

**THE AIAW VS. THE NCAA: A STRUGGLE FOR POWER
TO GOVERN WOMEN'S ATHLETICS IN AMERICAN INSTITUTIONS OF
HIGHER EDUCATION
1972-1982**

by

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ABSTRACT

From July 1972 to June 1982 the Association for Intercollegiate Athletics for Women (AIAW), an association created by and for women, governed and administered women's intercollegiate athletic programs in the United States. Subsequent to 1982, the governance and administration of women's programs fell largely upon the National Collegiate Athletic Association (NCAA), which for some 75 years had concerned itself with the promotion and development solely of men's intercollegiate athletics. The final act in the drama of the transition of women's intercollegiate athletics in the United States from women's control to that of men was the court case: AIAW vs. NCAA in 1981. The primary purpose of this study was to determine the pivotal factors which precipitated the AIAW's civil action against the NCAA for violation of anti-trust laws under the Sherman Anti-Trust Act (1891). These factors included, (i) Title IX and its implications for intercollegiate athletic programs, (ii) the NCAA's encroachment on the AIAW economic sphere, and (iii) the NCAA's initiatives into women's intercollegiate athletic programming. In addition, pivotal factors which significantly influenced the court's final decision in favour of the defendant, were analysed. These included the AIAW's failure to: (i) prove its conspiracy claim, (ii) prove the NCAA's intent to monopolize intercollegiate athletics, and (iii) argue that it sustained irreversible damages. Then, to, women's participation and the status of women's intercollegiate sports in American educational institutions since the passage of Title IX (1972) and the gradual involvement of the NCAA in the women's athletic market were examined. The data demonstrated that the structural configuration of women's intercollegiate athletic programs experienced a transformation, one that occurred at an exceptionally slow rate. The transformation experienced by women's intercollegiate athletics since 1982, under the governance of the NCAA, has not produced a particularly beneficial change for women from that experienced under AIAW governance.

To Mom and Dad,
for their Patience, Support and Love

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A good friend of mine told me once that it is the journey in life that is most important, not the destination. If nothing else, my educational experiences at the University of Western Ontario have proved this to be true. I have learned that it is the journey and those individuals who enter your life that make all things worth while. At this time I would like to thank those individuals who have supported my efforts and have made this particular journey easier. First, I extend my sincere gratitude to Professor Robert K. Barney (Bob or B²) for his continued encouragement and patience. This was a serious undertaking and I thank him for all his efforts, especially during those trying times. To Gord and Scott I wish to acknowledge your exceptional computer skills which, on more than one occasion, served me well. To my friends, I would like to thank you all for believing in me, even when things weren't going as planned. A special thank you to J.R. who helped me through the toughest times; just when I thought I couldn't write another word, you were there to motivate and support me - your efforts and interest were greatly appreciated. Finally, to my parents, I would like to say: I love you and thank you for faith and encouragement.

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GLOSSARY OF ACRONYMS

AIAW	Association for Intercollegiate Athletics for Women
NCAA	National Collegiate Athletic Association
NWBC	National Women's Basketball Committee
APEA	American Physical Education Association
CWA	Committee of Women's Athletics
AAU	Amateur Athletic Union
WDNAAF	Women's Division of the National Amateur Athletic Federation
NSWA	National Section on Women's Athletics
AAHPER	American Alliance of Health, Physical Education, and Recreation
DGWS	Division for Girls and Women's Sports
CIAW	Commission on Intercollegiate Athletics for Women
HEW	Department of Health, Education, and Welfare
NAIA	National Association for Intercollegiate Athletics

Chapter 1

Introduction

On July 1, 1972 the Association for Intercollegiate Athletics for Women (AIAW) officially came into existence. For approximately a decade, this organization served as an administrative and governing body for women's intercollegiate athletics in the United States. On June 30, 1982 the AIAW ceased operation. Since that time women's intercollegiate athletics functioned primarily under the aegis of the National Collegiate Athletic Association (NCAA), traditionally a governance structure dedicated to men's intercollegiate athletics. The final act in the dramatic struggle for control of women's intercollegiate athletics between the AIAW and the NCAA took place in the United States District Courts. The following thesis describes and analyzes this pivotal event in the contemporary history of women's intercollegiate athletics in the United States.

For decades women have been striving to establish a suitable governance structure and equitable system of athletics for females in American educational institutions. One of the earliest and most significant illustrations of this struggle was Senda Berenson's introduction of "basket ball" to her students at Smith College, in Massachusetts, only months after the game's invention by James Naismith in December of 1891. It was only eleven months after Berenson's introduction of the game at Smith that the first inter-institutional contest among women occurred between the University of California-Berkeley and Miss Head's School.¹ An article in the *Berkeley Daily Advocate* described the game:

... it is football modified to suit feminine capabilities. It is played in the gymnasium, and instead of goals there are baskets hung at either end of the room. The players line up, nine on a side. The umpire tosses the ball between the two lines, and then a general scramble begins to get it in the baskets.²

Due to the overwhelming popularity of the sport and its utility as a component in physical education programs, American universities and colleges from coast to coast began

to introduce basketball to female students. As a consequence various interpretations of the rules surfaced and were published. It became apparent that a common set of rules would need to be generated to ensure the fairness of intercollegiate athletic contests. In 1899, at a Conference on Physical Training held in Springfield, Massachusetts, a committee was appointed to study the problems associated with the inconsistency of rules in women's basketball. The committee, chaired by Alice Foster, met, discussed and agreed upon a standard set of rules. These were subsequently approved and in October of 1901 they were published in the *Spalding Athletic Library Series*, an accepted source of rules for men's sports. Berenson was appointed editor of this publication, an anomaly for the time, since women typically did not hold office or positions of power in sport organizations.³

Over the next seventy years women physical educators and administrators gradually gained more control over the organization and governance of women's athletics, often implementing philosophical values that contradicted the popular standards in vogue for male athletes. In 1905, a permanent National Women's Basketball Committee (NWBC) was appointed by the American Physical Education Association (APEA), with Berenson as the chair. The committee was charged "to carefully and impartially make such revisions in the rules as seemed wise and best."⁴ In January of 1917, the Committee on Women's Athletics (CWA) was established. Elizabeth Burchenal was chair. In April of the same year, at the National APEA Convention, Burchenal appointed the NWBC as a subcommittee of the CWA. Four separate rules and editorial subcommittees were subsequently established for field hockey, swimming, track and field, and soccer. Each of these sport committees was responsible for the creation, revision and interpretation of rules relevant to its particular sport. The CWA, comprised of women physical educators, was not a true governance organization. It was created primarily in response to the increasing demands from institutions throughout the country for assistance in solving issues connected to women's athletics. The CWA advised and facilitated the conduct of sport programs within schools, but renounced high level intercollegiate sports for women. The CWA published its first set of standards in the *Official Handbook of the National Committee on Women's Athletics*.⁵ The foreword to the Handbook explained that:

Insistent and increasing demands coming in from all parts of the country for assistance in solving problems in connection with the athletic activities for girls and women, demonstrated the need for a set of standards which should be based on the limitations, abilities, and needs of the sex rather than the continuation of applying a set of rules and standards designed primarily for men.⁶

The CWA opposed the notion of elite competition that many local and national organizations, such as the Amateur Athletic Union (AAU), so fondly espoused and encouraged in men's programs. As an alternative, the members of the CWA were dedicated to promulgation of a "sport for all" philosophy with specific emphasis on the provision of a rewarding educational experience through athletics.⁷

Despite the efforts of women physical educators to provide a quality athletic program for women, the AAU argued that women's sport lacked the necessary organization, supervision and direction required for success. These, however, were attributes that the AAU was willing to provide for women and girls. William C. Prout, President of the AAU, stated that "the time has come for properly regulating girl's athletics (track and field)."⁸ Thus, with no apparent objection from the CWA, the AAU took control of women's swimming in 1914 and women's track and field in 1923. Somewhat later, the AAU offered opportunities for women in basketball, softball, volleyball and gymnastics. It offered local and national leagues, tournament competitions and selected Olympic teams for women in those sports.⁹ Women physical educators were not pleased with the predatory actions of the AAU. As a result, many resigned from their positions on AAU committees and refused to serve in the future.¹⁰

In response to the AAU's actions, a Women's Division of the National Amateur Athletic Federation was formed in April of 1923. The National Amateur Athletic Federation (NAAF), established in 1922 by the U.S. War and Navy Secretaries, was responsible for facilitating and encouraging the participation of the nation's youth in sport and games. Thus, prior to the formation of the Women's Division (WD), the NAAF was primarily concerned with the athletic practices of male youth. The CWA chair, Blanche Trilling, worked with

Lou Henry Hoover (wife of American President, Herbert Hoover), the WD's first chair, to create an organization that would govern all women's athletics, with particular emphasis on those sports external to the educational setting. Together, the CWA and WD formed a united front against the AAU and any organization that attempted to provide highly organized elite or varsity athletic competition for women. For example, they campaigned against the inclusion of women's competition in the 1928, 1932 and 1936 Olympic games because the emphasis on winning, perceived exploitation of athletes, and the commercialization of the event contradicted their philosophy of sport as a valuable learning experience that prepared young women for the "events and emergencies of life."¹¹

In 1927 the CWA's request for section status was granted by the APEA, and five years later it became the National Section on Women's Athletics (NSWA). Throughout the 1930s and 1940s the NSWA was the authority on women's athletics. The NSWA acted as a "clearinghouse" for institutions to obtain information about girls and women's athletics; it established specific athletic programs for girls and women and promulgated standards for players, officials and administrators; it formed officiating boards, and encouraged research in the field of women's athletics. For decades the NSWA maintained monopolistic control over girls' and women's sport programs in educational institutions.¹²

In 1939, while the NSWA concerned itself primarily with women's athletics within educational institutions, the WDNAAF was experiencing financial and structural difficulties. It proposed a merger with the American Association of Health, Physical Education and Recreation (AAHPER)¹³ that would allow it to continue operation as a "National Committee on Standards." This idea, however, received vigorous opposition from the NSWA. The NSWA suggested, alternatively, that the WDNAAF be incorporated into its structure. Both of these plans were rejected. A mutually acceptable alternative was subsequently proposed and the WDNAAF joined the AAHPER with the stipulation that non-school personnel would have the opportunity to gain membership. On June 15, 1940 the WDNAAF closed its doors and ceased all operations.¹⁴

Throughout the 1940s, the NSWA maintained its strong control over women's athletics. Its focus, however, began to shift towards issues associated with women's fitness.

With the onset of World War II, the usual business of the section was suspended and the focus became civil defence programs. New standards were published by the NSWA which permitted competition because it met with the standards of fitness. Due to the financial constraints of expanded programs and the Section's complex philosophical stance, it opted to extend a working agreement with the AAHPER. This relationship, once agreed upon by the AAHPER, alleviated much of the Section's financial concerns, thus allowing it to continue operation into the 1950s.¹⁵

In 1958 the NSWA was officially elevated to divisional status and was renamed the Division for Girls and Women's Sports (DGWS) under the auspices of the AAHPER.¹⁶ This was a time when civil rights battles were surfacing and advocates for women's rights openly challenged traditional gender roles. Educational institutions and athletic programs were not exempt from scrutiny. Women administrators and physical educators recognized the need to break away from the strict anti-competitive philosophy of the past in favour of a structure that would increase the opportunities for women and improve athletic programs for female students.¹⁷ Women accepted the competitive nature of athletics; however, they still disapproved of the detrimental practices that were rampant in men's athletics. The recruitment of athletes, employment of professional coaches, the provision of scholarships, and the general commercialization of athletics were aspects of the men's model that women did not wish to emulate.¹⁸

The role of women in athletics had also become more diversified in that positions of power and influence were no longer limited solely to men. Women held coaching positions, they were officials, heads of athletic departments, and were instrumental in the development of effective teaching and coaching strategies for all levels of athletics.¹⁹

In 1965 the DGWS created a Commission on Intercollegiate Athletics for Women (CIAW) and four commissioners were appointed to govern women's intercollegiate athletics and to organize, sponsor and conduct national championships. The first women's intercollegiate national championships were held in gymnastics and track and field. By 1972 championships for women existed in seven different sports: golf, gymnastics, track and field, badminton, swimming and diving, volleyball, and basketball. Despite these advances in

women's athletics, members of the DGWS felt that there were organizational and structural issues that needed to be addressed. They were concerned about an unidentifiable membership and the limited financial resources that they had to depend upon.²⁰ Thus, in 1971, the DGWS executive board, commissioners, and representatives from the nine regions²¹ met and designed a plan for an institutional membership organization that would be known as the AIAW. Their vision was to create an "educationally sound and fiscally prudent model for intercollegiate programs." To alleviate financial concerns each institutional member was required to pay annual fees. July 1, 1972 marked the official beginning of the AIAW and the official demise of the CIAW.²²

The AIAW, whose principal offices were located at 1201 Sixteenth St. N. W., Washington, D.C., 20036, was organized in 1971 as a Non-profit Corporation under the laws of the District of Columbia. The primary functions of the AIAW were to develop and promote a women's athletic program through the promulgation and enforcement of standard rules, the administration of championship programs, and the generation of commercial support and visibility. The primary legislative body of the AIAW was the Delegate Assembly, composed of an Executive Board and designated voting representatives from each member institution.²³ The Executive Board was composed of 26 voting members, including the three Presidents (immediate Past President, President and President-elect). Each voting institutional representative also held one Delegate Assembly vote.²⁴ The AIAW Executive Committee, composed of the three Presidents and the Executive Director (non-voting), assumed responsibility for the affairs and property of the AIAW and its institutional members between the annual meetings of the Delegate Assembly and the Executive Board. AIAW Presidents and most major committee chair members were elected by the institutional membership.²⁵ While in existence, the AIAW established itself as a national governance organization dedicated to the development of equal opportunity for women both athletically and administratively.

The demand for women's equality in education and athletics was also recognized by the United States Government. In 1971, Senator Birch Bayh of Indiana proposed Title IX as an amendment to the Elementary and Secondary Education Act of 1964.²⁶ The Bill not

only addressed the lack of equal access for women in the educational process, but also challenged the inequalities experienced by female students in athletic and extracurricular activities offered in American educational institutions.²⁷ Over the course of Congressional hearings on the matter many proponents of Title IX testified to the discriminatory conditions prevalent in educational systems and expressed the necessity for federal regulation.²⁸

Following considerable Congressional debate the Bill was signed on June 23, 1972 and emerged as Title IX of the Education Amendments Act of 1972 (hereinafter cited as Title IX).²⁹ In its final form, section 901(a) of Title IX stated:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any education program or activity receiving federal financial assistance.³⁰

Title IX not only applied to the admission policies of educational institutions, but also included policies and practices for all educational programs offering athletic programs.³¹ Following the passage of Title IX, the Department of Health, Education and Welfare (HEW) became responsible for drafting a regulation implementing the Education Amendments of 1972 prohibiting sex discrimination in education.³² The final regulations, issued by HEW in 1975, mandated a three-year compliance deadline with evidence of re-evaluation of current programming within the first two years. This required institutions to alter their programs so as to provide “a selection of sports and a level of competition that effectively accommodates the interest and abilities of both sexes” prior to July 21, 1978.³³ For many institutions, compliance with the HEW regulations would require extensive remodelling of established athletic programs. The regulations extended jurisdiction over all aspects of sport, including the provision of comparable coaching, equipment, supplies, publicity, travel, practice times and scholarship aid.³⁴ The Office of Civil Rights (OCR) Director, Peter H. Holmes, cited five specific criteria which institutions had to consider in the development of an equitable athletic program. First, the implementation of Title IX mandates were to be applied to an institution’s entire athletic program, i.e., implementation was not to occur on an individual sport basis; secondly, the regulations did not demand dollar-for-dollar

expenditures for each sex; thirdly, reasonable opportunities for scholarships had to be in proportion to the number of students participating in interscholastic or intercollegiate athletics; fourth, quotas or fixed percentages were not required under the regulation; and finally, recipient institutions were not required to provide a women's program which duplicated the existing men's program.³⁵

The NCAA, a governance organization dedicated to the promotion and regulation of men's intercollegiate athletics, was not supportive of the mandates outlined under Title IX. The NCAA, an unincorporated Non-Profit association, was established in 1906 as a governance organization dedicated to men's intercollegiate athletics. Specifically, it was established to "initiate, stimulate and improve intercollegiate athletic programs for student-athletes and to provide and develop educational leadership, physical fitness, sports participation as a recreational pursuit and athletic excellence."³⁶

Like the AIAW, the NCAA held annual Conventions where important policy decisions were reached by democratic vote. Each institutional representative, appointed by the institution's chief executive officer, had one convention vote. In the interim between annual Conventions, a 22 member NCAA Council was responsible for "the establishment and direction of the general policy of the Association."³⁷ The Council, whose members were elected by the membership at annual conventions, was composed of two officers of the NCAA, the president and secretary-treasurer, and 20 vice-presidents. Of these 20 vice-presidents eight were representatives from each of the eight geographic districts of the NCAA. The other twelve are at-large. All actions of the Council in the interim were subject to membership approval.³⁸ The Council further appointed a twelve member Executive Committee responsible for "transacting the business and administering the affairs of the association in accordance with the policies of the association and the Council."³⁹ Between the meetings of the Council and the Executive Committee the President, Secretary-Treasurer and Executive Director, were empowered to transact the business and affairs of the Association. All decisions made by these officers were subject to the approval of the Council and Executive Committee. The NCAA Council, Executive Committee and all standing committees were divisionally determined and no NCAA staff members were

permitted to serve on these committees or councils.⁴⁰

The NCAA, as a purveyor of men's intercollegiate athletics, was adamantly opposed to the implementation of the HEW Title IX regulations. It viewed Title IX as "disruptive, ... destructive, and surely counter-productive," and in the words of NCAA president John A. Fuzak:

Bluntly put, directors of athletics fear that if significant sums are diverted under Title IX from sports which are today revenue producing, the quality of the particular athletic program in question must diminish, or be restricted.⁴¹

With relentless energy the NCAA lobbied against the implementation of Title IX regulations. On May 20, 1974 the NCAA introduced the Tower Amendment which, in the words of Senator John Tower, "[was] intended to apply to the allocation of income generated by revenue-producing sports and not, let me emphasize, to exempt all intercollegiate athletics from the Title IX provisions."⁴²

He went on to suggest that:

Grave concern has been expressed that the HEW regulations will undercut revenue-producing sports programs and damage the overall sports programs of education institutions. HEW, in its laudable zeal to guarantee equal athletic opportunities to women, is defeating its own purpose by promulgating rules which will damage the financial base of intercollegiate athletics. The bill that I am proposing will, if enacted, prevent any such result. The bill will except only those sports which provide gross revenues and only to the extent that the revenues are necessary to support such revenue producing athletic activities.⁴³

The Tower bill passed the Senate but was defeated by the House-Senate Conference Committee on June 11, 1974.⁴⁴ Approximately two years later, during the week of February 16, 1976, the NCAA filed suit against HEW with the intention of invalidating Title IX regulations that dealt specifically with athletics and scholarships. The NCAA argued that the language contained in Title IX was somewhat ambiguous⁴⁵ and that "the regulations represent an unlawful exercise of regulatory power by the HEW."⁴⁶ Both of these attempts

by the NCAA to circumvent the implementation of Title IX regulations were unsuccessful.

By 1980 the AIAW had grown to become a substantial governance structure with a membership of approximately 960 four-year colleges and universities in all 50 states and the District of Columbia. Indeed, the AIAW had come a long way from 278 institutional members and seven national championships in its charter year. However, the decade of the 1980s witnessed drastic changes in the governance structure of women's intercollegiate athletics. In the 1980-81 academic year, the National Association for Intercollegiate Athletics (NAIA) initiated its first women's championship program with a total of nine championships in one competitive division.⁴⁷ The following academic year the NCAA, after 75 years of exclusive involvement with men's intercollegiate athletics, initiated a women's championship program in Divisions I, II and III; thus marking the NCAA's official entrance into the women's intercollegiate athletic market.

The NCAA offered a total of 29 national championships in 12 sports for women, all of which were also offered by the AIAW and NAIA.⁴⁸ Therefore, in the 1981-82 academic year intercollegiate athletic championships for female athletes were sponsored and conducted by the AIAW, NAIA and NCAA.⁴⁹ The NCAA stated that justification for its actions could be found within the regulations of Title IX, and "... to do less would be to violate its responsibilities under Title IX."⁵⁰ All NCAA member institutions were automatically eligible for participation in the NCAA's women's championships and as an incentive, it stipulated that there would be no increase in membership dues and additional costs would be subsidized by revision of the distribution of funds for men's championships.⁵¹

The implications of the NCAA's actions were devastating for the AIAW which had, for almost ten years, organized, governed and administered university women's athletic championships.⁵² The AIAW experienced not only a marked decline in membership, from 961 members in 1980-81 to 759 in 1981-82, but also experienced a 32% drop in championship participation. Despite these losses, the AIAW offered 41 national championships in 19 sports in three divisions in 1981-82, its last year of operation.⁵³ The AIAW's losses in membership and participation were further compounded by the actions of the NBC television network. In the fall of 1981, NBC determined that participation in AIAW

championships, in terms of number and quality, would not be sufficient to warrant coverage when compared to the previous years. NBC subsequently declined to pay the agreed-upon rights fee of \$255 000 to the AIAW.⁵⁴

On October 9, 1981 the AIAW filed antitrust action against the NCAA in the U.S. Federal District Court for the District of Columbia.⁵⁵ It charged the NCAA with “predatory pricing” through the use of their excess profits and monopoly position in athletics to offer women’s championships. Secondly, the AIAW suggested that the NCAA illegally tied the sale of women’s broadcasting rights to the more lucrative men’s rights, thus monopolizing the market.⁵⁶ On June 30, 1982 the AIAW, after careful consideration and consultation, became “inoperative” and officially closed its doors.⁵⁷ In a subsequent decision, on February 25, 1983, the United States District Court for the District of Columbia found that the plaintiff AIAW had been unsuccessful in proving its case against the NCAA. In 1984 the AIAW filed an appeal, but was further denied on the same grounds.

Purpose of the Study

The purpose of this study was to investigate the final pivotal events, yet unanalysed from the primary sources, that spelled the eventual demise of the AIAW as the chief governing body of women’s athletics in American colleges and universities.

Justification for the Study

In order to gain a full historical understanding of the demise of the AIAW as a governing body of women’s athletics in American educational institutions, consideration was given to the events and circumstances that led to its collapse. Previous research has, primarily, focused on Title IX legislation and its subsequent repercussions for both men’s and women’s athletic programs. The NCAA’s subsequent counter-actions to reduce the impact of this legislation have also been well documented. Although these events were critical in women’s athletic history, it was the AIAW’s defeat in the courts that represents the final decisive act. The litigation brought forth by the AIAW against the NCAA was a pivotal historical event in the course of women’s athletic governance. The defeat of the AIAW not only sealed its fate as a women’s governance organization, but it also led to the NCAA’s monopolization of intercollegiate athletics for both men and women. With the

NCAA as a governing body, women's athletics were altered both structurally and philosophically. Under the auspices of the NCAA, women's athletics increasingly mirrored the established conventions and traditions of men's intercollegiate athletic programs. An examination of sport history and law literature suggested that no extensive research pertaining to this pivotal court case had been conducted.

Methodology

Primary source documents from the AIAW Archives, McKeldin Library, University of Maryland, College Park, Washington, D.C. were gathered and utilized in this study. Of particular interest to this study were Associational documents including, but not limited to, memoranda, letters, mailgrams and press releases and court documents including, but not limited to, briefs, testimony and court decisions. These documents provided detailed descriptions of the events which led to the litigation between the AIAW and NCAA. The court documents outlined the AIAW's formal allegations, evidence in support of these allegations and subsequent injury sustained to the AIAW as a result of the NCAA's unlawful actions. The methodology utilized in this study was description and analysis, history's most traditional approach.

Organization of the Study

The chapters for the study were arranged in the following manner. The introductory chapter discussed the historical development of women's intercollegiate athletic programs and governance structures. Chapter two described the relevant markets within which men's and women's governance structures functioned. Chapter three provided a chronological description of the NCAA's initiatives into the women's intercollegiate athletic market. Chapter four specifically outlined the AIAW's claims against the NCAA. In addition, the NCAA's justification for movement into women's intercollegiate athletics was summarized. The final chapter summarized how women have fared in American intercollegiate athletics, with specific reference to data published in a 25 year report evaluating the influence of Title IX in American colleges and universities.

Delimitations of the Study

This investigation focused primarily on events occurring between 1972 and 1983.

Only cursory treatment was afforded to the events occurring before and subsequent to these dates. The sources utilized in this study were confined primarily to materials located in the AIAW Archives, McKeldin Library, University of Maryland at College Park, Washington, D.C. The documents found within the AIAW Archives have undergone a preliminary inventory and were filed and categorized by subject, date or sport. These files were stored in approximately 430 boxes.

Limitations of the Study

The description and interpretation of this pivotal court case was limited by the qualitative and quantitative dimensions of the primary source documents. This study was further limited by the nature of the information, to the extent that the information contained in the AIAW archives was not free of personal and social bias. It was the intent of this study to describe the events leading to the court case and the subsequent claims of the AIAW, from the AIAW perspective. The AIAW Archives were limited to documents collected and/or produced by the AIAW, with the exception of NCAA memoranda and court testimony. However, due to the nature of court documentation, those court records utilized in this study were deemed valid and reliable. Collaborating associational documents were not obtained from the NCAA Archives.

Endnotes

1. Betty Spears, "Senda Berenson Abbott: New Woman, New Sport," in Joan S. Hult and Marianna Trekell, eds., *A Century of Women's Basketball: From Frailty to Final Four* (Reston, Virginia: American Alliance for Health, Physical Education, Recreation and Dance, 1991), pp. 19-36. This new game of basketball for women spread quickly across the country. Faculty members from various institutions, like Wellesley College and Radcliffe near Boston, travelled to Smith to observe the game, while others wrote to Berenson to learn more about the game. By 1893, women at Mt. Holyoke College in Massachusetts and Sophie Newcomb College in Louisiana played the game. Berenson had also begun to spread the word of basketball for women through published articles and by 1895, hundreds of women's teams across the country played the new game.
2. Lynne Fauley Emery and Margaret Toohey-Costa, "Hoops and Skirts: Women's Basketball on the West Coast, 1892-1930," in *A Century of Women's Basketball*, Ibid, p. 137.
3. Op. Cit, Spears, p. 29. See also Joan S. Hult, "The Governance of Athletics for Girls and Women: Leadership by Women Physical Educators, 1899-1949," in *A Century of Women's Basketball*, Ibid, pp. 53-82.
4. Ibid., Hult, p. 56.
5. Ellen Gerber, "The Controlled Development of Collegiate Sport for Women, 1923-1936." *Journal of Sport History*, 2 (Spring 1975), p. 5. See also: Paula Welch, "Governance: The First Half Century," in G.L. Cohen, ed., *Women in Sport: Issues and Controversies* (Newbury Park: Sage Publications, 1993), pp. 69-78; and Joan S. Hult, "Women's Struggle for Governance in US Amateur Athletics," *International Review for Sociology of Sport*, 24 (1989), p. 250.
6. Op. Cit., Hult, "The Governance," p. 57. The following is a reference for the CWA's Official Handbook published in 1923, Elizabeth Burchenal, ed., "Official Handbook of the National Committee on Women's Athletics and The Official Rules for Swimming, Track and Field, and Soccer, 1923-24," p. 14.
7. Op. Cit, Gerber, pp. 5-8.
8. Op. Cit., Welch, p. 70.
9. Op. Cit., Hult, "Women's Struggle," pp. 251-2.
10. Op. Cit., Gerber, pp. 6-7.
11. Op. Cit., Hult, "The Governance," p. 58; Hult, "Women's Struggle," p. 251; Welch, pp. 69-78.
12. Ibid., Hult, "The Governance," p. 58.

13. Op. Cit., Hult, "Women's Struggle," p. 260. The American Physical Education Association (APEA) became the American Association for Health, Physical Education and Recreation (AAHPER) in 1937-1979, and the American Alliance for Health, Physical Education, Recreation and Dance (AAHPERD) from 1979 to present.
14. Op. Cit., Hult, "The Governance," p. 60.
15. Ibid., p. 61.
16. Op. Cit., Welch, p. 75.
17. Nancy L. Struna, "Beyond Mapping Experience: The Need for Understanding in the History of American Sporting Women," *Journal of Sport History*, 11 (Spring 1984), p. 127.
18. Op. Cit., Welch, pp. 76-78; Hult, "Women's Struggle," p. 256.
19. Leotus Morrison, *The AIAW: Governance by Women for Women*. In Cohen, Greta L. (ed.), *Women in Sport: Issues and Controversies*, Newbury Park, California: Sage Publications (1993), pp. 59-66.
20. Christine H.B. Grant, "Recapturing the Vision," *Journal of Physical Education, Health, Recreation, and Dance (JOPEHRD)*, 60 (March 1989), p. 44.
21. The Association for Intercollegiate Athletics for Women (AIAW), Unpublished Manuscript (Author Unidentified), AIAW Preliminary Inventory (AIAWPI), University of Maryland, College Park (UMCP), Washington, D.C. The AIAW recognized nine official organizations of regional governance. R1: Eastern, Northeast, Mid Atlantic, R2: Southern, R3: "Region 3", R4: Southwest, R5: Midwest, R6: "Region 6 AIAW", R7: Inter-mountain, R8: Western, R9: Northwest College Women's Sports' Association.
22. Op. Cit., Morrison, pp. 59.
23. Pretrial Brief for the Plaintiff, August 23, 1982, AIAWPI, UMCP, Box #63, Folder "Pretrial Brief AIAW vs. NCAA August 1982," p. 54. A voting representative was chosen by chief executive officers at each member institution. Those faculty personnel who served as representatives to the Delegate Assembly were predominantly involved in women's athletics programs and were predominantly female. In 1980-81, 70% of the institutional voting representatives were female. See also: Testimony of Donna A. Lopiano, 1982, AIAWPI, UMCP, Box #57, Folder "AIAW vs. NCAA-Lopiano Testimony," p.11.
24. Ibid., Testimony of Donna Lopiano, p. 14. AIAW Bylaw IV D stipulated that no member of the Executive Board may hold an institutional vote while serving in that capacity.
25. Ibid. Student members of the Executive Board were student elected. The chair of the Committee on the Status of Minority Women was elected by the Committee and the chair of the

Chief Executive Officers Council was elected by the Council. All members were involved in the election of Vice Presidents who represented each of the three competitive divisions on the Executive Board. Nominations were derived from the membership and must be presented to the Delegate Assembly.

26. June E. Jenson, "Title IX and Intercollegiate Athletics: HEW Gets Serious About Equality in Sports?," *New England Law Review*, 15(3) (Summer 1980), pp. 573-596. Jenson references the *Congressional Record* 30155-57 (1971). However, the U.S. Department of Health, Education and Welfare (HEW) published a "Fact Sheet" in June of 1975 stating that Title IX was originally introduced as an amendment to the Civil Rights Act of 1964. See also: HEW, "HEW Fact Sheet-Title IX-Civil Rights," *Government Publications*, Washington, D.C. (June 1975).

27. *Ibid.*, p. 577. Senator Bayh also suggested in his statement that differential treatment of men and women would be allowed in unusual circumstances. Such a circumstance might be "in sport facilities or other instances where personal privacy must be preserved ... [or] where there is ... a unique facet such as football involved."

28. HEW, "HEW Fact Sheet-Title IX-Civil Rights," *Government Publications*, Washington, D.C. (June 1975), pp. 1-11. A representative from the National Centre for Educational Statistics Reported that as of 1973 female college faculty received \$2500 less in salary than their male counterparts, and that only 9.7% of female faculty reached the position of professor while 25.5% of males reached this position. See also: Ann G. Uhler, "The Wolf is Our Shepard: Shall We Not Fear?," *Phi Delta Kappan*, 64(3) (November 1982), pp. 172-176. Uhler reports that in 1973-74, the first year for available data, women's collegiate athletic budgets were 4% of the total collegiate athletic budgets. In 1971-72 only 14.1% of college intramural participants and 15.6% of college athletes were women.

29. *Ibid.*, p. 1. See also: Jenson, "Title IX," p. 576. Debate regarding Title IX centered on the question of which recipients of Federal aid would be required to comply with the Act. The questions of equality for women and enforcement were not issues.

30. Health, Education and Welfare, Office for Civil Rights (HEW-OCR), "Final Title IX Regulation Implementing Education Amendments of 1972: Prohibiting Sex Discrimination in Education," *Government Publications*, Washington, D.C. (1975).

31. *Op. Cit.*, Jenson, "Title IX," p. 577.

32. *Ibid.*

33. Gayle Ingram, "Political Backlash and Implications to the Women's Civil Rights Movement Focusing on Sport and Athletic Opportunities for Women", Unpublished Manuscript presented at the World Congress of Sociology, Mexico (August 1982), pp. 127-142.

34. Op. Cit., HEW/OCR, "Final Title IX," pp. 1-11. The regulations specifically outlined provisions in nine areas: (1) coverage, (2) admissions, (3) treatment, (4) physical education, (5) athletics, (6) benefits, services, and financial aid, (7) facilities, (8) curricular materials, and (9) employment. Under "Coverage" HEW provides that Title IX applies to all school districts, institutions, or other entities that receive federal funds for educational programs or activities. The only institutions which are exempt from the regulations are military or religious schools and those institutions which are traditionally single-sex. With regard to "Admissions" the regulations state that recruitment procedures and all admissions policies and practices must be comparable for each sex. The regulations specifically prohibit the ranking of applicants, quota systems and sex-biased tests or selection criteria. The provisions outlined for "Athletics" state that institutions must ensure an equal distribution of equipment, supplies, facilities, practice and game schedules, travel and per diem allowances, locker rooms, medical and training services, publicity, housing and dining facilities, coaching and academic tutoring. With respect to athletic teams, institutions may provide separate teams in those sports which base selection on competitive skill. In the instance of contact sports separate teams may also be provided. In those sports which do not involve bodily contact, i.e. tennis, track, swimming, golf and others, any student may try out for a position on a team if only one team is available. The Regulations further state within the section on "Treatment" that all schools, including pre-schools, elementary, secondary, vocational, colleges, universities at all levels, agencies, organizations, and any persons receiving federal funds for educational programs and activities, must treat admitted students without discrimination. This includes access to course offerings, extracurricular activities, benefits, services, financial aid, use of facilities and housing. The "Physical Education" provisions prohibit sex segregated classes, except in instances of competition involving bodily contact, i.e. wrestling, boxing, basketball, football. The regulations also state under "Curricular Materials" that sex education classes are required to be separate and that shop and home economics should be available to all students.

35. HEW/OCR, "Memorandum to Chief State Officers, Superintendents of Local Educational Agencies and College and University Presidents," *Government Publications*, Washington D.C. (September 1975). The regulations stipulated that women must be provided with equal opportunity with men, which does not necessarily require the duplication of the existing men's program. Under the regulations, voluntary compliance was expected. However, in the case of noncompliance the OCR had two disciplinary options. The first option was to terminate federal financial assistance until the recipient institution ceased discriminatory conduct. The second option was to refer the matter to the Department of Justice with the suggestion of court proceedings.

36. Testimony of Walter Byers, May 24, 1982, AIAWPI, UMCP, Box #57, Folder "AIAW vs. NCAA Byers Testimony." Walter Byers was the Executive Director of the NCAA for approximately 30 years at the time of this interview. NCAA's principal offices were located at U.S. Highway 50 and Nall Avenue, Shawnee Mission, Kansas 66222. The NCAA provided a number of services to its institutional members, both directly and indirectly.

The NCAA formulated, published and enforced rules governing play, amateurism,

institutional control, academic standards, financial aid, recruiting, and ethical conduct. The NCAA sponsored and administered championships in various sports [and] ... maintained athletic records and compiled and disseminated statistics. The NCAA represented its membership in legislative and regulatory matters affecting intercollegiate athletics at the state and federal levels.

The NCAA also provided services which indirectly assisted member institutions and student-athletes. The Association was a representative of intercollegiate athletics in other national amateur athletic organizations, such as the United States Olympic Committee. The National Youth Sports Program, which provided educational and athletic opportunities to thousands of underprivileged youths, received financial and administrative assistance from the NCAA. The NCAA was involved in an extensive drug education and conducted the Volunteer for Youth Program which is geared towards junior high students who required one-on-one counselling. The NCAA was also a source for research grants to further knowledge in the area of sport medicine.

37. Op. Cit., Testimony of Walter Byers, p. 3.

38. Ibid.

39. Op. Cit., Pretrial Brief, pp. 17-8. The Association's appointment process was controlled by the officers and the Council. The officers and Council members were the only representatives to be elected upon nomination of a Nominating Committee (appointed by the Council). The Nominating Committee would present a single slate of nominees at the Convention for "pro forma ratification." There was no record of a Nominating Committee's suggestions being rejected by the Convention from 1972-82.

40. Ibid. The NCAA President, Secretary-Treasurer and Executive Director were also members of the Council and Executive Committee. The role of the NCAA staff was limited to implementing the will of the membership. The NCAA Council and executive staff were responsible for the order and content of the agendas at each annual Convention. The Council and Executive Director were also responsible for implementing the Association's enforcement procedures and controlling the investigative staff. Institutions found in violation of NCAA rules jeopardized their opportunity to participate in national championships and to appear on live television, a source of income which brought the NCAA and member institutions in excess of \$100 million annually.

41. Patricia Huckle, "Back to the Starting Line: Title IX and Women's Intercollegiate Athletics," *American Behavioral Scientist*, 21 (January/February 1978), pp. 379-392.

42. Statement by Senator Tower, *Congressional Record*, Proceedings and Debates of the 94th Congress, First Session Vol. 121, No. 111, Washington D.C., July 15, 1975, AIAWPI, HMA, UMCP, Box #294, Folder "Title IX Amendment & Tower Bill (s2106)."

43. Ibid.

44. Linda Jean Carpenter, "The Impact of Title IX on Women's Intercollegiate Sports," in A.T. Johnson and J.H. Frey, eds., *Government and Sport: The Public Policy Issues* (New Jersey, NY:Rowan and Allanheld Publishers, 1985), pp. 62-78.
45. The NCAA claimed that Title IX could not apply to intercollegiate athletic programs because they do not receive federal financial assistance. However, the HEW regulations state that any program receiving or benefitting from financial assistance is legitimately covered. See also: Memorandum from Renouf, McKenna, Polivy to AIAW Executive Board, February 26, 1976. AIAWPI, HMAD, UMCP, Box #417, Folder "NCAA-Title IX Lawsuit."
46. U.S. District Court, For the District of Kansas, "NCAA vs. David Mathews, Secretary for DHEW", NCAA Civil Action No. 76-32-00, Complaint, AIAWPI, HMAD, University of Maryland, College Park, February 1992, Box 417 NCAA-Title IX Lawsuit.
47. Op. Cit., Pretrial Brief, pp. 61-3. The NAIA was traditionally concerned with the promotion and provision of men's intercollegiate athletics at Division II and III levels, i.e., below "semi-professional" levels. The NAIA established a new women's membership division and required members to select membership in the men's, women's or both divisions. The women's division was composed of schools that had competed at the AIAW Division II and III levels.
48. Ibid., p. 62. The NCAA did not offer a separate membership for its women's program. All NCAA members were automatically eligible for participation, unless an institution joined specifically for its men's program. The NCAA identified this offering as a "service to existing members." See also: The National Collegiate Athletic Association, Summary of NCAA Meetings Concerning Women's Athletics Matters, 1963-1980, December 4, 1980, AIAWPI, HMAD, UMCP, pp. 1-40. On January 8, 1980 women's championships in division two and three were approved by the 74th Annual NCAA Convention in New Orleans, Louisiana.
49. Ibid., Pretrial Brief, p. 63. Unfortunately, due to scheduling conflicts, college and university administrators had no choice but to choose between them. Of the 29 women's championships offered by the NCAA, 16 conflicted with dates previously scheduled and published as permanent AIAW championship dates in the same sports. In Division I, six of the nine NCAA events conflicted with AIAW events, including basketball and volleyball, the two most popular television events.
50. Op. Cit., Ingram, p. 131; Hult, "Women's Struggle," pp. 255-56.
51. Op. Cit., Pretrial Brief, p. 13; Morrison, "The AIAW," pp. 59-66.
52. Ibid., Pretrial Brief, p. 63. Of the 29 women's championships offered by the NCAA in 1981-82, 16 of the dates conflicted with previously scheduled and published AIAW championship dates. Thus, institutions were forced to decide between the two championships. The NCAA also offered some of the benefits of a membership organization, i.e. promotion and championships at no extra cost to institutional members.

53. Op. Cit., AIAW, "Unpublished Manuscript," p. 2. The AIAW offered national championships in the following sports: badminton, basketball, crew, cross country, fencing, field hockey, golf, gymnastics, indoor track and field, lacrosse, skiing, soccer, softball (fast and slow), swimming and diving, synchronized swimming, tennis, track and field and volleyball. See Appendix C for AIAW National Championships from 1972 to 1981.

54. Op. Cit., Pretrial Brief, p. 58. The AIAW's 1981-82 television income totalled a meagre \$55,000 in deferred payment for 1980-81. The amount cited below by Morrison combines the 1981-82 rights fee and the \$280,000 rights fee for 1982-83. See also Morrison, "The AIAW," pp. 59-66. The amount due under the AIAW contract with NBC was approximately \$500,000.

55. Motion for Preliminary Injunction, October 9, 1981, AIAWPI, HMAD, UMCP, Box #65, Folder "AIAW v. NCAA - Motion for Preliminary Injunction," pp. 1-53.

56. Wendy T. Kirby, "Federal Antitrust Issues Affecting Institutions of Higher Education: An Overview," *Journal of College and University Law*, 11(3) (Winter 1984), pp. 345-367. United States Code (U.S.C.), Title 15-Commerce and Trade, section 1-2, (1982) pp. 132-3. The Sherman Act dates back to 1890. Section one of the Sherman Act specifically states that "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal." With respect to monopolizing trade section two states that "every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and ... shall be punished by fine not exceeding one million dollars if a corporation, ..."

57. Ibid., pp. 14-16.

Chapter 2

What is At Stake: Dollars or Gender Autonomy?

It was the contention of the AIAW that there were four distinct national markets or sub-markets within which the governance and promotion of American intercollegiate athletics functioned. The first, and most pronounced distinction was established between the sexes. The discrimination between men and women permeated the majority of intercollegiate athletic activities in American educational institutions and, as such, created a distinct market for men and a distinct market for women. Within each of these markets, a secondary distinction was identified. The secondary markets were coined the “Membership Market” and the “Championship Product Market.” The unique governance and promotional needs of intercollegiate athletic programs facilitated the development of a Membership Market, defined by “specialized buyers” of services, (i.e., four year accredited colleges and universities) and “specialized sellers,” (i.e., governance organizations who serviced those needs.) The regulatory and promotional services provided by governance organizations defined the “size and national character” of the Membership Market; however, it was the commercial nature of the market which determined its survival at the national level. For instance, colleges and universities utilized their athletic programs to generate revenue, either directly from the sale of tickets and media rights or indirectly from financial contributions or booster clubs. Regardless of the source, these efforts were made possible by the services of athletic governance organizations.¹

The Championship Product Market is also unique, in that the vendors of membership services were the only entities in a position to sell the resulting product, (i.e., national intercollegiate athletic championships) to commercial entities and members of the general public. The championship product itself, also served to distinguish the market:

Championship events are distinguished from other collegiate sports by virtue of their greater direct commercial value; their greater popularity; their temporal separation and their

economic and public relations value to participating institutions.²

Clearly these two markets are interrelated since “the governance organization, which functions as a specialized vendor at each end of the market, must participate at both ends to be effective at either... .” Despite the distinctive character of each market, the common thread upon which all four markets flourished was the intercollegiate athletic competition between colleges and universities in the United States.³

American intercollegiate athletics was characterized, by some, as “a unique mix of educational program and commercial exploitation,” where colleges and universities could vary in their dedication to each component.⁴ Some institutions conducted athletic programs primarily for educational purposes⁵, while others focused heavily and directly on the commercial aspect of “big-time” athletics. National athletic governance associations enlisted a significant number of educational institutions as members with little regard for institutional perspective on the values and purposes of intercollegiate athletics. For those institutions that promoted the educational value of athletics, governance associations offered not only competitive opportunities against schools with the same value structure, but also increased the institution’s visibility to prospective students and alumni supporters.⁶

Many “big- time” athletic institutions viewed intercollegiate athletics as a commercial enterprise that not only carried successful athletes to professional heights, but also, elevated institutional prominence in the realm of athletics. For these institutions the economics and conduct of multi-million dollar athletic programs was a constant consideration since, more often than not, the financial basis for many of these programs had to be appropriated from self-generated revenues and general institutional funds, such as student fees and university concessions operations. For example, in Texas, the state law prohibited the use of state funds for the support and finance of intercollegiate athletic programs. The state declared that athletic programs, like those offered at the University of Texas, were not credible academic programs, but were rather “self supporting auxiliary enterprises.”⁷ In response to this classification, directors of athletics were forced to consider the economic as well as the athletic benefits offered by national governance associations. Donna Lopiano⁸, the Director

of Athletics for women at the University of Texas, Austin, stated that what she sought from a national governance organization was “the most cost effective way to achieve the most educationally sound and competitively successful program possible.” To satisfy the “cost effective” requirement governance organizations had to focus on: (1) the restriction of program expenditures through a system of rules⁹; and (2) the maximization of program benefits, i.e., the generation of income or other economic benefits or the enhancement of a program’s educational or competitive value.¹⁰

The national intercollegiate governance organization, in which institutions purchased membership, was the key factor in the successful promotion of varsity athletics in each market. Intercollegiate governance organizations also functioned as “middlemen” between member institutions and those entities who wished to be associated with the institution and its championships. Within the Membership Market, governance organizations functioned as “specialized sellers” of program services and national championships and, in return, the member institution submitted annual dues and provided championship participants and institutional support. Within the Championship Market, governance organizations sold institutional championship events to public spectators, television exhibitors and other commercial entities for financial compensation.¹¹ Obviously,

... the regulatory (governance) and commercial (promotional) functions of national collegiate athletic organizations are inseparable, interdependent and indeed to a great extent coextensive. It is governance rules and their enforcement which create the promotable product and it is largely promotion which makes governance possible.¹²

For example, in order to maintain effective regulation and successful governance, an organization depended upon a system of enforceable common rules and the implementation of viable penalties. Often times, penalties were directed towards individual athletes in order to keep individual institutions in line. For instance, the organization could declare a key player ineligible, a decision that could cost an institution a conference championship and the respective monetary benefits associated with its participation in the event. These sanctions, although detrimental in nature, were required to ensure successful governance.¹³

An institution's ability to conduct and provide a top quality intercollegiate athletic program was highly dependent upon membership in a governance association. For example, the NCAA strongly discouraged competition between NCAA members and non-members. The NCAA committees that selected post-season and championship participants often discriminated against institutions that scheduled competitions with non-NCAA member teams.¹⁴ Since non-member institutions were subject to no visible and enforceable regulation, institutional members were even more reluctant to accept offers of athletic competition. Institutional members of governance organizations, as opposed to non-members, were ensured the right to compete in sponsored championships; potentially large television revenues and reimbursements; fair and equitable competition; and "educational credibility."

In short, institutions engaging in intercollegiate athletics are dependent both upon each other and upon their joint membership in a national intercollegiate governing body either for educationally meaningful or for commercially viable programs.¹⁵

The Men's Market and the Women's Market

Traditionally, athletic events, ranging from high school competitions to the Olympic Games, have been separated on the basis of sex, where male athletes compete against male athletes and female athletes compete against female athletes.¹⁶ This separation on the basis of sex was the primary factor which divided the intercollegiate athletic market into two segments. There were a number of other factors within educational institutions that served to distinguish these two markets from each other. From the perspective of the student-athlete, differences based on sex were evident in many areas: (1) the rules of play, (2) the number of sports offered, with male athletes having a greater selection than females, (3) the number of competitors, where men comprised two thirds of all college athletes, and (4) the relative level at which men's and women's teams competed.¹⁷

Men's and women's intercollegiate athletic programs also received disproportionate institutional support in areas of administration and financing. Women comprised approximately one third of all collegiate athletes, but their programs received only 16% of

the athletic dollar nationwide. Total program budget size and the sources from which these funds accrued also varied between the sexes; men received greater public donations and commercial revenues and women depended proportionately more on institutional funding. With respect to administration, men's and women's athletic programs were typically organized as separate entities; administrative and operational structures, personnel, budgets and season schedules were exclusive to each program.¹⁸

The segregation of men's and women's athletics was also reflected in their systems of governance. Prior to the entrance of the NAIA (1980) and the NCAA (1981) into women's athletics, men's and women's programs were served by separate single sex governance organizations. Each organization promulgated its own distinct values, rules and traditions. The AIAW created rules and regulations for women which stressed the importance of increasing opportunities for women as participants in athletics, as well as the improvement of competitive standards and public exposure for women's competitive events. Conversely, the NCAA developed rules and practices for men which were based on "the availability of an essentially unlimited pool of talent" and the promotion of "major sports."¹⁹

Following the NCAA's initiation of a women's intercollegiate program, the governance of men's and women's athletics resided primarily under the auspices of a single organization. However, men's and women's programs were still considered by many institutions to be distinct. For example, in 1981-82, 80% of all NCAA institutions who filed the "required certification of rules compliance for their women's program" opted to follow the AIAW rules rather than those traditionally delineated by the NCAA. The NCAA, aware of the "unique interests of women," utilized specific championship conduct and eligibility criteria for its women's championships. In many institutions, it was often the case that personnel, budgets, sport committees and championships were also administered on a sex separate basis.²⁰

Men's and women's athletics were also differentiated by both the commercial and public value they elicited. Without question, the commercial value of men's athletics far exceeded that of women's intercollegiate athletics. In 1981-82 the NCAA signed a three-year network contract with CBS which valued women's Division I basketball championships at \$125,000 per annum and men's Division I basketball championships at \$16,000,000 per

annum.²¹ The differential value of men's and women's athletics was also reflected in the combined championship and television revenues for men's and women's events in 1980-81. The two largest men's governance organizations, the NCAA and the NAIA, had a combined aggregate revenue of approximately \$19,791,336, while the AIAW and the NAIA combined aggregate revenue for women's events totalled \$299,625.²²

Public value and interest in men's athletics over women's athletics also supported the AIAW's notion of divisional markets. In the years of 1978-1981 the mean television rating for the NCAA Division I men's intercollegiate basketball championship was 21.1. The mean television rating for the AIAW Basketball championships over that same period was 5.1. The highest television rating ever obtained by an AIAW event was for its August, 1981. Volleyball Championship, with a rating of 8.3. To further explicate this pattern, two thirds of all NCAA athletic events exceeded the AIAW rating of 8.3. The NCAA's mean rating for all its televised events was approximately 10.²³

Public value associated with "the nature and the degree of" competitive skill also served to distinguish between the men's and women's athletic markets. From a physiological standpoint men typically excelled at skills which required strength and speed, while women excelled at skills which required balance and fine motor control. Due to the historical significance and popularity of men's athletic competition, skills associated with speed and strength were highly regarded by the general public. For example, at the University of Texas (U.T.) an analysis of men's and women's basketball season ticket holders was conducted. It was discovered that there was a less than 5% overlap in purchasers and that the reasons for attending men's and women's events varied. It was further established that,

... in the case of men's athletics, attendance at U.T. men's events was the social thing to do in Austin, the place where you needed to be seen. If you weren't a season ticket holder, you had lower social prestige. Women's season ticket holders were older people without children or whose children had grown up and left home, parents of young girls who aspired to be collegiate athletes, single women and professional men and women with more liberal sex stereotype values.

Common to both groups was an inherent interest in sport, but those spectators attending men's events and not women's events did not perceive women's sports events to be as fast, exciting or as skilled as men's events.²⁴

Despite the pervasive evidence presented by the AIAW in support of the notion of distinct athletic markets for men and women, Walter Byers, Executive Director of the NCAA, provided an alternative view of the athletic market structure. It was his opinion that the intercollegiate athletic market encompassed both men's and women's athletic events, and that these two entities competed with each other within one athletic market. Byers cited the following example:

... in the market for telecasting rights all programming competes with other available programming. The rights to a given men's intercollegiate athletic championship may have more or less value to a network than a given women's championship presented at the same time; but if the price of the former is out-of-line with its market value, the network will buy the latter or some other type of programming to fill the available time slot.

Byers went on to state that:

... the men's Division I basketball tournament currently has more value than its women's counterpart; but the latter has more value than many men's championships such as fencing, golf and tennis. It is also true that, in general, there is currently less spectator interest in women's athletics. Thus the rights to many women's athletic contests have less market value than do the rights to more popular men's events -- but they compete with each other and with other programming for television exposure and are in the same market. ... In sum, none of the markets in which the NCAA operates is sex-separate.²⁵

Men's Market Participants

In 1980-81 there were four national athletic governance organizations available to more than 1,950 accredited four-year colleges and universities in the United States. Of those collegiate institutions, 1,216 operated men's intercollegiate athletic programs and, as such,

constituted potential purchasers of membership services. Two of the four governance organizations, were “highly specialized” and limited to “select institutions.”²⁶ The first organization, the National Little College Athletic Association, limited entrance to those institutions which enrolled fewer than 500 male undergraduates. The second organization dedicated to men’s intercollegiate athletics, the National Christian College Athletic Association, restricted admittance to four-year Christian institutions willing to subscribe to a “Statement of Faith.” In 1981-82, the National Little College Athletic Association and the National Christian College Athletic Association enlisted 52 and 117 members, respectively.²⁷

NAIA

The third organization, which dedicated its services to the governance and promotion of men’s athletic competition, was the National Association for Intercollegiate Athletics (NAIA). The NAIA was established in 1952 and enlisted 415 institutional members.²⁸ In 1971-72 NAIA membership peaked at 561 members, and then declined slowly to 516 by 1981-82. NAIA total membership remained fairly constant over time. Its members were primarily private collegiate institutions with limited enrollment. In 1979-80, the NAIA enlisted 516 members, 66% of which were private institutions. Of these, 46% (237) enrolled under 1,000 students, 52% (267) between 1,000 and 10,000 students and 1% (8) over 10,000.²⁹

The NAIA offered a single competitive division in which 12 national championships were conducted. The NAIA football program was the exception, with one national championship offered in two competitive divisions. The athletic program offered by the NAIA was geared towards those athletes and institutions who competed “below the major level.”³⁰ Each collegiate member was required to remit annual dues. The men’s division dues structure was graduated in six steps depending on the size of the institution. Annual dues ranged from \$300 to \$550 per year, with institutions enrolling over 5,000 students remitting the greatest amount. Annual dues totalled approximately \$200,000 or approximately 18% of NAIA’s total yearly income from 1979-1982. Other NAIA sources of income were radio and television rights fees, championship revenues, and various

marketing, advertising, and sales ventures. Table I below itemizes each source of income and the total NAIA revenues generated between 1979 and 1982.

Table I
NAIA Itemized Revenues for 1979-80 to 1981-82

Category	Year		
	1979-80	1980-81	1981-82*
Dues	\$202,465.90	\$201,455.00	\$254,675.00
Radio/Television	\$38,290.00	\$28,420.00	\$82,000.00 est.
Championships	\$434,065.00	\$460,916.00	too incomplete
Contribs, Adv., Mrkting. Souvnirs, Statist. Sales, Pubs.,	\$188,622.00	\$359,939.71	not available
Other	\$46,354.75	\$49,722.28	not available
TOTAL	\$909,818.65	\$1,100,452.99	unknown

* Figures include women's program. In 1980-81 women accounted for \$81,725, or 6.9% of NAIA's total revenue.

The revenues generated from radio/television contracts primarily involved the sale of rights to NAIA Division I and II football Championships. From 1956 to 1981 the NAIA secured national and regional syndicated television contracts,³¹ including contracts in 1956-57 and 1957-58 with CBS for the Aluminum Bowl football event and the NAIA football championship, respectively. In 1979-80, ESPN signed a contract for coverage of the NAIA Division I Football and men's Soccer championships. In 1981-82 the USA cable television network purchased the men's and women's outdoor track and field championship rights, as well as the Division I football championship rights. In 1982-83, the USA network scheduled television coverage for the NAIA football championship game, men's basketball championship game and the men's and women's outdoor track and field meet.³²

NCAA

The “oldest and economically strongest of the national intercollegiate athletic organizations” was the National Collegiate Athletic Association (NCAA or the Association). Established in 1906, the NCAA was the largest “purveyor of men’s governance and promotion services.”³³ The Association was not only dedicated to the initiation, stimulation and improvement of intercollegiate athletic programs for student-athletes, but also created opportunities for the development of leadership skills, physical fitness, and participation in sport as a recreational pursuit and for athletic excellence.³⁴ “In a real sense, the history of the NCAA has been the history of the development of men’s intercollegiate athletics.”³⁵

The first men’s national collegiate championship sponsored by the NCAA, was held in track and field in 1921. Twenty years later, the NCAA men’s championship program had grown to encompass ten sports: swimming (1924), wrestling (1928), boxing (1937), gymnastics (1938), tennis (1938), cross country (1938), basketball (1939), golf (1940), and fencing (1941). The NCAA only offered one competitive division; thus larger institutions which emphasized athletic excellence dominated the NCAA championship circuit. In 1957, the NCAA expanded its championship program to include two competitive divisions: the “University” Division for large institutions and the “College” Division which was reserved for smaller member institutions.³⁶ Initially, institutional members were permitted to select either division on a sport-by-sport basis. In 1968, this feature was eliminated and institutions were required to select a single competitive division for their entire men’s athletic program; 223 NCAA institutions selected the University Division and 386 opted for the College Division. As a result, the affiliation between “big-time” athletic programs and all others was severed. In 1973, the NCAA further refined its divisional structure by establishing three competitive divisions: Division I offered championships in 17 sports; Division II offered championships in 12 sports; Division III offered championships in ten sports. Division I was further divided into I-A and I-AA for the purposes of football, where the strongest football programs competed in Division I-A. Once again, each member institution was required to commit its entire men’s intercollegiate athletic program in one of the three competitive divisions. However, it was stipulated that one sport of the member’s choosing, other than

basketball or football, could be singularly assigned to any division.³⁷ The NCAA further adopted legislation which allowed each division to enact legislation on matters which were directly applicable to its particular division. Hence, the divisional selection of each institution held legislative and competitive significance.³⁸ In 1980-81 and 1981-82, 43 men's national championships in 19 different sports were sponsored by NCAA, with 19 Division I championships, 13 Division II championships, and 11 Division III championship events.

In 1981-82 the NCAA registered a total of 753 active member institutions. Of those members 276 competed within Division I, 191 were designated as Division II members and 286 were Division III members.³⁹ Each Division illustrated distinct qualities and characteristics. Division I institutions were typically those universities and colleges which sponsored major men's football and/or basketball teams. At this level, many men's intercollegiate athletic programs were considered to be "semi-professional," and as such, were expected to be at least self-supporting. These programs utilized various avenues, including gate receipts, television revenues, private donations and student activity fees, in an attempt to maximize income. It was estimated that Division I institutions, with major football programs, could expect annual men's intercollegiate athletic program budgets to range from \$3.5 to \$8 million. In 1977, the average Division I budget, for institutions supporting a major football program, was \$2.2 million and \$317,000 for "non-football" institutions. For Division I schools, membership in the NCAA was an "economic and programmatic necessity," since no other governance organization was available to service their competitive and commercial needs.⁴⁰

In contrast, Division II institutions maintained lower annual intercollegiate athletic budgets, usually between \$140,000 and \$700,00, they offered fewer athletic scholarships and sustained smaller coaching and support staff. Division II programs, unlike Division I programs, only received television exposure in the case of national championships. Their major sources of funding were student activity fees and general institutional revenues, and to a minor extent donations and gate receipts.

NCAA Division III institutions did not allow the award of any scholarships to student-athletes, since the only source of budgetary support came from general institutional funds. The majority of in-season competitive events held for Division III institutions were local and, as such, required minimal monetary support when compared to Division I events. Division III intercollegiate athletic program budgets ranged from \$100,000 to \$150,000 per annum.

The contribution of each Division to the total yearly revenues accrued by the NCAA, was proportionate to the size and extent of the athletic program offered in each Division. The NCAA generated total revenues of \$20, 220,495 and \$23,331,263 in 1979-80 and 1980-81, respectively. Division I men's national championships, the sale of the television rights to those events and membership dues income constituted 76% and 80% of the total NCAA revenues in 1979-80 and 1980-81.⁴¹ The Division II contributions to the total NCAA revenues in 1979-80 and 1980-81 were \$885,111 (4.4%) and \$836,109 (3.6%), respectively. Division III national championships and related television rights fees accounted for \$257,705 (1.3%) of the total revenues in 1979-80, and \$316,760 (1.4%) in 1980-81. From an economic perspective, "the NCAA was its Division I program."⁴² The following table illustrates the NCAA's gross revenues by category for the years 1979-80 and 1980-81. The figures were obtained from the NCAA's 1981 audited financial report.⁴³

Table II

Breakdown of NCAA Revenues by Category, 1979-80 and 1980-81

Category	Year	
	1979-80	1980-81
Television Income (Championships)	\$9,577,793 (47.4%)	\$11,312,038 (48.5%)
Television Income (Football)	\$2,173,200 (10.7%)	\$2,333,199 (10%)
National Champ. (Non-Television)	\$4,788,897 (23.7%)	\$5,656,019 (24.2%)
Membership Dues	\$201,450 (1.0%)	\$206,350 (0.9%)

Other	\$3,479,155 (17.2%)	\$3,823,657 (16.4%)
TOTAL NCAA Revenue	\$20,220,495 (100%)	\$23,331,263 (100%)

Each active member institution was required to remit annual dues; however, these dues were “relatively nominal” and, as illustrated in Table II above, they constituted only a small percentage of the total NCAA revenue. In 1980-81 the NCAA received \$206,350 in membership dues income. This revenue was generated from the following dues structure: \$500 for Division I football schools; \$400 for Division I non-football schools; \$200 for Division II schools; and \$100 for Division III schools. At the January 1982 NCAA Convention, an alternative dues structure was proposed and accepted. The new dues structure required first, that the four Divisional levels be reduced to two, one for Division I and the other for all Division II and III schools, and secondly, a two step dues increase was to be implemented over the next three years. Thus, in 1982-83 and 1983-84, Division I institutions remitted \$800 and all others remitted \$400. In 1984-85, Division I dues were calculated at \$1,400 and all others were required to remit \$700.

Within the intercollegiate men’s market the NCAA and NAIA were, for all practical purposes, the sole sources of membership services and championship product. As of 1980-81, 95% of all four year colleges and universities with men’s intercollegiate athletic programs were either members of the NAIA (32.5%), the NCAA (52%) or both (10%). For that same year the total revenues generated from all membership services dedicated to men’s intercollegiate athletics was \$24,431,715. The NAIA received \$1,100,452 or 4.5% of the total, while the NCAA received \$23,331,263 or 95.5% of the total. The NCAA was also a dominating force within the championship market. Direct revenues from championships and the sale of television rights totalled \$19,790,593 in 1980-81. Of that total, the NCAA received 97.5% or \$19,301,257 and the NAIA received 2.5% or \$489,336. Obviously, the NCAA enjoyed a substantial monopoly within both the membership and championship markets.⁴⁴

Women's Market Participants

AIAW

The Association for Intercollegiate Athletics for Women (AIAW), created by women physical educators in 1972, was the “first national intercollegiate athletic organization to regulate, promote and develop women’s intercollegiate athletic activities at four year colleges and universities” in the United States.⁴⁵ (See Appendix B for AIAW Articles of Incorporation.) Prior to the establishment of the AIAW, no national athletic organization officially supported, organized or conducted intercollegiate championships for women. In recognition of these disparities, the AIAW attempted to modify athletic tradition to include women’s prowess in intercollegiate competition. As a governance organization it provided member institutions with a systematic athletic program and national championships dedicated solely to female student-athletes. This profound interest in women’s athletics not only created athletic opportunities, but also facilitated greater public awareness and interest in women’s sports.⁴⁶ While in existence, the AIAW established itself as a national governance organization dedicated to the development and promotion of women’s intercollegiate athletics in the United States.

In its first year of operation, 1971-72, the AIAW enlisted 278 four year colleges and universities as member institutions. Institutional interest in the AIAW as a governing body of women’s athletics, increased steadily over the next eight years. In 1979-80 AIAW institutional membership peaked at 970 members. The AIAW was the preeminent governance organization in the realm of women’s athletics. In 1980-81, however, it appeared that this distinction was diminishing. AIAW institutional membership declined by 1% in 1980-81; of the 1196 four year colleges and universities that sponsored women’s intercollegiate athletic programs, 961 were associated with the AIAW. In 1981-82, a further loss was recorded, as only 759 institutions were under the governance of the AIAW. (See Table III below).⁴⁷

Table III
Number of AIAW Active Institutional Members from 1971-72 to 1981-82

Membership Year	Number of Active Member Institutions	% Gain (Loss)
1971-72	278	--
1972-73	381	37%
1973-74	508	33%
1974-75	595	17%
1975-76	723	21%
1976-77	805	11%
1977-78	825	2%
1978-79	915	11%
1979-80	970	6%
1980-81	961	(1%)
1981-82	759	(22%)

From 1972 to 1980 the growth of the AIAW was analogous with the growing interest in women's intercollegiate athletics. The AIAW's national, regional and state championship programs were reflective of the growing number of females competing in college athletics and the willingness of collegiate institutions to expand their athletic programs for women. In 1973, it was estimated that four year colleges and universities offered an average of 2.5 sports for women, while an average of 7.3 sports were offered for men. Similarly, in 1972 women's intercollegiate athletic program budgets accounted for approximately 1% of the total institutional budget. The impact of this trend was evident in the AIAW's decision to conduct only seven national championships in seven different sports in its charter year (golf, gymnastics, track and field, badminton, swimming and diving, volleyball and basketball). By 1979, the average number of sports for women had increased to 5.0 and the percentage of the total institutional budget allocated to women's athletic programs had increased to 16%.

A parallel response was recorded in the number of women competing on intercollegiate athletic teams. Between 1972 and 1979 the number of female student-athletes doubled.⁴⁸ In response to the changing trends in women's athletics, the AIAW expanded its national championship program. In 1979-80, the AIAW conducted 30 championships in 14 different sports. The number of AIAW championships peaked in 1981-82, the AIAW's final year of operation, with the conduct of 41 championships in 19 sports. The growth of the AIAW national championship program is reflected in the table below (See Table IV).⁴⁹

Table IV

The Number of AIAW National Championships, Sports Offered and Television Income
from 1972-73 to 1982-83

Membership Year	Number of Sports	Number of Championships	Television Income
1972-73	7	7	--
1973-74	7	7	--
1974-75	7	7	--
1975-76	9	11	\$15,750
1976-77	13	17	\$25,000
1977-78	13	18	\$23,000
1978-79	13	18	\$109,476
1979-80	14	30	\$219,052
1980-81	17	39	\$223,000
1981-82	19	41	\$246,000*
1982-83	--	--	\$273,750*

*Reflects sums contracted for; actual income in 1981-82 was \$55,000 in deferred payment from 1980-81. The 1982-83 figure excludes a payment of \$70,000 due in 1983-84.

The AIAW not only provided member institutions with regular-season play and national championships, but also offered additional competitive opportunities through state and regional qualifying events. In order to attain its established goals of increasing

opportunities for female student-athletes, the AIAW designed a competitive program structure that met the “unique and rapidly changing needs of women’s intercollegiate athletics.” Members of the AIAW strove, not only to correct the athletic deprivations experienced by women in the past, but also focused on increasing the pool of highly skilled female athletes.⁵⁰ To achieve these ends, the AIAW offered female student-athletes competitive post-season opportunities at both the state and regional level. In 1980-81, more than 450 post-seasonal state and regional qualifying tournaments were accessible to AIAW institutional members and their female student-athletes. These events not only served as national championship qualifiers, but also allowed teams which had no realistic chance of qualifying for national championships to experience post-season competition.⁵¹

The AIAW, as a governance organization interested in the development and promotion of women’s athletics, had two primary sources of income: annual membership dues and the sale of its national championships to spectators, sponsors and television exhibitors.⁵² From its inception in 1972, the AIAW required institutional members to remit annual dues based on the institution’s selected competitive division. From 1972 to 1974 the AIAW only offered one competitive division to its members. By 1975, it almost tripled its membership, and as a result, two distinct championship divisions were created. Institutions which enrolled fewer than 3,000 female undergraduates were classified as “small” and submitted \$350 annually to the AIAW. Institutions with more than 3,000 female undergraduates were classified as “large” and were required to submit \$500 per annum. In 1975, the AIAW limited its provision of small and large national championships to basketball and volleyball which, at the time, were the most popular women’s sports. By 1978, the AIAW championship program had expanded to include 18 championships in 13 sports, eight “open” events, five large- and five small-college championships. In 1979, it was recommended that the AIAW reorganize its present competitive structure to include three competitive divisions, Divisions I, II and III. The three-divisional dues structure was not implemented by the AIAW until the 1981-82 membership year.⁵³ Each institutional member declared its Divisional status based on the division in which the majority of its female athletic teams competed. Schools which competed in Division I were required to

remit annual dues of \$700, Division II annual dues totalled \$600, and Division III schools remitted \$500 per annum.⁵⁴ AIAW members had the opportunity to select a competitive division for each sport they offered. This allowed institutions to ensure that the competitive division in each sport coincided with the interests and abilities of student-athletes. This approach accommodated the varying stages of competitive development which was clearly evident in women's athletic teams. In 1981-82, 26% of AIAW members offered multi-divisional athletic programs.⁵⁵

The AIAW also relied on the income generated from public and network television interest in women's intercollegiate athletics. The AIAW signed its first television contract in 1975. In 1975-76 and 1976-77 it received \$25,000 for the television rights to all its national championships. The following year, 1977-78, the AIAW signed its first network contract with the NBC television network which purchased the rights to the AIAW Division I (large college) basketball and gymnastics championships. In 1979-80, the AIAW and NBC entered into a four year agreement which permitted NBC to cover all AIAW Division I and open championships.⁵⁶ Five AIAW national championships were televised by NBC in 1979-80, and in 1980-81 NBC doubled its exposure of AIAW national championships to ten.⁵⁷ However, in 1981-82 the AIAW championship coverage was abruptly halted when NBC refused to televise any AIAW athletic events.⁵⁸ "NBC determined that participation in the AIAW championships in terms of the number and quality of those institutions that had participated in previous years was insufficient to warrant coverage."⁵⁹ As a result, AIAW television revenues were considerably reduced in 1981-82. (See Table IV above for the yearly AIAW income generated from the sale of television rights.)

Governance organizations also gained substantial benefits from their association with institutional members. AIAW members not only provided the "raw material," (i.e., student-athletes for each event,) but also supplied the facilities and economic and human resources required to underwrite state, regional and national championship events. These benefits were not recognised in the form of profit and were often ignored as commercially valuable; however, they eliminated considerable expense for organizations like the AIAW. For example, if a national organization had to rent a commercial facility and pay all the personnel

involved in the conduct of one championship game, the cost could have reached over \$5,000 (not including a percent of the profit). One national championship, including all qualifying events, might have required the conduct of 30 to 40 games; this expense would undoubtedly nullify any potential profits for the governance organization.⁶⁰ It has been suggested that “the identity between the educational and commercial aspects of the member-governance organization relationship [was] almost absolute...” since many educational institutions, like those which competed in Division I, would not need or be able to afford the facilities utilized in competition unless, (1) those facilities generated income from the athletic events they hosted, and (2) governance organizations existed that created and exploited the cash value of athletic events.⁶¹

The AIAW generated total revenues of \$771,915 in 1979-80, \$824,112 in 1980-81 and \$684,246 in 1981-82. These revenues were derived from various activities surrounding the governance and promotion of women’s intercollegiate athletics. The following table specifies each revenue source and the total revenues generated by each.⁶²

Table V
AIAW Itemized Revenues for 1979-80 to 1981-82

Category	Year		
	1979-80	1980-81	1981-82
Television (Championships)	\$55,000 (8%)	\$223,000 (27%)	\$219,052 (28%)
Championships (Non-TV)	\$20,273 (3%)	\$66,634 (8%)	\$37,467 (5%)
Dues	\$422,149 (62%)	\$372,792 (45%)	\$375,600 (49%)
Other	\$186,824 (27%)	\$161,686 (20%)	\$139,796 (18%)
TOTAL	\$684,246 (100%)	\$824,112 (100%)	\$771,915 (100%)

Bracketed values for each category indicate the percentage of the total income generated.

NAIA

The NAIA initiated a women’s competitive program in the 1980-81 membership year. A new “women’s membership division” was created and each member institution was

required to specify its membership in the men's division, the women's division, or in both divisions. The following dues structure was adopted by the NAIA (See Table VI Below).⁶³

Table VI
NAIA Dues Structure Commencing in 1980-81

Fulltime Enrollment	Selected Division	
	Men's OR Women's	Men's AND Women's
Up to 500	\$300	\$450
501 to 1000	\$350	\$525
1001 to 2000	\$400	\$600
2001 to 3000	\$450	\$675
3001 to 5000	\$500	\$750
Over 5000	\$550	\$825

In 1980-81, the NAIA women's competitive division membership included 185 institutions. All of these members were also institutional members of the NAIA's men's division and 78 were also members of the AIAW. In 1981-82, the NAIA women's competitive division registered a total of 290 institutional members, 286 of which were also members of the NAIA men's program and 53 were AIAW institutional members. The NAIA women's program was composed almost entirely of schools which had previously competed at the AIAW Division II or III level. In 1980-81 and 1981-82, the NAIA sponsored nine women's championships in one competitive division. The 1980-81 women's program generated revenues totalling \$81,725, of which \$38,000 was derived from membership dues⁶⁴ and \$43,725 from commercial activities associated with the promotion of the women's program.⁶⁵ These revenues generated from the women's program constituted 7% of the NAIA's total revenue and 2% of the organization's championship and television income in 1980-81. The total revenue generated by women's intercollegiate athletic programs in 1980-

81 was \$905,837. Of this total 2% was derived from the efforts of the NAIA, the other 91% was attributable to the expertise and efforts put forth by the AIAW.⁶⁶

NCAA

In 1981-82, following 75 years of exclusive involvement in men's intercollegiate athletics, the NCAA initiated a women's intercollegiate athletic program at the request of its membership. All NCAA member institutions were deemed eligible for participation in the newly established women's championships. The NCAA, however, did stipulate that "unless an institution joined for its men's program, its women's teams were ineligible" to participate in the women's program. The women's program offered some of the benefits associated with promotion and championships; however, it was not a membership organization which represented women's programs; instead, it was an additional service for existing members.⁶⁷

The NCAA women's program included 29 national championships in 12 different sports, nine in Divisions I, nine in Division II, eight in Division III, and three within the "open" classification. In comparison to the women's programs offered by the AIAW and NAIA, the NCAA-sponsored program appeared to duplicate preexisting athletic opportunities for women. All 29 national championships initiated by the NCAA in 1981-82 were also available in the AIAW and NAIA athletic programs.⁶⁸

For the years 1981-82 and 1982-83, the estimated combined revenues from the NCAA women's athletic program ranged from \$300,000 to \$500,000. Revenues were generated from championship events proceeds and the sale of championship television rights fees. The 1982 women's Division I basketball championship rights were sold to CBS for \$125,000, and the NCAA women's Division I gymnastics championship secured a bid of \$65,000. All other women's championships were included in the NCAA television contract with ESPN.⁶⁹

The NCAA's decision to enter the women's athletic market sparked controversy and resentment from the AIAW and many of its members. However, the NCAA's expressed intent was not to stimulate a merger or takeover of women's intercollegiate athletics, but rather, to provide NCAA members with an "integrated option to compare with the separatist women's programs offered by the AIAW." The NCAA assumed that the "effective

leadership and the attraction of the basic philosophy of the AIAW to many institutions will assure the success of that organization... ."70

Endnotes

1. Pretrial Brief for the Plaintiff, August 23, 1982, AIAWPI, HMAD, UMCP. Box #63, Folder "Pretrial Brief AIAW vs. NCAA August 1982," pp. 28, 32.
2. Ibid., pp. 32-36. For example, the most commercially valuable in-season college sport was typically football. In 1980, participating colleges in the 12 nationally televised Division IA games received approximately \$600,000 per game. Despite the popularity of in-season games, championship contests were the most popular and brought in the highest commercial bids. The publicity and shared proceeds accrued to institutions "constitute irreplaceable funding and recruiting devices." In a temporal sense, championship games were distinct because by definition they only occurred after the season was complete; therefore there was no opportunity for conflict with other matches in the same sport at the same level.
3. Op. Cit., Pretrial Brief, pp. 20-21.
4. Ibid. The involvement of institutional athletic programs in commercial activities varied considerably, from those institutions who were involved only minimally, to those programs which promoted "big time" semi-professionalism.
5. Testimony of Donna A. Lopiano, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "AIAW vs. NCAA-Lopiano Testimony," p. 2. In these schools funding was often reserved for the development of educational opportunities rather than the provision of a "big-time" athletic program. Coaches were often faculty members, student-athletes were not induced by athletic scholarships, athletic and academic programs received identical consideration within the institutional budget, and no efforts were made to attract athletes, spectators or commercial interest.
6. Ibid. These institutions also received the same promotional benefits as schools which fostered the commercial aspect of athletics.
7. Ibid., p. 2-3.
8. Ibid., p. 3. Donna Lopiano was a resident of Austin, Texas and since 1975 was the Director of Intercollegiate Athletics for women and a Lecturer in physical education at the University of Texas at Austin. Between 1971 and 1975 she served as the Assistant Director of Athletics and Assistant Professor in physical education at Brooklyn College of the City University of New York. She graduated from Southern Connecticut State College in 1968 and went on to complete her M.A. and Ph.D. at the University of Southern California in 1969 and 1974, respectively. While attending school she participated in national and international competitions in basketball, field hockey, softball, volleyball and badminton. She also competed in the International Women's Professional Softball League. She coached and taught basketball, softball and men's and women's volleyball.

Her research and publications have focused on the technical aspects of coaching and play

in particular sports, as well as issues related to athletic funding; the promotion of women's athletics; high school sports; Title IX and its relation to athletics, and rules enforcement.

Donna Lopiano was involved with numerous associations and committees, those being: a member of the USOC Development Committee since 1979; the AIAW Commissioner of National Championships in 1977-78; chair of the AIAW Television Committee in 1976-77; and she served on the 1975 Committee on Restructure which developed the AIAW's divisional configuration. Donna Lopiano served on the AIAW Executive Board for five of the six years between 1976 and 1982. She was one of the Presidents throughout the time period concerned in this suit and was President when the suit against the NCAA was filed.

9. Ibid., p. 3-4. With respect to cost restrictions the national athletic organization implemented a system of rules and strategies dedicated to the restriction of programmatic expenditures. Some of these rules and strategies included limiting the number of subsidized prospective-athlete visits and the number of subsidized recruiting trips taken by coaches; the amount of money paid to an athlete; and the benefits offered to a prospective athlete, i.e., complimentary tickets, dormitory accommodations, clothes and possible work opportunities. The organization also had the option to control programmatic costs by limiting the number of coaches and officials hired, the length of a season and the number of players on a team.

10. Ibid. An institution had to assess the benefits provided by a governance organization in relation to the relative costs to the program. For example, the television exposure offered by an organization should be commensurate with the recruiting costs incurred by the institution. The media coverage, both electronic and print, generated from participation in national championships should be equivalent to the purchasing of a national advertising campaign. The visibility and prestige created from media coverage enhanced the recruiting abilities of institutions and generated funds for the athletic program and the institution. They also created more spectator interest which, in turn, increased profits from ticket sales, concessions and parking sales. For many men's athletic teams the benefits were monetary. Successful football programs could potentially realize up to a million dollars a year in profit.

11. Op. Cit., Pretrial Brief, pp. 20-1, 27.

12. Op. Cit., Testimony of Donna Lopiano, p. 5.

13. Ibid., p. 6. Common rules and viable penalties also allowed for the conduct of a promotable product. Spectators were not interested in viewing events that were lopsided, where one team continually destroys the others. "It is governance rules enforceable against all competitors which create a competitive structure in which no one institution can gain an insurmountable competitive advantage. The better the competition, the greater the promotional gain."

14. Testimony of James B. Koch, 1982, AIAWPI, HMA, UMCP, Box #57, Folder "AIAW vs. NCAA, Koch Testimony," p. 5. He stated further that if the NCAA terminated the membership of one institution of an athletic conference, then the conference member was

ineligible for post-season play. Thus, there was extreme peer pressure on individual schools to ensure that such situation not occur.

15. Op. Cit., Testimony of Donna Lopiano, p. 7.

16. NCAA Response to AIAW First Request for Admissions, March 25, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "NCAA: Response to AIAW First Request for Admissions," p. 7.

17. Ibid., p. 22.

18. Ibid.

19. Ibid., p. 24; Testimony of Donna Lopiano, p. 11. In her testimony Donna Lopiano suggested that the system promulgated by the AIAW was based on humanitarian values and that it is quite capable of broadening the base of talent while at the same time increasing competitive quality. She suggested that the NCAA system, which selects "the cream from a practically unlimited pool of highly skilled entry level participants by imposing barriers to athletic entry," was philosophically inferior. As an example, she cited the varying degrees of representation on various governing structures of the AIAW versus the NCAA, where the former structure included student-athletes and minority individuals.

20. Ibid. The NCAA further accommodated women's interests by securing a seat on the Council and Executive Committee for the "primary woman administrator of athletic programs" at member institutions. Women were also guaranteed a minimal level of participation on other NCAA governing entities. The women's program within the NCAA was not afforded the same distinction after 1985.

21. Ibid., p. 25. See also Testimony of Merrily Dean Baker, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "AIAW vs. NCAA, Baker Testimony." Baker suggested that NBC did not want the NCAA's women's basketball championship event and, that in the past, CBS Sports had consistently declined to purchase any women's intercollegiate event. However, in March of 1981 CBS responded to the conditions submitted by the NCAA Basketball negotiations committee with the following about the women's championship: "CBS Sports proposes to assign a separate fee for broadcast rights to the Division I Women's Championship of \$75,000 for each year of the agreement." (See Exhibit 1, p. 8) The Minutes of the NCAA Basketball Negotiations Committee reflect the following response to the CBS proposal regarding women's championships:

Mr. Byers said we have a deal, but CBS' offer was lower than it should be regarding rights fee. NCAA is faced with a dilemma of accepting a lower price for the women's championship than had been offered by the other organization [NBC]. CBS was asked to reconsider this item. (Exhibit 2, p. 2)

After a short recess, the CBS representatives made a "good-faith" effort by offering \$125,000 for

each year of the three-year contract. This amount was agreed to by the Committee.

22. Ibid., p. 25. The women's aggregate championship and television revenues were 1.5% of the total men's aggregate revenues. Public interest, in terms of those who purchase the rights and those who buy tickets to the athletic events, also reflects an imbalance in favour of men's athletic events.

23. Op. Cit., Testimony of James Koch, p. 8.

24. Op. Cit., Testimony of Donna Lopiano, p. 8. It was also found that the women's basketball market would not tolerate the exorbitant prices charged for men's events.

25. Testimony of Walter Byers, May 24, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "AIAW vs. NCAA, Byers Testimony," pp. 10-11.

26. Op. Cit., Pretrial Brief, p. 37.

27. Op. Cit., NCAA Response to AIAW, p. 4.

28. Op. Cit., Pretrial Brief, p. 41. During the 1930s there was increased demand from small colleges for post-season national championships. In response, the National Small College Basketball Tournament was established in 1937. From this tournament an organization known as the National Association for Intercollegiate Basketball was formed in 1941. In 1952 that association became the NAIA.

29. Op. Cit., Pretrial Brief, p. 38. In 1979-80 the average enrollment of NAIA membership institutions was 1,721 students, with a median of 1,050 students.

30. Ibid. NAIA competition was equivalent to the Division II or III programs offered by the NCAA.

31. Ibid. The regional or non-national syndicated television coverage of NAIA athletic events are as follows: 1959 and 1960 - Football - CBS; 1971 - Division II Football - syndicated in Southern California and Arizona; 1976 - Division I Football - College Sports Network (7 stations); 1977 - Division I Football - delayed to Texas markets and a cable system in Washington; 1978 - Football (non-championship) - College Sports Network (4 games - 8 stations) and; 1981 - Football playoff games (5) - regional telecast.

32. Ibid.

33. Ibid., p. 41. See Appendix A for NCAA Constitution, Article 1.

34. Op. Cit., Testimony of Walter Byers. At the time of this interview, Walter Byers had been the Executive Director of the NCAA for approximately 30 years.

35. Op. Cit., Pretrial Brief, p. 41.

36. The NCAA's decision to expand its championship structure to include two divisions was simultaneous with the development of the NAIA as a governance organization dedicated to the promotion of "lower" status athletics, i.e., Division II and III athletic events.

37. Ibid. See also: Testimony of Walter Byers, p. 1. Byers suggested that NCAA member institutions were organized according to a combination of three competitive divisions, Divisions I, II and III, and open championships. The combination of divisions "normally depended upon the number of members offering programs in a given sport."

38. Op. Cit., Pretrial Brief, pp. 19, 42. The competitive divisions were not permitted to enact legislation in regards to associational membership, divisional membership, associational committees and bylaw amendment procedure.

39. Ibid., p. 46. The allied conferences had the following divisional classification: 45 Division I, 19 Division II and 17 Division III. In 1979-80, 736 four-year colleges and universities and 73 allied athletic conferences were active members in the NCAA. See also: Testimony of Walter Byers, p. 1. Byers suggested in his testimony, dated May 1982, that there were 751 active NCAA institutional members, rather than 753. See also: Erik Brady and Tom Witosky, "Title IX Improves Women's Participation," *USA Today* (March 3 1997) pp. 4C-9C. Division I was further divided into Division I-A, Division I-AA and Division I-AAA. In 1995-96 there were 108 I-A schools, 117 I-AA schools and 78 I-AAA schools.

40. Ibid., pp. 43-4. Division I programs were perhaps the most recognized by the general public and, to their institutional sponsors they represented "valuable fund-raising and public relations instrumentalities."

41. Ibid. "Ancillary income," related to Division I competitions, accounted for an additional 10.8% and 10% of the NCAA gross revenue for 1979-80 and 1980-81, respectively.

42. Ibid., p. 44.

43. Ibid., p. 46. The NCAA audit was conducted in 1981. The audited financial report showed the NCAA's national championship revenue to be \$16,986,058. This figure included the television income from national championships. In contrast, NCAA Annual Reports reflected a higher figure, totalling \$19,348,594 in 1980-81. From individual championship reports it was estimated that at least \$12,221,346 was derived from television rights fees, \$6,460,893 from gross receipts, and the remaining \$580,834 was unallocated. In terms of the regular football season, both reports assessed the television income to be \$2,333,199. This amount accounted for 8% of the total in-season football television proceeds in 1980-81. Consistent totals were also found for all other NCAA revenue for 1980-81.

44. Ibid., p. 50.

45. Ibid., Pretrial Brief, p. 53.
46. Ibid., pp. 53-4.
47. Ibid., pp. 12-13.
48. Ibid., p. 55. In 1979 women constituted approximately one third of all student-athletes at four year colleges and universities. Despite the growth experienced in women's athletics, few if any women's teams were self-supporting.
49. Ibid., pp. 13, 56. See Appendix C for AIAW National Championships from 1972-1981.
50. Op. Cit., Testimony of Donna A. Lopiano, p. 12.
51. Op. Cit., Pretrial Brief, pp. 12, 56. In 1971-72, the AIAW's charter year, the CIAW's regional organizations were established as the nine AIAW regions. It was established that each region would conduct qualifying tournaments for the AIAW national championships. Note: the AIAW received no direct economic benefit from the provision of state and regional championships. See also: Testimony of Donna A. Lopiano, pp. 12-13. In her testimony Lopiano she stated that the AIAW provided competitive opportunities through more than 250 state and regional events.
52. As of 1982, no television rights for state or regional championship events had been sold. However, had television rights been sold for these events, the profits would have been split between the AIAW and all nine AIAW regions as outlined in the AIAW Television Plan.
53. Ibid., pp. 54-56. On page 54 paragraph 147, the Brief states that AIAW annual dues remained in the two-divisional structure, those divisions being small and large, until 1980-81. It further suggests that annual dues were paid according to a three-divisional structure beginning in 1981-82. However, on page 56, paragraph 152, the Brief states that the AIAW reorganized its championship program, to include three divisions, Division I, II, III, in 1979.
54. Ibid., p. 57. The "operative distinction" between Division I, II, and III was the number of athletic scholarships that were awarded to each sport. Division I was reserved for those schools which awarded close to 100% of the allowable athletic aid. Division II was restricted to teams that awarded no more than 50% of the maximum allowable financial aid. Division III was reserved for teams with no scholarship athletes.

It was estimated, in 1979, that athletic scholarships for women constituted approximately 20% of the total national collegiate scholarships.
55. Ibid., pp. 57, 15. See also: Testimony of Donna A. Lopiano, p. 13. Each division is represented by a member on the Executive Board; however for institutional members divisional classification held no legislative significance. All legislative functions resided with the Delegate Assembly as a unitary body. The legislative process was not divided by division for any purpose.

56. Ibid., p. 57. In 1979-80 ESPN, the sports cable network, also carried selected AIAW championships from Divisions II and III. This was the first time that non-Division I women's championships were distributed nationwide on a telecommunications network. In 1980-81 ESPN televised two AIAW national championships (Divisions unknown).

57. Ibid., pp. 57-8. There is a discrepancy in the exact number of championships which were televised by NBC in 1980-81. On page 101 the text suggests nine championships, however on page 57 the text cites ten.

On average women's Division I basketball championships offered on network television received an audience rating of 5.1. In 1981, the women's volleyball championship received the highest single event audience rating of 8.3.

58. Ibid., pp. 57, 101-2. The AIAW offered the rights to its 1981-82 women's championships to ESPN, but the offer was declined "because much [had] happened since the NCAA adopted women's championships at their convention."

59. Ibid., p. 58. NBC also refused to pay the 1981-82 and 1982-83 rights fees, of \$255,000 and \$280,000 respectively, that were due under its contract with the AIAW.

60. Op. Cit., Testimony of Donna A. Lopiano, p. 7. The example outlined refers to basketball championships. Commercial facilities were utilized only when sufficient facilities could not be supplied by the host institution. The host institution and the AIAW divided the profits and gate receipts equally.

61. Ibid.

62. Op. Cit., Pretrial Brief, pp. 58-9. For 1981-82, the AIAW's original May 1981 budget projected revenues of \$910,350 despite the potential loss of approximately 150 members and all television income except NBC, whose payments totaling \$251,250 were due in that fiscal membership year. In actuality, NBC remitted only \$55,000 in deferred payment from 1980-81 (See Table III).

63. Ibid., p. 62

64. Ibid. Revenues generated from 1981-82 membership dues totalled \$51,000.

65. Ibid., p. 61. The NAIA received \$11,225 from championships and the sale of television rights to a single competitive event. The USA cable network purchased the men's and women's track and field championships for \$12,500.

66. Ibid.

67. Ibid. No additional dues were required from NCAA member institutions who wished to participate in the NCAA women's championship program. Institutions, having membership in other governance organizations were not permitted membership status with the NCAA for the

sole purpose of its women's program. However, those institutions were still allowed to compete in the NCAA women's events. Until August 1985, participants in the women's programs must place their entire program, with the exception of one sport which may be moved up or down, in the division selected by the institution's men's program.

68. Ibid., p. 63. Conflicts with respect to championship dates were also a concern. Sixteen of the 29 national championship dates established by the NCAA conflicted with previously scheduled and published AIAW championship dates in the same sports. In Division I six of the nine NCAA championship events conflicted with AIAW championships dates; basketball and volleyball, the two most popular television events, were included among them. The NCAA championship program failed to offer championships in seven of the AIAW sponsored sports and, of the 12 sports it did sponsor, five fewer championships were available when compared to the AIAW.

69. Ibid. The total 1981-82 NCAA women's market revenues were not available prior to the submission of the plaintiff's Pretrial Brief.

70. Defendant's Exhibits, May 27, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "NCAA Exhibits," Exhibit No. 9. It was further noted that the women's program offered by the NCAA would provide an additional option to 134 NCAA members which were also NAIA members.

Chapter 3

A Wary Courtship: NCAA Initiatives in Controlling Women's Intercollegiate Athletics

The NCAA's initiative into the realm of women's intercollegiate athletics was a gradual process that progressed over a period of approximately 15 years. The NCAA's first formal introduction to women's collegiate athletics occurred at the 58th Annual NCAA Convention in 1964. Sara Staff Jernigan, Stetson University, and Dr. Marguerite Clifton, University of California Los Angeles, spoke before a general roundtable gathering in regard to current developments in women's athletics, the possibility of women participating on men's athletic teams, and the potential role of the NCAA. This was "an historic first" for the NCAA.¹ One year later, the 1965 NCAA Convention enacted a regulation, at the request of the women leaders with whom NCAA representatives had been communicating, which restricted female student-athletes from participating in NCAA championships and tournaments. Thus, NCAA competitive athletic events were limited only to eligible male student-athletes.²

The NCAA's initial interest in governance and organization of women's athletics was, ironically, simultaneous with the evolution of an independent national governance organization dedicated to the needs and interests of women's intercollegiate athletic programs. In February 1966, Richard C. Larkins informed the NCAA, via Charles Neinas, Assistant to the Director, that the Division of Girls and Women's Sports (DGWS) was in the process of developing a governance organization, namely the Commission on Intercollegiate Athletics for Women (CIAW), to offer national championships for women.³ Neinas, on behalf of the NCAA, responded to the DGWS' proposal with the following assurances:

The NCAA limits its jurisdiction and authority to male student-athletes. In fact, the Executive Regulations of this Association prohibit women from participating in National Collegiate Championship events. ... Consequently, a national organization assuming responsibility for women's

intercollegiate athletics would not be in conflict with this Association. ... the NCAA stands ready to be of assistance, in an advisory capacity, in formulating policies and procedures for the conduct of intercollegiate athletics for women. We wish the DGWS well in this important endeavour.⁴

By September 1, 1967, the DGWS had developed and successfully established the CIAW as an organization dedicated to the governance of women's intercollegiate athletics, as well as the organization, promotion and conduct of women's national championships.⁵ During this same period of time, however, the NCAA Council discussed and subsequently authorized the appointment of a special committee to study "the feasibility of the NCAA establishing appropriate machinery to provide for the control and supervision of women's intercollegiate athletics."⁶ The fact that the NCAA considered involvement in women's athletics, prior to the passage of Title IX, is significant. On July 25, 1967, Walter Byers, NCAA Executive Director, invited seven collegiate representatives to serve on the special committee, including Katherine Ley, CIAW Chairperson, and Betty McCue, DGWS Vice-President.⁷ On August 4, 1967 Katherine Ley wrote to Walter Byers questioning the NCAA's intentions with regards to the special committee, since they had previously indicated a "hands off" policy in women's athletics. Byers wrote in response: "I don't know precisely what you mean by our 'hands off' policy or who told you that was the official position of the Association. I would point out, however, that the NCAA committee is a 'study committee'."⁸ In response to Byers' letter, Ley recounted the events and communications between Larkins and Neinas prior to the formation of the CIAW and included the letter sent by Neinas verifying the NCAA's position regarding women's athletics. She further expressed the DGWS' concerns about the NCAA's initiation of a special committee just as the CIAW was becoming operational. Ley explained that:

A copy of the letter, upon which my remarks about the 'hands-off' policy were based, is enclosed. Mr. Larkins had sought an answer from you directly but you were out of the office at the time, so he talked to Mr. Neinas. Mr. Larkins then asked that the conversation be verified in a letter--a copy of the verification is enclosed.

The whole matter came up when [the] DGWS was

considering the formation of a Commission on Intercollegiate Athletics for Women. We wanted to be sure there was no existing organization concerned with or interested in conducting athletic events specifically for college women.

On the basis of the March 8 letter, we went ahead and developed the Women's Commission.⁹

Byers responded to Ley's October 6 letter, reaffirming that the NCAA's intent behind the establishment of the study committee was to study the feasibility of the NCAA entering women's athletics in a promotional and supervisory capacity, and clarified that:

The question of whether the NCAA is the organization to take on this job is a question yet to be determined. Likewise, I presume that the question of whether the AAHPER (through [the] DGWS) is the appropriate organization to supervise and control women's intercollegiate sports has not been determined.

Whatever the decision might be, it is my view that the organization which is eventually selected or developed must be an organization based upon institutional membership because I do not believe the governing boards and administrators of the high schools and colleges of the nation are going to be satisfied on any other basis.¹⁰

On January 21, 1968 the NCAA special committee assembled at O'Hare Airport in Chicago. The meeting consisted of a general sharing of ideas concerning the governance and organizational structure of women's athletics. Chairman Earnest B. McCoy did, however, question the power of the CIAW to sanction women's championships. The male members asked how the NCAA could be of assistance to the CIAW, since their interest was not to take over women's athletics, but rather to assist and support new athletic programs for women.¹¹

It had been the expressed opinion of Walter Byers in 1967 that an organization based upon institutional membership would best serve the governing boards and administrators of American high schools and colleges. This opinion was reiterated by Neinas and McCoy at a meeting with Lucille Magnusson and another DGWS representative in August of 1969. Neinas stated that "an institutionally oriented organization would be better qualified to administer a national athletic program than an organization composed of individual

educators.” He further emphasized that “the NCAA was not anxious to become involved in women’s intercollegiate athletics,” but that the Association was willing to assist in the establishment of such an organization. Despite the NCAA’s offer of assistance, the DGWS representatives indicated a preference for continued operation under the aegis of the DGWS.¹²

In October 1970, despite the DGWS’ initial response to the idea of a membership organization, it approved a proposal to establish the CIAW as a membership-based organization. Two months later AAHPER approved, in principle, the DGWS proposal. In January 1971, the DGWS-CIAW sent the NCAA material regarding the proposed development of a National Organization for Intercollegiate Athletics for Women (NOIAW).¹³ This material was subsequently forwarded to the NCAA legal counsel, who was in the process of establishing an official legal opinion regarding the NCAA’s current regulations disallowing participation of female student-athletes in NCAA competitions or tournaments. Walter Byers later outlined the NCAA’s legal position to the Executive Committee and Council. Byers suggested that there were several courses of action, but “the creation of a division within the NCAA for female intercollegiate competition was legally preferable.”¹⁴ The NCAA’s legal opinion, prepared by attorney George Gangwere, concluded, in light of the material supplied by the DGWS-CIAW, that in order:

... to take full advantage of the great amount of work done heretofore in the field of women’s sports, to avoid resentment and hostility from the leading women athletic administrators, and as the best means of locating the necessary additional female administrators, it would appear desirable for the NCAA to seek the affiliation as an adjunct of the NCAA of the new National Organization for Intercollegiate Athletics for Women. I would suggest that a committee be appointed to confer with the new women’s organization with the aim of asserting if such an affiliation is possible, and if so the procedures necessary to accomplish it. If such an affiliation is not possible then it will be desirable to ascertain the necessary steps for organizing a separate women’s group within the NCAA.¹⁵

In April 1971, the NCAA Council authorized the formation of a Special Committee

to review the NCAA's legal obligations with regard to women's intercollegiate athletics and the participation of female athletes in intercollegiate athletics. The following individuals were invited to serve on the Special Committee (Swank Committee): David Swank, Oklahoma, chair; Donald N. Boydston, Southern Illinois, and Edward M. Czekay, Pennsylvania State University.¹⁶ On July 6, 1971 the Swank Committee met in Kansas City, with DGWS Chairperson JoAnne Thorpe, Commissioner in Charge of National Championships, Carole Oglesby and DGWS Consultant Rachel Bryant. The discussion focussed primarily on the DGWS' proposal of a new membership organization called the Association for Intercollegiate Athletics for Women (AIAW). Issues concerning the disassociation from AAHPER/DGWS, and the possibility of the AIAW establishing an affiliation with the NCAA as the female branch within athletics were also addressed. It was ultimately decided that, prior to any further discussion regarding the affiliation of the AIAW and NCAA, the NCAA legal counsel would draft an affiliation proposal upon receipt of the new AIAW constitution.¹⁷

In September 1971, at the AIAW's request, leaders of the NCAA, NAIA, and the National Junior College Athletics Association (NJCAA) met in Kansas City to discuss further the possible affiliation of the AIAW with the NCAA. Lucille Magnusson, CIAW Chairperson, did not indicate that the AIAW would not affiliate with the NCAA, but rather, her concerns were about the willingness of the NAIA and NJCAA to affiliate with the NCAA. She explained, however, that "if the women had their choice, they would prefer to have Gangwere determine a way they could operate independently without affiliating with the NCAA."¹⁸ In regard to the NCAA's legal obligation to conduct women's events, it was the NCAA's wish "to be legally exonerated from this obligation by having the AIAW affiliate with [the] NCAA in some legal way through their Bylaws." George Gangwere was to formulate a plan for this amalgamation, then submit it to the CIAW Council and the AAHPER legal advisor for consideration.¹⁹

At the NCAA Council meeting on October 25-27, 1971, David Swank presented his Committee's report. The Committee initially considered the possibility of affiliating the AIAW with the NCAA; however there were problems with respect to eligibility as well as

the AIAW's preference to organize and administer women's programs and championships with only minimal involvement from the NCAA. In light of these issues, the Swank Committee recommended that "all students meeting the necessary qualifications (eligibility, predictability and performance standards) be allowed to enter NCAA championship competition regardless of sex. Also, the AIAW would be encouraged to affiliate with the NCAA." In response to these recommendations the Council voted, "... that the Committee continue its study of the problem."²⁰

The Swank Committee reported to the Council in April 1972, with the suggestion that it would be "inappropriate at that time for the NCAA to do more than encourage and offer assistance to the newly formed AIAW." Executive Director Walter Byers, however, stated that the problem was,

... acute inasmuch as the policy of excluding women from NCAA events was not a legally defensible position. Also, pressure on local athletic departments for women's competition is more severe in colleges of smaller enrollments. ...[and] separate programs for women at the institutional level will not solve the NCAA problem.

The Council agreed that the NCAA would have to confer with the NJCAA and the NFSHSA on the whole matter.²¹ Ironically, two months later, Title IX of the Education Amendments Act of 1972 (Title IX) was passed. The law stated that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.²²

The law required all schools and colleges to provide a "selection of sports and a level of competition that effectively accommodates the interest and abilities of both sexes."²³ In light of Title IX and the Long Range Planning Committee Report to the NCAA Counsel suggesting the elimination of "all references that imply exclusive male participation" from NCAA legislation,²⁴ the 1973 NCAA Convention amended Executive Regulation 2-4-d to permit female student-athletes to compete in NCAA tournaments and championship events.²⁵

On February 26, 1974, the NCAA Council reconstituted the Swank Committee as the

Special Committee on Women's Intercollegiate Athletics (SPWIA).²⁶ At the first SPWIA meeting, held on March 18, 1974, Chairman Swank outlined the committee's assignment:

A previous NCAA committee had considered issues concerning female intercollegiate athletics, and at that time had merely recommended that there be nothing contained in the Association's rules and regulations which differentiated between sexes.

Circumstances were presently such that the Council felt it was imperative that the NCAA take a leadership role in recommending procedure to the membership, as well as arriving at the Association's immediate and long-range position, in the administration and conduct of intercollegiate athletics for both men and women.

The Council believed that since the first committee was organized, a number of legal precedents had been established, the development of programs at the institutional level had taken a more definite form, HEW was in the process of issuing binding regulations and the Association remained vulnerable to possible legal attack.²⁷

The Committee discussed at length the proposal presented by George Gangwere, the evolution of women's intercollegiate athletics, and the anticipated implementation of Title IX and its possible effects at the institutional level. Following the discussions the Committee agreed upon the following actions:

1. The AIAW would consider immediately presenting a position statement to Secretary Weinberger of HEW concerning the application of Title IX and the draft regulations to female intercollegiate athletics.
2. That a joint committee of the NCAA and AIAW be established to consider the possibility of a joint organizational structure.
3. Anticipating agreement on point 2, the meeting of the joint committee should be scheduled for early June.
4. Any revisions in the draft regulations implementing Title IX should be immediately distributed to the committee members once they were received by the NCAA.²⁸

In the summer of 1974, the Department of Health, Education and Welfare (HEW) published proposed Title IX Regulations. In August 1974, Walter Byers, NCAA Executive

Director, reported to the Council on issues related to the impact of HEW's proposed Title IX Regulations:

The executive director reviewed the current status of the Association's efforts to effect changes in the Title IX regulations regarding requirements for member institutions in the funding and administration of intercollegiate athletics for women. He predicted the NCAA eventually will be involved in women's athletics since it seems inevitable that eligibility rules, for example, must be the same for both sexes.²⁹

On October 10, 1974, representatives of the AIAW, including Leotus Morrison, President, Laurie Mabry, President-Elect, Margot Polivy, Legal Counsel, and Bonnie Parkhouse, NAGWS-AIAW consultant, met with the NCAA SCWIA at O'Hare International Tower Hotel in Chicago. The meeting's discussion centered on how a formal melding of the two organizations or an affiliation of the associations might be achieved. Margot Polivy suggested that both the AIAW and NCAA be dissolved and a completely new unified body be created. NCAA representatives urged that the possibility of an alliance between the two organizations not be dismissed. There was also the suggestion that the NCAA assume the responsibilities associated with sponsoring all athletics for men and women. Laurie Mabry insisted that if a combined organization was to emerge, the AIAW expected to have equal representation on all policy-making levels. Chairman Swank replied that it was unlikely that the NCAA Council would accept equal representation and instead suggested that the AIAW might be granted two of the Division I positions on Council, one of the Division II and one of the Division III positions. The AIAW reiterated the fact that it could not accept anything less than equal representation. It was finally agreed that a small committee be formed to further investigate the administrative and policy differences of each organization. A second subcommittee was charged with the development of alternative structures to govern men's and women's athletics. A joint press release stated that the meeting had been "fruitful and worthwhile."³⁰

At the NCAA Council meeting on October 21, 1974, David Swank presented the report of the SCWIA. The report consisted of the following points:

1. The AIAW had demanded equal representation from the beginning of any joint or merged organization.
2. It was the committee's consensus that, (a) NCAA representatives should work further toward a recommendation³¹ to both the NCAA and the AIAW; (b) The NCAA must create its own women's competition, appropriate committees and staff; (c) The Committee is not optimistic regarding any eventual recommendation that would be satisfactory and acceptable to both organizations.
3. The Council voted that the staff and Association legal counsel be directed to determine all legal, financial and political ramifications involved in establishing NCAA competition and championships for women in selected activities.
4. It was the sense of the Council meeting that the Special Committee should meet again with [the] AIAW representatives, and that the high school and junior college representatives named to the committee in ex officio capacities should now be removed from the committee.

Following the NCAA Council meeting, the Executive Council met and adopted a proposal for the future governance of Women's Athletics.³²

At the January 1975 NCAA annual Convention, held in Washington D.C., the NCAA Executive Council proposed Resolution No. 168 which required the NCAA Council to prepare:

... a comprehensive report and plan on several issues involved in the administration of women's intercollegiate athletics at the National level in light of existing court decisions, anticipated regulations implementing Title IX ... and present developments in women's intercollegiate athletics.

It was further resolved that the Council's plan be circulated to representatives of the AIAW and all members of the NCAA before May 1, 1975. In addition, the Council was required to include in its report:

... whether the Council believes it would be desirable or legally necessary for national championships to be conducted by the Association for female student-athletes either on an integrated or segregated basis, and that the Council direct its Special Committee on Women's Intercollegiate Athletics to

determine if it is advisable to conduct pilot programs for women's national championships as a part of development of a final proposal for consideration by the membership, it being understood that no such pilot program shall be conducted during this academic year.³³

In recognition of the NCAA Council recommendations, Leotus Morrison, AIAW President, sent the following wire to NCAA President Alan Chapman:

AIAW views with grave concern the announced intention of NCAA to commence a pilot program of intercollegiate athletics for women. For sake of future harmony in administration of intercollegiate sports program for all students and to restore an atmosphere of cooperation in which mutually beneficial exchange of views and exploration of future alternatives might continue, the Executive Board of AIAW urges the Executive Council to reconsider immediately its decision to initiate any pilot program in women's intercollegiate championships. AIAW has no choice but to view failure to reconsider as an effort by NCAA to undermine the existing women's intercollegiate championship program.³⁴

In April, the SCWIA reviewed the staff proposal, earlier adopted by the Executive Council, and recommended that three additional alternatives be submitted to the NCAA and AIAW for comment. The three alternatives included: (1) that both the NCAA and AIAW remain as individual governance associations, where the AIAW is responsible for women and the NCAA is responsible for men, (2) the NCAA offer men's and women's programs to its members with alterations to the NCAA Constitution and bylaws to accommodate women's teams, and (3) the AIAW and NCAA form an alliance with equal voice in determining the structure of a new governance organization; this new organization would incorporate and combine the best features of each organization. The NCAA Executive Council subsequently rejected all three alternatives and resolved to submit a revised version of the original staff proposal "to unilaterally begin NCAA women's championships," to member institutions for comment. The proposal was sent to all NCAA institutional members; however, a mere 10.4% response rate resulted.³⁵

In September 1975, the NCAA joint committee and representatives of the AIAW

convened in compliance with Resolution No. 169 passed at the 1974 NCAA Convention. It was resolved that two committees be established, one to examine the differences in eligibility rules, and the other to develop alternate governance structures. Following the joint meeting, John Fuzak received a telegram from AIAW President Laurie Mabry requesting a meeting of legal counsels of the respective organizations. President Fuzak agreed, and on October 23, 1975, George Gangwere and Margot Polivy met in Chicago to determine the major legal issues relating to the governance and administration of women's athletics. In a memorandum prepared for the Joint Committee, the attorneys agreed to the following concepts; first:

As a general proposition...that if a member institution which afforded comparable athletic opportunities to men and women subscribed to different intercollegiate governing organizations for its men's and women's program, this would not constitute a violation of the law.

It was further decided that:

While counsel perceive a present legal obligation on member institutions of AIAW and NCAA to provide "equal" athletic opportunity for women, there is no court decision which dictates the particular ways and means that such equal opportunity is to be achieved.³⁶

On November 24, 1975, the NCAA Executive Council recommend three resolutions concerning women's intercollegiate athletics for membership consideration at the 1976 NCAA Convention in St. Louis. The recommendations included the application of NCAA rules to women, the delay of NCAA championships for women and the formation of a standing committee on women's intercollegiate athletics to continue discussions with the AIAW.³⁷ Resolution No. 325, which "called for explicit recognition that NCAA rules applied to certain intercollegiate athletic programs for women," was referred to the NCAA Council for further study; resolution No. 326, directing that no women's championships be inaugurated prior to the 1977-78 academic year, was tabled; and resolution No. 327, that a committee continue discussions and study with AIAW representatives, was approved.³⁸

Approximately one month following the Convention, on February 17, the NCAA Council filed a lawsuit against the HEW challenging the validity of that Department's regulations implementing Title IX. President Fuzak stated that he was "greatly disturbed by the major intrusions of the federal bureaucracies into the affairs of higher education." The AIAW, in turn, questioned the propriety of meeting with the NCAA committee when a suit had just been filed regarding Title IX and the application of the law to athletic programs. In May the NCAA appointments to the Joint AIAW/NCAA Committee were discontinued. Those Joint Committee members, however, were subsequently appointed to the new Committee on women's athletics as authorized by the 1976 Convention.³⁹

During the latter half of 1976 and the whole of 1977, various meetings and conversations took place between members of the new NCAA Committee on women's athletics and representatives of the AIAW. Discussions primarily focused on the differences in rules for men and women; recommendations for continuous communication between organizations, i.e., through the exchange of handbooks, championship dates, and minutes; and the possible integration of men's and women's athletics.⁴⁰

At the 1978 NCAA Convention, Division II member institutions considered Proposal No. 151, which called for the establishment of Division II women's national championships in the sports of basketball, gymnastics and swimming. The Proposal was sponsored by six Division II member institutions. Division II members defeated the proposal by a vote of 44 to 31. Opponents to the proposal claimed that: "adoption of that proposal would hinder good-faith negotiations between the NCAA and the AIAW and that the Association as a whole should determine the NCAA position regarding women's athletics rather than a single division." Less than a month later, each NCAA member institution received a survey, to determine the members' desire to initiate national championships for women. Of those Division I members which responded to the NCAA survey, 23.4% voted "YES", in Division II 55.9% voted positively and 44.1% of Division III members. The NCAA Committee on women's athletics met in August to discuss the results of the membership poll. In addition, issues and concerns regarding the distinct rules promulgated by the AIAW and NCAA and proposed structures for a combined governance organization were tabled. The Committee

on women's athletics concluded that:

1. The results of the survey showed a clear consensus of opposition of Division I members to initiation of NCAA championships for women. It also showed that the issues of women's regulations and championships are very complex and some confusion exists among the members as to the best possible means of addressing each. The committee agreed that regional championships for women would not be successful, since most colleges would wish to work toward a goal of a national championship, consequently only national championships should be considered for sponsorship by NCAA.
2. A rules subcommittee meeting was set up for October, 1978.
3. Agreed to draft a resolution in the committee's name calling for pilot championships in three sports for all divisions if the rules of the two organizations could not be reconciled.
4. Developed a proposed structure for a combined governing organization for men's and women's athletics.⁴¹

It was also recommended that the AIAW President contact the NAIA and NCAA and issue an invitation to meet jointly to discuss the future governance structure of collegiate athletics. On October 24, 1978, Charlotte West, AIAW President, issued an invitation to the NAIA and NCAA; the NAIA accepted and the NCAA declined. Walter Byers responded to the AIAW invitation on January 7, 1979:

It was the Council's view that present conditions do not augur for a meeting of national collegiate athletic organizations to consider questions of national athletic governance. It seems to the Council that the several questions which naturally flow from this broad subject first must be resolved at the institutional level and then, in many instances, at the conference level before intelligent answers can be formulated nationally. This of course has been the natural evolution in college athletic management.⁴²

At the 1979 NCAA Convention, Proposal No. 85, calling for the establishment of Division III women's championships in the sports of basketball, field hockey, swimming, tennis and volleyball, was recommended by seven NCAA member institutions. The

resolution was subsequently defeated by the Division III membership. Despite the defeat of the proposal, it was obvious to the NCAA Council that the membership's interest in offering women's championships and governance was increasing.⁴³ On October 16-19, the NCAA Council called for the establishment of a Special Committee on NCAA Governance, Organization, and Services (Special Committee) to examine, among other issues, "... the accommodation of women's interests within the NCAA and the district and divisional structure of the Association."⁴⁴

At the 1980 NCAA annual Convention, in New Orleans, Louisiana, Division II and III insitutional members considered amendments proposing the initiation of NCAA championships for women. Resolution No. 67 (as amended by 67-1) proposed the initiation of Division II championships in the sports of basketball, field hockey, swimming, tennis and volleyball, while resolution no. 68 (as amended by 68-1) proposed the initiation of Divison III championships in the same sports. These proposals were sponsored by nine Division II and eight Division III institutions. Both proposals were adopted by a majority vote, and a motion to rescind the Division II decision was defeated. Thus, women's championships in Division II and III were slated to begin in the 1981-82 academic year.⁴⁵

From January to August 1980, the NCAA Special Committee met to discuss and assess recommendations, questions and comments regarding the development of a governance plan. On August 13-15 the NCAA Council approved the Special Committee's plan with only a few minor adjustments. One month later, November 5, 1980, the plan was approved for presentation to the 1981 Convention. The basic concept of the plan was:

... to offer member institutions an additional option for their women's intercollegiate athletic programs and to make available, within the NCAA, the legislative mechanism for achieving, in an orderly manner, common rules for the men's and women's athletic programs of those institutions which wish to affiliate their women's programs with the NCAA.⁴⁶

At the 1981 NCAA Convention, held in Miami, Florida, NCAA member institutions (86% of which were AIAW members) considered legislation to increase women's championship opportunities in Division II and III, as well as a proposal to inaugurate

women's championships in Division I. Proposal No. 73, supported by 14 members, directed the NCAA to offer national championships for women in the sports of fencing, golf and lacrosse that would be open to all members in all divisions. The membership approved the proposal by a vote of 252 to 237. Division II voted to add four sports (cross country, outdoor track, softball and gymnastics) to the five championships previously approved at the 1980 Convention. Division III members voted on and approved proposal No. 80, which required the addition of three sports (cross country, outdoor track and softball) to the previously approved women's championship program. The closest and most pivotal vote concerned Proposal No. 72 which directed the NCAA to offer nine Division I championships for women beginning in the 1981-82 academic year. The proposal was first defeated by dint of a tie vote, 124 to 124. A recount produced a 128 to 127 defeat of Proposal No. 72. After ensuing debate, a subsequent motion to reconsider was passed, and the membership approved No. 72 by a vote of 137 to 117.⁴⁷

On October 9, 1981, the AIAW filed an antitrust action and sought a preliminary injunction in the Federal District Court of the District of Columbia against the NCAA. On October 10, 1981, Donna Lopiano, President of the AIAW, made the following statement:

[The] AIAW has not instituted this suit lightly -- we are an organization of educators and sports people, and frankly would have preferred to have come to a solution acceptable to all parties in the best interests of college athletics and student athletes. We have tried for over seven years to persuade the NCAA that cooperative efforts in which women are treated equally are preferable to unilateral actions. Our efforts have failed but we are not prepared to go gently into oblivion. [The] AIAW was created to provide a structure for fair competition. It would be indeed ironic if we were to permit that ideal to be snuffed out by the blatantly unfair competitive acts of the NCAA.⁴⁸

Endnotes

1. The National Collegiate Athletic Association, Summary of NCAA Meetings Concerning Women's Athletics Matters, 1963-1980, December 4, 1980, AIAWPI, HMAD, UMCP, p. 2. Sara Staff Jernigan was the past president of AAHPER, past chairperson of the DGWS, and the current chairperson of the Women's Board of the Olympic Development Committee and director of the First Institute for Girls' and Women's Sports held at Norman, Oklahoma. Dr. Marguerite Clifton was the vice president of the AAHPER and chairperson of the Girls' and Women's Sports Division.
2. Ibid.; Memorandum from Donna Lopiano to AIAW Executive Board, Committee on Men's Athletics and AIAW Past Presidents, December 8, 1980. AIAWPI, UMCP, p. 1.
3. Ibid, Memorandum from Donna Lopiano, p. 1. Richard C. Larkins, Ohio State University, was chairman of the Olympic Development Committee and NACDA President contacted the NCAA at the request of Phoebe Scott, a DGWS representative.
4. Op. Cit., Summary of NCAA Meetings, p. 3. Charles Neinas responded to Richard Larkins' phone call on March 8, 1966.
5. Ginny Hunt, "Governance of Women's Athletics: An Historical Perspective," 1976 (Ph.D. Dissertation), AIAWPI, HMAD, UMCP, Appendix C, p. 295. On January 6-7, 1966 the 3-member commission to develop a handbook and guidelines for the development of women's collegiate athletics met in Washington, D.C.. March 18-22, 1966 the DGWS Executive Council approved the formation of a Commission to govern women's athletics. AAHPER Board of Directors approved DGWS sponsorship of national championships and the development of a Commission on March 23, 1966. Between November 4 and 6, 1966, the Commission on Intercollegiate Athletics for Women is officially adopted by the DGWS.
6. Op. Cit., Summary of NCAA Meetings, p. 2. The NCAA Council recognized that high school athletic associations were attempting to revise their position in order to provide the same scrutiny and control over girl's interscholastic activities as was provided to boy's activities. The NCAA obviously felt it should do the same.
7. Ibid. Invitations were sent to the five additional people: Mr. Donald N. Boydston, Southern Illinois; Mr Carl E. Erickson, Kent State; Mr. Ernest B. McCoy, Pennsylvania State; Mr. Peter F. Newell, California, Berkeley; Mr, Dean S. Trevor, Knox College.
8. Op. Cit., Memorandum from Donna Lopiano, p. 2.
9. Ibid. Ley further notified the NCAA that the DGWS would cover her expenses to the special committee meetings, since it would provide an opportunity for the NCAA to present their comments and advice on a "face-to-face" basis.

10. Ibid.; See also Summary of NCAA Meetings, p. 3. In November 1967 the NCAA publicly expressed its intention to discuss the possibility of women's athletic governance. This triggered the DGWS to announce its intentions to offer women's national championships, three in 1968-69 and six in 1969-70. The three-member commission was put in charge of the national championships. Dr. Frances Schaafsma was appointed as the fourth commissioner. The first DGWS national intercollegiate championship was held in gymnastics at Springfield College, March 6 to 8, 1969.
11. Ibid., Summary of NCAA Meetings, p. 3; Memorandum from Donna Lopiano, p. 2.
12. Ibid., Summary of NCAA Meetings, p. 3. These meetings took place over August 20 to 22, 1969. For further information see Council Minutes dated October 20-22, 1969, Minute No. 5-d.
13. The NOIAW later became known as the AIAW.
14. Ibid., p. 4.
15. Op. Cit., Memorandum from Donna Lopiano, p. 3.
16. Op. Cit., Summary of NCAA Meetings, p. 4. Marcus L. Plant, University of Michigan, was also invited to serve but was unable to do so. A July meeting in Kansas City was arranged and DGWS representatives were invited to present their views.
17. Ibid., p. 4. The following persons attended the Kansas City meeting: Donald Boydston, Southern Illinois; Edward Czekay, Pennsylvania State; Rachel Bryant, DGWS/AAHPER; JoAnne Thorpe, Southern Illinois; Carole Oglesby, Purdue; Walter Byers, NCAA; Charles M. Neinas, NCAA; and George Gangwere, NCAA legal counsel. Issues concerning further disassociation of the AIAW from AAHPER/DGWS were also discussed. On August 14, 1971 George Gangwere sent Walter Byers a draft affiliation proposal.
18. Ibid., p. 5. Just a few days prior to this meeting membership in the AIAW became available, i.e., September 1, 1971.
19. Op. Cit., Memorandum from Donna Lopiano, p. 3; Summary of NCAA Meetings, p. 5. On October 13, 1971 the NCAA special study committee met to discuss Gangwere's proposal regarding the affiliation of the AIAW with the NCAA through its Bylaws. JoAnne Thorpe, DGWS Chairperson, was invited to join the Special Committee members following their discussion, to review their conclusions. The invitation was declined because of prior commitments; however, it was expressed that the meeting "would be after the fact and certainly could not change anything in the report that had previously been agreed upon by the study committee." Charles Neinas also wrote to Lucille Magnusson inviting her and/or her associates to present the findings of the special committee to the NCAA Council. This invitation was later declined.

20. Op. Cit., Summary of NCCA Meetings, p. 6. At the 66th Annual NCAA Convention, January 1972, JoAnne Thorpe, addressed the University Division round table. (Other sources suggest that she addressed the NCAA Executive Committee.) She recounted the past negotiations between the DGWS/CIAW/AIAW and the NCAA and sincerely recommended that the NCAA allow women autonomy in governing their own programs.

21. Ibid., p. 6. Between June 1st and 4th, 1972 the CIAW Executive Board made the transition to the AIAW Executive Board.

22. HEW/Office of Civil Rights (OCR), "Title IX of the Education Amendments of 1972: A Policy Interpretation," *Federal Register*, 44(239), December 1979, pp. 71413-71423.

23. Patricia Huckle, "Back to the Starting Line: Title IX and Women's Intercollegiate Athletics," *American Behavioural Scientist*, 21, January/February 1978, p. 383.

24. Op. Cit., Memorandum from Donna Lopiano, p. 4. The Long Range Planning Committee Report read:

In regard to women's intercollegiate sports, the Committee suggested that the NCAA express its interest in cooperating with other national sports organizations in areas of mutual concern and work toward strong collegiate sports and recreational programs for all students; cooperate and assist its members institutions in adjusting to the current needs for viable women's programs; eliminate from NCAA legislation all references that imply exclusive male participation, and publish in the NCAA News a series of articles that will provide members with background information on sports and recreational programs for women.

The Council voted to recommend to the Executive Committee that Executive Regulations pertaining to the eligibility of women to participate in NCAA events be amended.

25. Ibid., Memorandum from Donna Lopiano, p. 296. Laurene Mabry, Co-ordinator of National Championships for the AIAW, attended the Convention. The DGWS, as a result of Title IX, revised its scholarship statement, thus allowing insitutions which awarded athletic scholarships to women to join the AIAW.

26. Op. Cit., Summary of NCAA Meetings, pp. 7-8. The original Special Committee was restructured to include officers of the AIAW, Carol Gordon AIAW President and Mary Jean Mulvaney, Chicago, as voting members. Representatives of the high school and junior colleges were appointed as ex officio members, without voting privileges.

27. Ibid. The following persons attended the SCWIA meeting: Cliff Fagan, NFSHSA; Jack Fuzak, Michigan State; Carol Gordon, AIAW President, Washington State; Stanley J. Marshall, South Dakota State; Mary Jean Mulvaney, Chicago; Robert J. Scannell, Pennsylvania State; David Swank, Chair, Oklahoma; George Gangwere, NCAA legal counsel; Walter Byers, NCAA; Tom Jernstedt, NCAA.

28. Ibid., p. 8. At the NCAA Council meeting, held on May 3-5, 1974, Chairman Swank's report of the March 18 meeting was heard. It was noted by Council members that the AIAW clearly stated that it had no official input into the drafting of HEW Title IX Regulations. The Council voted that the SCWIA, in concert with AIAW representatives, continue to pursue general issues related to women's intercollegiate athletics. The Council minutes reflected the following Resolutions: that the Council strongly endorses the development of opportunities for female students to compete in sports programs; that the Council, with the aid of women leaders, direct its efforts towards promoting growth of competitive athletics for women; and that the Council urge the HEW to assist and promote continued growth in men's and women's athletics. The next SCWIA meeting was postponed until the HEW presented its clarifications of the proposed Title IX regulations. It was also noted that the AIAW asked that the Committee be expanded to include the new AIAW President and president-elect. It was further noted that the NCAA Long Range Planning Committee recommended an immediate pursuit of women's intercollegiate championships by the NCAA and the enlistment of the AIAW leadership towards a unified athletic governance organization.

29. Op. Cit., Memorandum from Donna Lopiano, p. 5. During August, September and October 1974 several attempts to establish a meeting date between David Swank and Leotus Morrison, AIAW President were made. The joint meeting of AIAW representatives and the SCWIA was set for October 10, 1974.

30. Ibid.; Summary of NCAA Meetings, pp. 10-11. Additional attendees included: John A. Fuzak, Stanley J. Marshall, Robert J. Scannell, Mary Jane Murvaney, Carol Gordon, George Killian, NJCAA, Jack Roberts, NFSHSA and Thomas C. Hansen, NCAA.

31. Ibid., p. 11. The recommendations were to focus on possible joint governance structures for the governance of intercollegiate athletics. These recommendations were to be submitted to both associations.

32. Ibid., p. 11. The proposal was prepared by the NCAA staff. In November, 1974, representatives of the AIAW contacted David Swank in regards to the minutes of the October 10 meeting and the subsequent Council actions. In a letter to Carol Gordon, David Swank stated that:

The Council has agreed that we should continue our negotiations, but hope that we can get some matter resolved very promptly so that this is not left without a solution. I doubt very much that we will have any opportunity to have the joint committee meet prior to the January NCAA Council meeting, but hopefully we can get some action started early in 1975.

33. Defendant's Exhibits, May 27, 1982, AIAWPI, UMCP, Box #57, Folder "NCAA Exhibits," Exhibit No. 2; Testimony of Walter Byers, May 24, 1982, AIAWPI, UMCP, Box #57, Folder "Byers Testimony," p. 13. See Appendix D for the relevant Convention Proceedings. Resolution 168 was defeated by the membership but a similar proposal, No. 169, was adopted following the Council's specific recommendation to establish a pilot program of women's

championships. The difference was in regards to the inclusion of the AIAW in making recommendations to the Council prior to its development of its proposal for the 1976 Convention.

In January 1975, the AIAW Delegate Assembly held its annual meeting in Houston, Texas. President Leotus Morrison was contacted by a Washington reporter in regards to the NCAA's Council recommendations to initiate a pilot program of intercollegiate championships for women. The details were later confirmed by Carole Oglesby, a former AIAW President, who was attending the NCAA meeting. Approximately three hours later, 7:00 pm, Tom Jernstedt officially notified Leotus Morrison of the NCAA Council actions. Subsequently, Leotus Morrison called the NCAA President, Alan Chapman, to express her concern and shock at the recommendation and the sequence of events.

34. AIAW-NCAA Fact Sheet, January 1975, AIAWPI, UMCP, Box #64, Folder "NCAA/AIAW Chronology 71-80," p.3.

35. Op. Cit., Memorandum from Donna Lopiano, p. 7; Summary of NCAA Meetings, p. 13. In May 1975, the AIAW responded to the NCAA proposal, "terming it inappropriate." AAHPER President, Roger Wiley, wrote the NCAA President in opposition to the proposal and recommending its immediate withdrawal.

36. Op. Cit., Summary of NCAA Meetings, pp. 16-7. The following seven concepts were also agreed upon:

1. Title IX and its regulations applied indirectly to both NCAA and AIAW through their members.
2. Governance actions of both organizations would constitute "state action" with regard to 14th Amendment.
3. Title IX and its regulations would probably influence courts in future sex discrimination cases.
4. The greater the divergence in governing rules applied to men from those applied to women by those governing organizations, the greater the potential for legal difficulty.
5. It would be legally desirable for coeducational members in either organization to "upgrade" their intercollegiate athletic opportunities for women.
6. It is legally desirable that women's intercollegiate athletics be regulated through an institutional membership organization.
7. It is legally desirable for organizations presently governing intercollegiate athletics to minimize differences in basic regulations relating to eligibility and participation of the different sexes, and to ensure that where differences exist, they are supported by sound reason.

37. Ibid., p. 18.

38. Op. Cit., Testimony of Walter Byers, p. 14; Defendant's Exhibits, Exhibit No. 3. See Appendix E for the full 1976 Convention Proceedings. Following the Convention it was decided

by the Council that all future initiatives concerning championships for women come from the membership.

39. Op. Cit., Memorandum from Donna Lopiano, p. 11. The new Committee Chair, Ed Betz, wrote to AIAW President Peg Burke, asking for continued cooperation in areas of eligibility rules and governance structures. Burke responded with some skepticism; however communications did continue.

40. Ibid., pp. 11-6; Summary of NCAA Meetings, pp. 20-7.

41. Ibid., pp. 29-30. The rules committee met on October 3 and 4, 1978. Four recommendations, regarding years of eligibility, recruiting rules, transfer rules, and financial aid, were developed and sent to the respective councils for consideration.

42. Op. Cit., Memorandum from Donna Lopiano, p. 18. In March the NCAA Committee on women's athletics contacted the AIAW Committee on men's athletics, formed in October 1976, inviting them to discuss organizational structures for the governance of intercollegiate athletics. The AIAW declined.

43. Op. Cit., Byers Testimony, p. 15; Defendant's Exhibits, Exhibit No. 5. See Appendix F for the Convention Proceedings. See also, NCAA-NAIA Governance of Women's Athletics Workshop, January 7, 1981, AIAWPI, UMCP, Box #64, Folder "Responses to NCAA Convention Actions: 1981," p. 8. Interestingly, just prior to the NCAA Convention, the Amateur Sport Act, which stipulated that voting power was based on the number of participants in an organization's national championship program, was passed. Thus, the NCAA could potentially double its voting power in U.S. Amateur Sport if it instituted a women's championship program at the national level.

44. Op. Cit., Summary of NCAA Meetings, p. 35. Following the appointment of the NCAA Special Committee, Carole L. Mushier, AIAW President, communicated the AIAW's five year "moratorium" motion to NCAA President Flynn. The moratorium would allow efforts to devise an alternate governance structure to continue. She further urged that the NCAA adopt a similar motion. In December 1979, the HEW issued its final policy interpretation of Title IX.

45. Op. Cit., Testimony of Walter Byers, p. 15; Defendant's Exhibits, Exhibit No. 6. See Appendix G for Convention Proceedings. That same year the NAIA decided to offer women's governance and championships, to begin in the 1980-81 academic year. Prior to the NCAA's actions to implement women's championships, the AIAW Executive Council passed the following motion:

Whereas, the AIAW has successfully conducted championship programs for women student-athletes since 1972 and;

Whereas, the AIAW membership has consistently supported AIAW programs/championships and;

Whereas, it is the overwhelming desire of the women in collegiate athletics that a

separate governing organization dedicated primarily to women be retained at the present time.

Therefore, the NCAA membership (council) is advised that the AIAW Delegate Assembly (Executive Board) strenuously (unanimously) opposes the proposals under consideration at the 1980 NCAA Convention the NCAA Division II and III initiate Championship programs for women student-athletes and calls upon the voting representation at the NCAA convention to vote against the proposals.

The NCAA Special Committee also proposed a governance plan, which was subsequently revised through regional forums and committee meetings. On August 8, Ruth M. Berkey was appointed director of NCAA Women's Championships.

46. Op. Cit., Summary of NCAA Meetings, pp. 39-40; Defendant's Exhibits, Exhibit Nos. 10, 11, p. 1.

47. Op. Cit., Testimony of Walter Byers, p. 16.

48. Statement of Donna A. Lopiano, October 10, 1981, AIAWPI, HMAD, UMCP, Box #68, Folder "Public Relations - Donna Lopiano," p. 3.

Chapter 4

Push and Shove: The NCAA and the AIAW Go To Court

At the 1981 NCAA Convention, NCAA member institutions voted in favour of the proposal to initiate a women's championship athletic program in the 1981-82 academic year. The NCAA's decision to expand its operations into the women's athletic market was never formally considered to be a threat to the AIAW, rather, it was intended to create alternative opportunities for NCAA institutional members.¹ However, "the manner proposed was intended and understood by the NCAA leadership to mean the destruction of [the] AIAW." At the 1980 NCAA Convention, Kenneth Weller, a member of the NCAA Council, stated that "... what we heard about in regard to Title IX makes it very clear that we cannot continue to have those two organizations [NCAA and AIAW]."² The AIAW, not prepared "to go gently into oblivion," responded to the NCAA's decision with legal action in the Federal District Court for the District of Columbia.³ On October 9, 1981, the law firm of Renouf and Polivy, on behalf of the AIAW, filed a Civil suit against the NCAA in the United States District Court for the District of Columbia.⁴ Renouf and Polivy sought "preliminary and permanent injunctive relief against the defendant's violations of the antitrust laws of the United States, treble the amount of damages caused to the plaintiff thereby and award of costs and attorneys fees."⁵ It was the plaintiff's charge that the defendant, NCAA, violated Sections 1, 2 and 3 of the Sherman Act.⁶ Specifically, the AIAW charged the NCAA with the following offenses:

Beginning in or before October 1979, the exact date unknown to the plaintiff, and continuing up to and including the present time, the defendant and the co-conspirators, together with persons unknown to the plaintiff, have engaged in an unlawful combination and conspiracy to restrain trade and commerce in the governance, program and promotion of women's intercollegiate athletics and have combined, conspired and attempted to monopolize and have monopolized such interstate trade and commerce, in violation of Section 1, 2 and 3 of the Sherman Act.⁷

Section 1 of the Sherman Act stated that “every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce ... is declared to be illegal.”⁸ American courts have recognized that Section 1 does not literally prohibit every restraint of trade; rather, “it prohibits only those contracts, combinations and conspiracies which impose an undue or unreasonable restraint on trade.”⁹ Section 2 of the Act prohibited “the monopoly of, and attempts or conspiratory actions to monopolize trade or commerce.”¹⁰ Monopoly power¹¹ was not illegal; however, monopoly power within the relevant market and “willful acquisition or maintenance of that power” was viewed by the courts as a violation.¹² Some examples of monopolizing behaviours included “predatory pricing, refusals to deal, and the use of monopoly power in one market to gain a competitive advantage in another.”¹³ The courts clarified that:

... a monopoly is illegal per se only if it is willfully acquired or maintained, as distinguished from grown or developed as a consequence of a ‘superior product, business acumen, or historic accident.’ Otherwise the competitive advantages accruing to a monopoly innocently acquired may be legitimately employed to compete in another market so long as the monopolist refrains from ‘conduct directed at smothering competition’. When a monopolist crosses its own market’s boundary to enter another it may not use its leverage in the former to obtain unfair advantage in the latter.¹⁴

Section 3 prohibited conditional sales which required the buyer to discontinue dealings with the seller’s competitors, since these conditions often led to reduced competition or the creation of a monopoly in a designated market. This section also applied to “tie-ins”, where “the seller requires the purchase of one product in order for the buyer to purchase a desired second product.”¹⁵ In the following sections the AIAW claims are specifically defined and a corresponding defence, as outlined by the defendants witnesses and exhibits, is provided.

General Complaint

At the 1981 NCAA Convention, institutional members voted in favour of the proposals initiating women’s national intercollegiate athletic championships. These decisions, coupled with the adoption of significant portions of the NCAA governance plan,

significantly affected the status of women's athletic governance. It was the AIAW's contention that the NCAA's initiation of women's championships not only "displaced" the AIAW as a viable option for governance in women's athletics, but also facilitated the NCAA's eventual "control" of and "monopoly" in women's intercollegiate athletics. The AIAW reasoned that with the enactment of Title IX and the subsequent publication of HEW regulations implementing the Act, extreme pressure was placed on institutions to provide equal financial, programmatic and facility resources for women. In turn, these concessions permitted women physical educators and those interested in the success of women's athletics, "autonomous development" of women's programs and women's athletic governance and promotion. The NCAA leadership, however, perceived increased opportunities for women and the success of a women's athletic market to be "potentially damaging to well established and commercially lucrative men's athletics programs."¹⁶ The AIAW contended that "only by controlling the development of women's athletics programs itself could the NCAA hope to limit their growth and deflect negative commercial impacts on men's programs."¹⁷ In the words of NCAA President, John Fuzak:

With the enactment of Title IX of the Education Amendments Act of 1972, and the resultant pressure for equality of opportunities for both sexes, it became increasingly clear that the Association no longer could delay in determining its role in the development of intercollegiate athletics for women. ...

The members of the NCAA now are being required by law to provide comparable opportunities for participation in intercollegiate athletic programs for women. While the argument may be made that it is legally possible to provide those programs through separate but equal facilities and staff, economy probably will dictate that there be a minimum of duplication of personnel and facilities. Furthermore, administrative necessity and the need for equitable eligibility requirements will require coordination and similarity not only at the institutional level but also on a national level. Integrated or coordinated programs at the national level cannot be achieved if separate male and female organizations are left to accomplish it through anticipated bilateral agreements. ...

For the NCAA now to renounce its mandate to supervise and promote all forms of intercollegiate athletics among its members would be to deny services to women's intercollegiate athletics, which most needs it. The resulting lack of services and coordination by the NCAA would result in severe prejudice to male intercollegiate athletics. NCAA policies would no longer apply to all intercollegiate athletics and the NCAA would be restricted and frustrated in the control of male athletics by the overlapping and conflicting regulations of others in the field of female athletics.¹⁸

Although Fuzak cited Title IX as justification for the NCAA's "supervision and promotion" of women's intercollegiate athletics, the plaintiff claimed that the NCAA had few options left following its unsuccessful attempts to circumvent the regulations implementing Title IX. Thus, in an attempt to protect men's athletics, the NCAA solicited and ultimately acquired control of the development of women's intercollegiate athletics.¹⁹

The AIAW took this allegation one step further, with the suggestion that the NCAA's intentions were to undermine the AIAW's governance position and ultimately bring about the demise of the AIAW as a governing body of women's intercollegiate athletics. Although the official stance of the NCAA was to the contrary, NCAA staff members, including Secretary-Treasurer John Toner and Special Committee member Richard Perry, gave credence to the AIAW's contentions. The day after the 1981 NCAA Convention and in a subsequent telephone conversation with Donna Lopiano, Toner conceded that:

...assuming that the Division I championships will be populated by almost all of the major conference schools, then I'd say that the championships in the AIAW right now are going to be greatly reduced in stature and in appeal and probably will have to fade away.²⁰

Perry suggested that the AIAW might serve a "kind of fill-in role", not unlike the role of the NAIA in men's athletics:

...[the] NAIA emerged because [the] NCAA was not meeting the needs of a certain group of institutions. [The] NCAA then responded to that by developing Division II and III ... in an attempt to recapture those institutions and obviously they can recapture some. But the NAIA still continues to maintain

itself and provide a very viable experience for a lot of institutions that feel they're better served there. My gut level feeling is that the same will happen with the AIAW; now, I can't predict that.²¹

Despite the views of these NCAA staff members, the official NCAA stance in regards to the potential demise of the AIAW was that:

There is no reason to believe that the AIAW will or should cease to operate if the NCAA offers programs and services for women's intercollegiate athletics. The NCAA governance committee is on record as favoring continuation of the AIAW's alternative structure and philosophies because there are institutions that prefer that particular mode. There is nothing in the NCAA plan to prevent the AIAW from doing so, if it believes in its philosophy and is willing to test its concepts and ideas against those of other groups and organizations.²²

The initiation of a women's athletic program and championships was not intended to precipitate the demise of the AIAW as a governance organization in women's athletics. The governance plan, outlining the NCAA's intentions with respect to women's athletics, specifically emphasized the concept of "permissive legislation." Thus, NCAA members were not obligated to place their women's programs under NCAA rules or participate in any NCAA-sponsored championships for women.

The governance plan does create alternate opportunities for member institutions, their women professional administrators and coaches and their female student-athletes to avail themselves of the services and programs of the NCAA without restricting their opportunities to participate in the programs of other organizations.²³

In addition, Walter Byers testified that the intent of the institutional members who proposed the NCAA women's program was not to displace the AIAW, but rather, to offer a practical option to the well-established programs of the AIAW. He further stated that neither he, nor any other member of the NCAA staff wanted to "control" women's athletics.

The truth is that the staff was fully occupied with the day-to-day responsibilities and problems of governing men's

intercollegiate athletics. Consequently, we were willing, but not eager, to take on a whole new area of responsibility. However, the NCAA member institutions, to whom we are responsible, directed us to provide governance and championships for their women's athletic programs, and we are doing our best in providing those services. Our members have not asked us to "control" women's sports and we are not attempting to do that.²⁴

The AIAW Conspiracy Claim

The AIAW alleged that members of the NCAA, including its President, William J. Flynn, Executive Director Walter Byers, Secretary-Treasurer James Frank and numerous other Council and Committee members, were involved since 1978 in an elaborate conspiracy to initiate NCAA women's championships. The AIAW claimed that the NCAA's purpose in initiating women's championships was not only to undermine and challenge the AIAW's standing as a viable option for women's governance but, at the same time, to gain monopoly control over women's intercollegiate athletics.²⁵ In October, 1979, the NCAA appointed the Special Committee on Organization, Governance and Services (Special Committee) to determine if women's programs and interests could be adequately satisfied by the NCAA and if so, to develop a plan to implement those programs. Despite these seemingly innocent acts, the AIAW claimed that the NCAA's appointment of the Special Committee was in fact "a sham intended to legitimize the scheme previously designed by the NCAA officers and Executive Director" to initiate a women's program. It was the plaintiff's contention that the Special Committee's only purpose was to facilitate membership acceptance since the decision to enter the women's market had already been made and a plan to implement NCAA women's championships had most likely been drafted.²⁶

Based on information and belief, the plaintiff further alleged that in an attempt to induce members to adopt legislation initiating women's championships in Divisions II and III, NCAA officers and Committee members discretionarily provided and withheld specific information at the 1980 Convention. According to the defendant's published reports, Division II and III members were informed of the Special Committee's administrative support of women's championships as well as the Council's informal support of the initiation

of a NCAA women's program in Division II and III. To further entice the NCAA members, the Council advised that:

...Title IX of the Education Amendments of 1972 precluded separate athletic governing associations for men and women, that the needs of NCAA members who were not AIAW members mandated NCAA women's championships, and that the Executive Committee would probably provide additional funding to Division II and III if the women's championship proposals were adopted.²⁷

However, Division II and III members were not informed that the women's program offered by the NCAA would be a duplication of the pre-existing program offered by the AIAW; that the AIAW would suffer immeasurably if the NCAA initiated a women's program; and that the Special Committee had already established a recommendation to increase membership dues if the proposals were adopted.²⁸

In response to the plaintiff's conspiracy claim, NCAA Executive Director Walter Byers stated that the AIAW's allegations were "pure fabrication" since it was the NCAA membership who initiated the proposals for women's championships and subsequently voted democratically to implement such proposals at the 1980 Conception.²⁹ He further stated that:

The NCAA Council did not propose or sponsor the legislation calling for the establishment of such championships. Indeed, after the 1976 Convention the Council determined that any initiative to institute women's championships should come from the members. The NCAA staff's function is to implement the will of the membership. My staff and I were not involved in any scheme to institute NCAA championships for women. No such scheme ever existed. Moreover, I did not seek to injure the AIAW, and none of the other alleged co-conspirators ever indicated to me that he or she had any such purpose.³⁰

Following the 1980 NCAA Convention, the AIAW suggested that further "anticompetitive and predatory" acts were employed by the defendant to monopolize women's athletics and restrain and possibly destroy the AIAW. These alleged acts functioned on two levels: (1) those acts intended to dissuade collegiate institutions from

joining or renewing their membership in the AIAW and/or from participating in AIAW-sponsored women's championships; and (2) those acts intended to undermine the AIAW's commercial and sponsorship networks; these actions included jeopardizing AIAW revenue sources and possible opportunities for media exposure.³¹

Membership Restriction Claim

It was the contention of the AIAW that the defendant employed various methods not only to further their attempts to enter the women's athletic market, but also to persuade or "require individual NCAA members to boycott AIAW membership and participation in [the] AIAW's women's intercollegiate championship program."³² These methods included: the provision of financial inducements to member institutions; the option of alternative rules structures; the misuse of executive authority to facilitate the incorporation of women's intercollegiate athletics; and the schedule of coincidental championship dates with the AIAW's established championship timetable.³³

(I) Financial Inducements

The plaintiff identified two direct financial benefits received by collegiate institutions and female athletes who participated in the NCAA-sponsored women's championship program. It was alleged that the defendant offered NCAA institutional members access to women's programs and services without increases to the membership dues required for the NCAA men's athletic program.³⁴ Essentially, the NCAA offered women's programs and services to institutional members at no additional membership fee, an advantage no other intercollegiate governance organization could afford to offer or provide.³⁵ Therefore, NCAA institutional members had two options, (1) to participate in the NCAA sponsored men's and women's program at no extra charge, or (2) to decline participation in the NCAA women's program and suffer the inevitable programmatic and economic consequences to its men's program.³⁶ For collegiate institutions which previously enlisted the services of two governance organizations, one for its women's program (AIAW) and one for its men's program (NCAA or NAIA), the economic choice seemed obvious. Through utilization of the men's and women's services offered by the NCAA, collegiate institutions could reduce their membership fees by half without jeopardizing the needs of either athletic program.³⁷

It was the AIAW's claim that, by offering its women's services and championship programs at "below cost," i.e., by failing to charge members increased dues for the rights to participate in its women's program, the NCAA was essentially "tying" the purchase of its men's program to the purchase of its women's program, an act which constituted violations of Section 1, 2 and 3 of the Sherman Act.³⁸

In response to the plaintiff's "tying" charge, Walter Byers clarified the fact that NCAA members were not required to participate in the NCAA women's championships. In reality, institutional members were free to participate in the men's program alone, the women's program alone or in both programs.³⁹ "In short, the men's and women's programs are in no way tied to one another; participation in one is not conditioned upon participation in the other." This fact was supported by the relatively low percentage, between 30% and 35%, of NCAA members which chose to participate in the 1981-82 NCAA-sponsored women's championships.⁴⁰ Walter Byers further defended the NCAA's actions with the following statement:

When the NCAA membership approved offering women's governance and championships ..., the members were aware that the women's program would generate less revenue than it would cost and, consequently, would operate at a net loss. Despite the known fact that the women's program would operate in the red, the NCAA membership, when it approved the NCAA women's program ..., did not vote to increase membership dues generally nor to impose increased dues upon those members participating in the NCAA's women's championships.⁴¹

Byers cited two reasons for the membership's decision not to increase dues to finance the women's program. First, the NCAA did not finance its athletic championship programs through membership dues. In fact, membership dues accounted for a very small percentage of the NCAA's total annual revenues.⁴² Rather, NCAA championship programs were subsidized by the revenues generated from the events themselves, (i.e., gate and concession receipts and proceeds from the sale of television rights). The NCAA further contended that a dues increase was not required for the 1981-82 academic year because sufficient revenues

from other sources were available to fund the services provided to members. “In short, the NCAA council, Executive Committee and membership felt that no increase was necessary in 1981-82. The decision not to increase 1981-82 NCAA dues was not motivated by any commercial or anticompetitive purpose.”⁴³

The plaintiff further claimed that, in addition to offering a “free” women’s program, the NCAA also enticed members with the assurance of cash benefits for those who participated in the NCAA women’s championship program. These financial benefits were offered in the form of travel reimbursement for expenditures incurred by participants during NCAA-sponsored women’s championship events.⁴⁴ In 1981-82 the NCAA expended approximately \$3,000,000 for their women’s programs, \$2,100,000⁴⁵ of which represented cash payments to teams participating in women’s championships. Virtually none of the reimbursement funds were procured from the women’s program. Rather, the money was redistributed from an Associational fund, the greatest share being derived from the men’s Division I basketball championships and the football television assessment.⁴⁶ In 1981-82, the men’s transportation and per diem payments, which were available to men’s championship teams in previous years, were reduced to transportation payments only.⁴⁷ Therefore, member institutions were faced with the “choice” of gaining transportation reimbursement for both their men’s and women’s teams or losing per diem payments for men’s teams while subsidizing those institutions who chose to participate in the women’s program. The AIAW contended that this was “not simply a case of ‘robbing Peter to pay Paul’ but of robbing Peter twice.”⁴⁸

In sum, the NCAA offered its women’s program and services to its members at no charge and paid cash stipends for those teams participating in its national women’s championships. Since economic considerations are of great importance to collegiate institutions, these positive economic inducements made participation in NCAA women’s championships extremely attractive to institutional decision makers.⁴⁹

The AIAW alleged that these actions constituted “predatory pricing” or “illegal subsidization,” and as such, violated Section 2 of the Sherman Act.

In response to the above charges the defendant admitted that the NCAA women's championships were subsidized from Association revenues; however, these championships were not the sole recipients of Association funds. For example, in 1980-81 NCAA Division I championships in the following men's sports lost money: Baseball, Cross Country, Fencing, Golf, Gymnastics, Rifle, Skiing, Soccer, Swimming, Tennis, Indoor Track, Outdoor Track, Volleyball and Water Polo.⁵⁰ As a consequence, these programs had to be subsidized from the general revenues of the Association. With respect to the guarantee of transportation reimbursement for its women's championships, the NCAA Executive Committee believed that out of fairness and legal obligation, equivalent travel benefits would be provided to members participating in women's championships. Byers assured that "the Executive Committee was not motivated by any commercial or anticompetitive purpose in reaching its decision to pay travel expenses to the women's championships."⁵¹

In response to the AIAW's implication that the NCAA adopted a more restrictive per diem policy "in order to (1) entice members to compete in NCAA women's championships, and (2) fund NCAA transportation guarantees for women," Byers stated: "The change in per diem was a general economy measure adopted in response to the severe inflation in travel expenses, especially air fares."⁵²

(II) Optional Regulatory Systems

In regards to the regulations and policies imposed by the NCAA on women's athletics, the AIAW claimed that:

The defendant NCAA and the co-conspirators subverted and relaxed existing associational policies, regulations and proscriptions at will to further their efforts to induce membership acceptance and thwart internal opponents of NCAA entry into the new market.⁵³

Specifically, the plaintiff argued that the NCAA's agreement to allow member institutions to adopt alternative rules structures within their women's program during the period of 1981 to 1985, was intended to encourage members to withdraw from AIAW women's championship events. At the 1981 NCAA Convention the membership voted to adopt a number of measures proposed by the Governance Committee and the NCAA Council.

Among them, was Proposal No. 67⁵⁴ which stipulated that:

An NCAA member institution would be able to enter its women athletes and teams in NCAA events for a period of four years (1981-1985) under the published rules of any recognized state, conference, regional or national organization that were used to govern the institution's women's program prior to August 1, 1981.⁵⁵

For example, an institution which chose to govern its women's program under AIAW or NAIA rules during the specified period of 1981-85 was eligible to participate in the NCAA-sponsored women's championships for those years.⁵⁶ The proposal further stipulated that:

In 1985, an option continues: Each member institution could place its women's program within the NCAA structure, apply the NCAA rule in effect at that time and be eligible for NCAA women's championships ...; or a member institution could decide not to place its women's program in the NCAA (relinquishing its eligibility for NCAA women's championships) and affiliate its women's program with any other national organization it chooses. Such a decision would not affect the membership status of the NCAA member or its men's program.⁵⁷

It was the opinion of the AIAW that the most fundamental purpose of a national athletic governance organization was to establish "a unified rules structure to ensure the maintenance of fair athletic competition," a challenge the NCAA failed to meet with its adopted women's program. Contrary to its designated purpose, the "NCAA provided no such unified rules structure for women's intercollegiate athletic programs in general or for those eligible to participate in [the] NCAA women's championships." The plaintiff viewed the NCAA proposal of women's championships without unified rules and minimal assurance of a competitive environment, as an attempt to create a "competitively chaotic situation in women's athletics."⁵⁸

In response to the AIAW's claims, regarding optional rules structures for women and the misuse of executive authority, the NCAA offered the following rebuttal. In terms of the optional rules structure for women's championships for the years 1981-1985,

it was the belief of the NCAA Governance Committee and Council that the majority of member institutions preferred a “phase-in” period. This would be a period during which they could:

... review existing NCAA rules as to their appropriateness for men’s and women’s athletics, work on revisions as needed and study in other ways the best course for their women’s athletic programs, without limiting their administrative and competitive alternatives.⁵⁹

(III) Misuse of Executive Authority

It was the AIAW’s contention that the NCAA Executive Committee and Council approved financial provisions relating to the conduct and support of men’s and women’s athletic programs without the expressed authority of the membership. Specifically,

... the membership did not vote on any financial matter at the 1981 Convention. They did not vote to charge no dues for membership services for women’s programs. They did not vote to approve the disbursement of over two million dollars as rebates for travel and per diem expenses to national championship participating teams. They did not...in any way consider the amount of the NCAA monopoly profits from men’s athletics which would be utilized to garner control of the women’s athletic market.

In fact, no statement of the total cost to the NCAA of women’s programs was ever made to the membership. When costs were discussed, men’s and women’s championship rebates were discussed as a lump sum or the suggestion was made that actual costs were difficult to estimate. Sources mentioned to support the new program were increased revenues from men’s football and basketball, marketing, new corporate revenue, ‘surpluses’ and a change in the association’s accounting procedure. When one member tried to ascertain whether the financial benefits projected for the women’s programs were coming at the expense of the men’s program benefits, no direct answer was given.⁵⁸

The NCAA admitted “that no legislative proposals concerning the financial aspects of implementation of the ‘NCAA women’s program’ were advanced or considered by the NCAA membership at the 1981 NCAA Convention.”⁵⁹ However, the NCAA stipulated that

even though specific financial proposals were not introduced, the NCAA “did receive membership approval for their actions via the membership’s adoption of the 1979-80 NCAA Annual Reports at the 1981 NCAA Convention.”⁶⁰

In response, Donna Lopiano testified that the NCAA’s:

... contention is almost laughable. The annual reports document is a 200-300 page book in fine print which is distributed to those members attending the annual Convention at the time they register. One or two days later, without discussion, the document is ‘accepted’ by the membership as one of the first items on the so-called ‘consent agenda’. As a practical matter, it would be impossible to read the document during those few hours when Convention activities or formal sessions are not scheduled. In fact, the membership was informed by the chair and via the printed Convention program that those parts of the governance plan which were not submitted as legislation to be considered at the 1981 Convention did not even require their approval since the Council had approved them.⁶¹

Thomas Blackburn, a Faculty Intercollegiate Athletics Representative of Swarthmore College, Pennsylvania, stated in his testimony, on behalf of the plaintiff, he was not aware “that by the acceptance of the reports of the sports and general committees, treasurer, Council and Executive Committee, the NCAA membership was ratifying every action reflected in each of those reports.” He further explained that if that rule were true, it “would be a travesty.”

Those reports are offered and accepted pro forma. A copy of the Annual Report is given to you at registration. It’s over 300 pages. By voting to accept those reports all I voted for was to acknowledge that the report had been made. It’s like accepting the minutes of a meeting--it simply means that those things which are recorded occurred, not that you agree with what happened.

To my knowledge, the NCAA has never told the membership that by accepting a report it is ratifying all of the sections recorded in that report. I would be willing to bet that no one but the Council and Executive Committee knows that, if it is in fact what the NCAA leadership claims. It certainly isn’t written in the NCAA Constitution or bylaws.⁶²

Lopiano further questioned the validity and reliability of the Convention's actions concerning the legislation that the Council did submit. Approximately one week before the NCAA Convention, "identically appointed representatives to [the] AIAW, charged with voting these same respective institutional positions regarding women's athletics, overwhelmingly voted in opposition to the proposed NCAA action." Thus, it appears that the definitive position of member institutions was ambiguous to say the least. In either case, Lopiano suggested that "only the interests of a portion of the voting institutions were necessarily reflected in those votes."⁶³

It was further alleged that "the NCAA Council 'waived' or 'amended' NCAA constitution and bylaw provisions to attract more AIAW teams which the written NCAA procedures would have excluded, thus further damaging the AIAW." This complaint specifically dealt with issues surrounding "Official Interpretation" number 12 (O.I. 12).⁶⁴ Under the NCAA Constitution the Council, between conventions, or the President, Secretary-Treasurer and Executive Director, between council meetings, may issue official interpretations that are binding until the next convention. Official Interpretations required support from two-thirds of the membership to remain in effect. O.I. 12, originally adopted by the membership at the 1977 Convention, was intended to affirm the fact "that the Association's legislation applies to all sports recognized by the member institution as varsity intercollegiate activities... ." The pertinent part of O.I. 12 read:

The Constitution, Bylaws and other legislation of this Association, unless otherwise specified therein, shall apply to all sports recognized by the member institution as varsity intercollegiate sports and which involve all-male teams, mixed teams of males and females and those all-female teams used by the institution to satisfy the membership requirements of Constitution 4-2-(e). (with emphasis)⁶⁵

At the 1978 NCAA Convention the membership adopted an amendment requiring the deletion of the emphasized portion. In the testimony of Thomas H. Blackburn, filed by the plaintiff, it was stated that the amendment to O.I. 12 was intended to exclude women's athletics from NCAA jurisdiction.⁶⁶ The NCAA, however, refuted the assumption, since a

number of legislative changes were adopted at the 1978 NCAA Convention for the purpose of narrowing the criteria for membership in the NCAA. Section 4-2-(e) of the NCAA Constitution was amended, at the suggestion of Council, “to provide that the four teams an institution must sponsor to be eligible for NCAA membership must consist of male or mixed male-female teams.” It was further noted, that prior to these amendments no proposals to exclude women’s athletics from NCAA jurisdiction were ever considered, and “the amendment of O.I. 12 did not have that purpose or effect.”⁶⁷

In light of the amendment to O.I. 12, which seemingly excluded all-female teams from NCAA jurisdiction, the AIAW argued that the NCAA, by virtue of its own organic documents, was ineligible or “forbidden” to offer women’s championships. The AIAW further suggested that without a supplementary amendment to O.I. 12 and two-thirds support of the membership, the NCAA’s initiation of a women’s program would be in direct conflict with the NCAA Constitution.⁶⁸ The AIAW leadership concluded that a further amendment to O.I. 12 would eliminate the impropriety of NCAA-sponsored women’s championships. An amendment to O.I. 12, however, was not forthcoming from the NCAA Council, Executive Committee or Special Committee. This was not a surprising fact, since many institutional members opposed the application of NCAA rules to their women’s programs. Indeed, Mr. Blackburn testified that it was his belief that well over 80% of the institutions represented at the NCAA Regional meeting in Pittsburgh, Pennsylvania in July 1980, were not eager to apply NCAA rules to their women’s programs. He further stated that if an amendment to O.I. 12 were proposed to the 1981 Convention, it would not likely pass. These intuitions must have been equally obvious to the NCAA Special Committee, hence their lack of interest in amending O.I. 12.

If they [Special Committee] proposed an amendment to O.I. 12 and it failed, the clear result would have been that the NCAA lacked the jurisdiction to initiate women’s programs. If such a proposal passed, then the NCAA would have to apply its rules to women -- which clearly no sizable number of institutions wanted. Consequently, it was vital to their intention to move into women’s athletics to avoid any

reliance on O.I. 12 or any other constitutional proposal as a predicate to initiating a women's program.⁶⁹

On October 22, 1980 Mr. Blackburn of Swarthmore College sent a mailgram to Walter Byers, NCAA Executive Director, requesting an official interpretation of NCAA Constitution 4-2-(a) O.I. 12.⁷⁰ Swarthmore College did not receive an official interpretation from the NCAA, despite the fact that the NCAA Constitution (Article 6-2) gave each member the right to request such an interpretation.⁷¹ Despite numerous letters of correspondence between Mr. Blackburn and the NCAA staff, no official interpretation was offered and no reason for its denial was determined.⁷²

In response to the AIAW's claim that O.I. 12 forbade the initiation of NCAA women's championships, the NCAA stated that this contention was simply "inconsistent with the plain language of O.I. 12." O.I. 12 did not "forbid" women's championships and it was never intended by the NCAA to do so.⁷³ The AIAW's position was also inconsistent with the NCAA's past practices regarding women's intercollegiate athletics. NCAA women's championships were proposed at the 1978, 1979 and 1980 Conventions and were never challenged or ruled out of order by the membership because of an alleged inconsistency with O.I. 12. On the contrary, the 1980 Convention passed the resolutions initiating women's championships in Divisions II and III. The NCAA clarified the purpose and intention of O.I. 12 with the following description:

O.I. 12, a part of Constitution 4-2, is not a statement limiting the jurisdiction of the NCAA to male and mixed teams. Rather, it is a requirement that the governing legislation of the Association shall apply to male and mixed teams unless specified otherwise in the rules of the Association.⁷⁴

In response to the AIAW's allegation that the NCAA "subverted its organizational rules by denying Swarthmore College's request for an official interpretation of the effect of O.I. 12," the NCAA clarified that while the Constitution (Article 6, section 2) authorized the provision of official interpretations, it did not require that they be given upon request. Walter Byers further explained:

Indeed, it would not be practical to require that an official interpretation be given upon request since we receive hundreds of requests for interpretations each year, many of them unnecessary or repetitive. In short, Mr. Blackburn had no constitutional right to the official interpretation he requested.⁷⁵

(IV) Conflicting Championship Dates

In 1981-82 the AIAW offered 41 national women's championships: eleven Division I, eleven Division II, eleven Division III and eight open events. The permanent dates on which those national championships were held, were established by action of the AIAW Executive Board.⁷⁶ Any temporary or permanent change to these dates required approval from the Executive Board and 18 months advance notice to the membership. All AIAW permanent championship dates were published in the AIAW Handbook and did not change from year to year. The plaintiff claimed that the permanent dates of all 29 AIAW 1981-82 national championships were known to the defendant prior to the establishment of NCAA championship dates. Thus, it was alleged that the NCAA intentionally scheduled its women's championships to maximize conflicts with the AIAW championship dates.⁷⁷

In 1981-82 the NCAA sponsored 29 women's national championships: nine Division I, nine Division II, eight Division III and three open events which included all divisions.⁷⁸ Despite the AIAW's predetermination and announcement of its national championship dates, the NCAA scheduled 16 of the 29 (55%) NCAA championships in conflict with AIAW championships in the same sports.⁷⁹ These conflicts occurred in either or both the qualifying and national level events. Specifically, six of the nine NCAA women's championships in Division I were scheduled in conflict with the AIAW championships. The AIAW alleged that:

... virtually all persons serving on [the] NCAA sport committee responsible for setting the NCAA conflicting dates had knowledge of the AIAW championship schedule by virtue of previous or current membership in [the] AIAW. In addition, Ruth Berkey, the NCAA Director of Women's Championships and Linda Estes, a member of the NCAA Executive Committee which approved the conflicting dates,

also had such knowledge. Berkey admits the knowledge and Estes is a former AIAW Executive Board member and current AIAW member.⁸⁰

Although, the AIAW admitted the existence of factors that could potentially dictate date selection, it stressed the fact that the options for any event usually span over several weeks. The fact that so many dates could be in conflict was, in the eyes of AIAW members, beyond “all theory of chance prediction.” The only explanation that seemed feasible was that the NCAA intentionally set conflicting dates to ensure that members could not participate in both events even if they chose to do so. It was the assumption of the AIAW that the “effect of this purposeful conflict was to deprive the AIAW championships of high calibre participants and thereby further undermine the value and credibility of [the] AIAW’s championships.”⁸¹

In response to this allegation, Walter Byers provided the following reasoning:

The fact is that the choice of championship dates is restricted by many factors so that date conflicts are inevitable. Sports have developed traditions concerning “natural” seasons. The host institutions’ facilities may be available only at limited times. Weather, holiday schedules and exam schedules all add constraints. Many sports have qualifying rounds on successive weekends, a condition that greatly increases potential conflicts. Under these circumstances, and given three organizations offering national intercollegiate championships for women -- NAIA, NCAA and AIAW -- numerous date conflicts are to be expected. The NCAA tries to pick the best date for its championships. It is the policy of the NCAA, however, to attempt to minimize date conflicts, and the NCAA has offered to meet with the AIAW to achieve that goal. The NCAA has not sought to create, let alone maximize, conflicting dates.⁸²

The NCAA did admit that:

... in some instances, the members of [the] NCAA women’s sports committees were aware of the scheduled dates of [the] AIAW’s national championships for 1981-82 for their particular sports at the time they scheduled NCAA women’s championship events for 1981-82 in those sports....⁸³

Despite the NCAA's seemingly deceptive intentions with regard to scheduling conflicts, the NCAA did offer to meet with AIAW representatives to discuss the possibility of date conflicts in the years subsequent to 1981-82.⁸⁴

Commercial Restriction Claim

(I) Television Rights

It was the plaintiff's contention that the NCAA engaged in unlawful and conspiratory actions with the purpose of restraining "trade and commerce in the governance, program and promotion of women's intercollegiate athletics." Specifically, the NCAA not only attempted to:

Induce television and cable television entities to refrain from or limit electronic media exposure of AIAW championship events, ..., for the purpose of depriving AIAW income, prestige and public exposure, such conduct constituting boycott in violation of § 1 of the Sherman Act and an abuse of monopoly power in violation of § 2 of the Sherman Act.

The formal complaint alleged further that the NCAA attempted to:

Include NCAA women's championships in the defendant NCAA's existing and future television contracts, such conduct constituting an illegal tying arrangement and an unreasonable restraint of trade in violation of § 1 of the Sherman Act and an unlawful use of monopoly leverage in violation of § 2 of the Sherman Act.⁸⁵

In short, the AIAW made a second "tying charge" which specifically accused the defendant of binding the sale of the NCAA women's championship television rights to the purchase of the men's championship rights; particular reference was made to NCAA men's basketball championships.⁸⁶

From November 1980 to March 1981 the NCAA Basketball Negotiations Committee negotiated with NBC, ABC, CBS and TVS for the sale of the television rights to the NCAA Division I basketball championship. Each network was required to include, within its proposal for the men's championship, a separate rights bid for the NCAA women's Division I basketball championship.⁸⁷ Each network was also responsible for identifying other NCAA

men's and women's championships it wished to televise. The AIAW alleged that during the process of negotiations with the television networks, the NCAA made it clear that "any successful bid for the men's Division I championship would have to include purchase of the television rights to the NCAA Division I women's basketball championship."⁸⁸ On March 3, 1981, Mr. V.C. Sauter of CBS Sports responded to the conditions outlined by the NCAA Negotiations Committee in regards to a bid for the NCAA Division I men's basketball championship. CBS proposed a bid of \$75,000 for the broadcast rights to the Division I Women's Championship for each year of the agreement. CBS was also interested in televising the NCAA women's gymnastic championship, for an annual fee of \$65,000. The CBS bid for the women's basketball championship was considerably lower than anticipated; the NCAA Negotiations Committee was faced with the dilemma of accepting a lower price for the women's championship than had been offered by NBC. CBS reconsidered its offer and in making a "good-faith effort" offered \$125,000 for each year of the three year contract.⁸⁹ The NCAA subsequently sold the television rights to its men's and women's Division I basketball championship to CBS for three years at a total contract price of approximately \$48,000,000 and \$375,000, respectively; the contract was to commence in 1982.⁹⁰

In response to the AIAW's allegation, that the NCAA "tied" the purchase of its women's championships rights to sale of its men's Division I basketball championship rights, Walter Byers, who worked with the Basketball Negotiations Committee between November 1980 and March 1981, admitted that each network was asked to submit a separate bid for the television rights to the NCAA women's Division I basketball championship game but the purchase of the men's rights were at no time conditioned upon the purchase of the women's championship rights. Byers further stated that:

... to the best of my knowledge, CBS, which got the contract, affirmatively wanted the rights to our women's basketball championship; and it also affirmatively proposed to buy the rights to the NCAA women's gymnastics championship.⁹¹

The AIAW further alleged that the NCAA “sought to induce various television and cable television entities, including, but not limited to, NBC and ESPN, to refrain from presenting AIAW women’s intercollegiate athletic championship events over their facilities.”⁹² The AIAW entered into a four year contract with NBC for the rights of all AIAW Division I and open championships beginning in 1979. In 1979-80 and 1980-81 NBC honoured its contract with the AIAW, televising 5 and 9 AIAW championships, respectively. In 1981-82, NBC televised no AIAW events, thus curtailing the AIAW’s anticipated growth in network exposure. NBC claimed that the AIAW’s loss, “in terms of number and quality of those [participating] institutions that have participated in the [AIAW] tournaments during previous years,” was the basis for their decision. NBC sports officials further explained that “NBC’s decision was based upon AIAW’s loss of the ‘name’ Division I schools in women’s collegiate basketball”⁹³

To offset the resulting loss of television coverage and revenues, the AIAW attempted to interest other television networks and cable television networks in televising any or all of the 1981-82 AIAW national championships. ESPN, which had previously covered the AIAW Division I, II and III national championships in 1979-80 and 1980-81, declined the offer, stating that “much has happened since the NCAA adopted women’s championships at their convention.”⁹⁴

Walter Byers claimed, in response to the previously mentioned charges, that the NCAA did not, at any time, induce NBC to terminate or reduce its commercial coverage of AIAW national championships. On the contrary, Byers claimed that the NCAA “encouraged NBC to broadcast both NCAA and AIAW women’s championships.” Further, “the NCAA never sought to induce ESPN to cease or reduce cable casting of AIAW championships.”⁹⁵

Byers explained that in the market of television rights the NCAA “is a small fish in a large pond. Any notion that the NCAA can dictate terms to the large commercial networks is pure fantasy and belied by all of [his] negotiating experience.” Even in the realm of professional sports, the NCAA was considered modest in comparison to other rights sellers. Any attempt to demand an excessive fee, (i.e., a rights fee that was in excess of the market value when compared to other available rights,) would likely result in failure to sell the

programs. In short, the NCAA claimed that competition, not governance organizations, had the power to control prices and competition in the television rights market.⁹⁶

(II) Sponsorship Support

Television exhibition rights were not only highly valuable sources of revenue for national athletic organizations; the associated financial benefits for commercial entities were also substantial. To further damage the AIAW as a competitor in the women's athletic market, the plaintiff alleged that:

... the defendant NCAA and the co-conspirators, between January 1981 and the present [October 1981], initiated discussions with commercial entities, including, but not necessarily limited to, the Eastman-Kodak Company and the Broderick Company, to induce such entities to discontinue or modify their support of the plaintiff AIAW and programs administered under the plaintiff's auspices.⁹⁷

In recognition of the outstanding achievements of young women in athletics, the AIAW cosponsored two major athletic awards, one with the Broderick Company and the other with the Eastman-Kodak Company. The Broderick Cup award recognized the most outstanding female collegiate athlete in each of the 19 championship sports offered by the AIAW.⁹⁸ The Broderick Company (Broderick) assumed responsibility for all the costs associated with the program and donated an annual cash stipend of \$5,000 to the AIAW. Despite the award's previous success, the Broderick Company sought to withdraw from its multi-year agreement with the AIAW in the summer and fall of 1981, citing AIAW participation losses, especially in Division I competitions, as justification.⁹⁹ Between January and August 1981 Judith Holland, an NCAA Council member and chair of the AIAW-Broderick Awards Committee, spoke with representatives of the Broderick Company in regards to the future of its award program.¹⁰⁰ Holland allegedly discussed the possibility of affiliating their program with an alternate organization. Judith Holland made further statements to Broderick representatives regarding "the likelihood that particular institutions would or would not be participating in AIAW championships in 1981-82 and the competitive quality of those institutions' women's teams"¹⁰¹ In November 1981, the Broderick

Company decided, reluctantly, to honour its preexisting agreement with the AIAW for 1981-82. Despite this agreement, the program was “severely degraded and became a public relations detriment to [the] AIAW.” For example, Broderick failed to fulfill its obligations by not preparing the ballots correctly, (i.e., information pertaining to non-selected nominees was printed and distributed as part of the ballot;) they failed to distribute the ballots within a reasonable time period, and refused to participate and support the program as it had done in the past.¹⁰²

The Eastman Kodak Company (Kodak), sponsor of the AIAW Kodak All-American Basketball Team, also attempted to forfeit its obligations under its contract with the AIAW. In July 1981 Kodak requested that the 1981-82 AIAW Kodak All-American program be discontinued in favour of sponsorship of less visible AIAW ventures. The AIAW denied Kodak’s request. Ultimately, Kodak complied with its programmatic and financial obligations; but not without significant modifications in commitment. For example, in 1980-81 Kodak arranged for a full page advertisement (See Appendix K), dedicated to the promotion of the AIAW Kodak All-American Program to be published in *Sports Illustrated* (May 4, 1981), *Women’s Sports* (June 1981) and the AIAW Championship Program. In 1981-82, Kodak, without prior notice to the AIAW, changed the name of the program from the “AIAW/Kodak Women’s All-American Basketball Team” to the “Kodak Women’s All-American Basketball Team (See Appendix L).” Kodak also reduced its publication to the *Women’s Sports* magazine and the NCAA women’s basketball Championship Program; the *Sports Illustrated* advertisement was cancelled.¹⁰³ Kodak did not renew its agreement with the AIAW; rather, it was anticipated that the program would be administered through an “independent” association created by the NCAA Division I women’s basketball committee and Kodak in the summer of 1981. The association was called the Women’s Basketball Coaches Association (WBCA).¹⁰⁴

In 1980-81, the AIAW signed Russell Athletic to a one year contract as the Division I “AIAW Volleyball All-American” program sponsor. Apart from covering the costs of the program, Russell carried a full page advertisement in the July 1981 issue of *Women’s Sports*.

However, in 1982 Russell did not renew its contract with the AIAW. As a consequence, the AIAW estimated a direct loss of \$7,500, plus unaccountable losses in visibility.¹⁰⁵

The AIAW was also in the initial stages of licensing its logo to commercial entities, with anticipated revenues in 1981-82 and 1982-83 of \$100,000 per year. These efforts came to an abrupt halt early in 1981, since prospective agents were sceptical about the AIAW's existence and status as a national governing body of women's intercollegiate athletics. The AIAW alleged that the NCAA's entry into the women's athletic market destroyed the AIAW logo as a marketable commodity.¹⁰⁶

Walter Byers responded to the AIAW allegation that "the NCAA sought to injure the AIAW by inducing the AIAW's commercial sponsors to withdraw their support" with the following statement:

Neither I nor any member of the NCAA staff, Council or other representative of the NCAA have, to my knowledge, sought to injure the AIAW in any manner, including any attempt to cause AIAW's commercial sponsors to withdraw their support. I would not countenance such actions.¹⁰⁷

On the basis of these NCAA actions, the AIAW concluded that the NCAA:

used the full range of its power over the form and content of the decisional process both to gain authority over women's athletics and to eliminate AIAW's conflicting authority. In the latter case it also brought to bear the weight of its monopoly resources.¹⁰⁸

To achieve its desired goals, the NCAA employed numerous techniques including the provision of financial benefits and incentives. In essence, the NCAA offered a women's program to all NCAA institutional members at no extra cost, while other governance organizations were charging additional dues for women's governance, programs and services. The NCAA also offered cash subsidies to cover the transportation costs for all women's teams and individuals participating in NCAA national championships. For those members who did not affiliate their women's program with the NCAA, however, the NCAA's reimbursement proposal caused a serious economic dilemma. Those institutions which remained faithful to the AIAW, not only received lower benefits for their men's

participants, but also supported a program which provided no benefits. The NCAA employed additional methods to displace or render inoperative the AIAW as a viable governance organization. These included the scheduling of NCAA championship dates in direct conflict with established AIAW championship dates in the same sports; interference with AIAW contractual agreements with commercial entities, including Kodak, Broderick and NBC; and finally, the combined sale of NCAA men's and women's championship television rights. Undoubtedly, the NCAA intended, through these actions, to provoke the eventual demise of the AIAW.

The NCAA leaders knew that "no-cost" membership and the subsidization of women's championship travel could not be matched by any competition in the women's athletics market. They also knew that reducing the subsidization of men's championship participation but increasing the potential total dollar subsidization of men's and women's programs tied together in a single membership package, would leave institutions economically hard pressed to refuse increased returns for the same membership dollar rather than accept lower returns for the same membership dollar. There is no question, given these actions and their necessary consequence, the at the NCAA intended to displace the AIAW in the women's athletic market.¹⁰⁹

Injury to the AIAW

The NCAA's alleged anticompetitive actions had an "immediate and devastating" impact on the AIAW. Within one year of the NCAA's initiation of a women's intercollegiate athletic program, substantial erosion occurred in the AIAW's organizational structure and women's athletic programs and championships in general. Three specific areas were identified by the AIAW as sustaining irreparable damage: (1) membership and dues income, (2) championship participants, and (3) commercial value and exposure. It was the AIAW's claim that the losses experienced in these areas were solely attributable to the NCAA's entrance into the women's athletic market.¹¹⁰

Loss of Membership and Dues

“Prior to the 1980-81 academic year, [the] AIAW was the sole provider of national governance, program, and promotion of women’s intercollegiate athletic activities.” The NAIA was the first organization to offer alternative programming and governance for women’s collegiate athletic teams. In 1980-81, the NAIA initiated a women’s program in a single competitive division. Institutions had a choice of joining the men’s or the women’s program or both. In 1981-82 NAIA membership dues were set at \$500 for either division and \$750 for both divisions, a 25% savings in the total dues amount. In 1980-81, 185 institutions joined the NAIA women’s program, all of which were members of the NAIA’s men’s division. The AIAW, as a result of the NAIA’s entrance into women’s athletics, experienced its first decline in membership in 1980-81 (See Table III). The AIAW lost a total of 62 members in Divisions II and III to non-renewal, 58 of which were non-renewing institutions that became members of the NAIA women’s division. Despite these losses in membership, the AIAW enrolled 52 new institutional members in 1980-81.¹¹¹

In 1981-82, the NCAA’s initial year in the women’s athletic market, the AIAW lost a total of 216 members, which represented a 22.5% loss over 1980-81.¹¹² Of those non-renewing members, 124 were former AIAW/NCAA members. The AIAW experienced losses in all three divisions: 39 were Division I members, 94 were Division II members, and 78 were Division III members, while two were undesignated.¹¹³ The redistribution of AIAW non-renewing members is outlined in Table VII below.

Table VII
1981-82 Distribution of AIAW Non-renewing Institutional Members

Division	Governing Organization			
	NCAA	NAIA	NCAA/NAIA	Neither
Division I	35	2	2	---
Division II	31	50	11	2
Division III	34	33	6	5
undesignated	0	1	1	---
TOTAL (%)	100 (47%)	86 (40%)	20 (9%)	7 (3%)

Table VII suggests that approximately 47% of AIAW non-renewing members had no formal organizational affiliation but chose to participate in the NCAA women's championships; 40% affiliated their women's programs with the NAIA; 9% participated in the NCAA championships but affiliated with the NAIA; and 3% chose not to affiliate with either organization.¹¹⁴ AIAW membership losses were subsequently reflected in the substantial reduction in dues income for 1981-82. AIAW dues income was reduced by \$123,500, of which \$71,900 was directly attributable to the loss of former AIAW/NCAA members.¹¹⁵

Championship Participation

The NCAA's entrance into Division I national championships had the greatest and most damaging effects on the AIAW's Division I program. Approximately 20% of the AIAW's Division I membership chose not to renew their athletic programs under the auspices of the AIAW. Of those Division I member institutions which renewed their membership with the AIAW, 25% indicated that they would not participate in the AIAW women's national championships. Thus, the AIAW suffered an "effective loss" of over 46% of its Division I teams. Donna Lopiano, AIAW President, suggested that:

... there was a "domino effect" associated with top teams declaring their non-intention to participate in AIAW events. Once teams became aware that their traditional opponent or,

high calibre teams they wished to compete against, would not be participating in AIAW championships, they felt they had no recourse but to switch to participation in NCAA events so as not to deny their student-athletes the competitive experiences with which they were accustomed.¹¹⁶

Interestingly, virtually all of the AIAW Division I “dropouts” became NCAA Division I participants. The following table depicts the substantial losses sustained by the AIAW Division I championship program.

Table VIII
1981-82 AIAW Division I Championship Participants and Percentage of
Non-Participation and Non-Renewal

Sport	Participating Members	Non-partic. Members	% Not Partic.	% Non Renewal	Total % Champ. Loss
Basketball	189	60	32%	17%	49%
X-Country	110	27	25%	17%	42%
Field Hockey	55	9	15%	19%	34%
Golf	70	13	19%	17%	36%
Gymnastics	74	21	28%	16%	44%
LaCrosse	22	1	5%	4%	9%
Swim. & Dive	86	27	31%	17%	48%
Tennis	129	29	21%	17%	38%
Track & Field	113	33	29%	16%	45%
Volleyball	130	39	30%	20%	50%

Note: The two most popular and marketable sports, basketball and volleyball, sustained the greatest losses in overall championship participation.

Moreover, approximately 60% of those institutions not renewing their membership were the most highly competitive and successful teams in the 1980-81 Division I championships. The AIAW basketball and volleyball programs suffered the greatest losses with respect to top finishing teams; 100% of the 1980-81 top basketball teams and 90% of

the top volleyball teams did not opt for participation in the 1981-82 AIAW championships.¹¹⁷

In 1980-81, Division I dues accounted for almost half of the AIAW's total income. In 1981-82, the drastic loss of Division I championship participants was responsible for the disproportionately high losses in revenue. For example, in 1980-81 the University of Utah hosted the AIAW Division I Gymnastics Championship. The profit from that championship totalled \$27,028. Conversely, in 1981-82 the University of Utah hosted the NCAA championship, while Memphis State University hosted the AIAW Gymnastic championship at a loss of \$3,602.43.¹¹⁸

Commercial Revenue and Exposure

In the commercial market of intercollegiate athletics, it was the nature and quality of the teams that participate in an organization's national championships which significantly determined their attractiveness to television rights purchasers, sponsors and the paying customer-spectators. In men's and women's intercollegiate athletics, it was Division I competition which possessed the highest commercial value. Unfortunately, it was in its Division I program that the AIAW suffered its greatest losses.¹¹⁹ NBC, with whom the AIAW held a four year contract (1979-1983) which included coverage of AIAW Division I and Open national championships, believed that "the quality of the AIAW championship events would be affected by the withdrawal of a high percentage of the previous top finishers in the AIAW," and as a consequence, "opted not to televise any AIAW events in 1981-82."¹²⁰ NBC subsequently refused to pay the \$255,000 due under its contract for the 1981-82 rights fees.¹²¹ The lost visibility resulting from NBC's decision not only hampered the AIAW's ability to retain other previously contracted championships but also resulted in an erosion of membership confidence in the AIAW as a viable athletic governance organization. (For a full description and value assessment of AIAW's proposed losses see Appendix N).

It was the plaintiff's contention that the NCAA, upon entrance into the women's athletic market in 1981-82, had an immediate and negative market impact that not only destroyed the AIAW but also "gravely and perhaps fatally" injured the very market the NCAA purportedly sought to support and expand.

The immediate consequence of the NCAA's market entry was an overall visibility and revenue loss for women's athletics, because media coverage of AIAW's women's championships and related revenue were wholly destroyed and coverage of NCAA's women's program only partially replaced that loss of both coverage and revenue. Nor can that fact be deemed wholly the anomalous product of a year devoted to destroying competition rather than promoting women's athletics: While it was its power base in men's athletics which permitted the NCAA's almost instantaneous elimination of [the] AIAW, it does not follow that such power either can or will serve to develop the women's market.¹²²

Endontes

1. Defendant's Exhibits, May 27, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "NCAA Exhibits." Exhibit No. 10. In a Memorandum, dated November 5, 1980, from William Flynn and James Frank to NCAA member institutions concerning the NCAA Governance plan, the NCAA membership was urged to remember that:

The governance and championship proposals represent permissive legislation -- an NCAA member would not be obligated to place its women's program under NCAA rules, a member would not be required to enter NCAA championships for women and staff members would not be obligated to serve on NCAA committees. The governance plan does create alternate opportunities for member institutions, their women professional administrators and coaches and their female student-athletes to avail themselves of the services and programs of the NCAA without restricting their opportunities to participate in the programs of other organizations (p. 1).

2. Pretrial Brief for the Plaintiff, August 23, 1982, AIAWPI, HMAD, UMCP, Box #63, Folder "Pretrial Brief AIAW vs. NCAA August 1982," p. 81.
3. Statement of Donna A. Lopiano, President, AIAW, October 10, 1981, AIAWPI, HMAD, UMCP, Box #68, Folder "Public Relations - Donna Lopiano." p. 3. Donna Lopiano and many other AIAW representatives vigorously opposed any potential role the NCAA might have in the governance and promotion of women's intercollegiate athletics. The NCAA's decision and subsequent actions towards the initiation of a women's intercollegiate athletic program was viewed by many AIAW members to be "anticompetitive and predatory" in nature. A myriad of motions to defeat any proposals to offer NCAA women's championships were considered and rejected by the NCAA membership.

Donna A. Lopiano made the following statement in regards to the civil suit filed against the NCAA:

We took this action after long consideration -- not simply because of the devastating and immediate impact NCAA's entrance was having on AIAW but because it became increasingly apparent that this impact was not the result of fair competition, but the result of a massive effort to buy women's athletics to add to the NCAA's conglomerate interests. It became apparent that this was not the first time the NCAA has acted in a predatory fashion -- it has done the same to the other men's intercollegiate athletic organizations... . (p. 1)

4. Retainer Agreement between AIAW and Renouf and Polivy, May 8, 1981, AIAWPI, HMAD, UMCP, Box #309, Folder "Renouf and Polivy Retainer Agreement 1981-1982." Prior to filing action against the NCAA, the AIAW retained the law firm Renouf and Polivy (R & P) as its legal counsel for the period July 1, 1981 through June 30, 1982. The agreement, signed by AIAW President Donna Lopiano, stipulated that the AIAW would compensate R & P one hundred and thirty two thousand dollars (\$132,000), plus fifty dollars (\$50.00) per hour for each hour of litigation over 200 hours. Payments in the sum of eleven thousand dollars (\$11,000)

were payable on or before the first day of each month starting in July 1981 and ending in June 1982. The AIAW was not responsible for the reimbursement of "out of pocket" expenses; however, they were liable for the fees and expenses of any other law firm which consulted or represented R & P. The AIAW provided single room hotel accommodations for counsel at Executive Board and Delegate Assembly functions and meetings. R & P were required to provide a monthly tabulation of actual lawyers' time to AIAW matters. The table was broken down into subject matter, i.e., NCAA, Corporate Affairs, Television, Promotions, Championships etc.

5. Verified Complaint, October 9, 1981, AIAWPI, HMAD, UMCP, Box #63, Folder "AIAW vs. NCAA Verified Complaint (5f)."p.1.
6. Ibid., p. 2.
7. Ibid., p. 32.
8. Title 15 - Commerce and Trade, §§ 1-7, *U.S.C.*, 1982, p. 132. See also: Wendy T. Kirby, "Federal Antitrust Issues Affecting Institutions of Higher Education: An Overview," *Journal of College and University Law*, 11(3) (Winter 1984), pp. 345-367. In order to establish that a violation of Section 1 has occurred, the existence of an agreement between two or more entities must be shown. This agreement may be expressed or inferred from various circumstances.
9. Ibid., "Federal Antitrust," p. 354. To determine if a violation has occurred the courts established two tests, the "rule of reason" and the "per se rule". Most cases are judged according to the rule of reason, where the "anticompetitive effects" of an alleged restraint are compared to the "procompetitive effects" to determine if the restraint is reasonable. Other instances, because of their very nature, are deemed to result in unreasonable restraint on trade. These cases are "per se illegal" without any consideration for the justifications behind the restrictive actions. Examples include agreements between competitors that affect price, divide markets, or allocate customers.
10. Op. Cit., Title 15, p. 132.
11. Op. Cit., Federal Antitrust, p. 356. Monopoly power is constituted by the power to "control market prices" or the power to "exclude competition within a given geographic area and product market."
12. Ibid., p. 356. This acquisition and maintenance of monopoly power is distinguished from the growth and development of an organization which may be attributed to superior products, business expertise, or tradition.
13. Ibid. A defendant may be liable under Section 2 even if monopoly power is nonexistent.

14. Decision and Order, February 25, 1983, AIAWPI, HMAD, UMCP, Box #380. Folder "AIAW vs. NCAA Decision and Order," p. 29.
15. Op. Cit., "Federal Antitrust," pp. 356-7. To establish a tie-in two distinct products must be involved in the arrangement. These arrangements may also involve leases.
16. Testimony of Donna A. Lopiano, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "AIAW vs. NCAA-Lopiano Testimony." The NCAA perceptions of the women's athletic market was forwarded by Lopiano in her testimony. She did not provide a source for this quote.
17. Ibid., p. 13.
18. Ibid., p. 14. Mr. Fuzak mentioned that: "it is legally possible to provide those programs through separate but equal facilities and staff..." This option was agreed upon by legal counsel for the AIAW and NCAA in a meeting held in October 1975. It was agreed that:

As a general proposition...that if a member insitution which afforded comparable athletic opportunities to men and women subscribed to different intercollegiate governing organizations for its men's and women's program, this would not constitute a violation of the law.
19. Ibid. The Tower Amendment was introduced in May 1974, in an attempt to exempt revenue producing sports from Title IX regulations. The NCAA fully supported this action. (See Chapter 1). This decision, by the NCAA, was made following considerable efforts to reach a consensus with the AIAW regarding the governance structure of women's athletics. (See Chapter 3).
20. Ibid., Exhibit No. 2, p. 5. Instead of offering national championships, Toner suggested that the AIAW continue as a service organization, providing those services which the NCAA could not handle, such as officiating services and a forum for women coaches. In regards to Division II and III, he suggested that the AIAW would lose members because of economic factors and the fact that they wanted the same things for both their men's and women's teams.
21. Ibid., Exhibit No. 1, p. 3.
22. Op. Cit., Defendant's Exhibits, Exhibit No. 11, p. 17. The NCAA used the circumstances surrounding the NAIA as an example:

It is noteworthy that some observers predicted the NAIA would die when the NCAA began offering what were then called College Division championships more than 23 years ago. The NAIA has grown and for years has offered a viable alternative in men's competition for those institutions choosing membership in that organization or dual NCAA-NAIA membership. There is no reason to believe the same cannot be true for the AIAW.
23. Ibid., p. 2.

24. Testimony of Walter Byers, May 24, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "AIAW vs. NCAA-Byers Testimony," p. 30.
25. Ibid., Testimony of Walter Byers, p. 21. See Appendix H for list of Co-conspirators.
26. Op. Cit., Verified Complaint, p. 22. In support of this claim, the plaintiff argued that prior to the January 1981 NCAA Convention, held no more than three months after the appointment of the Special Committee, the Special Committee declared, without membership consultation, that the incorporation of a women's program was "feasible and practical." It was further determined, prior to the Convention, that women's championships would receive the same financial and administrative benefits that were afforded to men.
27. Ibid., p. 23.
28. Ibid. See Appendix I for political cartoon.
29. Defendant's Exhibits, Exhibit No. 6, pp. A-42-45, 114-121. Proposal No. 67 and 67-1 were intended to establish Division II women's championships in the following sports: basketball, field hockey, swimming, tennis and volleyball, beginning in the 1981-82 academic year. Thomas J. Niland Jr., of LeMoyne College, moved for the adoption of these proposals. These proposals were approved by Division II. E. John Larsen, of the University of Southern California, requested a review of the passed motion; however a two-thirds vote was not obtained in a subsequent vote. With respect to Division III women's championships, William A. Marshall, of Franklin and Marshall College, moved for the adoption of Proposal No. 68 and 68-2. Proposal 68 called for the initiation of women's championships in basketball, field hockey, swimming, tennis and volleyball. Proposal 68-2 suggested the following championship schedule: March, 1981 (basketball and swimming), May or June, 1981 (tennis), November, 1981 (field hockey and volleyball), March, 1982 (basketball and swimming) and May or June, 1982 (tennis). Both proposals were subsequently voted upon and approved by Division III. William P. Dioguardi, of Montclair State College, moved for a roll call on the question of Division III women's championships. The motion was seconded but later defeated by Division III.
30. Op. Cit., Testimony of Walter Byers, pp. 21-2.
31. Ibid., p. 29.
32. Ibid., p. 33.
33. Op. Cit., Verified Complaint, pp. 25, 33.
34. Ibid., p. 33. See also Testimony of Christine H.B. Grant, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "AIAW vs. NCAA, Grant Testimony." p. 13. Despite the lure of free programming and services, this option, in the long run, secured no savings in membership dues. In 1982, one year following the initiation of the NCAA's women's programs, the NCAA raised

its annual dues by some 300% to 700%. Schools that were NCAA and AIAW members in 1980-81 paid combined dues of \$1,000 for Division I; \$500 for Division II; and \$450 for Division III. By 1984 those schools which were NCAA members paid \$1,400 for Division I; \$700 for Division II; and \$700 for Division III.

35. Op. Cit., Testimony of Walter Byers, p. 23. The NAIA, which instituted a women's program in 1980, adopted a dues increase ranging from \$300 to \$550 for member institutions wishing to transfer their women's program from the AIAW to the NAIA. The increase depended upon the program enrolled in. Thus, institutions were not compensated financially for joining the NAIA women's program. The AIAW queried as to why the NCAA did not adopt a similar stance with regard to increasing membership dues. Byers responded that NCAA members could have voted to increase dues but they did not. It was his opinion that an increase in dues would not have affected any member's decision of whether or not to participate in the NCAA women's championships.

36. Ibid., pp. 26-7. In fact, the women's program was funded through an "Associational Fund," of which approximately 90% was derived from NCAA men's football and basketball championships. In addition, men's championship participants were only guaranteed travel expenses, where previously they were allotted per diem allowances as well.

37. Op. Cit., Pretrial Brief, p. 84. In 1980-81, an institution which joined the NCAA for its Division I men's program and the AIAW for its Large College women's program paid combined dues of \$1,000; \$500 to each organization. By participating in the NCAA's women's program in 1981-82, an institution could save \$700 (dues for AIAW Division I).

38. Op. Cit., Testimony of Walter Byers, p. 23.

39. Op. Cit., Pretrial Brief, p. 62. All NCAA members were deemed eligible for participation in the NCAA's women's championships. "However, unless an institution joined for its men's program, its women's teams were ineligible."

40. Ibid.

41. Ibid., . 24.

42. Ibid., p. 24. NCAA membership dues accounted for less than 1% of the total annual revenues. In 1979-80 and 1980-81 the NCAA championship programs cost a total of \$8,004,658 and \$9,681,103, respectively. These same programs only generated total revenues of \$201,450 and \$206,350, respectively.

43. Ibid., p. 25. Despite the 1981 decision, the membership did vote to increase membership dues at the 1982 Convention. Byers suggested however, that the two-step dues increase was not related to the continuance of the women's athletic program. Rather, the funds were to be utilized in the subsidy of direct costs associated with NCAA publications, convention operations, the

establishment and maintenance of rules and the compilation of statistics. These were services available to all NCAA members, thus each member contributed to covering the costs.

44. Verified Complaint, p. 24. The decision to offer a “free” program and to pay travel reimbursement was made by the NCAA Council prior to September 1980. The decision was not presented to the NCAA membership for approval.

45. Op. Cit., Testimony of Walter Byers, p. 26. Other sources indicated that \$2,500,000 was attributable to transportation expenses. Byers also suggested that the total revenues from the women’s championships were not expected to exceed \$500,000.

46. Ibid., See also Verified Complaint, p. 24. It is interesting to note that the Special Committee and the NCAA Council initially planned to subsidize the approximately \$2,500,000 women’s program from membership dues. This proposal was indicated to the NCAA membership in the summer of 1980. However, in September 1980, this proposal was reversed by the NCAA Council and Executive Committee; a new plan to finance the women’s program from the existing Associational fund was proposed. See also Defendant’s Exhibits, Exhibit No. 9. James Frank, chairman of the Special Committee, sent a memorandum to all NCAA members dated September 15, 1980 in regards to the NCAA’s proposed Governance Plan. Frank began by reiterating the fact that the NCAA’s Plan was not intended to “effect a merger or takeover of any sort;” rather it was an attempt to “provide an option -- an integrated option to compare with the separatist women’s programs offered by the AIAW.” Specifically related to the dues structure, the report of the Special Committee included in the memorandum, stated that:

The NCAA Council approved in principle the concept of a possible dues increase to fund expanded women’s services, with the understanding that the Executive Committee is responsible for the details of any such plan. The Executive Committee should be expected to adjust the Association’s budget, through its normal budgetary processes, to provide the financing and personnel needed to administer services for women that are approved by the membership. (Note: The Executive Committee has taken the initial steps to provide the necessary administrative support for this program) (p. 10).

47. Ibid.; Testimony of Christine H.B. Grant, p. 14-5. Prior to the development of women’s championships, the men’s travel and per diem payments were paid from Associational funds and championship proceeds were allocated to cover the event expenses; with any remaining proceeds to be split 50/50 between the NCAA and participating teams. For example, the University of Iowa received \$2,447 plus transportation and per diem from its participation in the Division I Wrestling Championship in 1980-81. However, under the new formula implemented with the advent of a women’s program, the University of Iowa was not expected to receive any proceeds. The modified formula stated that only transportation was covered by Associational funds, and only in the case of gross net proceeds were per diem payments available. If further receipts remained then the transportation funding was to be repaid to the Association; only then are the remaining receipts split 50/50.

48. Ibid., Testimony of Christine H.B. Grant, p. 13. Christine Grant was a resident of North Liberty, Iowa and, since 1973, has been employed by the University of Iowa. At the time of this interview, she was the Women's Athletic Director and an Associate Professor. Between 1956 and 1973 she coached and taught physical education at both the high school and college level in West Lothian, Scotland, and Vancouver, Ottawa and Toronto, Canada. In 1956 she graduated from Dunfermline College, Scotland with a M.A.; she obtained a Ph.D. degree in Administration from the University of Iowa in 1974.

She had been involved with national and international amateur Field Hockey as a coach, official, event manager and delegate to international conferences since 1963. At the 1980 Moscow Olympics she was selected to participate as a Field Hockey Judge. In 1980 she was also a member of the USOC.

Within the AIAW organization, she served as chair of the IAIW Ethics and Eligibility Committee (state level) from 1975-78; on the regional level she served as Coordinator of Championships in 1977-78; at the national level she served as chair for the Recruiting Committee in 1976-77. In 1980-81 Christine Grant was the AIAW President. From 1979-82 she served on the Executive Committee and Executive Board. In 1978 she served as an expert consultant to the HEW Office for Civil Rights Title IX Task Force.

49. Op. Cit., Pretrial Brief, p. 85.

50. Op. Cit., Testimony of Walter Byers, pp. 26-7. See also: Defendants Exhibits, Exhibit No. 1. See Appendix J for a detailed financial analysis of the NCAA men's Division I, II and III net revenues and deficits.

51. Ibid., p. 27. The NCAA guaranteed transportation expenses for men's championship participants since 1976. The NCAA Executive Committee's decision to offer women the same reimbursement was communicated to the membership as early as the 1980 Convention by Mr. Flynn, then President of the NCAA. At the 1981 Convention, the membership was informed that equivalent funding would be available in all three divisions prior to the voting process. At the 1982 Convention, the membership approved the Executive Committee's decision to guarantee equal travel expenses for men and women.

52. Ibid., p. 28. See also Defendant's Exhibits, Exhibit No. 11, pp. 14-5. In response to the question of whether transportation and per diem expenses for men's championships would be reduced, William Flynn and James Frank stated that transportation expenses for men's and women's championships would likely be available. However, the Executive Committee believed that it was possible that neither would receive per diem, or a lesser amount would be available than in the past.

53. Op. Cit. Verified Complaint, p. 27.

54. Op. Cit., Defendant's Exhibits, Exhibit No. 7, p. A-59. The membership also voted to adopt Proposal No. 51 and 53 which guaranteed substantial representation of women in the NCAA administration.

55. Ibid., Exhibit No. 10, p. 2. Without a specific rules structure, it became the responsibility of the NCAA Eligibility Committee to review complaints and determine if a team should be permitted to participate in NCAA women's championships. A subcommittee of the Eligibility Committee was established to hear appeals.

56. Op. Cit., Testimony of Walter Byers, p. 17.

57. Op. Cit., Defendant's Exhibits, Exhibit No. 10, p. 2. A member also had the option to remove its women's program from NCAA jurisdiction at a later date or include its women's program if it had not done so before. These NCAA proposals were intended to assure each member institution's autonomy in deciding the best course for its women's program.

58. Op. Cit., Verified Complaint, p. 88; See also: Testimony of Merrily Dean Baker, 1982, AIAWPI, HMAD, UMCP, Box # 57, Folder "AIAW vs. NCAA, Baker Testimony," pp. 6-7. Baker suggested that the NCAA's elimination of rules enforcement for four years and the requirement of adherence to NCAA rules following that time, will have a damaging and depressive effect on the development of women's athletics as a promotable product. She stated that the strength of governance organizations had always been their promulgation of a single system of rules. She further suggested that women's adherence to NCAA recruiting and scholarship rules would result in the concentration or "pooling" of high quality athletes in a few institutions; an increase in program costs without a commensurate increase in program quality; and an intensified disparity between the small number of top Division I schools and all other Division I schools, thus perpetuating the "super" woman's Division I.

59. Op. Cit., Defendant's Exhibits, Exhibit No. 11, p. 5. Following the four-year moratorium, the Council had no intention of proposing the inclusion of women's programs under O.I. 12, since that action would only serve to eliminate the institution's options at that time (1985). Further, that was not the intended purpose of the Governance Plan.

58. Op. Cit., Testimony of Donna Lopiano, pp. 15-6. See also: Testimony of Thomas H. Blackburn, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "AIAW vs. NCAA-Blackburn Testimony," p. 21. As a Faculty Representative of Swarthmore College, Blackburn supported Lopiano's statement that, indeed, no legislation on the subjects of dues increases or reimbursement was presented to the membership.

59. NCAA Response to AIAW First Request for Admissions, March 25, 1982, AIAWPI, HMAD, UMCP, Box # 57, Folder "NCAA: Response to AIAW First Request for Admissions," p. 8. The NCAA admitted that no dues proposal was advanced or considered and that the decision to budget approximately \$3 million for women's athletics was made by the Executive Committee and approved by the membership at the 1982 Convention.

60. Op. Cit., Testimony of Donna Lopiano, p. 16. At the start of each Convention Annual Reports were distributed to institutional members, and were subsequently accepted by voice vote.

61. Ibid. See also: Testimony of Thomas H. Blackburn, p. 12. Thomas Blackburn testified that in regards to the role of the membership versus the role of the Council during Convention proceedings, it was his opinion that “the Council has all the power. They have all the resources. They control the microphones, the vote count, and... they can always say ‘we have to have another vote.’ It is a very questionable system.”

62. Ibid., Testimony of Thomas H. Blackburn, pp. 21-3. Blackburn further described an instance where the NCAA leadership “misused” its authority. At the outset of the business section (1981 Convention) there was a motion to reorder the agenda so that Motion 71, a resolution which would postpone the NCAA’s initiation of women’s championships and require the NCAA to meet with the AIAW to develop a mutually agreeable unified governing structure, could be considered before the specific governance or championship proposals. This seemed to be a logical order of consideration; however the Council, Special Committee and other appointees treated the request “as though it were a subversive plot. The Council could have had no other reason to oppose the reordering of the agenda than to avoid member consideration of the whole issue....” Motion 71, with the exception of the part ruled out of order, was adopted after all other motions had been addressed.

If the NCAA membership had been permitted to consider and adopt Motion 71 before the other women’s governance and championship motions, I believe we would not be in Court and this whole matter could have and should have been resolved in the manner dictated by Motion 71. (p. 23)

63. Ibid., p. 17. Lopiano also addressed the NCAA Council’s arrangement of the items presented to the Convention, suggesting that only those which were the least controversial and had the best chance of passing were introduced. She further submitted that Officers and Staff attempted to stifle or “obstruct” the submission of member-generated motions opposing the Council’s women’s athletic proposals. See also: Testimony of Thomas Blackburn, p. 13. He stated that “... every motion which would have inhibited the NCAA’s juggernaut entrance into women’s athletics by simple majority vote...was ruled out of order one way or another....”

64. For further claims regarding the NCAA’s misuse of executive authority see Pretrial Brief, pp. 91-3. These complaints concerned issues of applicable standards of amateurism and financial, academic and athletic eligibility for student-athletes. The plaintiff alleged that at no time prior to the initiation of women’s championships did the NCAA authorize waiver or suspension of any of the constitutional provisions listed above. AIAW complaints also deal with the determination of conference champions, an institution’s eligibility to participate in championships and the ratio of championship berths to participating teams.

65. Op. Cit., Testimony of Walter Byers, p. 19. See also Testimony of Thomas H. Blackburn, Exhibit 1, p. 1. This exhibit provided, in full, O.I. 12 from the 1977-78 and 1978-79 NCAA Manuals.

66. Ibid., Testimony of Thomas H. Blackburn, p.3. Thomas H. Blackburn was a resident of Swarthmore, Pennsylvania and functioned as the Faculty Representative for Swarthmore College

to the 1981 NCAA Convention. Mr. Blackburn was the Dean of Swarthmore College from 1975 to 1981 and a Professor of English Literature since 1975. He had taught at Swarthmore College continuously from 1961. Prior to this he taught at Stanford University, beginning in 1958. Mr. Blackburn was a 1954 graduate, Phi Beta Kappa, Magna Cum Laude, of Amherst College. He held B.A. (1956) and M.A. (1960) degrees from Oxford University, to which he received a Rhodes Scholarship. He was awarded his Ph. D. in 1963 from Stanford University. Aside from his service as an NCAA Faculty Representative, Mr. Blackburn was involved in coaching college football, wrestling and track (which he participated in as a college student) and soccer at the youth level. He supervised Swarthmore's intercollegiate athletics program during his tenure as Dean and chaired the Swarthmore Committee on Physical Education and Athletics.

67. Op. Cit., Testimony of Walter Byers, p. 19.

68. Ibid. See also Pretrial Brief, p. 90. The NCAA Council did in fact issue an Official Interpretation, in May 1981, that permitted all women's schools (but not women's programs of coeducational institutions) to become NCAA members. However, this action lacked legislative authority. The plaintiff claimed that this O.I. was in conflict with the NCAA Constitution and a prior Official Interpretation.

69. Op. Cit., Testimony of Thomas H. Blackburn, p. 5.

70. Ibid., Exhibit No. 3. He requested this interpretation in order to clarify if "(1) can a division of the Association extend the provision of program or the application of the Associations rules to any individual or group not specified in O.I. 12 without appropriate amendment of that official interpretation," and (2) do not the 1980 action f Division II and III authorizing the initiation of NCAA championships for women commencing in 1981-82 require an amendment of O.I. 12 to comply with the requirement of Constitution 6-1-(a)?"

71. Op. Cit., Testimony of Walter Byers, p. 20. Article 6, section 2 of the NCAA Constitution read:

The Council, in the interim between Conventions, and the President, Secretary-Treasurer and Executive Director, in the interim between meetings of the Council, are empowered to make interpretations of the Constitution and Bylaws which shall be binding after their publication and circulation to the membership.

72. Op. Cit., Testimony of Thomas H. Blackburn, pp. 7, 10. Four letters relating to his O.I. 12 request were sent between October 31 and December 11, 1980. A fifth letter, dated January 5, 1982 was received by Blackburn from Walter Byers. The only explanation offered by the NCAA was that the previous actions of the Division II and III members at the 1980 Convention, to initiate women's championships in 1981-82, made his question "moot." The NCAA theory, as understood by Blackburn, was that the membership had spoken on the issue, although only implicitly.

Council minutes dated January 4-7, 1980 suggest that Chalmers Hixon further questioned the appropriateness of initiating Division II and III women's championships in light of O.I. 12.

Walter Byers reported that the matter had been ruled upon by the 1978 officers and parliamentarian; they “held that O.I. 12 was not a bar to the initiation of such championships” (p. 9).

73. Op. Cit., Testimony of Walter Byers, p. 19. This argument was considered by NCAA legal council and was rejected. See also Testimony of Thomas H. Blackburn, Exhibit No. 10. The NCAA legal opinion from Ted C. Tow, dated December 28, 1978 states that:

O.I. 12 does not state that an institution cannot apply NCAA rules to its women’s teams. In fact a number of institutions do conduct their women’s programs under NCAA rules. Therefore no amendment of O.I. 12 is necessary to establish women’s championships.

74. Op. Cit., Defendant’s Exhibits, Exhibit No. 11, p. 5.

75. Ibid., p. 20.

76. Op. Cit., Pretrial Brief, p. 89. For example, the fourth weekend in March was reserved for all divisions involved in basketball; the second weekend in December was reserved for Division I and III volleyball championships.

77. Testimony of G. Ann Uhler, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder “AIAW vs. NCAA, Uhler Testimony,” pp. 9-11. See also Pretrial Brief, p. 89.

Ann Uhler was a resident of Washington D.C. and served as the AIAW Executive Director since 1979. In that capacity, she directed “all functions and personnel of the National Office and [sat] on the Executive Committee and Executive Board. Prior to her service with the AIAW (1965-1979) she was a professor of Health and Physical Education at Eastern Kentucky University and directed women’s athletics. She was a graduate of Ball State University with majors in Mathematics and Physical Education. She received her M.A. in 1956 and Ed.D. from Teachers College, Columbia University in 1962. From 1978 to 1981 she served on the Committee on Men’s Athletics, and since 1980 had been a member of the United States Olympic Committee House of Delegates.

78. Op. Cit., Defendant’s Exhibits, Exhibit No. 11, p. 2. Division I championships were available to women in the following nine sports: basketball, cross country, field hockey, gymnastics, softball, swimming, tennis, outdoor track, and volleyball. Division II consisted of: basketball, cross country, field hockey, gymnastics, outdoor track, softball, tennis and volleyball. Division III offered the before mentioned sports with the exception of gymnastics. In the open division fencing, golf and lacrosse were offered.

79. Op. Cit, Pretrial Brief, p. 89. Beginning in April 1981, the dates of the NCAA national championships and mandatory qualifying events were announced to members in installments.

80. Op. Cit., Testimony of G. Ann Uhler, p. 10.

81. Op. Cit., Pretrial Brief, pp. 89-90.
82. Op. Cit., Testimony of Walter Byers, p. 30.
83. Op. Cit., NCAA Response to AIAW, p. 9.
84. Response of the AIAW to the Defendant NCAA's Second Request for Admissions, March 25, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "AIAW: Response to NCAA Second Request for Admissions," p. 5.
85. Op. Cit., Verified Complaint, pp. 34-5.
86. Op. Cit., Testimony of Walter Byers, p.28.
87. Op. Cit., Testimony of Merrily Dean Baker, p. 3; Testimony of Walter Byers, p. 28. See also NCAA Response to AIAW First Request for Admissions, March 25, 1982, AIAWPI, UMCP, Box #57, Folder "NCAA: March 25, 1982 NCAA Response to AIAW Admissions," pp. 11-12. NCAA negotiations for the sale of television rights to the NCAA Division I women's basketball championship took place prior to the NCAA membership's authorization of such a program, i.e., in November 1980. Proposal to initiate women's program in Division I was not approved until January 1981 NCAA Convention. The defendant claimed that the bid for the women's championship was accepted on an "if adopted" basis.
88. Op. Cit., Verified Complaint, p. 93.
89. Op. Cit., Testimony of Merrily Dean Baker, Exhibits 1, 2.
90. Op. Cit., NCAA Response to AIAW Admissions, pp. 3, 14.
91. Op. Cit., Testimony of Walter Byers, pp. 28-9. In 1981-82 the NCAA women's track and field championship was held and televised in conjunction with the men's track and field championship events.
92. Op. Cit., Verified Complaint, p. 31.
93. Op. Cit., Pretrial Brief, pp. 101-2.
94. Ibid.
95. Op. Cit., Testimony of Walter Byers, p. 29.
96. Ibid., p. 8. Byers applied these same principles to the AIAW's claims that the NCAA had the power to control prices or exclude competition in the markets in which it competes in selling tickets, concession rights to its championships and the sale of its logo.

97. Op. Cit., Verified Complaint, p. 30.

98. Op. Cit., Pretrial Brief, p. 102. To determine the Cup recipient, the most outstanding athlete in each sport was selected by vote of the AIAW membership. The joint AIAW/Broderick Committee, on the basis of balloting, then selected the winner from the pool of nominated athletes.

99. Ibid., pp. 102-3. The AIAW/Broderick contract extended from 1979 to 1983. Over its five year history the Broderick Cup had been awarded to such "world class" athletes as Lucy Harris Stewart, Ann Meyers and Nancy Lieberman for their excellence in basketball, Julie Shea for track and Jill Sterkel for swimming.

100. Op. Cit., NCAA Response to AIAW Admissions, p. 10. The AIAW contended that Judith Holland spoke in regard to the Broderick Company's continuation of the awards program it sponsored through the AIAW. The NCAA only admitted that she spoke in regard to the future of the program.

101. Ibid, p. 11. The AIAW further alleged that Judith Holland told Broderick representatives that the NCAA would assist with the selection of Broderick recipients if the program was no longer conducted under the AIAW. Judith Holland allegedly arranged a meeting with NCAA officials to enlist their support; however NCAA interest in that program was minimal. The NCAA denied these comments and allegations in its response to AIAW admissions.

102. Op. Cit., Testimony of Ann G. Uhler, pp. 5-6. The Presidential Reception, which in the past had been sponsored by the Broderick Company, was not supported in 1982. The AIAW Awards Banquet, where Broderick Award recipients were announced, followed the Reception. In a further example, the press conference intended to be held in New York City in 1981 to announce the Broderick Cup winner was instead held at the Awards Banquet in Spokane, thus forfeiting any nationwide publicity for the program.

103. Ibid., p. 5. The estimated value of the misnamed or discontinued advertisements was \$36,576. Lost circulation totalled approximately 1.6 million readers.

104. Op. Cit., Pretrial Brief, p. 105; NCAA Response to AIAW, p. 15. In 1982, both organizations, the NCAA and Kodak, provided financial support for the existence of the new association.

105. Op. Cit., Testimony of Ann G. Uhler, pp. 4-5.

106. Ibid, pp. 18-19, Exhibit No. 3; Pretrial Brief, p. 105. Introspections, an exclusive licensing and marketing agency, indicated their interest in the AIAW in 1980 and submitted a preliminary proposal. Despite their initial interest, Introspections sent the AIAW a letter, dated March 4, 1981, indicating their reluctance to continue the licensing process since the AIAW's "long-term existence is tenuous." See Appendix M for the letter in full.

107. Op. Cit., Testimony of Walter Byers, p. 29.
108. Op. Cit., Testimony of Donna Lopiano, pp. 22-3.
109. Ibid., p. 24.
110. Op. Cit., Testimony of Ann G. Uhler, p. 1.
111. Op. Cit., Pretrial Brief, p. 96. These numbers are inconsistent with the statistics provided earlier in the Brief. Table III indicates that the AIAW lost a total of 11 members, not eight as would appear in this instance.
112. Op. Cit., Testimony of Ann G. Uhler, p. 1. The Pretrial Briefd suggested that the AIAW's total membership loss equalled 213; however 11 new members were enrolled.
113. Ibid., p. 3. The AIAW also depended on its membership to provide facilities and personnel for the conduct of national championships. Thus, with significant losses in membership, there resulted a significant loss in possible championship venues. Several institutions that had previously indicated their willingness to host championships, reneged on their agreements. For example, Brigham Young University--Division I volleyball; Penn State University--Fencing; California State University, Long Beach--Slow Pitch Softball; University of Arizona--Cross Country. The AIAW calculated a loss of 1808 potential sites (216 lost members times and average of six sports per institution, plus 512 schools which opted not to participate). The AIAW suffered substantial losses in its leadership pool; which was limited to persons employed in colleges and universities who had leadership responsibilities in women's sports. Not only were their personnel crucial for the conduct of championships but, they also served on AIAW committees. The NCAA, upon entering women's athletics, "tapped" the existing leadership pool created by the AIAW. Virtually all of the women selected for NCAA committees or leadership positions had served in some capacity with the AIAW.
114. Op. Cit. Pretrial Brief, p. 97. These statistics were based on 1980-81 membership affiliations and the 1981-82 directories of the NAIA and the NCAA. The testimony of Ann G. Uhler, p. 1 suggested that Division I, II, and III institutional losses were 39, 92 and 82, respectively. She suggested that all but one Division I member were lost to the NCAA.
115. Op. Cit. Testimony of Ann G. Uhler, p. 1; Pretrial Brief, p. 97. The Brief suggested that the AIAW's total dues loss equalled \$124,000, of which \$60,400 attributable to NCAA participating schools; \$47,400 to NAIA women's division participants; \$11,500 to NCAA/NAIA and \$4,700 to schools with no affiliation.
116. Op. Cit., Statement of Donna Lopiano, p. 3.
117. Op. Cit., Pretrial Brief, p. 99. The alleged that these losses were due to the fact that the NCAA had scheduled their championships in direct conflict with the AIAW championships in

the same sports. Therefore, even if members had wanted to participate in both championships, they were unable to do so.

The AIAW championship losses in Division II and III were not as substantial as those experienced in Division I. The NCAA did receive over 50% of the reallocated members, with the NAIA enlisting the rest. For example, in basketball the AIAW lost 90 (26%) Division II teams and 75 (20%) Division III teams to non-renewal. Of those teams renewing membership in the AIAW Divisions II and III, only 19 (7.5%) of the Division II and 23 (8%) of the Division III teams declined to participate in the AIAW divisional basketball championships. The NCAA claimed that 65 Division II and 75 Division III women's basketball teams participated in its divisional basketball championships

118. Op. Cit., Testimony of Ann G. Uhler, p. 2.

119. Op. Cit., Pretrial Brief, p. 100; Statement of Donna Lopiano, pp. 1-3.

120. Op. Cit., Testimony of Ann G. Uhler, p. 3.

121. Op. Cit., Pretrial Brief, p. 102. Given NBC's action and its stated reasons for its decision in 1981-82, it was clear to the AIAW that NBC would likely fail its contractual obligations for the 1982-83 season as well. The stipulated rights fee for 1982-83 was \$280,000.

122. Op. Cit., Testimony of Merrily Dean Baker, p. 2. Baker subsequently stated that: While [the] NCAA insists that men and women are indistinguishable in its scheme of governance, the realities of sex, sport, history, economics and politics stand between insistence and verity. Women's athletics cannot be promoted to their benefit as [the] NCAA would have them; they can only be kept from interfering with the promotion of men's athletics.

Chapter 5

For Whom the Bell Tolls: The Demise of the AIAW

On October 9, 1981 the plaintiff, the AIAW, filed antitrust action, challenging “the lawfulness of the NCAA’s predatory use of its men’s intercollegiate athletics monopoly to displace [the] AIAW and control women’s intercollegiate athletics.” In addition, the AIAW filed a Motion for Preliminary Injunction “restraining the NCAA from sponsoring, sanctioning, operating, holding or exploiting a women’s national collegiate championship program,” until the merits of the case were resolved.¹ The AIAW claimed that preliminary relief was “necessary not only to protect the plaintiff from imminent destruction but to preserve the court’s ability to render a meaningful decision on the merits.” They further contended that the NCAA would suffer no direct harm if relief was granted.² At a Status Call on October 22, 1981 Judge Charles R. Richey declined to rule on the AIAW’s motion stating, “I do not see the need right now, I am not persuaded by your [AIAW] argument, that we need to move any faster than the Court has suggested.” Richey further suggested that:

Assuming you [AIAW] are right, then the damages will not be speculative; they will be something else, and that will aid you in the final analysis, rather than hurt you. That will deal with not only the legal question of whether you are entitled to relief, but the probability of success more than anything else. ...So we will just hold this sub judice until we can get going into this and the court can learn something about what your contentions are, and the parties can engage in mutual discovery. Then, as soon as we can, we will set this down for a conference to review the question of whether or not a summary judgement proceeding could possibly be a remedy that would work here.³

Before the Court could render a decision on the merits of the case, the AIAW renewed its motion for a preliminary injunction on the basis that events occurring after the Court’s decision on October 22, 1981 would irreversibly affect the AIAW’s ability to offer a women’s intercollegiate program and governance after March 1, 1982.⁴ The renewed

motion was filed on December 21, 1981 and it was requested that the Court enter a judgement by mid-February 1982. Donna Lopiano, AIAW President and Executive Officer clarified that:

... unless judicially ordered preliminary relief which would permit AIAW to re-establish its economic base is forthcoming in the immediate future, AIAW will be unable to continue its present level of operation through the 1981-82 membership year, which ends June 30, 1982. Only by drastically curtailing organizational activities (staff and services) will AIAW be economically able to continue its championship program for 1981-82. Under the present circumstances, there is no practical possibility of continuing operation in 1982-83.⁵

At a December 23, 1981 Status Call, Judge Richey again suggested that a summary judgement would likely be the only source of relief for the AIAW, short of a full trial on the merits of the case. Richey expressed his sympathy for the AIAW's situation; however, he stated:

I must tell you very frankly and candidly, the court does not see what it can do about it at this time. Perhaps after you have conferred, that will eliminate some of the issues and narrow the case even further. ...When you have completed whatever it is that you can do to telescope this case, limit the facts, the court will make a prompt decision. That is all I can do.⁶

In response, Margot Polivy, Counsel for the plaintiff, asked that the Court order the defendant to answer the renewed motion. Richey denied the AIAW's request, since attempts to compromise and resolve the issues at hand were still in the early stages. The court suggested that the AIAW make every effort to confer with the defendant and establish an amicable solution by means of a "summary judgement motion." The court reminded the AIAW that:

discovery has not been completed. I am not very hopeful about the possibility of your being able to do it. I hope you can. It certainly would be good for the parties and good for the court.⁷

On February 18, 1982 a status call was held before Judge Richey. Before rendering a decision on the plaintiff's Renewed Motion, Richey allowed the representative counsels to present additional arguments or emphasize pertinent points within the previously submitted reports. Subsequent to discussion, Richey found that the plaintiff AIAW had not met its burden of proof that the antitrust laws apply to the aforesaid acts of the defendant. On February 18, 1982 Richey stated that:

Upon consideration of plaintiff's Renewed Motion for Preliminary Injunction, the various memoranda and affidavits filed by the parties in support and in opposition to said motion, oral argument of the parties concerning the motion and the entire record in this matter; it is this 19th day of February, 1982 hereby ordered, that plaintiff's Renewed Motion for Preliminary Injunction is denied.⁸

The court denied preliminary relief on the grounds that the plaintiff "failed to carry its burden under any one of the criteria governing preliminary injunctive relief; that is, (1) likelihood of success on the merits, (2) harm to other parties, (3) public interest, and (4) irreparable injury."⁹ The AIAW immediately filed an *Emergency Motion for Preliminary Injunction Pending Appeal or in the Alternative For Summary Reversal* of Judge Richey's order. Merrily Baker, AIAW President, responded to the Court's decision,

We are obviously disappointed by Judge Richey's ruling. We continue to believe that the NCAA is violating the anti-trust laws and that violation is threatening the life of [the] AIAW. We are hopeful that the U.S. Court of Appeals will act expeditiously in reversing Judge Richey's ruling.¹⁰

On February 26, 1982 before Wright, Ginsburg and Robert Bork, Circuit Judges for the U.S. Court of Appeals, it was ordered by the Court, :

...that this Court's order of February 26, 1982 entered at approximately 4:15 p.m. be, and the same hereby is, vacated and on consideration of appellant's motion for preliminary injunction pending appeal, or in the alternative, motion of summary reversal, it is ORDERED by the Court that the motions are denied.

At this threshold stage, and in view of the novelty of the action, we are unable to conclude that appellant has made out a sufficiently secure case on

the merits to warrant the emergency order requested, particularly in light of the immediate alterations such an order would command. We note the district court's readiness to proceed as expeditiously as possible to a final resolution of this case.¹¹

Approximately one week later, a Status Call was held by Judge Richey during which he set deadlines for the discovery process and the submission of AIAW and NCAA Statement of Contentions and Proof. Richey also ordered that the AIAW submit to the NCAA, a prospective plan for the amalgamation of the two organizations. The AIAW had 30 days to comply with Richey's order and the NCAA had 15 days to respond to the AIAW's proposal thereafter. "The two groups were to then attest to the Court that meaningful discussions on a plan took place."¹²

Pursuant to Judge Richey's March 4, 1982 directive, the AIAW submitted a proposal to the NCAA Counsel William D. Kramer of Squire, Sanders & Dempsey. The proposal was intended to serve "as framework for both the resolution of the present litigation and a future harmonious and cooperative relationship."¹³ The AIAW's proposal included three provisions. The first was:

that a joint board, composed of representatives of men's and women's intercollegiate athletic programs ... and chief executive officers, be formed to serve as a body to ensure compatibility of rules in those areas designated by the parties in creating the Board or thereafter identified; and to serve as a body for conflict resolution.¹⁴

The second provision stipulated that men's and women's intercollegiate athletic programs should be administered by "autonomous structures that are subject to the authority of the joint board;" and thirdly, these autonomous structures should cooperate to the fullest extent possible, especially in areas concerning the provision of services to members. These structures should coordinate the scheduling of meetings and championship dates and ultimately join together to sponsor opportunities for co-educational competitive athletic activities. This structure would allow the voting membership of the men's and women's structures to determine the particular championships, qualifying routes, competitive divisional classifications, financial aid and recruitment policies. Likewise, each structure

would be responsible for funding its own activities; in instances where joint efforts could be mutually beneficial, the joint board would function to unify the two structures and coordinate their activities.¹⁵

In accordance with Judge Richey's ruling, the NCAA responded to the AIAW proposal on April 20, 1982. On June 3, 1982 the AIAW and NCAA met in Washington D.C. to discuss the proposals submitted by each association. The AIAW subsequently filed for a pretrial conference, to certify that the joint meeting had been held and that no amicable settlement was reached.¹⁶

At the end of June 1982 the AIAW, beset by a loss of income, institutional membership and championship sites, ceased to offer women's intercollegiate athletic programs and services. However, to continue pursuance of its claim effectively, the AIAW sustained its "corporate shell." The AIAW Officers and Executive Board explored all options and were left with none save the antitrust action. The decision to fight for survival until all resources were exhausted had been made.¹⁷

Unfortunately, for the AIAW, the U.S. District Court for the District of Columbia did not find that the plaintiff presented sufficient evidence to prove its allegations that "it had been forced to suspend operation in 1982 because the NCAA began offering women's championships and engaged in anti-competitive actions that induced member institutions to leave the AIAW." With regard to the AIAW Section 1 Claim, in which the plaintiff argued that the NCAA had "conspired with various of its own officials to anti-competitive ends,"¹⁸ the Court held that:

Although a 'tying' agreement is unlawful whether its restraint upon commerce operates to depress the price of the tied product to the injury of competitors¹⁹ or inflates its price to the detriment of consumers..., the products must, nevertheless, be in fact tied, at least in the minds of the buyer and seller of the tying product. AIAW concedes that none of its witnesses have personal knowledge that NCAA intended to condition the purchase of the television rights to its men's Division I basketball championships upon its sale of the women's counter-part. The NCAA's executive director, who was its principle negotiator with the networks, expressly

denies it. And the circumstances of the negotiations, in context, leads the Court to conclude that the sale of the women's championship was merely collateral to a much larger transaction which would have gone forward with or without the women's event. The evidence may demonstrate, as the AIAW has always contended, that the NCAA is preoccupied with its men's programs and insensitive to the needs of the women, but it does not prove an illegal Section 1 tying agreement.²⁰

Under Section 2 of the Sherman Act, the plaintiff alleged that the "NCAA as a unitary monopolist, [was] able, without connivance, by reason of its dominant position as a purveyor of men's intercollegiate athletics to project that power into the women's market to stifle competition there."²¹ The AIAW had to satisfy the following three criteria in order to prove its claim: (1) the NCAA's probability of success in the women's market, (2) the injurious conduct of the NCAA, and (3) the NCAA's intent to monopolize the women's market. The plaintiff compared AIAW membership and championship participation statistics for 1980-81 and 1981-82 and reported losses in AIAW network television revenues to illustrate the relative detriment to the AIAW and the resulting gains for the NCAA. It was the Court's opinion that:

Although it cannot be shown that the AIAW's losses are entirely the NCAA's gains, the Court concludes that the evidence demonstrated a likelihood, if present trends continue, that the NCAA will in the foreseeable future exert an influence in the women's market comparable to that it presently possesses in the men's, and that the AIAW has proved the probability of NCAA's success as a monopolist, whether it can be said to be dangerous or not.²²

With respect to the second criteria, the NCAA's injurious conduct, the AIAW contended that the "manner" in which the NCAA entered the women's athletic market, the "predatory economic practices" utilized and the NCAA's substantial "leverage" in the men's market explained the NCAA's immediate and dramatic success in women's athletics. The AIAW described the NCAA's strategic implementation of (1) an optional rules structure for women from August 1981 to August 1985, (2) a formula for no additional fees in 1981, (3) the

NCAA's intentional scheduling of championships in conflict with AIAW championships in the same sports, and (4) the NCAA's interference with AIAW commercial relationships to the extent that "the NCAA procured the termination" of the AIAW's relationships with NBC, ESPN, Broderick Company and Eastman Kodak. The Court concluded that "the evidence as to each of the alleged predatory acts is, at best, equivocal when considered in the abstract without regard to defendant's intent, which, it now appears, becomes dispositive of all Section 2 claims."²³

In regard to the third criteria, the NCAA's intent to monopolize, the NCAA contended that the intent of offering women's championships and governance was not to "monopolize;" rather the membership sought an alternative philosophy and women's program to that advocated by the AIAW. It was the membership's desire to develop a common unified rules structure for men's and women's intercollegiate athletics. The AIAW countered that the NCAA's leadership, specifically the Executive Director, "paid staff, and various influential committee officials" in the quest for control over women's intercollegiate athletics. The AIAW cited the NCAA's abuse of the parliamentary process at annual conventions in support of its claim. For example, at the 1981 Convention, the NCAA "governance plan was forced through on the vote of a bare majority intimidated by fear of disciplinary sanctions."²⁴ It was the Court's opinion that:

... while the evidence of parliamentary maneuvering may evince the leadership's determination to see the proposal for women's governance adopted, it does not prove that such determination derived from an intent to monopolize. Nor does the balance of the evidence support a conclusion that women's governance was thrust upon a reluctant membership by NCAA's conspiratorial leaders; rather, it indicates that the impetus came from the membership itself to which a somewhat recalcitrant leadership reluctantly acceded. And, although several of the plaintiff's witnesses spoke of an atmosphere of fear pervading the Convention proceedings, they offered no direct evidence that any vote by any institution on any measure resulted from apprehension of persecution under the NCAA's enforcement powers. To the contrary, such testimony as was given on personal knowledge

showed each institution to have voted as it wished for reasons of conscience, self-interest, or both.²⁵

Thus, the Court concluded that the plaintiff had failed to prove “the specific intent necessary to sustain its claim of attempted monopoly.”²⁶ The Court further concluded that, based on the record, there was no evidence that the “injuries” sustained by the AIAW were due to anything but direct competition.²⁷

In conclusion, Thomas Penfield Jackson, U.S. District Court Judge, declared in the case of AIAW versus NCAA:

in summary [the] plaintiff’s evidence with respect to the blandishments offered by the NCAA is both imprecise and contradictory, and it does not support a conclusion that the NCAA, in effect, bought defectors from the AIAW with its superior economic resources.

For the foregoing reasons the Court holds that plaintiff has failed to prove its claims against defendant under Sections 1 and 2 of the Sherman Act, 15 U.S.C., §§ 1-2, and it is, this 25th day of February, 1983, ORDERED, that judgement be entered for defendant.²⁸

The AIAW subsequently appealed the decision, but was once again disappointed by the ruling. The U.S. Court of Appeals for the District of Columbia Circuit upheld Judge Jackson’s decision that the AIAW had not proved its antitrust allegations. The circuit court based this decision on the fact that “in its final year of existence, the AIAW enrolled more members and offered 12 more championships in 7 more sports than the NCAA.” The circuit court further stated that:

the AIAW voluntarily ceased operations in June 1982, not because of current bankruptcy, but due to a business estimation of accelerating economic hardship in 1982-83. Because we do not find clearly erroneous the district court’s conclusion that the NCAA had not acquired a monopoly in women’s sport by June, 1982, we affirm its dismissal of the AIAW’s monopolization claim.²⁹

Following the circuit court’s ruling Ruth Berkey, Director of the NCAA women’s program, stated, “we are pleased with the decision. The ruling affirms what we are doing .

We are committed to continue to offer programs for women on the same basis as we do for men.” Margot Polivy, counsel for the AIAW, stated: “we are obviously disappointed. We are discussing whether to pursue the case further.”³⁰ With the dissolution of the AIAW and the Court’s unfavourable ruling women physical educators were left with few viable alternatives. Ultimately, the governance and promotion of women’s intercollegiate athletics was relinquished to the NCAA. (See Appendix O for full legal action chronology.)

In retrospect one might argue that the AIAW may have been the recipient of weak legal advice and representation, since the conspiracy argument was featured in the plaintiff’s case, while the hard facts of gender equity and economic loss, really more plausible points of argument, were given less focus than they merited.

Twenty-Five Years after Title IX: A Reason For Concern

June 1997 marked the 25th anniversary of Title IX, the landmark legislation that prohibited sex discrimination in American educational institutions. In acknowledgment of this anniversary, *USA Today* conducted a comprehensive analysis of women’s status within NCAA Division I athletic programs.³¹ The data, upon which the *USA Today* report was based, originated from annual institutional reports submitted to the HEW by 303 NCAA Division I schools (the Citadel and Virginia Military Institute were excluded). The data from these reports were compiled and published in the *USA Today* three part series focusing on women’s participation in Division I intercollegiate athletics. The data, as presented in the report, suggested that, despite the expressed intent of the NCAA to provide men and women with comparable services and program opportunities, women’s athletic programs still fared poorly when compared to men’s programs.³²

The annual institutional reports for the 1995-96 academic year suggested that the status and role of women in Division I intercollegiate athletics has been transformed, however, these changes have occurred at an exceptionally slow rate. A total of 43,712 female student-athletes participated in Division I athletic programs in 1995-96. This was an increase of 22% over 1992 and four times the estimated number of female athletes in 1972.³³ Similar increases have also been recorded in the number of sports offered to women at the post-secondary level. In 1977-78, the academic year just prior to the Title IX mandatory

compliance date, the number of sports offered to female athletes was on average 5.61 per school. In 1988, this number had grown to 7.31, and in 1996, to 7.53 (See Appendices P, Q and R).³⁴

In order to determine if American colleges and universities were in compliance with Title IX and the HEW regulations, the Office of Civil Rights (OCR) implemented a “three-prong” test. The OCR mandated that in order for an institution to pass the test one of the following three requirements had to be satisfied: (1) substantial proportionality, (2) program expansion for women, or (3) accommodation of interests and abilities of women. Substantial proportionality was determined by comparing the number of male and female student-athletes with the number of full-time male and female members of the total student body. Institutions were assumed to be in compliance with Title IX mandates if those two ratios were relatively close.³⁵ The second requirement stated that institutions must demonstrate a concerted effort to expand their programming for the under-represented gender. Thus, institutions must show that they have either offered increased opportunities and resources over the years or that they have a plan of action in place that will increase opportunities for women. The third requirement suggested that an institution may fulfill its obligations by accommodating the interests and abilities of the under-represented gender. This may involve a thorough self-analysis, to determine if the appropriate programs are being offered.³⁶

In an attempt to aid institutions to comply with the third prong of the OCR test, the NCAA developed a gauge or survey that measured the level of interest within a student population. The goal of this survey was to determine the level of interest in intramural, club and varsity athletics.³⁷ The NCAA went on to establish a Gender Equity Task Force which stood behind Title IX legislation and advised institutions on how to comply with the law. The Task Force defined gender equity as follows: “an athletics program is gender equitable when either the men’s or women’s sports program would be pleased to accept as its own the overall program of the other gender.”³⁸ The results of the first NCAA gender equity study were published in March 1992. The study analyzed expenditures and opportunities for women’s and men’s athletics at institutions within each NCAA division.³⁹ The final report

was published in May 1993. Not surprisingly, many Title IX advocates were disappointed with the results.⁴⁰

To reinforce and encourage compliance with OCR criteria and the reporting of gender equity statistics, the U.S. Government adopted the Federal Equity in Athletics Disclosure Act of 1994 which required all coeducational institutions to compile data on men's and women's athletics.⁴¹ Specifically, each institution was required to publish an annual report which detailed statistics pertaining to finances and participation in men's and women's athletic programs. This publication was then made available for public and student inspection.⁴²

The *USA Today* report outlined the status of Division I-A, I-AA, and I-AAA institutions with regard to the OCR proportionality requirement. The *USA Today* report estimated that women constituted more than half of the total Division I undergraduate population, but they only constituted approximately one-third or 37% of student-athletes. Specifically, of the 108 NCAA Division I-A, institutions only nine schools met the proportionality test (see Table IX below). That is, the percentage of female student-athletes exceeded or were within five percentage points of the percentage of female undergraduates. Ninety-nine Division I-A institutions failed the proportionality test. Those schools recording the greatest disparity between the number of female student-athletes and female undergraduates are outlined in Table X below.⁴³

Table IX

Division I-A Institutions Meeting the OCR Proportionality Test in 1995-96

Institution	Percentage of Females		Point Difference
	Student Population	Student-Athletes	
Air Force	15%	26%	11
Navy	14%	22%	8
Army	12%	19%	7
Georgia Tech	27%	28%	1

Washington State	47%	46%	-1
Virginia Tech	41%	40%	-1
Kansas	50%	47%	-3
Utah	45%	41%	-4
Washington	50%	46%	-4

Table X

Division I-A Institutions Recording the Greatest Disparity in the Ratio of Female Undergraduates to Female Student-Athletes

Institution	Percentage of Females		Point Difference
	Student Population	Student-Athletes	
Arkansas State	57%	22%	-35
Southern Mississippi	56%	21%	-35
SW Louisiana	57%	22%	-35
Texas Christian	59%	27%	-32
Northeast Louisiana	59%	28%	-31

Of the 117 Division I-AA institutions which reported participation statistics for 1995-96, only seven met the requirements of the OCR proportionality test. Those institutions which passed the test are indicated in Table XI below. Those institutions which recorded the greatest disparity between women's athletic participation and undergraduate enrollment are indicated in Table XII below.⁴⁴

Table XI

Division I-AA Institutions Meeting the OCR Proportionality Test in 1995-96

Institution	Percentage of Females		Point Difference
	Student Population	Student-Athletes	
Dartmouth	48%	47%	-1
Lehigh	37%	36%	-1
Massachusetts	48%	46%	-2
Harvard	44%	40%	-4
Lafayette	47%	43%	-4
Montana State	44%	39%	-5
Cal Poly-SL Obispo	42%	37%	-5

Table XII

Division I-AA Institutions Recording the Greatest Disparity in the Ratio of Female Undergraduates to Female Student Athletes

Institution	Percentage of Females		Point Difference
	Student Population	Student-Athletes	
Nicholls State	61%	29%	-32
Sarnford	61%	28%	-33
Drake	59%	26%	-33
Alcorn State	61%	27%	-34
Texas Southern	60%	26%	-34

Of the 78 NCAA Division I-AAA schools, 16% met the proportionality criteria established by the OCR. In comparison, only 8% of Division I-A schools achieved the

proportionality criteria. In addition, it was estimated that approximately half of all Division I-AAA athletes were female. Richard Lapchick, director of the Centre for the Study of Sport in Society suggested that, in Division I-AAA schools which did not support men's football programs, there was less pressure on institutions to recruit athletes, foster commercialized programs, and raise revenues from athletic events.⁴⁵ Hence, females shared a greater percentage of athletic-related financial aid at I-AAA schools than at I-A schools. In fact, females received almost half of the available funding at I-AAA schools while I-A schools only allocated one-third of the funding for women's athletics. These proportions were also reflected in recruiting budgets, where women's Division I-AAA teams received 37% of the budget, but in Division I-A they only received 24%.⁴⁶

The *USA Today* report provided an overall summary of the financial status of women's athletic programs in comparison to men's programs in NCAA Division I institutions. It was found that for every dollar that was spent on women's programs, three were spent on men's college sports. Similarly, Division I women's teams received only 38% of all athletic scholarships, 27% of athletic recruiting funds and only 25% of the total athletic operating budget. Patty Viverito, chairwoman of the NCAA's Committee on Women's Athletics, agreed that with respect to participation rates "it is encouraging to see the increases for women but very discouraging to see that they are not really sharing equally in the money.... the men's side of the ledger still gets the vast amount of the money."⁴⁷ It was estimated that men's programs cost three times as much to operate as women's programs. The disparity among Division I men's and women's operating budgets are also reflected on a per-athlete basis. The following table outlines the average operating expenses for men's and women's athletic programs in each division, as well as on a per-athlete basis (See Table XIII below).⁴⁸

Table XIII
Average Division I Operating Expenses for 1995-96

Division	Average Division Operating Expense		Average Operating Expense Per Athlete	
	Male Sports	Female Sports	Male Athlete	Female Athlete
I-A	\$2,448,200	\$683,100	\$8,000	\$4,100
I-AA	\$684,100	\$292,800	\$2,400	\$2,000
I-AAA	\$340,200	\$212,200	\$2,500	\$1,900

In addition, *USA Today* calculated the average operating expenses and team size for football and men's and women's basketball programs in Division I schools (See Table XV below). Operating expenses included lodging, meals, transportation, officials, and uniforms. Equipment, scholarships, coaches salaries and recruiting costs were not included in the calculations. It is interesting to note that the average number of participants in men's and women's basketball were comparable; however the average operating expenses of the two programs were somewhat disparate.

Table XIV
Average 1995-96 Operating Expense and Team Size for Division I Football
 and Basketball Programs

Division	Athletic Program		
	Football	Men's Basketball	Women's Basketball
I-A	\$1,436,700 (114)	\$536,500 (15.6)	\$204,900 (14.4)
I-AA	\$268,000 (94.5)	\$162,800 (15.5)	\$95,500 (14.6)
I-AAA	---	\$236,200 (14.3)	\$184,800 (13.8)

With respect to the generation of revenues, Division I schools reported about \$1.8 billion in sports revenue in 1995-96. However, it reportedly cost \$2 billion to administer all Division I athletic programs. Football revenues accounted for 37% of all revenues, while women's programmatic revenues accounted for only 2% of the total. It was estimated that for every dollar generated by women's athletic teams, thirteen were generated from men's athletic teams. Appropriately, of the \$2 billion in Division I expenses, 43% went to men's programs and 20% went to women's programs (See Table XV below). Barbara Hedges, Athletic Director at the University of Washington, suggested "that there has been incredible progress in women's programs in the past 10 to 15 years, ... the interest in them has grown, and the revenue will continue to grow."⁴⁹ The following table outlines revenues and affiliated expenses for Division I athletic programs.⁵⁰

Table XV

Percentage of Total 1995-96 Division I Revenues and Expenses by Athletic Program

Athletic Program	Percentage of Total Revenues and Total Expenses	
	Revenues	Expenses
Unallocated	42%	37%
Football	37%	21%
Men's Basketball	17%	10%
Other Men's Sports	2%	12%
Other Women's Sports	1%	14%
Women's Basketball	1%	6%

The statistics have shown that, indeed, women's participation numbers have increased since the passage of Title IX and the NCAA's entrance into the women's athletic market; however, with respect to the OCR proportionality test, NCAA Division I schools have fallen short of the expected goal. Many female physical educators and leaders in the

AIAW predicted that under the jurisdiction of the NCAA women's athletics would suffer numerous depressive effects. The AIAW leadership suggested that:

the rules of intercollegiate athletic organizations are policy determinations that dictate the nature of future development. Since men's and women's athletics are at vastly different stages of development, rules appropriate for men's athletics unnecessarily restrict the development of women's athletics... The governance policies which the NCAA's structure imposes are inappropriate for women's athletics and will restrict or inhibit development of the market.⁵¹

For example, they predicted that the combination of men's and women's events would prevent the development of independent public interest, sponsors and promoters of women's events, thus relegating them to "perpetual second-class status." They further anticipated that with the reduction of sports offered and the elimination of the state-regional-national qualifying structure competitive opportunities for women would be drastically reduced not only during the regular season but in post-season competition as well. In response to these and other concerns, the NCAA assured that:

... its wealth, experience and skill at promotion, coupled with the reflected glory of its men's events, which will be co-promoted, will overcome all obstacles and take women's athletics to heights beyond AIAW's ability.⁵²

It has been almost 15 years since the NCAA's initiative into the women's intercollegiate athletic market, and 25 years since the passage of Title IX mandating the provision of equal opportunities for men and women in American intercollegiate athletics. Clearly, "the architecture of sports for girls and women in the United States has changed remarkably in the last two and a half decades,"⁵³ but the question remains: have women benefited from the NCAA's initiation and subsequent monopoly in women's intercollegiate athletics? The institutional reports submitted for the 1995-96 academic year suggested that only a small percentage (9%) of NCAA Division I Institutions were in compliance with Title IX mandates. Similarly, under the auspices of the NCAA, the average number of sports offered for women in Division I, II and III institutions has only increased by 1.28 sports.⁵⁴

Merrily Dean Baker, a previous AIAW President, argued that the evidence has shown that the "NCAA has no experience in promoting women's athletics and its skill is obviously exceeded by the AIAW's." For example, in 1981-82 the NCAA was unable to negotiate a more substantial television contract than the AIAW had negotiated in 1979-80. She argued further that:

... it is the very fact of the NCAA's wealth which disables it from effective promotion because the protection of that wealth, i.e., the male half of the NCAA's constituency, must take precedence over creation of new wealth for the female half. While the NCAA insists that men and women are indistinguishable in its scheme of governance, the realities of sex, sport, history, economics and politics stand between [their] insistence and verity. Women's athletics cannot be promoted to their benefit as NCAA would have them; they can only be kept from interfering with the promotion of men's athletics.⁵⁵

Although the NCAA claimed its actions were honorable and not intended to jeopardize the AIAW's standing in women's athletic governance, the decisions and subsequent actions of the NCAA suggested alternative self-serving motives. Determination of the NCAA's true motives was beyond the scope of this study. However, one may still speculate as to the NCAA's motives based on the evidence and arguments posed by the AIAW. There was no doubt that the NCAA's initiatives into women's athletics promoted structural and philosophical transformations that were contrary to those previously promulgated by the AIAW. Under the NCAA athletic model, women's programs were forced to surrender their uniqueness and autonomy. Within the NCAA athletic model, women's athletics seemed to serve as an adjunct rather than as a partner. As a result, progress and development in women's intercollegiate athletics was limited. Therefore, it seemed that perhaps the NCAA's hasty initiative into women's athletics was not necessarily in the best interest of women's athletic promotion, but rather satisfied the NCAA's necessity to protect the market status of men's intercollegiate athletics through dominance in American intercollegiate athletics in general.

Endnotes

1. Memorandum of Points and Authorities in Support of Renewed Motion for Preliminary Injunction, December 21, 1981, AIAWPI, HMAD, UMCP, Box #57, Folder "Renewed Motion for Injunction/Memorandum Support Motion," pp. 1, 14.

Maintenance of the status quo through preliminary injunction is 'appropriate when a serious legal question is presented when little if any harm will befall other interested persons or the public and where denial of the order would inflict irreparable injury to the movant.'

2. Ibid., p. 2. The AIAW contended that all other interested persons, i.e., institutional members of both governance organizations would also be spared "irreparable injury." If the injunction had been granted, the NCAA would not be able to carry out its previously scheduled championships, therefore those institutions planning to participate in the NCAA championships would not have an opportunity to compete. To remedy this situation, the AIAW explained that it would accommodate those institutions within its championship events. The NCAA was not required to respond to the AIAW's motion. The first NCAA women's championship was to be held on November 21, 1981.

3. Motion for Preliminary Injunction Pending Appeal or Summary Reversal, February 19, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "AIAW: February 19, 1982 U.S. Court of Appeals," pp. 3, Appendix 1-Appendix 3. On October 28, 1981 the Court issued an order setting the dates and procedures for discovery and exchange of testimony. April 9, 1982 was set as the final date for written testimony submission.

4. Op. Cit., Memorandum of Points, p. 1. See also Affidavit of Donna Lopiano, dated December 8, 1981. The circumstances which evolved following Richey's decision on October 22, 1981 included the following; (1) The NCAA proposed a number of legislative changes that would cause further erosion of the AIAW's membership and ability to function effectively, (2) NBC stipulated that any television exposure it provided for AIAW championships was conditional upon the AIAW's ability to provide a program equal in number and quality to AIAW tournaments in past years, (3) On November 23, 1981 NBC, assuming that those previously mention conditions could not be met, advised the AIAW that no further payments would be forthcoming until successful resolution of their case was confirmed. (21.4% of the AIAW operating budget in 1981-1982 was dependent upon receipt of NBC's fee submission.)

5. Ibid., Affidavit of Donna Lopiano. If the AIAW's motion was not granted the AIAW Executive Committee would recommend to the January 1982 meeting of the Executive Board that: (1) renewal applications for 1982-83 membership not be distributed; (2) as of March 1, 1982 all AIAW members were relieved of their obligations under the AIAW rules on recruitment and adherence to the provisions outlined in the AIAW Letter of Intent. AIAW could then commence issuance of athletic scholarship commitments to prospective student-athletes; (3) on of March 1, 1982 a notice was to be distributed to the membership regarding a special convention to consider a motion for dissolution of the AIAW.

6. Status Call Proceedings, December 23, 1981, AIAWPI, HMAD, UMCP, Box #57, Folder "Richey: December 23, 1981 Order NCAA Response," p. 18.
7. Ibid., Polivy clarified that they were not asking for a summary judgement, but rather a preliminary injunction. Richey responded: "I heard you, I know what you said." That same day the Court's decision regarding NCAA non-response to the AIAW motion was reconsidered. The NCAA was instructed to respond to the Renewed motion by January 12, 1982.
8. Order, February 19, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "AIAW: February 19, 1982 U.S. Court of Appeals."
9. Op. Cit., Motion for Preliminary Injunction, p.4. It was the opinion of the plaintiff-appellant that with respect to the first three criteria, the court's reasoning was groundless within the scope of the law. Further, the plaintiff-appellant asserted that "no reason was given for the holding of irreparable injury, despite the court's apparent belief that the plaintiff-appellant would go out of business absent the requested relief."
10. AIAW Press Release, February 18, 1982, AIAWPI, HMAD, UMCP, Box #68, Folder "Press Releases 1981-82."
11. Order, February 26, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "AIAW: February 26, 1982 Appeal Denial."
12. AIAW vs. NCAA Legal Action Chronology, June 8, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "AIAW vs. NCAA Legal Action Chronology, October-June 1982," p. 3. See Appendix O for the full chronology, which outlines specific dates for submissions, depositions, memoranda and court proceedings.
13. Settlement Proposal to NCAA from AIAW, April 5, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "AIAW: Settlement Proposal April 5, 1982." The proposal was upon six assumptions: (1) that men's and women's athletics were at different developmental stages in virtually all respects, including spectator interest and opportunities for participation, and each should be accommodated to the fullest extent possible; (2) applicable law (i.e., Title IX,) does not require a single governing body for men's and women's intercollegiate athletic programs within individual institutions; (3) those areas which required commonality of rules (i.e., eligibility, financial aid, recruitment and enforcement,) could have been identified through a process of joint discussion and mutual agreement; (4) both associations should jointly recommend to their members approval of actions in the best interests of intercollegiate athletics; (5) institutional control does not preclude institutional designation of different individuals to serve as representatives for men's and women's athletic programs; and (6) intercollegiate athletic associations should be governed by the democratically selected leadership.
14. Ibid., p. 3.

15. Ibid., pp. 3-6. The purposes of the joint board were:
 (a) to provide an ongoing mechanism for synthesizing the interests of men's and women's intercollegiate athletics and to provide for the direct involvement of institutional chief executive officers selected by CEO's themselves; (b) to ensure compatibility of rules applicable to male and female student-athletes and the administration of men's and women's intercollegiate athletic programs; (c) to provide an established mechanism for the resolution of conflicts that may arise between the autonomous structures of men's and women's intercollegiate athletics.
16. Op. Cit., Legal Action Chronology, p. 4. The NCAA's response to the AIAW proposal was not available in the AIAW archives.
17. Ann G. Uhler, "The Wolf is Our Shepard: Shall We Not Fear?," Phi Delta Kappan, 64, November 1982, p. 175; Op. Cit., Status Call Proceedings, February 18, 1982, p. 24.
18. Decision and Order, February 25, 1983, AIAWPI, HMAD, UMCP, Box #380, Folder "AIAW vs. NCAA Decision and Order," p. 24. The plaintiff also alleged a similar violation of Section 3 "which prohibited conspiracies in restraint of trade or between U.S. Territories and the District of Columbia."
19. NBC, while unsuccessful in its bid for the NCAA championships, might have been expected to buy the AIAW's alternative. However, NBC was apparently not willing to pay any price for their events.
20. Op. Cit., Decision and Order, pp. 28-9. The evidence showed that the NCAA formally inquired about television network interest in the rights for men's championships in December 1980. There was no mention of the women's championships at that time. In mid-February, 1981, CBS and NBC both received a list of 23 "conditions" to which they were asked to respond. Two of the "conditions" asked the networks to state the "rights fee" they would be willing to pay for other NCAA events, i.e., other men's and women's championships and the women's NCAA Division I basketball championship game (final round). Both networks alleged that they felt obliged to respond to all of the NCAA conditions, hence the inclusion of a rights fee for women's basketball. Neither network was ever expressly told that coverage of the single women's event was "*sine qua non*" of a contract for the men's championships. Further, both networks claimed that the women's bid was not a significant aspect of the overall negotiations. The NCAA, of course, insisted that the men's and women's events were completely unrelated.
21. Ibid., p. 29. The AIAW had charged the NCAA as "a unitary monopolist", however, the court concluded, based on the fact that the AIAW had 207 more members and offered 12 more championships in 7 more sports than the NCAA, that the plaintiff's claim under Section 2 had to be treated as an "attempted monopoly."
22. Ibid., pp. 31-2.

23. Ibid., pp. 33-9.

24. Ibid., p. 40. Approximately 90 percent of the NCAA members attending the Convention were also members of the AIAW. Many members were skeptical of the NCAA's plan because of strong opposition from the AIAW.

25. Ibid., p. 41.

26. Ibid., p. 44.

27. Ibid. "A competitor who claims to have been the victim of a monopolist's anti-competitive conduct must prove his injury to have resulted from that conduct, and not from the fact of competition alone,...., of the purpose of the antitrust laws is and has always been the protection of competition, not competitors."

28. Decision and Order, February 25, 1983, AIAWPI, HMAD, UMCP, Box #380, Folder "AIAW vs. NCAA Decision and Order," p. 46.

29. Cheryl M. Fields, "Appeals Court Rejects Charge that NCAA Forced Women's Group out of Business," *Chronicle of Higher Education*, May 1984, pp. 27-8. The circuit court provided further justifications for their decision. The AIAW had suggested, through the testimony of several institutional representative, that institutions moved to the NCAA because they feared "bucking" the NCAA leadership. The circuit court stated that this testimony did not prove that the NCAA "provided irresistible economic inducements" to persuade members to shift their women's teams to the NCAA program. "Moreover, several witness for the defendant indicated that their institutions participated in the NCAA championships, not to receive the alleged irresistible economic inducements, but rather because the NCAA offered a superior product," the appeals court said.

The circuit court also upheld the NCAA's contentions that its decision to allow its members to enter both men's and women's programs without the burden of extra dues in the first year was not monopolistic. The court said that "the dues policy did not require NCAA members to enroll their women's programs in the NCAA events or penalize them for not doing so."

30. Ibid.

31. Erik Brady and Tom Witosky, "Title IX Improves Women's Participation," *USA Today*, March 3, 1997, pp. 4C-9C. The statistics compiled by USA Today originated from annual institutional reports from Division I schools in the United States. *USA Today* addressed the issue of gender equality in a 1995 issue, where 94 of the 107 NCAA Division I-A schools disclosed participation numbers.

32. Debbie Becker and Tom Witosky, "Women Make Gains Against College Curve," *USA Today*, March 4, 1997, p. 1-C.

33. Erik Brady, "Colleges Score Low on Gender-Equity Test," *USA Today*, March 3, 1997, p. 1-C. The fastest growing sports in women's athletics were waterpolo, soccer, skiing, rowing/crew, rifle/pistol. Twenty-five women participated in waterpolo in 1991-92, that number increased to 217 in 1995-96, an increase of 766%. In soccer the number of female participants doubled between 1991-92 and 1995-96. The same trend carried over into skiing and rowing/crew. Rifle/ pistol shooting experienced an increase of 65% between 1991-92 and 1995-96.
34. R. Vivian Acosta and Linda Jean Carpenter, "Women in Intercollegiate Sport: A Longitudinal Study-Nineteen Year Update, 1977-1996," Department of Physical Education, Brooklyn College, Brooklyn, New York, p. 3.
35. David Salter, "Crashing the Old Boy's Network: The Tragedies and Triumphs of Girls and Women in Sports," in Westport: Praeger Publishers, (1996), pp. 56-7. The average NCAA institution has a ratio of approximately 66 percent male student-athletes to 33 percent female student-athletes compared to the average student body ratio of 50-50. Thus most NCAA institutions fail compliance in this area.
36. Ibid. In 1995, approximately twenty years after the passage of Title IX, the controversy surrounding the inclusion of revenue-producing sports is still debated in the courts. At the bequest of college football coaches and coaches of non-revenue producing men's sports, Congressional hearings were held to determine, once again, the appropriateness and fairness of Title IX and the "three-prong" test implemented by the OCR. It was the contention of these coaches and members of the College Football Association (CFA) that the first portion of the test ("proportionality") lacked clarity and guidelines for compliance. Unfortunately, opponents of the OCR test focus exclusively on the proportionality aspect, instead of accommodating the OCR test through efforts to develop new women's teams or programs. See also: Erik Brady and Tom Witosky, "Title IX Improves Women's Participation," *USA Today* (March 3 1997) pp. 4C-9C.
37. Ibid. This research tool was tested at various institutions that represent each of the NCAA classifications: Long Beach State University in California, North Dakota State, Washburn University of Topeka, and the University of Wisconsin-LaCrosse.
38. Ibid. The committee was comprised of twenty-four people from various NCAA disciplines and consultants from outside sources.
39. Sally Huggins, "Title IX Ticker: Institutions Must Make Gender-Equity Data Available," *The NCAA News*, (October 1996), pp. 5,16.
40. Op. Cit., Salter, p. 60.
41. Op. Cit., Brady and Witosky, "Title IX," p. 4C. The Act does not specify what form or accounting procedures must be used by institutions. Hence, discrepancies on how expenses are divided and the reflection of revenues may vary from school to school and year to year.

42. Op. Cit., Huggins, p. 16. Institutions are provided with worksheets to collect the data on a sport-by-sport basis. The results are then compiled in an aggregate form and transferred to tables as outlined in the Athletics Disclosure Act. The information is forwarded to the NCAA and results from all institutions are shown in aggregate form without institutional identification.
43. Op. Cit., Brady and Witosky, "Title IX Improves," p. 4C.
44. Debbie Becker and Tom Witosky, "Crew, Soccer Help Schools Close Gender Gap," *USA Today*, March 4, 1997, p. 6C.
45. Tanya Albert, "I-AAA Women Get Bigger Cut of Budget," *USA Today*, March 5, 1997, p. 9C.
46. Ibid. Statistics regarding financial budget distributions of Division I-AA institutions were not published in the *USA Today* Report.
47. Op. Cit., Brady and Witosky, "Title IX Improves," p. 4C.
48. Ibid.
49. Tanya Albert, "Women's Programs Show Revenue Gains," *USA Today*, March 4, 1997, p. 6C. The University of Washington was one of the seven women's basketball programs reporting a profit in 1995-96. Connecticut was at the top with revenues of nearly \$1.4 million and expenses of \$980,000.
50. Ibid. Unallocated revenues included donations and student fees and unallocated expenses were administrative/overhead.
51. Op. Cit., Pretrial Brief, p. 108.
52. Op. Cit., Testimony of Merrily Dean Baker, p. 7.
53. Op. Cit., Acosta and Carpenter, p. 2.
54. Ibid., p. 3. See Appendix P.
55. Ibid.

APPENDIX A

NCAA Constitution, Article I

Constitution I

Page 7

Section 2-2-(a)

*Constitution and Interpretations of
The National Collegiate Athletic Association*

[Note: The NCAA Council is empowered, in the interim between Conventions, to make interpretations of the constitution and bylaws. Those interpretations are presented in the Constitution and Bylaws Case Book, beginning on page 205. Each such interpretation is cross-referenced in brackets at the end of the paragraph it interprets within the constitution and bylaws.]

ARTICLE ONE

NAME

The name of this organization shall be "The National Collegiate Athletic Association."

ARTICLE TWO

PURPOSES AND FUNDAMENTAL POLICY

Section 1. Purposes. The purposes of this Association are:

- (a) To initiate, stimulate and improve intercollegiate athletic programs for student-athletes and to promote and develop educational leadership, physical fitness, sports participation as a recreational pursuit and athletic excellence;
- (b) To uphold the principle of institutional control of, and responsibility for, all intercollegiate sports in conformity with the constitution and bylaws of this Association;
- (c) To encourage its members to adopt eligibility rules to comply with satisfactory standards of scholarship, sportsmanship and amateurism;
- (d) To formulate, copyright and publish rules of play governing intercollegiate sports;
- (e) To preserve intercollegiate athletic records;
- (f) To supervise the conduct of, and to establish eligibility standards for, regional and national athletic events under the auspices of this Association;
- (g) To cooperate with other amateur athletic organizations in promoting and conducting national and international athletic events;
- (h) To legislate, through bylaws or by resolution of a Convention, upon any subject of general concern to the members in the administration of intercollegiate athletics; and
- (i) To study in general all phases of competitive intercollegiate athletics and establish standards whereby the colleges and universities of the United States can maintain their athletic activities on a high level.

Section 2. Fundamental Policy. (a) The competitive athletic programs of the colleges are designed to be a vital part of the educational system. A basic purpose of this Association is to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing,

APPENDIX B

AIAW Articles of Incorporation

ARTICLE I
Name

The name of the corporation is the ASSOCIATION FOR INTER-COLLEGIATE ATHLETICS FOR WOMEN.

ARTICLE II
Duration

The period of its duration is perpetual.

ARTICLE III
Purposes

The purposes for which the Corporation (hereinafter also referred to as "AIAW"), is organized are as follows:

- A. To operate exclusively for educational and charitable purposes.
- B. To exercise all the powers conferred upon corporations under the District of Columbia Non-profit Corporation Act in order to accomplish the corporation's educational and charitable purposes, including, but not limited to the power to accept donations of money or property, whether real or personal, or any interest therein, wherever situated.
- C. Further the purposes of the AIAW shall be:
 1. To foster broad programs of women's intercollegiate athletics which are consistent with the educational aims and objectives of the member schools and in accordance with the philosophy and standards of the NAGWS.
 2. To assist member schools in extending and enriching their programs of intercollegiate athletics for women based upon the needs, interests, and capacities of the individual student.
 3. To stimulate the development of quality leadership for women's intercollegiate athletic programs.
 4. To foster programs which will encourage excellence in performance of participants in women's intercollegiate athletics.
 5. To maintain the spirit of play within competitive sport events so that the concomitant educational values of such an experience are emphasized.
 6. To increase public understanding and appreciation of the importance and value of sports and athletics as they contribute to the enrichment of the life of the woman.
 7. To encourage and facilitate research on the effects of intercollegiate athletics on women and to disseminate the findings.
 8. To further the continual evaluation of standards and policies for participants and programs.
 9. To produce and distribute such materials as will be of assistance to persons in development and improvement of intercollegiate programs.
 10. To hold national championships and to sponsor conferences, institutes, and meetings which will meet the needs of individuals in member schools.
 11. To cooperate with other professional groups of similar interests for the ultimate development of sports programs and opportunities for women.
 12. To provide direction and maintain a relationship with AIAW state and regional organizations.
 13. To conduct such other activities as shall be approved by the Executive Board and/or the Delegate Assembly. Provided that the AIAW shall not engage in any activity which would be inconsistent with the status of an educational and charitable organization as defined in Section 501(c)(3) of the Internal Revenue Code of 1954 or any successor provision thereto, and none of the said purposes shall at any time be deemed or construed to be purposes other than the public benefit purposes objectives consistent with such educational and charitable status.

ARTICLE IV
Membership

The AIAW shall be a corporation without stockholders but it shall have members. The classes of members, the qualifications and number of the members of each class shall be determined in accordance with the Bylaws. The right of members to vote shall be determined in accordance with the Bylaws.

ARTICLE V
Governing Authority

The affairs and property of the AIAW shall be managed by an Executive Board that shall act as AIAW's board of directors. AIAW shall be governed by a Delegate Assembly. The composition of the Executive Board and Delegate Assembly, the qualifications and the method of selection of their members, and their respective powers or duties shall be set forth in the Bylaws. The initial board of directors was composed of the 1979-1980 AIAW Executive Board constituted in July, 1979.

ARTICLE VI
Officers

The AIAW shall have officers as designated in the Bylaws. The qualifications of officers, the method of their selection, and their respective powers and duties shall be set forth in the Bylaws.

ARTICLE VII
Bylaws

The AIAW shall adopt Bylaws not inconsistent herewith which may be amended as therein provided and which may contain provisions permissible under the laws of the District of Columbia which may be divisible into two or more parts with separate sub-sections or designations.

ARTICLE VIII
Powers

The AIAW shall have the following powers subject to any restrictions herein set forth:

1. To have perpetual succession by its corporate name.
2. To sue and be sued, complain and defend, in its corporate name.
3. To have a corporate seal which may be altered at pleasure and use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.
4. To purchase, take, receive, lease, take by gift, devise, bequest, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.
5. To sell, convey, mortgage, pledge, lease, exchange, transfer or otherwise dispose of all or any part of its property and assets.
6. To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals or direct or indirect obligations of the United States, or of any other government, state, territorial, governmental district, or municipality, or of any instrument or contract thereof.
7. To make contracts and incur liabilities, borrow money at rates of interest as the corporation may determine, issue its bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchise income.

APPENDIX C

AIAW National Championships, 1972-1981

1972-73

Badminton
Basketball
Golf
Gymnastics
Swimming and Diving
Track and Field
Volleyball

1973-74

Badminton
Basketball
Golf
Gymnastics
Swimming and Diving
Track and Field
Volleyball

1974-75

Badminton
Basketball
Golf
Gymnastics
Swimming and Diving
Track and Field
Volleyball

1975-76

Badminton	
Basketball	2 Divisions
Cross Country	
Field Hockey	
Golf	
Gymnastics	
Swimming and Diving	
Track and Field	
Volleyball	2 Divisions

1976-77

Badminton	
Basketball	2 Divisions
Cross Country	
Field Hockey	
Golf	
Gymnastics	
Snow Skiing	
Softball (Fast Pitch)	
Swimming and Diving	2 Divisions
Synchronized Swimming	
Tennis	2 Divisions
Track and Field	
Volleyball	2 Divisions

1977-78

Badminton	
Basketball	2 Divisions
Cross Country	
Field Hockey	

1977-78 (cont'd)

Golf	
Gymnastics	2 Divisions
Snow Skiing	
Softball (Fast Pitch)	
Swimming and Diving	2 Divisions
Synchronized Swimming	
Tennis	2 Divisions
Track and Field	
Volleyball	2 Divisions

1978-79

Badminton	
Basketball	2 Divisions
Cross Country	
Field Hockey	
Golf	
Gymnastics	2 Divisions
Snow Skiing	
Softball (Fast Pitch)	
Swimming and Diving	2 Divisions
Synchronized Swimming	
Tennis	2 Divisions
Track and Field	
Volleyball	2 Divisions

1979-80

Badminton	
Basketball	3 Divisions
Cross Country	3 Divisions
Field Hockey	3 Divisions
Golf	
Gymnastics	3 Divisions
Indoor Track and Field	
Snow Skiing	
Softball (Fast Pitch)	3 Divisions
Swimming and Diving	3 Divisions
Synchronized Swimming	
Tennis	3 Divisions
Track and Field	
Volleyball	3 Divisions

1980-81

Badminton	
Basketball	3 Divisions
Cross Country	3 Divisions
Fencing	
Field Hockey	3 Divisions
Golf	3 Divisions
Gymnastics	3 Divisions
Indoor Track and Field	
Lacrosse	3 Divisions
Snow Skiing	
Softball (Fast Pitch)	3 Divisions
Softball (Slow Pitch)	
Swimming and Diving	3 Divisions
Synchronized Swimming	
Tennis	3 Divisions
Track and Field	3 Divisions
Volleyball	3 Divisions

1981-82

Badminton	
Basketball	3 Divisions
Crew	
Cross Country	3 Divisions
Fencing	
Field Hockey	3 Divisions
Golf	3 Divisions
Gymnastics	3 Divisions
Indoor Track and Field	
Lacrosse	3 Divisions
Snow Skiing	
Soccer	
Softball (Fast Pitch)	3 Divisions
Softball (Slow Pitch)	
Swimming and Diving	3 Divisions
Synchronized Swimming	
Tennis	3 Divisions
Track and Field	3 Divisions
Volleyball	3 Divisions

basketball is that the home team will wear the lighter colored uniforms;

Now, Therefore, Be It Resolved, that the 69th annual Convention of the National Collegiate Athletic Association and its allied and affiliated organizations here assembled endorses this Resolution as an open letter to Lee Williams, director, and the trustees of the Naismith Hall of Fame to examine the criteria that thus far have resulted in not selecting an individual black player or coach in those categories in the Basketball Hall of Fame.

Source: Alcorn State University; Florida A&M University; Hampton Institute; Howard University; Morgan State University; Morris Brown College; Tennessee State University; Texas Southern University; University of Arkansas, Pine Bluff; Virginia State College.

Action: Withdrawn.

NO. 167 RESOLUTION: TICKETS

Be It Resolved, that no tickets, whether complimentary to the student-athlete or purchased by him, shall be given directly to the student-athlete.

Be It Finally Resolved, that all such tickets shall be dispersed only as follows: (1) to persons designated by the student-athlete, and who have identified themselves and signed a receipt therefor, and (2) to persons who shall receive such tickets only on the day of the contest at the ticket gate.

Source: University of Arkansas, Fayetteville.

Action: Approved by voice vote.

NO. 168 RESOLUTION: WOMEN'S INTERCOLLEGIATE ATHLETICS

Whereas, this Association has taken an active interest in the development of women's intercollegiate athletics since 1963; and

Whereas, developments in the field of equal rights—as to legal requirements and society's needs—now pose serious demands upon the NCAA as an organization; and

Whereas, the Association's legal counsel has consistently reminded the NCAA Council that

- (1) The Association's rules and the obligations of institutional membership relate to all varsity intercollegiate sports and do not differentiate between men and women; and
- (2) the Association is facing legal obligation to offer services and programs to women student-athletes as they do for men; and

Whereas, each member institution has had these influences and requirements visited upon it at the institutional level and now the Association, itself, must move to adjust its concepts and programs to meet the demands of today's society and today's law;

Now, Therefore, Be It Resolved, that the NCAA Council prepare a comprehensive report and plan on the several issues involved in the administration of women's intercollegiate athletics at the national level in light of existing court decisions, anticipated regulations implementing Title IX of the Educational Amendments of 1972 and

present developments in women's intercollegiate athletics;

Be It Further Resolved, that the report and plan of the Council be circulated to all members not later than May 1, 1975, and, after soliciting and receiving the membership's comments, then the Council prepare whatever proposals it believes necessary and desirable for consideration by the 1976 NCAA Convention;

Be It Finally Resolved, that the Council include in its report whether the Council believes it would be desirable or legally necessary for national championships to be conducted by the Association for female student-athletes either on an integrated or segregated basis, and that the Council direct its Special Committee on Women's Intercollegiate Athletics to determine if it is advisable to conduct pilot programs for women's national championships as a part of development of a final proposal for consideration by the membership, it being understood that no such pilot program shall be conducted during this academic year.

Source: NCAA Council.

Action: Motion to table defeated by voice vote. Motion to consider final paragraph separately defeated by show of paddles. Motion to refer to Council defeated by voice vote. Proposal 168 defeated by voice vote.

NO. 169 RESOLUTION: WOMEN'S INTERCOLLEGIATE ATHLETICS

Whereas, this Association has taken an active interest in the development of women's intercollegiate athletics since 1963; and

Whereas, developments in the field of equal rights—as to legal requirements and society's needs—now pose serious demands upon the NCAA as an organization; and

Whereas, the Association's legal counsel has consistently reminded the NCAA Council that

- (1) the Association's rules and the obligations of institutional membership relate to all varsity intercollegiate sports and do not differentiate between men and women; and
- (2) the Association is facing legal obligation to offer services and programs to women student-athletes as it does for men; and

Whereas, each member institution has had these influences and requirements visited upon it at the institutional level and now the Association, itself, must move to adjust its concepts and programs to meet the demands of today's society and today's law;

Now, Therefore, Be It Resolved, that the NCAA Council prepare a comprehensive report and plan on the several issues involved in the administration of women's intercollegiate athletics at the national level in light of existing court decisions, anticipated regulations implementing Title IX of the Educational Amendments of 1972 and present developments in women's intercollegiate athletics;

Be It Further Resolved, that the report and plan of the Council be circulated to all members of the NCAA and the Association of Intercollegiate Athletics for Women not later than May 1, 1975, and, after soliciting and receiving the memberships' comments, a joint committee of both the NCAA and AIAW shall make recommendations

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Be It Finally Resolved, that the Council include in its report whether the Council believes it would be desirable or legally necessary for national championships to be conducted by the Association for female student-athletes either on an integrated or segregated basis, and that the Council direct its Special Committee on Women's Intercollegiate Athletics to determine if it is advisable to conduct pilot programs for women's national championships as a part of development of a final proposal for consideration by the membership, it being understood that no such pilot program shall be conducted during this academic year.

Source: California State University, Long Beach.
Action: Approved by voice vote.

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69th ANNUAL CONVENTION

Nominating Committee

Chairman—Ralph E. Fadum

District 1—Ross H. Smith, Massachusetts Institute of Technology
District 2—John R. Eller, East Stroudsburg State College
District 3—Ralph E. Fadum, North Carolina State University
District 4—William D. Rohr, Ohio University
District 5—Stanley J. Marshall, South Dakota State University
District 6—Harold Jeskey, Southern Methodist University
District 7—Harry E. Troxell, Colorado State University
District 8—O. Kenneth Karr, San Diego State University
At-Large—Cecil N. Coleman, University of Illinois, Champaign
At-Large—H. Boyd McWhorter, Southeastern Conference
At-Large—John A. Pitsch, Grinnell College
At-Large—Joe L. Singleton, University of California, Davis

Committee on Committees

Chairman—James B. Higgins

District 1—Ferdinand A. Gelger, Brown University
District 2—William P. Dioguardi, Montclair State College
District 3—Eugene F. Corrigan, University of Virginia
District 4—J. Edward Weaver, Ohio State University
District 5—Richard G. Koppenhaver, North Central Conference
District 6—James B. Higgins, Lamar University
District 7—Fritz S. Brennecke, Colorado School of Mines
District 8—Cedric W. Dempsey, University of the Pacific
At-Large—Edwin B. Crowder, University of Colorado
At-Large—Capt. Otto Graham, U.S. Coast Guard Academy
At-Large—George H. Hobson, Alabama A&M University
At-Large—Vannette W. Johnson, University of Arkansas, Pine Bluff

Committee on Voting

Chairman—H. Boyd McWhorter

District 1—Russ Granger, Clark University
District 2—David B. Evenson, Dickinson College
District 3—Richard T. Bowers, University of South Florida
District 4—Leo VanderBeek, Western Michigan University
District 5—Aldo A. Sobben, Southwest Missouri State University
District 6—Marino H. Casem, Alcorn State University
District 7—Fritz S. Brennecke, Colorado School of Mines
District 8—Donald Warhurst, California State Polytechnic University, Pomona
At-Large—H. Boyd McWhorter, Southeastern Conference

APPENDIX E

Excerpt from 1976 NCAA Convention Proceedings

Appendix D

RESOLUTIONS ON WOMEN'S ATHLETICS

(Note: The following resolutions concerning women's intercollegiate athletics were prepared by the NCAA Council for consideration by the 70th Convention in compliance with the wishes of the 69th Convention which passed a resolution directing that "the Council prepare whatever proposals it believes necessary and desirable for consideration by the 1976 NCAA Convention." Votes were by show of paddles unless otherwise indicated.)

NO. 325 RESOLUTION: APPLICATION OF NCAA RULES
 WHEREAS, by resolution adopted by the 69th NCAA Convention January 8, 1975, this Association directed the NCAA Council to address the questions of rules administration and competitive athletic opportunities for women student-athletes and asked the Council to prepare proposals it believes necessary and desirable to this end; and
 WHEREAS, the Council has concluded that preliminary to the preparation of specific plans and proposals, it is essential that a formal conclusion be reached as to the applicability of NCAA governing legislation to the varsity intercollegiate athletic teams of member institutions, including such teams made up of female student-athletes; and
 WHEREAS, the Constitution and Bylaws by their terms purport to regulate intercollegiate athletics generally among the members and make no distinctions or exceptions based upon sex; and
 WHEREAS, the Council has been advised by legal counsel that an affirmative act by amendment or interpretation of the NCAA Constitution and Bylaws to exclude or exempt women's varsity intercollegiate athletics would be invalid, and the Council believes that such an act would be inimical to the Association's ability to meet its present obligations;

Now, THEREFORE, Be It Resolved:

1. That it is in the best interest of the intercollegiate varsity athletic programs of NCAA member institutions that rules be applied equally to the student-athletes who compete in those programs and the institutional employees responsible for those programs and effective September 1, 1977, the then applicable governing legislation of this Association shall be so applied, regardless as to whether the student-athletes and employees be male or female;
2. That "varsity intercollegiate athletic programs" are defined as those programs conducted by a member institution in which it designates a team or individual to represent it in varsity intercollegiate competition in a sport recognized by the Association; i.e., a sport in which the NCAA maintains a championship event for either male or female student-athletes, or both;
3. That this resolution in no way affects the present application of NCAA rules to those varsity intercollegiate teams and programs (and those persons responsible for said programs) in which male student-athletes are participating (see Case No. 1, page 209, 1975-76 NCAA Manual) or an exclusively female team or program in a sport designated by the institution to fulfill the four-sport requirement for NCAA membership (see Case No. 129, page 242, 1975-76 NCAA Manual).

Sources: NCAA Council.

Action: Referred to NCAA Council for further study and consideration.

NO. 326 RESOLUTION: CHAMPIONSHIPS

WHEREAS, it is the policy of this Association to encourage the adoption of programs which will provide opportunities for female student-athletes to participate in intercollegiate athletics; and

WHEREAS, the Association stands ready to establish championship meets and tournaments for teams composed exclusively of female student-athletes;

WHEREAS, the Association for Intercollegiate Athletics for Women (AIAW) now provides national championship meets and tournaments in 11 sports for exclusively female student-athlete teams and participants, and has clearly indicated its opposition to any action by this Association to establish championship events exclusively for female student-athletes;

WHEREAS, the extent of programs for female student-athletes now existing among the members may not be sufficient to warrant additional championship events at this time beyond those now provided by the AIAW; and

WHEREAS, the Association will continue to develop plans to provide opportunities for mixed competition of male and female student-athletes which now occurs occasionally in the Association's existing championship meets and tournaments,

Now, THEREFORE, Be It Resolved, that no championship meets or tournaments for exclusively female student-athlete participation shall be established by this Association for any season prior to the 1977-78 academic year, and thereafter as determined by the Association at the 71st Annual Convention.

Sources: NCAA Council.

Action: Tabled.

NO. 327 RESOLUTION: COMMITTEE AND STUDY PROGRAM

Be It Resolved that the 70th Annual NCAA Convention establish a committee on women's intercollegiate athletics to be composed of nine persons, with at least one representative from each of the eight NCAA districts and with at least two representatives from institutions holding membership in each of the three divisions of the Association;

Be It Further Resolved, that the Council shall appoint the committee for 1976 and also shall prepare the necessary amendment to the Bylaws for submission to the 71st NCAA Convention so that this committee will become one of the standing committees of the Association;

Be It Further Resolved, that this committee shall be responsible for keeping the membership informed of developments in women's intercollegiate athletics and the legal and societal obligations of the NCAA in this area of activity;

Be It Finally Resolved, that the committee or a subcommittee designated by it, shall continue during 1970 the discussions and study projects initiated by the 1975 Joint Committee of the AIAW and NCAA as described in the NCAA Council's report of December 3, 1975, with priority being given to an analysis of the governing legislation of the respective organizations and recommendations as to the steps each organization might take to bring the rules of the AIAW and NCAA more closely together.

Source: NCAA Council.

Action: Approved.

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Appendix E

AMENDMENTS TO AMENDMENTS AND OTHER PROPOSALS

[Note: The following amendments to amendments and other proposals were presented at the 70th Annual Convention. In the amendments to amendments, those letters and words which appear in *italics* are to be deleted; and those letter and words which appear in **bold face** are to be added. All page numbers listed refer to pages in appendices in this book containing proposals and supporting information which were considered by the Convention. All votes were by show of paddles unless otherwise indicated. Only those proposed amendments to amendments upon which the 70th Convention took some action appear in this appendix.]

NO. 100-1 DETERMINATION OF FINANCIAL NEED

Bylaws: Amend Proposal No. 100-B, page A-42, as follows:

"(e) The Council shall approve a form (see Appendix I) to secure information needed to make the calculation of the Expected Family Contribution. The form shall permit explanation of extraordinary situations which the student wishes considered in the calculation. The form shall be submitted to the NCAA, or its NCAA's designated agent, which shall determine the Expected Family Contribution and advise the student of the figure thus established. The figure shall be revealed to such member institutions as the student directs, and such institutions may offer or award aid as provided above in accordance with the stated figure.

"(f) The information in the form shall be kept confidential by the NCAA, or its NCAA's designated agent, except to the extent that the information may be material to questions of violation of NCAA requirements."

(All other paragraphs remain unchanged.)

Source: Pacific-8 Conference.

Action: Defeated by Division I, 102-121, and by Divisions II and III.

NO. 100-2 RESOLUTION: DETERMINATION OF FINANCIAL NEED

"WHEREAS, it has been proposed that this Association adopt a system of financial aid to student-athletes based on need, and

"WHEREAS, one of the principal goals of adoption of any such system is to reduce institutional athletic expenditures, and

"WHEREAS, there is uncertainty as to the extent to which athletic expenditures would be reduced by installation of the need system,

"Now, THEREFORE, BE IT RESOLVED THAT:

"1. Consideration of legislation designed to adopt a need system of financial aid to student-athletes be deferred until the 71st Annual Convention;

"2. Each active member of the Association making any initial award in 1970 of financial aid not based on need to one or more

Southern California; Stanford University; University of Washington; Washington State University.

Intent: To establish a maximum amount (\$800) for tuition and fees in the equivalency computational method and to permit member institutions to subsidize any tuition over the amount without the subsidy being counted in the equivalency calculation. [See Appendix B for examples of the equivalency calculation.]

Effective Date: Immediately; for those student-athletes first entering member institutions in the opening term (semester or quarter) of the 1979-80 academic year and for all renewals of financial aid applicable to that term.

Action: Defeated by Divisions I and II.

NO. 83 MAXIMUM AWARDS-ICE HOCKEY

Bylaws: Amend Article 5, Section 5, pages 75-77, by adding new paragraph (i), as follows:

[Divided bylaw, Divisions I and II, divided vote]

"(i) When a student-athlete in the sport of ice hockey joins his nation's Olympic hockey team, his financial aid award shall be considered vacated and shall be available for immediate award to another student-athlete in that sport without counting as an additional award under the provisions of Bylaws 5-5(b) and (f). Upon re-enrollment of the student-athlete, his award may be renewed without counting in the award limitations in ice hockey set forth in Bylaws 5-5(b) and (f)."

Source: Colorado College; University of Minnesota, Duluth; University of Denver; Michigan Technological University; Michigan State University; University of Minnesota, Twin Cities.

Intent: To exempt from the ice hockey award limitations in Divisions I and II an award realigned when a student-athlete leaves the institution to join his nation's Olympic hockey team and the award granted to that student-athlete when he re-enrolls at the institution.

Effective Date: Immediately.

Action: Defeated by Divisions I and II.

Championships

NO. 84 TERMINAL CHAMPIONSHIPS

A. Executive Regulations: Amend Regulation 2, Section 2, pages 113-114, by deleting paragraph (c) and subparagraphs (1) through (7), as follows:

[All divisions, common vote]

"(c) Division II and Division III institutions may enter student-athletes in National Collegiate (Division I) Championship meets and tournaments, provided the

institution and individuals meet the prevailing eligibility requirements and the following individual criteria of successful performance in the particular Division II or Division III championships:

"(1) Cross Country—first six finishers in Division II and first four finishers in Division III.

"(2) Golf—first four finishers in Division II and first two finishers in Division III. In the event of a tie for any of these positions, a sudden-death playoff shall be held immediately to determine which athletes may advance.

"(3) Gymnastics—first two finishers in each event and first two finishers in all-around competition in Division II.

"(4) Swimming—first four finishers in each Division II event and first two finishers in each Division III event, provided they meet the minimum performance standards established by the Swimming Committee.

"(5) Tennis—first four finishers in singles and first four finishers in doubles in Division II, and first two finishers in singles and first two finishers in doubles in Division III.

"(6) Outdoor Track—first four finishers in each Division II event and first two finishers in each Division III event, provided they meet the minimum performance standards established by the Track and Field Committee.

"(7) Wrestling—champion in each weight classification in Division II and Division III, plus additional at-large selections from the respective tournaments as may be recommended annually by the Wrestling Committee and approved by the Executive Committee."

B. Bylaws: Amend Article 8, Section 6, page 89, by deleting paragraph (d), as follows:

[Common bylaw, all divisions, divided vote]

"(d) Student-athletes from members of Division II or Division III who seek to compete in the National Collegiate Championships in accordance with the provisions of Executive Regulation 2-2(c) shall be required to meet all institutional and individual eligibility requirements of Division I, including academic standards for initial participation."

Source: NCAA Council (Divisions II and III Steering Committees).

Intent: To establish terminal championships in Divisions II and III by deleting those provisions which permit Divisions II and III to enter student-athletes in the National Collegiate (Division I) Championships.

Effective Date: August 1, 1979.

Action: Defeated.

NO. 85 DIVISION III WOMEN'S CHAMPIONSHIPS

Bylaws: Amend Article 4, Section 6, pages 70-71, by adding the following:

[Division III only]

"The National Collegiate Division III Women's Basketball Championship

"The National Collegiate Division III Women's Field Hockey Championship

"The National Collegiate Division III Women's Swimming Championships"

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"The National Collegiate Division III Women's Tennis Championships"

"The National Collegiate Division III Women's Volleyball Championships"

Source: Franklin and Marshall College, Dickinson College, Albright College, Elizabethtown College, Lebanon Valley College, Johns Hopkins University, Muhlenberg College.

Intent: To establish Division III women's championships in the sports of basketball, field hockey, swimming, tennis and volleyball.

Effective Date: Immediately; first championships to be conducted in March 1980 (basketball, swimming); June 1980 (tennis) and November 1980 (field hockey, volleyball). [Note: Proposals regarding playing rules and administrative committees for these championships will be submitted at the 1980 NCAA Convention.]

Action: Defeated by Division III.

NO. 86 RIFLE CHAMPIONSHIPS

A. Bylaws: Amend Article 4, Section 6, pages 70-71, by adding the following:

(Divided bylaw, all divisions, divided vote)

"The National Collegiate Rifle Championships"

B. Bylaws: Amend Article 10, Section 5, pages 102-106, by adding new paragraph (i), relettering subsequent paragraphs, as follows:

(Common bylaw, all divisions, divided vote)

"(i) The Rifle Committee shall consist of six members. The chairman may designate a secretary-rules editor from among the membership of the committee."

Source: Appalachian State University; The Citadel; Davidson College; East Tennessee State University; Furman University; Marshall University; University of Tennessee; Chattanooga; Virginia Military Institute; Western Carolina University.

Intent: To establish the National Collegiate Rifle Championships and a Rifle Committee to administer that championship and formulate the official collegiate rules in the sport of rifle.

Effective Date: Immediately; first championship to be conducted in March 1980.

Action: Ruled out of order after it was approved by Division I (131-08) but defeated by Division II (45-58) and Division III (43-77). Inasmuch as the only division wishing to establish the rifle championships did not have the required 45 institutions sponsoring rifle as a varsity intercollegiate sport. As a replacement action, the NCAA council sponsored a resolution establishing a pilot championship for rifle. See No. 134.

NO. 87 DIVISION III LACROSSE CHAMPIONSHIP

Bylaws: Amend Article 4, Section 6, pages 70-71, by adding the following:

"The National Collegiate Division III Lacrosse Championship"

Source: Fairleigh-Dickinson University, Madison; Clarkson College; Denison University; Kean College; Lebanon Valley College; Montclair State College; Muhlenberg College.

Intent: To establish a Division III Lacrosse Championship.

Effective Date: Immediately; first championship to be conducted in May 1980.

Action: Approved by Division III.

NO. 88 DIVISION I AUTOMATIC QUALIFICATION

Bylaws: Amend Article 4, Section 7, page 73, as follows:

(Division I only)

"Section 7. Conference Eligibility. For a conference to be eligible for automatic qualification into any National Collegiate Championship in a sport in which more than one divisional championship is offered, it must meet all requirements set forth in Executive Regulation 2-6. In the sport of basketball, it must be an allied conference which determines a conference champion in at least six sports, including football or baseball, and its basketball champion must be determined either by regular round-robin, in-season conference competition or and a postseason tournament or by double round-robin, in-season conference competition. A conference which had automatic qualification in Division I as of January 12, 1977, January 10, 1978, shall conform to these criteria no later than January 1 August 1, 1981. A conference which applies for automatic qualification subsequent to January 12, 1977, January 10, 1978, must meet the criteria prior to making application."

"O.1. 402. To determine a conference champion under this legislation, at least six of the conference's member institutions must be classified in Division I in the sport in which Division I automatic qualification is sought; further, for those conferences seeking automatic qualification in the sport of basketball under this legislation, in each of the six sports in which a conference champion is determined under this legislation, at least six of the conference's member institutions must sponsor the sport on the varsity intercollegiate level."

"O.1. 403. If an allied conference subdivides to conduct divisional competition in basketball and one or more subdivisions seek automatic qualification, then the subdivision(s) must be an allied member and satisfy the other requirements of this legislation; however, it is not necessary that it subdivide in all of the sports in which it determines a conference champion for purposes of qualifying for automatic qualification in the sport of basketball."

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APPENDIX G

Excerpt from 1980 NCAA Convention Proceedings

Intent: To establish Division II women's championships in the specified sports.

Effective Date: Immediately; first championships to be conducted in the 1980-81 academic year.

Action: Approved by Division II as amended by No. 67-1. Motion to rescind was defeated.

NO. 67-1 DIVISION II WOMEN'S CHAMPIONSHIPS

Bylaws: Amend Proposal No. 67; Bylaw 4-6, as follows:

[Division II only]

"Effective Date: Immediately; first championships to be conducted in the 1980-81 academic year."

Source: Le Moyne College.

Action: Approved by Division II.

NO. 68 DIVISION III WOMEN'S CHAMPIONSHIPS

Bylaws: Amend Article 4, Section 6, page 74, by adding the following:

[Division III only]

"The National Collegiate Division III Women's Basketball Championship"

"The National Collegiate Division III Women's Field Hockey Championship"

"The National Collegiate Division III Women's Swimming Championships"

"The National Collegiate Division III Women's Tennis Championships"

"The National Collegiate Division III Women's Volleyball Championship"

Source: Buckton State College, Franklin and Marshall College, Geneva State University College, Juniata College, Lockwood College, Muhlenberg College, Westfield State College, Wilkes College.

Intent: To establish Division III women's championships in the specified sports.

Effective Date: Immediately; first championships to be conducted in March 1981 (basketball and swimming), May or June 1981 (tennis) and November 1981 (field hockey and volleyball). (Note: Proposals regarding playing rules and administrative committees for these championships will be submitted at the 1981 NCAA Convention.)

Action: Approved by Division III as amended by No. 68-2. Motion to take roll call vote was defeated by Division III.

NO. 68-2 DIVISION III WOMEN'S CHAMPIONSHIPS

Bylaws: Amend Proposal No. 68; Bylaw 4-6, as follows:

[Division III only]

"Effective Date: Immediately; first championships to be conducted in March 1981 (basketball and swimming), May or June 1981 (tennis) and November 1981 (field hockey and volleyball). (Note: Proposals regarding playing rules and administrative committees for these championships will be submitted at the 1981 NCAA Convention.)"

Action: Approved by Division III as amended by No. 68-2. Motion to take roll call vote was defeated by Division III.

NO. 68-1 DIVISION III WOMEN'S CHAMPIONSHIPS

Bylaws: Amend Proposal No. 68; Bylaw 4-6, as follows:

[Division III only]

"Effective Date: Immediately; first championships to be conducted in March 1981 (basketball and swimming), May or June 1981 (tennis) and November 1981 (field hockey and volleyball). (Note: Proposals regarding playing rules and administrative committees for these championships will be submitted at the 1981 NCAA Convention.)"

Action: Approved by Division III as amended by No. 68-2. Motion to take roll call vote was defeated by Division III.

exceed all expenses, including the transportation and per diem expenses as specified in Executive Regulation 2-10, shall be exempt from this provision. The determination of receipts and expenses shall be based upon a moving three-year average."

Source: NCAA Council.

Action: Approved.

NO. 66 RIFLE CHAMPIONSHIPS

A. Bylaws: Amend Article 4, Section 6, page 73, by adding the following:

[Division I only]

"The National Collegiate Rifle Championships"

B. Bylaws: Amend Article 10, Section 5, pages 109-110, by adding new paragraph (b), relettering subsequent paragraphs, as follows:

[Common bylaw, all divisions, divided vote]

"(i) The Rifle Committee shall consist of six members. One member shall be elected secretary-rules editor."

Source: Appalachian State University; The Citadel; Davidson College; East Tennessee State University; Furman University; Marshall University; University of Tennessee; Chattanooga; Virginia Military Institute.

Intent: To establish the National Collegiate Rifle Championships and a Rifle Committee to administer that championship and formulate the official collegiate rules in the sport of rifle.

Effective Date: Immediately; first official championship to be conducted in April 1981.

Action: Approved (Part A by Division I, Part B by all divisions).

NO. 67 DIVISION II WOMEN'S CHAMPIONSHIPS

Bylaws: Amend Article 4, Section 6, pages 73-74, by adding the following:

[Division II only]

"The National Collegiate Division II Women's Basketball Championship"

"The National Collegiate Division II Women's Field Hockey Championship"

"The National Collegiate Division II Women's Swimming Championships"

"The National Collegiate Division II Women's Tennis Championships"

"The National Collegiate Division II Women's Volleyball Championship"

Source: Assumption College, Bentley College, Gannon College, Le Moyne College, New Hampshire College, Northern Kentucky University, St. Michael's College, Springfield College, Tuskegee Institute.

Intent: To establish Division II women's championships in the specified sports.

Effective Date: Immediately; first championships to be conducted in March 1981 (basketball and swimming), May or June 1981 (tennis) and November 1981 (field hockey and volleyball). (Note: Proposals regarding playing rules and administrative committees for these championships will be submitted at the 1981 NCAA Convention.)

Action: Approved by Division II as amended by No. 67-2. Motion to take roll call vote was defeated by Division II.

NO. 67-2 DIVISION II WOMEN'S CHAMPIONSHIPS

Bylaws: Amend Proposal No. 67; Bylaw 4-6, as follows:

[Division II only]

"Effective Date: Immediately; first championships to be conducted in March 1981 (basketball and swimming), May or June 1981 (tennis) and November 1981 (field hockey and volleyball). (Note: Proposals regarding playing rules and administrative committees for these championships will be submitted at the 1981 NCAA Convention.)"

Action: Approved by Division II as amended by No. 67-2. Motion to take roll call vote was defeated by Division II.

and swimming) and May or June 1983 (tennis)."

Sources: Rhode Island College.
Action: Withdrawn.
NO. 68-2 DIVISION III WOMEN'S CHAMPIONSHIPS

Bylaws: Amended Proposal No. 68, Bylaw 4-6, as follows:

"Effective Date: Immediately; first championships to be conducted in March 1981 (volleyball and swimming), May or June 1981 (tennis) and November 1981 (field hockey and volleyball), March 1982 (basketball) and swimming) and May or June 1982 (tennis)."

Sources: Houston State College, Franklin and Marshall College, Genesee State University College.
Action: Approved by Division III.

NO. 69 RESOLUTION: WOMEN'S CHAMPIONSHIPS

[All divisions, common vote]

"Be It Resolved, that when national championship for women are approved by the National Collegiate Athletic Association, the Committee on Committees will be instructed to nominate to the appropriate committees only persons coaching women's teams and those actively involved in the administration of women's athletic activities."

Sources: Houston State College, Franklin and Marshall College, Genesee State University College, Juniata College, Lycoming College, Middlebury College, Westfield State College, Wilkes College.
Action: Approved as amended by No. 69-1.

NO. 69-1 RESOLUTION: WOMEN'S CHAMPIONSHIPS

Amended Proposal No. 69; Resolution: Women's Championships, as follows:

[All divisions, common vote]

"Be It Resolved, that when national championships for women are approved by the National Collegiate Athletic Association, the Committee on Committees or NCAA Council will be instructed to nominate to the appropriate committees only persons coaching women's teams and those actively involved in the administration of women's athletic activities."

Sources: Boston State College, Franklin and Marshall College, Genesee State University College.

NO. 70 DIVISION I AUTOMATIC QUALIFICATION

Bylaws: Amended Article 4, Section 7, page 76, as follows:

[Division I only]

"Section 7. Conference Eligibility. For a conference to be

eligible for automatic qualification into any National Collegiate Championship in a sport in which more than one division championship is offered, it must meet all requirements set forth in Executive Regulation 7-6. In the report of basketball, it must be an all-district conference which determines a conference champion in at least six sports, and the basketball champion must be determined either by round-robin, in-season conference competition and a postseason tournament or by double round-robin, in-season conference competition. A conference which had automatic qualification in Division I as of January 10, 1979, shall conform to these criteria no later than August 1, 1981. A conference which applies for automatic qualification subsequent to January 10, 1979, must meet the criteria prior to making application."

Sources: Holy Cross College, Manhattan College, University of New Hampshire, University of Richmond, U.S. Military Academy, College of William and Mary.

Intent: "To eliminate the requirement that a conference must conduct round-robin competition in basketball in order to qualify for Division I automatic qualification in that sport, permitting such a conference to qualify by conducting a postseason tournament to determine the champion."

Effective Date: Immediately.

Action: Withdrawn.

NO. 70-1 DIVISION I AUTOMATIC QUALIFICATION

Bylaws: Amended Proposal No. 70; Bylaw 4-7, as follows:

[Division I only]

"Effective Date: Immediately August 1, 1980."

Sources: Pacific-10 Conference.

Action: Moved due to withdrawal of No. 70.

NO. 71 DIVISION I AUTOMATIC QUALIFICATION

Bylaws: Amended Article 4, Section 7-(b), page 77, as follows:

[Division I only]

"(b) If an all-district conference including 18 or more Division I members subdivided to conduct divisional regional postseason tournament competition in basketball to determine regional conference champions in that sport and one or more subdivisions would all-district conference seeks automatic qualification for more than one of said regional champions, then the subdivision(s) must be any round-robin, in-season conference competition requiring participation of this subdivision. However, it is not necessary that it and need not be included in all of the sports in which it determines a conference champion for purposes of qualifying for automatic qualification in the report of basketball."

Sources: Holy Cross College, Manhattan College, University of New

conditioning as a prerequisite for excellence. Two, excellence in rifle does not parallel positive democratic attitudes. Three, facility requirements for rifle are not multiple-use areas which can be used for other campus activities, whether they be recreational, athletics or academic. Four, rifle's only long-range or carry-over value is destructive in nature. Five, rifle's intent of maximum skill level is negative and not comparable to, say, fencing or archery. It might be compared in intent to boxing, except boxing at least requires a high level of body coordination and conditioning. Bowling does not necessarily demand a high level of conditioning, but its intent at least is not destructive. As you are aware, neither boxing nor bowling is an NCAA-sponsored sport, but they both would reflect a more positive image for the NCAA than rifle. Six, in the optimum skill level, rifle does not and cannot make a contribution to the needs of a democratic society. Indeed, it may encourage the teaching of negative values to the college or university student. Seven, riflery cannot be aligned with the purposes of a college or university education. It relates only to the purposes of a campus ROTC program.

For these reasons, I would urge the membership to give serious consideration to the elimination of rifle as an NCAA-sponsored sport. Arliss L. Ronden (Tennessee Technological University): For more than two decades my university has sponsored riflery as an intercollegiate sport. I can attest that the young men and women who composed the riflery team exemplified the highest in academic and civic standards, beyond the norms of the student body in general. The members of this team are represented on dean's lists, on academic honor rolls and are recipients of other academic honors.

Also beyond the norms of the study body in general, they are represented on service organizations and engaged in other activities oriented toward providing services to the university and services to the community. I said young men and women. Indeed, a significant portion of the team members are women and one young lady was an all-American last year. Thus, this sport would be helpful in the implementation of Title IX.

The training and discipline required for successful competition in riflery are rigorous and demanding; and I do urge this body to give recognition to a sport that has well earned its way in the sports world.

[Proposal No. 66 (page A-42) was approved (Part A by Division I, Part B by all divisions).]

Division II Women's Championships

Thomas J. Niland Jr. (Le Moyne College): Mr. President, I move adoption of Proposal No. 67.

[The motion was seconded.]

I move adoption of Proposal No. 67-1, an amendment to No. 67, to change the effective date from 1980-81 to 1981-82.

[The motion was seconded.]

Some of the members of the NCAA staff have suggested, in order to give proper time for preparation to conduct these championships in the manner of all the championships we hold, that we postpone for one year

the conduct of these championships in order to set up our necessary programs.

[Proposal No. 67-1 was approved by Division II.]

Mr. Niland: I am speaking now in favor of Proposal No. 67. I don't quite see the fulfillment over Title IX that we are credited with having. As a matter of fact, I think it is quite clear. I have proposed the same championship previously, and I do not see any reason to wait any longer. I believe that many of us in Division II are conducting programs. Some of us are not dual members. We feel we would like to again offer the women the opportunity to participate in the NCAA events. Therefore, I move the adoption.

Robert Moorman (Central Intercollegiate Athletic Association): We would like to speak in favor of this proposal. We presently are conducting tournaments for our women; and we feel that the AIAW doesn't do us much, specifically for the small colleges and more specifically for Black colleges. We encourage you to pass this proposal.

Edward P. Morkey (St. Michael's College): In the past four or five years we have mutually requested legislation providing championships in women's sports. It has continually been turned down due to a number of reasons, one of which was in deference to the ongoing talks with the AIAW. Since we are not members of the AIAW for various reasons, some of which are financial, and with admiration and respect for the AIAW's providing such championships, it is our feeling that the NCAA has a moral and possibly legal obligation now to offer such championships.

I personally object to the idea that the AIAW is the only organization privileged to conduct such championships for women, just as I would object to the fact that the NCAA would have exclusive right to conduct a championship just for men.

According to the news reports the last couple of days, the NCAA has been accused of intruding and providing obstacles in the conduct of women's championships with a threat to sue. How offensive these comments are! The fact is that we do understand these concerns; but we feel the NCAA has the obligation of offering greater opportunity for recognition and satisfaction to our women, as well as a right of choice. I respectfully ask your approval and support of this amendment.

Stanley J. Marshall (South Dakota State University): First, the purpose and fundamental policy of this Association is to initiate, stimulate and improve intercollegiate athletics for student-athletes and to promote and develop educational leadership, physical fitness and sports participation as a recreational pursuit, as well as athletic excellence. I urge your support. The competition is good. It provides a service, and in this case our consideration should be what is right for the student-athlete.

Edward S. Steltz (Springfield College): For the third time in a row, three years in a row, I just want to say once again the time is right, legally, morally and in every respect. I agree with the previous speakers 100 percent. In fact, with every passing year my conviction becomes stronger that this body should provide championships for women.

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[Proposal No. 67 (pages A-42-43) was approved by Division II as amended by Proposal No. 67-1.]

E. John Larsen (University of Southern California): Mr. Chairman, under the provisions of Bylaw 11-1(b), I request a review of the just-passed motion by the entire Convention.

[The motion was seconded.]

President Flynn: It has been moved and seconded that the entire body either affirm or deny the vote, the affirmative vote of Division II. It takes a two-thirds vote to overturn. Are you ready for the vote?

Franklin A. Lindeburg (University of California, Riverside): Is it proper to discuss the amendment or the rescission, or both?

President Flynn: You may discuss Proposal No. 67.

Mr. Lindeburg: I will do so. I would like to point out that the legislation is permissive. I would like to point out that it gives the opportunity for those institutions in the NCAA only to have women participate in national championships. I would also say that changing the date in which this would be implemented gives us ample time to plan for the championships and to place women on the sports in which the national championships would be conducted. I speak in favor of No. 67 and ask those of this body to allow Division II to have championships for women.

Stanley J. Marshall (South Dakota State University): I respectfully request that members of Division I and Division III not overturn this legislation. We have refrained from applying this technique on several occasions, and we ask for your help in doing something very important to us in Division II.

Kenneth J. Weller (Central College): Last year at this Convention I spoke rather urgently against NCAA championships. I rise at this occasion to speak for NCAA championships and against the move for rescission.

In my remarks last year, I commented on the fact that I was afraid that the NCAA championships would seriously hurt the chance of developing a single organization for the administration of sports in the United States and hinder the possibilities for cooperation and coordination, particularly with the AIAW. I continue to believe this is an extremely important thing for athletics today, to find some singular system.

I was also concerned at that time about the professional opportunities for women in athletics. I continue to feel very strongly about the need for a single arrangement. Somewhere within each institution, whether it is at the level of the athletic director, the dean, a vice-president or perhaps at the presidential level itself, someone must deal at the present time with the two very different sets of rules and organizations. This attempt to keep two balls in the air at one time is sometimes rather difficult. In particular, those of us in Division II have experienced serious difficulty in our attempts to define philosophy for our institutions in Division III that is not inconsistent with the philosophy and the provisions for athletic scholarships in the AIAW

Division III. That is extremely difficult and I think an untenable situation.

Certainly, what we heard about in regard to Title IX makes it very clear that we cannot continue to have those two organizations. I am less hopeful at the present time about that singular organization being arranged. I am less hopeful because of the moratorium that has been called for by the executive board of the AIAW, in which they have called for a five-year waiting period on any championships and also—please note—the five-year moratorium on the possibility of exploring ways to work together.

I am more optimistic at the present time about the NCAA providing more opportunities for women in our organization. I have, during the course of the past year, seen a significant increase in attitude and in action for involving women. The committee that Mr. Frank chairs on organization and governance has made it very clear there is a strong preference for including a structure of women at all levels of the NCAA activities. Certainly in Division III we have added women to several important committees and we hope to add a woman to our steering committee.

In summary, it seems to me that in the interest of the women athletes, the NCAA championships could provide them with the experience and the staff to have an excellent program. I would call to the attention of Division I that this is a matter of principle. It is not, as Mr. Mohr indicated at the general round table yesterday, an attempt to get additional financing. We are willing to work with the amount of money we have with the men's championships. Also I believe that the NCAA championships and the changes in our structure would make it easier for women to become involved in our structure. Therefore, I would urge you not to rescind this action of Division II.

Finally, I would note that there are many institutions for whom the NCAA championships are an alternative or an option. There are many others for whom it is an imperative. They must either drop out of the NCAA championships or join the AIAW, which they have chosen not to do. At the present time in Division III there are 76 institutions in that situation. It seems to me that the rest of the membership must recognize their plight and allow them to have what they have been speaking for for a number of years.

Cliff Speegle (Southwest Athletic Conference): May we have an explanation of how these championships will be funded by the NCAA?

President Flynn: At the present time, the Council has stated that there will be equal treatment of men and women in the division, let's say Division II, if they adopt the motion; and there will be no guarantee that Division II will get additional money.

However, the Executive Committee at its next meeting, when it goes over the finances of the Association, may in their wisdom recommend that Division II receive additional money.

David E. Sweet (Ithaca Island College): I speak in favor of the motion to rescind and urge that the NCAA recognize that all that it has done by way of bringing women into its governance structure is establish a study committee.

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the AIAW, and say that the NCAA will pay the freight and we will go. It will probably be the death for the AIAW, and that is what they are worried about. They see it as a merger in which they had no choice. I really urge you to vote for rescission.

Vincent L. Gaudio (State University College, Cortland): I have been instructed by my university and more recently this morning by a phone call from the president of the AIAW, who is director of athletics at our institution, that until the NCAA and AIAW merge, our institution would go on record to defeat this NCAA involvement in women's sports.

Raymond J. Whipple (Muhlenberg College): I address my remarks to those of you who have asked for rescission. I feel that it is only fair to point out to you that those of us in Division II and Division III who are supporting this legislation for championships for women have been at this for a period of five years.

We were asked to participate in a moratorium on this subject for a long time. We did. As a member of the NCAA Committee on Women's Athletics, I have attended the meetings, have tried to keep an open mind. I think that in all fairness all of you are participating in a real effort to genuinely give women the opportunity that they deserve, not because of legal implications but because of moral implications.

I plead with you people in Division I to please consider the fact that a rescission motion is something that sets a precedent and something that, in all fairness, is really telling us what to do in our division.

I recognize full well that this is a momentous decision. I think it is in the best interest of women; I think it is in the best interest of the NCAA, and I think that ultimately, like so many things that the Division III has done, later in history we will find it is done by others.

Thendro Kjelhedo (Central Michigan University): I rise to speak in favor of rescission. With all due respect to my colleagues in Divisions II and III, this is just not a Divisions II and III issue.

We have sponsored a national championship on our campus and we will have another one in March. I can say that the women have demonstrated competence. They have expanded the opportunities for the women greatly. To leave this without rescinding it would raise suspicion of the NCAA even higher than it is at the present time.

Many of us feel that we are making good progress in working out a compatible arrangement to better meet the needs of our women athletes. Should the NCAA sponsor national championships for our women, it would be divisive and make more difficult any reconciliation which eventually must take place. I recognize in any issue it is very seldom 90-10, that the issue is difficult and it is more like 66-45 in nature. I expect that rescission will fail, but I think that it is good to have brought it up so that these arguments could be made. I don't think that it will be bad in doing it.

President Flynn: It appears that we are ready for the vote. It takes a two-thirds vote. Everyone is voting.

[The motion to rescind approval of Proposal No. 67 was defeated.]

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COLLEGE PARK, MD. 20742

You are now on the verge of establishing championships first and participation by women in the governance of the Association as a possible second. It seems to me that this is a matter of principle. The principle should be to get the governance matter settled so that the championships and other aspects of the operation, as it will affect women, are a set of decisions undertaken with full participation by a strongly representative group of women.

It seems to me further that this Association has no need for taking an action at this Convention which is almost certain to generate controversy in the matter of the relationships between women athletes and athletic administrators and men athletes and athletic administrators.

If the Association wants to assume a genuine leadership position, it seems to me it has an opportunity to do so in an orderly way by moving forward in restructuring itself. It is not insignificant, although it is symbolic, that the logo of the Association, which surrounds us in this room, clearly demonstrates that it is an Association which was established and operated for nearly three-quarters of a century focusing on men and not women. To make this change now, without having brought women into leadership within the Association, strikes me as taking the second step first.

I realize that the likelihood of the rescission prevailing is not very great; but, as a president, I could not refrain from speaking out as I see you are about to make what I think would be a serious mistake and one the organization will regret.

Mr. Marshall: The arguments that the time is not right were presented in 1975, 1976, 1978, 1979 and now again in 1980; and for some the time will never be right. I submit the time is right today. As far as funding is concerned, it will be funded. There is no question about that.

The adoption will give women professionals more opportunities, not less. This will be another store to go to, if they so choose. For the woman student-athlete, there will be another option. They will have a second place to go. They are not forced to go.

In closing, I again ask those in Divisions I and III to permit us to do something we should have done four or five years ago.

President Flynn: I would like to remind the members are only allowed to speak twice on a proposition.

Mr. Moorman: Stan said most of what I wanted to say. I would like to add this, that I am sort of an authority on this "time is not right." I have gone through this quite a few years on when the time is right.

Gail Fullerton (San Jose State University): I would like to speak for rescission in supporting the Pac-10 position. It is kind of a situation where starting with a championship, which means establishing rules for championships, is almost like a corporation merger that is carried out by itself.

I know I am speaking for many of the women athletic directors that are very concerned. I think in time they will be willing to merge. But at this time they have established some firm programs; and they see this as a takeover operation because many chief executive officers will look at the cost of sending women to tournaments which must be borne by

move adoption of Proposal No. 68.

[The motion was seconded.]

[Proposal No. 68-1 (pages A-43-44) was withdrawn.]

I now move adoption of Proposal No. 68-2.

[The motion was seconded.]

The intent of the amendment, of course, is to move the effective date to the academic year 1981-82 in order to allow the NCAA to set in place the appropriate supportive services, the committees, the rules and all the things that need to take place before championships can occur.

[Proposal No. 68-2 (page A-44) was approved by Division III.]

Speaking to Proposal No. 68, as amended, this amendment would establish NCAA Division III championship opportunities for women in the sports listed. We selected these five sports because we felt these were the sports that had the greatest amount of interest and greatest participation. Nothing would prevent future legislation from being introduced to include other sports if they satisfy existing NCAA regulations.

Many of the reasons for the amendment have been given in the discussion of previous legislation. One item that is important, 27 percent of Division III schools do not hold membership in any other national women's sports organization. This amendment will allow them to begin offering championships for their women.

It would also provide the mechanism by which institutions would be able to conduct their athletic programs under one set of rules if they so desired. We also think the NCAA has the expertise and the resources to provide the appropriate support services not now available through other organizations. We think this could improve greatly the quality of the championship events and also the advisability of championships for women on the national level. We also think this would help to bring women into the administrative structure of the NCAA.

This amendment is permissive legislation. The institutions will certainly be allowed to continue joint membership in other organizations if they so desire.

As was mentioned, in the Division III round table yesterday we talked about the funding of these championships; and I think the Division III schools understand that the total amount of money now available may not be increased. Philosophically, we are offering athletics to all our members, whether they be men or women.

David E. Sweet (Rhode Island College): I want to speak against the NCAA moving into championships for women at this time. I think it is perhaps ironic, but not unimportant, that the front page of today's Wall Street Journal contains an article that I suspect you are going to hear a great deal more about as you go back home after this Convention. The article reads as follows:

"A survey of women's athletic programs on 100 campuses by a University of Iowa professor indicated the percentage of women directors declined to

"Some observers say that men are competing for a higher proportion of the expanding opportunities in women's sports because opportunities in men's competition are finite. Also, more colleges are enrolling men's and women's athletic programs and naming men as overall supervisors, with women becoming assistant directors.

"Enrollment in women's sports programs jumped 62 percent nationwide between 1971 and 1976; spending for such programs has increased fivefold since 1974."

I read that to you only because of your action today, in light of the fact that those figures are going to be interpreted in ways that I think have little to do with the fact that the time is right for the NCAA to sponsor women's championships. It will be looked upon, I think, nationally and is going to be interpreted nationally as a bit self-serving on the part of this organization.

I say again that is not a posture that the organization ought to be taking at this time. I think the organization would be well served if it moved forward promptly with its reorganization plan before undertaking changes in its competitive structure.

Elizabeth A. Kruczek (Fitchburg State College): I am one of those that have charge of both the men's and women's athletic programs at our college. I would like to reiterate everything that Division II said and simply say that, one, it will allow our students to participate in an additional opportunity, and, two, it will allow the nonmember AAUW colleges and universities, especially in Division III, equivalent opportunity in postseason play.

It will enhance our country-given right to choose; and, as in any business, competition is foremost. I feel this will mean better organization in both national organizations. Furthermore, I would still hold my membership in the AAUW. I will still, as this year, serve as basketball championship director for Divisions I, II and III in the AAUW.

Needless to say, much work needs to be accomplished. I outline these details as far as the implications and ramifications of both organizations. I feel that, at this time, the NCAA can succeed. Having listened and talked to many of you at this Convention, I am more positive than ever.

[Proposal No. 68 (page A-43) was approved by Division III as amended by Proposal No. 68-2.]

William P. Dloguardt (Montclair State College): Since I have come down here with specific instructions from my president, for the record, can we have a roll call vote?

President Flynn: You may move it. It will have to pass by a majority vote in Division III. Are you moving that?

Mr. Dloguardt: I move that we have a roll call on the question of championships for Division III.

[The motion was seconded.]

President Flynn: It has been seconded. It is not debatable.

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[The motion for a roll call vote was defeated by Division III.]
[The Convention recessed at 12 noon.]

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FINAL BUSINESS SESSION

Tuesday Afternoon, January 8, 1980

The session convened at 2 p.m., President William J. Flynn presiding.

6. PROPOSED AMENDMENTS

Resolution: Women's Championships

William A. Marshall (Franklin and Marshall College): I would like to move adoption of Resolution No. 69.

[The motion was seconded.]

I would like to bring to your attention the amendment to the amendment, Resolution No. 69-1. I move its adoption.

[The motion was seconded.]

As you see in the amendment, there is the addition of the words "or NCAA Council." This will bring the legislation into compliance with the current state of affairs.

[Resolution No. 69-1 (page A-44) was approved.]

Speaking to the resolution itself, this is a very brief statement encouraging the NCAA to make sure that women are brought into the administrative structure for the championships that were approved this morning.

Harry M. Cross (University of Washington): As I read this, it is mandatory for the Council to do this; and that is stupid. I know the point is to appoint appropriate qualified people to the extent they are identified, but to say that they insist there can be no men appointed doesn't make any sense. I urge you to vote against the resolution.

Mr. Marshall: What this says is that only persons coaching women's tennis or those actively involved in the administration of women's athletic activities may be appointed. It doesn't say women or men. It says people that are involved with women's activities. We assume the majority would be women.

It is our intent that, with respect to any games committees or sports committees that are dealing with field hockey or women's swimming or tennis, the people involved with those programs would be involved with the conduct of the event and involved with the conduct in drawing up the rules and regulations. So it doesn't preclude men, because there may be some men coaching some teams.

Francis W. Honnor (Furman University): Mr. Chairman, a point of clarification. Will this rule out faculty representatives who might be men?

President Flynn: I don't think so. As a rule, faculty members are not on sports committees, but it does not rule them out.

[Resolution No. 69 (page A-44) was approved as amended by Resolution No. 69-1.]

APPENDIX H

Named Co-Conspirators

NCAA Council 1979-present

1. Sherwood O. Berg
South Dakota State
University
Brookings, SD 57007
2. Francis W. Bonner
Furman University
Greenville, SC 29613
3. John Chellman
Indiana University
of Pennsylvania
Indiana, PA 15705
4. Howard Davis
Tuskegee Institute
Tuskegee Institute, AL
36088
5. John R. Davis
Oregon State University
Corvallis, OR 97331
6. William J. Flynn
Boston College
Chestnut Hill, MA
02167
7. James Frank
Lincoln University
Jefferson City, MO
65101
8. Joseph R. Geraud
University of Wyoming
Laramie, WY 82071
9. Kenneth W. Herrick
Texas Christian
University
Fort Worth, TX 76129
10. Chalmer G. Hixson
Wayne State University
Detroit, MI 48202
11. Judith R. Holland
University of California,
Los Angeles
405 Hilgard Avenue
Los Angeles, CA 90024
12. Olav B. Kollevoll
Lafayette College
Easton, PA 18042
13. Elizabeth A. Kruczek
Fitchburg State
College
Fitchburg, MA 01420
14. Edwin W. Lawrence
Cheyney State College
Cheyney, PA 19319
15. Arthur J. McAfee, Jr.
Morehouse College
223 Chestnut Street
Atlanta, GA 30314
16. Edward W. Malan
Pomona-Pitzer Colleges,
Memorial Gymnasium,
Pomona College
Claremont, CA 91711
17. Andrew T. Mooradian
University of
New Hampshire
Durham, NH 03824
18. Edwin D. Muto
State University of
New York, Buffalo
3435 Main Street
Buffalo, NY 14214
19. Gwendolyn Norrell
Michigan State
University
East Lansing, MI 48824
20. Fred Picard
Ohio University
Athens, OH 45701
21. John Pont
Northwestern University,
Anderson Hall
Evanston, IL 60201
22. Robert F. Riedel
Geneseo State
University
Geneseo, NY 14454
23. Donald M. Russell
Wesleyan University
Middletown, CT 06457

NCAA Council 1979-present (cont.)

- | | |
|---|--|
| 24. Charles H. Samson
Texas A&M University
College Station, TX
77843 | 29. James P. Sullivan
Boston State College
625 Huntington Avenue
Boston, MA 02115 |
| 25. John W. Sawyer
Wake Forest University
Winston-Salem, NC
27109 | 30. P. Laverne Sweat
Hampton Institute
Hampton, VA 23668 |
| 26. Charley Scott
University of Alabama
P.O. Box 1933
University, AL 35486 | 31. John L. Toner
University of
Connecticut
Box U-78
Storrs, CT 06268 |
| 27. Aldo A. Sebben
Southwest Missouri
State University
Springfield, MO 65802 | 32. Kenneth J. Weller
Central College
Pella, IA 50219 |
| 28. Richard G. Shrider
Miami University
Oxford, OH 45056 | |

NCAA Executive Committee 1979-present

- | | |
|---|---|
| 1. Ernest C. Casale
Temple University
Philadelphia, PA 19122 | 7. J.D. Morgan
University of California,
Los Angeles
405 Hilgard Avenue
Los Angeles, CA 90024 |
| 2. Cecil N. Coleman
University of Illinois
Assembly Hall #112
Champaign, IL 61820 | 8. Seaver Peters
Dartmouth College
Hanover, NH 03755 |
| 3. Linda K. Estes
University of New
Mexico
Albuquerque, NM 87131 | 9. Robert F. Riedel
Geneseo State
University College
Geneseo, NY 14454 |
| 4. J. William Grice
Case Western Reserve
University
10900 Euclid Avenue
Cleveland, OH 44106 | 10. Charley Scott
University of Alabama
P.O. Box 1933
University, AL 35486 |
| 5. Robert C. James
Atlantic Coast
Conference
P.O. Box 6271
Greensboro, NC 27405 | 11. Joe L. Singleton
University of California,
Davis
Hickey Gymnasium
Davis, CA 95616 |
| 6. Henry T. Lowe
University of Missouri
218 Tate Hall
Columbia, MO 65201 | 12. Edward S. Steitz
Springfield College
Springfield, MA 01109 |
| | 13. Mary Zimmerman
University of South Dakota
Vermillion, SD 57069 |

Special Committee on NCAA Governance, Organization and Services

- | | |
|---|---|
| 1. Ruth M. Berkey
Occidental College
Los Angeles, CA 90041 | 9. Charles H. Samson, Jr.
Texas A&M University
College Station, TX
77843 |
| 2. John Chellman
Indiana University
of Pennsylvania
Indiana, PA 15705 | 10. Charley Scott
University of Alabama
P.O. Box 1933
University, AL 35486 |
| 3. William E. Davis
University of New
Mexico
Albuquerque, NM 87131 | 11. Phillip R. Shriver
Miami University
Oxford, OH 45056 |
| 4. DeLoss Dodds
Kansas State University
Manhattan, KS 66506 | 12. Judith M. Sweet
University of California,
Davis
Davis, CA 95616 |
| 5. James Frank
Lincoln University
Jefferson City, MO
65101 | 13. J. Neils Thompson
University of Texas,
Austin
Austin, TX 78712 |
| 6. Robert C. James
Atlantic Coast
Conference
P.O. Box 6271
Greensboro, NC 27405 | 14. John L. Toner
University of
Connecticut
Box U-48
Storrs, CT 06268 |
| 7. Gwendolyn Norrell
Michigan State
University
East Lansing, MI 48824 | 15. Kenneth J. Weller
Central College
Pella, IA 50219 |
| 8. Richard H. Perry
University of Southern
California
Los Angeles, CA 90007 | |

Ad Hoc Committee to Review NCAA Legislation

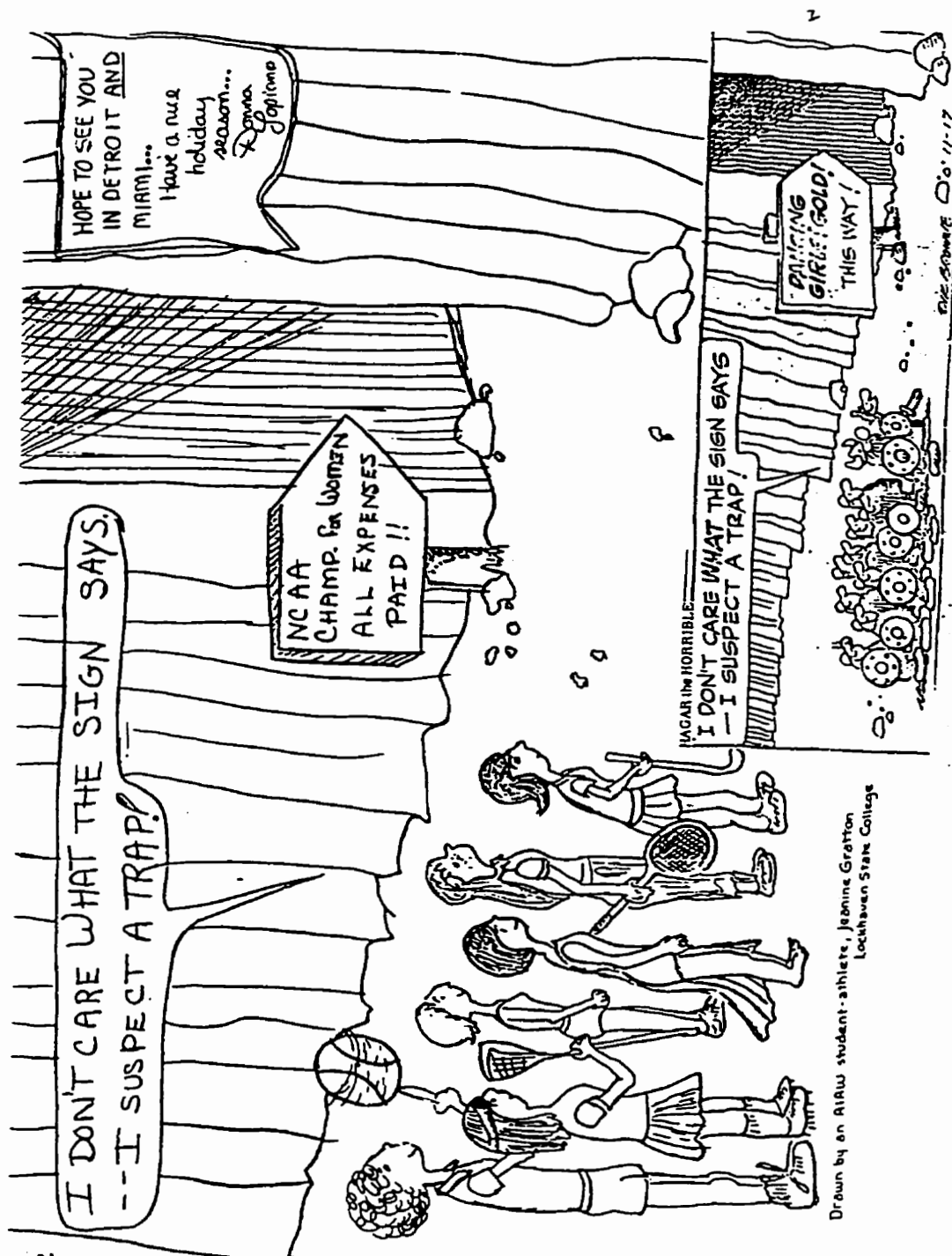
- | | |
|--|---|
| 1. Alan J. Chapman
Rice University
Houston, TX 77001 | 5. Susan Feamster
University of Kentucky
Lexington, KY 40506 |
| 2. John Chellman
Indiana University
of Pennsylvania
Indiana, PA 15705 | 6. Hubert Heitman, Jr.
University of California,
Davis
Davis, CA 95616 |
| 3. Jean Cerra
University of Missouri,
Columbia
Rolla, MO 65401 | 7. Judith R. Holland
University of California,
Los Angeles
405 Hilgard Avenue
Los Angeles, CA 90024 |
| 4. Linda Estes
University of New
Mexico
Albuquerque, NM 87131 | 8. Fred Jacoby
Mid-American Athletic
Conference
1927 S. State St. - Ann Arbor, MI 48106 |

Ad Hoc Committee to Review NCAA Legislation (cont.)

- | | |
|---|---|
| 9. Elizabeth A. Kruczek
Fitchburg State College
Fitchburg, MA 01420 | 12. John L. Toner
University of
Connecticut
Box U-78
Storrs, CT 06268 |
| 10. Edward W. Malan
Pomona-Pitzer College,
Memorial Gymnasium,
Pomona College
Claremont, CA 91711 | 13. D. Alan Williams
University of
Virginia
Charlottesville, VA
22903 |
| 11. Gwendolyn Norrell
Michigan State
University
East Lansing, MI 48824 | |

APPENDIX I

Efforts to Gain Support for AIAW Motions/Meetings



Source: Memorandum to AIAW Chief Executive Officers, December 9, 1980

APPENDIX J

Analysis of 1980-81 NCAA Division I, II and III Championship Revenues

Division I

<u>Sport</u>	<u>Net Revenues</u>	<u>Sport</u>	<u>Deficits</u>
Basketball	\$12,375,407	Baseball	\$ -888
Football (IAA)	742,072	Cross	
Ice Hockey	139,106	Country	-105,811
Lacrosse	40,304	Fencing	- 46,874
Wrestling	31,891	Golf	-109,790
		Gymnastics	- 10,855
		Rifle	- 24,275
		Skiing	- 86,511
		Soccer	-117,874
		Swimming	-133,583
		Tennis	- 10,707
		Indoor Track	-136,957
		Outdoor Track	-228,398
		Volleyball	- 17,965
		Water Polo	- 34,602

Division II

<u>Sport</u>	<u>Net Revenues</u>	<u>Sport</u>	<u>Deficits</u>
Football	\$315,491	Baseball	\$-200,053
Lacrosse	557	Basketball	- 17,052
		Cross	
		Country	- 66,101
		Golf	- 67,562
		Gymnastics	- 50,220
		Ice Hockey	- 22,112
		Soccer	- 78,337
		Swimming &	
		Diving	-121,980
		Tennis	- 37,742
		Outdoor Track	- 32,827
		Wrestling	-130,035

Division III

<u>Sport</u>	<u>Net Revenues</u>	<u>Sport</u>	<u>Deficits</u>
-----	-----	Baseball	\$-151,077
		Basketball	- 76,947
		Cross	
		Country	- 63,783
		Golf	- 56,613
		Lacrosse	- 40,770
		Soccer	- 95,007
		Swimming &	
		Diving	-113,622
		Tennis	- 37,096
		Outdoor Track	-141,771
		Wrestling	- 95,693
		Football	- 3,087

Source of data: 1980-81 Annual Report of the NCAA and updated information provided by NCAA staff on 11 sports for which data was not available in time for printing in the 1980-81 Annual Report.

Source: Defendant's Exhibits, Exhibit 1

APPENDIX K

Sports Illustrated, May 4, 1981

Kodak.

In support of excellence



Denise Curry
UCLA

Anne Donovan
Old Dominion

Pam Kelly
Louisiana Tech

Kris Kirchner
Rutgers

Carol Menken
Oregon State



Cindy Noble
Tennessee

LaTaunya Pollard
Long Beach State

Bev Smith
Oregon

Valerie Walker
Cheney State

Lynette Woodward
Kansas



Meet the AIAW/Kodak Women's All-America Basketball Team.

These ten remarkable young women athletes were selected by the coaches of the Association of Intercollegiate Athletics for Women. They represent the best of thousands of women who now participate in intercollegiate women's basketball.

As sponsors of the Kodak Sports Programs, Eastman Kodak Company supports the achievements of each of these women. Because we believe their achievements can become a standard of excellence for all.



The AIAW/Kodak Women's All-America Basketball Team

Source: Testimony of Ann Uhler, Exhibit 1

APPENDIX L

Women's Sports, 1981-82

Kodak. In support of excellence.



It is through unwavering courage and determination that women athletes today are commanding new and much deserved recognition for their achievements. Ten such athletes are those selected annually by the AIAW for the Kodak Women's All-America

Basketball Team. Their reach for excellence has brought them to the front ranks in the sport of basketball.

As originator of the Kodak Sports Programs, Eastman Kodak Company believes in honoring athletes such as these.

Because at Kodak we recognize the importance of excellence—in sports, in our products and in our people.

© Eastman Kodak Company, 1982



The Kodak Women's All-America Basketball Team

Source: Testimony of Ann Uhler, Exhibit 2

APPENDIX M

Letter to AIAW President, Donna Lopiano, March 4, 1981

Introspections, inc P.O. BOX 1343 - NEW CANAAN, CONNECTICUT 06840 - 203-972-1196

DONNA LOPIANO
PRESIDENT
AIAW
UNIVERSITY OF TEXAS
AUSTIN, TX 78712

MARCH 4, 1981

DEAR DONNA,

IN RESPONSE TO YOUR LETTER DATED FEBRUARY 23, 1981, THE LICENSEES IN QUESTION OR ANY MAJOR LICENSEES FOR THAT MATTER, ARE RELUCTANT TO LICENSE THE AIAW AND ITS LOGO, SINCE IT'S LONG -TERM EXISTENCE IS TEN!

GENERALLY, A NEW LICENSE CAN TAKE ANYWHERE FROM ONE TO THREE YEARS TO LAUNCH AS A PROGRAM AND PENETRATE THE MARKETPLACE. CONSEQUENTLY, THE HIGH SET-UP COSTS AND LONG LEAD TIME NEEDED FOR A NEW LICENSE ARE THE DETERMINING FACTORS FOR THE LICENSEE.

IF THE AIAW SHOULD MERGE WITH THE NCAA, IT IS STRONGLY ADVISABLE TO POSITION YOURSELVES AS A SEPARATE ENTITY FOR USE OF YOUR LOGO. AS WE STATED IN THE PAST, INTROSPECITONS, INC. WOULD LIKE TO HELP YOU WORK ON THE STRATEGY NEEDED, IN ORDER TO MAINTAIN YOUR IDENTITY AND LOGO.

HOPEFULLY, THIS HAS ANSWERED YOUR IMMEDIATE QUESTION AND WOULD BE GLAD TO HELP IN ANY OTHER WAY. IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE DO NOT HESITATE TO CONTACT US.

WE WISH YOU THE BEST OF LUCK IN ALL YOUR EFFORTS AND LOOK FORWARD TO HEARING FROM YOU, SOON.

SINCERELY,


VICKY PATSON
PRESIDENT

VP/IP

APPENDIX N

Calculated AIAW Damages

DAMAGES

The damages submitted in the following tabulations are limited to those as of March 30, 1982 and do not reflect the additional costs to be incurred including expenses for the April 13-14 Dissolution Proposal Board Meeting and the anticipated June 7 Special Delegate Assembly and any other damages that may yet come to light. The total damages presented in this report are \$2,139,718.03.

OUT-OF-POCKET COSTS

Costs listed in this category were incurred in direct response to the NCAA's efforts to enter women's intercollegiate athletics in an anticompetitive manner. All costs are either exclusively related to NCAA's actions or prorated, as in the instance of a mailing where a portion of the mailing related to the NCAA while the remainder of the mailing was ordinary AIAW business. Accounting records of the association were examined in great detail to assess exact costs. Only costs which would otherwise not have been incurred are listed in this section.

I. Membership/Media/Board Mailings

1979-1980	\$3,173.84	
1980-1981	8,689.56	
1981-1982	1,568.96	
TOTAL		\$13,432.36

II. Executive Committee Conference Calls/Meetings

1979-1980	\$2,554.85	
1980-1981	1,326.12	
1981-1982	3,448.07	
TOTAL		7,329.04

III. Special Meetings1979-1980

February 20-25, 1980 - Executive Committee Meeting and presentation to ACE Presidents' Committee on Intercollegiate Athletics	1,411.18
---	----------

June 14-19, 1980 - Executive Committee Meeting and presentation to ACE President's Committee on Intercollegiate Athletics	974.70
---	--------

1980-1981

July 21-24, 1980 - NCAA Denver/Pittsburgh Meetings	742.86
November 17, 1980 - Donna Lopiano to AASCU in Norfolk	167.00
January 11-14, 1981 - NCAA Convention in Miami	500.44
February 2-4, 1981 - AIAW "Think Tank"	4,275.25
March 3-4, 1981 - Executive Committee and Board	9,252.75
April 29-30, 1981 - AIAW/NCAA in Chicago	2,052.65
June 16-18, 1981 - Executive Director to make presentation at NACDA meetings	351.77
June 22-24, 1981 - CCNC Meeting for Restructuring Championships	1,348.77
June 25-26, 1981 - Haag to Las Vegas for restructuring planning with NAGWS	869.85

1981-1982

December 15-16, 1982 - Restructuring Championships (Special Committee - Haag/West/Patrick) Chicago	705.32
April 12-14, 1982 - Executive Board for Dissolution	
June 7, 1982 - Special Delegate Assembly	
TOTAL	<u>\$22,652.54</u>

IV. Telephone/Telegram - (estimated long distance usage over basic watt charges)

January '80 - June '80 - 20% telephone & telegrams	\$ 2,380.78
July '80 - June '81 - 50% telephone	10,713.51
July '81 - June '82 - 30% telephone	2,294.82
TOTAL	<u>\$15,389.11</u>

V. Personnel Expenses

A. Interns	\$ 995.00
B. Severance for Staff - Stage 1	11,129.88
Stage 2	20,000.00
C. Vacation pay obligation (normally a non-direct cost benefit)	15,470.86

D.	Part-time Secretarial Help	2,617.73
E.	Duplication of Affidavit and filings for Executive Board and members	3,263.87
	TOTAL	<u>\$53,477.34</u>

VI. Presidential Expenses relating to NCAA actions

A.	Donna Lopiano 1980-1981 1981-1982	\$ 8,197.79 4,424.98
B.	Merrily Baker 1981-1982	312.95
C.	Ginny Hunt 1981-1982	
	TOTAL	<u>\$12,935.72</u>

VII. Miscellaneous

A.	Programming costs for Directory related to non-participation of AIAW members	1,364.80
B.	Clipping Service	584.27
C.	NCAA Publications	168.75
D.	Western Union Equipment (prepared for E.COM)	303.90
E.	Additional Commissioner to Fall Cham- pionships (CC - Mitchell)	679.20
	TOTAL	<u>\$ 3,100.92</u>

SPECIFICALLY ASCERTAINABLE LOSSES

Losses stated in this category are known, given losses. Established agreements exist covering all of category I and category III. Category II, 1981-1982 membership income, is loss projected only from joint AIAW/NCAA members and is based on the 1980-1981 year.

I. NBC Television Income

1981-1982	\$191,250.00
1982-1983 (including fifth payment nor- mally considered 1982-84 income)	348,750.00
TOTAL	<u>\$540,000.00</u>

II. Membership Income

1981-1982 (from lost joint AIAW/NCAA memberships)	\$ 71,900.00
1982-1983 (from total lost membership)	513,849.00
TOTAL	<u>\$585,749.00</u>

III. Promotions Multi-Year Agreements Beyond June 30, 1982

1982-1983

Black Knight	\$ 700.00
W.H. Brine	3,100.00
Broderick	5,000.00
Chingford	2,000.00
Dudley Sports	3,250.00
Eastman Kodak	10,500.00
Gym Master	2,400.00
H.L. International	250.00
Louisville Badminton Supply	500.00
Nissen	2,100.00
Sauk Valley	1,800.00
Wilson	2,800.00
	<u>\$ 34,400.00</u>

1983-1984

Chingford	\$ 2,000.00
Dudley Sports	3,250.00
Wilson	3,150.00
	<u>\$ 8,400.00</u>

TOTAL \$ 42,800.00

ESTIMATED DAMAGES

I. ESPN Television Income

Estimated damages are conservative. Loss is projected to equal only income achieved in the 1979-1980 year. Although it could be anticipated that income growth would normally occur, the NBC contract which provided for exclusivity would, if opted, preclude marketing of 19 events to ESPN or other networks/cable television. Therefore, the income figure of \$33,000 per year was utilized as the benchmark for each year affected.

	<u>Actual Income</u>	<u>Estimated Damage</u>
1979-1980 (Base Year)	\$33,100	
1980-1981	13,000	\$20,000
1981-1982	--	33,000
1982-1983	--	<u>33,000</u>
		\$86,000
		\$ 96,000.00

II. People's Republic of China Tour, 1981

This tour, contracted in 1980, was seriously altered by the declaration of many Division I AIAW members not to participate in AIAW events due to their decision to participate in NCAA championships. All eight of AIAW's top finishers in 1980-1981 declared non-participation in 1981-1982. The tour not only was two games short of the initial eight planned (a loss of \$4,000 in guarantee) but the tour was incapable of generating gate receipts or television income due to the competitive inequality of most teams on the schedule with the PRC team. In the final analysis, AIAW was fortunate to cut the actual loss on the tour to \$5,979.40.

	<u>Actual Income</u>	<u>Estimated Damage</u>
Guarantees	\$12,000.00	\$ 4,000.00
Television Rights	--	10,000.00
Gate Receipts	2,391.50	16,000.00
	<u>\$14,391.50</u>	<u>\$30,000.00</u>
TOTAL		\$ 30,000.00

III. Delegate Assembly

The projected growth in income is based on the diminishing rate of growth over the period 1977-1981. Each year, as would be hypothesized, the income was greater but the rate of growth declined. Projection is based on the continuance of the curve. In 1978-1979, the growth was .32 of the previous year's income; in 1979-1980, .24 of 1978-1979; in 1980-1981, .17 of 1979-1980. The rate of growth decreased from .08 to .07. Therefore, it can be inferred that the next rate of growth rate would be .06, followed by .05. Hence, damage estimates are based on the conservative growth rate of .11 in 1981-1982 and .06 in 1982-1983.

	<u>Income</u>	<u>Rate of Growth</u>	<u>Estimated Damage</u>
1977-78	\$20,998.25		
1978-79	27,703.50	.32	
1979-80	34,386.50	.24	
1980-81	41,665.00	.17	
1981-82	25,594.00		\$20,654.00 (.11)
1982-83			49,022.00 (.06)
(projected rate)			
TOTAL			\$ 69,676.00

IV. National Championship Income

In this income category, it can be clearly seen that a consistent growth rate was not experienced. This is partially due to the expansion of the total number of AIAW championships. There were 18 in 1977-78 and 1978-79; 30 in 1979-80; 39 in 1980-81; and 41 in 1981-82. More events clearly would be expected to produce greater income.

In addition to an increase in the number of events, the interest in women's sports generally would be expected to produce more gate revenue. Hence, the judgement is made to predict a growth rate of 1.00 for 1981-1982 and .50 for 1982-1983.

	<u>Income</u>	<u>Rate of Growth</u>	<u>Estimated Damage</u>
1977-78	\$ 4,539		
1978-79	32,229	6.10	
1979-80	37,467	.16	
1980-81	66,634	.78	
1981-4/1/82	6,741		\$126,527 (1.00)
1982-83			199,902 (.50)
TOTAL			\$326,429.00

V. Sales/Publications/Salable Items

Prediction of growth in this category to estimate income for 1981-1982 and 1982-1983 is based on the notion that at a point (estimated to be 1981-1982) growth would level without further expansion of salable products. Therefore, 1981-82 would be the beginning of a leveling off of income (without

further expansion of championships) and 1982-1982 would reflect the slower .25 rate of growth.

	<u>Income</u>	<u>Rate of Growth</u>	<u>Estimated Damage</u>
1978-79	\$15,370		
1979-80	19,197	.25	
1980-81	32,508	.69	
1981-82	20,320		\$44,696 (1.00)
1982-83			81,270 (.25)
TOTAL			\$125,966.00

VI. Promotions/Rights Agreements

Promotions agreements have been projected to grow at a fairly consistent rate with an increase in rate of .18 from 1979-80 to .20 in 1980-82 to .25 in 1982-83. Marketing of women's sports has only begun. These estimates are very conservative. Further, the estimates are reduced by the amounts claimed under specifically ascertainable loss as shown in section on Specifically Ascertainable Loss III, 1982-83, supra.

	<u>Income</u>	<u>Rate of Growth</u>	<u>Estimated Damage</u>
1977-78	\$12,650		
1978-79	29,500	1.33	
1979-80	33,000	.12	
1980-81	43,050	.30	
1981-4/1/82	38,400		\$ 26,175 (.50)
1982-1983			113,006 (.75)
			<u>139,181</u>
			- 34,400 (See Specifically
			\$104,781 Ascertainable Loss,
			III, 1982-83)
TOTAL			\$104,781.00

VII. Merchandising Licensing Programs - (Exhibit 3)

Initial work in this area began spring of 1980 with the receipt of a proposal from Chester Swenson of General Licensing Corporation. Benefits anticipated were revenue from "royalties, increased exposure of AIAW programs to the general public, new membership, and our expanded public awareness of AIAW." Possible revenue was projected as:

First year: (81-82)	\$10,000 to \$100,000
Second year: (82-83)	increased revenue dependent on retail sales
TOTAL	\$100,000

Introspections, another exclusive licensing and marketing agent also indicated interest in AIAW in 1980, and submitted a preliminary proposal. They, however, suggested in a letter dated March 4, "licensees in general are reluctant to license the AIAW and its logo, since its long term existence is tenuous." Damages for the first two years of program, (1981-1982; 1982-1983) had the existence of AIAW not been threatened, is, at a minimum, projected at a value of \$100,000.

Source: Testimony of Ann Uhler

APPENDIX O

AIAW vs. NCAA Legal Action Chronology

- October 9, 1981 AIAW filed in the Federal District Court in the District of Columbia:
1. Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction
 2. Lopiano Affidavit (three volume appendices)
 3. Verified Complaint against NCAA requesting permanent injunction and treble damages
 4. Chronological Compendium of Cited Portions of Published NCAA Documents
- October 22, 1981 Judge Charles Richey held a Status Call
- October 28, 1981 Judge Charles Richey issued Order setting schedule for anti-trust case cutting off discovery by March 21, 1982; requiring AIAW to submit summary of witnesses testimony by February 22, 1982 and entire written testimony by April 2, 1982, and NCAA by March 15, 1982 and April 9, 1982 respectively.
- November 9, 1981 NCAA filed:
1. First Set of Interrogatories
 2. First Request for Production of Documents
 3. First Request for Admissions
- December 9, 1981 AIAW filed:
1. Response to NCAA's First Request for Production of Documents
 2. Answers to NCAA's First Set of Interrogatories
 3. Objections to NCAA's First Set of Interrogatories
 4. Response to NCAA's First Request for Admissions
- December 14, 1981 AIAW filed First Statement of Contentions and Proof
- December 21, 1981 AIAW filed:
1. Renewed Motion for Preliminary Injunction
 2. Memorandum of Points and Authorities in support of Renewed Motion for Preliminary Injunction

December 23, 1981	Judge Charles Richey held a Status Call and issued an Order for NCAA to respond to AIAW motion within twenty days
January 2, 1982	Depositions of Lopiano and Uhlir taken by NCAA
January 12, 1982	NCAA filed Memorandum in Opposition to Plaintiff's Renewed Motion for Preliminary Injunction
January 15, 1982	AIAW filed: <ol style="list-style-type: none"> 1. First Set of Interrogatories 2. Request for Production of Documents
January 25, 1982	NCAA filed First Statement of Contentions and Proof
January 28, 1982	NCAA filed notice of deposition of Lopiano, Uhlir, and Kharasch
February 2, 1982	AIAW filed a Reply Memorandum NCAA filed a Request for Oral Hearing
February 5, 1982	NCAA filed Response requiring court to consolidate hearing on renewed motion with the anti-trust case and specifically requested an evidentiary hearing if that was not granted
February 8, 1982	Depositions of Lopiano and Uhlir taken by NCAA
February 16, 1982	NCAA filed: <ol style="list-style-type: none"> 1. Response to AIAW Initial Request for Production of Documents 2. NCAA Answers to AIAW Interrogatories
February 17, 1982	Polivy wrote letter to Kramer calling NCAA answers "wholly deficient"

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March 30, 1982	Depositions of NBC officials Watson and Lardner.
March 31, 1982	Depositions of Toner and Holland taken by AIAW.
April 1, 1982	Depositions of Byers and Berkey taken by AIAW.
April 5, 1982	AIAW submitted Settlement Proposal to NCAA in accordance with Judge Richey's March 4 directive.
April 7, 1982	AIAW files outline of witnesses and their testimony.
April 20, 1982	NCAA responded to AIAW Settlement Proposal in accordance with Judge Richey's March 4 directive.
April 21, 1982	NCAA files outline of witnesses and their testimony.
May 8, 1982	AIAW filed Second Statement of Contentions and Proofs (testimony of Donna Lopiano, Merrily Dean Baker, Virginia Hunt, Donna DeVarona, James Koch, Lonnie Leotus Morrison, Cynthia Brown, Mimi Murray, Rex Lynford Lardner, Jr., Geoffrey Mason, G. Ann Uhler, Harry Fritz, Arthur Watson, Thomas Blackburn, Sharon Taylor, and Christine Grant).
May 27, 1982	NCAA filed Second Statement of Contentions and Proofs (testimony of Walter Byers, Paul Klein, James Frank, Nora Lynn Finch, G. Jean Cerra, Judith R. Holland, Ruth M. Berkey, and John L. Toner).
June 3, 1982	AIAW/NCAA meeting in Washington, D.C. in accordance with Judge Richey's March 4 directive, attended by Baker, Lopiano, and Polivy for AIAW, and Frank, Toner, and Kramer for NCAA.
June	AIAW files a request for pretrial conference, certifying the June 3 meeting took place and no settlement was reached.

February 18, 1982	Judge Charles Richey held a Status Call and issued an Order denying AIAW request for preliminary injunction.
February 19, 1982	AIAW filed in the U.S. Court of Appeals for the District of Columbia Circuit an Emergency Motion for Preliminary Injunction Pending Appeal or In the Alternate for Summary Reversal of Judge Richey's Order.
February 24, 1982	NCAA files response to Emergency Motion.
February 26, 1982	U.S. Court of Appeals issued Order denying AIAW Motions for preliminary injunction pending appeal, or in the alternative, for summary reversal.
March 4, 1982	Judge Charles Richey held a Status Call during which he ordered discovery for the anti-trust case cut off by March 31, 1982; the AIAW Final Statement of Contentions and Proof be submitted by April 30, 1982, and the NCAA Final Statement of Contentions and Proof by May 20, 1982. Judge Richey also ordered the AIAW to submit a plan for merger of the two organizations (or some other solution) to the NCAA within thirty days and the NCAA to respond fifteen days thereafter. The two groups were to then attest to the Court that "meaningful discussions" on a plan took place.
March 15, 1982	AIAW filed its First Request for Admissions. NCAA filed its Second Request for Admissions.
March 16, 1982	AIAW filed Motion for Voluntary Dismissal in the U.S. Court of Appeals.
March 17, 1982	AIAW filed Notice of Deposition of Toner, Byers, Berkey, Holland, and NBC officials Lardner, Mason, and Watson.
March 25, 1982	NCAA filed response to AIAW First Request for Admissions. AIAW filed response to NCAA's Second Request for Admissions.

Source: Legal Action Chronology

APPENDIX P

Sport Offerings for Female Intercollegiate Athletes

<i>All Divisions</i>		<i>By Division</i>					
Year	Sports Per School						
1996	7.53						
1995	7.27		1996	1995	1994	1993	1992
1994	7.22	Division I	8.33	7.99	7.89	7.66	7.68
1993	7.02	Division II	6.07	5.83	5.81	5.68	5.74
1992	7.09	Division III	7.75	7.67	7.65	7.43	7.42
1991	7.00						
1990	7.24						
1989	7.19						
1988	7.31						
1987	7.24						
1986	7.15						
1985	6.99						
1984	6.90						
1983	6.25						
1982	6.59						
1981	6.46						
1980	6.48						
1979	6.25						
1978	5.61						

Source: Acosta and Carpenter

APPENDIX Q

Percent of Schools Offering Each Sport-All Divisions

Sport	1996	95	94	93	92	91	90	89	88	87	86	85	84	83	82	81	80	79	77/8
Archery	0.5	0.6	0.5	0.5	0.5	0.5	0.6	0.6	1.1	1.2	0.6	0.8	1.2	1.4	1.4	2.2	2.4	3.3	3.0
Badminton	0.3	0.3	0.7	0.5	0.9	0.9	1.0	1.5	1.1	1.2	2.0	2.0	2.0	2.0	3.0	4.4	5.4	6.1	5.9
Basketball	98.3	97.5	97.8	97.6	97.2	97.1	96.2	96.2	97.0	97.2	97.1	96.8	95.7	93.6	97.3	95.9	97.5	96.4	90.3
Bowling	0.5	0.3	0.3	6.8	0.5	0.3	0.8	0.6	1.6	1.9	2.0	2.0	1.9	1.9	2.9	3.3	3.0	3.0	3.4
Crew	11.7	10.4	10.4	10.4	5.6	8.0	10.5	10.4	11.1	10.9	8.4	8.1	6.9	7.0	7.4	7.7	7.2	6.9	6.9
X Country	85.2	83.0	82.6	79.9	80.1	79.0	82.1	82.2	82.4	80.1	76.5	75.2	64.0	59.9	59.5	54.0	46.6	39.6	29.4
Fencing	4.6	4.3	4.6	4.6	7.0	7.2	7.4	7.4	9.2	9.5	8.8	9.1	8.0	8.0	10.4	9.8	9.6	9.5	9.8
Field Hockey	27.1	26.9	28.2	28.0	28.1	28.9	29.4	29.9	32.6	33.5	34.8	35.5	30.2	30.3	34.6	36.1	37.1	38.2	36.3
Golf	30.4	26.7	26.1	22.9	24.0	22.9	25.8	25.0	24.3	22.5	24.5	23.0	20.5	19.8	19.7	18.5	24.1	20.8	19.9
Gymnastics	11.2	11.1	10.8	10.9	11.5	11.3	15.5	16.0	16.8	17.5	20.6	20.4	18.6	20.0	22.1	23.0	25.6	28.2	25.9
Ice Hockey	2.8	2.6	2.4	2.2	2.4	2.7	2.6	2.6	3.0	3.2	2.5	2.7	2.6	2.4	2.9	2.9	1.8	1.5	1.3
Lacrosse	20.9	18.7	17.1	16.6	16.0	16.1	16.9	16.9	18.3	18.2	16.9	17.1	13.5	13.3	13.5	13.7	13.9	13.8	13.0
Riding	2.8	2.6	3.4	3.2	2.4	2.2	3.5	3.5	2.6	2.6	2.7	2.4	2.6	2.4	2.4	2.2	3.1	2.5	2.0
Riflery	4.2	4.0	2.6	2.2	2.2	2.4	2.6	3.2	2.6	3.2	4.2	4.2	2.8	2.7	1.8	1.9	3.4	3.3	3.8
Sailing	3.5	3.5	3.9	3.9	3.8	3.6	4.0	3.6	3.4	3.2	2.9	2.7	2.7	2.8	2.7	2.4	1.9	2.5	2.3
Skating	4.6	4.9	4.9	5.2	5.7	5.6	5.3	5.3	5.8	5.8	6.7	6.6	4.9	5.0	5.7	5.4	5.2	4.6	3.6
Soccer	68.9	61.8	55.5	49.7	45.8	44.4	41.3	38.5	38.3	35.1	29.7	26.8	18.7	16.4	16.4	12.5	8.2	4.6	2.8
Softball	77.0	74.5	75.9	74.2	72.4	70.6	70.9	69.2	72.5	72.5	69.6	68.4	65.6	65.6	67.1	65.6	62.3	58.9	48.4
Squash	3.4	3.4	3.6	3.6	3.9	3.6	3.6	3.6	3.2	3.0	3.4	3.3	2.0	2.0	2.9	2.7	2.8	2.5	2.3
Swim/Drive	48.1	47.4	48.6	47.8	51.1	51.1	53.6	53.3	55.0	54.9	54.2	53.5	44.8	42.5	49.1	48.6	46.9	44.8	41.0
Sync. Swim	0.8	0.8	0.7	0.5	1.2	1.4	0.5	0.5	0.7	0.7	1.5	1.3	1.5	1.3	2.7	3.3	3.2	3.4	3.3
Tennis	87.8	86.4	85.3	82.9	85.8	85.0	88.6	88.6	88.9	90.3	88.5	87.0	82.5	82.6	85.5	85.4	88.6	86.5	80.0
Track	65.8	63.7	65.0	63.3	66.4	64.3	68.6	66.8	66.8	64.6	67.2	63.8	58.7	57.2	62.0	59.3	58.6	54.3	46.1
Volleyball	92.4	90.9	91.5	90.6	91.1	89.1	90.6	91.2	91.2	91.0	87.7	86.3	84.0	83.6	85.7	84.9	87.8	85.9	80.1

Source: Acosta and Carpenter

APPENDIX R

Percent of Schools Offering Each Sport-By Division

Sport	Division 1			Division 2			Division 3		
	1996	1994	1992	1996	1994	1992	1996	1994	1992
Archery	0.9	1.0	1.0	0.0	0.0	0.0	0.4	0.0	0.0
Badminton	0.0	0.0	0.0	0.0	0.0	0.7	0.8	1.7	1.7
Basketball	98.1	98.0	99.4	98.3	99.4	99.3	99.4	95.7	95.7
Bowling	0.0	0.0	1.0	0.5	0.6	0.0	0.8	0.4	0.4
Crew	18.1	13.0	12.6	4.5	5.0	2.7	11.4	12.0	8.8
Cross Country	95.8	96.4	93.1	81.6	75.2	70.7	78.8	76.4	74.4
Fencing	7.0	6.8	11.1	0.6	1.1	0.7	5.5	5.2	7.6
Field Hockey	22.8	25.0	26.8	14.0	11.2	10.8	40.0	42.5	39.9
Golf	51.6	45.3	41.1	15.1	15.5	14.3	23.1	17.6	15.5
Gymnastics	25.4	24.0	24.7	3.4	3.7	5.4	5.1	4.7	4.2
Ice Hockey	3.3	3.6	3.5	0.6	0.0	0.7	3.9	3.0	2.5
Lacrosse	18.6	12.0	14.1	7.26	5.0	4.1	32.5	29.6	24.8
Riding	0.9	1.0	0.5	2.2	1.9	0.0	4.7	6.4	5.5
Riflery	9.3	5.7	2.5	0.6	1.2	2.0	2.4	0.95	2.1
Sailing	4.2	5.2	4.0	1.7	1.2	2.0	4.3	4.7	4.6
Skiing	5.1	4.2	4.0	3.4	3.1	5.4	5.1	6.9	7.1
Soccer	67.4	46.9	31.8	50.8	38.5	32.0	82.7	74.2	66.0
Softball	69.3	68.2	63.1	83.2	80.7	78.9	79.2	79.0	76.1
Squash	1.9	2.6	3.5	0.0	0.0	0.0	7.1	6.9	6.7
Swim/Dive	56.3	58.3	61.6	24.0	23.6	26.5	58.0	57.9	57.6
Sync. Swim	1.4	0.5	0.5	0.0	0.0	0.7	0.7	1.3	2.1
Tennis	95.8	92.7	92.9	77.1	74.5	70.7	88.6	86.7	89.1
Track	85.1	83.9	83.3	46.4	47.8	52.4	63.1	61.4	60.9
Volleyball	95.3	93.8	91.4	91.6	91.9	93.9	90.6	89.3	89.1

Source: Acosta and Carpenter

Bibliography

Primary Sources

Association for Intercollegiate Athletics for Women (AIAW), Unpublished Manuscript (Author Unidentified), AIAW Preliminary Inventory (AIAWPI), Historical Manuscripts and Archives Department (HMAD), University of Maryland College Park (UMCP), Washington D.C.

AIAW - NCAA Fact Sheet, January, 1975, AIAWPI, HMAD, UMCP, Box #64, Folder "NCAA/AIAW Chronology 71-80."

AIAW Press Release, February 18, 1992, AIAWPI, HMAD, UMCP, Box #68, Folder "Press Releases 1981-82."

AIAW vs. NCAA Legal Action Chronology, June 8, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "AIAW vs. NCAA Legal Action Chronology, October-June 1982."

Decision and Order, February 25, 1983, AIAWPI, HMAD, UMCP, Box #380, Folder "AIAW vs. NCAA Decision and Order."

Defendant's Exhibits, May 27, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "NCAA Exhibits."

Health, Education, and Welfare, Office for Civil Rights (HEW-OCR), "Final Title IX Regulation Implementing Education Amendments of 1972: Prohibiting Sex Discrimination in Education," *Government Publications*, Washington, D.C. (1975).

HEW-OCR, "Memorandum to Chief State Officers, Superintendents of Local Educational Agencies and College and University Presidents," *Government Publications*, Washington D.C. (September 1975).

HEW-OCR, "HEW Fact Sheet-Title IX-Civil Rights," *Government Publications*, Washington, D.C. (June 1975).

HEW-OCR, "Title IX of the Education Amendments of 1972: A Policy Interpretation," *Federal Register*, 44(239), December 1979.

Memorandum from Donna Lopiano to AIAW Executive Board, Committee on Men's Athletics and AIAW Past Presidents, December 8, 1980, AIAWPI, HMAD, UMCP, Box #319, Folder "Correspondence: AIAW Executive Committee."

Memorandum of Points and Authorities in Support of Renewed Motion for Preliminary Injunction, December 21, 1981, AIAWPI, HMAD, UMCP, Box #57, Folder "Renewed Motion for Injunction/Memorandum Support Motion."

Memorandum from Renouf, McKenna, Polivy to AIAW Executive Board, February 26, 1976, AIAWPI, HMAD, UMCP, Box #417, Folder "NCAA-Title IX Lawsuit."

Motion for Preliminary Injunction, October 9, 1981, AIAWPI, HMAD, UMCP, Box #65, Folder "AIAW vs. NCAA - Motion for Preliminary Injunction."

Motion for Preliminary Injunction Pending Appeal or Summary Reversal, February 19, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "AIAW: February 19, 1982 U.S. Court of Appeals."

The National Collegiate Athletic Association (NCAA), Summary of NCAA Meetings Concerning Women's Athletics Matters, 1963-1980, December 4, 1980, AIAWPI, HMAD, UMCP.

NCAA Response to AIAW First Request for Admissions, March 25, 1982, AIAWPI, HMAD, UMCP, Box # 57, Folder "NCAA: Response to AIAW First Request for Admissions."

Order, February 19, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "AIAW: February 19, 1982 U.S. Court of Appeals."

Order, February 26, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "AIAW: February 26, 1982 Appeal Denial."

Pretrial Brief for the Plaintiff, August 23, 1982, AIAWPI, HMAD, UMCP, Box #63, Folder "Pretrial Brief AIAW vs. NCAA August 1982."

Response of the AIAW to the Defendant NCAA's Second Request for Admissions, March 25, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "AIAW: Response to NCAA Second Request for Admissions."

Retainer Agreement between AIAW and Renouf and Polivy, May 8, 1981, AIAWPI, HMAD, UMCP, Box #309, Folder "Renouf and Polivy Retainer Agreement 1981-1982."

Settlement Proposal to NCAA from AIAW, April 5, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "AIAW: Settlement Proposal April 5, 1982."

Statement of Donna A. Lopiano President, AIAW, October 10, 1981, AIAWPI, HMAD, UMCP, Box #68, Folder "Public Relations - Donna Lopiano."

Statement by Senator Tower, Proceedings and Debates of the 94th Congress, First Session Vol. 121, No. 111, July 15, 1975, AIAWPI, HMAD, UMCP, Box #294, Folder "Title IX Amendment & Tower Bill."

Status Call Proceedings, December 23, 1981, AIAWPI, HMAD, UMCP, Box #57, Folder "Richey: December 23, 1981 Order NCAA Response."

Testimony of Christine H. B. Grant, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "AIAW vs. NCAA-Grant Testimony."

Testimony of Donna A. Lopiano, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "AIAW vs. NCAA-Lopiano Testimony."

Testimony of G. Ann Uhler, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "AIAW vs. NCAA-Uhler Testimony."

Testimony of James B. Koch, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "AIAW vs. NCAA-Koch Testimony."

Testimony of Merrily Dean Baker, 1982, AIAWPI, HMAD, UMCP, Box # 57, Folder "AIAW vs. NCAA-Baker Testimony."

Testimony of Thomas H. Blackburn, 1982, AIAWPI, HMAD, UMCP, Box #57, Folder "AIAW vs. NCAA-Blackburn Testimony."

Testimony of Walter Byers, May 24, 1982, AIAWPI, UMCP, Box #57, Folder "AIAW vs. NCAA-Byers Testimony."

Title 15 - Commerce and Trade, §§ 1-7, *U.S.C.*, 1982, p. 132.

U.S. District Court, For the District of Kansas, "NCAA vs. David Mathews, Secretary for DHEW", NCAA Civil Action No. 76-32-00, Complaint, AIAWPI, HMAD, UMCP, Box #417, Folder "NCAA-Title IX Lawsuit."

United States Code (U.S.C.), Title 15-Commerce and Trade, section 1-2, (1982).

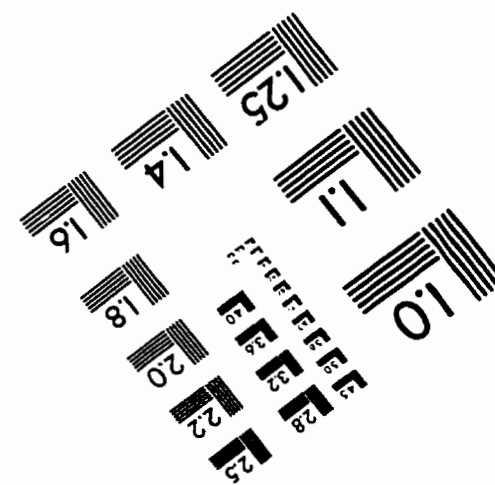
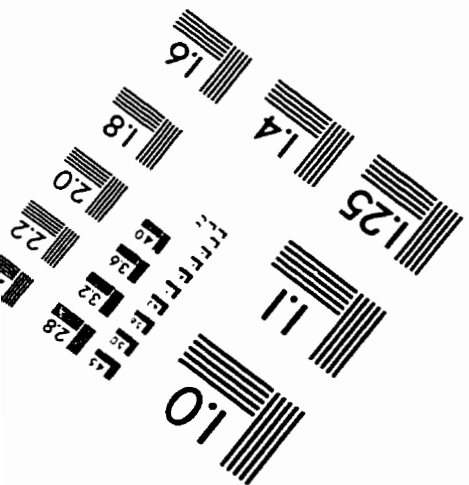
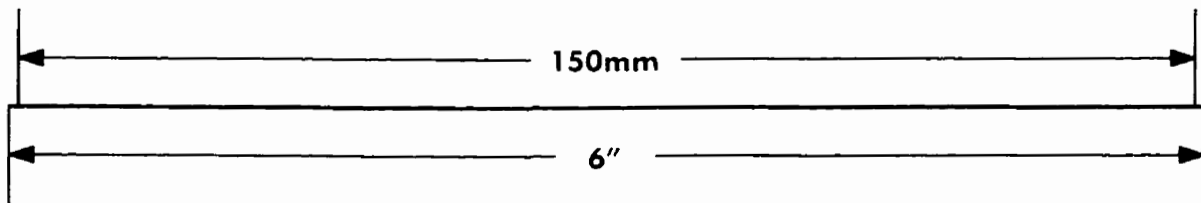
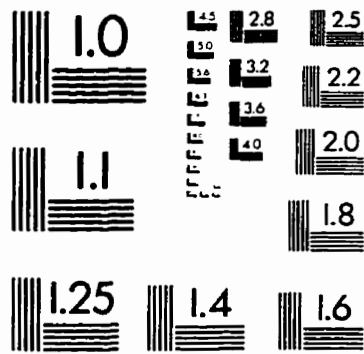
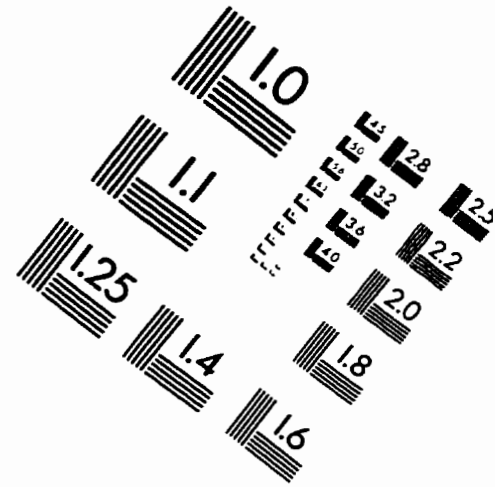
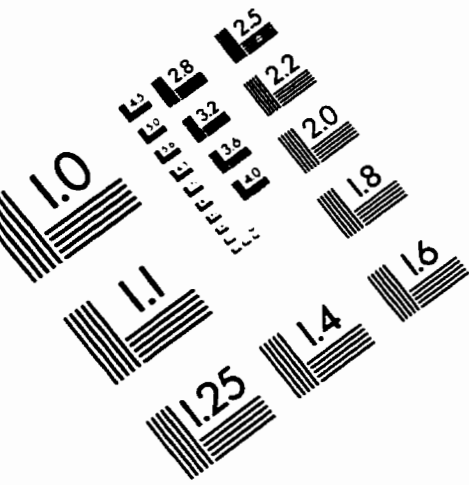
Verified Complaint, October 9, 1981, AIAWPI, HMAD, UMCP, Box #63, Folder "AIAW vs. NCAA Verified Complaint."

Secondary Sources

- R. Vivian Acosta and Linda Jean Carpenter, "Women in Intercollegiate Sport: A Longitudinal Study-Nineteen Year Update, 1977-1996," Department of Physical Education, Brooklyn College, Brooklyn New York (1996).
- Tanya Albert, "I-AAA Women Get Bigger Cut of Budget," *USA Today*, March 5, 1997.
- Tanya Albert, "Women's Programs Show Revenue Gains," *USA Today*, March 4, 1997.
- Erik Brady, "Colleges Score Low on Gender-Equity Test," *USA Today*, March 3, 1997.
- Linda Jean Carpenter, "The Impact of Title IX on Women's Intercollegiate Sports," in A.T. Johnson and J.H. Frey, eds., *Government and Sport: The Public Policy Issues* (New Jersey, NY:Rowan and Allanheld Publishers, 1985).
- Lynne Fauley Emery and Margaret Toohey-Costa, "Hoops and Skirts: Women's Basketball on the West Coast, 1892-1930," in *A Century of Women's Basketball: From Frailty to Final Four* (Reston, Virginia: American Alliance for Health, Physical Education, Recreation and Dance, 1991).
- Cheryl M. Fields, "Appeals Court Rejects Charge that NCAA Forced Women's Group out of Business," *Chronicle of Higher Education*, May 1984
- Ellen Gerber, "The Controlled Development of Collegiate Sport for Women, 1923-1936," *Journal of Sport History*, 2 (Spring 1975).
- Christine H.B. Grant, "Recapturing the Vision," *Journal of Physical Education, Health, Recreation, and Dance (JOPEHRD)*, 60 (March 1989).
- Patricia Huckle, "Back to the Starting Line: Title IX and Women's Intercollegiate Athletics," *American Behavioral Scientist*, 21 (January/February 1978).
- Sally Huggins, "Title IX Ticker: Institutions Must Make Gender-Equity Data Available," *The NCAA News*, (October 1996)
- Joan S. Hult, "Women's Struggle for Governance in US Amateur Athletics," *International Review for Sociology of Sport*, 24 (1989).
- Joan S. Hult, "The Governance of Athletics for Girls and Women: Leadership by Women Physical Educators, 1899-1949," in *A Century of Women's Basketball: From Frailty to Final Four* (Reston, Virginia: American Alliance for Health, Physical Education, Recreation and Dance, 1991).

- Ginny Hunt, "Governance of Women's Athletics: An Historical Perspective," Ph.D. Dissertation, 1976, AIAWPI, HMAD, UMCP.
- Gayle Ingram, "Political Backlash and Implications to the Women's Civil Rights Movement Focusing on Sport and Athletic Opportunities for Women", Unpublished Manuscript presented at the World Congress of Sociology, Mexico (August 1982).
- June E. Jenson, "Title IX and Intercollegiate Athletics: HEW Gets Serious About Equality in Sports?," *New England Law Review*, 15(3) (Summer 1980).
- Wendy T. Kirby, "Federal Antitrust Issues Affecting Institutions of Higher Education: An Overview," *Journal of College and University Law*, 11(3) (Winter 1984).
- Leotus L. Morrison, The AIAW: Governance by Women for Women. In Cohen, Greta L. (ed.) *Women in Sport: Issues and Controversies*, Newbury Park, California: Sage Publications (1993).
- David Salter, "Crashing the Old Boy's Network: The Tragedies and Triumphs of Girls and Women in Sports," in Westport: Praeger Publishers, (1996).
- Betty Spears, "Senda Berenson Abbott: New Woman, New Sport," in Joan S. Hult and Marianna Trekell, eds., *A Century of Women's Basketball: From Frailty to Final Four* (Reston, Virginia: American Alliance for Health, Physical Education, Recreation and Dance, 1991).
- Nancy L. Struna, "Beyond Mapping Experience: The Need for Understanding in the History of American Sporting Women," *Journal of Sport History*, 11 (Spring 1984).
- Erik Brady and Tom Witosky, "Title IX Improves Women's Participation," *USA Today*, March 3, 1997.
- Debbie Becker and Tom Witosky, "Women Make Gains Against College Curve," *USA Today*, March 4, 1997.
- Debbie Becker and Tom Witosky, "Crew, Soccer Help Schools Close Gender Gap," *USA Today*, March 4, 1997.
- Ann G. Uhler, "The Wolf is Our Shepard: Shall We Not Fear?," *Phi Delta Kappan*, 64(3) (November 1982).
- Paula Welch, "Governance: The First Half Century," in G.L. Cohen, ed., *Women in Sport: Issues and Controversies* (Newbury Park: Sage Publications, 1993).

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