faculty. Judge M. E. Sharp noted that Title IX regulations were to protect students not university personnel.³⁶⁴ In May, 1978, *The N.C.A.A. News* carried two Title IX related articles, one, “HEW Counsel Reaffirms Applicability of Title IX” and “Title IX Testimony” featuring Bayh and Fatel exchanges during budget hearings for fiscal year 1979.³⁶⁵ Later in the summer of 1978, J. E. Roberts was the featured editorial “Equal Opportunity Not the B Team” indicating HEW attempted to carry out contact sports in mixed-gender team format.³⁶⁶ The article, “Women’s Survey Completed” caught the attention of membership in July 1978.³⁶⁷ D. Pickle offered the editorial in September 15, 1978, “Unwelcome

³⁶⁰ G. S. White, Jr., “Title IX Guidelines are Issued for Equal Sports Expenditures,” *New York Times*, December 7, 1978. Microfilm.

³⁶¹ G. S. White, Jr., “Colleges Mystified by Title IX Fund Rules,” *New York Times*, December 15, 1978: 27. Microfilm.

³⁶² N.C.A.A. News “The Other Side of Title IX,” and “U.S. Judge Dismisses NCAA’s Title IX Suit,” *N.C.A.A. News*, vol. 15, no. 3, February 1978:2, 11. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁶³ B. Olmstead, “Title IX Runaround,” as featured in *Chicago Sun-Times*, *N.C.A.A. News*, vol. 15, no. 4, March 1, 1978:2. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁶⁴ N.C.A.A. News, “Title IX Provisions Solely for Students,” *N.C.A.A. News*, vol. 15, no. 5, April 1, 1978:3. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁶⁵ N.C.A.A. News, “HEW Counsel Reaffirms Applicability of Title IX,” and “Title IX Testimony,” *N.C.A.A. News*, vol. 15, no. 7, May 15, 1978:3. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁶⁶ J. E. Roberts, “Equal Opportunity, Not the B Team,” *N.C.A.A. News*, vol. 15, no. 8, June 1, 1978:2. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁶⁷ N.C.A.A. News, “Women’s Survey Completed,” *N.C.A.A. News*, vol. 15, no. 9, July 1, 1978:1. <http://web1.ncaa.org> (accessed March 28, 2008).

Domination” which revealed comments made by Joseph Califano to The American Federation of Teachers³⁶⁸ By the end of 1978 “HEW Distributes Policy Interpretation for Title IX,” which was the script of the latest clarifying efforts inviting comments from stakeholders, and *The N.C.A.A. News* also included “Confusion Surrounds Title IX Policy Interpretation.”³⁶⁹

Attention turns to Title IX in winter of 1979 as “Title IX Discussion [is] Focus of Convention.”³⁷⁰ In March, 1979, “Flynn Denies Existence of Discrimination” in a letter printed in *The N.C.A.A. News*. D. Pickle, editor of *The N.C.A.A. News*, ponders “Living with HEW’s Quota System” and the announcement is made to membership that the “Association Files Title IX Comments.”³⁷¹ By the spring of April, 1979, *The N.C.A.A. News* featured a Pickle editorial “HEW and the Marketplace,” at the same time *The New York Times* reported that the “A.I.A.W. Plans Protest to Protect Title IX”³⁷² signaling their “Rally Slated Today Supporting Title IX”³⁷³ to happen and later acknowledging the completion in “Women’s Sports Backed in Rally.”³⁷⁴

May 1979 *The N.C.A.A. News* piqued members’ interest in issues about “Court Questions HEW Authority Regarding Employment,” and the “President Clarifies Title IX Position” indicating endorsement of Title IX. NACUBO asked H.E.W. through organizational resolutions to review Title IX Policy Interpretation issued in 1979 in “HEW Asked to Reexamine

³⁶⁸ N.C.A.A. News, “Unwelcome Domination,” *N.C.A.A. News*, vol. 15, no 12, September 15, 1978:2. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁶⁹ N.C.A.A. News, “HEW Distributes Policy Interpretation for Title IX: and “Confusion Surrounds Title IX Policy Interpretation,” *N.C.A.A. News*, vol. 15, no. 16, December 22, 1978:1, 7. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁷⁰ N.C.A.A. News, “Title IX Discussion Focus of Convention,” *N.C.A.A. News*, vol. 15, no. 2: February 1, 1979:1,4. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁷¹ N.C.A.A. News, “Flynn Denies Existence of Discrimination,” “Living with HEW’s Quota System,” and “Association Files Title IX Comments,” *N.C.A.A. News*, vol. 16, no. 3, March 8, 1979:1,5,2,4,7. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁷² New York Times, “A.I.A.W. Plans Protest to Protect Title IX Gains,” *New York Times*, sec. 5, April 15, 1979:6. Microfilm.

³⁷³ New York Times, “Rally Slated Today Supporting Title IX,” *New York Times*, sec. 5, April 22, 1979: 11. Microfilm.

³⁷⁴ New York Times, “Women’s Sports Back in Rally,” (April 23, 1979). *New York Times*, sec. 3, April 23, 1979:3. Microfilm.

Interpretation.”³⁷⁵ In late July, *N.C.A.A. News* commented “Duke President Seeks Support for Title IX Counterproposal” and then included the proposal for preview “President Sanford’s Counterproposal for Title IX” in response to the latest round of interpretive information from HEW.³⁷⁶

In the early fall of 1979 “Appeals Court Rules Against HEW Employment Cases” watched carefully by *N.C.A.A. News* as they report “Ashbrook Questions HEW Powers.” Representative J. M. Ashbrook noted discrepancy between wording of law and HEW’s interpretive use.³⁷⁷ *N.C.A.A. News* reprinted parts of C.M. Neinas’ article from *Kansas City Star* as he contemplated “Title IX Now A Money Issue”³⁷⁸ and also featured that “CRC Reverses Title IX Position.”³⁷⁹

“U.S. Judge Hears Grove City Case”³⁸⁰ updates *N.C.A.A. News* readership on the Grove City decision and William Herr’s article from the *Chicago Tribune* was reprinted in November of 1979 “Title IX in 1989: Are All Things Possible?”³⁸¹ By December 1979, the “Government Issues Final Title IX Interpretation”³⁸² as Pickle’s editorial informed “New Era Beginning for

³⁷⁵ *N.C.A.A. News*, “Court Questions HEW Authority,” “President Clarifies Title IX Position,” and “HEW Asked to Reexamine Interpretation,” *N.C.A.A. News*, vol. 16, no. 6, May 31, 1979: 3,5,6. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁷⁶ *N.C.A.A. News*, “Duke President Seeks Support for Title IX Counterproposal,” and “President Sanford’s Counterproposal for Title IX,” *N.C.A.A. News*, vol. 15, no. 8, July 25, 1979:1,3. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁷⁷ *N.C.A.A. News*, “Appeals Court Rules Against HEW Employment Cases,” and “Ashbrook Questions HEW Powers,” *N.C.A.A. News*, vol. 16, no. 10, September 7, 1979:6. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁷⁸ C. M. Neinas, “Title IX Now a Money Issue,” *N.C.A.A. News*, vol. 16, no. 11, September 30, 1979:2. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁷⁹ *N.C.A.A. News*, “CRC Reverses Title IX Position,” *N.C.A.A. News*, vol. 16, no. 11, September 30, 1979:3. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁸⁰ *N.C.A.A. News*, “U.S. Judge Hears Grove City Case,” *N.C.A.A. News*, vol. 16, no. 15, November 30, 1979:3. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁸¹ W. Herr, “Title IX in 1989: Are All Things Possible?” *N.C.A.A. News*, vol. 16, vol. 15, November 30, 1979:3. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁸² *N.C.A.A. News*, “Government Issues Final Title IX Interpretation,” *N.C.A.A. News*, vol. 16, no. 16, December 15, 1979:1,7. <http://web1.ncaa.org> (accessed March 28, 2008).

Title IX.”³⁸³ When the 1980 Convention Issue of N.C.A.A. News was published constituents were notified “Attorneys to Analyze Title IX Interpretation.”³⁸⁴ February 1980 continued educating in “Title IX: Questions and Answers on one of Intercollegiate Athletics’ Most Pressing Issues.” This installment also included “Title IX: Part B of HEW Policy Interpretation” for membership to peruse.³⁸⁵ All the while that N.C.A.A. News is reporting “Title IX Part C of the HEW Policy Interpretation”, stories started to appear leading one to believe that behind the scenes The N.C.A.A. as an organization was moving toward embracing women’s athletics as seen in “Officer’s Clarify Women’s Athletic Issues”³⁸⁶ and “Council Approves Position to Head Women’s Events” as the “Steering Committee Discuss Women’s Events.”³⁸⁷ Maintaining the battle, *The N.C.A.A. News* comes out with reports such as “Suits focus on Men’s and Women’s Rules Differences”³⁸⁸ and “Appeals Court Ruling Favors N.C.A.A.”³⁸⁹ By June of 1980, reality is reported as “Title IX Enforcement Begins Soon”³⁹⁰ is placed on page one in *The N.C.A.A. News*. In August, September and November of 1980 *N.C.A.A. News* ran a series of Title IX questions previously posed to the U.S. Department of Education and their answers. In the same series of issues The N.C.A.A. announced “Berkey to

³⁸³ D. Pickle, “New Era Beginning for Title IX,” *N.C.A.A. News*, vol.16, no. 15, December 15, 1979:2. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁸⁴ N.C.A.A. News, “Attorneys To Analyze Title IX Interpretation,” *N.C.A.A. News*, vol. 16, no. 17, 1980:1. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁸⁵ N.C.A.A. News, “Title IX Questions and Answer on One of Intercollegiate Athletics’ Most Pressing Issues,” and “Title IX: Part B of HEW Policy Interpretation,” *N.C.A.A. News*, vol. 17, no. 3, February 15, 1980:1,5. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁸⁶ N.C.A.A. News, “Title IX: Part C of HEW Policy Interpretation,” and “Officers Clarify Women’s Athletic Issues,” *N.C.A.A. News*, vol. 17, No. 4, March 15, 1980. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁸⁷ N.C.A.A. News, “Steering Committee Discuss Women’s Events,” *N.C.A.A. News*, vol. 17, no. 10, July 16, 1980:5,10. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁸⁸ N.C.A.A. News, “Suits Focus on Men’s and Women’s Rules Differences,” *N.C.A.A. News*, vol. 17, no. 5, March 31, 1980:3. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁸⁹ N.C.A.A. News, “Appeals Court Ruling Favors NCAA,” *N.C.A.A. News*, vol. 17, no. 7, April 30, 1980:1,6. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁹⁰ N.C.A.A. News, “Title IX Enforcement Begins Soon,” *N.C.A.A. News*, vol. 17, no. 9, June 15, 1980:1,3. <http://web1.ncaa.org> (accessed March 28, 2008).

Direct Women's Events,"³⁹¹ "Mudra Claims Competition Key to Women's Athletic Future,"³⁹² and "ED Selects Eight Institutions to Review."³⁹³ The fact that Berkey had been hired to run the women's division, created in The N.C.A.A. a need to report that "Berkey Joins Other Women On Staff" as they listed ten women on staff and their duties.³⁹⁴ In October 1980 The N.C.A.A. recorded that "Women's Sports Committees Are Appointed" to direct and plan for women's championships in Basketball, Swimming, Tennis, Volleyball and Field Hockey.³⁹⁵ By November of 1980 *The N.C.A.A. News* featured "Future Appears Bright for Women's Athletics"³⁹⁶ and "Women's Championship Position Open for Applications."³⁹⁷

In the 1981 N.C.A.A. Convention issue of *The N.C.A.A. News*, membership is alerted the "First Title IX Review Complete." This feature named those first investigations at eight institutions of higher education done by the Office for Civil Rights (OCR). The list of institutions under investigation was assembled based on complaints received by OCR.³⁹⁸ In *The N.C.A.A. News* February, 1981, "Findings Not Issued In Compliance Review" reported that letters from OCR investigations had not been released and part of the delay was attributed to the change in presidential administrations in January of 1981.³⁹⁹ At the end of that month, *The*

³⁹¹ N.C.A.A. News, "Ed Dept Answers Title IX Queries," and "Berkey to Direct Women's Events," *N.C.A.A. News*, vol. 17, no. 11, August 15, 1980:1,3,4. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁹² N.C.A.A. News, "Mudra Claims Competition Key To Women's Athletic Future," *N.C.A.A. News*, vol. 17, no. 11, August 15, 1980:3,4. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁹³ N.C.A.A. News, "ED Selects Eight Institutions to Review," *N.C.A.A. News*, vol. 17, no. 12, August 31, 1980:3. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁹⁴ N.C.A.A. News, "Berkey Joins Other Women on Staff," *N.C.A.A. News*, vol. 17, no. 12, August 31, 1980:7. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁹⁵ N.C.A.A. News, "Women's Sports Committees Are Appointed," *N.C.A.A. News*, vol. 17, 14, October 15, 1980:4. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁹⁶ N.C.A.A. News, "Future Appears Bright for Women's Athletics," *N.C.A.A. News*, vol. 17, no.16, November 15, 1980:3. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁹⁷ N.C.A.A. News, "Women's Championships Position Open for Applications," *N.C.A.A. News*, vol. 17, no. 17, November 30, 1980:8. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁹⁸ N.C.A.A. News, "First Title IX Review Complete," *N.C.A.A. News*, vol. 18, no. 1, 1981 Convention:1. <http://web1.ncaa.org> (accessed March 28, 2008).

³⁹⁹ N.C.A.A. News, "Findings Not Issued In Compliance Review," *N.C.A.A. News*, vol. 18, no. 3, February 15, 1981:1,5. <http://web1.ncaa.org> (accessed March 28, 2008).

N.C.A.A. News announced “A New N.C.A.A. look” as the organization launched a new visual identity as it updated its logo and seal. The seal incorporated both male and female figures as The N.C.A.A. approved governance plans that included women’s programming.⁴⁰⁰ Mid-March found “Court Ruling Limits Title IX Application” as *The N.C.A.A. News* reported the latest court decision that limited the reach of Title IX. The decision referred to in this article was *Othen v. Ann Arbor Board*. It incited supporters of women’s right and was looked upon as an attempt to thwart the application of Title IX regulations. N.C.A.A. as an association went on record to say even if Othen was appealed it would not stop plans already in place to expand women’s athletic programming.⁴⁰¹

By April, 1981, “Championship Plans Announced” put forward N.C.A.A. implementation plans for the 1981-82 women’s sports championships. The first to be offered were in Basketball, Field Hockey, Swimming, Diving and Volleyball.⁴⁰² As the month closed, “Council Discusses Women’s Athletics” suggested that among other issues the N.C.A.A. Council would be directing attention to that Women’s Athletics was one of them.⁴⁰³ N.C.A.A. president James Franks delivered a speech to the American Association of Affirmative Action in spring 1981. Among the topics he discussed, changes occurring in governing athletics as a result of Title IX was one of them.⁴⁰⁴ Also *N.C.A.A. News* reported in May that the “N.C.A.A. Council Continues to Implement Governance Plan” which announced proposed deadlines for

⁴⁰⁰ N.C.A.A. News, “A New NCAA Look.” *N.C.A.A. News*, vol. 18, no. 4, February 28, 1981:1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴⁰¹ N.C.A.A. News, “Court Ruling Limits Title IX Application,” *N.C.A.A. News*, vol. 18, no. 5, March 15, 1981:1,7. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴⁰² N.C.A.A. News, “Championship Plans Announced,” *N.C.A.A. News*, vol. 18, no. 7, April 15, 1981:1,3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴⁰³ N.C.A.A. News, “Council Discusses Women’s Athletics,” *N.C.A.A. News*, vol. 18, no. 8, April 30, 1981:1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴⁰⁴ N.C.A.A. News, “Frank Speech Focuses On Governance, Title IX,” *N.C.A.A. News*, vol. 18, no. 8, May 15, 1981:3. <http://web1.ncaa.org> (accessed March 28, 2008).

aligning existing women's athletic programs with The N.C.A.A. after 1985.⁴⁰⁵ An important article in *The N.C.A.A. News* featured "AIAW, N.C.A.A. Delegates Discuss Women's Athletics." This report that the N.C.A.A. and A.I.A.W. organizations were attempting to come together on decisions on governance of women's athletics led to accusations for A.I.A.W. that N.C.A.A. was intruding on the governance of women's athletics. Donna Lopiano was one of the A.I.A.W. representatives mentioned in the article.⁴⁰⁶

In June 1981, *The N.C.A.A. News* provides information in a condensed version regarding women's champions and the dates divisional championship would be held. Also revealed at this juncture in "Richmond Files Suit," the University of Richmond brought suit against the U.S. Department of Education, Office for Civil Rights claiming that its athletic programming fell outside Title IX's purview because it received no federal funds.⁴⁰⁷ July, August and September issues of *N.C.A.A. News* carried information about events in women's athletics, rules enforcement in women's athletics for institutions beginning to participate in women's championships and automatic certification of conferences that were entering into championship competition.⁴⁰⁸ September 1981 also brought results of *Bennett v. Texas State University* as "Judge Reveals Programming Title IX Application," which echoed Michigan's decision about program applications not using federal funding.⁴⁰⁹

⁴⁰⁵ N.C.A.A. News, "NCAA Council Continues to Implement Governance Plan," *N.C.A.A. News*, vol. 18, no 8, May 15, 1981:3,7. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴⁰⁶ N.C.A.A. News, "A.I.A.W., NCAA Delegates Discuss Women's Athletics," *N.C.A.A. News*, vol. 18, no. 8, May 15, 1981:7. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴⁰⁷ N.C.A.A. News, "Richmond Files Suit," *N.C.A.A. News*, vol. 18, no. 10, June 15, 1981:11. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴⁰⁸ N.C.A.A. News, "Legislative Committee to Recommend Rule Changes," *N.C.A.A. News*, vol. 18, no.. 11, July 15, 1981: 5, 8; "N.C.A.A. Council Issues Statement on Women's Rules Enforcement," Vol. 18, no. 12, August 15, 1981:5, and "Judge rules for Problematic Title IX Application, vol. 18, no. 13, September 15, 1981: 7. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴⁰⁹ N.C.A.A. News, "Judge Reveals Programming Title IX Application," *N.C.A.A. News*, vol. 18, no. 13, September 15, 1981:7. <http://web1.ncaa.org> (accessed March 28, 2008).

On a different Title IX front, *The N.C.A.A. News* disclosed, “Justice Dept Rejects Title IX Deregulation Move.” Justice Department weighed in on employment discrimination and left it as part of Title IX after the U.S. Department of Education asked to strike it from the Title IX regulations for most cases. *North Haven v. Bell* and *Grove City v. Bell* are discussed at length in this article regarding program specificity under Title IX’s federal assistance rules.⁴¹⁰ The article “Comparison of Selected N.C.A.A./AIAW Regulations” created as a reference, enlightened the *N.C.A.A. News* reader about the policy and philosophical differences between the two organizations.⁴¹¹ Donna Lopiano, as president of A.I.A.W., filed suit claiming N.C.A.A.’s attempted to create monopoly in women’s athletics and had colluded and conspired to end A.I.A.W.’s business. Ruth Bader Ginsburg is quoted in support of The N.C.A.A.’s cause in “AIAW Suit Alleges NCAA Antitrust Law Violations.”⁴¹² Information is released to N.C.A.A. membership about impending litigation and approximate date for discovery to end and trial to being in “Judge for AIAW Suit Sets Limits, Procedures.”⁴¹³ *N.C.A.A. News* included “Court Rules Title IX Programmatic,” in which attention is directed to the *Rice v. President and Fellows of Harvard College* law suit which is about the awarding of grades and not employment or athletics. This article also gave updates on *North Haven Board of Education v. Bell* and the program specific line of decisions made in another circuit applied to Title IX interpretation.⁴¹⁴ Also included in this issue of the *N.C.A.A. News*, “AIAW to Meet January 5-9” disclosed that

⁴¹⁰ N.C.A.A. News, “Justice Dept Rejects Title IX Deregulation Move,” *N.C.A.A. News*, vol. 18, no. 14, October 15, 1981:3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴¹¹ N.C.A.A. News, “Comparison of Selected NCAA/AIAW Regulations,” *N.C.A.A. News*, vol. 18, no. 14, October 15, 1981:7,8. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴¹² N.C.A.A. News, “A.I.A.W. Suit Alleges NCAA AntiTrust Law Violations,” *N.C.A.A. News*, vol. 18, no. 15, October 31, 1981. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴¹³ N.C.A.A. News, “Judge for A.I.A.W. Suit Sets Limits, Procedures,” *N.C.A.A. News*, vol. 18, no. 17, November 30, 1981:1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴¹⁴ N.C.A.A. News, “Court Rules Title IX Programmatic,” *N.C.A.A. News*, vol. 18, no. 18, December 15, 1981:3. <http://web1.ncaa.org> (accessed March 28, 2008).

A.I.A.W. leadership would meet and discuss the N.C.A.A. suit among other items such as conflict of interest and student-athlete Bill of Rights.⁴¹⁵

The year 1982 opens with Ruth Berkey's promotion at N.C.A.A. headquarters conveying significant growth of women's programming and the need for more staff to handle the demand.⁴¹⁶ The A.I.A.W. claimed irreparable harm would be inflicted upon them by N.C.A.A. Women's Championships as "Judge denies attempt to stop N.C.A.A. Women's Events" by denying a A.I.A.W.'s preliminary injunction against N.C.A.A.⁴¹⁷ By March, 1982, the "Judge Alters AIAW suit schedule" appeared. Judge Richey extended the period of discovery to May with court delay as a result of energies A.I.A.W. expended trying to seek injunctive relief. Merger plans were ordered.⁴¹⁸ Also included in March 15, 1982 were housekeeping details about rules clarifications for female athletes transferring at mid-year and a reminder of women's rules applications to schools entering championship competition.⁴¹⁹

In spring 1982, The N.C.A.A. announced regional meetings to train and heighten awareness of N.C.A.A. rules as applied to women's athletic competition⁴²⁰ by the end of April, submitted information to members about "Buffalo Complies with Title IX." The Bowling team at SUNY Buffalo filed a complaint. Buffalo was found to be in compliance with Title IX under financial aid and operational activities but was cited for violating facilities and recruitment

⁴¹⁵ N.C.A.A. News, "A.I.A.W. to Meet January 5-9," *N.C.A.A. News*, vol. 18, no. 18, December 15, 1981:7. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴¹⁶ N.C.A.A. News, "Ruth Berkey, Promoted," *N.C.A.A. News*, vol. 19, no. 2, January 31, 1982. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴¹⁷ N.C.A.A. News, "Judge Denies Attempt to Stop NCAA Women's Events," *N.C.A.A. News*, vol. 19, no. 4, February 28, 1982:1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴¹⁸ N.C.A.A. News, "Judge Alters A.I.A.W. Suit Schedule," *N.C.A.A. News*, vol. 19, no. 5, March 15, 1982:1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴¹⁹ N.C.A.A. News, "Rules Clarification for Women Transferring at midyear," and "Women's programs reminded of rules applications," *N.C.A.A. News*, vol. 19, no. 5, March 15, 1982:7. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴²⁰ N.C.A.A. News, "Women's Rules To Be Expanded," *N.C.A.A. News*, vol. 19, no.7, April 15, 1982:1. <http://web1.ncaa.org> (accessed March 28, 2008).

regulations. Plans were shared with promises to improve facilities by fall 1982.⁴²¹ In the article “Two Questions Remain After Recent Title IX Decisions,” which were “What is the definition of a program” and “What aid constituted federal aid?” The N.C.A.A. featured these topics in mid-1982 as membership continued to grapple with Title IX interpretations and applications.⁴²²

In June 1982, women’s sport programs were being adopted by various athletic conferences,⁴²³ the championships were expanding and women’s basketball coaches were creating an organization expecting 450 members. Scholarship distribution was equalizing on the post baccalaureate level through the N.C.A.A. and women’s soccer was planning their first championship, all the while the A.I.A.W. trial date was set for August 25, 1982.⁴²⁴ July 1982 featured a two-part reprint of N.C.A.A. legal counsel William D. Kramer’s speech regarding changes in intensity surrounding Title IX in “Title IX Not A Dead Issue, But It’s Mellowing.”⁴²⁵ The N.C.A.A. revealed that the U.S. District Court in Virginia ruled that OCR could not investigate allegations at the University of Richmond in “Court Bars Richmond Title IX Athletic Probe.” University of Richmond claimed they did not receive federal funds; therefore, they were not subject to Title IX.⁴²⁶ In an advisory notice about questionnaires the statement showing The N.C.A.A.’s embracing of women’s athletics was “The 1981-82 Questionnaire is quite similar to the one used 5 years ago, except that men’s and women’s programs are now treated

⁴²¹ N.C.A.A. News, “Buffalo Complies with Title IX,” *N.C.A.A. News*, vol. 19, no. 8, April 30, 1982:9. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴²² N.C.A.A. News, “Two Questions Remain After Recent Title IX Decisions,” *N.C.A.A. News*, vol. 19, no. 9, June 2, 1982:3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴²³ N.C.A.A. News, “Leagues Adopt Women’s Programs,” *N.C.A.A. News*, vol. 19, no. 10, June 16, 1982:12. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴²⁴ N.C.A.A. News, “Judge Sets August 25 As AIAW Trial Date,” “Women Share in Scholarship for First Time,” and “Women’s Soccer Committee Plans First Championship,” *N.C.A.A. News*, vol. 19, no. 11, June 30, 1982, :1,4,5, 7. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴²⁵ N.C.A.A. News, “Title IX Not A Dead Issue, But Its Mellowing,” *N.C.A.A. News*, vol. 19, no. 12, July 14, 1982:1,3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴²⁶ N.C.A.A. News, “Court Bars Richmond Title IX Athletic Probe,” *N.C.A.A. News*, vol. 19, no. 12, July 14, 1982:3. <http://web1.ncaa.org> (accessed March 28, 2008).

identically.”⁴²⁷ By July 1982’s end, “AIAW suit judges changed-randomly assign to distribute case load” is reported along with the second installment of Kramer’s speech reporting litigation developments and compliance standards for publicity in “N.C.A.A. attorney discusses changes in Title IX.”⁴²⁸

In August 1982 another court date was set for the A.I.A.W. suit since a new judge was appointed to the case. Each side of the suit was instructed to give written rather than oral testimony.⁴²⁹ Later in September, The N.C.A.A. maintains the successful debut of women’s championships and announces restructuring and expansion of the women’s administrative team. In the same issue, New Hampshire’s successful enhancement of their women’s athletic programming over a ten year period is attributed to Title IX.⁴³⁰ Reports on the University of Richmond outcome stands and the U.S. Department of Education decides not to appeal the ruling because the University of Richmond Athletic program did not receive direct federal dollars and was not required to abide by Title IX regulations in athletics.⁴³¹

October 1982 *N.C.A.A. News* advocates “Exceptions For Women Explained” as programming rule differences applied only as stated for any institution choosing N.C.A.A. rules to govern women’s athletic play.⁴³² “Grove City to Appeal Ruling” is cited as Grove City

⁴²⁷ N.C.A.A. News, “Questionnaires To Be Mailed,” *N.C.A.A. News*, vol. 19, no. 12, July 14, 1982:para. 3, line 3,8. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴²⁸ N.C.A.A. News, “A.I.A.W. Suit Judges Changed—Randomly Assigned To Distribute Case Load,” and “NCAA Attorney Discusses Changes In Title IX,” *N.C.A.A. News*, vol. 19, no. 13, July 21, 1982:1,3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴²⁹ N.C.A.A. News, “A.I.A.W. Suit Set For October,” *N.C.A.A. News*, vol. 19, no. 14, August 11, 1982:1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴³⁰ N.C.A.A. News, “Association Expands Staff For Women’s Programs,” and “Women’s Program Grows At New Hampshire,” *N.C.A.A. News*, vol. 19, no. 17, September 13, 1982:1,2. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴³¹ N.C.A.A. News, “Decision that Limits Title IX Suit Will Stand,” *N.C.A.A. News*, vol. 19, no. 18, September 20, 1982:1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴³² N.C.A.A. News, “Exceptions for Women Explained,” *N.C.A.A. News*, vol. 19, no. 21, October 11, 1982:1. <http://web1.ncaa.org> (accessed March 28, 2008).

College planned to petition the U.S. Supreme Court on status of Pell Grants and Title IX.⁴³³

Later that same fall, The N.C.A.A. disclosed plans to “step up” promotion of women’s championships in gymnastics, volleyball and basketball. November 1982 finds women’s sports featured in different venues from spurring interest in conference development⁴³⁴ gaining prestige of being named among the top five finalists.⁴³⁵ The year 1982 ends discussing women’s basketball rules changes to increase spectator interest as sports information directors name the women’s volleyball academic team.⁴³⁶ “Cal Poly-Pomona Ends Football”⁴³⁷ resounded throughout the news basing the decision on belt-tightening as a “Series To Highlight Women’s Sports” is announced as a joint venture to feature women’s athletics on CBS Radio designed to heighten awareness and interest in two women’s sports and baseball.⁴³⁸

The second decade of Title IX begins with “Court Upholds Hillsdale on Title IX.”⁴³⁹ Will Grimsley finds that print and television news media organizations failed to freely embrace and, therefore, promote women’s sporting events and activities in “Ex Olympic Performers Promoting Women’s Sports.”⁴⁴⁰ Washington State University (WSU) was advised as “Court Orders Athletic Program to Adjust Budget Equitably appeared in print.” WSU was ordered to provide more budget allocation to women’s athletic programming especially in the areas of scholarship

⁴³³ N.C.A.A. News, “Grove City to Appeal Ruling,” *N.C.A.A. News*, vol. 19, no. 22, October 18, 1982:1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴³⁴ N.C.A.A. News, “Basketball Triggers Explosion Of Women’s Athletic Conferences,” *N.C.A.A. News*, vol. 19, no. 27, November 22, 1982:10. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴³⁵ N.C.A.A. News, “Women Gain Prestige of Being Included in Top Five Finalists,” *N.C.A.A. News*, vol. 19, no. 28, November 29, 1982:1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴³⁶ N.C.A.A. News, “Groups Discuss Women’s Basketball Rules,” and “Sports Information Directors Name Women’s Volleyball Academic Team,” *N.C.A.A. News*, vol. 19, no. 29, December 6, 1982:10. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴³⁷ N.C.A.A. News, “Cal Poly-Pomona Ends Football,” *N.C.A.A. News*, vol. 19, no. 30, December 15, 1982:12. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴³⁸ N.C.A.A. News, “Series To Highlight Women’s Sports,” *N.C.A.A. News*, vol. 19, no. 31, December 22, 1982:1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴³⁹ N.C.A.A. News, “Court Upholds Hillsdale on Title IX,” *N.C.A.A. News*, vol. 19, 33, 77th Annual Convention Issue, January 5, 1983:1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴⁴⁰ N.C.A.A. News, “Ex Olympic Performers Promoting Women’s Sports,” *N.C.A.A. News*, vol. 19, no. 33, 77th Annual Convention Issue, January 5, 1983:3. <http://web1.ncaa.org> (accessed March 28, 2008).

distribution and facilities.⁴⁴¹ “Court Date Set” for *A.I.A.W. v. N.C.A.A.*⁴⁴² and in less than a month, “N.C.A.A. prevails in A.I.A.W. Antitrust Litigation.” The N.C.A.A. did not conspire to end The A.I.A.W. when it implemented a governance plan for women’s athletics including championships. The judge reasoned that The N.C.A.A. responded to member institutions and market forces.⁴⁴³ Also in March, 1983, *N.C.A.A. News* reported “Courts Sidestep Deciding Whether Title IX Applies To Sports Programs.”⁴⁴⁴ In the article, *Grove City College v. Bell, Othen vs. Ann Arbor School Board, Bennett v. West Texas State University* and *North Haven Board of Education v. Bell* were reviewed as interest mounted in court decisions on what constituted a program, what was involved when schools receive federal aid, and whether schools can be forced to file the Assurance of Compliance with Title IX.⁴⁴⁵ *The N.C.A.A. News* column, “Elsewhere in Education,” featured a report from Hillsdale president regarding their U.S. Supreme court request for a ruling to be reversed that opened the door for future federal encroachment.⁴⁴⁶

“AIAW appeals ruling of district court judge” reported to N.C.A.A. membership in April, 1983 stemmed from the prior ruling that the US District Court found no foul play in practices entered into by The N.C.A.A. to begin sponsoring women’s championships.⁴⁴⁷ In mid-April, *The N.C.A.A. News* editors reported that “Government’s Approach To Title IX May Be

⁴⁴¹ N.C.A.A. News, “Court Orders Athletic Program to Adjust Budget Equitably,” *N.C.A.A. News*, vol. 20, no 2, January 12, 1983:8. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴⁴² N.C.A.A. News, “Court Date Set,” *N.C.A.A. News*, vol. 20, no. 6, February 9, 1983. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴⁴³ N.C.A.A. News, “NCAA Prevails In A.I.A.W. Antitrust Litigation,” *N.C.A.A. News*, vol. 10, no. 9, March 2, 1983:1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴⁴⁴ N.C.A.A. News, “Courts Sidestep Deciding Whether Title IX Applies to Sports Programs,” *N.C.A.A. News*, vol. 20, no. 10, March 9, 1983:1,12. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴⁴⁵ *Ibid.*, “Courts Side Step,” March 9, 1983:12.

⁴⁴⁶ N.C.A.A. News, “Hillsdale To Seek Ruling Reversal,” *N.C.A.A. News*, vol. 20, no. 13, March 30, 1983:3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴⁴⁷ N.C.A.A. News, “A.I.A.W. Appeals Ruling Of District Court Judge,” *N.C.A.A. News*, vol. 20, no. 14, April 6, 1983:1. <http://web1.ncaa.org> (accessed March 28, 2008).

Changing,” which offered information about the Reagan Administration’s decision to abandon deregulation of Title IX.⁴⁴⁸

The N.C.A.A. News featured a report of a study by Emily Feistrizer regarding the shift of interest in careers chosen by women. She revealed that many of the better teacher education prospects were not choosing education, but were training in professional schools and seeking higher paying, more prestigious jobs. She shared statistics that between 1970 and 1980 six times as many women were going into business related college majors and that eleven times as many women were choosing law related careers. This information appeared in her newsletter and was reported in *The Washington Post*.⁴⁴⁹

S. Patricia Walden presented an article “Women’s Sports Programs Face Pivotal Issues” as part of the Comment section of August 1983 *N.C.A.A. News*. The issues facing women, according to her comment, were relating to family, coaching opportunities, the quality of coaching and how to increase the entertainment value of women’s sports.⁴⁵⁰ At the end of August, 1983, *N.C.A.A. News* revealed that “U.S. Takes New Approach To Title IX Enforcement.” The U.S. Justice Department entered the conversation directly as courts and athletics still struggled with what entities were immune under the current definition or lack of definition regarding financial aid and program.⁴⁵¹ At the end of 1990, two well known advocates of women’s athletics, Linda Carpenter and Vivian Acosta, lodged a complaint against their

⁴⁴⁸ N.C.A.A. News, “Government’s Approach To Title IX May Be Changing,” *N.C.A.A. News*, vol. 20, no. 15, April 13, 1983:1,8. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴⁴⁹ N.C.A.A. News, “Women Bypass Teaching Careers,” *N.C.A.A. News*, vol. [21] sic, no. 16, April 20, 1983:3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴⁵⁰ N.C.A.A. News, “Women’s Sports Programs Face Pivotal Issues,” *N.C.A.A. News*, vol. 20, no. 28, August 17, 1983:2. <http://web1.ncaa.org> (accessed March 28, 2008).

⁴⁵¹ N.C.A.A. News, “U.S. Takes New Approach To Title IX Enforcement,” *N.C.A.A. News*, vol. 20, no. 29, August 31, 1983:1, 3. <http://web1.ncaa.org> (accessed March 28, 2008).

employer, Brooklyn College, alleging that Title IX violations existed in their athletic program in all the program-related items in the regulations.⁴⁵²

Dissertations

Dissertation writing was one way university students and faculty prepared knowledge-laden dialogues and monologues to increase the body of knowledge within their field. The subject of Title IX and athletics was no exception to the production of scholarly materials. Most dissertations experienced limited circulation before the advent of electronic storage and retrieval systems such as ProQuest. Much of what was once restricted to the shelves of university libraries or journal publication with specialized readership now enjoy a life outside the confines of brick and mortar. Dissertation for review and purchase brought to this researcher forty-eight titles and abstracts to peruse.

The collection of Title IX-related topics grows as the interpretation expands beyond the traditional. Using the search language “Title IX” combined with athletics, women’s athletics and law brought forward an important cache of information reviewed in the following paragraphs.

One of the earliest studies was published in 1978 at Bowling Green University. Author Rohr used an appraisal methodology to study the Mid- American Conference’s guidelines used in the early 1970s to comply with the gender equity law.⁴⁵³ Two years later at the University of Alabama, White discussed the issues surrounding the fusion of male and female sports programs in the Southeastern Conference.⁴⁵⁴ That same year, 1980, a researcher at Georgia State

⁴⁵² R. M. Thomas, Jr., “Two Women at Brooklyn College File Rights Complaint,” *New York Times*, December 12, 1990. LexisNexis (accessed May 10, 2010).

⁴⁵³ J. P. Rohr, *An Appraisal of Practices and Policies in Intercollegiate Athletics in the Mid-American Conference Essential for Compliance with Title IX of the Educational Amendments of Nineteen Seventy Two (Public Law 92-381)*, Abstract. Dissertation. Bowling Green State University, 1978. ProQuest AAT 7901452. (October 15, 2009).

⁴⁵⁴ G. M. White, *A Systems Design for the Merger of Male and Female Athletics in Southeastern Conference Universities*, Abstract. Dissertation. The University of Alabama, 1980. ProQuest AAT 8104101. (October 15, 2009).

University investigated physical education program changes in select states in the southeastern United States.⁴⁵⁵

In 1981 King at West Virginia University dealt with trends based on the impact Title IX was having on the gender make-up of coaching and administrative staff at A.I.A.W. Division I universities.⁴⁵⁶ Gates in 1984 at the University of Louisville examined the early history of Title IX development and application to collegiate athletic venues. Gates discussed congressional intent, judicial review, and attention from U.S. presidents given to Title IX as it related to athletics and regulations school personnel must follow to be compliant with Title IX.⁴⁵⁷ Riffe presented a chronological look at the development of women's athletic programming at the University of Arizona. In the study, Riffe discussed the starting point in 1895 and journeyed through to the mid-1980s.⁴⁵⁸

By 1987 scholarly publications were seen from mid-America to the southeast regions of the United States. Szady presented a record of expansion of women's athletics from 1922 – 1981 at the University of Michigan.⁴⁵⁹ Burkhart at Northeast Missouri State University assessed budgeting changes tied to Title IX in the public universities of Missouri.⁴⁶⁰ Campbell at The Florida State University presented a perception versus reality compliance report for the years

⁴⁵⁵ D. R. Kelley, *Physical Education Curriculum Compliance with the 1975 Title IX Regulations in Eight Southeastern State*, Abstract. Dissertation. Georgia State University, 1980. ProQuest AAT 8015049 (accessed October 15, 2009).

⁴⁵⁶ L. T. King, *Title IX, Sex Ratios, and Trends in Leadership Roles in AIAW Division I Institutions*, Abstract. Dissertation. 1981. ProQuest ATT8118392 (accessed October 15, 2009).

⁴⁵⁷ R. E. Gates, Jr., *The Development of Title IX of the Educational Amendments of 1972 and Its Current Application to Institutional Athletic Program*, Abstract. Dissertation. University of Louisville, 1984. ProQuest ATT 8420417 (accessed October 15, 2009).

⁴⁵⁸ T. D. Riffe, *A History of Women's Sports at the University of Arizona (Athletics)*, Abstract. Dissertation. The University of Arizona, 1986. ProQuest AAT 8513832 (accessed October 15, 2009).

⁴⁵⁹ S. M. Szady, *The History of Intercollegiate Athletics for Women at the University of Michigan*, Abstract. Dissertation. University of Michigan. 1987. ProQuest AAT 8712219 (accessed October 15, 2009).

⁴⁶⁰ F. E. Burkhart, *The Effects of Title IX on Expenditures in Athletics for Women*, Abstract. Dissertation. Northeast Missouri State University, 1987. ProQuest AAT 1330804 (accessed October 15, 2009).

1972-1985 at FSU regarding gender equity compliance in women's sports.⁴⁶¹ The 1980s ended with a discussion of the laws and constitutional amendments governing co-ed [male and female] competitive sports giving rise to discrimination claims. At The University of Minnesota, Anderson's account included the years 1970-1987.⁴⁶²

The decade of the 1990s benefitted from a multitude of studies produced at universities throughout the United States and Canada. In 1991, Reynolds' study at New York University, focused on attitudes held by university females about the level of commitment their university demonstrated in equalizing athletic opportunities for women.⁴⁶³ Calia of Fordham University reviewed student newspaper coverage of athletes, particularly female, for years spanning 1971-1972 and 1991-1992 to determine the influence Title IX may have had in media coverage decisions.⁴⁶⁴ Woods in 1994 studied the 90-year program development of female sports at Central Missouri State University.⁴⁶⁵ Hattig of The Pennsylvania State University submitted results from a series of interviews tracing growth of women's athletic opportunities.⁴⁶⁶ The mid-1990s finds Besnette's analysis of legal principles and Title IX as practiced in a key Division I-A university sports association.⁴⁶⁷ Also available in 1995, Maloney of the State University of New

⁴⁶¹ J. N. Campbell, *Actual Versus Perceived Compliance with Title IX Regulations Governing the Women's Intercollegiate Athletic Program at the Florida State University, 1972 – 1985*, Abstract. Dissertation. 1987. ProQuest AAT 8805649 (accessed October 15, 2009).

⁴⁶² M. L. Anderson, *A Legal History and Analysis of Sex Discrimination In Athletics: Mixed Gender Competition, 1970-1987*, Abstract. Dissertation. University of Minnesota, 1989. ProQuest AAT 9002965 (accessed October 15, 2009).

⁴⁶³ S. L. Reynolds, *College Women's Beliefs About Institutional Support for Women's Intercollegiate Athletics*, Abstract. Dissertation. New York University, 1991. ProQuest AAT 9134771 (accessed October 15, 2009).

⁴⁶⁴ G. N. Calia, *An Historical Analysis of the Impact of Title IX on Student Media Presentation of Women as Athlete*, Abstract. Dissertation. Fordham University, 1993. ProQuest AAT 9324608 (accessed October 15, 2009).

⁴⁶⁵ M. L. Woods, *The Development Of Women's Intercollegiate Athletics At Central Missouri State University 1900-1990*, Abstract. Dissertation. Central Missouri State University, 1994. ProQuest AAT 1360610 (accessed October 15, 2009).

⁴⁶⁶ S. A. Hattig, *A Study of Progress Toward Gender Equity in the Intercollegiate Athletics Program at a Major Research University*, Abstract. Dissertation. The Pennsylvania State University, 1994. ProQuest AAT 9518759 (accessed October 15, 2009).

⁴⁶⁷ C.A. Besnette, *Gender Equity in Intercollegiate Athletics: An Examination of Title IX and Legal Theory in the Context of a Major Division I-A collegiate Athletic Conference*, Abstract. Dissertation. University of California, Los Angeles, 1995. ProQuest AAT 9541826 (accessed October 15, 2009).

York at Buffalo offered a Title IX effectiveness study related to women's sports.⁴⁶⁸ The following year, 1996, at Portland State University, researcher Pemberton issued a content-specific field-tested clinic model for use to train personnel about Title IX-related material.⁴⁶⁹ By 1997 scholarly production from doctoral students included six different timely and important topics. Wu at The Pennsylvania State University presented a look at the power struggle between The A.I.A.W. and The N.C.A.A. over control of athletic conference administration of women's sporting opportunities.⁴⁷⁰ Colles at the University of Northern Colorado, tracked application of the Title IX Three-Part Test used by the Office for Civil Rights on sixty-six adjudicated cases with emphasis placed on the uniform application of the test.⁴⁷¹ Plyley at the University of Western Ontario (Canada) offered a fresh look at the scuffle for control between the national athletic governing bodies vying for control of women's sports in U.S. universities and colleges during the ten year period of 1972-1982.⁴⁷² Certo at Columbia University Teacher's College offered a study about discerning parity in college sports based on feedback from students involved in sports and athletic personnel reacting to their awareness of university support in equalizing athletic opportunity between the genders.⁴⁷³ Hoogestraat at Peabody College for Teachers of Vanderbilt University studied women athletic experiences at select universities

⁴⁶⁸ G. F. Maloney, *The Impact of Title IX on Women's Intercollegiate Athletics*, Abstract. Dissertation. State University of New York at Buffalo, 1995. ProQuest AAT 9525594 (accessed October 15, 2009).

⁴⁶⁹ C. L. Pemberton, *An Educational Gender Equity/Title IX Workshop for Intercollegiate Athletic Personnel*, Abstract. Dissertation. Portland State University, 1996. ProQuest AAT 9635654 (accessed October 15, 2009).

⁴⁷⁰ Y. Wu, *The Demise Of The AIAW And Women's Control Of Athletics For Women: The Sex-Separate Policy In The Reality Of NCAA, Cold War and Title IX*, Abstract. Dissertation. The Pennsylvania State University, 1997. ProQuest AAT 9817607 (accessed October 15, 2009).

⁴⁷¹ C. M. Colles, *The Office for Civil Rights' Investigation and Interpretation of Title IX's Three-Part Test: A Question of Consistency*, Abstract. Dissertation. University of Northern Colorado, 1997. ProQuest AAT 9806118 (accessed October 15, 2009).

⁴⁷² D. E. Plyley, *The AIAW vs. the NCAA: A Struggle For Power To Govern Women's Athletics in American Institutions of Higher Education, 1972-1982*, Abstract. Dissertation. The University of Western Ontario (Canada), 1997. ProQuest AAT MQ28637 (accessed October 15, 2009).

⁴⁷³ M. J. Certo, *Reaching Gender Equity in Intercollegiate Athletics: Coaches' And Student-Athletes' Beliefs About Institutional Support For Men's And Women's Athletics*, Abstract. Dissertation. Columbia University Teachers College, 1997. ProQuest AAT 9810955 (accessed October 15, 2009).

developing formal competitive women's basketball regarding the model of sport competition employed and the governing bodies struggle to dominate control of women's rules of competition.⁴⁷⁴ The last study produced in 1997 by Moss at The University of Wisconsin at Madison involved a public university. Moss used a case study methodology to determine the conformity to Title IX in attempts to gain parity in the university's sports program between genders.⁴⁷⁵ At the end of the decade, Hooks focused on the outcomes small institutions of higher learning in Pennsylvania experienced when they applied Title IX to their athletic operations in pursuit of parity. The study included three NCAA Division III schools.⁴⁷⁶ Hovan at the University of Miami looked at the certification gender parity conversions at NCAA sport programs at universities at the highest tier of competition.⁴⁷⁷ Espy at the University of Alabama, explored historical development of Title IX laws and legal action between 1972 and 1997.⁴⁷⁸ Maurer and Bell ended the 1990s. Maurer looked at Northern Illinois University and the roles women held while altering N.I.U.'s athletic programming to incorporate changes allowing gender parity to flourish at the University.⁴⁷⁹ Bell offered a snapshot of factors at work in the

⁴⁷⁴ F. M. Hoogestraat, *Qualitative Portraiture Of The Female Intercollegiate Athletic Experience In Four Elite Women's Basketball Programs*, Abstract. Dissertation. Peabody College for Teachers of Vanderbilt University, 1997. ProQuest AAT 9729100 (accessed October 15, 2009).

⁴⁷⁵ S. L. Moss, *Gender Equity in Intercollegiate athletics: A Case Study Of A Title IX Compliance Effort At A Division I-A Public University*, Abstract. Dissertation. The University of Wisconsin – Madison, 1997. ProQuest, AAT 9726171 (accessed October 15, 2009).

⁴⁷⁶ D. T. Hooks, *Complying with Title IX: An Examination Of The Effects On Three NCAA Division III Colleges In Pennsylvania And The Difficulties The Law's Interpretation Has Created For Small Colleges Attempting To Achieve Gender Equity*, Abstract. Dissertation. University of Pennsylvania, 1998. ProQuest AAT 9913306 (accessed October 15, 2009).

⁴⁷⁷ J. A. Hovan, *Changes in Certified NCAA Division I Athletic Programs in the Area of Gender-Equity*, Abstract. Dissertation. University of Miami, 1998. ProQuest AAT 9934230 (accessed October 15, 2009).

⁴⁷⁸ I. P. Espy, Jr., *A History And Analysis Of Sports-Related Title IX Legislation And Litigation From 1972 To 1997*, Abstract. Dissertation. The University of Alabama, 1998. AAT 9831322 (accessed October 15, 2009).

⁴⁷⁹ R. J. Maurer, *An Inductive Case Study of Women Leaders of Athletics at Northern Illinois University: Learning, Leadership and Transformation*, Abstract. Dissertation. Northern Illinois University, 1999. ProQuest AAT 9927710 (accessed October 15, 2009).

Southern Conference between 1995 and 1998 related to Title IX compliance. Bell compared these factors with NCAA results found in their 1997 Gender-Equity Study.⁴⁸⁰

The onset of the new millennium brought scholarly production about Title IX from a host of institutions of higher learning. Stahura of the University of Minnesota traced employment opportunities in athletics for females comparing gender of coach with such factors as reputation of university, national status of athletic program and type of activity played.⁴⁸¹ Skretny-Fowler at Spalding University intended to teach athletic personnel and student athletes about sexual harassment in college sports and how to avoid it.⁴⁸² Also offered in 2000, was a study by Fields at the University of Iowa giving insight into contact sport law and female interest in participating.⁴⁸³ Forman of the University of California at Davis wrote a retrospective look at the struggle to remove barriers using Title IX implying that the effort has been somewhat counter-productive.⁴⁸⁴ Allison at the University of Denver compared the University of Denver and University of Colorado-Boulder's strategies in formulating policy governing women's athletic competition.⁴⁸⁵ Walton of the University of Iowa looked at women's wrestling and the media image and coverage received.⁴⁸⁶ Emerson (2002) at the University of Idaho coded responses

⁴⁸⁰ R. C. Bell, *An Examination of Selected Gender-Equity Factors in Intercollegiate Athletics in the Southern Conference from 1995-1998*, Abstract. Dissertation. United States Sports Academy, 1999. ProQuest AAT 9954000 (accessed October 15, 2009).

⁴⁸¹ K. A. Stahura, *Occupational Employment Patterns in Women's Intercollegiate Athletics: Sex of Head Coach as a Function of Sport Type, Institutional Prestige and ranked Program Prestige*, Abstract. Dissertation. University of Minnesota, 2000. ProQuest AAT 9966271 (accessed October 15, 2009).

⁴⁸² A. B. Skretny-Fowler, *Sexual Harassment in Intercollegiate Athletics: A Case Law Analysis and Recommendations for Prevention, Training, and Risk Assessment*, Abstract. Dissertation. Spalding University, 2000. ProQuest AAT 9962311 (accessed October 15, 2009).

⁴⁸³ S. K. Fields, *Female Gladiators: Gender, Law and Contact Sport in America*, Abstract. Dissertation. The University of Iowa, 2000. ProQuest AAT 9996088 (accessed October 15, 2009).

⁴⁸⁴ P. J. Forman, *Contesting Gender Equity: The Cooptation Of Women's Intercollegiate Athletics*, Abstract. Dissertation. University of California, Davis, 2001. ProQuest AAT 3039147 (accessed October 15, 2009).

⁴⁸⁵ M. L. Allison, *The History Of Women's Collegiate Sports In Colorado: A Comparative Case Study Of Administrative Decision-Making At The University Of Denver And The University Of Colorado-Boulder*, Abstract. Dissertation. University of Denver, 2002. ProQuest AAT 3040740 (accessed October 15, 2009).

⁴⁸⁶ T. A. Walton, *Pinned By Gender Construction? A Critical Analysis Of Media Representations Of Female Amateur Wrestling In The United States*, Abstract. Dissertation. The University of Iowa, 2002. ProQuest AAT 3052478 (accessed October 15, 2009).

from women educational leaders, athletic directors and coaches. Emerson reviewed results to develop grounded theory as discovering themes from the data related to emerging patterns of behavior regarding constraints placed on female personnel by others and themselves.⁴⁸⁷ Also in 2002 Oliver at the University of Kansas analyzed media reporting in the university newspaper to determine compliance with Title IX regulations.⁴⁸⁸ Ritter at the University of Nevada, Reno, covered the historical development of Title IX compliance at the University of Nevada, Reno from 1972-2002.⁴⁸⁹

Journals

J.E. Shields comments on the pre-Title IX “Controversy of the ‘Equal Rights for Women’s Amendment,” in a 1971 *Congressional Digest*. This pre-dated the passage of Title IX but gave voice to the elements involved in the emerging equal rights for women conversation.⁴⁹⁰ A. L. Alford directed attention to “Education’s New Landmark Legislation” in the journal, *American Education*.⁴⁹¹ In 1979 N. Baer, D. Hulsizer, and Lerman submitted, “An Interview On Title IX with Shirley Chisolm, Holly Knox, Leslie R. Wolfe, Cynthia G. Brown and Mary Kaaren Jolly”⁴⁹² for publication in *The Harvard Educational Review*. J. Hoyt mentioned the new “Target: Sex Bias in Education”⁴⁹³ in the August 1974 issue of *American Education*. A.W.

⁴⁸⁷ K. E. Emerson, *Perceptions Of Female Coaches, Female Athletic Directors And Female Administrators Regarding Women Coaching Female Varsity Athletics*, Abstract. Dissertation. University of Idaho, 2002. ProQuest AAT 3043270 (accessed October 15, 2009).

⁴⁸⁸ J. A. Oliver, *An Analysis of Text and Photographic Coverage of Women’s and Men’s Basketball in the University-Sponsored Newspaper at the University of Kansas*, Abstract. Dissertation. University of Kansas, 2002. ProQuest AAT 3059066 (accessed October 15, 2009).

⁴⁸⁹ S. E. Ritter, *Achieving Gender Equity in Collegiate Sports: University of Nevada, Reno Responds to Title IX, 1972-2002*, Abstract. Dissertation. The University of Nevada, 2002. ProQuest (accessed October 15, 2009).

⁴⁹⁰ J. E. Shields, (Ed.), “Controversy Over the ‘Equal Rights for Women’ Amendment,” *Congressional Digest* 50 (1971).

⁴⁹¹ A. L. Alford, “Education’s New Landmark Legislation,” *American Education* 8 (1972): 4-9.

⁴⁹² N. Baer, D. Hulsizer and L. Perman, “An Interview on Title IX with Shirley Chisolm, Holly Knox, Leslie R. Wolfe, Cynthia, G. Brown, and Mary Kaaren Jolly,” *The Harvard Educational Review* 49 (1979): 504 – 526.

⁴⁹³ J. Hoyt, “Target: Sex Bias in Education,” *American Education* 10 (1974): 129-131.

Steinhilber interpreted Title IX for educational administrators in his article appearing in *The American School Board Journal*, “Here’s What the Tough New Federal Rules Against Sex Bias Mean for Public Schools.”⁴⁹⁴ Dunkle and Sandler conveyed issues in their *Inequality in Education* article “Sex Discrimination Against Students: Implications of Title IX of the Education Amendments of 1972.”⁴⁹⁵ J. C. Hogan reported in *Phi Delta Kappan* “Sport in the Courts”⁴⁹⁶ extending the conversation in educational circles as K. Ley commented on “Women in Sports: Where Do We Go From here, Boys?”⁴⁹⁷ M.C. Dunkle revealed “Title IX New Rules for an Old Game”⁴⁹⁸ in *Teachers College Record* as R. Cole’s play on words dredged up images with “Title IX: A Long Dazed Journey into Rights”⁴⁹⁹ As 1975-1976 roll along, the conversation in education about compliance deadlines looming and policy making took center stage on multiple levels. T. R. Wolanin discussed “Federal Policy Making in higher Education”⁵⁰⁰ while A. Fishel presented “Organizational Positions on Title IX: Conflicting Perspectives on Sex Discrimination in Education”⁵⁰¹ and the D. M. Timpano advised administrators through an article in *The American School Board Journal* on “How to Meet that Title IX Deadline Four Months From Now.”⁵⁰² P. Faust asserted that “Title IX: It Means More Than Pink Footballs,”⁵⁰³ as J. Hult mulled “Equal programs or Carbon Copies: Title IX

⁴⁹⁴ A. W. Steinhilber, “Here’s What the Tough New Federal Rules Against Sex Bias Mean for Public Schools,” *American School Board Journal* 161 (August 1974): 20-21.

⁴⁹⁵ M. C. Dunkle and B. Sandler, “Sex Discrimination Against Students: Implications of Title IX of the Education Amendments of 1972,” *Inequality in Education* 18 (1974): 12-35.

⁴⁹⁶ J. C. Hogan, “Sport in the Courts,” *Phi Delta Kappan* LVI (1974): 132-135.

⁴⁹⁷ K. Ley, “Women in Sports: Where Do We Go From here, Boys?” *Phi Delta Kappan* LVI (1974): 129-131.

⁴⁹⁸ M. C. Dunkle, “Title IX New Rules for an Old Game,” *Teachers College Record* 75 (1975): 385-399.

⁴⁹⁹ R. Cole, “Title IX: A Long Dazed Journey into Rights,” *Phi Delta Kappan* 57 (1975): 575-577, 586.

⁵⁰⁰ T. R. Wolanin, “Federal Policy Making In Higher Education,” *AAUP Bulletin* 61(1975): 309-314.

⁵⁰¹ A. Fishel, “Organizational Positions on Title IX: Conflicting Perspectives on Sex Discrimination in Education,” (1976) *The Journal of Higher Education* ILVII (1976): 93-105.

⁵⁰² D. M. Timpano, “How to Meet that Title IX Deadline Four Months From Now,” *American School Board Journal* 163 (1976): 30-34.

⁵⁰³ P. Faust, “Title IX: It Means More Than Pink Footballs,” *Thrust for Education Leadership* 5 (1975): 6-8.

Prospects and Problems,”⁵⁰⁴ and D. A. Lopiano put forward “A Fact-Finding Model for Conducting a Title IX Self-Evaluation Study in Athletic Programs: Title IX Prospects and Problems.”⁵⁰⁵ W. Kroll shifted the conversation when submitting “Psychological Scaling of Proposed Title IX Guidelines”⁵⁰⁶ in *The Research Quarterly* and G.R. LaNoue pondered “Athletics and Equality: How to Comply with Title IX Without Tearing Down the Stadium”⁵⁰⁷ as D. G. Speck dispelled Title IX myths in “Title IX: The Death of Athletics and Other Myths”⁵⁰⁸ bringing the issues facing athletics into 1977.

Anderson and Cheslock in 2004, reviewed the impact of Title IX requirements, especially gender participation proportionality, against data reported as required by The Equity in Athletics Disclosure Act between the years, 1995-1996 to 2001-2002, in their article “Institutional Strategies to Achieve Gender Equity in Intercollegiate Athletics: Does Title IX Harm Male Athletes?” Anderson and Cheslock used a multiple regression analysis technique to state their conclusion about Title IX compliance and the intentional and unintentional harm to male athletic participation in the effort to achieve gender equity.⁵⁰⁹

⁵⁰⁴ J. Hult, “Equal programs or Carbon Copies: Title IX Prospects and Problems,” *Journal of Physical Education and Recreation* 47 (1976): 24-25.

⁵⁰⁵ D. A. Lopiano, “A Fact-Finding Model for Conducting a Title IX Self-Evaluation Study in Athletic Programs: Title IX Prospects and Problems,” *Journal of Physical Education and Recreation* 47 (1976): 25-30.

⁵⁰⁶ W. Kroll, “Psychological Scaling of Proposed Title IX Guidelines,” (1976) *The Research Quarterly* 47 (1976): 549-553.

⁵⁰⁷ G. R. LaNoue, “Athletics and Equality: How to Comply with Title IX Without Tearing Down the Stadium,” *Change* 8 (1976): 27-30, 63-64.

⁵⁰⁸ D. G. Speck, “Title IX: The Death of Athletics and Other Myths,” *NASPA* 13 (1976): 73-75.

⁵⁰⁹ D. J. Anderson and J. J. Cheslock, “Institutional Strategies to Achieve Gender Equity in Intercollegiate Athletics: Does Title IX Harm Male Athletes?” *American Economic Review* 94 (May, 2004): 307-311. Stable URL: <http://links.jstor.org/sici?sici=0002-8282%28200405%2994%3A2%3C307%3AISTAGE%3E2.0.CO%3B2-D>.

CHAPTER III

PLESSY V. FERGUSON TO PETER HOLMES' MEMO

1896 - 1975

The pre-Title IX conversation started in the year X-Ray technology was invented in Austria, when the Dow Jones Industrial Average began publication in New York and when Henry Ford developed a Ford quadricycle, the forerunner of the modern automobile. Grover Cleveland was the sitting president of the United States, Utah became the 45th state to join the Union and William McKinley defeated William Jennings Bryan in the 1896 presidential election. Other notable events in 1896 included the Klondike Gold Rush in the Arctic and the revival of the modern Olympic Games in Athens, Greece.⁵¹⁰

In 1896 the United States Supreme Court leveled a decision in *Plessy v. Ferguson*⁵¹¹ mutating civil rights gains after the Civil War and Reconstruction Period. This decision virtually sustained a legal racially-segregated social structure between the black (African American) and white (Euro American) races.⁵¹² After Reconstruction ended, individual states were allowed to make laws referred to as “Jim Crow”⁵¹³ prohibiting racial desegregation in use of public

⁵¹⁰ America's Best History, “1890-1900,” America's Best History U.S. Timeline. www.americasbesthistory.net (accessed August 5, 2008).

⁵¹¹ *Plessy v. Ferguson* 163 U.S. 537.

⁵¹² A. Sarat, *Race Law and Culture: Reflections on Brown v. Board of Education*, (New York: Oxford Press, 1997): 55.

⁵¹³ M. J. Klarman, *Brown v. Board of Education and the Civil Rights Movement*, (New York: Oxford University Press, 2007).

facilities, restaurants and train cars. The state of Louisiana passed a law specifically aimed at racially segregating railway accommodations. To test this law, Homer Plessy was enlisted. Mr. Plessy was one-eighth African American and attempted to ride in a railway car reserved for Euro-American patrons. When Plessy refused to move to the other train car reserved for African American patrons, he was arrested and jailed. Two attempts to plead his case in Louisiana failed to give Plessy and the sponsors satisfactory results. The United States Supreme Court granted *certiorari* to hear *Plessy v. Ferguson* in the spring of 1896. The judicial majority held that state governments could constitutionally provide separate but equal public accommodations. In the majority opinion it was established that the 13th Amendment did not apply because Plessy was not enslaved at the time of his arrest. As part of their argument to create and uphold a “separate but equal doctrine,” the Supreme Court Justices cited educational, marital and public facilities law which permeated the 1896 social structure. The majority opinion stated that Congress had no power to regulate individual states and local municipalities. Other states had successfully been allowed to segregate the races on public transportation vehicles.⁵¹⁴

The mindset of The Supreme Court Justices and society at large in 1896 was that one could not legislate harmonious relations between racially different people. In the decision, the Justices stated: “If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other’s merits and a voluntary consent of individuals.”⁵¹⁵ At the end of the majority opinion, seven of the U.S. Supreme Court Justices joined voices and affirmed the Louisiana lower court decisions, upholding the “separate but equal doctrine.”⁵¹⁶ In the years to come, the doctrine of ‘separate but equal’ would be applied

⁵¹⁴ *Plessy v. Ferguson*.

⁵¹⁵ *Ibid.*, Plessy, 1896: 8, para.1.

⁵¹⁶ *Ibid.*, Plessy, 1896: 8, para.4.

loosely to other groups trying to gain access and equality in areas traditionally off-limits to them. One dissenting voice in *Plessy* was documented in the opinion written by Justice Harlan. Harlan reasoned that separate but equal was inconsistent with the liberties afforded the United States citizen. He mentioned that this doctrine was even hostile to the basic tenets of the United States Constitution.⁵¹⁷ Much of what Harlan discussed had implications for civil rights venues in the future of United States social justice.

Fifty-eight years later, a different social justice saga played out which diminished the hold that the “separate but equal doctrine” had on American society. On a mid-western stage, use of this doctrine was banished from the publicly-funded educational arena. The United States Supreme Court, the Warren Court, ruled at a time when Dwight D. Eisenhower was President, the United States launched its first nuclear-powered submarine, the U.S.S. Nautilus, and Senator Charles McCarthy began his infamous congressional hearings linking the U.S. Army to Communist influence. To further couch this decision historically, in 1954 the first issue of *Sports Illustrated* hit the streets and Burger King opened for business while McDonald’s Restaurants expanded and sought incorporation.⁵¹⁸ In 1954, the historic and landmark decision, *Brown v. Board of Education, Topeka*, canceled the “separate but equal doctrine” promoted by *Plessy v. Ferguson*. The Warren Court unanimously ruled that states must provide desegregated educational opportunities for all its citizens. *Brown* dealt with inequalities in educational access and opportunity for African American children and teens.

Four previously tried cases from across the United States formed the basis of Brown’s attack on educational inequity. Gathered together with *Brown v. Board of Education, Topeka*, were *Briggs Et Al. V. Elliott Et Al.*, 347 U.S. 483; *Davis Et Al. V. County School Board Of*

⁵¹⁷ *Ibid.*, *Plessy*, 1896: 13, para.3.

⁵¹⁸ Wikipedia, “1954,” Wikipedia, the free encyclopedia, <http://www.wikipedia.com> (accessed April 10, 2008).

Prince Edward County, Virginia, Et Al., 347 U.S. 483; *Bolling Et Al. V. Sharpe Et Al.*, 347 U.S. 497; and *Gebhart Et Al. V. Belton Et Al.*, 347 U.S.

Briggs Et Al. v Elliott Et Al was in itself a case about the quality of the separate schools maintained in South Carolina. The Supreme Court vacated and remanded the case back to the state of South Carolina to ensure that separate schools maintained for the white and colored races were equal in quality.⁵¹⁹ *Gebhart v. Belton* involved the denying of access to several Negro (African American) children to schools maintained for Caucasian (Euro American) pupils by Board of Education policy in Claymont Special School District in New Castle County, Delaware. The curriculum and facilities found at the schools the children were assigned to and those they attempted to attend were not equal. Belton had been discriminated against based on racial factors by not being allowed to attend the more desirable school. School district officials were instructed to make the appropriate adjustments to ensure equal quality of separate facilities.⁵²⁰

These cases, along with *Brown*, showed a pattern of abuse practiced by individual states that the Justices of the Warren Court could not ignore or continue to rationalize away. Taking a consolidated approach allowed the Warren Court to gauge just how far states had not moved in their journey to champion true civil rights for underserved students. To continue practices *de jour* in 1954 would in effect continue to jeopardize true educational opportunity for the marginalized sectors of citizens. The Justices recognized their duty to create an essential action. At the time the way education was practiced prior to *Brown v. Board of Education, Topeka (1954)*,⁵²¹ allowed many states to run two-track, racially-segregated educational systems. When these systems were closely scrutinized the promise of equal educational opportunity for all

⁵¹⁹ *Briggs Et Al v Elliott Et Al.*, No. 273, 342 U.S. 350; 72 S. Ct. 327; 152 U.S. LEXIS 2486; 96 L.Ed. 392, (January 28, 1952).

⁵²⁰ *Gebhart v. Belton*, 91 A.2d 137; 1952 Del. LEXIS 117; Del. Ch. 144 (August 28, 1952).

⁵²¹ *Brown et al. v Board of Education of Topeka et al.*, No. 1, 347 U.S. 483; 74 S. Ct. 686; 1954 U.S. LEXIS 2094; 98 L. Ed. 873; Ohio Op. 326; 38 A.L.R. 2d 1180 (May 17, 1954).

citizens was not a reality. Repercussions from the Brown decision resounded even in later generations when other *Brown v. Board* cases were brought to refine and realign the segregation issues cropping up among cases.⁵²²

The Justices on the Warren Court reasoned that society had developed beyond the social policies and laws of the mid-to-late 1800's and that education itself had become an important right for all citizens regardless of their race.⁵²³ Within the scope of the importance of this moment in history, the Warren Court decided that the conditions merited realigning so that when public funds were used to support public education all students should share those benefits equally. This inferiority, it was stated, led to motivational and developmental problems with the affected racial group.⁵²⁴

Therefore, the Warren Court emphatically quashed the *Plessy v. Ferguson* doctrine of 'separate but equal' in publicly funded educational settings until a time when gender discrimination would bring it back as a helpful remedy in the minds of many who had to make Title IX work with no additional revenues or budgets allocated for implementing the gender equity mandate. The now famous words of the Warren Court are quoted here for emphasis: "We conclude that in the field of public education the doctrine of 'separate but equal' has no place in public education. Separate educational facilities are inherently unequal."⁵²⁵ *Brown* changed the American educational system dramatically but the change was not immediate. *Brown*'s mandate took years for complete integration of schools and educational institutions nationwide⁵²⁶ which served as a forewarning of the struggles Title IX regulators and supporters

⁵²² Klarman, *Brown v. Board of Education*.

⁵²³ *Brown*, 1954: 8, paras. 3-4.

⁵²⁴ *Ibid.*, *Brown*, 1954: 9, para.1.

⁵²⁵ *Ibid.*, *Brown*, 1954: 9, para.5.

⁵²⁶ A. F. Ball, (Ed.), *With More Deliberate Speed: Achieving Equity and Excellence in Education: Realizing the Full Potential of Brown v. Board of Education*, (Malden, Mass: Blackwell Publishing, 2006).

would face in making gender equity commonplace in American education and athletics. *Brown v. Board of Education, Topeka* was mentioned here because of its far-reaching equal implications in the public education arena. Of course, to fully delve into the history of Brown and the subsequent Brown cases would fill the pages of many separate dissertations.

A related racial desegregation case appeared years later. *Board of Public Instruction of Taylor County Florida v. Finch*, 414 F.2d 1068, 1079-79 (5th Cir. 1969) dealt with civil rights violations in a school district in Florida which had not de-segregated their school district to a point that satisfied H.E.W. The Department of Health, Education and Welfare took action to have federal funding revoked and the court interceded and ruled that such enforcement should be done on a program-by-program basis.⁵²⁷ This case was included because it was later mentioned in a subpart of the Title IX regulations.

Prior to the passing of Title IX regulations, the conversations within law schools started with equal educational opportunity and sex-discrimination topics⁵²⁸ and state action involved with private universities⁵²⁹ dealing with issues in higher education and federal financial aid.⁵³⁰ During the early 1970's Congressional hearings took place to discuss the plight of women in education. Attempts to pass legislation to correct the widely-practiced and socially-accepted discrimination against females in education were unsuccessful. While the Congressional leaders awakened to the problem of sex-discrimination, the courts were paving the way, setting precedents with cases like *Reed v. Reed*. The Reeds were separated when their adopted son died and both parents wished to be appointed executor/executrix of the deceased son's estate. The

⁵²⁷ Department of Health, Education and Welfare, "Education Programs and Activities Receiving or Benefitting from Financial Assistance: Non-Discrimination Based on Sex. Part 2," *Federal Register* vol. 39 no. 120: 22228, June 20, 1974. Microfiche.

⁵²⁸ Iowa Law Review, "Sex Discrimination in College Admissions: The Quest for Equal Educational Opportunities," 56 *Ia L. Rev.*, October 1970: 209.

⁵²⁹ R. C. Schubert, "State Action and Private Universities," 24 *Rutgers L.Rev.* December 1970: 323.

⁵³⁰ W. D. Ford, "Constitutional Implications of Federal Aid to Higher Education," 1 *U.L. & Education*, October 1972: 513-540.

initial probate court awarded this duty to Mr. Reed even though Mrs. Reed was in the same entitlement class. The District Court reversed the ruling, awarding administratorship to Mrs. Reed, the adoptive mother. Later, The Supreme Court of Idaho reversed the lower court's ruling, granting the executor duties back to the father, following the original probate court decision. The U.S. Supreme Court reversed and remanded the decision. The lower court was giving preference to the male for administering the son's estate which was in fact in violation of the Fourteen Amendment because the parents were equally qualified and in the same entitlement class.⁵³¹

Significant discussion presented during the 91st and 92nd Congresses on the issues related to gender equity appeared in *The Congressional Record*. Debates, references to proceedings and committee hearings led by Representative Edith Green, Senators George McGovern and Birch Bayh were recorded in the 117 and 118 volumes of the *Congressional Record*, showing notable support for gender equity reform. The dedication of Edith Green, U.S. Representative from Oregon, help from House members representing New York, Shirley Chisholm, and Hawaii's congresswoman, Patsy Mink, heightened awareness in Congress of the need to support legislation to combat sex-discrimination in education. Important documents, transcripts of speeches, statistical information, letters and articles were recorded, as was supporting debate over reform in higher education.⁵³² Valiant efforts paid off when Representative Green was able to persuade fellow committee members to include a segment of the education bill prohibiting unequal treatment of women under penalty of loss of federal funding. Birch Bayh from Indiana, with discernment from George McGovern of South Dakota, assumed responsibility for the battle

⁵³¹ *Reed v Reed, Administrator*, No. 70-4, 404 U.S. 71; 92 S. Ct. 251; 1971 U.S. LEXIS 8; 30 L. Ed. 2d 255, (November 22, 1971).

⁵³² *Congressional Record*, Proceedings and Debates of the 92nd Congress, 2nd session, Volumes 117 and 118.

for gender equity in the Senate.⁵³³ Congressional house members addressed sex-discrimination with the intent that no quota would be imposed as a remedy.⁵³⁴ Scrutiny of these historical records kept in *The Congressional Record* helped define initial conversations involving interest in social and higher education reform as Congress intended and also showed the level of public involvement in supporting the gender equity effort.⁵³⁵ As an example, Senator McGovern expressed concern for women and their changing roles in society since childbearing was not the main focus of the young women. Senator Bayh presented evidence showing a reversal of progress in educational and occupational opportunities for females. Bayh reiterated in the text based on a Ford Foundation study that gender discrimination was more wide-spread and socially accepted than racial discrimination.⁵³⁶

The Year 1972—Federal Express (now know as Fed Ex) and Nike, Inc. were founded, the Dow Jones Industrial Average exceeded the 1000-point measure; Bobby Fischer defeated Boris Spassky to claim the world championship in chess. Richard Nixon was President of the United States and outwardly championed gender equity-related legislation. In 1972, Nixon visited Mao Zedong in China and attended the Strategic Arms Limitation Talks (SALT) in Russia. Watergate was planned and executed. Woodward and Bernstein of *The Washington Post* began probing for information that ultimately led to the dismantling of the Nixon White House.⁵³⁷

Bernice Sandler’s article “What Women Really Want on the College Campuses” appeared in *The Chronicle (The Chronicle)* in April 1972 prior to the passage of Title IX

⁵³³ *Congr. Rec.*, 92nd Cong., 2d sess., (1972), 118: 5803-4.

⁵³⁴ P. J. Snyder, *A Legislative and Judicial History of Title IX in Athletics*, May 2008. Ph.D. Dissertation. (Ann Arbor Michigan: University of Michigan). ProQuest (accessed October 15, 2009).

⁵³⁵ *Congr. Rec.*, 92nd Cong., 2d sess. , (1972), 118.

⁵³⁶ *Congr. Rec.*, 92nd Cong., 2d sess. , (1972), 118: 3936.

⁵³⁷ History.com, “History Made Every Day World History Timeline 1972,” A & E Television Network. <http://www.history.com/wt.do?year=1972> (accessed November 30, 2009).

legislation. Much of what was covered in this article was also chronicled in the *118 Congressional Record*.⁵³⁸ Sandler addressed the lack of women's academic and employment opportunities on the 1970's university campus. She presented clearly delineated myths about women's academic abilities and the impact of marital and parental status on academic and job options for women. At the time this article appeared, discrimination grievances procedures were virtually non-existent. To complain, according to Sandler, put women into employment jeopardy with no remedy or recourse available to address concerns. Employment benefits were unequally appointed based on gender as reported by Sandler.⁵³⁹

As reported by *The Chronicle of Higher Education (The Chronicle)* in May 1972, the most controversial part of Public Law 92-318 was the anti-busing provision, not the sex-discrimination portion of the law. Civil Rights groups called for PL 92-318's defeat because of the busing issue.⁵⁴⁰ By June, Nixon signed the bill that created Title IX of the Education Amendments of 1972 of the Civil Rights Act of 1965. The significance of the bill to gender policy seemed lost as it contained the aforementioned social hot-button items such as school busing and Native American programs.⁵⁴¹ The Equal Rights Amendment (E.R.A.) was also gaining support for ratification even though, in time, there would not be enough states to ratify the amendment by the imposed seven-year deadline.⁵⁴²

In May 1972, *The Chronicle* directed attention to a "Summary of Higher Education Bill: Senate Passes It, 63 to Fifteen." *Chronicle* reporters authored a detailed summary of the Senate version of what would become PL 92-318. Included in this summary were how sex-

⁵³⁸ *Congr. Rec.*, 92nd Cong., 2d sess., (1972), 118: 5811.

⁵³⁹ B. Sandler, "What Women Really Want on College Campuses," *Chronicle of Higher Education*, April 24, 1972. Microfilm.

⁵⁴⁰ *Chronicle of Higher Education*, "PL-318," *Chronicle of Higher Education*, May 22, 1972. Microfilm.

⁵⁴¹ R.M. Nixon, *Nixon Archives Presidential Papers*, June 23, 1972, 208 (accessed February 21, 2002).

⁵⁴² R. W. Francis, "The History Behind The Equal Rights Amendment," *History*, <http://www.equalrightsamendment.org/era.htm> (accessed November 30, 2009).

discrimination would be addressed in higher education and what exemptions would be allowed. Athletic programming was not mentioned in this article.⁵⁴³ In July, 1972 *The Chronicle* printed a listing of major United States Congressional legislation on the docket when Elliott Richardson was Secretary of Health, Education and Welfare. Public Law 92-318 containing what would become Title IX was signed by President Nixon.⁵⁴⁴

Title IX regulation, Subpart D, section 106.31, set the tone for the directives that followed regarding educational programs and activities receiving public funding. Language from this section is the most often directly quoted passage of Title IX regulations in print and in the media. The passage: “. . . no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient who receives Federal financial assistance. . . .”⁵⁴⁵ appeared in the regulations as well as in media and printed journals.

In the early 1970s the courts reviewed military benefits. The basis for *Frontiero v. Richardson* in 1973 was that a military service woman applied for additional benefits for her husband who was dependent on her income and resources while he was a college student. Her request was denied when she was not able to show that she provided for more than half of her husband’s support [A burden male military counterparts did not have to prove about their wives’ support.]. The U.S. Supreme Court found that the denial of benefits was based on Frontiero’s gender and that this practice was discriminatory and unconstitutional and reversed the district

⁵⁴³ Chronicle of Higher Education, “Summary of Higher Education Bill: Senate Passes It 63 to Fifteen,” *Chronicle of Higher Education*, May 30, 1972: 10. Microfilm.

⁵⁴⁴ Chronicle of Higher Education, “Status of Major Legislation,” *Chronicle of Higher Education*, vol. 6, July 3, 1972: 10. Microfilm.

⁵⁴⁵ Title IX Subpart D § 106.31.

court's decision.⁵⁴⁶ *Brenden v. Independent School District* (1972) involved girls being denied access to athletic competition as members of boys' teams. The court held in favor of the girls.⁵⁴⁷ On appeal in the Eighth Circuit, the panel of judges agreed with the findings at the district court level in *Brenden v. Independent School District*.⁵⁴⁸

Educational Journals began carrying Title IX-related information as A. L. Alford directed attention to "Education's New Landmark Legislation" in the journal, *American Education*.⁵⁴⁹ Billy Jean King offered insight about women's sports at the 1973 Senate subcommittee hearings. King commented, "If sports proved such a valuable training in self-discipline and pursuit of excellence, 'why is it,' Ms. King asked, 'that such benefits are only extended to 49 percent of the population?'"⁵⁵⁰ The Congressional hearings were part of an attempt by sponsors, Walter Mondale and Patsy Mink, to authorize the Women's Educational Equity Act of 1973 that would earmark funding in 1975-1977 for development of women's sports programming. Subcommittee hearing participants proposed other areas outside athletics that needed funding. Efforts were made by the Nixon administration spokesperson to convince the Senate panel that other laws were already on the books to remedy these concerns. Health Education and Welfare had come under scrutiny for violating its own sex bias laws. At the time this article was written, H.E.W. was in the process of developing guidebooks to rid sex-biased language in promotional and

⁵⁴⁶ *Frontiero v. Richardson*, No. 71-1694, 411 U.S. 677; 93 S. Ct. 1764; 1973 U.S. LEXIS 153; 36 L. Ed. 2d 583; 9 Fair Empl. Prac. Cas (BNA) 1253; 5 Empl. Prac. Dec. (CCH) P8609, January 17, 1973, Argued May 14, 1973, Decided.

⁵⁴⁷ *Brenden v. Independent School District*, No. 4-72 Civ. 201; 342 F. Supp. 1224; 1972 U.S. Dist. LEXIS 13955, May 1, 1972.

⁵⁴⁸ *Brenden v. Independent School District*, No. 72-1287; 477 F.2d 1292; 1973 U.S. App. LEXIS 10454; 23 A.L.R. Fed 649, January 8, 1973, submitted, April 18, 1973, decided.

⁵⁴⁹ A. L. Alford, "Education's New Landmark Legislation," *American Education* 8 (1972): 4-9.

⁵⁵⁰ C. M. Fields, "Billy Jean King Tells Senators of Bias in School Sports," *Chronicle of Higher Education*, vol. 8, no.9, November 19, 1973: 5. Microfilm.

training materials. Other efforts included compiling and reporting annual statistical data on the status of women in education.⁵⁵¹

After the passage of Title IX, Ruth Bader Ginsberg took part in the conversation with her law review, “Gender and the Constitution,” which appeared in the *New York Law Journal* in 1973.⁵⁵² One of the first reviews post-Title IX passage to tie equality issues and intercollegiate athletics together, appeared in 1974 featuring gender comparisons between athletics and cheerleading.⁵⁵³ In 1979, on the education front, N. Baer, D. Hulsizer, and L. Perman submitted, “An Interview On Title IX with Shirley Chisolm, Holly Knox, Leslie R. Wolfe, Cynthia G. Brown and Mary Kaaren Jolly”⁵⁵⁴ for publication in *The Harvard Educational Review*.

The N.C.A.A. News led with story line: “Colleges Seek Input to Title IX,” alerting members about the organization’s protest of legal issues and onerous outcomes from Title IX regulations. Included in the discussion was a request to re-call the regulations since initial Congressional intent seemed to leave athletics out of Title IX’s reach. Leadership’s major alarm centered around: “A severe deficiency in the regulations . . . in the area of allocation of revenues from income producing intercollegiate athletic events and programs.”⁵⁵⁵ N.C.A.A leadership included statistics about the exponential growth in women’s involvement in college sports over a 5-year period. A list of factors published by the N.C.A.A. Legislative Committee offered for H.E.W. consideration for modifications to Title IX regulations.⁵⁵⁶

⁵⁵¹ *Ibid.*, Fields, November 19, 1973.

⁵⁵² R. B. Ginsberg, “Gender and the Constitution,” *New York Law Journal*, November 1973: 170.

⁵⁵³ Rusch, C. “Equality in Athletics: The Cheerleader vs. The Athlete,” *South Dakota Law Review*, 19, 428-446.

⁵⁵⁴ N. Baer, D. Hulsizer and L. Perman, “An Interview on Title IX with Shirley Chisolm, Holly Knox, Leslie R. Wolfe, Cynthia, G. Brown, and Mary Kaaren Jolly,” *The Harvard Educational Review* 49 (1979): 504 – 526.

⁵⁵⁵ N.C.A.A. News, “Colleges Seek Input to Title IX,” *N.C.A.A. News*, vol. 11, no. 4, March 15, 1974. http://web1.ncaa.org/web_files/NCAANewsArchive/1974/19740315.pdf, (accessed April 10, 2009).

⁵⁵⁶ *Ibid.*

In early March, 1974, *The N.C.A.A. News* presented to its membership the threat that H.E.W. regulations would have on college athletics.⁵⁵⁷ Cheryl Fields of *The Chronicle* reported that athletic concerns delayed the completion of guidelines for Title IX. Fields stated that the sticking point seemed to be the required deployment of non-discriminatory policies guiding physical education and athletic competition. Gwen Gregory of The Office for Civil Rights (O.C.R.) spoke on behalf of the Office for Civil Rights regarding the delay in producing regulations. Fields pointed out that direct aid from federal sources was not part of athletic funding schemes but Title IX required holistic efforts and saw part of the institution and its programming bound by the anti-sex discrimination guidelines. Fields also reported that spokesperson Gregory declared that many myths had been created about what would be required of institutional athletic funding per gender. The N.C.A.A. was recognized in media coverage as a major voice opposing the regulations. Fields shared their analysis about the question of defining “equal opportunity” and there being no provisions made for sports that produced revenue.⁵⁵⁸

In April, 1974, *The Chronicle's* “Washington Notes” proclaimed an effort was underway to exempt revenue producing sports from the newest version of Title IX guidelines. The N.C.A.A. was reported to be behind an effort to ask Congressional leaders to take athletics out of Title IX completely.⁵⁵⁹ To corroborate this report, *The N.C.A.A. News* carried a lead story about the redrafting of the Title IX regulations. According to a spokesperson for The N.C.A.A., “The first draft made public contained provisions which college administrators and athletic officials

⁵⁵⁷ R. James, (Ed.), “H.E.W. Regulations Threaten College Athletics,” *N.C.A.A. News*, vol. 11, no. 3, March 1, 1974: 2-3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁵⁵⁸ C. M. Fields, “Fear of Effect on Athletics Delays Sex-Bias Guidelines,” *Chronicle of Higher Education*, vol. 8, no. 24, March 18, 1974: 5. Microfilm.

⁵⁵⁹ *Chronicle of Higher Education*, “Washington Notes Sports May be Excluded from Equality Guidelines,” *Chronicle of Higher Education*, vol. 8, no. 29, April 22, 1974: 4. Microfilm.

across the nation decried as a threat to the continued viability and existence of intercollegiate athletics.”⁵⁶⁰ Such terms as ‘unrealistic’ and ‘unreasonable’ most often were applied to the HEW paper.”⁵⁶¹ In an April 1974 article The N.C.A.A. went on record contesting the lawfulness of the broad reach of Title IX into institutions of higher learning receiving no public funds. The N.C.A.A. also challenged the conditions requiring intercollegiate and interscholastic sports programming to be singled out for parity in opportunity and expenditures between the genders.⁵⁶²

By mid-May, 1974, *The N.C.A.A. News* reported a resolution by the N.C.A.A. Council allowing a move by the organization “for the development of opportunities for women students to compete in sports programs of member institutions. The Council said it would direct its efforts toward encouraging and promoting the orderly growth of competitive athletics for women in support of and in consort with the leaders of the women’s sport movement.”⁵⁶³ The following paragraph in the article, reiterated the member institutions’ fear of Title IX and “endangerment” of their current programming and that Title IX should be re-written because of the projected and perceived fiscal effects that institutions of higher learning may encounter supporting programs for both genders.⁵⁶⁴ Sentiments voiced by Don Canham, athletic director at the University of Michigan, in his letter to H.E.W. Secretary, Caspar Weinberger, appeared under the heading “Opposition Forwarded to Title IX Regulations.”⁵⁶⁵

⁵⁶⁰ N.C.A.A. News, “Redraft of Title IX Regulations Due,” *N.C.A.A. News*, vol. 11, no. 5, April 15, 1974:1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁵⁶¹ *Ibid.*, Redraft, April 15, 1974.

⁵⁶² *Ibid.*, Redraft, April 15, 1974.

⁵⁶³ N.C.A.A. News, “NCAA Council Adopts Resolutions on Senate Bills, Women’s Sports,” *N.C.A.A. News*, vol. 11, no. 6, May 15, 1974:1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁵⁶⁴ *Ibid.* “NCAA Council Adopts Resolutions,” May 15, 1974.

⁵⁶⁵ D. Canham, “Opposition Forwarded to Title IX Regulations,” *N.C.A.A. News*, vol. 11, no. 6, May 15, 1974: 6. <http://web1.ncaa.org> (accessed March 28, 2008).

Two entries revealed the N.C.A.A.'s attention to Title IX as "N.C.A.A. Council Adopts Resolutions on Senate Bill, Women's Sports"⁵⁶⁶ appeared on page one and "On Women's Sports RESOLUTION"⁵⁶⁷ appeared on page two. Along the same thoughts, a *New York Times* article appeared stating: "Women Battle for Funds on College Sports Scene." It was a monologue about what adding women to a program in sports might cost. As long as women athletes were satisfied being part of a club sport, having enough funding to pay fuel expenses to their competitions, the athletic departments, like the one mentioned in the article, did not feel threatened. What was dreaded, at the time, was for women, according to Ferrell of the University of Arkansas, to "secure some equal rights"⁵⁶⁸ as they had at another mid-western university. Requests from women interested in participating in athletics increased from ten requests to 200 within a few years. At the time Searcy wrote the 1974 article, Kansas State University was considered a model for women's athletics in the United States.⁵⁶⁹ *Chronicle* reporter Fields wrote "Revenue-Producing Intercollegiate Sports Freed from Sex-Bias Rules by Senate" in late-May 1974 making the public aware that the U.S. Senate had voted to exclude revenue-generating college athletics from Title IX in support of the Tower Amendment. N.C.A.A. and member coaches momentarily saw their efforts pay off as the Senate listened to their fears about decreased revenues and how the sports traditionally supported might suffer if funding women's sporting endeavors were expected from currently generated male sports revenue. The Tower Amendment interpretation was of concern to those interested in anti-sex discrimination policy since it could be construed to mean that sports revenues generated by male sport teams and other amenities

⁵⁶⁶ N.C.A.A. News, "NCAA Council Adopts Resolutions on Senate Bills, Women's Sports," vol. 11, no. 6, May 15, 1974: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁵⁶⁷ N.C.A.A. News, "On Women's Sports RESOLUTION," vol. 11, no. 6, May 15, 1974: 3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁵⁶⁸ J. Searcy, "Women Battle for Funds on College Sports Scene," *New York Times*, May 19, 1974: para. 6. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁵⁶⁹ *Ibid.*, Searcy, May 19, 1974.

could be off-limits for equalizing sports opportunities for women.⁵⁷⁰ In *The Chronicle's* "Washington Notes" at the end of May, 1974, The Office for Civil Rights reportedly sent a revised draft of Title IX regulations to Weinberger, Secretary of Health, Education and Welfare, for review. One of the reported options that O.C.R. gave to Weinberger was an approach that would inform higher education about their duty to end gender discrimination in athletics and that the agency would not provide guidelines to promote equal opportunity in sports participation.⁵⁷¹

Eileen Shanahan, of *The New York Times*, announced that the new regulations, Title IX, would create changes in the way curricula were offered in disciplines traditionally and historically male-dominated. Shanahan voiced disappointment when she expressed that in athletic programming equal expenditures were not mandated but failure to comply with regulations in most levels of public or private education would result in loss of federal aid. The idea of annually surveying students about athletic interest was pointed out as a section once part of the initial regulations but not part of the printed regulations up for public review such as sections dealing with equal funding of male and female athletic teams. In 1974 one of the controversial points that had citizens begging for it to be clarified was regarding sex education in mixed gender classes.⁵⁷² In June, 1974, *The Federal Register* contained the proposed regulations of Title IX for review by the public at large. The proposed anti-sex discrimination regulations for Title IX from H.E.W. were patterned after Title VI of the Civil Rights Act of 1964. Certain exceptions applied with enumerated educational program and activity limitations. The following is a cursory review of Title IX's subparts:

⁵⁷⁰ C. M. Fields, "Revenue-Producing Intercollegiate Sports Freed from Sex-Bias Rules by Senate," *Chronicle of Higher Education*, vol. 8, no. 34, May 28, 1974: 4. Microfilm.

⁵⁷¹ *Chronicle of Higher Education*, "Washington Notes: Sex Bias Guidelines Being Reviewed," *Chronicle of Higher Education*, vol. 8, no. 32, May 31, 1974: 6. Microfilm.

⁵⁷² E. Shanahan, "H.E.W. Proposes Rules to Outlaw Schools' Sex Bias: Regulations Would Require Fundamental Changes in Programs of Athletics," *New York Times*, June 19, 1974. Microfilm.

Subpart A contained the definitions and guidelines remedying current violations and promoting change. Requirements regarding compliance and reporting appeared in this section along with a review of state and local laws.

Subpart B outlined the kind of educational entities subject to Title IX scrutiny. Exemptions that guided admissions policy and transition plans re-designing admission procedures to be followed within a seven-year deadline to comply appeared here.

Subpart C again dealt with admission practices and recruiting practices along with student employment.

Subpart D projected guidelines dealing with programs and activities of educational institutions. This section included student benefits and opportunities in research, extra-curricular programs, room facilities, health services, physical education, instructional opportunities, sports and married students with children.⁵⁷³

The subject of Subpart E dealt with employment in the educational setting. All facets of employment were included under Title IX's reach unless there was a *bona fide* occupational qualification based on gender.

Information contained in Subpart F set procedural rules for Title IX compliance and investigations into motion. The umbrella of financial aid assistance identified the scope of programming under Title IX. Judicial review was an option that could be exercised to remedy violations as well as administrative decisions from O.C.R. Subpart F also identified a legal precedent set in athletic sex discrimination which informed Title IX regulations. Judges in the Eighth Circuit supported a lower court decision in *Brenden v. Independent School District 742*, 477F.2d 1292 (8th Cir. 1973), affirming that league rules denying girls opportunity to participate

⁵⁷³ Department of Health, Education and Welfare, "Education Programs and Activities Receiving or Benefitting from Financial Assistance: Non-Discrimination Based on Sex. Part 2," *Federal Register*, v 39, n120, June 20, 1974: 22228. Microfiche.

on male high school sport teams violated constitutional rights of girls under the Fourteenth Amendment's Equal Protection provisions.

Subpart F contained language which mirrored H.E.W.'s enforcement policy patterned after earlier civil rights legislation.⁵⁷⁴ Additional supporting judicial review for this section came from *Board of Public Instruction of Taylor County Florida v. Finch*, 414 F.2d 1068, 1079-79 (5th Cir. 1969), which dealt with civil rights violations in a school district in Florida that had not desegregated its school district to a point that satisfied H.E.W. The Department of Health, Education and Welfare took action to have federal funding revoked, but the court interceded and ruled that such enforcement should be done on a program-by-program basis.⁵⁷⁵

In 45 C.F.R. Part 86, the various subparts were discussed including the reasoning behind policy written to cover most questions and scenarios that existed in the field. Remedying past activity such as violating Title IX was addressed and affirmative action or quotas were not required to overcome past discrimination related to gender. The regulations required educational institutions that accepted federal funds to complete a statement of compliance, assuring their cooperation with Title IX.⁵⁷⁶ Cases challenging this requirement, i.e., *Grove City College v Bell*⁵⁷⁷ and *Hillsdale College v Department of Education*,⁵⁷⁸ to submit the compliance statement to O.C.R., were appealed to The U.S. Supreme Court. The exemptions based on military and religious affiliation were outlined as were those dealing with vocational and single-sex institutions. The rights of married students and those with children were delineated as applying

⁵⁷⁴ *Ibid.*, H.E.W., "Education Programs and Activities Receiving or Benefitting from Financial Assistance."

⁵⁷⁵ *Ibid.*, H.E.W., "Education Programs and Activities Receiving or Benefitting from Financial Assistance."

⁵⁷⁶ *Ibid.*, H.E.W., "Education Programs and Activities Receiving or Benefitting from Financial Assistance."

⁵⁷⁷ *Grove City College Et Al. v. Bell, Secretary of Education*, Et Al. No. 82-792, 465 U.S. 555; 104 S. Ct. 1211; 79 L. Ed. 2d 516; 1984 U.S. LEXIS 158; 52 U.S.L.W. 4283; 33 Empl. Prac. Dec. (CCH) P 34, 158, November 29, 1983, Argued; February 28, 1984, Decided.

⁵⁷⁸ *Hillsdale College v. Department of Education, Et Al.* No. 82-1538, 466 U.S. 901; 104 S. Ct. 1673; 80 L. Ed. 2d 149; 1984 U.S. LEXIS 1585; 52 U.S.L.W. 3700.

residency rules governing in-state tuition.⁵⁷⁹ This section was based on previous judicial review from the Western District of Pennsylvania. *Samuel v. University of Pittsburgh* 375 F. Supp. 119; 1974 U.S. Dist. LEXIS 9055; 18 Fed. R. Serv. 2d (Callaghan) 786 was a class action suit that heightened awareness about gender discrimination related to residency classifications and tuition charged based on marital status.⁵⁸⁰

Language utilizing the term “separate but equal” permeated the proposed rules explanatory section, especially those sections related to housing, restroom and locker room facilities. The pursuit of academic disciplines would no longer be gender-specific based on various sections of the regulations proposed. The H.E.W. staff acknowledged that existing curricular materials contained gender biased language. H.E.W. offered a policy of self-policing from the publishing industry as a remedy rather than violating First Amendment/Free Speech by mandating and regulating the curricular changes. H.E.W.’s Office of Education would offer assistance and guidelines for the eradication of gender biased language in printed texts.

Financial aid guidelines were included to assist institutions in developing non-gender biased scholarship distribution. There were provisions created to protect some scholar programs traditionally reserved for male students. Student health benefits were discussed with various exemptions as well as those policies governing married students and pregnant students. Athletics and physical education programming was specifically addressed as part of the educational experience and therefore fully subject to Title IX. Various exemptions applied to individual athletic sport competitive levels and team skills. Equalizing athletic opportunity and developing the interests and talents of the underrepresented gender were the responsibilities of educational institutions supported by federal funding. Employment was discussed as it was governed by the

⁵⁷⁹ Department of Health, Education and Welfare, “Educational Programs and Activities Receiving or Benefitting from Financial Assistance,” *Federal Register*, v 39, n120, June 20, 1974: 22228. Microfiche.

⁵⁸⁰ *Ibid.*, “Educational Programs and Activities Receiving or Benefitting from Financial Assistance.”

Equal Employment Opportunity Commission (E.E.O.C), Department of Labor Federal Contracts' Guidelines, Title VII and Executive Order 11246. Distribution and equalization of fringe benefits were addressed as was the predominance of the part-time workforce in education being predominantly female and not eligible for fringe benefits.⁵⁸¹

In June 1974, Chronicle reporter, Fields, in her article: "U.S. Publishes Its Anti-Sex Guidelines but Delays Enforcement; Text books are not Affected Expects Rules Won't Take Effect before January 1st" directed attention to the announcement that Title IX regulations were available for public comment. Public comment could be made until October 15, 1974 and the regulations themselves were anticipated to become effective by January 1, 1975. As mentioned in previous paragraphs, Fields echoed the textbook revision exemption. Athletics, according to Fields, was reportedly the hot-button issue and the new regulations did not carry the exemptions coaches and athletic directors had lobbied for addressing equal spending per gender. Athletic teams could be separate but must be equivalently outfitted and offer a proportionate number of scholarships by gender. The teams must be coached and have quality of facilities at comparable value. Fields included H.E.W. officials stating policy compliance issues would not necessarily be dollar-for-dollar spending, but must assure that the organization assesses opportunity created for both groups. Fields touched on private colleges, religious colleges and single-sex organizations and their exemptions and added comments about housing, financial aid, marital status issues also found in the regulations.⁵⁸² Neill Amdur wrote a thought-provoking piece that sympathized with the prospect of men's loss of dominance in athletics under Title IX and women's newly found athletic identity in "Equality for Women will Raise Host of Problems for

⁵⁸¹ *Ibid.*, "Education Programs and Activities Receiving or Benefitting from Financial Assistance:"

⁵⁸² C. M. Fields, "U.S. Publishes Its Anti-Sex Bias Guidelines But Delays Enforcement; Text Books Are Not Affected HEW Expect Rules Won't Take Effect before January 1st," *Chronicle of Higher Education*, vol. 8, no. 36, June 24, 1974: 1. Microfilm.

Colleges.” Institutions that decided to step forward, according to Amdur, that were pro-actively embracing women’s athletic programming were Pennsylvania State University, University of California at Los Angeles and University of Michigan. Amdur identified The N.C.A.A as a force lobbying against Title IX legislation. He ended his discussion by enumerating the hardships that mired men’s athletic programming and predicted that women’s athletics were sure to face the same hardships sometime in the future.⁵⁸³ On a different note, Searcy commented on the lack of scholarships available to women athletes and the interest the Association of Intercollegiate Athletics for Women (A.I.A.W.) had in quashing the scholarship issue based on the importance of being different from men’s athletic programming in the article: “Scholarships for Women Have Come a Long Way.” The truth of the matter, according to Searcy, was the lack of infrastructure and funding that the policing agents required in recruiting and scholarship distribution to women athletes. Searcy predicted that scholarships were here to stay in women’s athletics.⁵⁸⁴ Winkler suggested in *The Chronicle* article: “Guidelines Underfire: Anti-Sex Rules Too Vague” that the latest version of the proposed regulations was vague and broad. A.I.A.W. lawyer, Margo Polivy, was quoted by Winkler regarding what really had not been defined clearly enough in the regulations. Polivy, predicted that it would take years of litigation to interpret the newest version of the Title IX guidelines. Winkler commented on The N.C.A.A.’s unsuccessful attempts to tighten the regulations’ focus and that, as written, the regulators would have a wide range of discretion in enforcement. Winkler addressed the growing number of institutions already examining their financial practices when funding for women’s athletics existed. Thomas, N.C.A.A. spokesperson, noted that programming decisions would dynamically change

⁵⁸³ N. Amdur, “Equality for Women Will Raise a Host of Problems for Colleges,” *New York Times*, June 30, 1974. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁵⁸⁴ J. Searcy, “Scholarships for Women Have Come A Long Way,” *New York Times*, July 7, 1974. <http://www.query.nytimes.com> (accessed August 11, 2008).

and be based on demand cultivated by the new growing interest in women's athletics. Winkler followed and further noted that unnamed activists predicted the government's efforts in promoting change in athletic participation would be too low. Winkler also stated that unless interested people got behind the effort, there would be little growth in women's athletics. Other sources cited that growing female interests would be years away since opportunity for participation would need to start in middle grades so that by the time students arrived at university age the women's interest would drive the demand.⁵⁸⁵ Some of the more controversial points of the regulations contained in Title IX were featured in July 1974 of *The Chronicle*. The excerpts including external organizations, textbooks, admissions, housing and pension plans were strategically aligned among athletic topics. The athletic section included general provisions that most readers were familiar with from the regulations. Monitoring interest in sports to be offered to the underrepresented gender and making positive steps forward to remedy lack of opportunity were featured in this report on Title IX controversies.⁵⁸⁶ Later in July, Searcy returned to the conversation with an article appearing in *The New York Times*: "Foe to Men's Myths Braces for Battle." Searcy introduced Margaret Dunkle, Project Associate for the Project on the Status of Education of Women sponsored by the Association of American Colleges. Dunkle discussed ideas about women's sports programming suffering because of the lack of aggressiveness to push women to demand equal footing in athletics, the vagueness of the Title IX regulations guiding the changes and the prediction that athletic directors would do as little as they could to get by while appearing to promote women's athletic programming development.

⁵⁸⁵ K. J. Winkler, "Guidelines Underfire Anti-Sex Rules Too Vague," *Chronicle of Higher Education*, vol. 8, no. 37, July 8, 1974: 8. Microfilm.

⁵⁸⁶ *Chronicle of Higher Education*, "Controversial Portions of U.S. Rules Against Sex Discrimination," *Chronicle of Higher Education*, vol. 8, no. 37, July 8, 1974: 9. Microfilm.

According to the athletic directors cited by Searcy, men's programming would suffer if women could not find a way to fund themselves.⁵⁸⁷

By August 1, 1974, *The N.C.A.A. News* reported to their membership that "Weinberger Responds to Questions Concerning Title IX" featuring comments taken from Weinberger's press meeting. Among those issues discussed were the effective date for regulations, how college athletics would be changed, co-ed physical education classes and the aggregate expenditures on the genders.⁵⁸⁸ Also in the issue, N.C.A.A. Legislative Committee chair, James, presented the N.C.A.A.'s interpretation of implications from Title IX on intercollegiate athletics. The language of the Title IX regulation in James' presentation was discussed: "In general, it appears to us, HEW has opted for a form of Regulations containing broad and ambiguous mandates, leaving those who administer Federal financial assistance to educational institutions the widest discretion to interpret and implement the Regulations as they please."⁵⁸⁹ James continued to question the authority H.E.W. regulators used to create such sweeping changes, how H.E.W. ignored concerns about not exempting revenue generating competitive teams, noted the Tower amendment's final form as watered-down. He acknowledged progress in opportunities for female athletes that had been virtually overlooked by H.E.W. as they finalized the regulations.⁵⁹⁰ Later in August 1974, *The N.C.A.A. News* continued to present editorials that considered Title IX extreme, something to fight against which created the need for The N.C.A.A. to begin monitoring Senate and House bills rather closely.⁵⁹¹

⁵⁸⁷ J. Searcy, "Foe of Men's Myths Braces for Battle," *New York Times*, July 14, 1974. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁵⁸⁸ C. A. Weinberger, "Weinberger Responds to Questions Concerning Title IX," *N.C.A.A. News*, vol. 11, no 8, August 1, 1974: 4. <http://web1.ncaa.org> (accessed March 28, 2008).

⁵⁸⁹ R. James, "James Reviews NCAA Position to Title IX," *NCAA News*, vol. 11, no. 8, August 1, 1974: 1, para. 4. <http://web1.ncaa.org> (accessed March 28, 2008).

⁵⁹⁰ *Ibid.*, James, August 1, 1974: 4.

⁵⁹¹ D. Daniel, "Title IX Regulations Extreme," *N.C.A.A. News*, v. 11, no 9, August 15, 1974: 2. <http://web1.ncaa.org> (accessed March 28, 2008).

As the N.C.A.A. lamented their plight with H.E.W. realities, Searcy featured an interview in *The New York Times* with a representative of sporting goods giant, Spalding. Spalding's corporate officers realized that Title IX helped create for them a new market for sporting goods for various levels of competition. The market research findings were fueling new designs for lighter and smaller equipment because Spalding was finding that the sporting equipment needs of female athletes differed from those of their counterparts.⁵⁹²

The N.C.A.A. showed keen interest in tracking Congressional activity making note of the Senate and House bills, their purpose, and their sponsor with an N.C.A.A. commentary included by R. James in the article "Legislative Committee Keeps Up with Bills,"⁵⁹³ which was followed with a letter from Bowling Green State University's athletic director, R. Young to Honorable Representative Delbert L. Latta. Editor Daniel pointed out that HEW's Title IX regulations were something to fight against agreeing with the sentiments found in R. Young's "Title IX Letter Shows Effort Needed in Battle."⁵⁹⁴ D. Daniel offered an editorial viewpoint in "Logic Lacking in Title IX Guidelines."⁵⁹⁵ Also the results from the fourth Survey on Sports and Recreational Programs were shared with readers showing varsity women's participation increased over the last report in 1971-72.⁵⁹⁶

Journal articles featured sex-bias topics as seen in *American Education*, and *Phi Delta Kappan*. J. Hoyt mentioned the new "Target: Sex Bias in Education"⁵⁹⁷ in the August 1974 issue

⁵⁹² J. Searcy, "Sporting Goods Industry Listening to Women," *New York Times*, August 11, 1974. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁵⁹³ R. James, "Congressional Scorecard: Legislative Committee Keeps up with Bills," *N.C.A.A. News*, vol. 11, no. 9, August 15, 1974: 3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁵⁹⁴ D. Daniel, (Ed.), "Title IX Letter Shows Effort Needed in Battle," *N.C.A.A. News*, vol. 11, no. 9, August 15, 1974: 5. <http://web1.ncaa.org> (accessed March 28, 2008).

⁵⁹⁵ D. Daniel, (Ed.), "Logic Lacking in Title IX Guidelines," *N.C.A.A. News*, vol. 11, no. 9, August 15, 1974:8. <http://web1.ncaa.org> (accessed March 28, 2008).

⁵⁹⁶ N.C.A.A. News, "Sports Participation Study Reflects Significant Increases," *N.C.A.A. News* vol. 11, no. 9, August 15, 1974: 8. <http://web1.ncaa.org> (accessed March 28, 2008).

⁵⁹⁷ J. Hoyt, "Target: Sex Bias in Education," *American Education* 10 (1974): 129-131.

of *American Education*. J. C. Hogan reported in *Phi Delta Kappan* “Sport in the Courts”⁵⁹⁸ extending the conversation in educational circles as K. Ley commented on “Women in Sports: Where Do We Go From here, Boys?”⁵⁹⁹ Ley considered Title IX the most significant and progressive move on behalf of women since gaining voting rights. The Title IX regulations were in the public comment phase when Ley’s article appeared in *Phi Delta Kappan*. Ley cited reaction from physical education personnel about how to implement and what to change under Title IX. Ley noted that the only standard against which to measure Title IX was the male athletic model. There was interest in having something else for women to pattern their programming after and Ley’s concern was with the dominant party allowing such differences to occur. Disclosing that few women’s voices were heard in planning events such as the Olympics—up until the 1970s, Ley pointed out only one woman had been appointed to participate on the Olympic planning committee. Rhetorically, Ley asked, “Can women develop operational policies and procedures that will be better for women in general?”⁶⁰⁰ Accordingly, Ley contended that athletic programming for women was often modeled on male sports and that in reality a second chance to resolve issues plaguing men’s sports was available if women would be allowed to take advantage of the opportunity. When commenting on costs Ley noted the attitude toward winning, increasing revenues and scholarships as issues was being discussed in higher education circles. Ley continued by citing information provided by Don Canham, athletic director of the University of Michigan, concerning the critical state of athletic financing regarding cost to run programs and fund scholarships to attract talented players. In this article Ley offered athletic advice to women administrators to curtail recruiting. Ley espoused her

⁵⁹⁸ J. C. Hogan, “Sport in the Courts,” *Phi Delta Kappan* LVI (1974): 132-135.

⁵⁹⁹ K. Ley, “Women in Sports: Where Do We Go From here, Boys?” *Phi Delta Kappan* LVI (1974): 129-131.

⁶⁰⁰ *Ibid.*

philosophy and hope: “I believe sports programs can be different, provided that everyone—both men and women—considers sports participation and competition as a right and privilege for all human beings who choose to participate. ‘Separate but equal’ is not perfect, but it is a start, and better solutions can be worked out if men and women coaches, physical educators, officials, athletes, administrators—all persons interested in sports for all—will put their heads together and negotiate solutions satisfactory to all.”⁶⁰¹ In conclusion Ley pointed out that Americans, athletically and socially, value success beyond just having the opportunity to compete and have a tendency to strip ethical considerations from much of the equation.⁶⁰²

In the fall of 1974 *The N.C.A.A. News* ran a series of Doonesbury cartoons [See Appendix C] that captured the perplexity experienced by many athletic organizations. One cartoon featured a football team discussing the Title IX survey requirements in “Doonesbury Bewildered by Title IX.”⁶⁰³ Other information shared in the fall of 1974, was the collaboration The N.C.A.A. was considering with The A.I.A.W. to increase athletic opportunities for women.⁶⁰⁴

Fields of *The Chronicle* reported that by the Title IX comment deadline 2000 people had given the O.C.R.’s Title IX guidelines a thorough review on issues dealing with physical education, sporting teams, textbooks, and Greek collegiate life. Formation of a taskforce to look specifically at the responses received was spawned by this public outcry. The reporting burden was one concern held by higher education stakeholders. Athletic concerns appeared to be the area receiving most responses. Commentors parsed no words when they emphasized their wishes

⁶⁰¹ *Ibid.*, Ley, 131.

⁶⁰² *Ibid.*, Ley.

⁶⁰³ G. Trudeau, “Doonesbury Bewildered by Title IX,” *N.C.A.A. News*, vol. 11, no. 11, October 15, 1974 and November 1, 1974:2. <http://web1.ncaa.org> (accessed March 28, 2008).

⁶⁰⁴ *N.C.A.A. News*, “NCAA Discusses Growing Women’s Sports with A.I.A.W.,” *N.C.A.A. News*, vol. 11, no. 12, November 1, 1974:2. <http://web1.ncaa.org> (accessed March 28, 2008).

to exempt revenue-generating sports. The A.I.A.W. weighed in with a per capita spending plan that would balance interest levels with male interests anticipated to be greater than female. The American Council on Education (A.C.E.) was prone to show partiality to those sports appearing to be self-supporting through their own means or through outside support.⁶⁰⁵ An interesting aside was included in *The N.C.A.A. News* from an Associated Press release as Edith Green asserted that Title IX regulations were not as Congress intended and that “H.E.W. [went] ‘Overboard’ on Title IX.”⁶⁰⁶

Fiske reported that Congress was planning changes to Title IX. The modification discussed would exempt traditionally single-sexed groups and clubs. The regulatory language “equal aggregate expenditures for athletics for members of each sex”⁶⁰⁷ was pointed to by users of Title IX as not specific enough for colleges and schools to interpret the true meaning for consistent application of Title IX to athletic programming. Clarification from the Department of Health, Education and Welfare (H.E.W.) about the terms of Title IX’s statement about equality in funding was requested by athletic directors and college personnel. The National Collegiate Athletic Association (N.C.A.A.) supported dropping athletics from the Title IX regulations entirely. Women’s groups wanted to share the power and income from sporting participation as they were ready to break the sideline-cheerleading model. Fiske provided insight into Congressional intent when attributing comments from an interview with the congresswoman from Oregon, Edith Green. Green stated, according to Fiske, “the intent of Congress was to require simply that funds from taxes, tuition and fees and discretionary funds be spent equally for

⁶⁰⁵ C. M. Fields, “2000 Guideline Critics,” *Chronicle of Higher Education*, vol. 9, no. 5, October 21, 1974: 7. Microfilm.

⁶⁰⁶ E. Green, “HEW ‘Overboard’ On Title IX,” As quoted from Associated Press release, November 24, 1974 appearing in *N.C.A.A. News*, vol. 12, no. 1, January 1975: 4. <http://web1.ncaa.org> (accessed March 28, 2008).

⁶⁰⁷ E. B. Fiske, “Congress Moves to Modify Law Restricting Sex Bias by Schools,” *New York Times*, November 25, 1974. <http://www.query.nytimes.com> (accessed August 11, 2008).

men's and women's sports but that the income generated by revenue-producing sports themselves [was] to be exempt."⁶⁰⁸ The following portion of the article containing Green's words are not directly quoted by Fiske, yet the next line, promoting H.E.W.'s coming around to their thinking (Congressional thinking), was attributed to Green.⁶⁰⁹ It would seem that Congresswoman Green's concept of funding athletics from the aforementioned sources without involving revenue-generating sports resources put all women's and lesser men's athletic programming into a state of jeopardy as it created a category of potential non-essentialness based on revenue generating abilities.

The Chronicle reported in "Women's Groups Sue US over Aid to Sex-Biased Colleges" about the lawsuit brought by women's organizations against H.E.W. and the Department of Labor. Basic claims held against the government entities were their failure to push enforcement of several laws and executive orders that ensured anti-discrimination based on sex in educational institutions. The proponents in the suit wanted federal funds to be withheld from places not changing their discriminatory practices.⁶¹⁰ In the article, "Threat to Civil Rights? H.E.W. Chief Sees Enforcement in Jeopardy," author Winkler briefed the public interested in educational issues on the latest amendment to a bill for H.E.W. The Holt Amendment, being considered by Congress, was designed to block all data collection necessary to enforce civil rights legislation that might lead to revocation of federal funds for institutions continuing in discrimination

⁶⁰⁸ *Ibid.*, Fiske.

⁶⁰⁹ *Ibid.*, Fiske.

⁶¹⁰ *Chronicle of Higher Education*, "Women's Groups Sue U.S. Over Aid to Sex-Biased Colleges," *Chronicle of Higher Education*, vol. 9, no. 11, December 2, 1974: 5. Microfilm.

practices.⁶¹¹ Later in December, 1974, as reported in the “Washington Notes” a regular feature in *The Chronicle*, the U.S. Senate voted to limit coverage of Title IX in December 1974.⁶¹²

According to Don Canham in “Women’s Athletics: A Conflict over Regulations,” there was mass confusion surrounding the 1974 version of the Title IX Regulations. Canham implied that women’s athletic programming was steadily increasing on its own. He stated: “The difficulties and confusion that have arisen is over H.E.W.’s attempt to force regulations and requirements on athletic programs that are not practical or able to be financed by athletic departments.”⁶¹³ At the time Canham wrote the article, organized varsity sports for men had been in existence for seventy years. Canham pointed out discrepancies in interpreting Title IX regulations. Casper Weinberger had one explanation for the meaning of “equal” as applied to scholarship distribution and a female staffer in charge of implementing understood “equal” to literally mean, equal. Going on record, Canham rejected the section of Title IX regulations requiring the annual survey of student interest in which sports to field, predicting disastrous results. The H.E.W. guidelines, at this juncture, had very rough points that needed refinement before implementation. The conversation Canham and others interested in athletics and women’s equality were having had helped H.E.W. take the proposed regulations from an insular office setting and made them more realistic and applicable to society. Canham dramatically predicted death to athletics if the term “equal,” used in the language of the Title IX regulations, meant equal in enforcement and implementation of Title IX.⁶¹⁴ In reviewing Canham’s comments, one considers what had been done for the men’s teams in all the years organized

⁶¹¹ K. J. Winker, “Threat to Civil Rights? H.E.W. Chief Sees Enforcement in Jeopardy,” *Chronicle of Higher Education*, vol. 9, no. 12, December 9, 1974: 5. Microfilm.

⁶¹² *Chronicle of Higher Education*, “Washington Notes: Congress Votes to Nullify Anti-Busing Amendment,” *Chronicle of Higher Education*, vol. 9, no. 14, December 23, 1974: 4. Microfilm.

⁶¹³ D. Canham, “Women’s Athletics: A Conflict over Regulations,” *New York Times*, December 29, 1974. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁶¹⁴ *Ibid.*, Canham, 1974.

athletic programming had existed. In reality, little had been done to develop women's total athletic programming beyond basketball, tennis and other intramural and club sports. Unfortunately, what Canham and other athletic department personnel failed to see was their inherent responsibility for developing and funding women's athletic programming since it had been ignored until a regulatory agency of the United States government informed them of their duty. To end the year, a former athlete from the University of Chicago, Jeanne DuFort, wrote about choices women's athletic programmers had available: either develop the few females with real athletic talent or allow all or more to participate and benefit from the competitive athletic experience. DuFort opined that "The intrinsic value of sport should be recognized for what it is—the effort rather than the success."⁶¹⁵

Judith Miller reviewed progress and commented on activity on released Title IX regulations in a report featured in *Change*. Miller stated that "educational organizations contend the regulations are overly aggressive and unduly burdensome, while feminists and civil rights groups argue that the proposed regulations are not sufficiently strong to end sex discrimination."⁶¹⁶ Miller also pointed out that Title IX was patterned after a previous law which prohibited racial discrimination. She commented that federal funds could be withheld from schools not complying with anti-discrimination practices. The judiciary, Miller pointed out, had the authority to bring suit against those institutions not complying with Title IX. Miller mentioned the great interest in how this law affected athletic policy but failed to create as great an interest in other important areas slated for change including curfew, dress and conduct codes. Discussing the exemptions, Miller pointed out items religious and military organizations would

⁶¹⁵ J. DuFort, "The Dangers of Overemphasis," *New York Times*, December 29, 1974: col. 3, para.7. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁶¹⁶ J. Miller, "Report: Collegiate Sports and Other Title IX Controversies," *Change* 6 (Winter 1974-1975): 20.

be able to claim under Title IX that could not be applied to racial discrimination law.

Developing the topic of disparity between athletic program spending by gender, Miller, included a quotation from Holly Knox of the National Organization for Women's Legal Defense Fund who pointed out the importance for athletic gender parity to society at large: "'Women have been socialized,' according to Knox, 'to believe that athletics is not an important component of education.'"⁶¹⁷ Knox went on to point out that participating in athletic competition developed many desirable leadership characteristics. Miller mentioned that Title IX had already suffered many Congressional assaults: Tower, Holt, and Green, had all used their positions to attempt to weaken or eliminate areas from Title IX's umbrella.⁶¹⁸ Dunkle and Sandler covered gender-related issues in their *Inequality in Education* article "Sex Discrimination Against Students: Implications of Title IX of the Education Amendments of 1972."⁶¹⁹

In June of 1974, H.E.W. issued proposed Title IX regulations for public review. They invited comment from the public and received an overwhelming response of comments related to athletic programming.⁶²⁰ Senator J.K. Javits proposed an alternate and acceptable amendment in July 1974 that focused attention on Title IX coverage in its regulations and the characteristics of particular college sports.⁶²¹ H.E.W. distributed Title IX regulations for executive approval in 1975. President Gerald Ford signed Title IX regulatory policies in May, 1975. When H.E.W. sent Title IX regulations back to Congress in early June, 1975 there were several failed attempts to dismantle it. A variety of senators and representatives proposed amendments trying to alter the regulations during July 1975. These attempts were recorded in 121 Congressional Record

⁶¹⁷ *Ibid.*, Miller, 23.

⁶¹⁸ *Ibid.*, Miller.

⁶¹⁹ M. C. Dunkle and B. R. Sandler, "Sex Discrimination Against Students: Implications of Title IX of the Education Amendments of 1972," *Inequality in Education* 18, (1974): 12-35.

⁶²⁰ Department of Health Education and Welfare, "Educational Programs and Activities Receiving or Benefitting from Financial Assistance," *Federal Register* 39, June 20, 1974. Microfiche.

⁶²¹ J. K. Javits, "Javits Amendment," Sen. Conf. Rep. No. 1026, 93rd Cong., 2nd Sess.4271 (1974) as cited in website: <http://www.titleix.info/>(accessed April 8, 2006).

and committee proceedings from the 94th Congress, 1st session. Title IX regulations became law July 21, 1975 and deadlines for compliance were issued to elementary (by July 1976) and secondary schools (by July 1978) for expected compliance.⁶²²

In January, 1975, *The New York Times* re-entered the conversation with “College Heads Ponder Athletic Costs, Ethics and Title IX”⁶²³ in which G.S. White, Jr. reviewed comments made by William Davis (Idaho State). Davis voiced his concern over Title IX’s equal spending parameters and the bureaucratic interference he foresaw as a mortal threat to athletic programming.⁶²⁴ Following the Davis interview, White wrote about claims that “Women are a Problem for N.C.A.A.” The foreboding of federal evil was reported in this article regarding expected outcomes from the N.C.A.A. annual convention and the administration of men’s and women’s athletic programming. This was one of the first public statements regarding an N.C.A.A. take-over bid for The A.I.A.W.’s governing duties. The scare talk surrounding funding and possible budget cuts to men’s programming to fund fledgling women’s athletics fueled the interest in consolidating efforts. Even an advocate of women’s athletics was found to say that she could not fathom spending the exact same amount of money for women’s athletics as the men’s programs do.⁶²⁵ Regrettably, if one studied this comment carefully, it showed a widely held view of social status of women and their worth. Oglesby stated “men’s athletics have a tradition of overemphasis on excellence to the degree that it becomes an end that justifies any means.”⁶²⁶ Oglesby went on to say that the focus of women’s athletics has been on developing the individual student. She stated as a whole the women’s athletic programs would

⁶²² 121 *Congressional Record* 19, 209; 21,865; 22,940, (1975), as cited in website: <http://www.titleix.info/> (accessed April 8, 2006).

⁶²³ G. S. White, Jr., “College Heads Ponder Athletics Costs, Ethics and Title IX,” *New York Times*, January 6, 1975: 37,39. Microfilm.

⁶²⁴ *Ibid.*, White, January 6, 1975.

⁶²⁵ G. S. White, Jr., “Women are a Problem for N.C.A.A.,” *New York Times*, January 7, 1975: 39,41. Microfilm.

⁶²⁶ *Ibid.*, White, January 7, 1975: 39.

need to become less mediocre with the influx of funding and the men could moderate their programming expenditures and both program types would benefit.⁶²⁷ White reported a few days later on one of the major issues coming out of the N.C.A.A. convention as talks planned with The A.I.A.W. about ground rules for women's competitions under The N.C.A.A. were surfacing. Leadership from The A.I.A.W. voiced their displeasure with news of this N.C.A.A. vote. Glenn Gregory of H.E.W., one of the authors of the Title IX regulations, indicated that it would eventually become necessary for both men and women's athletic competitions to be governed by the same body. When this article was written, President Gerald Ford had not yet signed the regulations.⁶²⁸ *The Chronicle* reported that The N.C.A.A. authorized formation of a committee, jointly with The A.I.A.W., to study expansion opportunities for women's athletics and championship play. Once finalized, The N.C.A.A. and The A.I.A.W. members were to be encouraged to make suggestions up to mid-1975. Basing motivation on court legal action and Title IX, The N.C.A.A. sought to improve the balance of activities women athletes could have available. The N.C.A.A.'s Committee on Women Sports reported this rationale for the cooperative move: "The only satisfactory approach—considering the demands of the court decisions—to the necessary institutional control of all its intercollegiate athletic programs is to place men's and women's programs under the same administration, the same legislative body and the same eligibility rules."⁶²⁹

The N.C.A.A. News presented a letter Senator Tower sent to Peter Holmes, Director of O.C.R., outlining the serious flaws in the Title IX regulations. February 1975 issues of *The N.C.A.A. News* directed attention to the historical progression of N.C.A.A. and A.I.A.W

⁶²⁷ *Ibid.*

⁶²⁸ G. J. White, Jr., "N.C.A.A. in New Bid to Women," *New York Times*, January 9, 1975. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁶²⁹ *Chronicle of Higher Education*, "N.C.A.A. Eyes Women's Sports Considers Unifying Administration with Men's," *Chronicle of Higher Education*, vol. 9, no. 15, January 13, 1975: 3, para.6. Microfilm.

decisions about women's athletics from the years 1963-1973 and The A.I.A.W.'s interest in equal but separate athletic programming.⁶³⁰ E. Davis of Idaho State University enlightened readers of *The N.C.A.A. News* with his insightful questions and tongue-in-cheek delivery of a two-part series "Title IX: Assassination or Assimilation?"⁶³¹ These were strategically placed opposite the address side of the newsletter fold to heighten interest in reading the article. Cheryl Miller reported for *The Chronicle* "Holt Bill Reintroduced." Miller asserted that Margaret Holt attempted again to change data collection requirements for anti-discrimination charges. The amendment was updated to clarify intent about the extent of protection. In essence, the amendment would make it difficult to investigate patterns of discrimination since O.C.R. data collection efforts would be stymied.⁶³²

Another set of articles from *The New York Times* followed in March 1975 announcing Title IX regulatory maturity as it was to be sent to the President. Reporters contemplated the real effect this set of guidelines would have on sports in higher education and the elementary and secondary schools. This article from the Associated Press chronicled that Caspar Weinberger, H.E.W. Secretary, signed the Title IX Regulations sending them on to President Gerald Ford. One feature of this particular set of regulations was a 45-day Congressional review, post-presidential approval. By the time this article appeared, the language in the public statement made by H.E.W. personnel had somewhat softened. The last paragraph of the article stated: "The goal of the regulations on competitive athletics, according to the Department of Health, Education and Welfare, is to obtain equal opportunity for men and women while allowing

⁶³⁰ N.C.A.A. News, "Women's Sports and N.C.A.A.," *N.C.A.A. News*, vol. 12, no. 2, February 1, 1975: 1-2. <http://web1.ncaa.org> (accessed March 28, 2008).

⁶³¹ W. E. Davis, "Title IX Assassination or Assimilation?" *N.C.A.A. News*, vol. 12, no. 3, February 15, 1975: 8. <http://web1.ncaa.org> (accessed March 28, 2008).

⁶³² C. F. Miller, "Holt Bill Re-Introduced," *Chronicle of Higher Education*, vol. 9, no. 20, February 18, 1975: 6. Microfilm.

schools and colleges flexibility in determining how best to approach such opportunities.”⁶³³ *The Chronicle* submitted to readers “Anti-Sex Bias Rules: White House Reviewing Proposals” indicating that the Title IX guidelines were indeed being reviewed by the executive branch of government. If approved by President Gerald Ford, the Title IX regulations would be sent to Congress for a 45-day review. H.E.W. received close to 10,000 comments as they updated the Title IX guidelines. According to this report, Ford had contacted the Justice Department regarding the constitutional status of the way Congress “created” the post-presidential approval review.⁶³⁴ *The N.C.A.A. News* reported to its member institutions “Title IX Sent to White House: H.E.W. Mum on Guidelines Content”⁶³⁵ while featuring a re-print of Representative Edith Green’s comments found in *The American School Board Journal* in “Title IX Author Considered Guidelines ‘Interference.’”⁶³⁶ Amdur offered “Title IX’s Effect on College and School Sports” in *The New York Times* while⁶³⁷ as an example of realigning athletic departments in “Campus Notes” in *The Chronicle* featured “Men and Women’s Sports Merged at Stanford.” This article revealed that Stanford University chose to consolidate athletic programming in a move to save money and comply with Title IX regulations. The athletic director at Stanford announced that the first scholarship for female athletes at Stanford would be issued in the fall of 1975.

⁶³³ *New York Times*, “A Bill to Give Women Equal Rights in Colleges Sports Sent to President,” *New York Times*, March 1, 1975: 16. Microfilm.

⁶³⁴ *Chronicle of Higher Education*, “Anti-Sex Rules White House Reviewing Proposals,” *Chronicle of Higher Education*, vol. 10, no. 3, March 10, 1975: 10. Microfilm.

⁶³⁵ *N.C.A.A. News*, “Title IX Sent to White House; H.E.W. Mum on Guidelines’ Content,” *N.C.A.A. News*, vol. 12, no. 4, March 15, 1975: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁶³⁶ E. Green, “Title IX Author Considers Guidelines ‘Interference,’” *N.C.A.A. News*, vol. 12, no. 4, March 15, 1975: 2. <http://web1.ncaa.org> (accessed March 28, 2008).

⁶³⁷ N. Amdur, “Title IX’s Effect on College and School Sports,” *New York Times*, March 14, 1975. Microfilm.

Stanford's plan was to have one head coach to serve both male and female athletes each by sport.⁶³⁸

Fields analyzed the guidelines sent to President Gerald Ford by Weinberger, including the confidential memo in which Weinberger expressed sentiments about the lack of Congressional foresight when enacting such a wide-sweeping law that would continue to be difficult to regulate. Fields enumerated familiar points regarding women and contact sports, deadlines for compliance, retracting provisions (such as requiring an annual interest poll of athletes) and scholarship options. She then reviewed comments made by Weinberger to President Ford predicting judicial review of policy dealing with topics women's groups were not pleased with in the latest revision of the regulations. Fields touched on other topics dealing with equal funding language and contact sports.⁶³⁹

The Chronicle expounded upon Weinberger's letter to President Ford that accompanied the latest version of the Title IX Regulations. Weinberger addressed issues and his apprehension with portions of the new regulations, especially where funding would not be provided and tradition would make the regulations difficult to implement. The tone of the letter implied Weinberger's displeasure with the task his organization was asked to do as they sought to match Congressional intent as they created the regulations for Title IX. Weinberger directed presidential attention to areas Ford should not attempt to change. He pointed out issues such as physical education and foreign scholarships.⁶⁴⁰

⁶³⁸ Chronicle of Higher Education, "Campus Notes: Men and Women's Sports Merged at Stanford," *Chronicle of Higher Education*, vol. 10, no. 5, March 24, 1975: 2. Microfilm.

⁶³⁹ C. M. Fields, "HEW Softens Bias Stand," *Chronicle of Higher Education*, vol. 10, no. 7, April 7, 1975: 1. Microfilm.

⁶⁴⁰ Chronicle of Higher Education, "'With Little History, Debate or Thought,'" *Chronicle of Higher Education*, vol. 10, no. 7, April 7, 1975: 11. Microfilm.

Editors from *The N.C.A.A. News* featured excerpts from Weinberger's letter to the President regarding Title IX regulations in the article "With Little History, Debate or Thought"⁶⁴¹ as *The Chronicle* reporter, Fields, examined the "Mood in Congress Alarms Women." Fields reported that proponents of Title IX feared that action by the House of Representatives would weaken the entire proposed Title IX regulations. Casey's amendment, which he proclaimed, would not affect basic equity tenets, made supporters of Title IX uneasy. Bella Abzug remarked: "I fear this amendment will have the effect of depriving young girls and women of . . . equal facilities, equal programs, and opportunity."⁶⁴² Fear was expressed by Congress as well as those groups supporting Title IX action but for opposite reasons. Bayh, one of the originators of Title IX, was fighting to keep Title IX strong. Fields explained that once President Ford reviewed and signed the regulations there would be an additional period of Congressional scrutiny as outlined in these specific regulations. Congressional leaders promised that hearings to compare law to regulation would soon be forthcoming.⁶⁴³

Fields discussed events leading up to The N.C.A.A.'s proposal to expand its sponsorship of championships in women's sports. Fields recorded the concerns of The A.I.A.W. and its leadership, who attempted to work out a merger with The N.C.A.A. The way the proposal was presented—voting representation would be limited to athletic directors—concerned The A.I.A.W. in that female athletes might not receive adequate representation. A.I.A.W. President, Leotus Morrison expressed her concerns in a letter to university members of The A.I.A.W. Morrison acknowledged: "We believe that to assure women's voice in decisions at this stage in women's intercollegiate sports development, it will be necessary either to maintain a separate

⁶⁴¹ N.C.A.A. News, "With Little History, Debate or Thought," *N.C.A.A. News*, vol. 10, no. 5, April 15, 1975: 1,3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁶⁴² C. M. Fields, "Mood in Congress Alarms Women," *Chronicle of Higher Education*, vol. 10, April 28, 1975: 7, col. 2, para.2. Microfilm.

⁶⁴³ *Ibid.*, Fields, April 28, 1975: 7.

organization for the governance of women's athletics or to guarantee women's equal voice at all levels of operation within any merged organization, which the N.C.A.A. executive council is apparently unwilling to do. The institution of a women's program by a male governing organization does nothing to assure women of real programmatic or administrative equality: Without these assurances, A.I.A.W. must strongly oppose the commencement of a women's program by N.C.A.A."⁶⁴⁴ The N.C.A.A's report claimed that separate but equal may not be realistic based on budget restraints. The female athletic administrators had ideas that they would be able to operate without falling prey to the male sports model of administration. The N.C.A.A. report indicated that "The council does not believe it is practical or desirable to attempt to create exclusive arenas for the separate operations of men's and women's organizations. . . to do so would deny N.C.A.A. services to female student-athletes of 331 N.C.A.A. members which are not A.I.A.W. members."⁶⁴⁵ Based on previous experience by other sports organizations, The A.I.A.W. leadership referenced the "conquer and devour" tactics The N.C.A.A. was known for and forecasted a similar outcome.⁶⁴⁶

Editor Daniel announced in mid-May 1975 in "A Report on Women's Intercollegiate Athletics Distributed" as the groups prepared a way for The N.C.A.A. and The A.I.A.W. to jointly oversee compliance of Title IX in their existing athletic programming.⁶⁴⁷ Later in May 1975, *The New York Times* reported "College Experiment Offered Women" written by Searcy to announce that The A.I.A.W. offered a plan to govern, yet not govern, their women's collegiate athletic programs. Insinuating that N.C.A.A. rules were too complex and heavy handed, The

⁶⁴⁴ C. M. Fields, "They Don't Trust the Jocks," *Chronicle of Higher Education*, vol. 10, no. 12, May 12, 1975: 3, col. 2, para.7-8. Microfilm.

⁶⁴⁵ *Ibid.*, Fields, May 12, 1975: 3, col. 4, para.3.

⁶⁴⁶ *Ibid.*, Fields, May 12, 1975.

⁶⁴⁷ N.C.A.A. News, "A Report on Women's Intercollegiate Athletics Distributed," *N.C.A.A. News*, vol. 10, no. 6, May 15, 1975: 2. <http://web1.ncaa.org> (accessed March 28, 2008).

A.I.A.W. felt that giving colleges more ruling flexibility would usher in a more equitable opportunity for athletic participation. A.I.A.W. officials lamented the proposed regulation updates allowing contact sports to be removed from the reach of female athletes.⁶⁴⁸

The Chronicle carried a feature by Fields “NCAA Urged to Withdraw Its Women’s Sports Plan” at the end of May, 1975. Fields declared that The A.I.A.W. through its parent organization attempted to stop the N.C.A.A.’s proposal to expand their options in women’s championships. The N.C.A.A. officials downgraded the excitement by indicating that this plan was to inform membership before the A.I.A.W. joint considerations would be implemented. The A.I.A.W. claimed they were not aware of the report produced before their joint effort. The leader of A.I.A.W.’s parent organization, Wiley, articulated in a letter to N.C.A.A.’s leader, Fuzak, that “The ‘consent of the governed’ is essential to any reorganization of collegiate sport. N.C.A.A. claims of alleged interest in ‘institutional control’ sensitivity to legal mandates regarding women, and alleged concern about opportunity for women athletes are meaningless when those to be governed are rendered powerless with vague promises of ‘contemplated’ participation at some nebulous to-be-determined time.”⁶⁴⁹ Wiley indicated the displeasure that The A.I.A.W. and his organization had with points allowing The N.C.A.A. to control national athletics, govern international athletics and financially profit as a monopolistic power. Fuzak rebutted prophetically that The N.C.A.A. could not be expected to work with The A.I.A.W. as he stated “I think here there is not much question that eventually we cannot have different eligibility rules for men and women. The lowest common denominator will prevail.”⁶⁵⁰ The N.C.A.A. claimed that Title IX required them to move in this direction and The A.I.A.W. countered with

⁶⁴⁸ J. Searcy, “College Experiment Offered Women,” *New York Times*, May 18, 1975:S5. Microfilm.

⁶⁴⁹ C. M. Fields, “N.C.A.A. Urged to Withdraw Its Women’s Sports Plan,” *Chronicle of Higher Education*, vol. 10, no. 14, May 27, 1975: 8, col. 2, para.4. Microfilm.

⁶⁵⁰ *Ibid.*, Fields, “N.C.A.A. Urged,” May 27, 1975: 8, col. 3, para.3.

their attempt to return a sense of autonomy to universities giving them less structured environments in which to govern athletics.⁶⁵¹

Reaction to female golfer Gallo's complaint filed with H.E.W. was dramatic when concerned athletic director, Giel, threatened to resign if money from a scholarship fund that he raised were offered to female athletes. A reasonable response from a university task force reviewing the matter recommended that Gallo's scholarship appointment be honored and that in the future the University of Minnesota would include women in the distribution of funds. Miss Gallo stated that the university athletic officials "figure I'll give up, that they will lose me in red tape. But I will not give up. All I want is a fair shake at a scholarship fund for athletes."⁶⁵²

This was followed by an announcement that "H.E.W. Halts Individual Bias Inquiries" penned by Nancy Hicks of *The New York Times*. Hicks shared that the new Title IX procedures to be used at H.E.W. included not handling individual complaints. H.E.W. would use its team of investigators to monitor groups of complaints, showing a pattern of non-compliance at institutions rather than continuing to respond to each of the individual complaints it received. Public outcry considered the "no complaint" policy to make regulations enforcement less likely in both Titles VI and IX cases. Women's advocacy groups vocally proclaimed that an underlying hostility existed and the current H.E.W. investigators did not want to act on their complaints.⁶⁵³

The Associated Press distributed a feature explaining expectations of both sides in the Title IX fray were on hold as the presidential decision to sign or not Title IX was pending. A

⁶⁵¹ *Ibid.*, Fields, "N.C.A.A., Urged," May 27, 1975.

⁶⁵² Chronicle of Higher Education, "Women's Golf Champion Seeks Sport Scholarship," *Chronicle of Higher Education*, vol. 10, no. 14, May 27, 1975: 8, col. 3, para.1. Microfilm.

⁶⁵³ N. Hicks, "H.E.W. Halts Individual Bias Inquiries," *New York Times*, May 30, 1975: 29. <http://www.nytimesarchives.com> (accessed August 11, 2008).

few changes already made in the regulations did not satisfy either side in the struggle. Women's rights advocates contended that the changes were efforts to weaken Title IX while N.C.A.A. officials and members prayed that more changes, in their favor, would be made before regulations were approved. Several controversial points were removed or revised including those regulations dealing specifically with contact sports, student polling, physical education exceptions and developing women's new sporting opportunities.⁶⁵⁴ On the same day, *The N.C.A.A. News* revealed to its membership that the "Final Title IX Version Approved by the President"⁶⁵⁵ still did not address all exemptions they had sought. The N.C.A.A. advised law makers to consider changes in "Title IX Needs Action By Congress"⁶⁵⁶ since the regulations were scheduled to go back to Congress for a matching of statute to regulation. A few days later in *The New York Times*, Gerald Eskenazi revealed that "Title IX Rules Issued for Equality in Sports" as he announced that President Ford had signed the Title IX regulations and sent them back to Congress for additional review and approval. The N.C.A.A. flexed their muscles prophesying the destruction of their intercollegiate athletic temples. Weinberger tried to allay fears with words to calm like making "good faith efforts" to comply with Title IX. Weinberger also announced his doubts that intercollegiate athletics would be going-out-of-business as forecasted by the N.C.A.A. leadership and its member institutions. Athletic directors from various programs voiced their reservation and anticipated less than instantaneous development of

⁶⁵⁴ Associated Press, "Presidential Action Due on Title IX," *New York Times*, June 1, 1975. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁶⁵⁵ N.C.A.A. News, "Final Title IX Version Approved by the President," *N.C.A.A. News*, vol. 12, no. 7, June 1, 1975: 2,4. <http://web1.ncaa.org> (accessed March 28, 2008).

⁶⁵⁶ N.C.A.A. News, "Title IX Needs Action by Congress," *N.C.A.A. News*, vol. 12, no 7, June 1, 1975: 2,4. <http://web1.ncaa.org> (accessed March 28, 2008).

women's athletics into powerhouses overnight. Eskenazi pointed out that affirmative action-type quotas were not in the language of the current regulations.⁶⁵⁷

In *The Chronicle* Fields announced that President Gerald Ford signed Title IX regulatory policies in May of 1975. Fields also conveyed information that The House of Representatives would immediately hold hearings inviting comments from both opponents and proponents of the regulations. *The Chronicle* mentioned that Congress would have until July 21, 1975 to make any changes because on that date the regulations would become law.⁶⁵⁸ Fields detailed in her article "Probing Discrimination" the focusing of energies in O.C.R. as the force behind the investigative procedural changes. The changes allowed O.C.R. to investigate patterns of abuse rather than attend to every individual complaint. Weinberger stated that this would "focus HEW's enforcement machinery on the main, systematic forms of discrimination . . . rather than follow an approach in which priorities are dictated by the morning's mail and each complaint, whether specious or not, must be fully investigated."⁶⁵⁹ O.C.R.'s reason for implementing a different approach was blamed on lack of trained personnel available to investigate claims which created a large backlog of un-examined complaints. Voices from the crowd were considered as one group produced a statement in response to O.C.R.'s policy change: "Civil-rights groups are concerned that eliminating the complaint mechanism would deprive many groups and individuals of remedies under the law, since the alternative to the administrative complaint process—court suits—can be prohibitively expensive."⁶⁶⁰ Fields continued the explanation of the new procedures for investigating complaints which would include recognizing the receipt of the

⁶⁵⁷ G. Eskenazi, "Title IX Rules Issued for Equality in Sports," *New York Times*, June 4, 1975: 29,30. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁶⁵⁸ *Chronicle of Higher Education*, "President Signs Proposed Rules on Sex Bias," *Chronicle of Higher Education*, vol. 10, no. 15, June 9, 1975: 1. Microfilm.

⁶⁵⁹ C. M. Fields, "Probing Discrimination," *Chronicle of Higher Education*, vol. 10, no. 15, June 9, 1975: 6 col. 1, para.2. Microfilm.

⁶⁶⁰ *Ibid.*, Fields, "Probing Discrimination," June 9, 1975: 6, col. 2, para.5.

complaint, whether there would be an investigation planned in the next year and also include informing the institution of the complaint made against it.⁶⁶¹

Included here, as an interesting side note, *The American School Board Journal* featured an article in June 1975 “Girls—And What They Want From Sports.” The article opened rhetorically asking what girls really wanted related to sport and the answer given was: parity. By 1975, the National Federation of State High School Athletic Associations (The Federation) boasted an increase in girls’ high school athletic participation as exceeding 340 percent as they sponsored state competitions in girls’ track and field, swimming, diving, basketball and gymnastics. Other highly visible areas of female competition centered around the 1976 Olympics. Myths surrounding female inferiority relating to athletic ability were falling away based on research and educating society about the fallacy of said myths. California researchers were cited as studying three basic components of athletic ability: “Strength, Endurance, and Body Composition.”⁶⁶² Studies had shown that each body type’s abilities to be comparable are based on conditioning and physical body characteristics. Body composition showed the most measurable differences when looking at body fat and lean muscle mass. Researchers contended that conditioning was the key to closing the gap and improving female athletic competitiveness. According to reported research, muscle mass was one area where women could not make up the differences as this was based on hormone types and levels. Contact sport exclusions were discussed in terms of potential injury because of the physiological disadvantages girls have after age twelve compared to boys/men. It was found that “The Federation prefers to protect girls’ sports programs by keeping them ‘separate but, equal.’”⁶⁶³ Reasoning behind this decision was

⁶⁶¹ *Ibid.*, Fields, “Probing Complaints.”

⁶⁶² American School Board Journal, “Girls—and What They Want From Sports,” *American School Board Journal* 162 (June 1975): 33.

⁶⁶³ *Ibid.*, *American School Board Journal*, 1975: 34.

that historically males enjoyed years of structured conditioning which gave greater advantages when competing in co-ed sports.⁶⁶⁴

Nancy Hicks used her article “Congress Gets U.S. Rules to End Schools’ Sex Bias” to remind the public that Congress had forty-five days to review the recently approved Title IX regulations. James O’Hara, democrat from Michigan, immediately scheduled Congressional hearings to review the regulations and find out whether they followed Congressional intent of the law. So much energy and attention had been expended on the athletic formulary that other important aspects brought to the public by gender equity regulations had been overshadowed. Hicks included a discussion of other non-athletic traditionally held biases that would no longer be allowed in educational settings. Hicks noted that Weinberger, at the end, was belittled by the plight of sexual discrimination when he maintained that racial and national origin discrimination was much more widespread than gender-related discrimination. Hicks discussed the rationale behind the new way H.E.W. would investigate claims of non-compliance. According to Hicks, women’s advocacy groups collectively shuddered to think that the new regulations and the new investigation procedures would set a course for “women and minorities” to take their claims to the legal system leaving the institutions of higher learning open to active litigation.⁶⁶⁵

Immediately following in the timeline, there was a story sent across the Associated Press wire indicating that the Congressional subcommittee hearings had begun and “Title IX Rules [were] Under Fire.” Coaches, athletic directors and university personnel testified at the House Education Subcommittee Hearings seeking a moratorium against Title XI regulations. Mixed reviews on revenue sharing began to surface as House of Representative members committed themselves to their own athletic causes. A student voice heard during these sessions advocated

⁶⁶⁴ *Ibid.*

⁶⁶⁵ N. Hicks, “Congress Gets U.S. Rules to End Schools’ Sex Bias,” *New York Times*, June 4, 1975. <http://www.nytimesarchives.com> (accessed August 11, 2008).

passage of Title IX regulations because it would help combat wide-spread sex discrimination in higher education.⁶⁶⁶

Reports on Congressional hearings by the writers at *The Chronicle* included conjecture that adhering to Title IX regulations could wipe out profits from “money-making sports such as football and basketball,”⁶⁶⁷ according to Darrell Royal who represented the American Football Coaches Association. The coaches’ group was requesting that Congressional leaders stop the application of Title IX to college sports until it was deemed necessary. This was juxtaposed with sentiments of the National Student Association, who wished to see speedy implementation of Title IX with efforts to make it stronger. House member James G. O’Hara of Michigan, orchestrator of the hearings, contended that the focus of the hearings was to match regulations to the legal parameters. O’Hara stated, “If we find policy problems with the regulations which persuade the subcommittee that the law should be changed, then we will approach that through the regular legislative route.”⁶⁶⁸

Reporter Hicks followed the drama developing in the subcommittee hearings as women’s groups had their time to speak. The focus moved away from athletics and momentarily captured the attention of representatives from higher education. Congressional objections centered around athletics as Jesse Helms sought to kill Title IX regulations and redraft them without the athletic-related provisions.⁶⁶⁹ Echoing comments mentioned already, Weinberger assured interested parties that Title IX would not require equal expenditures on athletics comparatively by gender, but that women must be given equal opportunity to participate. At this writing, Weinberger had

⁶⁶⁶ Associated Press, “Title IX Rules Under Fire,” *New York Times*, June 18, 1975. <http://www.nytimesarchives.com> (accessed August 11, 2008).

⁶⁶⁷ *Chronicle of Higher Education*, “Football and the Bias Rules,” *Chronicle of Higher Education*, vol. 10, no. 16, June 23, 1975: 6, col. 1, para.2. Microfilm.

⁶⁶⁸ *Ibid.*, “Football and the Bias Rules,” 6: col. 3, para.3.

⁶⁶⁹ N. Hicks, “Women’s Groups and Educators Urge Approval of Sex Bias Rules,” *New York Times*, June 26, 1975. <http://www.nytimesarchives.com> (accessed August 11, 2008).

tendered his resignation as he tried to spell out concrete examples of what the regulations covered and did not cover.⁶⁷⁰

Reminding the higher education community of the effective date for Title IX guidelines, an article, posted in *The Chronicle*, outlined Congressional scrutiny as efforts continued to find incidents where the H.E.W. regulators went outside their authority when including sports, self-study requirements and compliant process information. The mood during the hearings reflected in the following passage illustrated that “Mr. O’Hara engaged in a rare display of table-pounding during testimony by H.E.W. Secretary Caspar W. Weinberger that suggested that Congress let the guidelines go into effect so there would be no further delay in enforcing the law. Mr. O’Hara countered that it had taken Mr. Weinberger’s department three years to produce the guidelines. H.E.W. shouldn’t tell Congress it should change the law if it didn’t like the guidelines,” O’Hara remarked.⁶⁷¹ The quandary, whether to change any or all regulations which needed revising by H.E.W., kept the subcommittee busy. It would require that both houses of Congress agree to aforementioned re-writes.⁶⁷² On the same page of *The Chronicle*, the announcement naming Weinberger’s replacement, B. David Mathews, appeared.⁶⁷³

As reported by *The New York Times*, House hearings continued as Representative O’Hara, Chair of the Title IX hearings, announced two parts of Title IX he considered rejecting. The record collecting, self-study and grievance procedures were parts of the regulations O’Hara opposed because, as he stated, they were not the intent of Congress and were not part of the original draft of the law. The post-presidential signature forty-five day Congressional review

⁶⁷⁰ New York Times, “HEW Head Says Title IX Won’t Bankrupt Schools,” *New York Times*, June 27, 1975. <http://www.nytimesarchives.com> (accessed August 11, 2008).

⁶⁷¹ Chronicle of Higher Education, “Bias-Rules Deadline,” *Chronicle of Higher Education*, vol. 10, no. 17, July 7, 1975: 5, col. 2, para.3. Microfilm.

⁶⁷² *Ibid.*, “Bias-Rules Deadline.”

⁶⁷³ Chronicle of Higher Education, “It’s Official: Mathews to Head H.E.W.,” *Chronicle of Higher Education*, vol. 10, no. 17, July 7, 1975: 5. Microfilm.

period of this set of regulations was considered by many as unconstitutional. At this particular juncture, it was core as to whether all or part of the regulations had to be approved according to this review by Hicks.⁶⁷⁴

Later Hicks reported that the “House Panel Rejects Some Rules on Sex Discrimination in Schools.” Surprises abounded as the Congressional subcommittee worked to remove various parts of Title IX’s regulations. O’Hara led the charge to strike the grievance and self-study on hiring practices sections. H.E.W. would be left to decide the status of legal discrimination based on religious tenets. One other major amendment dealt with revenue generation and what programs would benefit.⁶⁷⁵

In mid-July *The N.C.A.A. News* featured a lead story “Long-Debated Title IX Regulations Not Rejected by Congress”⁶⁷⁶ conveying to their membership that compliance deadlines were firm and that efforts by athletic stakeholders to abort the regulation had failed. The editorial featured in the same issue “About Women’s Athletics,”⁶⁷⁷ cited issues such as income, quotas, segregation, overreach and hostility that Title IX enactment had brought to the athletic venue.

A variety of senators and representatives went on record for trying to alter the regulations during July 1975. These attempts were recorded in *121 Congressional Record* and Committee Proceedings from the 94th Congress, 1st session.⁶⁷⁸ Hicks predicted that Title IX would begin by

⁶⁷⁴ N. Hicks, “Sex Discrimination Rules Face Test in House Unit,” *New York Times*, July 8, 1975. <http://www.nytimesarchives.com> (accessed August 11, 2008).

⁶⁷⁵ N. Hicks, “House Panel Rejects Some Rules on Sex Discrimination in Schools,” *New York Times*, July 9, 1975. <http://www.nytimesarchives.com> (accessed August 11, 2008).

⁶⁷⁶ N.C.A.A. News, “Long-Debated Title IX Regulations Not Rejected by Congress,” *N.C.A.A. News*, vol. 12, no.8, July 15, 1975: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁶⁷⁷ N.C.A.A. News, “About Women’s Athletics,” *N.C.A.A. News*, vol. 12, no. 8, July 15, 1975: 2. <http://web1.ncaa.org> (accessed March 28, 2008).

⁶⁷⁸ *121 Congressional Record* 19209, 21865, 22940, (1975). As cited in website: <http://www.titleix.info/>. (accessed April 8, 2006).

default, intact, on July 21, 1975 without the House subcommittee amendments as she reported that “House Reverses Itself to All Integration of Sexes in Schools.”⁶⁷⁹

Fields notified readers of *The Chronicle* that attempts to change Title IX Regulations were unsuccessful as the deadline for the law to take effect arrived. O’Hara and others like him in Congressional ranks were not successful in having Title IX revised. Abzug found support from a host of representatives who endorsed her letter affirming that guidelines for Title IX were reliable when compared to legislative intent.⁶⁸⁰ As Hicks of *The New York Times* predicted, Title IX regulations became law by July 21, 1975 and the deadlines for compliance were issued to elementary and secondary levels as July 1976 and for colleges as July 1978.⁶⁸¹

The first August issue of *The N.C.A.A. News* (1975) featured a call to arms as “Ford Would ‘Welcome’ More Title IX Hearings”⁶⁸² which implied President Gerald Ford had concerns about Title IX as written, yet he maintained that he endorsed efforts to end sex discrimination in athletics. Ford invited Congress to hold hearings to further study Title IX as it applied to collegiate athletics. Also in the August issue the article “Fuzak Questions Title IX Consistency with the Law” appeared which contained portions of the N.C.A.A. President John A. Fuzak’s words used when he addressed the Congressional subcommittee hearing citing facts N.C.A.A. holds as reasons Title IX did not apply to them or athletics in general.⁶⁸³

Fields reported that efforts by women’s groups helped defeat proposed exemptions to Title IX. A coalition member remarked: “It was a major victory, and I think it’s a sign that

⁶⁷⁹ N. Hicks, “House Reverses Itself to Allow Integration of Sexes in Schools,” *New York Times*, July 19, 1975. <http://www.nytimesarchives.com> (accessed August 11, 2008).

⁶⁸⁰ Chronicle of Higher Education, “Sex-Bias Curbs Due to Take Effect,” *Chronicle of Higher Education*, vol. 10, no. 18, July 21, 1975: 9. Microfilm.

⁶⁸¹ *121 Congressional Record*, 1975.

⁶⁸² N.C.A.A. News, “Ford Would ‘Welcome’ More Title IX Hearings,” *N.C.A.A. News*, vol. 12, no. 9, August 1, 1975: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁶⁸³ J. A. Fuzak, “Fuzak Questions Title IX Consistency with The Law,” *N.C.A.A. News*, vol. 12, no. 9, August 1, 1975: 8. <http://web1.ncaa.org> (accessed March 28, 2008).

women's rights now need to be considered and not dealt with nonchalantly [by being] added to bills on the floor of Congress."⁶⁸⁴ *The N.C.A.A. News* informed the membership that "Title IX Amendments [were] Alive" in a James O'Hara bill regarding changes recommended to Title IX.⁶⁸⁵ Oregon State Athletic Director Jim Barnett decided to quit his job at O.S.U., crediting Title IX with one motive for leaving.⁶⁸⁶ As *The N.C.A.A. News* began coverage about the fallout from Title IX they also revealed that "Illinois Supports Tower Amendment" as they offered testimony during Congressional subcommittee hearings about use of athletic funds.⁶⁸⁷ In the same month, excerpts of comments N.C.A.A. President Fuzak made before the Senate in hearings on the Tower Amendment appeared in "N.C.A.A. Viewpoint on Title IX Clarified by President Fuzak." Fuzak lent support for the Tower bill, expressed deep concern over ways member institutions could meet demands and accused H.E.W. of 'economic insanity' as related to running athletic programs while trying to comply with Title IX.⁶⁸⁸

The trustees administering the Rhodes scholarship established in 1902 were considering a change in criteria and law in Great Britain which would allow females, for the first time, to participate in receipt of funds to attend Oxford University. The consideration was being made based on Title IX regulatory language.⁶⁸⁹

In September 1975, Peter Holmes, Director, Office for Civil Rights (O.C.R.), under the auspices of the Department of Health, Education and Welfare, distributed a memorandum to

⁶⁸⁴ C. M. Fields, "Bias Exceptions Beaten Back," *Chronicle of Higher Education*, vol. 10, no. 19, August 4, 1975: 1, col. 3, para.1. Microfilm.

⁶⁸⁵ N.C.A.A. News, "Title IX Amendments Alive," *N.C.A.A. News*, vol. 12, no. 11, September 1, 1975: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁶⁸⁶ N.C.A.A. News, "Jim Barnett Cites Title IX As One Reason For Resignation," *N.C.A.A. News*, vol. 12, no. 11, September 1, 1975: 4. <http://web1.ncaa.org> (accessed March 28, 2008).

⁶⁸⁷ N.C.A.A. News, "Illinois Supports Tower Amendment," *N.C.A.A. News*, vol. 12, no. 11, September 1, 1975: 6. <http://web1.ncaa.org> (accessed March 28, 2008).

⁶⁸⁸ N.C.A.A. News, "N.C.A.A. Viewpoint on Title IX Clarified by President Fuzak," *N.C.A.A. News*, vol. 12, no. 12, September 15, 1975: 7. <http://web1.ncaa.org> (accessed March 28, 2008).

⁶⁸⁹ *Chronicle of Higher Education*, "Women May Be Eligible for 1976 Rhodes Scholarship," *Chronicle of Higher Education*, vol. 11, no. 2, September 22, 1975: 1. Microfilm.

educational officials across the United States. The reason the memorandum was produced was to give guidance to educational entities about what and when to implement Title IX in regard to athletic programming.⁶⁹⁰ Chapter Four begins the period of efforts at compliance with Title IX as the legal journey begins in earnest in the late 1970s.

In the fall of 1975 different viewpoints were starting to appear in *New York Times* articles as “One view of Title IX: Detrimental to Women”⁶⁹¹ and football fans weighed in “View of Sports ‘Football, It Pays the Bills, Son.’”⁶⁹² *The N.C.A.A. News* comments regarding “Guidance on Title IX Issued by OCR Staff” involved N.C.A.A. reaction to the clarification of guidelines by OCT from legal counsel R.T. Thomas.⁶⁹³ News of federal regulatory enforcement was reported in *The N.C.A.A. News* in December, 1975 in “Non-Compliance with Title IX Announced by BYU and Hillsdale.”⁶⁹⁴ By late 1975 references were being made to how far girls had come on the athletic playing field in “Girls on the Athletic Field: Small Gains, Long Way to the Goal.”⁶⁹⁵

⁶⁹⁰ P. E. Holmes, “Elimination of Sex Discrimination in Athletic Programs. Memorandum to Chief State School Officers, Superintendents of Local Educational Agencies and College and University Presidents,” September 1975,” ERIC ED 119583 (accessed September 22, 2008).

⁶⁹¹ L. A. Gurka, “One View of Title IX: Detrimental to Women,” *New York Times*, sec. 2, September 28, 1975: 5. Microfilm.

⁶⁹² R. J. Sabock, “View of Sports ‘Football, It Pays the Bills, Son,’” *New York Times*, sec. 5, October 5, 1975: 2. Microfilm.

⁶⁹³ R. T. Thomas, “Guidance on Title IX Issued by OCR Staff,” *N.C.A.A. News*, vol. 12, no. 13, October 1, 1975: 1,2. <http://web1.ncaa.org> (accessed March 28, 2008).

⁶⁹⁴ *N.C.A.A. News*, “Non-Compliance with Title IX Announced by BYU and Hillsdale,” *N.C.A.A. News*, vol. 12, no. 17, December 1, 1975: 3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁶⁹⁵ N. Brozan, “Girls on the Athletic Field: Small Gains, Long Way to the Goal,” *New York Times*, January 12, 1976: 22. Microfilm.

CHAPTER IV

THE 'BRAVE NEW WORLD' OF TITLE IX COMPLIANCE

1975-1979

The Tempest, by William Shakespeare, contains appropriate imagery to apply when thinking about the stormy journey The Office for Civil Rights (O.C.R.) and the public shared while writing and reviewing Title IX regulations. Chapter Three followed the critical journey the new public law banning sex-discrimination practices had taken as the regulations were shared with those who would be bound by them. As noted in the previous chapter, the tempest of public outcry seemed to be heard loudest from the quarters of those who participated in, supported and administrated athletic programming. Chapter Four opens where the preceding chapter ended with the mandate from Peter Holmes, Director of The Office for Civil Rights.

The year was 1975. The Fall of Saigon signaled an end to the unsuccessful war efforts in Vietnam as U.S. citizens were forced to evacuate from the city. Patty Hearst was abducted, and Gerald Ford was President of the United States. Watergate participants Mitchell, Halderman, and Ehrlichman were convicted for their role in the Watergate cover-up.⁶⁹⁶ The conversation in education about compliance deadlines looming and policy making took center stage on multiple levels. In September of 1975, Peter Holmes under the auspices of the Department of Health, Education and Welfare, distributed a memorandum to educational officials throughout the United

⁶⁹⁶ America's Best History, "1970-1979," America's Best History U.S. Timeline. <http://americasbesthistory.com/abhtimeline1970.html>. (accessed November 12, 2009).

States announcing the effective dates for Title IX compliance. The reason the memorandum was produced was to give guidance to educational entities about what and when to implement Title IX regarding athletic programming. The guidelines provided information about regulatory actions required by institutions receiving federal funding. The Holmes memorandum stated

Title IX-related prohibitions along with what institutions might consider for compliance in athletic programming. Director Holmes gave individual deference to athletic departments regarding governance structure and assessment for compliance with regulatory responsibilities. Holmes commented on the self-evaluation requirement and the adjustment period deadlines. The information in the memo about compliance deadlines was listed as a one-year deadline for elementary schools and for all other educational institutions a three-year deadline was imposed. Holmes emphasized that the adjustment time was not considered a wait-and-see time frame. The O.C.R. expected institutions to move toward goals, create self-designated solutions for their educational organization, and to identify their institution's particular circumstances. Holmes' memorandum included a detailed outline of the first-year activities to be accomplished. Assessing athletic interest and abilities, separate teams per gender were detailed as were definitions of what constituted a contact sport and what made one eligible to offer separate teams. The memorandum included examples of what would and would not be allowed. Equal opportunity took many forms as the Title IX regulatory language showed interest in total sport programming reform. The Holmes memorandum enumerated the various self-evaluation points from scholarship to scheduling events, providing necessary equipment, and expenses incurred on the road for room, board and transportation. The memorandum also followed the regulations to include items such as equity between sexes in athletic team considerations for tutoring, coaching,

facilities for dressing, fields for competition, public relations and media coverage, health care, housing and meals on campus. Holmes stressed scholarship awarding and expenditures allowed by Title IX regulations. He also informed schools and colleges that The Office for Civil Rights personnel would be available to assist during the transition. The memorandum included a list of regional contacts.⁶⁹⁷

The Chronicle article presented findings in the aforementioned Peter Holmes' Memorandum to higher education personnel about Title IX. The article broke down the memorandum into areas about deadlines for implementation, contact sports, scholarship distribution and rules for employing and releasing female and male administrative athletic leadership. The text included reminders about the waiting period and self-study efforts that must be completed by mid-summer 1976. Athletic personnel were reminded about their mandate to create a plan to guide them and their organization in considering and creating athletic interest for both genders. Words such as "reasonableness" were used when contemplating distribution of scholarships. Comments included in this article ranged from "the more you spell out, the more you'll get people to do," but also "the clarification isn't any clearer than the rules. We're still scratching our heads to figure out what it means."⁶⁹⁸

As a way to distribute the Title IX information to a wider higher education- minded audience, *The Chronicle of Higher Education* reprinted the Holmes' Memorandum in its entirety in the September 29, 1975 issue. No extra comment was added except for the introductory

⁶⁹⁷ P. E. Holmes, "Elimination of Sex Discrimination in Athletic Programs. Memorandum to Chief State School Officers, Superintendents of Local Educational Agencies and College and University Presidents," September 1975," ERIC ED 119583 (accessed September 22, 2008).

⁶⁹⁸ *Chronicle of Higher Education*, "Sex Bias in Athletics: HEW Outlines Responsibilities of Colleges," *Chronicle of Higher Education*, vol. 11, no. 3, September 29, 1975: 8-9:col. 3, para.3. Microfilm.

paragraph. This medium of dissemination of information allowed interested athletic professionals within higher education to read the text and consider its meaning to their future.⁶⁹⁹

During October 1975, Nancy Hicks reported that John Tower introduced an amendment attempting to protect revenue-producing sports from the aegis of Title IX. Surprisingly, as Hicks noted when the financial numbers were presented about the dollars actually produced, deficits were realized and the revenue-producing sports were found not to be as financially sound as Congressional leaders were led to believe. Thus, passing the Tower Amendment which protected intercollegiate athletics, the stated goal of the N.C.A.A. and Tower, would continue to marginalize the under-represented gender who would continue to remain on the sidelines.⁷⁰⁰

In the fall of 1975 different viewpoints were starting to appear in *The New York Times* in articles such as “One View of Title IX: Detrimental to Women”⁷⁰¹ and football fans weighed in with “View of Sports, It Pays the Bills, Son.” *The N.C.A.A. News* presented comment regarding “Guidance on Title IX Issued by OCR Staff”⁷⁰² which involved N.C.A.A. reaction to the clarification of guidelines from O.C.R. from legal counsel, Thomas.⁷⁰³

At the same time, Sisley wrote “Challenges Facing the Woman Athletic Director,” which appeared in the 1975 fall issue of *Physical Educator*. Sisley discussed the emergence of the woman athletic director, the legislative movement resulting in girls and women athletes competing in larger numbers and the growth of athletic associations catering to the interests and needs of the female athlete. Title IX was promoted as a force creating the impetus for change.

⁶⁹⁹ Chronicle of Higher Education, “What Title IX Means: Text of Holmes’ Memorandum on Athletics,” *Chronicle of Higher Education*, vol. 11, no. 3, September 29, 1975: 9. Microfilm.

⁷⁰⁰ N. Hicks, “Title IX Exemptions Unlikely for Revenue-Producing Sports,” *New York Times*, October 2, 1975. <http://www.nytimesarchives.com> (accessed August 11, 2008).

⁷⁰¹ L. A. Gurka, “One View of Title IX: Detrimental to Women,” *New York Times*, sec. 2, September 1975: 5. Microfilm.

⁷⁰² R. J. Sabock, “Views of Sports ‘Football, It Pays the Bills, Son,’” *New York Times*, sec. 5, October 5, 1975: 2. Microfilm.

⁷⁰³ R. T. Thomas, “Guidance on Title IX Issued by OCR Staff,” *N.C.A.A. News*, vol. 12, no. 13, October 1, 1975: 1,2. <http://web1.ncaa.org> (accessed March 28, 2008).

Sisley wrote this article during the comment period of the proposed regulations, and it was published after the regulations were approved and the Holmes' memo had been sent. According to Sisley, the burgeoning interests in athletics with the reality that federal funding drove the changes enhanced the need for women athletic administrators to serve beyond the intramural competition level. A training vacuum occurred as women's athletic director positions were developing. Concerned for the woman athletic director's learning curve, Sisley offered a short course for development of administrators. Sisley detailed the Litchfield model of leadership promoting the development of administrators. The main tasks of administrators noted in this model dealt with making decisions, developing programs, telling others about them, steering progress and, in turn, evaluating the progress. Sisley listed ten responsibilities women athletic directors should know, develop and practice which included knowing compliance regulations governing athletics in the state, regional and national levels, becoming skilled in human resources, budgeting, scheduling, arranging for health needs, travel, planning public relations, securing equipment and supplies, representing the university and keeping the lines of communication freely flowing. Sisley maintained that certain characteristics should be present in a woman athletic director. These characteristics included showing concern for athletes was paramount, staying grounded in the new, more powerful position, remaining level-headed as they faced long and short term responsibilities and having the courage to do what was needed to accomplish duties. Sisley warned new administrators about the dangers of recruiting and funding as she commented on developing abilities to fully understand regulations and policies governing eligibility, recruiting and financial aid.⁷⁰⁴

⁷⁰⁴ B. L. Sisley, "Challenges Facing the Woman Athletic Director," *Physical Educator*, vol. 32, no. 3, October 1975: 121-123.

The Chronicle of Higher Education (The Chronicle) reported that Hillsdale College refused to comply with Title IX filing of assurance statement since they did not receive federal funds. Hillsdale officials remarked that the U.S. government through the regulations would create a controlling interest. Hillsdale students were receiving loans, grants and veteran benefits at the time. The Hillsdale College leadership was preparing to battle federal regulators. Roche, president of Hillsdale College, stated “Rather than allow such a federal takeover of our campus, we are prepared to refuse compliance with government edicts now proposed”⁷⁰⁵ referring to O.C.R.’s requirement to sign an assurance of Title IX compliance.

Brigham Young University (B.Y.U.) in Utah went on record in *The Chronicle* to convey their alignment with Title IX concepts in all except six select provisions dealing with their freedom to govern their institution of higher learning. B.Y.U.’s identified rejected portions of regulations were enumerated in the advertisement and explained as:

- Encroachment of federal control into programs that did not receive public funds;
- Selective religious exemptions would be an outcome for governmental authority;
- Information gathering would be stymied since applicants could not be asked personal information about reproductive issues and marriage history;
- Regulations would interfere with carrying out BYU’s stated dress code;
- The university would be prohibited from accepting gifts to establish scholarships for the exclusive use of one sex and
- Athletic programming decisions would no longer be autonomous.⁷⁰⁶

⁷⁰⁵ Chronicle of Higher Education, “Hillsdale Won’t Comply,” *Chronicle of Higher Education*, vol. 11, no. 8, November 4, 1975: 6. Microfilm.

⁷⁰⁶ K. J. Winkler, “Brigham Young University Challenges Parts of Bias Law,” *Chronicle of Higher Education*, vol. 11, no. 7, October 28, 1975. Microfilm.

B.Y.U. officials contended that “The H.E.W. regulations extend government power well beyond that granted in the statute by providing if any part or area of a university receives direct or indirect federal financial assistance (such as by enrolling students who receive federal student aid), then the entire institution is subject to the federal regulation.”⁷⁰⁷ Winkler proceeded to express B.Y.U.’s sentiments that the advertisement placed in *The Chronicle* expressed. Winkler concluded by quoting B.Y.U. officials who intended to ignore Title IX and H.E.W. unless judicial review demanded compliance with the sections they regarded as offensive to their religious tenets on each campus they operated. Their hope was that H.E.W. would ignore them.⁷⁰⁸

Dunkle and Sandler worked together to present *Sex Discrimination Against Students: Implications of Title IX of the Education Amendments of 1972* in November 1975. They began their publication with a passage: “In the past twenty years it has become painfully clear that equal educational opportunity will become a reality only if it is supported by strong and vigorously enforced federal legislation.”⁷⁰⁹ Dunkle and Sandler discussed the provisions of Title IX related to publicly finance educational institutions and earlier attempts made in public health to end discriminatory practices. They explained the Title IX regulations so that a general reader could gain a better understanding of them. They included encouragement to those who recognized discrimination based on sex to file a complaint with H.E.W. Accordingly, H.E.W. would investigate and try to resolve the issue with the institution in question. If there were no changes made by the institution and its practices regarding sex discrimination, sanctions such as terminating receipt of federal monies could be invoked. Dunkle and Sandler defined affirmative

⁷⁰⁷ *Ibid.*, Winkler, October 28, 1975: 1, col. 3, para.2

⁷⁰⁸ *Ibid.*, Winkler, October 28, 1975.

⁷⁰⁹ M. C. Dunkle and B.R. Sandler, “Sex Discrimination Against Students: Implications of Title IX of the Education Amendments of 1972,” (November 1975). ERIC ED 119586 (accessed September 22, 2008).

action, overt discrimination and discrimination based on written policy. They tackled the recruiting violations that most often resulted in discriminatory practices. They considered practices they labeled as benign or having a “Chilling Effect” as significantly discouraging to female applicants. Included in this discussion were examples of criteria that could keep women from participating which included memberships, receipt of awards and attending historically male schools. Also mentioned were athletic letters, military service and age discrimination as ways used to discriminate.⁷¹⁰

The Minnesota Civil Liberties Union, (M.C.L.U.) filed a claim regarding aid to female sports participants at the University of Minnesota and the refusal to offer athletic scholarships to female participants even when they met the basic academic and athletic requirements. As introduced in Chapter Three, Gallo, a female golfer at the University of Minnesota, was nominated for a scholarship by her coach. She met the basic academic and athletic qualifications but was denied receipt of the aid based on gender. The M.C.L.U. claimed that university policy regarding scholarship receipt for female athletes was non-existent and violated their basic rights under Title IX and Fourteenth Amendment (Equal Protection Clause). Since the University of Minnesota was a publicly funded institution of higher learning the M.C.L.U. concluded that the laws barred them from discriminating based on gender.⁷¹¹

Journal articles carried items of interest related to Title IX. In *Teachers College Record* as R. Cole’s “Title IX: A Long Dazed Journey into Rights”⁷¹² is a play on words dredging up images of Eugene O’Neill’s play, *A Long Day’s Journey into Night*.⁷¹³ T. R. Wolanin

⁷¹⁰ *Ibid.*, Dunkle and Sandler, 1975.

⁷¹¹ Chronicle of Higher Education, “Suit Attacks Denial of Aid to Women Athletes,” *Chronicle of Higher Education*, vol. 11, no. 10, November 17, 1975: 2. Microfilm.

⁷¹² R. Cole, “Title IX: A Long Dazed Journey into Rights,” *Phi Delta Kappan* 57 (1975): 575-577,586.

⁷¹³ E. O’Neill, *Long Day’s Journey Into Night* (New Haven: Yale University Press, 1989).

discussed “Federal Policy Making in Higher Education”⁷¹⁴ while A. Fishel presented “Organizational Positions on Title IX: Conflicting Perspectives on Sex Discrimination in Education”⁷¹⁵

In other educational venues Gappa, Jauquet, and Ragan designed a self-evaluation packet to aid higher education personnel in meeting Title IX compliance as mentioned in the Holmes memorandum. This guide presented worksheets that would aid institutions of higher learning with self-evaluations. The document was divided into sections, reflecting the parts of the institutions’ self-study responsibilities identified for the various officials and administrators required to participate. The packet contained sixteen sections and for each section there was a coversheet, purpose statement and introduction, including the appropriate places to identify assignment and date of completion. The contents of the packets were outlined and included detailed instructions, along with the portion of the Title IX regulation upon which the assigned person would be working. Data gathering worksheets were included along with a checklist which would aid the data collector for the section with prompts about the tasks to be completed. For example, where procedures had not existed before, the worksheet set-up would guide an institution to create the outcomes necessary to complete the review. The major subparts of Title IX were addressed in this lengthy publication.⁷¹⁶

Judith Cummings reported in *The New York Times* during November 1975, “About Education: College in Michigan Takes Stand Against Rule It Views as ‘Federal Take-Over of Campus’” on the Hillsdale College situation. Hillsdale College was protesting government

⁷¹⁴ T. R. Wolanin, “Federal Policy Making In Higher Education,” *AAUP Bulletin* 61 (1975): 309-314.

⁷¹⁵ A. Fishel, “Organizational Positions on Title IX: Conflicting Perspectives on Sex Discrimination in Education,” *The Journal of Higher Education* LVII (1976): 93-105.

⁷¹⁶ J. M. Gappa, A. M. Jauquet, and B. M. Ragan, “Self-Evaluation Packet Designed to Meet the Needs and Requirements of the Department of Health, Education and Welfare for Compliance by Institutions of Higher Education with Title IX of the Education Amendments of 1972 and Its Implementing Regulations,” January 1976. Microfiche.

encroachment as it refused to file compliance assurances with Title IX with the Department of Health, Education and Welfare (H.E.W.). Cummings explained various social programs and agendas the federal government imposed on institutions of higher learning. Cummings cited an American Council on Education (A.C.E.) study identifying twelve governmental/federally imposed regulatory programs focused on higher education. What most universities considered as standard procedure was imposed during the 1970s. Social Security, Occupational Health and Safety Act (O.H.S.A.), equal employment, and minimum wage were among the programs cited by A.C.E. as counter-productive and budget-spoilers for participating institutions. Higher education administrators did not welcome these imposed regulations, especially when no funding was given to implement the social programming which had federal aid implications tied to non-compliance.⁷¹⁷ Later, an attention-getting notice heightened public awareness about Hillsdale's plight in its attempts to remain free to govern itself without federal regulation. The only federal funding accepted was portable federal monies that filtered into the institution through aid to students. Title IX regulatory changes made all institutions, private and public, subject to compliance with the new anti-sex discrimination law.⁷¹⁸

Fields submitted to *The Chronicle*, "57 Rights Groups Hit HEW on Anti-Bias Enforcement," at the end of 1975. Civil rights groups representing racial, gender and handicapped rights formed a coalition to require H.E.W. chief, David Mathews, to listen to and focus on their concerns. The Civil Rights coalition was reacting to new policies and the new investigation procedures used by O.C.R. The new procedures authored O.C.R. to consolidate

⁷¹⁷ J. Cummings, "About Education: College in Michigan Takes Stand Against Rule It Views as 'Federal Take-Over of Campus,'" *New York Times*, November 12, 1975. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁷¹⁸ *New York Times*, "Ideas and Trends: Education, Medicine and Law A Little College Decides to Fight Big Government," *New York Times*, November 15, 1975. <http://www.query.nytimes.com> (accessed August 11, 2008).

violation claims instead of examining each complaint. The letter from the coalition plainly stated their displeasure with the response to claims, the current backlog of cases in higher education, the choices made when allocating and spending resources to make investigations happen and the lack of data collection being done. The groups rejected the O.C.R.'s continuous claim based on lack of funding for the inattention to investigating claims. They outlined their reactions to the new procedures and listed their areas of concern, common excuses offered by O.C.R. and recommendations for progress.⁷¹⁹

By January, 1976, references were being seen as to how far girls had come on leveling the athletic playing field. Nadine Brozan interviewed several advocacy groups to examine progress in girls' and women's athletics after the passage of Title IX regulations. Several universities were cited as making progress but at some prestigious schools the inequities existed in part, were blamed on budget shortfalls. As an example, Dr. Donna Lopiano discussed the lack of proportionality in participation opportunities for female athletes as compared to males. Equipment, budgets, supplies, travel and food allowance, tutoring services, scholarships, salaries for coaches, housing and facilities were equally skewed to favor male athletes. Holly Knox with the National Organization for Women (N.O.W.) was championing the junior high aged girl whose interest in sports should be fostered and not squashed. Many elementary and secondary schools had begun their conversion allowing sporting opportunities for both genders.⁷²⁰

News of federal regulatory enforcement was reported in *The N.C.A.A. News* in "Non-Compliance with Title IX Announced by BYU and Hillsdale."⁷²¹ *The N.C.A.A. News* revealed

⁷¹⁹ Chronicle of Higher Education, "57 Rights Groups Hit HEW on Anti-Bias Enforcement," *Chronicle of Higher Education*, vol. 11, no. 15, December 22, 1975: 7. Microfilm.

⁷²⁰ N. Brozan, "Girls on the Athletic Field: Small Gains, Long Way to Goal," *New York Times*, January 12, 1976. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁷²¹ N.C.A.A. News, "Non-Compliance with Title IX Announced by BYU and Hillsdale," *N.C.A.A. News*, vol. 13, no. 2, February 1, 1976: 1, 7. <http://web1.ncaa.org> (accessed March 28, 2008).

“Rules Do Not Apply to All Female Athletics” as decisions about intra-organizational regulatory power regarding genders in respect to A.I.A.W. and N.C.A.A. regulatory structures were discussed.⁷²² By mid-February, *The N.C.A.A. News* reported to membership “N.C.A.A. Challenges Validity of HEW’s Title IX” announcing that N.C.A.A. had filed a lawsuit against H.E.W.⁷²³

Nancy Wiegers and others provided a legal guide for students, “Title IX: An Overview of the Law for Students. A Guide to Equal Rights, part 2.” This publication was the second in a three-part series written by students for students interested in learning more about Title IX and how they could change practices in their schools to promote the anti-sex discrimination law. The project made Title IX more accessible to a younger audience.⁷²⁴

An event that galvanized public attention to intercollegiate athletic sex-discrimination practices appeared in the article “Yale Women Strip to Protest a Lack of Crew’s Showers” which was featured *The New York Times* in March 1976. This protest in 1976 at Yale heightened readers’ interest and awareness. During the protest Yale female athletes presented themselves, upper body clothing stripped away, showing letters painted on their bodies spelling the words “Title IX.” This event which took place in the director’s office helped these women athletes communicate their concerns about the lack of adequate shower facilities available to them at this prestigious university.⁷²⁵

⁷²² N.C.A.A. News, “NCAA Rules do not Apply to All Female Athletics,” *N.C.A.A. News*, vol. 13, no. 2, February 1, 1976: 1,7. <http://web1.ncaa.org> (accessed March 28, 2008).

⁷²³ N.C.A.A. News, “NCAA Challenges Validity of HEW’s Title IX,” *N.C.A.A. News*, vol. 13, no. 3, February 15, 1976: 1,3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁷²⁴ N. Weigers, *et al.*, “Title IX: An Overview of the Law for Students. A Guide to Equal Rights, part 2,” (1976). ERIC ED 183636 (accessed September 22, 2008).

⁷²⁵ New York Times, “Yale Women Strip to Protest a Lack of Crew’s Showers,” *New York Times*, March 4, 1976: 33. Microfilm.

The N.C.A.A. News editor provided a “Summary of Principal Legal Cases Involving N.C.A.A. 1971-1976,”⁷²⁶ which did not include their case filed against H.E.W. Maeroff announced “Conservative College Fights U.S. Control,” and conveyed the outpouring of support Hillsdale College received while battling the Federal Government. In 1976, the issue had not been resolved, and Hillsdale found friends in various places because of their fearless attempt to stop more federal encroachment into collegiate administrative decisions. Maeroff reported that H.E.W. considered the college a recipient of federal funds since federal aid was distributed to their students. George C. Roche, president of Hillsdale, was leading a campaign to build the school’s endowment to replace the federal funding.

Cole made an effort to find out how schools and universities were doing as they moved toward Title IX compliance. Constituents, trainers, government compliance personnel, advocacy groups, and representatives were contacted as Cole attempted to gauge progress toward Title IX compliance activities. Many schools, according to Cole’s study, had named a compliance officer by 1976 but few had completed their self-study. Some school districts seemed relatively ignorant of Title IX expectations. Cole provided a voice to progress as he included examples of those familiar with what should be happening at the state or school level. Office for Civil Rights employees were asked to comment on their information about compliance efforts and investigations. Many agreed that there were few staffers available to investigate all the complaints and non-compliance status issues in 1976.⁷²⁷

In July 1976, The N.C.A.A. announced “First Women Athletes Awarded Postgraduate Scholarships.” This was followed by an editorial by J.W. Shaffer, “Finally, Mr. President,” which lauded President Ford’s reaction to the latest H.E.W. Title IX ruling. Also in this

⁷²⁶ N.C.A.A. News, “Summary of Principal Legal Cases Involving NCAA, 1971-1976,” *N.C.A.A. News*, vol. 13, no. 6, May 15, 1976: 6,7,8. <http://web1.ncaa.org> (accessed March 28, 2008).

⁷²⁷ R. Cole, “Title IX: A Long Dazed Journey into Rights,” *Phi Delta Kappan* 57 (May 1976): 575.

editorial, Shaffer updated the organization on progress of their lawsuit as he opined that H.E.W. unofficial propaganda was released to explain Title IX while Terrell Bell was U.S. Commissioner of Education.⁷²⁸

Another article about slow change and Title IX was written by Candace Hogan for *The New York Times* in September 1976. Hogan updated the status of women's athletics when she reported that in five years, university budgets were still not dedicating much more than two percent of their athletic budgets to developing women's opportunity in sports in order to comply with Title IX. An example at one university where men and women's golf teams were fielded, Hogan reported that the university issued one golf ball to each female golfer while male golfers had an unlimited supply of golf balls. Hogan found that institutions of higher education participating in a survey did not wish to attribute any changes or gains made to their programs supporting women's athletics to the influence of Title IX regulations. Hogan stated that to really gauge the growth, one would need to compare the supplies, facilities use, coaches' salaries and practice facilities and schedules allotted to both genders.⁷²⁹

Educational personnel were able to look to professional and scholarly journals for ideas and information on Title IX. D. M. Timpano advised administrators through an article in *The American School Board Journal* on "How to Meet that Title IX Deadline Four Months From Now."⁷³⁰ P. Faust asserted that "Title IX: It Means More Than Pink Footballs,"⁷³¹ as J. Hult

⁷²⁸ J. W. Shaffer, "Finally, Mr. President," *N.C.A.A. News*, vol. 13, no. 8, July 15, 1976: 2. <http://web1.ncaa.org> (accessed March 28, 2008).

⁷²⁹ C. L. Hogan, "Title IX Progress: Little Has Changed," *New York Times*, September 26, 1976. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁷³⁰ D. M. Timpano, "How to Meet that Title IX Deadline Four Months From Now," *The American School Board Journal* 163 (1976): 30-34.

⁷³¹ P. Faust, "Title IX: It Means More Than Pink Footballs," *Thrust for Education Leadership* 5 (1975): 6-8.

mulled “Equal programs or Carbon Copies: Title IX Prospects and Problems.”⁷³² Lopiano presented “A Fact-Finding Model for Conducting a Title IX Self-Evaluation Study in Athletic Programs: Title IX Prospects and Problems.”⁷³³

Kroll’s study designed to measure university athletic personnel’s feelings toward Title IX regulations appeared in *Research Quarterly* (October 1976). Kroll wanted to measure the psychological intensity and reaction related to Title IX’s regulations as seen in athletic department administrators. The study methodology included use of paired comparisons considered valuable when analyzing principled judgment and work-related choices. The methodology used to build the instrument contained Title IX guideline statements that had been edited to remove redundancy and complexity. Kroll included fifteen statements on the scale. The instructions used asked athletic directors to choose which pair would most benefit athletics (gender neutral); the next set of instructions were written to have men and women athletic personnel answer which paired comparison would benefit or be detrimental to their gender’s programming. The scaled pairs and the instructions were mailed in 1974 to schools on the A.I.A.W. membership directory. Of the 126 packets sent out, sixty returned scales were usable. Other scales were returned but were disqualified because the items were incomplete or altered. Kroll’s results were interpreted and revealed that “male athletic directors were more concerned about budgetary matters while female athletic directors were more concerned about effecting quality athletic programs, decision making and status factors.”⁷³⁴ Kroll predicted that Title IX guidelines would result in favorable implementation.⁷³⁵

⁷³² J. Hult, “Equal programs or Carbon Copies: Title IX Prospects and Problems,” *Journal of Physical Education and Recreation* 47 (1976): 24-25.

⁷³³ D. A. Lopiano, “A Fact-Finding Model for Conducting a Title IX Self-Evaluation Study in Athletic Programs: Title IX Prospects and Problems,” *Journal of Physical Education and Recreation* 47 (1976): 25-30.

⁷³⁴ W. Kroll, “Psychological Scaling of Proposed Title IX Guidelines,” *Research Quarterly* (October 1976): 552.

⁷³⁵ *Ibid.*, Kroll, 1976.

LaNoue pointed out that “a major source of controversy over Title IX and athletics is the meaning of quality.”⁷³⁶ LaNoue considered hidden agendas, women’s rights groups attempting to dismantle the male culture and traditions, as being more vehemently sought than equal opportunity for their own gender. On the flip side, males involved in athletic administration were more interested in protecting their status. LaNoue was of the opinion that government should not impose its will by legislating cultural change. He debated the spending equity issues not yet resolved and pointed to the danger of equal truly meaning equal. To compromise, “the problem, therefore, is to work out a concept of athletic equality that will improve opportunities for women, be legally defensible, and reflect the multiple purposes of collegiate sports.”⁷³⁷ LaNoue shared his idea that the tradition of college sports as entertainment and revenue-generators should not be threatened or undermined by Title IX. LaNoue proposed a four-tiered sports system based on interest, skill, entertainment and capital generation. LaNoue disagreed with any quota system, and was critical of the push to make women’s sports equal to men’s while leaders of women’s athletics indicated on some level they would prefer not to follow the male sports model. The A.I.A.W.’s policy colored the thinking on recruiting and scholarship distribution in women’s athletics at the time this was written.⁷³⁸ In mid-November, *N.C.A.A. News* updated its membership on the lack of resolution with their lawsuit against H.E.W.⁷³⁹

Law reviewers were beginning to attend to The N.C.A.A. and Title IX as topics to feature in their conversations.⁷⁴⁰ Attention turned in 1976 and 1977 to the struggle at private educational

⁷³⁶ G. R. LaNoue, “Athletics and Equality: How to Comply with Title IX without Tearing Down the Stadium,” *Change* 8 (10 November 1976): 27.

⁷³⁷ *Ibid.*, LaNoue, (1976): 28.

⁷³⁸ *Ibid.*, LaNoue, (1976).

⁷³⁹ N.C.A.A. News, “Title IX Suit Moves at Slow Court Pace,” *N.C.A.A. News*, vol. 13, no. 14, November 15, 1976:3.

⁷⁴⁰ J. V. Koch, “Title IX and the N.C.A.A.,” 3 *West St. U.L. Rev.* 1976:250-261.

institutions with sex discrimination⁷⁴¹ and private colleges' academic freedom as related to Title IX.⁷⁴² Intercollegiate athletics and Title IX entered the discourse as time ripened for legal testing of the infant law and its regulations.⁷⁴³

Attempts to limit Title IX continued as Senator James McClure attempted to pass legislation to limit Title IX's meaning and scope.⁷⁴⁴ Senator Birch Bayh of Indiana influenced fellow senators to reject this amendment.⁷⁴⁵ On the legal front, sex-discrimination case, *Craig v. Boren*, was on the docket for a hearing in the U.S. Supreme Court. Although it was not a Title IX case, it paved the way for gender discrimination litigation. In *Craig v. Boren*, The Supreme Court overturned the lower court's directive because it could not find reason for discriminating between genders, based on the age differences for the selling of a non-intoxicating beverage and how it would serve important government objectives. The U.S. Supreme Court concluded that the State of Oklahoma could not discriminate when controlling the sale of beer to males and females.⁷⁴⁶

The year, 1977, brought more action from Congress and courts in athletics. In a continuing effort to slice athletics from Title IX's oversight, Senator Jesse Helms unsuccessfully recycled former amendments in early 1977.⁷⁴⁷ *Kampmeier v. Nyquist*, even though not a Title IX case, was included here because it dealt with access to sports participation by school-aged children who had impairments. The Kampmeiers claimed for their child that being excluded

⁷⁴¹ Kentucky Law Journal, "Title IX Sex Discrimination Regulations: Impact on Private Education," 65 *Ky L.J.* 1976:656-711.

⁷⁴² Urban Law Annual, "Title IX Sex Discrimination: Private Colleges and Academic Freedom," 18 *Urban L. Ann.* 1977:107-137.

⁷⁴³ T. A. Cox, "Intercollegiate Athletics and Title IX," *George Washington Law Review* 46(1),1977:34-65.

⁷⁴⁴ J. McClure, 122 *Congressional Record* 18135 (1976). As cited in website: <http://www.titleix.info/> (accessed April 8, 2006).

⁷⁴⁵ B. Bayh, 122 *Congressional Record* 28147 (1976). As cited in website: <http://www.titleix.info/> (accessed April 8, 2006).

⁷⁴⁶ *Craig v. Boren*, No. 75-628; 429 U.S. 190; 97 S. Ct. 451; 1976 U.S. LEXIS 83; 50 L. Ed. 2d 397, (December 20, 1976).

⁷⁴⁷ J. Helms, January 31, 1977 S. 2146 and S. 535. As cited in website: <http://titleix.info/> (accessed April 8, 2006).

from playing a contact sport violated their rights under the 14th Amendment's equal protection and the Rehabilitation Act. Since the plaintiffs, The Kampmeiers, could not demonstrate that their child would be safe from injury, the U.S. Court of Appeals, Second Circuit upheld the ruling from the previous court decision.⁷⁴⁸ Also in April of 1977, *The N.C.A.A. News* was quick to report that "Title IX Employment Rules Held Invalid by Judge" which gave hopefulness to the association members that their claim may invalidate other portions of Title IX.⁷⁴⁹ The editorial featured the same sentiments in "Overreach by HEW."⁷⁵⁰ *The N.C.A.A. News* also carried statements by "Califano [as he] Describes HEW Document as 'Unofficial,'" which referred to a contracted publication "Competitive Athletics: In Search of Equal Opportunity." Califano denied it was endorsed as a directive from H.E.W.⁷⁵¹

Dee Wedemeyer referred to current conditions in women's sport as an explosion in participation, a change she attributed to Title IX. Wedemeyer discussed the unequal funding requirements of the equal opportunity law. Another factor cited as contributing to heightened interest in women competing in sports was the televised Olympics. Having female sports role models visible in the television media inspired women and girls to seek out sports. An additional factor offered by Wedemeyer was that there existed keen rivalry between women's club teams making the environment ripe for an upgrade to varsity status. Wedemeyer continued with a discussion of A.I.A.W.'s growth and scholarship regulations. Members of A.I.A.W. expressed concern over then current recruiting rules and the need to be able to really assess talent in person

⁷⁴⁸ *Kampmeier v. Nyquist*, Docket No. 76-7383, No. 509 – September Term 1976; 553 F.2d 296; 1977 U.S. App. LEXIS 13808, (April 15, 1977).

⁷⁴⁹ N.C.A.A. News, "Title IX Employment Rules Held Invalid by Judge," *N.C.A.A. News*, vol. 14, no. 4, April 1977: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁷⁵⁰ N.C.A.A. News, "Overreach by HEW," *N.C.A.A. News*, vol. 14, no. 4, April 1977: 2. <http://web1.ncaa.org> (accessed March 28, 2008).

⁷⁵¹ N.C.A.A. News, "Califano Describes H.E.W. Document as 'Unofficial,'" *N.C.A.A. News*, vol. 14, no. 5, May 15, 1977: 2. <http://web1.ncaa.org> (accessed March 28, 2008).

rather than by reputation only.⁷⁵² Two months later, *The N.C.A.A. News* continued to inform members with a brief note about “Fourteen Title IX Books Not ‘Interpretive’” which followed the trend from H.E.W. as a disclaimer to undermine external publications funded by H.E.W. on the subjects of Title IX or gender equity, which in turn were not officially endorsed as policy by H.E.W.⁷⁵³

At the end of July, Patsy Neal presented a discourse regarding “Women and Their Problems in Sports: Many Coaches Aren’t Ready to Coach.” In it Neal discussed the loss of innocence brought on by the big-time attitude now showing up in women’s sports. She noted that many of the problems and headaches inherent in men’s athletics were appearing in women’s athletics despite the best efforts of The A.I.A.W. to “keep women’s sports in perspective by limiting recruiting, by limiting the number of scholarships that can be given in any one sport and by emphasizing the ethics of playing and coaching.”⁷⁵⁴ Other problems Neal pointed out were related to budget increases beyond what women’s programs were used to and the lack of real coaching experience and knowledge for many of the teachers-turned-coaches.⁷⁵⁵

The familiar voice of Margaret Roach in the Title IX conversation was heard as she announced the arrival of a student manual written by Myra Sadker to aid students in interpreting Title IX and understanding gender equity entitlements available to them as well as steps to take when they needed to report a violation.⁷⁵⁶ Following up, Roach reported later in August 1977

⁷⁵² D. Wedemeyer, “Women’s College Sports: A New Ball Game,” *New York Times*, May 25, 1977. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁷⁵³ N.C.A.A. News, “Fourteen Title IX Books not ‘Interpretive,’” *N.C.A.A. News*, vol. 14, no. 6, July 15, 1977: 3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁷⁵⁴ P. Neal, “Women and Their Problems in Sports: Many Coaches Aren’t Ready to Coach,” *New York Times*, July 31, 1977: col. 2, para.5. <http://www.nytimesarchives.com> (accessed August 11, 2008).

⁷⁵⁵ *Ibid.*, Neal.

⁷⁵⁶ M. Roach, “Guide Takes Students Through Title IX,” *New York Times*, August 7, 1977. Microfilm.

that “Maryland is Putting Girls on the School Football Line.”⁷⁵⁷ Roach then offered an opportunity to review “Issues and Debate: Is Title IX Scoring Many Points in the Field of Women’s School Sports?” Roach began her review with the Title IX statement most often quoted, getting to the heart of the anti-discrimination law as it related to educational programs and activities. Roach’s article was designed to give a quick view of the five years that had passed since Title IX was enacted by Congress. Breaking down information into history and background, supporters and opponents, Roach ended the piece with a section on “where do we go from here?” Data provided by The A.I.A.W. tracked the increase in university participation by sport that women were participating in at the member universities. The A.I.A.W. membership grew from 301 schools in 1971-1972 to 843 in 1975-1976. Roach indicated that Title IX proponents were parents willing to bring lawsuits when necessary and coaches interested in developing the athletic talent in females. She also discussed the anti-Title IX role The N.C.A.A. had played during the legislative and regulatory phase of Title IX. Roach noted emphatically near the end of this article that “The law does not provide for any financial aid to institutions to institute the regulations—or pay for additional locker space, equipment or uniforms. But neither will it excuse any institution from failure to comply because of insufficient funds.”⁷⁵⁸ Roach ended with a note about separate-but-equal struggles women’s athletics face in accommodations and facilities which brings to mind the *Plessy v. Ferguson*’s doctrine and applying it to gender equity efforts.⁷⁵⁹

The Associated Press reported lack of progress in O.C.R. investigations and enforcement of Title IX on complaints lodged between 1972 and 1976. A new O.C.R. director agreed with

⁷⁵⁷ M. Roach, “Maryland Is Putting Girls on the School Football Line,” *New York Times*, August 14, 1977: sec. 5, 7. Microfilm.

⁷⁵⁸ M. Roach, “Issues and Debate: Is Title IX Scoring Many Points in the Field of Women’s Sports?” *New York Times*, September 27, 1977: col. 3, para.10. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁷⁵⁹ *Ibid.*, Roach, September 27, 1977.

the criticism brought by the watchdog group PEER (Project on Equal Education Rights) and stated that the new presidential administration under Carter was focused on finding and eradicating gender bias.⁷⁶⁰ Gordon White, Jr., another voice from *The New York Times*, reported that A.I.A.W. and N.C.A.A. conventions were held at the same time in the same town. The reason given by the A.I.A.W. president for the simultaneous meeting was to “get to know each other.” The N.C.A.A., at that time, was considering a move to begin sponsoring women’s athletic championships. That A.I.A.W. adamantly opposed this move and saw it as encroachment into their territory. The points of contention existing between the athletic organizations, N.C.A.A and A.I.A.W., centered on their philosophical differences regarding policies in financial aid and recruiting.⁷⁶¹

In 1978 the lawsuit, *N.C.A.A. v. Califano*, was an attempt by The National Collegiate Athletic Association to shield itself and its 707 member colleges and universities from the new Title IX regulations and the Department of Health, Education and Welfare’s enforcement of them on intercollegiate athletic programs that received no federal financial assistance—directly through the institution.⁷⁶² Also in 1978, *Leffel v. Wisconsin* involved females who wished to try out for male interscholastic sport teams. The class action suit involved the sports of baseball, swimming and tennis. It was found that the Wisconsin Interscholastic Athletic Association violated the equal protection clause of the Fourteenth Amendment when it provided support for

⁷⁶⁰ Associated Press, “AP Sex Bias in School Persists, Group Says. Women’s Organization Is Critical of ‘Lackadaisical’ Enforcement by Federal Civil Rights Office,” *New York Times*, November 8, 1977. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁷⁶¹ G. S. White, Jr., “Women Fear Interference by N.C.A.A.,” *New York Times*, January 10, 1978. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁷⁶² *N.C.A.A. v. Califano*, Civil Action No. 76-32-C2; 444 F. Supp. 425; 1978 U.S. Dist. LEXIS 20275, (January 19, 1978).

male teams and did not provide access to team participation or the fielding of a team for females.⁷⁶³

Voicing opposition to girls joining male contact sports Grace Lichtenstein captured the temper of coaches as a judge announced an upcoming ruling in Ohio regarding contact sports. Lichtenstein listened to coaches of female athletes express that they would rather see females compete in separate-but-equal athletic opportunities.⁷⁶⁴ February 1978 featured an editorial by D. Pickle in *The N.C.A.A. News* “The Other Side of Title IX”⁷⁶⁵ discussing anti-sex discrimination as applied to uni-sex sporting teams, as the note, buried in page 11, reported that a “U.S. Judge Dismisses N.C.A.A.’s Title IX Suit.”⁷⁶⁶ *New York Times* correspondent White composed an article “Title IX Guidelines Are Issued for Equal Sports Expenditures”⁷⁶⁷ that awakened the nation to the fact that university personnel were reacting to new Title IX regulations. Later that spring, *The N.C.A.A. News* reprinted excerpts from B. Olmstead’s column from *The Chicago Sun-Times* “The Title IX Runaround.”⁷⁶⁸ In an article “Title IX Provisions Solely for Students” *The N.C.A.A. News* reported attempts by H.E.W. to enforce Title IX at Seattle University based on employment discrimination claims made by their nursing faculty. Judge M.E. Sharp noted that Title IX regulations were to protect students, not university personnel.⁷⁶⁹ In May, 1978, *The N.C.A.A. News* carried two Title IX related articles, “HEW

⁷⁶³ *Leffel v. Wisconsin*, Nos. 75-C-174, 73-c-269; 444 F. Supp. 1117; 1978 U.S. Dist. LEXIS 20061, (January 19, 1978).

⁷⁶⁴ G. Lichtenstein, “Many Women Are Displeased by Legal ‘Victory,’” *New York Times*, January 23, 1978. <http://query.nytimes.com> on (accessed August 11, 2008).

⁷⁶⁵ N.C.A.A. News, “The Other Side of Title IX,” *N.C.A.A. News*, vol. 15, no. 3, February 15, 1978: 2. <http://web1.ncaa.org> (accessed March 28, 2008).

⁷⁶⁶ N.C.A.A. News, “U.S. Judge Dismisses N.C.A.A.’s Title IX Suit,” *N.C.A.A. News*, vol. 15, no.3, February 15, 1978: 11. <http://web1.ncaa.org> (accessed March 28, 2008).

⁷⁶⁷ G. S. White, Jr., “Title IX Guidelines are Issued for Equal Sports Expenditures,” *New York Times*, February 15, 1978. Microfilm.

⁷⁶⁸ B. Olmstead, “Title IX Runaround,” As featured in *Chicago Sun-Times*, *N.C.A.A. News*, vol. 15, no 4, March 1, 1978. <http://web1.ncaa.org> (accessed March 28, 2008).

⁷⁶⁹ N.C.A.A. News, “Title IX Provisions Solely for Students,” *N.C.A.A. News*, vol. 15, no. 5, April 1, 1978: 3. <http://web1.ncaa.org> (accessed March 28, 2008).

Counsel Reaffirms the Applicability of Title IX”⁷⁷⁰ and “Title IX Testimony” featuring Bayh and Fatel exchanges during budget hearings for fiscal year 1979.⁷⁷¹

In December 1978, H.E.W. sent a draft of the latest Title IX interpretation as it intersected with intercollegiate athletics inviting general public comment before final publication. By the following year, December 1979, H.E.W. produced their final version of policy governing Title IX and intercollegiate athletics. It appeared in *44 Federal Register* and was distributed for use by schools and universities assessing their compliance with gender discrimination in athletic programming.⁷⁷²

Dissertations provided a unique opportunity for students and faculty to participate in the conversation of Title IX. One of the earliest dissertations was published in 1978 at Bowling Green University. Author Rohr used an appraisal methodology to study the Mid- American Conference’s guidelines used in the early 1970s to comply with the gender equity law.⁷⁷³ Two years later at the University of Alabama, White discussed the issues surrounding the fusion of male and female sports programs in the Southeastern Conference.⁷⁷⁴ That same year, 1980, a researcher at Georgia State University investigated physical education program changes in select states in the southeastern United States.⁷⁷⁵

⁷⁷⁰ N.C.A.A. News, “HEW Counsel Reaffirms Applicability of Title IX,” *N.C.A.A. News*, vol. 15, no. 7, May 15, 1978: 3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁷⁷¹ N.C.A.A. News, “Title IX Testimony,” *N.C.A.A. News*, vol. 15, no. 7, May 15, 1978: 3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁷⁷² U.S. Department of Health, Education and Welfare, “Title IX and Intercollegiate Athletics,” *44 Federal Register*, 71413, et. Seq. (December 11, 1979). Microfiche.

⁷⁷³ J. P. Rohr, *An Appraisal of Practices and Policies in Intercollegiate Athletics in the Mid-American Conference Essential for Compliance with Title IX of the Educational Amendments of Nineteen Seventy Two (Public Law 92-381)*, Abstract. Dissertation. Bowling Green State University, 1978. ProQuest AAT 7901452 (accessed October 15, 2009).

⁷⁷⁴ G. M. White, *A Systems Design for the Merger of Male and Female Athletics in Southeastern Conference Universities*, Abstract. Dissertation. The University of Alabama, 1980. ProQuest AAT 8104101 (accessed October 15, 2009).

⁷⁷⁵ D. R. Kelley, *Physical Education Curriculum Compliance with the 1975 Title IX Regulations in Eight Southeastern States*, Abstract. Dissertation. Georgia State University, 1980. ProQuest AAT 8015049 (accessed October 15, 2009).

Later in the summer of 1978, *The N.C.A.A. News* featured J.E. Roberts in an editorial “Equal Opportunity Not the B Team.” Roberts discussed H.E.W.’s attempt to carry out contact sports in mix-gender format.⁷⁷⁶ The article, “Women’s Survey Completed” caught the attention of N.C.A.A. membership in July.⁷⁷⁷

Margot Polivy reminded *New York Times* readers that theoretically, Title IX compliance should be complete since the adjustment period was over for institutions of higher education. Of course, this was not the reality. Polivy summarized succinctly what the three-year adjustment period did accomplish: “Indeed equal opportunity in athletics has come to symbolize for many women the larger recognition that is both right and rewarding to compete and excel. Time also clarified the real enemy of athletic equality: economics.”⁷⁷⁸ Polivy discussed the current state of affairs and business in intercollegiate athletics as the compliance deadline approached. She considered male athletes underpaid employees of their institutions of higher education and that education was not the important feature of the experience. She indicated that athletes and the athletic programs that promoted them served as economic engines for the school they represented. Polivy frankly stated “In this context, the female athlete has been regarded as a resource without commercial value.”⁷⁷⁹ Polivy criticized H.E.W. for not taking a firm stance on resolving issues they created themselves by making sweeping public statements about responsibility for Title IX compliance of revenue-generating sports and turning around and stating that consideration was being given for exempting scholarships from Title IX regulations for the money-generating sports from the parity equation.⁷⁸⁰

⁷⁷⁶ J. E. Roberts, “Equal Opportunity, Not the B Team,” *N.C.A.A. News*, vol. 15, no. 8, June 1, 1977: 2. <http://web1.ncaa.org> (accessed March 28, 2008).

⁷⁷⁷ N.C.A.A. News, “Women’s Survey Completed,” *N.C.A.A. News*, vol. 15, no. 12, July 1, 1978:1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁷⁷⁸ M. Polivy, “July 21: Deadline or Dead End?” *New York Times*, July 16, 1978: para.3. Microfilm.

⁷⁷⁹ *Ibid.*, Polivy, July 16, 1978: col. 1, para.1.

⁷⁸⁰ *Ibid.*, Polivy.

Turning again to the court docket, *Swiderski v. Board of Education, City School District of Albany*, involved a petition to allow a high school-aged girl with vision impairment the opportunity to participate in athletics. The school district opposed the request because of the liability and possibility of injury to the healthy eye. The court ruled in favor of the petitioner because of the compelling nature of the supporting affidavits from medical experts. The provisions were that Swiderski's healthy eye must be protected at all times and a parental waiver of liability must be filed to protect the school district in the event an injury to her healthy eye was sustained.⁷⁸¹ Later in September, D. Pickle offered an editorial in the *N.C.A.A. News*, "Unwelcome Domination" which revealed comments made by Joseph Califano of H.E.W, to the American Federation of Teachers.⁷⁸²

As the end of 1978 approached, Fred Davidson lashed out at what he deemed as government encroachment into the affairs of institutions of higher education in "Carrying Title IX Too Far." Davidson quoted Senator Birch Bayh, Democrat from Indiana, who supported the section of Title IX with which most coaches and The N.C.A.A. disagreed. Davidson attributed the following statement to Senator Bayh: "Its purpose (Title IX) . . . was to provide equal access for male and female students to the educational process and the extracurricular activities in a school, where there is not a unique facet such as football involved."⁷⁸³ Davidson saw the equity battle in terms of dollars and prestige his organization would lose if revenue-producing sports were not exempt from Title IX. A statement made by Davidson indicated that he wanted to consider athletics as an entirely separate entity from the university they represented. His tone

⁷⁸¹ *Swiderski v. Board of Education, City School District of Albany*, 95 Misc. 2d 931; 408 N.Y.S. 2d 744; 1978 N.Y Misc. LEXIS 2530, (September 5, 1978).

⁷⁸² *N.C.A.A. News*, "Unwelcome Domination," *N.C.A.A. News*, vol. 15, no. 12, September 15, 1978: 2. <http://web1.ncaa.org> (accessed March 28, 2008).

⁷⁸³ C. F. Davidson, "Carrying Title IX Too Far," *New York Times*, December 3, 1978: col. 1, para.5. <http://web1.ncaa.org> (accessed March 28, 2008).

revealed his attitude about funding athletic opportunities for women—whatever was left over from men’s football and basketball should be plenty. The disconnect was that women’s athletics could not and would not become commercially successful and Davidson stated: “Enormous additional expenditures would be needed for women’s athletic programs, even though those programs generate no revenue and attract low interest by spectators and even potential participants.”⁷⁸⁴ Regrettably for the female athlete, Davidson failed to see his inherent duty to build women’s athletics just like the men’s programs had been built.

The University of Georgia was one of the first institutions H.E.W. investigated, according to Davidson’s article, and a final ruling could not be released, since in his interpretation, H.E.W. did not even know what their own regulations meant. At this juncture, O.C.R. was preparing to define enforcement guidelines in Title IX more clearly.⁷⁸⁵ By the end of 1978 the article: “H.E.W. Distributes Policy Interpretation for Title IX”⁷⁸⁶ contained the script of the latest Title IX clarifying efforts by O.C.R. The public was invited to make comments. *The N.C.A.A. News* observed in an article: “Confusion Surrounds Title IX Policy Interpretation”⁷⁸⁷ after the new regulations had been released for public viewing. *New York Times* reporter, Gordon White, Jr., explained changes covered by the H.E.W. Secretary Joseph Califano’s announcement in late 1978 about the latest Title IX policy interpretation issued for public review and related specifically to athletic concerns. The interpretation met with mixed reviews from men’s and women’s groups. The proposed changes to Title IX regulations included requiring *per capita* spending on men’s and women’s sports based on proportional gender representation in the

⁷⁸⁴ *Ibid.*, Davidson, December 3, 1978.

⁷⁸⁵ *Ibid.*, Davidson.

⁷⁸⁶ N.C.A.A. News, “HEW Distributed Policy Interpretation for Title IX,” *N.C.A.A. News*, vol. 15, no. 16, December 22, 1978: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁷⁸⁷ N.C.A.A. News, “Confusion Surrounds Title IX Policy Interpretation,” *N.C.A.A. News*, vol. 15, no. 15, December 22, 1978: 7. <http://web1.ncaa.org> (accessed March 28, 2008).

student body. The new interpretation gave some regulatory relief for the level of competition and particular sport. Another facet of the re-written regulations gave measures and guidelines to help universities and colleges build their women's programs over time. Colleges and universities would have to attempt to fully assist in developing interests of potential female athletes. White included a summary of changes by Jean Peelen of H.E.W. "First," according to Peelen, "there must be equal expenditures of money per person involved in intercollegiate athletics." . . . "Second, there must be comparable standards set where there are elements that are not easily measurable." . . . "and Third, colleges must have policies and procedures for upgrading women's athletics such as showing how they will upgrade a women's club team to a varsity team."⁷⁸⁸ Peelen went on to give examples of how budget items such as scholarships, equipment and travel would be distributed proportionately under the new regulations so the equal spending on genders would not bankrupt athletics as many Title IX opponents predicted earlier.⁷⁸⁹

"Football is Hardly a 'Sugar Daddy'" written by Candace L. Hogan, responded to Davidson's (of the University of Georgia) challenges. Hogan attempted to dispel the myth that football revenues pay for as much as proponents claimed. According to information verified by The N.C.A.A., less than twenty percent of member institutions' football budgets were actually able to fund themselves. The budget drain was more pronounced at Division II and III schools. Hogan broke down the N.C.A.A. report to show what had been feared to break the athletic budgets—adding or expanding women's athletics—but upon close scrutiny, it was increased cost attributed to running the football team. Other inequities included coaching salaries and the rising cost of outfitting the football team. Hogan discussed Davidson's claims and gave information

⁷⁸⁸ G. S. White, Jr., "Title IX Guidelines are Issued for Equal Sports Expenditures," *New York Times*, December 7, 1978. Microfilm.

⁷⁸⁹ *Ibid.*, White, December 7, 1978.

about the University of Georgia's budget. Hogan also refuted the low interest in women's athletics by presenting information from the National Federation of State High School Associations about reported growth in girls' competitive sports. Participation increased from approximately 200,000 in 1972 to more than 2 million in 1978. Hogan also touched on spectator interest growth as television networks approached the A.I.A.W. for the privilege of televising national championship competitions.⁷⁹⁰

White described the state of Title IX affairs as he offered "Colleges Mystified by Title IX Fund Rules" in late 1978. The new Title IX interpretation for athletic programming seemed to have the opposite effect than Califano had hoped. It seemed that confusion surrounded the revenue-producing sports and their perceived exemption in the new Title IX interpretation. What the sports administrators heard at the press conference and what they read in the updated regulations were not in sync. Donald Canham vocally asserted that litigation would abound because interested parties would not sit by and watch athletics be dismantled and destroyed. He predicted that his school—The University of Michigan—could afford to increase the scholarships called for in the currently released gender parity standards but that many schools could not. Canham predicted this would create a situation at the next N.C.A.A. Convention calling for a ban on non-revenue sports scholarships. Father Edmund Joyce, a vice-president at Notre Dame, spoke out against the scholarship parity language in the new regulations. Joyce stated that athletic programming was at the bottom of the university's priority list and that money for the football and basketball programs at Notre Dame were funded by their own revenues. Quoting the opinion made clear by Joyce, "Therefore to state you have to spend a million dollars for women's sports because you spend a million dollars for men's football team—of which most

⁷⁹⁰ C. L. Hogan, "Football is Hardly a 'Sugar Daddy,'" *New York Times*, December 19, 1978. <http://www.query.nytimes.com> (accessed August 11, 2008).

is for grants—is asinine. It is irrational.”⁷⁹¹ Administrators Canham and Joyce, quoted in this article, agreed in fact that the new regulations were confusing. Charlotte West of Southern Illinois University and President of the A.I.A.W. went on record asking in frustration “But what does ‘the nature of the sport’ mean? It will take them [referring to H.E.W.] five more years to define that.”⁷⁹² Tom Hansen, N.C.A.A. executive, did an about-face after the Califano press conference up until the writing of this article about how football would be impacted. Both the A.I.A.W. and the N.C.A.A. were expected to make suggestions during the review period.⁷⁹³

The New York Times continued to follow the development of public interest in Title IX’s latest interpretation by offering a collection of letters “Title IX Supporters Dissect the Major Sports Syndrome.” The letters were in response to recent Title IX-related articles. Two letters called for making athletic competition in higher revenue-generating sports separate from the university; two regarded the sports in question as enjoying too much attention from society and, therefore, devaluing women; and another considered that cutting back on expenditures in revenue-generating sports meant that one would cut back on quality and caliber of athlete or level of competitiveness. The last letter attended to the needs of the forgotten non-revenue male sports which were always in fear of losing budgetary support. These voices rounded out many issues on the minds of coaches, athletes and the general public as Title IX continued to come-of-age.⁷⁹⁴ In 1979, a law review appeared discussing the question of whether under Title IX there is an implied private right to sue when federally funded programs are involved in gender related discrimination.⁷⁹⁵

⁷⁹¹ G. S. White, Jr., “Colleges Mystified by Title IX Fund Rules,” *New York Times*, December 15, 1978: 27. Microfilm.

⁷⁹² *Ibid.*, White, December 15, 1978.

⁷⁹³ *Ibid.*, White, December 15, 1978.

⁷⁹⁴ *New York Times*, “Title IX Supporters Dissect the Major Sports Syndrome,” *New York Times*, December 31, 1978. <http://www.querynytimes.com> (accessed August 11, 2008).

⁷⁹⁵ University of Cincinnati Law Review, “Implied Right to Sue,” 48 *U. Cin. L Rev.* 1047-57.

“N.C.A.A. to Maintain Division IA Makeup” dealt with other issues swirling around in the ranks of convention goers in 1979. The N.C.A.A. expressed concern about newly released Title IX regulations. Most members opposed the spending parity required by the policy interpretation released by H.E.W. At this time the N.C.A.A. convention membership decided they needed to invoke congressional support as they rebutted the Title IX updates. In January 1979, White pointed out to *New York Times* readers that on other matters, The N.C.A.A. had provoked House members when it voted to not reform certain enforcement and penalty regulations policing its member athletic programs.⁷⁹⁶ In February 1979, *The N.C.A.A. News* turned its attention to “Title IX Discussion [was] Focus of Convention” as the delegates approved a lengthy resolution acknowledging several points of contention with H.E.W. and resolving to work against the regulations on five expressed points.⁷⁹⁷

To further the conversation: “Flynn Denies Existence of Discrimination” featured a letter sent from N.C.A.A. President William J. Flynn to H.E.W. on behalf of the Association. The letter was filled with what were considered harmful effects of Title IX’s upcoming interpretation and unlawful requirements.⁷⁹⁸ Also in the March issue, the editorial writer considered the quota system H.E.W. created with the latest revision of Title IX regulations. The editorial included one of the reasons women’s athletics had grown so slowly up until the 1970s: “The historical fact of the matter, however, is that there has not been discrimination in intercollegiate athletics against women by either men or their educational institutions. History clearly shows that women’s athletics have developed cautiously because the women’s leadership in physical

⁷⁹⁶ G. S. White, Jr., “N.C.A.A. To Maintain Division IA Makeup,” *New York Times*, January 1979. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁷⁹⁷ N.C.A.A. News, “Title IX Discussion Focus of Convention,” *N.C.A.A. News*, vol. 15, no. 2, February 9, 1979: 1,4. <http://web1.ncaa.org> (accessed March 28, 2008).

⁷⁹⁸ N.C.A.A. News, “Flynn Denies Existence of Discrimination,” *N.C.A.A. News*, vol. 15, no. 2, March 8, 1979: 1,5. <http://web1.ncaa.org> (accessed March 28, 2008).

education on the campus and in their national organizations actively discouraged competitive athletics for the greater part of this century.”⁷⁹⁹ In “Association Files Title IX Comments” the writer listed the factual premise that H.E.W. and The N.C.A.A. do not agree, discussed the proposed compliance tests, their legal objection to the revised regulations and their recommendations for alternative action.⁸⁰⁰

Gene Maeroff reported that Grove City College refused to follow the H.E.W. mandate related to Title IX regarding compliance assurance. Maeroff revealed that Grove City had been informed that aid coming to students from federal sources constituted aid to the college and that continued refusal to sign the compliance form could jeopardize aid to their students. Ironically, there were no Title IX complaints or any evidence they were not complying with the spirit of the law. According to Grove City College leader, Charles S. MacKenzie, “We believe in women’s rights, but we support those rights voluntarily, as a matter of Christian conscience,” . . . MacKenzie refused “To sign a compliance form to accept H.E.W. jurisdiction over a college that doesn’t take a penny of Government money.”⁸⁰¹ Grove City, according to information reported by Maeroff, had lodged a legal complaint against H.E.W. charging that they had over-stepped their administrative authority. A judicial ruling in September 1978 deemed aid coming in through the students was government assistance and H.E.W. could cease funding based on negligence in executing the proper form. Grove City College (Pennsylvania) joined Hillsdale (Michigan) as institutions of higher learning refusing to comply in written form with Title IX. The students of both institutions used Basic Educational Opportunity Grants (B.E.O.G.). The

⁷⁹⁹ N.C.A.A. News, “Living with HEW’s Quota System,” *N.C.A.A. News*, vol. 15, no. 3, March 8, 1979: 2, col. 2, para.2. <http://web1.ncaa.org> (accessed March 28, 2008).

⁸⁰⁰ N.C.A.A. News, “Association Files Title IX Comments,” *N.C.A.A. News*, vol. 16, no. 3, March 8, 1979:4,7. <http://web1.ncaa.org> (accessed March 28, 2008).

⁸⁰¹ G. I. Maeroff, “Education: College Challenges Federal Intervention,” April 10, 1979: para.4. <http://query.nytimes.com> on (accessed August 10, 2008).

crux of the case hinged on whether institutions could remain independent if they received federal funding through student aid. Maeroff reminded readers of Bob Jones University's refusal to sign a similar compliance form for Title VI. The court recognized payment to students receiving the G.I. Bill as funding, and the U.S. government moved to stop payments.⁸⁰²

On the women's front, *The New York Times* reported: "A.I.A.W. Plans Protest to Protect Title IX Gains" contained the announcement that A.I.A.W. membership and representatives planned to gather at The White House for a demonstration showing support for Title IX. The organization members believed that recent attempts to weaken Title IX had to be countered.⁸⁰³ Plans for mobilizing women's advocacy groups at The White House for a rally that would end at Capitol Hill were described as having the distinct purpose of supporting Title IX regulations. While on the men's side, a coalition of 300 colleges, universities and The N.C.A.A. were actively lobbying for athletics to be totally removed or partially exempt in light of the revenue they produced. The coalition hired a public relations firm to solidify their message. Ed DeHart, a spokesman for the coalition explained that "The coalition is strongly supportive of Title IX. . . the basic problem with the regulations proposed by H.E.W. is that they ignore the economics of universities and colleges. We are seeking a solution to the problem. We are hoping to have the proposed policy interpretation changed so schools can live with it."⁸⁰⁴

In an article appearing in *The Educational Record*, Gerber noted "The failure of colleges and universities to regulate and equalize their intercollegiate sports programs caused control to be relegated to 'others'. Institutions of higher education now find that Congress, The N.C.A.A. and The A.I.A.W. have acted and that the courts have consistently upheld these external actions

⁸⁰² *Ibid.*, Maeroff, 1979.

⁸⁰³ New York Times, "A.I.A.W. Plans Protest to Protect Title IX Gains," *New York Times*, April 15, 1979: sec. 5, 6. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁸⁰⁴ New York Times, "Rally Slated Today Supporting Title IX," *New York Times*, April 22, 1979: col. 2, para.3. Microfilm.

when challenged by the institution or athletes themselves.”⁸⁰⁵ Gerber advocated the basic mandate with the standard Title IX mantra familiar to most. She declared, “Title IX applies to all educational institutions in the country and all programs within the institutions. The federal financial assistance specified may be in any form such as construction loans, guaranteed student loans and grants, veteran’s tuition grants or program grants of any kind. Even if the athletic program is itself independent, i.e., funded only by gate receipts or contributions, the institution must comply with Title IX in all respects, including athletics.”⁸⁰⁶ Gerber updated readers on the most recent policy interpretation related to Title IX. The most significant changes were outlined as per capita expenditure formulas and emerging sports, developing the interest women had in sports, increasing their numbers and increasing the prominence of the level of competition. Gerber revealed Title IX victory in recent court decision, *Cannon v. University of Chicago U.S. 99 S. Ct. 1946 (1979)* [a case to be discussed more fully, later in this chapter]. Gerber stated: “In Cannon, The Supreme Court, held that individuals have a private right to bring suit under Title IX. Essentially that decision means that a person can sue a college or university for failing to provide an equal opportunity to participate in sports. Such suits already have been filed against such institutions as University of Minnesota, University of Alaska, and Michigan State University. Colleges and universities can expect a flood of lawsuits in the wake of the Cannon decision.”⁸⁰⁷ Gerber asserted that “Congress, the courts, and H.E.W. have resisted efforts by the N.C.A.A and its member organizations to retrench.”⁸⁰⁸ John Tower, according to Gerber, attempted to limit the scope of Title IX when he introduced an amendment that would in effect exclude revenue generating activities from Title IX. Congress conveyed support for Title IX by

⁸⁰⁵ E. W. Gerber, “The Legal Basis for the Regulation of Intercollegiate Sport,” *Educational Record* 60, (1979): 468.

⁸⁰⁶ *Ibid.*, Gerber, 469.

⁸⁰⁷ *Ibid.*, Gerber, 473.

⁸⁰⁸ *Ibid.*, Gerber.

rejecting the Tower Amendment and allowing H.E.W. to publish their inclusion of athletics. Gerber enlightened readers about N.C.A.A.'s lawsuit filed against the U.S. Department of Health, Education and Welfare. The N.C.A.A. claimed that H.E.W. regulations lacked jurisdiction and that college and university sports programs did not directly collect federal funds, exempting them from Title IX. The suit was eventually dismissed because The N.C.A.A. could not bring suit on behalf of its member institutions. Gerber briefly mentioned lobbying efforts by the consortium with 300 members of institutions of higher learning intent on lobbying Congress to weaken Title IX.⁸⁰⁹

In a *Phi Delta Kappan* journal article, Thurston's read on Title IX was that voluntary compliance was failing as paper work would give way to judicial review and enforcement. Thurston offered examples of court rulings which required districts to choose a plan of action to remedy past discrimination. Thurston named schools in districts where the contact sport rule had been declared unconstitutional by state law. Thurston then moved to discuss Title IX provisions protecting employees. Thurston's comments pre-dated *Cannon v. University of Chicago's* private right to bring suit provisions under Title IX. Thurston closed by stating that H.E.W. and O.C.R. had come under intense scrutiny for not enforcing policy. Thurston included in his footnote number 22 that "An HEW administrative judge recently ordered federal funds cut off from Grove City (Pennsylvania) College until it provides the appropriate Title IX assurances as cited in *School Law News*, September 19, 1978."⁸¹⁰

An entry for Title IX to be tested in the judicial arena came in 1979. The Supreme Court made a decision on the case involving *Cannon v. University of Chicago*. The case, first presented in 1976, examined an individual's private right to sue under Title IX of the Education

⁸⁰⁹ *Ibid.*, Gerber.

⁸¹⁰ P. Thurston, "Judicial Dismemberment of Title IX," *Phi Delta Kappan* 60 (April 1979): 594-596.

Amendments of 1972. *Cannon v. University of Chicago* was one of the first significant legal decisions related to Title IX. Even though it involved admission to medical school rather than participation in intercollegiate athletics, the case paved the way for litigation based on gender discrimination when applied to athletics.⁸¹¹

During 1979, a law review appeared in the *University of Cincinnati Law Review* discussing the question of whether under Title IX there was an implied private right to sue when federally funded programs were involved in gender-related discrimination.⁸¹² In the same year, Title IX discussions increased to include Office for Civil Rights, political intervention and intercollegiate athletics,⁸¹³ as the reviewer asked if the Department of Health, Education and Welfare (H.E.W) had become more interested in the push for gender equality in athletics.⁸¹⁴

The Associated Press (AP) reported in May 1979 that the coalition of colleges and universities proposed to H.E.W. a plan that would give decision making authority about expenditures in athletics to individual institutions, thwarting federal oversight completely.⁸¹⁵ Later in May, *The N.C.A.A. News* piqued members' interest in "Court Questions HEW Authority Regarding Employment"⁸¹⁶ and reported that the National Association of College and University Business Officers (N.A.C.U.B.O.) asked H.E.W. through organizational resolutions to review Title IX Policy Interpretation issued earlier in the year.⁸¹⁷ In July, the *N.C.A.A. News* commented

⁸¹¹ *Cannon v. University of Chicago*, No. 77-926; 441 U.S. 677; 99 S. Ct. 1946; 60 L. Ed. 2d 560; 1979 U.S. LEXIS 36; 19 Empl. Prac. Dec. (CCH) P9202 January 9, 1979, Argued; May 14, 1979, Decided.

⁸¹² *University of Cincinnati Law Review*, "Implied Right to Sue," 48 *U. Cin. L. Rev.* 1979:1047-57.

⁸¹³ F. Farmer, "Selling the Adams Criteria: The Response of O.C.R. to Political Intervention in *Adams v. Califano* (430 F. Supp. 118)," 22 *How. L. J.* 1979:417-425.

⁸¹⁴ J. E. Jensen, "Title IX and Intercollegiate Athletics: HEW Gets Serious about Equality in Sports?" *New England Law Journal*. 15 (3), 1979:573-596.

⁸¹⁵ Associated Press, "Alternate Plan is Offered to Comply with Title IX," *New York Times*, May 24, 1979. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁸¹⁶ N.C.A.A. News, "Court Questions HEW Authority," *N.C.A.A. News*, vol. 16, no. 6, May 31, 1979: 3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁸¹⁷ N.C.A.A. News, "HEW Asked to Reexamine Interpretation," *N.C.A.A. News*, vol. 16, no. 6, May 31, 1979: 6. <http://web1.ncaa.org> (accessed March 28, 2008).

that “Duke President Seeks Support for Title IX Counterproposal”⁸¹⁸ and then included the proposal for preview in “President Sanford’s Counterproposal for Title IX” in response to the latest round of interpretive information from H.E.W.⁸¹⁹ In early fall of 1979 “Appeals Court Rules Against HEW Employment Cases”⁸²⁰ was watched carefully by *The N.C.A.A. News* as they reported “Ashbrook Questions HEW Powers.” Representative J.M. Ashbrook noted a discrepancy between wording of the law and H.E.W.’s interpretive use.⁸²¹ In September 1979, *The N.C.A.A. News* featured the following comments in “CRC Reverses Title IX Position?” As noted, the CRC was involved in making recommendations as seen in this passage from the article: “The Civil Rights Commission, a federal agency with no legislative or enforcement powers, has reversed a position adopted earlier this year and recommended that colleges and universities provide immediate equal *per capita* funding for all men’s and women’s sports, including football.”⁸²²

Nyquist opened an article in *The Educational Record* with his point of view on the philosophical issues plaguing university athletics identified as: “To win at any cost . . . to make legal accommodations for women in the interest of equity . . . to finance athletics in spite of declining resources and rising costs.”⁸²³ Contemplating the morality of designing an athletic program offering equality and justice, Nyquist wished to open athletics to include all who wished to participate. The public was briefed by Nyquist with examples of dishonorable conduct among

⁸¹⁸ N.C.A.A. News, “Duke President Seeks Support for Title IX Counterproposal,” *N.C.A.A. News*, vol. 16, no. 8, July 25, 1979: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁸¹⁹ N.C.A.A. News, “President Sanford’s Counterproposal for Title IX,” *N.C.A.A. News*, vol. 16, no. 8, July 25, 1979: 3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁸²⁰ N.C.A.A. News, “Appeals Court Rules Against HEW Employment Cases,” *N.C.A.A. News*, vol. 16, no. 10, September 7, 1979: 6. <http://web1.ncaa.org> (accessed March 28, 2008).

⁸²¹ N.C.A.A. News, “Ashbrook Questions HEW Powers,” *N.C.A.A. News*, vol. 16, no. 10, September 7, 1979: 6. <http://web1.ncaa.org> (accessed March 28, 2008).

⁸²² N.C.A.A. News, “CRC Reverses Title IX Position,” *N.C.A.A. News*, vol. 16, no. 11, September 30, 1979: 3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁸²³ E. B. Nyquist, “Win, Women and Money: Collegiate Athletics Today and Tomorrow,” *Educational Record* 60 (Fall 1979): 374.

athletic coaches, fans, purveyors of television and the coalition of 300 higher learning institutions hiring a public relations company to influence congressional leaders and employees of the Department of Health, Education and Welfare to keep money-making sports out of the reach of Title IX. Nyquist also mentioned providing universities a plan to help them implement their own individual Title IX compliance schemes. He reviewed the Commission on Collegiate Athletics areas of interest and problem-solving opportunities. Thirteen areas were listed among which was listed the lack of equality for women in athletics. Nyquist revisited the Commission's lofty and ambitious agenda to find that after three years not much was accomplished due to low budget, low interest and lack of commitment to real change. Nyquist predicted greater participation in sporting activities would be driven by more leisure time, more access to recreational places and more medical information about wellness being available to sport-minded citizens. Nyquist pointed out that as the costs of athletic competition continued to grow, stakeholders, constituents and communities would decide in lean financial times about whether money should develop athletics or academic pursuits. Title IX claimed Nyquist's attention as he divulged growth in female athletic participation statistics. Many factors, according to Nyquist, converged as interest and ability drove women's sports participation along with court rulings that furthered the rights to access. "Women," according to Nyquist, "have already shown the N.C.A.A., athletic directors, presidents, and legislators that they are more powerful legally. Women have the right to participate, to complete, to achieve, to excel."⁸²⁴

New York Times reporter, Steve Cady expressed views on another reality faced by female coaches in "Equal Coaching for Equal Pay." Cady interviewed Peggy Quinn, a former physical education teacher and high school sports coach. Miss Quinn was fired from her coaching duties because she expressed, when directly asked by her supervisor, her displeasure at being paid less

⁸²⁴ *Ibid.*, Nyquist, 387.

than male coaches for doing basically the same thing, coaching high school sports. Quinn filed suit against the school board on behalf of herself and the girls she had coached. Quinn cited discriminatory practices existing at the high school where she had coached. Quinn came from a sports-minded family; her father had served as an athletic director and coach of multiple sports and her brother had been an active athlete in college. Quinn was aware of the importance sports played for both male and female participants.⁸²⁵

In the *Journal of Physical Education and Recreation*, Bain reported results of a survey of students preparing to teach physical education regarding attitudes held toward Title IX and changes occurring and required in their profession. Findings indicated that male participants did not consider their female counterparts competent to actually fulfill the duties of athletic administrators/coaches. Bain identified the differences in the apprenticeship system of male athletics and the historic exclusion of females from these opportunities. Bain entertained that programs preparing women athletic administrators required a change to create these opportunities for females. Bain discussed other concerns future physical education teachers had to face when planning and implementing programming for co-educational classes.⁸²⁶

The Associated Press covered incoming H.E.W. Secretary Patricia Roberts Harris' announcement in December 1979 that new Title IX interpretation of regulations would go into effect. Harris stated that scholarship money had to be the same in proportion to participation based on gender but supportive expenditures, scheduling, coaching and facilities were not expected to follow the per capita spending formula.⁸²⁷ *New York Times* writer, White followed

⁸²⁵ S. Cady, "Equal Coaching for Equal Pay," *New York Times*, October 27, 1979.
<http://www.query.nytimes.com> (accessed August 11, 2008).

⁸²⁶ L. L. Bain, "Implementing Title IX: Concerns of Undergraduate Physical Education Majors," *Journal of Physical Education and Recreation* 50 (November-December 1979): 77.

⁸²⁷ *New York Times*, "AP Shift Seen on Title IX Fund Rules," *New York Times*, December 4, 1979.
<http://www.query.nytimes.com> (accessed August 11, 2008).

with a report that women's sports advocates were encouraged by the new regulations in "Mrs. Harris Strengthens Title IX Policies." White noted that colleges, universities and The N.C.A.A. were not encouraged. The proportionality of scholarship dollars concerned the groups who were not happy with the latest set of regulations offered by Califano and his replacement, Mrs. Harris. Harris mentioned the creation of the Department of Education and where the new regulations would be enforced under The Office For Civil Rights' jurisdiction. Harris identified schools that had Title IX complaints lodged against them. The University of Bridgeport, Connecticut, at the time this article was published, had the most complaints, sixty-two, made against it, according to H.E.W. records. Other institutions of higher education listed were "Cornell, Syracuse, Fordham, Georgia, Vanderbilt, Georgia Tech, Michigan State, Purdue, Texas Tech, Missouri, Kansas, Iowa, Washington, Arizona, and Washington State."⁸²⁸

The N.C.A.A. News updated its readership on two cases on appeal in both Grove City College and Hillsdale College, both of which refused to sign Title IX forms required by H.E.W. in "U.S. Judge Hears Grove City Case." The two institutions were in jeopardy of losing federal funding for their students because they had not complied by filing paperwork required by H.E.W. for Title IX compliance assurance.⁸²⁹

In December 1978, H.E.W. sent a new draft of Title IX interpretation as it intersected with intercollegiate athletics inviting general comment before final publication. By December 1979, H.E.W. produced their final version of policies governing Title IX and Intercollegiate Athletics. As announced by Harris the Title IX policies appeared in *44 Federal Register* and were distributed for use by schools and universities for assessing their compliance with gender

⁸²⁸ G. S. White, Jr., "Mrs. Harris Strengthens Title IX Policies," *New York Times*, December 6, 1979: col. 4, para.3. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁸²⁹ N.C.A.A. News, "U.S. Judge Hears Grove City Case," *N.C.A.A. News*, vol. 15, no. 11, September 30, 1979: 2. <http://web1.ncaa.org> (accessed March 28, 2008).

discrimination in athletic programming.⁸³⁰ While housed in the Department of Health, Education and Welfare, The Office for Civil Rights issued “A Policy Interpretation: Title IX and Intercollegiate Athletics” in response to complaints it received about institutions of higher learning and their failure to comply with Title IX regulations. The aforementioned 1979 regulatory interpretation included clarification of responsibility on scholarship distribution, programming of sports, expenditures on supplies and interest tracking in intercollegiate athletics.⁸³¹

New York Times correspondent, Steve Cady offered Notre Dame officials an outlet to voice their attitudes toward recent Title IX updates when he featured them in an article “Notre Dame Grapples with Athletic Equity.” Cady offered a rounded discussion about what the new Title IX scholarship rules meant to the male and female athletes known as the Fighting Irish. When this article was written, women athletes and males who competed in what were known as the minor sports did not receive scholarships. The scholarship issues brought about by Title IX’s newest regulations were discussed by coaches, students and the athletic director. From a player’s point of view, the change should be gradual, but there should be change. Male coaches saw revenue generation of a sport playing the largest role in deciding how to distribute funds. Female coaches wanted to avoid what they considered pressures faced by male programming, and they also contributed the statement, “no one wants to see the male sports hurt.”⁸³²

By mid-December, 1979, *The N.C.A.A. News* featured an article: “Government Issues Final Title IX Interpretation,” listing three important aspects or parts from the interpretation. In

⁸³⁰ U.S. Department of Health, Education and Welfare, “Title IX and Intercollegiate Athletics,” *44 Federal Register*, 71413, et seq. (December 11, 1979). Microfiche.

⁸³¹ Office of Secretary, Office for Civil Rights, “Title IX of the Education Amendments of 1972; A Policy Interpretation; Title IX and Intercollegiate Athletics,” *44 Federal Register*, no. 239, December 11, 1979. Microfiche.

⁸³² S. Cady, “Notre Dame Grapples with Athletic Equity,” *New York Times*, December 14, 1979. <http://www.query.nytimes.com> (accessed August 11, 2008).

the article, H.E.W. leader, Harris explained: “Part A: Financial proportionality is the principal test of compliance in the athletic scholarship area. ‘In other words,’ says HEW Secretary Harris, ‘if 70 percent of a school’s athletes are male, they are entitled to 70 percent of the financial aid dollars their school makes available.’ Part B: An equivalency test has been established for 11 aspects of athletic programs other than financial aid. Among those 11 items are travel allowances, scheduling, compensation of coaches and the availability of equipment. Part C: HEW will determine whether an institution is accommodating the athletic interests of both its male and female athletes. Specific guidelines have been established to determine an institution’s compliance.”⁸³³ The eleven aspects include the items known as the “laundry list” which dealt with outfitting the team, arranging for travel and meals while on the road, organizing coaching and tutoring, salaries for the coaches and tutors, dressing and locker room facilities for competition and practice, services for health care and conditioning, room and board, media coverage, recruiting participants for sports and providing leadership and clerical support for the sports.⁸³⁴ Pickle’s editorial, included in *The N.C.A.A. News*, informed the membership that the “New Era Beginning for Title IX” included training of enforcement agents and his hope was that efforts to enforce the new regulations could be equally applied throughout the ten regional offices.⁸³⁵

On a more positive note, Carrie Seidman wrote a piece to describe the recognition and respect women athletes were beginning to enjoy. Seidman featured the women’s college basketball star, Nancy Leiberman. Leiberman played for Old Dominion in Virginia. Old Dominion’s women’s basketball program was one of the few programs producing revenue. Old

⁸³³ N.C.A.A. News, “Government Issues Final Title IX Interpretation,” *N.C.A.A. News*, vol. 15, no. 15, December 15, 1979: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁸³⁴ *Ibid.*, “Government Issues Final Title IX Interpretation,” December 15, 1979.

⁸³⁵ D. Pickle, “New Era Beginning for Title IX,” *N.C.A.A. News*, vol. 15, no. 16, December 15, 1979: 2. <http://web1.ncaa.org> (accessed March 28, 2008).

Dominion officials, according to Seidman, planned for the growth and realized in five years the success they sought. Public relations efforts by the team members and the organization helped fuel this success. The fact that they went from free admission to charging for admission and selling 800 season tickets helped them realize their revenue-generating potential. As an aside, Seidman included a chart representing participation growth at the high school-level for female athletes in the various sports. In the early 70s girl athletes' participation was reported at 294,000 and by 1979 it had blossomed to 1.85 million.⁸³⁶

The decade ended with Title IX policy interpretation being approved and sent out in the *Federal Register* for education leadership to become aware of the latest requirements and move to have their schools to become compliant. Training for future enforcement was announced and the world of athletics would move into that Brave New World of Title IX compliance at the end of the decade that saw Title IX become law, be reviewed and revised many times. The decade of the 1980s would see an increase in litigation to force institutions of higher learning to meet the standards of gender equity policy found in Title IX.

⁸³⁶ C. Seidman, "Women Athletes Gained Recognition and Also Respect," *New York Times*, December 30, 1979. <http://www.query.nytimes.com> (accessed August 11, 2008).

CHAPTER V

THE STRUGGLE TO MAKE TITLE IX WORK

1980 – 1990

Jimmy Carter was president at the beginning of the 1980s. The United States was at odds with the Soviet Union for their on-going activities in Afghanistan. In February 1980 the Winter Olympic Competition was held in Lake Placid, New York. The American delegation for the Summer Olympics was withdrawn from the Summer Games because of Russia's participation in Afghanistan. In May 1980, the volcano at Mt. St. Helens erupted and by the end of the year, President Jimmy Carter was defeated by Ronald Reagan.⁸³⁷ In the 1980s Title IX entered a new decade of strength followed by judicial attempts to weaken it and Congressional efforts to re-fortify it.

The 1980s opened with new discussion on the Title IX front. The U.S. Department of Education (D.E.) was established in 1980 and Title IX enforcement management was assigned to its Office for Civil Rights, creating the change in codification in the *Code of Federal Regulations*, 34 C.F.R. Part 106.⁸³⁸ By July, 1980, O.C.R. issued an "Interim Title IX Investigator's Manual" governing Title IX compliance for use in their regional offices.⁸³⁹

⁸³⁷ America's Best History, "1980's The Reagan Revolution," America's Best History U. S. Timeline. <http://americasbesthistory.com/abhtimeline1980.html> (accessed December 9, 2009).

⁸³⁸ U.S. Department of Education Office for Civil Rights, "34 C.F.R., Part 106," *45 Federal Register*, 30,955, et. Seq. (May 9, 1980).

⁸³⁹ U.S. Department of Education, Office for Civil Rights, "Interim Title IX Investigator's Manual," ERIC ED (1980). Microfiche.

As a feature in *The New York Times*, writer Jane Gross profiled Donna Lopiano, University of Texas women's athletic director. Lopiano was on the eve of being elected The Association of Intercollegiate Athletics for Women's (A.I.A.W.) president. Lopiano praised the University of Texas for its generous support of women's athletics. She attributed the success to women's and men's programs co-existing rather than being merged into one athletic entity which allowed for a more robust development of the women's program at her university. Lopiano told Gross that she was denied opportunity to participate in organized sports when she was growing up. By age 15, she did join a women's softball team which culminated in ten years of participation. As an amateur athlete in a variety of team sports, Lopiano remarked on how that influenced her decision to become an athletic director. Lopiano predicted that women's athletic competitive improvement needed a decade more of development to allow girls at earlier ages to gain athletic proficiency through coaching and training.

Lopiano also felt strongly about the economic influence women's programming would have on men's lavish recruiting and outfitting team budgets. According to Lopiano, "The development of women's athletics will provide a situation where men have no choice but to reduce men's costs. . . . We never set out to reform men's athletics. We just wanted to do our own thing. But money alone will dictate that men can't continue in the present mode."⁸⁴⁰

C.A. Moore offered predictions in the *Journal of Physical Education and Recreation* on what he thought the future held for physical education and athletics. He touched on coaching staffs changing from full-time to adjunct and men coaching both women's and men's teams, thus reducing the opportunity for females to get coaching jobs. He predicted zero-based budgeting and outside governance of budgetary matters to be part of the future in athletic administration.

⁸⁴⁰ J. Gross, "Miss Lopiano: A Leader in Women's Sports," *New York Times*, January 8, 1980. <http://www.query.nytimes.com> on (accessed August 11, 2008).

Moore continued as he visualized more specification with the field and maintained that minor sports would be required to become more self-sufficient.⁸⁴¹

Gross announced that a “Woman’s Group Set to Combat N.C.A.A.” as The National Collegiate Athletic Association (N.C.A.A.) was on task to create women’s championship competitions in Divisions II and III. The scheduling of championships—slated to begin fall of 1981—alarmed and unsettled the members and leadership of The A.I.A.W. Margot Polivy, legal representative for The A.I.A.W., promoted the possibility of suing The N.C.A.A. for anti-trust. Other A.I.A.W. leadership members looked to the Department of Health, Education and Welfare (H.E.W.) to suppress the N.C.A.A. events. H.E.W. remained silent on the issue. The new N.C.A.A. women’s championship opportunities gave universities a choice of participation between The N.C.A.A. and The A.I.A.W. A.I.A.W. leadership feared that many schools would choose The N.C.A.A. because it was traditionally a no-cost way to run collegiate athletic championships. University members of The A.I.A.W. incurred costs of running their own championships. Gross enumerated several strategic suggestions offered by A.I.A.W. members which ranged from boycotting N.C.A.A. women’s championships, to writing letters to Congressional members, to raising funds from the private sector to subsidize A.I.A.W. competitions, to changing recruiting guidelines to remain less like The N.C.A.A.’s. They considered lobbying university executives with a civil rights focus, upgrading A.I.A.W. championships for Division II and II and contemplated a letter-writing campaign to the sponsors advertising at N.C.A.A. events.⁸⁴²

⁸⁴¹ C.A. Moore, “Future Trends and Issues in Physical Education and Athletics,” *Journal of Physical Education and Recreation* 51 (January 1980): 20-21.

⁸⁴² J. Gross, “Women’s Group Set to Combat N.C.A.A.,” *New York Times*, January 9, 1980. <http://www.query.nytimes.com> on (accessed August 11, 2008).

When the 1980 Convention issue of *The N.C.A.A. News* was published constituents were notified by the story line: “Attorneys to Analyze Title IX Interpretation” and announced that at their round table meeting there would be legal counsel to make presentations among other speakers invited to discuss the policy interpretation released by H.E.W. in late 1979.⁸⁴³ To continue educating members about H.E.W.’s interpretation, “Title IX: Questions and Answers on one of Intercollegiate Athletics’ Most Pressing Issues” first appeared in February 1980. This first segment of a three-part series addressed questions and explained the background of what Title IX was, who was responsible for imposing the new legal standards and whether the 1979 Interpretation was legally binding. Questions about government aid in the form of scholarships were answered as were those defining the word “participant” as it applied to intercollegiate sports.⁸⁴⁴ In late February, 1980, the second installment “Title IX: Part B of the HEW Policy Interpretation” was featured. Questions in this section included differences between the original Title IX regulations and new items that appeared in the 1979 Interpretation. An explanation of the Title IX “laundry list”—benefits and opportunities—which enumerated areas of everyday expense in supplies and facilities, scheduling, room and board, tutoring, coaching, travel and public relations where equal spending was considered an important factor in compliance was discussed. Additional comment about two new items appearing in the interpretation dealing with recruiting and support staffing was made and the terms “equivalent” and “identical” were discussed in light of what they meant in the Title IX environment. The question and answer segment continued as discussion ensued regarding compliance and how that would be

⁸⁴³ N.C.A.A. News, “Attorneys to Analyze Title IX Interpretation,” *N.C.A.A. News*, vol. 16, no. 17, 1980 Convention Issue. <http://web1.ncaa.org> (accessed March 28, 2008).

⁸⁴⁴ N.C.A.A. News, “Title IX Questions and Answers on One of Intercollegiate Athletics’ Most Pressing Issues,” *N.C.A.A. News*, vol. 17, no. 3, February 15, 1980: 1,5. <http://web1.ncaa.org> (accessed March 28, 2008).

determined based on the H.E.W. criteria⁸⁴⁵ The final question and answer segment dedicated to the H.E.W. Title IX interpretation of 1979 appeared in March, 1980. It spoke to accommodating interests and abilities of both genders and when to provide separate teams or allow mixed-gender teams.⁸⁴⁶ Also appearing in the mid-March issue was a letter to “Officers Clarify[ing] Women’s Athletic Issues” which was a letter sent to all officers of their member institutions in an attempt to rebut information provided by The A.I.A.W. after their charge of anti-trust activities against The N.C.A.A. was made. The N.C.A.A. wanted to go on record and clarify what it considered erroneous information.⁸⁴⁷

Maeroff of *The New York Times* commented on “College Wins Tentative Victory in Fight Against Federal Regulation” relating to *Grove City College v. Bell*. Maeroff disclosed findings from the federal district judge who appeared to agree with the federal government in part and the students of Grove City College in part. Maeroff included a quote from Judge Simmons, “The Court is holding that the Basic Educational Opportunity Grant Program in which Grove City College students participate is Federal financial assistance to the said recipient college which brings it within the provision of Title IX.”⁸⁴⁸ The crux of the matter was that although the college must abide by Title IX, student aid could not be arbitrarily cut off without due process.⁸⁴⁹

New York Times reporter, Hogan, composed a humorous article using oil as the metaphor for women’s athletic championships and the growing interest The N.C.A.A. had shown in sponsoring the women’s events. Hogan indicated that once media became interested in featuring

⁸⁴⁵ N.C.A.A. News, “Title IX: Part B of HEW Policy Interpretation,” *N.C.A.A. News*, vol. 17, no. 3, February 29, 1980: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁸⁴⁶ N.C.A.A. News, “Title IX: Part C of HEW Policy Interpretation,” *N.C.A.A. News*, vol. 17, no. 4, March 15, 1980: 1,4. <http://web1.ncaa.org> (accessed March 28, 2008).

⁸⁴⁷ N.C.A.A. News, “Officers Clarify Women’s Athletic Issues,” *N.C.A.A. News*, vol. 17, no. 4, March 15, 1980: 3,7. <http://web1.ncaa.org> (accessed March 28, 2008).

⁸⁴⁸ G. I. Maeroff, “College Wins Tentative Victory in Fight Against Federal Regulation,” March 18, 1980: col. 3, para.1. <http://query.nytimes.com> (accessed August 10, 2008).

⁸⁴⁹ *Ibid.*, Maeroff, March 18, 1980.

televised women's athletic competitions the N.C.A.A. followed suit, realizing a potential revenue stream.⁸⁵⁰

In "Appeals Court Ruling Favors NCAA" membership was updated on *N.C.A.A. v. Califano* as the editor reported that the challenge brought by The N.C.A.A. on behalf of its member institutions was reversed at the circuit court level. This reversal allowed The N.C.A.A. to sue H.E.W. on behalf of its membership over the Title IX regulations and the constitutionality of them. At this juncture the "The Circuit Court noted, 'Without doubt (should the facts of the NCAA's complaint be true) the members of the NCAA have sustained the injury in fact that the Constitution demands of a complaining litigant. Compulsion by unwanted and unlawful government edict is injury per se. Certainly the cost of obeying the regulations constitutes injury. . . . In this case the member colleges are prevented from developing their intercollegiate sports programs as they see fit.'"⁸⁵¹ As seen here, the higher court maintained that an organization itself may not be able to bring suit for itself but if the majority of its members agree to support the claim then the group may go forward with the claim.⁸⁵²

New York Times journalist, White, discussed the potential impact The N.C.A.A. and The National Association of Intercollegiate Athletics' (N.A.I.A.) sponsorship of women's championships would have on the A.I.A.W. He briefly described the background and creation of The A.I.A.W., since The N.C.A.A., at the time The A.I.A.W. formed, was not interested in sponsoring women's competitive championships. White also retraced the Congressional support for women's equal rights with passage of Title IX. White offered the arguments for N.C.A.A. expansion. N.C.A.A. leadership commented that Title IX required more choices for women's

⁸⁵⁰ C. L. Hogan, "N.C.A.A. Discovers Women's Athletics: A Valuable Resource," *New York Times*, March 30, 1980. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁸⁵¹ N.C.A.A. News, "Appeals Court Ruling Favors NCAA," *N.C.A.A. News*, vol. 17, no. 7, April 30, 1980: 1-6. <http://web1.ncaa.org> (accessed March 28, 2008).

⁸⁵² *Ibid.*, "Appeals Court Ruling Favors NCAA."

championships. A.I.A.W. leadership cited N.C.A.A.'s keen interest in women's championships actually coincided with media interests in televising women's athletic championships, an idea mentioned earlier by Hogan. A.I.A.W. and N.C.A.A. leadership were unable to come to merger terms. A.I.A.W. attorney, Margot Polivy, was quoted: "If there is ever to be a merger, it has to be a natural product from mutual interest and not a unilateral settlement."⁸⁵³

While delivering the commencement address at Barnard College, Shirley Hufstедler, Secretary of the newly formed U.S. Department of Education, vowed to promote and support Title IX.⁸⁵⁴ Scholarly Information began to emerge about the differences between men and women, anatomically, in regard to sports conditioning. P.S. Wood reported on the progress of women's athletics using information available from The Women's Sports Foundation (W.S.F). Information from the W.S.F. featured in Wood's article included a report of increased participation numbers reported about high schools girls and college women. Numbers increased in the sports of tennis, golf, jogging, car racing and marathon running. Wood informed the readers that women's athletic involvement had increased dramatically over a ten-year period. Wood rhetorically asked if women would be able to endure the physical demand of athletic competition. Questions continued to emerge about women's comparisons to male counterparts in respect to their physical skills and abilities. The final question Wood left to ponder: What are women's goals in sports . . . their expectations? Wood discussed research findings detailing differences between how male and female bodies function athletically. Findings mentioned in this article indicated growing evidence about female athletic ability and stamina that were thought to be equal to or be greater than males' in some aspects and certain competitive sports.

⁸⁵³ G. S. White, Jr., "Are Women's College Sports Units in Peril?" *New York Times*, May 6, 1980: col. 4, para.6. <http://www.query.nytimes.com> on (accessed August 11, 2008).

⁸⁵⁴ J. Cook, "Barnard Class Told to Battle Bias," *New York Times*, May 15, 1980. <http://www.query.nytimes.com> on (accessed August 11, 2008).

Myths that had discouraged females in the past were being dispelled. According to Wood, Dr. Dorothy Harris of Pennsylvania State University agreed with Billy Jean King that both genders should have the right to compete in sports. Wood presented information about body development differences between boys and girls. Information provided by Harris proclaimed that boys and girls start out with the same basic blueprint, athletically speaking. Girls mature earlier until puberty. The muscle development is dramatically different between males and females. Boys' and girls' bodies after puberty are preparing for specific gender-related reproductive functions.

Wood pointed out that Army strength ratios were developed at West Point after 1975 when women were allowed to attend. According to their data, women had one-third the upper body strength and two-thirds the lower body strength as compared to males. Wood reviewed information and improvements in female abilities beyond the first class of West Point after women were admitted. Wood also noted various sports where women excelled because of their body-design or sport-design, those not requiring brute strength. Examples included swimming (long distance), horseback events, rifle and target shooting. Fat storage and deposits on the female body offered women an edge in endurance sport competition. Sweat production differed by gender giving the female the more efficient cooling system.

Wood offered a peek into development of athletic wear for women as industry leaders, Adidas and Nike, featured sport shoes made to fit the female athlete. In 1980, the sporting goods industry was beginning to cater to female athlete body types. Wood presented more scientific and some predictive studies to determine that in some sports the difference in time from start to finish would be so similar that gender would not be a factor. Wood emphasized in this feature the changes in society's belief and attitudes surrounding athletic competition and gender. Wood

attributed Title IX as a force allowing women and girls the open opportunity to compete in sports.⁸⁵⁵

By the end of the 1970s and the beginning of the 1980s, Title IX issues were reaching courts of law.⁸⁵⁶ The constitutional outcome from *Cannon v. University of Chicago* regarding the private right of action,⁸⁵⁷ also known as implied right of action⁸⁵⁸ or implied right to private cause of action,⁸⁵⁹ was a popular theme for early Title IX law reviewers. In 1982, The N.C.A.A. had developed an enforcement program⁸⁶⁰ that law reviewers were talking about along with the lawsuits student-athletes were bringing against institutions of higher education.⁸⁶¹

The lawsuit, *Pavey v. University of Alaska*, involved female students at the University of Alaska who allegedly were being discriminated against in athletics under Title IX and the due process and equal protection clauses of the Fourteenth Amendment. The University of Alaska contended if it remedied the aforementioned complaints that it would then violate rules of their governing athletic associations—The N.C.A.A. and The Association for Intercollegiate Athletics for Women (A.I.A.W.).⁸⁶²

“Title IX Enforcement Begins Soon” appeared in the same issue of *The N.C.A.A. News* that reported results from court cases involving rules differences between The A.I.A.W. and The

⁸⁵⁵ P. S. Wood, “References in Sports,” *New York Times*, May 18, 1980. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁸⁵⁶ D. I. Thompson, “Title IX of the Education Amendments of 1972: Issues Reach the Courts,” *Washburn Law Journal* 18(2), 1979:310-324.

⁸⁵⁷ UMKCL Review, “Constitutional Law: *Cannon v. University of Chicago* (99 S. Ct. 1946): Civil Rights and Private Wrongs, A New Remedy,” 48 *UMKC L. Rev.*, 1980:487-501.

⁸⁵⁸ Duquesne Law Review, “Civil Rights-Sex Discrimination, Title IX of the Education Amendments of 1972, Implied Right of Action,” 18 *Duquesne L. Rev.*, 1980:983-998.

⁸⁵⁹ Detroit Journal of Urban Law, “Civil Rights, Sex Discrimination, Title IX of the Education Amendments of 1972 Contains an Implied Right to Private Cause of Action,” 58 *Det. J. Urb. L.*, 1980:74-94.

⁸⁶⁰ Arizona Law Review, “N.C.A.A.: Fundamental Fairness and the Enforcement Program,” 23 *Ariz. L. Rev.*, 1980:1065-1102.

⁸⁶¹ Arizona Law Review, “Suits by Student Athletes Against Colleges for Obstructing Educational Opportunity,” 24 *Ariz. L. R.* 1982:467-496.

⁸⁶² *Pavey v. University of Alaska*, Civ. No. A79-19; 490 F. Supp. 1011; 1980 Dist. LEXIS 11746; 31 Fed. R. Serv. 2d (Callaghan) 543, (June 9, 1980).

N.C.A.A. *The N.C.A.A. News* writer acknowledged that the Department of Health Education and Welfare was split and the enforcement arm for Title IX was housed in the newly established Department of Education. The Office for Civil Rights (O.C.R.) was charged with reinstating investigation guidelines and procedures to handle complaints related to gender discrimination. At the time this was written, the Department of Education had not identified the institutions of higher learning chosen to participate in compliance audits.⁸⁶³

During an April 1980 meeting of the N.C.A.A. Council a report was presented regarding proposed changes in N.C.A.A. governance and organization. The report was issued as a tentative document as the group sought input from other outside organizations and experts. Quoting the authors of the report offered credibility showing significant changes in organizational operation and governance for the N.C.A.A. The following passages introduced the crux of the proposed plan, “The institutions of Divisions II and III decided conclusively at the 1980 NCAA Convention that women will be involved in the programs and governance of The NCAA. In light of that accomplished fact, the Special Committee on NCAA Governance, Organization and Services has produced a plan that in its opinion represents the best possible merger of (1) the practical realities of current personnel and structures, (2) the legal implications of Title IX and (3) equitable provisions of opportunity for women student-athletes and administrators.”⁸⁶⁴ The report, according to the committee, still lacked completion in two areas. The areas in need of attention required perusal by athletic professionals of both genders and experts in the policy foundations governing athletic competition. The committee repeated their recognition of future needs in athletic administration: “As a general, ongoing principle, the

⁸⁶³ N.C.A.A. News, “Title IX Enforcement Begins Soon,” *N.C.A.A. News*, vol. 17, no. 9, June 15, 1980: 1,3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁸⁶⁴ N.C.A.A. News, “Report of Special Committee on Governance, Organization and Services,” *N.C.A.A. News*, vol. 17, no. 9, June 15, 1980: 4, col. 1, para.2. <http://web1.ncaa.org> (accessed March 28, 2008).

committee believes that men's and women's programs must be administered under a common set of regulations. During a transition period, however, some differences in such areas as sport-by-sport financial aid limits, division definition and recruiting rules may best be permitted temporarily. Such differences would be eliminated in the future by changing both men's and women's regulations through normal legislative processes that would include women in that decision-making.⁸⁶⁵ The resolution carried forward in this report recommended that The N.C.A.A. embrace and include the addition of women's championships into their responsibilities. The report described details about areas where changes would need to be made in institutional representation, membership, administrative structure, programs and services for women's athletics, representation on committees and N.C.A.A. legislative changes that allowed their governance of women's athletics.⁸⁶⁶

As a follow-up, the N.C.A.A. committees setting up competitions for the various divisions of intercollegiate athletics met in July 1980 to discuss the likelihood of expanding championships in women's athletic competition. Divisions II and III were ready to add seven areas, while Division I planners chose not to act on the creation since the upcoming convention was expected to address the expansion.⁸⁶⁷ In the brief article "U.S. to Act on Complaints of Bias in College Sports," the Department of Education reported plans to act on complaints of gender equity violations against eighty-four institutions of higher learning.

While Patricia Roberts Harris was H.E.W. Secretary, the publication and distribution of a new investigator's manual made it possible for Federal Investigators of the Office for Civil

⁸⁶⁵ *Ibid.*, "Report of Special Committee," June 15, 1980: 4, col. 1, para.4.

⁸⁶⁶ *Ibid.*, "Report of Special Committee," June 15, 1980: 4.

⁸⁶⁷ N.C.A.A. News, "Steering Committee Discuss Women's Events," *N.C.A.A. News*. Vol. 17, no. 10, July 16, 1980: 5,10. <http://web1.ncaa.org> (accessed March 28, 2008).

Rights to follow newly approved guidelines. The investigator's manual included an assessment tool to be used to gather data on athletic programs.⁸⁶⁸

August 15, 1980, marked a significant issue of *The N.C.A.A. News*. As a follow-up to governance changes were discussed, Title IX questions were answered by the new Department of Education. Also featured in the August 15th issue was the announcement that Ruth Berkey was hired by The N.C.A.A. to coordinate championship events for female athletes. In "Meetings Bring Revisions in Governance Committee Plan" the editor offered a follow-up to the resolution about N.C.A.A. governance and women's athletics. It was reported that meaningful meetings had produced revisions to the original resolution offered by the special committee. Chair of the Special Committee, Franks, added this comment, "We believe the meetings were successful in achieving their objective: To obtain advice and suggestions of the membership regarding our plan, especially from those in leadership positions in women's athletics. . . . I believe our panel was successful in affirming our desire to obtain advice for review by the special committee."⁸⁶⁹ The meeting referenced in this particular instance included newly appointed women's athletic events director, Ruth M. Berkey. The revised report was slated to be mailed directly to membership as soon as it was completed giving time for essential feedback from member institutions before the November deadline for modifications.

Another feature in the August 15, 1980 edition of *The N.C.A.A. News* was "ED Department Answers Title IX Queries," offered by the Editor of *The N.C.A.A. News*, as responses to questions posed by N.C.A.A. regarding Title IX. The first question reviewed in this issue dealt with comparing interest and support by community and students for sporting events

⁸⁶⁸ New York Times, "U.S. to Act on Complaints of Bias in College Sports," *New York Times*, August 1980. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁸⁶⁹ N.C.A.A. News, "Meetings Bring Revisions In Governance Committee Plan," *N.C.A.A. News*, vol. 17, no. 11, August 15, 1980: 1,7 col. 2-3, para.2. <http://web1.ncaa.org> (accessed March 28, 2008).

scheduled for male and female athletes and whether the sponsoring university could use those factors to justify distribution of scholarships. The answer from the Department of Education was “‘No.’ The obligation to provide overall equal athletic opportunity to male and female students, including the opportunity to receive athletic financial assistance, cannot be obviated or alleviated by such factors as spectator interest, community or student support of the production of revenue. Thus, such factors cannot be cited to justify a departure from substantial proportionality in the allocation of athletic scholarship funds to participating men and women.”⁸⁷⁰ Other questions and answers contributed to the discussion about net revenue, proportionality of scholarship awards, sources of outside scholarships and their use in the proportionality equation. Also covered was what happened when you increase scholarships for one gender and not the other as it related to compliance, and how federal assistance coming in to aid students related to a student-athlete’s total financial assistance package.⁸⁷¹

As mentioned previously, Ruth M. Berkey was appointed by The N.C.A.A. to lead and coordinate championship events for female athletes. Berkey’s appointment became effective September 1, 1980. For many years and in many capacities Berkey served at Occidental College before joining the staff at The N.C.A.A. Byers said of Berkey: “Ruth Berkey is an outstanding human being and nationally recognized as one of college athletics’ most competent athletic administrators. . . . She will be responsible for not only assuring the success of these women’s championships, but also for representing women’s sports interests in all facets of NCAA operations. . . . She will have the full support of NCAA staff and its resources.”⁸⁷²

⁸⁷⁰ N.C.A.A. News, “Education Department Answers Title IX Queries,” *N.C.A.A. News*, vol. 17, no. 11, August 15, 1980: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁸⁷¹ *Ibid.*, “Education Department Answers Title IX Queries,” August 15, 1980: 3.

⁸⁷² N.C.A.A. News, “Berkey To Direct Women’s Events,” *N.C.A.A. News*, vol. 17, no. 11, August 15, 1980: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

In a letter to the editor of *The N.C.A.A. News*, Darrell Mudra, of Eastern Illinois University, offered an eloquent pro and con look at the future development of women's athletics under the regulations of Title IX. He was concerned about using funds from existing sports that produced revenue to fund women's athletics. He claimed that the philosophical change in women's attitudes toward participating in sports contributed more to the growth of women's athletics than Title IX. In Mudra's own words he attempted to discredit any Title IX relationship to increased interest in athletic participation by women: "The dramatic improvement in women's sports programs over the last 10 years is long overdue. Since this improvement has paralleled the Title IX act, it has been easy to attribute this recent progress to Title IX. However, I believe that the progress in women's athletics is not the result of Title IX but of a change in women's philosophic attitude toward competition."⁸⁷³ Mudra noted that this change in philosophy drove the grassroots-effort that culminated in Title IX. Mudra talked of the drain non-revenue producing sports had on the entire athletic budget, causing at times, elimination of the minor sports and he feared there would be little growth of women's athletics. Mudra recommended an overhaul of the funding scheme: ". . . I suggest we start with the basic principle of having all sports programs funded by the university and controlled by the faculty. To the extent that each school's resources allow, a school should use its various activities to serve its individual needs. . ."⁸⁷⁴

In an on-going effort to educate membership, *The N.C.A.A. News* devoted several issues to the topic: "Education Department responds to Title IX Questions," which contained information about guideline issues that would impact their future operational philosophies. This series of questions and answers was devoted to educating members about how the Department of

⁸⁷³ N.C.A.A. News, "Letter to the Editor: Mudra Claims Competition Key To Women's Athletic Future," *N.C.A.A. News*, vol. 17, no. 11, August 15, 1980: 2, col. 1, para.1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁸⁷⁴ *Ibid.*, Mudra, August 15, 1980: 4, col. 2, para.2.

Education defined the term “participant” as it related to Title IX scholarship distribution. Also outlined in this group of questions and answers was whether differences in levels of competition could be a reason to depart from scholarship guidelines and whether the quality of the athletes being supported could be a reason to give larger scholarship awards to one gender as compared to the other.⁸⁷⁵ *The N.C.A.A. News*, August 31, 1980, reported more about the Department of Education activities identifying the first group of institutions to be reviewed by The Office for Civil Rights (O.C.R.). The first group of O.C.R. higher education investigations included schools where existing Title IX complaints were filed: “University of Akron, The University of Bridgeport, Cornell University, Howard University, The University of Kansas, The University of Michigan, Oklahoma State University and Washington State University.”⁸⁷⁶ Comprehensive investigations of sports programming would be forthcoming at these institutions by O.C.R. as inspection teams would be using the new Title IX Investigator’s manual to process findings. The process was explained to N.C.A.A. members. The procedure included sending a letter to the university and its athletic officials announcing an O.C.R. investigation that would be followed by a data gathering period and a subsequent on-campus visit. O.C.R. Investigative teams would be expected to take no more than ninety days during the announcement and data discovery phase before the campus visit would be scheduled. Also in this article, The N.C.A.A. reportedly was reviewing the O.C.R. Investigators Handbook, comparing it to the Title IX regulations. The N.C.A.A. established a national help-center as a resource for their member institutions to ensure information flowed to members uniformly throughout the Association regarding necessary forms

⁸⁷⁵ N.C.A.A. News, “Education Department Responds to Title IX Questions,” *N.C.A.A. News*, vol. 17, no. 12, August 31, 1980: 1,3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁸⁷⁶ N.C.A.A. News, “ED Selects Eight Institutions for Review,” *N.C.A.A. News*, vol. 17, no. 12, August 31, 1980: 3. <http://web1.ncaa.org> (accessed March 28, 2008).

and procedures.⁸⁷⁷ The *ad hoc* committee report placed in the August 31, 1980 *N.C.A.A. News* issue enumerated the items on the pending convention agenda. Included in this report was the idea that Division I women's championship approval must be member-driven.⁸⁷⁸ In the same issue, there was a correction to the record. Berkey, who joined the N.C.A.A. staff to direct women's championship planning, was said to join other women on staff. Technically Berkey was the first woman to hold an administrative position dealing specifically with athletics. The other ten women on staff dealt with general business and communication duties.⁸⁷⁹

As voices heard in the educational conversation, two doctoral dissertations appeared in 1980: At the University of Alabama, White discussed the issues surrounding the fusion of male and female sports programs in the Southeastern Conference.⁸⁸⁰ Kelley, a researcher at Georgia State University, investigated physical education program changes in select states in the southeastern United States.⁸⁸¹

In September 30, 1980, *The N.C.A.A. News* followed up on the governance activities and presented more answers to previously asked questions of the Department of Education. The governance plan had been mailed to faculty athletic representatives, athletic directors and the C.F.O. of each university on the active member roster.⁸⁸² The questions and answers by the

⁸⁷⁷ *Ibid.*, "ED Selects," August 31, 1980.

⁸⁷⁸ N.C.A.A. News, "ad hoc Committee Named," *N.C.A.A. News*, vol. 17, no. 12, August 31, 1980: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁸⁷⁹ N.C.A.A. News, "Berkey Joins Other Women On Staff," *N.C.A.A. News*, vol. 17, no. 12, August 31, 1980. <http://web1.ncaa.org> (accessed March 28, 2008).

⁸⁸⁰ G. M. White, *A Systems Design for the Merger of Male and Female Athletics in Southeastern Conference Universities*, Abstract. Dissertation. The University of Alabama, 1980. ProQuest AAT 8104101 (accessed October 15, 2009).

⁸⁸¹ D. R. Kelley, *Physical Education Curriculum Compliance with the 1975 Title IX Regulations in Eight Southeastern States*, Abstract. Dissertation. Georgia State University, 1980. ProQuest AAT 8015049 (accessed October 15, 2009).

⁸⁸² N.C.A.A. News, "Governance Activities Continue," *N.C.A.A. News*, vol. 17, no. 13, September 30, 1980. <http://web1.ncaa.org> (accessed March 28, 2008).

Department of Education featured topics related to defining “equivalency,” clarifying points for revenue-producing sports and use of facilities based on spectator interest in scheduling events.⁸⁸³

The N.C.A.A. moved forward to select women’s championship event planning committee chairs. Thirty-five men and women were chosen to serve as Division II and III planners for women’s championship events. Ruth Berkey coordinated this effort as she explained: “Planning will include a determination of the size of the event, brackets, dates and sites of respective events, selection procedures, rules to be utilized . . . A handbook must be developed containing the administrative guidelines for each women’s championship.”⁸⁸⁴ The women’s sports involved in this planning scheme included Division II and III basketball, swimming, tennis, volleyball and field hockey.⁸⁸⁵

In “Revised Governance Plan Mailed to Members,” key points were extracted from the revision that was mailed to N.C.A.A. membership drawing attention to the portions related to governance changes allowing The N.C.A.A., as an organization, to endorse and embrace women’s athletic programming and services, representation of women athletic personnel and implementation of women’s championship events at Division II and III levels. In an effort to give membership autonomy in governing women’s athletics “these proposals maintain member institution autonomy in determining the best course for its women’s program. The NCAA Council, however, does not accept the argument that the NCAA must refuse to accommodate women professionals and their programs. . . . To do so would ignore the development of integrated athletic administration at the institutional and conference levels, thereby freezing out women administrators and female student-athletes from enhanced opportunities at the national

⁸⁸³ N.C.A.A. News, “Education Department Fields More Questions,” *N.C.A.A. News*, vol. 17, no. 13, September 30, 1980. <http://web1.ncaa.org> (accessed March 28, 2008).

⁸⁸⁴ N.C.A.A. News, “Women’s Sports Committees are Appointed,” *N.C.A.A. News*, vol. 17, no. 14, October 12, 1980. <http://web1.ncaa.org> (accessed March 28, 2008).

⁸⁸⁵ *Ibid.*, “Women’s Sports Committees are Appointed,” October 12, 1980.

level of athletic administration and competition.”⁸⁸⁶ The points extracted also addressed needs to consolidate administrative framework based on Title IX interpretations. There would be a decision and phase-in period allowed up to 1985, by which time member organizations would have to choose the governing organization that would accommodate their women’s athletic programming.⁸⁸⁷

The November 15, 1980 issue of *The N.C.A.A. News* included an editorial containing visionary statements by athletic personnel. James Franks, in “Future Appears Bright for Women’s Athletics,” outlined the changes women’s athletics had experienced since the previous decade. He attributed much of the impetus for change to Title IX and the leaders of The A.I.A.W. Franks predicted that the budget would be the hurdle that all universities must clear. He indicated that with the expected shortfall of funds all universities would have to cut programming from their total athletic budget. Franks indicated the future need of having one governing body for athletics. He also discussed the efforts by individual institutions would be paramount in successfully carrying out the expanding needs of women’s athletics. Setting a futuristic tone, Franks indicated: “I am truly optimistic about the future growth of women’s athletics. This does not mean that the formation of a super sports governing organization is the solution, nor does it mean that the disputes between governing organizations will vanish. It does mean a consensus in areas of commonality such as uniform rules, so that institutions are not caught in a tug of war, and are in a position to make intelligent and informed decisions.”⁸⁸⁸

⁸⁸⁶ N.C.A.A. News, “Revised Governance Plan Mailed to Members,” *N.C.A.A. News*, vol. 17, no. 15, November 15, 1980: 1, col. 5, para.2. <http://web1.ncaa.org> (accessed March 28, 2008).

⁸⁸⁷ *Ibid.*, “Revised Governance Plan,” November 15, 1980: 1.

⁸⁸⁸ N.C.A.A. News, “Future Appears Bright for Women’s Athletics,” *N.C.A.A. News*, vol. 17, no. 16, November 15, 1980: 3, col. 3, para.8. <http://web1.ncaa.org> (accessed March 28, 2008).

Franks ended his editorial with a call for unity of voice in administering athletics so that as a whole—regardless of gender—prosperity and growth would be fostered and encouraged.⁸⁸⁹

New York Times reporter, White discussed the N.C.A.A.'s move to sponsor women's championships as the leader Ruth Berkey was named director of women's championships. A.I.A.W. colleagues considered Berkey a 'turncoat.' Berkey offered comments about Title IX's role in offering women more athletic opportunity and the part The N.C.A.A. played in fostering this interest. Berkey made statements about the plan for expanding N.C.A.A. championship coverage and that there was room for The A.I.A.W. and The N.C.A.A. to coexist.⁸⁹⁰

In the 1981 N.C.A.A. Convention issue of *The N.C.A.A. News*, membership was alerted the "First Title IX Review Complete." This feature named those involved in initial investigations—eight institutions of higher education—conducted by the Office for Civil Rights (O.C.R.). The list of institutions under investigation was assembled based on complaints received by O.C.R.⁸⁹¹ The N.C.A.A. provided a new organizational seal in February 1981 that incorporated the female image, signifying the changes in their governance policies. The changes included offering championship events for women's sporting events which ushered in a new philosophy and era for The N.C.A.A.⁸⁹²

In *The N.C.A.A. News* February, 1981, "Findings Not Issued In Compliance Review" reported that letters from O.C.R. investigations had not been released and part of the delay was attributed to the change in presidential administrations in January of 1981.⁸⁹³ As the new Title

⁸⁸⁹ *Ibid.*, "Future Appears Bright," November 15, 1980.

⁸⁹⁰ G.S. White, Jr., "N.C.A.A. Woman Criticized," *New York Times*, January 3, 1981. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁸⁹¹ N.C.A.A. News, "First Title IX Review Complete," *N.C.A.A. News*, vol. 18, no. 1, 1981 Convention: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁸⁹² N.C.A.A. News, "A New N.C.A.A. Look," *N.C.A.A. News*, vol. 18, no. 4., February 28, 1981. <http://web1.ncaa.org> (accessed March 28, 2008).

⁸⁹³ N.C.A.A. News, "Findings Not Issued In Compliance Review," *N.C.A.A. News*, vol. 18, no. 3, February 15, 1981: 1,5. <http://web1.ncaa.org> (accessed March 28, 2008).

IX regulations were being absorbed, Judge Charles W. Joiner presiding in U.S. District Court in Detroit, Michigan, ruled that equal opportunity in sports did not have to be provided unless the sport program received federal funds.

In “Judge Alters Title IX Outlook,” Title IX opponents saw this decision as landmark in what it would mean to collegiate athletic programs operating as self-supporting and receiving no federal assistance. The Associated Press (AP) writer noted that The N.C.A.A. had offered a similar argument in its class-action lawsuit. The N.C.A.A. vocally resisted government encroachment into athletic program administration at its member institutions. Easing budget constraints and scholarship formulas under Title IX’s guidelines made administrators reportedly smile while other Title IX supporters felt the precedent-setting ruling could have a negative impact on women’s program growth and Title IX’s enforcement. N.C.A.A. official, Hansen, saw the ruling as a way to defend universities in O.C.R. investigations.⁸⁹⁴

By April, 1981, “Championship Plans Announced” put forward N.C.A.A. implementation plans for the 1981-82 women’s sports championships. The first to be offered were in Basketball, Field Hockey, Swimming, Diving and Volleyball.⁸⁹⁵ As the month closed, “Council Discusses Women’s Athletics” suggested that among other issues the N.C.A.A. Council would be directing attention to the fact that Women’s Athletics was one of them.⁸⁹⁶

Sisley wrote an article appearing in the *Journal of Physical Education and Recreation* “Women in Administration: A Quest for Quality Leadership” in an effort to describe the emerging female sports administrator archetype. According to Sisley, “She is ruthless,

⁸⁹⁴ New York Times, “Judge Alters Title IX Outlook,” *New York Times*, March 1, 1981. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁸⁹⁵ N.C.A.A. News, “Championship Plans Announced,” *N.C.A.A. News*, vol. 18, no. 7, April 15, 1981: 1,3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁸⁹⁶ N.C.A.A. News, “Council Discusses Women’s Athletics,” *N.C.A.A. News*, vol. 18, no. 8, April 30, 1981: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

aggressive and quick to act. She is eager to play the game of big-time athletics. She uses language of a seasoned veteran. She is ready to challenge anyone who stands in her way.”⁸⁹⁷

Sisley pointed to Title IX as somewhat responsible for this behavior. With increased opportunity came increased funding and where there are dollars to be spent, comes power, responsibility and a new-found quest for glory. Sisley remarked that rule and priority changes had taken women athletic administrators down the same road so that they exhibited behaviors resembling men’s athletic administrators. Sisley appealed to women in administration to set the moral tone for women’s athletics as they created a system that would scrutinize what they do to further the cause. Sisley asserted the concern about ethical behavior guidelines that leaders and members of The A.I.A.W. had created in 1974 since three years later these guidelines were under review. Entertainment revenue changed the basic operating principles in women’s athletics as student involvement in decision-making began to be quashed. Sisley re-stated several points from her previous article which emphasized student-athletes as the focal point, the hiring of qualified staff, the commitment of staying informed about regulations from A.I.A.W. and for being cautious about The N.C.A.A. Sisley stressed two things: keeping communication flowing, and keeping a level head about the function you have as an administrator would play out in the scheme of women’s athletics.⁸⁹⁸

New York Times writer, Sack pointed out the conflict between the amateur and business models of collegiate sports in light of Judge Charles Joiner’s ruling and its impact on gender equity. According to Sack’s observations, revenue-producing sports, which athletic directors and The N.C.A.A. were trying to shield from Title IX and the federal grasp, could not really be

⁸⁹⁷ B. L. Sisley, “Women in Administration: A Quest for Quality Leadership,” *Journal of Physical Education and Recreation* 52 (April 1981):77.

⁸⁹⁸ *Ibid.*, Sisley, 1981.

considered amateur.⁸⁹⁹ In *Phi Delta Kappan*, Flygare also discussed the ruling by U.S. District Judge, Charles Joiner, allowing a program-specific interpretation of Title IX. The court decision was ultimately carried forward as a case to determine who would pay court costs after the Ann Arbor School System remedied the original Title IX issue to provide equal opportunity in golf for girls. The issue under scrutiny became the authority of Title IX and who would be responsible for paying attorney fees. Based on the findings, Joiner decided to use the interpretation that funds from federal sources were not used to support athletics and, therefore, in essence exempted the school system from Title IX for applicability to their athletic program. The other approach that Joiner rejected would have tied federal funding to the athletic department because the school itself received federal funds, thereby, when looking holistically at the school, Title IX regulations would apply. According to Flygare, Joiner considered points of law as he weighed the original language of Title IX that changed before the bill became law and that historically the legal interpretation of Title IX had been passed on a program-view. As stated by Flygare, Joiner rejected many arguments presented by the defense and did not recognize decisions in other districts as precedent-setting. Flygare predicted that the issues presented would eventually require U.S. Supreme Court scrutiny as they would decide the status of athletics as regulated by Title IX.⁹⁰⁰

N.C.A.A. president James Franks delivered a speech to the American Association of Affirmative Action in spring 1981. Among the topics he discussed were changes occurring in governing athletics as a result of Title IX.⁹⁰¹ *The N.C.A.A. News* also reported in May that the

⁸⁹⁹ A. Sack, "College Sports Must Choose: Amateur or Pro?" *New York Times*, May 3, 1981. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁹⁰⁰ T. J. Flygare, "Schools and the Law/Federal Court in Michigan Holds that Title IX does not Cover Athletics," *Phi Delta Kappan* 62 (June 1981):741-42.

⁹⁰¹ N.C.A.A. News, "Frank Speech Focuses On Governance, Title IX," *N.C.A.A. News*, vol. 18, no. 8, May 15, 1981: 3. <http://web1.ncaa.org> (accessed March 28, 2008).

“N.C.A.A. Council Continues to Implement Governance Plan,” which announced proposed deadlines for aligning existing women’s athletic programs with The N.C.A.A. after 1985.⁹⁰² An important article in *The N.C.A.A. News* featured “A.I.A.W., N.C.A.A. Delegates Discuss Women’s Athletics.” This report that the N.C.A.A. and A.I.A.W. organizations were attempting to come together on decisions on governance of women’s athletics led to accusations from The A.I.A.W. that The N.C.A.A. was intruding on the governance of women’s athletics. Donna Lopiano was one of the A.I.A.W. representatives mentioned in the article.⁹⁰³ In June 1981, *The N.C.A.A. News* provided information in a condensed version regarding women’s champions and the dates divisional championships would be held. *The N.C.A.A. News* also revealed at this juncture, “Richmond Files Suit.” The University of Richmond brought suit against the U.S. Department of Education, Office for Civil Rights claiming that its athletic programming fell outside Title IX’s purview because it received no federal funds.⁹⁰⁴

On the federal government front, under a guise “to stimulate the U.S. economy,” President Ronald Reagan appointed a task force headed by Vice President George Bush to review cumbersome regulations. The Presidential Task Force for Regulatory Relief was charged with reviewing Title IX issues along with over twenty other regulations. Based on feedback from higher education and local governments, Title IX subparts dealing with intercollegiate athletics, equal pay issues and sexual harassment were to be reviewed.⁹⁰⁵ Leaders of women’s groups responded to Vice President Bush’s announcement about governmental taskforce review of Title IX. Kohn of the National Women’s Law Center remarked in response to complaints

⁹⁰²N.C.A.A. News, “NCAA Council Continues to Implement Governance Plan,” *N.C.A.A. News*, vol. 18, no. 8, May 15, 1981: 3,7. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹⁰³N.C.A.A. News, “A.I.A.W., N.C.A.A. Delegates Discuss Women’s Athletics,” *N.C.A.A. News*, vol. 18, no. 8, May 15, 1981: 7. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹⁰⁴N.C.A.A. News, “Richmond Files Suit,” *N.C.A.A. News*, vol. 18, no. 10, June 15, 1981: 11. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹⁰⁵H. Raines, “U.S. Begins Deregulation Review on Rights and Ecology Guidelines,” *New York Times*, August 13, 1981. <http://www.query.nytimes.com> (accessed August 11, 2008).

about extra paper work and equal pay that “extra paperwork was only required when a school was found not complying and that equal pay was not required in all cases.”⁹⁰⁶ July, August and September issues of *The N.C.A.A. News* carried information about events in N.C.A.A. rule change proposals, women’s athletics, rules enforcement in women’s athletics for institutions beginning to participate in women’s championships, and automatic certification of conferences entering into championship competition.⁹⁰⁷

New York Times journalist, White described reaction to the announcement that Title IX was among the federal regulations being addressed by Reagan’s Presidential Task Force on Regulatory Relief. Polivy, lawyer for The A.I.A.W., noted in her interview with White that the Task Force was not empowered to make legislative changes to Title IX without action from Congress or The Education Department. Lopiano, president of The A.I.A.W., expressed concern over Orrin Hatch’s amendment designed to take intercollegiate athletics (sports activities) out of Title IX scrutiny—this all on the eve of The N.C.A.A. entering sponsorship of its first women’s championships. Many familiar with the on-going Title IX fray were alarmed to realize the federal leaders’ interpretation of what was required to become and remain compliant with Title IX.⁹⁰⁸ September 1981 brought results of *Bennett v. Texas State University* as “Judge Reveals Programming Title IX Application,” which echoed Michigan’s decision about program applications not using federal funding.⁹⁰⁹

⁹⁰⁶ *New York Times*, “Feminists Say Reagan Reneged on a Promise,” *New York Times*, August 14, 1981. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁹⁰⁷ *N.C.A.A. News*, “Legislative Committee to Recommend Rule Changes,” *N.C.A.A. News*, vol. 18, no. 11, July 15, 1981: 5, 8; “N.C.A.A. Council Issues Statement on Women’s Rules Enforcement,” Vol. 18, no. 12, August 15, 1981:5 and “Judge rules for Problematic Title IX Application,” vol. 18, no. 13, September 15, 1981: 7. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹⁰⁸ G. S. White, Jr., “Review of Title IX is No Surprise,” *New York Times*, August 1981. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁹⁰⁹ *N.C.A.A. News*, “Judge Reveals Programming Title IX Application,” *N.C.A.A. News*, vol. 18, no. 13, September 15, 1981: 7. <http://web1.ncaa.org> (accessed March 28, 2008).

On a different Title IX front *The N.C.A.A. News* disclosed, “Justice Dept Rejects Title IX Deregulation Move.” The Justice Department weighed in on employment discrimination and left it as part of Title IX after the U.S. Education Department asked to strike it from the Title IX regulations for most cases. *North Haven v. Bell* and *Grove City v. Bell* were discussed at length in this article regarding program specificity under Title IX’s federal assistance rules.⁹¹⁰ The article “Comparison of Selected N.C.A.A./A.I.A.W. Regulations,” created as a reference, enlightened *The N.C.A.A. News* reader about the policy and philosophical differences between the two organizations.⁹¹¹ Donna Lopiano, as president of A.I.A.W., filed suit claiming The N.C.A.A. had attempted to create a monopoly in women’s athletics and had colluded and conspired to end The A.I.A.W.’s business. Ruth Bader Ginsburg is quoted in support of The N.C.A.A.’s cause in “AIAW Suit Alleges N.C.A.A. Antitrust Law Violations.”⁹¹² Information is released to N.C.A.A. membership about impending litigation and approximate date for discovery to end and trial to begin in “Judge for AIAW Suit Sets Limits, Procedures.”⁹¹³

New York Times Correspondent, Brozan articulated in “Uncertain Future for Curbs on Sex Bias,” the crux of the Presidential Task Force’s charge to re-evaluate Title IX’s far reaching regulatory language which prohibited discrimination based on gender at any institutions or programs receiving federal dollars. Brozan briefly discussed the 1981 report published by the National Advisory Council on Women’s Educational Programs. The assessment of progress noted in this report indicated that many traditionally male-dominated programs and careers were more available to women but that the employment sector in education did not show marked

⁹¹⁰ N.C.A.A. News, “Justice Dept Rejects Title IX Deregulation Move,” *N.C.A.A. News*, vol. 18, no. 14, October 15, 1981: 3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹¹¹ N.C.A.A. News, “Comparison of Selected NCAA/AIAW Regulations,” *N.C.A.A. News*, vol. 18, no. 14, October 15, 1981: 7,8. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹¹² N.C.A.A. News, “A.I.A.W. Suit Alleges NCAA AntiTrust Law Violations,” *N.C.A.A. News*, vol. 18, no. 15, October 31, 1981. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹¹³ N.C.A.A. News, “Judge for A.I.A.W. Suit Sets Limits, Procedures,” *N.C.A.A. News*, vol. 18, no. 17, November 30, 1981: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

improvement. Brozan remarked on various events that would impact the future of Title IX. At the time of this article, late 1981, anti-Title IX related activities were manifested in agency regulation review, Congressional amendment, and U.S. Supreme Court activity. By triangulated efforts, Brozan personally felt that Title IX would come out of the review somewhat weakened.

Another avenue of consternation, discussed by Brozan, was financial aid distribution. The question considered the portability of federal aid and the impact this had on higher education. If the aid was sent directly to students then many surmised that even if the finances came to institutions of higher education in the form of payment for tuition and fees that it would not require the institution of higher learning to be bound by Title IX. An opposing school of thought would opine that any aid from federal sources would bind the institution of higher learning to Title IX regulations. Other issues in the debate included a program-specific approach. Others reasoned that programs receiving direct aid would be obligated to follow civil rights legislation. Senator Orrin Hatch was interested in realigning federal funding in program-specific links. Hatch was quoted in this article by Brozan. Hatch stated that ““both bureaucratic and judicial interpretations of Title IX have wandered far from its original intent.””⁹¹⁴ Hatch added that Title IX represented federal encroachment. Hatch maintained that programs not receiving federal funds should remain exempt from Title IX. Activists all agreed that the attempts to weaken Title IX conveyed a message to the general public that gender discrimination was not as important as it should be and that in the interim, O.C.R. field investigators were finding lax attitudes toward compliance at institutions of higher learning.⁹¹⁵

The N.C.A.A. News included “Court Rules Title IX Programmatic,” in which attention was directed to *Rice v. President and Fellows of Harvard College* lawsuit which was about the

⁹¹⁴ N. Brozan, “Uncertain Future for Curbs on Sex Bias,” *New York Times*, November, 23, 1981. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁹¹⁵ *Ibid.*, Brozan, November 23, 1981.

awarding of grades and not employment or athletics. This article also gave updates on *North Haven Board of Education v. Bell* and the program specific line of decisions made in another circuit applied to Title IX interpretation.⁹¹⁶ Also included in this issue of the *N.C.A.A. News*, “AIAW to Meet January 5-9” disclosed that A.I.A.W. leadership would meet and discuss the N.C.A.A. suit among other items such as conflict of interest and the student-athlete Bill of Rights.⁹¹⁷

In 1981 a doctoral dissertation produced by King at West Virginia University dealt with trends based on the impact Title IX was having on the gender make-up of coaching and administrative staff at A.I.A.W. Division I universities.⁹¹⁸

As reported in a *New York Times* article, the Education Department considered a plan to re-define a financial aid term which would allow many institutions of higher learning to be exempt from civil rights regulations, namely, Title IX. The Justice Department did not agree with the proposal. The Education Department then concentrated on omitting a type of student loan that would offer relief to some colleges and universities. Secretary of Education Bell went on record prior to this proposal remarking that his “agency had an opportunity to ‘make a political point concerning the reach of federal jurisdiction, namely, that when we aid students, we do not thereby, obtain jurisdiction over institutions.’” Bell went on to state that “‘We are here in Washington, among other things, to curtail the interference of the Federal Government.’”⁹¹⁹

⁹¹⁶ N.C.A.A. News, “Court Rules Title IX Programmatic,” *N.C.A.A. News*, vol. 18, no. 18, December 15, 1981: 3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹¹⁷ N.C.A.A. News, “A.I.A.W. to Meet January 5-9,” *N.C.A.A. News*, vol. 18, no. 18, December 15, 1981: 7. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹¹⁸ L. T. King, *Title IX, Sex Ratios, and Trends in Leadership Roles in AIAW Division I Institutions*, Abstract. Dissertation, 1981. ProQuest ATT8118392 (accessed October 15, 2009).

⁹¹⁹ New York Times, “U.S. Aides Bar Rights Exemption for Schools,” *New York Times*, January 27, 1982: para.9-10. LexisNexis (accessed May 2, 2010).

The A.I.A.W. claimed irreparable harm would be inflicted upon them by the N.C.A.A. Women's Championships as "Judge denies attempt to stop N.C.A.A. Women's Events" by denying an A.I.A.W. preliminary injunction against The N.C.A.A.⁹²⁰ By March, 1982, the "Judge Alters AIAW suit schedule," as Judge Richey extended the period of discovery to May with court delay as a result of energies the A.I.A.W. expended trying to seek injunctive relief. Merger plans were ordered.⁹²¹ Also included in March 15, 1982 regarding The A.I.A.W. were housekeeping details about rules clarifications for female athletes transferring at mid-year and a reminder of women's rules applications to schools entering championship competition.⁹²²

Weisman commented on Reagan's efforts to change Title IX in March 1982. According to Weisman, President Reagan honored Secretary of Education Bell's request and moved to exempt schools that only received student loans from Title IX. Approximately three hundred institutions of higher learning would be able to claim the exemption. This decision was met with ire by the Executive Director of the Women's Legal Defense Fund, Judith Lichtman, who vowed "we will exert all our energies and coordinate a response from the various constituency groups' to overturn the new decision."⁹²³

In spring 1982, The N.C.A.A. announced regional meetings to train and heighten awareness of N.C.A.A. rules as applied to women's athletic competition.⁹²⁴ By the end of April, *The N.C.A.A. News* submitted information to members about "Buffalo Complies with Title IX."

⁹²⁰ N.C.A.A. News, "Judge Denies Attempt to Stop NCAA Women's Events," *N.C.A.A. News*, vol. 19, no. 4, February 28, 1982: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹²¹ N.C.A.A. News, "Judge Alters A.I.A.W. Suit Schedule," *N.C.A.A. News*, vol. 19, no. 5, March 15, 1982: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹²² N.C.A.A. News, "Rules Clarification for Women Transferring at Mid-Year," and "Women's Programs Reminded Of Rules Applications," *N.C.A.A. News*, vol. 19, no. 5, March 15, 1982: 7. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹²³ S. R. Weisman, "Reagan Eases School Law on Bias in Schools," *New York Times*, March 17, 1982: para.11. LexisNexis (accessed May 2, 2010).

⁹²⁴ N.C.A.A. News, "Women's Rules To Be Expanded," *N.C.A.A. News*, vol. 19, no.7, April 15, 1982: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

The bowling team at SUNY Buffalo filed a complaint. Buffalo was found to be in compliance with Title IX under financial aid and operational activities but was cited for violating facilities and recruitment regulations. Plans were shared with promises to improve facilities by fall 1982.⁹²⁵

New York Times coverage of Title IX events continued as Gamarekian compiled a calendar of events that included the announcement of scheduled hearings by the House of Representatives to investigate the latest decision of The Reagan Administration to exempt higher education institutions from Title IX if the institution only received financial aid in the form of federal student loans.⁹²⁶

North Haven Board of Education v. Bell addressed employment discrimination based on gender in programs receiving federal funds and established that Title IX of the Education Amendments of 1972 may be used to address claims by employees.⁹²⁷ *New York Times* writer Greenhouse announced in “Court Says School Anti-Bias Rules Cover Workers as Well as Pupils” the results of *New Haven v Bell* made by The Supreme Court, which expanded the interpretation of “person” in Title IX. The majority ruling considered employees covered by the Title IX regulations. Justice Blackmun pointed out that if Congressional intent wished to narrow the focus of the regulatory language, they could have used a word other than “person”.⁹²⁸

Koza announced that “ERA May be Dead, But Its Decade of Controversy Forever Changed the Status of American Women.” Although the Equal Rights Amendment died three states short of passing, Koza maintained that the lessons learned in the ten-year battle would

⁹²⁵ N.C.A.A. News, “Buffalo Complies with Title IX,” *N.C.A.A. News*, vol. 19, no. 8, April 30, 1982: 9. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹²⁶ B. Garmarekian, “The Calendar,” *New York Times*, May 10, 1982. LexisNexis (accessed May 2, 2010).

⁹²⁷ *North Haven Board of Education v. Bell*, No. 80-986; 456 U.S. 512; 102 S. Ct. 1912; 1982 U.S. LEXIS 105; 72 L. Ed. 2d 299; 50 U.S. L. W. 4501; 28 Fair Empl. Prac. Cas. (BNA) 1393; 28 Empl. Prac. Dec. (CCH) P25, 120; 28 Empl. Prac. Dec. (CCH) P32, 675, (May 17, 1982).

⁹²⁸ L. Greenhouse, “Court Says School Anti-Bias Rules Cover Workers as well as Pupils,” *New York Times*, May 18, 1982. LexisNexis (accessed May 2, 2010).

continue to strengthen women's opportunities in many facets of education employment. Koza provided statistics supporting the notion that women had begun to infiltrate political offices on the local, state and national levels. Title IX was mentioned as an equalizer of athletic access and participation for girls and women.⁹²⁹

“Two Questions Remain After Recent Title IX Decisions,” which were “What is the definition of a program” and “What aid constituted federal aid?” These topics were featured in mid-1982 as N.C.A.A. membership continued to grapple with Title IX interpretations and applications.⁹³⁰ In June 1982, women's sport programs were being adopted by various athletic conferences,⁹³¹ the championships were expanding, and women's basketball coaches were creating an organization expecting 450 members. Scholarship distribution was equalizing on the post baccalaureate level through The N.C.A.A. Women's soccer was planning their first championship, as the A.I.A.W. trial date was set for August 25, 1982.⁹³²

Perlez maintained in a report appearing in *The New York Times* that the defeat of the ERA was not the end of the movement to ensure women's equal treatment in education and employment. She included voices from various factions confirming that changes to key laws would proffer the same results. Harvard professor Freund used the phrase “diverted energy” when he looked back on the ten-year effort to ratify this amendment. Perlez pointed to Supreme Court interpretation in *Reed v Reed* which allowed women an opportunity to serve in traditionally-assigned male roles when found to be equally qualified. Also as a result of The

⁹²⁹ P. Koza, “ERA May be Dead, But Its Decade of Controversy Forever Changed the Status of American Women,” *New York Times*, June 26, 1982. LexisNexis (accessed May 2, 2010).

⁹³⁰ N.C.A.A. News, “Two Questions Remain After Recent Title IX Decisions,” *N.C.A.A. News*, vol. 19, no. 9, June 2, 1982: 3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹³¹ N.C.A.A. News, “Leagues Adopt Women's Programs,” *N.C.A.A. News*, vol. 19, no. 10, June 16, 1982: 12. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹³² N.C.A.A. News, “Judge Sets August 25 As AIAW Trial Date,” and “Women Share in Scholarship for First Time,” and “Women's Soccer Committee Plans First Championship,” *N.C.A.A. News*, vol. 19, no. 11, June 30, 1982, :1,4,5, 7. <http://web1.ncaa.org> (accessed March 28, 2008).

Supreme Court ruling in *Frontiero v Richardson*, Perlez noted that service women who were married were open to the same benefits as their male counterparts. Segal, director of the National Organization of Women (N.O.W.), according to Perlez, countered on realization that ERA ratification would fail, as she commented that the legal system offered slow remedy using the 14th Amendment to combat something it was not designed to do. Segal was quoted: “You are seeking judicial activism. You are asking justices to put something into the fourteenth amendment that was not intended.”⁹³³ Perlez then reviewed the list of statutes designed to offer women protection—naming Title VII, which was designed to combat employment discrimination by gender. She lamented the slow procedures using EEOC clearance before lawsuits could be filed. Perlez then noted Title IX and the strides made in college and university opportunities for women as she featured a statement about the importance of *Cannon v University of Chicago*.⁹³⁴ Margolick echoed expected defeat of the Equal Rights Amendment (E.R.A.) as ratification moved closer. Margolick presented alternate plans made by women’s rights groups to strengthen and ensure continued gender equity efforts. Title IX was noted in federal resources as still being defined by judicial review in 1982.⁹³⁵

In another legal encounter with The Supreme Court, men’s interests were championed. In *Mississippi University for Women v. Hogan*, a male prospective nursing student applied for admission to the Mississippi University for Women (M.U.W.). M.U.W. was a historically single-sex institution of higher education catering traditionally to the female student. Hogan was denied admission on the basis of his gender even though he had qualifications for admission. The U.S. Supreme Court found that M.U.W.’s policy to allow only women to be admitted to

⁹³³ J. Perlez, “Ratification Defeat Leaves Rights Law on Uneven Path,” *New York Times*, June 27, 1982: para 6. LexisNexis (accessed May 2, 2010).

⁹³⁴ *Ibid.*, Perlez, June 27, 1982.

⁹³⁵ D. Margolick, “Women Turn to Courts to Gain Rights,” *New York Times*, June 29, 1982. <http://www.query.nytimes.com> (accessed August 11, 2008).

study violated the equal protection clause of the 14th Amendment. M.U.W. had allowed males to audit courses which undermined their attempt to remain an institution of higher learning with a mission to serve exclusively female students.⁹³⁶ A review by *New York Times* correspondent Greenhouse, who followed Justice O'Connor's first year on The Supreme Court bench, offered insight into O'Connor's ruling in *M.W.U. v. Hogan*. Greenhouse mentioned Justice Sandra Day O'Connor and two cases having a place in this dissertation. O'Connor was part of the Court when Title IX's reach was extended to include employment violations (*North Haven v Bell*) and in a reversal of discrimination in *Mississippi University for Women v Hogan*. "Her opinion," cited by Greenhouse, "that a state-run nursing school cannot exclude male students stands in sharp contrast to the Title VII case. The issue was constitutional, not statutory, and Justice O'Connor this time looked at discrimination from the victim's point of view—not only the male applicant, but the women nursing students who themselves were being stereo-typed by the admissions policy."⁹³⁷

July 1982 featured a two-part reprint of N.C.A.A. legal counsel William D. Kramer's speech regarding changes in intensity surrounding Title IX in "Title IX Not A Dead Issue, But It's Mellowing."⁹³⁸ The N.C.A.A. revealed that the U.S. District Court in Virginia ruled that OCR could not investigate allegations at the University of Richmond in "Court Bars Richmond Title IX Athletic Probe." University of Richmond claimed they did not receive federal funds; therefore, they were not subject to Title IX.⁹³⁹

⁹³⁶ *Mississippi University for Women v. Hogan*, No. 81-406; 458 U.S. 718; 102 S. Ct. 3331; 1982 U.S. LEXIS 157; 73 L. Ed. 2d 1090; 50 U.S. L. W. 5068; 29 Empl. Prac. Dec. (CCH) P 32, 868 (July 1, 1982).

⁹³⁷ L. Greenhouse, "The O'Connor Record Proves Surprising to Fans and Foes," *New York Times*, July 11, 1982: para.15. LexisNexis (accessed May 2, 2010).

⁹³⁸ N.C.A.A. News, "Title IX Not A Dead Issue, But It's Mellowing," *N.C.A.A. News*, vol. 19, no. 12, July 14, 1982: 1,3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹³⁹ N.C.A.A. News, "Court Bars Richmond Title IX Athletic Probe," *N.C.A.A. News*, vol. 19, no. 12, July 14, 1982: 3. <http://web1.ncaa.org> (accessed March 28, 2008).

In an advisory notice about questionnaires the statement showing N.C.A.A.'s embracing of women's athletics was "The 1981-82 Questionnaire is quite similar to the one used 5 years ago, except that men's and women's programs are now treated identically."⁹⁴⁰ By July 1982's end, "AIAW Suit Judges Changed-Randomly Assign To Distribute Case Load," is reported along with the second installment of Kramer's speech reporting litigious developments and compliance standards for publicity in "N.C.A.A. attorney discusses changes in Title IX."⁹⁴¹ In August 1982 another court date was set for the A.I.A.W. suit since a new judge was appointed to the case. Each side of the suit was instructed to give written rather than oral testimony.⁹⁴²

Margolick reported on a federal appeals court decision that made Title IX apply to institutions receiving indirect federal aid. The institution in question, Grove City College, had not been accused of violating Title IX regulations. Their failure to file the compliance assurance paperwork verifying that they would not violate Title IX created action against them. It was found that Grove City accepted federal monies funneled through some of their students. MacKenzie, President of Grove College, reacted as he commented "this means that any private institution can be brought under Government jurisdiction because some of its students may benefit in some way from its largesse."⁹⁴³ The court of appeals used Congressional records of debate to establish that Congress did not specifically exempt indirect federal aid. Kohn of the National Women's Law Center considered this case important because as Ms. Kohn stated:

⁹⁴⁰ N.C.A.A. News, "Questionnaires To Be Mailed," *N.C.A.A. News*, vol. 19, no. 12, July 14, 1982 para.3, line 3, 8. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹⁴¹ N.C.A.A. News, "A.I.A.W. Suit Judges Changed—Randomly Assigned To Distribute Case Load," and "NCAA Attorney Discusses Changes In Title IX," *N.C.A.A. News*, vol. 19, no. 13, July 21, 1982: 1, 3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹⁴² N.C.A.A. News, "A.I.A.W. Suit Set For October," *N.C.A.A. News*, vol. 19, no. 14, August 11, 1982: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹⁴³ D. Margolick, "Bias Rules Appealed to Private Schools," *New York Times*, August 20, 1982: para.8. LexisNexis (accessed May 2, 2010).

“The decision . . . clarifies that colleges and universities which have intentionally refused Federal funds cannot shield themselves from civil rights responsibilities.”⁹⁴⁴

More legal matters and Title IX issues erupt in *Haffer v. Temple University*. The University claimed that its athletic programs were not funded by federal dollars and not bound by Title IX regulations. The U.S. Court of Appeals ruled that they were subject to Title IX regulations because they received federal funding indirectly funneled through the university to female students who wished to participate in intercollegiate athletics.⁹⁴⁵ *O’Connor v. Board of Education* dealt with policies for maintaining separate basketball teams for each gender. O’Connor was an exceptionally gifted basketball player and she had always played basketball with boys. She wanted to continue competing at the level that challenged her even though a girl’s basketball team did exist.⁹⁴⁶

The Associated Press release “U.S. Won’t Appeal Bias Case” appeared in *The New York Times*. This brief article announced that The Reagan Administration would not appeal a ruling in the fourth circuit. Judge Warriner took a “program” approach to applying Title IX to the University of Richmond’s athletic programming. Warriner accused the Education Department’s enforcement branch, The Office for Civil Rights, staff of intentionally making Title IX’s reach broad. He allowed students attending colleges and universities to receive government-based dollars and exempted the athletics program because it was run without government funds.⁹⁴⁷

Pear reported that a U.S. Court of Appeals—Third Circuit—found that intercollegiate sports activities were bound by Title IX if any program in the higher education institution

⁹⁴⁴ *Ibid*, Margolick, August 20, 1982: para.5.

⁹⁴⁵ *Haffer v. Temple University*, No. 82-149; 688 F.2d 14; 1982 U.S. App. LEXIS 25850 (September 7, 1982).

⁹⁴⁶ *O’Connor v. Board of Education of School District 23*, No. 80 C 5660; 545 F. Supp. 376; 1982 U.S. Dist. LEXIS 14129, (August 12, 1982).

⁹⁴⁷ Associated Press, “U.S. Won’t Appeal Bias Case,” *New York Times*, September 9, 1982. LexisNexis (accessed May 2, 2010).

received federal funds. The case on appeal against Temple University helped to define further Title IX's scope because federal aid was accepted by the institution in various forms. The judge in the Third Circuit found that all programs fell under Title IX, even athletics and that Temple University had to abide by Title IX regulations even through their athletic endeavors. Federal funds represented only ten percent of their university operating budget. Pear reported that a federal judge in Virginia had ruled just the opposite earlier that year when the athletic department of the University of Richmond was considered exempt from Title IX as it received no direct federal financial support. Of course, the opposing rulings from separate districts did not bind states outside the district as to the decisions regarding Title IX.⁹⁴⁸

Later in September, *The N.C.A.A. News* reported the successful debut of women's championships and announced restructuring and expansion of women's administrative team. In the same issue, New Hampshire's successful enhancement of their women's athletic programming over a ten-year period is attributed to Title IX.⁹⁴⁹ Reports on the University of Richmond outcome stood and the U.S. Education Department decided not to appeal the ruling because the University of Richmond athletic program did not receive direct federal dollars and was not required to abide by Title IX regulations in athletics.⁹⁵⁰ October 1982 *N.C.A.A. News* advocates "Exceptions For Women Explained" as programming rule differences applied only as stated for any institution choosing N.C.A.A. rules to govern women's athletic play.⁹⁵¹ "Grove

⁹⁴⁸ R. Pear, "Court Interpretations Conflict on Scope of Sex Discrimination Law," *New York Times*, September 10, 1982. <http://www.query.nytimes.com> (accessed August 11, 2008).

⁹⁴⁹ N.C.A.A. News, "Association Expands Staff For Women's Programs," and "Women's Program Grows at New Hampshire," *N.C.A.A. News*, vol. 19, no. 17, September 13, 1982: 1,2. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹⁵⁰ N.C.A.A. News, "Decision that Limits Title IX Suit Will Stand," *N.C.A.A. News*, vol. 19, no. 18, September 20, 1982: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹⁵¹ N.C.A.A. News, "Exceptions for Women Explained," *N.C.A.A. News*, vol. 19, no. 21, October 11, 1982: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

City to Appeal Ruling” is cited as Grove City College planned to petition The U.S. Supreme Court on the status of Pell Grants and Title IX.⁹⁵²

Updating *New York Times* readers on successful female athletes, Gross opened an October 1982 article with an interview with Katherine Switzer, the first woman to run in the Boston Marathon as a registered entry. Switzer talked of the freedom from limitations she realized. Switzer stated: ““When I was first running marathons, we were sailing on a flat earth. We were afraid we’d get big legs, grow mustaches, not get boyfriends, not be able to have babies. Women thought that something would happen to them, they’d break down or turn into men, something shadowy, when they were only limited by their own and society’s sense of limitations.”” . . . Switzer continued to share her voice with Gross during the interview: “Now, all those myths surrounding women athletes are going by the board in the face of knowledge and opportunities. Now women realize they can do anything they put their minds to doing. That’s in every aspect of life. The marathon, to me, is the pinnacle of that breakdown of limitations. For centuries, it was said to be the most arduous distance and that only the strongest hearts could do it. We’ve shown that women have the capability of doing that. And, if we’re capable of doing that, we’re capable of doing anything.”⁹⁵³

Gross’s article contained what she considered measurable gains as defined by the executive director of the Women’s Sports Foundation. Later that same fall, The N.C.A.A. disclosed plans to “step up” promotions of women’s championships in gymnastics, volleyball and basketball. November 1982 finds women’s sports featured in different venues from spurring

⁹⁵² N.C.A.A. News, “Grove City to Appeal Ruling,” *N.C.A.A. News*, vol. 19, no. 22, October 18, 1982: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹⁵³ J. Gross, “Women’s Old Images Fading Rapidly: Significant Gains by Female Athletes,” *New York Times* October 29, 1982. LexisNexis (May 2, 2010).

interest in conference development⁹⁵⁴ to gaining prestige of being named among the top five finalists.⁹⁵⁵ The year 1982 ended discussing women's basketball rules changes to increase spectator interest as sports information directors name women's volleyball academic team.⁹⁵⁶ "Cal Poly-Pomona Ends Football"⁹⁵⁷ resounded throughout the news basing the decision on belt-tightening as a "Series To Highlight Women's Sports" is announced as a joint venture women's athletics on CBS Radio designed to heighten awareness and interest in two women's sports and baseball.⁹⁵⁸

Orleans wrote in an article "Title IX and Athletics: Time Out?" published in *Educational Record*: "Separate teams for men and women presently are the best way to assure competitive participation by comparable proportions of men and women. But separate teams require definition and assurance of equality in resources and support, cost a lot of money, and on the basis of performance, exclude the best women from competing with the best men."⁹⁵⁹ Orleans presented a detailed discussion of issues facing intercollegiate athletics and the exemptions sought by revenue-producing sports. Orleans' enlightened declarations revealed a backlash-effect from federal regulations that many times were covered by state equal opportunity legislation. Orleans directed attention to defining equal pay-for equal work as related to the Title IX controversy.⁹⁶⁰

⁹⁵⁴ N.C.A.A. News, "Basketball Triggers Explosion Of Women's Athletic Conferences," *N.C.A.A. News*, vol. 19, no. 27, November 22, 1982: 10.

⁹⁵⁵ N.C.A.A. News, "Women Gain Prestige of Being Included in Top Five Finalists," *N.C.A.A. News*, vol. 19, no. 28, November 29, 1982: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹⁵⁶ N.C.A.A. News, "Groups Discuss Women's Basketball Rules," and "Sports Information Directors Name Women's Volleyball Academic Team," *N.C.A.A. News*, vol. 19, no. 29, December 6, 1982: 10. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹⁵⁷ N.C.A.A. News, "Cal Poly-Pomona Ends Football," *N.C.A.A. News*, vol. 19, no. 30, December 15, 1982: 12. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹⁵⁸ N.C.A.A. News, "Series To Highlight Women's Sports," *N.C.A.A. News*, vol. 19, no. 31, December 22, 1982: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹⁵⁹ J. H Orleans, "Title IX and Athletics: Time Out?" *Educational Record* (Winter 1982):42.

⁹⁶⁰ *Ibid.*, Orleans, Winter 1982.

Hillsdale College v. H.E.W. involved a refusal on the private college's part to file the "Assurance of Compliance with Title IX Regulations" (H.E.W. Form 639A) with the Department of Health, Education and Welfare. H.E.W. was ready to enforce action on Hillsdale College, revoking their students' privileges as federal financial aid recipients. At the time of the enforcement proceedings, no gender discrimination was cited; therefore, the courts held that Hillsdale College did not have to file the H.E.W. form in order for their students to continue to receive federal financial aid.⁹⁶¹

The second decade of Title IX began with "Court Upholds Hillsdale on Title IX."⁹⁶² Will Grimsley found that print and television news media organizations failed to freely embrace and therefore promote women's sporting events and activities in "Ex Olympic Performers Promoting Women's Sports."⁹⁶³ Washington State University (WSU) was advised to revise distribution of its athletic program funds in "Court Orders Athletic Program to Adjust Budget Equitably." WSU was ordered to provide more budget allocation to women's athletic programming, especially in the areas of scholarship distribution and facilities.⁹⁶⁴ *The N.C.A.A. News* alerted members about the "Court Date Set" for *A.I.A.W. v. N.C.A.A.*⁹⁶⁵ and in less than a month it is reported that "N.C.A.A. prevails in AIAW Antitrust Litigation." The N.C.A.A. did not conspire to end The A.I.A.W. when it implemented a governance plan for women's athletics including

⁹⁶¹ *Hillsdale College v. Department of Health, Education and Welfare*, No. 80-3207; 696 F.2d 418; 1982 U.S. App. LEXIS 23243, (December 16, 1982).

⁹⁶² N.C.A.A. News, "Court Upholds Hillsdale on Title IX," *N.C.A.A. News*, vol. 19, 33, 77th Annual Convention Issue, January 5, 1983: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹⁶³ N.C.A.A. News, "Ex Olympic Performers Promoting Women's Sports," *N.C.A.A. News*, vol. 19, no. 33, 77th Annual Convention Issue, January 5, 1983: 3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹⁶⁴ N.C.A.A. News, "Court Orders Athletic Program to Adjust Budget Equitably," *N.C.A.A. News*, vol. 20, no 2, January 12, 1983: 8. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹⁶⁵ N.C.A.A. News, "Court Date Set," *N.C.A.A. News*, vol. 20, no. 6, February 9, 1983. <http://web1.ncaa.org> (accessed March 28, 2008).

championships. The judge reasoned that The N.C.A.A. responded to member institutions and market forces.⁹⁶⁶

The United States Supreme Court ruled in the case on *Grove City College v. Bell* regarding the reach of Title IX jurisdiction and whether student aid entangled the entire institution. The Supreme Court took a program-by-program interpretation in that if a program received no federal funding, then it would not be tied to Title IX oversight. The article text reminded readers that in 1976, The Department of Health, Education and Welfare had sought to cut funding to the students and in 1982 the Third Circuit Court of Appeals found that federal funds given to students at Grove City College created a recipient relationship and the College could be penalized for not submitting written compliance with Title IX. Another issue Grove City wished to clarify was related to program-specific or institutional jurisdiction when federal funds were accepted through students. The Justice Department tried to intervene but failed to ward off The Supreme Court in the Grove City case.⁹⁶⁷

In March, 1983, *The N.C.A.A. News* reported “Courts Sidestep Deciding Whether Title IX Applies To Sports Programs.”⁹⁶⁸ In the article, *Grove City College v. Bell*, *Othen vs. Ann Arbor School Board*, *Bennet v. West Texas State University* and *North Haven Board of Education v. Bell* were reviewed as interest increased in court decisions on what constituted a program, what was involved when schools received federal aid and whether schools could be forced to file the Assurance of Compliance with Title IX.⁹⁶⁹ *The N.C.A.A. News* column, “Elsewhere in Education,” featured a report from Hillsdale’s president regarding their U.S.

⁹⁶⁶ N.C.A.A. News, “NCAA Prevails In A.I.A.W. Antitrust Litigation,” *N.C.A.A. News*, vol. 10, no. 9, March 2, 1983: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹⁶⁷ New York Times, “Court to Decide Case on Sex Bias,” *New York Times*, February 23, 1983. <http://query.nytimes.com> (accessed November 3, 2008).

⁹⁶⁸ N.C.A.A. News, “Courts Sidestep Deciding Whether Title IX Applies to Sports Programs,” *N.C.A.A. News* vol. 20, no. 10, March 9, 1983:1,12. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹⁶⁹ *Ibid.*, “Courts Sidestep,” March 9, 1983:12.

Supreme Court request for a ruling to be reversed that opens the door for future federal encroachment.⁹⁷⁰

In the April 1983 article, “AIAW Appeals Ruling Of District Court Judge,” N.C.A.A. membership was informed about the A.I.A.W. appeal stemming from the prior ruling. The US District Court found no foul play in practices entered into by The N.C.A.A. in its actions to begin sponsoring women’s championships.⁹⁷¹ In mid-April, *The N.C.A.A. News* editors reported that “Government’s Approach To Title IX May Be Changing,” which offered information about The Reagan Administration’s decision to abandon deregulation of Title IX.⁹⁷²

The N.C.A.A. News featured a report of a study by Emily Feistritz regarding the shift of interest in careers chosen by women. She revealed that many of the better teacher education prospects were not choosing education, but were training in professional schools and seeking higher paying, more prestigious jobs. She shared statistics that between 1970 and 1980 six times as many women were going into business-related college majors and that eleven times as many women were choosing law-related careers. This information appeared in her newsletter and was reported in *The Washington Post*.⁹⁷³

S. Patricia Walden entered an article “Women’s Sports Programs Face Pivotal Issues” as part of the Comment section of August 1983 *N.C.A.A. News*. The issues facing women, according to her comment, were issues relating to family, coaching opportunities, the quality of

⁹⁷⁰ N.C.A.A. News, “Hillsdale To Seek Ruling Reversal,” *N.C.A.A. News*, vol. 20, no. 13, March 30, 1983: 3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹⁷¹ N.C.A.A. News, “A.I.A.W. Appeals Ruling Of District Court Judge,” *N.C.A.A. News*, vol. 20, no. 14, April 6, 1983: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹⁷² N.C.A.A. News, “Government’s Approach To Title IX May Be Changing,” *N.C.A.A. News*, vol. 20, no. 15, April 13, 1983: 1,8. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹⁷³ N.C.A.A. News, “Women Bypass Teaching Careers,” *N.C.A.A. News*, vol. [21] sic, no. 16, April 20, 1983: 3. <http://web1.ncaa.org> (accessed March 28, 2008).

coaching and how to increase the entertainment value of women's sports.⁹⁷⁴ At the end of August, 1983, *The N.C.A.A. News* reveals that "U.S. Takes New Approach To Title IX Enforcement." The U.S. Justice Department entered the conversation directly as courts and athletics still struggled with what entities were immune under the current definition or lack of definition regarding financial aid and program.⁹⁷⁵

Students studying to become lawyers actively produced material for examination. Title IX law review production appeared to hold steady in 1983 as P.J. Van de Graff returned to the financial aid and Congressional intent question in his review of the conflicting legal interpretations of *Hillsdale College v. H.E.W.* Van de Graff also discussed the meaning of "program" as it related to federal funding received by schools and termination authority held by H.E.W. when programs were found to be violating Title IX.⁹⁷⁶ J. Krakora pointed out at the time the article was written in 1983 that in order for plaintiffs to succeed in their claim, they must connect the discrimination they suffered with the particular program within the university that received direct federal funding. At the time this review was written athletic departments were not directly receiving federal funds.⁹⁷⁷ C.S. Lewis, in *Fordham Law Review* 51, called for expanding the reading of Title IX to include an entire institution and involve all forms of federal aid then exempted from scrutiny.⁹⁷⁸ M. Brownfield challenged Congressional leaders in 1983 to clear up Title IX intent because issues of compliance practices were extended to private institutions. Brownfield held that using the financial aid system to enforce compliance was not a

⁹⁷⁴ N.C.A.A. News, "Women's Sports Programs Face Pivotal Issues," *N.C.A.A. News*, vol. 20, no. 28, August 17, 1983: 2. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹⁷⁵ N.C.A.A. News, "U.S. Takes New Approach To Title IX Enforcement," *N.C.A.A. News*, vol. 20, no. 29, August 31, 1983: 1,3. <http://web1.ncaa.org> (accessed March 28, 2008).

⁹⁷⁶ P. J. Van de Graff, "The Program-Specific Reach of Title IX," *83 Colum. L. Rev.*, 1983:1210.

⁹⁷⁷ J. Krakora, "The Application of Title IX to School Athletic Programs," *68 Cornell L. Rev.*, 1983:222.

⁹⁷⁸ C. S. Lewis, "Title IX of the 1972 Education Amendments Harmonizing Its Restrictive Language with Its Broad Remedial Purpose," *51 Fordham L. Rev.*, 1983:1043.

good focus.⁹⁷⁹ A.E. Freedman presented a general gender classification discussion and the United States Supreme Court justices supporting them.⁹⁸⁰ In 1983, R. J. Waicukauski offered a collection of essays growing out of the 1981 Indiana University Conference on Law and Sports.⁹⁸¹

Pear reported that The Reagan Administration was accused of tampering with civil rights policies. “‘There are indications’, Attorney General William French Smith alleged, ‘that the Departments of Education and Justice still seek to limit longstanding equal opportunity guarantees. Their efforts, unless reversed promptly, jeopardize not only equal education protection for women, but also fundamental civil rights guarantees against discrimination based on race, color, national origin, age and handicap in all federally assisted programs.’”⁹⁸² Also in the article, Pear pointed out that outspoken members of the Commission on Civil Rights were under threat of being replaced by Reagan. Concerns expressed grew out of the narrowly defined tenets in *Grove City v. Bell* affecting the 1972 equal rights law.⁹⁸³

Pear offered more attention to the critique of The Reagan Administration for undermining civil rights laws all the while stating that Reagan was committed to women’s rights. Greenberger of the National Women’s Law Center commented: “‘We are very distressed and very concerned that the administration would retreat so dramatically and undercut one of the most important civil rights laws that we have on the books today. . . It’s particularly ironic to see

⁹⁷⁹ M. Brownfield, “Title IX of the Education Amendments of 1972: Setting Limits on Agency Jurisdiction,” *52 U. Cin. L. Rev.*, 1983:819.

⁹⁸⁰ A. E. Freedman, “Sex Equity, Sex Differences and The Supreme Court,” *Yale L. J.*, 1983:913.

⁹⁸¹ R. J. Waicukauski, “Law and Amateur Sports,” *96 Har. L. Rev.*, 1983:1495.

⁹⁸² R. Pear, “Rights Unit Faults Reagan Once More,” *New York Times*, June 15, 1981: para.10. LexisNexis (accessed May 2, 2010).

⁹⁸³ *Ibid.*, Pear, June 15, 1983.

this action taken at the same time President Reagan is touting the commitment of his administration to fighting discrimination against women and minorities.”⁹⁸⁴

In a *New York Times* article, Bob Dole, Senator from Kansas, reacted to The Reagan Administration and the Justice Departments attempt to change the scope and focus of Title IX. Dole maintained that “Congress didn’t want a piecemeal approach whereby an educational institution could reap the benefits of federal aid for one program but be free to discriminate in the rest of its programs”⁹⁸⁵ Attorney General William French Smith publicly reacted to an editorial “Again, the Tilt Toward Bias” in *The New York Times*, August 14, 1983 explaining that The Justice Department’s attempt to correctly interpret Title IX. He based his comments on the department’s literal interpretation of Congressional intent when it wrote the words “program or activity” into the original statute.⁹⁸⁶

The Office for Civil Rights announced Title IX violations at Furman University regarding practices in distribution of athletics scholarships and other Title IX laundry list items.⁹⁸⁷ A few days later in another *New York Times* feature, Taylor identified the Grove City saga as ““The battle is a clash of values: the American Tradition of valuing diversity and autonomy, especially in colleges where academic freedom could be stifled by pervasive regulation, versus Washington’s commitment to bar the use of Federal funds to subsidize discrimination.”⁹⁸⁸ Taylor reiterated the issues facing the ultimate Supreme Court interpretation of “program or activity” as written into Title IX and applied to practices of financial aid acceptance by only a

⁹⁸⁴ R. Pear, “Reagan Seeks to Limit a Law Banning Sex Bias in Schools,” *New York Times*, August 6, 1983: para.7-8. LexisNexis (accessed May 2, 2010).

⁹⁸⁵ *New York Times*, “Dole Assails Bias-Law Stance,” *New York Times*, August 7, 1983: para.9. LexisNexis (accessed May 2, 2010).

⁹⁸⁶ W. F. Smith, “A Law on Bias Properly Enforced,” *New York Times*, August 14, 1983. LexisNexis (accessed May 2, 2010).

⁹⁸⁷ *New York Times*, “Athletics at Furman Cited as Discriminatory,” *New York Times*, September 4, 1983. LexisNexis (accessed May 2, 2010).

⁹⁸⁸ J. S. Taylor, “Court Case Yanks on the Whole Ball of Federal Aid String,” *New York Times*, September 25, 1983. LexisNexis (accessed May 2, 2010).

portion of Grove City's students.⁹⁸⁹ Greenhouse discussed The Supreme Court docket focus for 1983. The case of interest was *Grove City College v Bell*. Greenhouse mentioned the Grove City briefs prepared by civil rights groups and a Congressional enclave who contended that Title IX covered the whole university or college and not just a particular program within the academic structure.⁹⁹⁰

Molotsky reported on a sports conference sponsored by the Women's Sports Foundation and the U.S. Olympic Committee where Billy Jean King spoke, calling for open competition between men and women in an effort to improve competitive edge. Professor Dorothy Harris of Pennsylvania State University countered with the idea that if they did as King advised they would create a class of female athletes which in turn would limit opportunity for most females interested in sports participation. The president of the Olympic Committee, Simon, commented on equalizing sport for both genders as becoming reality.⁹⁹¹

Grove City College v. Bell featured the private college that refused to comply with H.E.W.'s Assurance of Title IX Compliance. The U.S. Supreme Court ruled that private colleges and universities receiving indirect federal financial aid support through their students for educational purposes must abide by the tenets of Title IX which prohibited discrimination based on gender. The major result from this decision was the interpretation of "program" application rather than whole university when receiving federal financial aid.⁹⁹²

Greenhouse discussed The Supreme Court decision that supported The Reagan Administration's narrowly defined meaning of student aid and programming involved when aid

⁹⁸⁹ *Ibid.*, Taylor, September 25, 1983.

⁹⁹⁰ L. Greenhouse, "High Court New Term: Much Old Business," *New York Times*, October 2, 1983. LexisNexis (accessed May 2, 2010).

⁹⁹¹ I. Molotsky, "Mixing of Sexes Urged in Sports," *New York Times*, November 5, 1983. LexisNexis (accessed May 2, 2010).

⁹⁹² *Grove City College v. Bell*, No. 82-792; 465 U.S. 555; 104 S. Ct. 1211; 1984 U.S. LEXIS 158; 79 L.Ed. 2d 516; 52 U.S. L. W. 4283; 33 Empl. Prac. Dec. (CCH) P34,158, (February 28, 1984).

was from federal sources. The Supreme Court justices in a six-three split decision agreed in *Grove City v Bell* that the Title IX regulations would not affect programs which did not receive direct student aid. The supporters of civil rights voiced their concern about other civil rights laws being defined in this manner while vowing to request legislative action to combat this decision. The Supreme Court majority opinion writers looked for Congressional intent supporting the whole-institution view. The writer of the opinion, Justice White, contended: “We have found no persuasive evidence suggesting that Congress intended that the department’s regulatory authority follow federally aided students from classroom to classroom, building to building or activity to activity.”⁹⁹³

Fiske emphasized how little the latest ruling of The Supreme Court in *Grove City v Bell* would really affect standard operating procedure at institutions of higher learning. Steinbeck of the American Council on Education agreed as he stated: “Over the last 12 years the spirit of Title IX has been incorporated into the everyday practices and thought processes of administrators, faculty members and students. . . It is highly unlikely that there will be any cutback in efforts to achieve equality of opportunity based on sex.”⁹⁹⁴ The President of Trinity University commented on the possibility of athletic programmers faced with budget short falls succumbing to the temptation to relax growth of women’s programs. Trinity’s president stated: “It may provide a convenient way to cut back on the number of sports or scholarships or coaches”⁹⁹⁵ referring to schools with little commitment to achieve parity between the genders.

⁹⁹³ L. Greenhouse, “High Court Backs Reagan’s Position on a Sex Bias Law,” *New York Times*, February 29, 1984. LexisNexis (accessed May 2, 2010).

⁹⁹⁴ E. B. Fiske, “Colleges Expecting Little Impact From Ruling,” *New York Times*, February 29, 1984: para. 3. LexisNexis (accessed May 2, 2010).

⁹⁹⁵ *Ibid.*, Fiske, February 29, 1984: para.5.

Several university presidents went on record expressing their commitment to gender equity efforts.⁹⁹⁶

Legislators' response was documented by *New York Times* reporter Pear who cited William Bradford Reynolds' endorsement of any new legislative remedy to re-strengthen Title IX. Claudene Schneider of Rhode Island was credited with presenting a bill in Congress to widen Title IX authority. She noted that her effort ““would make it clear to the courts that the sex discrimination statute should apply to all programs or activities within any institution receiving any form of taxpayer support.””⁹⁹⁷ Pear noted the surprise expressed by several civil rights advocates about Reynolds' explanation that the government had been practicing a program-related interpretation of Title IX for many years. Bell, Education Secretary, chimed in that federal departments had no desire to dictate what athletic programs each school had to offer based on Title IX enforcement requirements.⁹⁹⁸

Legislators used the print media outlets as a forum to air their stance as Bob Packwood of Oregon provided an op-ed in *The New York Times* reacting to *Grove City v Bell*, citing gender-related improvements brought on by Title IX. Packwood provided a call to action when he wrote: “We need to recommit ourselves to the purposes of the Civil Rights Act, which is now 20 years old. Fortunately, The Supreme Court's opinion is easily corrected. A broad spectrum of members of Congress—Republican and Democrat—men and women have introduced The Civil Rights Act of 1984 to clarify and restore our original intentions regarding all four statutes: that any receipt of Federal financial assistance will trigger institution-wide coverage.”⁹⁹⁹

⁹⁹⁶ *Ibid.*, Fiske February 29, 1984.

⁹⁹⁷ R. Pear, “Justice Dept. Open to New Rights Bill,” *New York Times*, March 3, 1984: para.7. LexisNexis (accessed May 2, 2010).

⁹⁹⁸ *Ibid.*, Pear, March 3, 1984.

⁹⁹⁹ B. Packwood, “Discrimination Aided,” Op-Ed, *New York Times*, April 20, 1984: para.6. LexisNexis (accessed May 2, 2010).

After the U.S. Supreme Court decided to interpret Title IX jurisdiction on a program-by-program basis, Congressional forces introduced a bill to reverse that interpretation by widening Title IX jurisdiction to any entity receiving federal funds. In this bill Congress sought to define the meaning of “recipient” and would incorporate existing civil rights law matching original Congressional intent. The civil rights statutes were related to gender, race, handicap and age. Bob Dole, Senator from Kansas, supported this bill stating: “The sole purpose of this legislation is to restore the law to the broad coverage which marked its enforcement prior to Grove City.”¹⁰⁰⁰ In a law review, K. Czapansky discussed North Haven and Grove City decisions and the action by Congressional leaders to broaden the intent of Title IX legislation after Grove City.¹⁰⁰¹

While touted as a minor legislative adjustment, Assistant Attorney General William Bradford Reynolds stated: “This bill has been portrayed as minor tinkering, a quick fix to overturn the Grove City decision, but it represents a monumental, drastic change in the civil rights enforcement landscape. It rewrites four statutes to the point that the Federal Government would be involved in every facet of state and local activity.”¹⁰⁰² Many did not agree that the federal government should have this much authority while others applauded its clarity of focus.¹⁰⁰³

Pear announced that as a result of Supreme Court action in *Grove City v. Bell*, which changed the widely held interpretation of Title IX’s reach, the Federal Government arranged to end investigations, making them moot by the decision. Schools which had complaints against them at the time the decision was made were The University of Maryland, Pennsylvania State

¹⁰⁰⁰ R. Pear, “Bill to Expand Rights Coverage Sets Off Dispute,” *New York Times*, May 7, 1984: para.12. <http://query.nytimes.com> (accessed November 3, 2008).

¹⁰⁰¹ K. Czapansky, “*Grove City College v. Bell*: Touchdown or Touchback?” *43 Md. L. Rev.*, 1984:379.

¹⁰⁰² Pear, “Bill to Expand Rights,” May 7, 1984: para.14.

¹⁰⁰³ *Ibid.*, Pear, May 7, 1984.

University, University of Alabama, Auburn University, Duke University, Idaho State, Mississippi College and the University of Washington. Most of the complaints against these institutions of higher learning were related to athletic programming, except at Mississippi College where the charges related to hiring practices and treatment of the college's workers. Pear cited Bell as he stated "Our enforcement authority has been limited considerably by the Grove City decision."¹⁰⁰⁴ Bell indicated that he would support Congressional efforts to reverse Grove City.¹⁰⁰⁵ Fuerbrunger found the Senate trying to tack on different issues to the spending bill designed to keep the federal government operating into fiscal year 1984-1985. Fuerbrunger noted that the Senate version of the bill containing language designed to reverse Grove City was stuck in committee as senators debated procedural points related to "tacking" important issues onto appropriation legislation.¹⁰⁰⁶

Dissertation writer Gates examined in 1984 at the University of Louisville, the early history of Title IX development and application to collegiate athletic venues. Gates discussed Congressional intent, judicial review, and attention from U.S. presidents given to Title IX as it related to athletics and regulations school personnel must follow to be compliant with Title IX.¹⁰⁰⁷

Back to action in the courts, in *Minor v. Northville Public Schools*, Minor, a physical education teacher and part-time coach, sought permission to sue her school district for claims under Title VII and for Title IX gender-based discrimination on pay received for part-time

¹⁰⁰⁴ R. Pear, "23 Cases on Civil Rights Closed After Court Rules," *New York Times*, June 3, 1984: para.8. LexisNexis (accessed May 2, 2010).

¹⁰⁰⁵ *Ibid.*, Pear, June 3, 1984.

¹⁰⁰⁶ J. Fuerbrunger, "Senate to Take Up Anti-Bias Measure Before Departing," *New York Times*, September 28, 1984. LexisNexis (accessed May 2, 2010).

¹⁰⁰⁷ R. E. Gates, Jr., *The Development of Title IX of the Educational Amendments of 1972 and Its Current Application to Institutional Athletic Programs*, Abstract. Dissertation. University of Louisville, 1984. ProQuest ATT 8420417 (accessed October 15, 2009).

coaching contracts.¹⁰⁰⁸ Court action in the mid-1980s included *Blair v. Washington State University*. Female athletes and their coaches accused Washington State University of sex-discrimination practices.¹⁰⁰⁹

Fiske updated *New York Times* readers about Grove City College's refusal to comply with federal policy as administrators created procedures at the college to stop accepting federal monies. The Freedom Fund was established to offset the loss of funding which according to MacKenzie, President of Grove City, "It's the principle. We don't want Washington dictating our policies."¹⁰¹⁰ Elsewhere, civil rights watchers were suing the Education Department for not carrying out Title IX non-compliance investigations that had been delayed as new policies were being developed.¹⁰¹¹

New York Times journalist Alfano interviewed N.C.A.A. officials, coaches, and athletic directors to discover real and perceived problems encountered in programming women's athletics. The N.C.A.A. had begun sponsoring women's athletics three years before this was written. N.C.A.A. governance, according to some interviewees, was still dominated by men. Those who were from A.I.A.W. roots discussed the differences in philosophy and practice between the two organizations. Berst, an investigator for The N.C.A.A., noted that rules violations were starting to become more common in women's programs. Alfano noted that, although The N.C.A.A. had created a women's division, it had no responsibility to create governing policy. Alfano briefly recapped the influence Title IX had on the growth of women's athletics coupled with the attention the women's programming enjoyed once The N.C.A.A.

¹⁰⁰⁸ *Minor v. Northville Public Schools*, No. 81-40371; 605 F. Supp. 1185; 1985 U.S. Dist. LEXIS 21279; 1 Fed. R. Serv. 3d (Callaghan) 481; 39 Fair Empl. Prac. Cas. (BNA) 677, (March 28, 1985).

¹⁰⁰⁹ *Blair v. Washington State University*, No. 50591-8; 108 Wn. 2d 558; 740 P. 2d 1379; 1987 Wash. LEXIS 1159, (August 6 1987).

¹⁰¹⁰ E. B. Fiske, "Education Watch: Going It Alone at Grove City," *New York Times*, May 5, 1985: para.4. <http://select.nytimes.com> (accessed November 3, 2008).

¹⁰¹¹ *Ibid.*, Fiske, May 5, 1985.

began sponsoring championships for women's sports. Coaches and athletic directors commented about the Reagan Administration's successful efforts to weaken Title IX. The mindset was that there were enough established programs that progress in gender parity would not necessarily be impeded. Alfano cited the study by Acosta and Carpenter, which contained information about the coaching disparity issues. Most of the blame for the lack of women's progress in the coaching job market was placed on the male network. One administrator countered with the fact that the training for women's coaches for women's sports was still in the apprentice stage.¹⁰¹²

Lawyers in training offered reaction or alternate ideas on adjudicated cases. D.M. Piche in the summer of 1985 offered another law review featuring *Grove City v. Bell*, suggesting the need for further legislation that would expressly define the scope and meaning of program or activity for colleges subject to Title IX on a program-specific basis.¹⁰¹³ B.B. Tiesenga continued discussion on the Grove City decision seeing it as encroaching on liberties of private colleges.¹⁰¹⁴ Croudace and Desmarais asked: Can separate but equal efforts to affect gender equity be enough by looking at the equal protection clause as it applied to the then current practice of separate athletic programs for males and females?¹⁰¹⁵

Reporting about efforts to persuade Congressional leaders, Williams wrote "Coalition Seeks Wider Penalty In Rights Law" as a feature in *The New York Times* in February 1986. The civil rights coalition efforts to persuade Congress to revisit Title IX were sponsored by well-known groups. The coalition members featured in this article were National Organization for Women, National Association for the Advancement of Colored People, League of Women

¹⁰¹² P. Alfano, "Signs of Problems Amid the Progress," *New York Times*, December 15, 1985. LexisNexis (accessed May 2, 2010).

¹⁰¹³ D. M. Piche, "*Grove City College v. Bell* and Program Specificity: Narrowing the Scope of Federal Civil Rights States," *34 Cath. U.L. Rev.*, 1985:1087.

¹⁰¹⁴ B. B. Tiesenga, "Title IX and the Outer Limits of Spending Powers *Grove City College v. Bell* 104 S. Ct. 1211 (1984)," *61 Chi.-Kent L. Rev.*, 1985:711.

¹⁰¹⁵ V. P. Croudace and S.A. Desmarais, "Where the Boys Are: Can Separate Be Equal in School Sports?" *58 S. Cal. L. Rev.*, 1985:1425.

Voters and the Disability Rights Education and Defense Fund and promised to do what was necessary to overturn the Grove City decision. Williams briefed the reader on the historical progression of Title IX and reported that the present restoration bill was failing to move through Congress because another amendment, concerning abortion limitations, was being attached. The coalition's expressed wish was to pass the Title IX restoration legislation on its own merit.¹⁰¹⁶

Students in Ph.D. programs at institutions of higher learning studied a variety of aspects about Title IX outcomes and influence. In a doctoral dissertation, Riffe presented a chronological look at the development of women's athletic programming at the University of Arizona. In the study, Riffe discussed the starting point in 1895 and journeyed through to the mid-1980s.¹⁰¹⁷ By 1987 scholarly publications were seen from mid-America to the southeast regions of the United States. Szady's doctoral dissertation presented a record of expansion of women's athletics from 1922 – 1981 at the University of Michigan.¹⁰¹⁸ Burkhart at Northeast Missouri State University assessed budgeting changes tied to Title IX in the public universities of Missouri.¹⁰¹⁹ The doctoral dissertation Campbell produced at The Florida State University presented a perception versus reality compliance report for the years 1972-1985 at FSU regarding gender equity compliance in women's sports.¹⁰²⁰

The Office for Civil Rights was busy updating its material in 1987. The "Title IX Grievance Procedures: An Introductory Manual" was developed and published in 1987 to help

¹⁰¹⁶ L. Williams, "Coalition Seeks Wider Penalty In Rights Law," *New York Times* (February 28 1986). LexisNexis (accessed May 2, 2010).

¹⁰¹⁷ T. D. Riffe, *A History of Women's Sports at the University of Arizona (Athletics)*, Abstract. Dissertation The University of Arizona, 1986. ProQuest AAT 8513832 (accessed October 15, 2009).

¹⁰¹⁸ S.M. Szady, *The History of Intercollegiate Athletics for Women at the University of Michigan*, Abstract. Dissertation, University of Michigan. 1987. ProQuest AAT 8712219 (accessed October 15, 2009).

¹⁰¹⁹ F. E. Burkhart, *The Effects of Title IX on Expenditures in Athletics for Women*, Abstract. Dissertation Northeast Missouri State University, 1987. ProQuest AAT 1330804 (accessed October 15, 2009).

¹⁰²⁰ J. N. Campbell, *Actual Versus Perceived Compliance with Title IX Regulations Governing the Women's Intercollegiate Athletic Program at the Florida State University, 1972 – 1985*, Abstract. Dissertation. 1987. ProQuest AAT 8805649 (accessed October 15, 2009).

schools understand their obligations to comply with newly established Title IX complaint procedures and their duty to appoint a Title IX compliance officer for their organization.¹⁰²¹ As a rebuttal to the judicial decision held by The U.S. Supreme Court in *Grove City College v. Bell*, limiting Title IX policing authority in athletic programming, Congress responded by authorizing the Civil Rights Restoration Act of 1987, re-establishing Title IX scrutiny over sex discrimination practices in athletic programming.¹⁰²² Thomas and Rogers revealed news that the Civil Rights Restoration Act, a Congressional effort to reverse The Supreme Court ruling in *Grove City v. Bell*, was likely to pass and would restore power to Title IX expanding reach to institutions receiving any federal funding.¹⁰²³

Updating the public on legislative matters, Molotsky conveyed The House of Representatives efforts to join the Senate in attempting to reverse the 1984 *Grove City College* decision. The Civil Rights Restoration Act, on its way to the president, widened the reach of anti-discrimination from piece-meal to program. Representative Rodino from New Jersey stated “Federal tax dollars collected for all the people should not be used to subsidize discrimination against some of the people. . . . Our nation’s civil rights laws are the cornerstone of the promise of equality under the law, for all Americans, regardless of race, sex, national origin, age or physical handicap.”¹⁰²⁴ President Reagan threatened to stop this legislation. Predictions were made that some Republican House members saw this legislation as good intentions going wrong

¹⁰²¹ U.S. Department of Education, Office for Civil Rights, “Title IX Grievance Procedures: An Introductory Manual,” ERIC Document ED (1987).

¹⁰²² *The Civil Rights Restoration Act of 1987*, codified at 20 U.S.C. (1687).

¹⁰²³ E. M. Thomas, Jr. and T. Rogers, “Sports World Specials: Reversing Field,” *New York Times*, April 20, 1987. <http://query.nytimes.com> (accessed November 3, 2008).

¹⁰²⁴ I. Molotsky, “House Passes Bill to Upset a Limit on U.S. Rights Law,” *New York Times*, March 3, 1988: para.9-10. <http://query.nytimes.com> (accessed November 3, 2008).

and having an extreme effect on small business, government, religious organizations, farmers and educational institutions both public and private.¹⁰²⁵

Johnson reported that President Reagan vetoed the Civil Rights Restoration Act also known as the Grove City Bill. Congressional leaders were being lobbied by a variety of citizens' groups to override the veto. The bill was designed to restore rights lost when The United States Supreme Court applied a program-specific interpretation to Title IX in the *Grove City College v. Bell* decision. Most of the citizens' groups opposing the bill indicated that areas usually off-limits to government control would be endangered. Johnson mentioned that "Mr. Reagan, who has introduced an alternative civil rights package, acknowledges that The Supreme Court ruling went too far in limiting Federal anti-discrimination laws but he contends that the Congressional remedy goes too far in the other direction."¹⁰²⁶ Two days later, *The New York Times* featured an Associated Press release that announced "Grove City's Finances Survive Rights Battle." The reaction to the veto-override that reversed the *Grove City College v. Bell* ruling indicated that the college administration had prepared the endowment by raising funds that would offset loss of federal support that a percentage of their student body received. They were determined to be independent of government interference.¹⁰²⁷

Following up on the lawsuit and settlement terms, Temple University pledged to issue scholarships to women in varsity sports at the same rate proportionate with their participation numbers. The projected population of female athletes for the upcoming year was forty-three

¹⁰²⁵ *Ibid.*, Molotsky, March 3, 1988.

¹⁰²⁶ T. Johnson, "Washington Talk: Congress: Foes of Civil Rights Bill Mount 11th-Hour Drive," *New York Times*, March 22, 1988: para.8. <http://query.nytimes.com> (accessed November 3, 2008).

¹⁰²⁷ Associated Press, "Grove City's Finances Survive Rights Battle," *New York Times*, March 24, 1988. <http://query.nytimes.com> (accessed November 3, 2008).

percent and the University leaders promised to give forty-three percent of scholarship funding to women's sports.¹⁰²⁸

When Title IX was enacted, according to research by Acosta and Carpenter, ninety percent of intercollegiate female sports were coached by women. Since Title IX was passed the number of women coaching women has dropped dramatically. The conundrum: Salaries. The equalization of salaries in coaching made the positions to coach women's teams more inviting to men.¹⁰²⁹ An accompanying educational voice was heard in a doctoral dissertation produced in the late 1980s by Anderson of the University of Minnesota. Anderson presented a discussion of the laws and constitutional amendments governing co-ed [male and female] competitive sports giving rise to discrimination claims.¹⁰³⁰

The New York Times ran a brief notice that "Virginia Files Lawsuit on V.M.I Admissions" in February 1990. Virginia Military Institute, an all male institution catering to military training, was ordered by the U.S. Justice Department to submit a plan to end gender bias by allowing women to be admitted. V.M.I filed a lawsuit to counter this order.¹⁰³¹ *The New York Times* also ran an article "View of Sports: Fair Play for All (Even Women)" in April 1990. This article was written by Donna Lopiano as an example of some of the things that happened as a result of *Grove City v. Bell*. Lopiano reported that Oklahoma University cut women's basketball, stating that the expenditure out-weighed the spectator interest. The Governor of Oklahoma went on record saying: "It doesn't bother me. They'll still have intramural

¹⁰²⁸ New York Times, "Sports People; Temple Settlement," *New York Times*, June 14, 1988. LexisNexis (accessed May 2, 2010).

¹⁰²⁹ R. M. Thomas, Jr., "Sports World Specials: Colleges; Not-So-Equal Coaching," *New York Times*, May 8, 1989. LexisNexis (accessed May 2, 2010).

¹⁰³⁰ M. L. Anderson, *A Legal History and Analysis Of Sex Discrimination In Athletics: Mixed Gender Competition, 1970-1987*, Abstract. Dissertation. University of Minnesota, 1989. ProQuest AAT 9002965 (accessed October 15, 2009).

¹⁰³¹ New York Times, "Virginia Files Lawsuit on V.M.I. Admissions," *New York Times*, February 6, 1990. LexisNexis (accessed May 2, 2010).

basketball, won't they? We have never had total equality in women's athletics, and I don't know that we ever will have. They don't have the same opportunity now. There is no women's baseball, or women's wrestling. . . ."¹⁰³² In response, Oklahoma University restored the women's basketball team and vowed to add more sports for women because they discovered the general public and the members of the Oklahoma Senate were overwhelmingly in favor of having women's basketball at Oklahoma University. Lopiano noted that the gender discrimination pattern of behavior was widespread even though not as overtly practiced. Sharing statistics found in N.C.A.A. records, Lopiano offered information that documented on-going gender discrimination in sports. The article also contained suggestions and insights on how university athletic programmers might avoid what happened in Oklahoma.¹⁰³³

By 1990 O.C.R. released a final version of the "Title IX Investigator's Manual" written by Bonnett and Lamar.¹⁰³⁴ At the end of 1990, two well-known advocates of women's athletics, Linda Carpenter and Vivian Acosta, lodged a complaint against their employer, Brooklyn College, alleging that Title IX violations existed in their athletic program in all the program-related items in the regulations.¹⁰³⁵

As seen in the next chapter, results in a sexual harassment case involving a coach and student in the upcoming decade would bring changes in the way damages were awarded in Title IX cases when intentional gender discrimination was found and the administrators of the school chose not to resolve it. The sport of wrestling and other minor men's sports continued to lose support at many institutions of higher learning causing them to turn to the courts. A well-known

¹⁰³² D. A. Lopiano, "Views of Sport: Fair Play for All (Even Women)," *New York Times*, April 15, 1990. LexisNexis (accessed May 2, 2010).

¹⁰³³ *Ibid.*, Lopiano, April 15, 1990.

¹⁰³⁴ V. Bonnette and D. Lamar, "Title IX Investigator's Manual," U.S. Department of Education, Office for Civil Rights, (April 2, 1990). Microfiche.

¹⁰³⁵ R. M. Thomas, Jr., "Two Women at Brooklyn College File Rights Complaint," *New York Times*, December 12, 1990. LexisNexis (accessed May 10, 2010).

northeastern university would fight in different levels of the court system as it tried to resolve differences in what the lower court judges considered equity for the female athletes, which opposed what the university felt it was already doing to comply with Title IX.

CHAPTER VI

WRESTLING WITH TITLE IX: 1991 - 2002

FRANKLIN V. GWINNETTE COUNTY PUBLIC SCHOOLS, COHEN V. BROWN,

PATSY T. MINK AND THE PLIGHT OF THE WRESTLERS

In 1991, George Herbert Walker Bush was President of the United States. Gopher was created at the University of Minnesota as a way to connect to the internet and “Dr. Seuss,” Theodore Seuss Geisel, writer of children’s books, died. During the year, Clarence Thomas joined The United States Supreme Court after surviving accusations of sexual harassment and a grueling Senate confirmation process. In 1991 apartheid ended in South Africa, The Soviet Union dissolved to form a commonwealth and America was involved militarily in the Persian Gulf War in Operation: Desert Storm. Title IX was entering a new decade with new judicial remedies available for victims of intentional gender discrimination, new cases brought by coaches and the plight of discontinued teams suffered by men in non-revenue generating sports.

The decade of the 1990s researchers produced a multitude of doctoral studies at universities throughout the United States and Canada. In 1991, Reynolds’ study at New York University focused on attitudes held by university females about the level of commitment their university demonstrated in equalizing athletic opportunities for women.¹⁰³⁶ Also in the 1990s, universities were grappling with the reality of budgeting and seeking Title IX compliance. Cases

¹⁰³⁶ S. L. Reynolds, *College Women’s Beliefs About Institutional Support for Women’s Intercollegiate Athletics*, Abstract. Dissertation. New York University, 1991. ProQuest AAT 9134771 (accessed October 15, 2009).

like *Franklin v. Gwinnette County Public Schools* brought a new level of outcome. Not only were female voices being heard, but money for intentional discrimination would become available as a remedy for intentional discrimination suffered by victims of gender abuse. Many university administrators would choose to cut programs and deal with the fallout from those decisions. R. B. Ginsberg described a twenty-year effort in *Women's Equity Action League (W.E.A.L.) v. Cavazos*, a lawsuit brought by the members of W.E.A.L. to seek remedy from government agencies that was not in the judiciary's power to grant.¹⁰³⁷

During 1991, O.C.R. developed a publication featuring non-discrimination in employment practices in education. This pamphlet gave a summary for the general public and employers to use to become more informed about various civil rights policy, including Title IX and how it affected hiring practices.¹⁰³⁸ Also in 1991, in an effort to help the general public understand Title IX, the pamphlet "The Guidance Counselor's Role in Ensuring Equal Educational Opportunity" was produced and distributed. This pamphlet explained in detail the importance counseling young people played in accomplishing goals fostered in this civil rights legislation. Attention to the counseling profession itself and what to look for to ensure their own compliance with federal regulations was part of this publication.¹⁰³⁹ Annual reports maintained by O.C.R. available online included the *Annual Reports to Congress of the Office for Civil Rights* [for years 1995-2007]. O.C.R. was charged with reporting their policy and enforcement

¹⁰³⁷ *Women's Equity Action League v. Cavazos*, No. 88-5065, Consolidated Nos. 88-6068, 88-5069, 88-5070, 88-5071, 88-5088; 285 U.S. App. D.C. 48; 906 F. 2d 742; 1990 U.S. App. LEXIS 10154; 54 Empl. Prac. Dec. (CCH) P40, 054 (June 26, 1990).

¹⁰³⁸ U.S. Department of Education, Office for Civil Rights, "Non-Discrimination in Employment Practices in Education," (1991). <http://www.edu.gov/about/offices/list/ocr/docs/hq53e8.html> (accessed March 10, 2009).

¹⁰³⁹ U.S. Department of Education, Office for Civil Rights, "The Guidance Counselor's Role in Ensuring Equal Educational Opportunity," (1991). <http://www.ed.gov/about/offices/list/ocr/docs/hq43ef.html> (accessed March 10, 2009).

activities annually. Annual reports 1992-1994 were available upon request in paper-copy format.¹⁰⁴⁰

The most important result from the lawsuit, *Franklin v. Gwinnette County Public Schools*, was that for the first time under Title IX monetary damages would be available as remedy for intentional sex-discrimination.¹⁰⁴¹ Greenhouse of *The New York Times* gave details about *Franklin v. Gwinnette County Public Schools*, since it resulted in a new remedy and judicial procedure for adjudicating Title IX violations. Greenhouse reported “The decision today also means that Title IX suits will be tried before juries rather than before judges alone, because the Constitution provides a right to jury trial in civil suits that involve damages.”¹⁰⁴² The Supreme Court, while considering *Franklin v Gwinnette County Public Schools*, ignored the Bush Administration’s interpretation that damages would only be available to employees, not to students. Justice White pointed out that the Court had a history of enforcing what Congress does not implicitly state. To accept and share the opinion stated by the Bush team would, according to Justice White, leave Franklin without an option for remedy.¹⁰⁴³

The N.C.A.A. News reported that O.C.R. sent a forty-plus page letter to Brooklyn College citing Title IX violations it found during its investigation of the college’s intercollegiate athletic program. The area where they were found to be compliant dealt with the distribution of financial aid. Most of the other requirements were not met or out of proportion. Thomas echoed the revelation of *The N.C.A.A News* to its members about Brooklyn College in an article submitted to

¹⁰⁴⁰ U.S. Department of Education, Office for Civil Rights, “Office for Civil Rights Annual Reports to Congress,” (2006). <http://www.ed.gov/about/offices/list/ocr/congress.html>. (accessed August 15, 2007).

¹⁰⁴¹ *Franklin v. Gwinnette County Public Schools*, No. 90-918; 503 U.S. 60; 112 S. Ct. 1028; 1992 U.S. LEXIS 1375; 117 L.Ed. 2d 208; 60 U.S. L. W. 4167; 59 Fair Empl. Prac. Cas. (BNA) 213; 58 Empl. Prac. Dec. (CCH) P41, 293; 92 Cal. Daily Op. Service 1594; 92 Daily Journal DAR 2551; 6 Fla Law W. Fed. S 16 (February 26, 1992).

¹⁰⁴² L. Greenhouse, “Court Opens Path for Student Suits in Sex-Bias Case,” *New York Times*, February 27, 1992. LexisNexis (accessed May 2, 2010).

¹⁰⁴³ *Ibid.*, Greenhouse, February 27, 1992.

The New York Times in February of 1992. Thomas stated in “Major Step Against Sex Discrimination,” that Brooklyn College was found to violate ten of thirteen Title IX standards during an O.C.R. investigation. Brooklyn College vowed to correct the wrongs found. Professors Acosta and Carpenter lodged the complaint that brought attention to the short-sighted administrative policies in their college’s intercollegiate athletic department. The areas where violations occurred were “accommodation of student interests, and abilities, provision of equipment and supplies and assignment of experienced coaches.”¹⁰⁴⁴ At the time this was written, Thomas reported that only forty-five complaints had been registered against athletic programmers since the revival of Title IX enforcement in 1988.¹⁰⁴⁵

Scott and Semo, legal counsel serving the interests of the N.C.A.A., reported in “Damages to be Allowed in Title IX” on the recent Supreme Court decision changing the options plaintiffs have when Title IX violations are found to be intentional. Before this decision judicial relief took different forms to stop or allow requested actions but The Supreme Court decision in *Franklin v. Gwinnette* paved the way for awarding monetary damages.¹⁰⁴⁶

Schultz presented findings “Survey Shows Progress with Gender Equity,” contained in the N.C.A.A. study on Men and Women’s Athletics. According to Schultz, progress occurred since 1972 but more attention and effort must be made to improve gender equity. He announced the formation of a Gender-Equity Taskforce charged with informing The N.C.A.A. as an organization what it must do next to improve standings in this area.¹⁰⁴⁷ The N.C.A.A. was making a concerted effort to provide membership more information as they updated Title IX

¹⁰⁴⁴ R. M. Thomas, Jr., “Major Step Against Sex Discrimination,” *New York Times*, February 27, 1992. LexisNexis (accessed May 2, 2010).

¹⁰⁴⁵ *Ibid.*, Thomas, February 27, 1992. LexisNexis (accessed May 2, 2010).

¹⁰⁴⁶ N.C.A.A. News, “Damages to be Allowed in Title IX,” *N.C.A.A. News*, March 18, 1992. <http://web1.ncaa.org> (accessed March 28, 2008).

¹⁰⁴⁷ N.C.A.A. News, “Survey Shows Progress with Gender Equity,” *N.C.A.A. News*, March 11, 1992. <http://web1.ncaa.org> (accessed March 28, 2008).

legal tenets and basic principles. Court decisions and Congressional action were reviewed so that members could see what expectations existed and what responsibility they inherently had in resolving gender parity issues.¹⁰⁴⁸ *The N.C.A.A. News* staff shared the executive summary of the Gender Equity Study. Responses to requests for information from membership exceeded 640. Statistical points of interest and how football affected the study were available from data based on responses from Division I, II and III institutions of higher learning.¹⁰⁴⁹

In “Gender-Equity Task Force To Go on a Fast Track,” N.C.A.A. leadership expected the Gender Equity Task Force to complete initial assignments by August 1992 so convention action could be taken if necessary. Seeking a solution for funding women’s athletic teams was high on the agenda.¹⁰⁵⁰ In the same issue, “Title IX Only Part of Gender Equity” noted that the new task force intended to define just what gender equity meant to The N.C.A.A. stating that Title IX was a legal requirement while gender equity is a moral, more philosophical approach to operating athletics.¹⁰⁵¹ Rounding out the March 18th edition of *The N.C.A.A. News* Mott acquainted readers with Washington State University and its commitment to gender equity in athletics. In 1988 the president, Jim Livengood, seemed to understand that in addition to money, it would take a change in attitude to make improvements in gender equity. Not only did Washington State add more sports for women, it committed to a policy for hiring a majority of women to coach female athletes. Livengood stated: “I don’t have any problems with men coaching women’s teams, but we always talk about increasing coaching opportunities for women. We need to do more than

¹⁰⁴⁸ N.C.A.A. News, “Update on Status of Title IX Requirements,” *N.C.A.A. News*, March 11, 1992. <http://web1.ncaa.org> (accessed March 28, 2008).

¹⁰⁴⁹ N.C.A.A. News, “646 Members Responded in Gender-Equity Study,” *N.C.A.A. News*, March 18, 1992. <http://web1.ncaa.org> (accessed March 28, 2008).

¹⁰⁵⁰ N.C.A.A. News, “Gender-Equity Task Force To Go On a Fast Track,” *N.C.A.A. News*, March 18, 1992. <http://web1.ncaa.org> (accessed March 28, 2008).

¹⁰⁵¹ N.C.A.A. News, “Title IX Only Part of Gender Equity,” *N.C.A.A. News*, March 18, 1992. <http://web1.ncaa.org> (accessed March 28, 2008).

give lip services to that.”¹⁰⁵² Livengood attributed Washington State’s success to all those constituencies at the university and in the state legislature who worked in a supportive manner to begin solving the gender equity equation.¹⁰⁵³

New York Times writer Lipsyte reported as Donna Lopiano became executive director of the Women’s Sports Foundation. Lipstye mentioned that leadership of The N.C.A.A. disclosed tactics used by their member institutions that patterns of gender bias continued in athletic programming. Lopiano applauded this step by The N.C.A.A. in light of what it would mean as they stepped forward to assist their membership to focus attention on gender parity. Lipsyte followed the progress in women’s athletics in the 1970s and highlighted efforts to stymie the progress of gender equity and protect football interests.¹⁰⁵⁴

California State University at Fullerton’s volleyball team sought and won a preliminary injunction prohibiting the University from disbanding the team. Their coach, Huffman, was released from coaching duties after bringing the case to court. Huffman was supportive of Title IX action protecting opportunities for female athletes, and he only hoped that others in programs that violated gender equity provision would not be discouraged to speak out as a result of his release. Huffman’s lawyer stated: “The case law and statutes are quite clear. . . Programs cannot take steps that are more onerous to women than men.”¹⁰⁵⁵

The spring was an active time for The N.C.A.A. as it made deliberate efforts to improve gender equity. The leadership council chose five topics to ponder at its upcoming meeting. One

¹⁰⁵² R. D. Mott, “Washington State Building a Gender-Equity Model,” *N.C.A.A. News*, March 18, 1992: 18, col. 4, para.2. <http://web1.ncaa.org> (accessed March 28, 2008).

¹⁰⁵³ *Ibid.*, Mott, March 18, 1992.

¹⁰⁵⁴ R. Lipsyte, “Lopiano Just Smiles Before the Brushback,” *New York Times*, March 22, 1992. LexisNexis (accessed May 2, 2010).

¹⁰⁵⁵ N.C.A.A. News, “Fullerton Coach Fired After Injunction Gained (CSU-Fullerton),” *N.C.A.A. News*, March 25, 1992: 25, col. 2, para.4. <http://web1.ncaa.org> (accessed March 28, 2008).

of the focal points would be gender equity and Title IX.¹⁰⁵⁶ In the Governmental section of the same issue, *The N.C.A.A. News* reported The Supreme Court decision in Franklin-Gwinnette County Public Schools, which offered damages for intentional Title IX violations. The Bush Administration and Gwinnette County school officials requested that limits be placed on the remedy and that they should refrain from allowing money for damages. Other “Governmental” features included announcing the preparation of a “technical assistance” document for advising schools considering dropping athletic teams to avoid Title IX entanglement, reviewing the schools under complaint investigations and O.C.R. Title IX compliance reviews.¹⁰⁵⁷

The N.C.A.A. News carried the story that members of Brown University’s gymnastics team filed a lawsuit to receive operating capital for themselves and the women’s volleyball squad. Brown indicated that the reasons for the cuts were budget-related.¹⁰⁵⁸ During 1992 Congressional Hearings, results from the N.C.A.A. Gender Equity Study were considered. The leadership of The N.C.A.A. presented information on what the organization was doing to increase female athletes’ participation in college sports. The N.C.A.A. Gender Equity Study was touted as the organization showed commitment to the cause. Congressmen Collins and McMillen informed N.C.A.A. leadership that not enough progress had been made and the “Congress may need to take action if institutions do not end discrimination in athletics on their own.”¹⁰⁵⁹ Congressional members asked what The O.C.R. and The N.C.A.A. should do to improve the situation. The O.C.R. indicated that it could fix flaws or identified problems in Title IX policy and follow-up on institutions investigated after they reach agreement regarding

¹⁰⁵⁶ N.C.A.A. News, “Council Emphasizes Five Principle Topics,” *N.C.A.A. News*, April 8, 1992. <http://web1.ncaa.org> (accessed March 28, 2008).

¹⁰⁵⁷ N.C.A.A. News, “Governmental,” *N.C.A.A. News*, April 15, 1992. <http://web1.ncaa.org> (accessed March 28, 2008).

¹⁰⁵⁸ N.C.A.A. News, “Brown Athletes Sue for Funding,” *N.C.A.A. News*, April 15, 1992. <http://web1.ncaa.org> (accessed March 28, 2008).

¹⁰⁵⁹ N.C.A.A. News, “NCAA Panel Addresses Gender Equity,” *N.C.A.A. News*, April 15, 1992:3, col. 2, para.2. <http://web1.ncaa.org> (accessed March 28, 2008).

corrective measures. The N.C.A.A. pledged to add a gender equity plan to its re-certification process.

University of New Hampshire made a decision to cut women's tennis. The thirteen members of the team organized and threatened to file a Title IX lawsuit. The student body, over half of which were women, was not equally represented in varsity sport opportunities. As the tennis team made efforts to draw attention to their situation, the President of University of New Hampshire discussed the lack of compliance with Title IX and disclosed plans to improve the situation in order to meet gender parity standards. While an institutional study led by the affirmative action staff was being made, budgeting decisions were considered and approved that drove the elimination of the tennis team. The results of the institutional study published after the tennis team incident revealed that no women's athletics teams should be cut. Miss Hyde, captain of the tennis team, offered: "The University was in blatant violation of Title IX. It was such a cut and dried case. They would have saved themselves a lot of money if they had just reinstated the team."¹⁰⁶⁰

In April 1992, N.C.A.A. Executive Director, Schultz announced the members of the Gender Equity Task Force charged to study what could be done to assist member institutions in meeting gender equity mandates.¹⁰⁶¹

Moran presented discussion focused on the push to comply with Title IX since monetary damages as a remedy became available to victims of intentional gender discrimination by the decision of The Supreme Court in *Franklin v. Gwinnette County Public Schools* one year before. Education Department official, Williams, pointed out the difference in attitude about efforts to

¹⁰⁶⁰ New York Times, "Campus Life: New Hampshire; Pressed by Women, College Restores Their Tennis Team," *New York Times*, April 19, 1992. LexisNexis (accessed May 2, 2010).

¹⁰⁶¹ N.C.A.A. News, "Howlett, Whalen Named Co-chairs of NCAA Gender Equity Task Force," *N.C.A.A. News*, April 22, 1992. <http://web1.ncaa.org> (accessed March 28, 2008).

comply with Title IX when stating: “I suspect there is less of ‘Do we have to?’ and more of ‘How do we?’ comply with Title IX.”¹⁰⁶² Moran cited signal events and decisions that created the difference in compliance attitudes which included *Franklin v. Gwinnette* – offering monetary damages to victims of Title IX violations; The Big Ten Conference’s commitment to increase the gender participation ratio over five years; The Office for Civil Rights’ recognition of Title IX and athletics as one of its seven priorities; N.C.A.A.’s creation of a president’s commission with the authority to reform the organization and The 1988 Civil Rights Restoration Act.¹⁰⁶³ Moran relayed the reaction from Lopiano, who indicated, although angered by the sacred status of football program, “My feeling is that equity for women may be the salvation of intercollegiate athletics because it creates a need for reform. It is focusing attention on collegiate budgets which have been a reflection of considerable abuse.”¹⁰⁶⁴

Legal counsel to The N.C.A.A., Judith Semo, traced the history of Title IX, in brief, from enactment twenty years before, to regulations writing and refinement in response to public comment in 1974 and 1978. Semo maintained that a key issue surrounded the question of “program” as she visited 1984’s *Grove City v. Bell* decision which narrowed the focus to individual programs, later re-defined in 1988 when Congress restored the reach of Title IX to all programs within an institution accepting federal funds. Semo offered an update on the status of Title IX. She reminded *N.C.A.A. News* readers that parity in scholarship distribution was expected and that the whole athletic program fell under scrutiny rather than just an individual team. O.C.R.’s methods of investigation, according to Semo, included using a three-part test where each part was independent of the other in determining compliance. Semo cautioned

¹⁰⁶² M. Moran, “Title IX: A 20-Year Search for Equity; Title IX is Now an Irresistible Force,” *New York Times*, June 21, 1992: para.6. LexisNexis (accessed May 2, 2010).

¹⁰⁶³ *Ibid.*, Moran, April 21, 1992.

¹⁰⁶⁴ *Ibid.*, Moran, April 21, 1992: para. 37.

members that the test seemed simple but could vary and complicate attempts to achieve gender parity in athletics.

In “College Campus Changes Coming, Like It or Not,” Moran assembled personalities from The N.C.A.A. and The Big Ten Conference to discuss efforts underway to bring the conference into compliance. The change of aid packages to finance athletes and reduction of men’s team sizes were two ideas offered. Delaney, Big Ten Conference Commissioner, stated “What it means is you have limited resources. . . .Somebody loses an opportunity. Somebody gains an opportunity. There is no question that when you don’t have the resources to take care of everybody, you have to allocate your resources according to some principles.”¹⁰⁶⁵ Other options open to the Big Ten, according to Moran’s interviewees, would be to cut men’s teams, to wage a campaign to recruit women to engage in sport opportunities on campus or to create opportunities through junior varsity competition.¹⁰⁶⁶

In a surprise move, Brooklyn College officials announced their plan to disband varsity athletics and replace it with an intramural program. This recommendation was based on budget considerations, according to College officials. A player who would become displaced by this decision voiced her disappointment even though her scholarship would be honored until she graduated.¹⁰⁶⁷ Janofsky echoed Moran In “Colleges; Brooklyn College Drops Sports” citing that because of budgeting issues the entire sports program would be dropped by Brooklyn College.¹⁰⁶⁸

¹⁰⁶⁵ M. Moran, “College Campus Changes Coming, Like it or Not,” *New York Times*, June 22, 1992. LexisNexis (accessed May 2, 2010).

¹⁰⁶⁶ *Ibid.*, Moran, June 22, 1992.

¹⁰⁶⁷ M. Moran, “Colleges; Brooklyn College at Crossroads,” *New York Times*, June 23, 1992. LexisNexis (accessed May 2, 2010).

¹⁰⁶⁸ M. Janofsky, “Colleges; Brooklyn College Drops Sports,” *New York Times*, July 2, 1992. LexisNexis (accessed May 2, 2010).

Court action involving evaluating and reinstating women's athletic opportunities at the intercollegiate level abounded in the early 1990s. Colgate University's refusal to field a women's ice hockey team on the varsity level prompted court action in *Cook v. Colgate University*. The University was interested in keeping the team on the club level. The committee charged with reviewing the petition to elevate the club to a varsity team gave the same four reasons they would not field the women's team that they offered in the previous two attempts. The court countered those reasons citing the provisions listed in Title IX regulations as reasons the University should have acted before this instance to field a women's ice hockey team. It ordered Colgate University to grant the team varsity status and outfit it accordingly.¹⁰⁶⁹

In July 1992, *The N.C.A.A. News* reported on the first meeting of the Gender-Equity Taskforce. Suggestions and observations were shared with the Gender-Equity Task Force at its first meeting. The ideas expressed by members included: meeting interests of genders rather than measuring by enrollment percentages; increasing the size of women's existing teams instead of capping men's; looking at scholarship distribution and taking football out of the ratio-calculation.¹⁰⁷⁰ Also reported in July, members of the Committee on Women's Athletics supported review of revenue plans, committee make-up and gender equity being part of the N.C.A.A. certification process.¹⁰⁷¹ To round out the news in the summer of 1992, *The N.C.A.A. News* revealed that "Title IX Suit Filed at Two Schools." Colorado State University discontinued a women's sport and the student-athletes sued for its reinstatement. At the University of Texas at Austin, women participating in club sports wished to have four of them

¹⁰⁶⁹ *Cook v. Colgate University*, 90-CV-411; 802 F. Supp. 737; 1992 U.S. Dist. LEXIS 14951, (September 28, 1992).

¹⁰⁷⁰ N.C.A.A. News, "Gender-Equity Concerns Go to Task Force," *N.C.A.A. News*, July 8, 1992. <http://web1.ncaa.org> (accessed March 28, 2008).

¹⁰⁷¹ N.C.A.A. News, "Women's Panel Focuses on Equity," *N.C.A.A. News*, July 8, 1992. <http://web1.ncaa.org> (accessed March 28, 2008).

elevated to varsity status. Diane Henson, working with the Texas female athletes stated: “We’re out for the future; not out for blood, but for an opportunity. . . This is the first offensive kind of lawsuit using Title IX law in a long time. Most of the cases (that have been) filed were reacting when (athletics) departments dropped sports.”¹⁰⁷²

Another case involving women’s athletic teams being disbanded was *Favia v. Indiana University of Pennsylvania*. The University decided to discontinue two women’s athletic sport teams. This action was found to violate female student-athletes’ rights under Title IX. The court used the three-part test to show that the University was not making attempts to continue to be compliant with O.C.R.’s 1979 Policy Interpretation. The University cited the lack of financial support prompting their decision to discontinue the two women’s athletic teams. The U.S. District Court for the Western District of Pennsylvania ruled that Indiana University would restore the status and funding to the two women’s teams immediately.¹⁰⁷³

In “Colleges: Funding Is Restored for Women’s Sports” *The New York Times* carried an Associated Press release as Judge Maurice Cohill informed Indiana University of Pennsylvania that it had to reinstate funding to two women’s athletic programs previously cut. The budget shortfall was the reason that teams for both males and females had been dropped yet the school planned to have their football team elevated to the next level of competition. According to an Associated Press reporter, “Cohill said money problems and a desire for football prestige were not excuses for violating Title IX, a federal law that forbids sex discrimination at schools such as Indiana that get federal money.”¹⁰⁷⁴

¹⁰⁷² N.C.A.A. News, “Title IX Suit Filed at Two Schools,” *N.C.A.A. News*, July 8, 1992: 23, col. 2, para. 3-4. <http://web1.ncaa.org> (accessed March 28, 2008).

¹⁰⁷³ *Favia v. Indiana University of Pennsylvania*, Civil Action No. 92-2045; 812 F. Supp. 578; 1992 U.S. Dist. LEXIS 21117 (November 2, 1992).

¹⁰⁷⁴ Associated Press, “Sports People: Colleges; Funding is Restored for Women’s Sports,” *New York Times*, November 4, 1992. LexisNexis (accessed May 2, 2010).

In November 1992 Lipsyte identified the term “gender equity” as a hot buzz phrase within the context of college sports. He asked: “What is this thing called gender equity?” Lipsyte then answered, “To some people, it is the logical extension of Title IX’s breathtaking fairness, assuring every young woman exactly the same sports opportunity as every young man. To others, it is the diabolical extension of Title IX’s vile social engineering, taking away traditional privilege from mediocre young men and giving it to superior young women.”¹⁰⁷⁵ Appearing as a voice in Lipsyte’s article, Lopiano, the outspoken women’s sport advocate stated: “Your daughter *must* play sports. It’s not fun and games. Sports is essential for successful people.”¹⁰⁷⁶

In a 1992 law review, P.S. Woods questioned whether reverse discrimination had a place in redressing gender discrimination of the past.¹⁰⁷⁷

The N.C.A.A. News announced: “Cooperation Sought for Gender-Equity Challenge.” In early 1993, Walen, co-chair of the Gender Equity Taskforce, asked members for a spirit of cooperation as the Taskforce began working in earnest through the emotions that stymied productive results during the long-term gender-equity efforts. Whalen expressed to the convention delegates “There seems to be a great deal of anger, feelings of threat, fear—one might even go as far to say paranoia.”¹⁰⁷⁸ Whalen went on to comment: “If we are going to come up with a reasonable and productive resolution to this longstanding concern, we are going to have to rise above the volatility and work together.”¹⁰⁷⁹ The disagreements revolved around the traditional push-points—of reducing scholarships for one gender to create equality in

¹⁰⁷⁵ R. Lipsyte, “Backtalk: Equity, Plus or Minus,” *New York Times*, November 15, 1992: para. 3. LexisNexis (accessed May 2, 2010).

¹⁰⁷⁶ *Ibid.*, Lipsyte, November 15, 1992: para. 7.

¹⁰⁷⁷ P. S. Wood, “Boys Muscling in on Girls’ Sports,” *53 Ohio St. L. J.*, 1992:891.

¹⁰⁷⁸ N.C.A.A. News, “Cooperation Sought For Gender-Equity Challenge,” *N.C.A.A. News*, January 20, 1993: 16, para.4-5. <http://web1.ncaa.org> (accessed March 28, 2008).

¹⁰⁷⁹ *Ibid.*

distribution of financial resources to the other, equalizing opportunity to participate and equalizing equipping of teams. Naysayers at the 1993 event doubted the legislation of equity within the convention membership could be achieved.¹⁰⁸⁰

The N.C.A.A. News featured a quote from Nora Finch of the University of North Carolina. Finch was able to add voice to the gender struggle. She stated: “It all has to do with money and power and sex. People who have power do not want to give it up. As a woman, I can understand that. If I were a minority, I could understand it better. If I were poor, I could understand it better still. . . There are people on both sides who would like to make it a bloody battle to the death. I don't think it has to be that way. But any time the have-nots, or those who feel discriminated against, want to move up, the people in power are going to do what they can to suppress it. . . . I'm not afraid of a little bit of a battle.”¹⁰⁸¹ Anyone listening to Finch could better understand gender equity battle lines.

In 1993, The United States Court of Appeals for the First Circuit handed down a Title IX decision in what was referred to as a watershed case—*Cohen v. Brown University*. Brown University discontinued varsity status for women’s gymnastics and volleyball based on budgetary restrictions. In this class action suit, the First Circuit Court applied the proportionality test, recapped the history and development of Title IX from Congressional intent. Other topics covered were the H.E.W. split which included legal decisions precipitating the ruling that Brown did not effectively accommodate the athletic interests and abilities of female students. Brown was ordered to restore the women’s gymnastics and volleyball teams.¹⁰⁸²

¹⁰⁸⁰ *Ibid.*

¹⁰⁸¹ N. L. Finch, “Gender-Equity Attitudes Depend on Perspective,” *N.C.A.A. News*, January 27, 1993: para. 4. <http://web1.ncaa.org> (accessed March 28, 2008).

¹⁰⁸² *Cohen v. Brown University*, No. 92-2483; 991 F. 2d 888; 1993 U.S. App. LEXIS 7912, (April 16, 1993).

Scott and Semo reviewed the First Circuit's ruling against Brown University. The First Circuit Court of Appeals held that based on the Title IX three-pronged test, Brown had discriminated against the underrepresented gender when it cut two women's varsity teams. Brown's arguments and evidence did not convince the court that the interest and abilities of female athletes had been met. Brown also failed the proportionality standard when it cut the varsity teams so that the ratio of female athletes and females represented in the student body did not improve. Brown failed all three standards according to Scott and Semo's analysis. Brown was ordered to restore the two female varsity teams and was mum on whether it would appeal to the higher court.¹⁰⁸³

Thomas reported in "Ruling for Brown Women to Be Far-Reaching," that Brown University received a mandate from the First Circuit Court of Appeals to reinstate funding to the two women's varsity teams it cut while awaiting the outcome of their trial. In essence, the court determined that dropping women's sports was not an acceptable remedy in response to budgeting decisions. Brown's Executive Vice President, Reichley, remarked that "If Brown is not in compliance with Title IX then no college in the country is."¹⁰⁸⁴ Later in the year, July 1993, the University of Texas settled with students in an agreement that would increase athletic opportunities for female students avoiding a Title IX lawsuit.¹⁰⁸⁵

Law school and doctoral students continued to produce scholarly materials for consideration covering various facets of Title IX. Law reviewer B.G. George recommended

¹⁰⁸³ M. Scott and J.J. Semo, "Ruling Has Title IX Significance," *N.C.A.A. News*, April 28, 1993. <http://web1.ncaa.org> (accessed March 28, 2008).

¹⁰⁸⁴ R. M. Thomas, Jr., "Ruling for Brown Women to Be Far-Reaching," *New York Times*, April 20, 1993. LexisNexis (accessed May 2, 2010).

¹⁰⁸⁵ *New York Times*, "Sports People: Colleges; Women Reach Settlement with Texas," *New York Times*, July 17, 1993. LexisNexis (accessed May 2, 2010).

looking at the entire athletic program to determine compliance with Title IX.¹⁰⁸⁶ R. Yasser offered a compelling notion about the inability The N.C.A.A. had to govern amateur sports and offered a blueprint for reform in intercollegiate athletics.¹⁰⁸⁷ As a doctoral-level student, Calia of Fordham University reviewed student newspaper coverage of athletes, particularly female, for years spanning 1971-1972 and 1991-1992 to determine the influence Title IX may have had in media coverage decisions.¹⁰⁸⁸

In another case that reversed a university's decision to drop a women's athletic team Colorado State University Board of Agriculture was ordered by the district court to reinstate the women's fast pitch softball program at Colorado State University. The court required Colorado State University to accomplish this requiring immediate action to hire a coach, field a team and be ready to play softball the next fall. In *Roberts v. Colorado State University Board of Agriculture*, the United States Court of Appeals for the 10th District found that the lower court had over-stepped its authority by demanding immediate action to field a team by the fall but not by reinstating the fast pitch softball program itself.¹⁰⁸⁹

The Associated Press reported the N.C.A.A. decision allowing individual institutions of higher learning to be responsible for gender equity. The organization created guidelines for membership to approve at their upcoming convention. These tenets addressed the responsibility of individual schools to abide by laws governing gender equity. The N.C.A.A. also noted that as

¹⁰⁸⁶ B. G. George, "Miles To Go and Promises to Keep: A Case Study in Title IX," *64 U. Colo. L. Rev.*, 1993:555.

¹⁰⁸⁷ R.A. Yasser, "Comprehensive Blueprint for the Reform of Intercollegiate Athletics," *3 Marq. Sports L. J.*, 1993:123.

¹⁰⁸⁸ G.N. Calia, *An Historical Analysis Of The Impact Of Title IX on Student Media Presentation of Women as Athletes*, Abstract. Dissertation. Fordham University, 1993. ProQuest AAT 9324608 (accessed October 15, 2009).

¹⁰⁸⁹ *Roberts v. Colorado State Board of Agriculture*, No. 93-1052, No. 93-1086; 998 F. 2d 824; 1993 U.S. App. LEXIS 16957 (July 7, 1993).

an organization, they should respect this as they attempt to adopt policies that counter the laws. Another decision discussed was that N.C.A.A. activities were to be run without gender bias.¹⁰⁹⁰

Marianne Stanley, former women's basketball coach for the University of Southern California, sued the university under Title IX. *New York Times* reporter Moran discussed the points of contention in the salary negotiation with Stanley and the University of Southern California officials which resulted in non-renewal of Stanley's contract in "Colleges: Dispute over Equality Leaves a Coach Jobless." Moran presented information on the vulnerable state most coaches are in with emphasis on women's coaches holding a more precarious position in the likelihood of being dismissed by their universities.¹⁰⁹¹ In reaction to the aforementioned court action in Colorado, Thomas commented, in "Colo. State Softball Wins One for Women" on Jennifer Roberts and the effort she and her teammates made to bring gender equity to Colorado State University. Roberts played softball at C.S.U. when the administration cut the softball team. The reinstatement of the softball team was a victory attributed to Title IX protection.¹⁰⁹² Thomas also reported that Cornell restored two women's teams it had cut to circumvent a lawsuit filed against them.¹⁰⁹³

Coaches were actively bringing lawsuits in the mid-1990s as seen at U.S.C. *Bowers v. Baylor University* involving the female coach, Bowers, and her termination, reinstatement as coach and subsequent termination based on her claims of sex-discrimination. The court found that Bowers did have a cause of action under Title IX against the former institution of higher

¹⁰⁹⁰ *New York Times*, "Colleges; NCAA will not Mandate Gender Equity," *New York Times*, August 7, 1993. LexisNexis (accessed May 2, 2010).

¹⁰⁹¹ M. Moran, "Colleges; Dispute Over Equality Leaves a Coach Jobless," *New York Times*, September 14, 1993. LexisNexis (accessed May 2, 2010).

¹⁰⁹² R. M. Thomas, Jr., "Colo. State Softball Wins one for Women," *New York Times*, December 1, 1993. LexisNexis (accessed May 2, 2010).

¹⁰⁹³ R. M. Thomas, Jr., "Pro Football: Cornell Reinstates Two Women's Sports," *New York Times*, December 9, 1993. LexisNexis (accessed May 2, 2010).

education with whom she was employed but not against the individuals also named in the suit.¹⁰⁹⁴

New York Times reporter Thomas described the offered settlement with female students at Brown University on one of the Title IX issues. The female students agreed that progress had been made at the university in gender equity circles. The federal judge would have to approve this requested settlement and deal with the remaining fact as to “whether Brown must continue to add women’s sports (or refrain from cutting them) as long as the participation in varsity athletics remains below their rate of enrollment.”¹⁰⁹⁵

Law reviewer J. K. Johnson argued the validity of the three-pronged test used to assess whether a university meets Title IX compliance in athletic programs on the basis of previous judicial decisions in *Cohen v. Brown University*, *Roberts v. Colorado State Board of Agriculture* and *Favia v Indiana University of Pennsylvania*.¹⁰⁹⁶ W. B. Connoly, Jr. and J. D. Adelman pointed out mistakes made in *Roberts v. Colorado State University*. One defining point they made was that Congressional intent of Title IX did not include using student body ratios to achieve gender equity.¹⁰⁹⁷ R. L. Marshall shared ramifications of the judicial decision *Cohen v. Brown University*.¹⁰⁹⁸ T. J. Wilde presented factors contributing to a heightened awareness about reasons intercollegiate athletics exist and the inevitable changes driven by legal and social forces

¹⁰⁹⁴ *Bowers v. Baylor University*, Civil No. W-94-CA-154; 862 F. Supp. 142; 1994 U.S. Dist. LEXIS 12484, (August 11, 1994).

¹⁰⁹⁵ R. M. Thomas, Jr., “Settlement for Brown’s Female Athletes,” *New York Times*, September 29, 1994: para. 3. LexisNexis (accessed May 2, 2010).

¹⁰⁹⁶ J. K. Johnson, “Title IX and Intercollegiate Athletics: Current Judicial Interpretation of the Standards of Compliance,” *74 B. U. L. Rev.*, 1994:553.

¹⁰⁹⁷ W. B. Connoly, Jr. and J. D. Adelman, “A University’s Defense to a Title IX Gender Equity in Athletics Lawsuit: Congress Never Intended Gender Equity Based on Study Body Ratios,” *71 U. Det. Mercy L. Rev.*, 1994:845.

¹⁰⁹⁸ R. L. Marshall, “Case Comments: *Cohen v. Brown University*. The First Circuit Breaks New Ground Regarding Title IX’s Application to Intercollegiate Athletics,” *28 Ga. L. Rev.*, 1994:837.

favoring growth in gender equity in sports.¹⁰⁹⁹ C.C. Claussen introduced new venues opening in Title IX litigation which included a new emphasis on coaching salaries.¹¹⁰⁰ A. Richardson discussed *Cohen v. Brown University* along with general budgetary concerns for intercollegiate athletics twenty years after Title IX was enacted. Richardson likened *Cohen v. Brown* to a two-edged sword.¹¹⁰¹ M.B. Petriella discussed Colgate's issues with gender equity and injunctive relief tactics available to them while awaiting the decision on another gender equity case.¹¹⁰² C. L. Hollinger, Jr., looked at the 1979 Office for Civil Rights Policy Statement that included the three-pronged test and *Kelly v. Board of Trustees of the University of Illinois* and reverse discrimination.¹¹⁰³ D. Heckman referred to the explosion of litigation in the 1990s. Heckman referred to coach-related litigation, collecting for damages and emerging issues in light of equal opportunity. Heckman also offered a checklist of what universities should do to minimize falling prey to compliance audits.¹¹⁰⁴ W. H. Webb, Jr. offered comments on various cases such as *Grove City v. Bell*, *Cohen v. Brown University* and *Roberts v. Colorado State Board of Agriculture*.¹¹⁰⁵ L.S.C. Hanson compiled a selected bibliography related to law and sports.¹¹⁰⁶ M. Harris contemplated twenty years of Title IX by seeing athletics grow into what Congress

¹⁰⁹⁹ T. J. Wilde, "Gender Equity in Athletics: Coming of Age in the 90's," 4 *Marq. Sports L. J.*, 1994:217.

¹¹⁰⁰ C. C. Claussen, "Title IX and Employment Discrimination in Coaching Intercollegiate Athletics," 12 *U. Miami Ent. & Sports L. Rev.*, 1994:149.

¹¹⁰¹ A. Richardson, "Sports Law: *Cohen v. Brown* A Title IX Lesson for Colleges and Universities on Gender Equity," 47 *Okla. L. Rev.*, 1994:161.

¹¹⁰² M. B. Petriella, "Injunctive Relief—Title IX—An Interim Preliminary Injunction Reinstating Varsity Status to Demoted Collegiate Athletic Teams Is Available When that Team Alleges a Title IX Violation and Litigation is Pending—*Cohen v. Brown University*, 991 F. 2d 888 (1st Cir. 1993)," 4 *Seton Hall J. Sports L.*, 1994:595.

¹¹⁰³ C. L. Hollinger, Jr., "Case note: Are Male College Sports in Jeopardy? A Look at *Kelly v. Board of Trustees of the University of Illinois*," 21 *S.U. L. Rev.*, 1994:151.

¹¹⁰⁴ D. Heckman, "The Explosion of Title IX Legal Activity in Intercollegiate Athletics during 1992-1993 Defining the 'Equal Opportunity Standard,'" 1994 *Det. C.L. Rev.*, 1994:953.

¹¹⁰⁵ W. H. Webb, Jr., "Case Comments: Sports Law—*Cohen v. Brown University*: The Promulgation of Gender Equity in Intercollegiate Athletics," 25 *U. Mem. L. Rev.*, 1994:351.

¹¹⁰⁶ L. S. C. Hanson, "Sports, Athletics and the Law: A Selected Topical Bibliography of Legal Resources Published During 1990s," 4 *Seton Hall J. Sports L.*, 1994:763.

intended.¹¹⁰⁷ G. Szul presented comments on coaches' pay issues including Stanley's attempt to show evidence of compensation disparity.¹¹⁰⁸ D. K. Stellmach advocated that the path to equality in collegiate athletics was through the courts.¹¹⁰⁹

New York Times correspondent, Sandomir, reported Judge Raymond Pettine's findings against Brown University as a violator of Title IX. Pettine commented that "far more male athletes are being supported at the university varsity level than are female athletes, and thus, women receive less benefit from their intercollegiate varsity program."¹¹¹⁰ The opportunity for remedying the gender equity situation at Brown University involved as recommended by Pettine that it drop athletics totally upgrade the required number of female spaces or reduce the number of men's spaces or sports until the participation rate is reached that allows Brown to comply.¹¹¹¹ *The New York Times* reported that Brown University appealed the federal ruling asking for a new trial or to throw out Pettine's ruling.¹¹¹²

Rhoden described in *The New York Times* the 1995 N.C.A.A. gender equity seminar offering this scenario: "For the last two days 200 college athletic administrators have sat in meeting rooms listening, debating, and negotiating. One side—mostly men—contemplated how to give, while the other side—mostly female—considered how to take a fair share for women in intercollegiate athletics."¹¹¹³ This mini-conference had the express intention of enlightening college sports personnel about following the legal requirements of Title IX. One invited panelist,

¹¹⁰⁷ M. Harris, "Hitting 'Em Where It Hurts: Using Title IX Litigation to Bring Gender Equity to Athletics," 72 *Denv. U. L. Rev.*, 1994: 57.

¹¹⁰⁸ G. Szul, "Sports Law: Sex Discrimination and the Equal Pay Act in Athletic Coaching," 5 *J. Art & Ent. Law*, 1994: 161.

¹¹⁰⁹ D. K. Stillmach, "Title IX The Mandate for Equality in Collegiate Athletics," 41 *Wayne L. Rev.*, 1994: 203.

¹¹¹⁰ R. Sandomir, "Colleges; Brown Is Told Sports Program Cheats Women," *New York Times*, March 30, 1995: para. 8. LexisNexis (accessed May 2, 2010).

¹¹¹¹ *Ibid.*, Sandomir, March 30, 1995.

¹¹¹² *New York Times*, "Brown Appeals Title IX Ruling," *New York Times*, April 20, 1995. LexisNexis (accessed May 2, 2010).

¹¹¹³ W. C. Rhoden, "Sports of the Times; A Partisan Spin on Title IX," *New York Times*, April 22, 1995: para. 1. LexisNexis (accessed May 2, 2010).

Norma Cantu, of the Office for Civil Rights, tried to answer questions about what constituted violations. Rhoden stated that collegiate sports administrators did not have to drop teams from their roster to make way for women's athletics. Rhoden contended that trimming budgets from mega sports would give operating funds for women's athletics and reducing the salaries of coaches, aligning them with what faculty received, would free up budget constraints. This reality would never exist, according to Rhoden, because the university leadership would rather drop men's sport teams and attach the credit to Title IX rather than face football reductions.¹¹¹⁴

In mid-1995 Representative Dennis Hastert lodged complaints about Title IX and the impact on male sports participation which resulted in additional Congressional hearings. O.C.R. Assistant Secretary Norma V. Cantu indicated that cases investigated after 1989 resulted in no schools being forced to reduce the number of male athletic teams. No changes to Title IX occurred based on the Hastert hearings.¹¹¹⁵

During Congressional hearings the President of Brown University, Vartan Gregorian, expressed stern opposition to Title IX and the Office for Civil Rights regarding regulations interpreted by a federal judge finding Brown in violation of the statute. Gregorian commented "I am a frustrated university administrator who does not like bureaucracy and who does not like to be intimidated by lawyers and who would like a clear policy," [referring to Title IX regulations].¹¹¹⁶ During the hearings Gregorian conveyed to the panel that proportionality seemed to be the focus of O.C.R. investigations and that Brown University was penalized even after upgrading sports for females. Gregorian articulated his continued frustration when he

¹¹¹⁴ *Ibid.*, Rhoden, April 22, 1995.

¹¹¹⁵ U.S. House of Representatives Committee on Economic and Educational Opportunities, Subcommittee on Post-Secondary Education, Training and Lifelong Learning, "Hearing on Title IX of the Education Amendments of 1972: Hearing Before the Subcommittee on Postsecondary Education, Training and Lifelong Learning of the Committee on Economic and Educational Opportunities," House of Representatives, One Hundred Fourth Congress, first session, hearing held in Washington D.C., May 9, 1995.

¹¹¹⁶ New York Times, "Colleges; Brown's President Asks for a Clear Policy on Title IX," *New York Times*, May 10, 1995. LexisNexis (accessed May 2, 2010).

stated: “It’s a Catch-22. If you create a team and don’t have participation you’re held accountable. If you don’t have the team you’re held accountable on opportunity.”¹¹¹⁷

The New York Times carried an *Associated Press* report on the compliance outline Brown University proposed to eliminate Title IX violations. The proposal included reducing the number of members on men’s sport teams and creating a junior varsity category in many women’s competitive sport teams. Judge Raymond Pettine ordered Brown University to create a plan of remediation to counter the Title IX violations it incurred by discontinuing two athletic teams designed for females. The guidelines Brown offered reduced men’s sports by forty-four positions. Robert Reichley, Executive Vice-President at Brown, commented, “It is ironic and even a bit tragic that in order to make our athletic numbers conform to a simple mandated quota, we must eliminate more than 40 opportunities for men at a time when most women’s teams at Brown have room for additional players.”¹¹¹⁸ Brown cited budget concerns as a reason they could not bring new athletic teams on board for either gender.¹¹¹⁹

In July 1995 Representative Porter introduced H.R. 2127 considering 1996 funding for the U.S. Department of Education. Representative Hastert attached an amendment that would bar O.C.R.’s use of funds to continue Title IX enforcement at institutions of higher learning until O.C.R. clarified Title IX regulations.¹¹²⁰ While Congress was getting ready to review Title IX again, Brown was suffering the consequences for ignoring the needs of female athletes. As a further blow to Brown’s efforts to abide by Title IX, on August 18, 1995, The Associated Press offered Judge Pettine’s reprimand to Brown University for creating an unacceptable remedy to

¹¹¹⁷*Ibid.*, “Colleges: Brown’s President Asks,” May 10, 1995.

¹¹¹⁸ Associated Press, “Brown Cuts Men’s Sports for Title IX,” *New York Times*, July 8, 1995: para. 5. LexisNexis (accessed May 2, 2010).

¹¹¹⁹ *Ibid.*, Associated Press, July 8, 1995.

¹¹²⁰ Department of Education Appropriations Act of 1996, H.R. 2127 July 27, 1995 as cited in website: <http://www.titleix.info/> (accessed April 8, 2006).

comply with Title IX. He favored a plan proposed previously that contained outside support (monetary) to help create additional female teams.¹¹²¹ More Congressional hearings ensued in October 1995 as the Senate Commerce Committee heard testimony from Hastert and Cantu.¹¹²²

Law review production was extensive in 1995 with variety of topics based on trends in university athletics and the court decisions affecting them. Reviewers, J. Judge, D. O'Brien and T. O'Brien explained California's struggle to become Title IX compliant.¹¹²³ D. Mahoney directed attention to reverse discrimination as a negative result from enforcing Title IX in a proportional scheme.¹¹²⁴ J. P. Ferrier revisited Title IX since 1979 O.C.R. Policy Interpretation was issued to try to gauge real change in gender equity in order to see if there was room to improve the overall Act.¹¹²⁵ A.A. Ingram reviewed N.C.A.A. legislation which could have changed the need for judicial remedy as it related to Title IX and intercollegiate athletics.¹¹²⁶ C. Raymond promoted discussion of legal activity and Title IX with focus on use of class-action suits, prioritizing and balancing equity against programs and avoiding the award of monetary damages whenever possible.¹¹²⁷ J. Hudson argued that schools should not necessarily build programs for equity at the expense of raiding those programs generating substantial revenue.¹¹²⁸ P. Anderson reminded schools about strategies that ran counter to Title IX compliance and some

¹¹²¹ Associated Press, "Judge Criticizes Plan at Brown," *New York Times*, August 18, 1995. LexisNexis (accessed May 2, 2010).

¹¹²² Senate Commerce Committee Hearing, October 18, 1995, as cited in website <http://www.titleix.info/> (accessed April 8, 2006).

¹¹²³ J. Judge, D. O'Brien and T. O'Brien, "Perspective: Gender Equity in the 1990's: An Athletic Administrator's Survival Guide to Title IX and Gender Equity Compliance," *5 Seton Hall J. Sports L.*, 1995:313.

¹¹²⁴ D. Mahoney, "Note and Comment: Taking a Shot at the Title: A Critical Review of Judicial and Administrative Interpretations of Title IX as Applied to Intercollegiate Athletic Programs," *27 Conn. L. Rev.*, 1995:943.

¹¹²⁵ J. P. Ferrier, "Comment: Title IX Leaves Some Athletes Asking, 'Can We Play Too?'" *44 Cath. U. L. Rev.*, 1995:841.

¹¹²⁶ A. A. Ingram, "Civil Rights: Title IX and College Athletics: Is There a Viable Compromise?" *48 Okla. L. Rev.*, 1995:755.

¹¹²⁷ C. Raymond, "Comment: Title IX Litigation in the 1990's: The Courts Need a Game Plan," *18 Seattle Univ. L. R.*, 1995:665.

¹¹²⁸ J. Hudson, "Comment: Complying with Title IX of the Education Amendments of 1972: The Never-Ending Race to the Finish Line," *5 Seton Hall J. Sports L.*, 1995:575.

practices that were acceptable to promote compliance.¹¹²⁹ R. C. Farrell submitted a discussion of efforts to make football exempt from Title IX compliance.¹¹³⁰ D. Aronberg promoted a discussion of practices of athletic administrators and their efforts. Aronberg also asserted that court-enforced compliance was beginning to eliminate men's athletic opportunities in order to make way for women's. He urged the reinvention of O.C.R. policy.¹¹³¹ S.F. Ross, K. Kahrs, and F. Heinrich conveyed proceedings from their panel discussion at the University of Illinois reviewing gender equity.¹¹³² D.H. Moon, after reviewing Title IX lawsuits, questioned whether it was time to legislatively amend Title IX to take into account financial ability of schools to expand programs for compliance.¹¹³³ T. Davis directed institutions of higher learning to answer the question of their academic mission which he avowed should, in turn, drive the institution's decisions about gender equity and athletics.¹¹³⁴ B. G. George pointed out the need for intercollegiate athletics to continue to seriously pursue their Title IX responsibility even in times of budgetary constraints.¹¹³⁵

Collegiate wrestlers brought suit against their university in *Gonyo v. Drake University* after their intercollegiate wrestling team was discontinued in order to make efforts to comply with Title IX. The wrestlers were not successful in their bid to have their program reinstated.¹¹³⁶ In another case related to coaching, not dropping athletic teams or Title IX, Bartges took the

¹¹²⁹ P. Anderson, "Article: Football Schools' Guide to Title IX Compliance," 2 *Sports Law J.*, 1995:75.

¹¹³⁰ R. C. Farrell, "Article: Title IX or College Football?" 32 *Hous. L. Rev.*, 1995:993.

¹¹³¹ D. Aronberg, "Crumbling Foundations: Why Recent Judicial and Legislative Challenges to Title IX May Signal Its Demise," 47 *Fla. L. Rev.*, 1995:133.

¹¹³² S. F. Ross, K. Kahrs and F. Heinrich, "Panel Discussion: Rededication Panel Discussion on Gender Equity and Intercollegiate Athletics," 1995 *U. Ill. L. Rev.*, 1995:133.

¹¹³³ D. H. Moon, "Gender Inequity? Analysis of Title IX Lawsuits in Intercollegiate Athletics," 6 *J. Art & Ent. Law*, 1995:87.

¹¹³⁴ T. Davis, "A Model of Institutional Governance for Intercollegiate Athletics," 1995 *Wis. L. Rev.*, 1995:599.

¹¹³⁵ B. G. George, "Who Plays and Who Pays: Defining Equality in Intercollegiate Athletics," 1995 *Wis. L. Rev.*, 1995:647.

¹¹³⁶ *Gonyo v. Drake University*, Civil No. 4-93-70470; 879 F. Supp. 1000; 1995 U.S. Dist. LEXIS 3820, (March 10, 1995).

University of North Carolina at Charlotte to court. *Bartges v. University of North Carolina at Charlotte* was brought by a Bartges, a female coach who initially volunteered for the position of assistant women's basketball coach then was offered a coaching job in women's softball. Bartges contracted with a fund raiser to underwrite softball team expenses her budget would not cover. She did this without the permission of the university athletic director and was verbally reprimanded but not fired. Bartges filed a discrimination claim that she was being paid less because she was a woman and later resigned from the university. This was not a Title IX case, but did involve a dispute over coaching pay based on alleged sex-discrimination.¹¹³⁷

Dissertation production remained steady as Woods in 1994 studied the 90-year program development of female sports at Central Missouri State University.¹¹³⁸ Hattig of The Pennsylvania State University submitted results from a series of interviews tracing growth of women's athletic opportunities.¹¹³⁹ The mid-1990s found Besnette's analysis of legal principles and Title IX as practiced in a key Division I-A university sports association.¹¹⁴⁰ Also available in 1995, Maloney of the State University of New York at Buffalo offered a Title IX effectiveness study related to women's sports.¹¹⁴¹

In legal action of some notoriety, Louisiana State University was found to be in violation of Title IX by Judge Rebecca Doherty based on what she termed was "arrogant ignorance" of

¹¹³⁷ *Bartges v. University of North Carolina at Charlotte*, 3:94CV113-P; 908 F. Supp. 1312; 1995 U.S. Dist. LEXIS 19469; 70 Fair Empl. Prac. Cas. (BNA) 1643, (November 6, 1995).

¹¹³⁸ M. L. Woods, *The Development Of Women's Intercollegiate Athletics At Central Missouri State University 1900-1990*, Abstract. Dissertation. Central Missouri State University, 1994. ProQuest AAT 1360610 (accessed October 15, 2009).

¹¹³⁹ S. A. Hattig, *A Study of Progress Toward Gender Equity in the Intercollegiate Athletics Program at a Major Research University*, Abstract. Dissertation. The Pennsylvania State University, 1994. ProQuest AAT 9518759 (accessed October 15, 2009).

¹¹⁴⁰ C.A. Besnette, *Gender Equity in Intercollegiate Athletics: An Examination of Title IX and Legal Theory in the Context of a Major Division I-A collegiate Athletic Conference*, Abstract. Dissertation. University of California, Los Angeles, 1995. ProQuest AAT 9541826 (accessed October 15, 2009).

¹¹⁴¹ G. F. Maloney, *The Impact of Title IX on Women's Intercollegiate Athletics*, Abstract. Dissertation. State University of New York at Buffalo, 1995. ProQuest AAT 9525594 (accessed October 15, 2009).

what women sports participants needed for competition. She regarded this as unintentional so no monetary damages were awarded.¹¹⁴²

In the fall of 1995, O.C.R. drafted a “Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test” in response to House and Senate attempts to quash funding for Title IX policy enforcement. This clarification was issued from the Department of Education, Office for Civil Rights in January 1996.¹¹⁴³ A Congressional request for information regarding sports and gender parity culminated in a U.S. General Accounting Office report “Intercollegiate Athletic Status of Efforts to Promote Gender Equity” released in October 1996.¹¹⁴⁴

In 1996 at Portland State University, doctoral-level researcher Pemberton issued a content-specific field-tested clinic model for use to train personnel about Title IX-related material.¹¹⁴⁵ At the same time, reviews of law appeared to be plentiful as M. Straubel advised and heightened awareness that unnecessary harm (to males) was a side effect of Title IX at high school and college levels.¹¹⁴⁶ D.G. Duncan suggested creation of a strategy formulation to accept cuts in some men’s sports programs while learning to leave football out of the formula. Duncan endorsed use of the O.C.R. Policy Interpretation as it stood.¹¹⁴⁷ M.J. Yelnosky directed attention to controversy surrounding use of baseball metaphors in legal writing.¹¹⁴⁸ D. C. Wilson weighed the importance of Title IX to intercollegiate athletics gender equity efforts against its

¹¹⁴² New York Times, “Sports People: College Sports; Bias Found at L.S.U. In Title IX,” *New York Times*, January 13, 1996. LexisNexis (accessed May 2, 2010).

¹¹⁴³ U.S. Department of Education, Office for Civil Rights, “Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test,” (January 16, 1996). <http://www.ed.gov/about/offices/list/ocr/docs/clarific.html#two>.

¹¹⁴⁴ United States General Accounting Office, *Intercollegiate Athletics, Status of Efforts to Promote Gender Equity*, (GAO/HEHS-97-10). 1996.

¹¹⁴⁵ C. L. Pemberton, *An Educational Gender Equity/Title IX Workshop for Intercollegiate Athletic Personnel*, Abstract. Dissertation. Portland State University, 1996. ProQuest AAT 9635654 (accessed October 15, 2009).

¹¹⁴⁶ M. Straubel, “Gender Equity, College Sports, Title IX and Group Rights: A Coach’s View,” 62 *Brooklyn L. Rev.*, 1996:1039.

¹¹⁴⁷ D. G. Duncan, “Gender Equity in Women’s Athletics,” 64 *U. Cinn. L. Rev.*, 1996:1027.

¹¹⁴⁸ M. J. Yelnosky, “If you Write it (S)he Will Come: Judicial Opinions, Metaphors, Baseball and ‘The Sex Stuff,’” 28 *Conn. L. Rev.*, 1996:813.

application as an affirmative action outcome and high-stake big-time athletics stakeholders.¹¹⁴⁹ D. Brake and E. Catlin acknowledged Title IX successes and struggles with football and Congressional interest in weakening Title IX's power.¹¹⁵⁰ M. J. Kane directed attention to media's marginal coverage of female athletes' efforts since Title IX was enacted.¹¹⁵¹ J. H. Orleans questioned whether it was time to redefine O.C.R. regulations based on significant changes made in society and athletics since Title IX was invoked as an equivocator.¹¹⁵² M. W. Gray focused on creating a mathematical equation to determine a true compliance margin for substantial proportionality in cases involving Title IX and intercollegiate athletics.¹¹⁵³ J. C. Weistart saw proportional representation as only part of the battle in gender equity.¹¹⁵⁴ J. J. Whalen discussed the N.C.A.A. Task Force pre- and post-survey preparation and the results about university resources used to create compliance with Title IX.¹¹⁵⁵ T.S. Evans disclosed what could be gained or lost by making significant changes to football when trying to achieve Title IX equity.¹¹⁵⁶ S. A. Mota conveyed to readers the cost to universities to litigate for and against court-ordered Title IX compliance and the cost a university would incur to directly fix the gender equity problem in athletics¹¹⁵⁷ based on Brown University's information. R. K. Smith

¹¹⁴⁹ D. C. Wilson, "Parity Bowl IX: Barrier Breakers v. Common Sense Makers and the Serpentine Struggle for Gender Diversity in Collegiate Athletics," 27 *Cumb. Rev.* 1996:397.

¹¹⁵⁰ D. Brake and E. Catlin, "Setting a Course for College Athletics: The Path of Most Resistance The Long Road Toward Gender Equity in Intercollegiate Athletics," 3 *Duke J. Gender L. & Pol'y*, 1996: 51.

¹¹⁵¹ M. J. Kane, "Setting a Course for College Athletics: Media Coverage of the Post Title IX Female Athlete: A feminist Analysis of Sport, Gender and Power," 3 *Duke J. Gender L. & Pol'y*, 1996:95.

¹¹⁵² J. H. Orleans, "Setting a Course for College Athletics: An End to the Odyssey: Equal Athletic Opportunity for Women," 3 *Duke J. Gender L. & Pol'y*, 1996:131.

¹¹⁵³ M. W. Gray, "Setting a Course for College Athletics: The Concept of Substantial Proportionality in Title IX Athletic Cases," 3 *Duke J. Gender L. & Pol'y*, 1996:165.

¹¹⁵⁴ J. C. Weistart, "Setting a Course for College Athletics: Can Gender Equity Find a Place in Commercialized College Sports?" 3 *Duke J. Gender L. & Pol'y*, 1996:191.

¹¹⁵⁵ J. J. Whalen, "Spring Symposium: Issues Facing College Athletics: Gender Equity or Title IX?" 5 *Kan. J.L. & Pub. Pol'y*, 1996:65.

¹¹⁵⁶ T. J. Evans, "Spring Symposium: Issues Facing College Athletics: Title IX and Intercollegiate Athletics: A Primer on Current Legal Issues," 5 *Kan J. L. & Pub. Pol'y*, 1996:55.

¹¹⁵⁷ S. A. Mota, "Title IX Intercollegiate Athletics: The First Circuit Holds Brown University Not In Compliance," 14 *U. Miami Ent. & Sports L. Rev.*, 1996:152.

asserted the unintended fallout when seeking gender equity could include racial disparity. Smith offered suggestions to combat this trend.¹¹⁵⁸

Law review production was especially abundant as M. J. McPhillips discussed women and their attempts to play baseball and form their own league where no opportunity had existed before for women to participate in a traditionally male non-contact sport.¹¹⁵⁹ R. D'Augustine called for change in Title IX enforcement suggesting several ways to update rules of engagement for a tempered interpretation to encourage proportionality between the genders in athletic opportunity in intercollegiate arenas.¹¹⁶⁰ J. Judge, D. O'Brien and T. O'Brien suggested compensation package outlines for coaching salaries to avoid issues between genders.¹¹⁶¹ S. Otos took a look at the proportion of athletic injuries occurring by gender and the impact the injuries had on participation.¹¹⁶² C.P. Beveridge concluded after discussing cuts of men's athletic teams that parity of interest in athletic participation starts in grade school. Beveridge recommended that opportunities to participate in athletics must be introduced at early stages of childhood in order for interest to grow.¹¹⁶³ J.R. Parkinson discussed the vulnerability of men's sports experience as a result of 1979 Title IX Policy Interpretation which included the three-part test. Parkinson cited the steps that The N.C.A.A. took when it created the Gender-Equity Task Force in 1992.¹¹⁶⁴

¹¹⁵⁸ R. K. Smith, "When Ignorance is Not Bliss: In Search of Racial and Gender Equity in Intercollegiate Athletics," *61 Mo. L. Rev.*, 1996:329.

¹¹⁵⁹ M. J. McPhillips, "'Girls of Summer': A Comprehensive Analysis of the Past, Present and Future of Women in Baseball and a Roadmap to Litigating a Successful Gender Discrimination Case," *6 Seton Hall J. Sports L.*, 1996:329.

¹¹⁶⁰ R. D'Augustine, "'A Loosely Laced Buskin?' The Department of Education Policy Interpretation for Applying Title IX to Intercollegiate Athletics," *6 Seton Hall J. Sports L.*, 1996:469.

¹¹⁶¹ J. Judge, D. O'Brien and T. O'Brien, "Pay Equity: A Legal and Practical Approach to the Compensation of College Coaches," *6 Seton Hall J. Sports L.*, 1996:549.

¹¹⁶² S. Otos, "*Cohen v. Brown University*: Sports in the Legal Arena," *3 Sports Law L.*, 1996:14.

¹¹⁶³ C. P. Beveridge C.P. "Title IX and Intercollegiate Athletics: When School Cut Men's Athletic Teams," *1996 U. Ill. L. Rev.*, 1996:809.

¹¹⁶⁴ J. R. Parkinson, "Grappling with Gender Equity," *Wm & Mary Bill of Rts. L.*, 1996:75.

Back in court, in a non-athletic Title IX- related action, the state of Virginia in an effort to protect their long-standing military institute sued the federal government. In *United States v. Virginia*, the historically all-male Virginia Military Institute (V.M.I.) denied admission to a woman interested in becoming a cadet. V.M.I. and the State of Virginia offered to create a female branch at a neighboring private college for women who wished to become V.M.I. cadets. The Supreme Court held that Virginia created an unconstitutional cure with the inferior program created for women.¹¹⁶⁵ Echoes of the doctrine of ‘separate but equal’ accommodations being inherently unequal, a result of *Brown v. Board of Education, Topeka*,¹¹⁶⁶ the state of Virginia could not protect V.M.I. from the encroachment of the federal government by denying women admission to the institute.

The New York Times described Brown University’s most recent plan to increase parity. This plan involved elevating three sports from club status. The scheme included adding sixty places for female athletes. It would also provide minimum-maximum participation limits. Brown was seeking approval from the district court judge at this juncture. The U.S. Supreme Court did not grant *certiorari* to Brown, which forced the university officials to accept the First Circuit’s agreement with the Federal District court’s decision.¹¹⁶⁷ Sandomir presented reaction to Brown’s attempt to be heard at The Supreme Court-level. Comments ranged from “A law is a law and we all have to comply. . . .”¹¹⁶⁸ to “the case ‘has no effect on our program. . . . We moved beyond the Brown case years ago,’”¹¹⁶⁹ to “the only problem with the Brown debate is it appears

¹¹⁶⁵ *United States v. Virginia*, No. 94-1941; 518 U.S. 515; 116 S. Ct. 2264; 1996 U.S. LEXIS 4259; 135 L. Ed. 2d 735; 64 U.S. L. W. 4538; 96 Cal. Daily Op. Service 4694; 96 Daily Journal DAR 7573; 10 Fla. Law W. Fed S. 93, (June 26, 1996).

¹¹⁶⁶ *Brown v. Board of Education, Topeka*, 1954.

¹¹⁶⁷ New York Times, “Colleges; Brown Plan to Boost Equity,” *New York Times*, April 22, 1997. LexisNexis (accessed May 2, 2010).

¹¹⁶⁸ R. Sandomir, “Colleges; The Prospects for Title IX Are Expected to Improve,” *New York Times*, April 23, 1997: para. 4. LexisNexis (accessed May 2, 2010).

¹¹⁶⁹ *Ibid.*, Sandomir, April 23, 1997: para. 7.

when a school is making progress for women's athletics, somehow that's not enough,"¹¹⁷⁰ to finally lamenting that parity efforts are forced and that if athletic administrators had made efforts when Title IX started then the adjustment period would have been finished.¹¹⁷¹ Lipsyte presented interviews with a coach and a female athlete who had battled for gender equity in their respective roles. Dunn was dismissed from Purdue University in 1976 over a salary dispute leading her to sue the university. They settled the matter without going to court. Fischer was an injured athlete at Notre Dame who was ignored by the training staff when a football player with a less serious injury entered the training room. Dunn acknowledged there had been progress in some gender equity areas. She indicated that in leadership situations, women were not always empowered and they feared confronting issues. She observed similarity between women and African Americans waging civil rights battles.¹¹⁷²

New York Times journalist, El-Bashir informed readers about the 1997 N.C.A.A. Gender Equity Report. Dempsey, N.C.A.A. Executive Director, expressed disappointment that more progress had not been made to achieve gender parity in athletic pursuits. Dempsey stated: "The results were not what we had expected as far as the progress that might have been made the last five years. At this rate, it will take about 10 or 12 years before we reach equity."¹¹⁷³ The 1997 report did show some improvement in scholarship, coaches' pay and recruiting funds made available to women's athletics. Men's program expenses grew more than women's yet participation rates for men dropped with minor gains for women. N.C.A.A. officials expressed concern about the way universities had chosen to comply to Title IX regulations.¹¹⁷⁴ Grey of *The*

¹¹⁷⁰ Sandomir, April 23, 1997: para. 11.

¹¹⁷¹ Sandomir, April 23, 1997.

¹¹⁷² R. Lipsyte, "Backtalk; Fighting On In the Battle For Equity," *New York Times*, April 27, 1997. LexisNexis (accessed May 2, 2010).

¹¹⁷³ T. El-Bashir, "Colleges; Title IX Study; Equality Is Still a Decade Away," *New York Times*, April 29, 1997: para. 3. LexisNexis (accessed May 2, 2010).

¹¹⁷⁴ *Ibid.*, El-Bashir, April 29, 1997.

New York Times offered a report highlighting scholarship disparity in athletics. The Office for Civil Rights received notice of charges against various colleges and universities lodged by the National Women's Law Center (N.W.L.C.). The worst offender, according to Greenberger of the N.W.L.C., was Vanderbilt University. Basic statistics available through data collected by Equity in Athletics Disclosure Act resulted in the scholarship disparity charges. Grey noted the historic progress of Title IX enforcement which first involved creating participation opportunities for women in athletics and grew into equal access to resources. Critics of the 1972 equity law feared that progress in gender parity would be detrimental to men's sports.¹¹⁷⁵

Chambers prepared the reader for the 25th anniversary of Title IX. The Clinton Administration planned a ceremony to highlight the milestones achieved in gender equity. Reality of what had not become equal over the years was pointed out by Chambers revolving around scholarship distribution and budget allocations. Chambers explained the 1979 test created to interpret Title IX compliance for athletics. Within the scheme there are three opportunities for a college or university to show itself as compliant with Title IX regulations. Chambers clarified: "A college may show that the ratio of female athletes to male athletes is substantially proportionate to the ratio of female students to male students. Failing that, the college can show that it is moving in the right direction and had a plan to get there in a reasonable number of years. Failing that, it can show that there is no unmet need among the underrepresented class, which is usually but not always women."¹¹⁷⁶ Chambers cited several reasons for slow or no compliance—leadership, N.C.A.A. and its schools and O.C.R. Chambers identified Bryant, who was involved in the Brown lawsuit noting that there was federal interest

¹¹⁷⁵ K. Gray, "Colleges; Bias in Scholarships Charged at 25 Colleges," *New York Times*, June 3, 1997. LexisNexis (accessed May 2, 2010).

¹¹⁷⁶ M. Chambers, "Women's Sports; For Women, 25 Years of Title IX has Not Leveled the Playing Field," *New York Times*, June 16, 1997: para 15. LexisNexis (accessed May 2, 2010).

in compliance, and federal requests for plans. According to Bryant, the most influential force pushing reform was efforts made by private citizens who chose to sue and get results. Chambers allowed Grant of the University of Iowa, who was interested in strong and consistent efforts to achieve equity, to speak. Grant remarked: “Parents are demanding parity for their daughters as well as their sons. . . Indeed, the fathers of talented young women are the most impatient feminists I have ever met.”¹¹⁷⁷ Wallace reported about the growth in rowing as a sport in which women could participate. Rowing offered large numbers of participants for college athletics departments to use when trying to achieve parity. In 1972, according to Wallace, two rowing teams were operational and by 1997 there were ninety-six women’s rowing teams training and competing.¹¹⁷⁸

Heather Mercer, interviewed by Smith, recounted her disappointment at never being allowed to participate in practices or games as a place kicker on Duke University’s football team. Mercer filed a lawsuit with claims that Duke’s refusal to allow her to participate on the team violated her Title IX protection.¹¹⁷⁹ Naughton reported in *The Chronicle of Higher Education* that Mercer was a celebrated high school place kicker before attending Duke University in 1994. In 1995 she succeeded in being allowed to take part in an intra-squad game which led to her to be named as a team member by Goldsmith, coach of Duke’s football team. Before the 1995 fall season Goldsmith changed his mind and barred Mercer from practice and the sidelines.¹¹⁸⁰

Moran reported to readers of *The New York Times* on the decision Boston University made to end football in an effort to meet the demands of a changing student body and the gender

¹¹⁷⁷ *Ibid.*, Chambers, June 16, 1997.

¹¹⁷⁸ W. Wallace, “Rowing: Title IX Helps Female Scullers Thrive,” *New York Times*, June 19, 1997. LexisNexis (accessed May 2, 2010).

¹¹⁷⁹ T. W. Smith, “College Football: A Kicker Sues, Saying She was Treated Unfairly,” *New York Times*, September 17, 1997. LexisNexis (accessed May 2, 2010).

¹¹⁸⁰ J. Naughton, “Female Kicker Sues Duke U. For Denying Her a Spot on the Football Team,” *Chronicle of Higher Education*, September 26, 1997. LexisNexis (accessed April 10, 2010).

equity law. Moran recited that over twenty other schools had made the same decision.¹¹⁸¹

Haworth covered “Boston U. to Drop Its Football Program at Season’s End” for *The Chronicle of Higher Education*. Haworth indicated that Boston University’s choice to drop the football team led an effort to re-organize their athletic program priorities which included infusing funding into women’s athletic team opportunities. Carpenter, the Sports Information Director for Boston, disassociated the decision to drop football from Title IX. Carpenter cited the three-million dollar deficit incurred by football as one of the reasons Boston University dropped football along with the campus’ lack of interest in the sport and low spectator support at football events.¹¹⁸²

The Chronicle reporters Naughton and Crissey co-authored an article announcing The Office for Civil Rights’ investigation of twenty-five universities accused of Title IX violations. O.C.R. shared that the complaints revolved around scholarship distribution. The proportionality standard was allegedly changing to a stricter measure called ‘exact proportionality.’ According to Brian A. Snow, general counsel of Colorado State University, O.C.R. officials had given them notice “that the proportion of scholarship money given to female athletes must precisely equal the proportion of female athletes at the institution.”¹¹⁸³ Universities had generally been operating under the five-percent proportionality range considered a safe harbor. So under newly identified proportions, exact meant that institutions distributing scholarship dollars to men and women athletes must be more closely aligned than once understood. N.C.A.A. reaction included policy changes that would allow more scholarship dollars to flow into women’s sports. The Women’s Law Center personnel supported the new standard whereas an N.C.A.A. women’s

¹¹⁸¹ M. Moran, “College Football: Banned in Boston: One Football Team; At B.U., A Century of Pigskin History Is Coming to a Sudden Painful End,” *New York Times*, November 2, 1997. LexisNexis (accessed May 2, 2010).

¹¹⁸² K. Haworth, “Boston U. to Drop Its Football Program at Season’s End,” *Chronicle of Higher Education*, November 14, 1997. LexisNexis (accessed April 10, 2010).

¹¹⁸³ J. Naughton and M. Crissey, “Education Department Said to Toughen Stance on Title IX; New Requirement on Scholarships For Female Athletes May Prompt a Change in Policy by N.C.A.A.,” *Chronicle of Higher Education*, December 19, 1997: para 2. LexisNexis (accessed April 10, 2010).

athletic committee member reacted by saying: “If you start throwing around words like ‘exact,’ more pressure is going to be brought to bear by the Division I-A schools that want to have football excluded.”¹¹⁸⁴

In 1997 information about sports and participation by gender began appearing. The Equity in Athletics Disclosure Act (E.A.D.A.) reports were filed by colleges and universities.¹¹⁸⁵ In other federal agencies, as a way to mark the twenty-fifth anniversary of the passing of Title IX, a publication was released by O.C.R. and the U.S. Department of Education: “Title IX: 25 Years of Progress” presenting information on various indicators of progress in education, employment and athletic opportunities related to gender participation rates.¹¹⁸⁶

“Too Strong for A Woman – The five words that created Title IX” represented Bernice Sandler’s fundamental efforts to access equal employment opportunities in higher education. As an activist, Sandler created awareness in the public eye so that Congress, society and the legal system eventually addressed gender disparity in multiple arenas.¹¹⁸⁷

By 1997 scholarly production from doctoral students included six different timely and important topics. Wu at The Pennsylvania State University presented at look at the power struggle between the A.I.A.W. and the N.C.A.A. over control of athletic conference administration of women’s sporting opportunities.¹¹⁸⁸ Colles at the University of Northern Colorado tracked application of the Title IX Three-Part Test used by the Office for Civil Rights

¹¹⁸⁴ *Ibid.*, Naughton and Crissey, December 19, 1997: para 15.

¹¹⁸⁵ N.C.A.A.org., “Equity in Athletics Disclosure Act,” http://www.ncaa.org/library/research/gender_equity_study/1997-98/introduction.pdf. (accessed November 15, 2009).

¹¹⁸⁶ U.S. Department of Education, Office for Civil Rights, “Title IX: 25 Years of Progress,” (1997). <http://www.ed.gov/pubs/TitleIX/title.html> (accessed August 15, 2007).

¹¹⁸⁷ B. R. Sandler, “Too Strong for a Woman – The Five Words that Created Title IX,” (1997) <http://www.bernice-sandler.com/id44.htm> (accessed April 8, 2006). Originally appeared in Spring 1997 issue of *About Women on Campus*, former newsletter of the National Association for Women in Education.

¹¹⁸⁸ Y. Wu, *The Demise Of The AIAW And Women’s Control Of Athletics For Women: The Sex-Separate Policy In The Reality Of NCAA, Cold War and Title IX*, Abstract. Dissertation. The Pennsylvania State University, 1997. ProQuest AAT 9817607 (accessed October 15, 2009).

on sixty-six adjudicated cases with emphasis placed on the uniform application of the test.¹¹⁸⁹ Plyley at the University of Western Ontario (Canada) offered a fresh look at the scuffle for control between the national athletic governing bodies vying for control of women's sports in U.S. universities and colleges during the ten-year period of 1972-1982.¹¹⁹⁰ Certo at Columbia University Teacher's College offered a study about discerning parity in college sports based on feedback from students involved in sports and athletic personnel reacting to their awareness of university support in equalizing athletic opportunity between the genders.¹¹⁹¹ Hoogestraat at Peabody College for Teachers of Vanderbilt University studied women's athletic experiences at select universities developing formal competitive women's basketball regarding the model of sport competition employed and the governing bodies' struggle to dominate control of women's rules of competition.¹¹⁹² The last study produced in 1997 by Moss at The University of Wisconsin at Madison involved a public university. Moss used a case study methodology to determine the conformity to Title IX in attempts to gain parity in the university's sports program between genders.¹¹⁹³

Beasley v. Alabama State University involved a former female student and athlete.

Beasley claimed for herself and others like her that A.S.U. had violated Title IX and the equal protection clause of the Fourteenth Amendment by not providing equal athletic opportunities and

¹¹⁸⁹ C. M. Colles, *The Office for Civil Rights' Investigation and Interpretation of Title IX's Three-Part Test: A Question of Consistency*, Abstract. Dissertation. University of Northern Colorado, 1997. ProQuest AAT 9806118 (accessed October 15, 2009).

¹¹⁹⁰ D. E. Plyley, *The AIAW vs. the NCAA: A Struggle For Power To Govern Women's Athletics In American Institutions Of Higher Education, 1972-1982*, Abstract. Dissertation. The University of Western Ontario (Canada), 1997. ProQuest AAT MQ28637 (accessed October 15, 2009).

¹¹⁹¹ M. J. Certo, *Reaching Gender Equity in Intercollegiate Athletics: Coaches' And Student-Athletes' Beliefs About Institutional Support For Men's And Women's Athletics*, Abstract. Dissertation. Columbia University Teachers College, 1997. ProQuest AAT 9810955 (accessed October 15, 2009).

¹¹⁹² F. M. Hoogestraat, *Qualitative Portraiture Of The Female Intercollegiate Athletic Experience In Four Elite Women's Basketball Programs*, Abstract. Dissertation. Peabody College for Teachers of Vanderbilt University, 1997. ProQuest AAT 9729100 (accessed October 15, 2009).

¹¹⁹³ S. L. Moss, *Gender Equity in Intercollegiate Athletics: A Case Study Of a Title IX Compliance Effort at a Division I-A Public University*, Abstract. Dissertation. The University of Wisconsin – Madison, 1997. ProQuest, AAT 9726171 (accessed October 15, 2009).

support for female athletes. The U.S. District Court for the Middle District of Alabama, Northern Division, chose to elaborate on the Title IX claim.¹¹⁹⁴

In the winter of 1997 an article appeared in the *New York School Journal of Human Rights* suggesting that after twenty-five years of Title IX activity that equalizing coaches' salaries was still not a priority in intercollegiate athletics.¹¹⁹⁵ R. K. Smith advocated women's football to ease Title IX compliance issues.¹¹⁹⁶ K. G. J. Pillai debated the validity of applying strict scrutiny arguments to gender and racial issues.¹¹⁹⁷ D. Heckman reviewed significant legal action based on legal decisions in Title IX cases between 1994 and 1997 and how contradictory these rulings sometimes appeared to be. Heckman made eleven distinct points about Title IX related-action and the consequences experienced between 1994 and 1997.¹¹⁹⁸ D. Heckman also published "Scoreboard: A Concise Chronological Twenty-five Year History of Title IX Involving Intercollegiate and Interscholastic Athletics," in the 21st year issue of *Seton Hall Journal of Sport Law*.¹¹⁹⁹ C. Spitz presented a diatribe about unintentional and negative effects on men's and women's intercollegiate athletics based on interpretation of Title IX regulations and subsequent judicial decisions. Spitz suggested reducing overall football budgets. This, Spitz argued, would allow expansion of female athletic interest without reducing minor male sport team opportunities.¹²⁰⁰ One of the ideas M. Kelman contended was that athletic ability alone

¹¹⁹⁴ *Beasley v. Alabama State University*, Civil Action No. 96-T-473-N; 996 F. Supp. 1117; 1997 U.S. Dist. LEXIS 8342, (June 9, 1997).

¹¹⁹⁵ *New York Law School Journal of Human Rights*, "The Opportunity to Play Ball: Title IX University Compliance and Equal Pay," 13 *N.Y.L. Sch. J. Hum. Rts.*, 1997:347.

¹¹⁹⁶ R. K. Smith, "Sports Law as a Reflection of Society's Laws and Values: Solving the Title IX Conundrum with Women's Football," 38 *S. Tex. L. Rev.*, 1997:1057.

¹¹⁹⁷ K. G. J. Pillai, "Phantom of Strict Scrutiny," 31 *New Eng. L. Rev.*, 1997:397.

¹¹⁹⁸ D. Heckman, "On the Eve of Title IX's 25th Anniversary: Sex Discrimination in the Gym and Classroom," 21 *Nova L. Rev.*, 1997:545.

¹¹⁹⁹ D. Heckman, "Scoreboard: A Concise Chronological Twenty-Five Year History of Title IX Involving Interscholastic and Intercollegiate Athletics," 21 *Seton Hall J. Sport L.*, 1997:391.

¹²⁰⁰ C. Spitz, "Gender Equity in Intercollegiate Athletics as Mandated by Title IX of the Education Act of 1972: Fair or Foul?" 21 *Seton Hall J. Sport L.*, 1997:621.

should not drive distribution of resources.¹²⁰¹ Among the four perspectives J.E. Jay offered, one advised the creation of a female sports participation model that was not based on the male sports participation model.¹²⁰² R. Yasser and S. J. Schiller touted Owasso's Consent Decree as a model for Title IX compliance. Yasser and Schiller noted Owasso's Consent Degree conveys empowerment to the organization administering interscholastic athletic programming—giving opportunity to address gender-related grievances before they become litigious.¹²⁰³ E. G. Bernardo, II, discussed and disagreed with quota system-like findings in the *Cohen v. Brown University* decision.¹²⁰⁴ R. Yasser and S. J. Schilling offered another read on the Owasso Case in light of questions about equal opportunity, unequal treatment and discrimination in Owasso's interscholastic programming.¹²⁰⁵ G. M. Mowery heightened awareness about gender-related coaching personnel issues regarding hiring and called for planning and balance, in search of quality athletic coaching personnel.¹²⁰⁶ L. J. Kolpin cited broad interpretation of Title IX led to improved gender representation in intercollegiate athletic opportunity and access. Kolpin also reviewed improved Olympic performance outcomes for female athletes attributable to Title IX. Kolpin advocated a move for improving quality of coaching for women's athletics.¹²⁰⁷ A discussion of cheerleading as a classified athletic sports was included by The Harvard Law Review Association in "Cheering on Women and Girls in Sports: Using Title IX to Fight

¹²⁰¹ M. Kelman, "(Why) Does Gender Equity in College Athletics Entail Gender Equity," 7 *S. Cal. Rev. L. & Women's Stud.*, 1997:63.

¹²⁰² J. E. Jay, "Women's Participation in Sports: Four Feminist Perspectives," 7 *Tex. J. of Women & L.*, 1997:1.

¹²⁰³ R. Yasser and S. J. Schiller, "Gender Equity in Interscholastic Sports: A Case Study," 33 *Tulsa L.J.* 273, 1997: 9968.

¹²⁰⁴ E. G. Bernardo, II, "Unsportsmanlike Conduct: Title IX and *Cohen v. Brown University*," 2 *Roger Williams U. L. Rev.*, 1997:305.

¹²⁰⁵ R. Yasser and S. J. Schiller, "Gender Equality in Athletics: The New Battleground of Interscholastic Sports," 15 *Cardoza Arts & Eng. L. J.*, 1997:371.

¹²⁰⁶ G. M. Mowery, "Creating Equal Opportunity for Female Coaches: Affirmative Action Under Title IX," *U. Cin. L. Rev.*, 1997:283.

¹²⁰⁷ L. J. Kolpin, "Has Title IX Delivered an 'Air Ball' to Coaches of Women's Athletics?" 45 *Drake L. Rev.*, 1997:253.

Gender Role Oppression” in the 1997 issue.¹²⁰⁸ Despite gender equity strides in athletics, J. R. Martin submitted in an essay that higher education still had improvements to make in gender-related progress in its overall programming as it continued tracking females into low status areas of study.¹²⁰⁹

Naughton noted in “Education Dept. Says It Has Not Changed Rules for Title IX Comp” that officials at the Office for Civil Rights denied that the interpretation of proportionality as applied to scholarship distribution was likely to change. Dr. Mary Frances O’Shea commented that contact she made with The N.C.A.A. was about raising limits on women’s scholarships in various sports so institutions of higher learning participating in intercollegiate athletics could more easily comply with Title IX interpretations.¹²¹⁰ In a “Letter to the Editor” of *The Chronicle*, Norma Cantu, Assistant Secretary of the Office for Civil Rights, attempted to clarify rumors that they were in effect changing enforcement policy as reported in an article “Education Department Said to Toughen Stance.” Cantu responded: “The O.C.R.’s long-standing policy calls for institutions to award athletic financial assistance in amounts ‘substantially proportionate’ to the participation rates of each gender. The O.C.R. does not require, as reported in your article, that ‘the proportion of scholarship money given to female athletes must precisely equal the proportion of female athletes.’ Furthermore, Title IX compliance is not determined by a set percentage such as a 5-per-cent rule stated in your article. The department’s 1979 policy interpretation states that institutions may be found in compliance if the comparison of participation rates, by sex, to the rates at which athletic financial assistance is awarded, by sex,

¹²⁰⁸ The Harvard Law Review Association, “Cheering on Women and Girls in Sports: Using Title IX to Fight Gender Role Oppression,” *110 Harvard L. Rev.*, 1997:1627.

¹²⁰⁹ J. R. Martin, “Bound for the Promised Land: The Gendered Character of Higher Education,” *4 Duke Gender L. & Pol’y*, 1997:3.

¹²¹⁰ J. Naughton, “Education Dept. Says It Has Not Changed Rules for Title IX Compliance,” *Chronicle of Higher Education*, January 9, 1998. LexisNexis (accessed April 10, 2010).

results in ‘substantially equal’ amounts or if a resulting disparity can be explained by adjustments to take into account legitimate, nondiscriminatory factors. This continues to be the standard by which O.C.R. assesses compliance.”¹²¹¹ Cantu then explained that O.C.R. previously attempted to clarify this in a letter distributed in mid-January 1996.¹²¹²

Naughton reported another backlash from efforts to comply with Title IX in *The Chronicle* was the dilemma experienced by predominately and historically black universities in complying with proportionality standards for Title IX. Most universities in this group have high percentages of female undergraduates yet do not enjoy participation rates for female athletes to garner substantial compliance. Naughton noted that few sports available to African American students, in general, compounded the participation-rate issue. “The growth in women’s athletics in the 90s has been in what I call ‘white-girl sports.’” Schuld of Play Fair was a project director for the Independent Women’s Forum, which was a conservative advocacy group critical of the proportionality standard. According to Schuld, “They aren’t creating opportunities for black women to use sports as a way of getting to college in the same way that black men do.”¹²¹³

Haworth reported the decision by Third Circuit judges that applied federal regulations in Title IX to The N.C.A.A. because it collected membership fees from universities who in turn received federal funds. The N.C.A.A. legal representative interviewed by Haworth attributed the decision to a misreading of the statute. The case, *N.C.A.A. v. Smith*, involved a denied request for use of athletic eligibility remaining after Smith completed her bachelor’s degree. Ms. Smith

¹²¹¹ N. V. Cantu, “Letter to the Editor: Title IX Policy Remains Consistent,” *Chronicle of Higher Education*, January 30, 1998: para. 2. LexisNexis (accessed April 10, 2010).

¹²¹² *Ibid.*, Cantu, January 30, 1998.

¹²¹³ J. Naughton, “Title IX Poses a Particular Challenge at Predominately Black Institutions; The High Percentage of Female Students Makes It Difficult to Meet ‘Proportionality Standard,’” *Chronicle of Higher Education*, February 20, 1998: para. 26. LexisNexis (accessed April 10, 2010).

claimed that The N.C.A.A. violated Title IX because they offered more eligibility waivers to men than to women.¹²¹⁴

In efforts to document athletic trends *The Chronicle* staff used data collected through the Equity in Athletics Disclosure Act of 1996. *The Chronicle* staff was able to perform a comparative study and determined that for 1996-1997 twice as much funding was spent on men's athletics. Data showing that women's sports budgets grew at a rapid rate during this period was presented. Cedric Dempsey, executive director of The N.C.A.A., stated that, "The numbers show steady progress. . . It is not as rapid as we would like, but it is moving in the right direction. I think there is still great sensitivity among membership in terms of increasing our commitment."¹²¹⁵ Showing slight gains, The N.C.A.A. was credited as one reason for requiring progress on gender parity as a feature of membership renewal. Ohio State athletic director, Andy Geiger, attributed gains to wise use of budget in his statement, "We have used the power of our football program to build our commitment to gender equity and we've managed to do it without cutting men's teams or getting heavily into roster management."¹²¹⁶ Orleans noted that Ivy League rationale for parity which contributed to their success included making women's athletics a standard budget item and creating the mindset which included women's athletics as regular programming.¹²¹⁷ Naughton also reported on House of Representative efforts spearheaded by Hastert to support a provision requiring universities give multi-year notice before being allowed to end athletic teams. Hastert's effort was eliminated from legislation aimed at curbing Title

¹²¹⁴ K. Haworth, "Federal Appeals Court Clears Way for Title IX to Apply to the N.C.A.A.," *Chronicle of Higher Education*, March 27, 1998. LexisNexis (accessed April 10, 2010).

¹²¹⁵ J. Naughton, "Women's Teams in N.C.A.A.'s Division I See Gains in Participation and Budgets; But the 831-million Spent on Male Athletes was Nearly Twice What was Spent on Female Athletes," *Chronicle of Higher Education*, April 3, 1998: para. 14. LexisNexis (accessed April 10, 2010).

¹²¹⁶ *Ibid.*, Naughton, April 3, 1998: para. 24.

¹²¹⁷ Naughton, April 3, 1998.

IX.¹²¹⁸ In response to the Education Department and the lawsuit against twenty-five colleges brought by the National Women's Law Center, The N.C.A.A. proposed reducing scholarships given to football and increasing scholarships in various women's sports. This proposal was met with criticism from within the ranks of Division I schools.¹²¹⁹

Lowrey v. Texas A & M University System, charged that Tarleton State University and several of its officials had practiced sex-discrimination while Lowery was employed there and struck back at her in retaliation when she filed a complaint.¹²²⁰

During the 1998 Gender Equity Seminar sponsored by The N.C.A.A. the discussion included scholarships—raising the cap for women, lowering the cap for men—with representatives weighing in on the real impact. *Cohen v. Brown University* and *N.C.A.A. v. Smith* law cases were also part of the focus during this seminar.¹²²¹

The Associated Press announced Brown University's intention to settle their Title IX lawsuit. Plans received initial acceptance by Judge Torres at the Federal District Court-level. Brown agreed to keep their proportionality margin to 3.5 points below the female undergraduate enrollment.¹²²² Naughton of *The Chronicle* informed readers of the settlement terms of *Cohen v. Brown University*. Brown's appeal to The Supreme Court was denied thereby forcing the University to accept the lower court's decision. Naughton echoed that the plan involved maintaining a proportional margin—3.5 ratio—of female athletes to female undergraduates so

¹²¹⁸ J. Naughton, "House Rejects Proposed Limits on Eliminating Teams," *Chronicle of Higher Education*, May 15, 1998. LexisNexis (accessed April 10, 2010).

¹²¹⁹ J. Naughton, "NCAA Plan Would Lower Limit on Football Scholarships," *Chronicle of Higher Education*, May 22, 1998. LexisNexis (accessed April 10, 2010).

¹²²⁰ *Lowrey v. Texas A & M University System*, Civil Action No. H-96-0834; 11 F. Supp. 2d 895; 1998 U.S. Dist. LEXIS 8757, (May 27, 1998).

¹²²¹ J. Naughton, "Focus of Title IX Debate Shifts From Teams to Scholarship; Some Colleges Hope Changes in N.C.A.A. Rules Will Make it Easier to Comply with Gender-Equity Law Filed," *Chronicle of Higher Education*, May 29, 1998. LexisNexis (accessed April 10, 2010).

¹²²² Associated Press, "Brown to Settle Title IX Suit," *New York Times*, June 24, 1998. LexisNexis (accessed May 2, 2010).

Brown could meet the Title IX substantial proportionality test. A University spokesman added that Brown was showing 1.2 because it had put into operation a plan designed to help meet the standard.¹²²³

In July 1998, O.C.R. issued a letter to Bowling Green State University in Bowling Green, Ohio regarding equity in scholarship distribution based on gender proportionality of participation. This letter, sent under the authority of M.F. O'Shea, was considered the official clarification policy related to athletic scholarships and intercollegiate athletics and was eventually shared with other institutions of higher learning.¹²²⁴

The Office for Civil Rights issued a policy clarification defining their interpretation of substantial proportionality. O'Shea, O.C.R. national coordinator for Title IX, sent a letter to colleges and universities named in the National Women's Law Center's Title IX investigation. O'Shea explained, "If the unexplained disparity in the scholarship budget for athletes of either gender is 1% or less of the entire budget for scholarships, there will be strong presumption that such a disparity is reasonable and based on legitimate and non-discriminatory factors. Conversely, there will be strong presumption that an unexplained disparity of more than 1% is in violation of the substantially proportionate requirement."¹²²⁵ O'Shea indicated this was not a change in operating policy and the 1% rule should not be considered a quota. A former O.C.R. investigator disagreed with O'Shea as she stated, "If O.C.R. is attempting to enforce a narrower standard, then what they are doing is enforcing a policy that is counter to their written policy, and I believe it is of questionable legality for them to do so."¹²²⁶ Supporters of women's sports

¹²²³ J. Naughton, "Judge Approves Settlement of Brown U.'s Title IX Case," *Chronicle of Higher Education*, July 3, 1998. LexisNexis (accessed April 10, 2010).

¹²²⁴ M. F. O'Shea, "Dear Colleague Letter: Bowling Green State University," (July 23, 1998). <http://www.ed.gov/about/offices/list/ocr/docs/bowlgrn.html> (accessed April 10, 2010).

¹²²⁵ J. Naughton, "Clarification of Title IX May Leave Many Colleges in Violation Over Aid to Athletes," *Chronicle of Higher Education*, July 31, 1998: para. 7. LexisNexis (accessed April 10, 2010).

¹²²⁶ *Ibid.*, Naughton, July 31, 1998: para 13.

interests appreciated the clarification according to Naughton.¹²²⁷ Haworth documented confusion and concern expressed by colleges and universities regarding the 1% clarification for athletic scholarship parity. Most institutions of higher learning had practiced the ‘understood’ five-percent rule. O’Shea further clarified that the financial aid rules were not the same as the participation proportionality standard. Brian Snow who alerted constituents and *Chronicle of Higher Education* readers in a previous article commented, “To make it within 1 percent of proportionality is very hard to do. . . Title IX is a critically important law and I think women have been terribly abused in athletics, but I would like to see something other than these number games. Too often, we turn this issue into numbers and miss the point: Are you discriminating or are you not?”¹²²⁸ A former O.C.R. employee- turned-consultant admonished Title IX/O.C.R. leadership for insisting the 1% rule was not a policy change. Colleges under investigation questioned the validity of the enforcement of a new standard when they were negotiating with O.C.R. and responding to court decisions.¹²²⁹

In articles reported by the Associated Press, Providence College chose to eliminate men’s baseball, golf and tennis to comply with Title IX. Providence College was not interested in creating additional teams exclusively for women as a remedy for Title IX compliance.¹²³⁰

According to Lederman of *The Chronicle*, The Supreme Court granted lawyers representing *N.C.A.A. v. Smith* an audience to hear arguments as to whether The N.C.A.A. was bound by Title IX because it received membership fees from federally supported institutions of

¹²²⁷ *Ibid.*, Naughton, July 31, 1998.

¹²²⁸ K. Haworth, “Statement on Sports Scholarships Frustrates and Confuses Colleges,” *Chronicle of Higher Education*, September 4, 1998. LexisNexis (accessed April 10, 2010).

¹²²⁹ *Ibid.*, Haworth, September 4, 1998.

¹²³⁰ Associated Press, “Plus: Colleges—Providence; 3 Teams Dropped,” *New York Times*, October 8, 1998. LexisNexis (accessed May 2, 2010).

higher learning.¹²³¹ Also included in *The Chronicle* was news presented by Monaghan echoing reports that Providence College planned to make room for more women's athletic participation by dropping men's baseball, golf and tennis. Providence cited upcoming N.C.A.A. peer review as the prompt for their action since N.C.A.A. certification requirements triggered the need for a gender equity plan.¹²³² Monaghan later reported that a federal judge cited the contact sport exclusion in Title IX which protected Duke University from required inclusion of a female place kicker on their football team. Mercer's lawyers, according to Monaghan, were beginning the process for appealing the ruling.¹²³³ In another effort to keep the education public informed, Monaghan detailed the reaction to Providence College's decision to eliminate men's golf, tennis and baseball. The cuts elicited emotional and angry responses from student-athletes and alumni. Monaghan offered the criteria Providence College used to consider which programs to drop which were "based on their financial viability, the likelihood of their staying competitive, and their contribution to keeping total sports participation as high as possible, a factor for drawing students."¹²³⁴ Efforts to negotiate baseball's reinstatement ended when the amount of money required for continued operation and money needed to offset Title IX requirements for women's athletic funding was well above what the team could expect to raise.¹²³⁵

At the end of the decade, Hooks' dissertation focused on the outcomes small institutions of higher learning in Pennsylvania experienced when they applied Title IX to their athletic

¹²³¹ D. Lederman, "US Supreme Court Agrees to Decide Whether Title IX Applies to NCAA," *Chronicle of Higher Education*, October 9, 1998. LexisNexis (accessed April 10, 2010).

¹²³² P. Monaghan, "Providence College Cuts 3 Men's Teams," *Chronicle of Higher Education*, October 30, 1998. LexisNexis (accessed April 10, 2010).

¹²³³ P. Monaghan, "Female Kicker Loses Bid to Play Football at Duke," *Chronicle of Higher Education*, November 27, 1998. LexisNexis (accessed April 10, 2010).

¹²³⁴ P. Monaghan, "Dropping Men's Teams to Comply With Title IX," *Chronicle of Higher Education*, December 4, 1998: para. 27. LexisNexis (accessed April 10, 2010).

¹²³⁵ *Ibid.*, Monaghan, December 4, 1998.

operations in pursuit of parity. The study included three NCAA Division III schools.¹²³⁶ Hovan at the University of Miami looked at the certification gender parity conversions at N.C.A.A. sport programs at universities at the highest tier of competition.¹²³⁷ Espy at the University of Alabama explored historical development of Title IX laws and legal action between 1972 and 1997.¹²³⁸ Maurer and Bell ended the 1990s. Maurer looked at Northern Illinois University and the roles women held while altering N.I.U.'s athletic programming to incorporate changes allowing gender parity to flourish at the University.¹²³⁹ Bell offered a snapshot of factors at work in the Southern Conference between 1995 and 1998 related to Title IX compliance. Bell compared these factors with N.C.A.A. results found in their 1997 Gender-Equity Study.¹²⁴⁰

More law reviews appeared in 1998 dealing with topics related to spending, inconsistent court rulings, expanding policy, collecting fees and N.C.A.A. efforts. Many topics of the law reviews mirrored headline news and court decisions presented in the late 1990s. Reviewer T.S. Bredthauer asked if true progress had been made under the auspices of Title IX, twenty-five years after it was signed into law. Bredthauer indicated various negative scenarios created by Title IX's expanded policy interpretation.¹²⁴¹ M. Hammond stressed that adopting a wise spending philosophy across the athletic department lines could increase opportunity for all sports

¹²³⁶ D. T. Hooks, *Complying with Title IX: An Examination Of The Effects On Three NCAA Division III Colleges In Pennsylvania And The Difficulties The Law's Interpretation Has Created For Small Colleges Attempting To Achieve Gender Equity*, Abstract. Dissertation. University of Pennsylvania, 1998. ProQuest AAT 9913306 (accessed October 15, 2009).

¹²³⁷ J. A. Hovan, *Changes in Certified NCAA Division I Athletic Programs in the Area of Gender-Equity*, Abstract. Dissertation. University of Miami, 1998. ProQuest AAT 9934230 (accessed October 15, 2009).

¹²³⁸ I. P. Espy, Jr., *A History And Analysis Of Sports-Related Title IX Legislation And Litigation From 1972 To 1997*, Abstract. Dissertation. The University of Alabama, 1998. ProQuest AAT 9831322 (accessed October 15, 2009).

¹²³⁹ R. J. Maurer, *An Inductive Case Study of Women Leaders of Athletics at Northern Illinois University: Learning, Leadership and Transformation*, Abstract. Dissertation. Northern Illinois University, 1999. ProQuest AAT 9927710 (accessed October 15, 2009).

¹²⁴⁰ R. C. Bell, *An Examination of Selected Gender-Equity Factors in Intercollegiate Athletics in the Southern Conference from 1995-1998*, Abstract. Dissertation. United States Sports Academy, 1999. ProQuest AAT 9954000 (accessed October 15, 2009).

¹²⁴¹ T. S. Bredthauer, "Twenty-Five Years Under Title IX: Have We Made Progress?" *31 Creighton L. Rev.*, 1998: 1107.

so that Title IX would be interpreted as Congress intended and not reduce male athletic program participation rates.¹²⁴² T. J. Johnson blamed the judiciary for their inconsistent rulings causing a lack of universal Title IX compliance in high school athletics after twenty-five years.¹²⁴³ T. J. Ellington, S. K. Higashi, J. K. Kim and M. M. Murakami directed attention to the use of strict scrutiny when applied to gender discrimination and in writings involving Justice Ruth Bader Ginsburg.¹²⁴⁴ B. L. Porto suggested using a different, non-commercial model for athletic participation which would in turn help achieve gender equity.¹²⁴⁵ T. R. Cheesebrough discussed Title IX and *Cohen v. Brown University*. In his argument Cheesebrough formulated that ability and interest should drive gender equity pursuits.¹²⁴⁶ R. Yasser and S. J. Schilling heightened awareness of the difficulty encountered by law professionals, when representing interscholastic clients as they attempted to collect fees for their services in gender equity cases.¹²⁴⁷ T. M. Evans provided information about the forgotten female athletes in gender-equity pursuits: African American Women.¹²⁴⁸ D.C. Wilson revealed roles played by The National Collegiate Athletic Association and how this ultimately affected the efforts to achieve gender equity in athletics.¹²⁴⁹ J. H. Blumberg looked at the outcome from *Cohen v. Brown University* and Title IX

¹²⁴² M. Hammond, "Substantial Proportionality Not Required: Achieving Title IX Compliance Without Reducing Participation in Collegiate Athletics," 87 *Ky. L. J.*, 1998:793.

¹²⁴³ T. J. Johnson, "Throwing Like a Girl: Constitutional Implications of Title IX Regarding Gender Discrimination in High School Athletic Programs," 18 *N. Ill. U. L. Rev.*, 1998:575.

¹²⁴⁴ T. J. Ellington, S.K. Higashi, J.K. Kim and M.M. Murakami, "Justice Ruth Bader Ginsburg and Gender Discrimination," 20 *Hawaii L. Rev.*, 1998:699.

¹²⁴⁵ B. L. Porto, "Completing the Revolution: Title IX as a Catalyst for an Alternate Model of College Sports," 8 *Seton Hall J. Sports L.*, 1998:351.

¹²⁴⁶ T. R. Cheesebrough, "*Cohen v. Brown*: I am Woman, Hear Me Score," 5 *Vill. Sports & Ent. L. J.*, 1998:295.

¹²⁴⁷ R. Yasser and S.J. Schiller, "Gender Equity in Interscholastic Sports The Final Saga: The Fight for Attorney's Fees," 34 *Tulsa L. J.*, 1998:85.

¹²⁴⁸ T. M. Evans, "In the Title IX Race Toward Gender Equity the Black Female Athlete is Left to Finish Last: The Lack of Access for the 'Invisible Woman,'" 42 *How. L. J.*, 1998:105.

¹²⁴⁹ D. C. Wilson, "Title IX's Collegiate Sports Application Raises Serious Questions Regarding The Role of the N.C.A.A.," 31 *J. Marshall L. Rev.*, 1998:1303.

compliance.¹²⁵⁰ D. Robinson weighed the protection offered by Title IX against its robustness to deal with issues related to contact sports and asked if women preferred their sports in segregation from men's programs.¹²⁵¹

Boucher v. Syracuse University included claims that Syracuse did not accommodate interests of female athletes by fielding varsity teams in which they were interested in participating and that the benefits and scholarships received by varsity female athletes were not equal to that of male athletes. Because Syracuse could show a record of accommodating interest of females they succeeded in their defense.¹²⁵²

Suggs updated progress on the twenty-five colleges and university named in the National Women's Law Center Title IX complaint. By 1999, eighteen schools had been cleared or had arranged to comply by distributing more scholarship funds to female athletes. Information collected by The N.C.A.A. and The Education Department as required by the Equity in Athletics Disclosure Act was bad and created a situation in which female athletes were counted more than once which deflated financial awards. Suggs pointed out that "The forms do not specify the total number of athletes within athletic departments. Instead, they list the numbers of athletes on each team roster. Thus athletes who participate in more than one sport can be counted more than once. . . . That skews the proportion of male and female athletes in an athletic department."¹²⁵³

Further anger and confusion arose during the investigations as universities realized the 1% rule

¹²⁵⁰ J. H. Blumberg, "Brown University Violated Title IX in Not Providing Women Equality Opportunity in Intercollegiate Athletics—*Cohen v. Brown* 101 F.ed 155 (1st Cir. 1996)," 31 *Suffolk U. L. Rev.*, 1998:987.

¹²⁵¹ D. Robinson, "A League of Their Own: Do Women Want Sex-Segregated Sports?" 9 *J. Contemp. Legal Issues*, 1998:321.

¹²⁵² *Boucher v. Syracuse University*, Docket No. 97-7678; 164 F. 3d 113; 1999 U.S. App. LEXIS 90; 42 Fed. R. Serv. 3d (Callaghan) 659, (January 6, 1999).

¹²⁵³ W. Suggs, "Sports Administrators Remain Disturbed as U.S. Acts on Gender Equity Complaints," *Chronicle of Higher Education*, January 8, 1999: para. 19. LexisNexis (accessed April 10, 2010).

was applied and they felt they “were being measured, in participation versus scholarships, by a stick no one knew about. . . .”¹²⁵⁴

Norma Cantu responded to Monaghan’s article “Dropping Men’s Teams to Comply with Title IX” claiming that Monaghan excluded other Title IX compliance options, which in effect misled readers. Cantu explained the other options available to universities seeking to become and maintain compliance with Title IX. Cantu emphasized that Title IX regulations did not require cutting men’s teams to achieve parity.¹²⁵⁵

Renee Smith, according to Chambers’ report, was denied the privilege of using two years of athletic eligibility while in graduate school and sued The N.C.A.A. for Title IX violations. The N.C.A.A. cited its post baccalaureate rule regarding eligibility as only applying to athletes who remained at the same university at which they earned their bachelor’s degree. This rule, according to The N.C.A.A., has since been changed. The N.C.A.A. claimed that it was an organization representing institutions of higher learning and was not held accountable to the tenets of Title IX. Many civil rights advocates, according to Chambers, did not agree.¹²⁵⁶ Suggs, provided a reminder about The Supreme Court review of *N.C.A.A. v. Smith* for readers of *The Chronicle*. At stake, according to Suggs, was the N.C.A.A.’s immunity from Title IX as it applied to N.C.A.A. membership.¹²⁵⁷ Suggs reported the victory Syracuse secured after female students claimed discrimination. Female students had requested that Syracuse add varsity lacrosse and softball teams. The District Court ruled that Syracuse had no history of discrimination when provided with their record of “expanding sports opportunities for

¹²⁵⁴ *Ibid.*, Suggs, January 8, 1999: para. 19.

¹²⁵⁵ N. V. Cantu, “Letter to the Editor: “Title IX and Men’s Sports,” *Chronicle of Higher Education*, January 15, 1999. LexisNexis (accessed April 10, 2010).

¹²⁵⁶ M. Chambers, “Volleyball; Power of the N.C.A.A. in Court Test Today,” *New York Times*, January 20, 1999. LexisNexis (accessed May 2, 2010).

¹²⁵⁷ W. Suggs, “Supreme Court Case May Have Major Impact on NCAA Support for Women’s Sports,” *Chronicle of Higher Education*, January 15, 1999. LexisNexis (accessed April 10, 2010).

women.”¹²⁵⁸ According to Suggs, Syracuse was the first college to use the expanding opportunities argument to support their legal defense.¹²⁵⁹

Male athletes brought suit in *Harper v. Board of Regents, Illinois State University* when, on the basis of Illinois State University’s Title IX audit and plan, men’s wrestling and soccer programs were eliminated as varsity sports and women’s soccer remained a varsity sport in efforts to comply with Title IX regulations.¹²⁶⁰

Suggs provided a forum in which to debate whether ‘ends justify the means’¹²⁶¹ when colleges try to comply with Title IX. Men’s sports hardest hit by the team-cutting mindset were golf, tennis, soccer and wrestling. Since so many men participate in sports comparable to women, universities found it easier to eliminate male sport teams in efforts to achieve required parity. According to Suggs, “Government officials who enforce Title IX say that rights of women to participate in college sports outweigh the rights of men to participate in particular sports.”¹²⁶² Suggs reviewed court decisions in suits brought by males requesting reinstatement of their sport. Unsuccessful attempts to gain court relief left many college athletes to wonder about fairness and others to continue to view cutting teams as university priorities driving the outcome.¹²⁶³

In February 1999, Greenhouse reported the N.C.A.A.’s triumph over Smith, which dealt only with the issuance of the waivers claim in Smith’s lawsuit. Justice Ginsberg wrote the

¹²⁵⁸ W. Suggs, “Syracuse U. Wins Title IX Case,” *Chronicle of Higher Education*, January 22, 1999: para. 2. LexisNexis (accessed April 10, 2010).

¹²⁵⁹ *Ibid.*, Suggs, January 22, 1999.

¹²⁶⁰ *Harper v. Board of Regents, Illinois State University*, Case No. 95-1371; 35 F. Supp. 2d 1118; 1999 U.S. Dist. LEXIS 1591, (February 3, 1999).

¹²⁶¹ W. Suggs, “Colleges Consider Fairness of Cutting Men’s Teams to Comply with Title IX,” *Chronicle of Higher Education*, February 19, 1999: para. 7. LexisNexis (accessed April 10, 2010).

¹²⁶² *Ibid.*, Suggs, February 19, 1999: para. 6.

¹²⁶³ Suggs, February 19, 1999.

opinion and maintained that payment of dues to The N.C.A.A. by university membership did not make it bound by Title IX.¹²⁶⁴

Suggs reported to readers of *The Chronicle* that the National Women's Law Center requested the U.S. Education Department to reopen a complaint against The N.C.A.A regarding championship competitions open to men and women. The N.W.L.C. claimed that women were not receiving a proportionate opportunity to participate in championship events sponsored by The N.C.A.A. The relationship of The N.C.A.A. as recipient of federal funds was under Supreme Court review when this request was made.¹²⁶⁵

Greenberger and Chaudry of the National Women's Law Center penned a letter to the editor of *The Chronicle* pointing out the data gathered in government reporting cycles did not match what was found during investigations. Greenberger and Chaudry called universities to task for reporting flawed data requesting them to provide information that would withstand investigative scrutiny.¹²⁶⁶ Also appearing in *The Chronicle* was a report from Monaghan detailing that The Supreme Court found that The N.C.A.A. was not bound by Title IX. Other issues were sent to the lower court for consideration.¹²⁶⁷

Magner reported to *The Chronicle* readers that a judge stopped California State University at Bakersfield from reducing the size of the wrestling team. The University wished to use the reduction to achieve parity with women's athletics.¹²⁶⁸ Brigham Young University in Utah announced restructuring of their athletic team rosters and their change in membership in

¹²⁶⁴ L. Greenhouse, "College; N.C.A.A. Triumphs in Civil Rights Suit in Supreme Court," *New York Times*, February 24, 1999. LexisNexis (accessed May 2, 2010).

¹²⁶⁵ W. Suggs, "U.S. Reopens Inquiry Into Gender Bias in NCAA Championships," *Chronicle of Higher Education*, February 26, 1999. LexisNexis (accessed April 10, 2010).

¹²⁶⁶ M. D. Greenberger and N. K. Chaudry, "Letter to Editor: Gender Equity Issues in College Sports," *Chronicle of Higher Education*, March 5, 1999. LexisNexis (accessed April 10, 2010).

¹²⁶⁷ P. Monaghan, "Supreme Court Favors NCAA in Title IX Case but Sends 2 Issues to Lower Court for Review," *Chronicle of Higher Education*, March 5, 1999. LexisNexis (accessed April 10, 2010).

¹²⁶⁸ D. K. Magner, "Judge Blocks Cal State-Bakersfield's Plan to Cap Size of Wrestling Team," *Chronicle of Higher Education*, March 12, 1999. LexisNexis (accessed April 10, 2010).

their athletic conference. Brigham Young dropped men's wrestling and gymnastics citing the reason owing to the new conference's lack of an adequate number of competitive teams in those sports. It was not, according to university leadership, directly attributed to efforts to comply with Title IX. In the *Chronicle* article, Hughes mentioned that the University of New Mexico cut men's wrestling, gymnastics and swimming with designs on joining the Mountain West Conference, the same athletic conference as Brigham Young,. The University of New Mexico officials also contended that Title IX was not the driving force behind the cuts, even though the swimming coach noted that he would still have a job because the women's swimming team remained active.¹²⁶⁹ Suggs revealed that "Miami U. Drops 3 Men's Sports," as Garland, president of Miami University, stated over-extension as the reason for cutting men's soccer, tennis, and wrestling as Miami University attempted to meet Title IX mandates. Teams on the elimination list were given an opportunity to endow their future. Only the golf team was able to raise funding to hedge their future.¹²⁷⁰

A *New York Times* journalist, Berkow, conveyed the emotional response from players in their last baseball game played for Providence College. Berkow also noted reaction from women athletes on campus when the decision was made to cut men's sports on their behalf and the administrator's wrangling with budget constraints. President Smith commented prior to this last game, "I do not feel good about the decision to drop baseball, but in the end we had to have our academic priorities come first."¹²⁷¹ Smith did not attend the last game under advice from other campus officials. Berkow provided voice from The Women's Sports Foundation as they offered

¹²⁶⁹ J. Hughes, "2 Universities Cut Some Men's Teams," *Chronicle of Higher Education*, April 16, 1999. LexisNexis (accessed April 10, 2010).

¹²⁷⁰ W. Suggs, "Miami U. Drops 3 Men's Sports," *Chronicle of Higher Education*, April 30, 1999. LexisNexis (accessed April 10, 2010).

¹²⁷¹ I. Berkow, "Baseball: The Other Side of Title IX," *New York Times*, May 19, 1999: para. 17. LexisNexis (accessed May 2, 2010).

a Title IX paper dealing with the topic of dropping men's teams. The Women's Sports Foundation representative stated: "Most schools cite, as the reason for their decision, the need to reduce expenditures in order to provide opportunities for women. . . Title IX requires no such reduction in opportunities for men. The Foundation is not in favor of reducing athletic opportunities for men as the preferred method of achieving Title IX compliance."¹²⁷²

Providence's Vice President Keegan observed that the College did not have the resources to litigate citing the multi-million dollar costs Brown incurred in pursuing a losing legal battle.¹²⁷³

While attending a Title IX Conference in May 1999 sponsored by The N.C.A.A., coaches took the opportunity to ask specific questions of the U.S. Education Department representative. One issue, data collection, took center stage as athletic personnel explained that their requests for information from The N.C.A.A. and the Equity in Athletics Disclosure Act (E.A.D.A) did not match and that the two combined could not keep them out of trouble with Title IX.¹²⁷⁴ In the same issue, Suggs reported that *The Chronicle* staff reviewed data collected by E.A.D.A. and presented a comparative study based on gender of spending, scholarships, participation rates from Division I schools who reported data.¹²⁷⁵ Suggs also reported that because of the confusion surrounding data collection and distribution for athletics required by E.A.D.A. the U.S. Education Department would standardize the collection of data. Suggs reported according to Horwich of the Office of Postsecondary Education, that: "The department is considering broadening the definition of expenses to be reported and combining the Equity in Athletics Disclosure Act and the requirements in the Higher Education Act into a single body of

¹²⁷² *Ibid.*, Berkow, May 19, 1999: para. 21.

¹²⁷³ *Ibid.*, Berkow, May 19, 1999.

¹²⁷⁴ Chronicle of Higher Education, "Athletic Directors Confront Federal Officials at Title IX Seminar," *Chronicle of Higher Education*, May 21, 1999. LexisNexis (accessed April 10, 2010).

¹²⁷⁵ W. Suggs, "More Women Participate in Intercollegiate Athletics," *Chronicle of Higher Education*, May 21, 1999. LexisNexis (accessed April 10, 2010).

regulations.”¹²⁷⁶ Another issue the Education Department was attempting to resolve was the techniques used related to counting participants to eliminate multiple-counting of athletes. The Education Department planned to begin collecting equity in athletics data from all colleges and universities regardless of their athletic conference affiliation in 2000.¹²⁷⁷

As previously noted in news releases, *Stanley v. University of Southern California* concerned a basketball coach’s various claims, one of which included a Title IX violation stemming from contract negotiations that failed between Marianne Stanley and the athletic director.¹²⁷⁸ Based on findings in *Neal v. California State University*, universities could use tactics including reduction of male sporting teams to bring about gender equity under Title IX regulations.¹²⁷⁹

The General Accounting Office (G.A.O.) produced a report at the request of Hastert to study gender and sports. The G.A.O. studied N.C.A.A. Division I – III schools from 1985-1986 to 1996-1997. Within those years, Lords reported to readers of *The Chronicle* that even though the total number of male athletes fell during this eleven-year period, men still participated at a higher rate. Lords also looked at scholarship numbers in Divisions I and II and the number of teams that competed for each gender.¹²⁸⁰

Updating Mercer’s efforts against Duke University in “Notebook; The Kicker Has a Case” the Fourth Circuit Court of Appeals articulated that Mercer’s case would go forward. Citing that since Duke University allowed Mercer to try out for a contact sport it could no longer

¹²⁷⁶ W. Suggs, “Education Department May Ask Colleges for More Data in Athletic-Equity Reports,” *Chronicle of Higher Education*, May 21, 1999: para. 5. LexisNexis (accessed April 10, 2010).

¹²⁷⁷ *Ibid.*, Suggs, May 21, 1999.

¹²⁷⁸ *Stanley v. University of Southern California*, Nos. 95-55466, 95-56250, 96-5500; 178 F. 3d 1069; 1999 U.S. App. LEXIS 11170; 79 Fair Empl. Prac. Cas. (BNA) 1616; 138 Lab. Cas. (CCH) P33, 881; 76 Empl. Prac. Dec. (CCH) Pr6, 014, 44 Fed. R. Serv. 3d (Callaghan) 311; 99 Cal. Daily Op. Service 4192; 99 Daily Journal DAR 5278, (June 2, 1999, Filed).

¹²⁷⁹ *Neal v. Board of Regents*, No. 99-1561; 198 F. 3d 633 U.S. App. LEXIS 31969, (December 3, 1999).

¹²⁸⁰ E. Lords, “More Women and Fewer Men Participate In Intercollegiate Athletics Study Finds,” *Chronicle of Higher Education*, July 9, 1999. LexisNexis (accessed April 10, 2010).

claim the exemption because it gave her an opportunity to be part of the team, listed her in the media guide and as such could not discriminate against her.¹²⁸¹ Suggs updated *The Chronicle* readership about Mercer as the Fourth Circuit Court of Appeals in Richmond, VA reasoned that Title IX allowed universities to decide whether women could participate in contact sports. Once allowed to try-out and make the team, no discrimination based on gender was allowed.¹²⁸²

Carr noted for *The Chronicle* that Vanderbilt University was sued by a male coach who worked with women athletes. Arceneaux claimed he was not paid adequately in comparison to other coaches and that funds available for his program had not been increased. Vanderbilt officials denied any wrong doing and offered their record of Title IX compliance as proof.¹²⁸³ Suggs' article, "Miami U. Athletes Plan Suit on Dropped Teams," drew attention to the disenfranchised student-athletes at Miami University of Ohio. The tennis and wrestling athletes planned to sue their university for cutting their respective sports as a means to comply with Title IX. The players claimed they suffered gender discrimination caused by the university officials' decision.¹²⁸⁴ In a case previously mentioned, *Stanley v. University of Southern California*, Marianne Stanley, former U.S.C. coach, was not granted a hearing before The U.S. Supreme Court after three attempts. Stanley originally sued the University of Southern California in a salary dispute claiming that her Title IX rights had been violated because she was not paid as much as the long-time men's basketball coach. The lower courts had already determined that the men's basketball coach had almost twice as much experience coaching basketball and was at one

¹²⁸¹ New York Times, "Notebook; The Kicker Has A Case," *New York Times*, July 14, 1999. LexisNexis (accessed May 2, 2010).

¹²⁸² W. Suggs, "Female Place Kicker's Lawsuit Against Duke is Reinstated," *Chronicle of Higher Education*, July 23, 1999. LexisNexis (accessed April 10, 2010).

¹²⁸³ S. Carr, "Male Coach of Women's Track Sues Vanderbilt U. Under Title IX," *Chronicle of Higher Education*, September 10, 1999. LexisNexis (accessed April 10, 2010).

¹²⁸⁴ W. Suggs, "Miami U. Athletes Plan Suit on Dropped Teams," *Chronicle of Higher Education*, November 12, 1999. LexisNexis (accessed April 10, 2010).

time an Olympic coach which substantiated the difference in salary.¹²⁸⁵ In a somewhat related case, coaches and female athletes brought a lawsuit against New Mexico Highlands University for Title IX violations. The jury decision found that the University was in violation and it was ordered to pay damages based on circumstances of the plaintiffs. The monetary awards, varying in amount, ranged from coaches' salary to student-athlete scholarships.¹²⁸⁶

By June 1999 the study requested by Congressional leaders, "Intercollegiate Athletics: Comparison of Selected Characteristics of Men's and Women's Programs,"¹²⁸⁷ was available from the U.S. General Accounting Office. Other activities related to governmental oversight included the "Impact of the Civil Rights Law" brochure, last updated in 1999, in which the O.C.R. explained Title IX as one civil rights law dealing with gender equity. In this discussion, various efforts and venues where civil rights laws made appeared to make significant strides to eliminate discrimination, to increase access, and to remove barriers for the underrepresented gender.¹²⁸⁸ Also available in 1999 "Notice of Non-Discrimination" was issued as a guide to institutions of higher learning. It instructed users on how to alert the public of institutional compliance efforts, and identify the compliance officer at each institution with instructions on how constituents could contact that institutional official in case they needed to report a gender discrimination infraction.¹²⁸⁹

At the end of the 1990s law review production on topics dealing with Title IX was at a peak. Law review writer R. R. Hunt concluded that Clune's Political Model of Implementation

¹²⁸⁵ Chronicle of Higher Education, "U.S. Supreme Court Turns Away Sex-Bias Lawsuit Against U. of Southern California," *Chronicle of Higher Education*, December 10, 1999. LexisNexis (accessed April 10, 2010).

¹²⁸⁶ W. Suggs, "New Mexico Highlands U. Liable in Title IX Suit," *Chronicle of Higher Education*, December 17, 1999. LexisNexis (accessed April 10, 2010).

¹²⁸⁷ United States General Accounting Office, *Intercollegiate Athletics, Comparison of Selected Characteristics of Men's and Women's Programs*, (USGAO/HEHS 99-3R). (1999).

¹²⁸⁸ U.S. Department of Education, Office for Civil Rights, "Impact of the Civil Rights Laws," (1999). <http://www.ed.gov/about/offices/list/docs/impact.html>. (accessed August 15, 2007).

¹²⁸⁹ U.S. Department of Education, Office for Civil Rights, "Notice of Non-Discrimination," (1999). <http://www.ed.gov/about/offices/list/ocr/docs/nondisc.html>. (accessed August 15, 2007).

paralleled distinctive points in the debate about athletic policy and Title IX during its progression and interpretation.¹²⁹⁰ S. Setty looked at Office for Civil Rights (O.C.R.), Title IX and the chasm that remained between true compliance and continuing violations of the gender equity mandate.¹²⁹¹ B.G. George examined N.C.A.A., Title IX and gender equity as applied to scholarship distribution in athletics.¹²⁹² J. Filippone argued that building female participation rates in athletics should not be at the expense of their male counterparts.¹²⁹³ R. Whitehead, W. Block and L. Hardin pointed out that forcing females to take part in athletic competition, patterned after a male model, in sports in which they were not necessarily interested, constituted a form of slavery.¹²⁹⁴ T. Davis discussed reform of college athletics into a professional division so that universities could develop those who wished to pursue academics separately from those who wished to excel athletically and not necessarily take part in the academic rigor of the university.¹²⁹⁵ E. M. Doherty warned of abuses and injuries to young female athletes who were exposed to motivational forces with little protection available to them. Doherty enumerated eating disorders, unhealthy attachments to coaches as parental figures and total athletic burn-out from over-zealous training requirements as dangers young female athletes could encounter.¹²⁹⁶ J. L. Botelho commented on Providence College's efforts to become Title IX compliant in the wake of *Cohen v. Brown University*. Botelho, claiming Providence as her *alma mater*, disagreed with methods used for compliance, which included reducing opportunities for male athletes in

¹²⁹⁰ R. R. Hunt, "Implementation and Modification of Title IX Standards: The Evolution of Athletic Policy," *1999 BYU Ed. & L. J.*, 1999:51.

¹²⁹¹ S. Setty, "Leveling the Playing Field: Reforming the Office for Civil Rights to Achieve Better Title IX Enforcement," *32 Colum. J. L. & Soc. Probs.*, 1999:331.

¹²⁹² B. G. George, "Sports Law in the 21st Century: Title IX and the Scholarship Dilemma," *9 Marq. Sports L. J.*, 1999:273.

¹²⁹³ J. Filippone, "Title IX in the Nineties," *15 N.Y.L. Sch. J. Hum. Rts.*, 1999:561.

¹²⁹⁴ R. Whitehead, W. Block and L. Hardin, "Gender Equity in Athletics: Should We Adopt a Non-Discriminatory Model?" *30 U. Tol. L. Rev.*, 1999:223.

¹²⁹⁵ T. Davis, "Sports Law in the 21st Century: Intercollegiate Athletics in the Next Millennium: A Framework Evaluating Reform Proposals," *9 Marq. Sports L. J.*, 1999:253.

¹²⁹⁶ E. M. Doherty, "Winning Isn't Everything. . . It's the Only Thing: A Critique of Teenaged Girls' Participation in Sports," *10 Marq. Sports L. J.*, 1999:127.

order to achieve Title IX proportionality.¹²⁹⁷ E. C. Dudley, Jr. and G. Rutherglen argued that the proportionality level of Title IX compliance should be eliminated and replaced with a more flexible standard of measure. They disagreed with the university practice of eliminating minor male sports to increase athletic opportunities for females.¹²⁹⁸ L. Labinger reported about her address to Rutgers Law School when she discussed *Brown University v. Cohen*, legislative history and misconceptions about Title IX.¹²⁹⁹

New York Times writer, Suggs reported that California State University at Bakersfield and Illinois State University won their right to limit members or drop men's athletic teams. Lawyers for the California and Illinois wrestlers vowed to appeal to their respective circuit courts.¹³⁰⁰ In another university case, Louisiana State University (L.S.U.) lost its Title IX appeal, as reported in *The Chronicle*. L.S.U. deliberately broke the law governing gender bias in athletics according to Fifth Circuit findings. A federal judge had ruled earlier that L.S.U. had not intentionally wronged female athletes but found that their attitudes and practices toward females were old and out-dated. The appeals court clearly noted violations with intent. The appeals court at the circuit level wished to expand the case to class-action status.¹³⁰¹

The National Women's Law Center celebrated their sense of accomplishment as The Office for Civil Rights, focusing on athletic scholarship parity, finished its last investigation of the twenty-five colleges and universities who were suspected of Title IX violations. This

¹²⁹⁷ J. T. Botelho, "The Cohen Court's Reading of Title IX: Does it Really Promote a *De facto* Quota Scheme?" 33 *New Eng. L. Rev.*, 1999:743.

¹²⁹⁸ E. C. Dudley, Jr. and G. Rutherglen, "Ironies, Inconsistencies and Intercollegiate Athletics: Title IX, Title VII and Statistical Evidence of Discrimination," 1 *Va. J. Sports L.*, 1999:130.

¹²⁹⁹ L. Labinger, "Title IX and Athletics: A discussion of *Brown University v. Cohen* by Plaintiff's Counsel, An Address by Lynnette Labinger Rutgers Law School—Newark, October 21, 1998," 20 *Women's Rights L. Rep.*, 1999:85.

¹³⁰⁰ W. Suggs, "2 Appeals Courts Uphold Right of Universities to Reduce Number of Male Teams," *Chronicle of Higher Education*, January 7, 2000. LexisNexis (accessed April 10, 2010).

¹³⁰¹ *New York Times*, "Colleges; Women's Basketball," *New York Times*, January 28, 2000. LexisNexis (accessed May 2, 2010).

controversial slice of investigations roused university leaderships' attention as the 1% rule was highlighted as the expectation for scholarship compliance.¹³⁰² Using the influence of a public forum in presidential campaigns, groups interested in changing Title IX's enforcement strategies attempted to collect support from candidates running for U.S. president. The interpretation that O.C.R. used quota-related tactics to achieve their parity agenda was under scrutiny. Women's rights advocates and The N.C.A.A. were trying to counter this attack by attempting to educate the public about Title IX compliance. Education Department officials considered the anti-quota groups to be spreading erroneous information to the public. Athletic organization directors agreed that this had potential to alienate voters and, therefore, they predicted it would probably be a non-issue during the presidential campaign.¹³⁰³

Suggs informed *The Chronicle* audience that the Fifth Circuit appeals court handed down a decision finding that Louisiana State University intentionally discriminated against women in sports by not providing opportunities to participate. The athletic director, Dean, perpetuated outmoded attitudes toward women which contributed to the findings involving Title IX violation.¹³⁰⁴

The University of Miami announced plans to discontinue men's water sports such as rowing, diving and swimming in order to comply with Title IX. University of Miami also disclosed its future plans to add women's volleyball. The discontinued programs would remain

¹³⁰² Chronicle of Higher Education, "Education Dept. Resolves Last of 25 Bias Complaints Filed by Women's Group," *Chronicle of Higher Education*, January 21, 2000. LexisNexis (accessed April 10, 2010).

¹³⁰³ W. Suggs, "Foes of Title IX Try to Make Equity in College Sports a Campaign Issue," *Chronicle of Higher Education*, February 4, 2000. LexisNexis (accessed April 10, 2010).

¹³⁰⁴ W. Suggs, "Louisiana State U. Loses Title IX Ruling," *Chronicle of Higher Education*, February 18, 2000. LexisNexis (accessed April 10, 2010).

club sports at the University with the hope that they could later be converted back to varsity status.¹³⁰⁵

In *The Chronicle*, Zimbalist, a professor at Smith College, shared his opinion about the state of Title IX in “Backlash Against Title IX: An End Run Around Female Athletes.” Zimbalist looked at progress made in athletics and gender equity and agreed with Demsey of The N.C.A.A. that the rate at which progress was made could be termed as slow. All the while opponents of Title IX sensed that progress had indeed been too rapid and minor sports played by men had suffered. Zimbalist boiled the problem down to funding. Wrestling identified as the men’s sport most often cut belonged to a group of men’s minor sports that do not generate enough revenue to fund themselves. The minor sports were always in jeopardy of being discontinued. Zimbalist’s analysis, which included a discussion of market forces, justified the growth of women’s athletics. He stated: “Both Title IX and the courts’ interpretation of it make it clear that market forces should not be allowed to alter gender equity. Indeed, college-sports programs happily enjoy numerous tax benefits, as well as the privilege of not paying salaries to their athletes on the grounds they are sponsoring amateur activities. It is duplicitous for colleges and universities to accept the fruits of amateurism for men’s sports and then invoke business principles when it comes to financing women’s sports. By the precepts of amateurism and the prevailing campus ethos, resources should be equally available to both men and women.”¹³⁰⁶ Zimbalist then suggested paring down football coaches’ salaries, the number of assistant coaches, the number of team slots and scholarships given to football. He also proposed that the

¹³⁰⁵ New York Times, “Plus: Colleges; Miami Drops Swimming for Men,” *New York Times*, February 29, 2000. LexisNexis (accessed May 2, 2010).

¹³⁰⁶ A. Zimbalist, “Backlash Against Title IX: an End Run Around Female Athletes,” *Chronicle of Higher Education*, March 3, 2000: para. 13. LexisNexis (accessed April 10, 2010).

NFL and NBA sponsor athletes in football and basketball since their interests would be served by developing players for use in their leagues.¹³⁰⁷

Ackmann wrote: “Backtalk: Years Later, Maker of Landmark Film Still Stands Up for Title IX,” appearing in *The New York Times* in March 2000. Ackmann reviewed the film “A Hero for Daisy” featuring the story about the Yale women’s crew team’s protest for facilities led by Chris Ernst. This Title IX protest, awakening the nation to existing disparities on the Yale campus, produced results and within weeks the women’s crew team acquired their own athletic shower facilities through university support. Mazzio, creator of the film, wanted to give her own daughter and others like her an alternative to media marketing messages aimed at young females.¹³⁰⁸

Chronicle commentator Suggs explored the gender equity lawsuit against Louisiana State University (L.S.U.) and the character at the center of the controversy—Joe Dean—long-time athletic director at L.S.U. The federal district court judge, Doherty, found enough evidence supporting Title IX violations at L.S.U. but indicated although ‘archaic,’ the intentional effort to discriminate was not found in the district court’s investigation. The Appeals Court for the Fifth Circuit’s panel of judges had a difference of opinion and indicated damages should have been awarded to the students who brought the Title IX suit against L.S.U. Suggs surveyed Dean’s career in the article and after all would be said and done, for a man who resisted gender equity as much as he did, his career at L.S.U. would forever be best known for the “advancement of women’s sports.”¹³⁰⁹ A week later, Suggs echoed *New York Times* coverage of University of Miami’s violation. In an attempt to meet proportionality standards outlined in Title IX,

¹³⁰⁷ *Ibid.*, Zimbalist. March 3, 2000.

¹³⁰⁸ M. Ackmann, “Backtalk; Years Later, Maker of A Landmark Film Still Stands Up for Title IX,” *New York Times*, March 12, 2000. LexisNexis (accessed May 2, 2010).

¹³⁰⁹ W. Suggs, “An Old-School Athletics Director and Title IX in the Deep South,” *Chronicle of Higher Education*, March 17, 2000: para. 64. LexisNexis (accessed April 10, 2010).

University of Miami dropped two men's sport teams—swimming and rowing. Although Olympic competitors were normal outcomes in the swimming program, the University's interest to remain competitive in Division I-A drove the need to eliminate the teams.¹³¹⁰

Schuld reacted to Zimbalist's opinion article in "Backlash Against Title IX" stating that his intention was "designed to disguise the real controversy,"¹³¹¹ that O.C.R. required quotas to meet gender parity and that downsizing football resources would solve the lack of money available to women's sport development. Schuld, an opponent of Title IX proportionality and its effect on men's minor sports, directed Play Fair sponsored by Independent Women's Forum.¹³¹²

Using new headcount rules, the University of Southern Mississippi was able to cut thirty-three positions from men's cross-country and in-door track but kept all male competitors on the outdoor track team roster. This creative accounting was found to actually inflate participation numbers on various sports teams making it difficult to determine whether intercollegiate athletic programs were Title IX compliant.¹³¹³ Also featured in *The Chronicle* in April 2000, Suggs chose to compare intercollegiate athletic programs in Arkansas as an example of the levels of gender equity compliance differences based on Equity in Athletics Disclosure Act data. Suggs described Title IX efforts at each institution of higher learning in Arkansas and the resources there to make compliance happen. It was determined that of the universities existing in Arkansas, Fayetteville had the means to support gender equity efforts most fully.¹³¹⁴ April submissions to *The Chronicle* included "At Smaller Colleges, Women Get Bigger Share of

¹³¹⁰ W. Suggs, "U. of Miami Drops 2 Men's Teams," *Chronicle of Higher Education*, March 24, 2000. LexisNexis (accessed April 10, 2010).

¹³¹¹ K. Schuld, "Letters to Editor: A Flawed Interpretation of Title IX is Keeping Male Students from Playing Sports," *Chronicle of Higher Education*, March 31, 2000: para. 1. LexisNexis (accessed April 10, 2010).

¹³¹² *Ibid.*, Schuld., March 31, 2000.

¹³¹³ Chronicle of Higher Education, "Southern Miss Drops 33 Men's Roster Spots—but Keeps the Athletes," *Chronicle of Higher Education*, April 7, 2000. LexisNexis (accessed April 10, 2010).

¹³¹⁴ W. Suggs, "Uneven Progress for Women's Sports," *Chronicle of Higher Education*, April 7, 2000. LexisNexis (accessed April 10, 2010).

Sports Funds” written by Suggs. Suggs brought attention to gender parity numbers for N.C.A.A. Division II and III colleges and universities. He noted that lower participation by women athletes garnered more financial resources at Division II and III schools. The data showed a higher ratio of women participating in sports at Division III schools with budgets paying for coaches, operating and recruiting expenses being proportionately higher than those of Division I. Division III schools also showed the largest percentage, forty-one, of women participating in athletics. Suggs uncovered a catch-22, as he stated: “Critics of Title IX wonder if substantial proportionality will ever be achieved at such colleges. They argue that women may simply not be as interested in sports as men are. . . whereas proponents of Title IX. . . say those colleges simply have not done enough to encourage women to come out for sports.”¹³¹⁵

The Women’s Sports Foundation, founded by tennis player, Billie Jean King, now under the new leadership of Donna Lopiano, held a conference entitled “Brave New World of Women’s Sports”. Since 1975, the organization that had assisted females with issues of access to athletic opportunities, announced plans to expand their operational mission to embrace program development, asset growth and advocating girls’ participation in sports. Current leadership looked for ways to educate upcoming athletes and to augment the distribution of their message through media coverage and Internet exposure. The foundation created a website dedicated to educating would-be athletes.¹³¹⁶

Suggs reported to *Chronicle of Higher Education* readers about the negotiations O.C.R. and University of New Mexico were involved in regarding options the university could exercise in coming into compliance with Title IX. University of New Mexico was not realistically able to

¹³¹⁵ W. Suggs, “At Smaller Colleges, Women Get Bigger Share of Sports Funds,” *Chronicle of Higher Education*, April 14, 2000: para. 42-43. LexisNexis (accessed April 10, 2010).

¹³¹⁶ L. Williams, “Sports Business; Women’s Sports Foundation Expands Mission Beyond Opening Doors,” *New York Times*, May 8, 2000. LexisNexis (accessed May 2, 2010).

meet the proportionality prong of Title IX because of the number of male athletes it would have to displace. Critics and advocates were included in the discussion presented by Suggs. O’Shea of O.C.R. stated: “We don’t push schools in any particular direction. . . Schools legitimately have a choice of how they want to come into compliance, but OCR works with schools to help them find ways to come into compliance without cutting sports opportunities for men.”¹³¹⁷

University lawyer, Estes, agreed the survey of interest prong seemed to be the most viable option for the University of New Mexico while outsiders on both sides of Title IX worried that either the university would take the path that might in fact allow them to do nothing else to achieve real gender parity or the university would have to disengage from the needs and interests of male athletes.¹³¹⁸ In another “Letter to the Editor” in *The Chronicle*, Cantu responded to Schuld’s letter in terms that clarified practices of O.C.R. in applying Title IX regulations to university cases. Cantu emphatically stated: “Let us be clear on a critical point: An institution can comply with Title IX even if men receive significantly more athletic opportunities than women so long as women athletes are not denied opportunity.”¹³¹⁹ In June 2000, The Fifth Circuit Court of Appeals found in *Pederson v. Louisiana State University* that Louisiana State University (L.S.U.) intentionally discriminated against female student-athletes who brought suit when L.S.U. did not provide athletic opportunities that were tailored to their interests and abilities.¹³²⁰

The Wall Street Journal and NBC News jointly conducted a poll to gauge how strongly Americans supported Title IX. The survey showed basic support for Title IX and approval of cutting men’s teams to achieve parity. Schuld, who conducted survey research before her

¹³¹⁷ W. Suggs, “Education Department Offers U. of New Mexico Another Way to Comply with Title IX,” *Chronicle of Higher Education*, May 12, 2000: para. 4. LexisNexis (accessed April 10, 2010).

¹³¹⁸ *Ibid.*, Suggs, May 5, 2000.

¹³¹⁹ N. V. Cantu, “Letter to the Editor: Enforcing Title IX,” *Chronicle of Higher Education*, March 3, 2000: para. 13. LexisNexis (accessed April 10, 2010).

¹³²⁰ *Pederson v. Louisiana State University*, No. 94-30680, No. 95-30777, No. 96-30310, No. 97-30427, No. 97-30719; 213 F. 3d 858; 2000 U.S. App. LEXIS 12019; 46 Fed. R. Serv. 3d (Callaghan) 1254, (June 1, 2000).

Independent Women’s Forum job, critiqued the questions asked. She stated: “The larger and grander, the more innocuous the questions are, the higher and more favorable the results are going to be. . . It’s not that they are unfair—they’re just too basic to really give people information.”¹³²¹ Schuld suggested improvements would be made by adding law-related items to the survey for the public to consider.¹³²²

Suggs briefly reviewed The Supreme Court’s refusal to hear the case brought by former Illinois State students who claimed reverse discrimination based on being denied athletic opportunity. Levey of the Center for Individual Rights suggested that the plaintiffs should change their approach and challenge regulatory language in Title IX or maintain that the defective guidelines need to be changed.¹³²³ Suggs reported in a later issue of *The Chronicle* that Colorado State University was cleared by O.C.R. based on its improvement and attention to gender equity in sports shown in team outcomes during regional and national competitions. This release from O.C.R. scrutiny took eight years.¹³²⁴

New York Times columnist Lipsyte updated the reader on Heather Mercer’s claim that Duke University violated Title IX by not allowing her to participate in football. The question surrounded trying out, and being put in the media guide but never being allowed to practice or play except in an inter-squad contest where she kicked a game-winning field goal.¹³²⁵ Lipsyte recounted the story of Heather Mercer and her fight with Duke University over football privileges and Title IX seven days after a jury found in her behalf on the discrimination claim.

¹³²¹ W. Suggs, “Poll Finds Strong Public Backing for Gender Equity in College Athletics,” *Chronicle of Higher Education*, July 7, 2000: para. 11. LexisNexis (accessed April 10, 2010).

¹³²² *Ibid.*, Suggs, July 7, 2000.

¹³²³ W. Suggs, “Supreme Court Won’t Hear Title IX Lawsuit,” *Chronicle of Higher Education*, July 14, 2000. LexisNexis (accessed April 10, 2010).

¹³²⁴ W. Suggs, “U.S. Says Colorado State University Meets Gender-Equity Requirements,” *Chronicle of Higher Education*, September 8, 2000. LexisNexis (accessed April 10, 2010).

¹³²⁵ R. Lipsyte, “Backtalk; Woman Accuses Duke of Going Wide Right of Title IX,” *New York Times*, October 8, 2000. LexisNexis (accessed May 2, 2010).

The jury determined that administrators at Duke had prior knowledge of the Title IX violation and chose not to intervene. Mercer was given monetary damages as the University vowed to appeal the case. Mercer claimed that she worked harder when rebuffed by coaches to no avail and wished only to be seen as an athlete while trying to play football at Duke.¹³²⁶

Williams offered a reminder to readers of *The New York Times* of some of the greatest athletic moments accomplished by women. This list, sponsored by sports outfitter Sports Authority, was replete with Olympic and World Cup achievements. It also included Wimbledon greats and the creation of the Women's Basketball League. The impetus for this list resulted from Sports Authority's commitment to women athletes. Sports Authority polled 1,000 people to find their top ten women athletes. Only eight women of one hundred were featured on ESPN's list.¹³²⁷

Berkow responded to the Top Ten List created by Sport Authority with his own choices. Berkow reminded readers of the drama of the figure skating showdown of Kerrigan and Harding at Lillehammer in 1994. He also offered the athletic milestone achieved by Katherine Switzer with her 1967 attempt to run the Boston Marathon while in disguise. Attempts were made to expel her and she found support from fellow runners to keep her in the 1969 event. Three years later, Switzer registered as a *bona fide* entrant for the 1972 Boston Marathon.¹³²⁸

Brainard, Burd, and Gose reviewed the Clinton Years and noted that in regard to Title IX that Cantu, director of O.C.R., was "a key player in the Clinton Administration's efforts to ensure that women have equal opportunities in athletics. . . The number of female college

¹³²⁶ R. Lipsyte, "Colleges; Five Years Later, A Female Kicker's Memorable Victory," *New York Times*, October 19, 2000. LexisNexis (accessed May 2, 2010).

¹³²⁷ L. Williams, "Women's Sports; Nine Moments and a Legal Decision," *New York Times*, November 20, 2000. LexisNexis (accessed May 2, 2010).

¹³²⁸ I. Berkow, "Sports of the Times; Top 10 List Misses a few Key Moments," *New York Times*, November 24, 2000. LexisNexis (accessed May 2, 2010).

athletes has surged 46 percent during the Clinton years. . . .”¹³²⁹ Cantu’s approach, according to sports personnel, was sometimes too forceful.¹³³⁰

With the onset of the new millennium, scholarly production about Title IX was generated by a host of institutions of higher learning. Stahura of the University of Minnesota traced employment opportunities in athletics for females comparing gender of coach with such factors as reputation of university, national status of athletic program and type of activity played.¹³³¹ Skretny-Fowler at Spalding University intended to teach athletic personnel and student-athletes about sexual harassment in college sports and how to avoid it.¹³³² At the University of Iowa, Fields offered a study giving insight into the contact sport law and females interest in participating.¹³³³

Law schools proliferated materials dealing with Title IX issues at the start of the new century. Reviewers established arguments calling for Title IX reform, objected to dropping men’s sports to remedy lack of opportunity for women, and debated the role of The N.C.A.A. as regulator of sport and other timely topics as follow. Law review writer R. A. Jurewitz called for Title IX reform, basically the proportionality prong of the three-part test from the 1979 O.C.R. Policy Interpretation. Jurewitz invoked the need for Congressional intent to be established or re-asserted as it related to Title IX enforcement.¹³³⁴ The Honorable D.E. Shelton discussed the simple problem and the simple solution that ought to be applied to Title IX. Shelton cited the

¹³²⁹ J. Brainard, S. Burd and B. Gose, “The Clinton Legacy in Higher Education.” *Chronicle of Higher Education*, December 15, 2000: para. 18. LexisNexis (accessed April 10, 2010).

¹³³⁰ *Ibid.*, Brainard, Burd and Gose, December 15, 2000.

¹³³¹ K. A. Stahura, *Occupational Employment Patterns in Women’s Intercollegiate Athletics: Sex of Head Coach as a Function of Sport Type, Institutional Prestige and ranked Program Prestige*, Abstract. Dissertation. University of Minnesota, 2000. ProQuest AAT 9966271 (accessed October 15, 2009).

¹³³² A. B. Skretny-Fowler, *Sexual Harassment in Intercollegiate Athletics: A Case Law Analysis and Recommendations for Prevention, Training, and Risk Assessment*, Abstract. Dissertation. Spalding University, 2000. ProQuest AAT 9962311 (accessed October 15, 2009).

¹³³³ S. K. Fields, *Female Gladiators: Gender, Law and Contact Sport in America*, Abstract. Dissertation. The University of Iowa, 2000. ProQuest AAT 9996088 (accessed October 15, 2009).

¹³³⁴ R. A. Jurewitz, “Playing at Even Strength: Reforming Title IX Enforcement in Intercollegiate Athletics,” 8 *Am. U.J. Gender Soc. Pol’y & L.*, 2000:283.

language in *Cook v. Colgate* that equality in athletics and law is not a luxury, but an essential element in not only athletics but society at large. Shelton strongly protested eliminating athletic opportunities for one gender to create opportunities for another.¹³³⁵ M.P. Hammer directed attention to N.C.A.A. and the continued haggling over whether the N.C.A.A. was bound by the tenets of Title IX.¹³³⁶ R. K. Smith developed an historical look at The N.C.A.A. and its role as the regulator who certifies eligibility for players to compete in intercollegiate athletics.¹³³⁷ A. Crouse offered a proposal for revoking the contact sports exception in Title IX based on her analysis of *Mercer v. Duke University*.¹³³⁸ M. Federbush advised readers to scrutinize gender equity efforts in publically funded institutions of higher learning. Federbush proposed using a model of competition similar to that used in the Olympics instead of Title IX.¹³³⁹ S. J. Clark presented two law professors' points-of-view on Title IX noting the mixed messages coming out of the conversation regarding Title IX and its application to athletic gender equity.¹³⁴⁰ D. Brake pointed out educational institutions of higher learning nurtured an underlying culture hostile to women in athletics. Brake called for creating a theory of engagement that factored in differences and levels of interests in athletics between genders. Even after twenty-eight years, athletics, according to Brake, was still a male-dominated entity.¹³⁴¹ J. Lamber addressed expectations and reality as a result of Title IX's implementation. Lamber reformulated the argument for equality

¹³³⁵ Honorable D. E. Shelton, "Equally Bad is not Good: Allowing Title IX 'Compliance' By the Elimination of Men's Collegiate Sports," *34 U. Mich. J. L. Ref.*, 2001:253.

¹³³⁶ M. P. Hammer, "Bump, Set, Spiked: Determining Whether the National Collegiate Athletic Association is a Recipient of Federal Funds Under Title IX *National Collegiate Athletic Ass'n v. Smith*," *65 Mo. L. Rev.*, 2000:773.

¹³³⁷ R. K. Smith, "A Brief History of the National Collegiate Athletic Association's Role in Regulating Intercollegiate Athletics," *11 Marq. Sports L. Rev.*, 2000:1655.

¹³³⁸ A. Crouse, "Equal Athletic Opportunity: An Analysis of *Mercer v. Duke University* and A Proposal to Amend the Contact Sport Exception to Title IX," *84 Minn. L. Rev.*, 2000:1655.

¹³³⁹ M. Federbush, "An 'Olympics' Approach: A More Equitable Approach to Athletics than Title IX Offers," *34 Mich. J. L. Ref.*, 2000:265.

¹³⁴⁰ S. J. Clark, "Competing in the 21st Century: Title IX, Gender Equity and Athletics: Introducing the Mixed Messages of Title IX," *34 U. Mich. J. L. Ref.*, 2000:1.

¹³⁴¹ D. Brake, "The Struggle for Sex Equity in Sport and the Theory Behind Title IX," *34 U. Mich. J. L. Ref.*, 2000:13.

in that Title IX went beyond other Civil Rights statutes to ensure that equal opportunity was made available to women in sports.¹³⁴² K. L. Schoepfer suggested that a scholarship athlete was an employee of an institution for whom they were contracted to play, thereby falling under the jurisdiction of Title VII.¹³⁴³ S. Sangree discussed the bearing that the contact sports exemption had on the overall value placed on females as athletes and members of society.¹³⁴⁴ S. Masterson outlined the state of Georgia's attempt to require compliance with gender equity measures in elementary and secondary education tied to financial incentives passed in their state legislature.¹³⁴⁵ J. R. Heller made a compelling argument against using the 1979 O.C.R. Policy Interpretation to solve Title IX issues in the judiciary. Heller called for a return to the language of the original statute not the agency regulatory interpretation of said legislation.¹³⁴⁶ K. S. Simons debated the principles of true equality, entitlements and distribution of resources.¹³⁴⁷ B. Osborne and M. Yarbrough addressed the university coaches' pay disparities historically driven by gender. Osborne and Yarbrough examined the Equal Employment Opportunity Commission (E.E.O.C.) sex discrimination guidelines issued in 1997 against other acts and titles dealing with equal pay issues.¹³⁴⁸ A discussion of what constitutes state action, making parties amenable to certain laws and regulations at state and federal levels, appeared in 2000 in *Seton Hall Journal of Sport Law* connecting the Tennessee Secondary School Athletic Association and Brentwood

¹³⁴² J. Lamber, "Gender and Intercollegiate Athletics: Data and Myths," *34 U. Mich. J. L. Ref.*, 2000:151.

¹³⁴³ K. L. Schoepfer, "Title VII: An Alternate Remedy for Gender Inequity in Intercollegiate Athletics," *11 Marq. Sports L. Rev.*, 2000:107.

¹³⁴⁴ S. Sangree, "Title IX and the Contact Sports Exemption: Gender Stereotypes in a Civil Rights Statute," *32 Conn. L. Rev.*, 2000:381.

¹³⁴⁵ S. Masterson, "Elementary and Secondary Education: Prohibit Discrimination Based on Gender in Elementary and Secondary School Athletics Programs Under the 'Quality Basic Education Act'; Amend Certain Provisions Relating to Grants and Other Disbursements of Fund by the Department of Community Affairs," *17 Ga. St. U. L. Rev.*, 2000:168.

¹³⁴⁶ J. R. Heller, "Stepping Back to Punt: Favoring Internal Agency Interpretations Over Title IX and its Regulations," *12 J. L. & Pub. Pol'y.*, 2000:179.

¹³⁴⁷ K. W. Simons, "The Logic of Egalitarian Norms," *80 B.U.L. Rev.*, 2000:693.

¹³⁴⁸ B. Osborne and M. Yarbrough, "Pay Equity for Coaches and Athletic Administrators," *34 Mich. J. L. Ref.*, 2000:231.

Academy case as an example.¹³⁴⁹ Also appearing in the *Seton Hall Journal of Sport Law* was a comment directing attention to contact sports exception and the outcomes from *Mercer v. Duke University* that strengthened Title IX's protection against gender discrimination.¹³⁵⁰ F. M. Duffy attempted to heighten awareness about the negative effects of the male athletic competition model on true athletic gender equity. Duffy stated that culturally, as a society, we are not willing to solve the underlying issues plaguing Title IX compliance.¹³⁵¹ T. T. Tygart ascertained the fine line athletic administrations at every level of competition have to monitor for equal distribution of resources to both genders participating in athletic competition and that private donations are not exempt from scrutiny under gender equity focus.¹³⁵² T. M. Rowland outlined issues of control that The N.C.A.A. was subject to indirectly through member university ties.¹³⁵³

New York Times reporter Navarro commented on the explosion of athletic product endorsements featuring women as well as sponsorship of women's league sports and professional teams in the 21st Century. Navarro also noted that the athletic industry was hiring women for jobs in various management and administrative positions. Examples cited by Navarro indicated that the National Football League increased job opportunities for women administrators from 12 to 34 percent in a four-year time span (1994-1998) and that the National Basketball Association showed an 8% increase over a two-year period as the Major League

¹³⁴⁹ Seton Hall Journal of Sport Law, "Absent Strong Connections to a State Government, A High School Athletic Association Cannot be Construed as a State Actor—*Brentwood Academy v. Tennessee School Athletics Ass'n*, 180 F.ed 758 (6th Cir. 1999, cert. granted, 120 S. Ct. 1156)," *10 Seton Hall J. Sport L.*, 2000:457.

¹³⁵⁰ Seton Hall Journal of Sport Law, "The Scope of Title IX: Protection Gains Yardage as Courts Continue to Tackle the Contact Sports Exception," *10 Seton Hall J. Sport L.*, 2000: 415.

¹³⁵¹ F. M. Duffy, "Twenty-Seven Years Post Title IX: Why Gender Equity in College Athletics Does Not Exist," *19 Quinnipiac L. Rev.*, 2000:67.

¹³⁵² T. T. Tygart, "Title IX: The Monitoring of Private Athletic Donations," *53 Okla. L. Rev.*, 2000:57.

¹³⁵³ T. M. Rowland, "Leveling the Playing Field: The N.C.A.A. Should be Subject to Title IX," *7 Sports L. J.*, 2000:143.

Baseball organization doubled their women executive opportunities in eight years. Navarro attributed the changes shown by 2000 to the Title IX mandates which began in 1972.¹³⁵⁴

Kellogg stated in “Following Title IX Probe, UCLA Reinstates Women’s Rowing as a Varsity Sport” in *The Chronicle* that even though the lacrosse team requested reinstatement when the Title IX complaint was filed that it was the rowing team that actually was elevated to a varsity sport for women. O.C.R. investigated U.C.L.A.’s parity efforts and found that the ratio between competing female athletes was out of sync with the student body numbers. In other matters, the university was found to “treat male and female athletes equitably.”¹³⁵⁵

Jacobson reviewed a new report produced by the General Accounting Office monitoring changes in athletes at the university-level. Jacobson included increases in the number of women’s teams created over a seventeen-year period. Also noted in the article was that one-third of universities participating in this report chose cutting men’s teams as a way to move toward or reach gender equity.¹³⁵⁶ One week later, Suggs conveyed information in “Woman Who Wanted to Play Football at Duke Wins Another Round” as U.S. District Judge James Beaty agreed with the jury decision and awarded Mercer two million dollars in damages, plus lawyer’s fees.”¹³⁵⁷

Litsky lamented the end of intercollegiate gymnastics as one type of fallout resulting from Title IX enforcement. Other collegiate sports endangered by Title IX, according to Litsky, were wrestling and fencing. The hemorrhage from gymnastics programs at the college-level affected competitive hopes at the national and Olympic levels. Litsky mentioned that feeder

¹³⁵⁴ M. Navarro, “Claiming their Share: A Special Report; ‘Women in Sports Cultivating New Playing Fields,’” *New York Times*, February 13, 2001. LexisNexis (accessed May 2, 2010).

¹³⁵⁵ A. P. Kellogg, “Following Title IX Probe, UCLA Reinstates Women’s Rowing as Varsity Sport,” *Chronicle of Higher Education*, March 2, 2001: para. 6. LexisNexis (accessed April 10, 2010).

¹³⁵⁶ J. Jacobson, “Colleges Cut Men’s Teams,” *Chronicle of Higher Education*, March 23, 2001. LexisNexis (accessed April 10, 2010).

¹³⁵⁷ W. Suggs, “Woman Who Wanted to Play Football at Duke Wins Another Round in Court,” *Chronicle of Higher Education*, March 30, 2001. LexisNexis (accessed April 10, 2010).

programs for gymnastics were mostly club sponsored. Fifty-eight programs in men's gymnastics had disappeared since 1981-82.¹³⁵⁸

The University of Vermont disposed of five varsity teams, according to Kellogg of *The Chronicle*, to assist in meeting budget requirements, to help the university align with conference competition and gender parity requirements and to help with Title IX.¹³⁵⁹ Later in the fall of 2001 in "Title IX Has Done Little For Minority Female Athletes—Because of Socioeconomic and Cultural Factors, and Indifference," Suggs suggested that sport choices at the collegiate level excluded women of color from participation because demographically and culturally many of the sports available in colleges were not available in neighborhood schools and communities. African American women's early exposure to sporting opportunities consisted of basketball and track, limiting their prospects in other sports offered at the collegiate-level. Suggs gave examples of women of color who had opportunities to participate in rowing and lacrosse in college which helped them in turn choose careers that would expose young athletes to sports in addition to basketball and track.¹³⁶⁰

In March 2001, the study, "Intercollegiate Athletic Four-Year Colleges' Experiences Adding and Discontinuing Teams" was offered by the U.S. General Accounting Office (G.A.O.) for members of Congress and the general public to use to gain a better understanding of the current practices in intercollegiate athletics of fielding teams for male and female participants. The report contained a comparison between years 1981-82 and 1998-99 regarding the number of athletes—male and female athletes charted separately—participating and the gain or loss over

¹³⁵⁸ F. Litsky, "Gymnastics; Colleges Reluctantly Drop Men's Programs," *New York Times*, August 7, 2001. LexisNexis (accessed May 2, 2010).

¹³⁵⁹ A. P. Kellogg, "Notes on Athletics," *Chronicle of Higher Education*, October 5, 2001. LexisNexis (accessed April 10, 2010).

¹³⁶⁰ W. Suggs, "Title IX Has Done Little For Minority Female Athletes—Because of Socioeconomic and Cultural Factors, and Indifference," *Chronicle of Higher Education*, November 30, 2001. LexisNexis (accessed April 10, 2010).

those years.¹³⁶¹ The G.A.O. included information about the procedures and influences used when deciding to cut or add teams. In the section named “Results in Brief” the G.A.O. researchers provided a snapshot of the entire report shared with Congressional requesters. At the time of the report results showed “The number of women participating in intercollegiate athletics at four-year colleges and universities increased substantially—from 90,000 to 163,000—between school years 1981-82 and 1998-99, while the number of men participating increased more modestly—from 220,000 to 232,000. Women’s athletic participation grew at more than twice the rate of their growth in undergraduate enrollment, while men’s participation more closely matched their growth in undergraduate enrollment.”¹³⁶² The G.A.O. used statistical information available from The N.C.A.A. and The N.A.I.A. Federal production of instructional material continued as The U.S. Department of Justice issued a *Title IX Legal Manual* in 2001. This manual presented historical, practical and program-specific information to federal agencies involved in Title IX compliance efforts. Title IX’s expansive reach across programs receiving federal funds prompted the creation of such a manual.¹³⁶³

Conversations at educational institutions of higher learning and schools of law included opportunities to look at progress in Title IX, or the lack thereof, the effect liberal feminism had on compliance goals, the advantage of adding certain specific women’s sports to increase participation and racial trends affected by Title IX. As a Ph.D. seeking student, Forman of the University of California at Davis, wrote a retrospective look at the struggle to remove barriers using Title IX implying that the effort has been somewhat counter-productive.¹³⁶⁴ Law review

¹³⁶¹ United States General Accounting Office, *Intercollegiate Athletics Four-Year Colleges’ Experiences Adding and Discontinuing Teams*, (GAO-01-297). (2001): 4.

¹³⁶² *Ibid.*, 4.

¹³⁶³ U.S. Department of Justice, Civil Rights Division, “Title IX Legal Manual,” (2001). Washington, D.C. <http://usdoj.gov/crt/cor/coord/ixlegal.htm> (accessed August 15, 2007).

¹³⁶⁴ P. J. Forman, *Contesting Gender Equity: The Cooptation Of Women’s Intercollegiate Athletics*, Abstract. Dissertation. University of California, Davis, 2001. ProQuest AAT 3039147 (accessed October 15, 2009).

writer M. Torrey followed the three decades of Title IX and the effects that liberal feminism had on driving compliance with the gender equity statute.¹³⁶⁵ M. K. Starace recounted the negative impact gender equity efforts had had on men's non-revenue producing sports.¹³⁶⁶ S.E. Gohl discussed the judicial remedies that should have been available for male athletes under the backlash and lack of opportunity they experienced because of gender equity efforts focused on building female participation in athletics.¹³⁶⁷ S. Campbell interpreted intentional gender discrimination standards as found in *Horner v. Kentucky High School Athletic Association*.¹³⁶⁸ C. R. DeLourdes recounted the reach of Title IX outside the educational athletic arena and the opportunities afforded the underrepresented gender in other athletic venues outside the universities and public elementary and secondary schools.¹³⁶⁹ E.A. Haggerty marveled at the recurring claims of Title IX violations in athletics at educational institutions after the law had been in existence since 1972. Haggerty noted that civil rights legislation takes a long time for society to get the message that it is here to stay and that progress is made in little steps forward.¹³⁷⁰ S. R. Rosner pointed out the financial advantages of creating women's rowing teams and other emerging sports to help educational institutions choose athletic opportunities for female athletes as they continue to comply with regulations of Title IX.¹³⁷¹ C.P. Reuscher discussed the Title IX history and purpose in an attempt to find a way to honor Congressional

¹³⁶⁵ M. Torrey, "Thirty Years," *22 Women's Rights' L. Rep.*, 2001:147.

¹³⁶⁶ M. K. Starace, "Reverse Discrimination Under Title IX: Do Men Have a Sporting Chance?" *8 Vill. Sports & Ent. L. Forum*, 2001:189.

¹³⁶⁷ S. E. Gohl, "A Lesson in English and Gender: Title IX and the Male Student-Athlete," *50 Duke L. J.*, 2001:1123.

¹³⁶⁸ S. Campbell, "Compensatory Damages are not Available for a Title IX Violation Without Showing of Intentional Discrimination," *Horner v. Kentucky High School Athletic Ass'n* 206 F.ed 685 (6th Cir. 2000). *11 Seton Hall J. Sports L.* 177.

¹³⁶⁹ C. R. De Lourdes, "In Search of a Level Playing Field *Baca v. City of Los Angeles* as a Step Toward Gender Equity in Girl's Sports Beyond Title IX," *24 Harv. Women's L. J.*, 2001:139.

¹³⁷⁰ E. A. Haggerty, "Title IX-Federally Funded Educational Institutions Failed to Effectively Accommodate Female Student Athletics Due to Intentional Discrimination Based on Stereotypes Assuming Their Interests and Abilities," *11 Seton Hall J. Sport L.*, 2001:373.

¹³⁷¹ S. R. Rosner, "The Growth of N.C.A.A. Women's Rowing: A Financial, Ethical and Legal Analysis," *11 Seton Hall J. Sport L.*, 2001:297.

intent for Title IX excluding use of the remedy to reduce existing athletic programs.¹³⁷² H. J. Nicholson and M. F. Maschino traced the roots of the organization Girls Incorporated ® to bring attention to social barriers that kept young females from attaining their true potential.¹³⁷³ A.D. Mathewson presented the plight of the African American female whose stereotypical role as athlete served as an obstacle to overcome in order to become a social representative for promoting anti-discrimination efforts.¹³⁷⁴ R. Reaves followed with a discussion of gender and racial roles being separate social issues when women are coached by males. The African American woman may be at the greater disadvantage and experience more harassment and discrimination because of her gender and ethnic attributes.¹³⁷⁵ P.A. Cain discussed historical implications of Title IX and the N.C.A.A.'s roles to make changes in gender equity in athletics. Cain attempted to couch the discussion historically in an effort to help constituents understand the lack of complete gender parity in athletics.¹³⁷⁶ S.A. Elliott and D. S. Mason proposed an alternative model for consideration to replace proportionality measures that often created a need to reduce existing athletic teams to bring programs into compliance or to continue compliance.¹³⁷⁷ A. Bauer discussed the state of Title IX in 2001 as being out of focus and unless this focus shifted away from collegiate-level programs that continued decline in gender parity progress in athletics would occur. Two points that Bauer offered—negative outcomes were based on meeting interests of women athletes who did not possess the level of athletic prowess of

¹³⁷² C. P. Reuscher, "Comment: Giving the Bat Back to Casey: Suggestions to Reform Title IX's Inequitable Application to Intercollegiate Athletics," 35 *Akron L. Rev.*, 2001:117.

¹³⁷³ H. J. Nicholson and M. F. Maschino, "Special Issue: Education Law And Policy: Strong, Smart, And Bold Girls: The Girls Incorporated(R) Approach To Education," 29 *Fordham Urb. L.J.*, 2001:561.

¹³⁷⁴ A. D. Mathewson, "Grooming Crossovers," 4 *J. Gender Race & Just.*, 2001:225.

¹³⁷⁵ R. Reaves, "ARTICLE: 'There's No Crying in Baseball': Sports and the Legal and Social Construction of Gender," 4 *J. Gender Race & Just.*, 2001:283.

¹³⁷⁶ P. A. Cain, "COMMENTARY: Women, Race, and Sports: Life Before Title IX," 4 *J. Gender Race & Just.*, 2001:337.

¹³⁷⁷ S. A. Elliott and D. S. Mason, "ARTICLE: 'Gender Equity in Intercollegiate Athletics': An Alternative Model to Achieving Title IX Compliance," 11 *J. Legal Aspects Of Sport*, 2001:1.

men's programs and that by using a pseudo-affirmative action scheme the fallout from male program closures would continue. The focus Bauer endorsed was further development of interscholastic athletic programs.¹³⁷⁸

Chronicle correspondent, Flores reported that wrestling coaches united to bring a lawsuit against the U.S. Education Department regarding policy applications in Title IX as clarified in 1996 by O.C.R.¹³⁷⁹ At the same time, Evelyn in "Calif. 2-Year Colleges Criticized on Title IX" publicized that California's junior college system came under gender equity scrutiny from representatives of the National Organization for Women (N.O.W.). N.O.W. officials were requesting information from the California community and junior colleges before launching complaints against those colleges suspected of Title IX violations.¹³⁸⁰ In a letter to *The Chronicle* Editor, Bernice Sandler, Senior Scholar, Women's Research and Education Institute, enlightened readers of the origin of the three-part/pronged test that wrestlers and men's athletics so vehemently opposed during her battles with the Education Department. Sandler rhetorically asked, "'How did the three-part test come about?' It was a creation of the men's athletic establishment. At one point, when regulations for Title IX were being developed, The National Collegiate Athletic Association (which at that point did not govern women's athletics) and The American Football Coaches Association sat down with The Association for Intercollegiate Athletics for Women to try to iron out their differences. The AIAW simply wanted to split everything down the middle. In response, The NCAA and The AFCA developed the three-part

¹³⁷⁸ A. Bauer, "NOTE: If You Build it, They Will Come: Establishing Title IX Compliance in Interscholastic Sports as a Foundation for Achieving Gender Equity," 7 *Wm. & Mary J. of Women & L.*, 2001:983.

¹³⁷⁹ C. Flores, "Wrestling Coaches Sue Education Department Over Title IX Enforcement," *Chronicle of Higher Education*, February 1, 2002. LexisNexis (accessed April 10, 2010).

¹³⁸⁰ J. Evelyn, "Calif. 2-Year Colleges Criticized on Title IX," *Chronicle of Higher Education*, February 8, 2002. LexisNexis (accessed April 10, 2010).

test and suggested it to the federal government, which then accepted it.”¹³⁸¹ In the same letter, Sandler noted the deterioration in the number of wrestling programs, and ascribed Title IX as the culprit, was greater during the years when Title IX was not applied to athletics (1984-1988).¹³⁸²

As reported to readers of *The Chronicle*, April 2002, The N.C.A.A. released a report showing pivotal gender equity progress in the number of men’s and women’s sports teams participating in Divisions I and II schools. Even though the number of supported teams equalized, the actual number of individual athletes, showing a drop in men’s participation, was not at parity. Wrestling programs showed the largest decline in participation rates.¹³⁸³ Suggs conveyed news during April 2002 of the University of Minnesota-Twin Cities’ announced merger of men’s and women’s athletic programming and administration and the cutting of three teams to offset a multi-million dollar deficit.¹³⁸⁴

Pennington highlighted for readers of *The New York Times* the fate of men’s track and field as budget realities required program cuts in men’s sports. Pennington noted that since Title IX was enacted “more than 170 wrestling programs, 80 men’s tennis teams, 70 men’s gymnastics teams and 45 men’s track teams have been eliminated according to the General Accounting Office.”¹³⁸⁵ Football, according to Pennington’s report, was seen as the culprit, although filtered through Title IX as the reason minor men’s sports were eliminated.¹³⁸⁶ Lipsyte reminded readers of the main difference of opinion between the genders on how to balance Title IX

¹³⁸¹ B. R. Sandler, “Letter to Editor: Wrestling with Title IX,” *Chronicle of Higher Education*, March 8, 2002, para.2-3. LexisNexis (accessed April 10, 2010).

¹³⁸² *Ibid.*, Sandler, March 8, 2002.

¹³⁸³ Chronicle of Higher Education, “NCAA Report on Sports Participation Reveals an Upswing for Women and a Drop for Men,” *Chronicle of Higher Education*, April 19, 2002. LexisNexis (accessed April 10, 2010).

¹³⁸⁴ W. Suggs, “U. Minnesota Reorganizes Athletics Program and Cuts 3 Teams,” *Chronicle of Higher Education*, April 26, 2002. LexisNexis (accessed April 10, 2010).

¹³⁸⁵ B. Pennington, “Colleges; More Men’s Teams Benched as Colleges Level the Field,” *New York Times*, May 9, 2002. LexisNexis (accessed May 2, 2010).

¹³⁸⁶ *Ibid.*, Pennington, May 9, 2002.

compliance when he said: “Many women would prefer to cap football squads at . . . 75 players than to keep cutting men’s wrestling, gymnastics, and track and field. . . . Meanwhile, most men would prefer to concentrate on creating new women’s teams and trimming the vulnerable minor male sports.”¹³⁸⁷ One of the athletic directors interviewed by Lipsyte expressed the importance of keeping football intact. One of the reasons, depth of talent available for training to offset injuries, was important for providing an incentive for alumni to stay connected to the university. Another athletic director interviewed emphasized creative ways to raise money for athletic sponsorship from using sources outside the university to convincing the university’s student body to allow a fee increase that would support athletics. In the end, Lipsyte stated that football was the last bastion of manhood driving the need to protect it from Title IX and female encroachment.¹³⁸⁸ Featured in the *New York Times* In “U.S. Defends Anti-Bias Law on College Sports,” journalist Lewin described The Bush Administration’s efforts to squash The National Wrestling Coaches Association’s lawsuit claiming reverse discrimination because of Title IX enforcement. This endeavor, claims of reverse administration by the wrestling coaches group, was met with concern expressed by women’s rights groups. Lewin echoed information previously cited in this dissertation from the G.A.O report by correspondent Lords that “170 wrestling programs have been eliminated along with 80 men’s tennis teams, 70 men’s gymnastics teams and 45 track teams.”¹³⁸⁹ As mentioned by Lewin, Suggs commented in “Defying Rumors, Bush Administration Defends Status Quo on Title IX” that in a surprise move, the Justice Department requested that the wrestlers’ suit against the Education Department be

¹³⁸⁷ R. Lipsyte, “Title IX Debate Is About Football,” *New York Times*, May 12, 2002: para. 7-8. LexisNexis (accessed May 2, 2010).

¹³⁸⁸ R. Lipsyte, “BackTalk; Title IX Debate is About Football,” *New York Times*, May 12, 2002. LexisNexis (accessed May 2, 2010).

¹³⁸⁹ T. Lewin, “U.S. Defends Anti-Bias Law on College Sports,” *New York Times*, May 30, 2002: para. 8. LexisNexis (accessed May 2, 2010).

dismissed. Title IX was apparently backed by the Bush Administration counter to what some Title IX advocates were led to believe.¹³⁹⁰

Lipsyte approached the subject of sexism in subtler forms as he interviewed women's basketball coach Cheryl Burnett, formerly of Southwest Missouri State University. Lipsyte cited examples of subtle discrimination such as "Male coaches and administrators forgot to invite female coaches to university events. If the women showed up, the men would forget to introduce them to visiting politicians or to rich boosters."¹³⁹¹ Burnett relayed other examples such as "In an exception to university policy, for example, the men's basketball team and many of its supporters received rings from the University for making Round of 16 in 1999. Meanwhile," as reported by Lipsyte, "the women's team was told it would receive fewer rings of lesser quality for reaching the Final Four in 2001. . . Burnett's Final Four incentive bonus, a simple check to cut, was run through the payroll system in such a way that the contracted amount was more than halved. She had to fight for what should have been hers routinely. Money she had raised publicly for a trophy case disappeared into the system and the case was never built. . . One incident directly affected the team. When she attempted to hire a strength and conditioning coach who had specific expertise with female athletes, she was told there was no money in the budget. Yet after she privately raised \$20,000 in two weeks she said the administration ordered her to use football's weight coach."¹³⁹² This venture did not pan out because the coach quit working with the female athletes at mid-season. Burnett gave philosophical differences as the reason she resigned from her successful coaching career at Southwest Missouri. Lipsyte noted

¹³⁹⁰ W. Suggs, "Defying Rumors, Bush Administration Defends Status Quo on Title IX," *Chronicle of Higher Education*, June 7, 2002. LexisNexis (accessed April 10, 2010).

¹³⁹¹ R. Lipsyte, "BackTalk; Behind the Scenes, the Sexism Is Now Subtler," *New York Times*, June 9, 2002: para 2. LexisNexis (accessed May 2, 2010).

¹³⁹² *Ibid.*, Lipsyte, June 9, 2002:para. 17-19.

that although the university's record of treating women and men's athletics appeared to be in check, the reality was marked with subtle and subversive efforts as noted above.¹³⁹³

Rhoden disclosed that the power-mongers of sports tend to break along racial lines and that the African American female athlete had limited opportunities to participate in sports outside of basketball and track. According to Rhoden, "the movement for women's rights in sports is complicated by the conundrum of gender and race. The movement has celebrated breakthroughs: more women playing more sports at earlier ages unshackled by old-fashioned attitudes. But the distribution of power that has marked the dominance by white males in sports has characterized the ascent of women as well. The old girls' network replaces the old boys' network: white women sit at the controls, black women sit on the periphery."¹³⁹⁴ He noted that he thought at one time women would produce a new athletic model. "The movement," Rhoden confessed, "was in a position to create a new model in which black and white women shared equally – all things being equal – in power, access and opportunity."¹³⁹⁵ This was not the case. Rhoden also noted an alarming trend that coaching opportunities for African American females were non-existent. Rhoden offered Lopiano's voice in efforts to draw attention to the opportunities African Americans were not getting in athletics.¹³⁹⁶ In another "BackTalk" article featured in *The New York Times*, Billy Jean King authored "For All the Good Things It has Done, Title IX Is Still Plagued by Myths." In June 2002, King discussed remaining myths about Title IX that were still alive and well after thirty years. She noted that Title IX did not require the cutting of men's teams and that only one-third of all colleges and universities had chosen that remedy to achieve parity. She then dispelled the myth that men had more interest in athletics

¹³⁹³ *Ibid.*, Lipsyte, June 9, 2002.

¹³⁹⁴ W. C. Rhoden, "Sport of The Times; Breaking Down the Institutional Barriers That Women Still Face," *New York Times*, June 22, 2002: para. 4-5. LexisNexis (accessed May 2, 2010).

¹³⁹⁵ *Ibid.*, Rhoden, June 22, 2002: para. 6.

¹³⁹⁶ *Ibid.*, Rhoden, June 22, 2002.

than women. King cited the phenomenal growth in female participation in sports since 1972 as proof that women's interests were keen. She also addressed the misconceptions that no discrimination remained, citing disparity remaining in scholarship distribution and the requirement of quotas to achieve gender equity.¹³⁹⁷

In 2002, to mark thirty years of Title IX progress, the federal government was actively assessing Title IX. The Senate planned to hold hearings to review progress made by Title IX implementation.¹³⁹⁸ Suggs introduced the group chosen by the Education Department to be known as the "Commission on Opportunities in Athletics." According to Roderick Paige, Education Secretary, the team "was charged 'with strengthening enforcement' of Title IX and 'expanding opportunities to ensure fairness for all athletes.'" The Commission was given eight questions to investigate and ask about college sports and Title IX while in operation. Those questions dealt with assessing standards, promoting opportunity for both genders, assessing guidance given to colleges and schools to meet Title IX tenets, ensuring that direction is given at early ages to help develop interests in sports offered by colleges, determining what other activities to include (i.e. cheerleading or bowling), what to do about walk-ons for men's teams, how revenue-generating sports with large numbers of participants affect budgeting for parity in sport opportunities, what part do "other sports venues, such as the Olympics, professional leagues, and community recreation programs." How these issues impacted university and school commitment to equal participation in sports and what other encouragement can be

¹³⁹⁷ B. J. King, "BackTalk; For All the Good Things It Has Done, Title IX Is Still Plagued by Myths," *New York Times*, June 23, 2002. LexisNexis (accessed May 2, 2010).

¹³⁹⁸ U.S. Senate Committee on Health, Education, Labor and Pensions, "Title IX [Microform]: Building On 30 Years Of Progress: Hearing Before The Committee On Health, Education, Labor And Pensions, United States Senate, On Examining The Implementation And Progress Of Title IX Of The Education Amendments Act Of 1972, Which Prohibits Sex Discrimination In All Aspects Of Education," One Hundred Seventh Congress, Second Session, June 27, 2002. Microform.

provided by public and private sectors to help sustain gender equity efforts was the overall charge given to The Commission.¹³⁹⁹

Pennington described the growing pattern of barring males who wished to join university teams as walk-on participants at most colleges and universities. Title IX was blamed for this lack of opportunity because men's sports teams were forced to cap participation numbers while walk-on participation was encouraged for female athletic team-building efforts. The term roster management grew out of this era as athletic programmers attempted to keep a balance between genders participating in sports at the college-level.¹⁴⁰⁰

Gootman of *The New York Times* announced the death of Patsy Takemoto Mink of Hawaii, who championed such causes as Title IX while serving in the U.S. House of Representatives. Mink herself was a pioneer in women's access to male-dominated professions as she completed law school in 1951 and became the "the first Japanese-American woman licensed to practice law in Hawaii."¹⁴⁰¹ Mink is quoted as saying to a group of women athletes in 1995 that "it's rare as a legislator that you fight for legislation you believe in and stay around or live long enough to see it come to fruition."¹⁴⁰² In October 2002, Title IX was re-named to posthumously honor Congresswoman Patsy T. Mink by The House of Representatives. Title IX is also known as the Patsy T. Mink Equal Opportunity in Education Act.¹⁴⁰³ *The Chronicle* reported "House to Name Successor to Late Congress Woman in Higher-Education Panel." This

¹³⁹⁹ W. Suggs, "Can a Commission Change Title IX?" *Chronicle of Higher Education*, July 12, 2002. LexisNexis (accessed April 10, 2010).

¹⁴⁰⁰ B. Pennington, "Want to Try Out for College Sports? Forget It," *New York Times*, September 22, 2002. LexisNexis (accessed May 2, 2010).

¹⁴⁰¹ E. Gootman, "Patsy Mink, Veteran Hawaii Congresswoman, Dies at 74," *New York Times*, September 30, 2002: para. 5. LexisNexis (accessed May 2, 2010).

¹⁴⁰² *Ibid.*, Gootman, September 30, 2002: para. 12.

¹⁴⁰³ U.S. House of Representatives, "House Passes Resolution to Rename Title IX after Patsy Mink," October 9, 2002, <http://www.house.gov/abercrombie/news/mink02f.htm> (accessed March 5, 2008).

appointment was to replace Representative Patsy T. Mink of Hawaii on the Subcommittee on 21st Century Competitiveness.¹⁴⁰⁴

Also in October 2002, The N.C.A.A. selected Myles Brand for president to replace Cedric Dempsey. Brand served as president of Indiana University before accepting the N.C.A.A. leadership position. Brand referred to Title IX as “one of the most important pieces of legislation affecting higher education in the second half of the 20th Century. . . I have two young granddaughters. . . I look forward to them participating in intercollegiate athletics. That might not have been possible without Title IX.”¹⁴⁰⁵ According to LaPointe, Brand expected to foster change in N.C.A.A. operations.¹⁴⁰⁶

At the close of 2002, The Commission on Opportunity in Athletics appointed by Education Department Secretary Rod Paige drew criticism from women’s rights advocates. The advocates expected this to be an effort to undermine Title IX. Critics cited the composition of commission membership—skewed to Division I schools—as a way to control the outcome. Ideas surfaced from commission discussions that would amend proportionality standards of Title IX and thus damage the reach and scope of the law. Other initiatives talked about involved record keeping for determining interest in emerging sports for women and asking schools to end their buildup of and spending on football and basketball. The Education Department was accused of “stacking the deck” by not including non-Division I schools, community colleges and K-12 interests on the commission.¹⁴⁰⁷

¹⁴⁰⁴ Chronicle of Higher Education, “House to Name Successor to Late Congress Woman in Higher-Education Panel,” *Chronicle of Higher Education*, October, 2002. LexisNexis (accessed April 10, 2010).

¹⁴⁰⁵ J. LaPointe, “Colleges: The N.C.A.A. Selects Brand As Its Chief,” *New York Times*, October 11, 2002: para. 18-19. LexisNexis (accessed May 2, 2010).

¹⁴⁰⁶ *Ibid.*, LaPoine, October 11, 2002.

¹⁴⁰⁷ D. J. Schemo, “Colleges; Advocates of Title IX Voice Concern on Panel,” *New York Times*, December 20, 2002. LexisNexis (accessed May 2, 2010).

Dissertation production continued as Allison at the University of Denver compared the University of Denver and University of Colorado-Boulder's strategies in formulating policy governing women's athletic competition.¹⁴⁰⁸ Walton of the University of Iowa looked at women's wrestling and the media image and coverage received.¹⁴⁰⁹ Emerson (2002) at the University of Idaho coded responses from women educational leaders, athletic directors and coaches. Emerson reviewed results to develop grounded theory as discovering themes from the data related to emerging patterns of behavior regarding constraints placed on female personnel by others and themselves.¹⁴¹⁰ Also in 2002 Oliver at the University of Kansas analyzed media reporting in the university newspaper to determine compliance with Title IX regulations.¹⁴¹¹ Ritter at the University of Nevada, Reno, covered the historical development of Title IX compliance at the University of Nevada, Reno from 1972-2002.¹⁴¹²

Law reviewers turned their focus to topics within Title IX as J. A. Baird offered a look at sexual orientation harassment and discrimination found in athletics.¹⁴¹³ A. F. Oloya carried on the conversation about Title IX and continued inequity in athletics in both public and private organizations.¹⁴¹⁴ M.R. Weiss encouraged the use of the Equal Pay Act or Title VII when

¹⁴⁰⁸ M. L. Allison, *The History Of Women's Collegiate Sports In Colorado: A Comparative Case Study Of Administrative Decision-Making At The University Of Denver And The University Of Colorado-Boulder*, Abstract. Dissertation. University of Denver, 2002. ProQuest AAT 3040740 (accessed October 15, 2009).

¹⁴⁰⁹ T. A. Walton, *Pinned By Gender Construction? A Critical Analysis Of Media Representations Of Female Amateur Wrestling In The United States*, Abstract. Dissertation. The University of Iowa, 2002. ProQuest AAT 3052478 (accessed October 15, 2009).

¹⁴¹⁰ K. E. Emerson, *Perceptions Of Female Coaches, Female Athletic Directors And Female Administrators Regarding Women Coaching Female Varsity Athletics*, Abstract. Dissertation. University of Idaho, 2002. ProQuest AAT 3043270 (accessed October 15, 2009).

¹⁴¹¹ J. A. Oliver, *An Analysis of Text and Photographic Coverage of Women's and Men's Basketball in the University-Sponsored Newspaper at the University of Kansas*, Abstract. Dissertation. University of Kansas, 2002. ProQuest AAT 3059066 (accessed October 15, 2009).

¹⁴¹² S. E. Ritter, *Achieving Gender Equity in Collegiate Sports: University of Nevada, Reno Responds to Title IX, 1972-2002*, Abstract. Dissertation. University of Nevada, 2002. ProQuest (accessed October 15, 2009).

¹⁴¹³ J. A. Baird, "Playing It Straight: An Analysis of Current Legal Protections to Combat Homophobia and Sexual Orientation Discrimination in Intercollegiate Athletics," *17 Berkeley Women's L.J.* 2002:31.

¹⁴¹⁴ A. F. Oloya, "Fourth Annual Review Of Gender And Sexuality Law: Education Law Chapter: Athletics," *4 Geo. J. Gender & L.*, 2002:377.

accusing an organization of disparity in athletic coaches' pay was based on gender. Weiss listed various elements from the E.E.O.C. Guidelines for reader consideration.¹⁴¹⁵ P.N. Findlay addressed the harm caused by a system attempting to achieve parity with proportional goals set. Findlay endorsed a system that would include and encourage participation in sports even if athletic skills are not up to varsity standards. In order to develop and accommodate interests of both genders in sports, a greater number of girls need to participate in team sports.¹⁴¹⁶ L. Tatum called upon N.C.A.A. as an organization to monitor and control gender equity in athletic competition in high schools.¹⁴¹⁷ J. Lamber in 2000 sampled various institutions of higher learning to review their Title IX plans for compliance, and changes in sports department structure and to find out what compliance strategies they were using to meet the standards.¹⁴¹⁸ B.G. George posed questions about possible gender remedies which would allow men to field teams established for women, where no men's teams existed. George supposed the need for limits to keep men from taking over the team membership was based on their possible ability to possess skill domination over female members. George considered scenarios where all sport teams would be made up of 50% of each gender.¹⁴¹⁹

The next phase of Title IX would bring about attempts by The Bush Administration to weaken the gender equity statute as the courts of law looked to strengthen its coverage. The Supreme Court in a split decision allowed protection and legal relief for those who dared to bring attention to gender discrimination. The whistle-blowers were known as those who became

¹⁴¹⁵ M. R. Weiss, "Comment: Pay Equity For Intercollegiate Coaches: Exploring The EEOC Enforcement Guidelines," *13 Marq. Sports L. Rev.*, 2002:149.

¹⁴¹⁶ P. N. Findlay, "ARTICLE: The Case for Requiring a Proportionality Test to Assess Compliance with Title IX in High School Athletics," *23 N. Ill. U. L. Rev.* 2002:29.

¹⁴¹⁷ L. Tatum, "COMMENT: Girls in Sports: Love of the Game Must Begin at an Early Age to Achieve Equality," *12 Seton Hall J. Sports L.*, 2002:281.

¹⁴¹⁸ J. Lamber, Article: Intercollegiate Athletics: The Program Expansion Standard Under Title IX's Policy Interpretation," *12 S. Cal. Rev. L. & Women's Stud.*, 2002:31.

¹⁴¹⁹ B. G. George, "ARTICLE Fifty/Fifty: Ending Sex Segregation in School Sports," *63 Ohio St. L.J.*, 2002/2003:1107.

indirect victims of gender discrimination by suffering acts of retaliation. The Commission on Opportunities in Athletics would finalize its report and send it forward to the Education Department. Survey of interests would play a larger role in determining compliance for a brief period of time and coaches filed a number of lawsuits against their higher education employers.

CHAPTER VII

Retaliation and Surveys of Interest

2003 – 2010

In the year 2003, America witnessed the explosion of NASA's Space Shuttle Columbia as it came back into earth's atmosphere over Texas—all astronauts onboard were killed. George W. Bush was president of the United States. The Iraq War started and all eyes were on Iraq as the capture of Baghdad was followed months later by the arrest of Saddam Hussain.¹⁴²⁰

In the athletic world January 2003 opened with attempts to complete the work of The Commission on Opportunities in Athletics (The Commission). The Commission's last few months were met with controversy over proposed recommendations for possible changes to Title IX. Criticism from pro-women's groups and praise from men's groups looking for relief from teams being dropped from intercollegiate sports in the name of Title IX compliance intensified the struggle.¹⁴²¹

Another item of interest in this period of the study involved the Supreme Court's review of *Jackson v. Birmingham School Board* and their decision expanding the reading of Title IX to protect from retaliation those who report gender-related discrimination on behalf of victims of such discrimination.¹⁴²² In this seven-year span, K-12 educational organizations were involved

¹⁴²⁰ America's Best History, "2000," America's Best History U. S. Timeline. <http://americasbesthistory.com/abhtimeline2000.html>. (accessed November 12, 2009).

¹⁴²¹ D. J. Schemo, "Women's Athletics; Female Athletes Attack Plans to Change Title IX," *New York Times*, January 29, 2003; para. 18-19. LexisNexis (accessed April 30, 2010).

¹⁴²² J. Weiner, "Celebrating Women's Sports, One Image at a Time," *New York Times*, June 6, 2004. LexisNexis (accessed May 2, 2010).

in gender equity investigations and battles that expanded into after-school activities for girls and boys involved in sports.¹⁴²³

In January of 2003 Welch Suggs reviewed the latest university decisions to remedy budgeting and Title IX concerns by announcing their discontinuation of sport teams. Suggs reported briefly on Canisuis College, Dartmouth College and St. John's University. Suggs featured St. John's president, Donald J. Harrington, in his article about his decision to eliminate sports teams. Harrington stated, "I don't see this as merely a title IX issue . . . Presuming that Title IX is a good law, any good law embodies justice. For me, as president, when dealing with a student body that's 58 percent female students, I have to be able to explain to them the allocations of resources, and to allocate resources in a way that's 65 percent male and 35 percent female, which is what we have, to me, that's a question of justice."¹⁴²⁴ Canisuis, according to Suggs, took the attitude that their decision to drop certain sports would make them better competitors in Division I. Canisuis dropped football, tennis, track and field (both genders) and rifle.¹⁴²⁵

Suggs reported in the same issue that the Commission on Opportunity in Athletics was supposed to be completing their review but there seemed to be a sense of delay as radical ideas for accomplishing Title IX reform were offered for commission members to ponder. Ted Leland, co-chair, justified the delay in that "This will give the commissioners more time to do the serious review warranted and produce a report that reflects the quality of the commissioners."¹⁴²⁶ Two points agreed upon included measuring interest of female athletes and

¹⁴²³ B. Pennington, "Title IX Trickles Down to Girls of Generation Z," *New York Times*, June 29, 2004. LexisNexis (accessed May 2, 2010).

¹⁴²⁴ W. Suggs, "A Federal Commission Wrestles With Gender Equity in Sports," *Chronicle of Higher Education*, January 3, 2003: para. 7. LexisNexis (accessed April 10, 2010).

¹⁴²⁵ *Ibid.*, Suggs, January 3, 2003.

¹⁴²⁶ W. Suggs, "Federal Panelists' Ideas for Changing Title IX," *Chronicle of Higher Education*, January 3, 2003: para. 3. LexisNexis (accessed April 10, 2010).

improving regulatory language for ease of comprehension for athletic personnel. Suggs noted that other segments of education had learned to cope with gender equity as he characterized athletics as an “Achilles heel.” Proposals on the table during these meetings alarmed supporters of women’s equity as possibly hindering progress in gender equity. Radical ideas presented included a fifty-fifty gender divide with up to a seven-point spread; giving target numbers as those you must have per team and eliminating the three-part test. Gerald Reynolds, assistant secretary of education for Civil Rights, commented on various aspects of proportionality and its punitive effects from one athletic director’s administration to the next, according to Suggs. Reynolds expressed ideas including the potential role of O.C.R. as educator to athletic administrators and serving as a central repository of information. He was quoted by Suggs as stating, “There’s been a vacuum. I think O.C.R. needs to do a better job of getting out there. . . . Throughout the town-hall meetings, people have been critical of O.C.R., and some of that criticism is grounded in fact. We have to do a better job, and hopefully, after we come up with our recommendations, those recommendations can help guide the process. The process is underway in terms of articulating policy and I hope we get additional recommendations.”¹⁴²⁷

In an attempt to educate the readers of *The Chronicle* reporter Suggs identified the Commission on Opportunities in Athletics membership and their ideas offered as proposals to reform Title IX. Suggs began with co-chairs Ted Leland and Cynthia Cooper. Leland wanted to change the 1979 Interpretation’s first part test (the proportionality test) by establishing a set team size per sport and allowing coaches to decide whether to exceed the number or curb the number so that walk-on opportunities could be kept. Cooper proposed to survey athletically-minded men and women to establish a pool of interest and remove the undergraduate student body connection. Eugene DeFilippo, Jr. wished to see the three-part test explained more clearly.

¹⁴²⁷ *Ibid.*, Suggs, January 3, 2003: para. 21.

Graham Spanier aspired to equalize the three-prongs of the 1979 Interpretation test by de-emphasizing parity in the first prong. He then suggested that you have a combination of the three. Deborah Yow would require a fifty-fifty ratio with flexible variance from five to seven points as a replacement for prong one and abolish prong two of the three-pronged test [1979 Policy Interpretation]. Cary Groth agreed the tests should be equalized and used for regulating the application of Title IX guidelines. Sally Stroup would choose to discontinue the Equity in Athletics Disclosure Act because as reported the data cannot be validated and according to Stroup, was not useful to the Department of Education. Percy Bates recommended defining the three-part test better and creating penalties for non-compliance. Bates also cited O.C.R. for inconsistency of regulatory application within regions. Julie Foudy wanted to limit spending (that seemed excessive) in sports. Thomas Griffith agreed somewhat with Yow in allowing percentage ranges but still wished to use proportionality with undergraduate population. Griffith also suggested review and reissue of regulations in a more legislative process. Rita Simon pushed for the interest survey, part three, to be more actively pursued. Simon wanted to include a disclaimer that interest and actual participation in the survey may vary from school to school. Muffet McGraw aimed to ban use of non-traditional students in determining interest because The N.C.A.A. does not allow older students to compete in athletics. Robert Bowsby intended to create an incentive system and incorporate high school proportions into the equation. The last panelist identified by *The Chronicle*, Gerald Reynolds, endorsed privatizing funding for men's athletics and suggested restructure of prong two in order to make it more useful in determining compliance.¹⁴²⁸

¹⁴²⁸ Chronicle of Higher Education, "Federal Panelists' Ideas for Changing Title IX," *Chronicle of Higher Education*, January 3, 2003. LexisNexis (accessed April 10, 2010).

The New York Times ran a feature written by writer John Irving, appearing at the same time the Commission on Athletic Opportunity was in its semi-final meetings. Irving discussed what he considered the two differing versions of Title IX. The first version as it appeared and as it passed Congressional and Presidential scrutiny in 1972 and the resulting 1979 Interpretation issued from O.C.R., the regulatory agency authorized with Title IX's enforcement. The 1979 Interpretation was considered, by Irving, to bring the concept of quotas into the enforcement of the gender law. He noted that the interpretation, in essence, over-corrected the situation occurring in athletic venues. As a result, Irving pointed out, an unintentional outcome affecting male athletes occurred which caused them to lose opportunity. He wrote that nowhere else in the academic world were these proportionality rules practiced as such. Irving discussed the decline of wrestling, the end of opportunity for the male walk-on athlete and the perceptible disinterest women seem to have in competitive sports in comparison to men. He also referred to the impact football had on athletic budgets and the unfair practice of the proportionality standard. Irving called for the elimination of this test in Title IX applications.¹⁴²⁹

As readers were grasping the concepts Irving purported, Diana Schemo reported "Female Athletes Attack Plans to Change Title IX." As The Commission on Opportunity in Athletics was wrapping up their tasks, female athletes were protesting in an attempt to protect their sport opportunities. Critiquing proposals to relax enforcement strategies, women's activists sounded the alarm while "fair enforcement" was on the minds of the commissioners. Political issues, according to Frederick Hess of the American Enterprise Institute, were detractors to progress. He stated, "If unemployment were a little lower and Iraq weren't on the agenda, I think it would

¹⁴²⁹ J. Irving, "Wrestling with Title IX," *New York Times*, January 28, 2003. LexisNexis (accessed April 30, 2010).

be gaining more attention.”¹⁴³⁰ Hess continued commenting on Americans’ middle-ground stance on Title IX, “Which you can manipulate doing nothing more complicated than redefining the terms you use. It’s why the proponents of proportionality speak out about fairness and opportunity and the other side talks about quotas. . . .”¹⁴³¹ Schemo followed two days later with a report that the Commission on Opportunity in Athletics was attempting to go beyond its charge to suggest exemption of college sports from anti-trust laws. The commissioners were trying to ease costs in order to protect male athletes. Other hot topics involved in the debate were whether to allow private donations to provide support for men’s athletics and reporting participation by counting allocated spots on teams even if they were not filled.¹⁴³² In “Advisory Panel Backs Easing Rules for Title IX,” Schemo continued to share information with readers as the commissioners wrangled with final efforts to gain consensus. Commissioners appeared to be leaning toward small steps that would make differences instead of promoting radical ideas that had been offered during the deliberation. Men harmed by Title IX thought the approach to relaxing Title IX was good and advocates for interests of women met this proposal with predictions of negative effects. The two proposals favored at this writing (2003) included expansion of the emphasis on the survey test and counting roster spots available, as a means of assessing parity—even if there were no participants to fill them.¹⁴³³

The New York Times reporter, Schemo, aware that The Commission on Opportunity in Athletics was pondering proposals that would become recommendations to send forward to the Department of Education recorded negative reaction as the proposal became public. Surveys for

¹⁴³⁰ D. J. Schemo, “Women’s Athletics; Female Athletes Attack Plans to Change Title IX,” *New York Times*, January 29, 2003: para. 18-19. LexisNexis (accessed April 30, 2010).

¹⁴³¹ *Ibid.*, Schemo, January 29, 2003: para. 19.

¹⁴³² D. J. Schemo, “Women’s Athletics, Title IX Panel Favors Lifting Anti-Trust Laws,” *New York Times*, January 30, 2003. LexisNexis (accessed April 30, 2010).

¹⁴³³ D. J. Schemo, “Colleges; Advisory Panel Backs Easing Rules for Title IX,” *New York Times*, January 31, 2003. LexisNexis (accessed April 30, 2010).

interest, according to proponents of women's rights, would stymie opportunity because if there was little response—regarded as lack of interest—then no progressive implementation of new sports would have to be made by an institution of higher learning, thus “freezing discrimination in place.”¹⁴³⁴ Roberts compared the opulence afforded football to the Spartan conditions minor sports endured before their elimination in “Therapeutic Treatments for Title IX.” Roberts stated that there might just be cause for uproar as he included the comments of Zimbalist, economics professor at Smith College: “Go point by point and compare football to the cost of teams that are getting eliminated . . . and you can see there is more than enough money out there for every one if they would just get rid of the waste.”¹⁴³⁵ One of the wastes referred to in this article was pre-game spa treatment for football team members. Roberts cautioned readers not to blame Title IX but to look at the patterns of spending. As the Commission finished its work, the subject of reforms in football was not approached. Zimbalist favored anti-trust action by Congress which would level the wealth to be shared among all interested athletes.¹⁴³⁶

Suggs reported to *Chronicle* readers that keen interest existed in use of surveys, part of the 1979 Interpretation's three-part test. Historically, according to Valerie Bonnette, former O.C.R. investigator, courts rejected use of surveys, “because they would freeze [women's] progress at the status quo.”¹⁴³⁷ Also considered were ideas that would exempt walk-on athletes from the proportionality test as well as take non-traditional students out of the parity calculation when using the undergraduate student body number for comparison. One voice demonstrating concern came from Christine Grant who stated, “This is just about predetermining the amount of

¹⁴³⁴ D. J. Schemo, “Colleges; Title IX Plans Assailed as Broad and Harmful,” *New York Times*, February 1, 2003. LexisNexis (accessed April 30, 2010).

¹⁴³⁵ S. Roberts, “Sports of the Times; Therapeutic Treatments for Title IX,” *New York Times*, February 2, 2003: para. 9. LexisNexis (accessed April 30, 2010).

¹⁴³⁶ *Ibid.*, Roberts, February 2, 2003.

¹⁴³⁷ W. Suggs, “Smoke Obscures Fire in Title IX Debate as Federal Panel Adjourns,” *Chronicle of Higher Education*, February 7, 2003. LexisNexis (accessed April 10, 2010).

discrimination we are going to practice,” following her statement reprimanding the commission on their ignorance of Title IX history and policy guidelines.¹⁴³⁸

Suggs reviewed suggestions coming out of the proceedings from the Commission on Opportunity in Athletics. As the Commission wrapped up its work, one area of constant debate revolved around the 1979 Interpretation and the three-part test. Proportionality was under review because of its pseudo-quota-like requirements. One proposal involved a 50-50 split between genders with a margin of accountability ranging from three to seven percentage points. Calls to eliminate the proportional feature were made during deliberation.¹⁴³⁹ On the same date, Ellen Staurowsky informed Chronicle readers about the final phases, including public input, of the Commission’s information gathering. The Commission on Opportunities in Athletics began assimilating knowledge gained into viable plans for future applications. According to outside reports, some of the recommendations countered the thirty-year progress made in gender parity. Staurowsky reported that only four commissioners remained on site to see the process to the end. She noted that from the beginning The Commission was lacking the voice from Division III athletics, as she put it “known for balancing athletics and academic priorities,” and from those who had researched historical and political developments during the life of the law. Staurowsky was aware of conflicting messages the Commission appeared to put forth as co-chair, Leland stated, “We are not here to adjudicate past disputes. We are not here to unravel conflicting sets of data and statistics. We are not here to assemble a lengthy research document.”¹⁴⁴⁰ Staurowsky asked rhetorically at the end of this utterance, “If the commissioners were not there for those

¹⁴³⁸ *Ibid.*, Suggs, February 7, 2003: para 24.

¹⁴³⁹ W. Suggs, “Proposals on Title IX Intensify the Debate Over Gender Equity,” *Chronicle of Higher Education*, February 14, 2003. LexisNexis (accessed April 10, 2010).

¹⁴⁴⁰ E. J. Staurowsky, “The Title IX Commission’s Flawed Lineup,” *Chronicle of Higher Education*, February 14, 2003: para. 5. LexisNexis (accessed April 10, 2010).

purposes, then why did they engage in the pretense of fact-finding and data-gathering?”¹⁴⁴¹

Commissioners shared with Staurowsky that one sense of discouragement during the process occurred when they reported their recommendations only to find them [the recommendations] reworded by O.C.R. staff reflecting different meanings from their [the commissioners] original intent. Non-voting members of the commission made the request to discontinue the Equity in Athletics Disclosure Act data collection discrediting the veracity of the numbers collected as reported and yet the same person was noted as using this EADA data in conferences referring to how useful it was. Staurowsky questioned whether Commission activities met the public expectations for a return on their investment or whether the Commission’s outcomes would fall short of what they could have accomplished.¹⁴⁴²

Schemo was back at the end of February 2003 to offer “Women’s Sports; Title IX Dissenters to Issue Report Criticizing Proposed Changes to Women’s Athletics.” The Commission on Athletic Opportunity found dissenters among the ranks who felt so strongly that they wrote a minority report. Julie Foudy, Women’s Sports Foundation president, and Donna de Varona, Olympian, went on record in the interview with Schemo that the commission members, “didn’t even acknowledge that discrimination exists for women.”¹⁴⁴³ Foudy and de Varona cited that their attempts to be heard on issues had been ignored and the reason behind their efforts was to balance the view coming out of the commission’s findings. The dissent was met with mixed reaction. Ted Leland, co-chair of the commission, had hoped that he could have mellowed the Foudy and de Varona minority report while the Education Department’s representative spokesperson, Susan Aspey, declined to acknowledge relevance in the critical dissent. Judith

¹⁴⁴¹ *Ibid.*, Staurowsky, February 14, 2003:para 5.

¹⁴⁴² *Ibid.*, Staurowsky, February 14, 2003.

¹⁴⁴³ D. J. Schemo, “Women’s Sports; Title IX Dissenters to Issue Report Criticizing Proposed Changes to Women’s Athletics,” *New York Times*, February 25, 2003: para. 3. LexisNexis (accessed April 30, 2010).

Sweet, N.C.A.A. vice president, stated, “Some of the recommendations on the table have the potential of institutionalizing discrimination against women.”¹⁴⁴⁴ Two days later, Schemo conveyed information to the public that as the report of the Commission on Opportunity in Athletics was released, members of the panel condemned the minority opinion. As a result of their six-month effort they offered twenty-three ideas—fifteen of which received unanimous support—to be sent forward to Secretary of Education, Rod Paige for consideration.¹⁴⁴⁵

Chronicle of Higher Education reporter Welch Suggs reported in “U.S. Commission on Title IX Calls for Protecting Men’s Teams” that he had accessed a confidential copy of the pre-report of the Commission on Opportunities in Athletics. In reviewing those proposed recommendations he commented on a noticeable focus on men’s sports. Suggs commented on the structure of the report indicating the four over-arching categories as: commitment, clarity, fairness and enforcement. Commissioners made special effort to condemn the practice of reducing the number of male minor sport teams to meet parity standards.¹⁴⁴⁶ Suggs offered “Cheers and Condemnation Greet Report on Gender Equity” in early March of 2003. The Commission on Opportunity in Athletics released their final report urging the Education Department to “publish clearer guidelines,” offered the argument “that male athletes lost opportunity, . . . recommended the Education Department publish new rules, . . . and called upon the Education Department to enforce current rules and guidelines.”¹⁴⁴⁷ Leland, co-chair, stated “We heard a lot of arguments that after 30 years, we’re still not there. . . Most of the commissioners would say that we still have much to do to ensure that women have equal

¹⁴⁴⁴ *Ibid.*, Schemo, February 25, 2003: para. 18.

¹⁴⁴⁵ *Ibid.*, Schemo, February 25, 2003.

¹⁴⁴⁶ W. Suggs, “U.S. Commission on Title IX Calls for Protecting Men’s Teams,” *Chronicle of Higher Education*, February 28, 2003. LexisNexis (accessed April 10, 2010).

¹⁴⁴⁷ W. Suggs, “Cheers and Condemnation Greet Report on Gender Equity,” *Chronicle of Higher Education*, March 7, 2003: para 3-4. LexisNexis (accessed April 10, 2010).

opportunities.”¹⁴⁴⁸ Supporters of men’s athletics did not think the report sufficiently covered their issues and promoters of women’s interests foresaw impeded progress. Secretary Paige planned to proceed with those fifteen recommendations that all commissioners agreed upon. Greenberger of the National Women’s Law Center predicted that schools and colleges would wait-and-see if new procedural guidelines would result from the recommendations thereby slowing progress toward full parity. The aforementioned minority report penned by Foudy and de Varona revealed points of disagreement among the commissioners. Foudy and de Varona reprimanded the panel actions stating, “They did not compile all the evidence necessary to fully address the state of gender equity in our nation’s schools and did not allow sufficient time for commissioners to conduct either a careful review of the evidence that was compiled or an assessment of the potential impact of the various recommendations.”¹⁴⁴⁹

New York Times reporter Longman described Brigham Young University’s decision to buy a franchise in a recreational soccer group not bound by N.C.A.A. oversight as a way to increase the competitive edge of the men’s non-varsity soccer club and also stay aligned with Title IX. Seen as an interesting alternative, the idea was being scrutinized by the N.C.A.A. and women’s groups.¹⁴⁵⁰ On the other side of the country universities were announcing plans to drop sports. In “East Tennessee State U. Will Cut Football Program After Season” Suggs reported about several Division I schools planning cuts in their athletic programming. West Virginia University, California State University at Fresno and the University of Toledo were among those mentioned. According to athletic leadership, the schools dropped various men’s and women’s

¹⁴⁴⁸ *Ibid.*, Suggs, March 7, 2003: para. 5.

¹⁴⁴⁹ *Ibid.*, Suggs, March 7, 2003: para. 17.

¹⁴⁵⁰ J. Longman, “Soccer; College Team Finds Novel Alternative to N.C.A.A.,” *New York Times*, March 7, 2003. LexisNexis (accessed April 30, 2010).

sport teams with a two-fold purpose: To reduce budget expenditures and to meet Title IX requirements without adding more women's teams.¹⁴⁵¹

Approximately eighteen months after wrestling coaches and supporters of minor sports were denied authority to force the Department of Education to change Title IX their lawsuit was dismissed. The judge wrote that Title IX was only one of the reasons a school drops teams and the group could not prove their sport would be reinstated if they succeeded in their request.¹⁴⁵² The Associated Press carried news of the dismissal of the wrestling coaches' suit for their failure to illustrate they were warranted with the right to sue under Title IX. The wrestling group could not prove that the decline in men's sports would be remedied if their claim was successful,¹⁴⁵³ echoing coverage seen in *The Chronicle*. Another unintended outcome from Title IX affecting women of color was substantiated in *The Chronicle* report "Minority Women Still Underrepresented in College Sports." The Women's Sports Foundation distributed a compiled statistical record that showed women of color continued to be underrepresented in intercollegiate athletics.¹⁴⁵⁴

Frank Litsky shared with readers of *The New York Times* in "Colleges; Bush Administration Says Title IX Should Stay as It Is," that Gerald Reynolds, Education Department for O.C.R. leader, announced that Title IX would stay relatively intact. He issued a letter to instruct and remind the public of options for complying with Title IX emphasizing no quotas were required and that downsizing men's athletics was not an endorsed remedy to achieving

¹⁴⁵¹ W. Suggs, "East Tennessee State U. Will Cut Football Program After Season," *Chronicle of Higher Education*, May 9, 2003. LexisNexis (accessed April 10, 2010).

¹⁴⁵² W. Suggs, "Wresting Complaint Denied in Title IX Ruling," *Chronicle of Higher Education*, June 2, 2003. LexisNexis (accessed April 10, 2010).

¹⁴⁵³ The Associated Press, "Plus: Court News; Court Dismisses Title IX Suit," *New York Times*, June 12, 2003. LexisNexis (accessed April 30, 2010).

¹⁴⁵⁴ *Chronicle of Higher Education*, "Minority Women Still Underrepresented in College Sports," *Chronicle of Higher Education*, July 11, 2003. LexisNexis (accessed April 10, 2010).

parity. Women's advocates supported the action while men's groups indicated that the Department of Education had a misunderstanding of what the public expected.¹⁴⁵⁵

Araton submitted an article to *The New York Times* "Sports of The Times; Proud Fathers Cheering Title IX" offering a refreshing success narrative about John Elway and Mick Luckhurst's athletic daughters. Both Elway and Luckhurst credited Title IX for allowing opportunities for their daughters to compete and excel in athletics. Luckhurst reacted to efforts to change or abolish Title IX by saying in 100 years if women's interests had not equalized, then it would be time to look at changing the law.¹⁴⁵⁶ As an example of subtle ongoing discrimination in the same issue of *The New York Times*, D. West reported results of a federal court action mandating that Westchester High School switch the girls' soccer schedule from spring to fall. Title IX regulations were violated because the girls' teams' opportunities for skill development and championship competition were denied since the spring schedule did not include those championship contests.¹⁴⁵⁷

By July 2003, the Education Department chose to implement four of the recommendations put forth from The Commission on Opportunities in Athletics. Gerald Reynolds, O.C.R. leader, sent a "Dear Colleague" letter to re-affirm O.C.R.'s commitment to Title IX's guidelines. The information in Reynolds' letter were a featured notice about the disfavored practice of dropping of men's sports opportunities used by universities to meet compliance, and an assertion about O.C.R.'s recommitment to the enforcement of Title IX regulations with universities putting them on notice to expect punitive results if found violating

¹⁴⁵⁵ F. Litsky, "Colleges; Bush Administration Says Title IX Should Stay As It Is," *New York Times*, July 12, 2003. LexisNexis (accessed April 30, 2010).

¹⁴⁵⁶ H. Araton, "Sports of the Times; Proud Fathers Cheering Title IX," *New York Times*, July 17, 2003. LexisNexis (accessed April 30, 2010).

¹⁴⁵⁷ D. West, "Judge Orders Season Shift in Westchester Girls' Soccer," *New York Times*, July 17, 2003. LexisNexis (accessed April 30, 2010).

the gender statute. Other panel recommendations included keeping enforcement decisions within regions the same and looking at a more equal application of the three prongs in the 1979 Interpretation. The earlier suggestion that Reynolds championed survived but not totally intact. Private funding for sports could be allowed but Title IX still had to be obeyed.¹⁴⁵⁸

Suggs assessed 2002 Equity in Athletics Disclosure Act (E.A.D.A.) data collected to find increases in participation in sports toward gender equity were slight and that higher operating costs were enemy to both genders. Analyzing the data Suggs offered a look at results of Division I profits and losses. Suggs featured comments from various coaches in the article, “We try to keep those numbers in check,” says Charles Jones, Central Connecticut’s athletic director. Even then these numbers are changing, the number of men who will come to college to participate in sports still outweighs the number of women . . . so we still have to do that because it’s the law and we feel strongly about the fact that there should be equal opportunity.”¹⁴⁵⁹ Suggs explained the practice of keeping a minimum on men’s rosters (capping) while encouraging growth of women’s teams as defined by Leland as “bloating up” the roster. Coach Myers at Indiana State University explained that active recruitment for women’s sport teams was expected of their athletic staff and, as a result, women’s participation and longevity on a team correlates directly to the quality of experience and the time spent playing. Meyers considered these as forces, quality of experience and time spent playing, were used to combat attrition on women’s teams whereas men liked to be part of the team regardless of whether they played or not.¹⁴⁶⁰

¹⁴⁵⁸ W. Suggs, “Education Department Stands Pat on Title IX,” *Chronicle of Higher Education*, July 25, 2003. LexisNexis (accessed April 10, 2010).

¹⁴⁵⁹ W. Suggs, “Colleges Make Slight Progress Toward Gender Equity in Sports,” *Chronicle of Higher Education*, July 25, 2003. LexisNexis (accessed April 10, 2010).

¹⁴⁶⁰ *Ibid.*, Suggs, July 25, 2003.

New York Times reporter, Sandomir, described the development of women's wrestling as an emerging and popular sport at the college-level.¹⁴⁶¹ Meanwhile the men's sports advocacy group, College Sports Council representing men's wrestling and other men's minor sports, sued the General Accounting Office for producing what they considered untrue information about the decline of men's sports. The G.A.O. report, according to the College Sports Council, provided information which underestimated the deterioration of men's intercollegiate competition in wrestling and other minor sports. The group wished to see the G.A.O do away with the report.¹⁴⁶²

Copies of letters were part of the public record maintained by O.C.R. introducing major publications of additional clarifications of regulations or information to general stakeholders in gender relations. In response to "'Open to All' Title IX at Thirty," the letter "Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance," was issued by Gerald Reynolds, Assistant Secretary for Civil Rights, on July 11, 2003.¹⁴⁶³

Dissertations continued to relay unique stories about the topic of Title IX. Many volumes are dedicated to the historic development of women's athletics or the compliance with Title IX. Farchmin (2003) studying at The Florida State University looked at women who participated in college athletics before the passing of Title IX from the year 1950 until the year Title IX passed, 1972.¹⁴⁶⁴

¹⁴⁶¹ R. Sandomir, "Wrestling; Wrestling's Niche Is Growing," *New York Times*, September 12, 2003. LexisNexis (accessed April 30, 2010).

¹⁴⁶² The Associated Press, "Sports Briefing," *New York Times*, September 13, 2003. LexisNexis (accessed April 30, 2010).

¹⁴⁶³ G. Reynolds, "Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance," Letter. (2003). <http://www.ed.gov/about/offices/list/ocr/titleixguidanceFinal.html>.

¹⁴⁶⁴ E. L. Farchmin, *Before the Revolution: The Experiences of Individual Women Involved in Intercollegiate Athletics: 1950-1972*, Abstract. Dissertation. The Florida State University, 2003. ProQuest AAT 3137423 (accessed October 15, 2009).

Pennington discussed the reopening of the conversation to have cheerleading recognized as a sport in 2004 in “From Sideline to Stage, With Lift From Title IX,”¹⁴⁶⁵ while Salzman interviewed coaches, former coaches and administrators in a look at how the women’s basketball team developed and prospered at the University of Connecticut with influence from Title IX and the university’s eventual commitment to gender equity in athletics.¹⁴⁶⁶

In April 2004, a Title IX letter entitled “Dear Colleague” was distributed reaffirming compliance responsibilities of the institution, telling where to post statements of compliance and identity of the designated person to coordinate Title IX activities, updating previous communiqués sent out by the organization.¹⁴⁶⁷

Bucknell and Tulane, as reported by Suggs to *Chronicle* readers, restored teams dropped earlier in response to Title IX compliance. Bucknell received a generous donation earmarked to bring the wrestling team back to the university as well as to fund the developing women’s rowing team. Tulane developed women’s swimming which gave them the capacity to restore men’s track. In the same vein, *New York Times* journalist Macur captured the excitement surrounding the growing of women’s varsity rowing on the intercollegiate-level.¹⁴⁶⁸

West offered a follow-up to high schools violating Title IX by moving girls’ soccer to spring for competition as noted earlier in this chapter. The 2nd Circuit Court of Appeals agreed with the district court decision and required the high schools to switch the season back to fall. Originally, out of an effort to space out opportunity for participation, leaders at the high school switched the schedule of girls’ soccer competition to spring which disallowed the girls to

¹⁴⁶⁵ B. Pennington, “From Sideline to Stage, With Lift From Title IX,” *New York Times*, April 4, 2004. LexisNexis (accessed April 30, 2010).

¹⁴⁶⁶ A. Salzman, “UConn Basketball, Then and Now,” *New York Times*, April 18, 2004. LexisNexis (accessed April 30, 2010).

¹⁴⁶⁷ U.S. Department of Education, Office for Civil Rights, “Dear Colleague Letter,” (April 2004). http://www.ed.gov/about/offices/list/ocr/responsibilities_ix.html.

¹⁴⁶⁸ J. Macur, “‘Never Rowed?’ Take a Free Ride?” *New York Times*, May 28, 2004. LexisNexis (accessed April 30, 2010).

compete in district championships.¹⁴⁶⁹ Other efforts to equalize genders at the interscholastic-level involved changing images socially held about women athletes. Jane Gottesman designed an educational module which grew out of her book, “Game Face: What Does a Female Athlete Look Like.” Gottesman’s work was incorporated into educational curriculum to give students a chance to consider various life outcomes resulting from women’s participation in sports.¹⁴⁷⁰

Chronicle reporter, Raftery indicated in “Supreme Court to Review Title IX Case,” *Jackson v. Birmingham Board of Education* would be presented before The Supreme Court. The case involved Jackson, former girls’ basketball coach, exposing Title IX violations related to his team and his salary as the girls’ basketball coach. His school system relieved him of his coaching duties as a means of punishing Jackson for revealing such information. Bringing suit against Birmingham School Board, Jackson, considered a whistle-blower, was denied a hearing in Alabama’s court system because he was not thought to be covered by the gender statute. When he applied to be heard by The Supreme Court, his case would test the limits of Title IX and the interpretation of who could be protected from retaliation. Greenberger, co-president of the National Women’s Law Center commented on historical development of Title IX when she stated, “Retaliation has been a serious issue ever since Congress first considered passing Title IX. . . At the hearings at the time, people were talking about not only the problem of discrimination but the problem of retaliation.”¹⁴⁷¹ As a local citizen Jackson struggled with his school system’s lack of attention to gender equity issues in athletics. Pennington described efforts by other local citizens making a decision to fight gender discrimination in other high

¹⁴⁶⁹ D. West, “Reschedule Girls’ Soccer, 2 Schools are Ordered,” *New York Times*, June 5, 2004. LexisNexis (accessed April 30, 2010).

¹⁴⁷⁰ J. Weiner, “Celebrating Women’s Sports, One Image at a Time,” *New York Times*, June 6, 2004. LexisNexis (accessed April 30, 2010).

¹⁴⁷¹ I. Raftery, “Supreme Court to Review Title IX Case,” *Chronicle of Higher Education*, June 25, 2004: para. 5. LexisNexis (accessed April 10, 2010).

schools in regard to athletic facilities. The movement leaders and supporters commented that for many years colleges were the focus for complaints to O.C.R. but in 2004 high schools provided fertile ground for lawsuits and general complaints. These actions resulted in athletic associations paying more attention to the rigors of Title IX. Pennington's discovery solidified that the fathers of athletic daughters actively drove some of the changes seen on the K-12 level.¹⁴⁷²

The Chronicle writer, Suggs, disclosed in "Women's Athletic Departments Verge On Extinction" that Brigham Young University in Utah, one of the last universities to have separate men's and women's athletic departments, had decided to merge its programs. Ms. Plonky of University of Texas at Austin commented on the effort it takes to manage such a merger and not lose sight of women's athletics. She discussed the different philosophy women's separate programs enjoyed. Plonky stated: "Women athletes were at school because of education, and physical activity was encouraged as a byproduct of education. That was always maintained (education) in the best programs (athletic), with women as advocates and that was one of the aspects they brought to the men's programs."¹⁴⁷³ Suggs noted that leaders of women's athletic programs weren't expected to produce income, which helped them operate at a different value-level from their male counterparts. Other women's separate program advocates cited their opportunity to focus energy and attention on their programs.¹⁴⁷⁴ In the next issue of *The Chronicle*, Secretary of the Education Department, Rod Paige had announced he was stepping down from the post because he had "taken the job to help improve the nation's elementary and secondary schools and to help establish a culture of accountability in American education."¹⁴⁷⁵

¹⁴⁷² B. Pennington, "Title IX Trickles Down to Girls of Generation Z," *New York Times*, June 29, 2004. LexisNexis (accessed April 30, 2010).

¹⁴⁷³ W. Suggs, "Women's Athletics Departments Verge On Extinction," *Chronicle of Higher Education*, November 19, 2004: para. 19. LexisNexis (accessed April 10, 2010).

¹⁴⁷⁴ *Ibid.*, Suggs, November 19, 2004.

¹⁴⁷⁵ S. Burd, "A New Face for Education in a Second Bush Term," *Chronicle of Higher Education*, November 26, 2004. LexisNexis (accessed April 10, 2010).

Paige indicated according to Burd, that he had done what he had set out to do. Bush recommended Margaret Spelling as Paige's replacement.¹⁴⁷⁶

In "Protecting the Whistle-Blower" in November 2004 in *The New York Times* an unnamed reporter explained the pre-Supreme Court arguments in terms that the general reader could understand. Whistle-blowers were defined as persons who stand up for rights of others, and the reporter stated they too must be protected from harm.¹⁴⁷⁷ On the following day, Greenhouse reminded readers in "Retaliation at Issue in Discrimination Case," that The Supreme Court was tackling a relatively new concept about Title IX's shield for those who point out discrimination. The law had traditionally been known to cover retaliation aimed at victims of discrimination but it had not been applied to protecting the whistle-blower from harm.¹⁴⁷⁸ *The Chronicle* correspondent, Lipka, also gave details as The "Supreme Court Weighs Applying Title IX to Whistle Blowers." After oral arguments were heard at the Supreme Court Lipka reported proceedings and statements from *Jackson v. Birmingham Board of Education*. This case was an effort to decide whether retaliation brought on by whistle-blowing would be allowed for indirect victims of gender discrimination. The case evolved as the high school coach, Jackson, brought a lawsuit against his school system after he was fired from the coaching part of his job because he entered a grievance that his girls' basketball team had suffered Title IX violations. Two lower courts had held for the Board so that The Supreme Court scrutiny would actually determine Jackson's right to bring suit. Those arguing the case favored a broad reading of the law so that people who saw and reported unfair treatment could legally be protected from reprisals. Justice Souter noted that "unless you allow this teacher or this whistle-blower to bring private action, the

¹⁴⁷⁶ *Ibid.*, Burd, November 26, 2004.

¹⁴⁷⁷ New York Times, "Protecting the Whistle-Blower," *New York Times*, November 30, 2004. LexisNexis (accessed April 30, 2010).

¹⁴⁷⁸ L. Greenhouse, "Retaliation at Issue in Discrimination Case," *New York Times*, December 1, 2004. LexisNexis (accessed April 30, 2010).

law is a dead letter.”¹⁴⁷⁹ Jackson opined that to not report the wrong would mean that you endorsed it.¹⁴⁸⁰

Anderson and Cheslock (2004), reviewed the impact of Title IX requirements, especially gender participation proportionality, against data reported as required by The Equity in Athletics Disclosure Act between the years,1995-1996 to 2001-2002, in their article “Institutional Strategies to Achieve Gender Equity in Intercollegiate Athletics: Does Title IX Harm Male Athletes?” Anderson and Cheslock used a multiple regression analysis technique to state their conclusion about Title IX compliance and the intentional and unintentional harm to male athletic participation in the effort to achieve gender equity.¹⁴⁸¹

As Title IX was reaffirmed, dissertation production was steady in the middle of the decade. Paule of Miami University examined the beliefs about Title IX held by the people involved in the university where the decisions about athletics were made. From the effort, several themes presented themselves such as disregard for dissimilarity between men and women, football’s friend and foe relationship with other sports and the balance of opportunity.¹⁴⁸² Jacobsen of The University of Southern Mississippi investigated secondary-level athletic staff ideas about Title IX and gender parity.¹⁴⁸³

O.C.R. maintained an electronic version of their Case Resolution and Investigation Manual (C.R.I.M.) giving guidelines to the agency on how to carry out compliance investigation

¹⁴⁷⁹ S. Lipka, “Supreme Court Weighs Applying Title IX to Whistle Blowers,” *Chronicle of Higher Education*, December 10, 2004: para. 10. LexisNexis (accessed April 10, 2010).

¹⁴⁸⁰ *Ibid.*, Lipka, December 10, 2004.

¹⁴⁸¹ D. J. Anderson and J. J. Cheslock, “Institutional Strategies to Achieve Gender Equity in Intercollegiate Athletics: Does Title IX Harm Male Athletes?” *American Economic Review*, Vol. 94, No. 2, (May, 2004):307-311. Stable URL: <http://links.jstor.org/sici?sici=0002-8282%28200405%2994%3A2%3C307%3AISTAGE%3E2.0.CO%3B2-D>.

¹⁴⁸² A. Paule, *Community Perceptions of Title IX*, Abstract. Dissertation. Miami University, 2004. ProQuest AAT 1421099 (accessed October 15, 2009).

¹⁴⁸³ D. Jacobsen, *An Examination of Gender Equity Compliance Through the Perception of High School Girls’ Sports Head Coaches*, Abstract. Dissertation. The University of Southern Mississippi, 2004. ProQuest AAT 3149914 (accessed October 15, 2009).

and case resolution. An “Additional Clarification of Intercollegiate Athletics Policy: The Three-Prong Test, Part Three” user’s guide was made available to the public in 2005.¹⁴⁸⁴ This publication was introduced in a letter by James Manning, under the authority of Assistant Secretary for Civil Rights, in which the term “Safe Harbor” was used as a means for complying with Title IX regulations.¹⁴⁸⁵ A technical manual by Karr and Sanil supported the creation of The User’s Guide.¹⁴⁸⁶

Suggs examined the lawsuit brought by the College Sports Council against The Government Accountability Office in “In lawsuit, Advocates of Men’s Sports Accuse U.S. Agency of Anti-Male Bias.” The Government Accountability Office (G.A.O.) was sued by advocates of men’s minor sports who charged that the research group down-played the reporting of cuts to men’s athletic teams. G.A.O. was cited for leaving out what the group considered vital data for lower academic-level sports (scholastic and community colleges). The G.A.O. defended itself by acknowledging that reliable data were not available for those levels and the change in their focus in the study in question was approved by the legislators’ offices who requested the report.¹⁴⁸⁷

New York Times reporter Vecsey interviewed Jackson after The Supreme Court found in favor of protecting people who report Civil Rights violations. Jackson cited the conditions that led him to continue fighting for the rights of his basketball team. He wanted them to enjoy some of the same advantages brought to their male counterparts, simple things such as regulation

¹⁴⁸⁴U.S. Department of Education, Office for Civil Rights, “Additional Clarification of Intercollegiate Athletics Policy: Three-Part Test – Part Three,” Washington, D.C., (2005).

¹⁴⁸⁵ J. R. Manning, “Dear Colleague Letter,” (March 2005).
<http://www.ed.gov/about/offices/list/ocr/doc/title9guidanceadditiona.html>.

¹⁴⁸⁶ A. F. Karr and A.P. Sanil, “Title IX Data Collection: Technical Manual for Developing the User’s Guide. Technical Report 150,” Research Triangle Park, North Carolina: National Institute of Statistical Sciences. (2005). <http://www.ed.gov/about/offices/list/ocr/docs/title9technicalmanual.pdf>.

¹⁴⁸⁷ W. Suggs, “In Lawsuit, Advocates of Men’s Sports Accuse U.S. Agency of Anti-Male Bias,” *Chronicle of Higher Education*, January 14, 2005. LexisNexis (accessed April 10, 2010).

basketball rims and backboards. As a result of Jackson's struggle on behalf of his girls' basketball team, they found themselves practicing and playing in regulation accommodations with a budget on par with the boys' team.¹⁴⁸⁸ Also featured the same day in the *New York Times*, "Justices Say Law on Sex Bias Guards Against Retaliation, Too." Greenhouse gave a report on The Supreme Court decision citing Title IX's newest interpretation in a legal sense as protecting victims of discrimination and those who stood up for their freedom from retaliation. Greenhouse cited Justice O'Connor's statement which set the tone of the narrow victory, "Retaliation against a person because that person has complained is another form of intentional sex discrimination The statute is broadly worded: it does not require that the victim of retaliation must be the victim of the discrimination that is the subject of the original complaint."¹⁴⁸⁹ The Supreme Court ruling favoring Jackson gave him an opportunity to take his case back to the lower courts in Alabama to actually seek reparations from the Birmingham School Board.¹⁴⁹⁰ In the dissent of *Jackson v Birmingham Board of Education*, Justice Thomas explained that the majority opinion extended implied rights beyond what the language and common sense conclusions allowed in Title IX's statutory language. He wrote that retaliation was not discrimination as interpreted in the statute. In prior instances the court addressed discrimination based on sex of the victim and this was not the case in *Jackson v Birmingham*. The actual discrimination had only been alleged, not proved in a court of law. Accordingly the statute itself was written in such a way that it did not contain the right to remedy for retaliation.¹⁴⁹¹

¹⁴⁸⁸ G. Vecsey, "A High School Coach Blows the Whistle," *New York Times*, March 30, 2005. LexisNexis (accessed April 30, 2010).

¹⁴⁸⁹ L. Greenhouse, "Justices Say Law on Sex Bias Guards Against Retaliation, Too," *New York Times*, March 30, 2005: para. 6. LexisNexis (accessed April 30, 2010).

¹⁴⁹⁰ *Ibid.*, Greenhouse, March 30, 2005.

¹⁴⁹¹ *Jackson v Birmingham Board of Education*, (2005). 544 US 167, 161 L Ed 2d 361, 125 S Ct 1497.

Uprising in the ranks of supporters of female rights was reported by Suggs as reaction to the new emphasis on surveying interests surfaced. O.C.R. defended its position as Suggs reviewed the 1979 Interpretation of Title IX dealing with proportionality of athletes to student body, a consistent trail of expanding opportunity or accommodating interests of the options available to institutions of higher learning for Title IX compliance. Advocates at the National Women's Law Center condemned the new procedure and the sample survey provided on O.C.R.'s website by stating, "The survey is inherently flawed because it presumes a survey alone can accurately measure student interests . . . The guidance does not require schools to look at other factors they once had to consider, such as coaches' and administrators' opinions or women's participation in surrounding high schools or recreational leagues."¹⁴⁹² O.C.R. did not consider the change to require a public comment opportunity and as it stood, it had the power to weaken Title IX reach.¹⁴⁹³

Lipka described the new broader interpretation of Title IX that allowed supporters of the injured party to make complaints on behalf of them without fear of incurring personal retribution. Lawyer Thomas representing the Birmingham School Board offered argument that allowed complaints to O.C.R. but not through the legal system. Dissenting justices explained that broadening the law to cover advocates went beyond Congressional intent as explained by Justice Thomas. While many predicted increased litigation, Samuels of the National Women's Law Center asserted "the ruling ultimately is a benefit to schools because it will encourage people to come forward to make schools aware of potentially discriminatory conditions and to

¹⁴⁹² W. Suggs, "New Policy Clarifies Title IX Rules for Colleges; Women's Groups Object," *Chronicle of Higher Education*, April 1, 2005: para. 16. LexisNexis (accessed April 10, 2010).

¹⁴⁹³ *Ibid.*, Suggs, April 1, 2005.

enable them to address those conditions before the situation ripens into a lawsuit.”¹⁴⁹⁴ Birch Bayh, co-author of Title IX, indicated that with this ruling Title IX would be best enforced by local interests with no qualms about retribution. Bayh stated, “Coaches and teachers ‘can be the ultimate enforcers of Title IX.’”¹⁴⁹⁵

“A New Attack on Women’s Sports” alerted the public to the Education Department’s issue of a clarification in 2005 allowing the “survey of interest” test to be featured more as a target for educational institutions to gauge female athletic interests when planning for program expansion. N.C.A.A. leader, Myles Brand, predicted that a setback in progress would likely result from the application of the interest survey as sole purveyor of interests. The Education Department launched this clarification without public comment or Congressional debate.¹⁴⁹⁶

Suggs predicted in “New Developments May Alter Enforcement of Title IX” that a change in Title IX policy and a current lawsuit testing the protection of the whistle-blowers would change how Title IX would be used. Suggs also discussed O.C.R.’s third attempt to explain more clearly the earlier clarifications of Title IX regulations. The resulting clarification involved using survey techniques to estimate the level of interest women have in sports. Coleman, former O.C.R. official during The Clinton Administration, offered “It’s moving in the right direction where the clear, preferred avenue is where perhaps you make the life of a college or university administrator easier by knowing what your default is and what a good survey looks like” . . . Coleman continued, “This is about equal opportunity, but at the same point you have to draw a clear line about the scope of obligation . . . It’s a stretch to say any institution should be

¹⁴⁹⁴ S. Lipka, “High Court Expands Protections of Title IX,” *Chronicle of Higher Education*, April 8, 2005: para. 23. LexisNexis (accessed April 10, 2010).

¹⁴⁹⁵ *Ibid.*, Lipka, April 8, 2005: para. 25.

¹⁴⁹⁶ New York Times, “A New Attack on Women’s Sports,” *New York Times*, April 12, 2005. LexisNexis (accessed April 30, 2010).

responsible for students not on its campus.”¹⁴⁹⁷ The last part of the quote referred to Congressional leaders’ preference to include a survey to assess interest at the high school-level. O.C.R. acting official Manning offered that each prong was independent of each other and that the survey was only one option open to universities.¹⁴⁹⁸

Later that month, Pennington announced that while the N.C.A.A. was adding another game to college football’s season, it was also calling on member institutions to refrain from using the survey methods recently endorsed by The Education Department to measure athletic interest of females in their student body as a way to comply with Title IX.¹⁴⁹⁹

Chronicle writer Diament reported that Heather Mercer was back in the news as the latest appeals court mandated Duke University to pay Mercer’s lawyer fees. Also in *The Chronicle* journalist Schuman focused public attention with the article, “Senate Panel Says More Proof Needs for Colleges’ Compliance with Title IX.” Using email for surveying women’s athletic interest caught the attention of the Senate, which requested that The Education Department withdraw the policy. This method was described by a Senate panelist as an “insufficient measurement” and a “loophole” whereby institutions of higher learning could “bypass the comprehensive analysis of interest in women’s sports.”¹⁵⁰⁰ Two days later, *The New York Times* featured “For Women’s Athletics, A Tempest over a Survey” written by Fuchs. Fuchs introduced pro and con voices in the conversation about the survey method endorsed by The Education Department. Opponents argued that low response to such instruments would be interpreted as lack of interest and, therefore, cause no further development in women’s athletics.

¹⁴⁹⁷ W. Suggs, “New Developments May Alter Enforcement of Title IX,” *Chronicle of Higher Education*, April 15, 2005: 17, 19. LexisNexis (accessed April 10, 2010).

¹⁴⁹⁸ *Ibid.*, Suggs, April 15, 2005.

¹⁴⁹⁹ B. Pennington, “A New Attack on Women’s Sports,” *New York Times*, April 29, 2005. LexisNexis (accessed April 30, 2010).

¹⁵⁰⁰ J. Schuman, “Senate Panel Says More Proof Needed for Colleges’ Compliance with Title IX,” *Chronicle of Higher Education*, July 29, 2005. LexisNexis (accessed April 10, 2010).

Proponents noted that this survey grew out of requests from constituent institutions to help them comply with Title IX.¹⁵⁰¹

Two dissertations produced in 2006 included one from Washington State University and the other from St. Louis University. Robertson of Washington State University pondered the phenomenon of gender equity not extending to coaching positions for females at the university-level of athletic competition for females.¹⁵⁰² Champion of Saint Louis University asked several questions pertaining to the success of Title IX in achieving real change in athletic parity.¹⁵⁰³

Senate hearings were popular places to air opinions. Responding to The O.C.R.'s attempts to weaken Title IX, panelists explained that survey methods were not a good way to gauge interest since response rates could skew results. Sweet, an N.C.A.A. leader, offered this observation, "This approach is contrary to the intent of Title IX . . . and appears to be designed to enable schools to show that females are not interested in participation"¹⁵⁰⁴ [in sports]. In "Education Dept. Affirms Use of E-Mail Surveys in Title IX Compliance" Wolverton indicated that even though the email interest survey was not endorsed by Congressional leaders and they went as far as to ask the O.C.R. to withdraw the newly revised third part of the test, O.C.R. was authorizing its use. Women's advocates voiced their disappointment and reaction to the dangerous change to Title IX enforcement. The N.C.A.A. appealed to their member universities to do more than just use a survey to determine female athletic interests.¹⁵⁰⁵

¹⁵⁰¹ M. Fuchs, "For Women's Athletics, A Tempest Over a Survey," *New York Times*, July 31, 2005. LexisNexis (accessed April 30, 2010).

¹⁵⁰² M. L. Robertson, *Explaining Variations in the Sex Composition of Coaches for Women's Intercollegiate Athletic Teams*, Abstract. Dissertation. Washington State University, 2006. ProQuest AAT 3233280 (accessed October 15, 2009).

¹⁵⁰³ T. M. Champion, *Title IX: Impact Of Gender Equity On Female Athletes In Intercollegiate Athletics*, Abstract. Dissertation. Saint Louis University, 2006. ProQuest AAT 3250380 (accessed October 15, 2009).

¹⁵⁰⁴ A. K. Walters, "Former Athletes Criticize Title IX Rule," *Chronicle of Higher Education*, February 17, 2006. LexisNexis (accessed April 10, 2010).

¹⁵⁰⁵ B. Wolverton, "Education Dept. Affirms Use of E-Mail Surveys in Title IX Compliance," *Chronicle of Higher Education*, March 31, 2006. LexisNexis (accessed April 10, 2010).

“At James Madison, Title IX is Satisfied but the Students Are Not,” authored by Pennington, captured the essence of what the University students and administrators were feeling about the recent cuts to minor sports in an effort to meet Title IX compliance. Students were protesting the cuts by holding demonstrations. Athletic officials verified that the savings from the cuts were miniscule compared to their entire budget. Others speculated that the cuts stemmed from the upcoming N.C.A.A. 10-Year certification review which included a review of the institution’s gender equity plan.¹⁵⁰⁶ Covering the cuts at James Madison, Lipka reported “In a New Twist on ‘Equal Opportunity’ A University Cuts Women’s Sports” about the move to realign their athletic programming by cutting ten teams, including women’s sports. Since emerging interest seemed to drive potential growth in athletics, James Madison trimmed its offerings in order to get away from the interest and accommodation prong of the 1979 Interpretation. By cutting the teams, James Madison was able to meet the proportionality test.¹⁵⁰⁷ Students and coaches who were informed their teams were cut were bewildered and disturbed that their opportunities had been taken from them. The consultant who helped James Madison decide its athletic department reduction stated that “There is no constitutional right to play anything. . . Young people are resilient. They’ll get over it.”¹⁵⁰⁸

In November 2006, an update to Title IX was published in the *The Federal Register* and dealt mainly with elementary and secondary school compliance issues allowing for the current single-sex pedagogical trends and techniques.¹⁵⁰⁹

¹⁵⁰⁶ B. Pennington, “At James Madison, Title IX is Satisfied but the Students Are Not,” *New York Times*, October 7, 2006. LexisNexis (accessed April 30, 2010).

¹⁵⁰⁷ S. Lipka, “In a New Twist on ‘Equal Opportunity’ A University Cuts Women’s Sports,” *Chronicle of Higher Education*, November 3, 2006. LexisNexis (accessed April 10, 2010).

¹⁵⁰⁸ Lipka, November 3, 2006: para. 27.

¹⁵⁰⁹ U.S. Department of Education, “Final Regulations Non Discrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” *71 Federal Register*, No. 206 (October 26, 2006): 62530.

Linda Jean Carpenter, Ph.D., J.D., and R. Vivian Acosta, Ph.D., (2006), released new results of their on-going national longitudinal study for years 1977—2006, showing rising participation rates for female collegiate athletes.¹⁵¹⁰ Examples of real people making a difference in the early years of Title IX's history included Billie Jean King's¹⁵¹¹ zealous influence heightening America's awareness of gender equity in sports when she challenged myths about female performance limits in a tennis match with Bobby Riggs. Bernice Sandler's fundamental efforts to access equal employment opportunities in higher education created awareness in the public eye so that Congress, society and the legal system addressed gender disparity in multiple arenas.¹⁵¹² In the fall of 1995, O.C.R. drafted a "Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test" in response to House and Senate attempts to quash funding for Title IX policy enforcement. This clarification was issued from the Department of Education, Office for Civil Rights in January 1996.¹⁵¹³

Discussing the trend of dropping sports as a way to comply with Title IX, Jon Vegosen noted in "Starve Football, feed Athletics" that sports cut usually were Olympic ones. Mentioning the cuts in one line and bolstering of football budgets in the other, Vegosen cut to the heart of the matter. At the school featured in this article, revenue from football traditionally would underwrite the remaining athletic teams annually. Curbing expenses of the giant (football)

¹⁵¹⁰ L. J. Carpenter and R.V. Acosta, *Women In Intercollegiate Sport: A Longitudinal, National Study Twenty-Nine Year Update 1977-2006*, (2006). <http://webpages.charter.net/womeninsport/> (accessed April 8, 2006).

¹⁵¹¹ Title IX, "Recent News: Special Message from Billie Jean King [interview]," Exercise My Rights. (2006). <http://www.titleix.info/> (accessed April 8, 2006).

¹⁵¹² B. R. Sandler, "'Too Strong for a Woman' – The Five Words that Created Title IX," (1997). <http://www.berniceandler.com/id44.htm> (accessed April 8, 2006). Originally appeared in Spring 1997 issue of *About Women on Campus*, former newsletter of the National Association for Women in Education.

¹⁵¹³ U.S. Department of Education, Office for Civil Rights, "Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test," (January 16, 1996). <http://www.ed.gov/about/offices/list/ocr/docs/clarific.html#two>.

was the argument Vegosen made in order to attempt to save Olympic sports and the training ground colleges provided for such sports.¹⁵¹⁴

Rhoden discussed the taboo subject of authority (power) and favor (privilege) and the inequality between African American and Euro-American women in athletics. Rhoden touched briefly on the historical development of athletic competition and the success African American women enjoyed as athletes. The public image, historically speaking, was often marred by crude and degrading remarks made by sports officials and radio talk show hosts. Statistics related to participation and the sports African American women traditionally pursued, basketball and track, were presented by Rhoden.¹⁵¹⁵

In “Study May Fuel Debate Over Title IX’s Effect on Male Sports,” Pennington focused on another study released for use in the wider public. Pennington presented supporters of the study, The Women’s Sports Foundation, and detractors, The College Sports Council. The study itself featured a chart of institutions showing issues with the proportionality test but not necessarily Title IX as a whole. College Sports Council leaders contended, according to Pennington, that the report did not give the true picture about the erosion of male sport opportunity in wrestling and minor sports and that the data used were not reliable.¹⁵¹⁶

Lipka announced the availability of The Government Accountability Office report covering fourteen years of athletic participation by men and women. Briefing *The Chronicle* readers, Lipka reported on the increase of women participating in sport activities and the slower rate of growth in men’s sports. Proponents of men’s collegiate sports questioned the data’s

¹⁵¹⁴ J. Vegosen, “Starve Football, Feed Athletes,” *New York Times*, January 28, 2007. LexisNexis (accessed April 30, 2010).

¹⁵¹⁵ W. C. Rhoden, “The Unpleasant Reality for Women in Sports,” *New York Times*, April 9, 2007. LexisNexis (accessed April 30, 2010).

¹⁵¹⁶ B. Pennington, “Study May Fuel Debate Over Title IX’s Effect on Male Sports,” June 6, 2007. LexisNexis (accessed April 30, 2010).

reliability, protesting that the report glossed-over the harm experienced by men who lost sport opportunities during the fourteen years included in the report.¹⁵¹⁷

A thesis appeared in 2007 that dealt with graduation rates and its relationship to sports participation. Kelly Troutman of Brigham Young University was reported to have authored a thesis detailing that “Girls who play interscholastic high school sports are 41 percent more likely to graduate from college than their counterparts.” Troutman identified the term “social capital” which referred to, in this case, “an athlete’s circle of supporters.”¹⁵¹⁸ Also in 2007 Fresno State University in California battled gender issues with female coaches who accused the school of violating Title IX and of retaliating against them when they complained. There were three lawsuits pending involving former women’s coaches. Other California campuses—Berkeley and Davis—were dealing with gender-related accusations that resulted in monetary settlements or court-awarded damages. Legislators in California began holding investigative hearings to find out what universities were doing to correct Title IX-related problems. The Athletic Department at Fresno State had not only been in Title IX trouble but in years prior they had been in a struggle with The N.C.A.A. The female coaches who had brought suit against Fresno State testified at hearings and were subjected to what they considered erroneous information provided by the university.¹⁵¹⁹

The Associate Press announced that long-time leader of the Women’s Sports Foundation Donna Lopiano had resigned after fifteen years of service to the organization.¹⁵²⁰ Lopiano

¹⁵¹⁷ S. Lipka, “GAO Examines Effects of Title IX,” *Chronicle of Higher Education*, July 27, 2007. LexisNexis (accessed April 10, 2010).

¹⁵¹⁸ New York Times, “Stat,” *New York Times*, July 29, 2007: para. 1. LexisNexis (accessed April 30, 2010).

¹⁵¹⁹ S. Lipka, “Fresno State Grapples With a Spate of Sex-Discrimination Claims,” *Chronicle of Higher Education*, August 3, 2007. LexisNexis (accessed April 10, 2010).

¹⁵²⁰ The Associated Press, “Sports Briefing Women’s Athletics Foundation CEO Resigns,” *New York Times*, August 11, 2007. LexisNexis (accessed April 30, 2010).

appeared in this dissertation a number of times offering comment on situations, lawsuits, complaints and general gender parity growth in athletics.

Four dissertations were produced in 2007. Gregg chronicled Indiana University-Bloomington's development of sports programming for women between the years 1965 – 2001.

¹⁵²¹ La Croix of The Florida State University traced the status of university-level athletic competition through twenty-eight years of development after Title IX. In retrospect, LaCroix attempted to gauge how far parity and participation had really come since the inception of Title IX regulations.¹⁵²² Prichett of the University of Kentucky (U.K.) followed the advancement of women's basketball at U.K. from Title IX formative years through 2002. Prichett offered insight into the emphasis placed on consigning women's basketball competition to non-varsity level until 1974 after which the women's team became a national contender in the decade of the 1980s yet was allowed to decline in stature in South Eastern Conference standings as the new century approached. Prichett noted that while Title IX gave the mandate to allow access to play, it did not necessarily at first support a controlling interest to allow females to coach female teams.¹⁵²³ Noftz (2007) of Ohio University tackled the study focusing on major football schools and their compliance record with Title IX.¹⁵²⁴

O.C.R. informed the public with its brochure: "How to File a Discrimination Complaint with the Office for Civil Rights." This brochure, last updated in 2007, gave persons who

¹⁵²¹ E. A. Gregg, *A History of Women's Intercollegiate Athletics at Indiana University-Bloomington: 1965-2001, A Historical Case Study*, Abstract. Dissertation. Indiana University, 2007. ProQuest AAT 3283104 (accessed October 15, 2009).

¹⁵²² R. M. LaCroix, *'You've Come Part Of The Way, Baby': The Status Of Women And Women's Sports In Intercollegiate Athletics 28 Years After Title IX*, Abstract. Dissertation. The Florida State University, 2007. ProQuest AAT 3301568 (accessed October 15, 2009).

¹⁵²³ R. J. Prichett, *The Battle Between Promise and Privilege: The History of Women's Basketball at the University of Kentucky: 1972-2002*, Abstract. Dissertation. University of Kentucky, 2007. ProQuest AAT 3263687 (accessed October 15, 2009).

¹⁵²⁴ B. B. Noftz, *An Exploratory Study Of Successful University Football Programs And The Level Of Compliance With Title IX*, Abstract. Dissertation. Ohio University, 2007. ProQuest AAT 3272923 (accessed October 15, 2009).

believed they had experienced discrimination guidance on how to file a formal complaint. The brochure gave succinct, important information regarding what constituted an infraction, deadlines to file after an incident occurred and where to file based on the enforcement region.¹⁵²⁵ To celebrate the 35th year of Title IX, Assistant Secretary for Civil Rights, Monroe, issued a letter on June 22, 2007, recapping statistical data highlighting accomplishments made to date.¹⁵²⁶

The Associated Press ran “Former Coach Settles Case” in February 2008 to announce that one of the Fresno State University female coaches who sued the university was instructed by a judge to settle for less or participate in another trial. The jury originally awarded Johnson-Klein 19.1 million dollars and she accepted one-third of that amount in settlement from Fresno State.¹⁵²⁷ Also in the *New York Times*, journalist Robinson tendered a story “Ivy League’s Director to Step Down After an Era of Change.” Jeff Orleans, according to Robinson, had taken a nominal organization, The Ivy League, and transformed it into a respected and well-run athletic conference. With no scholarships and a high demand for academics, Orleans led the organization successfully through racial integration and Title IX compliance.¹⁵²⁸

Sokolove discussed another unintentional outcome from the implementation of Title IX: “The Uneven Playing Field,” which is about injuries girls suffered as athletic competitors. Citing Title IX as an actor in the increase in serious sports-related injuries, Sokolove pointed to the A.C.L. injury as one of the most common in young girls. The lengthy article featured several young athletic girls who had learned to deal with injury and continued to play. Parents and medical professionals were voices included in this feature. Sokolove noted the lack of

¹⁵²⁵U.S. Department of Education, Office for Civil Rights, “How to File a Discrimination Complaint with the Office for Civil Rights,” (2007). www.ed.gov/about/offices/list/ocr/docs/howto.html.

¹⁵²⁶S. Monroe, “Dear Colleague Letter: Title IX 35th Anniversary Achievements,” (June 22, 2007). <http://www.ed.gov/about/offices/list/ocr/letters/colleague-20070622.pdf>.

¹⁵²⁷The Associated Press, “Former Coach Settles Case,” *New York Times*, February 14, 2008. LexisNexis (accessed April 30, 2010).

¹⁵²⁸J. Robinson, “Ivy League’s Director to Step Down After an Era of Change,” *New York Times*, February 27, 2008. LexisNexis (accessed April 30, 2010).

consistently compiled data about sports-related injuries making it difficult to estimate how large the problem was.¹⁵²⁹

Opportunity to participate in traditionally male contact-sports showed just how far the sports interests of women have come. Hollander interviewed women who play football. The teams' members are all women from various occupations who go to great lengths to play the contact sport thought to be too rough for women.¹⁵³⁰ Thomas wrote about the interest and growth of wrestling as a female sport at non-Division I colleges and universities. Added as an Olympic sport but not considered an N.C.A.A. emerging sport for women, Thomas notes that at smaller colleges, women enjoy participating in wrestling. In a twist, Title IX actually stymied program growth, according to Thomas, because roster size was not comparable to such sports as rowing, a popular Title IX compliance choice because you can field almost as many participants in rowing as you do in football. Thomas noted that overcoming social stereotypes also kept the sport from expanding.¹⁵³¹ Featured in fall 2008 in *The New York Times*, a "Study Finds Gender Barriers in Sports" reported about the difference in participation rates between urban and suburban and well versus disabled students. The researchers in the study found that suburban children enjoyed more gender balance than urban. The Women's Sports Foundation sponsored the data collection on activity trends of children. Sabo, lead researcher, indicated that the disparity between the children's participation rates was influenced by race and ethnicity,

¹⁵²⁹ M. Sokolove, "The Uneven Playing Field," *New York Times*, May 11, 2008. LexisNexis (accessed April 30, 2010).

¹⁵³⁰ S. Hollander, "Taking Aim at Gender Barriers In A Full-Contact Sport," *New York Times*, May 13, 2008. LexisNexis (accessed April 30, 2010).

¹⁵³¹ S. Thomas, "Women Want to Wrestle; Small Colleges Oblige," *New York Times*, May 27, 2008. LexisNexis (accessed April 30, 2010).

neighborhood or school location and personal family history. Findings showed that females in city areas tended to drop out of sports participation the older they became.¹⁵³²

Another interesting development in the world of varsity sports whose athletes were no longer allowed to compete in intercollegiate contests was conveyed to readers by Pennington. In “Dropped From Varsity Line Up, But No Longer Grumbling,” Pennington reviewed what had become of those athletes from minor sports commonly dropped from varsity rosters? They have become club sports with vibrant associations as they compete against each other. Gilinta, active since 1997 in the National Coaches Wrestling Association, stated, “Everyone was talking about Title IX effects and I thought those policies might eventually level out. . . So our goal was to posture ourselves as a bunch of schools that were ready to be brought back. But some of us have come to realize that institutions have been using Title IX as a cop-out. The real reason they are cutting sports is to save money.”¹⁵³³

Dissertations produced in 2008 are discussed below. Schmit of the University of Arizona reviewed legal elements that were used to hamper Title IX success.¹⁵³⁴ Snyder at Kent State University compiled an authoritative tome reviewing laws and court decisions featuring Title IX and athletics.¹⁵³⁵ Pilon traced the University of Kansas’ sports programming for women from 1890 to 1920.¹⁵³⁶

¹⁵³² K. Thomas, “Student Finds Gender Barriers In Sports,” *New York Times*, October 9, 2008. LexisNexis (accessed April 30, 2010).

¹⁵³³ B. Pennington, “Dropped From Varsity Line Up But No Longer Grumbling,” *New York Times*, December 2, 2008: para. 8. LexisNexis (accessed April 30, 2010).

¹⁵³⁴ E. M. Schmit, *For Her Own Good: Legal Justifications Used to Exclude Women and Girls From Sports*, Abstract. Dissertation. The University of Arizona, 2008. ProQuest AAT 1453367 (accessed October 15, 2009).

¹⁵³⁵ P. J. Snyder, *A Legislative And Judicial History Of Title IX In Athletics*, Abstract. Dissertation. Kent State University, 2008. ProQuest AAT 3313096 (accessed October 15, 2009).

¹⁵³⁶ N. N. Pilon, *Women’s Athletics at the University of Kansas During the Progressive Era, 1890-1920*, Abstract. Dissertation. University of Kansas, 2008. ProQuest AAT 3303997 (accessed October 15, 2009).

The evolution of women's basketball was what Keri discussed in "New Frontiers Await the Next Generation." Basketball powerhouses in the early days after Title IX were concentrated at a select few colleges and universities. A generation later, the acumen in basketball programs became more widely spread in the 1990s. Keri expressed this as "A generation of Title IX babies had grown up in a more supportive environment that encouraged girls to play competitive sports. A surge of budgets for women's collegiate athletics caused a controversy with programs like men's lacrosse and wrestling often shoved on the chopping block."¹⁵³⁷

The trend had never stopped, Belson commented in "Universities Cutting Teams As They Trim Their Budgets," as Title IX was not blamed for the round of team cuts at the college level in 2009. The economic environment drove colleges and universities to make cuts. Belson offered readers information about historic cuts that occurred in the late 1980s and 1990s.¹⁵³⁸ In May 2009, The Associated Press reported "Women's Volleyball Wins" as Quinnipiac was compelled to restore volleyball for females in a ruling by District Judge Stefan Underhill based on claims by student-athletes that Quinnipiac was not compliant with Title IX.¹⁵³⁹ A month later in a "Title IX Ruling in California Could Lead to Stricter Standards," Thomas told that the University of California at Davis was given a decade to increase participation of female athletes to within 1.5% of the proportion of females in the student body. The university settled agreeing to add field hockey and to set aside funds to cultivate club sports for women. Pro-women's rights activists cheered on the news that the 1.5 percent margin would be enforced while

¹⁵³⁷ J. Keri, J. "New Frontiers Await the Next Generation," *New York Times*, February 8, 2009. LexisNexis (accessed April 30, 2010).

¹⁵³⁸ K. Belson, "Universities Cutting Teams As they Trim Their Budgets," *New York Times*, May 4, 2009. LexisNexis (accessed April 30, 2010).

¹⁵³⁹ The Associated Press, "Women's Volleyball Wins," *New York Times*, May 27, 2009. LexisNexis (accessed April 30, 2010).

opponents still criticized Title IX for loss of their sport.¹⁵⁴⁰ Later in 2009 Thomas introduced to *New York Times* readers Robert Landau, one of those local people who was able to make differences in Title IX enforcement. Landau was an advocate for girls' sports and was considered somewhat of a Title IX vigilante. He started his career of complaint writing when his daughter was a student-athlete, and he realized the disparity existing in her program at the time and reported it.¹⁵⁴¹

The New York Times started 2010 by reporting that sand volleyball became an emerging sport at The N.C.A.A. The list of "emerging sports" for women athletes is kept on file at the N.C.A.A. According to the list posted on the ncaa.org website, currently the emerging sports for women in addition to sand volleyball are: Equestrian, Rugby and Squash.¹⁵⁴² The N.C.A.A. keeps colleges and universities abreast of what to consider when developing programs to expand opportunity for women athletes.¹⁵⁴³ Later in the spring of 2010, *The New York Times* ran an update about surveying interest of athletes in "Rule Change Takes Aim At Loophole in Title IX." Education Department officials announced that the agency would reverse itself on use of surveys as an only means of measuring interest women have in sports. The O.C.R. planned to open investigations in over thirty K-12 venues and review university-level compliance.¹⁵⁴⁴ The enforcers of the newest revision of Title IX policy also recognized that nearly forty years later,

¹⁵⁴⁰ K. Thomas, "Title IX Ruling in California Could Lead to Stricter Standards," *New York Times*, June 19, 2009. LexisNexis (accessed April 30, 2010).

¹⁵⁴¹ K. Thomas, "Advocating for Girls' Sports, With a Sharp-Tongued Voice," *New York Times*, November 30, 2009. LexisNexis (accessed April 30, 2010).

¹⁵⁴² N.C.A.A.org., "Emerging Sports," ncaa.org. http://www.ncaa.org/wps/portal/ncaahome?WCM_GLOBAL_CONTEXT=/wps/wcm/connect/ncaa/NCAA/About+The+NCAA/Diversity+and+Inclusion/Gender+Equity+and+Title+IX/New+Emerging+Sports+for+Women (accessed June 10, 2010).

¹⁵⁴³ K. Thomas, "Sand Volleyball Keeps Status in N.C.A.A. After Close Vote," *New York Times*, January 16, 2010. LexisNexis (accessed April 30, 2010).

¹⁵⁴⁴ K. Thomas, "Rule Change Takes Aim at Loophole in Title IX," *New York Times*, April 20, 2010. LexisNexis (accessed April 30, 2010).

there is still a significant disparity between school athletic opportunities for women and men, and the scholarships and career opportunities that often follow.

CHAPTER VIII

TITLE IX PAST, PRESENT, AND FUTURE

After almost forty years of Title IX one has to ask, ‘What does it all mean?’ and ‘What do we do now?’ Circles of conversation have overlapped, intersected and juxtaposed while discussing the issues related to women’s athletics and Title IX. Some of the voices in these conversations were offered as a record from the past to help educators and administrators see a Title IX poised for the future.

There were so many conversations taking place during the history of Title IX and athletics presented in this study. There were conversations within all circles, between all circles and among different constituents of the conversational circles. There were whispers, shouts, and at times there was silence. Soliloquies were performed, oftentimes heard only by the speakers. There were asides to the audience of readers as ‘confidential’ information from memos and reports just so happened to fall into the hands of reporters and journalists—such as those at *The Chronicle of Higher Education*, *The New York Times* and *The N.C.A.A. News*—who made short work of announcing that their source was confidential.¹⁵⁴⁵ Multiple groups conversed at the same time so in essence no one heard what was being said, which led to divisiveness and

¹⁵⁴⁵ C. M. Fields, “HEW Softens Bias Stand,” *Chronicle of Higher Education*, vol. 10, no. 7, April 7, 1975: 1. Microfilm.

indecision. As an example, the Coalition of 300 was active in efforts to exert influence over Congressional leaders. The Coalition was asking for exemption or removal of revenue-generating sports from Title IX.¹⁵⁴⁶ Later a large coalition of Civil Rights groups wanted stronger punishments added for violating civil rights laws.¹⁵⁴⁷ Fewer accomplishments at the beginning of Title IX were made because each group involved in the struggle to dominate the other wanted to be heard and was not necessarily interested in listening because that just might have led to resolution or compromise.¹⁵⁴⁸ At times speakers used their conversations and circles of influence to create environments of distrust, envy and at times even paranoia.¹⁵⁴⁹ Other speakers rallied supporters to meet the opposition on level ground by using whatever means available as the women of The A.I.A.W. planned their strategies in the battle with The N.C.A.A.¹⁵⁵⁰

Protection of territory was a theme permeating much of this research.¹⁵⁵¹ Those who had resources did not willingly share, which caused an outcry and need for governmental intervention.¹⁵⁵² Resources were always scarce when sharing with the other gender was required. Some vocal athletic administrators considered having to fund women's athletics as a mortal threat to men's sports.¹⁵⁵³ The underrepresented gender in athletics, mostly girls and

¹⁵⁴⁶ New York Times, "Rally Slated Today Supporting Title IX," *New York Times*, April 22, 1979: col. 2, para.3. Microfilm.

¹⁵⁴⁷ L. Williams, "Coalition Seeks Wider Penalty In Rights Law," *New York Times* (February 28 1986). LexisNexis (accessed May 2, 2010).

¹⁵⁴⁸ D.J. Schemo, "Women's Athletics, Title IX Panel Favors Lifting Anti-Trust Laws," *New York Times*, January 30, 2003. LexisNexis (accessed April 30, 2010).

¹⁵⁴⁹ N.C.A.A. News, "Cooperation Sought For Gender-Equity Challenge," *N.C.A.A. News*, January 20, 1993: 16, para.4-5. <http://web1.ncaa.org> (accessed March 28, 2008).

¹⁵⁵⁰ J. Gross, "Women's Group Set to Combat N.C.A.A.," *New York Times*, January 9, 1980. <http://www.query.nytimes.com> (accessed August 11, 2008).

¹⁵⁵¹ E. B. Fiske, "Congress Moves to Modify Law Restricting Sex Bias by Schools," *New York Times*, November 25, 1974. <http://www.query.nytimes.com> (accessed August 11, 2008).

¹⁵⁵² D. Canham, "Women's Athletics: A Conflict over Regulations," *New York Times*, December 29, 1974. <http://www.NYTimesarchive.com> (accessed August 11, 2008).

¹⁵⁵³ G. S. White, Jr., "College Heads Ponders Athletics Costs, Ethics and Title IX," *New York Times*, January 6, 1975: 37, 39. Microfilm.

women, started out with very few resources available to them as mentioned in the history of women's basketball programming at University of Connecticut. In the case Roderick Jackson brought against the Birmingham School Board, most of the equipment and supplies Jackson's girls were given were hand-me-downs from the boys' program.¹⁵⁵⁴ Not until Title IX was created and enforced did institutions of higher learning realize their responsibility of building and supporting opportunity for this segment of the population. Distribution of everyday expenses in which parity was expected were enumerated in the Title IX regulations as part of what was referred to by athletic personnel as the Laundry List.¹⁵⁵⁵

Over the thirty-eight year history of Title IX, as it intersected with athletics, there were multiple attempts made to eliminate or cripple it. These attempts ranged from the executive branch [Reagan and Bush] of the government to the national athletic regulatory organization [N.C.A.A.],¹⁵⁵⁶ from the courts of law [*Grove City College v. Bell*] to the local school boards [Birmingham]. The actions of these organizations were made to take the regulatory authority out of the gender equity statute. Congressional leaders worked in countless ways¹⁵⁵⁷ to undermine their own statute¹⁵⁵⁸ until a time when the underrepresented found their power from courts, their influential lobbyists in Congress and their action at the voter's booth. The underrepresented in athletics, most often women and girls, were not underrepresented in the general population. They were underrepresented in access to opportunity and resources in athletics. When women learned how to and chose to organize to seek gender parity, their power bases and supporters

¹⁵⁵⁴ G. Vecsey, "A High School Coach Blows the Whistle," *New York Times*, March 30, 2005. LexisNexis (accessed April 30, 2010).

¹⁵⁵⁵ U.S. Department of Health, Education and Welfare, "Elimination of Sex Discrimination in Athletic Programs," *40 Federal Register* (1975).

¹⁵⁵⁶ N.C.A.A. News, "Long-Debated Title IX Regulations Not Rejected by Congress," *N.C.A.A. News*, vol. 12, no.8, July 15, 1975: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

¹⁵⁵⁷ J. Helms, January 31, 1977 S. 2146 and S. 535. As cited in website: <http://titleix.info/> (accessed April 8, 2006).

¹⁵⁵⁸ C. F. Miller, "Holt Bill Re-Introduced," *Chronicle of Higher Education*, vol. 9, no. 20, February 18, 1975: 6. Microfilm.

came from a myriad of sources.¹⁵⁵⁹ Retelling stories of Title IX proponents and opponents, victims and regulators in this dissertation balanced the voices heard in various conversational circles.

Revisiting Separate-But-Equal

Separate-but-equal was a concept fostered by the *Plessy v Ferguson* decision regarding separate accommodations of equal quality on trains for passengers of different races.¹⁵⁶⁰ In *Brown v Board of Education, Topeka*, The Supreme Court found that for education, separate-but-equal was usually unequal and, therefore, not acceptable.¹⁵⁶¹ The regulatory language of Title IX included references to separate-but-equal facilities, equipment, and other items on the laundry list of everyday things necessary to run athletic teams.¹⁵⁶² The A.I.A.W. promoted the separate-but-equal doctrine since they were interested in equal but separate athletic programming and control.¹⁵⁶³ Peter Holmes in his memo to schools and university leaders explained when separate teams could be organized.¹⁵⁶⁴ In the late 1970s coaches were telling reporters that they preferred separate teams for female participants.¹⁵⁶⁵ J.H. Orleans stated in his article that in the early 1980s that fielding teams for men and women separate from one another was one approach to promote a more even participation ratio between genders. He cautioned that separate also meant that

¹⁵⁵⁹ Chronicle of Higher Education, "Women's Groups Sue U.S. Over Aid to Sex-Biased Colleges," *Chronicle of Higher Education*, vol. 9, no. 11, December 2, 1974: 5 and "Bias Exceptions Beaten Back," *Chronicle of Higher Education*, vol. 10, no. 19, August 4, 1975:1, col. 3, para. 1. Microfilm.

¹⁵⁶⁰ *Plessy v. Ferguson*, No. 210, 163 U.S. 537; 16 S. Ct. 1138; 1896 U.S. LEXIS 3390; 41 L. Ed. (May 18, 1896).

¹⁵⁶¹ *Brown et al. v Board of Education of Topeka et al.*, No. 1, 347 U.S. 483; 74 S. Ct. 686; 1954 U.S. LEXIS 2094; 98 L. Ed. 873; Ohio Op. 326; 38 A.L.R. 2d 1180 (May 17, 1954).

¹⁵⁶² Department of Health Education and Welfare, "Educational Programs and Activities Receiving or Benefitting from Financial Assistance," *Federal Register* 39, June 20, 1974. Microfiche.

¹⁵⁶³ N.C.A.A. News, "Women's Sports and N.C.A.A.," *N.C.A.A. News*, vol. 12, no. 2, February 1, 1975:1-2. <http://web1.ncaa.org> (accessed March 28, 2008).

¹⁵⁶⁴ P. E. Holmes, "Elimination of Sex Discrimination in Athletic Programs. Memorandum to Chief State School Officers, Superintendents of Local Educational Agencies and College and University Presidents. September 1975," ERIC ED 119583 (accessed September 22, 2008).

¹⁵⁶⁵ G. Lichtenstein, "Many Women Are Displeased by Legal 'Victory,'" *New York Times*, January 23, 1978. <http://query.nytimes.com> (accessed August 11, 2008)

funding and resources had to be distributed evenly.¹⁵⁶⁶ In a celebrated law case The Virginia Military Institute was denied the authority to create a separate-but-equal academic program for female cadets because the judicial logic was that separate but equal is inherently unequal.¹⁵⁶⁷ For most universities under Title IX's jurisdiction, the athletic administrative staff has been merged even though most women's teams are separate from men's.

Value placed on the female athletes was far less than that placed on male athletes. Davidson insinuated that women could have whatever was left over from football and basketball to run their programs in "Carrying Title IX Too Far."¹⁵⁶⁸ Low valuation of women continued to stymie total gender equity. The idea promoting women athletes had "little commercial value" compared to the male athletes' economic engine whose programs were generating revenue in highly sought after spectator sports.¹⁵⁶⁹ The questions and answers offered by *The N.C.A.A. News* when the Department of Education was created were replete with examples of how an institution of higher education might assign scholarships and resources based on the spectator and revenue generating aspects of particular sports.¹⁵⁷⁰ The official answer was usually no, but the N.C.A.A. membership felt compelled to ask. Society at large had accepted the myth that women were not interested in sports, sports participation or would ever be conditioned to be so inclined.¹⁵⁷¹

¹⁵⁶⁶ J. H. Orleans, "Title IX and Athletics: Time Out?" *Educational Record* (Winter 1982):42.

¹⁵⁶⁷ *United States v. Virginia*, No. 94-1941; 518 U.S. 515; 116 S. Ct. 2264; 1996 U.S. LEXIS 4259; 135 L. Ed. 2d 735; 64 U.S. L. W. 4538; 96 Cal. Daily Op. Service 4694; 96 Daily Journal DAR 7573; 10 Fla. Law W. Fed S. 93, (June 26, 1996).

¹⁵⁶⁸ C. F. Davidson, "Carrying Title IX Too Far," *New York Times*, December 3, 1978:col. 1, para. 5. Microfilm.

¹⁵⁶⁹ M. Polivy, "July 21: Deadline or Dead End?" *New York Times*, July 16, 1978: para. 3. Microfilm.

¹⁵⁷⁰ N.C.A.A. News, "Education Department Fields More Questions," *N.C.A.A. News*, vol. 17, no. 13, September 30, 1980, and "Education Department Responds to Title IX Questions," *N.C.A.A. News*, vol. 17, no. 12, August 31, 1980:1, 3. <http://web1.ncaa.org> (accessed March 28, 2008).

¹⁵⁷¹ K. J. Winkler, "Guidelines Underfire Anti-Sex Rules Too Vague," *Chronicle of Higher Education*, vol. 8, no. 37, July 8, 1974: 8. Microfilm.

Gender Equity Champions

Gender equity champions throughout the years showed up in both male and female forms. Legislatively, Birch Bayh,¹⁵⁷² Edith Green,¹⁵⁷³ and Patsy Mink,¹⁵⁷⁴ led their own charge attempting to stamp out gender discrimination. They were instrumental in gathering support in Congress to pass legislation that would lead to the creation of Title IX. Along with Title IX, promoters for the passage of the Equal Rights Amendment (E.R.A.) were rallying for support. E.R.A. would eventually fail to gain the support of enough state legislatures to pass so that Title IX was left to address a multitude of civil rights issues for women. Several newspaper and education journal writers stood by waiting to report the results of the latest battles in the fight for gender equity from Capitol Hill, the courts of law and local athletic organizations, where women were historically absent.

Donna Lopiano,¹⁵⁷⁵ Bernice Sandler,¹⁵⁷⁶ and Ruth Bader Ginsberg¹⁵⁷⁷ rallied to the call for attention. Each woman used her abilities, and her own skirmishes with gender discrimination, to drive personal interest in righting the wrongs of this socially-accepted phenomenon. Influential and committed to heightening awareness for need to change the status quo of creating opportunities for women, Lopiano, Sandler, and Ginsberg, representing athletics,

¹⁵⁷² B. Bayh, "Analysis of Laws Prohibiting Sex Discrimination in Higher Education," 92nd Cong., 118 *Cong. Rec.*, 1972:24683-24685, and 122 *Congressional Record* 28147 (1976). As cited in website <http://www.titleix.info/> (accessed April 8, 2006).

¹⁵⁷³ J. E. Shields, (Ed.), "Controversy Over the 'Equal Rights Amendment,'" *Congressional Digest* 50 (1971): 1.

¹⁵⁷⁴ E. Gootman, "Patsy Mink, Veteran Hawaii Congresswoman, Dies at 74," *New York Times*, September 30, 2002:para. 5. LexisNexis (accessed May 2, 2010).

¹⁵⁷⁵ J. Gross, "Miss Lopiano: A Leader in Women's Sports," *New York Times*, January 8, 1980. <http://www.query.nytimes.com> (accessed August 11, 2008).

¹⁵⁷⁶ B. R. Sandler, "'Too Strong for a Woman' – The Five Words that Created Title IX," (1997). <http://www.berniceandler.com/id44.htm> (accessed April 8, 2006). Originally appeared in Spring 1997 issue of *About Women on Campus*.

¹⁵⁷⁷ R. B. Ginsberg, "Gender and the Constitution," *New York Law Journal*, November 1973:170.

education and the legal system, worked tirelessly to carry out the early battle so that generations of women coming of age thirty-nine years later have to read about the historic struggles instead of experiencing them. Their struggle to embrace opportunity to do what used to be relegated to male-only is much less visible. There are still subtle¹⁵⁷⁸ forces at work that undermine progress.¹⁵⁷⁹ Looking at increased numbers of women and girls participating in athletic endeavors between 1972 and 2010 gives one the idea of just how successful the Title IX efforts have been. There is still room to grow and supporters vow to see that true parity in sport participation becomes reality.

Athletic Association Attention

National organizations participating in the conversation shaped rules by which universities and schools competed. Their endorsement, or lack thereof, of Title IX legislation influenced member institutions to participate in the law fighting gender discrimination, or skirt around the issues as long as they could without being caught. The roles of The National Collegiate Athletic Association (The N.C.A.A.) and The Association of Intercollegiate Athletics for Women (The A.I.A.W.) in airing their differences in philosophy¹⁵⁸⁰ and governance regarding athletic opportunities played an important part in structuring competition by gender. The N.C.A.A. had a long-standing history of administering men's athletic opportunities. At first it was foreign to them to think that women should be allowed to participate at the same level as men, in some of the same sports as men or even to participate in any sport unless they could fund

¹⁵⁷⁸ M. C. Dunkle and B. R. Sandler, "Sex Discrimination Against Students: Implications of Title IX of the Education Amendments of 1972," *Inequality in Education* 18, (1974):12-35.

¹⁵⁷⁹ R. Lipsyte, "BackTalk; Behind the Scenes, the Sexism Is Now Subtler," *New York Times*, June 9, 2002:para 2. LexisNexis (accessed May 2, 2010).

¹⁵⁸⁰ G. S. White, Jr., "Women Fear Interference by N.C.A.A.," *New York Times*, January 10, 1978. <http://www.query.nytimes.com> (accessed August 11, 2008).

their own interests and activities.¹⁵⁸¹ The N.C.A.A.'s newsletter during Title IX coverage can be interpreted as promoting an anti-women stance when it came to competing for championship opportunity. The N.C.A.A., the group governing athletic participation for men, vehemently fought the concepts promoted by Title IX regulations.¹⁵⁸² It would take around ten years to change their governing policy and ideals to reflect the inclusion of female athletic championship competition and another twenty before they actually embraced the responsibility of fully promoting and fully directing women's participation. One significant visual change was made in 1981-82 when The N.C.A.A. changed their logo¹⁵⁸³ to include both male and female athletes being crowned with the traditional laurel wreath. This underscored their vision for the future, symbolizing a willingness to appear to be working toward equity. It allowed them to expand their governing rules to include women's competition. The period of time when The N.C.A.A. set a taskforce to study gender equity and instituted a regular study on gender equity signaled a willingness to expand their administrative oversight and advise university officials to follow their lead. Their ultimate metamorphosis was reflected in the evolution in their executive leadership teams. Each leadership team appeared to be a little less contentious toward the interests of women as the years progressed. It took The N.C.A.A. almost thirty years to talk about their member institutions' moral obligation to comply with Title IX. While a moral obligation should be to treat everyone the same, the moral reality has been governed by the groups holding power over money and policy. Money often helped shape policy—those voices attached to power and money in athletics traditionally identified as football¹⁵⁸⁴ and basketball used their status to

¹⁵⁸¹ J. Searcy, "Foe of Men's Myths Braces for Battle," *New York Times*, July 14, 1974. <http://www.query.nytimes.com> (accessed August 11, 2008).

¹⁵⁸² *N.C.A.A. v. Califano*, Civil Action No. 76-32-C2; 444 F. Supp. 425; 1978 U.S. Dist. LEXIS 20275, (January 19, 1978).

¹⁵⁸³ N.C.A.A. News, "A New N.C.A.A. Look," *N.C.A.A. News*, vol. 18, no. 4, February 28, 1981. <http://web1ncaa.org> (accessed March 28, 2008).

¹⁵⁸⁴ R. Lipsyte, "BackTalk; Title IX Debate is About Football," *New York Times*, May 12,

defend the keeping resources at a higher proportion. Their circle of influence and power created precarious situations overshadowing both women athletes and men who participated in minor sports.

The Association of Intercollegiate Athletics for Women (A.I.A.W.) directed women's athletic programs when the N.C.A.A. was not interested. Their organization was small but was forceful within their own sphere. Their leaders aspired to follow different ideals about athletics, the development of the athlete and the types of competition and funding of athletic opportunity. These ideals would be tested and would fail as money and power became synonymous with women's athletic administration and competition. A.I.A.W. members professed to play a role in nurturing their student-athletes, with an emphasis placed on the student rather than scholarship-granting for athletic ability. Among other things, The N.C.A.A. and The A.I.A.W. philosophically differed on the issues of scholarship-granting and recruiting. Their attempts to work toward a merger failed when The N.C.A.A.¹⁵⁸⁵ realized in order to meet government-imposed gender mandates that one organization would need to be the rule setting authority for both genders. There was suspicion on the part of The A.I.A.W. and other athletic leaders of the time that the opportunity to develop television revenues for women's athletics drove the N.C.A.A.'s keen interest in extending their energies to include women's championships. Once the decision was made to include women's championships in their programming, The N.C.A.A. was on a course that would result in the eventual disbanding of A.I.A.W.¹⁵⁸⁶

2002. LexisNexis (accessed May 2, 2010).

¹⁵⁸⁵ N.C.A.A. News, "N.C.A.A. Discusses Growing Women's Sports with A.I.A.W.," *N.C.A.A. News*, vol. 11, no. 12, November 1, 1974: 2. <http://web1ncaa.org> (accessed March 28, 2008).

¹⁵⁸⁶ N.C.A.A. News, "Judge Denies Attempt to Stop NCAA Women's Events," *N.C.A.A. News*, vol. 19, no. 4, February 28, 1982: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

The leaders at The A.I.A.W. attempted to fight in court what they considered the N.C.A.A.'s encroachment into their territory—women's intercollegiate athletic championship competitions—for allegedly violating anti-trust laws.¹⁵⁸⁷ The N.C.A.A. was able to show that women at their member institutions would be denied opportunities to compete at championship levels if they did not move to incorporate them.¹⁵⁸⁸ One significant difference between the two organizations in hosting championships showed the economic disparity between genders. When The N.C.A.A. sponsored championships, the member institutions involved did not incur cost. When The A.I.A.W. was engaged in running the events, the institutions had to bare the cost.¹⁵⁸⁹ So what reasonable organization would continue to stay with an organization that could not do as much for them as the other?

Organized studies documenting the progress of Title IX kept government agencies,¹⁵⁹⁰ athletic organizations and university researchers¹⁵⁹¹ busy measuring the outcomes and reporting the results to the general public. Many times the outcomes of the study did not match the expectations of the sponsoring organization.¹⁵⁹² Frustrated by slow growth in gender equity, which in turn documented real university compliance, leaders in governing bodies would have to encourage members to adhere to Title IX tenets, asking them to make more effort, dedicate more

¹⁵⁸⁷ N.C.A.A. News, "A.I.A.W. Suit Alleges NCAA AntiTrust Law Violations," *N.C.A.A. News*, vol. 18, no. 15, October 31, 1981. <http://web1.ncaa.org> (accessed March 28, 2008).

¹⁵⁸⁸ N.C.A.A. News, "NCAA Prevails In A.I.A.W. Antitrust Litigation," *N.C.A.A. News*, vol. 10, no. 9, March 2, 1983: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

¹⁵⁸⁹ J. Gross, "Women's Group Set to Combat N.C.A.A.," *New York Times*, January 9, 1980. <http://www.query.nytimes.com> (accessed August 11, 2008).

¹⁵⁹⁰ United States General Accounting Office, *Intercollegiate Athletics, Status of Efforts to Promote Gender Equity*, (GAO/HEHS-97-10). (1996). and *Intercollegiate Athletics, Comparison of Selected Characteristics of Men's and Women's Programs*, (USGAO/HEHS 99-3R). (1999). and *Intercollegiate Athletics Four-Year Colleges' Experiences Adding and Discontinuing Teams*, (GAO-01-297). (2001):4.

¹⁵⁹¹ L. J. Carpenter and R.V. Acosta, *Women In Intercollegiate Sport: A Longitudinal, National Study Twenty-Nine Year Update 1977-2006*, (2006). <http://webpages.charter.net/womeninsport/>.

¹⁵⁹² T. El-Bashir, "Colleges; Title IX Study; Equality Is Still a Decade Away," *New York Times*, April 29, 1997: para. 3. LexisNexis (accessed May 2, 2010).

resources toward the parity mandates in an effort to keep them out of trouble with O.C.R.¹⁵⁹³ Questions about the veracity of the data always followed the release of a particular study. Groups who did not agree with the results or who felt their cause had not been reasonably supported by results, for example, wrestlers, exercised their power to sue the preparers of such reports.

Executive and Legislative Attention

United States Presidents from Nixon to Obama recorded support for, or rallied against Title IX.¹⁵⁹⁴ Their attention paid to Title IX, when mostly ceremonial, tended to heighten awareness of the progress made and the recommitment of effort to the gender equity statute. When opposing forces were found to be in The White House, progress halted or even reversed.¹⁵⁹⁵ Presidential interest or disinterest trickled down to the local attitudes toward making efforts to make gender parity progress. When one reviews the historical record on presidential interest and influence, there were more democratic presidents¹⁵⁹⁶ who went on record as supporters of Title IX, some republicans who were accused of openly undermining¹⁵⁹⁷ Title IX and still others who subtly worked against Title IX while shaking hands in public with those who benefited from or supported Title IX.

Congress has the power for creating legislation. Sometimes certain legislation is interpreted as encroachment upon the control of educational organizations. Questions of Congressional intent follow legislation into maturity. Courts of law define these intentions of

¹⁵⁹³ New York Times, "Colleges; NCAA will not Mandate Gender Equity," *New York Times*, August 7, 1993. LexisNexis (accessed May 2, 2010).

¹⁵⁹⁴ S. R. Weisman, "Reagan Eases School Law on Bias in Schools," *New York Times*, March 17, 1982: para. 11. LexisNexis (accessed May 2, 2010).

¹⁵⁹⁵ B. Wolverson, "Education Dept. Affirms Use of E-Mail Surveys in Title IX Compliance," *Chronicle of Higher Education*, March 31, 2006. LexisNexis (accessed April 10, 2010).

¹⁵⁹⁶ The White House, "Clinton to Expand Reach of Title IX Through Executive Order," *The White House Bulletin*, June 17, 1997.

¹⁵⁹⁷ New York Times, "Feminists Say Reagan Reneged on a Promise," *New York Times*, August 14, 1981. <http://www.query.nytimes.com> (accessed August 11, 2008).

Congress whenever they are not clearly or explicitly enumerated. Congress may not intend to take control of school districts or colleges and universities but new interpretation of the statute leaves educational institutions vulnerable to new court analysis of Congressional implied powers as seen in *Jackson v Birmingham Board of Education*.¹⁵⁹⁸ Many institutions of higher learning did not wish to comply and openly ignored mandates to file the required paperwork for compliance assurances with Title IX—Grove City College and Hillsdale College were two examples of educational institutions resisting further government encroachment.¹⁵⁹⁹ Title IX legislation—with no funding to help achieve the lofty goals of eliminating gender discrimination in higher education—required that each educational entity who accepted federal funding sign a compliance assurance or be in jeopardy of having their federal funding revoked.

Legislators have a checkered past in conjunction with Title IX. Created in a time when busing was the hot-button item, Title IX's tenets were virtually ignored until a time when society was awakened to and realized the power behind the words, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."¹⁶⁰⁰ The broadly worded statute left interpretation variations that would lead to litigation and resolution which in turn would redefine the statute's limits and scope. Once Title IX started gaining popularity, some Congressional leaders worked to weaken or even destroy some of the regulation, even attempting to cut off funding for the enforcement agency.¹⁶⁰¹ When other agencies or courts would try to alter or weaken Title IX, Congressional leaders would band

¹⁵⁹⁸ *Jackson v Birmingham Board of Education*. (2005). 544 US 167, 161 L Ed 2d 361, 125 S Ct 1497.

¹⁵⁹⁹ E. B. Fiske, "Education Watch: Going It Alone at Grove City," *New York Times*, May 5, 1985: para. 4. <http://select.nytimes.com> (accessed November 3, 2008).

¹⁶⁰⁰ Department of Education, Office for Civil Rights, "Title IX," http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html

¹⁶⁰¹ Department of Education Appropriations Act of 1996, H.R. 2127 July 27, 1995 as cited in website: <http://www.titleix.info/> (accessed April 8, 2006).

together and eventually pass what was needed to restore it to its original temper.¹⁶⁰² Eventually Congressional leaders would begin threatening agencies and organizations with additional oversight if they did not step up their efforts to eradicate gender discrimination.

Regulatory Agency Attention

Shaping public policy one voice at a time created a situation where people exercised their right to have input into the regulations that would govern them.¹⁶⁰³ The news media helped to keep issues in the public eye regarding Title IX. Public interest in and attention to Title IX's regulatory development shaped federal policy in a unique way. The Office for Civil Rights would release regulations in draft form for public view and comment. The agency then would address major concerns expressed by the public as they reacted to the new rules they would be governed by at some time in the future. At times the public debates were so heated that O.C.R. would choose to edit and re-publish drafts of regulations before they would become law. Title IX was one set of regulations that public reaction to certain items caused the agency to rewrite and redistribute.¹⁶⁰⁴ Once regulations were published for Title IX the public changed tenor and demanded further clarification. Title IX seems to have a history of being a more fluid document, open for clarifying, editing, and re-clarifying because the focus on gender equity in athletics has been more contentious than most of the other educational items covered in the statute.

The Office for Civil Rights (O.C.R.) played the role of regulation writer and enforcer after the Title IX regulations were approved by the appropriate parties and became active. The O.C.R.'s duty to enforce the unpopular Title IX mandates created stress between their office and those who were bound by the regulations. The complaint system used by them changed in such a

¹⁶⁰² *The Civil Rights Restoration Act of 1987*, codified at 20 U.S.C. (1687).

¹⁶⁰³ C. M. Fields, "2000 Guideline Critics," *Chronicle of Higher Education*, vol. 9, no. 5, October 21, 1974:7. Microfilm.

¹⁶⁰⁴ N.C.A.A. News, "HEW Distributed Policy Interpretation for Title IX," *N.C.A.A. News*, vol. 15, no. 16, December 22, 1978:1. <http://web1.ncaa.org> (accessed March 28, 2008).

way that every grievance filed did not get individual attention. The system of inquiry used a pattern of behavior that was documented against institutions. The infractions collected until there was significant evidence to warrant an investigation. Many schools were caught in the complaints that became lawsuits brought by women's groups and other civil rights activists. The investigations were thorough, tedious and usually found something that had to be corrected.

The on-going debate about clarification of the regulations and then clarification of the clarification has really never been resolved which has made Title IX a moving target. In 1979 O.C.R. issued a Policy Interpretation just for athletics which contained a three-part test. This test could be applied independently and an institution of higher learning could choose which test it wished to meet. Meeting proportionality ratios, continuing to effectively meet the athletic interests and needs of the female students was an important assurance that universities would attempt to comply. This was not really the case because the university personnel objected to the first proportionality test because they likened it to affirmative action quotas and according to the reading of Congressional intent, Title IX was not supposed to impose a quota.¹⁶⁰⁵

Studies done by federal commissions and government agencies tended to reflect the powers in The Oval Office. In order to truly gauge change and what needed to be fixed the majority and minority voices must listen to each other, respect each other and work together for real change. The 2002-2003 Commission on Athletic Opportunity had unrealistic expectations pinned to it.¹⁶⁰⁶ The think-tank was limited by the make-up of the committee and who they did not bring to the table. As the Commission on Athletic Opportunity came down to the end there seemed to be pressure to conform gleaned from comments made by some members to public

¹⁶⁰⁵ Office of Secretary, Office for Civil Rights, "Title IX of the Education Amendments of 1972; A Policy Interpretation; Title IX and Intercollegiate Athletics," *44 Federal Register*, No 239, December 11, 1979. Microfiche.

¹⁶⁰⁶ W. Suggs, "A Federal Commission Wrestles With Gender Equity in Sports," *Chronicle of Higher Education*, January 3, 2003:para. 7. LexisNexis (accessed April 10, 2010)

media outlets. Two members of the Commission on Athletic Opportunity, Foudy and de Varona, went against the group showing incredible courage as they chose to speak out.¹⁶⁰⁷ Foudy and de Varona were discredited, which is what happens in a group-think mindset. Also impressive was the decision to include the minority report available for public inspection. So, there was a more balanced outcome. When planning the next taskforce study, the entity in charge needs to agree to disagree and must give ample time to finish the task.

Journalists and correspondents for print media outlets spent a good portion of their careers following Title IX. *The Chronicle of Higher Education* and *The New York Times* covered the news items generated by Title IX regularly, as did *The N.C.A.A. News*. Attempting to report unbiased news was challenging at times and reporters would have to try to balance their information with pro and con input from parties involved. Reading these news items gave a sense of the emotional turmoil caused by enforcement expectations and general movement in the Title IX arena; as progress ensued on one level, disenfranchisement was created on another. The news media helped the public reader understand the human interest side as well as the legal aspects of compliance and the peril organizations faced if they ignored the statute. The bibliography of this study abounds with identity of reporters who spent a great deal of time and energy covering Title IX.

Judicial Attention

Courts of law shaped federal guidelines and regulations mandating changes to or enhancements to athletic policy depending on the court level and district. The Supreme Court applications of law to the interpretation of Title IX brought implied powers into the law as

¹⁶⁰⁷ D. J. Schemo, "Women's Sports; Title IX Dissenters to Issue Report Criticizing Proposed Changes to Women's Athletics," *New York Times*, February 25, 2003: para. 3. LexisNexis (accessed April 30, 2010).

necessary to remediate past discrimination practices. When Title IX was an infant law, women used it to gain access to opportunities. As it grew in stature, so did the requests for equity in things other than access. Women wanted to compete and have resources available to them. For the efforts made to exempt the revenue-generating sports, it is impressive that neither the courts of law nor legislators ever fully endorsed this idea.

Throughout the years the zealous enforcement of Title IX in times of economic distress and downturn has brought with it unintentional outcomes that affected male athletes¹⁶⁰⁸ who participated in sports who are not able to support themselves. Also affected were women of different racial and ethnic heritage. The practice of cutting men's athletic teams, a form of reverse discrimination by those men affected, has grown in popularity with university and athletic administrators as a way to comply with Title IX.¹⁶⁰⁹ Without actively increasing opportunity for females interested in participating in athletics a university could choose to eliminate enough male athletes as needed to meet a proportionality ratio of female athletes measured against the number of females in the undergraduate population. This practice penalized a sport team who could not find funding for themselves, or find funding for themselves, and funding for a new interest for females to pursue. Approximately one-third of the universities participating as members in The N.C.A.A. used this technique to equalize their rosters, according to the report *Intercollegiate Athletics Four-Year Colleges' Experiences Adding and Discontinuing Teams*.¹⁶¹⁰ Often the sports were those which survived in a club status or were independently pursued in sports leagues, Olympic competition or franchises

¹⁶⁰⁸ K. Schuld, "Letter to Editor: A Flawed Interpretation of Title IX is Keeping Male Students from Playing Sports," *Chronicle of Higher Education*, March 31, 2000: para. 1. LexisNexis (accessed April 10, 2010).

¹⁶⁰⁹ P. Monaghan, "Dropping Men's Teams to Comply With Title IX," *Chronicle of Higher Education*, December 4, 1998: para. 27. LexisNexis (accessed April 10, 2010).

¹⁶¹⁰ United States General Accounting Office, *Intercollegiate Athletics Four-Year Colleges' Experiences Adding and Discontinuing Teams*, (GAO-01-297). (2001):4.

outside the university setting.¹⁶¹¹ Universities have influenced athletic policy making by invoking this choice. Conversations swelled in response to and in defense of the practice of dropping men's sports. The courts and O.C.R.'s justification for continuing to allow this routine of equalization to be used was based on "the numbers."¹⁶¹² Annual review of athletic participation reports from institutions of higher learning showed that while there had been a decline in male athletic participation rates over the years, women's participation while strong, still did not equal that of men's.¹⁶¹³

Conversations in the judicial arena resulted in athletic policy changes that were significant to those seeking access or redress. Courts of law actively pursued interpretation of Title IX as law as case filings began in the late 1970s. *Cannon v University of Chicago*¹⁶¹⁴ was interpreted to include the implied power of the statute's language, which allowed an individual the right to bring a lawsuit under Title IX. Lower courts dealt with various aspects of accessing athletic opportunity in high schools and colleges. Cases granted *certiorari* at The Supreme Court level had national policy ramifications whereas the lower appeals courts were only binding in their circuit or district. Rights of employees and faculty to bring suit under Title IX took several years to establish. In the early years most decisions had reserved Title IX to deal with student rights since the regulations specified students' concerns. The right of an employee to bring suit was not granted until 1982 when *North Haven Board of Education v. Bell*¹⁶¹⁵ was adjudicated.

¹⁶¹¹ K. Belson, "Universities Cutting Teams As they Trim Their Budgets," *New York Times*, May 4, 2009. LexisNexis (accessed April 30, 2010).

¹⁶¹² *Neal v. Board of Regents*, No. 99-1561; 198 F. 3d 633 U.S. App. LEXIS 31969, (December 3, 1999).

¹⁶¹³ United States General Accounting Office, *Intercollegiate Athletics Four-Year Colleges' Experiences Adding and Discontinuing Teams*, (GAO-01-297). (2001):4.

¹⁶¹⁴ *Cannon v. University of Chicago*, No. 77-926; 441 U.S. 677; 99 S. Ct. 1946; 60 L. Ed. 2d 560; 1979 U.S. LEXIS 36; 19 Empl. Prac. Dec. (CCH) P9202 January 9, 1979, Argued; May 14, 1979, Decided.

¹⁶¹⁵ *North Haven Board of Education v. Bell*, No. 80-986; 456 U.S. 512; 102 S. Ct. 1912; 1982 U.S. LEXIS 105; 72 L. Ed. 2d 299; 50 U.S. L. W. 4501; 28 Fair Empl. Prac. Cas. (BNA) 1393; 28 Empl. Prac. Dec. (CCH) P25, 120; 28 Empl. Prac. Dec. (CCH) P32, 675, (May 17, 1982).

Refusals to sign Title IX assurance of compliance forms with O.C.R. occurred at Hillsdale College and Grove City College. The judicial outcome from *Grove City College v Bell*¹⁶¹⁶ had a numbing effect on Title IX enforcement as Title IX's statute was interpreted to apply piecemeal or program-specific to institutions receiving federal funding. Only those programs actually receiving the funds would be bound by tenets of Title IX. The Reagan Administration and the Justice Department supported this interpretation which created a need for Congressional leaders to review original intent. It took four years for Congress to nullify the decision in *Grove City College v Bell* by passing The Civil Rights Restoration Act.¹⁶¹⁷

An important decision was made in the early 1990s when *Franklin v. Gwinnette County Public Schools* was reviewed by The Supreme Court. The Court found that for intentional sexual discrimination this law left a person like Franklin without a remedy. To protect the victim of intentional abuse, where an institution willfully ignored the reported abuse, monetary damages were allowed. This changed Title IX oversight because constitutional ideology required a jury to award damages.¹⁶¹⁸ *Cohen v. Brown University* was a significant judicial effort to bring gender equity to a university through the lower appeals court system. The University tried unsuccessfully to be granted a hearing at The Supreme Court level. Eventually Brown settled their case with the female athletes and submitted a workable gender equity plan for athletics that was suitable for ridding the institution of higher learning of its discriminatory practices.¹⁶¹⁹

¹⁶¹⁶ *Grove City College Et Al. v. Bell, Secretary of Education*, Et Al. No. 82-792, 465 U.S. 555; 104 S. Ct. 1211; 79 L. Ed. 2d 516; 1984 U.S. LEXIS 158; 52 U.S.L.W. 4283; 33 Empl. Prac. Dec. (CCH) P 34, 158, November 29, 1983, Argued; February 28, 1984, Decided.

¹⁶¹⁷ *The Civil Rights Restoration Act of 1987*, codified at 20 U.S.C. (1687).

¹⁶¹⁸ *Franklin v. Gwinnette County Public Schools*, No. 90-918; 503 U.S. 60; 112 S. Ct. 1028; 1992 U.S. LEXIS 1375; 117 L.Ed. 2d 208; 60 U.S. L. W. 4167; 59 Fair Empl. Prac. Cas. (BNA) 213; 58 Empl. Prac. Dec. (CCH) P41, 293; 92 Cal. Daily Op. Service 1594; 92 Daily Journal DAR 2551; 6 Fla Law W. Fed. S 16 (February 26, 1992).

¹⁶¹⁹ *Cohen v. Brown University*, No. 92-2483; 991 F. 2d 888; 1993 U.S. App. LEXIS 7912, (April 16, 1993).

Many lawsuits brought in the 1990s had to do with coaching salaries and dropping athletic teams. Wrestling teams were especially hard hit by the policy invoked by many universities that chose to remedy their Title IX issues by dropping teams rather than developing revenue streams or new opportunities for female athletes. High profile coaches, such as Marianne Stanley, formerly of the University of Southern California, and institutions of higher learning, such as Louisiana State University and Fresno State University in California, were heavily involved in law related issues in recent years. Another important Title IX case involved protecting whistle-blowers. Whistle-blowers are those people who report discrimination to authorities. Sometimes the employer will retaliate against the worker by demoting or by non-renewal of contract of employment. *Jackson v Birmingham Board of Education* was a significant test of Title IX language. The majority opinion explained why it was important to protect the whistle-blower and the dissenting minority clarified why the decision to broaden the interpretation of the statute went against previous case law.¹⁶²⁰

Unintentional Outcomes

An unintentional Title IX outcome and an unexpected thread of conversation involved the African American female athlete. The plight of African American women and other women of color was especially intriguing. Marginalized into athletic participation traditionally open to them, African American women,¹⁶²¹ for example, have participated in basketball and track. This status will continue as long as their opportunities for athletic participation remain the same. In order to combat this conundrum African American girls will have to be introduced to sports outside their tradition so interest and skills can be built that will benefit them as they attend

¹⁶²⁰ *Jackson v Birmingham Board of Education*, (2005). 544 US 167, 161 L Ed 2d 361, 125 S Ct 1497.

¹⁶²¹ J. Naughton, "Title IX Poses a Particular Challenge at Predominately Black Institutions; The High Percentage of Female Students Makes It Difficult to Meet 'Proportionality Standard,'" *Chronicle of Higher Education*, February 20, 1998: para. 26. LexisNexis (accessed April 10, 2010).

college and university programs.¹⁶²² When looking at the structure of power and influences, African American women and other women of color held relatively no power in athletic decision making circles. The transfer of power in athletics has gone from white men to white women leaving the African American female and other women of color out of athletic leadership roles.¹⁶²³ Inclusion on the fringe of the conversation heightened public awareness, which was one of the first steps in working toward resolution of the situation.

Another unintentional outcome of Title IX was the increase in the occurrence of injuries to female athletes at all levels and the lack of medical preparedness to treat injuries for women and girls participating in athletics. Knowledge about athletic injury and the healing process applied to females is in the incubator stage. How stress of competition interacts with the female body and the level of conditioning are concerns for parents and health professionals. Again, attention paid to it as part of the emerging conversation in athletics had an impact on how sports for women were regulated, administrated and assigned liability for such injuries.¹⁶²⁴

Law reviews and doctoral dissertations offered ways to gain insight to various interpretations available to apply to Title IX. Several law reviews were written by persons who showed up in other capacities in the dissertation. Jeff Orleans,¹⁶²⁵ formerly of the Ivy League, not only wrote a law review but he also published a perceptive article in an educational journal. His comments made to a reporter upon leaving the Ivy League job in 2008 revealed his balanced

¹⁶²² W. C. Rhoden, "The Unpleasant Reality for Women in Sports," *New York Times*, April 9, 2007. LexisNexis (accessed April 30, 2010).

¹⁶²³ W. C. Rhoden, "Sport of The Times; Breaking Down the Institutional Barriers That Women Still Face," *New York Times*, June 22, 2002: para. 4-5. LexisNexis (accessed May 2, 2010).

¹⁶²⁴ M. Sokolove, "The Uneven Playing Field," *New York Times*, May 11, 2008. LexisNexis (accessed April 30, 2010).

¹⁶²⁵ J. H. Orleans, "Setting a Course for College Athletics: An End to the Odyssey: Equal Athletic Opportunity for Women," 3 *Duke J. Gender L. & Pol'y*, 1996:131. and "Title IX and Athletics: Time Out?" *Educational Record* (Winter 1982):42.

approach to dealing with athletics and gender equity.¹⁶²⁶ Several judges, including a Supreme Court Justice [Ginsberg], were law review writers. Popular topics for law reviews included *Cannon v University of Chicago*, *Grove City College v Bell*, *Cohen v. Brown University*, and *Franklin v Gwinnette Public Schools* only to name a few. Several reviewers attempted to make improvements on O.C.R.'s 1979 Policy Interpretation, to explain the plight of the male athlete who finds himself without a team, to factor in a way to leave football out of the Title IX equation and to figure out Congressional intent.

Conclusion

In conclusion, our society has witnessed substantial progress during the last thirty-eight years in efforts to eliminate gender discrimination in educational programs and activities using Title IX as the basis for action. The invisible conversational circles in society functioned as filters for athletic policy making. The conversation made public by the press influenced athletic personnel and policy makers. Regulators who were charged with enforcing the statute were made aware of public opinion. At times when enough of the public objected to points in the regulations, O.C.R. would take the time to review, redefine, and reissue the gender equity law. The conversations presented in this dissertation heighten awareness of the past and the present of Title IX. What we learned from this past and present determines the future of gender equity in athletic and other educational programming. The moral imperative that fosters gender equity as an inherent privilege is not agreed upon by all persons with power and influence in educational and athletic settings. If nothing else was gained from review of this dissertation, a sense of how passionate advocates and supporters were from both sides of Title IX was offered.

¹⁶²⁶ J. Robinson, "Ivy League's Director to Step Down After an Era of Change," *New York Times*, February 27, 2008. LexisNexis (accessed April 30, 2010).

Further Study

Opportunities for further study abound. Information presented in this dissertation was not exhaustive and there is room to develop so many conversational strands presented in the various chapters. Impact studies on how different organizations have furthered or retarded growth of women's participation in sports would be of great value. Writing biographies about the leading personalities involved in the struggle to keep Title IX constantly in the public eye would be a way to capture the conversations with spirit and force. Hearing from the disenfranchised athletes and those still marginalized by circumstances would give depth to the conversation. One voice that was lacking in strength in this dissertation was that of the student. Collecting historical records from colleges and universities to document the voice of the student in the conversation surrounding Title IX was not feasible for this researcher. The Office for Civil Rights' wealth of resources could not be visited in detail, but researchers interested in policy enforcement could easily find enough historical records there to produce a useful study. Congressional intent and the creation of legislation was a fascinating conversation. Access to records documenting conversations in the Congressional sphere was becoming easier as electronic versions of *The Congressional Record* are being generated. The Supreme Court voice is strong and vibrant. A website dedicated to recorded hearings before The Supreme Court was located at www.oyez.org.¹⁶²⁷ This resource came along too late to be used effectively to write this dissertation but limited use of it toward the end gave an opportunity to hear the oral argument in cases such as *Jackson v Birmingham Board of Education*. For a researcher interested in historical Supreme Court cases, this resource would be a treasure trove of not only the oral conversation but the amassed documents not readily available through LexisNexis.

¹⁶²⁷ The Oyez Project. "*Jackson v. Birmingham Board of Education*," <http://www.oyez.org>. (accessed May 2, 2010).

REFERENCE LIST

Ackmann, M. "Backtalk; Years Later, Maker of A Landmark Film Still Stands Up for Title IX." *New York Times*, March 12, 2000. LexisNexis (accessed May 2, 2010).

Affirmative Action Timeline. Northstar News Media, LLC. (2002).

<http://www.thenorthstarnetwork.com> (accessed February 8, 2004).

Alabama Law Review. "Judicial Review of the N.C.A.A. Bylaw 12-1." *29 Ala. L. Rev.* 1978:547-62.

Alfano, P. "Signs of Problems Amid the Progress." *New York Times*, December 15, 1985. LexisNexis (accessed May 2, 2010).

Alford, A.L. "Education's New Landmark Legislation." *American Education*, 8 (1972): 4-9.

Allison, M.L. *The History Of Women's Collegiate Sports In Colorado: A Comparative Case Study Of Administrative Decision-Making At The University Of Denver And The University Of Colorado-Boulder*. Abstract. Dissertation. University of Denver, 2002. ProQuest AAT 3040740 (accessed October 15, 2009).

Amdur, N. "Equality for Women Will Raise a Host of Problems for Colleges." *New York Times*, June 30, 1974. <http://www.query.nytimes.com> (accessed August 11, 2008).

Amdur, N. "Title IX's Effect on College and School Sports." *New York Times*, March 14, 1975:32. Microfilm.

America's Best History "1980's The Reagan Revolution." America's Best History U. S. Timeline. <http://americasbesthistory.com/abhtimeline1980.html> (accessed December 9, 2009).

America's Best History. "1890-1900." America's Best History U. S. Timeline. www.americasbesthistory.net on (accessed August 5, 2008).

America's Best History. "1970-1979." America's Best History U.S. Timeline.

<http://americasbesthistory.com/abhtimeline1970.html>. (accessed November 12, 2009).

America's Best History. "2000." America's Best History U. S. Timeline.

<http://americasbesthistory.com/abhtimeline2000.html>. (accessed November 12, 2009).

American School Board Journal. "Girls—and What They Want From Sports." *American School Board Journal* 162 (June 1975): 33.

Anderson, D.J. and Cheslock, J.J. "Institutional Strategies to Achieve Gender Equity in Intercollegiate Athletics: Does Title IX Harm Male Athletes?" *The American Economic Review* 94 (May, 2004): 307-311. Stable URL:

<http://links.jstor.org/sici?sici=0002->

[8282%28200405%2994%3A2%3C307%3AISTAGE%3E2.0.CO%3B2-D](http://links.jstor.org/sici?sici=0002-8282%28200405%2994%3A2%3C307%3AISTAGE%3E2.0.CO%3B2-D).

Anderson, M.L. *A Legal History And Analysis Of Sex Discrimination In Athletics: Mixed Gender Competition, 1970-1987*. Abstract. Dissertation. University of Minnesota, 1989. ProQuest AAT 9002965 (accessed October 15, 2009).

Anderson, P. "Article: Football Schools' Guide to Title IX Compliance." *2 Sports Law J.*, 1995:75.

Araton, H. "Sports of the Times; Proud Fathers Cheering Title IX." *New York Times*, July 17, 2003. LexisNexis (accessed April 30, 2010).

Arizona Law Review. "N.C.A.A.: Fundamental Fairness and the Enforcement Program." *23 Ariz. L. Rev.*, 1980:1065-1102.

Arizona Law Review. "Suits by Student Athletes Against Colleges for Obstructing Educational Opportunity." *24 Ariz. L. R.* 1982:467-496.

Aronberg, D. "Crumbling Foundations: Why Recent Judicial and Legislative Challenges

to Title IX May Signal Its Demise.” *47 Fla. L. Rev.*, 1995:133.

Associated Press. “Alternate Plan is Offered to Comply with Title IX.” *New York Times*, May 24, 1979. <http://www.query.nytimes.com> (accessed August 11, 2008).

Associated Press. “AP Sex Bias in School Persists, Group Says. Women’s Organization Is Critical of ‘Lackadaisical’ Enforcement by Federal Civil Rights Office.” *New York Times*, November 8, 1977. <http://www.query.nytimes.com> (accessed August 11, 2008).

Associated Press. “Brown Cuts Men’s Sports for Title IX.” *New York Times*, July 8, 1995: para. 5. LexisNexis (accessed May 2, 2010).

Associated Press. “Brown to Settle Title IX Suit.” *New York Times*, June 24, 1998. LexisNexis (accessed May 2, 2010).

Associated Press. “Former Coach Settles Case.” *New York Times*, February 14, 2008. LexisNexis (accessed April 30, 2010).

Associated Press. “Grove City’s Finances Survive Rights Battle.” *New York Times*, March 24, 1988. <http://query.nytimes.com> (accessed November 3, 2008).

Associated Press. “Judge Criticizes Plan at Brown.” *New York Times*, August 18, 1995. LexisNexis (accessed May 2, 2010).

Associated Press. “Plus: Colleges—Providence; 3 Teams Dropped.” *New York Times*, October 8, 1998. LexisNexis (accessed May 2, 2010).

Associated Press. “Plus: Court News; Court Dismisses Title IX Suit.” *New York Times*, June 12, 2003. LexisNexis (accessed April 30, 2010).

Associated Press. “Presidential Action Due on Title IX.” *New York Times*, June 1, 1975. <http://www.query.nytimes.com> (accessed August 11, 2008).

Associated Press. “Sports Briefing Women’s Athletics Foundation CEO Resigns.” *New*

- York Times*, August 11, 2007. LexisNexis (accessed April 30, 2010).
- Associated Press. "Sports Briefing." *New York Times*, September 13, 2003. LexisNexis (accessed April 30, 2010).
- Associated Press. "Sports People: Colleges; Funding is Restored for Women's Sports." *New York Times*, November 4, 1992. LexisNexis (accessed May 2, 2010).
- Associated Press. "Title IX Rules Under Fire." *New York Times*, June 18, 1975. www.nytimesarchives.com (accessed August 11, 2008).
- Associated Press. "U.S. Won't Appeal Bias Case." *New York Times*, September 9, 1982. LexisNexis (accessed May 2, 2010).
- Associated Press. "Women's Volleyball Wins." *New York Times*, May 27, 2009. LexisNexis (accessed April 30, 2010).
- Baer, N., D. Hulsizer and L. Perman, "An Interview on Title IX with Shirley Chisolm, Holly Knox, Leslie R. Wolfe, Cynthia, G. Brown, and Mary Kaaren Jolly." *The Harvard Educational Review* 49 (1979): 504 – 526.
- Bain, L.L. "Implementing Title IX: Concerns of Undergraduate Physical Education Majors." *Journal of Physical Education and Recreation* 50 (November-December 1979): 77.
- Baird, J.A. "Playing It Straight: An Analysis of Current Legal Protections to Combat Homophobia and Sexual Orientation Discrimination in Intercollegiate Athletics." *17 Berkeley Women's L.J.* 2002:31.
- Ball, A.F., Editor. *With More Deliberate Speed: Achieving Equity and Excellence in Education: Realizing the Full Potential of Brown v. Board of Education*. (Malden, Mass: Blackwell Publishing, 2006).

- Bartges v. University of North Carolina at Charlotte*, 3:94CV113-P; 908 F. Supp. 1312; 1995 U.S. Dist. LEXIS 19469; 70 Fair Empl. Prac. Cas. (BNA) 1643, (November 6, 1995).
- Bauer, A. "NOTE: If You Build it, They Will Come: Establishing Title IX Compliance in Interscholastic Sports as a Foundation for Achieving Gender Equity." 7 *Wm. & Mary J. of Women & L.*, 2001:983.
- Bayh, B. "Analysis of Laws Prohibiting Sex Discrimination in Higher Education." 92nd Cong., 118 *Cong. Rec.*, 1972:24683-24685.
- Bayh, B. 122 *Congressional Record*. 28147 (1976). As cited in website: <http://www.titleix.info/> (accessed April 8, 2006).
- Beasley v. Alabama State University*, Civil Action No. 96-T-473-N; 996 F. Supp. 1117; 1997 U.S. Dist. LEXIS 8342, (June 9, 1997).
- Bednar v. Nebraska School Activities Association*, No. 75-1773; 531 f.2d 922; 1976 U.S. App LEXIS 12441, March 1, 1976 submitted March 11, 1976, decided.
- Bell, R.C. *An Examination of Selected Gender-Equity Factors in Intercollegiate Athletics in the Southern Conference from 1995-1998*. Abstract. Dissertation. United States Sports Academy, 1999. ProQuest AAT 9954000 (accessed October 15, 2009).
- Belson, K. "Universities Cutting Teams As they Trim Their Budgets." *New York Times*, May 4, 2009. LexisNexis (accessed April 30, 2010).
- Berkhofer, Jr., R.J. "Behavioral Categories of Historical Analysis," in *A Behavioral Approach to Historical Analysis*. New York: The Free Press 1969.
- Berkow, I. "Sports of the Times; Top 10 List Misses a few Key Moments." *New York Times*, November 24, 2000. LexisNexis (accessed May 2, 2010).

- Berkow, I. "Baseball: The Other Side of Title IX." *New York Times*, May 19, 1999: para. 17. LexisNexis (accessed May 2, 2010).
- Bernardo, E.G., II. "Unsportsmanlike Conduct: Title IX and *Cohen v. Brown University*." 2 *Roger Williams U. L. Rev.*, 1997:305.
- Besnette, C.A. *Gender Equity in Intercollegiate Athletics: An Examination of Title IX and Legal Theory in the Context of a Major Division I-A collegiate Athletic Conference*. Abstract. Dissertation. University of California, Los Angeles, 1995. ProQuest AAT 9541826 (accessed October 15, 2009).
- Beveridge, C.P. "Title IX and Intercollegiate Athletics: When School Cut Men's Athletic Teams." 1996 *U. Ill. L. Rev.*, 1996:809.
- Blair v. Washington State University*, No. 50591-8; 108 Wn. 2d 558; 740 P. 2d 1379; 1987 Wash. LEXIS 1159, (August 6 1987).
- Blaufarb, M. "Complying with Title IX of the Education Amendments of 1972 in Physical Education, High School Sports Programs. A Manual on Physical Education and Sports Programs for Administrators, Athletic Directors, Coaches and Teachers in Local Education Agencies and for Personnel in General Physical Education Programs in Colleges and Universities." ERIC ED 129741. 1974. Microfiche.
- Blumberg, J.H. "Brown University Violated Title IX in Not Providing Women Equality Opportunity in Intercollegiate Athletics—*Cohen v. Brown* 101 F.ed 155 (1st Cir. 1996)." 31 *Suffolk U. L. Rev.*, 1998:987.
- Bonnette, V. and D. Lamar. "Title IX Investigator's Manual." U.S. Department of Education, Office for Civil Rights, (April 2, 1990). Microfiche.
- Boston College Academic Services, "Glossary of BC Law Terms."

<http://www.bc.edu/schools/law/services/academic/glossary.html>. (accessed February 16, 2008).

Botelho, J.L. “The Cohen Court’s Reading of Title IX: Does it Really Promote a *De facto* Quota Scheme?” *33 New Eng. L. Rev.*, 1999:743.

Boucher v. Syracuse University, Docket No. 97-7678; 164 F. 3d 113; 1999 U.S. App. LEXIS 90; 42 Fed. R. Serv. 3d (Callaghan) 659, (January 6, 1999).

Bowers v. Baylor University, Civil No. W-94-CA-154; 862 F. Supp. 142; 1994 U.S. Dist. LEXIS 12484, (August 11, 1994).

Brainard, J., S. Burd and B. Gose. “The Clinton Legacy in Higher Education.” *Chronicle of Higher Education*, December 15, 2000: para. 18. LexisNexis (accessed April 10, 2010).

Brake, D. “The Struggle for Sex Equity in Sport and the Theory Behind Title IX.” *34 U. Mich. J. L. Ref.*, 2000:13.

Brake, D. and E. Catlin. “Setting a Course for College Athletics: The Path of Most Resistance The Long Road Toward Gender Equity in Intercollegiate Athletics.” *3 Duke J. Gender L. & Pol’y*,” 1996: 51.

Bredthauer, T.S. “Twenty-Five Years Under Title IX: Have We Made Progress?” *31 Creighton L. Rev.*, 1998: 1107.

Brenden v. Independent School District, No. 4-72 Civ. 201; 342 F. Supp. 1224; 1972 U.S. Dist. LEXIS 13955, May 1, 1972.

Brenden v. Independent School District, No. 72-1287; 477 F.2d 1292; 1973 U.S. App. LEXIS 10454; 23 A.L.R. Fed 649, January 8, 1973, submitted, April 18, 1973, decided.

Briggs Et Al v. Elliott Et Al., No. 273, 342 U.S. 350; 72 S. Ct. 327; 152 U.S. LEXIS 2486; 96

- L.Ed. 392, (January 28, 1952).
- Brown Et Al. v Board of Education of Topeka Et Al.*, No. 1, 347 U.S. 483; 74 S. Ct. 686; 1954 U.S. LEXIS 2094; 98 L. Ed. 873; Ohio Op. 326; 38 A.L.R. 2d 1180 (May 17, 1954).
- Brownfield, M. "Title IX of the Education Amendments of 1972: Setting Limits on Agency Jurisdiction." *52 U. Cin. L. Rev.*, 1983:819.
- Brozan, N. "Girls on the Athletic Field: Small Gains, Long Way to the Goal." *New York Times*, January 12, 1976: 22. Microfilm.
- Brozan, N. "Uncertain Future for Curbs on Sex Bias." *New York Times*, November, 23, 1981. <http://www.query.nytimes.com> (accessed August 11, 2008).
- Burd, S. "A New Face for Education in a Second Bush Term." *Chronicle of Higher Education*, November 26, 2004. LexisNexis (accessed April 10, 2010).
- Burkhart, F. E. *The Effects of Title IX on Expenditures in Athletics for Women*. Abstract. Dissertation Northeast Missouri State University, 1987. ProQuest AAT 1330804 (accessed October 15, 2009).
- Cady, S. "Equal Coaching for Equal Pay." *New York Times*, October 27, 1979. <http://www.query.nytimes.com> (accessed August 11, 2008).
- Cady, S. "Notre Dame Grapples with Athletic Equity." *New York Times*, December 14, 1979. <http://www.query.nytimes.com> (accessed August 11, 2008).
- Cain, P.A. "COMMENTARY: Women, Race, and Sports: Life Before Title IX." *4 J. Gender Race & Just.*, 2001:337.
- Calia, G. N. *An Historical Analysis Of The Impact Of Title IX on Student Media Presentation of Women as Athletes*. Abstract. Dissertation. Fordham University,

1993. ProQuest AAT 9324608(accessed October 15, 2009).
- Campbell, J.N. *Actual Versus Perceived Compliance with Title IX Regulations Governing the Women's Intercollegiate Athletic Program at the Florida State University, 1972 – 1985*. Abstract. Dissertation. 1987. ProQuest AAT 8805649 (accessed October 15, 2009).
- Campbell, S. "Compensatory Damages are not Available for a Title IX Violation Without Showing of Intentional Discrimination *Horner v. Kentucky High School Athletic Ass'n* 206 F.ed 685 (6th Cir. 2000). 11Seton Hall J. Sports L. 177.
- Canham, D. "Opposition Forwarded to Title IX Regulations." *N.C.A.A. News*, vol. 11, no. 6, May 15, 1974: 6. <http://web1.ncaa.org> (accessed March 28, 2008).
- Canham, D. "Women's Athletics: A Conflict over Regulations." *New York Times*, December 29, 1974. <http://www.query.nytimes.com> (accessed August 11, 2008).
- Cannon v. University of Chicago*, No. 77-926; 441 U.S. 677; 99 S. Ct. 1946; 60 L. Ed. 2d 560; 1979 U.S. LEXIS 36; 19 Empl. Prac. Dec. (CCH) P9202 January 9, 1979, Argued; May 14, 1979, Decided.
- Cantu, N. V. "Letters to the Editor: 'Title IX and Men's Sports.'" *Chronicle of Higher Education*, January 15, 1999. LexisNexis (accessed April 10, 2010).
- Cantu, N.V. "Letter to the Editor: 'Enforcing Title IX.'" *Chronicle of Higher Education*, March 3, 2000:para. 13. LexisNexis (accessed April 10, 2010).
- Cantu, N.V. "Letter to the Editor: 'Title IX Policy Remains Consistent.'" *Chronicle of Higher Education*, January 30, 1998: para. 2. LexisNexis (accessed April 10,2010).
- Cape v. Tennessee Secondary School Athletic Association*, No. 77-1153, 563 F.2d 793; 1977 App. LEXIS 11308, October 3, 1977, Decided.

- Carpenter, L.J. and R.V. Acosta. *Women In Intercollegiate Sport: A Longitudinal, National Study Twenty-Nine Year Update 1977-2006*. (2006).
<http://webpages.charter.net/womeninsport/> (accessed April 8, 2006).
- Carr, S. "Male Coach of Women's Track Sues Vanderbilt U. Under Title IX." *Chronicle of Higher Education*, September 10, 1999. LexisNexis (accessed April 10, 2010).
- Certo, M. J. *Reaching Gender Equity in Intercollegiate Athletics: Coaches' And Student-Athletes' Beliefs About Institutional Support For Men's And Women's Athletics*. Abstract. Dissertation. Columbia University Teachers College, 1997. ProQuest AAT 9810955(accessed October 15, 2009).
- Chambers, M. "Volleyball; Power of the N.C.A.A. in Court Test Today." *New York Times*, January 20, 1999. LexisNexis (accessed May 2, 2010).
- Chambers, M. "Women's Sports; For Women, 25 Years of Title IX has Not Leveled the Playing Field." *New York Times*, June 16, 1997: para 15. LexisNexis (accessed May 2, 2010).
- Champion, T.M. *Title IX: Impact Of Gender Equity On Female Athletes In Intercollegiate Athletics*. Abstract. Dissertation Saint Louis University, 2006. ProQuest AAT 3250380 (accessed October 15, 2009).
- Cheesbrough, T.R. "*Cohen v. Brown*: I am Woman, Hear Me Score." *5 Vill. Sports & Ent. L. J.*, 1998:295.
- Chronicle of Higher Education. "57 Rights Groups Hit HEW on Anti-Bias Enforcement." *Chronicle of Higher Education*, vol. 11, no. 15, December 22, 1975:7. Microfilm.
- Chronicle of Higher Education. "Anti-Sex Rules White House Reviewing Proposals." *Chronicle of Higher Education*. vol. 10, no. 3, March 10, 1975: 10. Microfilm.

Chronicle of Higher Education. "Athletic Directors Confront Federal Officials at Title IX Seminar." *Chronicle of Higher Education*, May 21, 1999. LexisNexis (accessed April 10, 2010).

Chronicle of Higher Education. "Bias-Rules Deadline." *Chronicle of Higher Education*, vol. 10, no. 17, July 7, 1975: 5, col. 2, para. 3. Microfilm.

Chronicle of Higher Education. "Campus Notes: Men and Women's Sports Merged at Stanford." *Chronicle of Higher Education*, vol. 10, no. 5, March 24, 1975: 2. Microfilm.

Chronicle of Higher Education. "Controversial Portions of U.S. Rules Against Sex Discrimination." *Chronicle of Higher Education*, vol. 8, no. 37, July 8, 1974: 9. Microfilm.

Chronicle of Higher Education. "Education Dept. Resolves Last of 25 Bias Complaints Filed by Women's Group." *Chronicle of Higher Education*, January 21, 2000. LexisNexis (accessed April 10, 2010).

Chronicle of Higher Education. "Federal Panelists' Ideas for Changing Title IX." *Chronicle of Higher Education*, January 3, 2003. LexisNexis (accessed April 10, 2010).

Chronicle of Higher Education. "Football and the Bias Rules." *Chronicle of Higher Education*, vol. 10, no. 16, June 23, 1975: 6, col. 1, para. 2. Microfilm.

Chronicle of Higher Education. "Hillsdale Won't Comply." *Chronicle of Higher Education*, vol. 11, no. 8, November 4, 1975: 6. Microfilm.

Chronicle of Higher Education. "House to name Successor to Late Congress Woman in Higher-Education Panel." October, 2002. LexisNexis (accessed April 10, 2010).

Chronicle of Higher Education. "It's Official: Mathews to Head H.E.W." *Chronicle of Higher Education*, vol. 10, no. 17, July 7, 1975: 5. Microfilm.

- Chronicle of Higher Education. "Minority Women Still Underrepresented in College Sports." *Chronicle of Higher Education*, July 11, 2003. LexisNexis (accessed April 10, 2010).
- Chronicle of Higher Education. "N.C.A.A. Eyes Women's Sports Considers Unifying Administration with Men's." *Chronicle of Higher Education*, vol. 9, no. 15, January 13, 1975: 3, para 6. Microfilm.
- Chronicle of Higher Education. "NCAA Report on Sports Participation Reveals an Upswing for Women and a Drop for Men." *Chronicle of Higher Education*, April 19, 2002. LexisNexis (accessed April 10, 2010).
- Chronicle of Higher Education. "PL-318." *Chronicle of Higher Education*, May 22, 1972. Microfilm.
- Chronicle of Higher Education. "President Signs Proposed Rules on Sex Bias." *Chronicle of Higher Education*, vol. 10, no. 15, June 9, 1975: 1. Microfilm.
- Chronicle of Higher Education. "Sex Bias in Athletics: HEW Outlines Responsibilities of Colleges." *Chronicle of Higher Education*, vol. 11, no. 3, September 29, 1975:8-9:col. 3, para. 3. Microfilm.
- Chronicle of Higher Education. "Sex-Bias Curbs Due to Take Effect." *Chronicle of Higher Education*, vol. 10, no. 18, July 21, 1975: 9. Microfilm.
- Chronicle of Higher Education. "Southern Miss Drops 33 Men's Roster Spots—but Keeps the Athletes." *Chronicle of Higher Education*, April 7, 2000. LexisNexis (accessed April 10, 2010).
- Chronicle of Higher Education. "Status of Major Legislation." *Chronicle of Higher Education*, vol. 6, July 3, 1972: 10. Microfilm.

Chronicle of Higher Education. "Suit Attacks Denial of Aid to Women Athletes."

Chronicle of Higher Education, vol. 11, no. 10, November 17, 1975: 2. Microfilm.

Chronicle of Higher Education. "Summary of Higher Education Bill: Senate Passes It 63 to Fifteen." *Chronicle of Higher Education*, May 30, 1972: 10. Microfilm.

Chronicle of Higher Education. "U.S. Supreme Court Turns Away Sex-Bias Lawsuit Against U. of Southern California." *Chronicle of Higher Education*, December 10, 1999. LexisNexis (accessed April 10, 2010).

Chronicle of Higher Education. "Washington Notes: Congress Votes to Nullify Anti-Busing Amendment." *Chronicle of Higher Education*, vol. 9, no. 14, December 23, 1974: 4. Microfilm.

Chronicle of Higher Education. "Washington Notes: Sex Bias Guidelines Being Reviewed." *Chronicle of Higher Education*, vol. 8, no. 32, May 31, 1974: 6. Microfilm.

Chronicle of Higher Education. "Washington Notes. Sports May be Excluded from Equality Guidelines." *Chronicle of Higher Education*, vol. 8, no. 29, April 22, 1974: 4. Microfilm.

Chronicle of Higher Education. "What Title IX Means: Text of Holmes' Memorandum on Athletics." *Chronicle of Higher Education*, vol. 11, no. 3, September 29, 1975:9. Microfilm.

Chronicle of Higher Education. "'With Little History, Debate or Thought.'" *Chronicle of Higher Education*, vol. 10, no. 7, April 7, 1975: 11. Microfilm.

Chronicle of Higher Education. "Women May Be Eligible for 1976 Rhodes Scholarship." *Chronicle of Higher Education*, vol. 11, no. 2, September 22, 1975: 1. Microfilm.

Chronicle of Higher Education. "Women's Golf Champion Seeks Sport Scholarship."

- Chronicle of Higher Education*, vol. 10, no. 14, May 27, 1975: 8, col. 3, para. 1.
Microfilm.
- Chronicle of Higher Education. "Women's Groups Sue U.S. Over Aid to Sex-Biased Colleges." *Chronicle of Higher Education*, vol. 9, no. 11, December 2, 1974: 5.
Microfilm.
- Clark, S. J. "Competing in the 21st Century: Title IX, Gender Equity and Athletics: Introducing the Mixed Messages of Title IX." *34 U. Mich. J. L. Ref.*, 2000:1.
- Classen, C.C. "Title IX and Employment Discrimination in Coaching Intercollegiate Athletics." *12 U. Miami Ent. & Sports L. Rev.*, 1994:149.
- Cohen v. Brown University*, No. 92-2483; 991 F. 2d 888; 1993 U.S. App. LEXIS 7912, (April 16, 1993).
- Cole, R. "Title IX: A Long Dazed Journey into Rights." *Phi Delta Kappan* 57 (1975): 575-577, 586.
- Colles, C.M. *The Office for Civil Rights' Investigation and Interpretation of Title IX's Three-Part Test: A Question of Consistency*. Abstract. Dissertation. University of Northern Colorado, 1997. ProQuest AAT 9806118 (accessed October 15, 2009).
- Connoly, Jr., W.B. and J.D. Adelman. "A University's Defense to a Title IX Gender Equity in Athletics Lawsuit: Congress Never Intended Gender Equity Based on Study Body Ratios." *71 U. Det. Mercy L. Rev.*, 1994:845.
- Cook v. Colgate University*, 90-CV-411; 802 F. Supp. 737; 1992 U.S. Dist. LEXIS 14951, (September 28, 1992).
- Cook, J. "Barnard Class Told to Battle Bias." *New York Times*, May 15, 1980.
<http://www.query.nytimes.com> (accessed August 11, 2008).

- Cox, T.A. "Intercollegiate Athletics and Title IX." *George Washington Law Review* 46(1), 1977:34-65.
- Craig v. Boren*, No. 75-628; 429 U.S. 190; 97 S. Ct. 451; 1976 U.S. LEXIS 83; 50 L. Ed. 2d 397, (December 20, 1976)
- Croudace, V.P. and S.A. Desmarais. "Where the Boys Are: Can Separate Be Equal in School Sports?" *58 S. Cal. L. Rev.*, 1985:1425.
- Crouse, A. "Equal Athletic Opportunity: An Analysis of *Mercer v. Duke University* and A Proposal to Amend the Contact Sport Exception to Title IX." *84 Minn. L. Rev.*, 2000:1655.
- Cummings, J. "About Education: College in Michigan Takes Stand Against Rule It Views as 'Federal Take-Over of Campus.'" *New York Times*, November 12, 1975.
<http://www.query.nytimes.com> (accessed August 11, 2008).
- Czapansky, K. "*Grove City College v. Bell*: Touchdown or Touchback?" *43 Md. L. Rev.*, 1984:379.
- D'Augustine, R. "'A Loosely Laced Buskin?' The Department of Education Policy Interpretation for Applying Title IX to Intercollegiate Athletics." *6 Seton Hall J. Sports L.*, 1996:469.
- Daniel, D. (Ed). "HEW Challenge Unauthorized" *N.C.A.A. News*, vol. 12, no. 1, January 1, 1975: 2. <http://web1.ncaa.org> (accessed March 28, 2008).
- Daniel, D. (Ed.). "Logic Lacking in Title IX Guidelines," *N.C.A.A. News*, vol. 11, no. 9, August 15, 1974: 8. <http://web1.ncaa.org> (accessed March 28, 2008).
- Daniel, D. (Ed.). "Sen. Tower Comments on Title IX Regulations," *N.C.A.A. News*, vol. 12, no. 1, January 1, 1975: 1, 4. <http://web1.ncaa.org> (accessed March 28, 2008).

- Daniel, D., (Ed.). "Title IX Letter Shows Effort Needed in Battle" *N.C.A.A. News*, vol. 11, no. 9, August 15, 1974: 5. <http://web1.ncaa.org> (accessed March 28, 2008).
- Daniel, D. (Ed). "Title IX Regulations Extreme." *N.C.A.A. News*, v. 11, no 9, August 15, 1974: 2. <http://web1.ncaa.org> (accessed March 28, 2008).
- Davidson, C. F. "Carrying Title IX Too Far." *New York Times*, December 3, 1978: col. 1, para. 5. <http://web1.ncaa.org> (accessed March 28, 2008).
- Davis, T. "A Model of Institutional Governance for Intercollegiate Athletics." *1995 Wis. L. Rev.*, 1995:599.
- Davis, T. "Sports Law in the 21st Century: Intercollegiate Athletics in the Next Millennium: A Framework Evaluating Reform Proposals." *9 Marq. Sports L. J.*, 1999:253.
- Davis, W.E. "Title IX Assassination or Assimilation?" *N.C.A.A. News*, vol. 12, no. 3, February 15, 1975: 8. <http://web1.ncaa.org> (accessed March 28, 2008).
- Davis, W. E. "Title IX Assassination or Assimilation?, Part 2" *N.C.A.A. News*, Vol. 12, no. 4, March 15, 1975: 3. <http://web1.ncaa.org> (accessed March 28, 2008).
- De Lourdes, C.R. "In Search of a Level Playing Field *Baca v. City of Los Angeles* as a Step Toward Gender Equity in Girl's Sports Beyond Title IX." *24 Harv. Women's L. J.*, 2001:139.
- Department of Education Appropriations Act of 1996. H.R. 2127 July 27, 1995 as cited in website: <http://www.titleix.info/> (accessed April 8, 2006).
- Department of Health Education and Welfare. "Educational Programs and Activities Receiving or Benefitting from Financial Assistance." *Federal Register* 39, June 20, 1974. Microfiche.

- Detroit Journal of Urban Law. "Civil Rights, Sex Discrimination, Title IX of the Education Amendments of 1972 Contains an Implied Right to Private Cause of Action." 58 *Det. J. Urb. L.*, 1980:74-94.
- Doherty, E.M. "Winning Isn't Everything. . . It's the Only Thing: A Critique of Teenaged Girls' Participation in Sports." *10 Marq. Sports L. J.*, 1999:127.
- Dudley, Jr., E.C. and G. Rutherglen. "Ironies, Inconsistencies and Intercollegiate Athletics: Title IX, Title VII and Statistical Evidence of Discrimination." *1 Va. J. Sports L.*, 1999:130.
- Duffy, F. M. "Twenty-Seven Years Post Title IX: Why Gender Equity in College Athletics Does Not Exist." *19 Quinnipiac L. Rev.*, 2000:67.
- DuFort, J. "The Dangers of Overemphasis." *New York Times*, December 29, 1974: col. 3, para. 7. www.NYTimesarchives.com (accessed August 11, 2008).
- Duncan, D.G. "Gender Equity in Women's Athletics." *64 U. Cinn. L. Rev.*, 1996:1027.
- Dunkle, M.C. "Title IX New Rules for an Old Game" *Teachers College Record* 75 (1975): 385-399.
- Dunkle, M.C. and B. R. Sandler. "Sex Discrimination Against Students: Implications of Title IX of the Education Amendments of 1972." *Inequality in Education* 18, (1974): 12-35.
- Duquesna Law Review. "Civil Rights-Sex Discrimination, Title IX of the Education Amendments of 1972, Implied Right of Action." *18 Duquesna L. Rev.*, 1980:983-998.
- El-Bashir, T. "Colleges; Title IX Study; Equality Is Still a Decade Away." *New York Times*, April 29, 1997: para. 3. LexisNexis (accessed May 2, 2010).
- Ellington, T.J., S.K. Higashi, J.K. Kim and M.M. Murakami. "Justice Ruth Bader Ginsburg

- and Gender Discrimination.” *20 Hawaii L. Rev.*, 1998:699.
- Elliott, S.A. and D. S. Mason. “ARTICLE: ‘Gender Equity in Intercollegiate Athletics’: An Alternative Model to Achieving Title IX Compliance.” *11 J. Legal Aspects Of Sport*, 2001:1.
- Emerson, K.E. *Perceptions Of Female Coaches, Female Athletic Directors And Female Administrators Regarding Women Coaching Female Varsity Athletics*. Abstract. Dissertation. University of Idaho, 2002. ProQuest AAT 3043270 (accessed October 15, 2009).
- Eskenazi, G. “Title IX Rules Issued for Equality in Sports.” *New York Times*, June 4, 1975: 29, 30. www.nytimesarchives.com (accessed August 11, 2008).
- Equity in Athletics Disclosure Act*. 20 U.S.C. (1092) (g).
- Espy, Jr. I.P. *A History And Analysis Of Sports-Related Title IX Legislation And Litigation From 1972 to 1997*. Abstract. Dissertation. The University of Alabama, 1998. ProQuest AAT 9831322 (accessed October 15, 2009).
- Evans, T.J. “Spring Symposium: Issues Facing College Athletics: Title IX and Intercollegiate Athletics: A Primer on Current Legal Issues.” *5 Kan J. L. & Pub. Pol’y*, 1996:55.
- Evans, T.M. “In the Title IX Race Toward Gender Equity the Black Female Athlete is Left to Finish Last: The Lack of Access for the ‘Invisible Woman.’” *42 How. L. J.*, 1998:105.
- Evelyn, J. “Calif. 2-Year Colleges Criticized on Title IX.” *Chronicle of Higher Education*, February 8, 2002. LexisNexis (accessed April 10, 2010).
- Farchmin, E. L. *Before the Revolution: The Experiences of Individual Women Involved in*

- Intercollegiate Athletics: 1950-1972*. Abstract. Dissertation. The Florida State University, 2003. ProQuest AAT 3137423(accessed October 15, 2009).
- Farmer, F. "Selling the Adams Criteria: The Response of O.C.R. to Political Intervention in *Adams v. Califano* (430 F. Supp. 118)." *22 How. L. J.* 1979:417-425.
- Farrell, R.C. "Article: Title IX or College Football?" *32 Hous. L. Rev.*, 1995:993.
- Faust, P. "Title IX: It Means More Than Pink Footballs." *Thrust for Education Leadership* 5 (1975): 6-8.
- Favia v. Indiana University of Pennsylvania*, Civil Action No. 92-2045; 812 F. Supp. 578; 1992 U.S. Dist. LEXIS 21117 (November 2, 1992).
- Federbush, M. "An 'Olympics' Approach: A More Equitable Approach to Athletics than Title IX Offers." *34 Mich. J. L. Ref.*, 2000:265.
- Ferrier, J.P. "Comment: Title IX Leaves Some Athletes Asking, 'Can We Play Too?'" *44 Cath. U. L. Rev.*, 1995:841.
- Fields, C.M. "2000 Guideline Critics" *Chronicle of Higher Education*, vol. 9, no. 5, October 21, 1974: 7. Microfilm.
- Fields, C.M. "Bias Exceptions Beaten Back." *Chronicle of Higher Education*, vol. 10, no. 19, August 4, 1975: 1, col. 3, para. 1. Microfilm.
- Fields, C.M. "Billy Jean King Tells Senators of Bias in School Sports." *Chronicle of Higher Education*, vol. 8, no.9, November 19, 1973: 5. Microfilm.
- Fields, C.M. "Fear of Effect on Athletics Delays Sex-Bias Guidelines." *Chronicle of Higher Education*, vol. 8, no. 24, March 18, 1974: 5. Microfilm
- Fields, C.M. "HEW Softens Bias Stand." *Chronicle of Higher Education*, vol. 10, no. 7, April 7, 1975: 1. Microfilm.

- Fields, C.M. "July 31: 'Title IX Deadline.'" *Chronicle of Higher Education*, " November 14, 1977. Microfilm
- Fields, C.M. "Mood in Congress Alarms Women." *Chronicle of Higher Education*, vol. 10, April 28, 1975: 7, col. 2, para. 2. Microfilm.
- Fields, C.M. "N.C.A.A. Urged to Withdraw Its Women's Sports Plan." *Chronicle of Higher Education*, vol. 10, no. 14, May 27, 1975: 8, col. 2, para. 4. Microfilm.
- Fields, C.M. "Probing Discrimination." *Chronicle of Higher Education*, vol. 10, no. 15, June 9, 1975: 6 col. 1, para. 2. Microfilm.
- Fields, C.M. "Revenue-Producing Intercollegiate Sports Freed from Sex-Bias Rules by Senate." *Chronicle of Higher Education*, vol. 8, no. 34, May 28, 1974: 4. Microfilm.
- Fields, C.M. "They Don't Trust the Jocks." *Chronicle of Higher Education*, vol. 10, no. 12, May 12, 1975: 3, col. 2, para.7-8. Microfilm.
- Fields, C.M. "U.S. Publishes Its Anti-Sex Bias Guidelines But Delays Enforcement; Text Books Are Not Affected HEW Expect Rules Won't Take Effect before January 1st." *Chronicle of Higher Education*, vol. 8, no. 36, June 24, 1974: 1. Microfilm.
- Fields, S. K. *Female Gladiators: Gender, Law and Contact Sport in America*. Abstract. Dissertation. The University of Iowa, 2000. ProQuest AAT 9996088 (accessed October 15, 2009).
- Filippone, J. "Title IX in the Nineties." *15 N.Y.L. Sch. J. Hum. Rts.*, 1999:561.
- Finch, N.L. "Gender-Equity Attitudes Depend on Perspective." *N.C.A.A. News*, January 27, 1993: para. 4. <http://web1.ncaa.org> (accessed March 28, 2008).
- Findlay, P.N. "ARTICLE: The Case for Requiring a Proportionality Test to Assess Compliance with Title IX in High School Athletics." *23 N. Ill. U. L. Rev.* 2002:29.

Fishel, A. "Organizational Positions on Title IX: Conflicting Perspectives on Sex Discrimination in Education" *The Journal of Higher Education* LVII (1976): 93-105.

Fiske, E.B. "Colleges Expecting Little Impact From Ruling." *New York Times*, February 29, 1984: para. 3. <http://www.query.nytimes.com> (accessed August 11, 2008).

Fiske, E.B. "Congress Moves to Modify Law Restricting Sex Bias by Schools." *New York Times*, November 25, 1974. <http://www.query.nytimes.com> (accessed August 11, 2008).

Fiske, E.B. "Education Watch: Going It Alone at Grove City." *New York Times*, May 5, 1985: para. 4. <http://select.nytimes.com> (accessed November 3, 2008).

Flores, C. "Wrestling Coaches Sue Education Department Over Title IX Enforcement." *Chronicle of Higher Education*, February 1, 2002. LexisNexis (accessed April 10, 2010).

Flygare, T.J. "Schools and the Law/Federal Court in Michigan Holds that Title IX does not Cover Athletics." *Phi Delta Kappan* 62 (June 1981): 741-42.

Ford, W.D. "Constitutional Implications of Federal Aid to Higher Education." *1 U.L. & Education*, October 1972:513-540.

Forman, P. J. *Contesting gender equity: The Cooptation Of Women's Intercollegiate Athletics*. Abstract. Dissertation. University of California, Davis, 2001. ProQuest AAT 3039147 (accessed October 15, 2009).

Francis, R. W. "The History Behind The Equal Rights Amendment." *History*. <http://www.equalrightsamendment.org/era.htm> (accessed November 30, 2009).

Franklin v. Gwinnette County Public Schools, No. 90-918; 503 U.S. 60; 112 S. Ct. 1028; 1992 U.S. LEXIS 1375: 117 L.Ed. 2d 208; 60 U.S. L. W. 4167; 59 Fair Empl. Prac. Cas. (BNA) 213; 58 Empl. Prac. Dec. (CCH) P41, 293; 92 Cal. Daily Op. Service 1594; 92 Daily Journal DAR 2551; 6 Fla Law W. Fed. S 16 (February 26, 1992).

Freedman, A.E. "Sex Equity, Sex Differences and The Supreme Court." *Yale L. J.*, 1983:913.

Frontiero v. Richardson, No. 71-1694, 411 U.S. 677; 93 S. Ct. 1764; 1973 U.S. LEXIS 153; 36 L. Ed. 2d 583; 9 Fair Empl. Prac. Cas (BNA) 1253; 5 Empl. Prac. Dec. (CCH) P8609, January 17, 1973, Argued May 14, 1973, Decided.

Fuchs, M. "For Women's Athletics, A Tempest Over a Survey." *New York Times*, July 31, 2005. LexisNexis (accessed April 30, 2010).

Fuerbrunger, J. "Senate to Take Up Anti-Bias Measure Before Departing." *New York Times*, September 28, 1984. LexisNexis (accessed May 2, 2010).

Fuzak, J.A. "Fuzak Questions Title IX Consistency with The Law." *N.C.A.A. News*, vol. 12, no. 9, August 1, 1975: 8. <http://web1.ncaa.org> (accessed March 28, 2008).

Gappa, J.M., Jauquet, A.M., Ragan, B.M. "Self-Evaluation Packet Designed to Meet the Needs and requirements of the Department of Health, Education and Welfare for Compliance by Institutions of Higher Education with Title IX of the Education Amendments of 1972 and Its Implementing regulations." January 1976. Microfiche.

Garmarekian, B. "The Calendar." *New York Times*, May 10, 1982. LexisNexis (accessed May 2, 2010).

Gates, Jr., R. E. *The Development of Title IX of the Educational Amendments of 1972 and Its Current Application to Institutional Athletic Programs*. Abstract. Dissertation. University of Louisville, 1984. ProQuest ATT 8420417 (accessed October 15, 2009).

Gebhart v. Belton, 91 A.2d 137; 1952 Del. LEXIS 117; Del. Ch. 144 (August 28, 1952).

George, B.G. "ARTICLE: Fifty/Fifty: Ending Sex Segregation in School Sports." *63 Ohio St. L.J.*, 2002/2003:1107.

- George, B.G. "Miles To Go and Promises to Keep: A Case Study in Title IX." *64 U. Colo. L. Rev.*, 1993:555.
- George, B.G. "Sports Law in the 21st Century: Title IX and the Scholarship Dilemma." *9 Marq. Sports L. J.*, 1999:273.
- George, B.G. "Who Plays and Who Pays: Defining Equality in Intercollegiate Athletics." *1995 Wis. L. Rev.*, 1995:647.
- Gerber, E.W. The Legal Basis for the Regulation of Intercollegiate Sport. *Educational Record* 60 (1979): 468.
- Ginsberg, R.B. "Gender and the Constitution." *New York Law Journal*, November 1973:170.
- Gohl, S.E. "A Lesson in English and Gender: Title IX and the Male Student-Athlete." *50 Duke L. J.*, 2001:1123.
- Gomes v. Rhode Island Interscholastic League*, Civ. A. No. 79-0158; 469 F. Supp. 659; 1979 U.S. Dist. LEXIS 12685, May 1, 1979.
- Gonyo v. Drake University*, Civil No. 4-93-70470; 879 F. Supp. 1000; 1995 U.S. Dist. LEXIS 3820, (March 10, 1995).
- Good Sports, Inc. "Gender Equity and Title IX: Important Facts." (no date).
http://www1.ncaa.org/membership/ed_outreach/gender_equity/index.html. (accessed March 25, 2004).
- Gootman, E. "Patsy Mink, Veteran Hawaii Congresswoman, Dies at 74." *New York Times*, September 30, 2002: para. 5. LexisNexis (accessed May 2, 2010).
- Gray, K. "Colleges; Bias in Scholarships Charged at 25 Colleges." *New York Times*, June 3, 1997. LexisNexis (accessed May 2, 2010).

- Gray, M.W. "Setting a Course for College Athletics: The Concept of Substantial Proportionality in Title IX Athletic Cases." *3 Duke J. Gender L. & Pol'y*, 1996:165.
- Green, E. "HEW 'Overboard' On Title IX." As quoted from Associated Press release, November 24, 1974 appearing in *N.C.A.A. News*, vol. 12, no. 1, January 1975: 4. <http://web1.ncaa.org> (accessed March 28, 2008).
- Green, E. "Title IX Author Considers Guidelines 'Interference.'" *N.C.A.A. News*, vol. 12, no. 4, March 15, 1975: 2. <http://web1.ncaa.org> (accessed March 28, 2008).
- Greenberger, M.D. and N.K. Chaudry. "Letter to Editor: Gender Equity Issues in College Sports." *Chronicle of Higher Education*, March 5, 1999. LexisNexis (accessed April 10, 2010).
- Greenhouse, L. "College; N.C.A.A. Triumphs in Civil Rights Suit in Supreme Court." *New York Times*, February 24, 1999. LexisNexis (accessed May 2, 2010).
- Greenhouse, L. "Court Opens Path for Student Suits in Sex-Bias Case." *New York Times*, February 27, 1992. LexisNexis (accessed May 2, 2010).
- Greenhouse, L. "Court Says School Anti-Bias Rules Cover Workers as well as Pupils." *New York Times*, May 18, 1982. LexisNexis (accessed May 2, 2010).
- Greenhouse, L. "High Court New Term: Much Old Business." *New York Times*, October 2, 1983. LexisNexis (accessed May 2, 2010).
- Greenhouse, L. "Justices Say Law on Sex Bias Guards Against Retaliation, Too." *New York Times*, March 30, 2005: para. 6. LexisNexis (accessed April 30, 2010).
- Greenhouse, L. "Retaliation at Issue in Discrimination Case." *New York Times*, December 1, 2004. LexisNexis (accessed April 30, 2010).
- Greenhouse, L. "The O'Connor Record Proves Surprising to Fans and Foes." *New York*

- Times*, July 11, 1982: para. 15. LexisNexis (accessed May 2, 2010).
- Gregg, E.A. *A History of Women's Intercollegiate Athletics at Indiana University-Bloomington: 1965-2001. A Historical Case Study*. Dissertation Indiana University, 2007. ProQuest AAT 3283104 (accessed October 15, 2009).
- Gross, J. "Miss Lopiano: A Leader in Women's Sports." *New York Times*, January 8, 1980. <http://www.query.nytimes.com> (accessed August 11, 2008).
- Gross, J. "Women's Group Set to Combat N.C.A.A." *New York Times*, January 9, 1980. <http://www.query.nytimes.com> (accessed August 11, 2008).
- Gross, J. "Women's Old Images Fading Rapidly: Significant Gains by Female Athletes." *New York Times* October 29, 1982. LexisNexis (accessed May 2, 2010).
- Grove City College Et Al. v. Bell, Secretary of Education, Et Al.* No. 82-792, 465 U.S. 555; 104 S. Ct. 1211; 79 L. Ed. 2d 516; 1984 U.S. LEXIS 158; 52 U.S.L.W. 4283; 33 Empl. Prac. Dec. (CCH) P 34, 158, November 29, 1983, Argued; February 28, 1984, Decided.
- Gurka, L.A. "One View of Title IX: Detrimental to Women." *New York Times*, sec. 2, September 28, 1975: 5. Microfilm.
- Haffer v. Temple University*, No. 82-149; 688 F.2d 14; 1982 U.S. App. LEXIS 25850 (September 7, 1982).
- Haggerty, E.A. "Title IX-Federally Funded Educational Institutions Failed to Effectively Accommodate Female Student Athletics Due to Intentional Discrimination Based on Stereotypes Assuming Their Interests and Abilities." *11 Seton Hall J. Sport L.*, 2001:373.
- Hall, J. "Women's Athletics Gain Acceptance on Campus." *N.C.A.A. News*, vol. 12, no. 1, January 1, 1975: 2. <http://web1.ncaa.org> (accessed March 28, 2008).
- Hammer, M.P. "Bump, Set, Spiked: Determining Whether the National Collegiate

- Athletic Association is a Recipient of Federal Funds Under Title IX *National Collegiate Athletic Ass'n v. Smith*.” 65 *Mo. L. Rev.*, 2000:773.
- Hammond, M. “Substantial Proportionality Not Required: Achieving Title IX Compliance Without Reducing Participation in Collegiate Athletics.” 87 *Ky. L. J.*,
- Hanson, L.S.C. “Sports, Athletics and the Law: A Selected Topical Bibliography of Legal Resources Published During 1990s.” 4 *Seton Hall J. Sports L.*, 1994:763.
- Harper v. Board of Regents, Illinois State University*, Case No. 95-1371; 35 F. Supp. 2d 1118; 1999 U.S. Dist. LEXIS 1591, (February 3, 1999).
- Harris, M. “Hitting ‘Em Where It Hurts: Using Title IX Litigation to Bring Gender Equity to Athletics.” 72 *Denv. U. L. Rev.*, 1994:57.
- Hattig, S.A. *A Study of Progress Toward Gender Equity in the Intercollegiate Athletics Program at a Major Research University*. Abstract. Dissertation. The Pennsylvania State University, 1994. ProQuest AAT 9518759 (accessed October 15, 2009).
- Haworth, K. “Boston U. to Drop Its Football Program at Season’s End.” *Chronicle of Higher Education*, November 14, 1997. LexisNexis (accessed April 10, 2010).
- Haworth, K. “Federal Appeals Court Clears Way for Title IX to Apply to the N.C.A.A.” *Chronicle of Higher Education*, March 27, 1998. LexisNexis (accessed April 10, 2010).
- Haworth, K. “Statement on Sports Scholarships Frustrates and Confuses Colleges.” *Chronicle of Higher Education*, September 4, 1998. LexisNexis (accessed April 10, 2010).
- Heckman, D. “On the Eve of Title IX’s 25th Anniversary: Sex Discrimination in the Gym and Classroom.” 21 *Nova L. Rev.*, 1997:545.
- Heckman, D. “Scoreboard: A Concise Chronological Twenty-Five Year History of Title IX

- Involving Interscholastic and Intercollegiate Athletics,” *21 Seton Hall J. Sport L.*, 1997:391.
- Heckman, D. “The Explosion of Title IX Legal Activity in Intercollegiate Athletics During 1992-93: Defining The ‘Equal Opportunity’ Standard.” 1994 *Det. C.L. Rev.* 953.
- Heller, J.R. “Stepping Back to Punt: Favoring Internal Agency Interpretations Over Title IX and its Regulations.” *12 J. L. & Pub. Pol’y.*, 2000:179
- Helms, J. S. 2146 and S. 535. (January 31, 1977). As cited in website: <http://titleix.info/> (accessed April 8, 2006).
- Herr, W. “Title IX in 1989: Are All Things Possible?” *N.C.A.A. News*, vol. 16, vol. 15, November 30, 1979: 3. <http://web1.ncaa.org> (accessed March 28, 2008).
- Hicks, N. “Congress Gets U.S. Rules to End Schools’ Sex Bias.” *New York Times*, June 4, 1975. www.nytimesarchives.com (accessed August 11, 2008).
- Hicks, N. “H.E.W. Halts Individual Bias Inquiries.” *New York Times*, May 30, 1975: 29. www.nytimesarchives.com (accessed August 11, 2008).
- Hicks, N. “House Panel Rejects Some Rules on Sex Discrimination in Schools.” *New York Times*, July 9, 1975. www.nytimesarchives.com (accessed August 11, 2008).
- Hicks, N. “House Reverses Itself to Allow Integration of Sexes in Schools.” *New York Times*, July 19, 1975. www.nytimesarchives.com (accessed August 11, 2008).
- Hicks, N. “Sex Discrimination Rules Face Test in House Unit.” *New York Times*, July 8, 1975. www.nytimesarchives.com (accessed August 11, 2008).
- Hicks, N. “Title IX Exemptions Unlikely for Revenue-Producing Sports.” *New York Times*, October 2, 1975. www.nytimesarchives.com (accessed August 11, 2008).
- Hicks, N. “Women’s Groups and Educators Urge Approval of Sex Bias Rules.” *New York*

- Times*, June 26, 1975. www.nytimesarchives.com (accessed August 11, 2008).
- Hillsdale College v. Department of Health, Education and Welfare*, No. 80-3207; 696 F.2d 418; 1982 U.S. App. LEXIS 23243, (December 16, 1982).
- History.com. "History Made Every Day. World History Timeline 1972." A & E Television Network. www.history.com/wt.do?year=1972. (accessed November 30, 2009).
- Hogan, C.L. "Football is Hardly a 'Sugar Daddy.'" *New York Times*, December 19, 1978. <http://www.query.nytimes.com> (accessed August 11, 2008).
- Hogan, C.L. "N.C.A.A. Discovers Women's Athletics: A Valuable Resource." *New York Times*, March 30, 1980. <http://www.query.nytimes.com> (accessed August 11, 2008).
- Hogan, C.L. "Title IX Progress: Little Has Changed." *New York Times*, September 26, 1976. Microfilm.
- Hogan, J.C. "Sport in the Courts" *Phi Delta Kappan* LVI (1974) 132-135.
- Hollander, S. "Taking Aim at Gender Barriers In A Full-Contact Sport." *New York Times*, May 13, 2008. LexisNexis (accessed April 30, 2010).
- Hollinger, Jr., C. L. "Case note: Are Male College Sports in Jeopardy? A Look at *Kelly v. Board of Trustees of the University of Illinois*." *21 S.U. L. Rev.*, 1994:151.
- Holmes, P.E. "Elimination of Sex Discrimination in Athletic Programs. Memorandum to Chief State School Officers, Superintendents of Local Educational Agencies and College and University Presidents." September 1975. ERIC ED 119583 (accessed September 22, 2008).
- Hoogestraat, F. M. *Qualitative Portraiture Of The Female Intercollegiate Athletic*

- Experience In Four Elite Women's Basketball Programs*. Abstract. Dissertation. Peabody College for Teachers of Vanderbilt University, 1997. ProQuest AAT 9729100 (accessed October 15, 2009).
- Hooks, D.T. *Complying with Title IX: An Examination Of The Effects On Three NCAA Division III Colleges In Pennsylvania And The Difficulties The Law's Interpretation Has Created For Small Colleges Attempting To Achieve Gender Equity*. Abstract. Dissertation. University of Pennsylvania, 1998. ProQuest AAT 9913306 (accessed October 15, 2009).
- Hovan, J.A. *Changes in Certified NCAA Division I Athletic Programs in the Area of Gender-Equity*. Abstract. Dissertation. University of Miami, 1998. ProQuest AAT 9934230 (accessed October 15, 2009).
- Hoyt, J. "Target: Sex Bias in Education." *American Education* 10 (1974): 129-131.
- Hudson, J. "Comment: Complying with Title IX of the Education Amendments of 1972: The Never-Ending Race to the Finish Line." *5 Seton Hall J. Sports L.*, 1995:575.
- Hughes, J. "2 Universities Cut Some Men's Teams." *Chronicle of Higher Education*, April 16, 1999. LexisNexis (accessed April 10, 2010).
- Hult, J. "Equal Programs or Carbon Copies: Title IX Prospects and Problems." *Journal of Physical Education and Recreation* 47 (1976): 24-25.
- Hunt, R.R. "Implementation and Modification of Title IX Standards: The Evolution of Athletic Policy." *1999 BYU Ed. & L. J.*, 1999:51.
- Ingrum, A.A. "Civil Rights: Title IX and College Athletics: Is There a Viable Compromise?" *48 Okla. L. Rev.*, 1995:755.
- Iowa Law Review. "Sex Discrimination in College Admissions: The Quest for Equal

- Educational Opportunities.” *56 Ia L. Rev.*, October 1970:209.
- Irving, J. “Wrestling with Title IX.” *New York Times*, January 28, 2003. LexisNexis (accessed April 30, 2010).
- Jackson v Birmingham Board of Education*. (2005). 544 US 167, 161 L Ed 2d 361, 125 S Ct 1497.
- Jacobsen, D. *An Examination of Gender Equity Compliance Through the Perception of High School Girls’ Sports Head Coaches*. Dissertation The University of Southern Mississippi, 2004. ProQuest AAT 3149914 (accessed October 15, 2009).
- Jacobson, J. “Colleges Cut Men’s Teams.” *Chronicle of Higher Education*, March 23, 2001. LexisNexis (accessed April 10, 2010).
- James, R. “Congressional Scorecard: Legislative Committee Keeps up with Bills.” *N.C.A.A. News*, vol. 11, no. 9, August 15, 1974: 3. <http://web1.ncaa.org> (accessed March 28, 2008).
- James, R. “James Reviews NCAA Position to Title IX.” *NCAA News*, vol. 11, no. 8, August 1, 1974: 1, para. 4. <http://web1.ncaa.org> (accessed March 28, 2008).
- James, R. (Ed.). “H.E.W. Regulations Threaten College Athletics.” *N.C.A.A. News*, vol. 11, no. 3, March 1, 1974: 2-3. <http://web1.ncaa.org> (accessed March 28, 2008).
- Janofsky, M. “Colleges; Brooklyn College Drops Sports.” *New York Times*, July 2, 1992. LexisNexis (accessed May 2, 2010).
- Javits, J.K. “Javits Amendment.” Sen. Conf. Rep. No. 1026, 934d Cong., 2nd Sess.4271 (1974) as cited in website: <http://www.titleix.info/> (accessed April 8, 2006).
- Jay, J.E. “Women’s Participation in Sports: Four Feminist Perspectives.” *7 Tex. J. of Women & L.*, 1997:1.

- Jensen, J.E. "Title IX and Intercollegiate Athletics: HEW Gets Serious about Equality in Sports?" *New England Law Journal*. 15 (3), 1979:573-596.
- Johnson, J.K. "Title IX and Intercollegiate Athletics: Current Judicial Interpretation of the Standards of Compliance." *74 B. U. L. Rev.*, 1994:553.
- Johnson, T. "Washington Talk: Congress: Foes of Civil Rights Bill Mount 11th-Hour Drive." *New York Times*, March 22, 1988: para. 8. <http://query.nytimes.com> (accessed November 3, 2008).
- Johnson, T. J. "Throwing Like a Girl: Constitutional Implications of Title IX Regarding Gender Discrimination in High School Athletic Programs." *18 N. Ill. U. L. Rev.*, 1998:575.
- Judge, J., D. O'Brien and T. O'Brien. "Pay Equity: A Legal and Practical Approach to the Compensation of College Coaches." *6 Seton Hall J. Sports L.*, 1996:549.
- Judge, J., D. O'Brien and T. O'Brien. "Perspective: Gender Equity in the 1990's: An Athletic Administrator's Survival Guide to Title IX and Gender Equity Compliance." *5 Seton Hall J. Sports. L.*, 1995:313.
- Jurewitz, R. A. "Playing at Even Strength: Reforming Title IX Enforcement in Intercollegiate Athletics." *8 Am. U.J. Gender Soc. Pol'y & L.*, 2000:283.
- Kampmeier v. Nyquist*. Docket No. 76-7383, No. 509 – September Term 1976; 553 F.2d 296; 1977 U.S. App. LEXIS 13808, (April 15, 1977).
- Kane, M. J. "Setting a Course for College Athletics: Media Coverage of the Post Title IX Female Athlete: A Feminist Analysis of Sport, Gender and Power." *3 Duke J. Gender L. & Pol'y*, 1996:95.
- Karr, A. F. and A. P. Sanil, "Title IX Data Collection: Technical Manual for Developing the

- User's Guide. Technical Report 150. Research Triangle Park, North Carolina: National Institute of Statistical Sciences. (2005).
- <http://www.ed.gov/about/offices/list/ocr/docs/title9technicalmanual.pdf>.
- Kelley, D.R. *Physical Education Curriculum Compliance with the 1975 Title IX Regulations in Eight Southeastern States*. Abstract. Dissertation. Georgia State University, 1980. ProQuest AAT 8015049 (accessed October 15, 2009).
- Kellogg, A.P. "Following Title IX Probe, UCLA Reinstates Women's Rowing as Varsity Sport." *Chronicle of Higher Education*, March 2, 2001: para. 6. LexisNexis (accessed April 10, 2010).
- Kellogg, A.P. "Notes on Athletics." *Chronicle of Higher Education*, October 5, 2001. LexisNexis (accessed April 10, 2010).
- Kelman, M. "(Why) Does Gender Equity in College Athletics Entail Gender Equity." 7 *S. Cal. Rev. L. & Women's Stud.*, 1997:63.
- Kentucky Law Journal. "Title IX Sex Discrimination Regulations: Impact on Private Education." 65 *Ky L.J.* 1976:656-711.
- Keri, J. "New Frontiers Await the Next Generation." *New York Times*, February 8, 2009. LexisNexis (accessed April 30, 2010).
- King, B.J. "BackTalk; For All the Good Things It Has Done, Title IX Is Still Plagued by Myths." *New York Times*, June 23, 2002. LexisNexis (accessed May 2, 2010).
- King, L. T. *Title IX, Sex Ratios, and Trends in Leadership Roles in AIAW Division I Institutions*. Abstract. Dissertation, 1981. ProQuest ATT8118392 (accessed October 15, 2009).
- Klarman, M.J. *Brown v. Board of Education and the Civil Rights Movement*. (New York:

- Oxford University Press, 2007).
- Koch, J.V. "Title IX and the N.C.A.A." *3 West St. U.L. Rev.* 1976:250-261.
- Kolpin, L.J. "Has Title IX Delivered an 'Air Ball' to Coaches of Women's Athletics?" *45 Drake L. Rev.*, 1997:253.
- Koza, P. "ERA May be Dead, But Its Decade of Controversy Forever Changed the Status of American Women" *New York Times*, June 26, 1982. LexisNexis (accessed May 2, 2010).
- Krakora, J. "The Application of Title IX to School Athletic Programs." *68 Cornell L. Rev.*, 1983:222.
- Kroll, W. "Psychological Scaling of Proposed Title IX Guidelines." *Research Quarterly* (October 1976): 552.
- Labinger, L. "Title IX and Athletics: A discussion of *Brown University v. Cohen* by Plaintiff's Counsel, An Address by Lynnette Labinger Rutgers Law School—Newark, October 21, 1998." *20 Women's Rights L. Rep.*, 1999:85.
- LaCroix, R.M. *'You've Come Part Of The Way, Baby': The Status Of Women And Women's Sports In Intercollegiate Athletics 28 Years After Title IX*. Dissertation The Florida State University, 2007. ProQuest AAT 3301568 (accessed October 15, 2009).
- Lamber, J. "Gender and Intercollegiate Athletics: Data and Myths." *34 U. Mich. J. L. Ref.*, 2000:151.
- Lamber, J. Article: Intercollegiate Athletics: The Program Expansion Standard Under Title IX's Policy Interpretation." *12 S. Cal. Rev. L. & Women's Stud.*, 2002:31.
- Lane, J. M. "Title IX Conversational Circles Model" Available from the author. (2002).
- LaNoue, G.R. "Athletics and Equality: How to Comply with Title IX without Tearing

- Down the Stadium.” *Change* 8 (10 November 1976): 27.
- LaPointe, J. “Colleges: The N.C.A.A. Selects Brand As Its Chief.” *New York Times*, October 11, 2002: para. 18-19. LexisNexis (accessed May 2, 2010).
- Lederman, D. “US Supreme Court Agrees to Decide Whether Title IX Applies to NCAA.” *Chronicle of Higher Education*, October 9, 1998. LexisNexis (accessed April 10, 2010).
- Leffel v. Wisconsin*, Nos. 75-C-174, 73-c-269; 444 F. Supp. 1117; 1978 U.S. Dist. LEXIS 20061, (January 19, 1978).
- Leinhardt, G., C. Stainton and S.M. Virji. “A Sense of History,” *Educational Psychologist* 29, (1994): 88
- Lewin, T. “U.S. Defends Anti-Bias Law on College Sports.” *New York Times*, May 30, 2002: para. 8. LexisNexis (accessed May 2, 2010).
- Lewis, C.S. “Title IX of the 1972 Education Amendments Harmonizing Its Restrictive Language with Its Broad Remedial Purpose.” *51 Fordham L. Rev.*, 1983:1043.
- Ley, K. “Women in Sports: Where Do We Go From Here Boys?” *Phi Delta Kappan* 56 (October 1974): 129.
- Lichtenstein, G. “Many Women Are Displeased by Legal ‘Victory.’” *New York Times*, January 23, 1978. <http://query.nytimes.com> (accessed August 11, 2008).
- Lipka, S. “Fresno State Grapples With a Spate of Sex-Discrimination Claims.” *Chronicle of Higher Education*, August 3, 2007. LexisNexis (accessed April 10, 2010).
- Lipka, S. “GAO Examines Effects of Title IX.” *Chronicle of Higher Education*, July 27, 2007. LexisNexis (accessed April 10, 2010).
- Lipka, S. “High Court Expands Protections of Title IX.” *Chronicle of Higher Education*, April 8, 2005: para. 23. LexisNexis (accessed April 10, 2010).

- Lipka, S. "In a New Twist on 'Equal Opportunity' A University Cuts Women's Sports." *Chronicle of Higher Education*, November 3, 2006. LexisNexis (accessed April 10, 2010).
- Lipka, S. "Supreme Court Weighs Applying Title IX to Whistle Blowers." *Chronicle of Higher Education*, December 10, 2004: para. 10. LexisNexis (accessed April 10, 2010).
- Lipsyte, R. "BackTalk; Behind the Scenes, the Sexism Is Now Subtler." *New York Times*, June 9, 2002: para 2. LexisNexis (accessed May 2, 2010).
- Lipsyte, R. "Backtalk: Equity, Plus or Minus." *New York Times*, November 15, 1992: para. 3. LexisNexis (accessed May 2, 2010).
- Lipsyte, R. "Backtalk; Fighting On In the Battle For Equity." *New York Times*, April 27, 1997. LexisNexis (accessed May 2, 2010).
- Lipsyte, R. "Backtalk; Woman Accuses Duke of Going Wide Right of Title IX." *New York Times*, October 8, 2000. LexisNexis (accessed May 2, 2010).
- Lipsyte, R. "Colleges; Five Years Later, A Female Kicker's Memorable Victory." *New York Times*, October 19, 2000. LexisNexis (accessed May 2, 2010).
- Lipsyte, R. "Lopiano Just Smiles Before the Brushback." *New York Times*, March 22, 1992. LexisNexis (accessed May 2, 2010).
- Lipsyte, R. "Title IX Debate Is About Football." *New York Times*, May 12, 2002: para. 7-8. LexisNexis (accessed May 2, 2010).
- Litsky, F. "Colleges; Bush Administration Says Title IX Should Stay As It Is." *New York Times*, July 12, 2003. LexisNexis (accessed May 2, 2010).
- Litsky, F. "Gymnastics; Colleges Reluctantly Drop Men's Programs." *New York Times*, August 7, 2001. LexisNexis (accessed May 2, 2010).

- Longman, J. "Soccer; College Team Finds Novel Alternative to N.C.A.A." *New York Times*, March 7, 2003. LexisNexis (accessed April 30, 2010).
- Lopiano, D. A. "A Fact-Finding Model for Conducting a Title IX Self-Evaluation Study in Athletic Programs: Title IX Prospects and Problems." *Journal of Physical Education and Recreation* 47 (1976): 25-30.
- Lopiano, D.A. "Views of Sport: Fair Play for All (Even Women)." *New York Times*, April 15, 1990. LexisNexis (accessed May 2, 2010).
- Lords, E. "More Women and Fewer Men Participate In Intercollegiate Athletics Study Finds." *Chronicle of Higher Education*, July 9, 1999. LexisNexis (accessed April 10, 2010).
- Lowrey v. Texas A & M University System*, Civil Action No. H-96-0834; 11 F. Supp. 2d 895; 1998 U.S. Dist. LEXIS 8757, (May 27, 1998).
- Macur, J. "'Never Rowed?' Take a Free Ride?" *New York Times*, May 28, 2004. LexisNexis (accessed April 30, 2010).
- Maeroff, G.I. "College Wins Tentative Victory in Fight Against Federal Regulation." March 18, 1980: col. 3, para. 1. <http://query.nytimes.com> (accessed August 10, 2008).
- Maeroff, G.I. "Education: College Challenges Federal Intervention." April 10, 1979: para. 4. <http://query.nytimes.com> (accessed August 10, 2008).
- Magner, D.K. "Judge Blocks Cal State-Bakersfield's Plan to Cap Size of Wrestling Team." *Chronicle of Higher Education*, March 12, 1999. LexisNexis (accessed April 10, 2010).
- Mahoney, D. "Note and Comment: Taking a Shot at the Title: A Critical Review of Judicial and Administrative Interpretations of Title IX as Applied to Intercollegiate Athletic Programs." *27 Conn. L. Rev.*, 1995:943.

- Maloney, G. F. *The Impact of Title IX on Women's Intercollegiate Athletics*. Abstract. Dissertation. State University of New York at Buffalo, 1995. ProQuest AAT 9525594 (accessed October 15, 2009).
- Manning, J.R. "Dear Colleague Letter." (March 2005).
<http://www.ed.gov/about/offices/list/ocr/doc/title9guidanceadditiona.html>.
- Margolick, D. "Bias Rules Appealed to Private Schools." *New York Times*, August 20, 1982: para. 8. LexisNexis (accessed May 2, 2010).
- Margolick, D. "Women Turn to Courts to Gain Rights." *New York Times*, June 29, 1982.
<http://www.query.nytimes.com> (accessed August 11, 2008).
- Marshall, R. L. "Case Comments: *Cohen v. Brown University*. The First Circuit Breaks New Ground Regarding Title IX's Application to Intercollegiate Athletics." *28 Ga. L. Rev.*, 1994:837.
- Martin, J.R. "Bound for the Promised Land: The Gendered Character of Higher Education." *4 Duke Gender L. & Pol'y*, 1997:3.
- Masterson, S. "Elementary and Secondary Education: Prohibit Discrimination Based on Gender in Elementary and Secondary School Athletics Programs Under the 'Quality Basic Education Act'; Amend Certain Provisions Relating to Grants and Other Disbursements of Fund by the Department of Community Affairs." *17 Ga. St. U. L. Rev.*, 2000:168.
- Mathewson, A.D. "Grooming Crossovers." *4 J. Gender Race & Just.*, 2001:225.
- Maurer, R. J. *An Inductive Case Study of Women Leaders of Athletics at Northern Illinois University: Learning, Leadership and Transformation*. Abstract. Dissertation. Northern Illinois University, 1999. ProQuest AAT 9927710 (accessed October 15, 2009).

McClure, J. *122 Congressional Record* 18135 (1976). As cited in website:

<http://www.titleix.info/> (accessed April 8, 2006).

McPhillips, M.J. “Girls of Summer:” A Comprehensive Analysis of the Past, Present and Future of Women in Baseball and a Roadmap to Litigating a Successful Gender Discrimination Case.” *6 Seton Hall J. Sports L.*, 1996:329.

Miller, C.F. “Holt Bill Re-Introduced.” *Chronicle of Higher Education*, vol. 9, no. 20, February 18, 1975: 6. Microfilm.

Miller, J. “Report: Collegiate Sports and Other Title IX Controversies.” *Change* 6 (Winter 1974-1975): 20.

Minor v. Northville Public Schools, No. 81-40371; 605 F. Supp. 1185; 1985 U.S. Dist. LEXIS 21279; 1 Fed. R. Serv. 3d (Callaghan) 481; 39 Fair Empl. Prac. Cas. (BNA) 677, (March 28, 1985).

Mississippi University for Women v. Hogan, No. 81-406; 458 U.S. 718; 102 S. Ct. 3331; 1982 U.S. LEXIS 157; 73 L. Ed. 2d 1090; 50 U.S. L. W. 5068; 29 Empl. Prac. Dec. (CCH) P 32, 868 (July 1, 1982).

Molotsky, I. “House Passes Bill to Upset a Limit on U.S. Rights Law.” *New York Times*, March 3, 1988: para. 9-10. <http://query.nytimes.com> (accessed November 3, 2008).

Molotsky, I. “Mixing of Sexes Urged in Sports.” *New York Times*, November 5, 1983. LexisNexis (accessed May 2, 2010).

Monaghan, P. “Dropping Men’s Teams to Comply With Title IX.” *Chronicle of Higher Education*, December 4, 1998: para. 27. LexisNexis (accessed April 10, 2010).

Monaghan, P. “Female Kicker Loses Bid to Play Football at Duke.” *Chronicle of Higher Education*, November 27, 1998. LexisNexis (accessed April 10, 2010).

- Monaghan, P. "Providence College Cuts 3 Men's Teams." *Chronicle of Higher Education*, October 30, 1998. LexisNexis (accessed April 10, 2010).
- Monaghan, P. "Supreme Court Favors NCAA in Title IX Case but Sends 2 Issues to Lower Court for Review." *Chronicle of Higher Education*, March 5, 1999. LexisNexis (accessed April 10, 2010).
- Monroe, S. "Dear Colleague Letter: Title IX 35th Anniversary Achievements." (June 22, 2007). <http://www.ed.gov/about/offices/list/ocr/letters/colleague-20070622.pdf>.
- Moon, D.H. "Gender Inequity? Analysis of Title IX Lawsuits in Intercollegiate Athletics." *6 J. Art & Ent. Law*, 1995:87.
- Moore, C.A. "Future Trends and Issues in Physical Education and Athletics." *Journal of Physical Education and Recreation* 51 (January 1980): 20-21.
- Moran, M. "College Campus Changes Coming, Like it or Not." *New York Times*, June 22, 1992. LexisNexis (accessed May 2, 2010).
- Moran, M. "College Football: Banned in Boston: One Football Team; At B.U., A Century of Pigskin History Is Coming to a Sudden Painful End." *New York Times*, November 2, 1997. LexisNexis (accessed May 2, 2010).
- Moran, M. "Colleges; Brooklyn College at Crossroads." *New York Times*, June 23, 1992. LexisNexis (accessed May 2, 2010).
- Moran, M. "Colleges; Dispute Over Equality Leaves a Coach Jobless." *New York Times*, September 14, 1993. LexisNexis (accessed May 2, 2010).
- Moran, M. "Title IX: A 20-Year Search for Equity; Title IX is Now an Irresistible Force." *New York Times*, June 21, 1992: para 6. LexisNexis (accessed May 2, 2010).
- Moss, S. L. *Gender Equity in Intercollegiate Athletics: A Case Study of a Title IX*

- Compliance Effort at a Division I-A Public University*. Abstract. Dissertation. The University of Wisconsin – Madison, 1997. ProQuest, AAT 9726171 (accessed October 15, 2009).
- Mota, S.A. “Title IX Intercollegiate Athletics: The First Circuit Holds Brown University Not In Compliance.” *14 U. Miami Ent. & Sports L. Rev.*, 1996:152.
- Mott, R. D. “Washington State Building a Gender-Equity Model.” *N.C.A.A. News*, March 18, 1992: 18, col. 4, para. 2. <http://web1.ncaa.org> (accessed March 28, 2008).
- Mowery, G.M. “Creating Equal Opportunity for Female Coaches: Affirmative Action Under Title IX.” *U. Cin. L. Rev.*, 1997:283.
- N.C.A.A. News. “646 Members Responded in Gender-Equity Study.” *N.C.A.A. News*, March 18, 1992. <http://web1.ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News. “*ad hoc* Committee Named.” *N.C.A.A. News*, vol. 17, no. 12, August 31, 1980: 1. <http://web1.ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News. “About Women’s Athletics.” *N.C.A.A. News*, vol. 12, no. 8, July 15, 1975: 2. <http://web1.ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News. “A New N.C.A.A. Look.” *N.C.A.A. News*, vol. 18, no. 4., February 28, 1981. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News. “A Report on Women’s Intercollegiate Athletics Distributed.” *N.C.A.A. News*, vol. 10, no. 6, May 15, 1975: 2. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News. “A.I.A.W. Appeals Ruling Of District Court Judge.” *N.C.A.A. News*, vol. 20, no. 14, April 6, 1983: 1. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News. “A.I.A.W. Suit Alleges NCAA AntiTrust Law Violations.” *N.C.A.A. News*, vol. 18, no. 15, October 31, 1981. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "A.I.A.W. Suit Judges Changed—Randomly Assigned To Distribute Case Load." *N.C.A.A. News*, vol. 19, no. 13, July 21, 1982: 1, 3. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "A.I.A.W. suit set for October." *N.C.A.A. News*, vol. 19, no. 14, August 11, 1982: 1. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "A.I.A.W. to Meet January 5-9." *N.C.A.A. News*, vol. 18, no. 18, December 15, 1981: 7. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "A.I.A.W., NCAA Delegates Discuss Women's Athletics." *N.C.A.A. News*, vol. 18, no. 8, May 15, 1981: 7. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Appeals Court Rules Against HEW Employment Cases." *N.C.A.A. News*, vol. 16, no. 10, September 7, 1979: 6. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Appeals Court Ruling Favors NCAA." *N.C.A.A. News*, vol. 17, no. 7, April 30, 1980: 1-6. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Ashbrook Questions HEW Powers." *N.C.A.A. News*, vol. 16, no. 10, September 7, 1979: 6. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Association Expands Staff For Women's Programs." *N.C.A.A. News*, vol. 19, no. 17, September 13, 1982: 1, 2. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Association Files Title IX Comments." *N.C.A.A. News*, vol. 16, no. 3, March 8, 1979: 4, 7. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Attorneys to Analyze Title IX Interpretation." *N.C.A.A. News*, vol. 16, no. 17, 1980 Convention Issue. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Basketball Triggers Explosion Of Women's Athletic Conferences." *N.C.A.A.*

News, vol. 19, no. 27, November 22, 1982: 10. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Berkey Joins Other Women On Staff." *N.C.A.A. News*, vol. 17, no. 12, August 31, 1980. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Berkey To Direct Women's Events." *N.C.A.A. News*, vol. 17, no. 11, August 15, 1980: 1. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Brown Athletes Sue for Funding." *N.C.A.A. News*, April 15, 1992. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Buffalo Complies with Title IX." *N.C.A.A. News*, vol. 19, no. 8, April 30, 1982: 9. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Cal Poly-Pomona Ends Football." *N.C.A.A. News*, vol. 19, no. 30, December 15, 1982: 12. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Califano Describes H.E.W. Document as 'Unofficial.'" *N.C.A.A. News*, vol. 14, no. 5, May 15, 1977: 2. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Championship Plans Announced." *N.C.A.A. News*, vol. 18, no. 7, April 15, 1981: 1, 3. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Colleges Seek Input to Title IX." *N.C.A.A. News*, vol. 11, no. 4, March 15, 1974. http://web1.ncaa.org/web_files/NCAANewsArchive/1974/19740315.pdf, downloaded April 10, 2009. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Comparison of Selected NCAA/AIAW Regulations." *N.C.A.A. News*, vol. 18, no. 14, October 15, 1981: 7, 8. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Confusion Surrounds Title IX Policy Interpretation." *N.C.A.A. News*, vol. 15, no. 15, December 22, 1978: 7. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Cooperation Sought For Gender-Equity Challenge." *N.C.A.A. News*, January 20, 1993: 16, para. 4-5. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Council Discusses Women's Athletics." *N.C.A.A. News*, vol. 18, no. 8, April 30, 1981: 1. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Council Emphasizes Five Principle Topics." *N.C.A.A. News*, April 8, 1992. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Court Bars Richmond Title IX Athletic Probe." *N.C.A.A. News*, vol. 19, no. 12, July 14, 1982: 3. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Court Date Set." *N.C.A.A. News*, vol. 20, no. 6, February 9, 1983. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Court Orders Athletic Program to Adjust Budget Equitably." *N.C.A.A. News*, vol. 20, no 2, January 12, 1983: 8. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Court Questions HEW Authority." *N.C.A.A. News*, vol. 16, no. 6, May 31, 1979: 3. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Court Ruling Limits Title IX Application." *N.C.A.A. News*, vol. 18, no. 5, March 15, 1981: 1, 7. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Court Rules Title IX Programmatic." *N.C.A.A. News*, vol. 18, no. 18, December 15, 1981: 3. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Courts Sidestep Deciding Whether Title IX Applies to Sports Programs." *N.C.A.A. News* vol. 20, no. 10, March 9, 1983: 1, 12. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Court Upholds Hillsdale on Title IX." *N.C.A.A. News*, vol. 19, 33, 77th Annual Convention Issue, January 5, 1983: 1. <http://web1ncaa.org> (accessed March 28,

2008).

N.C.A.A. News. "CRC Reverses Title IX Position." *N.C.A.A. News*, vol. 16, no. 11, September 30, 1979: 3. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Damages to be Allowed in Title IX." *N.C.A.A. News*, March 18, 1992. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Decision that Limits Title IX Suit Will Stand." *N.C.A.A. News*, vol. 19, no. 18, September 20, 1982: 1. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Duke President Seeks Support for Title IX Counterproposal." *N.C.A.A. News*, vol. 16, no. 8, July 25, 1979: 1. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "ED Selects Eight Institutions for Review." *N.C.A.A. News*, vol. 17, no. 12, August 31, 1980: 3. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Education Department Answers Title IX Queries." *N.C.A.A. News*, vol. 17, no. 11, August 15, 1980: 1. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Education Department Fields More Questions." *N.C.A.A. News*, vol. 17, no. 13, September 30, 1980. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Education Department Responds to Title IX Questions." *N.C.A.A. News*, vol. 17, no. 12, August 31, 1980: 1, 3. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Ex Olympic Performers Promoting Women's Sports." *N.C.A.A. News*, vol. 19, no. 33, 77th Annual Convention Issue, January 5, 1983: 3. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Exceptions For Women Explained." *N.C.A.A. News*, vol. 19, no. 21, October 11, 1982: 1. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Final Title IX Version Approved by the President." *N.C.A.A. News*, vol.

12, no. 7, June 1, 1975: 2, 4. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Findings Not Issued In Compliance Review." *N.C.A.A. News*, vol. 18, no. 3, February 15, 1981:1, 5. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "First Title IX Review Complete." *N.C.A.A. News*, vol. 18, no. 1, 1981 Convention: 1. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "First Women Athletes Awarded Post Graduate Scholarships." *N.C.A.A. News*, vol. 13, no. 8, July 15, 1976: 1, 8. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Flynn Denies Existence of Discrimination." *N.C.A.A. News*, vol. 15, no. 2, March 8, 1979: 1, 5. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Ford Would 'Welcome' More Title IX Hearings." *N.C.A.A. News*, vol. 12, no. 9, August 1, 1975: 1. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Fourteen Title IX Books Not 'Interpretive.'" *N.C.A.A. News*, vol. 14, no. 6, July 15, 1977: 3. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Frank Speech Focuses On Governance, Title IX." *N.C.A.A. News*, vol. 18, no. 8, May 15, 1981: 3. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Fullerton Coach Fired After Injunction Gained (CSU-Fullerton)." *N.C.A.A. News*, March 25, 1992: 25, col. 2, para. 4. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Future Appears Bright for Women's Athletics." *N.C.A.A. News*, vol. 17, no. 16, November 15, 1980: 3, col. 3, para. 8. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Gender-Equity Concerns Go to Task Force." *N.C.A.A. News*, July 8, 1992. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Gender-Equity Task Force To Go On a Fast Track." *N.C.A.A. News*, March 18, 1992. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Governance Activities Continue." *N.C.A.A. News*, vol. 17, no. 13, September 30, 1980. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Government Issues Final Title IX Interpretation." *N.C.A.A. News*, vol. 15, no. 15, December 15, 1979: 1. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Government's Approach To Title IX May Be Changing." *N.C.A.A. News*, vol. 20, no. 15, April 13, 1983: 1, 8. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Governmental." *N.C.A.A. News*, April 15, 1992. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Groups Discuss Women's Basketball Rules." *N.C.A.A. News*, vol. 19, no. 29, December 6, 1982:10. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Grove City to Appeal Ruling." *N.C.A.A. News*, vol. 19, no. 22, October 18, 1982:1. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "HEW Asked to Reexamine Interpretation." *N.C.A.A. News*, vol. 16, no. 6, May 31, 1979: 6. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "HEW Counsel Reaffirms Applicability of Title IX." *N.C.A.A. News*, vol. 15, no. 7, May 15, 1978: 3. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "HEW Distributed Policy Interpretation for Title IX." *N.C.A.A. News*, vol. 15, no. 16, December 22, 1978: 1. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Hillsdale to Seek Ruling Reversal." *N.C.A.A. News*, vol. 20, no. 13, March 30, 1983: 3. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Howlett, Whalen Named Co-chairs of NCAA Gender Equity Task Force."

N.C.A.A. News, April 22, 1992. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Illinois Supports Tower Amendment." *N.C.A.A. News*, vol. 12, no. 11, September 1, 1975: 6. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Jim Barnett Cites Title IX As One Reason For Resignation." *N.C.A.A. News*, vol. 12, no. 11, September 1, 1975: 4. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Judge Alters A.I.A.W. Suit Schedule." *N.C.A.A. News*, vol. 19, no. 5, March 15, 1982: 1. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Judge Denies Attempt to Stop NCAA Women's Events." *N.C.A.A. News*, vol. 19, no. 4, February 28, 1982: 1. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Judge for A.I.A.W. Suit Sets Limits, Procedures." *N.C.A.A. News*, vol. 18, no. 17, November 30, 1981: 1. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Judge Reveals Programming Title IX Application." *N.C.A.A. News*, vol. 18, no. 13, September 15, 1981: 7. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Justice Dept Rejects Title IX Deregulation Move." *N.C.A.A. News*, vol. 18, no. 14, October 15, 1981: 3. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News, " Judge rules for Problematic Title IX Application, vol. 18, no. 13, September 15, 1981: 7. <http://web1.ncaa.org> (accessed March 28, 2008).

N.C.A.A. News, "Judge Sets August 25 As AIAW Trial Date." *N.C.A.A. News*, vol. 19, no. 11, June 30, 1982, : 1. <http://web1.ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Leagues Adopt Women's Programs." *N.C.A.A. News*, vol. 19, no. 10, June 16, 1982: 12. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News, "Legislative Committee to Recommend Rule Changes," *N.C.A.A. News*. vol.

18, no. 11, July 15, 1981: 5, 8. <http://web1.ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Letter to the Editor: Mudra Claims Competition Key To Women's Athletic Future." *N.C.A.A. News*, vol. 17, no. 11, August 15, 1980: 2, col. 1, para. 1.

N.C.A.A. News. "Living with HEW's Quota System." *N.C.A.A. News*, vol. 15, no. 3, March 8, 1979: 2, col. 2, para. 2. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Long-Debated Title IX Regulations Not Rejected by Congress." *N.C.A.A. News*, vol. 12, no.8, July 15, 1975: 1. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Meetings Bring Revisions In Governance Committee Plan." *N.C.A.A. News*, vol. 17, no. 11, August 15, 1980: 1,7, col. 2-3, para. 2. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Mudra Claims Competition Key To Women's Athletic Future." *N.C.A.A. News*, vol. 17, no. 11, August 15, 1980: 3,4. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "NCAA Attorney Discusses Changes In Title IX." *N.C.A.A. News*, vol. 19, no. 13, July 21, 1982: 1, 3. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "NCAA Council Continues to Implement Governance Plan." *N.C.A.A. News*, vol. 18, no 8, May 15, 1981: 3, 7. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "NCAA Discusses Growing Women's Sports with A.I.A.W." *N.C.A.A. News*, vol. 11, no. 12, November 1, 1974:2. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "NCAA Viewpoint on Title IX Clarified by President Fuzak." *N.C.A.A.*

News, vol. 12, no. 12, September 15, 1975: 7. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "NCAA Challenges Validity of HEW's Title IX." *N.C.A.A. News*, vol. 13, no. 3, February 15, 1976: 1, 3. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "NCAA Council Adopts Resolutions on Senate Bills, Women's Sports." *N.C.A.A. News*, vol. 11, no. 6, May 15, 1974: 1. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "NCAA Council Adopts Resolutions on Senate Bills, Women's Sports." Vol. 11, no. 6, May 15, 1974: 1. <http://web1.ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "NCAA Council Continues to Implement Governance Plan." *N.C.A.A. News*, vol. 18, no 8, May 15, 1981: 3, 7. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News, "N.C.A.A. Council Issues Statement on Women's Rules Enforcement," Vol. 18, no. 12, August 15, 1981:5 <http://web1.ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "NCAA Discusses Growing Women's Sports with A.I.A.W." *N.C.A.A. News*, vol. 11, no. 12, November 1, 1974: 2. <http://web1.ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "NCAA Panel Addresses Gender Equity." *N.C.A.A. News*, April 15, 1992: 3, col. 2, para. 2. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "NCAA Prevails In A.I.A.W. Antitrust Litigation." *N.C.A.A. News*, vol. 10, no. 9, March 2, 1983: 1. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "NCAA Rules do not Apply to All Female Athletics." *N.C.A.A. News*, vol. 13, no. 2, February 1, 1976: 1, 7. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Non-Compliance with Title IX Announced by BYU and Hillsdale."

- N.C.A.A. News*, vol. 13, no. 2, February 1, 1976: 1, 7. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News*. "Officers Clarify Women's Athletic Issues." *N.C.A.A. News*, vol. 17, no. 4, March 15, 1980: 3, 7. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News*. "On Women's Sports RESOLUTION." Vol. 11, no. 6, May 15, 1974: 3. <http://web1.ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News*. "Opposition Forwarded To Title IX Regulations." Vol. 11, no. 6, May 15, 1974: 6. <http://web1.ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News*. "Overreach by HEW." *N.C.A.A. News*, vol. 14, no. 4, April 1977: 2. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News*. "President Clarifies Title IX Position." *N.C.A.A. News*, vol. 16, no. 6, May 31, 1979: 3,5,6. <http://web1.ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News*. "President Sanford's Counterproposal for Title IX." *N.C.A.A. News*, vol. 16, no. 8, July 25, 1979: 3. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News*. "Questionnaires To Be Mailed." *N.C.A.A. News*, vol. 19, no. 12, July 14, 1982: para. 3, line 3, 8. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News*. "Redraft of Title IX Regulations Due." *N.C.A.A. News*, vol. 11, no. 5, April 15, 1974: 1. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News*. "Report of Special Committee on Governance, Organization and Services." *N.C.A.A. News*, vol. 17, no. 9, June 15, 1980: 4, col. 1, para. 2. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News*. "Revised Governance Plan Mailed to Members." *N.C.A.A. News*, vol. 17, no. 15, November 15, 1980: 1, col. 5, para. 2. <http://web1ncaa.org> (accessed March 28,

- 2008).
- N.C.A.A. News. "Richmond Files Suit." *N.C.A.A. News*, vol. 18, no. 10, June 15, 1981: 11. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News. "Rules Clarification for Women Transferring at Mid-year." *N.C.A.A. News*, vol. 19, no. 5, March 15, 1982: 7. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News. "Ruth Berkey, Promoted." *N.C.A.A. News*, vol. 19, no. 2, January 31, 1982. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News. "Series To Highlight Women's Sports." *N.C.A.A. News*, vol. 19, no. 31, December 22, 1982: 1. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News. "Sports Information Directors Name Women's Volleyball Academic Team." *N.C.A.A. News*, vol. 19, no. 29, December 6, 1982: 10. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News. "Sports Participation Study Reflects Significant Increases." *N.C.A.A. News* vol. 11, no. 9, August 15, 1974: 8. <http://web1.ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News. "Steering Committee Discuss Women's Events." *N.C.A.A. News*. Vol. 17, no. 10, July 16, 1980: 5, 10. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News. "Suits Focus on Men's and Women's Rules Differences." *N.C.A.A. News*, vol. 17, no. 5, March 31, 1980: 3. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News. "Summary of Principal Legal Cases Involving NCAA, 1971-1976." *N.C.A.A. News*, vol. 13, no. 6, May 15, 1976: 6, 7, 8. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News. "Survey Shows Progress with Gender Equity." *N.C.A.A. News*, March 11,

1992. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "The Other Side of Title IX." *N.C.A.A. News*, vol. 15, no. 3, February 15, 1978: 2. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Title IX Amendments Alive." *N.C.A.A. News*, vol. 12, no. 11, September 1, 1975: 1. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Title IX Comments Submitted to HEW." *N.C.A.A. News*, vol. 11, no. 11, October 15, 1974:1,5. <http://web1.ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Title IX Discussion Focus of Convention." *N.C.A.A. News*, vol. 15, no. , February 9, 1979: 1, 4. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Title IX Employment Rules Held Invalid by Judge." *N.C.A.A. News*, vol. 14, no. 4, April 1977: 1. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Title IX Enforcement Begins Soon." *N.C.A.A. News*, vol. 17, no. 9, June 15, 1980:1, 3. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Title IX Needs Action by Congress." *N.C.A.A. News*, vol. 12, no 7, June 1, 1975: 2, 4. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Title IX Not A Dead Issue, But It's Mellowing." *N.C.A.A. News*, vol. 19, no. 12, July 14, 1982: 1, 3. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Title IX: Part C of HEW Policy Interpretation." *N.C.A.A. News*, vol. 17, No. 4, March 15 1980. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Title IX Provisions Solely for Students." *N.C.A.A. News*, vol. 15, no. 5, April 1, 1978: 3. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Title IX Questions and Answers on One of Intercollegiate Athletics' Most Pressing Issues." *N.C.A.A. News*, vol. 17, no. 3, February 15, 1980: 1, 5.

- <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News. "Title IX Sent to White House; H.E.W. Mum on Guidelines' Content." *N.C.A.A. News*, vol. 12, no. 4, March 15, 1975: 1. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News. "Title IX Suit Filed at Two Schools." *N.C.A.A. News*, July 8, 1992: 23, col. 2, para. 3-4. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News. "Title IX Suit Moves at Slow Court Pace." *N.C.A.A. News*, vol. 13, no. 14, November 15, 1976: 3. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News. "Title IX Testimony." *N.C.A.A. News*, vol. 15, no. 7, May 15, 1978: 3. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News. "Title IX: Part B of HEW Policy Interpretation." *N.C.A.A. News*, vol. 17, no. 3, February 29, 1980: 1. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News. "Title IX: Part C of HEW Policy Interpretation." *N.C.A.A. News*, vol. 17, no. 4, March 15, 1980: 1, 4. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News. "Two Questions Remain After Recent Title IX Decisions." *N.C.A.A. News*, vol. 19, no. 9, June 2, 1982: 3. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News. "U.S. Judge Dismisses N.C.A.A.'s Title IX Suit." *N.C.A.A. News*, vol. 15, no.3, February 15, 1978: 11. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News. "U.S. Judge Hears Grove City Case." *N.C.A.A. News*, vol. 15, no. 11, September 30, 1979: 2. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News. "U.S. Takes New Approach To Title IX Enforcement." *N.C.A.A. News*, vol. 20, no. 29, August 31, 1983:1, 3. <http://web1ncaa.org> (accessed March 28, 2008).
- N.C.A.A. News. "Unwelcome Domination." *N.C.A.A. News*, vol. 15, no. 12, September

15, 1978: 2. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Update on Status of Title IX Requirements." *N.C.A.A. News*, March 11, 1992. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "With Little History, Debate or Thought." *N.C.A.A. News*, vol. 10, no. 5, April 15, 1975: 1, 3. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Women Bypass Teaching Careers." *N.C.A.A. News*, vol. [21] sic, no. 16, April 20, 1983: 3. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Women Gain Prestige of Being Included in Top Five Finalists." *N.C.A.A. News*, vol. 19, no. 28, November 29, 1982: 1. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Women's Championships Position Open for Applications." *N.C.A.A. News*, vol. 17, no. 17, November 30, 1980: 8. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Women's Panel Focuses on Equity." *N.C.A.A. News*, July 8, 1992. <http://web1ncaa.org> (accessed March 28, 2008).

N. C. A. A. News. "Women's Program Grows At New Hampshire." *N.C.A.A. News*, vol. 19, no. 17, September 13, 1982: 1, 2. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Women's Programs Reminded Of Rules Applications." *N.C.A.A. News*, vol. 19, no. 5, March 15, 1982: 7. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Women's Resolutions." *N.C.A.A. News*, vol. 12, no. 18, January 1, 1976: 3. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Women's Rules To Be Expanded." *N.C.A.A. News*, vol. 19, no.7, April 15, 1982: 1. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Women Share in Scholarship for First Time." *N.C.A.A. News*, vol. 19, no. 11, June 30, 1982, : 5, 7. <http://web1.ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Women's Soccer Committee Plans First Championship." *N.C.A.A. News*, vol. 19, no. 11, June 30, 1982, : 7. <http://web1.ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Women's Sports and N.C.A.A." *N.C.A.A. News*, vol. 12, no. 2, February 1, 1975: 1-2. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Women's Sports Committees are Appointed." *N.C.A.A. News*, vol. 17, no. 14, October 12, 1980. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Women's Sports Programs Face Pivotal Issues." *N.C.A.A. News*, vol. 20, no. 28, August 17, 1983: 2. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. News. "Women's Survey Completed." *N.C.A.A. News*, vol. 15, no. 12, July 1, 1978: 1. <http://web1ncaa.org> (accessed March 28, 2008).

N.C.A.A. v. Califano, Civil Action No. 76-32-C2; 444 F. Supp. 425; 1978 U.S. Dist. LEXIS 20275, (January 19, 1978).

N.C.A.A.org. "Emerging Sports." <http://www.ncaa.org> (accessed June 10, 2010).

N.C.A.A.org. Equity in Athletics Disclosure Act.
http://www.ncaa.org/library/research/gender_equity_study/1997-98/introduction.pdf.

NFSHSAA, "High Schools Denounce Title IX," *N.C.A.A. News*, vol. 11, no. 11, October 15, 1974:2. <http://web1.ncaa.org> (accessed March 28, 2008).

National Women's History Project. "Legacy '98 Detailed Timeline of Legal History of Women in the United States: A Timeline of the women's rights movement 1848-1998" (2002). <http://www.legacy98.org/timeline.html> (accessed February 8, 2004).

Naughton, J. "Clarification of Title IX May Leave Many Colleges in Violation Over Aid to

- Athletes.” *Chronicle of Higher Education*, July 31, 1998: para. 7. LexisNexis (accessed April 10, 2010).
- Naughton, J. “Education Dept. Says It Has Not Changed Rules for Title IX Compliance.” *Chronicle of Higher Education*, January 9, 1998. LexisNexis (accessed April 10, 2010).
- Naughton, J. “Female Kicker Sues Duke U. For Denying Her a Spot on the Football Team.” *Chronicle of Higher Education*, September 26, 1997. LexisNexis (accessed April 10, 2010).
- Naughton, J. “Focus of Title IX Debate Shifts From Teams to Scholarship; Some Colleges Hope Changes in N.C.A.A. Rules Will Make it Easier to Comply with Gender-Equity Law Filed.” *Chronicle of Higher Education*, May 29, 1998. LexisNexis (accessed April 10, 2010).
- Naughton, J. “House Rejects Proposed Limits on Eliminating Teams.” *Chronicle of Higher Education*, May 15, 1998. LexisNexis (accessed April 10, 2010).
- Naughton, J. “Judge Approves Settlement of Brown U.’s Title IX Case.” *Chronicle of Higher Education*, July 3, 1998. LexisNexis (accessed April 10, 2010).
- Naughton, J. “NCAA Plan Would Lower Limit on Football Scholarships.” *Chronicle of Higher Education*, May 22, 1998. LexisNexis (accessed April 10, 2010).
- Naughton, J. “Title IX Poses a Particular Challenge at Predominately Black Institutions; The High Percentage of Female Students Makes It Difficult to Meet ‘Proportionality Standard.’” *Chronicle of Higher Education*, February 20, 1998: para. 26. LexisNexis (accessed April 10, 2010).
- Naughton, J. “Women’s Teams in N.C.A.A.’s Division I See Gains in Participation and

- Budgets; But the 831-million Spent on Male Athletes was Nearly Twice What was Spent on Female Athletes.” *Chronicle of Higher Education*, April 3, 1998: para. 14. LexisNexis (accessed April 10, 2010).
- Naughton, J. and M. Crissey. “Education Department Said to Toughen Stance on Title IX; New Requirement on Scholarships For Female Athletes May Prompt a Change in Policy by N.C.A.A.” *Chronicle of Higher Education*, December 19, 1997: para 2. LexisNexis (accessed April 10, 2010).
- Navarro, M. “Claiming their Share: A Special Report; ‘Women in Sports Cultivating New Playing Fields.’” *New York Times*, February 13, 2001. LexisNexis (accessed May 2, 2010).
- Neal v. Board of Regents*, No. 99-1561; 198 F. 3d 633 U.S. App. LEXIS 31969, (December 3, 1999).
- Neal, P. “Women and Their Problems in Sports: Many Coaches Aren’t Ready to Coach.” *New York Times*, July 31, 1977: col. 2, para. 5. www.nytimesarchives.com (accessed August 11, 2008).
- Neinas, C. M. “Title IX Now a Money Issue.” *N.C.A.A. News*, vol. 16, no. 11, September 30, 1979: 2. <http://web1ncaa.org> (accessed March 28, 2008).
- New York Law School Journal of Human Rights. “The Opportunity to Play Ball: Title IX University Compliance and Equal Pay.” *13 N.Y.L. Sch. J. Hum. Rts.*, 1997:347.
- New York Times. “A Bill to Give Women Equal Rights in Colleges Sports Sent to President.” *New York Times*, March 1, 1975: 16. Microfilm.
- New York Times. “A New Attack on Women’s Sports.” *New York Times*, April 12, 2005. LexisNexis (accessed April 30, 2010).

New York Times. "A.I.A.W. Plans Protest to Protect Title IX Gains." *New York Times*, April 15, 1979: sec. 5, 6. Microfilm.

New York Times. "AP Shift Seen on Title IX Fund Rules." *New York Times*, December 4, 1979. <http://www.query.nytimes.com> (accessed August 11, 2008).

New York Times. "Athletics at Furman Cited as Discriminatory." *New York Times*, September 4, 1983. LexisNexis (accessed May 2, 2010).

New York Times. "Brown Appeals Title IX Ruling." *New York Times*, April 20, 1995. LexisNexis (accessed May 2, 2010).

New York Times. "Campus Life: New Hampshire; Pressed by Women, College Restores Their Tennis Team." *New York Times*, April 19, 1992. LexisNexis (accessed May 2, 2010).

New York Times. "Colleges; Brown Plan to Boost Equity." *New York Times*, April 22, 1997. LexisNexis (accessed May 2, 2010).

New York Times. "Colleges; Brown's President Asks for a Clear Policy on Title IX." *New York Times*, May 10, 1995. LexisNexis (accessed May 2, 2010).

New York Times. "Colleges; NCAA will not Mandate Gender Equity." *New York Times*, August 7, 1993. LexisNexis (accessed May 2, 2010).

New York Times. "Colleges; Women's Basketball." *New York Times*, January 28, 2000. LexisNexis (accessed May 2, 2010).

New York Times. "Court to Decide Case on Sex Bias." *New York Times*, February 23, 1983. <http://query.nytimes.com> (accessed November 3, 2008).

New York Times. "Dole Assails Bias-Law Stance." *New York Times*, August 7, 1983: para 9. LexisNexis (accessed May 2, 2010).

New York Times. "Feminists Say Reagan Reneged on a Promise." *New York Times*, August 14, 1981. <http://www.query.nytimes.com> (accessed August 11, 2008).

New York Times. "HEW Head Says Title IX Won't Bankrupt Schools." *New York Times*, June 27, 1975. <http://www.nytimesarchives.com> (accessed August 11, 2008).

New York Times. "Ideas and Trends: Education, Medicine and Law A Little College Decides to Fight Big Government." *New York Times*, November 15, 1975. <http://www.query.nytimes.com> (accessed August 11, 2008).

New York Times. "Judge Alters Title IX Outlook." *New York Times*, March 1, 1981. <http://www.query.nytimes.com> (accessed August 11, 2008).

New York Times. "Notebook; The Kicker Has A Case." *New York Times*, July 14, 1999. LexisNexis (accessed May 2, 2010).

New York Times. "Plus: Colleges; Miami Drops Swimming for Men." *New York Times*, February 29, 2000. LexisNexis (accessed May 2, 2010).

New York Times. "Protecting the Whistle-Blower." *New York Times*, November 30, 2004. LexisNexis (accessed May 2, 2010).

New York Times. "Rally Slated Today Supporting Title IX." *New York Times*, April 22, 1979: col. 2, para. 3. Microfilm.

New York Times. "Sports People: College Sports; Bias Found at L.S.U. In Title IX." *New York Times*, January 13, 1996. LexisNexis (accessed May 2, 2010).

New York Times. "Sports People: Colleges; Women Reach Settlement with Texas." *New York Times*, July 17, 1993. LexisNexis (accessed May 2, 2010).

New York Times. "Sports People; Temple Settlement." *New York Times*, June 14, 1988. LexisNexis (accessed May 2, 2010).

New York Times. "Stat." *New York Times*, July 29, 2007: para. 1. LexisNexis (accessed April 30, 2010).

New York Times. "Title IX Supporters Dissect the Major Sports Syndrome." *New York Times*, December 31, 1978. <http://www.querynytimes.com> (accessed August 11, 2008).

New York Times. "U.S. Aides Bar Rights Exemption for Schools." *New York Times*, January 27, 1982: para. 9-10. LexisNexis (accessed May 2, 2010).

New York Times. "U.S. to Act on Complaints of Bias in College Sports." *New York Times*, August 1980. <http://www.query.nytimes.com> (accessed August 11, 2008).

New York Times. "Virginia Files Lawsuit on V.M.I. Admissions." *New York Times*, February 6, 1990. LexisNexis (accessed May 2, 2010).

New York Times. "Women's Sports Back in Rally." (April 23, 1979). *New York Times*, sec. 3, April 23, 1979: 3. Microfilm.

New York Times. "Yale Women Strip to Protest a Lack of Crew's Showers." *New York Times*, March 4, 1976: 33. Microfilm.

Nicolson, H.J. and M. F. Maschino. "Special Issue: Education Law And Policy: Strong, Smart, And Bold Girls: The Girls Incorporated(R) Approach To Education." 29 *Fordham Urb. L.J.*, 2001:561.

Nixon, R. M. *Nixon Archives Presidential Papers*, June 23, 1972, 208.

Noftz, B.B. *An Exploratory Study Of Successful University Football Programs And The Level Of Compliance With Title IX*. Dissertation Ohio University, 2007. ProQuest AAT 3272923 (accessed October 15, 2009).

North Haven Board of Education v. Bell, No. 80-986; 456 U.S. 512; 102 S. Ct. 1912; 1982

U.S. LEXIS 105; 72 L. Ed. 2d 299; 50 U.S. L. W. 4501; 28 Fair Empl. Prac. Cas. (BNA) 1393; 28 Empl. Prac. Dec. (CCH) P25, 120; 28 Empl. Prac. Dec. (CCH) P32, 675, (May 17, 1982).

Nyyquist, E.B. "Win, Women and Money: Collegiate Athletics Today and Tomorrow." *Educational Record* 60 (Fall 1979): 374.

O'Connor v. Board of Education of School District 23, No. 80 C 5660; 545 F. Supp. 376; 1982 U.S. Dist. LEXIS 14129, (August 12, 1982).

O'Shea, M.F. "Dear Colleague Letter: Bowling Green State University." (July 23, 1998). <http://www.ed.gov/about/offices/list/ocr/docs/bowlgrn.html> (accessed April 10, 2010).

Office of Secretary, Office for Civil Rights. "Title IX of the Education Amendments of 1972; A Policy Interpretation; Title IX and Intercollegiate Athletics." *44 Federal Register*, No 239, December 11, 1979. Microfiche.

Oliver, J.A. *An Analysis of Text and Photographic Coverage of Women's and Men's Basketball in the University-Sponsored Newspaper at the University of Kansas*. Abstract. Dissertation. University of Kansas, 2002. ProQuest AAT 3059066 (accessed October 15, 2009).

Olmstead, B. "Title IX Runaround." As featured in *Chicago Sun-Times*, *N.C.A.A. News*, vol. 15, no 4, March 1, 1978. <http://web1.ncaa.org> (accessed March 28, 2008).

Oloya, A.F. "Fourth Annual Review Of Gender And Sexuality Law: Education Law Chapter: Athletics." *4 Geo. J. Gender & L.*, 2002:377.

O'Neill, E. *Long Day's Journey Into Night*. New Haven: Yale University Press, 1989.

Orleans, J.H. "Setting a Course for College Athletics: An End to the Odyssey: Equal Athletic Opportunity for Women." *3 Duke J. Gender L. & Pol'y*, 1996:131.

Orleans, J.H. "Title IX and Athletics: Time Out?" *Educational Record* (Winter 1982): 42.

Osborne, B. and M. Yarbrough. "Pay Equity for Coaches and Athletic Administrators." 34 *Mich. J. L. Ref.*, 2000:231.

Otos, S. "*Cohen v. Brown University*: Sports in the Legal Arena." 3 *Sports Law L.*, 1996:14.

The Oyez Project. "*Jackson v. Birmingham Board of Education*," <http://www.oyez.org>. (accessed May 2, 2010).

Packwood, B. "Discrimination Aided" Op-Ed *New York Times*, April 20, 1984: para. 6. LexisNexis (accessed May 2, 2010).

Parkinson, J.R. "Grappling with Gender Equity." *Wm & Mary Bill of Rts. L.*, 1996:75.

Paule, A. *Community Perceptions of Title IX*. Dissertation Miami University, 2004. ProQuest AAT 1421099 (accessed October 15, 2009).

Pavey v. University of Alaska, Civ. No. A79-19; 490 F. Supp. 1011; 1980 Dist. LEXIS 11746; 31 Fed. R. Serv. 2d (Callaghan) 543, (June 9, 1980).

Pear, R. "23 Cases on Civil Rights Closed After Court Rules." *New York Times*, June 3, 1984: para. 8. LexisNexis (accessed May 2, 2010).

Pear, R. "Bill to Expand Rights Coverage Sets Off Dispute." *New York Times*, May 7, 1984: para. 12. <http://query.nytimes.com> (accessed November 3, 2008).

Pear, R. "Court Interpretations Conflict on Scope of Sex Discrimination Law." *New York Times*, September 10, 1982. <http://query.nytimes.com> (accessed November 3, 2008).

Pear, R. "Justice Dept. Open to New Rights Bill." *New York Times*, March 3, 1984: para 7. LexisNexis (accessed May 2, 2010).

Pear, R. "Reagan Seeks to Limit a Law Banning Sex Bias in Schools." *New York Times*,

August 6, 1983: para. 7-8. LexisNexis (accessed May 2, 2010).

Pear, R. "Rights Unit Faults Reagan Once More." *New York Times*, June 15, 1981: para. 10. LexisNexis (accessed May 2, 2010).

Pederson v. Louisiana State University. No. 94-30680, No. 95-30777, No. 96-30310, No. 97-30427, No. 97-30719; 213 F. 3d 858; 2000 U.S. App. LEXIS 12019; 46 Fed. R. Serv. 3d (Callaghan) 1254, (June 1, 2000).

Pemberton, C.L. *An Educational Gender Equity/Title IX Workshop for Intercollegiate Athletic Personnel*. Abstract. Dissertation. Portland State University, 1996. ProQuest AAT 9635654 (accessed October 15, 2009).

Pennington, B. "A New Attack on Women's Sports." *New York Times*, April 29, 2005. LexisNexis (accessed April 30, 2010).

Pennington, B. "At James Madison, Title IX is Satisfied but the Students Are Not." *New York Times*, October 7, 2006. LexisNexis (accessed April 30, 2010).

Pennington, B. "Colleges; More Men's Teams Benched as Colleges Level the Field." *New York Times*, May 9, 2002. LexisNexis (accessed May 2, 2010).

Pennington, B. "Dropped From Varsity Line Up But No Longer Grumbling." *New York Times*, December 2, 2008: para. 8. LexisNexis (accessed April 30, 2010).

Pennington, B. "From Sideline to Stage, With Lift From Title IX." *New York Times*, April 4, 2004. LexisNexis (accessed April 30, 2010).

Pennington, B. "Study May Fuel Debate Over Title IX's Effect on Male Sports." June 6, 2007. LexisNexis (accessed April 30, 2010).

Pennington, B. "Title IX Trickles Down to Girls of Generation Z." *New York Times*, June 29, 2004. LexisNexis (accessed May 2, 2010).

- Pennington, B. "Want to Try Out for College Sports? Forget It." *New York Times*, September 22, 2002. LexisNexis (accessed May 2, 2010).
- Perlez, J. "Ratification Defeat Leaves Rights Law on Uneven Path." *New York Times*, June 27, 1982: para 6. LexisNexis (accessed May 2, 2010).
- Petriella, M.B. "Injunctive Relief—Title IX—An Interim Preliminary Injunction Reinstating Varsity Status to Demoted Collegiate Athletic Teams Is Available When that Team Alleges a Title IX Violation and Litigation is Pending—*Cohen v. Brown University*, 991 F. 2d 888 (1st Cir. 1993)." *4 Seton Hall J. Sports L.*, 1994:595.
- Piche, D.M. "*Grove City College v. Bell* and Program Specificity: Narrowing the Scope of Federal Civil Rights States." *34 Cath. U.L. Rev.*, 1985:1087.
- Pickle, D. "New Era Beginning for Title IX." *N.C.A.A. News*, vol. 15, no. 16, December 15, 1979: 2. <http://web1.ncaa.org> (accessed March 28, 2008).
- Pillai, K.G.J. "Phantom of Strict Scrutiny." *31 New Eng. L. Rev.*, 1997:397.
- Pilon, N.N. *Women's Athletics at the University of Kansas During the Progressive Era, 1890-1920*. Abstract. Dissertation. University of Kansas, 2008. ProQuest AAT 3303997 (accessed October 15, 2009).
- Plessy v. Ferguson*, No. 210, 163 U.S. 537; 16 S. Ct. 1138; 1896 U.S. LEXIS 3390; 41 L. Ed. (May 18, 1896).
- Plyley, D. E. *The AIAW vs. the NCAA: A Struggle For Power To Govern Women's Athletics In American Institutions Of Higher Education, 1972-1982*. Abstract. Dissertation. The University of Western Ontario (Canada), 1997. ProQuest AAT MQ28637 (accessed October 15, 2009).
- Polivy, M. "July 21: Deadline Or Dead End?" *New York Times*, July 16, 1978: para. 3.

Microfilm.

Porto, B.L. "Completing the Revolution: Title IX as a Catalyst for an Alternate Model of College Sports." *8 Seton Hall J. Sports L.*, 1998:351.

Pritchett, R.J. *The Battle Between Promise and Privilege: The History of Women's Basketball at the University of Kentucky: 1972-2002*. Dissertation University of Kentucky, 2007. ProQuest AAT 3263687 (accessed October 15, 2009).

Raftery, I. "Supreme Court to Review Title IX Case." *Chronicle of Higher Education*, June 25, 2004: para. 5. LexisNexis (accessed April 10, 2010).

Raines, H. "U.S. Begins Deregulation Review on Rights and Ecology Guidelines." *New York Times*, August 13, 1981. <http://www.query.nytimes.com> (accessed August 11, 2008).

Raymond, C. "Comment: Title IX Litigation in the 1990's: The Courts Need a Game Plan." *18 Seattle Univ. L. R.*, 1995:665.

Reaves, R. "ARTICLE: 'There's No Crying in Baseball': Sports and the Legal and Social Construction of Gender." *4 J. Gender Race & Just.*, 2001:283.

Reed v Reed, Administrator, No. 70-4, 404 U.S. 71; 92 S. Ct. 251; 1971 U.S. LEXIS 8; 30 L. Ed. 2d 255, (November 22, 1971).

Reuscher, C.P. "Comment: Giving the Bat Back to Casey: Suggestions to Reform Title IX's Inequitable Application to Intercollegiate Athletics." *35 Akron L. Rev.*, 2001:117.

Reynolds, G. "Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance" Letter, (2003).

<http://www.ed.gov/about/offices/list/ocr/titleixguidanceFinal.html>.

Reynolds, S. L. *College Women's Beliefs About Institutional Support for Women's*

- Intercollegiate Athletics*. Abstract. Dissertation. New York University, 1991. ProQuest AAT 9134771 (accessed October 15, 2009).
- Rhoden, W.C. "Sports of the Times; A Partisan Spin on Title IX." *New York Times*, April 22, 1995: para. 1. LexisNexis (accessed May 2, 2010).
- Rhoden, W.C. "Sport of The Times; Breaking Down the Institutional Barriers That Women Still Face." *New York Times*, June 22, 2002: para. 4-5. LexisNexis (accessed May 2, 2010).
- Rhoden, W. C. "The Unpleasant Reality for Women in Sports." *New York Times*, April 9, 2007. LexisNexis (accessed April 30, 2010).
- Richardson, A. "Sports Law: *Cohen v. Brown* A Title IX Lesson for Colleges and Universities on Gender Equity." *47 Okla. L. Rev.*, 1994:161.
- Riffe, T.D. *A History of Women's Sports at the University of Arizona (Athletics)*. Abstract. Dissertation The University of Arizona, 1986. ProQuest AAT 8513832 (accessed October 15, 2009).
- Ritter, S.E. *Achieving Gender Equity in Collegiate Sports: University of Nevada, Reno Responds to Title IX, 1972-2002*. Abstract. Dissertation. University of Nevada, 2002. ProQuest (accessed October 15, 2009).
- Roach, M. "Guide Takes Students Through Title IX." *New York Times*, August 7, 1977. Microfilm.
- Roach, M. "Is Title IX Scoring Many Points in the Field of Women's School Sports?" *New York Times*, August 14, 1977. Microfilm.
- Roach, M. "Issues and Debate: Is Title IX Scoring Many Points in the Field of Women's

- Sports?" *New York Times*, September 27, 1977: col. 3, para. 10.
<http://www.query.nytimes.com> (accessed August 11, 2008).
- Roach, M. "Maryland Is Putting Girls on the School Football Line." *New York Times*, August 14, 1977: sec. 5, 7. Microfilm.
- Roberts v. Colorado State Board of Agriculture*, No. 93-1052, No. 93-1086; 998 F. 2d 824; 1993 U.S. App. LEXIS 16957 (July 7, 1993).
- Roberts, J. "Guest Editorial: High Schools Also Decry Title IX." *N.C.A.A. News*, vol. 11, no. 5, April 15, 1974: 2. <http://web1.ncaa.org> (accessed March 28, 2008).
- Roberts, J.E. "Equal Opportunity, Not the B Team." *N.C.A.A. News*, vol. 15, no. 8, June 1, 1977: 2. <http://web1.ncaa.org> (accessed March 28, 2008).
- Roberts, S. "Sports of the Times; Therapeutic Treatments for Title IX." *New York Times*, February 2, 2003: para. 9. LexisNexis (accessed April 30, 2010).
- Robertson, M.L. *Explaining Variations in the Sex Composition of Coaches for Women's Intercollegiate Athletic Teams*. Dissertation Washington State University, 2006. ProQuest AAT 3233280 (accessed October 15, 2009).
- Robinson, D. "A League of Their Own: Do Women Want Sex-Segregated Sports?" 9 *J. Contemp. Legal Issues*, 1998:321.
- Robinson, J. "Ivy League's Director to Step Down After an Era of Change." *New York Times*, February 27, 2008. LexisNexis (accessed April 30, 2010).
- Rohr, J. P. *An Appraisal of Practices and Policies in Intercollegiate Athletics in the Mid-American Conference Essential for Compliance with Title IX of the Educational Amendments of Nineteen Seventy Two (Public Law 92-381)*. Abstract. Dissertation.

- Bowling Green State University, 1978. ProQuest AAT 7901452 (accessed October 15, 2009).
- Rosner, S.R. "The Growth of N.C.A.A. Women's Rowing: A Financial, Ethical and Legal Analysis." *11 Seton Hall J. Sport L.*, 2001:297.
- Ross, S.F., K. Kahrs and F. Heinrich. "Panel Discussion: Rededication Panel Discussion on Gender Equity and Intercollegiate Athletics." *1995 U. Ill. L. Rev.*, 1995:133.
- Rowland, T.M. "Leveling the Playing Field: The N.C.A.A. Should be Subject to Title IX." *7 Sports L. J.*, 2000:143.
- Rusch, C. "Equality in Athletics: The Cheerleader vs. The Athlete." *South Dakota Law Review*, 19, 428-446.
- Sabock, R. J. "View of Sports 'Football, It Pays the Bills, Son.'" *New York Times*, sec. 5, October 5, 1975: 2. Microfilm.
- Sack, A. "College Sports Must Choose: Amateur or Pro?" *New York Times*, May 3, 1981. <http://www.query.nytimes.com> (accessed August 11, 2008).
- Salzman, A. "UConn Basketball, Then and Now." *New York Times*, April 18, 2004. LexisNexis (accessed April 30, 2010)
- Sandler, B.R. "Letter to Editor: Wrestling with Title IX." *Chronicle of Higher Education*, March 8, 2002, para 2-3. LexisNexis (accessed April 10, 2010).
- Sandler, B.R. "'Too Strong for a Woman' – The Five Words that Created Title IX." (1997) <http://www.bernicessandler.com/id44.htm> (accessed April 8, 2006).
- Sandler, B.R. "What Women Really Want on College Campuses," *Chronicle of Higher Education*, April 24, 1972. Microfilm.
- Sandomir, R. "Colleges; Brown Is Told Sports Program Cheats Women." *New York*

- Times*, March 30, 1995: para. 8. LexisNexis (accessed May 2, 2010).
- Sandomir, R. "Colleges; The Prospects for Title IX Are Expected to Improve." *New York Times*, April 23, 1997: para. 4. LexisNexis (accessed May 2, 2010).
- Sandomir, R. "Wrestling; Wrestling's Niche Is Growing." *New York Times*, September 12, 2003. LexisNexis (accessed April 30, 2010).
- Sangree, S. "Title IX and the Contact Sports Exemption: Gender Stereotypes in a Civil Rights Statute." *32 Conn. L. Rev.*, 2000:381.
- Sarat, A. *Race Law and Culture: Reflections on Brown v. Board of Education*. (New York: Oxford Press, 1997): 55.
- Schemo, D.J. "Colleges; Advisory Panel Backs Easing Rules for Title IX." *New York Times*, January 31, 2003. LexisNexis (accessed April 30, 2010).
- Schemo, D.J. "Colleges; Advocates of Title IX Voice Concern on Panel." *New York Times*, December 20, 2002. LexisNexis (accessed May 2, 2010).
- Schemo, D.J. "Colleges; Title IX Plans Assailed as Broad and Harmful." *New York Times*, February 1, 2003. LexisNexis (accessed April 30, 2010).
- Schemo, D.J. "Women's Athletics, Title IX Panel Favors Lifting Anti-Trust Laws." *New York Times*, January 30, 2003. LexisNexis (accessed April 30, 2010).
- Schemo, D.J. "Women's Athletics; Female Athletes Attack Plans to Change Title IX." *New York Times*, January 29, 2003: para. 18-19. LexisNexis (accessed April 30, 2010).
- Schemo, D.J. "Women's Sports; Title IX Dissenters to Issue Report Criticizing Proposed Changes to Women's Athletics." *New York Times*, February 25, 2003: para. 3. LexisNexis (accessed April 30, 2010).
- Schmit, E.M. *For Her Own Good: Legal Justifications Used to Exclude Women and Girls*

- From Sports*. Abstract. Dissertation. The University of Arizona, 2008. ProQuest AAT 1453367 (accessed October 15, 2009).
- Schoepfer, K.L. "Title VII: An Alternate Remedy for Gender Inequity in Intercollegiate Athletics." *11 Marq. Sports L. Rev.*, 2000:107.
- Schubert, R. C. "State Action and Private Universities." *24 Rutgers L.Rev.* December 1970:323.
- Schuld, K. "Letters to Editor: A Flawed Interpretation of Title IX is Keeping Male Students from Playing Sports." *Chronicle of Higher Education*, March 31, 2000: para. 1. LexisNexis (accessed April 10, 2010).
- Schuman, J. "Senate Panel Says More Proof Needed for Colleges' Compliance with Title IX." *Chronicle of Higher Education*, July 29, 2005. LexisNexis (accessed April 10, 2010).
- Scott, M. and J.J. Semo. "Ruling Has Title IX Significance." *N.C.A.A. News*, April 28, 1993. <http://web1.ncaa.org> (accessed March 28, 2008).
- Searcy, J. "College Experiment Offered Women." *New York Times*, May 18, 1975: S5. Microfilm.
- Searcy, J. "Foe of Men's Myths Braces for Battle." *New York Times*, July 14, 1974. <http://www.query.nytimes.com> (accessed August 11, 2008).
- Searcy, J. "Scholarships for Women Have Come A Long Way." *New York Times*, July 7, 1974. <http://www.query.nytimes.com> (accessed August 11, 2008).
- Searcy, J. "Sporting Goods Industry Listening to Women." *New York Times*, August 11, 1974. <http://www.query.nytimes.com> (accessed August 11, 2008).
- Searcy, J. "Women Battle for Funds on College Sports Scene." *New York Times*, May 19,

1974: para. 6. from <http://www.query.nytimes.com> (accessed August 11, 2008).

Seidman, C. "Women Athletes Gained Recognition and Also Respect." *New York Times*, December 30, 1979. <http://www.query.nytimes.com> (accessed August 11, 2008).

Senate Commerce Committee Hearing. October 18, 1995, as cited in website <http://www.titleix.info/> (accessed April 8, 2006).

Seton Hall Journal of Sport Law. "Absent Strong Connections to a State Government, A High School Athletic Association Cannot be Construed as a State Actor—*Brentwood Academy v. Tennessee School Athletics Ass'n*, 180 F.ed 758 (6th Cir. 1999, cert. granted, 120 S. Ct. 1156)." *10 Seton Hall J. Sport L.*, 2000: 457.

Seton Hall Journal of Sport Law. "The Scope of Title IX: Protection Gains Yardage as Courts Continue to Tackle the Contact Sports Exception." *10 Seton Hall J. Sport L.*, 2000: 415.

Setty, S. "Leveling the Playing Field: Reforming the Office for Civil Rights to Achieve Better Title IX Enforcement." *32 Colum. J. L. & Soc. Probs.*, 1999:331.

Shaffer, J.W. "Finally, Mr. President." *N.C.A.A. News*, vol. 13, no. 8, July 15, 1976: 2. <http://web1.ncaa.org> (accessed March 28, 2008).

Shanahan, E. "H.E.W. Proposes Rules to Outlaw Schools' Sex Bias: Regulations Would Require Fundamental Changes in Programs of Athletics." *New York Times*, June 19, 1974. Microfilm.

Shelton, Honorable D.E. "Equally Bad is not Good: Allowing Title IX 'Compliance' By the Elimination of Men's Collegiate Sports." *34 U. Mich. J. L. Ref.*, 2001:253.

Shields, J.E., Ed. "Controversy Over the 'Equal Rights Amendment.'" *Congressional Digest* 50 (1971):1.

- Simons, K. W. "The Logic of Egalitarian Norms." *80 B.U.L. Rev.*, 2000:693.
- Simpson, J.A. and E.S.C. Weiner, Preparers. "history." *The Oxford English Dictionary*, Vol. III, Hat-Intervacuum, Oxford: Clarendon Press, 1989:261.
- Sisley, B.L. "Challenges Facing the Woman Athletic Director." *Physical Educator*, vol. 32, no. 3, October 1975:121-123.
- Sisley, B.L. "Women in Administration: A Quest for Quality Leadership." *Journal of Physical Education and Recreation* 52 (April 1981): 77.
- Skretny-Fowler, A. B. *Sexual Harassment in Intercollegiate Athletics: A Case Law Analysis and Recommendations for Prevention, Training, and Risk Assessment*. Abstract. Dissertation. Spalding University, 2000. ProQuest AAT 9962311 (accessed October 15, 2009).
- Smith, R.K. "A Brief History of the National Collegiate Athletic Association's Role in Regulating Intercollegiate Athletics." *11 Marq. Sports L. Rev.*, 2000:1655.
- Smith, R. K. "Sports Law as a Reflection of Society's Laws and Values: Solving the Title IX Conundrum with Women's Football." *38 S. Tex. L. Rev.*, 1997:1057.
- Smith, R.K. "When Ignorance is Not Bliss: In Search of Racial and Gender Equity in Intercollegiate Athletics." *61 Mo. L. Rev.*, 1996:329.
- Smith, T. W. "College Football: A Kicker Sues, Saying She was Treated Unfairly." *New York Times*, September 17, 1997. LexisNexis (accessed May 2, 2010).
- Smith, W.F. "A Law on Bias Properly Enforced." *New York Times*, August 14, 1983. LexisNexis (accessed May 2, 2010).
- Snyder, P.J. *A Legislative And Judicial History Of Title IX In Athletics*. Abstract.

- Dissertation. Kent State University, 2008. ProQuest AAT 3313096 (accessed October 15, 2009).
- Sokolove, M. "The Uneven Playing Field." *New York Times*, May 11, 2008. LexisNexis (accessed April 30, 2010).
- Speck, D. G. "Title IX: The Death of Athletics and Other Myths." *NASPA* 13 (1976): 73-75.
- Spitz, C. "Gender Equity in Intercollegiate Athletics as Mandated by Title IX of the Education Act of 1972: Fair or Foul?" *21 Seton Hall J. Sport L.*, 1997:621.
- Stahura, K. A. *Occupational Employment Patterns in Women's Intercollegiate Athletics: Sex of Head Coach as a Function of Sport Type, Institutional Prestige and ranked Program Prestige*. Abstract. Dissertation. University of Minnesota, 2000. ProQuest AAT 9966271 (accessed October 15, 2009).
- Stanley v. University of Southern California*, Nos. 95-55466, 95-56250, 96-5500; 178 F. 3d 1069; 1999 U.S. App. LEXIS 11170; 79 Fair Empl. Prac. Cas. (BNA) 1616; 138 Lab. Cas. (CCH) P33, 881; 76 Empl. Prac. Dec. (CCH) Pr6, 014, 44 Fed. R. Serv. 3d (Callaghan) 311; 99 Cal. Daily Op. Service 4192; 99 Daily Journal DAR 5278, (June 2, 1999, Filed).
- Starace, M.K. "Reverse Discrimination Under Title IX: Do Men Have a Sporting Chance?" *8 Vill. Sports & Ent. L. Forum*, 2001:189.
- Staurowsky, E. J. "The Title IX Commission's Flawed Lineup." *Chronicle of Higher Education*, February 14, 2003: para. 5. LexisNexis (accessed April 10, 2010).
- Steinhilber, A.W. "Here's What the Tough New Federal Rules Against Sex Bias Mean for Public Schools." *The American School Board Journal* 161 (August 1974): 20-21.

- Stillmach, D.K. "Title IX The Mandate for Equality in Collegiate Athletics." *41 Wayne L. Rev.*, 1994:203.
- Straubel, M. "Gender Equity, College Sports, Title IX and Group Rights: A Coach's View." *62 Brooklyn L. Rev.*, 1996:1039.
- Suggs, W. "2 Appeals Courts Uphold Right of Universities to Reduce Number of Male Teams." *Chronicle of Higher Education*, January 7, 2000. LexisNexis (accessed April 10, 2010).
- Suggs, W. "A Federal Commission Wrestles With Gender Equity in Sports." *Chronicle of Higher Education*, January 3, 2003: para. 7. LexisNexis (accessed April 10, 2010).
- Suggs, W. "An Old-School Athletics Director and Title IX in the Deep South." *Chronicle of Higher Education*, March 17, 2000: para. 64. LexisNexis (accessed April 10, 2010).
- Suggs, W. "At Smaller Colleges, Women Get Bigger Share of Sports Funds." *Chronicle of Higher Education*, April 14, 2000: para. 42-43. LexisNexis (accessed April 10, 2010).
- Suggs, W. "Athletics: Title IX at 30." *Chronicle of Higher Education*, June 21, 2002: A 39. LexisNexis (accessed April 10, 2010).
- Suggs, W. "Can a Commission Change Title IX?" *Chronicle of Higher Education*, July 12, 2002. LexisNexis (accessed April 10, 2010).
- Suggs, W. "Cheers and Condemnation Greet Report on Gender Equity." *Chronicle of Higher Education*, March 7, 2003: para 3-4. LexisNexis (accessed April 10, 2010).
- Suggs, W. "Colleges Consider Fairness of Cutting Men's Teams to Comply with Title IX." *Chronicle of Higher Education*, February 19, 1999: para. 7. LexisNexis (accessed April 10, 2010).
- Suggs, W. "Colleges Make Slight Progress Toward Gender Equity in Sports." *Chronicle of*

- Higher Education*, July 25, 2003. LexisNexis (accessed April 10, 2010).
- Suggs, W. “Defying Rumors, Bush Administration Defends Status Quo on Title IX.”
Chronicle of Higher Education, June 7, 2002. LexisNexis (accessed April 10, 2010).
- Suggs, W. “East Tennessee State U. Will Cut Football Program After Season.” *Chronicle of Higher Education*, May 9, 2003. LexisNexis (accessed April 10, 2010).
- Suggs, W. “Education Department May Ask Colleges for More Data in Athletic-Equity Reports.” *Chronicle of Higher Education*, May 21, 1999. LexisNexis (accessed April 10, 2010).
- Suggs, W. “Education Department Offers U. of New Mexico Another Way to Comply with Title IX.” *Chronicle of Higher Education*, May 12, 2000:para. 4. LexisNexis (accessed April 10, 2010).
- Suggs, W. “Education Department Stands Pat on Title IX.” *Chronicle of Higher Education*, July 25, 2003. LexisNexis (accessed April 10, 2010).
- Suggs, W. “Federal Panelists’ Ideas for Changing Title IX.” *Chronicle of Higher Education*, January 3, 2003: para. 3. LexisNexis (accessed April 10, 2010).
- Suggs, W. “Female Place Kicker’s Lawsuit Against Duke is Reinstated.” *Chronicle of Higher Education*, July 23, 1999. LexisNexis (accessed April 10, 2010).
- Suggs, W. “Foes of Title IX Try to Make Equity in College Sports a Campaign Issue.”
Chronicle of Higher Education, February 4, 2000. LexisNexis (accessed April 10, 2010).
- Suggs, W. “In Lawsuit, Advocates of Men’s Sports Accuse U.S. Agency of Anti-Male Bias.” *Chronicle of Higher Education*, January 14, 2005. LexisNexis (accessed April 10, 2010).
- Suggs, W. “Louisiana State U. Loses Title IX Ruling.” *Chronicle of Higher Education*,

- February 18, 2000. LexisNexis (accessed April 10, 2010).
- Suggs, W. "Miami U. Athletes Plan Suit on Dropped Teams." *Chronicle of Higher Education*, November 12, 1999. LexisNexis (accessed April 10, 2010).
- Suggs, W. "Miami U. Drops 3 Men's Sports." *Chronicle of Higher Education*, April 30, 1999. LexisNexis (accessed April 10, 2010).
- Suggs, W. "More Women Participate in Intercollegiate Athletics." *Chronicle of Higher Education*, May 21, 1999. LexisNexis (accessed April 10, 2010).
- Suggs, W. "New Developments May Alter Enforcement of Title IX." *Chronicle of Higher Education*, April 15, 2005: 17, 19. LexisNexis (accessed April 10, 2010).
- Suggs, W. "New Mexico Highlands U. Liable in Title IX Suit." *Chronicle of Higher Education*, December 17, 1999. LexisNexis (accessed April 10, 2010).
- Suggs, W. "New Policy Clarifies Title IX Rules for Colleges; Women's Groups Object." *Chronicle of Higher Education*, April 1, 2005: para. 16. LexisNexis (accessed April 10, 2010).
- Suggs, W. "Poll Finds Strong Public Backing for Gender Equity in College Athletics." *Chronicle of Higher Education*, July 7, 2000: para. 11. LexisNexis (accessed April 10, 2010).
- Suggs, W. "Proposals on Title IX Intensify the Debate Over Gender Equity." *Chronicle of Higher Education*, February 14, 2003. LexisNexis (accessed April 10, 2010).
- Suggs, W. "Smoke Obscures Fire in Title IX Debate as Federal Panel Adjourns." *Chronicle of Higher Education*, February 7, 2003. LexisNexis (accessed April 10, 2010).
- Suggs, W. "Sports Administrators Remain Disturbed as U.S. Acts on Gender Equity Complaints." *Chronicle of Higher Education*, January 8, 1999: para. 19. LexisNexis

(accessed April 10, 2010).

Suggs, W. "Supreme Court Case May Have Major Impact on NCAA Support for Women's Sports." *Chronicle of Higher Education*, January 15, 1999. LexisNexis (accessed April 10, 2010).

Suggs, W. "Supreme Court Won't Hear Title IX Lawsuit." *Chronicle of Higher Education*, July 14, 2000. LexisNexis (accessed April 10, 2010).

Suggs, W. "Syracuse U. Wins Title IX Case." *Chronicle of Higher Education*, January 22, 1999: para. 2. LexisNexis (accessed April 10, 2010).

Suggs, W. "Title IX Has Done Little For Minority Female Athletes—Because of Socioeconomic and Cultural Factors, and Indifference." *Chronicle of Higher Education*, November 30, 2001. LexisNexis (accessed April 10, 2010).

Suggs, W. "U. Minnesota Reorganizes Athletics Program and Cuts 3 Teams." *Chronicle of Higher Education*, April 26, 2002. LexisNexis (accessed April 10, 2010).

Suggs, W. "U. of Miami Drops 2 Men's Teams." *Chronicle of Higher Education*, March 24, 2000. LexisNexis (accessed April 10, 2010).

Suggs, W. "U.S. Commission on Title IX Calls for Protecting Men's Teams." *Chronicle of Higher Education*, February 28, 2003. LexisNexis (accessed April 10, 2010).

Suggs, W. "U.S. Reopens Inquiry Into Gender Bias in NCAA Championships." *Chronicle of Higher Education*, February 26, 1999. LexisNexis (accessed April 10, 2010).

Suggs, W. "U.S. Says Colorado State University Meets Gender-Equity Requirements." *Chronicle of Higher Education*, September 8, 2000. LexisNexis (accessed April 10, 2010).

Suggs, W. "Uneven Progress for Women's Sports." *Chronicle of Higher Education*, April

7, 2000. LexisNexis (accessed April 10, 2010).

Suggs, W. “Woman Who Wanted to Play Football at Duke Wins Another Round in Court.” *Chronicle of Higher Education*, March 30, 2001. LexisNexis (accessed April 10, 2010).

Suggs, W. “Women’s Athletics Departments Verge On Extinction.” *Chronicle of Higher Education*, November 19, 2004: para. 19. LexisNexis (accessed April 10, 2010).

Suggs, W. “Wrestling Complaint Denied in Title IX Ruling.” *Chronicle of Higher Education*, June 2, 2003. LexisNexis (accessed April 10, 2010).

Swiderski v. Board of Education, City School District of Albany, 95 Misc. 2d 931; 408 N.Y.S. 2d 744; 1978 N.Y Misc. LEXIS 2530, (September 5, 1978).

Szady, S.M. *The History of Intercollegiate Athletics for Women at the University of Michigan*. Abstract. Dissertation. University of Michigan. 1987. ProQuest AAT 8712219 (accessed October 15, 2009).

Szul, G. “Sports Law: Sex Discrimination and the Equal Pay Act in Athletic Coaching.” 5 *J. Art & Ent. Law*, 1994:161.

Tatum, L. “COMMENT: Girls in Sports: Love of the Game Must Begin at an Early Age to Achieve Equality.” 12 *Seton Hall J. Sports L.*, 2002:281.

Taylor, J.S. “Court Case Yanks on the Whole Ball of Federal Aid String.” *New York Times*, September 25, 1983. LexisNexis (accessed May 2, 2010).

The Civil Rights Restoration Act of 1987. codified at 20 U.S.C. (1687).

The Harvard Law Review Association. “Cheering on Women and Girls in Sports: Using Title IX to Fight Gender Role Oppression.” 110 *Harvard L. Rev.*, 1997:1627.

The White House, “Clinton to Expand Reach of Title IX Through Executive Order.” *The*

White House Bulletin. June 17, 1997.

Thomas, Jr., R.M. "Colo. State Softball Wins one for Women." *New York Times*, December 1, 1993. LexisNexis (accessed May 2, 2010).

Thomas, Jr., R.M. "Major Step Against Sex Discrimination." *New York Times*, February 27, 1992. LexisNexis (accessed May 2, 2010).

Thomas, Jr., R.M. "Pro Football: Cornell Reinstates Two Women's Sports." *New York Times*, December 9, 1993. LexisNexis (accessed May 2, 2010).

Thomas, Jr., R.M. "Ruling for Brown Women to Be Far-Reaching." *New York Times*, April 20, 1993. LexisNexis (accessed May 2, 2010).

Thomas, Jr., R.M. "Settlement for Brown's Female Athletes." *New York Times*, September 29, 1994: para. 3. LexisNexis (accessed May 2, 2010).

Thomas, Jr., R.M. "Sports World Specials: Colleges; Not-So-Equal Coaching." *New York Times*, May 8, 1989. LexisNexis (accessed May 2, 2010).

Thomas, Jr., R.M. "Two Women at Brooklyn College File Rights Complaint." *New York Times*, December 12, 1990. LexisNexis (accessed May 10, 2010).

Thomas, Jr. R.M., and T. Rogers. "Sports World Specials: Reversing Field." *New York Times*, April 20, 1987. <http://query.nytimes.com> (accessed November 3, 2008).

Thomas, K. "Advocating for Girls' Sports, With a Sharp-Tongued Voice." *New York Times*, November 30, 2009. LexisNexis (accessed April 30, 2010).

Thomas, K. "Rule Change Takes Aim at Loophole in Title IX." *New York Times*, April 20, 2010. LexisNexis (accessed April 30, 2010).

Thomas, K. "Sand Volleyball Keeps Status in N.C.A.A. After Close Vote." *New York Times*, January 16, 2010. LexisNexis (accessed April 30, 2010).

- Thomas, K. "Student Finds Gender Barriers In Sports." *New York Times*, October 9, 2008. LexisNexis (accessed April 30, 2010).
- Thomas, K. "Title IX Ruling in California Could Lead to Stricter Standards." *New York Times*, June 19, 2009. LexisNexis (accessed April 30, 2010).
- Thomas, R.T. "Guidance on Title IX Issued by OCR Staff." *N.C.A.A. News*, vol. 12, no. 13, October 1, 1975: 1, 2. <http://web1.ncaa.org> (accessed March 28, 2008).
- Thomas, S. "Women Want to Wrestle; Small Colleges Oblige." *New York Times*, May 27, 2008. LexisNexis (accessed April 30, 2010).
- Thompson, D.I. "Title IX of the Education Amendments of 1972: Issues Reach the Courts." *Washburn Law Journal* 18(2), 1979:310-324.
- Thurston, P. "Judicial Dismemberment of Title IX." *Phi Delta Kappan* 60 (April 1979): 594-596.
- Tiesenga, B.B. "Title IX and the Outer Limits of Spending Powers *Grove City College v. Bell* 104 S. Ct. 1211 (1984)." *61 Chi.-Kent L. Rev.*, 1985:711.
- Timpano, D. M. "How to Meet that Title IX Deadline Four Months From Now." *The American School Board Journal* 163 (1976): 30-34.
- Title IX. "Recent News: Special Message from Billie Jean King [interview]." Exercise My Rights. (2006). <http://www.titleix.info/> (accessed April 8, 2006).
- Torrey, M. "Thirty Years." *22 Women's Rights' L. Rep.*, 2001:147.
- Tower, J. "Tower Amendment." *120 Congressional Record*, 15322-15323, (1974).
- Trudeau, G. "Doonesbury Bewildered by Title IX." *N.C.A.A. News*, vol. 11, no. 11, October 15, 1974 and November 1, 1974: 2. <http://web1.ncaa.org> (accessed March 28, 2008).

Trudeau, G. "Doonesbury Bewildered by Title IX." *N.C.A.A. News*, vol. 11, no 12, November 1, 1974:6. <http://web1.ncaa.org> (accessed March 28, 2008).

Tygart, T.T. "Title IX: The Monitoring of Private Athletic Donations." *53 Okla. L. Rev.*, 2000:57.

UMKCL Review. "Constitutional Law: *Cannon v. University of Chicago* (99 S. Ct. 1946): Civil Rights and Private Wrongs, A New Remedy." *48 UMKC L. Rev.*, 1980:487-501.

U.S. Congress. *Congressional Record*. 91st Congress, Vol. 117, 1971.

U. S. Congress. *Congressional Record*. 92nd Congress, 2nd session, Vol. 118,5803-4, 1972.

U. S. Congress. *Congressional Record*. 95th Congress, Vol. 121:19, 209; 21,865; 22,940, 1975. As cited in website: <http://www.titleix.info/> (accessed April 8, 2006).

Department of Education's Appropriations Act of 1996. H.R. 2127 July 27, 1995 as cited in website: <http://www.titleix.info/> (accessed April 8, 2006).

U.S. Department of Education, Office for Civil Rights. "34 C.F.R., Part 106." *45 Federal Register*, 30,955, et. Seq. (May 9, 1980).

U.S. Department of Education, Office for Civil Rights. "'Open to All' Title IX at Thirty." (February 2003). Washington D.C., <http://www.ed.gov/about/bdscomm/list/athletics/title9report.pdf>.

U.S. Department of Education, Office for Civil Rights. "Additional Clarification of Intercollegiate Athletics Policy: Three-Part Test – Part Three." Washington, D.C., (2005).

U.S. Department of Education, Office for Civil Rights. "Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test." (January 16, 1996). <http://www.ed.gov/about/offices/list/ocr/docs/clarific.html#two>.

- U.S. Department of Education, Office for Civil Rights. "Dear Colleague Letter." (April 2004). http://www.ed.gov/about/offices/list/ocr/responsibilities_ix.html.
- U.S. Department of Education, Office for Civil Rights. "How to File a Discrimination Complaint with the Office for Civil Rights." (2007). www.ed.gov/about/offices/list/ocr/docs/howto.html.
- U.S. Department of Education, Office for Civil Rights. "Impact of the Civil Rights Laws." (1999). <http://www.ed.gov/about/offices/list/docs/impact.html>. (accessed August 15, 2007).
- U.S. Department of Education, Office for Civil Rights. "Interim Title IX Investigator's Manual." ERIC document ED (1980). Microfiche.
- U.S. Department of Education, Office for Civil Rights. "Non-Discrimination in Employment Practices in Education." (1991). <http://www.edu.gov/about/offices/list/ocr/docs/hq53e8.html>. (accessed June 15, 2002)
- U.S. Department of Education, Office for Civil Rights. "Notice of Non-Discrimination." (1999). <http://www.ed.gov/about/offices/list/ocr/docs/nondisc.html>. (accessed August 15, 2007).
- U.S. Department of Education, Office for Civil Rights. "Office for Civil Rights Annual Reports to Congress" (2006). <http://www.ed.gov/about/offices/list/ocr/congress.html>. (accessed August 15, 2007).
- U.S. Department of Education, Office for Civil Rights. "The Guidance Counselor's Role in Ensuring Equal Educational Opportunity." (1991). <http://www.ed.gov/about/offices/list/ocr/docs/hq43ef.html>.
- U.S. Department of Education, Office for Civil Rights. "Title IX Grievance Procedures: An

- Introductory Manual.” ERIC Document ED (1987).
- U.S. Department of Education, Office for Civil Rights. “Title IX: 25 Years of Progress.” (1997). <http://www.ed.gov/pubs/TitleIX/title.html> (accessed August 15, 2007).
- U.S. Department of Education. “Final Regulations Non Discrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.” *71 Federal Register*, No. 206 (October 26, 2006): 62530.
- U.S. Department of Health, Education and Welfare. “Elimination of Sex Discrimination in Athletic Programs.” *40 Federal Register* (1975).
- U.S. Department of Health, Education and Welfare. “Title IX and Intercollegiate Athletics.” *44 Federal Register*, 71413, et. Seq. (December 11, 1979). Microfiche.
- U.S. Department of Justice, Civil Rights Division. “Title IX Legal Manual.” (2001). Washington, D.C., <http://usdoj.gov/crt/cor/coord/ixlegal.htm> (accessed August 15, 2007).
- U.S. House of Representatives Committee on Economic and Educational Opportunities, Subcommittee on Post-Secondary Education, Training and Lifelong Learning. “Hearing on Title IX of the Education Amendments of 1972: Hearing Before the Subcommittee on Postsecondary Education, Training and Lifelong Learning of the Committee on Economic and Educational Opportunities.” House of Representatives. One Hundred Fourth Congress, First Session, Hearing Held In Washington D.C., May 9, 1995.
- U.S. House of Representatives. “House Passes Resolution to Rename Title IX after Patsy Mink.” October 9, 2002. <http://www.house.give/abercrombie/news/mink02f.htm> (accessed March 5, 2008).
- U.S. Senate Committee on Health, Education, Labor and Pensions. “Title IX [microform]:

- Building On 30 Years Of Progress: Hearing Before the Committee on Health, Education, Labor and Pensions, on examining the implementation and progress of Title IX of the Education Amendments Act of 1972, which prohibits sex discrimination in all aspects of education.” United States Senate. One Hundred Seventh Congress. second session. June 27, 2002. Microform.
- U.S. Senate. “Analysis of Laws Prohibiting Sex Discrimination in Higher Education.” 92nd Cong., *118 Cong. Rec.*, 1972:24683-24685.
- United States General Accounting Office. *Intercollegiate Athletics, Comparison of Selected Characteristics of Men’s and Women’s Programs*. (USGAO/HEHS 99-3R). (1999).
- United States General Accounting Office. *Intercollegiate Athletics Four-Year Colleges’ Experiences Adding and Discontinuing Teams*. (GAO-01-297). (2001): 4.
- United States General Accounting Office. *Intercollegiate Athletics, Status of Efforts to Promote Gender Equity*. (GAO/HEHS-97-10). (1996).
- United States v. Virginia*, No. 94-1941; 518 U.S. 515; 116 S. Ct. 2264; 1996 U.S. LEXIS 4259; 135 L. Ed. 2d 735; 64 U.S. L. W. 4538; 96 Cal. Daily Op. Service 4694; 96 Daily Journal DAR 7573; 10 Fla. Law W. Fed S. 93, (June 26, 1996).
- University of Cincinnati Law Review. “Implied Right to Sue.” *48 U. Cin. L Rev.* 1047-57. 1979:1047-57.
- Urban Law Annual. “Title IX Sex Discrimination: Private Colleges and Academic Freedom.” *18 Urban L. Ann.* 1977:107-137.
- Van de Graff, P. J. “The Program-Specific Reach of Title IX.” *83 Colum. L. Rev.*, 1983:1210.

- Vecsey, G. "A High School Coach Blows the Whistle." *New York Times*, March 30, 2005. LexisNexis (accessed April 30, 2010).
- Vegosen, J. "Starve Football, Feed Athletes." *New York Times*, January 28, 2007. LexisNexis (accessed April 30, 2010).
- Waicukauski, R. J. "Law and Amateur Sports." *96 Har. L. Rev.*, 1983:1495.
- Wallace, W. "Rowing: Title IX Helps Female Scullers Thrive." *New York Times*, June 19, 1997. LexisNexis (accessed May 2, 2010).
- Walters, A.K. "Former Athletes Criticize Title IX Rule." *Chronicle of Higher Education*, February 17, 2006. LexisNexis (accessed April 10, 2010).
- Walton, T.A. *Pinned By Gender Construction? A Critical Analysis Of Media Representations Of Female Amateur Wrestling In The United States*. Abstract. Dissertation. The University of Iowa, 2002. ProQuest AAT 3052478 (accessed October 15, 2009).
- Watson, S. "Title IX Regulations Confuse All But a Very Few People." as cited from *N.C.A.A. News*, vol. 11, no. 9 August 15, 1974:2. <http://web1.ncaa.org> (accessed March 28, 2008).
- Webb, Jr., W.H. "Case Comments: Sports Law—*Cohen v. Brown University*: The Promulgation of Gender Equity in Intercollegiate Athletics." *25 U. Mem. L. Rev.*, 1994:351.
- Wedemeyer, D. "Women's College Sports: A New Ball Game." *New York Times*, May 25, 1977. <http://www.query.nytimes.com> (accessed August 11, 2008).
- Weigers, N., *et al.* "Title IX: An Overview of the Law for Students. A Guide to Equal Rights, Part 2." (1976). ERIC ED 183636 (accessed September 22, 2008).

- Weinberger, C.A. "Weinberger Responds to Questions Concerning Title IX." *N.C.A.A. News*, vol. 11, no 8, August 1, 1974: 4. <http://web1.ncaa.org> (accessed March 28, 2008).
- Weiner, J. "Celebrating Women's Sports, One Image at a Time." *New York Times*, June 6, 2004. LexisNexis (accessed May 2, 2010).
- Weisman, S.R. "Reagan Eases School Law on Bias in Schools." *New York Times*, March 17, 1982: para. 11. LexisNexis (accessed May 2, 2010).
- Weiss, M.R. "Comment: Pay Equity For Intercollegiate Coaches: Exploring The EEOC Enforcement Guidelines." *13 Marq. Sports L. Rev.*, 2002:149.
- Weistart, J.C. "Setting a Course for College Athletics: Can Gender Equity Find a Place in Commercialized College Sports?" *3 Duke J. Gender L. & Pol'y*, 1996:191.
- West, D. "Judge Orders Season Shift in Westchester Girls' Soccer." *New York Times*, July 17, 2003. LexisNexis (accessed April 30, 2010).
- West, D. "Reschedule Girls' Soccer, 2 Schools are Ordered." *New York Times*, June 5, 2004. LexisNexis (accessed April 30, 2010).
- Whalen, J.J. "Spring Symposium: Issues Facing College Athletics: Gender Equity or Title IX?" *5 Kan. J.L. & Pub. Pol'y*, 1996:65.
- White, G. M. *A Systems Design for the Merger of Male and Female Athletics in Southeastern Conference Universities*. Abstract. Dissertation. The University of Alabama, 1980. ProQuest AAT 8104101 (accessed October 15, 2009).
- White, Jr., G.S., "Are Women's College Sports Units in Peril?" *New York Times*, May 6, 1980: col. 4, para. 6. <http://www.query.nytimes.com> on (accessed August 11, 2008).
- White, Jr., G.S. "College Heads Ponder Athletics Costs, Ethics and Title IX." *New York Times*, January 6, 1975: 37, 39. Microfilm.

- White, Jr., G.S. "Colleges Mystified by Title IX Fund Rules." *New York Times*, December 15, 1978: 27. Microfilm.
- White, Jr., G.S. "Mrs. Harris Strengthens Title IX Policies." *New York Times*, December 6, 1979: col. 4, para. 3. <http://www.query.nytimes.com> (accessed August 11, 2008).
- White, Jr., G.S. "N.C.A.A. To Maintain Division IA Makeup." *New York Times*, January 1979. <http://www.query.nytimes.com> (accessed August 11, 2008).
- White, Jr., G.S. "N.C.A.A. in New Bid to Women." *New York Times*, January 9, 1975. <http://www.query.nytimes.com> (accessed August 11, 2008).
- White, Jr., G.S. "N.C.A.A. Woman Criticized." *New York Times*, January 3, 1981. <http://www.query.nytimes.com> (accessed August 11, 2008).
- White, G.S., Jr. "Review of Title IX is No Surprise." *New York Times*, August 1981. <http://www.query.nytimes.com> (accessed August 11, 2008).
- White, Jr., G.S. "Title IX Guidelines are Issued for Equal Sports Expenditures." *New York Times*, December 7, 1978. Microfilm.
- White, Jr., G.S. "Women are a Problem for N.C.A.A." *New York Times*, January 7, 1975: 39, 41. Microfilm.
- White, Jr., G.S. "Women Fear Interference by N.C.A.A." *New York Times*, January 10, 1978. <http://www.query.nytimes.com> (accessed August 11, 2008).
- Whithead, R., W. Block and L. Hardin. "Gender Equity in Athletics: Should We Adopt a Non-Discriminatory Model?" *30 U. Tol. L. Rev.*, 1999:223.
- Wikipedia. "1954." Wikipedia, The Free Encyclopedia. www.wikipedia.com (accessed April 10, 2008).
- Wilde, T. J. "Gender Equity in Athletics: Coming of Age in the 90's." *4 Marq. Sports L. J.*,

1994:217.

Williams, L. "Coalition Seeks Wider Penalty In Rights Law." *New York Times* (February 28 1986). LexisNexis (accessed May 2, 2010).

Williams, L. "Sports Business; Women's Sports Foundation Expands Mission Beyond Opening Doors." *New York Times*, May 8, 2000. LexisNexis (accessed May 2, 2010).

Williams, L. "Women's Sports; Nine Moments and a Legal Decision." *New York Times*, November 20, 2000. LexisNexis (accessed May 2, 2010).

Wilson, D.C. "Parity Bowl IX: Barrier Breakers v. Common Sense Makers and the Serpentine Struggle for Gender Diversity in Collegiate Athletics." *27 Cumb. Rev.* 1996:397.

Wilson, D. C. "Title IX's Collegiate Sports Application Raises Serious Questions Regarding The Role of the N.C.A.A." *31 J. Marshall L. Rev.*, 1998:1303.

Winkler, K. J. "Brigham Young University Challenges Parts of Bias Law." *Chronicle of Higher Education*, vol. 11, no. 7, October 28, 1975:1: col. 3, para. 2. Microfilm.

Winkler, K. J. "Guidelines Underfire Anti-Sex Rules Too Vague." *Chronicle of Higher Education*, vol. 8, no. 37, July 8, 1974: 8. Microfilm.

Winker, K. J. "Threat to Civil Rights? H.E.W. Chief Sees Enforcement in Jeopardy." *Chronicle of Higher Education*, vol. 9, no. 12, December 9, 1974: 5. Microfilm.

Wolanin, T. R. "Federal Policy Making in Higher Education." *AAUP Bulletin* 61 (1975): 309-314.

Wolverton, B. "Education Dept. Affirms Use of E-Mail Surveys in Title IX Compliance." *Chronicle of Higher Education*, March 31, 2006. LexisNexis (accessed April 10, 2010).

Women's Equity Action League, et al., v. Cavazos, Nos. 88-5065, Consolidated Nos. 88-

- 5068, 88-5069, 88-5070, 88-5071, 88-5088 U.S. Court of Appeals for District of Columbia Circuit, 285 U.S. App. D.C. 48; 906 F.2d 742; 1990 U.S. App. LEXIS 10154; 54 Empl. Prac. Dec. (CCH) P 40,054 June 26, 1990, decided.
- Wood, P.S. "Boys Muscling in on Girls' Sports." *53 Ohio St. L. J.*, 1992:891.
- Wood, P.S. "References in Sports." *New York Times*, May 18, 1980.
- <http://www.query.nytimes.com> (accessed August 11, 2008).
- Woods, M. L. *The Development Of Women's Intercollegiate Athletics At Central Missouri State University 1900-1990*. Abstract. Dissertation. Central Missouri State University, 1994. ProQuest AAT 1360610 (accessed October 15, 2009).
- Wu, Y. *The Demise Of The AIAW And Women's Control Of Athletics For Women: The Sex-Separate Policy In The Reality Of NCAA, Cold War and Title IX*. Abstract. Dissertation. The Pennsylvania State University, 1997. ProQuest AAT 9817607 (accessed October 15, 2009).
- Yasser, R. and S. J. Schiller, "Gender Equity in Interscholastic Sports: A Case Study." *33 Tulsa L.J.* 273, 1997: 9968.
- Yasser, R. and S. J. Schiller. "Gender Equality in Athletics: The New Battleground of Interscholastic Sports." *15 Cardoza Arts & Eng. L. J.*, 1997:371.
- Yasser, R. and S. J. Schiller. "Gender Equity in Interscholastic Sports The Final Saga: The Fight for Attorney's Fees." *34 Tulsa L. J.*, 1998:85.
- Yasser, R.A. "Comprehensive Blueprint for the Reform of Intercollegiate Athletics." *3 Marq. Sports L. J.*, 1993:123.
- Yelnosky, M.J. "If you Write it (S)he Will Come: Judicial Opinions, Metaphors, Baseball and 'The Sex Stuff.'" *28 Conn. L. Rev.*, 1996:813.

Zimbalist, A. "Backlash Against Title IX: an End Run Around Female Athletes." *Chronicle of Higher Education*, March 3, 2000: para. 13. LexisNexis (accessed April 10, 2010).

APPENDICES

APPENDIX A

Time Line of Historical and Legal Events Relating to Title IX Development, Implementation and Enforcement

Select Events from the Combined Timelines of Legal History of Women, Civil Right and Title IX in the United States

Significant events and decisions listed below chronicle Title IX development before, during and after the passing of the initial statute. Items are marked with a symbol to indicate the source from which they were taken. Timelines from the *The National Women's History Project, #The Chronicle of Higher Education, %Good Sports from the NCAA Website, and ^The Affirmative Action Timeline. Items inserted unique to this dissertation will be marked with @ .

***1789** United States Constitution ratified. The terms “persons,” “people” and “electors” are used, allowing the interpretation of those beings to include men and women.

***1848** At Seneca Falls, New York, 300 women and men sign the Declaration of Sentiments, a plea for the end of discrimination against women in all spheres of society.

***1866** The 14th Amendment is passed by Congress (ratified by the states in 1868), saying “Representatives shall be apportioned among the several States according to their respective members, counting the whole number of persons in each State, excluding Indians not taxed. . . .But when the right to vote . . .is denied to any of the male inhabitants of such State . . . the basis of representation therein shall be reduced in proportion.” It is the first time “citizens” and “voters” are defined as “male” in the Constitution.

***1869** The first woman suffrage law in the U.S. is passed in the territory of Wyoming.

***1870** The 15th Amendment receives final ratification, saying, “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.” By its text, women are not specifically excluded from the vote.

***1873** *Bradwell v. Illinois*, 83 U.S. 130 (1872): The U.S. Supreme Court rules that a state has the right to exclude a married woman (Myra Colby Bradwell) from practicing law.

***1875** *Minor v Happersett*, 88 U.S. 162 (1875): The U.S. Supreme Court declares that despite the privileges and immunities clause, a state can prohibit a woman from voting. The court declares women as “persons,” but holds that they constitute a “special category of nonvoting citizens.”

***1879** Through special Congressional legislation, Belva Lockwood becomes first woman admitted to try a case before the Supreme Court.

- ***1890** The first state (Wyoming) grants women the right to vote in all elections.
- ***1908** Muller v State of Oregon, 208 U.S. 412 (1908): The U.S. Supreme Court upholds Oregon’s 10-hour workday for women. The win is a two-edged sword: the protective legislation implies that women are physically weak.
- ***1920** The Nineteenth Amendment to the U.S. Constitution is ratified. It declares: “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.”
- ***1923** National Woman’s Party proposes Constitutional amendment: “Men and women shall have equal rights throughout the United States and in every place subject to its jurisdiction. Congress shall have power to enforce this article by appropriate legislation.”
- ***1932** The National Recovery Act forbids more than one family member from holding a government job, resulting in many women losing their jobs.
- ***1937** The U.S. Supreme Court upholds Washington state’s minimum wage laws for women.
- ***1938** The Fair Labor Standards Act establishes minimum wage without regard to sex.
- ^**1954** The United States Supreme Court overrules the “separate but equal” doctrine in *Brown v. Board of Education*, declaring racially segregated public schools unconstitutional.
- ***1963** The Equal Pay Act is passed by Congress, promising equitable wages for the same work, regardless of the race, color, religion, national origin or sex of the worker.
- *^**1964** Title VII of the Civil Rights Act passes including a prohibition against employment discrimination on the basis of race, color, religion, national origin, or sex.
- ***1965** Weeks v. Southern Bell, 408 F. 2d. 228 (5th Cir. 1969), marks a major triumph in the fight against restrictive labor laws and company regulations on the hours and conditions of women's work, opening many previously male-only jobs to women.
- ^**1965** President Lyndon B. Johnson issues an Executive Order (Executive Order 11246) requiring federal contractors to “take affirmative action” to ensure that they do not engage in discriminatory practices against workers because of race, creed, color, or national origin. Two years later gender was added to the list (1967).
- ***1968** Executive Order 11246 prohibits sex discrimination by government contractors and requires affirmative action plans for hiring women.
- ***1969** In *Bowe v. Colgate-Palmolive Company*, 416 F. 2d 711 (7th Cir.1969), the Seventh Circuit Court of Appeals rules that women meeting the physical requirements can work in many jobs that had been for men only.

Reed v. Reed, 404 U.S. 71 (1971): The U.S. Supreme Court holds unconstitutional a state law (Idaho) establishing automatic preference for males as administrators of wills. This is the first time the court strikes down a law treating men and women differently. The Court finally declares women as “persons,” but uses a “reasonableness” test rather than making sex a “suspect classification,” analogous to race, under the Fourteenth Amendment.

% **1970** U.S. Representative Edith Starrett Green, D-Oregon, holds congressional hearings on women’s opportunity in education and employment.

#**1971-1972** A total of 29,992 women and 170,384 men play college sports, the National Collegiate Athletic Association reports.

% U.S. Representative Edith Starrett Green, D-Oregon, introduces a bill in the House and U.S. Senator Birch Bayh, D-Indiana, introduces a bill in the Senate that becomes Title IX.

^***1972** Title IX (Public Law 92-318) of the Education Amendments prohibits sex discrimination in all aspects of education programs that receive federal support. With no specific reference to athletics.

#**1972-73** The AIAW [Association for Intercollegiate Athletics for Women], the first national governing body for women’s competitive sports in college, conducts its first championships. Events are held in badminton, basketball, golf, gymnastics, swimming, track and field, and volleyball.

***1973** Roe v. Wade, 410 U.S. 113 (1973) and Doe v. Bolton, 410 U.S. 179 (1973): The U.S. Supreme Court declares that the Constitution protects women’s right to terminate an early pregnancy, thus making abortion legal in the U.S.

***1974** Housing discrimination on the basis of sex and credit discrimination against women are outlawed by Congress.

#Senator John Tower of Texas, a Republican, proposes an amendment to exclude football from Title IX regulations. It is rejected.

*The Women’s Educational Equity Act, drafted by Arlene Horowitz and introduced by Representative Patsy Mink (D-HI), funds the development of nonsexist teaching materials and model programs that encourage full educational opportunities for girls and women.

% Proposed [Title IX] regulation published June 20, 1974, in Federal Register for comment; nearly 10,000 comments were received during comment period, most on athletics.

% Congress passed Section 844 of the Education Amendments of 1974, also known as the Javits amendment, which required inclusion in the Title IX regulation “with respect to intercollegiate athletics activities reasonable provisions considering the nature of the particular sports”.

% **1975** Title IX Regulation released July 21, 1975. (34 C.F.R. Part 106)

%Specific requirements for athletics 34 CFR § 106.41 Specific requirements for athletics scholarships 34 CFR § 106.37 (c).

***1976** Craig v. Boren, 429 U.S. 190 (1976): The U.S. Supreme Court declares unconstitutional a state law permitting 18 to 20-year-old females to drink beer while denying the rights to men of the same age. The Court establishes new set of standards for reviewing laws that treat men and women differently—an “intermediate” test stricter than the “reasonableness” test for constitutionality in sex discrimination cases.

%**1978** Proposed Title IX Policy Interpretation was published for comment on December 11, 1978 in Federal Register 1700 comments were received and certain of those comments were incorporated in final Policy Interpretation

#1979 The U.S. Education Department’s Office for Civil Rights issues a “policy interpretation” covering athletics, which orders schools and colleges not to discriminate against women in awarding athletics scholarships, offering opportunities for participation, and providing other services and benefits.

% Issued in Federal Register December 11, 1979, after nationwide consultation with institutions and athletics organizations.

%1980 Athletics Interim Manual issued July 28, 1980 by Office for Civil Rights to its ten regional offices to provide guidance on conducting investigations of alleged sex discrimination in intercollegiate athletics programs.

***1981** Kirchberg v. Feenstra, 450 U.S. 455, 459-60 (1981), overturns state laws designating a husband “head and master” with unilateral control of property owned jointly with his wife.

#1982 The NCAA begins sponsoring women’s championships. The AIAW disbands.

***1984** In Roberts v. U.S. Jaycees, 468 U.S. 609 (1984), sex discrimination in membership policies of organizations, such as the Jaycees, is forbidden by the Supreme Court, opening many previously all-male organizations (Jaycees, Kiwanis, Rotary, Lions) to women.

%The U.S. Supreme Court rules that Title IX and other civil-rights laws apply only to educational programs that directly receive federal funds—for example, financial-aid programs. Sports and other activities are left out. [Grove City College v. Bell 465 U.S. 555 1984)

*The state of Mississippi belatedly ratifies the 19th Amendment, granting women the vote.

*Hishon v. King and Spaulding, 467 U.S. 69 (1984): The U.S. Supreme Court rules that law firms may not discriminate on the basis of sex in promoting lawyers to partnership positions.

***1987** Johnson v. Santa Clara County, 480 U.S. 616 (1987): The U.S. Supreme Court rules that it is permissible to take sex and race into account in employment decisions even where there is no

proven history of discrimination but when evidence of a manifest imbalance exists in the number of women or minorities holding the position in question.

^1988 Overriding a veto by President Ronald Reagan, Congress approves the Civil Rights Restoration Act of 1987, which mandates that civil-rights laws, including Title IX, apply to all operations of any educational institutions receiving federal funds.

%CRRA of 1987 Passed by congress in March 22, 1988, effectively overturned Grove City ruling, directing that Title IX applied to all operations of a recipient of Federal funds and thereby restores OCR's jurisdiction over athletics programs.

%**1990** Title IX Athletics Investigator's Manual, issued April 2, 1990, to OCR regional offices providing guidance to OCR investigators; supersedes 1980 Interim Manual.

#1990-91 A total of 92,778 women and 184,595 men are on varsity sports teams.

#1992 The U.S. Supreme Court rules that students may sue educational institutions under Title IX for monetary damages, opening the door to female athletes' suing for better athletics opportunities. (*Franklin v. Gwinnett*)

***1994** Congress adopts the Gender Equity in Education Act to train teachers in gender equity, promote math and science learning by girls, counsel pregnant teens, and prevent sexual harassment.

The Violence Against Women Act funds services for victims of rape and domestic violence, allows women to seek civil rights remedies for gender-related crimes, provides training to increase police and court officials' sensitivity and a national 24-hour hotline for battered women.

^1995 The federal Glass Ceiling Commission Report confirms the existence of corporate practices or a "glass ceiling" that excludes women and minorities from opportunities in the workplace. The commission also finds that while males continue to dominate corporate America, occupying 95% of senior management positions.

***1996** *United States v. Virginia*, 518 U.S. 515 (1996), affirms that the male-only admissions policy of the state-supported Virginia Military Institute violates the Fourteenth Amendment.

#A federal appeals court rules that Brown University had discriminated against female athletes by dropping their sports. The case is viewed as a precedent for colleges to add women's programs, and often eliminate men's teams, to balance the number of male and female athletes.

#The Education Department issues a "policy clarification" affirming the 1979 guidelines on participation. Having the proportion of athletes who are female match the proportion of undergraduates who are female is a "safe harbor", it said.

%Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test Issued by OCR in final form January 16, 1996, the clarification explains the three-part test used to analyze

compliance in the accommodation of students' athletics interests and abilities, one of 13 program areas reviewed for compliance under Title IX. The accommodation of interests and abilities was the main subject of federal court cases in the early 1990s.

***1997** Elaborating on Title IX, the Supreme Court rules that college athletics programs must actively involve roughly equal numbers of men and women to qualify for federal support.

#2000-1 A total of 150,916 women and 208,866 men are on varsity sports teams.

#2002 The National Wrestling Coaches Association and other groups sue the Education Department claiming that the 1979 guidelines and the 1996 clarification discriminate against male athlete.

^Affirmative Action Timeline.¹⁶²⁸

% Good Sports, Inc. (no date).¹⁶²⁹

*National Women's History Project.¹⁶³⁰

#Suggs, W.¹⁶³¹

¹⁶²⁸ Northstar News Media. "Affirmative Action Timeline," Northstar News Media, LLC. (2002). <http://www.thenorthstarnetwork.com> (accessed February 8, 2004).

¹⁶²⁹ Good Sports, Inc., "Gender Equity and Title IX: Important Facts," http://www1.ncaa.org/membership/ed_outreach/gender_equity/index.html. (no date). (accessed March 25, 2004).

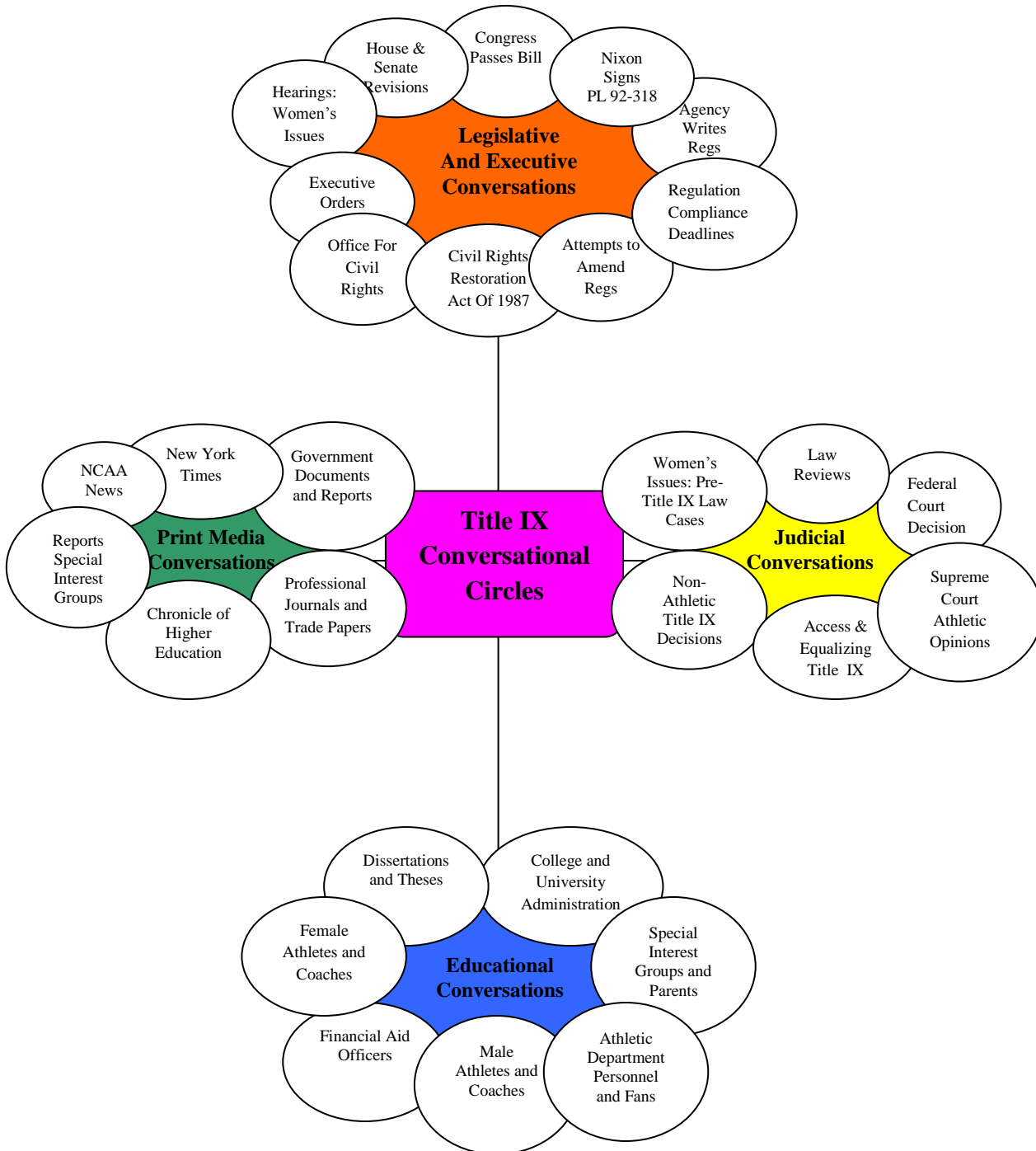
¹⁶³⁰ National Women's History Project, "Legacy '98 Detailed Timeline of Legal History of Women in the United States: A Timeline of the women's rights movement 1848-1998," (2002).

<http://www.legacy98.org/timeline.html> (accessed February 8, 2004)

¹⁶³¹ W. Suggs, "Athletics: Title IX at 30," *Chronicle of Higher Education*, June 21, 2002: A 39. LexisNexis (accessed April 10, 2010).

APPENDIX B

Title IX Conversational Circles Model¹⁶³²



¹⁶³² J. M. Lane, "Title IX Conversational Circles Model," (2002).

APPENDIX C

Doonesbury Bewildered by Title IX

Title IX has evoked much comment around the nation recently, including discussion in the nation's press. Even the comic strips are getting into the act, as evidenced by the popular "Doonesbury" strip penned

by Garry Trudeau.

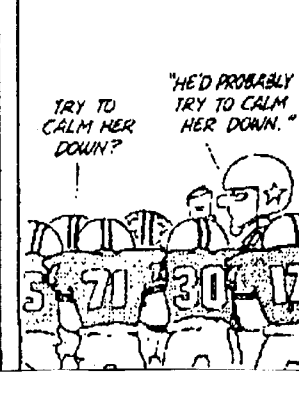
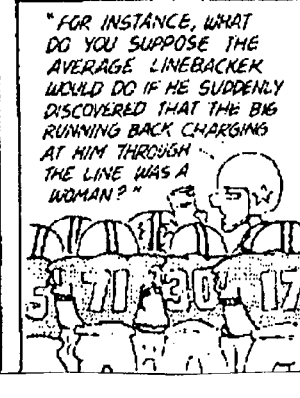
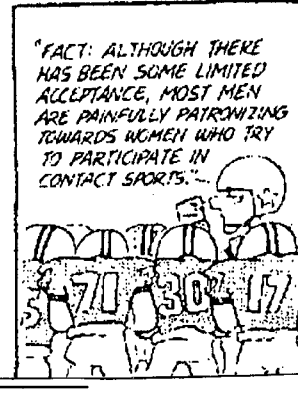
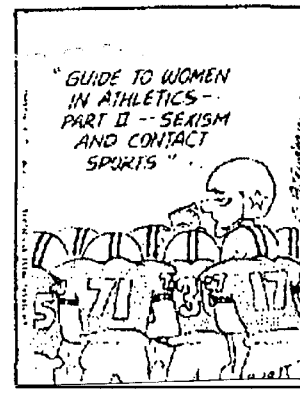
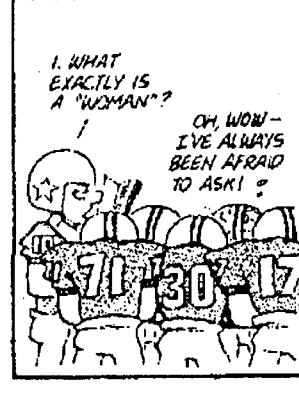
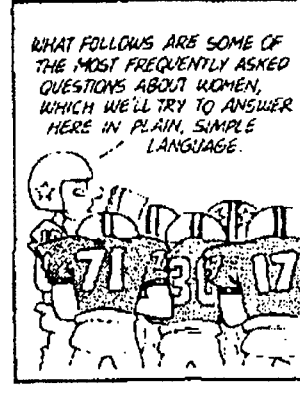
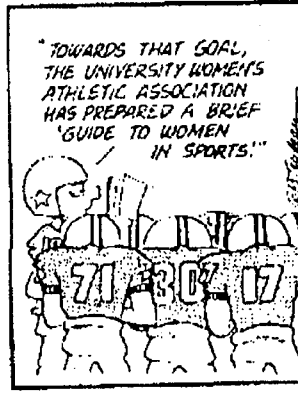
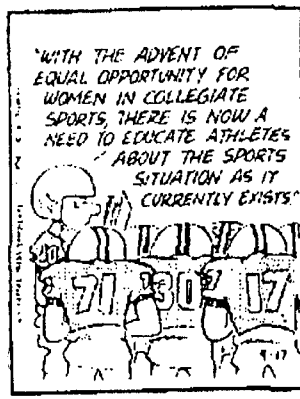
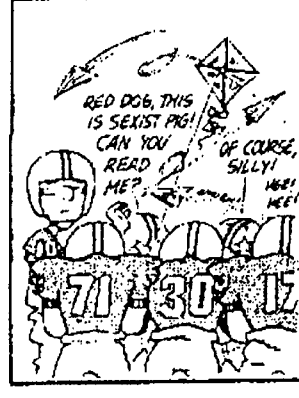
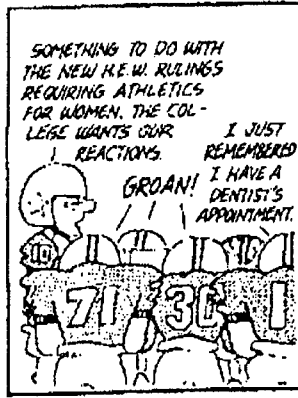
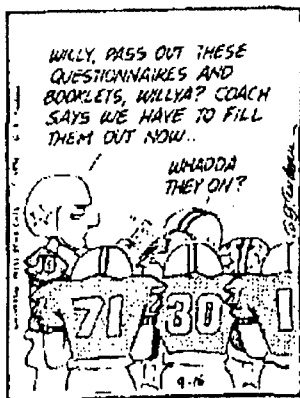
Trudeau, a graduate of Yale University who still resides in New Haven, Conn., drew the following strips for the week of September 16-21, as a college football team takes a look at

Title IX guidelines. Part of the week's strips are printed below, with more to come in the next issue of the NCAA News. Permission to reprint the strips was granted by Universal Press Syndicate.

DOONESBURY

Copyright 1974 by G. B. Trudeau — Distributed by Universal Press Syndicate

by Garry Trudeau



¹⁶³³ G. Trudeau, "Doonesbury Bewildered by Title IX," *N.C.A.A. News*, October 15, 1974: 2 and November 1, 1974. <http://web1.ncaa.org>. (accessed March 28, 2008).

Doonesbury Bewildered by Title IX

Title IX has evoked much comment around the nation recently, including discussion in the nation's press. Even the comic strips are getting into the act, as evidenced by the popular "Doonesbury" strip penned

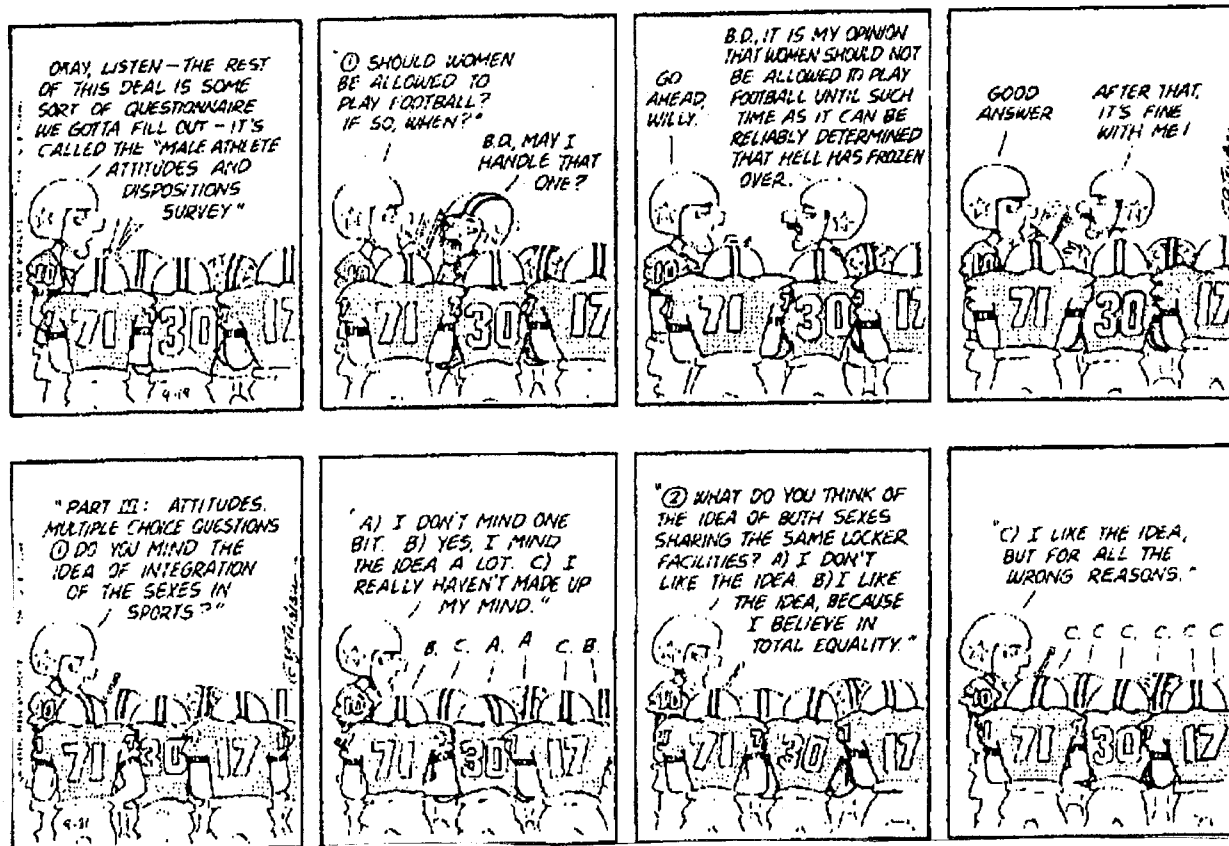
by Garry Trudeau.

Trudeau, a graduate of Yale University who still resides in New Haven, Conn., drew the following strips for the week of September 16-21, as a college football team takes a look at

Title IX guidelines. Part of the week's strips are printed below in the second installment. Part of the strips were run in the last issue of the News. Permission to reprint the strips was granted by Universal Press Syndicate.

DOONESBURY

Copyright 1974 by G. B. Trudeau -- Distributed by Universal Press Syndicate by Garry Trudeau



¹⁶³⁴ G. Trudeau, "Doonesbury Bewildered by Title IX," *N.C.A.A. News*, October 15, 1974: 2 and November 1, 1974. <http://web1.ncaa.org>. (accessed March 28, 2008).

APPENDIX D

Historical Models Used In Formulating Title IX Conversational Circle Model

Sterling Semantic Net: What is History?

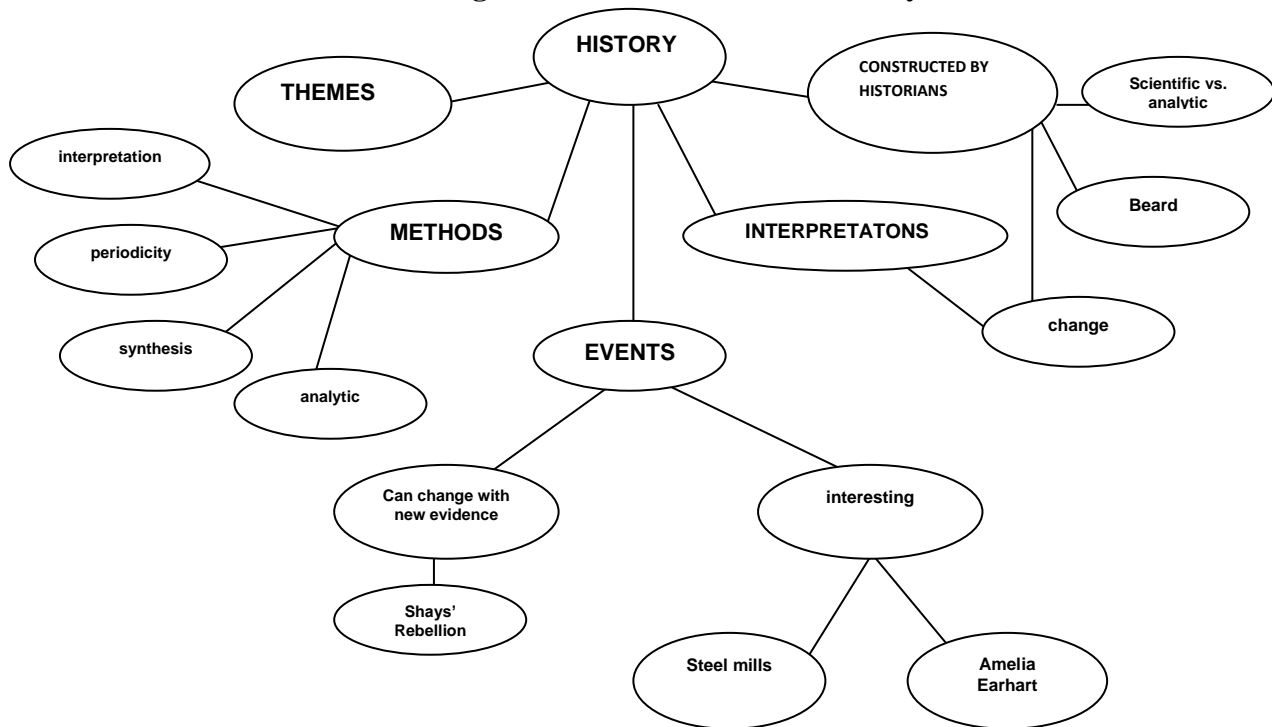


Figure D.1

Leinhardt, Stainton, and Virji, "A Sense of History: Sterling semantics net: 'What is history?'" *Educational Psychologist* 29(2) (1994): 84.

Peterbene Semantic Net: What is History?

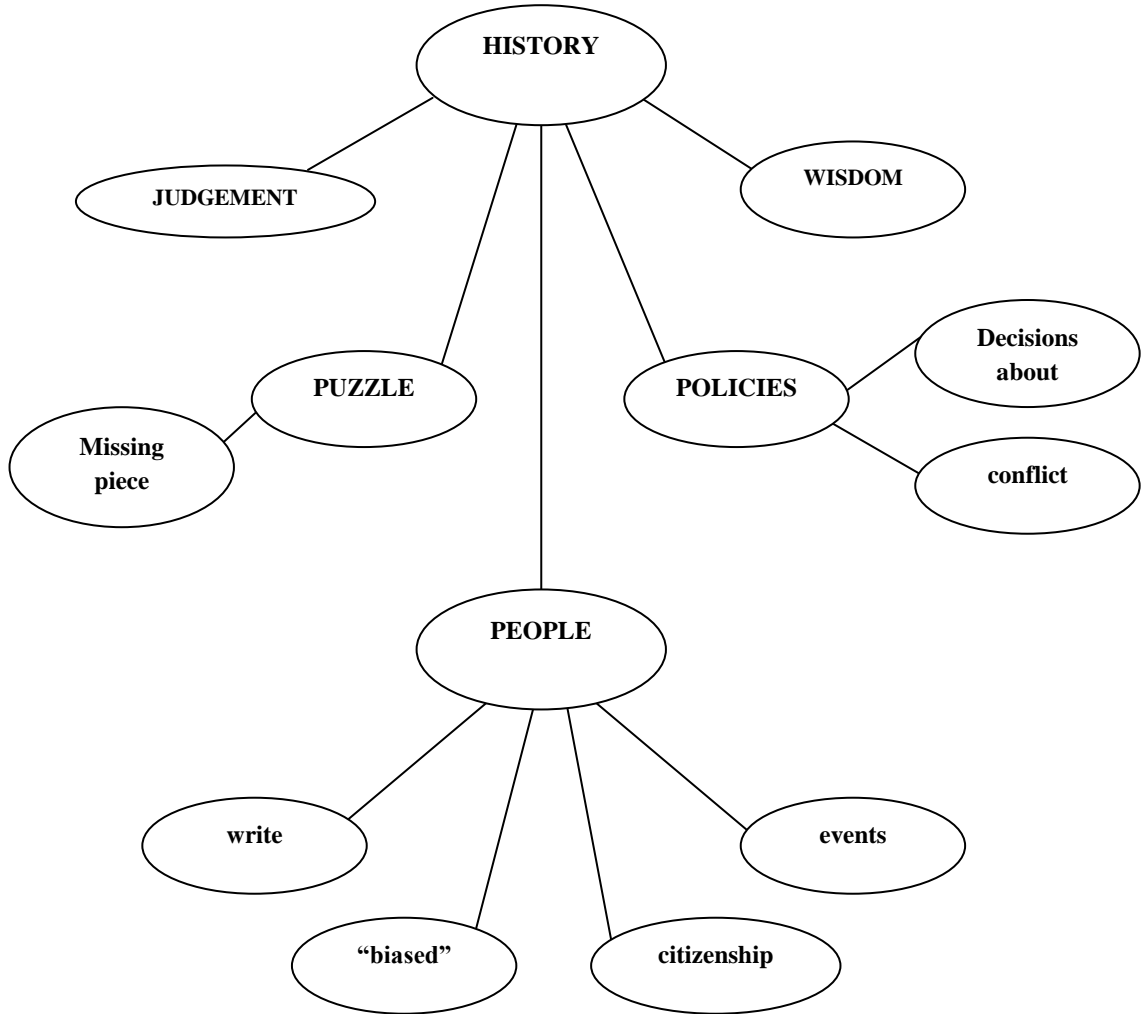


Figure D.2

Figure D.2 Leinhardt, Stainton and Virji. “A Sense of History: Peterbene Semantics Net: What is History?” *Educational Psychologist* 29(2) (1994): 85.

Figure D.3 Mallon Semantic Net: What is History?

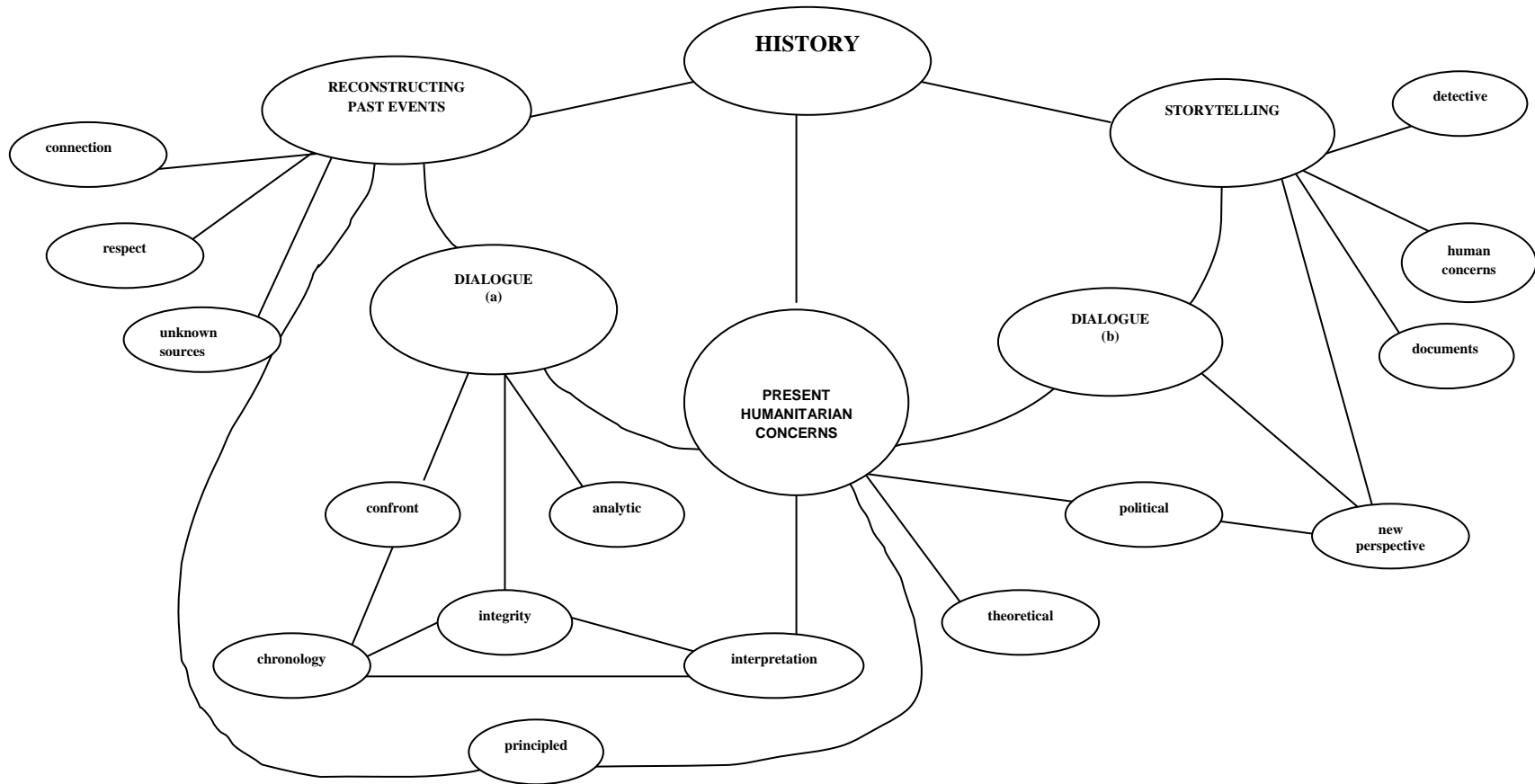


Figure D.3 G. Leinhardt and C. Stainton, S.M. Virji. (1994). 'A Sense of History: Mallon Semantics Net: What is History?' *Educational Psychologist* 29(2): 86.

VITA

Jeannie Mae Lane, born in Charleston, Mississippi on January 20, 1959, is the daughter of Perry Joe and Mary Pollan Lane. Raised in Mississippi and California, Lane's educational foundation began at Shore Acres Elementary School in Shore Acres, California (K-3), she attended 4th grade in Cascilla Elementary, Cascilla, Mississippi until consolidation closed the school. Attending grades 5-12 at Charleston Elementary, Charleston Junior High and Charleston High Schools, Charleston, Mississippi, Lane completed her high school diploma in May 1977.

Dr. Lane took a Bachelor's of Education degree in English from Mississippi College in May 1981 and a Master's of Education in School Guidance and Counseling in 1987. During her years as an undergraduate at Mississippi College, Dr. Lane was a member of Alpha Mu Gamma, Iota Lambda Chapter [Foreign Language honorary], Sigma Tau Delta [English honorary], Kappa Delta Pi [education honorary], and the Laguna Social Tribe. After graduating from Mississippi College, Dr. Lane was an active member of Olde Town Civitan, serving as club president and room mother for the severely and profoundly handicapped class at Lovette Elementary. She was a member of the Arts Council of Clinton. While in the Arts Council, Lane served on the Board of Directors, edited, printed, and distributed its monthly newsletter for five years. Dr. Lane was an active member of the Clinton Branch of AAUW-American Association of University Women serving as vice president for programs. She was also a member of MAWHE Mississippi Association of Women in Higher Education. Lane was chosen to participate in LEADERSHIP CLINTON before beginning doctoral study at the University of Mississippi. Lane was recognized by Marquis Who's Who in Education and America and Outstanding Young Women in America. She taught 3rd grade Sunday School at First Baptist, Clinton then served as a Library Media worker for five years. Lane also edited, produced, and distributed the *Mississippi*

College Courier, A University Newsletter, for several years. She also edited the Mississippi College Graduate and Undergraduate Catalogs for three years.

Dr. Lane pursued post-master's study at Mississippi College in English, psychology, foundational courses in Latin, Spanish conversation and paralegal studies before beginning her doctorate at the University of Mississippi. Dr. Lane took her Doctorate of Philosophy degree in Higher Education Administration from The University of Mississippi in May 2011.

Lane has worked at Mississippi College since 1981 serving as secretary in the graduate studies office. She was promoted to assistant to the vice president for graduate studies and special programs and then as the administrative assistant to the graduate dean upon the retirement of vice president, Dr. Edward McMillan. During the Nobles' years, 1993-1994 Dr. Lane represented graduate studies on the BANNER student system implementation team and was a member of the International Studies Committee. During the Todd administration, she served the university on the Strategic Planning Committee, the SACS Committee for the 2002 Reaffirmation visit as facilities developer for the onsite-visit. During the Royce presidency, she was in charge of local arrangements for the SACS Site-Visit for Significant Program Change when the education doctorate was added to the curricula offered by Mississippi College. She serves as a member of the Faculty Staff Recognition Day Planning Committee. She consulted with the group that created the MS in Higher Education at Mississippi College. She served the university as the planner and advisor for students in the interdisciplinary program, Master of Health Sciences Administration, from 2003-2008. During this period she wrote several problem-based learning modules for health services administrators and incorporated strategic planning and grant-writing into research classes she taught. She was a member of the Graduate Council during this time period. Lane taught as an adjunct professor in the School of Education.

Lane currently serves on the BANNER CAPP—Curriculum, Assessment and Program Planning— work team preparing online degree audits for all graduate programs available at Mississippi College. She is a member of the Mississippi College Staff Club. She also is a member of the SACS Reaffirmation Committee for the 2012 visit to Mississippi College. Dr. Lane served as Mississippi College test center administrator the Graduate Record Exam until it began to be offered by computer. She plans for and administers the Praxis Series paper-based test for the University. Lane began serving as the examination administrator for the National Board for Certified Counselors in 2010.

Lane actively rescues stray cats and supports a neutering/spaying program in her neighborhood. In an attempt to heighten awareness about feral cats, she plans to create and support a fund for spaying and neutering feral cats in Clinton with proceeds from her business, *Meow Lane Mosaics and Gifts*.