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# The Invisible Black Woman In The Title IX Shuffle: An Empirical Analysis And Critical Examination Of Gender Equity Policy In Assessing Access And Participation Of Black And White High School Girls In Interscholastic Sports

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UNIVERSITY OF MIAMI

THE INVISIBLE BLACK WOMAN IN THE TITLE IX SHUFFLE: AN EMPIRICAL  
ANALYSIS AND CRITICAL EXAMINATION OF GENDER EQUITY POLICY IN  
ASSESSING ACCESS AND PARTICIPATION OF BLACK AND WHITE HIGH  
SCHOOL GIRLS IN INTERSCHOLASTIC SPORTS

By

Moneque Walker Pickett

A DISSERTATION

Submitted to the Faculty  
of the University of Miami  
in partial fulfillment of the requirements for  
the degree of Doctor of Philosophy

Coral Gables, Florida

August 2009

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There has been considerable progress in women's sport participation opportunities since the enactment of Title IX of the Education Amendments Act of 1972. These opportunities have allowed women and girls to participate in sports at the primary and secondary school level, as well as at the collegiate level in considerable numbers. Institutions have been adding new, emerging, or growth sports to their sports lineup. Despite this progress, much remains to be done to achieve true equity in women's access to sports. Indeed, recent evidence suggests that women of color may not have benefited from the array of new sports and athletic opportunities as much as white women. To examine this issue, we compare Post-Title IX trends in black and white females' sports participation and directly examine the effect of race on participation opportunities. Quantitative analysis based on multiple national data sets, including the National Longitudinal Study (NLS), the High School and Beyond Survey (HSB), the National Educational Longitudinal Survey (NELS), and the Educational Longitudinal Survey (ELS), reveal that compared to white females, black females have indeed lost ground since Title IX, and that public schools attended by black females offer fewer sport participation opportunities to girls. Qualitative analysis

is presented through a detailed, critical examination of the history of white and black women and sports, followed by an assessment of the legal challenges to gender inequality involving Title IX. Although Title IX is supposed to provide greater sports participation and athletic opportunities for women, oftentimes, women of color are disproportionately excluded from participation. As a policy, Title IX is designed to promote gender equity and equality in education, including sports. However, interscholastic athletic access and participation opportunities for females are unevenly distributed along racial lines. Implications for policy and future research are discussed.

## Dedication

To my parents, Joy and Melvin, who started me on the journey of life-long learning, and to my husband, Booker, whose encouragement helped me to complete it.



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There are so many people who were influential in getting me to this point. First, I would like to thank my committee members for their patience and helpful comments during this process, and for molding my development as a scholar. All are brilliant scholars, and I am so honored to have had each of them on my committee: Dr. Don Spivey, whose feedback during my dissertation defense was immeasurable; Dr. John Murphy, who first introduced me to the field of critical studies; and Dr. Jomills Braddock who provided an ear to discuss research ideas, worked with me on methodology, and encouraged me to write on the neglected topic of black female underrepresentation in sport.

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who never gave up hope that I would eventually become a doctor. My Grandmother, Anne Walker, who always showered me with love and prayers even though she was far away.

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## PREFACE

When I first arrived at the University of Miami as a seventeen-year-old freshman in 1991, I eagerly anticipated getting involved in intramural and varsity athletics at a Division I institution. I had participated in track & field since middle school through high school, and had been exposed to basketball, volleyball, and tennis in my physical education classes. I soon discovered while walking on campus to my various classes or upon meeting someone that I was consistently asked a variation of the same question: “Do you play basketball?” or “Are you here on a basketball scholarship?” Truth be told, I never played basketball a day in my life, and I can’t even dribble. Whether I was asked this question because I was tall (5’9”) or black I do not know. Nevertheless, I was confronted with this question time and again.

Soon after beginning my freshman year, I saw a sign posted advertising a meeting for any students interested in rowing on the crew team. Rowing a boat in the middle of a body of water was such an interesting sport for this writer, having grown up in the deserts of Arizona. Although I had never seen the sport nor known anyone who had participated on a crew team, I went to the meeting eager to learn more. I was so intrigued at the notion of racing in a boat as a team sport that I immediately joined as a novice member of the University of Miami Women’s Crew.

I loved rowing and being out on the water. I wasn’t a fan of the ergometer or doing the conditioning drills (hooray for squat thrust leaps), but the sheer constant effort of rowing in unison in a craft with eight other women was

challenging and exhilarating at the same time. Had I experienced rowing in high school, I probably would have been better prepared for the athleticism required of the sport. Thankfully, my university offered the novice program for people like me, and I participated with the crew team until my knees sidelined me.

The issue of black female participation in sports is personal to me. I took personal offense to assumptions that I had to be a basketball player as an explanation for my presence at the University. Couldn't a black female attend the University in a non-athletic capacity? And for those black women who were on athletic scholarship, why were they limited to basketball and track & field? It was with these thoughts in mind that I began this dissertation journey.

I will approach this dissertation using Critical Race Theory. Initially derived as a part of the Critical Legal Studies discourse of the 1970s, Critical Race Theory can be described as work written by African American authors using a subjective approach, and includes scholarly work as well as material intended for a wide general audience (Spivey 2003). Using Critical Race Theory's subjective approach will allow me to look critically at race, racial subordination, and racial discrimination in the gender-based issues I will raise in this dissertation. I will conclude, like most scholars presenting written work utilizing the Critical Race Theory framework, that even in the area of gender equity, race is accountable as the number-one problem facing African American female participants.

In the Introductory chapter, I introduce the issue of sports, gender equity, and athletic participation of women and girls. I give background on Title IX, as an

affirmative action policy designed to redress gender disparities in educational access and sports. I discuss the issue of access to sports for black women, and conclude by introducing my research questions.

In the second chapter, I provide background on sports participation in the United States and review the literature on the benefits of sports participation, and the issue of black female underrepresentation in sports generally. I also discuss sports participation by gender and race in high school and college, and introduce the theoretical perspective that will be used in this study.

In Chapter three, I present the study's methodology, which includes a description of four national longitudinal surveys to be included in the analysis of empirical data in the following chapter (4), operational definitions of variables from these national data sets, and a list of cases from law suits related to Title IX which will be the basis of the of the legal analysis which will also be reported in Chapter Four.

In Chapter Four, I present the results of the analysis of data drawn from the four national longitudinal studies, and discuss the results as they relate to my research questions. Additionally, I provide a descriptive and critical examination of the history of white and black women in American sports, and an overview of Civil Rights activity in the United States after the Civil War. I also provide an assessment of legislative and legal history of Title IX.

I conclude with Chapter Five drawing conclusions based on the study's findings, discussing implications for both theory and policy, and offering insight on directions for future research. A specific focus of this chapter will be on the



need to develop race specific strategies to close the gap between black and white females in terms of their participation in high school interscholastic sports as a consequence of the implementation of Title IX.

## **CHAPTER 1**

### **INTRODUCTION**

Since its inception in the nineteenth century, organized sports in the United States were originally designed to instill in boys and young men such traits as cooperation, strength, assertiveness, and responsibility (Cahn 1994; Coakley 2004; Messner 1992). Oftentimes, women were not encouraged to participate, as attitudes about the role of sports for women and girls were dismissive. Perhaps to maintain femininity, and other structured restrictions, women were forced to perform in their “proper” roles, forfeiting the physical activity that sports participation may have afforded them (U.S. Department of Education 2003). As a result, opportunities for female athletic participation have been limited. However, since the early 1970’s, social and legal forces have led to substantial gains in the participation of girls and women in sport. In an attempt to redress this, and other gender disparities present in the United States, the federal government implemented some measures designed to assist girls and women, including the enacting of Title IX. Specifically, Title IX of the Education Amendments of 1972, which prohibits sex discrimination in any educational program receiving federal funds, has served as a major catalyst for girls’ and women’s increased access to athletic participation opportunities.

Title IX of the Education Amendments of 1972, 20 U.S.C. §§1681-88, is the major federal law that prohibits sex discrimination in education. It reads: “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 educational program or activity receiving federal financial assistance” (Office of Civil Rights 1980). Title IX was enacted to eliminate gender-based discrimination in educational programs. The legislation applies to most public and private colleges and universities, and also applies to most high schools, middle schools, and elementary schools in the United States.

Title IX is best known for giving women and girls an equal opportunity to play sports by requiring schools and colleges to treat men and women equally when providing scholarships, access to sports, and funding for sports programs. In fact, researchers have noted that Title IX may be the most important action to further women’s athletics in the twentieth century (Abney and Richey 1992). Yet despite the considerable progress that has been made towards gender equity in sports, greater improvement is still necessary. Indeed, a recent report titled “Title IX at 30: A Report Card on Gender Equity” issued by the National Council for Women and Girls on June 13, 2002 rated progress in athletics as earning a “C+” grade.

Other evidence corroborates the mediocre grade issued in 2002 by the National Council for Women and Girls. For example, Braddock, Sokol-Katz, Greene, and Basinger-Fleischman (2005) report that in 1971—one year before Title IX was passed—the rate of female high school interscholastic athletic participation was only eight percent of the participation rate of males. Four years later, post inception of Title IX, female participation rates swelled to thirty-two percent of that of males. Moreover, in 1979, seven years after the passage of Title IX, female participation was forty-eight percent of that of males. For both

genders, participation leveled off during the 1980s, and then increased again during the 1990s. This increase for females, however, was not as sharp as that immediately following the passage of Title IX. Yet, despite consistently increasing participation rates, three decades later, female's rate of athletic participation has only reached sixty-nine percent of that of males.

Despite comparatively lower participation rates than males, the fact remains that Title IX has in fact increased access for girls and women to athletic participation opportunities (Carpenter and Acosta 2005). According to the Women's Sports Foundation (2008), the participation rate of high school females has increased by 904 percent since the inception of Title IX. Thus, female student athletes across the country have benefitted from greater access to school based athletics. However, although Title IX has indeed increased the amount of female athletic participation in collegiate athletics, it has been ineffective in addressing the needs of racial and ethnic subgroups within the women's sports movement, especially African American women (Evans 1998). Although much research has addressed gender equity and the effects of Title IX on women and girls in sport generally, less research has focused on the effects of Title IX on women of color, and more specifically, black women.

Since 1971, immediately prior to the inception of Title IX, until 2000, female college athletes of color have seen a 955 percent increase in participation rates, and a tremendous increase in scholarship assistance (Butler and Lopiano 2003). Yet some evidence suggests that women of color may not have benefitted as much as white women (Braddock 2005), and that racial "clustering"

by sport is endemic in many athletic programs (Butler and Lopiano 2003). Thus, there is a need for greater attention to the question of whether progress toward gender equity has been achieved equally across both gender and the intersection of gender-race subpopulation. The present study addresses the issue.

### **Statement of the Problem**

It is well established that women of color face “double jeopardy” or subordinate status twice defined in terms of their experiences in education, the labor market, and other areas (Schaefer 2006). Similarly, African American females experience double jeopardy in sports in terms of facing discrimination based on both gender and race. As a consequence, in comparison to their white female counterparts, and both black and white males, African-American females are less represented among high school athletes, college athletes, and high school and college coaches and athletic administrators (Lopiano 2001). As a social institution in America, sport espouses the doctrine of equality of opportunity (Spivey 2003). This equality of opportunity is promoted as a color-blind, race neutral opportunity structure that gives all athletes an equal chance to participate. However, this type of neutral rhetoric preserves the existing structural hierarchy, providing advantages to those at the top. In reality, Black women have been placed into a subordinate position because of both race and gender discrimination, and have, in effect, not experienced equality of opportunity in sport.

Since the inception of Title IX, and more recently the *Cohen v. Brown* decision (*Cohen v. Brown University*, 809 F.Supp. 978 (D. R.I. 1992), *aff'd*, 991 F.2d 888 (1<sup>st</sup> Cir. 1993); 879 F.Supp 185 (D. R.I. 1995), *aff'd in part, rev'd on other grounds*, 101 F.3d 155 (1<sup>st</sup> Cir. 1996)), colleges and universities across the country have added a variety of new sports and additional scholarships in those sports, in an effort to attract female athletes to their schools. Female college athletics are nothing new; most schools have maintained basketball and track & field programs for some time. But when tasked with the duty of providing equal representation in sports for female athletes, most schools elect to add additional sports to the line-up, instead of putting additional funds into reinforcing the preexisting powerhouse sports programs like basketball and track. Since 1988, the NCAA reports that through the 2007-2008 academic year, member institutions have posted a net gain of 2,342 women's teams added to their varsity rosters (NCAA 2009). Historically, the women's sport with the highest annual net gain is soccer, followed by golf and softball (NCAA 2009). Many schools also added more "emerging" sports, and in the 2007-2008 academic year, the women's sport with the highest net gain was lacrosse (NCAA 2009).

This is problematic for two reasons: In the past, black female participation in sports has been limited to sports that are the least expensive for both the participant and the school (Lopiano 2001). These sports include basketball, and track & field. Citing the Wilson Report, a joint effort in 1988 between Wilson Sporting Goods Company and the Women's Sport Foundation, which was based on a sample of 500 families nationwide, Weiler (1998) noted that although black

and white females were equally likely to participate in sports, 33 percent of black girls (compared to 18 percent of white girls) said that their families could not afford to pay the cost of equipment and lessons. Sports like tennis and golf require private instructions, which can be expensive, and other sports like soccer and softball require participants to pay for travel expenses as well as their equipment.

Although purchasing a basketball is considerably cheaper than purchasing a horse, equestrian gear, and a country club membership, what is not so clear is the long-term effects of this approach in terms of providing equal access for both black and white girls in interscholastic sports programs. Fields (2008) notes that college coaches often recruit and offer scholarship opportunities to athletes who participate in “club” systems of participation rather than high school leagues. If black girls are not participating in these systems or in sports like soccer and softball, they may be at a disadvantage. It may be argued, for example, that by increasing the number and offering of women’s sports at the high school and collegiate level, opportunities for sports participation and development are extended toward white middle-class women at the expense of blacks (Naughton 1998). For example, in NCAA member institutions that maintain equestrian programs, the overall percentage of white female equestrian athletes has increased from 82.7 percent in 1999, to 94.5 percent in 2007 (NCAA 2008).

The issue of equality of access and participation has not been the focus of research related to the effect that Title IX has had on minority women and girls. However, the significance of this approach may be far reaching in terms of

erecting unintended barriers to access and participation in high school and college athletics for non-white women. Black females represent less than ten percent of all college athletes (Lopiano 2001). Thus, the effect of Title IX at the high school and collegiate levels may be to maintain the “funneling” of black female athletes into the two main sports, while the white female athletes benefit the most from the addition of new sports and sports programs. By narrowing the range of sports available at the high school level, this process may also adversely affect the accessibility of college athletics for non-white females who may be seeking athletic scholarships.

As noted earlier, in order to meet Title IX mandates, most colleges and universities are instituting programs in non-traditional sports—sports that generally pull its participants from the primarily white female athletic pool of participants. The “big three” non-traditional sports are volleyball, crew (rowing), and soccer. If black female athletic participation is primarily concentrated in basketball and track & field, the additional programs and scholarships in the big three sports may attract and benefit white female athletes at the expense of black women.

Since 1995, other emerging sports appearing on NCAA member institution college campuses include ice hockey, water polo, rugby, and equestrian (NCAA 2009) which pull the vast majority of their participants from the white female athletic pool (NCAA 2008). Consequently, scholarships that were benefitting powerhouse programs like basketball and track & field may now be inaccessible, and opportunities for post-secondary education diminished for blacks. Thus, it is



at the intersection of race, class, and gender, that the relatively understudied impact of the implementation of Title IX policies may be found. The present study seeks to fill this void in the research literature on the impact that Title IX may have on women of color and specifically black women and girls.

### **Research Questions**

The general question which serves as the focus of this study is: Do gender equity strategies embodied in the Title IX affirmative action policy benefit white women and women of color equally? Since sport provides an interesting and important context for examining this general question, three specific research questions that serve as corollaries to the general question will be addressed based on the assumption that because sports are presumed to be egalitarian and meritocratic, one should expect that African American women have benefitted in similar ways as whites under Title IX.

1. Have black women made the same progress as whites in high school sports participation since the enactment of Title IX in 1972?
2. To what extent is black women's under-representation a function of the extent to which schools they attend offer fewer opportunities to participate in sports, especially the "growth sports" which have been added as part of the Title IX strategy to achieve gender equity (e.g., soccer, volleyball, and crew)?
3. To what extent have the legal challenges to gender inequality addressed the racial disparity between black and white females in gaining access to sport participation in their intent and outcome?

This study will also provide a critical assessment of the differing historical contexts in which white and black women's access and involvement in sports has developed, with particular focus of the role of racism and its shaping of the opportunity structure.

### **Summary**

In this chapter, I have introduced the issue of gender equity in educational access and sports and provided background information on Title IX as an affirmative action policy designed to redress gender disparities in access to interscholastic sports. I provided a statement of the problem on the issue of gender equity and sports participation related to the issue of whether black and white females have benefited equally from the implementation of Title IX in gaining access to sports at the high school level. I finished the chapter by stating the specific research questions that will be the focus of the study. I shall turn next to a review of the relevant research literature.

## CHAPTER 2

### LITERATURE REVIEW AND CONCEPTUAL FRAMEWORK

In this chapter, I provide background on sports participation in the United States. I review the literature on the benefits of sports participation, and the issue of black female underrepresentation in sports generally. I discuss sports participation by gender and race in high school and college, and introduce the theoretical perspective that will be used in this study.

#### **Research on the Importance of Sport in Racial and Gender Populations**

Sports are an important part of American life, and play a role in the structure of many social norms in our society, from ideas on gender roles to ideas about sexuality (Yiannakis and Melnick 2001). Sports play an even more important role in the lives of America's youth. Braddock (2001) notes that in school based athletics, 82 percent of middle schools, and 98 percent of high schools provide sports participation opportunities, including opportunities for competition between teams from different schools. Coleman's (1961) seminal work on youth and education in the United States is often acknowledged as the primary study that engaged sociologists to look at the correlation between athletic participation and academic achievement. He found a negative correlation between athletic participation and academic achievement, namely that time and energy devoted to extra-curricular activities directed precious time away from proper academic achievement (Coleman 1961). However, Coleman (1961) did not base his theory on a nationally representative sample to support this negative correlation.

Instead, other scholarly research tends to support the positive correlation between sports participation and academic achievement. Studies have also indicated that participation in sports is beneficial for student athletes. For example, participating in sports enhances the physical and mental wellbeing of athletes (Birrell 1983; Crocker, Eklund, and Kowalski 2000). Sports participation and physical activity have been linked to decreased obesity and heart disease, and aids in the promotion of overall well being, as well as social and team building skills. Youth who are active in sports are less likely to be engaged in harmful behaviors such as drug and alcohol abuse or criminal behavior (Dawkins, Williams, and Guilbault 2006). In that study, Dawkins, et al. found that participation in school-based sports reduced cigarette and marijuana use in black and white high-school students, and in addition, black female athletes also had reduced rates of alcohol use. Similar to the present study, that study used data from participants responding to the National Educational Longitudinal Survey of 1988 (NELS, NCES, 1988) and subsequent follow-up surveys.

Furthermore, sports participation has been linked to higher self-esteem (Birrell 1983; Bunker 1991; Coop and Rotella 1991; McHale 2001; Phillips 1998) and self-image (Women's sports foundation 2008). Additionally, engaging in physical activity decreases instances of depression (Phillips 1998; Sabo, Miller, Melnick, and Heywood 2004) and suicide (Phillips 1998). Further studies have supported the argument that teen sports promote character building, including courage, cooperation, and honesty (Evans and Davies 1986) hard work, self

discipline, and sportsmanship (Frey and Eitzen 1991) and promote fewer discipline problems (Marsh 1993).

Studies have additionally supported the argument that high school sports participation has a positive effect on college attendance (Braddock 1981). However, possibly due to small sample size and lack of longitudinal data at that time, Braddock's 1981 study did not include females as part of the sample. Similarly, it should be noted that since the initial data collections of the NLS in 1972 and HSB in 1980, major changes, court decisions, and the creation of federal affirmative action regulations like Title IX have been implemented to require high schools and colleges to provide more athletic opportunities for women and girls, leading to a substantial increase in female sports participation since the data were collected. Nevertheless, studies that are more recent report similar findings as Braddock (1981), and indicate that at the collegiate level, student athletes at NCAA member schools graduate at a higher rate than non-student athletes (64 percent compared to 62 percent respectively) (2008 NCAA Division I Federal Graduation Rate Data).

Research focusing specifically on the benefits of sports participation to women has produced evidence that sport is beneficial to women and girls. Physical activity decreases the rates of breast cancer, and decreases the engagement in harmful behavior such as drinking, smoking, and drug use (Women's Sports Foundation 2004) and sexual activity (Williams and Brake 2008; Women's Sports Foundation 2004). Girls involved in sport report a greater sense of well being and self-worth, and a more positive body image (Evans

1998). Further, teenage female athletes are fifty percent less likely to get pregnant than their non-athletic counterparts, are more likely to report that they have never had intercourse, and are more likely to postpone future sexual intercourse until older (Williams & Brake, 2008; Women's Sport Foundation 2004).

Female student athletes also have higher high school graduation rates than non-athletes, are more likely to perform well in science and math courses, and are more likely to participate in honors courses (Women's Sport Foundation 2004). Scholarly research on high school sports participation and post-secondary educational attainment that did include sampling from females found that high school athletic participation had a significantly positive relationship to the educational attainment and/or occupational progress of high school graduates (Sabo, Melnick, and Vanfossen 1993). In that study, Sabo et al. used longitudinal data from the High School and Beyond (HSB) study, finding that high school athletic participation had a significant effect on the educational progress of rural white and Hispanic females, and suburban white females, although high school athletic participation had no significant effect on black females' college attendance and progress.

More recently, Marsh and Kleitman (2003) used longitudinal data from the National Education Longitudinal Study (NELS) and found that high school athletic participation had a positive effect on university enrollment and education achieved. While variables other than sports may be contributing factors to these

results, nevertheless, the positive benefits of participating in sports are clearly revealed in these studies.

Despite the social, psychological, and health benefits of sports participation, female athletic participation opportunities continue to be disproportionate to male participation opportunities (Braddock, Sokol-Katz, Green, and Basinger-Fleischman 2003). Girls participate in sports much less than boys, and tend to become less active in sports as they get older (Phillips 1998; Sabo et al. 2004). Non-white girls participate even less, with poor minority girls engaging in sports the least (Phillips 1998; Sabo et al. 2004). Yet, sport participation may be more important for African-American and other minority females since the benefits of sport participation described above may not be equally experienced for those groups in comparison to their white female counterpart.

Scholarly research on sport participation and related sport literature studying black women has been scarce, (e.g., Bruening 2004; Bruening 2005; Smith 1992; Stratta 1995) and, oftentimes, African American women have been excluded from research based on both gender and race, essentially existing “on the margins” (hooks 1984). Some argue that scholarly research on sports reflects the interests and values of the white male majority (Bruening 2005). Accordingly, the lack of research on black women reflects the lack of interest that the white male majority has in research pertaining to black women and sports. Historically, black female athletes have been neglected in research (Cahn 1994).

Indeed, the lack of research about black female athletes is indicative of the “gendered and raced” institutions embedded in sport (Williams and Brake 2008).

The black female experience encompasses issues of race, gender, and class, and her experience cannot be compared to the experiences of white women or black men. Historically, black women have been invisible in sport research, whether as the participant or the researcher. The black woman is rarely given an exclusive category, and, instead, is lumped in with either white women, or black men. The lack of scholarly attention to the issue of Title IX and its possible disparate effects on black women demonstrates a need for more research on this important topic. The participation experiences of black women and girls need to be moved from the margins to the center (hooks 1984; Williams and Brake 2008) in order to address the intersectional issues of gender and racial equity in sports participation. Thus, this dissertation will attempt to do so by examining the role that athletics has provided for women of color, focusing on the effects of Title IX on black and white female participation in high school sports.

### **Black Female Underrepresentation**

For some athletes, participation in sports provides access to economic mobility and opens the door to college and subsequent perceived financial success. Despite the perception that collegiate athletics is the springboard to financial success or professional athletic success, the majority of black athletes in big time intercollegiate sports fail to earn a degree (Spivey 1983), although all collegiate athletes do maintain higher graduation rates than non-athletes



regardless of race (Lapchick 2000). Even so, the perception remains that excelling in athletics in high school through college leads to achieved dreams of financial success in professional sports and the wealth that comes with it.

Despite the belief that sports leads to wealth, non-white girls living in urban areas participate in sports and engage in physical activity much less than white girls (Phillips 1998). Some have argued that non-white girls in urban central cities have lower participation rates because they have limited opportunity to participate in sports (Bruening, Armstrong, and Pastore 2005; Sabo et al. 2004). According to Lapchick (2001a), 85-90 percent of suburban girls play sports compared to only 15 percent of urban girls. Opportunities for these girls may be limited due to transportation issues, lack of funds to pay for equipment and fees for certain sports, and lack of facilities in which to play. Smith (1992) noted that although financial considerations allow some families to afford a variety of sports, poor socioeconomic conditions adversely affect women of color disproportionately such that sports participation means they must participate in sports such as basketball and track & field, or not participate in organized sports at all. Other scholars argue that lower levels of participation can be blamed on lack of money for lessons and equipment, lack of affirmative action from colleges and universities, lack of time due to commitments to childcare, study, or jobs, lack of role models, and lack of opportunities available in geographical areas where minority populations are concentrated (Bruening et al. 2005). Williams and Brake (2008) concur, adding that when black female athletes do participate, they consistently are channeled into certain sports or positions within sports, and,

consequently, coaches have a significant effect on how black females experience sports.

Others argue that this type of disproportionate representation is due to racial stereotyping of black athletes (Abney and Richey 1986; Acosta 1986; Barclay 1979; Bruening 2005) and black girls specifically (Bruening 2000; Lewis 1997; Vertinsky and Captain 1998; Corbett 1993). Yet, these same studies also concede that limited resources and opportunities, or at least the perception of such, may be the reason for the underrepresentation of blacks and other ethnic minorities in sports. For example, Bruening (2000), through a mix of focus group and individual interviews with college athletes, revealed that African American females pursue certain sports based on their socialization and exposure to those sports through their environment and socialization agents like family, friends, coaches, and the media. Bruening (2005) further notes that socialization into certain sports may also be the result of numerous combined factors such as a lack of money for lessons and equipment, lack of commitment to affirmative action on the part of colleges and universities, lack of role models for these young athletes, lack of time to participate in sports due to child care, study, and wage earning responsibilities, and geographic opportunity limitation based on minority concentration within neighborhoods.

Notwithstanding these issues, it is clear that black athletes have faced a history of racial discrimination in sports (Dawkins and Tellison 2008; Spivey 1983) and that race plays a role in the experiences of black athletes (Lawrence 2005). Through a history of overt segregation, prohibited interracial competition,

and a system of excluding blacks from playing sports at elite levels, racial differences in sports participation may have tangled and interconnected roots. Even when blacks were able to integrate and participate in competitive sports, talented players experienced stacking of position (Corbett 1993) or overt exclusion from key positions like quarterback (in football). Further, this discrimination in sports reflects the history of racial discrimination that blacks have experienced in America in most social institutions (Ashe 1988; Braddock 1989; Dawkins 2003; Dawkins and Kinloch 2000; Edwards 1969; Gilmore 1995; Sammons 1994; Spivey 1985). Some argue that the tangled nature of sexism and racism together make athletic involvement undesirable for black girls (Williams and Brake 2008). It is true that black women and girls have a unique experience being both black and female, but the black woman becomes invisible when the dual nature of her identity is dismissed, and research focusing on “blacks” or “women” make it difficult to draw conclusions about her since her experiences differ from the experiences of white women and black men.

### **Title IX: Gender Equity Policy and Black Female Underrepresentation**

Prior to the passage of Title IX of the Education Amendments Act of 1972, less than 17,000 females participated in intercollegiate athletics, and most other athletic opportunities for women were limited (Carpenter and Acosta 2004). Stevenson (2006) concurred, noting that girls had been excluded from participating in athletics throughout history. Thanks in part to the Association for Intercollegiate Athletics for Women (AIAW), and other historical social factors, things began to change in the early 1970s. The newly formed Association for

Intercollegiate Athletics for Women (IAAW) was a strong advocate for collegiate women and sports participation, and although the organization was merely a few months old, it placed a lot of pressure on the government to legislatively increase female collegiate opportunities in sport (Acosta and Carpenter 2004). Although the organization was young, its efforts inspired the U.S. Congress to pass Title IX, which was signed by President Nixon in 1972. Its results were immediately apparent: Shaw (1995) noted that by 1976, 64,000 women participated in collegiate sports, up from 17,000 (Carpenter and Acosta 2004), and by 1991, the number of women participating in sports had increased to 158,000. However, the underrepresentation of black women has clearly been a pattern in terms of such outcomes as the awarding of scholarships and participation rates across the decades of the 1970s through the 1990s and beyond.

Athletic scholarships were not awarded to female athletes until the early 1970s, and in 1974, only 50 women were attending college on athletic scholarships compared to over 50,000 men (Roth and Basow, 2004). By the end of the 1977-1978 collegiate athletic season, it is estimated that more than 10,000 female student-athletes from more than 460 schools received athletic scholarships. Despite expanding scholarship opportunities and increases in the number of female athletes, Black female athletes were not proportionately present in those ranks. For example, Alexander (1976) found that by 1976, only 1,012 black females were represented among the 17,298 female athletes included in the study. Over a decade later, Murphy (1989) made similar findings, noting that of the 204 institutions surveyed in that study, among female athletes,

12,340 were white and only 1,058 were black. Fields (2008) attributes this type of disproportionality to the link between youth sports and the type of sports that black girls participate.

In 1996, the National Collegiate Athletic Association (NCAA) reported that black women made up 15 percent of all female college athletes, but also found that these athletes were concentrated in basketball and track & field. In 2000, the NCAA reported that the participation rate of black women had decreased to only 13.8 percent of all Division I female athletes, but the overrepresentation in basketball and track & field persisted. Although black female athletes made up only 13.8 percent of the female athlete population, they represented 25.7 percent of female basketball athletes, and 20.4 percent of female athletes in track & field. Yet, collectively, they represented only 3.2 percent of participants in all of the other offered and reported NCAA sports in 2000 (NCAA 2000).

In its 2003-2004 report, the NCAA reported that race matters in sports participation (NCAA Sports Sponsorship and Participation Report 2004). Out of 156,586 student athletes in Division I institutions, and 78,387 student-athletes in Division II institutions, there were 69,768 female student athletes in Division I and 31,725 female student athletes in Division II. There were 86,818 male student athletes in Division I, and 46,662 male student-athletes in Division II. Of those participants, 71.4 percent of male student athletes and 78.2 percent of female student athletes were white. Likewise, 18.1 percent of male student athletes and 10.6 percent of female student athletes were black. Proportionately, female athletic participation is lower than male participation, but athletic participation by

black females lags far behind. Even though black female participation is lower than that of white females, black females' proportionate representation in basketball has increased. Notably, the NCAA (2007) reports that in the 2005-2006 academic year, the percentage of black female basketball student athletes increased from 37.8 percent to 42.6 percent. Moreover, in 1999 until 2007, the percentage of female basketball athletes at Division I schools who were black has increased steadily from 35.7 percent to 47.4 percent (NCAA 2008). Historically, the highest numbers of participants in women's basketball were white until 2005. For just the second year in a row, the highest numbers of participants in women's basketball are now black (NCAA 2008).

The NCAA further reports that since 1988 through the 2007-2008 academic year, member institutions have posted a net gain of 2,342 women's teams added to their varsity rosters (NCAA 2009). Historically, the women's sport with the highest net gain is soccer, followed by golf and softball, although in the 2007-2008 academic year, the women's sport with the highest net gain was lacrosse (NCAA 2009). Yet, despite the net gain of so many sports, the percentage of black female student athletes as a whole has only increased from 9.4 percent in 1999 to 11.2 percent in 2006-2007, and more than 33 percent of them were playing Division I basketball out of 27 offered sports (NCAA 2008). This increase in the black female student athlete population has not come at the expense of white women, who have maintained consistent numbers, representing 78.1 percent of all female athletes in 1999, and 78.8 percent in 2007 (NCAA 2008). In the sports with the highest net gains, black females only

made up 2.1 percent of 2006-2007 Division I lacrosse players, and 6.2 percent of soccer players (NCAA 2008). In the other two sports with the highest net gains, black females made up 4.2 percent of female golf participants, and 8.5 percent of softball players in Division I. This can be compared to white female athletic participation, where 90.9 percent, 82.4 percent, 76.2 percent, and 78.6 percent of white females participated in Division I lacrosse, soccer, golf, and softball respectively (NCAA 2008).

As the numbers above indicate, black female athletes overall are significantly underrepresented in sports based on their participation rates when compared to white females, and white and black males. Further, black women are underrepresented in 23 of the 27 sports where the NCAA maintains participation statistics overall (consistently maintaining participation rates of less than ten percent), and overrepresented in basketball, track & field, and bowling (NCAA 2008). It should be noted that only 4.9 percent of all NCAA member schools offered bowling in the 2007-2008 academic year (NCAA 2009). Also, while bowling reports overrepresentation of black female participation, as a sport, it has seen a steady decrease in black female athletic participation of almost 25 percent between 1999 and 2007 (in 2007, 51.9 percent of female bowlers were black, down from 75.6 percent in 1999), with a comparative increase of 25.6 percent among white female participants (NCAA 2008). Other popular emerging or growth sports like rowing report 83.1 percent white female participants, compared to only 1.7 percent of black females on crew teams (NCAA 2008).

Indeed, Bruening et al. (2005) notes a recent study where only two members of a team of fifty female rowers on a crew team were black.

Some have argued that Title IX benefits white women more than black women (Evans 1998). This argument contends that because white women attend college in higher numbers than black women, and colleges and universities are adding sports that are primarily played by white women, black women are not reaping the participation benefits that Title IX is designed to offer. In an effort to investigate the relationship between female athletic participation and race, Janis (1984) found that the percentage of black female athletes who participate in sports other than basketball and track is much lower than the percentage of white female athletes participating in these sports. Janis examined the involvement of black female athletes in the Association of Intercollegiate Athletics during the 1978-1979 academic year. Findings revealed that, during the 1978-1979 academic year, black female athletes were disproportionately represented in basketball and track & field. At the time of the study and within the organizations surveyed, black female athletes received eleven percent of the total athletic scholarships that were awarded, and the largest number of scholarships awarded to black female athletes was for participating in those two sports. This survey was completed seven years after passage of the Title IX Amendments.

Nearly a quarter of a decade later, not much has changed in terms of black female athletic participation. In 2000-2001, almost one third of all female basketball players at Division I institutions were black. Almost one quarter of all



female track athletes were black. However, in the new sports, only 2.7 percent of the female athletes who received scholarships were black.

Recently, Goldsmith (2003) examined the difference in participation rates of African Americans and whites in high school sports. Using data from NELS (1988) and the 1990 U.S. Census results, Goldsmith found that among high school sophomore girls, basketball is the most popular sport among both black girls and white girls, followed by softball and cheerleading. She also found that sports participation by race is not affected by the type of sports a school offers. She concludes that race does not play a role in the selection of sports that whites play. However, race does affect participation in the sports that black students play. For example, Goldsmith discovered that black females' odds of playing basketball or cheerleading are 2.6 and 1.3 times greater than the odds for white females to play basketball or cheerleading, even though both groups played basketball the most.

Goldsmith concluded that the effects of race are weaker in the sports that whites participate more in, and sports participation differences are a result of structural factors. For example, she concluded that whites maintain an advantage in swimming and soccer as a result of their higher socioeconomic status and presence in non-urban areas, and an advantage in baseball because of their lower levels of strain and attendance at smaller schools. Goldsmith suggests that the effect that race has on sports participation varies by sport, and that racial differences in sports participation are a result of racial inequality in

socioeconomic status, neighborhoods, and other demographic structural factors such as school size.

The scant research that exists shows that there is a relationship between race and sports participation among women and girls. When compared to whites, women of color do not participate in sports at the same levels. Whether the reason is lack of time (Sellers, Kuperminc, and Dumas 1997), wage earning responsibilities, or other reasons, black girls and women may not be reaping the full benefits that sports participation offers.

In its most recent participation report covering 1981 through 2008, the NCAA reported that since the 1981-1982 academic year, there have been more women's basketball teams sponsored at NCAA member institutions than any other women's team, followed respectively by volleyball, cross country, soccer, softball, and tennis (NCAA 2009). In fact, cross-country is nearly as common a team sport for female athletes as basketball at Division I institutions. The NCAA further notes that although women's track & field has traditionally had more female athletes participating than any other women's sport, since 1999, women's soccer has replaced track & field as the sport with the highest number of female athletes, followed by softball (NCAA 2009). Additionally, the NCAA reports that in the 2007-2008 academic year, the sport with the highest number of women's teams added at member institutions was lacrosse, and the women's sport that has been added the most since 1988 is soccer, with a total of 605 new programs, followed by golf (NCAA 2009). Similarly, the sport with the highest number of women's teams dropped during the 2007-2008 academic year was indoor track &

field, followed by golf and outdoor track & field (NCAA 2009). The addition of teams and the dropping of teams produce a “net” value of varsity teams present at NCAA member institutions.

The NCAA data are particularly important inasmuch as athletic participation rates in college are primarily a result of high school athletes continuing their athleticism into post-secondary educational institutions. Thus, the NCAA reports are useful in looking at how high school sports participation “feeds” athletes into collegiate participation and the impact of Title IX on this process. However, focusing on sports participation and opportunities in college may be too late to identify ways to increase participation in growth among women of color. Suggs (2005) suggests that it takes many years of highly competitive play in a sport to acquire the skill level necessary to participate in athletics at the collegiate level, further noting that “walk on” sports on a team roster is limited. Thus, a critical question is whether high school participation in sports affect a woman’s sports participation in college. If so, for women of color to have equal opportunity for participation in sports at the college level, they must be exposed to and have the opportunities to play a wide range of sports in elementary, middle, and high schools.

Title IX has been relatively successful as an affirmative action policy targeted to redress gender discrimination in scholastic sports. The number of females participating in sports since the inception of Title IX has increased exponentially. Even so, the question of Title IX’s impact on high school participation is relatively unexplored. Further, if Title IX is seen as a success,

why haven't more women of color benefitted through participation opportunities? Williams and Brake (2008) suggest that it is because Title IX does not address the roadblocks of race, gender, and class that are inherent in sports.

### **Theoretical Perspectives**

Few explanations have been advanced to account for the disproportionate number of black female athletes in high school and college sports outside of basketball and track & field. Bower and Martin (1999) suggested that stereotyping might limit black women to particular sports. Stereotypes have long been used to attempt to explain the participation patterns of African Americans in sport in general, such as genetic disposition for African American athletes to run faster and jump higher than whites (Bruening 2005). Stereotypes have also limited the athletic opportunities of black women by imposing ideas about "appropriate" sports in which they may participate (Williams and Brake 2008). Coincidentally, as early as 1974, Houzer reported that the stereotypically popular sports among African American women (i.e. basketball and track & field) were actually not the most popular sports for that group. In fact, Houzer found that African American women preferred sports like volleyball, tennis, gymnastics, and swimming to basketball and track & field (Houzer 1974).

Thus, the underrepresentation of black female athletes in some sports, coupled with the overrepresentation of black female athletes in certain sports, possibly despite their interests to the contrary, indeed, provides a limitation to the opportunities that Title IX may have opened to women of color (Bower and Martin 1999). If, for example, high schools and colleges are increasing the types and

numbers of sports being offered to their female athletes, and if black female athletes are only represented in certain sports, then they cannot, and indeed do not, benefit equally from Title IX policies. Furthermore, when the problem of limited opportunities for black females to participate in the range of sports is present at the high school level and earlier, the effect may be to limit the access to college given the level of access afforded to them.

In the broader literature of racial discrimination and affirmative action policies employed as measures to correct for past discrimination, Butler and Lopiano (2003) note that, female athletes of color experience double jeopardy through both race and gender discrimination. These researchers attribute this to the state of race relations in America, coupled with data on participation rates for people of color. Butler and Lopiano (2003) argue that race and gender inequalities are intertwined by their natures, and thus, female athletes of color remain at a double disadvantage, facing the effects of gender and racial discrimination.

Although the notion of double jeopardy (Schaefer 2006) is a useful heuristic construct, it is less often used in examining actual discriminatory experiences of women of color. In the present study, the question of whether black and white females have benefitted equally from the equity strategies of affirmative action provide a direct test of whether black women face double jeopardy in sports. Are black women and girls summarily excluded discriminatorily from participating in sports? Do women of color have the same opportunities and equality of access to sports participation opportunities as white

women? In the present study, I will draw upon the theoretical perspective of new critical race theory to further elaborate on this issue.

### ***New Critical Race Theory and Legal Storytelling***

Critical Race Theory may be useful in examining this issue. Critical Race Theory can be described as work written by African American authors using a subjective approach and includes scholarly work as well as material intended for a wide general audience (Spivey 2003). Roy L. Brooks (1994) defines it as “a collection of critical stances against the existing legal order from a race-based point of view.” Critical Race Theory’s subjective approach allows the authors’ conveyance of strong political views. It allows us to look critically at race relations, racial subordination, and discrimination in everyday social interactions. Generally, scholars presenting written work utilizing the Critical Race Theory framework ultimately hold race accountable as the number-one problem facing African Americans (Spivey 2003). Race matters in research, more so than gender and class, and for African Americans, race is more important than gender and class (Spivey 2003). For these scholars, they analyze the omnipresence of race and racism in society, confronting the fact that research cannot be neutral because the racism that exists (sometimes invisibly) in our daily lives is a permanent fixture. Thus, Critical Race Theory acknowledges that racism is not merely remedied with new laws or judicial decisions, but remains a pervasive part of the structure of the United States (Bauman 1996).

### *History and Background*

Critical Race Theory emerged from the modern civil rights movement in the mid-1970s, and although it tackles many of the same issues regarding race in America, it places the issues into the broader context of history, economics, group-interest, and self-interest (Crenshaw, Gotanda, Peller, and Thomas 1995; Delgado 2001). Dissatisfied with traditional civil rights discourse, Critical Race Theory attempts to reexamine the way race and racism have been embedded into American consciousness (and subconsciousness). Bringing race back into traditional discourse and rejecting the ideals of integration, color-blindness, and assimilation, enables scholars to examine race and racism critically (Crenshaw et al. 1995). Key writers in the “raceCrit” tradition include Kimberlé Crenshaw, Derrick Bell, Duncan Kennedy, Martha Minnow, Mari Matsuda, and Patricia J. Williams. Although it has been used as an analytic tool in many other disciplines, including education, political science, and ethnic studies, Critical Race Theory began as a movement within legal studies. More specifically, within legal studies, Critical Legal Studies emerged as a continuation of the U.S. legal realism and progressivism movements of the 1920s and 1930s (Bauman 1996).

Critical Legal scholars used their writing as a tool. They objected to the formalism present in legal thought; exhibited skepticism toward the extent that legal precedence (courts continuing to follow the decisions of previous courts on similar issues subsequently before them) actually determined subsequent legal issues the same way; examined the relationship between biases in the development of legal doctrine; feared the reification of legal concepts; and

recognized the roles of legal doctrine and legal institutions in the process of social change (Bauman 1996; Kelman 1987). Some writers, including Kennedy (2002) challenged the assumptions traditionally used in legal discourse and the structures used for maintaining domination, including the neutrality of law, ideology on the rule of law, and the idea that law was apolitical (Crenshaw et al. 1995). Following the successes of the civil rights movement in the 1960s, lawyers, activists, and legal scholars, believing that the civil rights movement had stalled, began looking at new ways to renew the discourse with the inception of a new approach to antidiscrimination doctrine (Bauman 1996; Crenshaw et al. 1995; Delgado 2001). Building on the framework of critical legal studies and radical feminism (or “femCrit”), Critical Race Theory also drew philosophical inspiration from European philosophers like Karl Marx, Antonio Gramsci, and Jacques Derrida, as well as the American activists Sojourner Truth, Frederick Douglass, W.E.B. Du Bois, Cesar Chavez, and Martin Luther King, Jr. (Crenshaw et al. 1995; Delgado 2001). Other critical approaches to law include Critical Latino/a Studies (“latCrit”), Asian American Critical Race Studies (“AsianCrit”), American Indian Critical Race Studies (“TribalCrit”), and postmodern approaches to law.

Critical Race Theory proposes that racism is an ordinary presence in everyday interactions. It is a usual part of the way our society operates, and is a common everyday experience for most people of color in the United States. Because it is a very real experience, “color blind” rules that encourage equal treatment only serve to combat blatant racism and racist practices. Critical Race



Theory acknowledges that the law works in a way to conceal racism, or, at the very least, makes racism seem rational. Thus, approaching issues from a “color blind” manner only affects blatant, egregious racism. Since, Critical Race Theory scholars argue that racism is woven into our thought processes and social structures, then the racism present in our routine activities and institutions will persist, and keep nonwhites in subordinate status (Bell 1995; Freeman 1995). Second, racism operates in our society to maintain the notion that white is better than nonwhite. Called “interest convergence” (Bell 1995) or “material determination” (Delgado 2001), racism helps whites maintain a material and psychological advantage over nonwhites, and there is little incentive for whites to eradicate racism and give up this advantage (Bell 1995a). For example, some Critical Race Theorists have argued that U.S. public policy is made based on the self-interests of those in power (Bell 1995). Others note the reality of race in legislative measures like political districting and in the passage of law and legislation (Gotanda 1995; Green 1995; Guinier 1995). Third, Critical Race Theorists argue that race is socially constructed, and has no fixed reality (Bell 1995a; Kennedy 1995). Rather, society invents and maintains the “racial” categories, and manipulates or changes them at will (Delgado 2001). Further, society applies racial categories to different groups at different times, changing or shifting stereotypical images, a term Delgado (2001) refers to as “differential racialization.”

Critical Race Theory can be differentiated from other theories addressing racism. For example, a Marxist framework on racism describes it as an ideology

that is used by the dominant class to divide the subordinate class, allowing for better exploitation of the working class (Bonilla-Silva 2001). Critical Race Theory can also be distinguished from Institutionalized Racism. Racism can contribute to the differential access to the services and opportunities of U.S. society. This differential access is so commonplace in our institutions that it has become common practice, dominating our businesses, government, and universities. When racism is built into the institution, it doesn't have a perpetrator, but appears to be a collective act of the entire population. Carmichael and Hamilton (1967) argue that this institutional racism is a direct result from the social caste system that both sustained, and was sustained by, slavery and racial segregation. Institutional or "structural" racism incorporates policies that are seemingly race neutral, but can have a discriminatory affect on minorities (Pincus 1996). Although Critical Race Theory acknowledges the structures in society that may impede advancement for ethnic minorities, it directs its focus on ways in which the law and legal tradition work to adversely affect people of color on a collective level (Brooks 1994).

Critical Race Theory has focused on the anti-essentialism and the intersectionality of race, exploring how race intersects with other institutions in America (Banks 1995; Crenshaw 1995; Delgado 2001; Ladson-Billings and Tate 1995; Roberts 1995). For example, an Asian activist may be a Christian, married, working class Republican, showing overlapping identities that everyone has. Critical Race Theory is a tool that helps us learn to look critically at race relations through every day actions and interactions. Rather than approach

social situations objectively, it is also used to attack the way society is organized along racial hierarchies. For example, Ladson-Billings and Tate (1995), using critical race theory, have looked at how race intersects with education. They challenge conventional assumptions about research protocol and theory building by arguing for a critical race theoretical perspective in education under three propositions: 1) that race continues to have significance in the United States; 2) that American society is not based on human rights, but property rights; and 3) inequity may be understood by looking at the intersection of race and property. From these three propositions, Ladson-Billings and Tate (1995) theorize race, and use it as an analytic tool applied to understand school inequity. They argue that racism functions in schools on a daily basis, through instruction, curriculum, funding, assessment, and even desegregation, and that these educational practices are rife with racist underpinnings. By reifying racial hierarchy, schools serve the interests of the white middle class (Ladson-Billings and Tate 1995).

Critical Legal Studies, and legal discourse in general, neglected to place value on the experience of inequality (Bauman 1996). Consequently, a component of Critical Race Theory is the notion that people of color have a distinct voice because of their histories and experiences with oppression, and are able to communicate these experiences to whites through their presumed competence on the issues of race and racism (Delgado 2001). Writers attempt to convey the weight of discrimination and racism through the everyday experience of people of color (Bauman 1996). Legal Storytelling is one way that nonwhite writers recount these experiences from their personal perspective.

Using parables, chronicles, and autobiography, those who engage in legal storytelling write about everyday experiences to encourage Americans to understand the experience of race in the United States: walking down the street as a person of color; trying to find an apartment; seeking employment; dining out; and even interactions with police and the criminal justice system. What is real, or what we believe is real is actually socially constructed. How we see the world shapes our fundamental assumptions about the nature of reality. These assumptions are invisible to us, used similar to eyeglasses, as a tool to view and interpret the world, but not really examined for its own properties (Delgado 1989). Thus, through these glasses, stock stories are told that are retold, and deeply ingrained in our collective psyche, assumed as normal. Counterstories, then, tell a different version of reality. This story is the story that had been filtered out, and suppressed, and is told as a tool to combat racial underpinnings present but hidden in the stock stories.

Critical Race Theory can be used to challenge previous conceptions on sport and leisure theorizing. Research on sport has been presumed to be objective or neutral, and Critical Race Theory may be used to reject the very notion of neutral objectivity or detachment in research on race and sport. Analyzing sports from a race conscious rather than colorblind standpoint may provide additional insight on gender equity policies that appear to be colorblind and fair. Critical Race Theory proposes that we live in a society that is inherently unequal, and fundamentally racist, where blacks and other minorities are systematically disenfranchised because of race and racism (Hylton 2009). It may

be useful, then, to use Critical Race Theory and legal storytelling as tools to examine the proffered story that is being told, and uncover the story that is not being told about black women and girls in sport. The untold story tells of how race is left out of the gender equity discourse and battles. A discussion of the legal stories (i.e. cases) that have been told follows in Chapter Four, along with a discussion of the stories that should have been told but haven't.

### **Summary**

I began this chapter with a review of literature on sports participation in America, including a discussion of sports participation of women, and the sports participation of black women. I reviewed literature on the issue of black female underrepresentation in sport and highlighted the lack of empirical research addressing this issue due, in part, to the failure to draw upon secondary analysis of data drawn from available longitudinal surveys which the present study will address. Finally, after reviewing several theoretical perspectives, I provided the theoretical framework which will be used to guide the analysis for the present study. I will now turn to the study's methodology.

## **CHAPTER 3**

### **METHODOLOGY**

In this chapter, I will discuss the methods used for the quantitative analysis and the critical narrative-legal storytelling approach employed in the qualitative analysis to follow in Chapter Four. First, I present the sources from which data are drawn for the quantitative analysis followed by a description of the measurement of variables from the four national surveys. I then describe the approach used in the qualitative analysis (critical examination).

#### **Quantitative Approach**

##### *Data*

Data for this study will be drawn from four independent national surveys conducted by the National Center for Educational Statistics (NCES): The Educational Longitudinal Survey (ELS), the National Educational Longitudinal Survey (NELS), the High School and Beyond Survey (HSB), and the National Longitudinal Study (NLS). In addition, this study will draw upon data reported by the National Collegiate Athletic Association (NCAA).

The Educational Longitudinal Study (ELS) will be used in this dissertation to address the Title IX related issues dealing with the participation rates of African American and white female high school athletes in “growth” sports (e.g., soccer, volleyball and crew). Additional data have been compiled by the National Collegiate Athletic Association (NCAA). The data consist of statistical information regarding student-athlete ethnicity in intercollegiate athletics at NCAA member institutions. The NCAA notes that the statistics provided are derived

from self-reported data supplied by NCAA member institutions, and were not independently verified by the NCAA. Although the data collected by the NCAA use seven ethnicity categories as defined by the federal government, for purposes of this dissertation, I will only be addressing data as they relate to female athletes in the categories of Asian/Pacific Islander, Black non-Hispanic, Hispanic, and White non-Hispanic. I have excluded the categories of American-Indian/Alaskan Native and Non-Resident Aliens, who could fall into any of the ethnicity categories.

Data drawn from the National Longitudinal Study of 1972 (NLS); High School and Beyond Survey (HSB); National Educational Longitudinal Study of 1988 (NELS) and Educational Longitudinal Study (ELS) will be used to make comparisons in sports participation trends by race and gender across four decades following passage of Title IX in 1972. Thus, this study will assess trends based on national surveys across four decades from the 1970s to the 2000s.

#### *National Longitudinal Study of 1972 (NLS)*

The National Longitudinal Study of 1972 (NLS) was sponsored by the National Center for Education Statistics (NCES), and consists of surveys completed by selected high school seniors in the spring of 1972. Follow-up surveys were completed by the same sample of students in 1973, 1974, 1976, 1979, and 1986, effectively capturing data from the sample for fourteen years. The NLS study of the Class of 1972 from its high school years through its early 30s is widely considered as the baseline against which the progress and

achievements of subsequent cohorts may be measured. It provides one of the largest and richest sources of data for studying a wide range of characteristics of youth as they transition from high school to adulthood.

A two-stage sample design was employed to select the nationally representative sample. In the first stage of the NLS sampling design, 1,200 high schools were randomly selected from the 50 states and the District of Columbia. In the second stage, 18 high school seniors were randomly selected from each of the participating schools, resulting in a base-year sample size of approximately 21,600 students, who completed surveys in 1972. The first follow-up in 1973 obtained data from 93.7 percent of the students from the original sample. The second follow-up in 1974 obtained data from 94 percent of the students from the original sample. Similarly, the third follow-up in 1976 obtained data from 92 percent of the original sample.

#### *High School and Beyond (HSB)*

The High School and Beyond (HSB) survey included data taken from the 1980 twelfth grade senior class, and the 1980 tenth-grade sophomore class. Additionally, each cohort was surveyed again in follow-up surveys every two years through 1986, and the 1980 tenth-grade sophomore class again in 1992. This survey included data on post secondary school enrollment, educational attainment, and employment outcomes.

In the 1980 base year, over 30,000 sophomore students and 28,000 senior students were surveyed from 1,122 participating schools. Nearly 94 percent of respondents participated in the first follow-up in 1982 during their



twelfth grade senior year. Close to 93 percent of respondents participated in the second follow-up in 1984, and 92 percent participated in the third follow-up in 1986.

*National Educational Longitudinal Study of 1988 (NELS)*

The National Educational Longitudinal Study of 1988 (NELS) began being compiled by the National Center for Education Statistics (NCES), a division of the U.S. Department of Education, in 1988. NCES subsequently conducted follow-ups to the initial compilation of data in 1990, 1992, 1994, and 2000. The design as implemented in 1988 used a two-stage procedure to select a nationally representative sample of public and private schools that contained eighth-grade students, and then a stratified random sample of eighth-grade students within each selected school. For the base year of 1988, in-school surveys were taken of these eighth-grade students and the subsequent follow-ups assessed them at tenth-grade (1990), twelfth-grade (1992), and then two and six years later in 1994 and 2000 respectively. Each follow-up represented a smaller sub-sample of the initial sample. In addition to the students surveyed, their teachers, parents, and school administrators were also surveyed.

In the 1988 base year, 24,599 eighth grade students were surveyed from 1,052 participating schools. Over 90 percent of the base year respondents were surveyed for the 1990 and 1992 follow-ups. The first follow-up in 1990 surveyed the students in their sophomore year of high school, which allowed longitudinal measurements from the 1988 baseline, and also provided a comparison point to high school sophomores from the previous decade as studied in the High School

and Beyond (HSB) survey. Similarly, the second follow-up in 1992 (the students' senior year) allowed a comparison point to the high-school senior class of 1980 as studied in the High School and Beyond (HSB) survey. A total of 16,489 students completed both the 1990 follow-up and the 1992 follow-up surveys.

*Educational Longitudinal Study of 2002 (ELS)*

The Educational Longitudinal Study of 2002 (ELS) was also conducted by the National Center for Education Statistics (NCES). The study is designed to track a nationally representative sample of high-school tenth-graders through their twelfth-grade senior year. In addition to the student sample, data were also collected from the students' parents, teachers, librarians, and school administrators.

The base year survey in 2002 employed a two-stage sampling procedure, resulting in a stratified random sample of nearly 17,000 tenth-grade students from around 1,000 schools. The subsequent follow-up in 2004, had a response rate of over 90 percent of the initial sample, and is representative of high-school seniors in twelfth grade. NCES also compiled data from a 2006 follow-up to gather additional information about colleges and enrollment in postsecondary education. ELS data from tenth-grade and twelfth-grade students allow comparisons to be drawn to the High School and Beyond (HSB) survey from similar students in the 1980s, as well as tenth and twelfth grade students responding to the National Educational Longitudinal Study (NELS) in the 1990s, and high-school seniors from the National Longitudinal Study (NLS) Class of 1972.

It should be noted that since the initial data collections of the NLS and HSB, major changes, court decisions, and creation of federal affirmative action regulations like Title IX have been implemented to require high schools and colleges to provide more athletic opportunities for women and girls, leading to a substantial increase in female sports participation since the data were collected.

### **Measurement of Variables**

*Sports Participation*- This measure is the primary dependent variable drawn from each of the four national surveys. While items were worded somewhat differently across surveys, students indicated whether they participated or did not participate in intramural or interscholastic (varsity and junior varsity) sports for a list of sports that were provided. They were also able to indicate whether a specific sport was available at their school (NLS, HSB, NELS, and ELS).

*Race*-As self-reported by respondents in all four data sets, classified as black or White; This is a self-reported measure of racial identification. Black=1; White=0 (NLS, HSB, NELS and ELS).

*Gender*-This is a self-reported measure of gender identification. Female=1; Male=0 (NLS, HSB, NELS and ELS).

*Socioeconomic Status*-as reported in all four data sets; this is a composite measure of socioeconomic status as constructed by NCES using parent questionnaire data on five components: father's education, mother's education, father's occupation, mother's occupation, and family income. Quartile scores on

this measure are then dichotomized. Top Quartile=1; second, third, and fourth quartiles=0.

*School Region*-This measure uses the U.S. Department of Education categories to classify the students' school region. South=1; West, East, Central=0 (ELS).

*School Urbanicity*-This measure uses U.S. Census categories which allow schools to be classified as either urban (central city), suburban (area surrounding a central city within a metropolitan statistical area), or rural (outside a metropolitan statistical area). Urban=1; Suburban; Rural=0 (ELS).

*Location of School/Community Type*-classified as small=1; medium=2; large=3. (NLS).

*School Type*-This is a measure of school control (public=1; private=0 (NELS; ELS)).

*School Size*- This measure reflects total student enrollment. Large schools (enrollment greater than 1,000 students)=1; small schools (with enrollments less than 1,000 students)=0 (NELS).

*School Size*-This measure is based on school administrators' response to a question about the total student enrollment. Large schools (enrollment greater than 1,000)=1; Small schools (enrollment LE 1,000)=0 (ELS).

*School Poverty Concentration*- This measure is based on school administrators' response to a question regarding the overall percentage of students receiving free or reduced-priced lunch. High poverty schools are those

with greater than 30 percent, low poverty schools are less than 30 percent. High poverty schools (GT 30%)=1; Low poverty schools (LE 30%)=0 (ELS).

### **Qualitative Approach**

The Critical Race Theory approach will also be employed in examining this issue. Critical Race Theory allows us to look critically at race relations, racial subordination, and discrimination in everyday social interactions. Race matters in research, more so than gender and class, and for African Americans, race is more important than gender and class (Spivey 2003). Thus, Critical Race Theory is useful to uncover the racism that exists (sometimes invisibly) in our daily lives. Critical Race Theory assists in placing gender inequity issues into the broader context of history and self-interest (Delgado and Stefancic 2001).

Traditional approaches to scholarly sociological work often require objectivity based on concrete evidence (i.e., empirical data) or data derived from objective observation. This dissertation objectively looks at the intersection of race and gender participation issues by analyzing data, but also embraces subjectivity through the Critical Race Theory Approach. Being open to other viewpoints through subjectivity makes sense, since there is no way to truly be objective and distance oneself from the biases and perspectives carried with us as members of society. This analysis, then, will draw upon published historical work as a guide for the qualitative analysis, while approaching this analysis from a Critical Race Theory perspective.

Critical Race Theory proposes that racism is an ordinary presence in everyday interactions. It is a usual part of the way our society operates, and is a

common everyday experience for most people of color in the United States. Because it is a very real experience, “color blind” policies that encourage equal treatment for men and women only serve to reinforce racist structures embedded in U.S. society. U.S. public policy is made based on the self-interests of those in power, and Title IX has been employed to address white women’s inequity in sports to that of white men. Critical Race Theory is useful to examine the intersectionality of race and gender in sport, as it has been a useful tool to explore how race intersects with other institutions in America (Delgado and Stefancic 2001; Ladson-Billings and Tate 1995). Accordingly, this qualitative analysis will use race as an analytic tool applied to understand gender inequity in sport.

A component of Critical Race Theory is the notion that people of color have a distinct voice because of their histories and experiences with oppression, and are able to communicate these experiences to whites through their presumed competence on the issues of race and racism (Delgado and Stefancic 2001). What is real, or what we believe is real is actually socially constructed. Barriers to athletic opportunities are real, although they may be unseen. Critical Race Theory can be used to challenge previous conceptions on sport and leisure theorizing. Research on sport has been presumed to be objective or neutral, and the Critical Race Theory approach will be used to reject the very notion of neutral objectivity in research on race and sport. Analyzing sports from a race conscious rather than colorblind standpoint may provide additional insight on gender equity policies that appear to be colorblind and fair. Since Critical Race Theory

proposes that we live in a society that is inherently unequal, where blacks and other minorities are systematically disenfranchised because of race and racism, it will be useful to use Critical Race Theory and legal storytelling as tools to examine the story of Title IX and its legislative and legal history, and uncover the story that is not being told about black women and girls in sport.

### **Summary**

In this chapter, I discussed the data and variables used in this study. I provided detail on the four national longitudinal surveys used to compile the data, and the measurement of variables drawn from the surveys. Additionally, I discussed the qualitative methods that will be used to guide the study's qualitative analysis through integrating these methods with the theoretical perspectives of Critical Race Theory and Legal Storytelling.

## CHAPTER 4

### RESULTS

In this chapter, I will first present the results of the analysis of data drawn from the four national longitudinal studies, and discuss the results as they relate to research questions one and two. Second, in addressing research question three, I will provide a critical examination of the history of white and black women in American sports in the context of civil rights activity in the United States after the U.S. Civil War and provide an overview of the legislative and legal history of Title IX followed by an analysis of legal challenges (i.e., cases) to gender inequality.

In addressing research question one involving whether black women have made the same progress as whites in high school sports participation since the enactment of Title IX in 1972, results based on a descriptive analysis of data drawn from four national surveys are presented-- the National Longitudinal Study of 1972 (NLS); the High School and Beyond Survey (HSB); the National Educational Longitudinal Study of 1988 (NELS); and the Educational Longitudinal Study (ELS)-- to make comparisons in sports participation trends by race and gender across four decades following passage of Title IX in 1972.

Research question two is to what extent is black women's under-representation a function of the extent to which schools they attend offer fewer opportunities to participate in sports, especially the "growth sports" which have been added as part of the Title IX strategy to achieve gender equity (e.g., soccer, volleyball, and crew). This question is addressed by using the Educational



Longitudinal Study (ELS) data and employing multivariate analytical techniques (logistic regression analysis) to assess Title IX effects related to the issue involving opportunities for participation of African American and white female students in "growth sports" (e.g., soccer, volleyball and crew).

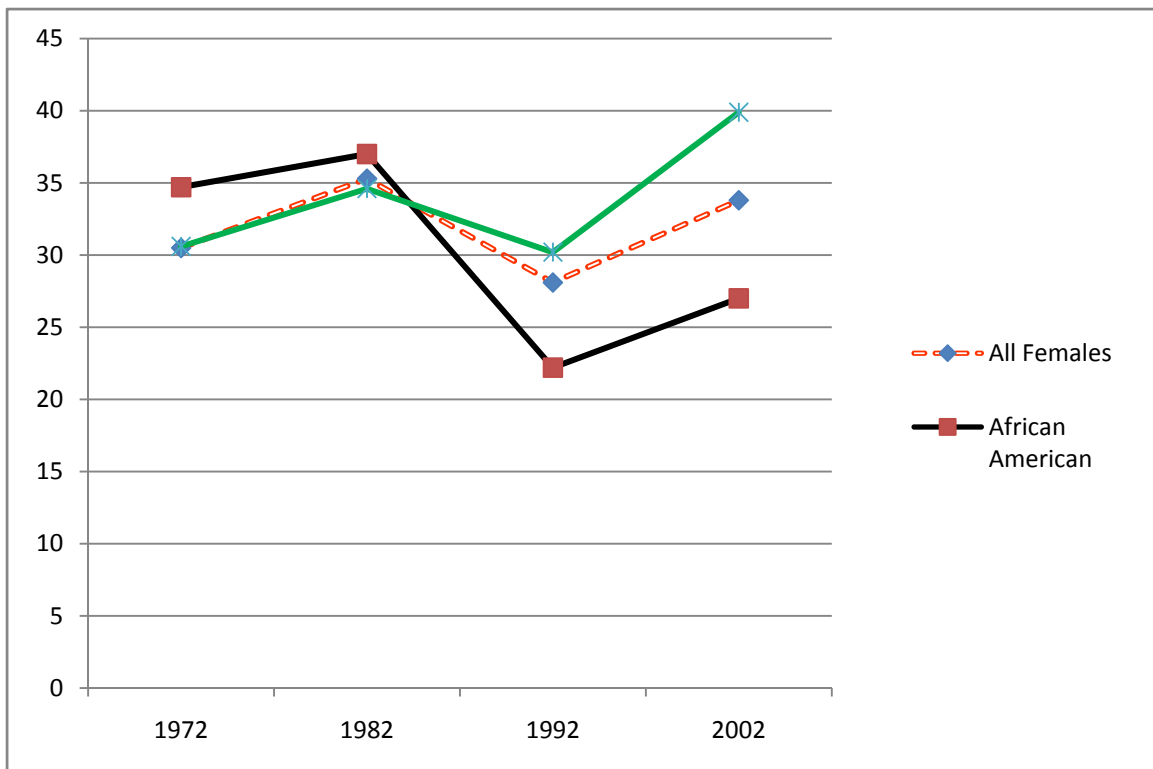
Finally, research question three is to what extent have the legal challenges to gender inequality addressed the racial disparity between black and white females in gaining access to sport participation in their intent and outcome. The results for addressing research question three are presented through a detailed, critical examination of the history of white and black women and sports followed by an assessment of legal challenges (i.e., law suits) to gender inequality involving Title IX issues.

### ***Descriptive Analysis***

The data used in the descriptive analysis are drawn from the; National Longitudinal Study of 1972 (NLS); High School and Beyond Survey (HSB); National Educational Longitudinal Study (NELS); and Educational Longitudinal Study (ELS), each conducted by the U.S. Department of Education's National Center for Education Statistics (NCES). As the trends in Figure 1 indicate, overall participation of females in high school sports experienced a slight increase during the initial post-Title IX decade after 1972, followed by a sharp decline during the 1980s and an increase that began in the early 1990s that continued through the beginning of the first decade in the 21<sup>st</sup> century. However, Figure 1 also shows that Black female participation in high school sports, compared to white females, declined more sharply in the decade of the 1980s

and, while experiencing increases, participation of African American females in sports since the early 1990s has not kept pace with the sharp increase of white female participation in high school sports. As a result, although, in 1972, black females (compared to white females) were overrepresented among high school athletes, by 1992 and beyond, black females (compared to white females) have been highly underrepresented among high school athletes.

**Fig. 1**  
**Post-Title IX Trends in High School Female Interscholastic Sports**  
**Participation by Race**



Further insight into over and underrepresentation of female participation in high school sports based on ethnicity during the initial post-Title IX decades (1972 – 2002) can be gained by examining data from four longitudinal surveys conducted during three decades: the National Longitudinal Study (NLS) in 1972, the High School and Beyond Survey (HSB) in 1982, the National Longitudinal Survey (NELS) in 1992, and the Educational Longitudinal Survey (ELS) in 2002.

Table 1 shows the percentages of female students who participated in high school interscholastic athletics among specific ethnic groups as reported in NLS, HSB, NELs, and ELS. In addition, a *parity* measure was created as an indicator of over or underrepresentation in sports for each ethnic group at the four time periods (1972, 1982, 1992, and 2002). The parity measure is an odds ratio representing the ratio of each ethnic group's participation to total female participation in athletics. Values above unity (1.00) reflect overrepresentation, while values below unity reflect underrepresentation. Consistent with the trends described in Figure 1, the results in Table 1 (focusing on black-white comparisons) show that the percentage of black females who participated in high school interscholastic athletics declined after reaching 37 percent in 1982 to 27 percent in 2002, while white female participation increased from 30.6 percent in 1972 to 39.9 percent in 2002.

Furthermore, while the parity ratio of 1.14 for African American females in 1972 indicated their overrepresentation in sports (i.e., blacks were 14 percent more likely to participate in interscholastic sports than their female peers), by 2002, African American high school females were only 80 percent as likely (or 20 percent less likely than their female peers) to participate in sports. Similar to African Americans, Asian and Hispanic female underrepresentation in high school sports persisted across the decades of the 1970s, 1980s and 1990s. By 2002, Asian females were 20 percent less likely than their female peers to participate in interscholastic athletics, while Hispanic females were 30 percent less likely to participate.

Table 1. Post-Title IX Trends in High School Female Interscholastic Sports Participation by Ethnicity (subsample sizes in parentheses)

	1972 NLS		1982 HSB		1992 NELS		2002 ELS	
	Percent Participated	Parity Ratio	Percent Participated	Parity Ratio	Percent Participated	Parity Ratio	Percent Participated	Parity Ratio
African-American	34.7 (1,567)	1.14	37.0 (825)	.95	20.6 (423)	.79	27.0 (869)	.80
Asian	17.0 (106)	.56	37.1 (165)	.95	25.5 (325)	.97	27.0 (653)	.80
Hispanic	22.2 (463)	.73	35.7 (1,090)	.99	19.5 (548)	.74	23.6 (932)	.70
White	30.6 (7,818)	1.00	34.6 (3,542)	1.02	28.2 (2,913)	1.08	39.9 (825)	1.18
Totals	30.5 (10,344)		35.3 (5,791)		26.2 (4,975)		33.8 (6,716)	

Parity ratio is an odds-ratio indicator representing the ratio of each ethnic group's participation to total female participation

***Multivariate Analysis***

The data for the multivariate analysis are taken from ELS. The ELS base year survey was conducted in 2002 when the students were in tenth grade and employed a two-stage, stratified random sample of nearly 17,000 tenth graders in some 1,000 schools who were followed up in 2004 when the respondents were in twelfth grade. Estimated response rates remain consistently over 90 percent. The overall sample is made up of Whites 53.7 percent, Hispanics 13.7 percent, African Americans 12.5 percent, Asian/Pacific Islanders 9 percent, and Native American/Alaskan Native .8 percent. However, our analytic student subsample consists of Whites and African American females only enrolled in public schools. We also use data from the school administrator questionnaire to identify schools that do (or do not) offer specific sports for female students.

Table 2. Logistic Regression of Sports Availability on Student Race (Controlling for School Size, Location, Region, and Poverty Level) as Reported by School Administrators

Sport Available to Females	Odds Ratio	Unstandardized Regression Coefficient	Standard Error	Cox & Snell R <sup>2</sup>	Constant
Baseball	1.292	.257	.274	.009	-4.055
Softball**	.304	-1.192	.198	.049	2.452
Soccer**	.461	-.774	.148	.280	.213
Basketball**	.121	-2.112	.344	.031	3.677
Swimming**	.890	-.117	.119	.277	-.663
Football	1.171	.158	.162	.017	-2.718
Ice Hockey	.467	-.762	.304	.070	-2.207
Field Hockey*	1.183	.168	.160	.081	-1.919
Volleyball**	.587	-.533	.124	.075	1.587
Lacrosse	1.112	.105	.160	.073	-2.324
Tennis*	.722	-.326	.149	.281	-.124
Cross	.538	-.619	.151	.173	1.800
Country**					
Track**	.431	-.842	.216	.051	2.887
Golf**	.531	-.633	.104	.075	.209
Gymnastics*	.780	-.249	.141	.107	-1.946
Wrestling*	1.369	.314	.145	.017	-2.123
Cheerleading	1.186	.171	.209	.039	2.238
Drill Team	.912	-.092	.100	.055	-.305
Other Sports	1.022	.022	.136	.024	-2.143
No Sports**	3.851	-2.810	.398	.020	-3.649

\*\*\* p < .001      \*\*p < .01      \*p < .05

Data Sources: Educational Longitudinal Study (ELS) Senior Cohort (2002); control variables were coded as follows: School Size (1,000+ =1), Location (Urban =1), Region (South =1), and Poverty Level School (% Free Lunch > 30% =1)

Our analyses employ logistic regression given the categorical outcome measures we examine. Table 2 reports the logistic regression of the availability to female students of sixteen specific sports activities (along with cheerleading and drill team) on race, school size, school urbanicity, school region, and school poverty level. The unstandardized regression coefficients represent the net or direct effect of each of our predictor variables on the availability to female students of the 18 specific activities. The reported Odds Ratios allow us to compare the availability to female students of specific sports across categories of the predictor variables. We focus our discussion here on the net effect of race on the availability of specific sports offered by schools as reported by school administrators.

First, considering the effect of race, we see that black females typically attend schools that offer fewer sport participation opportunities for females. Specifically, among the eighteen different activities examined, we find that schools attended by black females were significantly *less* likely to offer (to females): softball, basketball, soccer, ice hockey, volleyball, tennis, cross-country, track, golf, and gymnastics. The same schools are also more likely not to offer any sports to female students. In contrast, schools attended by African American females were significantly *more* likely to offer (to females) only wrestling. As other research would suggest, school size, region, location, and poverty level are also related to sport participation opportunities in predictable ways. Large schools and low poverty schools offer greater participation



opportunities for females, while the results for region and urbanicity vary according to sport types.

### **A Critical Examination of the History of White and Black Women and Sports**

Critical Race Theory allows us to look critically at race relations, racial subordination, and discrimination in everyday social interactions in the United States, including sports. For African Americans, race is more important than gender and class (Spivey 2003). Because race and racism are pervasive in U.S. society, much of history consists of stock stories, however, the racism that exists (sometimes invisibly) in our daily lives is a permanent fixture. Because it is a very real experience, “color blind” rules that encourage equal treatment only serve to combat blatant racism and racist practices. Approaching issues from a “color blind” manner only affects blatant, egregious racism. Since, Critical Race Theory scholars argue, racism is woven into our thought processes and social structures, then the racism present in our routine activities and institutions will persist, and keep nonwhites in subordinate status. Second, racism operates in our society to maintain the notion that white is better than nonwhite. This interest convergence or material determination helps whites maintain a material and psychological advantage over nonwhites, and there is little incentive for whites to eradicate racism and give up this advantage (Delgado and Stefancic 2001). Some Critical Race theorists have argued that U.S. public policy is made based on the self-interests of those in power.

Title IX, and the litigation and policies supporting it, has focused solely on gender equity. There may be implications for women of color even as the

progression of Title IX works to close the gender gap between male and female participation rates and access to sports. The present study addresses this issue. When determining whether the benefits of Title IX have accrued to both black and white women equally, it is important to review both the historical and the legal paths taken to achieve gender equity in American athletics. There is a history of demonizing women in sports by attacking women's sexuality, femininity, and reproductive ability. These negative connotations have permeated the ability of women and girls to engage in sport activity even as they excelled as athletes.

### *History of American Women and Sports*

To understand the lower participation rates among gender and gender-race subpopulations, and the reasons why policy may contribute to this phenomenon, it is important to first retrace the history of sport in the lives of American women and girls. Sports and sport participation in the United States have a history that is woven with political and social context. This is especially evident when looking at the role of sports in the lives of women.

At the beginning of modern American history, colonial women and the indigenous population's women maintained lives where sports were mixed in with everyday tasks and rituals (Struna 2005). However, in the middle of the eighteenth century, biological differences between men and women became a part of the political debate for whites, and women were determined to be inferior to men, worthy only of maintaining their daily activities within the house through chores and minimal exertion. Although white women participated in social

activities such as dancing, they generally were not encouraged to participate in strenuous or athletic activity.

Slaves, other minority women, and the poor on the other hand, were used to strenuous work outside the home, and physical exercise was inherent in their daily activities. Their work and subordinate status made them ineligible for the higher standards of beauty and femininity reserved for the frail white woman of means. While the status advantage of middle class privilege was extended to white women, who had no reason to break a sweat, poor women, on the other hand, forced to work constant and often physical labor, experienced athleticism differently from middle and upper class white women. During this time, much of the medical advice of the day instructed white women to limit strenuous physical activity to limit damage to her reproductive system (Cahn 1994). However, for black women who experienced daily life as slaves, physical activity and the ability to reproduce were not seen as mutually exclusive, and their ability to work determined their ability to survive. Sojourner Truth highlighted this disparity in her famous "Ain't I a Woman" speech, noting that while white women needed to be helped into carriages and lifted over ditches, she (Ms. Truth) had labored alongside men, oftentimes performing better than they did, had even been whipped and borne the lash, and yet, as a woman, no one had deemed her helpless enough to have helped her into carriages or even over mud-puddles (Truth 1851). Clearly, the way physicality was experienced by middle and upper-class white women differs from the way it was experienced by poor and working class women. Moreover, racial discrimination against black women also

prevented their participation in traditionally white activities and participation in sports.

Organized sport in the United States was originally developed for men to support their physical and physiological development in the nineteenth century (Coakley 1994). Closely aligned with masculinity, sports were seen as a way to highlight male physicality and dominance, emphasizing size, speed, and strength. In an era where women were encouraged to be passive and gentle, athletic women often bore the burden of being labeled negatively, their sexual orientation often called into question (Cahn 1994). Physical activity and “strenuous” movements were discouraged, for fear of harming the female reproductive organs, or interfering with childbearing (Cahn 1994) as childbearing was seen as the only real value of women; full civil and voting rights had not been afforded them at the time. Authorities directed women away from sports using the guise that sports were inherently masculine. From a critical standpoint, it can be argued that middle-class white women experienced “double jeopardy” because by being both white and female, they were discouraged from participating in sports at this time.

Upper class Americans looked at physical activity as only appropriate for skilled tradesmen, and not for ladies to engage in (Suggs 2005). However, in the middle of the nineteenth century, the medical profession began to view mild physical activity as positive for the body (Suggs 2005). Although athletic participation among white women within the middle and upper classes began to grow, racism and classism worked to keep non white women from participating,

even as female sport participation grew in the nineteenth century. Young women who were not yet married or bearing children were encouraged to exercise moderately to maintain their health, and colleges and universities, havens for middle and upper class women, instituted physical education programs to instruct the young ladies on calisthenics and other less rigorous exercises. Moderate exercise was also promoted as a way to support the “survival of the fittest” principle proffered by Darwin, and young women were encouraged to engage in moderate exercise to stay healthy and aid in capturing a husband (Cahn 1994). The idea that exercise could attract a husband by enhancing a young woman’s beauty was a middle and upper class ideal. However, for working class women, exercise and good health was a necessity, not for courting or beauty reasons, but for factory and domestic work, which required stamina and some strength. Working class women were initially too busy working to engage in additional activity. Accordingly, it was the middle and upper class women who attended college that assisted in the change in female sports participation patterns from basic calisthenics to more structured sports.

It was in this climate that women began to enter the new profession of physical education. The Sargent School and the Boston Normal School for Gymnastics began training female physical education teachers in the 1880s, and these graduates began physical education departments at women’s colleges or women’s departments within mixed colleges soon thereafter (Cahn 1994; Suggs 2005). This new discipline maintained that the purpose of sport was to

encourage good health, and it was through this profession that “female” versions of male games began.

An early organized sport that was well received by middle and upper class women was basketball. Naismith invented basketball for young men in 1891 as an inexpensive game that could be played indoors during winter to keep their minds and bodies occupied (Cahn 1994). Soon after Naismith invented basketball for young men, the popular sport’s rules were modified for women. Variations of sports had been adapted for women, who experienced most versions of athletics in a lighter, less strenuous way. The NWBC issued the first official women’s basketball rulebook in 1901. The new rules were intended to promote teamwork and cooperation, and not competition and physicality like the male version. Women were cautioned against participation in competitive meets, which were only appropriate for male athletics.

It was part of physical education training that activities like Swedish gymnastics and calisthenics were popular (Suggs 2005). However, basketball quickly became a favorite sport among women. The first women’s intercollegiate basketball game occurred in 1896 when Stanford beat Berkeley 2-1 (Suggs 2005). Although basketball was invented for men, women enthusiastically participated in the sport. In fact, participation in women’s basketball grew concurrently with men’s basketball, although men were able to play competitively, and women were limited to participation in intramurals (Suggs 2005).

Collegiate women have always eagerly participated in organized sports, and sports have always been a part of college life for women (Suggs 2005). Gymnastics became one of the most popular sports for collegians at this time. Many collegiate women were exposed to gymnastics through these newly established physical education departments. Upon graduation, some women found opportunities to participate in athletics by forming their own clubs, like the Chicago Women's Athletic club, founded in 1903. The wealthiest of these joined country clubs, and enjoyed sports that were dominated by the middle and upper classes: equestrian activities, archery, tennis, golf, and swimming (Cahn 1994).

Although women had been characterized as the "inferior" sex, they were allowed to play in championship competition in archery, tennis, and golf in the late nineteenth century because these sports were not played strenuously. These were sports suitable for "refined" women and "proper ladies" (Cahn 1994).

Although women were enthusiastic about sports, they were still discouraged from participating in sports activities, instead instructed to preserve their femininity. It proved to be quite a challenge to keep women from participating in sports. By the end of the nineteenth century, white women also began to enjoy bicycling. As with previous attempts by women to exercise outside the acceptable norms, the bicycling craze was met with criticism. Some insisted that too much bicycling could cause a woman to damage her uterus and spine (Cahn 1994; Suggs 2005), and any female bicyclist was in imminent danger of developing a "bicycle face," which was a supposed hardening of the facial muscles due to the activity. Despite the criticism and medical warnings,

women were not discouraged, and those women from the middle and upper classes continued to participate in bicycling, tennis, and engaging in other forms of active exercise (Suggs 2005).

During this time when America was transitioning from agrarian to industrial life, numerous campaigns ensued, seeking to keep the increasing numbers of young working class women in the cities from engaging in harmful behaviors (like going out for enjoyment after work), and organized athletics were used to promote activities to keep working class, rural, and poor people occupied (Suggs 2005). The Amateur Athletic Union (AAU) was formed, and began sponsoring athletic competitions at the amateur level, although its membership was initially extended only to males (Cahn 1994). Similar exercise campaigns began for men; however, rather than used to encourage good health, these campaigns were used to encourage physical superiority and masculine characteristics attributed to men (Cahn 1994). Organizations like the Young Women's Christian Association (YWCA), settlement houses, churches, and even the public schools began to provide opportunities for white working class girls to engage in athletic activity (Cahn 1994). For some, employer-sponsored sports activities and leagues also provided opportunities. Women embraced the opportunity to participate in sports, and did so enthusiastically, as their ability to participate would be short-lived, bordered by the restrictions of their youth, and the marital and childrearing priorities destined in their futures.

Women's participation in basketball began very early in the sport as a collegiate activity. Smith College in Massachusetts first introduced basketball to



its students in 1892 (Cahn 1994). In 1899, the National Women's Basketball Committee was formed, which later became the Committee on Women's Athletics of the American Physical Education Association in 1917 (Cahn 1994; Suggs 2003a).

As America entered the twentieth century and the flapper era, women were beginning to explore less Victorian ideals. The women's suffrage movement had successfully advanced the cause of women's rights. Entering the era of the "new woman," women began to wear shorter hair, flashier clothes, and publicly displayed a sexuality that was a significant departure from the restrained Victorian woman of the nineteenth century (Cahn 1994) Women were excited about life and athletics. Working class laborers had recently won the right to limit work to eight-hour workdays and shorter workweeks, and the workers' hard won fight left them with leisure time previously enjoyed only by the wealthy. The growth in women's sports at this time is also attributed in part to the American workers' attempt to fill these new leisure hours. Banks, insurance companies, and other industries employing a high number of female employees began offering women's sports opportunities in basketball, swimming, track, tennis, riflery, golf, and bowling (Cahn 1994).

Blacks migrating from the South and immigrants from Europe and Mexico were establishing parallel institutions to facilitate their incorporation into industrialized American life. These churches, social clubs, welfare groups, recreation centers, and small businesses aided in strengthening communities and transitioning the new immigrants. These institutions also provided

community based opportunities for participation in athletics (Cahn 1994). As opportunities to participate grew, American interest in sports grew as well, and professional sports like baseball and boxing, along with amateur sports of track & field, swimming, golf, college football, tennis, and racing were extremely popular.

As interest in athletics continued to grow, the AAU finally organized women's championship meets in swimming (1916), track (1924) and basketball (1926) (Cahn 1994). The Women's Swimming Association of New York was founded in 1917, the same year that the CWA was formed. Soon thereafter, women athletic teams represented the United States in the Olympics for the first time in 1920, competing in swimming and skating. Although the women's Olympic skating team produced a medal winning performance by Theresa Weld, the women's Olympic swimming and diving team dominated, winning four of five gold medals (Cahn 1994). Ethelda Bleibtrey and Aileen Riggan (who was only thirteen) contributed heavily to those swimming and diving wins (Cahn 1994). Cahn (1994) further notes that leading white female athletes shared national fame second only to movie stars. Their accomplishments and subsequent fame came complete with full spread articles and advertisements in national media. This was a golden age in women's sports. While this positive attention was finally being heaped upon middle and upper class female athletes, black and working class athletes, meanwhile, participating outside the glamour of swimming, diving, and other exclusive sports like tennis, were relatively ignored.

Cahn (1994) draws a parallel between the changes in the political perceptions and images of beauty that began with the lauded athletic female

body with the new dress styles and sexualized female body of the 1920s.

Women were freer, showing their bodies more, and were more comfortable with a new modern style of womanhood. With the distinctive break from traditional Victorian values, young men and women engaged in more leisure activities and freely took their sexuality public, placing high value on heterosexual companionship and sexual intimacy (Cahn 1994).

Critics, fearful of this new, less traditional attitude, renewed the discourse of the late 19<sup>th</sup> century that athletic participation would damage femininity and reproductive organs. More outspoken critics, some of whom were women physical educators, began “masculinizing” females who participated in sport. Concerned that impressionable young women would be innocently sucked into the glamour and fun of competitive sports, and would lose their womanly qualities (Cahn 1994), these critics began once again discouraging athletic participation for women. Many of these critics believed athletic participation would hyper-sex women and girls, who would be caught up in the frenzy of the competition and excess omnipresent in the uninhibited flapper lifestyle.

Two women’s organizations were formed during this time. In 1920, collegiate coaches and athletic administrators organized the National Association of Directors of Physical Education for College Women (Suggs 2005). The National Amateur Athletic Federation was founded in 1922 in an attempt to challenge AAU’s stronghold on amateur sports (Cahn 1994). The Committee on Women’s Athletics (CWA, of the APEA) furthered its efforts through the physical education profession, and the Women’s Division of the National Amateur Athletic

Federation (NAAF), formed in 1923 and headed by Mrs. Lou Hoover (wife of Herbert Hoover), brought its fight to the community level in an attempt to challenge AAU's stronghold on amateur sports (Cahn 1994). By the 1940s, the Committee on Women's Athletics of the American Physical Education Association became the National Section on Women's Athletics and merged with the Women's Division of NAAF. Although NAAF, CWA, and the male dominated athletic world believed that women should participate in sports, there was considerable disagreement over the types of sports women should play and the level of participation and competition acceptable for women was the point of contention. Women's sports advocates were opposed to competition, and sports teams were restricted in their play. Through the workings of the physical educators, as an alternative effort to encourage women to participate in sports without the unnecessary pressure of competition, many colleges began "play days," which allowed a group of athletes to travel to another college to choose teams and play basketball, volleyball, and other appropriate sports (Cahn 1994; Suggs 2005).

Play days provided the athletes an opportunity for different teams to participate in sports with a spirit of cooperation, without the unnecessary concerns of talent or skill, and promoted a type of inclusive utopia for the participants (Cahn 1994). These play days were more social than competitive, and by 1930, half of all American colleges participated in play days (Suggs 2005). By 1936, 40 percent of colleges had transformed the individual play days into team activities, allowing their best intramural teams to participate in "sports

days,” and to informally compete against other collegiate teams in the area (Suggs 2005). These types of activities were sanctioned by the national organizations. However, while organizations like the National Section for Girls and Women in Sports (NSGWS) encouraged sports participation for the white middle and upper class collegians, NSGWS ignored the female students at historically black colleges and universities.

Following the popularity of athletics for women during the “golden age” in the decades beginning in the latter part of the 1930s through the resurgence of the second women’s rights movement in the 1960s, schools began to discontinue play days and sports days, and women were once again discouraged from participating in sports. Although black colleges were still funding intercollegiate women’s basketball, few white colleges funded intercollegiate women’s basketball games by the 1930s (Cahn 1994). For these white colleges, team sports like basketball and track & field were once again deemed masculine. Only black girls played them, and they were considered off limits for respectable ladies.

While other sports like tennis and swimming were less masculine, and thus were more acceptable for female participation, even as women were allowed to participate, sexism was still present, as concerns over such things as displaying “mannish” strength persisted. Instead, Cahn (1994) notes that to reinforce femininity, athletes were forced to become objects of beauty and mystique, not skill. For example, swimmers were billed in the media as “nymphs” or “mermaids,” negating their talent as championship swimmers, and drawing the

focus solely to their feminine and physical attributes. The exception to this was field hockey. Cahn (1994) argues that because field hockey was an upper-class sport invented solely for women, and because its participants were the appropriate gender and class for the sport, physical educators never attacked it as they had other sports. Field hockey was inherently feminine. Additionally, softball, which was initially a derivative of baseball but designed for indoor play, became a depression-era game of choice in the 1930s, and, by the 1940s, more than 9 million Americans had joined softball teams (Cahn 1994). Although softball was played by man and woman alike, it was also a game that crossed cultures, having appeal in the black, Mexican, and Japanese communities as well as the white urban and rural communities (Cahn 1994).

Because of its cross cultural and intra-class appeal, baseball was a high revenue generating sport. When World War II began, the deployment of American men for war initiated a stagnation in baseball. Eager entrepreneur Philip K. Wrigley, chewing gum magnate and owner of the Chicago Cubs baseball team, organized the All-American Girls Softball League to keep baseball stadium full in 1943 (Cahn 1994). Changed to the All-American Girls Baseball League (AAGBL) two years later, the League operated for eleven years until 1954. A rival league, the National Girls Baseball League, formed in 1944, and together, the two leagues sought to make women playing a “man’s sport” acceptable (Cahn 1994). Since the teams were participating in a man’s sport, these players faced ridicule and stigma. While the National Girls Baseball League ignored the sport’s mannish stigma, the AAGBL attempted to counteract

the stigma by having its players maintain femininity through visual means: wearing short skirts, displaying reserved mannerisms, wearing makeup, and adhering to a strict feminine styled dress code (Cahn 1994). Black women were not recruited to participate in these two new leagues, however, either because of the pervasive racism of the 1940s, or because they did not meet the strict standards of femininity and beauty as required by white America (Cahn 1994).

Ancillary to women's participation in American sports is American women's participation in international sports. Betty Robinson, a white woman, won the first Olympic women's 100-meter sprint in 1928 when the International Olympic Committee added five women's track & field events to the 1928 Olympic games (Cahn 1994). Babe Didrikson, another white woman, participated in the 1932 Olympics and won gold medals in the javelin throw and hurdles, and a silver medal in the high jump (Cahn 1994; Suggs 2005). Black women were also successful in the Olympic games once they were allowed to participate. The femininity and sex of successful female Olympians were questioned, and black women came to bear additional ridicule because of their disproportionate representation in amateur and collegiate track & field (Cahn 1994).

As further attack to women's athletics, following the 1948 Olympic games in which Alice Coachman performed her historical gold-medal winning high jump, the International Olympic Committee engaged in discussions to eliminate many women's track & field events from the Olympic games. An alternative paternalistic proposal emerged as well. Because women were performing well and exceeding gender expectations of their sports ability, the International

Olympic Committee proposed creating a third category of participants, making distinctions between men, women, and presumed hermaphroditic participants in order to level the playing field so that “normal” women could participate competitively. This proposal was defeated, although the International Olympic Committee did begin to perform anatomical and chromosomal checks of women athletes in 1967 (Cahn 1994). The climate was ripe for political change in athletic policy towards women, and five years later two significant events helped to usher in a new era of female athletic participation in sports: Title IX and the “Battle of the Sexes.”

Billie Jean King is the winner of six Wimbledon singles championships and four U.S. Open titles. King won 32 of her career 39 Grand Slam titles, including all twelve of her Grand Slam singles titles, nine of her sixteen Grand Slam women's doubles titles, and ten of her eleven Grand Slam mixed doubles titles between 1966 through 1975. Her prowess at tennis allowed her to defeat other great tennis players like Martina Navratilova, Chris Evert and Margaret Court. King's “Battle of the Sexes” opponent, Bobby Riggs, a one-time Number 1 tennis champion in the 1940s, was a male chauvinist, who argued that women were no match to play at the level of men, claiming that the top female player of the time could not beat him, even at 55 years of age, because men were inherently superior players to women. Riggs had recently played and defeated current women's champion tennis player Margaret Court on Mother's Day in 1973. He immediately issued the challenge to King, asserting that by mere virtue of his manhood, she would be no match to him. In addition to her prominence as a top



women's athlete and tennis player (she was Sports Illustrated's Sportswoman of the Year in 1972), King had also been exceedingly vocal about women's equal rights in sports.

The "Battle of the Sexes" tennis match was held at the Houston Astrodome on September 20, 1973. Drawing the reported largest ever live audience for a tennis match, it received prime time television coverage, and more than 30,000 spectators filled the stadium and an estimated additional 50 million viewers watched on television. Billie Jean King entered the Astrodome tennis court carried out on a gold and red velvet litter like Cleopatra, held aloft by four muscular men half-dressed in togas. Bobby Riggs entered the Astrodome on a rickshaw carriage that was pulled by women who were equally scantily clad. Notwithstanding the jest portrayed in their entrances, a heated tennis match ensued. Despite Riggs' best efforts, Billie Jean King defeated him in three straight sets of tennis by wearing him down with long rallies; the final scores were 6-4, 6-3, and 6-3.

The Battle of the Sexes was such a historic event that it went a long way in advancing the cause for women's athletic equal rights. Billie Jean King went on to organize the Women's Tennis Association, a union of women players that successfully improved the bargaining position for female tennis players, requiring equal purse as men's tennis players. In 1973, the U.S. Open became the first major tournament to offer equal prize money for men and women. King was the first woman in American history to make more than \$100,000 a year in tennis. She started a women's sports magazine, and organized the Women's Sports

Foundation, an organization promoting the value and experience of women and girls in sports. King was the Associated Press's Woman Athlete of the Year in 1967 and 1973, and she was Time Magazine's Woman of the Year in 1976. Life Magazine had her listed as one of the 100 Most important Americans of the 20<sup>th</sup> Century (she was the only female of the 100 Americans, and one of four athletes, including Babe Ruth, Jackie Robinson, and Muhammad Ali). Indeed, Billie Jean King's voice in the struggle for women's equality in the 1970s was instrumental in changing perceptions of women, making it acceptable for American women to exert themselves in pursuits other than childbearing.

After Title IX, and the subsequent implementation regulations had shown that the policies were here to stay, in 1980, the NCAA broadened its base to include women's collegiate championships in a variety of sports. Although the AIAW had been sponsoring state, regional, and national championships for its member institutions, the NCAA had deep pockets and access to the media, and most schools transferred their membership affiliation from AIAW to the NCAA (Cahn 1994). By 1982, the takeover was complete, and AIAW closed its doors and ceased operations. However, other women's advocacy groups like Billie Jean Kings' Women's Sports Foundation have continued the charge for women and girls in sport.

### *History of African American Women and Sports*

In order to understand black female participation in sports, we must first understand that if we look at the experiences of black women in sports using Critical Race Theory, we understand that there are two different stories to be

told. The story of female participation in sports from a “color blind” perspective neglects the separate story of black women. Just as in the experiences that characterized the exclusion of white women in sports, black women in sports were ignored, excluded, or prohibited from participating. However, there is a history of black women in athletics that runs concurrently with the history of white women in athletics. During the same period that white women were entering into athletic competition, black women like Ora Washington and Lula Hymes were competing in sports in a climate steeped in racism and sexism. Working together with classism, the athletic choices of black female athletes were limited.

In the black community, sports participation among females had been generally accepted socially, and the black community placed few restrictions on female sport participation (Coakley 2004). Black female participation in sports took a different path from white female participation. Because of their history of physicality through labor, the black community often did not have stigmas on maintaining the femininity of black women athletes. Thus, while white America was limiting the athleticism of white middle and upper class women, there were no such limitations on black women and poor women. Cahn (1994) notes that because most of the black elementary and high schools lacked resources for physical education classes, these institutions provided interscholastic sports as a form of exercise. Segregated from playing in leagues with whites, black athletes participated in athletics through community-based venues like the YMCA, YWCA, and church leagues (Cahn 1994). Basketball was also a popular sport in the black community. Most black colleges, industrial training schools, and normal

schools were reporting their games to the black press, and national papers like the *Chicago Defender*, the *Pittsburgh Courier*, the *Philadelphia Tribune*, and the *Baltimore Afro-American* by the end of the 1920s (Cahn 1994). Women's basketball played to sold out crowds in local recreation centers and churches, and games were often followed by dances or live musical entertainment for the evening. By the 1940s, girls' track & field and basketball were staples at most black high schools (Cahn 1994).

Historically black colleges and universities in the South like Xavier and Tuskegee Institute developed a rich history of interscholastic athletic programs for women participants. However, similar to the white colleges at the time, many black colleges and normal schools began offering physical education degree programs beginning in the 1920s (Cahn 1994). These newly minted physical educators differed from their white colleagues, however, in that they geared their programs towards improving the overall general health of the black community as well as enhancing individual health. While white and black colleges were instituting physical education departments and white colleges were participating in play days, elite black colleges like Hampton Institute, Howard University, and Fisk continued to view women's sports as unladylike. Nevertheless, by 1939, only 25 percent of black college administrators objected to female participation in intercollegiate sport, compared to 83 percent opposition of white institutions to women's varsity athletics (Cahn 1994).

At the same time that elite, middle class black colleges portrayed their students as interested in studying and not athletic performance, other black

colleges like Tuskegee Institute and Tennessee State University supported women's athletics, and were producing champion female athletes (Suggs 2005). Tennis had become a part of student life at Tuskegee Institute in 1890, and entering into the twentieth century, many of the historically black colleges supported both men's and women's tennis teams (Cahn 1994). In 1929, Tuskegee Institute led the charge and formed the first competitive women's collegiate track team, which was incredibly successful. One of the Tuskegee Tigerettes' as they were called, was a young woman named Lula Hymes. In 1937, she secured a first place finish for broad jump and a second place finish in the 50-meter sprint at the black national championships for track & field. With her performance in the 4x400 meter relay, she helped her team secure a second place finish, clinching Tuskegee's first national championship win. The following year, Lula Hymes exceeded her previous year's performance by maintaining her first place in the broad jump, also winning first place in the 100 meter sprint, and anchoring the winning relay team (Tricard 1996). The Tigerettes first competed in the AAU in 1936, and won eleven of twelve AAU outdoor track championships between 1937 and 1948 (Cahn 1994).

While white women of means were enjoying the pleasure of tennis, Ora Washington, a phenomenal tennis player, was denied the opportunity to display her talents against whites (Grundy 2006). Due to racial inequity, black America was forced to organize parallel athletic associations to engage in competition. Although these athletic associations were fulfilling and popular, they limited the achievements of black athletes to being the best of the black Americans, and not

the best of all Americans. For example, in 1929, Ora Washington, won the women's national singles title of the Amateur Tennis Association (Grundy 2006), but the victory was bittersweet. Two years earlier, white tennis sensation Helen Wills won the first of her eight Wimbledon Women's Singles tennis championships (Cahn 1994). The two were never able to play each other, and while Wills was seen as a national hero, heralded for her beauty and talent, Ora Washington's achievements remained relatively unknown outside the black community.

The expansion of athletic opportunities for black females in the 1920s allowed participation in basketball, tennis, and track & field. Cahn (1994) notes that black women were even participating in baseball, although the relatively few numbers did not allow for the development of large leagues like the white All American Women's Baseball League within which they could play. Track & field is one of the only sports in the early twentieth century that allowed blacks and whites to compete against each other. Blacks had faced racial segregation and exclusionary tactics to keep them from participating in mixed athletic competitions, even in sports like horseracing, boxing, and cycling, which historically had seen black participation (Cahn 1994). The AAU had been successful in limiting their track meets in Southern states to only white participants. Track meets in the North, however, allowed black and white athletes to go head to head with each other. Rarely, other sports also permitted black and white competition, and in those instances, race became a political marker, symbolizing black challenges to white power (Cahn 1994).

Betty Robinson, a white woman, won the first Olympic women's 100-meter sprint in 1928 when the International Olympic Committee added five women's track & field events to the 1928 Olympic Games (Cahn 1994). The next year, Tuskegee Institute formed the first competitive collegiate track team for women (Cahn 1994). Babe Didrikson participated in the 1932 Olympics and won gold medals in javelin and hurdles, and a silver medal in the high jump (Cahn 1994; Suggs 2005). Despite these victories, women's track & field was still seen as a masculine sport, inappropriate for proper ladies. By the late 1940s, track & field had been pushed to the back of white American culture, although track & field and basketball were staples at most black high schools (Cahn 1994).

The reduced support of women's track and field by whites allowed an open door for black female participants to enter. For black women who had historically never been seen as feminine to white America, black women did not align femininity with specific activities, and sports participation for them was not seen as an activity that was not feminine (Cahn 1994). Following Tuskegee Institute's lead in 1929, Prairie View A & M, Alabama State College, Florida A & M College, Alcorn College, and Fort Valley State College formed women's teams and sent their players to participate in Tuskegee's track meets (Cahn 1994).

In 1948, Alice Coachman won the first Olympic medal bestowed upon a woman of color, and she set an Olympic record and American record while doing it. Her gold medal performance catapulted her to the top of women athletes in America, and recognition for an unparalleled ten-year career in track & field. Coachman earned thirty-six track and field national championships, including

twenty-six individual titles and ten team titles. Although the high jump was her signature event, her success as a sprinter earned her the press given title “the Tuskegee Flash.” In 1943 through 1948, Coachman was named as a member of the first All-American Women’s Track & Field Team. She also had the additional distinction of becoming the first black woman athlete to acquire a corporate endorsement, consequently appearing in print advertisements for Coca-Cola (Tricard 1985).

Although track & field had earned a popular following in the 1920s and 1930s, by the 1948 Olympics and through the middle of the twentieth century, track & field participation once again became a “masculine” sport that was not suitable for white female athletes (Cahn 1994). African American women were able to participate in track & field relatively easily, since they were already on the margins of society, participating in a marginalized sport. As the Tuskegee Tigerettes women’s track & field team started to fade in the early 1950s, the Tennessee Tigerbelles soon took their place as the national women’s track & field powerhouse. Wilma Rudolph participated on the Tennessee Tigerbelles team, and she was the first American women to win three gold medals in the same Olympic games when she participated in the 1960 Olympics in Rome. During her track & field career, she held four world records, one Olympic record, and five American records. She was a recipient of the prestigious Sullivan Award in 1961, which is awarded annually by the AAU to the best amateur athlete in the U.S. (Tricard 1985).



The idea that track and field was at odds with femininity persisted until the political climate of the 1950s forced America to reevaluate its position. In its fight to win the Cold War against the new Soviet Union, America found that there was a competitive hole in women's track & field, a hole through which the Soviet Union could potentially assert its dominance over the United States (Cahn 1994). Thus, it served America's political interests to spin track & field in a more positive light in order to obtain support for the sport as a perceived affront to communism. There was a dilemma as to how to encourage female participation and maintain the idea that the United States was stronger than the U.S.S.R. in all realms, including politically and socially. Although black women's femininity had been virtually ignored or considered unimportant for even a second thought, black women now represented the "face" of track & field. A public campaign was launched to cultivate the image of these black female track athletes as feminine and ladylike. For example, Tennessee State forbid photographers from taking photographs of the female track & field athletes after their races until after the women had fixed their hair and touched up their make-up (Cahn 1994). These images of black "ladies" attacked the idea that female track athletes were mannish, and publicly asserted the femininity of black women. Formerly "Cinderellas," forced to stay in the background of America by the "evil stepmother of public apathy," these women had finally found their way to the Prince's ball (Cahn 1994). Nevertheless, despite the rhetoric, black women were still excluded from the mainstream print media, who often chose to run no story on track & field rather than report on the success of these black participants.

In the 1960s and subsequent three decades, the women's movement and the civil rights movement worked to destroy barriers that had previously kept women and girls from full participation in sports. Additional noteworthy and historical performances assisted in that regard. Wilma Rudolph gave an award winning performance in the 1960 Olympics in Rome, Italy. She captured a trifecta of gold medals in the 100 and 200-meter sprints, and as anchor for the 400-meter relay team.

Althea Gibson made history during her eight years in white amateur tennis. Her exceptional play resulted in eleven grand slam titles and back-to-back Wimbledon and U.S. Open singles and doubles titles in 1957 and 1958. More recently, the sports world has been stunned by the performances of two tennis stars, Serena Williams, and her older sister, Venus Williams. Serena Williams has won all four major international professional tennis tournaments at least once. She boasts more than 28 singles championships, eleven doubles championships, and a gold medal in the 2000 Olympics. In 2002, Serena Williams had the distinction of holding the championship title for all four international tennis matches, achieving a true Grand Slam by winning the Italian Open, the French Open, Wimbledon, and the U.S. Open. She won the Australian Open, (singles & doubles), NASDAQ Open, French Indoor, and Wimbledon in 2003, and has continued to amass titles and victories across the globe, including the 2009 Australian Open championship and the 2009 Wimbledon ladies' title ([www.serenawilliams.com](http://www.serenawilliams.com)). Venus Williams, has achieved similar accomplishments, winning more than 36 Women's Tennis

Association tour titles, six Grand Slam titles (Wimbledon champions in 2000, 2001, 2005, 2007; and U.S. Open championships in 2000 and 2001) and two Olympic gold medals ([www.venuswilliams.com/venusbio.html](http://www.venuswilliams.com/venusbio.html)).

Despite the illustrious history of black women's excellence in sports, even today, black female athletes continue to confront racial and gender stereotypes. An example of this is the events following the 2007 NCAA Women's Basketball championship game. After an intensely played game, Rutgers University women's basketball team lost to the University of Tennessee women's team. During a radio commentary shortly after the win, Don Imus, a popular radio personality, declared the Rutgers University women's basketball team "nappy-headed hoes." Eight of the ten players were black, as was the coach, C. Vivian Stringer. Coach Stringer put up a powerful defense of the team, noting for the media that the team members were valedictorians, girl scouts, musical prodigies, and future doctors. By doing so, and calling the players "ladies," Coach Stringer attempted to invoke ideas of femininity to rehabilitate the stereotypical images that Imus had attempted to portray.

More recently, deep-seated historical misconceptions about black women, beauty, and sports have again reared its ugly head. In his February 27, 2009 article posted on the Huffington Post, Jewel Woods revealed his dismay at the fact that Venus Williams and Serena Williams, "the two statuesque sisters with chocolate skin, flamboyant style and curvaceous figures," were omitted from a list of the top ten most beautiful women posted on the 2009 Australian Open's website ([www.australianopen.com](http://www.australianopen.com)) (Woods 2009). He notes that "the list was

filled with sleek, thin images, and European names such as Dementieva and Hantuchova, and gushings over Jelena Jankovic's No. 1 body to go along with her No. 1 ranking" (Woods 2009). Curiously, Serena Williams was ranked number 2 going into the 2009 Australian Open, and in fact won the Women's Singles Championship for the year ([www.australianopen.com](http://www.australianopen.com)). Unlike black male athletes, who have continued to be handicapped by the public exaltation of their physical attributes, skills, and prowess over their mental skills and abilities, black female athletes have faced discourse for their bodies. The "masculine" qualities of aggressiveness, competitiveness, and physicality were not desired in white women, although it was okay for black women to eschew these qualities, and this look (Cahn 1994). Thus, black women's participation in sports not only challenged notions of femininity, but also challenged views on beauty. The differing historical experiences of black women and white women add an additional dimension to the issue of sports participation since the roles have effectively been reversed, and white women now participate in athletics at a much greater frequency than black women and girls. Although white women can understand what it means to compete in sports in a society that marginalizes them by gender, they cannot understand the additional burden that race places on black female athletes.

### *Overview of Civil Rights Activity Leading up to Title IX*

Our Nation has experienced two distinct phases in Civil Rights legislation. The first phase occurred immediately following the Civil War. The newly freed slaves, who had been liberated by the Emancipation Proclamation in 1863,

formally received the protections of our Constitution through the enactment of the Thirteenth Amendment to the U.S. Constitution in 1865, which prohibited slavery and involuntary servitude. Subsequent to the passage of the Thirteenth Amendment, Congress passed the Freedmen's Bureau Act and the Civil Rights Act of 1866. The Civil Rights Act of 1866 is best known for declaring all U.S. born individuals citizens of the United States (with the exception of "Indians" who were not taxed), and allowed for all citizens to have equal rights regardless of race, color, or previous conditions of servitude. In response to opponents who claimed that Congress overstepped their boundaries of the Thirteenth Amendment with the 1866 Act, Congress subsequently enacted the Fourteenth Amendment in 1868, broadening the definition of "citizen" and providing for equal protection and due process under the law for all citizens, and the Fifteenth Amendment to the U.S. Constitution in 1870, giving all men the right to vote regardless of race, color, or previous conditions of servitude. Following those two new Amendments, Congress passed the Civil Rights Act of 1870 (the Enforcement Act) providing for criminal penalties for denying citizens the right to vote. The Civil Rights Act of 1871 followed, intending to counteract the Ku Klux Klan's harassment and providing blacks with remedies which they could utilize to redress violations of their rights. Despite its grand ideals, the Civil Rights Act of 1871 was rarely followed until the new phase of civil rights activity in the 1960s.

The second phase of Civil Rights legislation in the United States occurred following the important *Brown v. Board of Education* decision (347 U.S. 483 (1954)). At this point, grass roots civil rights activity was very high, and

resistance to civil rights protections was equally high. The Civil Rights Acts of 1957 was enacted under President Dwight D. Eisenhower, although as a voting protections act, it was relatively ineffective as a voting rights tool. It did, however, establish the Commission on Civil Rights . The Civil Rights Acts of 1960 subsequently provided for inspection of voting booths to ensure voter access. However, it was the Civil Rights Act of 1964, signed by President Lyndon B. Johnson, which provided the most comprehensive anti-discrimination protections to U.S. citizens. This landmark legislation provides protections in a myriad of measures, and prohibits racial discrimination in public accommodations, schools, federally funded programs, employment, and in voting (although subsequent protections were enacted in the Voting Rights Act of 1965).

Title I of the Civil Rights Act of 1964 barred unequal application of voter registration requirements. Title I does not bar literacy tests, which were one of the main methods used to exclude black voters in the South, nor does it address many of the tactics used to dissuade voters, including retaliation, police repression, or physical violence. Title II outlaws discrimination in hotels and motels, restaurants, theaters, and all other public accommodations. Title III prohibits state and municipal governments from denying access to public facilities on the grounds of race, religion, gender, or ethnicity. Title IV encouraged school desegregation. Title V expanded the scope of the Civil Rights Commission by providing the Commission with additional powers. Title VI prevented discrimination by the federal government and its agencies. Title VII prevented discrimination by employers. Title VIII required federal collection and

compilation of voting data, Title IX provided provisions for moving civil rights cases from state courts to federal courts, and Title X established the Community Relations Service. In 1965, the federal Voting Rights Act was implemented. Congress then enacted the Civil Rights Act of 1968 (also known as the Fair Housing Act), which mandated non-discrimination in the sale, rental, and financing of houses.

*Historical Perspective of Title IX.*

For this dissertation, two critical women's movements affected women and sports. The first, the Women's Suffrage Movement, was a series of campaigns that addressed numerous issues relevant to women. Key campaigns on women's reproductive rights, domestic violence, maternity leave, equal pay, sexual harassment, and sexual violence were involved. This first wave of the women's movement occurred in the late 19<sup>th</sup> through early 20<sup>th</sup> centuries. Notable leaders in this movement campaigned for the rights of slaves through the abolitionist movement prior to campaigning for the rights of women to vote. Lucy Stone, an abolitionist and suffragist, publicly spoke out against the institution of slavery and for the rights of women at a time when women were discouraged and often prevented from engaging in public speaking. As the first woman from the Commonwealth of Massachusetts to earn a college degree (Oberlin College, Ohio in 1847), she was an ardent lecturer, and influenced the notable Susan B. Anthony to take up the charge of women's rights. With the passage of the Nineteenth Amendment to the U.S. Constitution in 1919 (ratified August 18,

1920), which granted women the right to vote, the first wave of the Women's Movement ended (Freedman 2003).

The second wave of the women's movement occurred in the 1960s and lasted through the 1980s. Although the Women's Suffrage Movement had made key gains in women's voting and reproductive rights, this second movement promoted women's cultural rights, specifically dealing with inequalities that women experienced through law, politics, and the effects of American culture. Many believe there is a third wave of the women's movement that began in the 1990s and is still operating today as a continuation of the second wave. For example, feminists of color like bell hooks, Maxine Hong Kingston, and Cherrie Moraga call for the prominence of race-related subjectivities within feminism. Although these women call for greater attention to the intersection of race and gender within feminist thought, the third wave of feminism is more often seen as nurturing and energizing the new, younger feminist activists (Freedman 2003). Some, like hooks, believe that the largely white middle and upper class second wave feminist movement neglected the needs of the poor and non-white women, thus reinforcing the structures of sexism, racism, and classism. During the same period of time, and into the 1970s, Congress also passed anti-discrimination legislation to prevent age discrimination, gender discrimination, and discrimination based on disability in the form of the Equal Pay Act of 1963, Age Discrimination in Employment Act, Age Discrimination Act of 1975, and the Rehabilitation Act of 1973.



As noted above, the Civil Rights Act of 1964 is the most comprehensive anti-discrimination legislation in the United States. Its most known provisions contain legislation to assist in protecting against discrimination in public accommodations (Title II), protecting against discrimination in federally funded programs (Title VI), and protecting against discrimination in employment (Title VII). Title IX of the Education Amendments of 1972, signed by President Richard Nixon, extends Title VI's protection to include prohibiting discrimination on the basis of sex in federally funded education programs. Title IX originated from the 1965 presidential executive order prohibiting federal contractors from discrimination in employment on the basis of race, color, national origin, or religion (Valentin, 1997). The executive order was originally amended to prohibit discrimination based on sex as a provision of the amendment to Title VI of the Civil Rights Act of 1964.

The road to title IX had been built throughout the history of women's exclusion from full participation in educational opportunities, either as students, or employees. Concurrent to the Executive Branch recognizing that gender inequity was an issue, Congress finally began to recognize the disparity in treatment towards women in education five years later. In 1970, U.S. Rep. Edith Green (OR) called for hearings on sex-based discrimination in higher education (U.S. Department of Education 2003). Revelations from the hearings included higher education administrators admitting that female applicants to their institutions had to have higher grade point averages than male applicants for admission (U.S. Department of Education 2003). During that time, five bills were

drafted between the U.S. House of Representatives and the U.S. Senate to address the issue of discrimination against women in higher education (U.S. Department of Education 2003). Two competing bills introduced by Senators Birch Bayh (IN) and George McGovern (SD) were consolidated into one, and, after moving through both houses of Congress, Title IX passed both houses of Congress successfully, and with little debate. President Richard Nixon signed Title IX of the Education Amendments of 1972 into law on June 23, 1972. Title IX mirrors the language and meaning of Title VI that was introduced in 1964 (Brooks, Carrasco, and Martin Jr. 1995) except that Title IX adds additional prohibitions against gender discrimination in educational programs. On October 29, 2002, President George W. Bush renamed Title IX the “Patsy T. Mink Equal Opportunity in Education Act” as a way to honor her contributions to this landmark legislation.

It is worth noting that Title IX is not the first attempt of legislators to encourage equal opportunity and nondiscrimination in the field of education. Fifteen years earlier, Congressman Adam Clayton Powell, Jr., a member of the House of Representatives from Harlem, New York, began attempts to attach what is now known as the “Powell Amendment” to all proposed legislation in the field of education (Powell 1994). When Congress resumed its session in January 1955 following the 1954 landmark decision of *Brown v. Board of Education*, Congressman Powell aggressively challenged Congress to provide legislative backbone to the *Brown* Court’s judicial mandates. Usually titled “Amendment Denying Federal Funds to Any State that Fails to Comply With the Decisions of

the Supreme Court,” Congressman Powell attempted to force the legislature to acknowledge and refute antidiscrimination and antisegregation policies by attaching his amendment to bills requesting federal aid for any educational purposes including school construction (thus prohibiting segregated schools). His efforts often generated criticism. A 1960 article in *TIME* magazine indicated that federal funds for schools were necessary to combat the “crowded classrooms, decaying school buildings and swarming moppets” (TIME 1960). Yet the same article, when describing Congressman Powell, describes the opinion that “[h]e insisted on attaching the old familiar “Powell Amendment,” a rider that would withhold federal funds from segregated schools. Powell occasionally manages to tack on his nuisance amendment, sometimes killing a decent bill...” (TIME 1960). Despite the criticism, and although legislation that had been amended by the “Powell Amendment” ultimately failed, Congressman Powell may indeed have been an oracle in his quest for equity in education.

### *Impact of Title IX*

The passing of Title IX occurred during two very passionate movements in the United States, the Civil Rights movement, and the Women’s Movement, which were both having a tremendous effect on U.S. society. Law and policy designed to redress or rectify past discrimination (i.e. assist in placing an individual in a position or situation they would have been able to achieve absent discrimination or discriminatory practices) have been used since President John F. Kennedy’s administration. By requiring that all agencies receiving federal funds make specific efforts towards non-discriminatory hiring, he ushered in what

is commonly called Affirmative Action. As a policy measure, affirmative action is specifically designed to help individuals shed the burden of race, ethnicity, and gender when being considered for jobs or educational opportunities. As applied to higher education, affirmative action policies actually took an applicant's race, ethnicity, and gender into consideration when making admission decisions.

Although affirmative action has come under considerable fire recently, it did provide positive benefits for those to whom the policies were applied. Those who benefited most under affirmative action policies were white women. Title IX can be considered an affirmative action policy. Its effect on women in higher education is well documented. For example, although Title IX is most known for allowing women and girls' access to athletic opportunities, Title IX is an educational amendment, and it covers almost every area of educational institutions. Post Title IX, educational institutions were no longer able to maintain discriminatory practices in the recruitment or admission of students, course offerings and selection, counseling, financial aid, housing, scholarships, athletics, or any other service provided by an institution to its students (Gavora 2002).

Prior to the enactment of Title IX, many colleges and universities actively discriminated against female students. These students did not have the same choices as male students in terms of majors, course selection, and in fact, many were discouraged (and sometimes prevented) from engaging in collegiate level coursework (U.S. Department of Education 2003) This was especially true for courses in the fields of science and math, and also specialized fields like law, dentistry, and medicine (U.S. Department of Education 2003). Many colleges

and universities also maintained admissions policies that not only discriminated against women, lowering their admissions rates, but benefited men. (U.S. Department of Education 2003) Since the enactment of Title IX, women now outnumber men in college enrollment at most institutions.

Although Title IX is best known and widely regarded today for its application to gender equity in athletics and sports, during the original hearings and debates, the issue of equal access in athletics did not even merit mention, except for Senator Bayh's comment that the proposed law would not require desegregation of football or men's locker rooms (Suggs 2005). Nevertheless, the NCAA was the strongest foe of Title IX (Cahn 1994). Interpretations on how Title IX affects athletics directed the shift in focus from gender equity in education to the current debate on equity in athletics. In addition to being denied opportunities in education, prior to the inception of Title IX, many women and girls were also denied opportunities to participate in interscholastic athletics, and denied access to athletic scholarships (U.S. Department of Education 2003). This inability to participate in athletics at the collegiate level streamlined many potential careers like those of Olympic gold medal swimmer Donna de Varona, who had won two gold medals at the 1964 Olympic games in Tokyo, but was forced to retire at the age of seventeen because there were no swimming programs or athletic scholarships available to her. Meanwhile, fellow gold medalist Don Schollander received a full scholarship for swimming to Yale. According to the National Federation of State High School Associations, athletic participation of girls has grown exponentially. In 1971, approximately 3.7 million

boys participated in high school sports compared to 294,000 girls (National Federation of State High School Associations Participation Survey 2002). In that same year, only seven percent of female athletes were women of color (Fields 2008). At a typical Big Ten Conference school, men's athletic teams received thirteen hundred dollars for every dollar that the women's athletic teams received (Cahn 1994). By 2002, 3.9 million boys participated in high school sports, but girls' participation had grown to 2.8 million (National Federation of State High School Associations Participation Survey 2002). Although athletic participation rates have swelled for girls, there is still a large disparity between the participation rates of girls and boys.

Title IX applies to all schools receiving federal funds directly or indirectly through grants, scholarships, research awards, academics, or extracurricular programs. An institution found to be in violation of Title IX is at risk for losing its funds (Coakley 2004). Despite the incredible increase in participation numbers for female athletes in the first decade after Title IX was enacted, by the 1980s, participation levels began to plateau due to the U.S. Supreme Court decision in *Grove City College v. Bell* that ruled Title IX only applied to programs or activities that directly received federal funding. Since most collegiate athletic programs did not receive direct federal funding, the growth of women's athletic participation opportunities stopped (NCAA 2008a). Consequently, four years after that ruling, Congress passed the Civil Rights Restoration Act of 1988. This Act applied Title IX to indirect recipients of federal funding. Four years later, Title IX received another boost when the U.S. Supreme Court ruled in *Frank v. Gwinnett* that

prevailing Title IX plaintiffs could recover monetary damages and attorneys' fees as compensation for intentional discrimination. These preceding actions set the scene for the *Cohen v. Brown University* decision, where it was determined that an institution must provide opportunities to its female students by meeting their sports interests and abilities.

### *History/Progression of Title IX*

Although Title IX was signed in 1972, the authorization for implementing regulations was not approved until two years later. When Title IX was originally signed into law, athletic enterprises including the NCAA and the NFL were lobbying against the inclusion of women into major athletics. Both enterprises were solely for men's athletics, while women's athletic participation was governed under the Association for Intercollegiate Athletics for Women (Cahn 1994). Senator John Tower was a willing ally for the NCAA and NFL, introducing a controversial amendment to Title IX that would have exempted "revenue producing" intercollegiate sports such as men's football and men's basketball from Title IX coverage. Although the Tower Amendment ultimately failed to garner enough support to pass through Congress, a compromise, the Javits Amendment, requiring the Secretary of Education to prepare and publish proposed regulations implementing Title IX, did make it through Congress successfully.

Although Title IX was signed in 1972, the authorization for implementing regulations, the Javits Amendment (Sec. 844 of the Education Amendments of 1974), was not approved until two years later, May 20, 1974, which required the

(then) Department of Health, Education, and Welfare (now Department of Education) to provide regulations to implement Title IX. The Javits Amendment, codified at 34 CFR § 106.41, allowed the Department of Health, Education, and Welfare to develop regulations implementing Title IX that took into account the “nature” of particular sports.

As there were no regulations prior to the Javits Amendment, recipients of federal funds sought guidance as to what sex-based discrimination actually was. However, since final regulations for Title IX were not drafted until 1975, the federal government had been effectively giving educational institutions a three-year grace period for implementing Title IX. During that time, the Office for Civil Rights received nearly 100 complaints of alleged Title IX violations (Evans, 1998). One section of the regulations pertains to athletics, and requires institutions to “effectively accommodate the interests and abilities of members of both sexes” (U.S. Department of Education 2003). The regulations also require that athletic facilities and support services be provided on an equal basis for men and women. Interestingly, the final regulations as drafted by the Department of Health, Education, and Welfare contain a provision that does allow limiting female access to certain sports. Reminiscent of decades past, and possibly under the guise of protecting female athletes, the final Title IX regulations contain what is known as the “Contact Sport Exemption.” If an institution does not provide male and female athletic opportunities in a specific sport, members of the excluded sex must be allowed to try out for the team unless the sport involved is a contact sport. The regulations (34 C.F.R. §106.41(b) (1975)) specifically



declare boxing, wrestling, rugby, ice hockey, football, basketball and other sports in which the purpose or major activity of the sport involves bodily contact.

It is not clear why the Contact Sport Exemption was included in the Title IX regulation. It is possible that including the clause embodied the spirit and intent of the failed Tower Amendment to restrict Title IX application to revenue producing sports like men's basketball and football. Perhaps it is an attempt to restrict female sports participation from traditionally male sports. As Cahn (1994) noted, historical reasons for keeping girls out of male sports is to encourage and maintain "proper" gender behavior for women, who have inferior bodies to males. Although it may seem that female athletes are protected from the hitting, punching, and tackling of contact sports, basketball play does not subject the participant to any of these physical abuses, but is included in the clause. Females have participated in basketball since the year after the sport was invented (Cahn 1994). However, at the time that Title IX was being implemented, it is possible that there were still concerns about women usurping monies set aside for men's revenue producing teams.

The debate and ensuing litigation about Title IX did not start immediately. The climate of the times fostered a sense that women and racial and ethnic minorities should receive the same opportunities as white men, thanks to the Civil Rights and Women's Movements. Title IX is not so much controversial because it mandates equality for women, but, instead, the outcry against Title IX is because of its effects on men's sports. Although most people did believe that women should have the same educational opportunities as men, once

interscholastic sports became involved, the male dominated sports machine cast gender equity as too radical and disruptive (Coakley 2004).

In 1978, the Department of Health, Education, and Welfare published a policy interpretation for public comment, and after receiving over 700 comments, the Department adopted the final interpretation, codified at 44 Fed. Reg. 71413, on December 11, 1979 (Office for Civil Rights 1979). Title IX does not require that educational institutions treat men's sports and women's sports equally, but it does require that the benefits provided to these sports should be comparable (Greenlee 1997; Office for Civil Rights 1979).

The policy interpretation of 1979 condensed the responsibilities of educational institutions into three general areas: 1) financial assistance, 2) benefits and opportunities, and 3) accommodation of interests and abilities. With regard to the third responsibility, the Department provided a three-part test that educational institutions could use to demonstrate compliance with accommodating the interests and abilities of their students. This three-part test provides that an institution is in compliance with Title IX if it can demonstrate that 1) the ratio of student athletes at an institution is "substantially proportionate" to the male/female ratio of student enrollment, 2) the institution has a "history and continuing practice of program expansion" for women, or 3) the institution is "fully and effectively" accommodating the interests and abilities of women (Office for Civil Rights 1979). This test does not require compliance with all three parts or prongs of the test, but if a school is unable to comply under the first section it

may do so under the second part, and if it still is in noncompliance, it may meet the third part of the test.

The first part of the test, the proportionality measure, means that the proportion of men and women competing in sports and on sports teams must be proportionate to their representation in the student population. If a school has an enrolled population of 48 percent males and 52 percent females then 48 percent of the athletic budget should be allocated to male athletics, and 52 percent of the budget should be allocated to female athletics (Suggs 2003b.).

The second part of the three-part test requires an institution to show a continuing history of providing athletic participation opportunities to the underrepresented gender. In most cases, the underrepresented gender is women. The Department of Education has not provided further guidelines on this prong of the test (Suggs 2003).

For most institutions, then, compliance with Title IX is best achieved under the third prong of the three-part test. Under this prong, an institution must show that it has put forth a good faith effort to meet the interest and abilities of the underrepresented gender. The Department of Education (2003) notes that the majority of federal appellate courts have upheld the legality of the three-part test. (See, e.g., *Roberts v. Colorado State Board of Agriculture*, 998 F.2d 824 (10th Cir. 1993); *Williams v. School District of Bethlehem*, 998 F.2d 168 (3rd Cir. 1993); *Horner v. Kentucky High School Athletic Association*, 43 F.3d 265 (6th Cir. 1994); *Kelley v. Board of Trustees*, 35 F.3d 265 (7th Cir. 1994); *Cohen v. Brown*

*University*, 101 F.3d 155 (1st Cir. 1996); *Neal v. Board of Trustees of the California State* located in Chapter 5)

*Grove City College v. Bell* may be one of the most influential cases affecting Title IX policy. Title IX as written prohibited gender discrimination at institutions that received federal funds. However, Title IX was not so clear as to what “receiving” federal funds meant. If a school received funding for its research activities in the Department of History, would that subject it to Title IX’s mandates? As a small liberal arts college, Grove City College did not receive direct federal funding, although a few of its students received BEOG grants from the U.S. Department of Education. Accordingly, the U.S. Department of Education mandated compliance with Title IX in athletics at Grove City College. Disagreeing with the Department of Education’s assessment, Grove City College argued that since it did not receive any federal funds directly, and absent the receipt of any other federal funding, enrolling students who receive the BEOG does not bring the school under the umbrella of Title IX regarding gender equity in athletics. Agreeing with Grove City College, the U.S. Supreme Court held that since the athletic department does not receive direct federal aid, the athletic department does not fall under Title IX compliance.

With this 1984 ruling, the U.S. Supreme Court determined that Title IX only applied to programs that received direct federal funding. Since the majority of athletic departments at educational institutions are not funded directly through the government, the *Grove City* ruling effectively allowed most university athletic departments to ignore Title IX.

Following the Grove City College decision, and in response to the Supreme Court's determination that athletic departments that did not receive federal funding were exempt from Title IX, the U.S. Congress enacted the Civil Rights Restoration Act of 1987 (20 U.S.C. §1687). This law was to encourage institutional compliance with all the federal anti-discrimination statutes, including Title IX, by requiring that any institution or part of an institution that received federal funds directly or indirectly had to comply with those statutes. The Civil Rights Restoration Act specifies that if even one program or activity within an institution is receiving federal funds, all programs within the institution must comply with Title IX. Therefore, an entire institution had to be in compliance with the Title IX regulations even if only a small part or section of the institution received one dollar. This applies to any public or private institution that has enrolled students that receive federal funds for any educational purposes (U.S. Department of Education 2003). Thus, if an institution receives funds for school lunch programs, teacher training, financial aid given to students, or any type of grants, Title IX applies. The enactment of the Civil Rights Restoration Act effectively overturned the *Grove City College* decision inasmuch as most educational institutions in the United States are exposed to some form of federal funding.

The 1980s saw many changes in women's athletics. With the push to bring women under the purview of the NCAA, the Association for Intercollegiate Athletics for Women (AIAW) met its demise. Newly included in the NCAA, women were finally recipients of collegiate athletic scholarships for the first time

(Carpenter 2004). There is debate on both sides of the aisle as to what meeting the three-part test really means. Women's rights organizations like the Women's Sports Foundation, National Women's Law Center, and the American Association of University Women, for example, agree that Title IX requires increasing the number of female teams to meet the female proportionality test. Opponents of Title IX disagree, and instead believe that proponents of Title IX desire a decrease in men's teams and male athletic participation in order to meet the proportionality test (Gavora 2002).

Title IX found renewed energy with the passage of two bills that aided athletic participation. The Equity in Athletics Disclosure Act (14 20 U.S.C. §1092(g)) was enacted in 1994 under President William J. Clinton. This Act mandated that educational institutions had to annually gather and disclose enrollment information at their institution, statistically broken down by sex and athletic participation. The Act applies to all institutions with male and female enrolled students, that participate and receive funds via federal student aid programs, and that sponsor intercollegiate athletic programs.

To be in compliance, the disclosure must include information on each varsity team, the number of participants, the total operating expenses, gender and salary information on the head coach of each team, number and gender of the assistant coaches, and spending totals for athletic aid and recruiting, revenues and income attributed to all teams. This information must be collected yearly and disclosed to students and the public on an annual basis (U.S. Department of Education 1994). As a counterpart to this Act, the Improving

America's Schools Act (H.R.6) was also passed on October 4, 1994. This bill aided in awarding grants to institutions to help them become Title IX compliant (U.S. Department of Education 1994).

#### *1996 Policy Clarification*

Through the 1990s, schools and institutions repeatedly requested clarification on Title IX regulations and compliance mandates. In response to such repeated inquiries, in 1996, the Department of Education issued a policy clarification on Title IX. Titled "Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test" but referred to as a "Dear Colleague" letter by the Department of Education. This clarification outlines the Department of Education's policy on the three-part test (O'Shea and Cantu 1998).

Among the many items included in this letter is the oft-cited reference to the proportionality test as a "safe harbor" for compliance with Title IX (O'Shea and Cantu 1998). This reference incited much debate. Some believed that the reference to the first prong of the three part test as a "safe harbor" was confusing, forcing a numbers game, and allowed schools to disregard prongs two (history of expansion) and three (meeting interest needs). Others, especially those who opposed Title IX, believed that the safe harbor provision in practice was a quota system that negatively affected male athletic programs.

#### *The 2003 Clarification*

Although Title IX had received favorable support in Washington, as a policy, it soon came under attack again. At that time, then-Texas governor George W. Bush was approached by a group of Iowa wrestling coaches who

believed Title IX should be interpreted differently (Hogshead-Makar and Zimbalist 2007). Title IX reform in turn became a part of George W. Bush's 2000 Republican platform. Hogshead-Makar and Zimbalist (2007) point out that then Speaker of the House Dennis Hastert was a former wrestling coach, and Secretary of Defense Donald Rumsfeld was a former wrestler.

It was in this climate that in 2002, under President George W. Bush, the Secretary's Commission on Opportunities in Athletics was commissioned by Education Secretary Roderick Paige to study the impact of Title IX on college athletics (U.S. Department of Education 2003).

The Commission held hearings through an eight -month period and presented its report titled "Open to All: Title IX at Thirty." Some believed that the Commission's report was politically motivated, and served to limit much of the progress that Title IX interpretation had allowed (Hogshead-Makar and Zimbalist 2007). Hogshead-Makar and Zimbalist (2007) note that during the hearings, thirty-one of the invited panelists were opposed to Title IX, fifteen were in favor of Title IX, and six were considered neutral. They further note that many experts in the field were not called to testify, and although numerous defendant institutions presented testimony, not one plaintiff or plaintiff's representative from the many lawsuits presented testimony. Moreover, they note that although ten panel slots went to organizations or individuals who were affiliated with discontinued men's sports teams, there were no panelists who represented any organizations with large numbers of discontinued women's sports teams (Hogshead-Makar and Zimbalist 2007).



Two commission members, Donna de Varona and Julie Foudy, who had both served as former presidents of the Women's Sports Foundation, subsequently released a minority report containing separate recommendations, and voiced concerns about much of the material contained in the original report (de Varona and Foudy 2003). Because they did not believe that the Commission's report presented fair consideration of the issues, they felt that the issue of discrimination faced by women and girls was being overlooked, and that many of the recommendations made by the Commission would in fact weaken Title IX's protections.

De Varona and Foudy's 2003 report presented findings and recommendations that were at odds with the Commission's Report. Their report found 1) Title IX and the three-part test have promoted great advances for women and girls to participate in sports; 2) Despite these advances, discrimination still limits athletic opportunities for girls and women at both the college and high school level; 3) Enhancing athletic opportunities for women and girls is important because of the significant benefits athletic opportunities provide; 4) persistent discrimination and not lack of interest explains the fact that women and girls have fewer athletic opportunities when compared to men; 5) advances in opportunities for women have not resulted in decreases in opportunities for men; 6) historic weakening of Title IX did not benefit wrestling and other men's teams; 7) the three-part test is fair and successful; 8) the Office for Civil Rights should provide enhanced technical assistance; 9) the Office for Civil Rights should do more to help institutions understand that compliance under prongs two

and three of the three-part test are achievable; 10) the lawfulness of the three-part test has been affirmed by every federal appellate court hearing the issue; 11) The Office for Civil Rights has never imposed a financial penalty on an institution for failing to comply with the three-part test; 12) the three-part test does not impose quotas or require preferential treatment for women and girls; 13) Title IX does not require that each men's team correspond to a women's team; 14) Title IX does not cause cuts to men's teams or programs; 15) Budgetary decisions, expenditures, and philosophical decision related to quality and size of athletic programs have resulted in the loss of sports teams at schools; 16) NCAA rules may hamper schools' abilities to comply with Title IX; 17) walk on athletes receive the benefits of athletic participation, and tend to be men; 18) The Office of Civil Rights guidelines in determining whether an activity is considered a sport is flexible; and 19) although the Equity in Athletics Disclosure Act assists in monitoring colleges and universities' compliance with Title IX, there is no corresponding mechanism in place to monitor these variables at the high-school level. (de Varona and Foudy 2003).

As response to the public outcry against the Commission's report, and perhaps to address the inconsistencies between the two reports, on July 11, 2003, the Department of Education Office for Civil Rights released "Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance." The OCR clarified that (1) The three-part test for assessing compliance with the participation portion of Title IX would continue to be the test used by the OCR to determine compliance; (2) Title IX did not require the cutting

or reduction of teams and that such a practice is disfavored; (3) Although the OCR would “aggressively enforce Title IX standards, including implementing sanctions for institutions” that were not in compliance, it would also work with schools to achieve compliance and thereby avoid such sanctions; (4) Private donations to athletics programs were not exempt from Title IX equity considerations; and (5) OCR enforcement would be uniform throughout the United States. This new clarification reinforced that the Title IX policies would continue to remain intact.

#### *2005 clarification*

In March 2005, the Office for Civil Rights within the Department of Education issued a subsequent clarification: “Additional Clarification of Intercollegiate Athletic Policy: Three-Part Test – Part Three”. This new clarification purportedly made it easier for universities and colleges to assess interests and abilities on campus consistent with Title IX mandates by allowing members to assess interest through email surveys. The Office of Civil Rights would deem schools to comply with Title IX if the school used the e-mail survey and found that there were no unmet interests or abilities of the under-represented sex. Perhaps most controversial is the portion of the clarification that allows a “no response” to be counted as an indication of “no interest” (Sabo and Grant 2005). The clarification has been strongly criticized by the NCAA President Myles Brand, the NCAA Executive Committee, the Knight Commission and Ted Leland and at least six members of the Commission on Athletics.

Prior to issuing the new clarification, the Department of Education had previously interpreted the third prong of the three-part test to require evaluation of numerous factors to determine whether an institution had met the interests and abilities of its female students (Clarification of Intercollegiate Athletics Policy Guidance: The Three Part Test Jan 1996). Some believe that this new clarification would effectively gut the previous interpretations, and allow institutions to only rely on survey methodology to assess interest or the lack thereof (Sabo and Grant 2005). They argue that reliance on surveys alone will not reveal the true extent of female athletic interest and abilities due to female cultural and behavioral identity, downplaying interest in order to conform to traditional gender roles, and incorrectly reporting lack of interest when a respondent may have lack of exposure to certain sports (Sabo and Grant 2005). Instead, they argue that sound methodology requires that institutions utilize multiple measures in their data collection that can better assess interest and abilities.

The Department of Education agreed, and one year after releasing the 2005 clarification, the Office of Civil Rights released a report to the Senate Appropriations Committee that the clarification was misguided (Zimbalist 2006).

With the clarifications issued by the Office of Civil Rights, Title IX still retains three basic components. First, a school can demonstrate compliance with part one of the three part test by showing that the athletic participation rate of the under-represented sex is substantially proportionate to the school's full-time undergraduate enrollment. Institutions maintain the right to eliminate

programs instead of expanding opportunities to the under-represented sex. Second, the institution has to have a history and continuing practice of program expansion that is “demonstrably responsive” to the developing interests and abilities of the under-represented sex. Third, if an institution cannot show proportionality or a history and continuing practice of expansion, it may still be in compliance with the law if it can demonstrate that it is fully and effectively accommodating the interests and abilities of the under-represented sex.

### **Challenges to Title IX and Legal Storytelling**

#### *Legal History of Title IX*

As is common with most change, many institutions were slow to accept the changes, and there were many concerns that institutions were not in compliance with the federal regulations. After the Department of Education issued its initial policy interpretation, much litigation has ensued. Consequently, a number of federal court and U.S. Supreme Court decisions have aided in shaping Title IX enforcement. Although numerous lawsuits have been filed challenging Title IX, the lawsuits in fact may challenge any of four primary components of the law: 1) the Title IX statute enacted in 1972; 2) the 1975 regulations; 3) the 1979 policy interpretation; and 4) the 1996 clarification letter (that sought to clarify the policy interpretation). However, by far, the majority of the litigation centers on challenges to the three-part test that was created by the 1979 policy interpretation. Generally, the lawsuits fall within three categories: 1) disparate treatment cases where plaintiffs allege male athletes or male sports teams are treated better than the female equivalent; 2) substitution cases where

women athletes object to a decision to discontinue funding a sport in favor of funding another women's sport; and 3) affirmative action cases where plaintiffs request an institution to add new women's teams or reinstate discontinued women's teams to allow participation based on their proportionate representation at an institution.

### *CASES*

A component of Critical Race Theory is the notion that people of color have a distinct voice because of their histories and experiences with oppression, and are able to communicate these experiences to whites through their presumed competence on the issues of race and racism (Delgado 2001). Legal Storytelling is one way that nonwhite writers recount these experiences from their personal perspective. Those who engage in legal storytelling write about everyday experiences to encourage Americans to understand the experience of race in the United States. What is real, or what we believe is real is actually socially constructed. How we see the world shapes our fundamental assumptions about the nature of reality. These assumptions are invisible to us, used similar to eyeglasses, as a tool to view and interpret the world, but not really examined for its own properties (Delgado 1989). Thus, through these glasses, stock stories are told, then retold, and eventually become deeply ingrained in our collective psyche, assumed as normal. Legal storytelling or the telling of "counterstories," then, tell a different version of reality. This story is the story that had been filtered out, and suppressed, and is told as a tool to combat racial underpinnings historically present but hidden within the stock stories.

It may be useful to look at legal storytelling as a tool to look at the story that is being told, and the story that is not being told about black women and girls in sport. The untold story tells of how race is left out of the gender equity discourse and battles. A discussion of the legal stories (i.e., cases) that have been told follows, along with a discussion of the stories that should have been told but have not. The intersection of ethnicity, race, and gender, and the ability to seek legal redress is highlighted by the lack of consideration and analysis provided to these subgroups.

Much litigation has ensued regarding Title IX, filed by those who want the law enforced, and by those who challenge Title IX. (See Table 3 for a complete listing of cases.)

Table 3: Table of Cases involving Title IX Athletic Issues  
 Compilation of Legal Cases Resolved at the Federal or State Appellate Level

Case	Facts	Issue	Ruling	Sport
Adams v. Baker, 919 F.Supp. 1496 (D. Kan. 1996)	<p>Plaintiff participated on the male wrestling team during eighth grade, but was prohibited from participating in 9<sup>th</sup> grade.</p> <p>Defendant cited moral beliefs and potential disruptions due to her gender.</p>	Does denying female participation on male teams based on moral beliefs satisfy a governmental objective substantially related to a specific governmental purpose?	<p>Objections based on moral beliefs do not meet the standard of important governmental objectives. Policy prohibiting females on male teams was not substantially related to student safety (defendant relied on generalization on lack of female strength compared to males); female participation on male teams would pose minimal hardship to defendant, and the hardship was outweighed by the benefits to plaintiff/females; public interest favored allowing female participation on the team</p>	Wrestling-F



Case	Facts	Issue	Ruling	Sport
B.C. v. Board of Education, 531 A.2d 1059 (N.J. Super. A.D. 1987)	Plaintiff participated on the female field hockey team as a 9 <sup>th</sup> grade J.V. player. After receiving complaints, the state athletic board prohibited males from participating on female teams.	Has plaintiff's rights been violated by prohibiting him from playing on the female team?	Prohibiting males from participating on female teams does not violate male equal protection rights. Excluding males from female teams prevents males from dominating or displacing females from athletic participation opportunities. If a female is on a male team, she assumes the risks, but placing males on female teams forces girls to compete against boys or forfeit her participation.	Field Hockey-M
Beasley v. Alabama State University (1997) M.D. Ala.	Plaintiff played volleyball for the school. She was initially offered a scholarship which was rescinded purportedly due to lack of funds. She was injured, and school refused to pay until 4 years later.	Has ASU provided equal opportunities to female athletes accommodating the interest and abilities; whether plaintiff can defeat a statute of limitations defense seeking relief?	Claim falls under the "continuing violation" doctrine, thus, is within the SOL, even though her eligibility expired. Defendants failed to accommodate the interests and abilities of its students.	Volleyball

Case	Facts	Issue	Ruling	Sport
Bennett v. West Texas State University, 525 F.Supp. 77 (1981)	Plaintiffs were six female athletes at WTSU who filed suit claiming the school maintained discriminatory practices against female athletes, excluding them from full participation in athletic programs.	IS WTSU a beneficiary of federal funds, and thus, under Title IX?	Court held WTSU was not a beneficiary of federal funds. Aid it received was general, nonspecific, and indirect, resulting in some benefit to every program at the school, whether remote or indirect. Believed Title IX was inapplicable	All sports

Case	Facts	Issue	Ruling	Sport
Blair v. Washington State Univ. 740 P.2d 1379 (Wash. 1987)	53 coaches and athletes at WSU sued the university. In the 1980-81 school year, men received over \$3million while women's teams received less than \$700,000, equivalent to a mere 23% of the men's appropriation. Court in dicta noted that women's teams told subtly and overtly that they were low priority, resulting in different participation opportunities for women athletes. WSU wanted men's football excluded from calculations.	Does the Equal Rights Amendment allow women and men's teams to be treated differently in receipt of funds?  Plaintiffs (female athletes) showed that although the univ had made improvements since the early 1970s, women's athletic programs were still treated inferior to men's programs in funding, fundraising efforts, publicity, promotions, scholarships, facilities and equipment, coaching, uniforms, etc.	WA Supreme Court held that men's football should be included in calculating participation opportunities, scholarships, and distribution of non-revenue funds. "To exclude football, an all-male program, from the scope of the Equal Rights Amendment, would only serve to perpetuate the discriminatory policies and diminished opportunities for women" pp. 1382. However, each sport gets to reap the benefits of the revenue that sport created.  NOTE: If this case were brought under Title IX, the ruling probably would have been different, based on the implementation regulations of Title IX.	Football

Case	Facts	Issue	Ruling	Sport
Brenden v. Independent School District, 477 F.2d 1292 (8 <sup>th</sup> Cir. 1973)	Plaintiffs, female high school students, were denied the opportunity to play on sports teams with boys when no equivalent team for girls was provided. State (MN) rules prohibited mixed participation	Is it a violation of plaintiffs' rights to prohibit them from playing on boys' teams?	Court held the rules were arbitrary and unreasonable, violation of equal protection. Defendants cited physiological differences b/w males and females. No medical evidence was presented to support the claims.	All Sports
Burkey v. Marshall County Board of Education, 513 F.Supp. 1084 (1981)	Plaintiff taught PE and coached girls' basketball. She received half the compensation given to coaches of boys' teams, and was prohibited from coaching boys' teams.	Should female coaches be compensated the same as male coaches; is it unlawful for the school district to not allow coaches to coach teams of the opposite sex?	It is discriminatory to restrict opportunities for coaching boys' sports to male coaches. Further, defendant's policy of paying female coaches ½ the compensation of male coaches is discriminatory. (Plaintiff presented evidence that her qualifications were equal to or superior to boys' coaches, and performed similar duties). Ancillary holding that firing plaintiff for exercising rights violates Title VII.	Basketball

Case	Facts	Issue	Ruling	Sport
Canon v. University of Chicago, et al., 406 F.Supp. 1257 (N.D. Ill. 1976), aff'd, 559 F.2d 1063 (7 <sup>th</sup> Cir. 1976), rev'd, 441 U.S. 677 (1979)	Geraldine G. Cannon was denied admissions to medical school and alleged Title IX violations. She claimed she was denied admissions because of her sex.	Does Cannon have standing to bring a lawsuit against the University under Title IX? Is there a private cause of action available?	Based on the Court's rulings in cases under other statutes, the Court determined that Congress intended for private litigants to have a cause of action to support their statutory rights. All of the circumstances were present in Cannon that the Court had previously identified as supportive of this type of remedy. Thus, the Court ruled that Cannon could sue the University even though Title IX did not expressly state it.	No Sport/ Academic
Cape v. Tennessee Secondary School Athletic Association, 563 F.2d 793 (6 <sup>th</sup> Cir. 1977)	Plaintiff played basketball, objected to the different rules governing boys' play and girls' play. Argued the rules prevented her from competing for athletic scholarships	Do different rules for girls' basketball vs. boys' basketball violate equal protection?	Because of physical differences and characteristics between girls and boys, the differing rules are justified, and do not violate equal protection rights.	Basketball
Carnes v. Tennessee Secondary School Athletic Association, 415	Plaintiff wanted to play high school baseball. TSSAA rules would not permit females to play.	Could defendant prohibit females from playing baseball?	Defendants could not prohibit plaintiff from playing baseball, and could not sanction the schools that permitted her to play.	Baseball

Case	Facts	Issue	Ruling	Sport
F.Supp. 569 (1976)				
Cohen v. Brown University, 879 F.Supp. 185 (D. R.I., 1995), aff'd 101 F.3d 155 (1 <sup>st</sup> Cir. 1996), cert. denied, 520 U.S. 1186 (1997)	Amy Cohen sued the University after the University demoted the status of four sports teams (two women's and two men's) from varsity (funded) status, to donor funded sports. Although school offered 13 varsity teams for women and only 12 teams for men, men had more than 200 more available positions, resulting in more opportunities to play.	Should the proportionality test be based on interest in sports, or on the population present at the entire university?	<p>Court held that the university failed to comply with Title IX by meeting the interest and abilities of its female student athletes. Brown had to upgrade four sports to varsity status to meet the higher proportion of female students enrolled at the school.</p> <p>NOTE that Brown chose to decrease opportunities for men to meet this proportionality, rather than increase opportunities for women</p>	Volleyball Gymnastics Water Polo Golf
Deli v. MN, 863 F.Supp 958 (Minn. 1994)	Plaintiff (female) was head coach of women's gymnastics at the University of Minnesota. She claimed she was discriminatorily paid less than head coaches of men's teams.	Did UM discriminate against her by paying her less than coaches of men's teams?	Plaintiff argued her difference in pay was based on her athletes sex, not her own. Court found this type of discrimination did not fall under Title IX, but Title VII and Equal Pay Act. Plaintiff failed to show her position was substantially similar to coaches of men's teams.	Gymnastics

Case	Facts	Issue	Ruling	Sport
Dodson v. Arkansas Activities Association, 468 F.Supp. 394 (1979)	Plaintiff was a 9 <sup>th</sup> grade student playing basketball in public high school. She challenged the split-court rules imposed on girls' basketball, which only allowed forwards to shoot, and guards had to play defense. Boys' teams played full court.	Is there justification to allowing different rules for girls' and boys' basketball? Does this injure girls, and deprive them of equal protection under the law?	Allowing different rules for girls' basketball play and boys' basketball play deprives girls of equal protection. Tradition alone, without substantive gender-related reasons, is insufficient justification for placing girls at a disadvantage. Girls do not receive the full benefit and experience of playing basketball, which in turn, places them at a disadvantage in pursuing collegiate scholarships to play basketball.	Basketball
Favia v. Indiana University of Pennsylvania, 812 F.Supp. 578 (W.D. Pa. 1992), aff'd, 7 F.3d 332 (3 <sup>rd</sup> Cir. 1993)	IUP discontinued two men's athletic teams, and two women's teams citing budgetary concerns. Plaintiffs were females who wanted reinstatement of the women's teams (gymnastics and field hockey). IUP added women's soccer to replace the two discontinued teams.	Does replacing one team with another satisfy Title IX?	IUP could not show a history of expansion for women's sports, nor could it show that women's sports were offered according to their proportionate population.	Gymnastics Field Hockey Soccer

Case	Facts	Issue	Ruling	Sport
Force v. Pierce City R-Vi School District, 570 F.Supp. 1020 (W.D. Mo. 1983)	Plaintiff (female) was prevented from playing junior high school football.	Is prohibition of females on male teams a legitimate governmental interest?	There was no significant governmental interest in preventing girls from playing on the boys' football team	Football
Franklin v. Gwinnet County Public Schools, 911 F.2d 617 (11 <sup>th</sup> Cir. 1990), rev'd, 503 U.S. 60 (1992)	Female student sued for damages based on sexual harassment from a male coach. The district court had dismissed the case previously, indicating that Title IX does not allow monetary damages for violations.	Is there a cause of action for sexual harassment, and if so, does the statute allow for an award of monetary damages?	The Supreme Court reversed the prior courts. Determined there is an implicit cause of action, and also an implicit right to an award for monetary damages. A plaintiff can receive an award for damages, but only for causes of actions based on intentional discrimination. Also held that institutions can be liable for the discriminatory actions of individuals at those institutions.	No Sport/ Sexual Harassment



Case	Facts	Issue	Ruling	Sport
Gomes v. Rhode Island Interscholastic League, 469 F.Supp. 659 (D.C.R.I. 1979)	Plaintiff was prohibited from participating in girls' volleyball at his high school. The school offered football as a male-only sport, numerous mixed gender sports, and numerous female only sports.	Can a male student play on an all-girls team when the school does not offer a similar males' team?	Separate female only teams are appropriate only when males have adequate athletic opportunities to participate. Because males had limited opportunities to participate in sports at the high school (in sports like volleyball and field hockey), plaintiff should be allowed to try out for female non-contact sports, or the school must establish a separate team for boys.	Volleyball
Gonyo v. Drake University, 837 F.Supp. 989 (S.D. Iowa 1993)	Drake University discontinued its male wrestling program. Plaintiffs are male members of the team seeking reinstatement of the program.	Did defendants violate Title IX by discontinuing the men's wrestling program, and providing more scholarship money to women than men?	Plaintiffs failed to show irreparable harm from defendants actions. Court further reasoned that the men's teams at the university outnumbered women's teams, and that the plaintiffs could not show they were excluded from participation in, or denied the benefits of, defendant's athletic program.	Wrestling

Case	Facts	Issue	Ruling	Sport
Grove City College v. Bell, 687 F.2d 691 (3d Cir. 1982), aff'd, 465 U.S. 555 (1984)	Grove City College is a small liberal arts college that argued it does not receive federal funds, although it does have students who receive the BEOG assistive grants from the Department of Education.	Absent the receipt of any other federal funds, does enrolling students who receive the BEOG mandate that Grove City College fall under the auspices of Title IX?	Since the athletic department does not receive any federal funds, Grove City College does not need to comply with Title IX in athletics.	No Sport/ Federal Question
Haffer v. Temple University, 524 F.Supp. 531, 678 F.Supp. 517 (E.D. Pa. 1981), aff'd, 688 F.2d 14 (3d Cir. 1982); 115 F.R.D. 506 (E.D. P.a. 1987)	Plaintiffs claimed the University provided fewer participation opportunities to females than males, disparate allocation of resources and financial aid to male and female athletes.	Has Temple failed to provide equal athletic opportunities to females in violation of Title IX?	Temple needs to provide equal opportunities to female athletes.	No Sport

Case	Facts	Issue	Ruling	Sport
Harker v. Utica College of Syracuse University, 885 F.Supp. 378 (N.D.N.Y> 1995)	Plaintiff coached female basketball and softball for school year. School alleges her contract was not renewed for poor coaching performance. Plaintiff alleges discrimination based on compensation where the men's basketball coach was paid more. She also alleged male benefits (locker rooms, uniforms, playing locations) were better than female benefits.	Did defendant discriminate against the terms and conditions of her employment; Did defendant violate Title IX by failing to provide equal benefits and opportunities to both male and female athletic programs?	Different wages for different coaches were not discriminatory. School may review differences in education, length of service, and experience when determining the wages of an employee. Claims of disparate benefits were without merit.	Basketball Softball
Hoover v. Meiklejohn, 430 F.Supp. 164	Plaintiff was excluded from playing soccer on her high school's boy's team. The Colorado High School Athletic Activities Association only allowed males to play soccer.	Is it a violation of Plaintiff's equal protection rights by excluding her from participating on the male soccer team?	The CHSAAA violated plaintiff's equal protection rights .	Soccer

Case	Facts	Issue	Ruling	Sport
Horner v. Kentucky High School Athletic Association, 43 F.3d 265 (6 <sup>th</sup> Cir. 1994)	Plaintiffs (female) played slow pitch softball, and wanted to play fast-pitch. The defendant did not sanction fast-pitch softball on the grounds that 25% of member schools had no interest in the sport.	Does defendant's 25% rule violate equal protection under the premise that greater athletic opportunities exist for males?	Defendants had no discriminatory intent, even though rule had a disparate impact on female athletes. (however, case was remanded to trial court because trial court erred in granting summary judgment to defendant)	Softball
Jones v. Oklahoma Secondary Schools Activities Association, 453 F.Supp. 150 (1977)	Plaintiffs filed suit against the OSSAA because the organization supported different rules for girls' basketball than boys' basketball. Girls had to play with six players in a half-court, and had to choose either guard or forward play. Plaintiff argued the differing rules were arbitrary, and would impede her ability to play at the collegiate or Olympic level	Does the different rules for girls and boys violate Title IX and her equal protection rights?	The different rules for girl and boy play did not violate her rights. The court further held that she had not exhausted all administrative remedies required for Title IX review. However, girls were allowed to participate in basketball, even though the rules were different for their play. The rules applied to all girls equally, thus, plaintiff was not disadvantaged.	Basketball

Case	Facts	Issue	Ruling	Sport
Kelley v. Board of Trustees, 832 F.Supp. 237 (C.D. Ill. 1993), aff'd, 35 F.3d 265 (7 <sup>th</sup> Cir. 1994) cert denied 115 S.Ct. 938 (1995)	In 1993, the University of Illinois discontinued four athletic programs. Men's swimming was included, although the women's swim team was not discontinued. Plaintiffs were men's team members	Does discontinuation of one sex's team but not the other violate Title IX and the Equal Protection Clause?	The decision by defendants to terminate the men's swimming team did not violate Title IX or the Equal Protection Clause. Women at UI comprise 44% of the students, but only 24% of athletes. The interest and abilities of men have been met based on the sports available to them and their proportionate share of athletic teams.	Swimming
Kleczec v. Rhode Island Interscholastic League, 612 A.2d 734 (R.I. 1992)	Plaintiff (male) tried out for the high school girls' field hockey team. Although the school placed him on the team, the RIIL did not allow him to participate.	Can males play on female teams; did denial of participation violate plaintiff's rights?	Athletic opportunities at the school had not been limited for males, thus denying him participation on the team did not violate his rights.	Field Hockey
Lantz v. Ambach, 620 F.Supp. 663 (D.C.N.Y. 1985)	Plaintiff was prohibited from playing high school football on boy's team. School regulations prohibited mixed competition in football.	Does prohibiting plaintiff (female) from playing football violate title IX and equal protection?	Title IX does not require opportunities for females to compete in contact sports. However, the regulation was overbroad by excluding qualified members of one gender because that gender is presumed to be inferior.	Football

Case	Facts	Issue	Ruling	Sport
Leffel v. Wisconsin Interscholastic Athletic Association, 444 F.Supp. 1117 (E.D. Wis. 1978)	Plaintiffs were female high school students who were denied opportunities to play boys' baseball, swimming, or tennis. The school did sponsor a girls' swimming team. Defendant's rules prohibited mixed teams.	Does equal protection under Title IX require girls to participate on male teams (when female teams are offered, but male teams have a higher level of competition); does excluding females from contact sports to prevent them from injury advance a significant government interest?	Females are not allowed to play on male teams simply because female team may have lower level of competition; excluding girls from contact sports to prevent injury is not a justifiable government objective.	Baseball Swimming Tennis

Case	Facts	Issue	Ruling	Sport
Mercer v. Duke University, 32 F.Supp. 2d 836 (M.D. N.C. 1998), rev'd, 190 F.3d 643 (4 <sup>th</sup> Cir. 1999)	plaintiff, Heather Mercer, was allowed to try out for the Duke University football team. Mercer participated on the team and was officially listed on the team roster, and posed as part of the team picture. She was subsequently cut, although other walk-on kickers were not cut from the team.	Does Contact Sports Exemption allow gender discrimination?	Court found in Mercer's favor, holding that because Duke University had allowed Mercer, a member of the female sex, to participate as a member of the team, it had waived its right to assert the contact sports exemption defense, and thus, was prohibited from discriminating against her because of her sex	Football
Mularadelis v. Haldane Central School Board, 74 A.D.2d 248, 427 N.Y.S.2d 458 (1980)	Plaintiff was a male high school student participating on the girls' tennis team. Although there was no boys' team, he was told he would no longer be allowed to participate. Plaintiff's school had almost twice as many boys' teams as girls' teams.	Does Title IX require "opportunities" relevant to the entire male population at an institution, or relevant to whether or not one has the opportunity to play on a specific team or sport?	Exclusion of males from the female tennis team did not violate equal protection rights. Overall opportunities for males at the school had not been limited, even though there were limited opportunities to play a specific sport (tennis)	Tennis

Case	Facts	Issue	Ruling	Sport
<p>National Wrestling Coaches Association v. U.S. Department of Education, 263 F.Supp. 2d 82 (D. D.C. 2003) aff'd, 366 F.3d 930 (D.C. Cir. 2004)</p>	<p>The plaintiffs in this case, concerned about the decision by some institutions to discontinue wrestling, sued the U.S. Department of Education, alleging that the proportionality test and enforcement framework outlined by the Department violates the statutory authority of Title IX. Challenging the applicability of the rules, the plaintiffs alleged that the rules regulating Title IX were created without following proper procedures.</p>	<p>Is it gender discrimination to eliminate male teams?</p>	<p>The District of Columbia Circuit Court held that the plaintiffs could not show that compliance with Title IX required the elimination of men's athletic teams, nor could plaintiffs show that changing the enforcement measures of Title IX would lead to the reinstatement of wrestling at institutions. Instead, the court noted that institutions use a variety of factors when making their independent decisions about which teams to retain and which teams to discontinue, further noting that these decisions may not include gender equity valuation.</p>	<p>Wrestling</p>



Case	Facts	Issue	Ruling	Sport
Neal v. California State Board of Trustees, 198 F.3d 763 (9 <sup>th</sup> Cir. 1999), cert. denied	California State University at Bakersfield (CSUB) reduced the number of positions available on the men's wrestling team in order to achieve substantial proportionality between male athletic participation and female athletic participation at the University. Members of the men's wrestling team filed suit to prevent the reduction in their team.	Is it a violation of Title IX to reduce participation opportunities for male athletes?	The upper court held that CSUB did not violate the law when attempting to balance athletic participation opportunities to its students based on proportionality by reducing male participation opportunities to males' representative share.	Wrestling
O'Connor v. Board of Education, 545 F.Supp. 376 (1982)	Plaintiff had a history of playing on boys basketball teams since she was 7. In middle school, she was denied permission to play on the boys' team.	Is it a violation to deny females the opportunity to play on the male basketball team?	The school board's refusal to allow females to participate on the males' team did not violate plaintiff's rights. Title IX does not require females to participate on males' teams. Accommodation of interests does not require talented players the ability to try out for the [more competitive] male team.	Basketball

Case	Facts	Issue	Ruling	Sport
O'Connor v. Peru State College, 781 F.2d 632 (8 <sup>th</sup> Cir. 1986)	Plaintiff, a PE teacher and women's basketball coach, was not rehired for following year.	Does Plaintiff have standing to bring this claim under Title IX?	Although defendant received federal funds, the funds were directed towards teaching, and, thus, impacted plaintiff's teaching duties, not coaching duties. Title IX does not extend to the defendant's athletic program.	Basketball
Othen v. Ann Arbor School Board, 699 F.2d 309 (1983)	Plaintiff played golf on the boys high school team, but was cut (presumably for being female), and there was no girls' golf team provided	Was school board subject to Title IX?	School board did not receive federal aid of the type bringing under the umbrella of Title IX.	Golf
Pederson v. Louisiana State University, 912 F.Supp 892 (M.D. La. 1996), aff'd, 213 F.3d 858 (5 <sup>th</sup> Cir. 2000)	Plaintiffs, three females, wanted to play soccer and fast-pitch softball	Did LSU accommodate the interest and abilities of female students?	LSU violated Title IX in not meeting the interest and abilities of female students by not providing fast pitch softball.	Soccer Softball

Case	Facts	Issue	Ruling	Sport
<p>Petrie v. Illinois High School Association, 31 Ill.Dec. 653 (1979)</p>	<p>Plaintiff, a male high school student, wanted to play volleyball on the female team.</p>	<p>Is it constitutional for the defendant association to prohibit males from participating on female volleyball teams?</p>	<p>Defendant's rule does not violate plaintiff's equal protection rights. Distinguishing male and female athletics is not unconstitutional. Court noted that females are at a physical disadvantage when competing against males, and affirmative action is allowable to promote the government interest of fostering athletic competition for girls and boys.</p>	<p>Volleyball</p>

Case	Facts	Issue	Ruling	Sport
Roberts v. Colorado State University, 814 F.Supp. 1507 (D. Colo. 1993), aff'd, 998 F.2d. 824 (10 <sup>th</sup> Cir. 1993), cert. denied	Colorado State University planned to discontinue fast pitch softball. Plaintiffs were current and former players challenging the decision.	Did CSU violate Title IX by discontinuing the fast pitch softball program? Did trial court properly order a remedy? (The trial court had ordered that the university play a fall exhibition season for softball.)	The court held that CSU did violate Title IX. CSU could not show that female participation in athletics was proportionate to their enrolled numbers; CSU could not show continuing expansion of female athletic programs; CSU had not met the interest and abilities of female students.  However, trial court had no authority to require the school to play a season against a competitive team.	Softball

Case	Facts	Issue	Ruling	Sport
Rowley v. Members of the Board of Education of St. Vrain Valley School District, 863 F.2d. 39 (10 <sup>th</sup> Cir. 1988)	Plaintiff (male) sought participation on the female volleyball team at his high school. Colorado prohibited males from playing on female teams. Plaintiff won an injunction allowing him to play.	Is it unconstitutional ( a violation of equal protection and Title IX) to prohibit males from competing on female teams?	The lower court used stricter standard of review than was required in this case. Equal protection challenges based on gender receives intermediate scrutiny (1) must serve an important governmental objective (2) must be substantially related to the achievement of that objective. School district has met the standard of review, thus there is no violation by prohibiting boys from playing on girls' teams. Case reversed.	Volleyball

Case	Facts	Issue	Ruling	Sport
<p>Stanley v. Univ of Southern California, 13 F.3d 1313 (9<sup>th</sup> Cir. 1994)</p>	<p>Plaintiff was the women's basketball coach at USC in 1989; at contract expiration in 1993, she requested renewal, but at the same salary as the men's basketball coach. The University rejected her request, although it did offer her a raise.</p>	<p>Was plaintiff entitled to equal pay as the men's basketball coach? Plaintiff argued the positions required equal responsibilities, equal skill and effort under similar working conditions?</p>	<p>Court held 1) that plaintiff failed to show she was entitled to the same pay because of differences in responsibilities, qualifications, and experience; 2) amount of revenue generated by a team may be taken into account when determining whether working conditions and responsibilities are equal; 3) trial court did not err in finding that USC did not renew plaintiff's contract in retaliation for being involved in protected activities. The court noted that the men's team generated more than 90 times more revenue than the women's team. Additionally, men's coach made speaking engagements, promotional appearances, and fund raising activities, in its consideration of revenue.</p>	<p>Basketball</p>

Case	Facts	Issue	Ruling	Sport
Williams v. School District of Bethlehem, 799 F.Supp. 513 (E.D.PA. 1992)	Plaintiff is a male who wanted to play girls' field hockey at his high school. The school district prohibited him from playing.	Is field hockey a contact sport? Have athletic opportunities for boys been limited within the school district? Has the defendant violated the equal protection rights of plaintiff?	Field hockey is not a contact sport, thus, Title IX does not support banning males from female field hockey team. Plaintiff's rights have been violated. Court noted that girls were allowed to try out for all 22 teams at the school, but boys were limited to the 10 male or 2 mixed teams. Males have been denied athletic opportunities. The school did not provide field hockey for males, and discriminated against plaintiff by not allowing him to play	Field Hockey
Yellow Springs Exempted Village School District Board of Education v. Ohio High School Athletic Association, 647 F.2d 651 (1981)	Plaintiff filed suit for declaratory relief on behalf of two female students who had tried out for and made the boys' basketball team. There was no girls' team available. Defendant's rules prohibited mixed competition, and the girls were prohibited from playing.	Was defendant's rule prohibiting mixed competition unconstitutional?	Defendant's rules were more restrictive than Title IX, and compliance with Title IX should be made by the schools, not the defendant. Defendant's rules took away school discretion. Further, defendant should not adopt rules which limit the ability of recipients to give girls the same athletic opportunities as boys.	Basketball

It is noteworthy that every appellate court that has reviewed the law and determined its application to high school and college athletics programs has upheld Title IX (NCAA 2008a). In the following pages, I highlight a few of the cases that have arisen relating to Title IX. The following analysis of cases will focus on four main themes. First, I am going to selectively review cases where the applicability of Title IX has been raised. Second, I will review cases where plaintiffs have sued based on the elimination of sports teams. Most of the elimination cases involve instances where men's sports teams or programs were eliminated, and hinge on a disparate treatment or equal protection argument. The third group of cases involve litigation where women have sued for the right to participate on men's teams. I conclude with a review of cases where men have sued, and been denied, the right to participate on women's sports teams.

### **Federal Question/Applicability Issues**

#### *Grove City College v. Bell*

*Grove City College v. Bell*, 465 U.S. 555 (1984), may be one of the most influential cases affecting Title IX policy. Title IX as written prohibited gender discrimination at institutions that received federal funds. However, Title IX was not so clear as to what "receiving" federal funds meant. If a school received funding for its research activities in the Department of History, would that subject it to Title IX's mandates? As a small liberal arts college, Grove City College did not receive direct federal funding, although a few of its students received BEOG grants from the U.S. Department of Education. Accordingly, the U.S. Department of Education mandated compliance with Title IX in athletics at Grove City



College. Disagreeing with the Department of Education's assessment, Grove City College argued that since it did not receive any federal funds directly, and absent the receipt of any other federal funding, enrolling students who receive the BEOG does not bring the school under the umbrella of Title IX regarding gender equity in athletics. Agreeing with Grove City College, the U.S. Supreme Court held that since the athletic department does not receive direct federal aid, the athletic department does not fall under Title IX compliance.

With this 1984 ruling, the U.S. Supreme Court determined that Title IX only applied to programs that received direct federal funding. Since the majority of athletic departments at educational institutions are not funded directly through the government, the *Grove City* ruling effectively brought the advances made for female athletes to a halt, and allowed most university athletic departments to ignore Title IX.

*Franklin v. Gwinnett County Public Schools*

*Franklin v. Gwinnett*, 503 U.S. 60 (1992), was not about equity in athletics, but about whether a private citizen could obtain monetary damages for violations of Title IX. The Plaintiff was a high school sophomore who filed a lawsuit alleging that her high school teacher had sexually harassed her. Although she had filed her complaint with the Office of Civil Rights, at the conclusion of their investigation, the Office of Civil Rights found that the school had violated Title IX, but closed the case under assurances from school officials that no similar incidents of sexual harassment would ever happen again. The trial court dismissed Franklin's case, indicating that monetary damages were not available

for lawsuits under Title IX, and Franklin appealed all the way to the Supreme Court. The Supreme Court ruled in 1992 that although Title IX did not explicitly authorize money damages, that a right to those damages could be awarded.

*Franklin v. Gwinnett* is a landmark case for Title IX because it opened the door for institutions to be subject to significant awards of punitive and compensatory damages. Unsuccessful defendant institutions are now financially accountable for their violations or noncompliance with Title IX. Thus, it further reinforced the rights of the aggrieved, and provided an even greater incentive for institutions to maintain compliance with Title IX mandates.

*Chalenor v. University of North Dakota*

In *Chalenor v. University of North Dakota*, 2002 U.S. App. LEXIS 14404 (8th Cir. 2002), the court held that the Office of Civil Rights policy interpretations held greater weight than Title IX when Title IX regulations were ambiguous on an issue. Although the plaintiffs argued that they could garner private support for their sport, the court held that they would still be under the purview of Title IX.

*Pederson v. Louisiana State University*

*Pederson v. Louisiana State University*, 912 F.Supp. 892 (D. La. 1996), rev'd, 213 F.3d 858 (5th Cir. 2000). A class of female students at Louisiana State University alleged that the university did not accommodate their athletic interests. Utilizing the "interest and abilities" test of Title IX, the District Court decided the case in favor of the plaintiffs, but rejected the use of the proportionality test as a "safe harbor" for compliance with the law. On appeal,

the Court of Appeals reversed the portion of the District Court opinion, but did not address the dicta on proportionality.

*Jackson v. Birmingham Board of Education. March 29, 2005.* Roderick Jackson was a high school coach who alleged he received negative performance evaluations and was relieved of his coaching duties of the girls' basketball team in retaliation for his efforts to remedy the unequal treatment borne by his players. The court ruled that affected parties could seek legal redress for retaliatory conduct against them based on their efforts to comply with the mandates of Title IX. Noting that Title IX provides for a cause of action to address retaliation, the court noted that Title IX enforcement is tied to the ability for individuals to report discrimination.

### **Disparate Treatment/Substitution/Elimination of Teams cases**

*Roberts v. Colorado State Board of Agriculture.*

In *Roberts v. Colorado State Board of Agriculture*, 998 F.2d 824 (10th Cir. 1993), *cert. denied*, 510 U.S. 1004 (November 29, 1993), plaintiffs filed suit in response to Colorado State University's 1992 decision to eliminate its women's fast pitch softball team. The district court determined that CSU had not met any part of the three-prong test used to determine whether an institution was in compliance with Title IX. The Court found that CSU had not added any women's athletic teams at the University since it added women's golf in 1977. Further, the Court found that CSU had actually eliminated three women's sports, and that a significant difference existed between the number of female students enrolled at the University, and the number of female students participating in varsity

athletics. The Courts determined that CSU was in violation of Title IX by not meeting the interest and abilities of its female students.

*Lichten v. State University of New York at Albany*

In *Lichten v. State Univ. of New York at Albany*, 646 N.Y.S.2d 402 (N.Y. App. Div. 1996), defendant, the State University of New York at Albany (SUNYA) eliminated its men's wrestling team, men's tennis, and men's and women's swimming programs at the University in order to achieve gender equity in its sports programs. At the same time that these teams were eliminated, SUNYA added women's field hockey and women's golf programs. Plaintiffs argued that SUNYA failed to follow established University procedures in eliminating the teams. Although the University reinstated the programs for an additional year to comply with its own guidelines, in 1995, after following University protocols, the teams were once again eliminated, and became club sports. The court found in favor of the University.

*Harper v. Board of Regents*

In *Harper v. Board of Regents*, 35 F. Supp. 2d 1118 (C.D.Ill. 1999), the Illinois State University had eliminated the men's wrestling and soccer teams, and added a women's soccer team to achieve gender equity in its athletic programs. The men's teams were eliminated following the 1994-1995 athletic season and the new women's soccer team was added for the 1995-1996 season. In addition to claims falling under Title IX by alleging that the University had violated Title IX by discriminating against plaintiffs based on sex, plaintiffs also argued that the elimination of the men's teams resulted in a reduction of minority participation

amounting to .8 percent. The court held that the school was within its rights to eliminate the teams under Title IX, and that the slight reduction to minority participation did not amount to a disparate impact on minority athletes in violation of Title VI of the Civil Rights Act of 1964.

*Cohen v. Brown University*

In *Cohen v. Brown University*, 101 F.3d 155 (1st Cir. 1996), cert. denied, 520 U.S. 1186 (1997), a class of female athletes, led by Amy Cohen, sued Brown University for gender discrimination under Title IX. Brown University had recently demoted four of their varsity level athletic teams from University to donor-funded programs. As donor funded programs, the participating athletes were no longer able to access University funds for team expenses, nor sundries or other support from the University. Thus, donor-funded programs were responsible for raising their own funds. Two teams, volleyball and gymnastics, were women's teams, and two teams, water polo and golf, were men's teams. Brown cited financial reasons for the demotion. The plaintiffs claimed that by dropping the women's teams, Brown University was not effectively meeting the "interest and abilities" test towards female students under Title IX.

The question before the Court was whether the proportionality test under Title IX should be based on the number of students' interest in sports, or based on the population present at the entire university. Brown University had an undergraduate student population made up of 50 percent women, but women made up less than 40 percent of Brown University's athletes. Brown University argued that women were less interested in sports than men, and thus, the

University had not violated Title IX. Both the U.S. District Court and the Court of Appeals rejected that argument, and held that the University failed to comply with Title IX by failing to meet the interest and abilities of its female student population. As a result, Brown had to upgrade four women's sports teams (gymnastics, fencing, water polo, and skiing) to varsity status to meet the higher proportion of female students enrolled at the school.

*Favia v. Indiana University*

In *Favia v. Indiana University of Pennsylvania*, 812 F.Supp. 578 (W.D. Pa. 1992), *aff'd*, 7 F.3d 332 (3<sup>rd</sup> Cir. 1993), plaintiffs were members of two women's athletic teams that had been discontinued at the University. They alleged that the University had engaged in gender based discrimination by eliminating the women's gymnastics and field hockey teams. The plaintiffs argued that the University had failed to provide athletic opportunities to women at a comparable level as those athletic opportunities provided to men. The courts agreed, and granted and/or upheld an injunction which prohibited the University from eliminating the women's teams. The district court in dicta indicated that when the University had cut the women's teams, it had denied benefits to female athletes, including limiting the development of skill, self-confidence, teamwork, increased physical and mental well-being, and a foundation for lifelong healthy lifestyle.

*Boulahanis v. Illinois State University Board of Regents*

In *Boulahanis v. Illinois State University Board of Regents*, 198 F.3d 633 (7th Cir. 1999), *cert. denied*, 530 U.S. 1284 (2000), the Illinois State University had determined in 1993 that it had not added any women's sports programs in

over ten years, and that while enrollment at the University was 45 percent male and 55 percent female, male athletic participation was 66 percent, and female athletic participation was only 34 percent. In order to bring itself compliant, the University eliminated the men's wrestling and soccer teams, and added a women's soccer team. Additionally, the University adjusted financial aid to better represent awards given to female students athletes. Plaintiffs, former members of the eliminated men's soccer and wrestling teams, argued that the University's decision to eliminate the programs was sex based discrimination. The courts held that Title IX was created to redress disparities based on sex, thus there was no violation.

*Kelley v. Board of Trustees of the University of Illinois.*

In *Kelly v. Board of Trustees of the University of Illinois*, 832 F.Supp. 237 (C.D.Ill. 1993); 35 F.3d 265 (7<sup>th</sup> Cir. 1994), plaintiffs were male members of the University's men's swimming team. Citing budgetary concerns and the need to comply with Title IX by increasing women's sports opportunities, in 1993, the University had announced it was going to eliminate four varsity team sports, including the men's swimming team. Plaintiffs alleged that the University violated Title IX by eliminating the men's swimming program but not the women's swimming program. In defending its decision, the University argued that women's athletic participation opportunities were not equal to the proportionate share of women enrolled at the University. Additionally, the University argued that its decision was also based on the historically weak performance of the men's swimming team, and eliminating the team would not eliminate athletic

participation opportunities for male students. The courts held that eliminating the men's swimming program while maintaining the women's swimming program did not violate Title IX or the equal protection clause.

*Gonyo v. Drake University*

In *Gonyo v. Drake Univ.*, 879 F. Supp. 1000 (S.D. Iowa 1995), defendant, Drake University, made a decision to eliminate the men's wrestling team following the 1992-1993 season. The decision was based on the University's budget, financial concerns, the discontinuation of wrestling at other universities, and lack of student and community support for the program. The Drake "Take Down Club," a wrestling booster organization, offered to cover the wrestling program's expenses, but defendant declined the offer. During the 1992-1993 scholastic year, more than 75 percent of the students participating in intercollegiate sports at the University were males, and almost half of the athletic scholarships available at the University went to male students. However, less than 43 percent of the student population was male. Plaintiffs, former members of the University's wrestling team, sued despite the fact that they had been offered the opportunity to finish their studies at the University on scholarship until each athlete's respective graduation date. The courts held that the University was not in violation of Title IX or the Equal Protection Clause by eliminating the team.

*Miami University Wrestling Club v. Miami University*

In *Miami Univ. Wrestling Club v. Miami Univ.*, 302 F.3d 608 (6th Cir. 2002), Miami University eliminated its men's wrestling, tennis, soccer, and golf



programs at the end of the 1998-1999 academic year. While women made up 54 percent of the student body, they only made up 29 percent of the student athletes. Additionally, the University spent more money on recruiting members for male teams as well as more funds for financial aid. Although supporters and alumni of the men's golf program raised funds to support the team (and thus Miami University did not cut it), plaintiffs filed suit based on the elimination of the men's wrestling, tennis, and soccer teams. The courts found in favor of the University.

*Neal v. Board of Trustees*

In *Neal v. Board of Trustees of California State Universities*, 198 F.3d 763 (9th Cir. 1999), 51 Fed.Appx. 736 (9th Cir. 2002), *cert. denied*, 540 U.S. 874 (2003), California State University at Bakersfield (CSUB) reduced the number of positions available on the men's wrestling team in order to achieve substantial proportionality between male athletic participation and female athletic participation at the University. Members of the men's wrestling team filed suit to prevent the reduction in their team. The upper court held that CSUB did not violate the law when attempting to balance athletic participation opportunities to its students based on proportionality by reducing male participation opportunities to males' representative share.

*National Wrestling Coaches Association v. U.S. Department of Education*

(January 16, 2002) The plaintiffs in this case, concerned about the decision by some institutions to discontinue wrestling, sued the U.S. Department of Education, alleging that the proportionality test and enforcement framework

outlined by the Department violates the statutory authority of Title IX.

Challenging the applicability of the rules, the plaintiffs alleged that the rules regulating Title IX were created without following proper procedures. The District of Columbia Circuit Court held that the plaintiffs could not show that compliance with Title IX required the elimination of men's athletic teams, nor could plaintiffs show that changing the enforcement measures of Title IX would lead to the reinstatement of wrestling at institutions. Instead, the court noted that institutions use a variety of factors when making their independent decisions about which teams to retain and which teams to discontinue, further noting that these decisions may not include gender equity valuation.

A common element of cases involving disparate treatment/ substitution/ elimination of teams is that challenges to the Title IX rules focused on issues of how to effect change without harming men's athletic teams. Sabo (1998) studied the elimination of men's sports teams to determine whether or not the progress that women have made under Title IX came at the expense of men. Looking at data from 1992 through 1997, Sabo (1998) determined that between those years, the increase in budgets for men's athletic teams were larger than the collective cost of women's athletic programs. Further, Sabo (1998) concluded that there was no evidence supporting the claim that increased women's sports opportunities forced the elimination of men's sports.

### **Women on Men's Teams**

Many cases address the issue of women and girls' access to sports. Although most deal with female athletic participation on female teams, a few deal

with female sports participation on male athletic teams. The difficulties that women and girls face when seeking inclusion to traditional male sports teams provide additional insight into the role society still plays in female sports participation. Baseball is an all-American sport, still considered the national pastime. Despite the previous, albeit short-lived, experience of women in baseball in the twentieth century, baseball is still a sport that is considered masculine.

*National Organization for Women v. Little League Baseball*

*In National Organization for Women v. Little League Baseball*, 127 N.J. Super. 522, (N.J. Super. A.D. 1974), the National Organization for Women (NOW), on behalf of young girls, argued that girls should be allowed to play little league baseball. Defendants argued that the physical differences between boys and girls made girls more prone to injury in baseball than she would be with a soft ball as used in softball. Little League Baseball provided expert witness testimony to support the assertion that female athletes were physically inferior due to their diminished bone and muscle strength and reaction times compared to that of boys. The expert witnesses put forth testimony that boys had more muscle fibers allowing for their greater strength. Accordingly, Little League Baseball claimed that lower skilled male baseball players were still better than highly skilled female players. By arguing that the female body was inferior to the male body, Little League Baseball embodied previous discourse and prejudices on the frailty of the female body. Defendants put forth an additional reason for limiting girls' play in baseball as protecting her from breast cancer should she

suffer a ball hitting her chest. Although the court found in favor of the plaintiffs, it is noteworthy that the dissenting opinion written by Judge Meanor reasoned that allowing girls to play little league baseball was a waste of time because girls would only engage themselves in the sport temporarily in childhood, unlike males, who could continue to play the sport through adulthood.

*O'Connor v. Board of Education of School District*

*O'Connor v. Board of Education of School District 23*, 545 F. Supp. 376 (1982), 449 U.S. 1301. In 1980, Karen O'Connor attempted to try out for the boys' basketball team. Although the junior high school that she attended had a girls' team, she believed that participating on the boys' team was better suited for developing her athletic abilities. O'Connor had a history of playing on boys' basketball teams since she was seven. Nevertheless, in excluding her from participating on the boys' team, the school district argued that it was protecting O'Connor from undue harm. The school additionally argued that by allowing O'Connor to participate on the male team, males would have to be allowed to participate on the girls' basketball team, causing additional harm to the female team members. Incidentally, this harm would occur because the boys would dominate the girls' team because of their inherently better athleticism.

O'Connor essentially put forth a "separate but equal" argument to support her claim. She contended that the girls' basketball team was not equal to the boys' team in terms of skill and level of competition, and that she should be allowed to participate on the team that best suited her skills. Curiously, the defendants did not argue that placing a less skilled female player on the boys'

team would harm the team. Instead, their sole purported concern was for the safety of the female players. The Court held that the school board's refusal to allow females to participate on the males' team did not violate plaintiff's rights under Title IX. Although the Court found that this type of treatment seemed to be based on the arbitrary fact that O'Connor was a girl, gender based classifications were acceptable to adequately protect women's sports teams. Thus, Title IX does not require allowing females to participate on males' teams, and it is not a violation of the "interest and abilities" prong to deny talented players the ability to try out for the more competitive male team.

*Force v. Pierce City R-VI School District*

In *Force v. Pierce City R-VI School District*, 570 F.Supp 1020 (1983), Nichole Force, a young woman, wanted to try out for her eighth grade football team. She was denied the opportunity, and challenged the school's all-male tryout policy. Since all males of any ability, size, or strength could try out, the Supreme Court rejected the school's argument that safety was a legitimate reason for excluding Force from even trying out for the team. The Court dismissed the argument proffered by defendants that female athletes were at greater risk of injury. Trying out for the team did not ensure a place on the team, but simply the opportunity to attempt to secure a position. The Court noted that even the smallest or frailest male had the opportunity to try out for the team, and excluding Force over concerns of her safety were not legitimate governmental concerns.

*Adams v. Baker*

*Adams v. Baker*, 919 F. Supp. 1496 (1996) shifted the debate on women participating on men's teams from the gender issue to the moral issue. Plaintiff Tiffany Adams had participated on her junior high school's wrestling team with the boys. When she attempted to try out for her high school wrestling team, she was denied the ability to try out. Defendants cited her gender as the reason for the denial, and also cited the objection of the male wrestler's parents over potential disruption and inappropriate touching that may occur when males and females compete in wrestling competitions against each other. In addition to these moral objections, defendant argued that girls were more prone to injury from wrestling than boys, and that girls could not lift weight in the same capacity as boys. Thus, although wrestlers participate in competition based on their individual weight class, generalizations about the inherent weaker strength of female athletes was again presented as a rational basis for exclusion. Additionally, defendant cited concerns about female wrestlers being trained and treated by male coaches, who may have to treat injuries involving touching an athlete's chest or other body parts, and potential liability for sexual harassment lawsuits. Clearly, the arguments put forth in *Adams* served to reinforce the sexualized image of the female athlete rather than her skill or competitiveness.

The Court, in finding that objections based on moral beliefs do not meet the standard of important governmental objectives, noted that a school should focus on preventing sexual harassment misconduct rather than preventing girls from participating in athletic activities. The policy prohibiting females on male

teams was not substantially related to student safety, female participation on male teams would pose minimal hardship to defendant, and any hardship incurred was outweighed by the benefits to plaintiff and females. Accordingly, the Court held that public interest favored allowing female participation on the male wrestling team.

*Mercer v. Duke University*

*Mercer v. Duke University*, 190 F.3d 643 (4th Cir., July 12, 1999) was different from most exclusion cases in that its plaintiff, Heather Mercer, was allowed to try out for the Duke University football team. Mercer participated on the team by attending regular practices and drills. She was officially listed on the team roster, and posed as part of the team picture although she never actually played in any intercollegiate games. She was subsequently cut, although other walk-on kickers were not cut from the team. Mercer argued that Duke University discriminated against her based on her sex. Unlike many of the cases that contended that female athletes were inherently inferior to their male counterparts, Duke University based its defense on Mercer's poor athletic skills, and the contact sports exemption as an affirmative defense. Even by presenting their case in this gender neutral manner, the Court found in Mercer's favor, holding that because Duke University had allowed Mercer, a member of the female sex, to participate as a member of the team, it had waived its right to assert the contact sports exemption defense, and thus, was prohibited from discriminating against Mercer based on her sex.

*Lantz v. Ambach*

*In Lantz v. Ambach*, 620 F.Supp. 663 (D.C.N.Y. 1985), Plaintiff, a sixteen year-old female student, was prohibited from playing high school football on the boy's team. School regulations prohibited mixed competition in football, basketball, boxing, ice hockey, rugby, and wrestling, all contact sports. Additionally, the defendant argued that male students were stronger, faster, and more muscular than female students of similar age; that girls were more prone to injury; and that the contact sports exemption was for the protection of female athletes. The Court held that Title IX does not require opportunities for females to compete in contact sports. However, the Court determined that the regulation was overbroad by excluding qualified members of one gender because that gender is presumed to be inferior.

*Hoover v. Meiklejohn*

*Hoover v. Meiklejohn*, 430 F. Supp. 164 (D. Colo. 1977) overturned Colorado High School Activity Association's policy of limiting soccer participation to only males.

**Men on Women's Teams***Clark v. Arizona Interscholastic Association*

*In Clark v. Arizona Interscholastic Association*, 695 F. 2d 1126 (Ariz. 1982), the Court held that excluding males from participating on the female volleyball team did not violate the Equal Protection rights of the male students because the prohibition was a substantially related method of achieving the



important objectives of promoting sport opportunities for female athletes, and redressing past discrimination.

*B.C. v. Board of Education*

*B.C. v. Board of Education, Cumberland Regional School District*, 531 A. 2d 1059 (N.J. Super. 1987) In this case, the Court held that that there was an important governmental interest in preserving women's athletic opportunities, thus, prohibiting males from participating in females' teams was substantially related to that objective.

*Petrie v. Illinois High School Association*

*Petrie v. Illinois High School Association*, 394 N. E. 2d 855 (Ill. App. Ct. 1979) In this case, the Court held that the defendant had a significant interest in preserving and fostering athletic competition for females, and preventing unfair athletic domination by males by restricting membership on the volleyball team to only females. The Illinois High School Association was allowed to restrict membership on volleyball teams to females only.

*Kleczek v. Rhode Island Interscholastic League*

*In Kleczek v. Rhode Island Interscholastic League*, 612 A. 2d 734 (R. I. 1992), the Plaintiff wanted to participate in field hockey at his school. However, the school did not offer a male field hockey team. Plaintiff petitioned to play on the female field hockey team, but his request was denied. Plaintiff alleged violations of his rights. The court held that prohibiting male participation on a female field hockey team was allowed, even when no field hockey team was provided for males.

A review of these court cases reveals that women still face strong resistance to full participation in sports, even 37 years after Title IX was passed. Women and girls who choose to participate in sports that are outside of traditional women's sports are still subjected to attacks based on physical inferiority, or the sexualized nature of their bodies. Gender stereotypes still confront women who desire to participate, and ideas of femininity and culture are difficult to defeat. The historical views that women athletes are not feminine or ladylike have been used to discourage women from participating fully in sports, and are still used today as underlying themes justifying denying women certain access to sports. Although the stigma of being a female athlete has lessened in recent years, women and girls who participate in sports still must confront gender and sex-role expectations.

A component of Critical Race Theory is the notion that people of color have a distinct voice because of their histories and experiences with oppression, and are able to communicate these experiences to whites through their presumed competence on the issues of race and racism (Delgado 2001). What is real, or what we believe is real is actually socially constructed, but race and racism permeate this reality. How we see the world shapes our fundamental assumptions about the nature of reality, even if these assumptions are invisible. The story that has been filtered out of the legal case history is the story of the black woman. Her story has been suppressed, and is unseen because of the color-blind presuppositions of Title IX and its regulations. The untold story tells of how race is left out of the gender equity discourse and battles. The intersection

of ethnicity, race, and gender, and the ability to seek legal redress is highlighted by the lack of consideration and analysis provided to these subgroups within the legal case law history.

When reviewing many of the cases that have been brought challenging Title IX, it is evident that none of the cases, nor judicial dicta, address race. Title IX requires educational institutions to provide for girls and women the same resources and opportunities that they provide for boys and men. Using disparate treatment and Equal Protection Clause arguments to advance the position of girls in sports, generally, does nothing to alleviate the race based discrimination affecting black women and girls in the sports context. Gender equity policies may provide black women and girls the ability to participate in sports where there are already opportunities for boys to participate, but these policies do not create opportunities for where opportunities do not already exist for boys, nor do these policies mandate the new expenditure of resources if there has not already been resources expended for boys. Thus, in instances where black boys do not have the opportunity to participate in sports (for example in urban or rural areas), so to does the effect of racism directly limit the athletic participation opportunities of black women and girls. One could argue that the only institutions where black women and girls may increase their raw participation numbers may be at historically black colleges and universities, or other all black educational institutions where the higher enrollment numbers of black females have the effect that the majority of participants in athletic programs are black females. This is not to ignore the challenges that predominately black institutions are having in

meeting the mandates of Title IX because the higher percentage of enrolled female students makes it difficult for institutions to meet the proportionality prong of the three-part test. (See, e.g. Naughton 1998).

Second, most of the challenges to Title IX have come from sports at the collegiate level. A possible explanation for this, and quite probable, is that high school sports do not generate revenue at the level of collegiate sports. Third, much attention has been directed toward a concern for the impact that Title IX has presented to men, or its relation to male sports opportunities. Finally, the sports that have been called into question under Title IX litigation have tended to be highly visible sports. These sports are the ones that are opening scholarship opportunities to colleges. Thus, these legal challenges further reinforce the underrepresentation of black women in sport.

Although Title IX is supposed to provide greater sports participation and athletic opportunities for women, oftentimes, women of color do not benefit because they are disproportionately excluded from many of the newly available sports opportunities. For example, many institutions attempt to meet part two of the Title IX regulations by adding women's teams to the roster of sports offered. The diversity of sports now being offered at many college and university campuses disproportionately exclude women athletes of color because the majority of newly added women's sports teams tend to attract suburban white females (Suggs 2005) Some research suggest that the NCAA promotes sports in which women of color are less likely to participate (Suggs 2001) and the NCAA's own data support the findings that the fastest growing sports at member

institutions are lacrosse, golf, soccer, and rowing (NCAA 2008). The reasons for this are varied. One explanation is that urban female athletes do not participate in the growth sports because their high schools do not have the space needed for sports like soccer or lacrosse, or the water needed for rowing (Williams and Brake 2008). These schools also lack the financial resources necessary to support large sports programs (Suggs 2005). Further, there is a need for coaches to train the athletes in such new fields, and a lack of qualified coaches to do so (Suggs 2001). Accordingly, recruiting black women and girls to participate in these growth sports is difficult. Moreover, there is insufficient research addressing the subject of participation by women of color in growth sports.

As a policy, Title IX is designed to promote gender equity and equality in education. Institutional Title IX compliance is monitored by the Equity in Disclosure Act. The Equity in Disclosure Act mandates that institutions of higher education publish sports participation rates for all of their athletes, broken down by gender, and further data concerning the breakdown of budget and expenses, coaches' salaries, operating expenses, and scholarships. Through the oversight of the Department of Education, institutions of higher education are also required to document how money is spent on women and men's sports teams. It is because of this disclosure that we are able to use the NCAA data on member institutions to surmise the participation rates of college level athletes, and garner participation rates by gender, race, permanent residence status, and by sport.

## CHAPTER 5

### CONCLUSION

We found that schools attended by African American females do not offer the same range of sports as those available in schools attended by White females. For example, these schools are less likely to offer the “growth sports” leading to college athletic scholarships --e.g., soccer, volleyball, crew, softball, and the like -- in similar proportions to those available in schools with large concentrations of White females. Women’s crew and soccer programs have experienced some of the largest growth since Title IX was enacted. Indeed, NCAA data show that from 1991 to 2000 the number of women’s crew teams increased from 12 to 129, while the number of women’s soccer teams grew from 318 to 811. Since the inception of Title IX, scholarships in those sports have also been added in efforts to attract female athletes. Increasing the number and offering of women’s sports at the high school and collegiate levels has provided greater opportunities for sports participation and development extended toward white, middle-class women at the expense of blacks. Thus, the effect of Title IX at the high school level has been to maintain the “funneling” of black female athletes into the two main sports (e.g., basketball and track & field), while white female athletes benefit the most from the addition of new sports and sports programs. In continuing to provide a narrow range of sports available at the high school level for black women, this process may also adversely affect the accessibility of college athletics for non-white females who may be seeking athletic scholarships. Therefore, the Title IX approach of adding “growth” sports

for women to achieve gender equity may be far reaching in terms of erecting unintended barriers to access and participation in high school and college athletics for non-white women.

The legal precedence that has been set following Title IX and equal protection litigation clearly supports the idea that women and girls should have equal opportunity and access to sports. Yet, although Title IX appears to redress gender equity issues, as a civil rights measure, it is not so clear as to whether Title IX addresses the needs or desire for racial equity. Case law challenging or supporting Title IX has neglected to test the double jeopardy implications for black women in sports. Title IX as a policy has only sought to redress one form of discrimination, discrimination by gender, not race. Few cases, if any, have dealt with the intersection of race and gender equity issues, and, specifically, the challenges faced by black female athletes when they face discrimination based on their gender and their race. The question of equal access should be a part of addressing gender equity. Race and gender equity have their roots in the equality of access. The introduction of new, growth sports affects both. Thus, the argument is not whether black women have benefitted from Title IX, but whether black women and girls have received equal benefits as those reaped by white females under Title IX. Specific attention to how educational and gender equity policies co-exist and intersect with race is key to making sure that all girls and women receive the benefits that sports participation provides.

The general question which served as the focus of this study was: Do gender equity strategies embodied in the Title IX affirmative action policy benefit white women and women of color equally? Three specific research questions served as corollaries to the general question:

1. Have black women made the same progress as whites in high school sports participation since the enactment of Title IX in 1972?
2. To what extent is black women's under-representation a function of the extent to which schools they attend offer fewer opportunities to participate in sports, especially the "growth sports" (e.g., soccer, volleyball, and crew), which have been added as part of the Title IX strategy to achieve gender equity?
3. To what extent have the legal challenges to gender inequality addressed the racial disparity between black and white females in gaining access to sport participation in their intent and outcome?

In this study, we have shown that interscholastic athletic access and participation opportunities for females are unevenly distributed along racial lines, with the result that black girls receive fewer opportunities to experience the benefits of athletic participation and miss out on the many positive consequences of involvement in organized school sports as a learning and socialization context. Greater emphasis must be given to racial considerations in Title IX's mandate of achieving equality of access, since school sport participation is especially important for young women of color as they are more likely to participate in



sports through their schools than through private organizations (Women's Sports Foundation 1988; Women's National Law Center 2002).

#### *Limitations to the Study and Directions for Future Research*

There are several limitations to this study. First, it is unclear what direct factors may influence a student's participation in sports. Additionally, it is unclear why a high school may not offer many of the sports that are being offered at the collegiate level. Research suggests that school size, region, location, and poverty level are related to sport participation opportunities in predictable ways. Using secondary data based on national longitudinal surveys rather than qualitative data limits the study to existing reports, and does not allow examination into the experience, interests, and abilities of students as reported directly by students themselves, which may include other contexts (intramural, community sports, and recreationally). Further, while research suggests that poverty level is related to sports participation opportunities, it is unclear whether discrimination issues like position stacking and female participation opportunities for black women are present at elite schools. Therefore, there is additional need for future research to address this and other issues affecting the involvement of black women in sports. Additional research may add depth to findings reported in this study. Specific suggestions for future research include:

- Conducting a study to examine why women of color do not participate in sports programs (especially growth sports) that may be offered at their educational institutions or in their communities;

- Research which more directly examine barriers to opportunity and access to sports by women of color;
- Research on sports participation among women through the lens of ethnographic data;
- More extensive research comparing race and gender differences within collegiate institutions, examining regional, and other demographic factors;
- Research examining the intersection of class, race, and gender by determining whether wealthy black areas or neighborhoods offer increased access to growth sports and other historically “upper-class” sports.
- Research examining the socialization experiences affecting black girls and women in shaping their participation in sports in high school and college.

All female athletes have had a tremendous increase in athletic opportunities since the inception of Title IX. Nevertheless, there is still much work to be done in the battle to gain equal representation and opportunities for women of color in collegiate athletics, and that work must be taken up at the middle and high school levels as well. African American females are still vastly underrepresented in collegiate sports, and those who are participants are limited to play in two main sports. According to NCAA data, women of color are underrepresented in all but five sports (bowling, badminton, basketball, outdoor track, and indoor track) (NCAA 2008).

What, then, can be done to increase the percentage of women of color in intercollegiate athletics? As mentioned above, first, greater opportunities are needed for participation in all sports at the initial lower-skilled levels. Although new and growth sports have been consistently added to the intercollegiate line up of sports since the 1980s, women of color and other women from lower socioeconomic backgrounds do not have the access to training, coaches, or facilities necessary to participate in sports such as hockey, synchronized swimming, badminton and archery (Corbett and Johnson 1993). If black women and girls do not get an adequate foundation in a sport through early exposure, it is very unlikely that they will be able to participate in these sports at the collegiate level. Opportunities need to be created in schools that have a high concentration of black girls to ensure they have the same opportunities as other athletes.

As indicated in the historical description of women in sports, participation opportunities at the beginning of the 20<sup>th</sup> century were provided by community organizations, churches, settlement houses, and businesses. A return to a time when sports participation was important to the community is in order. Some schools are unable to fund participation opportunities for many of the growth sports. Access opportunities are needed outside the realm of the school system. Community organizations and especially corporations should collaborate in providing access to new and growth sports to those women and girls whose families may not have the economic ability required for them to participate.

Limited role models and representation in the media may be another way that women of color are discouraged from participating in certain sports. The

media has a history of neglecting to tell the black women's sports story. Absent the attention given to a few phenomena like Serena Williams and Venus Williams, or negative media attention around sports stars like Marion Jones, black female participation in sports fades into obscurity. Any successes by women of color in sports is largely unnoticed by the media, and, consequently, young women of color do not see many women who look like them participating in sports other than track & field or basketball (Cahn 1994). Clearly, women of color have been marginalized by most segments of society (hooks 1984). The continued marginalization of this group of women may be a factor in explaining why women of color are not participating in sports outside of the traditional two.

Clearly, there is a need to extend opportunities to participate in growth sports to many athletes who currently do not have access to these sports. Although some evidence indicates that black girls have an interest in such growth sports as volleyball, they do not have the same opportunities to participate in these sports as white girls. Providing access to growth sports would serve to cultivate earlier interest in these sports.

Previous research on girls and sports indicates that encouraging black girls to play sports has many positive benefits, including: increasing high school graduation rates and future university enrollment; decreasing the engagement in harmful behavior such as drinking, smoking, and drug use, and sexual activity; decreasing rates of breast cancer; and reducing rates of teenage pregnancy. Female sport participants also have a greater sense of well being and self-worth, and a more positive body image. In facing the realities of living in a racist

society, black women and girls learn positive life lessons including courage, cooperation, and honesty, hard work, self-discipline, and sportsmanship through involvement in sports. They also experience lower instances of depression and suicide, and higher self-esteem. Perhaps, most importantly, they have fun. The benefits of investing in the athletic opportunities of young black females are substantial, and, in the long-run, outweigh the short term costs associated with program development and support. Most of the resources that are required to cultivate athletic interests and abilities should focus on black girls in elementary, middle, and high school. By the time they reach college, it may be too late to effectively address the issue of creating equality of opportunity for access and participation of black females in sports.

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