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TITLE IX: SOLUTION OR PROBLEM?

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TITLE IX: SOLUTION OR PROBLEM?

A Thesis
submitted in partial fulfillment of the
requirements for the Degree of
Bachelor of Arts
in Liberal Studies

By

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School for Summer and Continuing Education
Georgetown University
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May 3, 1999
TITLE IX: SOLUTION OR PROBLEM?

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ABSTRACT

Title IX is a civil rights statute enacted as part of the Education Amendments Act of 1972, which prohibits discrimination on the basis of sex in any education program or activity receiving federal financial assistance. The evaluation of Title IX compliance is made on a program-wide basis through the Office of Civil Rights (OCR). Title IX is an amendment indicative of social, economic and moral consciousness being rooted within humanity. My focus on Title IX will be the utilization of its doctrines by women athletes in educational programs on the college level. Social: Does society have an impact on the implementation of Title IX legislation? How many Federal agencies should regulate Title IX? Is Title IX a sign of the times amendment with empty promises and expectations? Do women really participate in sports as steadfastly as men?
Moral: Is it proper for colleges to discontinue men's' sports so women athletics can flourish? Does morality have a place in within sports? Is it morally correct to expect equity and equality to prevail for women's sports? Is Title IX the savior of women athletics and the Satan for men's athletics? Are ethics essential to obtain equality in higher education sports? Economic: Is it beneficial for institutions to support non-revenue generating women sports? Is money more important to institutions than their students well-being?

I reviewed the actual Title IX section of the Education Department Amendments Act of the 1972, the Congressional Reports, including the Almanac, and other periodicals to obtain a sense of the mentality behind the enactment of Title IX, and how this legislation has become paralleled by the Civil Rights Amendments. The mission of Title IX is to ensure that equality will prevail in educational institutions that accept Federal money and also it allows the Federal government to maintain oversight over educational institutions.
This is done so that non-discriminatory practices will be penalized. In its role as a solution, Title IX has also created problems. I have concluded that Title IX was conceived to promote equality in women's athletics so that there can be 'a girl for every sport and a sport for every girl.'
Chapter I is entitled "Brief History". This chapter will give a broad overview by historical analysis from whence women's athletics came, and how it began to impact societal thinking. I refer to women's athletics in the early 1970's as the stone age because women's athletics did not exist on many campuses and if they did offerings and participation were minimal.

Chapter II is entitled "Making the Law Work". This chapter discusses the solution Title IX hoped to implement throughout athletics as a method of maintaining nationwide equality of opportunity within education institutions.

Chapter III is entitled "Grove City An Alternative Solution". This chapter discusses the problems Title IX has caused while trying to promulgate nationwide equality of opportunity within education institutions.
Grove City would not be held hostage by Federal money and strangely enough the Congress seemed to concur. Grove City College actually tried to ignore the governance of Title IX by refusing Federal money. The institution felt that as long as it did not actively receive Federal money it was safe from enforcement. Sadly, these feelings were reinforced by some members of Congress and Grove City forged a co-op to dismantle the enforcement effects of Title IX and thus government intervention.
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DEDICATION

Dedicate means to commit, and certainly my family has done that: Rev. Dr. F. Mason Jordan, Sr. my father, Mrs. Milla' B. Williams Jordan Mayo, my mother, my children, Franklin Isaiah Jordan and Kenneth Mark Whack. My family has been committed to my completion of this degree by demonstrating their love and understanding. It would have been impossible without them.

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INTRODUCTION

In June, 1972, history was made when Title IX was enacted as part of the Education Amendments. Title IX states:

No person in the United States shall on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational programs or activity receiving federal financial assistance.¹

Quite simply, Title IX can be classified as an assurity law that prohibits discrimination on the basis of gender, from any educational entity receiving federal financial assistance. Title IX guarantees the protection and/or assistance of the Federal government against discrimination.

This paper discusses the historical aspects of Title IX and the consequences that have ensued. This work will focus on the utilization of Title IX for women's athletics at the intercollegiate level.
The origination of Title IX and its impact upon society from 1972-1993 will provide the context for this work. Since the courts interpretation of this statute continues to change the scope will be limited to the aforementioned years. The years chosen seem best to showcase the flexibility of the law and how its history and the perception of society have raised the question: Title IX a solution or a problem?

The Federal Government under the auspices of the Department of Education formulated the statue called Title IX to ensure that equality of opportunity was assured in educational institutions receiving Federal money. Because Title IX applies to programs affected by sex, women's athletics was protected under this statute. Title IX, therefore, provided an assurance of obtaining equitable accessibility to athletics within the educational system.

The 1970's can be remembered as a decade of change. They also were an era that called attention to inequality. Within this era the drive to adopt equality within humanity was very prevalent. This move to create equality of opportunity was made manifest in higher education through athletics when the Federal government stepped in.
This paper will also discuss some of the factors, which led to the creation of Title IX. While women have viewed this statute as a godsend for women's athletics, Title IX has ultimately resulted in adversarial responses from many people associated with athletics who feel that men's sports have become sacrificial lambs in order for educational institutions to comply with the law.

There is a fine line that separates inequality and equality. Furthermore, problems and solutions are created collectively. In fact, the creation of a solution usually means the creation of a problem, which is best described by the phrase 'unanticipated consequences'. Another view would be that this conflicting relationship between solutions and problems is an example of the natural law, which demands that opposites attract. Inevitably, Title IX can be classified as 'the law of unanticipated consequences' which explanation states: that the reform that is supposedly created by solutions-- ultimately creates problems.
In some cases, this statute has created problems for men's sports by denying men the ability to compete in intercollegiate sports. At some universities men's sports have been on the chopping block in order to facilitate or enhance women's sports,

Brown University is a perfect example of a university's attempt to level the playing field encountering 'unanticipated consequences' as it sought to enhance equality.

The law of 'unanticipated consequences' will exist and as a consequence society ultimately will decide--Title IX: Solution or Problem?
CHAPTER ONE

The mission of Title IX is to provide an increase in participation opportunities for female athletes. Colleges and universities must understand, however, that their mission must complement Title IX by administering athletics programs that are equitable and fair throughout athletics. The hoped for result of Title IX was that by creating athletics programs which are equitable the number of women's programs throughout educational institutions would increase.

After World War II, the women's sports of tennis and golf gained momentum. Yet, the archaic mentality that athletics was only for men was prevalent even until the 1950's. Women's athletics accepted whatever crumb of attention was thrown at them. There existed in the collegiate athletics world the mentality that women were weaker and therefore participating in strenuous sports was deemed 'unladylike.'

Public consciousness and awareness of women's athletics was raised in the 1960's by the championship play of Billy Jean King in the tennis arena.
Even during this time of change, male sports were still advocating separate and unequal treatment.

In 1971, the Division of Girls and Women's Sports organized the Association of Intercollegiate Athletics for Women (AIAW). The inception of this Association was to challenge the status quo. The precursors to the AIAW were the National Section for Girls and Women in Sports, (NSGWS) and The (DGWS) Division of Girls and Women in Sports which was formed in 1958 and adopted the motto of "a sport for every girl and every girl in a sport." (i) This organization laid the foundation for teaching, coaching and administrating women's sports. The NSGWS also offered training programs and developed college club teams, etc. It was from NSGWS that the AIAW was born.

Before, Title IX, there was the AIAW. The AIAW did not have any connection to the National Collegiate Athletic Association (NCAA); perhaps this is where some problems are rooted. The AIAW had the ingenuity to formulate itself into a viable association without interference from the NCAA model.
Unfortunately, this type of organization was also advocating separate but equal programs, rather than jointly administered programs. The AIAW's primary goal was to find a niche in sports world, by being an organization run by women for women.

The AIAW encouraged participation of female student athletes by providing the opportunity to compete. Their secondary goal was to avoid the mistakes that men's sports organization made: expensive programs, high-pressure recruiting, emphasis on winning, and complex rules. The AIAW's overall mission was to allow women's programs to develop and become self-contained.

The AIAW wanted to provide women's sports essentially with a women's division which could administer and officiate women's programs at various educational institutions, while creating a program for sports that developed educational and athletic abilities alike. In fact, the AIAW deserves some credit for the grassroots effort they provided to the passage of Title IX.
Title IX and the AIAW remain linked in history because they were created within a year of each other.

One can argue that because of the AIAW and Title IX, women's roles in sports became a larger reflection of society by the tolerance displayed towards women in other social milieu. In return, the personal development of the individual which is associated with sports assists society as a whole.

In fact, sports can be classified as a cog in the wheel of life, because it has become a reflection of what society can be, if we can all get along. The success of women's sports has been brought into the forefront because it is seen as an example of what society can do when teamwork is paramount. While the influence of teamwork is also felt within society it has had a dramatic influence on women's sports which had been male dominated for years.

One could argue that a negative result of this success is that some men have become afraid and fearful of their places in society. Because of this, sports governing bodies such as the NCAA, which were predominately male, feared the loss of control.
This proved to be ignorance of what the possibilities could be for women’s sports.

This ignorance dominated the thinking of the male mind. In some ways, this is the shortsighted thinking that characterized 1994 as the "Year of the Angry White Male". This is the year in which numerous white males voted for very conservative white men or just white people.

This ignorance about women's roles in sports became a collective mode of thought. In response, Felshin an energetic promoter of equity and sports; said,

Gender is irrelevant to sport and based on the assumption that sexism, like racism is social, and that the disease should not contaminate the relationship between ethical and actual structures of sport.

The government stepped into this fray with the creation of Title IX. Creating equality of opportunity is the overall issue and mission of Title IX. Women must not be treated differently than men in sports in educational institutions.
Unfortunately, Federal law can only provide a guideline for equality. The changes come about individually. Educational institutions must put forth an unequivocal effort to ensure that sports create an equality of opportunity. Title IX intends to provide women with the ammunition to combat separatism and inequality at educational institutions. Women should have access to the same opportunities as men. The attempt to rectify this problem continues.

The AIAW also was essential to the existence of women's sports today. The AIAW formulated the dictum that women were capable of being coaches and administrators as well. The AIAW conducted a grassroots effort to get Title IX of Education Amendments of 1972 legislation passed.

For men's athletics, Title IX was viewed in a crisis mentality. Title IX essentially invaded the domain of men's sports. With this mentality being prevalent within the NCAA, they lobbied congress to block athletics and especially revenue generating sports such as football and men's basketball from being considered a part of Title IX.
Through these lobbying efforts, The Tower Amendment was promulgated. This amendment proposed excluding all intercollegiate athletics from the regulations of Title IX. However, the Tower Amendment was replaced with the Javits Amendment which promulgated that the Department of Health, Education and Welfare (HEW) was to create and distribute Title IX regulations within a specified time.

In 1974, the amended regulations were published. These amended regulations in some ways still allowed the NCAA to have a loophole, which allowed that the regulation did not take effect for one year. Further, for institutions which were changing from admitting one gender to multi-genders, the regulations did not take effect for seven years.

In reaction, many educational institutions believed that women were being given opportunities instead of having to earn them like the men. Some NCAA members believed men were getting a raw deal. Within this mentality, HEW sought to broaden the language of the regulations to include educational programs which receive federal financial assistance, and also those who gain from that federal financial assistance.
The NCAA was in fear of having to share their revenue generated by men's sports to support the growth of women's sports.

Within the revised language of Title IX was Paragraph 86.38 which in summary stated that provisions must be made for women's and men's sports equally. One challenge to Title IX was the proposition that women be allowed to compete for men's teams if no women's teams existed (could not be contact sport). This was in direct contradiction to the NSGWS, which advocated a sport for every girl and a girl for every sport. The NSGWS model if realized in educational institutions, would provide equality of opportunity.

Many people believe that a law can change society, but society writes the laws, therefore society must change them. Laws do not change the mentality of people; people change the mentality of laws.

Mary Boutellier, wrote in the Sporting Woman that, Laws cannot change women's lives. It is time to move beyond the vision that equality of opportunity and freedom of choice can be created by legal reform alone. It must be reinforced by structural changes as well.¹
Grass roots efforts bring about changes. The AIAW wanted separate but equal treatment towards their programs. They wanted to ensure education would be the primary concern and athletics would be secondary. They did not want to make the mistakes the NCAA did, by making athletics primary and education secondary. Ultimately, the AIAW wanted the women athletes to be prepared to be coaches, administrators, etc.

Supporting the AIAW position, Joseph Durso of the New York Times sports department wrote that the athletic structure [NCAA] forgets that sports are supposed to be a participatory experience where every student should be allowed to play what he/she wants. Unfortunately, that is not true. The most notorious example is women's sports. In their effort to slow down the progress of women's sports, the NCAA tried to derail the progressive efforts of many equality seekers.

The NCAA began to realize that the AIAW was gaining momentum and therefore, the NCAA set about to systematically eradicate the AIAW. If successful in removing the stumbling block of AIAW, and the NCAA member schools hoped to minimize the impact of Title IX.
The NCAA began to interpret Title IX another way. They set about securing their leadership role in intercollegiate athletics. Therefore, the NCAA began to emphasize its role as the primary governing body of intercollegiate athletics for men and for women. They suggested that in this role the helm so long held by the AIAW as the voice of women's athletics actually belonged under the jurisdiction of the NCAA. The NCAA asserted that its organization was capable of fulfilling the needs of all athletes.

As a result, the AIAW was relegated to a non-essential role in athletics. This signaled the end of Title IX as a security blanket for women's athletics progression.

As soon as the NCAA, incorporated the AIAW under its umbrella the NCAA became directly responsible for women's athletic programs. The NCAA was now the direct provider of regulation enforcement. The male dominated NCAA had again gained control of women's athletics.
Almost immediately, the complaints started about women's athletics programs taking funding from male sports. Also, the NCAA coaching position's for women athletics, were becoming male dominated. All the things that AIAW championed against were becoming a fact of life for women's athletics.
CHAPTER TWO

Making the Law work became an essential and all encompassing effort by the Office of Civil Rights, which is under the jurisdiction of the Department of Health, Education and Welfare. OCR has been charged with enforcement responsibilities and this has proved to be quite an undertaking.

Title IX was met with so much resistance that Congress again had to interject itself into negotiating some type of arrangement. This interjection into the intercollegiate institutions made the Federal government an integral part of the decision-making processes of intercollegiate activities.

Title IX was not adhered to strictly. In fact, in some cases its significance was downplayed. The mentality of the male hierarchy within the NCAA was reflected by their lack of concern for the progression of women's athletics. Women were still subjected to a lack of participation and access to facilities.
Title IX was a law that was being ignored and therefore neglected by many.

Women's athletics were still being accused of destroying men's programs especially men's revenue generating sports. The revenue generating sports declared that they did not like sharing the wealth.

Without the government's watchdog mentality, many intercollegiate institutions ran rough shod over women's athletics. Intercollegiate institutions changed the status of women's sports dramatically. Varsity teams went to club or even intramural levels.

Sometimes programs were eradicated all together, and the scholarships ceased to exist. Many women felt that they had no choice but to go along. At this point, women's athletics had seen the future and they did not have a place in it.
Title IX has been re-evaluated many times to accommodate many differing opinions and some of the impact it was supposed to have was watered down. Consequently, Title IX was weakened and its purpose was slowly being changed. The exclusion of women in athletics or their acceptance at a minimal level seemed to reflect the mentality of the intercollegiate society.

In 1987, these discriminatory tendencies were brought front and center. As a result, The Civil Rights Restoration Act (S557) was introduced and ratified by Congress. Through the Civil Rights Restoration Act (S557) change came about but a confusing solution ensued.

Senator Birch Bayh, one of the staunchest supporters of Title IX believed that,

Congress intended Title IX to remove second class citizenship status from female students in regards to educational activities, and sports participation across the board.¹

The Civil Rights Restoration Act became a tool in the battle for equality.
This act was designed to restore women's belief in the system. More importantly, this Act was supposed to reassure women that since they were citizens their rights would be protected. Women wanted to experience the enforcement of the law. Moreover, women were tired of talk. They wanted action. Women needed something that would allow them to exert empowerment for their own survival.

Title IX was supposed to assure women athletes they would be protected against member institutions which sought to eliminate their existence. Yet, many times, decisions that were made were hostile to them. Women athletes were in dire need of a champion. Women yearned to have the same status as men. But alas, their sport could be here today, and gone tomorrow. Women learned that they must be able to participate in the decision making process, or be regulated to non-existence.

Basically, the problem revolved around money. Revenue generating sports had money and they did not want to share.
Therefore, financial aid for women was almost non-existent. This type of discrimination caught the attention of Sen. Barbara Mikulski who said,

The bill, for comprehensive protection against gender discrimination in education, is vital to the struggle for economic equality because education is the door to opportunity....if the door to education begins to close again for women, their opportunities and their fundamental ability to control the direction of their lives will be necessarily restricted.²

Sen. Ted Kennedy introduced Senate bill (S557) (Civil Rights Restoration Act to the Committee on Labor and Human Resources. The message was clear. The Federal government will no longer furnish Federal money that could be construed as being used for discrimination. Therefore, this Act took on a threefold directive: It restored coverage of the application of Title IX section 504 of the Rehabilitation Act of 1973, The Age Discrimination Act of 1975 and Title VI of the Civil Rights Act of 1964.
However, this measure was met with resistance by Congress and others, who seemed to be sympathetic to the cries of the NCAA. Even the National Education Association had problems.

The single purpose of S557 is expressed in its Title. The single issue in this important civil rights measure is discrimination. The single goal is restoration.3

The S557 doctrine was clear. If any entity of a college/university was covered, then the Act, applies to the entire Institution. This Act changed the message of Title IX. The coverage would not be program or activity specific. The OCR would finally be able to enforce regulations and impose penalties.

The Civil Rights Restoration Act was also about allowing OCR the compliance mechanism to successfully oversee Title IX. The Civil Rights Restoration Act acknowledged that Title IX was about Gender Equity and more importantly, providing equality of opportunity.
In this context, this Act closed the ambiguity of the U.S. Civil Rights Laws. The law was clear, discrimination is wrong and it is prohibited. After all, this is a basic tenet of the Constitution.

...It acknowledges that all people are created equal....

Therefore, equality is an essential component of freedom and the American way.

Title IX was able to forge ahead with a new vigor, thanks to the Civil Rights Restoration Act. The Civil Rights Restoration Act allowed Title IX to be understood as a Law instead of empty words on a piece of paper. There was a new atmosphere in athletics at universities and colleges.

However, sweeping changes were not apparent. Sometimes, the threat of filing a complaint was enough to scare an institution into making changes.
The complaint often backfired, as some coaches were dismissed from their perspective colleges or universities in retaliation for filing a complaint.

Every institution had an interpretation of what it meant to be in compliance. However, individual opinions did not change the scope of Title IX. If educational institutions wanted Federal funds, they had to comply with the rules and regulations of the law. If regulations were not complied with, then sanctions would follow. Title IX enforcement became a reality.

In 1992, change began when many institutions who had not done so upgraded women’s sports from club level to varsity level, and even to more competitive situations. While many women did not receive scholarships at this time, this was partially irrelevant, since women’s teams were becoming true actualities as athletic departments began analyzing which sports had greatest interest for women.
An 'unanticipated' result was the limiting of the size of men's teams.

Institutions still argued that funds were limited and that revenue generating sports should be able to spend their own money on their particular sports.

Of major concern was the loss of men's sports in order to reach compliance with Title IX. Certainly, women's teams could not be terminated and therefore, men's teams would be the loser. Consequently, the severest outcome would be the termination of a men's team.

Concern also existed that, men's programs of football and basketball could be adversely affected because of proportionability of opportunity. The problem for institutions was how to create and maintain equality in sports and enforce the language of Title IX while maintaining quality programs already in existence. Particularly, if there would not be an increase in institutional funding.
The OCR was charged with the awesome responsibility of enforcing, complying and applying Title IX not on a case-by-case basis but on a nationwide level. The OCR understood that this is the only way Title IX will have universality.

The aim of Title IX Laws, and the Civil Rights Amendments and Statutes is the creation of equality of opportunity for the underrepresented sex, which in athletics is women. The intention is to elevate not stagnate. Women are simply looking for their equal place in society. Women athletes can no longer accept exclusion. By law they must be included.

No one should be able to maintain that one sport is more important than another sport. Equality should not have to be measured by how many laws are needed to correct and protect.
Equality must be measured by people who have the mentality of equality. The effort to create an equality of opportunity persists because making the law work is central to equity. The result will be:

"A sport can be realized for every girl and a girl in every sport".
CHAPTER THREE

Grove City College posited an alternative by attempting to circumvent the rules of Title IX. Their position proved to be quite a challenge to the forces promoting Title IX. Grove City College felt that it could opt of out Title IX adherence because the college did receive direct financial assistance.

Compliance became confusing. While the statute said, institutions receiving Federal financial assistance are subject to oversight by the Federal government, Grove City College argued that indirect assistance did not affect them, therefore, there was not a need to comply with Title IX.

Grove City College was a Christian college and argued that church and state should remain separate. Therefore, federal intervention because of Title IX was in conflict the doctrine of the Christian college.
If Federal money was not accepted directly, then the Federal government is unable to have oversight over the college.

Grove City College felt that it should have the right to say NO! The College did not want to comply with the Title IX assurances. This refusal to the Federal Government situated Grove City College as the ‘big bad wolf.’ Grove City College absolutely did not want oversight from the Federal government within its educational institution. Having to answer to another authority was out of bounds as far as the administration of Grove City College was concerned.

Grove City felt that their students were individuals and as such could seek Government aid personally.
A few students were the recipients of the Alternative Disbursement System at Grove City College, through which the Basic Education Opportunity Grants (BEOG) were received. Grove City College argued that this was indirect aid to the college.

The government, in retaliation for the disavowal of Title IX enforcement at Grove City College, revoked the BEOG’s. The Government said it would re-release the funds after Grove City college complied with Title IX regulations.

Grove City College identified unclear language in Title IX and used this discrepancy to file suit in District court in 1983. Grove City College agreed with the Government that BEOGs were federal assistance but argued this funding was to the student not to the institution.

The Government argued it had legal grounds to end loans to students at Grove City College.
The court agreed with the Department of Education. As a result, Grove City College was left with no option but to appeal.

The U.S. Court of Appeals reversed the decision of the lower court saying that the Department of Education could end Federal aid, including BEOGs, issued to students attending the college. Title IX could be applied to the college's entire student body, not specifically to a program or activity.

In defense, the College argued that aid went directly to the students not through the school, which was the loophole they were hoping would not subject them to the Title IX statute. They argued that the aid only symbolized one entity of Grove City College—the financial aid department. Moreover, direct student aid did not constitute student body involvement in other programs or activities, therefore Title IX regulations had no jurisdiction.
The Government felt that the aid should be considered on an institution-wide basis because the statute clearly said, educational institutions. They used the definition of Basic Educational Opportunity Grants: "financial assistance from the Federal government under the jurisdiction of Alternative Disbursement system"¹ and further argued that the BEOGs are a part of the tuition of a student, and are subjected to being received into the institution in order for a student to receive it.

This is where Title IX begins to tread in murky waters. The government argued that Title IX is supposed to be applied to an insitutional educational programs and the language of Title IX does not delineate that individuals are treated separately. Educational programs could be inferred as programs for all students attending the institution. Grove City argued that, some students using BEOGs does not constitute universality within the institution.
Consequently, compliance regulations can be denied. Plainly speaking, the college did not adjoin itself to that Title IX policy.

The Supreme Court ruled in favor of Grove City while leaving the question “college’s use of BEOGs through some students is not institution-wide?” unanswered. This ambiguity was challenged in Grove City College vs Bell and resulted in a watering down of the initial belief that the regulations were supposed to be implemented institution-wide.

Civil rights lawyers and congressional allies complained that the Supreme Court misread Title IX, and they insisted that Congress intended to prohibit discrimination at an entire institution, if any program or activity received Federal aid. They argued that the language of Title IX refers to a college’s educational programs not to student’s attending an institution. Apparently, the gray area within the regulation could not withstand the ‘intention process’.
Civil rights lawyers believed that Congress intended to prohibit discrimination throughout any institution if any program or activity received any type of federal aid. Sadly, intention is one thing, the written law was another. The lack of clear language allowed vagueness to circumvent equality. The alternative solution arose when Grove City College realized the vagueness of the language of the regulations and interpreted it verbatim, without making any assumptions or intentional judgments.

The financial aid office was clearly not a program or an activity. Consequently, it could not be defined under Title IX. The Supreme Court found that "the clause 'program or activity' might be called a potentially empirical ambiguity."4

The result for Grove City College was that it was now legal for them to ignore the oversight of the Federal government. Grove City College therefore was able to solve their problem by ignoring the rules of Title IX. No Federal agency could sanction them, the college could not be penalized, and the college appeared invincible.
However, Grove City did not escape the entire enforcement of Title IX. One part of Title IX could still be enforced. The Federal government still had oversight on discrimination policies and procedures. Consequently, the Federal Government found its loophole, which allowed it to demand compliance to Title IX at Grove City College because it is against the law discriminate.

Later the Supreme Court acted to clarify their ruling through an oversight measure called 'purpose and effect test.' "If the purpose and effect of federal funding is to assist a particular program, the civil rights statutes may be invoked to bar discrimination in that (specific program)... even though the rest of the institution is not subject to the anti-discrimination statutes."

If one examines this 'purpose and effect test', it could be argued that Grove City College only had to refrain from discriminating in their financial aid department. The rest of the Grove City College would still be able to discriminate without fear of recrimination.
Through this 'purpose and effect test', the Supreme Court opened a loophole which allowed violators of Title IX to escape oversight enforcement sanctions. Thus, equality, in many cases, became a mute issue.

Federal dollars could be received and yet the Federal government's hands were tied.

The Grove City decision turned civil Rights protections on their head. Now, an organization that received Federal aid in one department would be free to discriminate with impunity in any other department that does not directly receive those funds. As an example, if a college or university that received financial assistance for its math program were to run an athletics program in which women athletes received inferior coaching, had lesser facilities, and had fewer teams than male athletes, or a student might suffer harassment by a professor, so long as it did not occur in the math department, the school was in compliance. After Grove Federal government agencies could not even investigate such claims of discrimination, and the courts would not decide if discrimination was taking place.5

There was already a controversy brewing before Grove City College. The OCR felt they could examine an institution in its entirety.
After Grove City College the OCR had limited examinations, oversight and investigations. The limited examinations could only be conducted on particular programs.

Grove City College rendered three major Civil Rights Laws ineffective:

Title VI of 1964 Civil Rights Act
Section 504 of 1973 Rehabilitation Act,
Age Discrimination Act of 1975.

This became a dilemma because these same Civil Rights Laws that were created to stop discrimination and promote equality could now be used to sanction and enforce discrimination. The Grove City College dilemma offered a new meaning for alternative solution. Could, discrimination be legal and protected by Laws?

The Reagan years were a reflection of the backward spiral which gripped society and caused the process of equality to be re-evaluated and the enforcement process stopped. This mentality was in line with the times and customs of the people.
The part of society which did not need to utilize the Civil Rights Laws or who seldom experienced discrimination continued to be white males. The protection of the white male and his entertainment outlet of athletics, was the underlying factor why Title IX had to have so many laws to protect its existence.

Grove City College’s controversy was not immobile. It moved to every college, university and educational institution. Yes, Grove City offered an alternate solution but at a cost—the maintenance of the equality of opportunity.

Grove City College seemed to have the courts on its side even though courts are where justice is supposed to reign supreme. When Grove City College’s alternate disbursement solution was challenged, the court agreed with Grove City College. In fact, the court upheld this decision by a vote of 6-3, “Federal money only buys oversight of programs receiving support; it does not give Uncle Sam a mandate to regulate the affairs of an entire school.”
Before Grove City, most educational institutions receiving Federal aid accepted the fact that oversight would be forthcoming. They recognized that the Federal government had a hands-on mentality. To put it another way, most educational institutions before Grove City College expected Federal Government interference.

Grove City College defied the Federal Government, because they wanted to maintain the status quo and leave things the way they were. Using the word NO, got the attention of the Federal government which sought to make an example of Grove City College. Perhaps, Grove City College just wanted to be a self-contained institution which governed itself without interpretation by, or interference from, outside forces.

Grove City College made history because it found it had the stamina and capability to defy the Federal Government. Essentially Grove City College said, stay out of our school's business. More alarming is the fact that the Federal Government did not have laws to protect itself against such defiance.
The language of Title IX plainly said, activity or program at educational institutions. What caused Title IX trouble was that its wording was not specific enough. Obviously inferences, assumptions of a law, allowed the challenge to be real. Consequently, Grove City College was not breaking the law, it was exercising its freedom of speech by saying, NO.

Grove City College had created an alternative solution, simply by just saying NO. The Federal government was without the ammunition of laws, oversight, or courts.

Grove City College made a large step towards ending Title IX and one giant step towards annihilation of women's rights.

Grove City College stopped overall institutional oversight and relegated it to a particular entity. Grove City in one act of defiance erased years of hard work towards achieving a measure of equity.
Grove City College put the brakes on equality of opportunity, so that opportunity was unavailable and therefore, equality could not be achieved.

This flew in the face of the main intention for Title IX which is to break down barriers of discrimination and allow equality within activities and programs, throughout educational institutions. Equality is supposed to institutional-wide so that it spreads from administration to support services, to men’s basketball to women’s crew. Opportunities should be available and equal.

Achieving equality of opportunity is a continuing battle. Women have realized that Title IX must be saved. If women become complacent, equality of opportunity will disappear. Equality must be now, women must no settle anymore, they must act now, if not—when?
CONCLUSION

As the new millennium approaches, will it signal a new beginning for women’s athletics or at the end of a progress. The jury is still deliberating, women’s athletics is deciding if Title IX has done its job in its entirety or if more changes need to be implemented in order to solidify its position in the world.

Title IX was implemented in 1972 and has undergone numerous attacks. While, Title IX has also been accommodating to those whose main objective has been its destruction, it would not die quietly or go away. Just when the opposition thought it could declare victory, Title IX rose of the ashes like a phoenix. The significance of Title IX can be measured by the legacy it will leave for women everywhere. When forces, sought to destroy it, Title IX regrouped and came back.
Defeat is not a loss. Defeat is nature's way of utilizing and adapting a situation, or plainly speaking it is a learning experience.

Title IX has been attacked on all sides and from within, but it continues to stand the test of time. Title IX signified the beginning of change. These changes have been fruitful for women but there is still a long way to go. The plateau of equality has not been reached.

Equality is easy to understand, but it is harder to initialize. For too long, women have been quiet and seemingly content. Women have not allowed their voices to be heard. Title IX changed the volume level of women's voices. Recent court interpretations of Title IX have made it stronger. Then again, perhaps, more revisions are needed so that Title IX will be able to state it has met the enemy and did not blink.
As the past has shown humankind, nothing is secure. There will always be someone or some entity willing to tear down the building blocks of progress. Title IX has been built upon the blood, sweat and tears of countless visionaries. In fact, Title IX could be said, to stand upon the shoulders of not only civil rights amendments but the shoulders of Sojourner Truth and Susan B. Anthony.

Title IX was created by people with the vision to see that equality must be achieved universally, so that opportunity would be available. The Federal Government, the ultimate supervisor for human rights was caught napping. When Grove City College protested against the Federal Government, the Government experienced an unheard of disagreement. With this challenge to the supervision of the Federal Government, Title IX supporters realized that they must secure Title IX, and in order to have that security, another Act from Congress was needed. Congress provided solutions by using modifications.
Solutions or Problems can be viewed as modifications or oppositions of opinion. Not understanding the difference creates question. Nearly, every solution usually yields to another problem and visa versa. Just as high and low go together, so do solutions and problems.

Grove City College created a modification of opinion and therefore Title IX was forced to re-examine itself to determine whether its ideology was not sound and therefore created a problem, or if it simply was misunderstood. The quest of Title IX is justice and equality. Essentially, Title IX has been the search mechanism for the equality of opportunity.

Grove City College’s defiance nearly toppled all the progress that Title IX had achieved. But Title IX supporters utilized modification by seeking to compromise and then reexamined the issue, of what constituted a program or activity. Title IX supporters would not be dissuaded because its existence was on the line as well as its significance to the promotion of equality for women.
Grove City College can also be classified as identifying a loophole which when opened allowed it use the Federal government against itself. Grove City College already was using its Alternate Disbursement System, when the Federal Government realized that it did not have oversight.

But to Grove City, this Alternate Disbursement System was an example of their willingness to be inclusive to the needs of the students, while being still being exclusive to the Federal Government. Grove City College perhaps, felt that the Federal Government had overreacted, because Grove City College decided to say NO, to the Federal Government's need to insert their authority.

Grove City College offered educational institutions a way to circumvent a Title IX regulations. Title IX was thought to be fool-proof but Title IX needed more legislation to close the loophole so that the Federal Government would be able to re-assert its authority. In a way, this disagreement can be viewed as David vs Goliath syndrome.
The framers of Title IX were probably not even aware that its content would be challenged. It seems they wanted to put in place a law that would assure equality in educational institutions. There must be reason why Title IX is a part of or so closely associated with Civil Rights initiatives. Defining Civil Rights usually means individual and personal rights or rights for a collective entity. In this case the entity would be women.

Women must operate as a collective unit in order to achieve changes. However, society also signals what can be achieved when entities of like minds work together for the common good. The way to change the mentality of male dominated societies is to help males understand that women deserve and are entitled to equality of opportunity.

Men should understand that sharing does not mean that they will lose their revenue. Quite the contrary, sharing the revenue can only bring positive results because each puts something in. Men and women must stop being oppositional and start formulating compromises.
Sharing is an attribute that is used at a young age, but maturity seems to obstruct its meaning. It is amazing that even though women have achieved the right to vote, they now most also rely on a law to ensure equality of opportunity. Has equality of opportunity been evasive to women? Has equality of opportunity been invisible? Or, has opportunity been so microscopic that a magnifying glass must be used to find it?

Women and Title IX have achieved a foothold and a footprint in the sand of equality. Will that footprint stay visible so that others may follow? Or, will the wind of inequality blow the footprints away and stop the trail for equality? Title IX has challenged and changed society. Where would women be without Title IX? Where were women before Title IX? More importantly, where will women go now, that Title IX appears to be able to withstand the test of time? The process of improving Title IX must continue, for the new millennium will perhaps bring other challenges.
Title IX was a law with a low utilization rate, however its significance has improved with age. Title IX has undergone implementation and withstood the challenge. It has taken twenty years for it to be recognized as a law which strongly promotes the opportunity for women to achieve equality.

It should be noted that for each step forward, Title IX has had a challenge to set it backwards. Title IX started a mission for acceptance of women into the larger society. Title IX proved it could be challenged, and it would not fall. Title IX continued on its mission for acceptance by standing its ground in the face of adversity and peril. The supporters of Title IX also understood that they had to promote the efforts to make the law work.

The elevation of equality could only be measured by how successful the law would be in unleashing its capabilities. Its successes and accomplishments are indicative of significant results.
The success of the Title IX will ultimately be decided in the courtroom, Congress and by each part of society. Success will be finally achieved when there is a sport for every girl and a girl for every sport.

In the end, equality will succeed because no lie lives forever, equality of opportunity cannot be forestalled. A sport for every girl and a girl for every sport should no longer be considered, a illusion but a reality.

Women have found that they cannot wait. Women realize that opportunity of equality must be now, if not now--when?
ENDNOTES

Introduction


Chapter One


Chapter Two


Chapter Three


\(^2\)Ibid., 241.


\(^4\)The Week: Editors Note, "Sex Discrimination: Grove City College and Title IX", National Review, (September 16, 1983) v35 1116-1117.


BIBLIOGRAPHY


Editor's Note "The Week": "Sex Discrimination Grove City College and Title IX." National Review, 16, 1983, v 35 1116-1117.


