

## More of the Same - Enough Already!

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# MORE OF THE SAME – ENOUGH ALREADY!

CYNTHIA LEE A. PEMBERTON\*

## I. WE ARE STILL WAITING

I frequently have the opportunity to give Title IX presentations to various groups (e.g., interscholastic and intercollegiate athletics folks, physical education classes, athletic teams, and law classes, etc.). Almost without exception, during the presentation someone comments along the lines of: “Title IX is all well and good, but change takes time . . . don’t we need to be patient in growing girl’s sports opportunities . . . moving too fast is hurting the boys . . .” To which I typically reply by asking, “How old are you?” From there the prompt goes something like this, “Raise your hand if you were born after 1972.” Not surprisingly, nearly everyone raises his or her hand (especially when the presentation is focused on an undergraduate class). In fact, based on 2010 U.S. Census data, just under 54% of the U.S. population (53.797%) was 39 years of age or younger in 1972.<sup>1</sup> That means over half of the U.S. population has lived their entire lives still waiting to realize the promise of Title IX—which quite simply translates to the absence of sex discrimination in educational settings. Patience is one thing, but forty years? Really?

Forty years of incrementally growing girl’s sport opportunities, while admittedly evidencing progress, has not yet gotten us to the point of the absence of sex discrimination in interscholastic and intercollegiate athletics.<sup>2</sup> We are not talking wonderfulness here. Laws establish how bad we can be before we get into trouble. The Title IX compliance margins allow us to be *sort-of bad*, meaning schools can and do keep on discriminating based on sex, at least a bit, without consequence.<sup>3</sup>

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1. Lindsay M. Howden & Julie A. Meyer, *Age and Sex Composition: 2010*, U.S. CENSUS BUREAU (May 2011), <http://www.census.gov/prod/cen2010/briefs/c2010br-03.pdf>.

2. See generally R. Vivian Acosta & Linda Jean Carpenter, *Women in Intercollegiate Sport: A Longitudinal, National Study Thirty Three Year Update 1977–2010* (2010), available at <http://webpages.charter.net/womeninsport/2010pdf%20combined%20final.pdf>.

3. RAY YASSER ET AL., *SPORTS LAW: CASES AND MATERIALS* 136–71 (7th ed. 2011).

## II. TITLE IX—EQUITY MATTERS

Title IX derives from the 1972 Education Amendments to the 1964 Civil Rights Act.<sup>4</sup> “Title IX is a statutory remedy for gender-based classifications in education.”<sup>5</sup> Among other things, Title IX applies to interscholastic and intercollegiate athletics in education settings. Title IX states: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”<sup>6</sup> It was signed into law June 1972 by President Nixon, and then more fully described and operationalized through the 1975 Title IX Rules and Regulations and again in even more detail in the 1979 Policy Interpretations propagated by the Department of Health, Education, and Welfare.<sup>7</sup>

A. *Equity Matters*

The 1975 Title IX Rules and Regulations established an initial compliance deadline of July 1978.<sup>8</sup> Using this compliance deadline as the starting point, roughly 47.26% of the U.S. population has been born since sex-based educational equity was supposed to have been achieved.<sup>9</sup> This translates to approximately 145,917,503 people, nearly 61 million of which are girls and women, who have received, and are still receiving, less school sport educational access and opportunity, and as a result, less in terms of the chance “to achieve, to [learn to] overcome obstacles, to practice to the point of proficiency . . . [to] learn [through school sport participation] about sacrifice, commitment to a greater good, [and] responsibility to others.”<sup>10</sup> That is a lot of folks, generations of girls and boys, women and men, moving through an education system wherein sex-based discrimination persists.

Sport and fitness activities are important physically, mentally, and

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4. Title IX, Education Amendments of 1972, 20 U.S.C. § 1681 (2011).

5. YASSER, ET AL., *supra* note 3, at 136.

6. § 1681(a).

7. *A Policy Interpretation, Title IX and Intercollegiate Athletics*, OFFICE FOR CIV. RIGHTS, DEP'T OF EDUC., 44 Fed. Reg. 71,413 (Dec. 11, 1979), available at <http://www.ed.gov/about/offices/list/ocr/docs/t9interp.html> [hereinafter *1979 Policy Interpretation*]; *Title IX of the Education Amendments of 1972, Rules and Regulations*, 45 Fed. Reg. 30,955, 30,955–65 (May 9, 1980) (codified as 34 C.F.R. 106).

8. *See Title IX of the Education Amendments of 1972, Rules and Regulations*, *supra* note 7.

9. *See* Howden & Meyer, *supra* note 1.

10. JEAN ZIMMERMAN & GIL REAVILL, *RAISING OUR ATHLETIC DAUGHTERS: HOW SPORTS CAN BUILD SELF-ESTEEM AND SAVE GIRLS' LIVES* 138 (1998).

emotionally.<sup>11</sup> Women and girls who participate in sports are more achievement-oriented, independent, and confident.<sup>12</sup> “[G]irls who are athletes do better in school[,] . . . [earn] higher grades and [get] better standardized test scores . . . are also less likely to drop out of high school and more likely to go on to college than their non[-]athletic counterparts.”<sup>13</sup> Girls who play sports are less likely to have unwanted pregnancies, and less likely to become involved in drugs than their nonathletic peers.<sup>14</sup>

In terms of the playing field of life, qualities associated with sport participation have been linked to leadership.<sup>15</sup> As an example, Cantor and Bernay interviewed twenty-five female government leaders asking what qualities or strengths they believed contributed to their success in getting elected and persevering in government or political leadership positions.<sup>16</sup> Time and again, the women interviewed noted sport participation as a “training ground” for effective participation on the “playing field of power.”<sup>17</sup> Title IX compliance and gender equity matter.

### B. Title IX Compliance

Title IX compliance is assessed via thirteen compliance components that fall into three areas. These are: (a) the accommodation of interest and abilities, (b) financial aid, and (c) equitable opportunities and accommodations regarding other program areas.<sup>18</sup>

The *accommodation of interest and abilities* is assessed in one of three ways (i.e., the three-prong interest and abilities test). The first part of the three-prong test involves the *assessment of substantially proportionate participation opportunities*. This means that athletic participation

11. See generally Donna A. Lopiano, *Equity in Women's Sports: A Health and Fairness Perspective*, 13(2) ATHLETIC WOMAN 281 (1994); Maureen R. Weiss & Susan D. Glenn, *Psychological Development and Females' Sport Participation: An Interactional Perspective*, 44 QUEST 138 (1992).

12. See generally Don Sabo, *Psychosocial Impacts of Athletic Participation on American Women: Facts and Fables*, 12(2) J. OF SPORT AND SOCIAL ISSUES 83 (1988).

13. ZIMMERMAN & REAVILL, *supra* note 10, at 21.

14. See generally Lopiano, *supra* note 11; DAVID SADKER ET AL., STILL FAILING AT FAIRNESS: HOW GENDER BIAS CHEATS GIRLS AND BOYS IN SCHOOL AND WHAT WE CAN DO ABOUT IT (2009); MYRA SADKER & DAVID SADKER, FAILING AT FAIRNESS: HOW AMERICA'S SCHOOLS CHEAT GIRLS (1994)

15. PATRICIA ABURDENE & JOHN NAISBITT, MEGATRENDS FOR WOMEN 33 (1992); DOROTHY W. CANTOR & TONI BERNAY, WOMEN IN POWER: THE SECRETS OF LEADERSHIP 62, 277(1992)

16. CANTOR & BERNAY, *supra* note 15, at 9.

17. *Id.* at 20, 50, 62.

18. VALERIE BONNETTE & LAMAR DANIEL, OFFICE FOR CIV. RIGHTS, DEP'T OF EDUC., TITLE IX ATHLETICS INVESTIGATOR'S MANUAL 7 (1990).

opportunities for females and males must be substantially proportionate to the female to male student body undergraduate enrollment rates at a particular institution.<sup>19</sup> For example, in general, if 50% of the enrolled undergraduate students are female and 50% are male, then the athletic program participation numbers must be substantially proportionate to these percentages (i.e., approximately 50% female and 50% male).

The second prong addresses what is called a *history and continuing practice of program expansion for the underrepresented sex*.<sup>20</sup> Specifically, it asks whether an institution can show a history and continuing practice of program expansion that is demonstrably responsive to the developing interest and abilities of the numerically underrepresented sex (which, in terms of interscholastic and intercollegiate athletics has been and continues to be women and girls).<sup>21</sup> The third prong asks whether an institution can demonstrate that the interests and abilities of the underrepresented sex have been, or are being *fully and effectively accommodated by the present program*. Prong three actually includes its own three-part assessment in terms of whether there is sufficient interest to form a team, athlete ability to merit participation on the team, and competition within the school's normal competitive region.<sup>22</sup>

Regarding *athletic-related financial aid*, Title IX compliance also mandates that athletic financial assistance (i.e., sport participation scholarship dollars) be allocated in proportion to existing female to male athletic participation numbers.<sup>23</sup> This means that if 60% of the intercollegiate athletic participants are male and 40% are female, then athletic-related financial aid may be allocated in a 60% to 40% male to female split. Title IX compliance assessment in this area is a straightforward matter of numbers very narrowly tied to actual participation numbers. Consider for a moment: if growing participation numbers among members of the underrepresented sex (i.e., women and girls) can be arguably linked, at least at the intercollegiate level, to the provision of athletic-related scholarship dollars, then the allocation of those dollars in proportion to existing sport participation sex ratios (which currently most often favor males as the overrepresented sex) acts to reinforce a disparate status quo.

The third broad area of Title IX compliance deals with *equitable*

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19. 1979 Policy Interpretation, *supra* note 7.

20. *Id.*

21. Acosta & Carpenter, *supra* note 2.

22. 1979 Policy Interpretation, *supra* note 7.

23. *Id.*

*opportunities and accommodations in other program areas,*<sup>24</sup> sometimes termed the laundry list. In this area, compliance assessment is considered relative to equipment and supplies, scheduling of games and practice, travel and per diem allowance, tutors, coaches, locker rooms, practice and competition facilities, medical and training facilities, housing and dining facilities, publicity, recruitment of student-athletes, and support services. It is important to note that relative to these other sport-related program areas, Title IX compliance assessment requires seeing both the forest and the trees—meaning adopting a dual monocular approach, viewing the overall level of accommodation afforded to females and males, as well as considering sport-specific comparisons. Often, very often, schools create and consider female to male sport-specific comparisons, erroneously thinking, for example, that football and volleyball can be “paired” for comparison. This level of compliance analysis is incomplete at best, flawed, inaccurate, and unacceptable as per the Title IX Rules and Regulations, Policy Interpretations, and the Title IX Athletics Investigator’s Manual guidelines.<sup>25</sup>

An overall approach to Title IX compliance assessment requires a comparison between what male athletes as a whole receive and what female athletes as a whole receive. This means that if 50% of the male sport participants receive a particular benefit (e.g., sport-specific athletic shoes), even if all those male athletes are from a single team (e.g., football), then 50% of the female athletes should receive a similar benefit. This would be true even if it takes providing the benefit to two or three different women’s teams to equal 50% of the female sport participants. This compliance assessment is based on a determination of what benefits and services are needed and desired, and does not require equal monetary expenditures, or that money be expended on things that are not needed or desired. Equity does not require identical or equal monetary expenditures.<sup>26</sup> Equity requires the provision of *equivalent* sport participation access and opportunity benefits.

Title IX compliance assessment is inclusive of *other sources of funding*, meaning “[w]here booster clubs provide benefits or services that assist only teams of one sex, the institution shall ensure that teams of the other sex receive equivalent benefits and services.”<sup>27</sup> This is another area where schools struggle, mistakenly believing that booster club or other donor source funding are excluded from Title IX compliance considerations when they are not.

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24. *Id.*

25. *Id.*; BONNETTE & DANIEL, *supra* note 18.

26. See Javits Amendment, Pub. L. No. 93–380, Title VIII, Part D, § 844, 88 Stat. 612 (1974) (codified as amended at 20 U.S.C. § 1681 (1973)).

27. ELLEN J. VARGYAS, *BREAKING DOWN BARRIERS: A LEGAL GUIDE TO TITLE IX* 29 (1994).

Regardless of the source of funds, it is incumbent upon the institution to provide equitable benefits to women and men, girls and boys.

### III. MORE THAN A GAME & MORE OF THE SAME

Not only are women and girls still waiting for equitable educational access and opportunities, but when push comes to shove and individuals speak up, repercussions are often swift, strong, and punishing. “In *Cannon v. University of Chicago* . . . the Supreme Court held that even though there is no express provision in [Title IX] authorizing private individuals to bring actions, there is an implied right of action.”<sup>28</sup> More recently, in 2005, in *Jackson v. Birmingham Board of Education*,<sup>29</sup> the Supreme Court held, “individuals, including coaches and teachers, have a right of action under Title IX if they are retaliated against for protesting sex discrimination.”<sup>30</sup> Despite an implied legal directive verifying a private right of action and prohibiting whistleblower retaliation, fear of retaliation is, according to Brake and Grossman, “the number one reason victims give for their silence”<sup>31</sup> and, I would add, justifiably so.

In 2002, my book, *More than a Game: One Woman’s Fight for Gender Equity in Sport*<sup>32</sup> (*More than a Game*), was published by Northeastern University Press. *More than a Game* is autobiographical and chronicles the true story of the struggle for Title IX compliance and gender equity in sports from 1992 through 1998 at a small liberal arts college in Oregon. It portrays an inside look at life as a whistleblower: the workings, limitations and costs of the legal process, the day-to-day battle engaged and endured, and ultimately, the price in human capital of Title IX compliance. I believe it has served as, and remains, an important resource for individuals considering pressing for Title IX compliance and the litigation that can result, as well as being a valuable source of insights and perhaps a deterrent for and to institutions potentially at risk of Title IX litigation. *More than a Game* seeks to raise awareness by laying bare the lived reality of challenging the status quo and

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28. YASSER ET. AL, *supra* note 3, at 137 (citing *Cannon v. Univ. of Chi*, 441 U.S. 677, 709 (1979)).

29. *See generally* 544 U.S. 167 (2005).

30. *Title IX Timeline*, in TITLE IX AT 35: BEYOND THE HEADLINES: A REPORT OF THE NATIONAL COALITION FOR WOMEN & GIRLS IN EDUCATION 5, 6 (2008), available at [www.ncwge.org/Pdf/Titleixat35.Pdf](http://www.ncwge.org/Pdf/Titleixat35.Pdf) (citing *Jackson*, 544 U.S. 167 (2005)).

31. Deborah Brake & Joanna L. Grossman, *Why the Supreme Court Was Right to Accept the Claim of a Coach Fired for Pointing Out Sex Discrimination in High School Athletic*, FINDLAW (Apr. 5, 2005) [http://writ.lp.findlaw.com/commentary/20050405\\_grossman.html](http://writ.lp.findlaw.com/commentary/20050405_grossman.html).

32. CYNTHIA LEE A. PEMBERTON, *MORE THAN A GAME: ONE WOMAN’S FIGHT FOR GENDER EQUITY IN SPORT* (2002).

pursuing gender equity.

The response to *More than a Game* has been largely (although not exclusively) positive, and over the course of this past near decade, rarely a month goes by that someone does not track me down via phone, email, or even Facebook, seeking help, advice, and often most importantly, the chance to share what they and those they care about are going through. Almost without exception, they talk and write about sport inequities and ongoing discrimination faced by student-athletes, daughters, nieces, and even themselves. They express pain and the frustration they have felt encountering repeated denials, delays, and layers of seemingly impenetrable institutional defenses acting to maintain a disparate status quo. Often, very often, they are sad and hurt describing the retaliatory personal and professional punishment they have endured.

This Article, while appearing in a sports law review, does not pretend to be a legal treatise on Title IX. Beyond the brief review of Title IX basics presented, this Article is about people. Through the words and stories shared by mothers, fathers, uncles, teachers, coaches, students, and athletes, it strives to present a real-time, real-world, real-people context to and for the ongoing struggle for gender equity and Title IX compliance. These words and stories are important because they illuminate the realities of what the pursuit of gender equity in school sports really means to people's lives. This matters because "we need and deserve our stories. They ground our understanding . . . in culture and context, elements frequently missing in mainstream literature . . ." <sup>33</sup> What follows, in their own words, are excerpts representing Title IX's human legacy of more of the same.

Hi . . . I'm a junior in high school and I am currently writing my final AP US History Paper on Title IX. My thesis essentially states that Title IX is helpful in opening up opportunities for women, though it has been at a cost to many women; and that women being mistreated have to choose [sic] between being treated as they are or fighting for what they deserve and making a lot of people upset. I am currently struggling with this as I was just cut from the baseball team after playing for two years, and it was obvious that it was because I am a girl and not because I am not as good as the boys.

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33. MAENETTE K. P. AH NEE-BENHAM & JOANNE E. COOPER, LET MY SPIRIT SOAR! NARRATIVES OF DIVERSE WOMEN IN SCHOOL LEADERSHIP 3 (1998).

In the spring of 2011, a former women's American Basketball League (ABL) professional player and Women's National Basketball Association (WNBA) coach, who recently accepted a high school basketball coaching job in a rural Midwest state, emailed the following:

I was hired as the girls basketball coach for a small rural town and had a nightmare experience. There have been violations of Title IX, sex and gender discrimination and defamation and more. I've already filed my complaint with the EEOC and we had mediation on Monday but it was unsuccessful. I was encouraged by how brave you were with your lawsuit[.] Can we talk?

Despite differences in age and circumstance (student-athletes to parents, high school teachers to college coaches), they share *evidence of persistent sport inequities and discrimination*, seeking advice, help, insight, and the opportunity to be heard. From a high school coach:

I wanted to run a situation by you to see if you feel it has Title IX implications . . . [The] High School has a girls wrestling team that the AD calls a "club." The school doesn't pay transportation and the coaches are volunteers. . . . The boys wrestling coach discourages girls from wrestling on his team.

Similarly, another high school coach shared:

My question concerns our facilities. We currently play at [a] Park next to the school on a city softball field with no dugouts or amenities. The field is open and used by dogs, kids, picnics, as well as normal recreation. . . . The boys field is also a city park used by the college baseball team and summer baseball programs only [and] is enclosed and locked from citizen park use, has bathrooms, dugouts, press box and hitting and pitching cage areas . . . . We have endured this with the promise of a new facility complex for soccer, track, and softball on a fairly close off campus site that was scheduled to break ground this fall. In the meantime the new AD [a former men's sport coach] has[,] because of some legitimate problems[,] negotiated with the city to sell off site [sic] land to the city and use it to redo [the] Park as a new college complex, leasing the land from the city on the

condition that certain criteria where [sic] met. A new baseball stadium would be built too. The college must allow the city to use the softball field as a coed slowpitch field as well as a fast pitch facility compromising the design for college use. The baseball field . . . received a large donation from the widow of a former coach and player toward that stadium facility. My understanding is the women's and men's facilities must be equal regardless of a donation . . . . How does designing one for city park slowpitch use instead of the normal fastpitch facility come into play? . . . [C]ould you give me advice on how to go forward to insure the women are not second class in this situation?

The father of two adopted daughters and a former student of mine wrote: "I know you have a lot of experience and training re: Title IX, and I need to know how to file a complaint against a high school." He went on:

My wife and I recently adopted two children from Ethiopia, one of them being a 14 year old girl who loves soccer. [The] High School has a football team, a cross country team, a guys soccer team, volleyball team, girls/boys basketball, wrestling, baseball, track, and softball teams. However, the school does have a cheer squad and dance team, which are considered activities, similar to band. As you can see, the boys at the high school have seven sports options to chose [sic] from and the girls have only five. The parents have tried to go through the proper channels and to bring up their concern for gender equity by adding a girls soccer team. At this point, I am through with being nice and I need to know how to file a formal complaint. We brought our initial concern to the school board on October 13, 2009 and they have deferred their decision each meeting until the 180-day complaint window to report a violation has passed. I am at the point to file a formal grievance against the school district to the OCR with the Department of Education.

As in the above, they express frustrations and a sense of helplessness in response to *institutional denials, delays, and defenses aimed at maintaining a disparate status quo*. The Director of a Women's Studies Program at a University in California wrote:

One of my students . . . the only African-American member of the . . . team . . . was told . . . by the head coach (a local millionaire who owns the racquet club where they all practice) that she has been suspended for three months because she was “not nice enough” to one of his friends. . . . The allegations go from there and are equally unsubstantiated. The trail leads to a climate of sexual harassment (his older friends asking the female players out constantly, etc.). . . . My student appealed the suspension and the university is supposedly investigating but they are doing nothing more than dragging their heels.

The uncle of two nieces who, in his words, “have been discriminated [against] severely,” described his six-year “battle” to draw Office for Civil Rights attention to gender equity in his state’s public schools.

[Ten] years ago, after federal funding ended . . . Dept of Education was no longer providing a designated Title IX officer. Consequently, many school districts in the state did the same, and gender equity took a downhill slide for girls in favor of the boys . . . . DOE/OCR has been highly resistant to taking corrective action . . . it has been a series of denials, delays, and defending the institution versus protection of the rights of girls to receive equal accommodation.

They write with thanks and relief derived from finding someone to talk or write to, knowing there is someone who understands what they are going through and that they are not alone. A college softball coach wrote, “I do not work at the college but only as a coach which is just considered a part time job. I happened upon your book at the city library and was deeply moved.” He went on to say, “I have often been beaten down by the system in championing women’s rights in [school sport].” A former college student-athlete wrote: “I just finished reading your book . . . I cannot express my thanks enough for fighting the “good fight” even though odds were stacked against you.” She sent a lengthy email describing how she, through stories shared by her college coach, came to know and understand the longstanding history and traditions associated with the disparate sport treatment endured by women and girls.

It’s certainly amazing to hear some of the stories . . . she said at the time, she coached varsity field hockey, volleyball, basketball, and softball plus had a full teaching load while

another coach coached one sport and didn't have nearly the teaching load that she did. The budgets for all 4 girls sports were still less than the mens' basketball team's budget alone. As for court space, intramurals were able to use the varsity game courts before women's varsity teams were. Women's varsity basketball was forced to use a gym that is in the basement with no seating and the endlines go literally to the wall (this I was able to see). . . . I think it is important for females to know where their opportunities were born. . . . I was just hired as a varsity softball coach in my area and really plan to make sure girls know where their roots were established.

And, sometimes, despite suffering personal and professional pain and frustration, their voices swell with determination.

Our conversation and your insight [were] very helpful to me and also provided me with support to continue on my fight. I know this will not be an easy battle but it is a necessary one. At this time, my financial situation is not great and this past year I have been emotionally fragile. . . . I've taken a big hit, but your book and your advise [sic] were like fresh water in a desert.

Likewise, not long ago, a young female college coach shared the following:

I work at a small NCAA Division III institution in Massachusetts. I have been looking for an email address and I hope you are the right person who authored the book, *More Than A Game?* If you are, then I have to say that that book has completely changed my career in Athletic Administration. . . . I read the book while in graduate school. . . . I couldn't, at first, believe that these situations still exist. I feel as though now at my current institution, I am facing similar scenarios and my philosophy and core values are challenged on a daily basis. I thought about giving up my career in coaching and moving on to another field. Instead, I re-read your book, and re-considered my decision. I continually face obstacles and challenges with gender equity on the staff level and for the student-athletes. It's extremely

difficult at times to work through harsh conditions but I am trying to remember that if I quit or leave, then all the progress I have made here will go by the way-side. I guess my real reason for emailing you is because . . . when I read your book in grad school . . . I couldn't imagine those issues happening in this day and age. Unfortunately, it still exists, as much as people are working hard to achieve equality on all levels, we still have a long road ahead.

Indeed, we do.

The epilogue of *More than a Game* concludes, in part, with a response to the questions: *Was it worth it and would I do it all again?* It reads:

The real cost of equity, the price of Title IX, goes far beyond dollars and cents. I lost a significant part of my job . . . I lost any hope of a career in athletic administration, particularly in the Pacific Northwest, something at the time I thought I wanted. My academic work was hindered and disrupted, and my dissertation focus, after months of work, had to be redirected. I was publicly humiliated over and over again. My swimmers and assistant coaches were harassed and hurt. My reputation in coaching was tainted, my swim camps suffered, and my colleagues in coaching were badgered and scrutinized because of their association with me. Friends and colleagues . . . brave enough to stand beside me were also harassed and hurt. . . . My Title IX battle cost [me] more than one long-standing friendship. I came to the brink of financial ruin. My physical, mental, and emotional health to this day are under repair. The emotionally strong, capable, and resilient woman I once was is less strong, less resilient, and much more vulnerable.<sup>34</sup>

Then, as now,

I suppose the answer is yes, it was worth it, and I would do it all again. But if I have regrets, they are that I remained so naively optimistic for so long and, as a result, was surprised, confused, and hurt, over and over again. Even now there is a part of me that doesn't understand, that just doesn't get it.

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34. PEMBERTON, *supra* note 32, at 280.

It should be a simple concept. Inattention and resistance to gender equity is morally, ethically, and legally wrong. The only way to make sense of [the] legacy of wrongdoing is to assume that, like me (before the summer of 1992), people . . . hadn't known any better, and that once they knew better, we would work together to make things right. The alternative is to assume that . . . the hundreds of schools across the country that continue to ignore and openly resist gender equity do know better, and that their actions and inactions were and are intentional and willful.<sup>35</sup>

It has been forty years. Nearly half the U.S. population has come of age since we were to have achieved educational equity and Title IX compliance. Despite the law, despite Office for Civil Rights publications, clarifications, investigations, and a growing mountain of litigation, not only does inequity persist, but so does the retaliatory, personal, and professional punishment perpetrated against those who speak up. Enough already!

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35. *Id.* at 281.