

THE GROWTH OF NCAA WOMEN'S ROWING: A FINANCIAL, ETHICAL AND LEGAL ANALYSIS

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I. INTRODUCTION

The sport of women's rowing has experienced substantial growth over the last several years. Since becoming a National Collegiate Athletic Association (NCAA) Championship sport in 1996-97,¹ the number of NCAA member schools that offer women's rowing at the varsity level has increased from 96 to 136 in the 2000-01 academic year.² The sport's proliferation at the intercollegiate level has occurred despite the fact that there is a dearth of youth and high school rowing programs – merely 291 nationwide in 1997.³ As a result, nearly 90% of all rowers on intercollegiate

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1. Peter Brewington, *NCAA Wades Into Women's Rowing*, USA TODAY, Apr. 2, 1997, at 8C.

2. *2000-01 Sports Sponsorship*, at www.ncaa.org/sponsorships/sponssummary.html (last visited Jan. 4, 2001). Within the NCAA, women's rowing is currently sponsored by eighty-one institutions in Division I, fourteen institutions in Division II, and forty-one institutions in Division III. *Id.*

3. AMERICAN ROWER'S ALMANAC 1997, at 489-94.

teams have no rowing experience before entering college.⁴

This article seeks to explain the reasons behind the seemingly anomalous growth of NCAA women's rowing by analyzing the financial, ethical, and legal implications of adding the sport at the intercollegiate varsity level.

Research of women's rowing programs added since the NCAA began sponsorship of the sport demonstrates that the start-up costs associated with women's rowing are substantial, ranging between \$231,800 and \$390,100 depending on the size of the program.⁵ In addition, the annual cost of a women's rowing program ranges from \$120,000 to \$250,000, depending on the size of the program.⁶ A comparison with other emerging women's sports such as ice hockey, water polo, soccer, and lacrosse found these sports to be far less expensive in their start-up costs.⁷ Furthermore, the annual costs of lacrosse and water polo are lower than women's rowing.⁸ A logical conclusion of this research seems to be that, on a *per team* basis, women's rowing at the intercollegiate level is not a sensible financial investment. However, one must look beyond these daunting numbers when looking at women's rowing and take an athletic department-wide perspective. Doing so would result in a different conclusion. Women's rowing has the capability of attracting a significantly larger number of athletes than any other women's sport. It is not uncommon for teams to have over 100 members.⁹ This is three to four times the number of athletes on any other women's team aside from track and field.¹⁰ Thus, when looking at participation numbers from a financial perspective, a single women's rowing team is the functional equivalent of several other women's sports. This considerable roster size is important in analyzing the legal reasons for the growth of women's rowing. On a *per athlete* basis, women's rowing is a sound financial undertaking.

NCAA member schools seeking refuge from the Title IX "storm" have turned in increasing numbers to women's rowing as a way to safely navigate the statute's troubled waters. The aforementioned participation num-

4. Andrea Blasko, *NCAA Women's Rowing: Flow*, JUST SPORTS FOR WOMEN, at www.justwomen.com/feat_flow.html (last visited Dec. 3, 1998).

5. George Butera, *Collegiate Rowing: Its Costs, Popularity & Growth*, AMERICAN ROWER'S ALMANAC 468, 468-70 (1997).

6. *Id.*

7. See discussion *infra* Part IV.

8. See *infra* notes 191-94 and accompanying text.

9. William Wallace, *Title IX Helps Female Scullers Thrive*, N.Y. TIMES, June 19, 1997, at B18.

10. NCAA, 1998-99 PARTICIPATION STUDY - WOMEN'S SPORTS (2000), available at http://www.ncaa.org/participation_rates/1998-99_w_partrates.pdf (last visited May 16, 2000) [hereinafter 1998-99 PARTICIPATION STUDY].

bers, along with a current scholarship limit of twenty imposed by the NCAA,¹¹ offer schools the opportunity to vastly increase the ratio of female students competing in intercollegiate athletics. This is an important factor in determining whether a school is substantially accommodating the interests and abilities of its female students, as required by Title IX.¹² In fact, achieving substantial accommodation is cited by the schools that have added women's rowing as the single most influential reason for the sport's growth.¹³

This article is intended to provide a comprehensive assessment of an increasingly prominent intercollegiate sport, and to study the broad impact that the sport has had on the landscape of intercollegiate athletics from financial, ethical, and legal perspectives. Part II will provide a brief review of the history of the sport of women's rowing, including its development as an NCAA sport. Part III examines the legal reasons for the growth of women's rowing, as the framework of Title IX will be applied. Part IV analyzes the financial implications for an institution choosing to sponsor women's rowing at the intercollegiate level, with a comparison to other nascent women's sports. Part V explains the numerous ethical issues surrounding the sponsorship of women's rowing, both in the institution's initial decision to offer the sport and its support of the crew once it has been established. Part VI discusses the likely future of the sport in the overall landscape of NCAA athletics. The article concludes in Part VII.

II. HISTORY

Rowing has existed for approximately 3000 years, ever since mankind began to understand the notion that an oar interacting with a fulcrum could allow for the safe navigation of bodies of water.¹⁴ Collegiate rowing in the United States began as an intramural sport in 1852 when a Yale University student purchased a used boat for \$29.50.¹⁵ The first intercollegiate sporting event was a crew race between Yale and Harvard on August 3, 1852, on Lake Winnepesaukee, New Hampshire.¹⁶ Though rowing has

11. NCAA CONST. OPERATING BYLAWS AND ADMINISTRATIVE BYLAWS, art. 15, § 5.3.1.2, *reprinted in* 1999-00 NCAA DIVISION I MANUAL [hereinafter NCAA MANUAL].

12. See U.S. Department of Education, Office for Civil Rights, Equal Opportunity In Intercollegiate Athletics: *Requirements Under Title IX of the Education Amendments of 1972*, available at www.ed.gov/offices/OCR/interath.html (last visited May 24, 1999) [hereinafter *Requirements Under Title IX*].

13. Wallace, *supra* note 9.

14. Thomas C. Mendenhall, *A Short History of American Rowing*, available at www.usoc.org/sports/az_3_26_1.html (last visited Dec. 3, 1998).

15. *Id.*

16. LISA PIKE MASTERALEXIS, CAROL BARR, & MARY HUMS, *PRINCIPLES AND PRACTICE OF*

had a long amateur history, and had the first national sports governing body in the United States,¹⁷ the sport has been largely restricted to men.¹⁸ While women rowed intramurally at Wellesley College as early as 1877, and at a few other clubs and schools in the late 1800's, their involvement in rowing was intended to be for health and recreational purposes only.¹⁹ Women continued to be excluded from most competitive rowing until the formation of the National Women's Rowing Association in 1962, which held its first national championship in Seattle in 1966.²⁰ While less than 100 women competed at this event,²¹ the seeds of elite women's competition were sown and women began rowing in the Olympic Games in 1976.²²

When the NCAA replaced the Association for Intercollegiate Athletics for Women (IAIW) and became the primary sponsor of intercollegiate women's sports in 1981-82,²³ there were 1,187 athletes on the 43 women's rowing teams competing at the varsity level.²⁴ However, the NCAA did not recognize women's rowing as a championship sport at the time. As a result, there was little growth of the sport until the NCAA took affirmative steps toward achieving gender equity over a decade later. Upon the recommendation of the NCAA Gender Equity Task Force's final report in 1993, the NCAA enacted legislation at its 1994 Convention²⁵ that identified nine 'emerging' women's sports—rowing, ice hockey, synchronized swimming, team handball, water polo, archery, badminton, bowling, and squash.²⁶ This provided the necessary impetus to increase dramatically the

SPORT MANAGEMENT 167 (Aspen Publication) (1998).

17. Mendenhall, *supra* note 14.

18. *Id.*

19. *Id.*

20. *Id.*

21. Mendenhall, *supra* note 14.

22. DAVID WALLECHINSKY, THE COMPLETE BOOK OF THE SUMMER OLYMPICS xxix (Overlook Press) (5th ed. 2000). Women competed in 1,000 meter races from 1976 until 1988, when they began racing at the men's standard distance of 2,000 meters. *Id.*

23. PAUL WEILER & GARY ROBERTS, SPORTS AND THE LAW: TEXT, CASES, PROBLEMS 844 (West Publishing Co.) (2d ed. 1998).

24. NCAA, 1981-82 PARTICIPATION STUDY - WOMEN'S SPORTS (1983), available at www.ncaa.org/participation_rates/1981-82_w_participation.html (last visited May 16, 2000). There were 28 teams with 862 women participating in Division I, 5 teams with 86 women participating in Division II, and 10 teams with 239 women participating in Division III. *Id.*

25. NCAA MANUAL, *supra* note 11, § 20.02.5. This legislation established the maximum number of scholarships allowed for each sport as follows: rowing (20), ice hockey (18), synchronized swimming (5), team handball (12), water polo (8), archery (5), badminton (8), bowling (8), and squash (9). *Id.*

26. Kay Hawes, *Emerging Issue*, NCAA NEWS, Feb. 15, 1999 available at www.ncaa.org/news/19990215/active/3604n01.html (last visited Dec. 15, 1999). Emerging sports are recognized by the NCAA to attempt to provide additional athletic participation opportunities to

sponsorship of women's rowing. Following the passage of this legislation, sponsorship of women's rowing programs rose from 67 in 1993-94²⁷ to 74 in 1994-95²⁸ and 87 in 1995-96.²⁹ At the NCAA Convention in January, 1996, the membership enacted legislation that established women's rowing as a National Collegiate Championship sport for the 1996-97 academic year.³⁰ Sponsorship of the sport continued to rise after the passage of this legislation, with 97 institutions offering women's rowing in 1996-97,³¹ 111 in 1997-98,³² 122 in 1998 - 99,³³ 128 in 1999-2000,³⁴ and 136 in 2000-01.³⁵ The first National Collegiate Women's Rowing Championship was held on Lake Natoma in Sacramento, California in 1997.³⁶ Eight teams and 296 athletes competed in this inaugural event, which was won by the University of Washington.³⁷

female athletes. Institutions can use emerging sports to meet the NCAA's minimum sports sponsorship and financial aid requirements. There is a financial incentive for institutions that sponsor an emerging sport; it may use the sport for revenue distribution purposes from the NCAA's broad-based revenue distribution plan. According to this plan, an institution receives a specified amount of money from the NCAA for each sport that it sponsors beyond the NCAA minimum requirement. There is no NCAA championship in an emerging sport, though it may have a national championship event conducted by a separate entity. If the NCAA removes a sport from the emerging sports list and elevates it to a championship sport, the NCAA conducts the national championship event. *See id.*

27. NCAA, 1993-94 PARTICIPATION STUDY - WOMEN'S SPORTS (2000), available at www.ncaa.org/participation_rates/1983-98_w_participation.html (last visited May 16, 2000).

28. NCAA, 1994-95 PARTICIPATION STUDY - WOMEN'S SPORTS (2000), available at www.ncaa.org/participation_rates/1983-98_w_participation.html (last visited May 16, 2000).

29. NCAA, 1995-96 PARTICIPATION STUDY - WOMEN'S SPORTS (2000), available at www.ncaa.org/participation_rates/1983-98_w_participation.html (last visited May 16, 2000).

30. *See* ACHIEVING GENDER EQUITY at VI-1, available at w.ncaa.org/library/general/achieving_gender_equity/ (n.d.). This legislation was codified as Bylaw 18.2.4.1. *Id.* On August 1, 1997, women's rowing was removed from the emerging sports list, as it had been elevated to a national collegiate championship sport. *Id.*

31. NCAA, 1996-97 PARTICIPATION STUDY - WOMEN'S SPORTS (2000), available at www.ncaa.org/participation_rates/1983-98_w_participation.html (last visited May 16, 2000).

32. NCAA, 1997-98 PARTICIPATION STUDY - WOMEN'S SPORTS (2000), available at www.ncaa.org/participation_rates/1997-98_w_participation.html (last visited May 16, 2000).

33. 1998-99 PARTICIPATION STUDY, *supra* note 10.

34. NCAA, 1999-2000 PARTICIPATION STUDY - WOMEN'S SPORTS (2000), available at www.ncaa.org/participation_rates/1999-00_w_participation.html (last visited May 16, 2000).

35. 2000-01 Sports Sponsorship, *supra* note 2.

36. *Washington Lives Up to Favorite's Role In Women's Rowing*, NCAA NEWS, June 9, 1997, at www.ncaa.org/news/19970609/active/3423n11.html (last visited May 14, 1999). The NCAA sponsors two types of championship events. National Collegiate Championships are offered in women's sports sponsored by at least forty institutions in any division of the NCAA for two consecutive years. NCAA MANUAL, *supra* note 11, §§ 18.02.1, 18.2.4. Currently, National Collegiate Championships are held in the women's sports of gymnastics, ice hockey, lacrosse, rowing, and water polo. *Id.* at § 18.3. Division Championships are held in women's sports sponsored by at least forty institutions in a particular division of the NCAA for two consecutive years. *Id.* at § 18.2.4. Division Championships are held in all other NCAA women's sports. *Id.* at § 18.3.

37. *Group Proposes Increasing Size of Rowing Field*, NCAA NEWS, June 29, 1998, at

The competition has since grown in size, with ten teams and 311 athletes competing at the 2000 championship regatta.³⁸ Each team is required to have a boat in each of the three championship events, with the remainder of the field in each event selected at-large based on a boat's performance in regular season competition.³⁹ Division I, II, and III institutions compete against each other in a single event, as there is no separate championship for each division.⁴⁰

The explosive growth of women's rowing has not been matched by the eight other emerging sports established by § 20.02.5 of the NCAA Manual.⁴¹ It was the first to be elevated to a championship sport⁴² and has more athletes competing than all of the other emerging sports combined.⁴³ Although rowing has been one of the fastest growing sports in the NCAA for nearly five years,⁴⁴ this growth seems anomalous for several reasons. First, the costs associated with sponsoring a varsity women's rowing team are extremely high.⁴⁵ The initial expenditures that an institution must make to purchase equipment during a program's formative years are greater than any other sport.⁴⁶ Depending on the particular situation of an

www.ncaa.org/news/19980629/active/3526n06.html (last visited May 14, 1999). The regatta consists of three separate events: a 'I Eight' for varsity rowers, a 'II-Eight' for junior varsity-level rowers, and a 'Four,' a boat with four rowers and a coxswain. *Id.* Champions are crowned in each event and the results tabulated to determine a team champion. *Id.* An individual rower may compete in only one event. *Id.*

38. *National Collegiate Women's Rowing*, NCAA NEWS, May 10, 1999, at www.ncaa.org/news/19990510/active/3610n32.html (last visited May 13, 1999).

39. *Id.*

40. *Id.* A minimum of 36 of the 311 berths are allocated to rowers from Divisions II and III. *Id.* Not surprisingly, these rowers have fared poorly in the championship regatta results, having never advanced to the finals of any race in the competition. *Id.*

41. See *supra* note 25 and accompanying text. Equestrian was placed on the emerging sports list for Divisions I and II in 1998. 1998-99 PARTICIPATION STUDY, *supra* note 10. There are only 178 schools offering the other eight emerging sports combined. *Id.* The total sponsorship numbers for each of these sports in 2000-01 is as follows: ice hockey (61), synchronized swimming (9), team handball (0), water polo (49), archery (3), badminton (3), bowling (25), and squash (28). Equestrian teams are fielded by 36 schools. 2000-01 Sports Sponsorship, *supra* note 2.

42. Water polo and ice hockey were elevated to championship sports and removed from the emerging sports list on August 1, 2000. See www.ncaa.org/databases/legislation/1999/99-062.html (ice hockey) (last visited Jan. 4, 2001); www.ncaa.org/databases/legislation/1999/99-062.html (water polo) (last visited Jan. 4, 2001). The NCAA Committee on Women's Athletics has recommended that squash and bowling be placed on a 'fast track' to championship status by 2002-03. Kay Hawes, *Women's Sports Seeking Fast Track to Championship Status*, NCAA NEWS, Feb. 15, 1999, available at www.ncaa.org/news/19990215/active/3604n02.html (last visited Jan. 4, 2001).

43. There were 5,628 rowers and 2,971 athletes participating on all of the other previously identified emerging sports combined. 1998-99 PARTICIPATION STUDY, *supra* note 10.

44. See *supra* notes 31-35 and accompanying text.

45. See *supra* notes 5-6 and accompanying text.

46. The specific costs of program sponsorship will be discussed at length in Part IV *infra*.

institution deciding to sponsor a varsity women's rowing team, the capital expenditures that may be required are also quite costly. If the construction or renovation of a boathouse and sufficient docking space are deemed necessary, the cost structure is inflated tremendously.⁴⁷ Beyond these initial expenditures, the annual cost of sponsoring a women's rowing team is higher than most other women's sports.⁴⁸ This is primarily a function of the comparatively exorbitant travel expenses associated with transporting a large number of athletes over frequently great distances to competitions.⁴⁹ Finally, the NCAA allows for the equivalent of a maximum of twenty athletic scholarships to be awarded by a women's rowing program.⁵⁰ An institution awarding the full complement of allowable scholarships dramatically increases the annual expenditures incurred by its women's rowing team.

In addition to the expense of sponsoring the sport, another reason that the growth of women's rowing seems illogical is its low participation rate at the youth and high school levels. There are merely 291 high schools offering rowing programs nationwide.⁵¹ As a result, there are simply not many athletes competing in the sport, let alone those with the desire to row intercollegiately. This has severely limited the pool of highly talented rowers available to be recruited by college rowing programs.⁵²

Closely related to the issue of low youth participation is the fact that rowing has traditionally been limited both in its geographic scope and in racial and economic diversity. Historically, rowing enjoyed pockets of regional popularity in the United States, primarily in the Pacific Northwest and Northeast, where the sport was long-dominated by Ivy League schools.⁵³ Whether this is a function of greater access to suitable public waters on which to row in these regions or the sporting preferences of the populations residing there, rowing does not enjoy wide participation beyond these locales.⁵⁴ Further, the sport lacks racial diversity.⁵⁵ "Rowing is

47. See *infra* note 198 and accompanying text.

48. Scott R. Rosner, *The Price You Pay: A New Method of Analyzing the Real Financial Costs of Intercollegiate Sport Teams*, Address Before the Annual Conference of the North American Society for Sport Management, Colorado Springs, Colorado (June, 2000) (manuscript on file with author).

49. See *infra* note 206 and accompanying text.

50. NCAA MANUAL, *supra* note 11, § 15.5.3.1.2.

51. See *supra* note 3 and accompanying text.

52. Telephone interview with Jenny Hale, President of the College Rowing Coaches Association and Head Women's Rowing Coach, Kansas State University (June 1, 1999). The ethical issues created by this situation are discussed in Part V *infra*.

53. Brewington, *supra* note 1. Prior to the establishment of an NCAA championship, Ivy League schools won the women's college national title every year from 1992 to 1996. *Id.*

54. See *id.*

a sport with primarily white ethnic roots.”⁵⁶ This is likely due to minority populations lacking access to the sport, both psychologically and physically.⁵⁷ Despite the rapid growth of the sport, there has not been an influx of minorities participating in women’s rowing.⁵⁸

The sport also lacks socioeconomic diversity.⁵⁹ This is attributable to the prohibitive expense of participation, which has made rowing the province of the upper class and those enrolled at elite preparatory schools.⁶⁰ The sport is simply too expensive for most people to afford.⁶¹ This lack of access has served to perpetuate the sport’s elitist stereotype and has limited the growth of the sport’s participation base.⁶²

Finally, the growth of women’s rowing is surprising because it is outside of the realm of the experience of many athletic administrators.⁶³ When faced with a decision to add a varsity-level sport, the primary decision makers are often forced to choose among several sports. Many of these administrators lack a fundamental understanding of women’s rowing, and very few of them have participated in the sport.⁶⁴ In addition, the rowing team usually practices on a body of water located off-campus and therefore is not visible to athletic administrators.⁶⁵ Thus, even if there already exists a thriving *club* team at the institution, it is typically unfamiliar to members of the athletic department.⁶⁶ As Washington College’s rowing mentor, Mike Davenport stated, “I think some athletics directors have seen rowing as this pariah out there – ‘What the heck is this thing?’ they say. ‘You have all these people, you need all this money, and then you do it so far away from campus – what do you guys do out there, fish?’”⁶⁷ This

55. See Gary Brown, *Seeking a Diverse Crew*, NCAA NEWS, Apr. 27, 1998, available at www.ncaa.org/news/19980427/active/3517n12.html (last visited Dec. 14, 1999).

56. *Id.*

57. *Id.* This lack of physical access to water is attributable to the large distance between many boathouses and minority neighborhoods. *Id.* Thus, the sport remains unpopular among minority populations even though there are various rowing programs that seek out minority participants. *Id.* Kevin Harris, the first and only African-American head rowing coach in the NCAA thus far, believes that this unpopularity is “because it’s not a place where they go.” *Id.*

58. *Id.*

59. Barbara Carton, *You Don’t Need Oars in the Water to Go Out for Crew*, WALL ST. J., May 14, 1999, at A1, A6.

60. *Id.*

61. See Brown, *supra* note 55.

62. See *id.*

63. See Gary Brown, *Making a Big Splash*, NCAA NEWS, Apr. 28, 1997, available at www.ncaa.org/news/970428/active/3417n07.html (last visited May 14, 1999).

64. See Brown, *supra* note 63.

65. See *id.*

66. See *id.*

67. *Id.*

sentiment is not atypical. Women's rowing often lacks a champion from within the athletic department to shepherd it through the sponsorship decision making process.⁶⁸

Despite these obstacles, women's rowing has been among the fastest growing sports in the NCAA in terms of both the number of institutions sponsoring the sport and number of participants.⁶⁹ To understand the primary reason for this growth, one must look to the law of Title IX.

III. LEGAL ASPECTS

A. History of Title IX

Title IX of the Education Amendments of 1972 is a federal law prohibiting sex discrimination in education programs and activities receiving or benefiting from federal funding.⁷⁰ While not specifically mentioned in the law itself, athletics are covered by Title IX.⁷¹ Consequently, this law has been the primary method by which women have achieved equal opportunity in high school and college athletics, and it has played a vital role in opening competition to female athletes.⁷² Though signed into law on June 23, 1972,⁷³ the Department of Health, Education and Welfare's final Title IX regulations⁷⁴ did not go into effect until July 21, 1975, and were not enforced until the three-year compliance period expired in 1978.⁷⁵ In order to clarify the requirements of Title IX and to provide schools with guidance on their obligations under the law, the Office for Civil Rights (OCR) issued its final Policy Interpretation on December 11, 1979.⁷⁶ This outlines a detailed set of standards to be adhered to in three separate areas: student interests and abilities, athletic benefits and opportunities, and ath-

68. See Brown, *supra* note 63.

69. See *supra* notes 31-35 and accompanying text.

70. 20 U.S.C. § 1681 provides in relevant part that "[n]o 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 ..."

71. See 34 C.F.R. § 106.41 (1975).

72. MASTERALEXIS, *supra* note 16, at 184.

73. *History of Title IX Legislation, Regulation and Policy Interpretation*, at bailiwick.lib.uiowa.edu/ge/history.html (last visited May 24, 1999).

74. 34 C.F.R. § 106.41 (1975).

75. *Id.*

76. *History of Title IX Legislation, Regulation and Policy Interpretation*, *supra* note 73. The Office for Civil Rights within the U.S. Department of Education is responsible for the enforcement of Title IX. Letter from Dr. Mary Francis O'Shea, National Coordinator for Title IX Athletics, Office for Civil Rights, to Nancy Foster, General Counsel, Bowling Green State University (July 23, 1998), available at bailiwick.lib.uiowa.edu/ge/ [hereinafter 1998 Guidance Letter].

letic financial assistance.⁷⁷

Though the Policy Interpretation is not a rule of law, it has been given substantial deference by courts determining the rights of female athletes.⁷⁸ After the period of enforcement that followed the issuance of the Policy Interpretation, female athletes suffered a setback when athletic programs were removed from coverage under Title IX by *Grove City v. Bell*.⁷⁹ As a result of this judicial setback, OCR immediately cancelled all forty of its ongoing Title IX athletics investigations and ignored any new complaints regarding athletics.⁸⁰ Congress acted rather quickly to correct the narrowing of Title IX that *Grove City* had accomplished and enacted the Civil Rights Restoration Act in 1988,⁸¹ overriding a veto by President Reagan.⁸² The Act served the purpose of reversing the Supreme Court's decision in *Grove City* by stipulating that Title IX applies to all programs of an educational institution that receive any federal financial assistance.⁸³ The revitalization of Title IX was fortified by the Supreme Court's decision in *Franklin v. Gwinnett County Public Schools*,⁸⁴ which allowed private plaintiffs to receive monetary damages and attorney fees for an intentional violation of Title IX.⁸⁵

In addition to these agency regulations and legislative and judicial statements, Title IX has been shaped by three other policy documents issued by OCR:⁸⁶ the Title IX Investigator's Manual;⁸⁷ the Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test;⁸⁸ and a letter offering guidance regarding the issuance of athletics scholarships.⁸⁹

77. 44 Fed. Reg. 71413 (1979). See also *Requirements Under Title IX*, *supra* note 12. These requirements will be discussed further in Part III.B *infra*.

78. See Robert D'Augustine, *A Loosely Laced Buskin?: The Department of Education's Policy Interpretation For Applying Title IX To Intercollegiate Athletics*, 6 SETON HALL J. SPORT L. 469, 473-80 (1996).

79. 465 U.S. 555 (1984). The Supreme Court limited the application of Title IX to programs or activities that received direct federal financial assistance. See *id.* As most athletic departments do not receive such direct funding, they were removed from coverage under Title IX.

80. *History of Title IX Legislation, Regulation and Policy Interpretation*, *supra* note 73.

81. Pub. L. No. 100-259, 102 Stat. 28 (1988) (codified at 20 U.S.C. § 1687).

82. *History of Title IX Legislation, Regulation and Policy Interpretation*, *supra* note 73.

83. *Id.*

84. 503 U.S. 60 (1992).

85. *Id.*

86. Valerie Bonnette, *Title IX Basics*, available at www.ncaa.org/library/general/achieving_gender_equity/ (n.d.).

87. VALERIE BONNETTE AND LAMAR DANIEL, OFFICE FOR CIVIL RIGHTS, TITLE IX INVESTIGATOR'S MANUAL (1990).

88. OFFICE FOR CIVIL RIGHTS, CLARIFICATION OF INTERCOLLEGIATE ATHLETICS POLICY GUIDANCE: THE THREE-PART TEST, January 16, 1996, available at www.ncaa.org/library/general/achieving_gender_equity/ [hereinafter 1996 Clarification Letter].

89. 1998 Guidance Letter, *supra* note 76.

Under part one of the three-part test, OCR looks at whether an institution's participation opportunities for its male and female students are substantially proportionate to their full-time undergraduate enrollments.⁹⁶ Although OCR will find that an institution with a closely mirrored image between these two figures is effectively accommodating the interests and abilities of its students, very few institutions have been able to take advantage of this "safe harbor."⁹⁷ In 1997, only fifty-one institutions in NCAA Division I were within even five percentage points of achieving substantial proportionality.⁹⁸ For many institutions, this is due to the presence of football. The number of participation opportunities in football is unmatched by any other sport.⁹⁹ An institution would typically have to sponsor at least three women's teams in order to match the number of athletes on a football team.¹⁰⁰ Thus, it becomes extremely difficult for an institution sponsoring a Division I-A football team to comply with the first benchmark.¹⁰¹

The growth of women's rowing in the NCAA is primarily attributable to its positive impact on institutions attempting to comply with the interests and abilities aspect of Title IX via the substantial proportionality

96. 1996 Clarification Letter, *supra* note 88, at II-26. In doing so, OCR considers only the actual number of participants in intercollegiate athletics, including the walk-ons who make a squad and practice but do not compete. *Id.* OCR excludes intramural sports and any unfilled roster slots from this calculation. *Id.* An individual who quits after two weeks of practice is not counted as a participant. Bonnette, *supra* note 86. Women's rowing has a high attrition rate because of the demanding nature of the sport. See Brett Johnson, *A Look at the University of Louisville's First Year (Part II)*, USROWING, June 2000, at 21-23 [hereinafter Johnson (Part II)]. A large number of individuals who attend practices in the preseason quit the sport before the competitive schedule begins; these individuals are not counted as participants. See *id.* Thus, the number of participation opportunities provided by women's rowing is somewhat limited because of its difficulty.

97. See *Gender Equity Creative Solutions; A Case Study of What Education Institutions Can Do In Order To Comply With The Regulations of Title IX*, at www.womenssportsfoundation.org (last visited May 12, 2000). Less than 9% of Division I institutions are able to do so. *Id.* An example is often helpful in understanding this aspect of the law. An institution with 10,000 full-time undergraduate students – 5200 women and 4800 men – must offer 52% of its participation opportunities in intercollegiate athletics to women to be in strict compliance with part one. See 1996 Clarification Letter, *supra* note 88. OCR makes the determination of whether an institution is in compliance with part-one on a case-by-case basis, as there is no strict statistical cut-off for a finding of substantial proportionality. See *id.*

98. CHRONICLE OF HIGHER EDUCATION, *Participation: Proportion of Female Students on Athletic Teams*, at <http://www.chronicle.com/search97cgi/s97.cgi> (last visited Jan. 19, 2001).

99. See NCAA, 1998-99 PARTICIPATION STUDY - MEN'S SPORTS (2000), available at http://www.ncaa.org/participation_rates/1998-99_m_partrates.pdf (last visited May 16, 2000). The average roster size for football is 113.4 in Division I-A and 92.7 in Division I-AA. *Id.*

100. Brewington, *supra* note 1.

101. See CHRONICLE OF HIGHER EDUCATION, *Participation: Proportion of Female Students on Athletic Teams*, *supra* note 98. Only 18 institutions in Division I-A and 20 institutions in Division I-AA were within five percentage points of achieving substantial proportionality. *Id.*

The confluence of these various statements has resulted in a corpus of law, which requires further analysis and application to women's rowing in order to fully understand the primary reason for the growth of the sport.

B. Analysis & Application of Title IX to Women's Rowing

1. Student Interests and Abilities

As previously mentioned, compliance with Title IX is measured in three separate areas: student interests and abilities, athletic benefits and opportunities, and athletic financial assistance.⁹⁰ Under Title IX, the athletic interests and abilities of male and female students must be equally and effectively accommodated.⁹¹ OCR will assess whether an institution is in compliance with this aspect of Title IX through the application of the following three-part test:

- (1) Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
- (2) Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or
- (3) Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.⁹²

An institution may choose any one of the three benchmarks established by this test in order to satisfy the accommodation requirement.⁹³ OCR also considers the quality of competition available to members of both sexes,⁹⁴ but it is this three-part test that has been the most litigated aspect of Title IX in determining whether the interests and abilities of an institution's students are effectively accommodated.⁹⁵

90. 44 Fed. Reg. 71413 (1979), *See also Requirements Under Title IX, supra* note 12.

91. *Requirements Under Title IX, supra* note 12.

92. 44 Fed. Reg. 71418 (1979).

93. 1996 Clarification Letter, *supra* note 88, at II-25.

94. *Id.*

95. *See e.g.,* Cohen v. Brown Univ., 991 F.2d 888 (1st Cir. 1993); Boucher v. Syracuse Univ., 164 F.3d 113 (2d Cir. 1999); Pederson v. La. State Univ., 201 F.3d 388 (5th Cir. 2000).

test.¹⁰² The large roster size of a women's rowing team has made it an extremely attractive alternative for athletic administrators looking to increase the number of participation opportunities afforded to an institution's female students.¹⁰³ The average roster size of a women's rowing team is the largest of any NCAA women's sport - nearly twice that of outdoor track and field, which has the second largest roster of any women's sport.¹⁰⁴ It is not uncommon for a crew to have 100 rowers.¹⁰⁵ Therefore, rowing is "women's football" in terms of roster size. It is a "quick fix" for institutions looking to offer substantially proportionate athletic opportunities to its female students.

While the first benchmark has been the focus of both litigants and courts, the dearth of institutions satisfying this test requires that attention be given to part two of the three-part test of Title IX compliance - whether an institution has a history and continuing practice of program expansion for the underrepresented sex. OCR reviews an institution's previous and ongoing remedial efforts to determine its compliance with this benchmark.¹⁰⁶ Of primary importance is ascertaining whether an institution has expanded its program over time in a manner that is demonstrably responsive to the developing interests of the underrepresented sex.¹⁰⁷ To do so, OCR will review if the school has added or elevated women's teams to intercollegiate status, added participation opportunities for female athletes, and its responses to female students' requests to add or elevate sports.¹⁰⁸ In determining whether an institution has a continuing practice of program expansion that is demonstrably responsive to the developing interests of the underrepresented sex, OCR looks to whether the institution has effectively communicated to students a procedure for requesting the addition or upgrading of a sport.¹⁰⁹ In addition, the current implementation of an institution's plan to expand an underrepresented program is viewed favorably by OCR.¹¹⁰ In *Boucher v. Syracuse University*,¹¹¹ the court held that

102. Carton, *supra* note 59.

103. Brewington, *supra* note 1.

104. 1998-99 PARTICIPATION STUDY, *supra* note 10.

105. Wallace, *supra* note 9.

106. 1996 Clarification Letter, *supra* note 88, at II-27. An institution cannot meet the requirements of part two simply by cutting men's teams or participation opportunities. *Id.* Nor can a school cut women's teams or participation opportunities without replacing them with additional teams or opportunities. *Id.* "[P]art two considers an institution's good-faith remedial efforts through actual program expansion." *Id.*

107. See *supra* note 92 and accompanying text.

108. 1996 Clarification Letter, *supra* note 88, at II-28. While no definitive time frame is mentioned by OCR, it is clear that the addition or elevation must be relatively recent. See *id.*

109. 1996 Clarification Letter, *supra* note 88, at II-28.

110. *Id.* Mere promises to expand the program do not suffice. *Id.*

the institution's addition of women's lacrosse, soccer, and softball between 1996 and 1999 was evidence that it had a history and continuing practice of program expansion for its female athletes.¹¹² Syracuse University is the first and only institution to successfully rely on this benchmark in proving its compliance with Title IX.¹¹³

Women's rowing is beneficial to those institutions choosing to comply with the second benchmark. The tremendous growth of the sport at the intercollegiate level allows those schools that have recently begun to sponsor it to claim a history of program expansion.¹¹⁴ The addition or elevation of a women's rowing team, and the numerous participation opportunities added for female athletes via the sport, will be evaluated positively by OCR.¹¹⁵ At those institutions that have added or elevated the sport upon the request of its students, the affirmative response will receive similar approval from OCR.¹¹⁶ The large number of NCAA institutions that are able to make these claims because of women's rowing is reflected in the sport becoming the first to move from Emerging to Championship status.¹¹⁷ In addition, there are several institutions that have announced plans to add or elevate a women's rowing team in the near future.¹¹⁸ These institutions may claim a continuing practice of program expansion through their implementation of a plan to add the sport.

In part three of the three-part test, an institution may claim that it is fully and effectively accommodating the interests and abilities of its female students even though it has neither achieved substantial proportionality nor demonstrated a history and continuing practice of program expansion.¹¹⁹ In reviewing this claim, OCR evaluates whether there is unmet interest in a particular sport, sufficient ability to sustain a team in the sport, and a reasonable expectation of competition for a team.¹²⁰ First, OCR

111. 164 F.3d 113 (2d Cir. 1999).

112. *Id.* at 119.

113. Carol Barr, *Still Afloat*, ATHLETIC BUSINESS, Oct. 1999, at 26-28.

114. This takes the form of an *addition* of a women's team at those institutions where there was no club team prior to the formation of an intercollegiate women's rowing team; at institutions that upgrade a club team to the intercollegiate level, the decision is considered an *elevation*. See 1996 Clarification Letter, *supra* note 88, at II-28.

115. See 1996 Clarification Letter, *supra* note 88, at II-28.

116. *Id.* Any institution doing so may also be able to claim that it has a continuing practice of program expansion if it had a policy or procedure in place for requesting the addition or upgrading of sports that was effectively communicated to students. *Id.*

117. See *supra* note 42 and accompanying text.

118. Jeff Metcalfe, *ASU Wet Behind Ears But Aims to be Water Power*, THE ARIZONA REPUBLIC, Sept. 8, 1999, at C1. Arizona State University will add a rowing team in 2001-02. *Id.*

119. 1996 Clarification Letter, *supra* note 88, at II-29. This includes students who have been accepted but are not yet enrolled at the institution. *Id.*

120. 1996 Clarification Letter, *supra* note 88, at II-29. An institution that has recently elimi-

looks at several indicators to determine whether there is unmet interest in a particular sport at an institution.¹²¹ These indicators include: whether the institution has been requested to add or elevate a particular sport by its current or admitted students; participation in a particular club or intramural sport at the institution; participation in certain interscholastic sports by admitted students; and sports participation rates in the high schools, amateur athletic groups, and community sports leagues in the areas from which an institution draws most of its students.¹²² Second, OCR looks at the *potential* ability of either an existing club team or interested students to evaluate if there exists a sufficient ability to sustain an intercollegiate team in the sport.¹²³ Third, OCR reviews if there is a reasonable expectation of intercollegiate competition available for a team in both the institution's conference and surrounding geographic area.¹²⁴ If there is unmet interest in a particular sport, sufficient ability to sustain a team in the sport, and a reasonable expectation of competition for a team, then the institution has not fully and effectively accommodated the interests and abilities of its female students.¹²⁵

Women's rowing may or may not help an institution satisfy the third benchmark of Title IX compliance. There are many strong club teams at the college level.¹²⁶ If one of them requests elevation to the intercollegiate level, and the institution is located in an area with a high participation rate at both the high school and intercollegiate levels, then the institution could not refuse to elevate the women's rowing team and still claim that it is fully and effectively accommodating the interests and abilities of its female students.¹²⁷ This is due to the fact that all three compliance requirements would have been met by the women's rowing team.¹²⁸ However, there are several potential problems with this analysis that may allow an institution faced with a request to add a women's rowing team to refuse to do so with no Title IX impunity. There is likely to be a paucity of feeder rowing programs in many institutions' normal recruiting area, as there are

nated a viable intercollegiate women's team is highly unlikely to satisfy part three. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. 1996 Clarification Letter, *supra* note 88, II-30-31.

125. *Id.* at II-30.

126. AMERICAN ROWER'S ALMANAC, *supra* note 3, at 489-94.

127. See Bonnette, *supra* note 86.

128. See *id.* "Compliance with this third method is unlikely if there is a sport not currently offered to the underrepresented sex for which there is sufficient competition in the institution's normal competitive regions and: a club team; and/or significant participation at high schools in the institution's normal recruitment area; and/or substantial intramural participation." *Id.*

so few club and high school programs throughout the country.¹²⁹ Depending on the geographic location of the institution and its conference affiliation, there may not be a reasonable expectation of intercollegiate competition in the institution's vicinity.¹³⁰ Thus, there would be no unmet interest or reasonable expectation of competition. Under these circumstances, the institution could claim that it is fully and effectively accommodating the interests and abilities of its female students without adding a rowing team.

2. Athletic Benefits and Opportunities

The second area of concern for Title IX compliance is the parity of athletic benefits and opportunities between male and female students.¹³¹ Though only one court has issued a decision addressing these requirements at the intercollegiate level thus far, they are an important aspect of Title IX compliance that are likely to be the future focus of the courts.¹³² In addition to looking at student interests and abilities, the law specifies that OCR examine other factors in determining whether there is equal opportunity in athletics.¹³³ The Policy Interpretation requires the following factors to be considered in determining whether an institution is providing equality in athletic benefits and opportunities: provision and maintenance of equipment and supplies; scheduling of games and practice times; travel and per diem expenses; opportunity to receive coaching and academic tutoring; assignment and compensation of coaches and tutors; provision of locker rooms and practice and competitive facilities; provision of medical and training services and facilities; provision of housing and dining services and facilities; publicity; provision of support services; and recruitment of student athletes.¹³⁴ Each of these factors is evaluated by comparing an institution's entire male and female athletic program with respect to the availability, quality and kinds of benefits, opportunities, and treatment afforded.¹³⁵ While identical benefits, opportunities and treatments are not required, the effects of any differences must be negligible.¹³⁶

129. See *supra* note 3 and accompanying text.

130. See *supra* notes 53-54 and accompanying text.

131. 44 Fed. Reg. 71413 (1979).

132. See *Cook v. Colgate Univ.*, 802 F. Supp. 737 (N.D.N.Y. 1992), *vacated as moot*, 992 F.2d 17 (2d Cir. 1993) (College women's hockey team established a *prima facie* Title IX violation by coming forth with evidence that the university had provided significantly superior funding and equipment to the men's team).

133. 44 Fed. Reg. 71413 (1979).

134. *Id.*

135. *Id.*

136. *Id.*

The impact of women's rowing on any one particular aspect of this area of Title IX compliance is relatively small. However, any inequity in the women's rowing program is magnified because of the large number of participation opportunities provided by the sport.¹³⁷ Because a significant percentage of the female athletes at an institution may be rowers, the impact of women's rowing on this area may be considerable.¹³⁸ Of primary concern is the effect of women's rowing on the provision and maintenance of equipment and supplies, scheduling of games, and the construction of practice and competitive facilities.¹³⁹

Perhaps the most compelling of these components are equipment and supplies.¹⁴⁰ The quality of equipment offered to both male and female athletes must be similar.¹⁴¹ However, the cost of the equipment used in women's rowing is quite high.¹⁴² As a result, many institutions opt to purchase used equipment to lower their expenses, especially when beginning a program.¹⁴³ If a women's rowing program is using inferior equipment for a sustained period of time, the institution may encounter difficulty establishing compliance with this component. The amount of equipment provided to male and female athletes also must be similar.¹⁴⁴ It seems

137. See *supra* notes 103-05 and accompanying text. This is especially important given that the analysis of compliance with Title IX often focuses on whether the equivalent quality and quantities of benefits and services are provided to equivalent percentages of female and male athletes. See Bonnette, *supra* note 86. Many athletic administrators focus on comparing similar sports with each other for the purpose of this area of analysis, as they find that it is the easiest method by which to ensure compliance. See *id.* at II-2. Football creates a problem for these administrators because it is usually afforded better benefits than any other sport, yet does not have a similar women's sport to provide a basis for comparison. See *id.* at II-3. Thus, the administrators must provide 'football-like' benefits to several sports in order to be in compliance with this area. See *id.*

Although the sports are dissimilar in nature, football and women's rowing are similar in the number of participation opportunities that they provide; this allows for an easier comparison between men's and women's athletes and, therefore, facilitates compliance with this area of Title IX. See *generally id.* at II-9-24. Even this comparison is not flawless; it is likely that football will still receive greater benefits in areas such as compensation of coaches, medical and training services, publicity, recruitment, and support services. However, the institution has available numerous justifications for the differences in the provisions of these services. See *generally*, Bonnette, *supra* note 86, at II-9-24.

138. See *supra* notes 103-05 and accompanying text.

139. See 44 Fed. Reg. 71414 (1979). See also Fed. Reg. 71416 (1979).

140. See 44 Fed. Reg. 71414 (1979). "Compliance will be assessed by examining, among other factors, the equivalence for men and women of: (1) [t]he quality of equipment and supplies; (2) [t]he amount of equipment and supplies; (3) [t]he suitability of equipment and supplies; (4) [t]he maintenance and replacement of the equipment and supplies; and (5) [t]he availability of equipment and supplies." *Id.*

141. See *id.*

142. The specific equipment costs are discussed at length in Part IV *infra*.

143. See *infra* note 223 and accompanying text.

144. See 44 Fed. Reg. 71414 (1979).

logical to expect that there should be enough equipment to ensure that all members of a team will be able to practice at the same time. Providing enough boats for the entire team to be on the water at the same time becomes an expensive proposition for a rowing team. Due to this expense, many institutions have opted not to purchase a sufficient number of rowing shells; the rowers must "take turns" on the water.¹⁴⁵ Institutions engaging in this practice may find it similarly difficult to prove compliance with this component.

One of the ways in which the maintenance of equipment and supplies is measured is by how equipment is repaired.¹⁴⁶ Men's and women's teams should have their equipment repaired in the same manner.¹⁴⁷ If there is a professional equipment manager, repairs should be done for a similar number of men's and women's teams.¹⁴⁸ The specialized nature of rowing requires a trained individual to repair and maintain the equipment.¹⁴⁹ While some institutions employ either a part-time or full-time rigger, in many cases these repair duties are the responsibility of the coach. This may be a compliance problem for an institution, because its equipment repair policy may result in inequality between the men's and women's teams. Replacement of equipment typically must be done on the same schedule for men's and women's teams unless there is a difference justified by the nature of the sport.¹⁵⁰ While rowing may be of a sufficiently unique nature to justify a different replacement schedule, this difference must not cause an inequity between male and female athletes if the institution wishes to remain in compliance with Title IX.¹⁵¹ The expense of purchasing new rowing equipment is likely to make it tempting for athletic administrators to delay this transaction. Nevertheless, administrators must not shy away from replacing old rowing equipment because of the expense involved if it results in inequitable treatment of female athletes.

Compliance with Title IX also implicates the procedures adopted by an institution for scheduling games and practice time for the women's rowing team.¹⁵² The time of day during which competitive events and practices

145. See Hale, *supra* note 52.

146. See 44 Fed. Reg. 71414 (1979).

147. Bonnette, *supra* note 86, at II-10.

148. *Id.*

149. Sue Rochman, *Journey Towards Equity*, ATHLETIC MANAGEMENT, June/July 1998, at 23. This individual is referred to as a rigger. *Id.*

150. Bonnette, *supra* note 86, at II-10.

151. See *id.*

152. See 44 Fed. Reg. 71416 (1979). "Compliance will be assessed by examining, among other factors, the equivalence for men and women of: (1) [t]he number of competitive events per sport; (2) [t]he number and length of practice opportunities; (3) [t]he time of day competitive events are scheduled; (3) [t]he time of day practice opportunities are scheduled; and (5) [t]he opportunities to engage

are scheduled should be equally convenient for the men's and women's teams.¹⁵³ Since most regattas are scheduled on weekends, the women's rowing team facilitates an institution's compliance with this component.

Women's rowing impacts upon the provision of practice and competitive facilities as well.¹⁵⁴ Practice and competitive facilities must be of equivalent quality and availability.¹⁵⁵ The assignment of a women's team to a poorer quality facility is a common compliance problem.¹⁵⁶ This is manifested in the sport of women's rowing by the type of boathouse facility used by many crews. Construction or renovation of a boathouse is a very expensive proposition.¹⁵⁷ Instead of engaging in such a project when adding or elevating a women's rowing team, many institutions choose to look at alternatives to incurring these large capital expenses. The institution may enter into a rental agreement with an existing boathouse or utilize an older boathouse that was previously used by the institution's men's or women's club rowing team. If these options prove unattractive, the institution may store equipment in a semi-trailer in close proximity to the practice water¹⁵⁸ or simply transport equipment to and from the institution to the practice water on boat trailers every day.¹⁵⁹ Engaging in these practices may make it extremely difficult for an institution to comply with this component; the poor quality of many of these facilities likely creates an inequity between male and female athletes. The availability of practice facilities involves the scheduling and location of these facilities. The location of the practice facility is of concern if the facility for a team of one sex is off campus and in an inconvenient location.¹⁶⁰ Most boathouses fit this description, as they tend to be located some distance from campus.¹⁶¹

in available pre-season and post-season competition." *Id.*

153. Bonnette, *supra* note 86, at II-11.

154. See 44 Fed. Reg. 71417 (1979). "Compliance will be assessed by examining, among other factors, the equivalence for men and women of: (1) [q]uality and availability of the facilities provided for practice and competitive events; (2) [e]xclusivity of use of facilities provided for practice and competitive events; (3) [a]vailability of locker rooms; (4) [q]uality of locker rooms; (5) [m]aintenance of practice and competitive facilities; and (6) [p]reparation of facilities for practice and competitive events." *Id.*

155. *Id.* There is some flexibility in evaluating this standard depending on the nature of the facility used. See Bonnette, *supra* note 86, at II-16.

156. *Id.*

157. The specific construction costs are discussed at length in Part IV *infra*.

158. UNITED STATES ROWING ASS'N, WOMEN'S ROWING 2 (1995).

159. Telephone interview with Rob Catloth, Head Women's Rowing Coach, University of Kansas (June 2, 1999).

160. Bonnette, *supra* note 86, at II-17. The scheduling of the boathouse will not be of concern unless there are rental terms that stipulate that the facility only be used by the institution at times that are inconvenient for the athletes. *Id.*

161. Johnson (Part II), *supra* note 96. Louisville's team travels 43 miles to practice. *Id.* The

While the nature of the sport may justify some inconvenience in the availability of the practice facility, the institution should attempt to minimize this burden as much as possible so as to reduce any inequities between male and female athletes.

3. Athletic Financial Assistance

The final area of concern for Title IX compliance is athletic financial assistance.¹⁶² Though only 46 institutions are in compliance,¹⁶³ this area has also received little judicial attention.¹⁶⁴ None of the three courts that have reviewed cases involving athletic financial assistance has found a violation of Title IX.¹⁶⁵ OCR presumes compliance in this area if the total amount of athletic scholarship dollars awarded to male and female athletes is within one percent of their respective participation rates in intercollegiate athletics at the institution.¹⁶⁶ Women's rowing may play an important role in an institution's compliance with this standard due to the large number of athletic scholarships that can be awarded. The NCAA allows for the equivalent of twenty full athletic scholarships to be awarded in women's rowing.¹⁶⁷ This is the largest of any women's sport.¹⁶⁸ When all sports are taken into consideration, only football offers more scholar-

rowing team at Robert Morris College practices at a boathouse eighteen miles from campus. Rochman, *supra* note 149, at 26.

162. 44 Fed. Reg. 71414 (1979) requires that the amounts spent on scholarships be offered on a "substantially proportional basis to the number of male and female participants in the institution's athletic programs." *Id.*

163. CHRONICLE OF HIGHER EDUCATION, *Participation: Proportion of Female Students on Athletic Teams*, *supra* note 98.

164. See Judith Jurin Semo and John F. Bartos, *A Guide to Recent Developments in Title IX Litigation - February 15, 2000*, ACHIEVING GENDER EQUITY at III-2, at http://www.ncaa.org/library/general/achieving_gender_equity/ (n.d.) (discussing *Gonyo v. Drake Univ.*, 837 F. Supp. 989 (S.D. Iowa 1993); *Beasley v. Ala. State Univ.*, 3 F. Supp.2d 1325 (M.D. Ala. 1998); *Boucher v. Syracuse Univ.*, 164 F.3d 113 (2d Cir. 1999)).

165. *Id.*

166. 1998 Guidance Letter, *supra* note 76. Therefore, if females constitute 55 percent of the athletes at an institution, then they must receive between 54 and 56 percent of the athletic scholarship dollars awarded by institution. *Id.* OCR allows variations of larger than one percent under several circumstances, including during the phase-in period for scholarships that are awarded by a new team. *Id.*

167. NCAA MANUAL, *supra* note 11, § 15.5.3.1.2. The NCAA classifies sports into two categories for the purpose of athletic scholarships. Head count sports are those sports in which only full athletic scholarships may be awarded if they are awarded at all. *Id.* at §§ 15.5.2, 15.5.4, 15.5.5. In Division I, football, men's basketball, and women's basketball, gymnastics, tennis, and volleyball are head count sports. Equivalency sports are sports in which partial athletic scholarships may be awarded. All other NCAA sports are equivalency sports. *Id.* at § 15.5.3.

168. *Id.*

ships.¹⁶⁹ Thus, the presence of a women's rowing team is the single greatest ally to an institution hoping to comply with the athletic financial assistance standard established by OCR.

IV. FINANCIAL ASPECTS

It is necessary to perform a comprehensive analysis of the financial aspects of women's rowing in order to have a proper understanding of the sport. As previously mentioned, both the start-up and annual costs of a rowing team are extremely high.¹⁷⁰ At the outset, a description of the initial expenditures that an institution must make to purchase equipment during a program's formative years is warranted.¹⁷¹ The most expensive aspect of this endeavor is the purchase of boats.¹⁷² Though NCAA championship competition is limited to two eight-person and one four-person shell, a rowing team usually has several additional boats.¹⁷³ A competitive Division I team might have between six and nine eight-person shells, four four-person shells, and five two-person shells.¹⁷⁴ An eight-person shell costs between \$14,000 and \$27,000, depending on the quality of materials used and its method of construction.¹⁷⁵ A quality four-person shell costs approximately \$10,000;¹⁷⁶ a pair costs approximately \$7,000.¹⁷⁷ The total cost of shells is between \$159,000 and \$318,000, depending on the number and quality of eights purchased. Despite the high cost, the shells do not come equipped with oars. Therefore, approximately seventy oars must be purchased for most programs at a cost of \$250 per oar; the total cost of oars is \$17,500.¹⁷⁸ In order to safely navigate the water, the coxswain of each boat must be heard by all of her rowers. An inboard voice amplification system called a "cox box" is a necessary aid to this endeavor, and

169. NCAA MANUAL, *supra* note 11, §§ 15.5.5.1, 15.5.5.2. A football team in Division I-A may award 85 scholarships, while a team in Division I-AA may offer the equivalent of 63 scholarships to 85 individuals. *Id.*

170. *See supra* Part I.

171. While these costs may be defrayed by purchasing used equipment, adding new equipment incrementally, and limiting the amount of equipment utilized by the team, the cost of providing the amount of new equipment necessary to achieve the desired goal of allowing an entire team to practice at the same time will be described for the purpose of this section.

172. Claus Wolter, *Starting Crew: A Primer*, ATHLETIC MANAGEMENT, June/July 1998, at 22.

173. *Id.*

174. *Id.* While these pairs are not usually raced in competition, they are used extensively in training because of the technical and boat-handling skills that can be learned. *Id.*

175. Wolter, *supra* note 172.

176. Hale, *supra* note 52.

177. *Id.*

178. Wolter, *supra* note 172.

costs approximately \$700.¹⁷⁹ Six "cox boxes" are required, at a total cost of \$4,200.¹⁸⁰ Safety equipment and tools for the shells cost an additional \$500.¹⁸¹ For safety and instruction purposes, coaches must be on the water with the rowers during practice in small boats with two or four stroke engines.¹⁸² These launches cost approximately \$3,200 each; three are needed by most programs.¹⁸³ The total cost of launches is \$9,600. A pickup truck with a frame mounted hitching system and a boat trailer are required to transport the shells and oars to competitions and practices.¹⁸⁴ The cost of a truck is approximately \$20,000 and a trailer is \$9,000.¹⁸⁵ Finally, rowing ergometers (specialized training machines that allow for indoor practice) are required at a cost \$750 per ergometer.¹⁸⁶ Most programs employ fifteen such instruments, for a total cost of \$11,250.¹⁸⁷

The total start-up cost for a rowing team is between \$231,800 and \$390,100 – a daunting sum.¹⁸⁸ This is especially true when rowing is compared to other women's sports that are becoming increasingly popular at the NCAA level. Ice hockey recently moved from emerging to championship status, a reflection of its growth in sponsorship from ten programs in 1996 to twenty-eight in 2001.¹⁸⁹ The start-up cost of an ice hockey program is approximately \$110,000.¹⁹⁰ Water polo made a similar move from emerging to championship status, as it has grown from eleven teams in 1996 to twenty-six in 2001.¹⁹¹ The start-up cost of a water polo team is only \$20,000.¹⁹² Lacrosse is another popular women's sport, with seventy-one Division I institutions sponsoring a team.¹⁹³ The start-up cost of women's lacrosse team is approximately \$70,000.¹⁹⁴ Finally, women's

179. Hale, *supra* note 52.

180. *Id.*

181. *Id.*

182. Wolter, *supra* note 172.

183. Hale, *supra* note 52.

184. *Id.*

185. *Id.* The truck can sometimes be shared with or borrowed from other departments on campus to defray its cost to the rowing team. *Id.*

186. Wolter, *supra* note 172.

187. *Id.*

188. See *supra* notes 172-87. A line item summary is likely helpful. Shells: \$159,000 - \$318,000; Oars: \$17,500; Cox Boxes: \$4,200; Launches: \$9,600; Tools: \$500; Truck: \$20,000; Trailer: \$9,000; Ergometers: \$11,250. *Id.*

189. 2000-01 Sports Sponsorship, *supra* note 2.

190. Scott Rosner, *The Growth Of NCAA Women's Rowing: A Financial, Ethical And Legal Analysis*, Address Before the Annual Conference of the North American Society for Sport Management, Vancouver, British Columbia, Canada (June 5, 1999) (Manuscript on file with author).

191. 2000-01 Sports Sponsorship, *supra* note 2.

192. Rosner, *supra* note 48.

193. 2000-01 Sports Sponsorship, *supra* note 2.

194. Telephone Interview with Bonnie Rosen, Head Women's Lacrosse Coach, University of

soccer has increased its sponsorship from 181 teams in 1996 to 274 in 2001; it is the fastest growing sport in the NCAA.¹⁹⁵ The start-up cost of a women's soccer team is approximately \$60,000.¹⁹⁶

In addition to the exorbitant start-up expenses, the initiation of an intercollegiate varsity women's rowing program may also require significant capital expenditures. If it is necessary for an institution starting a varsity women's rowing team to construct or renovate a boathouse and/or install a dock, additional funds must be earmarked for the sport. A crew needs a boathouse to protect its equipment. If the university does not own its own facility, one must be rented, purchased, or constructed.¹⁹⁷ While the latter option is desirable, it is also expensive. A suitable boathouse ranges in price from \$500,000 to \$800,000.¹⁹⁸ Even when a new boathouse is not constructed, a new dock must be installed on the waterfront in many instances. At least 1,500 square feet of plastic docking space is necessary and costs between \$15 and \$25 per square foot; the total cost of a dock is between \$22,500 and \$37,500.¹⁹⁹ Therefore, depending on an institution's situation, capital expenditures of up to \$837,500 may be required when it begins sponsorship of women's rowing.

The average annual cost of sponsoring a Division I women's rowing team is \$204,176.²⁰⁰ This is less expensive than women's ice hockey²⁰¹ and women's soccer,²⁰² but more than women's lacrosse²⁰³ and women's

Connecticut (May 24, 1999).

195. Rosner, *supra* note 48.

196. Telephone Interview with Betty Ann Kempf, Head Women's Soccer Coach, Seton Hall University (Jan. 18, 2001).

197. UNITED STATES ROWING ASS'N, *supra* note 158. This is preferable to using a semi-trailer for boat storage, as some teams have done. *See id.*

198. Hale, *supra* note 52. This cost may be increasing. The University of Michigan recently completed construction on a 6,000 square foot boathouse at a cost of \$1.2 million. *New Michigan Boathouse Nearing Completion*, at www.mgoblue.com/rowing/99-00/features/boathouse-05-20.html (last visited Jan. 12, 2001).

199. Wolter, *supra* note 172.

200. NCAA, 1997-98 GENDER-EQUITY STUDY 12, 15-18 (1999) [hereinafter GENDER-EQUITY STUDY]. This includes operating expenses of \$66,885, recruiting expenses of \$4,325, athletic scholarship expenses of \$81,366, a head coach's salary of \$28,431, and assistant coaches' salaries of \$23,168 for the average Division I team. *Id.* *See also* Rosner, *supra* note 48.

201. GENDER-EQUITY STUDY, *supra* note 200. The average annual cost of women's ice hockey in NCAA Division I is \$242,470. *Id.* The cost is broken down as follows: operating expenses (\$60,584), recruiting expenses (\$7,597), athletic scholarship expenses (\$107,017), a head coach's salary (\$39,054), and assistant coaches' salaries (\$28,268). *Id.*

202. GENDER-EQUITY STUDY, *supra* note 200. The average annual cost of women's soccer in NCAA Division I is \$229,700. *Id.* The cost is broken down as follows: operating expenses (\$46,597), recruiting expenses (\$9,187), athletic scholarship expenses (\$121,919), a head coach's salary (\$33,058), and assistant coaches' salaries (\$18,939). *Id.*

203. GENDER-EQUITY STUDY, *supra* note 200. The average annual cost of women's lacrosse in NCAA Division I is \$187,985. *Id.* The cost is broken down as follows: operating expenses

water polo.²⁰⁴ The operating expenses are higher for rowing than any other women's championship sport in Division I except basketball.²⁰⁵ This is likely a function of the travel expenses associated with transporting a large number of athletes over frequently great distances to competitions.²⁰⁶ Conversely, the recruiting expenses for rowing are lower than most other women's championship sports in Division I.²⁰⁷ This is attributable to the low participation rate at high schools, which results in a small number of rowers for college coaches to recruit. Recruiting expenses may increase as the sport grows at the high school level, which should yield more recruitable rowers for college coaches to pursue. Finally, there is less money spent on athletic scholarships in rowing than in any other NCAA Division I women's championship sport except golf, tennis, and water polo.²⁰⁸ Currently, an average of only five scholarships are awarded to athletes on a university's women's rowing team.²⁰⁹ This is certain to change as more institutions begin to offer the sport and award the NCAA maximum of twenty athletic scholarships,²¹⁰ which will dramatically increase the annual amount of money spent on athletic scholarships by women's rowing teams in the future.

There can be no doubt that sponsoring a women's rowing team is an expensive proposition for any institution. On a per team basis, it may not be a sensible investment. In this era of changing priorities in sport sponsorship by NCAA institutions, financial considerations are typically a primary factor in the decision of whether or not to add or eliminate a team.²¹¹ Sport administrators typically analyze the cost of sport sponsorship on a *per team* basis, considering the financial cost of the impacted team solely

(\$37,668), recruiting expenses (\$4,962), athletic scholarship expenses (\$102,720), a head coach's salary (\$28,448), and assistant coaches' salaries (\$14,187). *Id.*

204. GENDER-EQUITY STUDY, *supra* note 200. The average annual cost of women's water polo in NCAA Division I is \$126,686. *Id.* The cost is broken down as follows: operating expenses (\$41,398), recruiting expenses (\$3,806), athletic scholarship expenses (\$45,789), a head coach's salary (\$25,038), and assistant coaches' salaries (\$10,655). *Id.*

205. *Id.* The average annual operating expense of a Division I women's basketball team is \$120,930. *Id.* at 15.

206. Hale, *supra* note 52. This is especially true for institutions with a small number of competitors nearby, such as the University of Texas and Kansas State University. *Id.* These expenses may decrease somewhat as the sport grows at the college level, as there will be more competitors located in closer proximity to institutions that are currently forced to travel large distances for races.

207. GENDER-EQUITY STUDY, *supra* note 200, at 15. Only golf (\$3,235), tennis (\$3,359), and water polo (\$3,806) spend less money on recruiting than rowing. *Id.*

208. *Id.* at 16. The average Division I institution's athletic scholarship expenses are \$56,167 in golf, \$45,702 in water polo, and \$72,702 in tennis. *Id.*

209. *Id.*

210. NCAA MANUAL, *supra* note 11, § 15.5.3.1.2.

211. Rosner, *supra* note 48.

in terms of its bottom line revenues and expenses.²¹² A team that appears too expensive may be affected negatively while an inexpensive one may be aided.

While the use of the *per team* method is widely accepted, it is flawed. The *per team* method does not allow for the measurement of a team's actual cost in terms of dollars spent on each student-athlete, because it does not account for the number of participation opportunities provided by the team. This issue is of great import in determining an athletic department's compliance with Title IX. As discussed, a comparison of the ratio of male and female student-athletes to male and female students enrolled in a university is a determining factor of whether an institution is substantially accommodating the athletic interests and abilities of its female students, as required by Title IX.²¹³

A team's true cost to an athletic department is better ascertained by an evaluation of its cost *per athlete*.²¹⁴ This allows roster size to be factored into the decision of whether to add or drop a particular team by providing an administrator with an objective basis for comparing various teams. Therefore, Title IX's substantial proportionality issues may be taken into consideration, and the true cost of Title IX compliance may be determined.²¹⁵

Comparing the annual cost of women's rowing to thirteen other women's sports indicates that it is quite reasonable.²¹⁶ However, the real benefit of a women's rowing team is its large roster size, which allows an institution to take advantage of economies of scale by offering a sport that is equivalent to several other teams in terms of its impact on the number of participation opportunities provided to female athletes.²¹⁷ Women's row-

212. *Id.* The per team cost is the annual cost of sponsorship. *Id.* It is determined by adding a team's operating, recruiting, and athletic scholarship expenses with its coaches' salaries. *Id.*

213. See *supra* note 92 and accompanying text.

214. Rosner, *supra* note 48. The per capita cost is determined by dividing the per team cost by the number of athletes on the team. *Id.*

215. *Id.*

216. See Rosner, *supra* note 48. (summarizing NATIONAL COLLEGIATE ATHLETIC ASS'N, 1997-98 GENDER-EQUITY STUDY). The annual costs of the Division I women's sports surveyed are as follows: basketball (\$503,288), gymnastics (\$274,148), volleyball (\$263,708), field hockey (\$242,739), ice hockey (\$242,470), softball (\$230,479), soccer (\$229,700), swimming and diving (\$228,375), rowing (\$204,176), lacrosse (\$187,985), tennis (\$135,775), water polo (\$126,686), and golf (\$124,500). *Id.* The only NCAA women's championship sports excluded from this survey are cross country and indoor and outdoor track and field; the separate annual costs of these sports cannot be determined since they are combined for the purpose of the NCAA's Gender Equity Study. *Id.*

217. See 1998-99 NCAA PARTICIPATION STUDY, *supra* note 10. The average roster size of a women's rowing team is 55.4 athletes, while the averages of the other Division I women's sports are as follows: outdoor track and field (32.5), indoor track and field (32.1), lacrosse (25.2), swimming and diving (25.1), soccer (24.5), ice hockey (23.6), field hockey (22.7), water polo (21.9), softball

ing has the lowest cost per athlete of any NCAA Division I sport by a wide margin.²¹⁸ Institutions adding the sport receive significant "bang for their buck." From this perspective, it is somewhat surprising that *more* Division I institutions have not added women's rowing. Although thirty Division I teams have been added since 1995-96, the sport trails other, less cost-effective sports, such as soccer, golf, and softball in its growth.²¹⁹

V. ETHICAL ASPECTS

The growth of women's rowing has not been seamless. The evolution of women's rowing into an NCAA championship sport has led to numerous changes in the sport. Its adoption by the NCAA caused rowing to become more formalized, as teams were forced to adhere to the organization's myriad rules.²²⁰ More importantly, various ethical issues have arisen in two general areas as sponsorship of the sport has increased. Both the institution's initial decision to offer the sport and its support of the crew once it is established have caused ethical dilemmas that must be elaborated upon in order to gain a full understanding of women's rowing.

The first area of concern stems from the basic level of institutional support provided to the crew. The principle of gender equity differs from the law of Title IX; an institution adopting this principle is committed to providing an equal athletic experience to its male and female athletes. Other institutions seek merely to comply with the letter of the law of Title IX by offering a sufficient number of participation opportunities to its female students with little additional commitment to the majority of its women's teams. While women may be allowed to participate in intercollegiate athletics at these institutions, the quality of their experience is often inferior to that of the male athletes.

The approach taken toward women's rowing by the institution is of

(19.1), gymnastics (16.7), cross country (15.4), basketball (14.5), volleyball (13.8), and tennis (9.6). *Id.*

218. Rosner, *supra* note 48. The cost per athlete of women's rowing is \$3,706. Among other women's sports, water polo has the next lowest cost per athlete at \$5,762, followed by: lacrosse (\$7,611), swimming and diving (\$9,360), soccer (\$9,692), ice hockey (\$10,231), field hockey (\$10,646), softball (\$12,458), golf (\$13,833), tennis (\$14,599), gymnastics (\$17,687), volleyball (\$19,390), and basketball (\$34,710). *Id.*

219. Rosner, *supra* note 48. Soccer has increased by 93 teams, golf by 44 teams, and softball by 43 teams. *Id.* In addition, sponsorship of volleyball and lacrosse has grown by 22 teams each and basketball by 21 teams. *Id.*

220. See Mike Davenport, *Mavericks No More*, USROWING, May/June 1997, at 19-20. Perhaps most noticeable to the athletes has been the ban on shirt betting, a long rowing tradition in which the losers gave the winners of a race the shirts off of their backs. *Id.* This violates the NCAA rule against gambling embodied in Bylaw 10.3. *Id.*

critical importance in ascertaining whether the underlying philosophy of the institution towards women's athletics is one of gender equity or simply Title IX compliance. This is reflected in the goals established for the team by the athletic department and will determine its ultimate role on campus. The institution may view women's rowing as either a championship sport or a participation sport.²²¹ An institution choosing the former option will provide full financial support to the rowing team in all aspects of the program, including quality equipment, a boathouse, and a sufficient number of scholarships and assistant coaches. An institution opting for the latter will not. Instead, a minimal amount of support will be provided in these programmatic aspects. Essentially, the women's rowing team will be given enough support to be a viable intercollegiate team, but little more.

The quality of equipment provided to the women's rowing team is an indicator of the purpose for which the sport is sponsored at the institution. An institution that purchases all new equipment at its inception and supplements it with additional new equipment as its needs grow along with its roster size is likely to be one which embraces the concept of gender equity.²²² Juxtaposed is the institution whose teams purchase used equipment or simply inherits the equipment utilized by the former club team. This creates an inequitable situation, as it seems far-fetched that a men's team would begin varsity intercollegiate competition with used equipment. Though the vast majority of college rowers are new to the sport and initially may not be skilled enough to notice the difference between new and used equipment, the notion that they are being treated differently than their male counterparts simply because they are women is disconcerting. While the purchase of used equipment certainly saves an institution a significant amount of money, it is ethically dubious. However, this is a common scenario at institutions adding a women's rowing team for Title IX compliance purposes.²²³

The quality of the boathouse used by the women's rowing team presents another ethical issue. While the construction of a new boathouse is a costly endeavor,²²⁴ it is often a necessary expense, unless there is an existing facility owned by the institution that is suitable for a Division I crew.

221. Hale, *supra* note 52.

222. Telephone interview with Martin Stone, Head Women's Rowing Coach, University of Notre Dame (June 2, 1999). Notre Dame purchased all new equipment at the program's inception in 1998 and continues to do so as its roster grows. *Id.*

223. Brett Johnson, *A Look at the University of Louisville's First Year (Part I)*, USROWING, March 2000, at 19-22 [hereinafter Johnson (Part I)]. Many institutions such as the University of Louisville have purchased a combination of new and used equipment at the inception of the rowing team. *Id.*

224. See *supra* note 198 and accompanying text.

Though this is sometimes a viable option, it is often insufficient.²²⁵ This is especially true when there is a men's club team in existence that is subsequently forced to share its boathouse with the women's varsity team.²²⁶ This may result in a situation that is inadequate for both teams.²²⁷ The proximity of the boathouse to campus is also an issue. Although some boathouses are located on campus,²²⁸ others are located a far distance away.²²⁹ While this situation is in some ways attributable to the unique needs of the sport, it should be avoided whenever possible, because it places an enormous burden on the rowers. Nonetheless, this situation is preferable to the one faced by those institutions who either use a semi-trailer in lieu of a boathouse²³⁰ or simply transport the shells to and from campus every day on a trailer, completely eschewing a boathouse.²³¹ This certainly has a negative impact on the rowers' athletic experience and is the functional equivalent of the men's baseball team commuting daily to a community field for practice.

The number of athletic scholarships allocated to the women's rowing team is a strong indicator of the institution's approach to the sport. There is no question that the introduction of athletic scholarships into women's rowing has led to a more business-like approach to the sport by both coaches and athletes.²³² Yet, an institution's commitment to the sport is often reflected in the level of athletic scholarship funding provided. There can be little doubt that rowing teams such as Kansas State²³³ and the University of Virginia,²³⁴ which offer the NCAA maximum of twenty scholar-

225. Stone, *supra* note 222.

226. See UNIVERSITY OF CONNECTICUT, TITLE IX COMPLIANCE PLAN AND PROGRESS REPORTS, 1996-99, at www.ncaa.org/gender_equity (n.d.) [hereinafter TITLE IX COMPLIANCE PLAN]. The University of Connecticut's boathouse on Coventry Lake is shared by its women's varsity and men's club teams. *Id.*

227. See *id.*

228. See *Clemson Adds Women's Rowing as Varsity Sport*, July 11, 1997, at www.clemsonigers.com/genrel/clem-genrelease05.html (last visited Dec. 3, 1998). Princeton's Lake Carnegie and Clemson's Lake Hartwell are both on-campus homes to boathouses. *Id.*

229. See Tippi Pearse, *Title IX Opened the Door for Women's Varsity Crew at USC*, DAILY TROJAN, November 10, 1999, available at <http://www.usc.edu/student-affairs/dt/> (last visited Feb. 4, 2001). University of Southern California's boathouse is located twenty-five miles from campus at the Port of Los Angeles. *Id.* University of Louisville practiced forty-three miles from campus on Taylorsville Lake in its first season. Johnson (Part II), *supra* note 96, at 21-23.

230. UNITED STATES ROWING ASS'N, *supra* note 158. The University of Kansas women's rowing team does this. *Id.*

231. Telephone interview with Rob Catloth, Head Women's Rowing Coach, University of Kansas (June 2, 1999).

232. See Blasko, *supra* note 4.

233. See Hale, *supra* note 52.

234. Brewington, *supra* note 1.

ships,²³⁵ have strong institutional support. While other institutions offer varying levels of athletic scholarships, some prominent institutions offer none.²³⁶ The awarding of athletic scholarships may prove to be an important factor in the growth of the sport. If competitive parity increases as the talent pool is spread among more teams, it could eventually shift the sport's domination from Ivy League schools to large Division I institutions.²³⁷

The number of full-time assistant coaches employed by the rowing team is a final indicator of the level of institutional support for the sport. The NCAA allows for two full-time assistant coaches²³⁸ unless there is both a lightweight and a heavyweight team.²³⁹ If an institution employs less than this number of full-time assistants or hires them on a part-time basis, it may be compromising the experience of its rowers and putting them at an additional risk of injury. Because the sport occurs on water, appropriate supervision is an important safety concern.²⁴⁰

In addition to the aforementioned issues related to the institutional decision to sponsor the sport, there have been other issues concerning the general growth of women's rowing at the college level. This growth is primarily attributable to Title IX and the impact of women's rowing on an institution's compliance with its requirements, rather than a high participant demand for the sport. Yet, those involved in the sport do not seem concerned that they are being exploited by institutions desperate to comply with Title IX; they are excited about the tremendous opportunity to participate in the sport and believe that women's rowing will gain further credibility and popularity as a result of its increased collegiate sponsorship.²⁴¹

The lack of a broad participation base has led to an odd disparity.

235. See *supra* note 50 and accompanying text.

236. TITLE IX COMPLIANCE PLAN, *supra* note 226. Both the Universities of Connecticut and Wisconsin offer no rowing scholarships. *Id.* The University of Notre Dame has offered no athletic scholarships since the rowing team's inception in 1998, but plans to begin to do so in 2002. The maximum number of scholarships will be offered by 2004-5. *Id.* See also UNITED STATES ROWING ASS'N, *Rowing Rationale; Notre Dame to Add Additional Athletic Grants Over Next Four Years*, Dec. 21, 2000, at und.fansonly.com/genrel/122100aaa.html (last visited Jan. 3, 2001).

237. Brewington, *supra* note 1. This has not yet occurred, as Brown University won consecutive NCAA titles in 1999 and 2000. See *Brown Defends NCAA Women's Rowing Championship*, NCAA NEWS, May 28, 2000, available at <http://www.ncaachampionships.com/news/row/wrow/2000/05/28/959537260209.html> (last visited Mar. 13, 2001).

238. NCAA MANUAL, *supra* note 11, § 11.7.4.

239. *Id.* at § 11.7.4.2.7. These teams may have two additional coaches. *Id.*

240. See Hale, *supra* note 52.

241. Barbara Huebner, *Title IX Has Been Crew's Propeller*, BOSTON GLOBE, Oct. 19, 1997, at D12.

There are simply more athletic scholarships available in women's rowing than there are high school athletes talented enough to earn them.²⁴² It is believed that this will eventually change as the participation base increases,²⁴³ but it has raised an interesting debate about the need for scholarships in a sport in which approximately ninety percent of the athletes have never participated before college.²⁴⁴ As a result, many athletes are recruited into the sport by some unique methods. The ideal rower is a powerful woman at least 5'10" in height.²⁴⁵ Coaches at the University of Texas have staked out campus cafeterias in search of women with this body type and observe the amount of food they consume during meals.²⁴⁶ The coaches then approach these women and inquire about their interest in becoming Division I athletes who could potentially earn a scholarship.²⁴⁷ Other coaches recruit women out of course registration lines,²⁴⁸ put up flyers around campus publicizing open recruiting meetings,²⁴⁹ set up informational tables on campus,²⁵⁰ post recruiting documents and questionnaires on their websites,²⁵¹ or simply stop tall women that they see on campus with hope of luring new athletes into the sport.²⁵² A somewhat more scientific approach is taken at institutions where coaches work with the admissions office and send letters to all incoming freshmen women prior to the beginning of classes, inviting them to try out for the rowing team.²⁵³ The University of Louisville has taken this a step further, targeting only those women identified as at least 5'10" by the admissions office.²⁵⁴ Some coaches, feeling pressure to succeed immediately, have turned to foreign athletes to fill their rosters, recruiting experienced and internationally competitive rowers instead of inexperienced American

242. Don Norcross, *Deep Pockets Swamp Old Powers*, SAN DIEGO UNION-TRIBUNE, Apr. 2, 2000, at C-17.

243. See Hale, *supra* note 52.

244. Blasko, *supra* note 4.

245. Carton, *supra* note 59.

246. Mark Wangrin, *Everybody Grab An Oar*, AUSTIN AMERICAN - STATESMAN, Mar. 22, 1998, available at <http://web.lexis-nexis.com/universe/docu> (n.d.).

247. *Id.*

248. *Rowing Rationale*, *supra* note 236.

249. Ben Keim, *Virginia Women's Rowing on the Rise - Every Morning*, CAVALIER DAILY, Oct. 10, 2000, available at <http://www.cavalierdaily.com/> (n.d.). See also Huebner, *supra* note 241; Metcalfe, *supra* note 118, at C1.

250. Johnson (Part I), *supra* note 223, at 19-22. See also Johnson (Part II), *supra* note 96, at 21-23.

251. Official Site, *University of Michigan Women's Rowing*, at www.mgoblue.com/rowing/more-information.html (last visited Jan. 12, 2001).

252. Johnson (Part I), *supra* note 223, at 19-22. See also Carton, *supra* note 59.

253. Stone, *supra* note 222. See also Pearse, *supra* note 229.

254. Johnson (Part I), *supra* note 223, at 19-22.

rowers.²⁵⁵

Many coaches have turned to other sports such as volleyball and basketball in search of athletes.²⁵⁶ These coaches believe that they can transform a woman with Division II or III caliber talent in these sports into a competitive Division I rower by offering her a chance at a scholarship.²⁵⁷ The repetitive nature of rowing's demanding, yet relatively simple, mechanics allows for expertise to be gained quickly,²⁵⁸ and as a result, there are many all-American collegiate rowers who had no experience in the sport prior to college.²⁵⁹ Critics point to the recruiting process as evidence that there is no need to offer scholarships in a sport that lacks experienced athletes who are talented enough to contribute to a team's success.²⁶⁰ At Notre Dame, only high school rowers experienced enough to help the team as freshmen are recruited; the rest of the roster is filled with athletes recruited on campus.²⁶¹

Conversely, rowing's cerebral nature draws athletes who are of a different type than those found in any other college sport.²⁶² Some feel that college sports are long overdue for the type of athlete that rowing attracts.²⁶³ Rowing is a highly demanding and mentally challenging lifestyle sport which has allowed individuals previously ignored by intercollegiate sports the opportunity to become competitive athletes.²⁶⁴ In addition, the presence of novice programs allows newcomers to the sport to gain competitive experience while learning the sport. This allows untested athletes to develop into talented rowers worthy of athletic scholarships.²⁶⁵ Thus, these athletes are no less deserving of scholarships than those in any other sport.

Another ethical issue that has arisen at many institutions concerns the addition or elevation of a women's rowing team to varsity intercollegiate

255. Carton, *supra* note 59, at A6. The University of Southern California has done this extensively, recruiting a significant number of foreign athletes. *See id.*

256. Norcross, *supra* note 242, at C-17. *See also* Wangrin, *supra* note 246; Huebner, *supra* note 241.

257. *Id.*

258. Hale, *supra* note 52. *See also* Brewington, *supra* note 1.

259. Brewington, *supra* note 1.

260. Stone, *supra* note 222.

261. *Id.*

262. *See* Johnson (Part I), *supra* note 223, at 19-22; *Rowing Rationale*, *supra* note 236; Blasko, *supra* note 4. *See also* Sam Donnellon, *Title IX Creating Gender Inequity*, PHILADELPHIA DAILY NEWS, May 8, 1998, at 151.

263. *See* Hale, *supra* note 52.

264. *See id.* *See also* Donnellon, *supra* note 262, at 151.

265. Interview with Women's Rowing Coach Martin Stone, May 11, 1999, available at www.fansonly.com/schools/nd/sports/w-crew/spec-rel/051299aaa.html (last visited Jan. 12, 2001).

status while their male counterpart remains at the club level.²⁶⁶ While the male athletes are generally supportive and understand the reasons why this occurs, they are typically disappointed by what they perceive to be unfair treatment.²⁶⁷ These feelings are exacerbated if, prior to an institution's decision to add only a varsity women's team, there existed a thriving men's crew but no women's team.²⁶⁸ Nevertheless, the men's crew often benefits from this decision, because it may result in better equipment in the form of "hand-me-downs" from the women's team, as well as a new boathouse.²⁶⁹

VI. FUTURE OF WOMEN'S ROWING

The future of women's rowing at the NCAA level is wide open.²⁷⁰ The sport will continue to grow because of its adoption by the NCAA. Additionally, the publicity offered by the sport will encourage more institutions to add women's rowing.²⁷¹ As this occurs, there will be greater parity among teams as the pool of talented athletes deepens.²⁷² The improvement in the caliber of competition since women's rowing became an NCAA sport in 1996-97 has been remarkable, and is likely to continue as more and better athletes begin rowing.²⁷³ This may eventually yield better Olympic results.²⁷⁴ There will be conference championship regattas as more institutions add the sport and commissioners look to enhance their women's sports offerings.²⁷⁵ In addition, the method by which teams are selected to participate in the NCAA championship regatta itself will change, with automatic bids offered to conference champions and regional qualifying regattas likely.²⁷⁶ The NCAA championship regatta will grow along with the sport, thereby allowing more athletes and teams to partici-

266. See Brewington, *supra* note 1. Club teams are recognized by their institutions and receive minimal funding, forcing athletes to pay their own way in order to participate. *Id.*

267. *Id.* See also Anita Powell, *Funding for Women's Athletics Favored in National Poll*, DAILY TEXAN, June 26, 2000; Jim Naughton, *More Colleges Cut Men's Teams to Shift Money to Women's Teams*, CHRONICLE OF HIGHER EDUCATION, Feb. 21, 1997, at A39.

268. Wallace, *supra* note 9, at B18. See also Metcalfe, *supra* note 118.

269. Stone, *supra* note 222. See also Huebner, *supra* note 241.

270. *Rowing Rationale*, *supra* note 236.

271. See Hale, *supra* note 52.

272. See Norcross, *supra* note 242, at C-17.

273. See Hale, *supra* note 52.

274. See Carton, *supra* note 59.

275. Interview with Women's Rowing Coach Martin Stone, *supra* note 265. See also *Big East Conference to Sponsor Women's Rowing Regatta*, Jan. 8, 2001, at www.und.fansonly.com/sports/w-crew/spec-rel/010801aaa.html (last visited Jan. 12, 2001).

276. Interview with Women's Rowing Coach Martin Stone, *supra* note 265. See also *Big East Conference to Sponsor Women's Rowing Regatta*, *supra* note 275.

pate.²⁷⁷ The number of events will increase, competition in lightweight categories eventually will be added,²⁷⁸ and separate championships focusing more on team competition will be held in each NCAA division.²⁷⁹

While the growth of NCAA women's rowing may increase the number of high school and club programs as more athletes hope to earn college athletic scholarships,²⁸⁰ access issues and the high expense are likely to prevent women's rowing from becoming a mass participation sport. Men's rowing will continue to be relegated to club status, as the addition of the sport at the varsity level would negate the benefits of women's rowing that are associated with Title IX.²⁸¹ Finally, women's rowing may emerge as a good fundraising tool for institutions, as the festive regatta atmosphere is highly conducive to building relationships with potential donors.²⁸²

VII. CONCLUSION

Women's rowing has had a significant effect on college athletics since becoming an NCAA sport. Athletic administrators must recognize the legal, financial, and ethical impact of the sport on their athletics programs in order to make a well-informed sponsorship decision about women's rowing. It is hoped that this article will allow them to do so.

277. See Hale, *supra* note 52.

278. *Id.* See also Big East Conference to Sponsor Women's Rowing Regatta, *supra* note 275.

279. See Women's Rowing Committee Prepares for Separate Regattas, NCAA NEWS, July 17, 2000, available at www.ncaa.org/news/20000717/active/3715n09.html (last visited Jan. 12, 2001). The NCAA will hold a separate Division III championship at the same site of the Division I regatta beginning in 2002, and will add a Division II championship when a sufficient number of teams sponsor the sport. *Id.* In 2001, the NCAA championship will consist of 14 teams of three boats each with no at-large berths awarded. *Id.*

280. See Brewington, *supra* note 1. See also Huebner, *supra* note 241.

281. See Huebner, *supra* note 241.

282. Interview with Women's Rowing Coach Martin Stone, *supra* note 265. As with many institutions, Notre Dame contacts its alumni in the areas in which the rowing team competes and invites them to the regattas. *Id.*