LOST IN LITIGATION:
UNTOLD STORIES OF A TITLE IX LAWSUIT

DISSERTATION

Presented in Partial Fulfillment of the Requirements for the Degree Doctor of Philosophy in the Graduate School of The Ohio State University

By
Kylee Jo Short, M.A.
Graduate Program in Education

The Ohio State University
2012

Dissertation Committee:
Dr. Sarah K. Fields, Advisor
Dr. Melvin Adelman
Dr. Brian Turner
Abstract

Girls and women in the United States are more active participants of sport than ever before. Many attribute this dramatic increase to the impact of Title IX, the legislation that requires gender equity in educational settings. However, Title IX is proving just to be the first step, as it does not address all of the issues. Namely, application of the law skips over the fact that poor women of color are ultimately left out of the equation. Women and girls of color are not “winning” the Title IX game like white women and girls. On the contrary, the application of Title IX ignores poor, black females.

The purpose of this project is to fill the void left by ignoring poor girls of color by considering the voices that are often lost in Title IX fights. In considering the most recent lawsuit to reach the Supreme Court, Jackson v. Birmingham Board of Education, I explore the impact of this Title IX lawsuit on the Birmingham community. Through interviews with several involved in this lawsuit—Coach Jackson, three of his former players, a parent, a student, and an athletic administrator—I provide several angles on how Title IX played out at the local level. The concepts presented—the disposition of the city, the lawsuit, the inability to settle the lawsuit, and the experiences of those involved—all provide examples of the way issues of race and class seem to fall outside the scope of the Title IX law.
Acknowledgments

So many stood behind me throughout this process that it is simply impossible to acknowledge all who impacted this project. First and foremost, to the staff and scholars at The Ohio State University, I owe my utmost gratitude. Dr. Sarah Fields, my advisor, was the backbone for this project. She reminded me often that this undertaking was doable and proved her faith in me time and time again. Sarah’s intelligence and witty sense of humor helped sustain this endeavor. Her passion for sport is contagious, and I only hope to contribute to the women and girls who play its games as she has and continues to do.

Dr. Melvin Adelman and Dr. Brian Turner willingly joined me in this process. Their enthusiasm for the classroom and their students was and is always refreshing. Both Dr. Adelman and Dr. Turner reminded me that this process actually did have an enjoyable side to it.

I am forever grateful to my family. The prayers and unending love and support of my parents, Kevin and Suzie Studer, my sister and brother, Shani Fackler, and Rob Studer, along with their families have been constant throughout my life. Those prayers and support were never more welcomed and appreciated than through the undertaking of this project.
Without the help of Coach Jackson, the girls at the former Ensley High School, and Jon Solomon of the *Birmingham News*, this project would have never taken place. The time, effort, help, and willingness to share stories with me made this project possible, and I am very appreciative for all of their help. Also, thank you to the Texas A&M University’s Laboratory for the Study of Diversity in Sport for their financial contribution to this project.

Finally, and most importantly, I owe much to my husband, C. J. Short. He convinced me to rally and to finish the project. At times he stood behind me to hold me up, while other days he helped blaze a path for me. C. J. reminded me there was light at the end of the tunnel and kicked my backside into gear when I needed it. C. J. has challenged me to support my way of thinking and to stand up for my convictions. He is my biggest fan in this game we call life. I am forever grateful for his love, care, and encouragement.
Vita

September 25, 1980 ..............................Born – Hicksville, Ohio

2003 ..............................................B.S. Health and Sports Studies, Miami University

2004-2008 .......................................Graduate Teaching and Administrative Associate, Sport, Fitness and Health Program, The Ohio State University

2006 ..............................................M.A. Sport and Exercise Humanities, The Ohio State University

2010 ..............................................Adjunct Faculty, Houston Community College

2011 ..............................................Lecturer, Rice University

2011 to present .................................Adjunct Faculty, Houston Baptist University

Fields of Study

Major Field: Education
   Sport Humanities
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Title IX has a reputation. Part of the Education Amendment Acts of 1972, Title IX requires gender equity in educational activities receiving federal funding. Since its origination, Title IX has initiated hotly contested dialogue and debate, especially regarding the law’s application to athletics. Often, these opinions are a direct result of how the directive impacts the individual or individuals in question. For advocates of Title IX, the law means opportunity for women and girls. Conversely, Title IX opponents often blame the law for shattering the dreams of boys and young men when men’s and boys’ athletic teams or opportunities are cut in the name of equity.

This ambivalent relationship with Title IX seems to be a direct reflection of gender. Title IX is believed to provide opportunities for girls and women through increasing opportunities to play sport, while decreasing those same sporting changes for boys and men. Girls and women seem to benefit from this law, while boys and men suffer. Some parents rave about how great Title IX is for their daughters, and other parents with sons detest the law. It then becomes clear. The law on its face is gender neutral; rather, the intention of the law was to be gender neutral. The practical application

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of the law, however, has had a more negative impact on males and a more positive impact upon females.

At one point in history, males had the entire the athletic pie, in terms of resources and opportunities. The instituting of Title IX required that that athletic pie be shared across both genders. Under the law, males no longer have that entire athletic pie, as the law requires the resources to be fairly distributed to both boys and men and girls and women. According to the view of some, however, females unfairly took that athletic pie from the males. Was it fair in the first place for males to have the entire athletic pie? That depends on the viewpoint. Advocates of women’s equality believe the arrangement was unfair from the start, but to someone who had the whole athletic pie in the beginning, being forced to share that pie is then unfair.

Because of this so-called sharing of the athletic pie, Title IX plays multiple roles and has several different faces in the lives of many American families. These variations are reflected in this dissertation. Title IX exists on a microlevel. It impacts individual people, families, schools, institutions, and communities. Title IX also exists on the macrolevel as collectively more women are active and participating in sports than ever before in history. Finally, Title IX exists as a myth, ironically both as a mythical hero and as a mythical villain. As mythical hero, Title IX stands for all that is good and equitable, namely increased opportunities for women and girls. However, as a mythical villain, it destroys boys’ and men’s sports.

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Advocates for increased women’s opportunities have considered this law a “winner” for girls and women. However, Title IX is proving just to be the first step. The law does not address all of the issues. Yes, it is beginning to address key gender inequities, and therefore, some—arguably many—women and girls are making gains from this law. Women and girls of color, unfortunately, are not “winning” the Title IX game like white women and girls. The application of the law overlooks the fact that women of color are ultimately being left out of the equation; in practice, the application of Title IX often ignores poor, black females.

Sample Case: Jackson v. Birmingham Board of Education

Since Title IX’s origination in 1972, only seven lawsuits have made it all the way to the Supreme Court. As will be discussed in later chapters, all of these lawsuits have significantly impacted the face of Title IX. The lawsuit that is the center of this project—Jackson v. Birmingham Board of Education—is the most recent Title IX lawsuit to reach the Supreme Court. Therefore, this particular lawsuit is valuable based on that premise alone. Maybe more importantly, though, is the fact that this lawsuit is a prime example of how the application of Title IX overlooks economically disadvantaged girls of color. As demonstrated by Jackson, Title IX and the subsequent legal battles

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attempting to enforce the law are not positively affecting poor, black females. Their voices—those of poor, black females—are lost in this particular Title IX fight, and a significant reason these voices are lost is because of issues of race and class.

In this lawsuit, Roderick Jackson, a black male, was the coach of the Ensley High School girls’ basketball team. This high school, a member of the Birmingham Public School system, was predominately black and poor. Jackson brought the lawsuit against the Birmingham School Board, because he made complaints regarding what he believed to be inequitable treatment between his girls’ squad and the boys’ team. Shortly after these complaints, the Birmingham Board of Education relieved Jackson of his coaching duties. Jackson believed he was fired because he complained about the gender inequity and filed a subsequent Title IX lawsuit against the school system for its retaliatory actions. Jackson’s case eventually ended up before the Supreme Court, which ultimately ruled in favor of Jackson.

The litigation itself in *Jackson v. Birmingham Board of Education* sheds new light on the current landscape of Title IX. It provides valuable information on how Title IX is applied to retaliation, which is central in the enforcement of the law. The social impact of Title IX on a community, however, is lost when the focus is solely on the influence of the law at the level of the educational institution. Also, just as important, examining the impact of the law from a national perspective fails to see where the application of the law has fallen short and continues to fall short when it is played out in an actual school setting. In this example, the application of the law at Ensley High School did not cover these poor girls of color.
In the instance of Jackson, nearly six years passed from 1999 to 2005 before actions were taken to rectify a gender-biased environment. The law in this example was clearly not being applied in a way that was effective in remedying gender discrimination. This occurrence at Ensley High School reflected an enforcement failure, as the laws in place did not meet the needs at the local level. Coach Jackson began making complaints in 1999, alleging unfair treatment of the girls’ basketball team he coached. The Supreme Court ultimately rendered a verdict in 2005. After the Supreme Court reached its decision, the local media reports on the subject indicated a settlement was finally reached almost a year and a half after the Supreme Court decision. However, two years after this verdict, according to the Birmingham News, Jackson filed yet another court document, alleging that the retaliation against him persisted and that the girls’ basketball team still was not being treated equally.6 Thus, eight years following the original 1999 complaints regarding uniform, transportation, and gym inequity, the plaintiff still believed the high school girls in question had yet to be treated as equals to their male counterparts.

Like the academic and legal writing on the Jackson lawsuit, most of the media attention given to this lawsuit focused on the school in question and Jackson, as he was the plaintiff. After the Supreme Court decided in his favor, Jackson, perhaps rightfully so, was represented in the media as a hero.7 Unfortunately, but not surprisingly, little

attention was paid to the impact on the Birmingham community and the female athletes, who were the heart of the original Title IX complaints.

The majority of the legal and scholarly literature on Title IX does not sufficiently explore the tangible outcomes following a court ruling; this literature certainly did not in the case of Jackson. More specifically, outside of a few local writings, the effect the Jackson lawsuit had is lost in litigation, especially pertaining to the females of Ensley High School and the members of the local community. As I examined the legal documents and local editorials, the voices of lawyers, legal analysts, and various public officials have been heard. Shockingly, though, little has been heard from those this law is intended to aid: female athletes. Even more disconcerting is the disconnect between the ruling of the Supreme Court and local action. Academics and even Title IX advocates spent little time on the issues of the case once the High Court delivered a verdict. Those pleased with the court ruling apparently assumed that the problems would be resolved, but this was clearly not the case in Jackson.

Most of the discussion in the legal and scholarly literature rests at the level of the educational institution. It considers the historical, legal, and larger cultural ramifications with little emphasis on the law’s impact at the local level. By focusing solely on these areas, little voice is given in legal and scholarly writings to those of the local community. More specifically, little, if any, attention is paid to the young females of communities deeply influenced by Title IX and its legal battles. It is obvious that without institutional reform there would be no teeth behind the enforcement of Title IX’s regulations; however, only focusing on the impact of the law at the organizational level fails to
consider the societal effects that the law has on the community—Title IX on a microlevel.

With these gaps in mind, this project—through comments expressed in first-hand interviews—allows several of Jackson’s former players and an athletic administrator to express their thoughts on the lawsuit. As a result, this sheds new light on this lawsuit from an entirely different perspective than the views offered in academic, legal, and local writings on the case. In addition, the words of these local individuals offer insight into this community, which provides a greater understanding of how race and class are constructed there. The disposition of the city, the lawsuit, the inability to settle the lawsuit, and the experiences of those involved, all provide examples of the manner in which issues of race and class seem to fall outside the scope of the Title IX law. Title IX’s opponents have analyzed the law and are quick to scrutinize it for its detrimental effects on certain nonrevenue men’s sports. There needs to be the same cautious eye and scrutiny to consider whether the application of the law may disregard issues of race and class, and this project seeks to do just that.

*The Road Map*

To accomplish the task of adding race and class to the Title IX discussion, the first chapter provides a history of the law, brief components of the law, and a practical example of how an institution gains compliance with Title IX. In other words, this chapter explains the nuts and bolts of Title IX’s purpose and aspirations, and how the law attempts to accomplish what its authors intended. The first chapter concludes by summarizing many of the significant battles over Title IX that have reached the Supreme
Court level. Case law, especially the significant cases to have reached the Supreme Court, provides guidance on how the courts believe Title IX is to be implemented. Again, since there have been only seven total cases to reach the Supreme Court level, including *Jackson*, all are significant pieces in Title IX history.

Chapter 2 recounts the history of Birmingham, Alabama, with particular attention to the way race shaped the early labor markets and propelled the city to national notoriety throughout the tumultuous civil rights era. The chapter includes analysis of Birmingham’s demographic profile according to the most recent census data. Finally, the chapter follows the evolution of the city’s public schools from inception to today’s complex urban school district and includes a note on the final statistics of Ensley High School before it closed its doors. The chapter is crucial in understanding the historical groundwork on which this community and subsequent lawsuit was founded, and the data lay the foundation for understanding the later analysis. Issues of race and class have been intertwined in this community since its inception, and this chapter helps elucidate those issues.

The main premise of Chapter 3 is the lawsuit, the legal framework, and legal application of Title IX as it pertains to this case. First, the chapter chronicles the lawsuit between Jackson and the Birmingham Board of Education, including a detailed account of Jackson’s allegations and the Board’s defense. It traces the lawsuit from Jackson’s first allegations in the late 1990s to its conclusion in 2008. This chapter analyzes the decision rendered by the Supreme Court and the rationale offered in the majority and dissenting opinions.
Chapter 4 tells the local side of the story of the *Jackson* lawsuit—the microlevel impact. The chapter begins with an analysis of local-news coverage to understand and contextualize community reaction to the litigation. Next, the perspective of three girls who played for Coach Jackson is provided through first-hand interviews. The chapter also includes interviews with a key athletic administrator and Coach Jackson himself, and it concludes by making sense of the views of those interviewed.

Chapter 5, the concluding chapter, examines the long-term ramifications of the *Jackson* case and how these consequences are likely to impact the future of Title IX. It also considers how the retirement of Justice Sandra Day O’Connor and how the addition of Justices Samuel Alito, John Roberts, Sonia Sotomayor, and Elena Kagan might alter the face of Title IX. The chapter ends by connecting the history of Birmingham to the outcome of this lawsuit, and it considers the application of the law in the future.
Chapter 1: Title IX – The Law

Coming on the heels of the revolutionary 1960s, Title IX of the 1972 Education Amendment Acts originated as an expansion of antidiscrimination law to the Civil Rights Act of 1964. More commonly known simply as Title IX, the law states, “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.” Title IX, in essence, “added the word ‘sex’ to Title VI of the Civil Rights Act of 1964, which prohibited institutions receiving federal funds from discriminating on the basis of race, color, or national origin.”

At the time, the intention of the law was thought to have little, if anything, to do with athletics. Instead, its authors sought primarily to provide equal footing for both boys and girls in classroom opportunities. The purpose, explained Senator Birch Bayh, was to contend with the “continuation of corrosive and unjustified discrimination against women

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10 Baer and Goldstein, *Constitutional and Legal Rights*, 534.
in the American educational system.” One scholar, Dr. Sarah Fields, discussed this from a practical standpoint. She stated, Title IX, “for example … would stop schools from excluding girls from physics and wood-working class and ensure that all students, regardless of gender, had the opportunity to acquire financial aid.” It was not until later, in 1979, when the regulations were drafted, that athletics were explicitly mentioned.

Title IX consists of four components: the law, the regulations, the policy interpretations, and the letters of clarification (see Appendix 1 for further detail). Congress enacted the law; three years later, the Office of Civil Rights (OCR) of the Department of Health, Education, and Welfare (HEW) developed Title IX’s regulations. The regulations detailed a list of requirements, or objectives, which Title IX sought to meet. The regulations included such areas as designating a responsible employee, adopting grievance policies acquiring proper financial assistance, and applying the legislation to athletics.

Since the law then required that girls receive equal treatment with boys in the educational process—now explicitly including athletics—were girls going to be found on the football fields or the baseball diamonds alongside boys? Unsurprisingly, that very question raised serious concern among the supporters of male athletics. The regulations were set in place with the intention of providing clarity for the law’s implementation. Instead, questions and confusion surrounded the details of the regulations. In 1979, in

12 Fields, Female Gladiators, 10-11.
13 Fields, Female Gladiators; and Linda Carpenter and Vivian R. Acosta, Title IX (Champaign, IL: Human Kinetics, 2005). For further discussion on the regulation on athletics, see Appendix A or Carpenter and Acosta, Title IX, 9-11.
response to overwhelming perplexity surrounding the law’s application, the HEW developed policy interpretations. In essence, the policy interpretations provided specific, concrete—or at least more concrete than the previous interpretations—guidelines for institutions to follow in order to become compliant with Title IX.

To be compliant, schools were expected to follow the three-prong test. First, if a federally funded institution provided athletic opportunities for females that are substantially proportionate to the number of female students enrolled at the school or university, the institution was compliant with Title IX. For example, if females comprised 55 percent of the student body of University/School A, then 50 to 60 percent of the athletic body at University/School A must also be female. If University/School A met this requirement, it was compliant.

If University/School A was unable to meet the first of the three-prong test, the institution could test its compliance against the second prong. If University/School A was able to show a history and continuing practice of expanding programs for the underrepresented sex, then University/School A was compliant with Title IX based upon the second prong. If University/School A did not meet the criteria of either the first or second prong, the third prong required that University/School A be able to demonstrate that the interests and abilities of the underrepresented sex were being met. If University/School A satisfied this final prong, it was compliant. However, if University/School A was not able to meet the criteria established by satisfying just one of the three prongs, it was not compliant with Title IX’s requirements.\footnote{As of this project’s completion date, these regulations remain the same.}
Additions to the above three components came in 1996, 1998, and 2003 in the form of letters of clarification. The 1996 letter of clarification addressed each component of the three-prong test with a particular emphasis on the first prong, proportionality. Due to the number of questions submitted to the OCR by participating institutions, another letter, the 1998 letter of clarification, readdressed proportionality, as it applied to financial aid and participation numbers. Finally, in 2003, the OCR addressed the application of Title IX, which included the cutting of men’s programs in order to gain compliance through proportionality. This third letter encouraged institutions to utilize the flexibility of the three-prong test, in addition to reiterating that the OCR did not encourage eliminating programs. These letters of clarification were often a direct result of how the courts clarified and applied the law. The subsequent section provides a general overview of the most pertinent cases. For greater specificity on the law, consult Appendix 1.

**Title IX and Case Law**

This section examines the cases that have dramatically shaped the enforcement of Title IX. Case law has played a significant role in the shaping of Title IX. As institutions have struggled over how exactly to comply with the regulations on gender equity, the courts have assisted in clearing up the confusion. Many questions have been answered through case law that were not explicitly discussed in the policy regulations or the interpretations, such as whether Title IX covers a private right of action, and whether

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15 As discussed in the first prong of the three-prong test, the participation numbers needed to be substantially proportionate with the student body population, plus or minus five percentage points. This was true also for financial aid.
monetary damages can be awarded under Title IX. Due to the large number of gender-equity issues brought before all levels of the courts, this section focuses mainly on those cases reaching the Supreme Court.

*Cannon v. University of Chicago.* The first Title IX case reached the Supreme Court in 1979. In *Cannon v. University of Chicago,* the petitioner, Geraldine Cannon, was a thirty-nine year-old woman who had applied to the Pitzker School of Medicine at the University of Chicago and, despite adequate test scores and grades, was denied admittance. Additionally, the institution admitted several students with lower test scores and grade point averages. The petitioner filed a Title IX complaint in April of 1975 with the local HEW, after appeals to the institution to reconsider her application failed. In June of 1976, the HEW informed Cannon that the national headquarters would be conducting a more detailed investigation of the situation. Upon receiving no confirmation from the HEW after three months, the petitioner filed a suit in the District Court for the Northern District of Illinois against the University of Chicago under Title IX, claiming she had been denied entrance to the school because of her sex. The district court ruled that Cannon did not have a private right of action or the ability to file a suit against an institution without first utilizing the administrative remedies already set in place. That is, the district court decided Cannon could not sue the University of Chicago without first exhausting the options set forth by the OCR.

The US Supreme Court overturned the district court and court of appeals’s ruling that Cannon had no private right of action in federal court and ordered the case remanded.

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17 Id.
to the lower courts. The court enumerated the following reasons for arriving at this
determination. First, Title IX was passed in order to prevent discrimination against
individuals based upon their sex, and in the case of Cannon,\textsuperscript{18} the petitioner alleged
biased treatment because she was a female. Historically, the court argued, Congress
intended Title IX to follow the model of Title VI, which included those individuals
excluded from federally funded programs because of their sex. The court believed
Congress had every intention of allowing Title IX to cover a private right of action as
well. Moreover, the majority opinion maintained that a private cause of action was
consistent with the standards Title IX sought to enforce. Finally, the court concluded that
the question of a private right of action belonged to the jurisdiction of the federal courts,
not the states.\textsuperscript{19}

In short, Cannon ensured that the victims of sex discrimination had the right to
take their case to court without first exhausting the administrative options in place. This
ruling allowed the alleged victim of discrimination to choose from a variety of legal
remedies, rather than a single administrative relief. In the case of Cannon, the HEW’s
investigation, though lengthy, produced few results. The filing of the complaint with the
courts resulted in a much speedier and effective outcome. Furthermore, a private right of
action held more significant results in the fight against inequality than following the in-
house compliance measures. With more options available to seek redress for gender
discrimination, federally funded institutions were put at a much greater risk of litigation if
they failed to comply with the standards set forth by the law.

\textsuperscript{18} Id.
\textsuperscript{19} Id.
North Haven Board of Education v. Bell. North Haven tenured school teacher, Elaine Dove, filed a complaint with the HEW in January of 1978. She charged that the North Haven Public School system refused to allow her to return to her teaching position after taking a one-year maternity leave of absence. Because North Haven claimed the HEW lacked authority under Title IX to enforce issues on employment, the school refused to accommodate the HEW’s request for documents detailing North Haven’s leave of absence and hiring policies. Upon being notified that the HEW was contemplating proceedings, North Haven took action of its own and brought suit to the United States District Court for the District of Connecticut, claiming the HEW had overstepped its bounds by attempting to punish North Haven on issues of employment. 20

The district court ruled in favor of the North Haven Board of Education. Agreeing with the board, the court ruled Title IX’s purpose was not to cover employment, and therefore, the HEW was not to take away the school’s federal funds because of non-compliance. 21 It appeared that Title IX applied to students, but its scope did not reach employment issues. The Court of Appeals for the Second Circuit disagreed and reversed the decision made by the district court. The court of appeals asserted that the provisions set forth in Title IX were, in fact, intended to prohibit discrimination in employment practices in conjunction with their already established function for students.

Upon reaching the Supreme Court, the court rejected the idea that employment was outside the scope of the law, even though Title IX did not specifically incorporate or exclude employees of federally funded institutions. Furthermore, the court returned to the

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21 Id.
historical grounding for this law in considering how to rule. In support of the strong opinion offered by the court, Congress implemented regulations to ensure that federally funded education programs were not discriminating on the basis of gender and refused to institute legislation that limited the strength of these regulations.\textsuperscript{22}

The ruling in \textit{North Haven} established several key lines of reasoning at this point in the rather short history of the law. First, this ruling determined that Title IX had to be applied not only to students, but also to employees. If students were to be protected against gender discrimination, then employees of the educational system must also be protected to maintain Title IX’s effectiveness. This case additionally ensured the HEW’s authority in enforcing both student and employee protections. The court in \textit{North Haven}, as in \textit{Cannon}, confirmed that it would continue to return to the historical grounding of the law in determining how to carry out Title IX. The court specifically indicated in \textit{North Haven}, as in \textit{Cannon}, that it would continue to use the provisions set forth in Title VI of the 1964 Civil Rights Act and Title VII of the Equal Pay Act to shape the application of Title IX.

\textit{Grove City College v. Bell.} \textit{Grove City v. Bell}, brought before the Supreme Court in 1983, pitted Grove City College in Pennsylvania against the United States Department of Education. Grove City College, a small, independent, coeducational liberal arts college, prided itself on its refusal to accept all forms of federal, state, and local government assistance, thus making the school wholly independent. The students of Grove City did, however, receive Basic Educational Opportunity Grants (BEOG) and Guaranteed Student

\textsuperscript{22} Id.
Loans (GSL). The grants were offered directly to in-need students via the Department of Education, while the loans were guaranteed to the students through the federal government. This case would center on these two forms of grant-in-aids.\textsuperscript{23}

In the early 1980s, Grove City College refused to complete paperwork assuring that the institution was in compliance with Title IX. Grove City contended that it did not receive any form of governmental aid outside of the BEOGs and, therefore, did not have to comply with this law. The Department of Education thought differently. The department believed the students of Grove City College were the recipients of federal aid, and, therefore, the school was required to comply with Title IX. The Department of Education began proceedings that would render Grove City and its students unable to receive BEOGs.

Unwilling to accept this, Grove City and four of its students filed a case with the District Court for the Western District of Pennsylvania. This court ruled that even though BEOGs were a form of federal financial assistance, the Department of Education could not remove this aid just because the institution refused to file the assurance of Title IX compliance. The Department of Education then appealed the district court’s decision. The court of appeals reversed the previous decision, stating that the Department of Education could take away BEOGs from the students if an institution refused to complete the assurance of compliance.

The Supreme Court made the final ruling and offered the following justification and clarification. First, Title IX did apply to Grove City because it enrolled students who

were the recipients of BEOGs. In other words, BEOGs were a form of federal financial assistance, which obliged Grove City College to comply with Title IX. Second, Title IX enforcement only applied, however, to the program directly receiving the federal financial assistance. As in the case of Grove City, the financial-aid program was the only department receiving the federal funds, and therefore, according to the Supreme Court’s ruling, would be the only program required to comply with Title IX. The federal assistance given to the financial-aid department, however, could be terminated if Grove City continued to refuse to submit the assurance of compliance with Title IX’s standards.

_Grove City_ had a brief, but significant, impact on the enforcement of Title IX. The outcome in Grove City determined that only those units of institutions specifically receiving federal funds were required to comply. For example, if the financial-aid department of an institution directly received federal funding, then the financial-aid department was required to comply with the standards set forth by Title IX. If, however, the math department did not directly receive federal financial assistance, this department was not required by law to comply with Title IX. In this example, the financial-aid department was expected to maintain gender equity when distributing funds. However, the math department was legally permitted to operate at the standard the department deemed satisfactory, even if that standard discriminated on the basis of sex.

Typically at colleges and universities, athletic departments, or even physical education departments, are not the recipients of federal financial assistance. Because of _Grove City_, these departments or subunits of the larger institution, like many others, no longer felt the need nor were required by law to comply with Title IX standards. As a
result, soon after the Supreme Court’s decision, “scholarships for female athletes were canceled at several colleges across the nation, women’s teams were slated for termination at others, OCR complaints were closed, and lawsuits dismissed.” It appeared as if the good faith effort to strive towards gender equity had been short-lived.

However, in 1987, four years after Grove City, the Civil Rights Restoration Act reversed this decision by specifying that subunits of an institution were not distinct from the institution as a whole. Therefore, if any subunit of a school or university received federal funding, the entire institution, not simply the smaller unit receiving the funds, must comply with the standards set forth by Title IX. Even if just one area of the institution received federal money, all were expected to follow the standards set forth by Title IX. In the example above, both the financial-aid department and the math department were now held to the same standard. In essence, the Civil Rights Restoration Act of 1987 reversed the decision in Grove City and returned compliance to the standards initially set forth.  

Franklin v. Gwinnett County Public Schools. Christine Franklin attended high school at North Gwinnett High School from 1985 to 1989. In 1986, Andrew Hill, a teacher and athletic coach in the Franklin County School system, had been sexually harassing Franklin. Franklin asserted that Hill kissed her on the mouth, made phone calls to her home, and had coerced her into having intercourse with him. Franklin further alleged that even though she had informed school officials of the harassment, no action was taken to end the harassment, and school officials discouraged her from pressing charges against

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24 Carpenter and Acosta, Title IX, 121.
Hill. Hill eventually resigned from the school system in April of 1988 with the agreement that the complaints against him would be dropped.\(^{26}\)

Prior to Hill’s resignation, in December of 1988, Franklin filed a grievance with the United States District Court for the Northern District of Georgia, seeking damages under Title IX. Shortly following, in August of 1989, Franklin had graduated from high school, thus making a coercive injunction useless.\(^{27}\) Because of this, Franklin wanted the chance to sue for monetary damages. Even if the court demanded that the alleged sexual discrimination must end, this result had no impact on Franklin, because Franklin was no longer a student due to graduation. Instead, Franklin sought monetary reparation to right the alleged wrong. The district court rejected the case on the grounds that awarding monetary damages was not under the scope of Title IX. Subsequently, the court of appeals upheld the district court decision.

The Supreme Court ultimately reversed and remanded the two lower courts’ decisions in *Franklin* and did so by unanimous vote. The Supreme Court emphatically ruled that monetary damages could be awarded for failure to comply with Title IX, and the unanimous decision emphasized that the court was serious when it came to students and sexual harassment. The majority opinion stated, among other things, that upon considering the Civil Rights Remedies Equalization Amendment of 1986 and the Civil Rights Restoration Act of 1987, it was not the intention of Congress to limit options available to resolve suits brought under Title IX. The Court did not believe that its decision to allow monetary damages under Title IX overstepped the bounds of judiciary

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\(^{27}\) Baer and Goldstein, *Constitutional and Legal Rights*, 544.
power. Monetary damages, as stated in the opinion, “should be limited to back pay and prospective relief conflicts with sound logic.”28 Although the Court cautioned against excessive compensation, these monetary damages included not only back pay for employees, but restitution for areas of distress as well.

Arguably, the outcome in Franklin provided the greatest leverage for petitioners to date in the history of Title IX. Prior to Franklin, individuals could not seek monetary damages under Title IX. In the case of Christine Franklin, simply remedying the alleged harassment failed to provide any benefit, since she already had graduated from school. At the time, individuals like Franklin were left to seek other forms of remedy. Unfortunately, without the threat of financial penalties, institutions did not always listen to pleas for equity. Following Franklin, however, schools, colleges, and universities were confronted with the choice of either ensuring gender equity or being prepared to pay financially for noncompliance. The mere threat of being sued for Title IX infractions was adequate to encourage compliance, and Franklin provided the backing for such threats.

Cohen v. Brown University. In 1991, Brown University reduced the status of the varsity women’s gymnastics and volleyball squads, as well as the men’s golf and water polo teams, from university-funded programs to donor-funded programs. To continue to compete, the squads had to raise their own funds. These programs lost not only their university funding, but also the privileges associated with varsity status at this university. In response, Amy Cohen, claiming to represent all “present, future, and potential Brown University women students who participate, seek to participate, and/or are deterred from

28 Franklin, 503 U.S. at 60.
participating in intercollegiate athletics funded by Brown,” brought suit against the university for failing to comply with Title IX standards.\textsuperscript{29}

The district court decided Brown had indeed violated Title IX. It demanded that the university promote the volleyball and gymnastics squads back to university-funded varsity status; maintain the varsity status of the fencing, skiing, and water polo teams; and submit a plan for how Brown would meet these compliance standards. Brown appealed the district court decision to the court of appeals, challenging the soundness of the test utilized by the court to determine compliance. Brown University argued that it could meet the compliance by using surveys to show that the relative interest of the female student body was being met. In other words, Brown sought to indicate compliance by illustrating that the number of opportunities offered to the female population on campus was directly proportional to the interest shown by the female student body.

The court of appeals sustained the ruling of the district court and asserted that there were indeed women interested in competing at the collegiate level; the remarkable statistical growth in female participation numbers since Title IX’s enactment debunked the university’s rationale that women on campus were not interested. It was clear in its ruling that the court of appeals was emphasizing the seriousness in providing equal opportunities for women and girls. Furthermore, surveys were not a sufficient means for demonstrating compliance and would not be tolerated as such.

The Supreme Court never heard Cohen. In 1997, the court declined to hear Brown University’s appeal of the court of appeals’s ruling, denying the petition for the writ of

The Cohen case proved to be painfully lengthy and costly, particularly to Brown. Even though Cohen never actually made its way to the Supreme Court, its outcome has significantly impacted Title IX as it applies to athletics, and it is therefore worthy of consideration.

The history of Title IX is marked by differing interpretations of areas such as the three-prong test, and Cohen is an excellent example of this disagreement. Brown University was quite obstinate in its attempts to prove the validity of other options for achieving compliance, including internet surveys and the establishment of ratios based upon these survey results, rather than ratios based upon the general student body. Brown University sought to prove that women, particularly at that university, were not as interested in sports, and, because of this lack of interest, the university should not be required to provide additional opportunities for them. However, the courts that ruled on Cohen were firm in maintaining the validity of the three-prong test and were not pleased with Brown’s attempts to prove females were not interested in sports. The outcome of this case not only sent a message to institutions and universities that the three-prong test was not a quota system, but also warned these establishments to be careful of their rhetoric concerning this law. The Cohen courts believed that “interest and ability rarely develop in a vacuum; they evolve as a function of opportunity and experience. The policy interpretation recognizes that women’s lower rate of participation in athletics reflects women’s historical lack of opportunities to participate in sport.”

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31 Cohen, 101 F.3d at 178-9.
Cohen courts clearly stated that women are interested in sports and deserve the right to have that interest fostered and developed.

It is also important to note that around the time of the Cohen decision, publication of the 1996 clarification letter provided guidance on matters of participation and proportionality. In particular, this letter sought to make sense of the three-prong test. This was especially important following the outcome of the Cohen case. This letter emphasized the first prong, proportionality, and also thoroughly detailed how to satisfy the second and third prongs. This letter highlighted that nowhere in the three-prong test were schools encouraged to remove programs in order to comply. Both the court’s decision in Cohen and the subsequent clarification letter provided an obvious illustration of how legislators believed institutions ought to fulfill Title IX standards.

Gebser v. Lago Vista Independent School & Davis v. Monroe County Board of Education, et al. Due to its lesser impact on athletics, the cases of Gebser and Davis are considered in much less detail than the other cases included in this review. In the case of Gebser, the Supreme Court ruled that institutions receiving federal funds might be liable under Title IX for teacher-on-student sexual harassment. However, the Court specified that monetary damages could only be awarded if an official with authority to institute changes had knowledge of the harassment and was deliberately indifferent to the teacher’s behavior. If an official with authority knew about the teacher-on-student sexual harassment and refused to act, that institution would then be liable under Title IX.
However, if no appropriate official knew about the harassment, the school in question was not liable under Title IX. 32

In Davis, much like the Gebser ruling, the Supreme Court widened the scope of sexual harassment under Title IX to cover student-on-student sexual harassment. However, just as in Gebser, the Court specified that damages may be awarded only if an official with proper authority and knowledge of the harassment acted with deliberate indifference. Additionally, in Davis the Court decided that student-on-student harassment had to be so pervasive and severe that the victim was deprived of the benefit of educational programs. This was done in order to make room for common schoolyard taunts and name-calling, while establishing a level of severity at which monetary damages would be appropriate.

The outcomes in both Gebser and Davis, although not necessarily applicable to athletics, still had an important impact on the scope of Title IX. First, these two cases established the standards for teacher-on-student and student-on-student sexual harassment, as deemed appropriate by the courts. Additionally, these cases guaranteed that monetary damages would be awarded if the standards set forth by the courts were violated. Most importantly, these cases established protection for students from teachers, as well as from other students, from harassment based upon sex.

Jackson v. Birmingham Board of Education. This now leads us to the most recent Supreme Court Title IX lawsuit, and the issues explored for the remainder of this document. To summarize the case, Roderick Jackson was the coach of a high school

girls’ basketball team in the Birmingham Public School System. He made complaints regarding what he believed to be inequitable treatment between his girls’ squad and the boys’ team, and shortly after these complaints, Jackson was relieved of his coaching duties. Jackson believed he was fired because he complained about the gender inequity and filed a subsequent Title IX lawsuit against the school system for its retaliatory actions. Jackson’s case eventually ended up before the Supreme Court, which ultimately ruled in favor of Jackson.
Chapter 2: Birmingham and Its System of Hierarchy

This section provides a brief history of the city of Birmingham, the former Ensley High School, and the new Jackson-Olin High School. The gender inequity in Birmingham High School sports is a reflection of the inequity of race and class deeply rooted in this city’s history and of the limitations of the application of the federal law.

The tumultuous history of Birmingham has been the topic of many books, and it is outside the scope of this dissertation to provide a comprehensive picture of Birmingham in all of its aspects. Instead, this section seeks to provide a brief overview of the early history of Birmingham, the impact of the two world wars and the Great Depression on the city, and the bearing of the civil rights and post-civil rights activities. In addition, this


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section provides an historical and statistical picture of the old Ensley High School and its replacement, the new P. D. Jackson-Olin High School.

It is important to note that this section focuses mainly upon issues of race and class throughout Birmingham’s early history. While many works are written on the history of Birmingham, fewer consider the history of Birmingham women, and even fewer give press to women of color. Several texts offer insights into the lives of African American women in the south. However, fewer insights are found specifically on the lives of Birmingham black women, and a more comprehensive history on southern black women in general falls outside the scope of this project.

This historical context allows one to better understand the cultural landscape of this city, and ultimately the lawsuit and its impact on the local citizens of Birmingham. The Jackson case, arguably, arose out of a long-standing tradition of racism and classism in the city of Birmingham. More specifically, the failure to apply the precepts of Title IX in this city was a result of race and class inequalities. By understanding these racial and economic problems that have marked the history of this city, one can better see the connection between gender inequity with the city’s history of troubling racial and class issues. Simply, the following historical happenings in Birmingham are critical to the understanding of the landscape that impacted the application of Title IX and ultimately the Jackson case.

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The Early Days

The city of Birmingham was founded in 1871 in one of the southernmost valleys of the Appalachian mountain chain. Early farmers had previously avoided the hilly country region of Jefferson County because of its rocky and infertile soil. The barren land, however, proved to be rich in raw materials. The new city, named after England’s own steel-making center, was originally located at the intersection of two railroads, thus making it easy to transport mass amounts of coal, iron ore, and limestone, all of which were plentiful in this region. One author described Birmingham in this way: “It is said nowhere else do these minerals lie together in abundance,” and because of the vast quantity of accessible minerals, Birmingham quickly boomed into an iron and steel center. The city’s industry encompassed not only iron making, but also the construction of machinery and various other steel products. Because of its dependence on these industries, the city was nicknamed the “Pittsburgh of the South.” It would eventually garner the name “Magic City” because of its massive growth, due to the influx of laborers, who provided the manpower for its industrial plants. Simply, “like magic, Birmingham seemed to pop right out of the hills and valleys of central Alabama.” Birmingham held the promise of a “new South,” a post-Civil War glimmer of hope through industry and development.

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35 McMillan, Yesterday’s Birmingham.
36 LaMonte, Politics and Welfare.
37 O’Donnell, Birmingham.
38 Weeks, Birmingham.
39 Henley, This is Birmingham, 6.
40 Weeks, Birmingham.
41 O’Donnell, Birmingham, 17.
42 Henley, This is Birmingham.
The early years of this city hinged upon the business of the Elyton Land Company. James R. Powell, the president of the company, was an active figure in shaping the foundations of Birmingham. Powell was responsible for constructing the city’s first hotel, providing land for the railroad system, constructing several parks, and donating the plot of land on which the first school was built. Further progress came in the late 1880s in the form of paved streets and public transportation. Powell’s planning and financial resources were responsible for great developments in the rising young city of Birmingham.

Enoch Ensley, a wealthy cotton farmer, arrived in Jefferson County in 1881 and wasted little time purchasing ten acres of rocky land from a local farmer. The land would later become one of the prized tracts of Pratt Coal Mines, which would eventually become the Tennessee Coal, Iron & Railroad Company (TCI). The Pratt Coal Mines were organized in 1878 when three men, Henry DeBardeleben, James Sloss, and Truman Aldrich, acquired large amounts of land in the county. Ensley eventually bought DeBardeleben’s portion of the company in 1883 for $1 million, then went on with his new partners to expand the Pratt Mines and construct four blast furnaces. In 1886, TCI arrived in Jefferson County, and by 1888 took over the Pratt Coal and Iron Company. In spite of this, Ensley still dreamed of building a city around his coalmines. He acquired 4,000 acres of land from TCI, forming the Ensley Land Company. Ensley planned upon

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43 McMillan, *Yesterday’s Birmingham*.
46 Atkins, *Valley and the Hills*; and DuBose, *Jefferson County*. 

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increasing his fortune by building manufacturing plants, including blast furnaces and steel plants. The rest of the land was intended for residential areas. Ensley never realized his dream, as he died in 1891. It was not until 1898 that the Ensley Land Company bought and sold its first plot of land, and the town of Ensley began to develop.\textsuperscript{47}

\textit{The Gay and Not-So-Gay Nineties}

With the city’s industries booming, the 1890s came to be known as both the “gay” and the “not-so-gay” nineties, with issues of race and class being the key demarcation between prosperity and decline.\textsuperscript{48} For the workers, the 1890s proved to be a trying time, but as the labor force grew, businessmen prospered. By this time, thousands of laborers and their families had flocked to Birmingham to work in the mines and refineries. They were local poor whites and former slaves as well as Italian, British, and southern European immigrants.\textsuperscript{49} The immigrant population, however, never reached the significant numbers achieved in other growing industrial cities: the proportion of immigrants among the general population of Birmingham never exceeded 4.3 percent. Local blacks filled the role of cheap immigrant labor instead. The black population in Birmingham climbed to nearly 40 percent during the early years of the twentieth century.\textsuperscript{50}

Rather than forming a united industrial force, workers competed against each other as well as with employers. Laborers battled with the industries to improve low

\textsuperscript{47} Atkins, \textit{Valley and the Hills}; and Jefferson County, \textit{Heritage of Jefferson County}.

\textsuperscript{48} Henley, \textit{This is Birmingham}; and McMillan, \textit{Yesterday’s Birmingham}.

\textsuperscript{49} Hamilton, \textit{Alabama}.

\textsuperscript{50} LaMonte, \textit{Politics and Welfare}, 16.
wages, working conditions, and the problem of convict labor.\textsuperscript{51} Convict labor was the industrialists’ attempt to appease the farmers of Alabama’s Black Belt, as well as to manage the post-Emancipation slaves. Instead of taking laborers from the farmers, companies leased criminals from the state and paid a monthly fee per convict. It was no coincidence that the majority of these convict laborers were black males in jail for “nothing more than gambling, indebtedness, or idleness.”\textsuperscript{52} Workers argued that convict labor took jobs away from free individuals, suppressed wages, and undermined labor strikes. Free laborers had little leverage in negotiations, since they could easily be replaced with inexpensive convicts.\textsuperscript{53}

To make matters worse, employees lived in a city that was marked by dangerous working environments and poor living conditions. Most of the members of this laboring populace found themselves and their families living in company camps or towns and shopping from company general stores, thus undermining their own freedom while increasing company wealth and power. Furthermore, workers often labored six days a week in extremely dangerous conditions. When laborers did find free time, they sought their entertainment primarily in saloons and brothels.\textsuperscript{54} Birmingham’s reputation was said to be similar to that of a “‘wild western mining town with a saloon and brothel’ on almost every street in the downtown area.”\textsuperscript{55} In 1894, with the help of the American Federation of Labor, a series of strikes helped improve the plight of the labor force. Workers were enabled to renegotiate contracts and did so for the next several years. The industry

\textsuperscript{51} Atkins, \textit{Valley and the Hills}.
\textsuperscript{52} McWhorter, \textit{Carry Me Home}, 20.
\textsuperscript{53} Hamilton, \textit{Alabama}.
\textsuperscript{54} Jefferson County, \textit{Heritage of Jefferson County}; and Henley, \textit{This is Birmingham}.
\textsuperscript{55} McMillan, \textit{Yesterday’s Birmingham}, 38.
owners’ staunch resistance to any influence by union members on shaping wages or rents marred these negotiations. This resistance was only a small glimpse of the future pattern of labor exploitation by big businessmen. Nonetheless, both working and living conditions improved. Because of the improvements, labor strikes declined until the early twentieth century.  

For the wealthy and social elite, the 1890s marked a “gay” time of prosperity and advancement and for many extravagant lifestyles. The mines and refineries were booming and the pocketbooks of the wealthy were growing even larger. Unlike the working class, the elite engaged in sports, lavish parties, balls, and other social events. Professional baseball came in the form of the Barons, and Birmingham’s elite were among the fans supporting the team. The Southern Club and Birmingham Country Club were formed in the late 1890s. These clubs provided upscale entertainment, such as debutante balls, and recreation in the form of shooting and horse riding. Social clout was measured by membership in these clubs and attendance at upscale events.

In the mid-1890s, Birmingham first tried its hand at the medical industry with the formation of the Birmingham Medical College. This medical school, established by nine local doctors, sought to secure Birmingham’s place as a “symbol and instrument of growth.” The city was mindful of the state’s substandard performance when it came to medical education. The medical school was established partly to provide the state’s

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57 Henley, *This is Birmingham*; Jefferson County, *Heritage of Jefferson County*; and McMillan, *Yesterday’s Birmingham*.
58 Henley, *This is Birmingham*; and Jefferson County, *Heritage of Jefferson County*.
residents a place to be educated locally, rather than going out of state. The Birmingham Medical College provided the credibility for the city of Birmingham to be chosen as the home for the University of Alabama’s medical school in 1944. As will be discussed later, the medical school and its medical centers are still a prominent fixture and source of income for Birmingham and the surrounding communities.

Social and Cultural Divisions

Divisions clearly defined many aspects of daily life for Birmingham residents throughout the conclusion of the nineteenth and into the twentieth centuries. The trend continued as division determined by class and by race governed how one was to behave toward others. These demarcations separated individuals into job categories, into housing developments, and even into places of worship. Historian and native Alabamian Harvey H. Jackson III described race relations in the early 1900s in Birmingham in this way:

It followed that during those first decades of the twentieth century, race relations in Alabama coalesced around customs and ceremonies that defined superior and inferior, master and servant, and drew clearly the line that marked separate but equal, with everyone knowing that equality was a sham. Anyone who grew up, white or black, in this culture—a culture that would continue, seldom challenged, for more than half a century—remembers how it operated and can pick out examples that defined the differences as much as or more than the color of skin.

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60 Rogers et al., Alabama.
62 Ibid., 151.
Class distinctions drew a line between poor whites and the bourgeoisie, and it is arguable that the elite overlooked working class whites. The Big Mules—“the colloquial name given to the handful of chief executives and attorneys who managed the iron and steel industries, the insurance companies, the utilities, and the banks”—took a number of measures to control the working class. However, the treatment of the white and immigrant working class paled in contrast to the hardships endured by blacks in Alabama, who were also governed by the Big Mules.

Throughout the early years of the twentieth century, Birmingham was primarily concerned with the “prosperity of the business and industrial communities” and paid little or no attention to the plight of the poor, especially blacks. Blacks lacked the opportunity for education in the early 1900s, as black schools only offered instruction up to the sixth grade, while whites attended school through grade eleven. The schools available to blacks also lacked the teachers needed to meet the rising enrollment. Schools expanded in Birmingham during the late 1800s and early 1900s, but the expansions impacted white school children much more than the local blacks—and as will be discussed later, the trend continued as in the example of Jackson.

In addition to educational opportunities, local blacks lacked basic public services, and Jim Crow laws helped maintain this imbalance. The city had few quality parks, and the ones the city did provide were often not available to the black community. Roads, transportation, sewer systems, police and fire safety, were all problems for local whites,

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63 Eskew, But for Birmingham, 10.
64 LaMonte, Politics and Welfare, 37.
65 LaMonte, Politics and Welfare.
and even more so for members of the black community. “It is clear the black community did not receive an equitable share of public services. Instead, improvements were made chiefly in the newly developed neighborhoods that lacked services and in the downtown area.”66 Perhaps the most frustrating ordeal for the black community was its exclusion from local politics, thus making it nearly impossible to voice concerns. The white community, especially elites, stifled the black community, and so protected its own privileged status.

**Taxation and Annexation**

The city of Birmingham held great promise after its formation. Some even speculated that it had the potential to overtake Atlanta as the leading city in the South. Despite the rising population and flourishing industry, at the turn of the century, Birmingham was struggling to live up to its potential. At the time, Birmingham was providing an inadequate police force to manage the rising population. The city’s park system ranked last among southern cities. The state of Alabama placed last in per capita expenditures for public schooling. Health care services failed to accommodate the growing population, and major disparities existed between blacks and whites in areas of sanitation, housing, schooling and many other areas.67

Eventually, the city of Birmingham was forced to deal with its inability to provide basic necessities to its citizens. Throughout the late nineteenth century and into the early twentieth, the city fought furiously over issues of taxation and annexation. The “Greater

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66 Ibid., 24; The new neighborhoods of Birmingham were inhabited by the upper and middle class, while the downtown was the area of commercial activity. These areas, therefore, received public service improvements from the city government because the local government considered these areas to be favorable for economic activity.


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Birmingham” movement sought to create a “greater tax base to pay for and improve city services, and a larger population to attract more industry.”68 This movement held that these changes in taxation and annexation would increase police protection, improve suburban schools,69 appeal to more industries, and allow the city to borrow money at a lower interest rate.70

Industry officials, not wanting to pay additional taxes, feverishly battled against the movement. In something of a compromise, a deal was made, and the newly determined boundaries brought Ensley within the current Birmingham city limits, but only portions of TCI, excluding the main plants. The largest portions of TCI, those to be most heavily taxed, were left out of the annexation. Instead, a smaller, less taxed area was included. Census data revealed that 132,685 people lived in the city, representing a 245 percent increase in its population.71

Nearly thirty-five years prior, Birmingham had been purposefully founded upon mineral-rich terrain, making it a prime location for the iron and steel industry. Struggles over pay, conditions and convict labor soon emerged between laborers and employers. Along with these struggles, clear racial and class differences materialized between the wealthy and social elite and the poor, laboring force. These differences became even more pronounced as the city moved towards its most promising and trying times in the world wars and the Great Depression.

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68 Atkins, Valley and the Hills, 102.
69 As will be discussed throughout the history of the Birmingham School System, the “Greater Birmingham” movement, some argued, sought to gain control of the black school systems surrounding the outskirts of the city. It was thought if these black school systems were controlled, then the lives of the local blacks could be controlled even more than the situation at the time.
70 LaMonte, Politics and Welfare.
71 Atkins, Valley and the Hills, 103.
The World Wars and the Great Depression

World War I forced Birmingham and its steel and iron industry to swing into full force. New mines and coke ovens were built to support the doubled and even tripled demand for raw materials.\textsuperscript{72} Those unemployed by earlier hard times went to work again. Women went to work, filling the gaps left by men who had gone to war. Churches and organizations showed their support by organizing recreation and tobacco funds and growing their own food. The year 1918 saw the end of the war and of profitable government contracts for the local steel industries. Wartime pay increases were now a thing of the past, and labor workers saw their wages decline. Regardless, Birmingham and its steel industry had benefited greatly from the war. Additional plants were built to support the demand, and the river system was improved to accelerate the exportation of coal. This provided an opportunity to transport materials by sea, which proved an economical alternative to paying the high tolls demanded for railroad freight.\textsuperscript{73}

In spite of the dramatic war-time increase, Birmingham was far from achieving its potential. The majority of its citizens “were working-class, sparsely educated, economically insecure, and racially divided.”\textsuperscript{74} The laboring workforce tended to value the short-term benefits of work, rather than the potential long-term benefits of union membership. When times got tough, workers chose labor rather than a union strike. Black laborers found themselves at the mercy of the “fee system and convict leasing,” which

\textsuperscript{72} Coke ovens were used to convert coal into a more usable product called coke. Coke was then used as a fuel source and in the production of steel.
\textsuperscript{75} Atkins, Valley and the Hills.
\textsuperscript{74} Hamilton, Alabama, 137.
undermined their ability to prosper economically and politically. Efforts by middle-class businessmen to make community improvements were undercut by Birmingham elites, especially the industrial bigwigs. These big shots furthered their own cause by skirting “efforts to raise property taxes, end convict leasing, or control the pollution from smokestacks.” Nonetheless, the major players of Birmingham’s industry held the support of the local community, because the local people believed the only way to improve the city was through big industry.

The end of the war and the commencement of the 1920s marked the beginning of hard times for Birmingham even before the Great Depression. Harvey Jackson III attributed the economic downturn to the industry, but also to the greedy hand of the northern steel giants. Jackson described Birmingham’s predicament like this:

Through the ‘20s Birmingham, the state’s industrial giant, rode the economic roller coaster, not because of its product, but because of who owned it. When orders lagged U.S. Steel cut pay, reduced hours, and even closed plants in the Magic City so it could keep its Pittsburgh operations running at full capacity. To add insult to injury, northern owners destroyed Birmingham’s competitive advantage by charging customers according to the so-called “Pittsburgh Plus” formula that based freight rates on an imaginary route from Birmingham to Pittsburgh and then to market. That scheme, in practice, meant a Birmingham businessman from one side of the city who bought steel from a mill across town would be charged as if

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75 Ibid.
76 Ibid.
the load had been shipped from Pennsylvania, some eight hundred miles away. So even before the crash, times were hard in the city. Banks failed, businesses went under, people were evicted, children went hungry. Birmingham did not have to wait for the depression to suffer. If you wanted to get mad at Yankees exploiting the South, Birmingham would have been a good place to begin.77

Four county banks had closed by 1929, production was at a standstill, and nearly one-third of the population was seeking help through private charities and food lines. Birmingham was badly bruised by the economic downturn of the Depression and was described as the hardest hit city in the nation.78 With the assistance of local philanthropists, community groups were able to provide aid to the unemployed, at least at first. The need, however, was too great, and the city eventually accepted a loan from the federal government.

Like the First World War, World War II boosted production, but the production increase was short-lived once the war was over, and Birmingham was once again faced with difficult economic times. The coal and steel plants in the city were slowing, and no outside business was making Birmingham its home. Many local community members blamed the hardships on the fact that although local industries provided thousands of jobs for local workers, the owners of these major industries had no true vested interest in the community. The major stakeholders of the industry giants governed the factories from afar and “treated Birmingham like a southern stepchild in order to protect its holdings in

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77 Jackson, *Inside Alabama*, 175.
78 Hamilton, *Alabama*. 
the East.” Industry giants punished Birmingham with higher rates, excessive regulations, and crippling taxes. Even though Birmingham possessed the ability to flourish because of labor and materials, it failed to do so in a significant manner.

Despite lower costs of labor and raw materials, Birmingham’s ingot steel was priced three dollars a ton higher than that of Pittsburgh. This artificially high price, coupled with southern freight rates which favored the shipping of raw rather than finished materials, accounted for the fact that the annual steel ingot capacity of TCI’s antiquated furnaces had expanded only 600,000 tons in twenty years.

Not only were prices inflated, some speculated that the industry bigwigs had blocked other forms of business and commerce from entering the Birmingham market. The steel giants further hindered local development by placing their mills and offices just outside of city limits to avoid paying local taxes and paid employees in currency only redeemable at company stores.

Post War and Pre-Civil Rights

Several welcome changes, however, would make their way to Birmingham in the late 1940s. At that time the federal government stripped the steel giants of several of their self-serving practices. The Interstate Commerce Commission put freight rates on an equal basis, and the Supreme Court prohibited the use of price discrepancies to protect one plant at the cost of others. Birmingham was now on more of an equal playing field with its major competitors. Although the local community embraced these changes, a series of

79 Ibid., 139.
80 Ibid.
racial transformations were coming down the pike, and the city of Birmingham would fight against the revolution tooth and nail.

In 1954, the Supreme Court required the desegregation of schools in its ruling on *Brown v. Board of Education*. The local Birmingham government, responding as it had in the past to racial issues, was quietly indifferent to the ruling. Birmingham blacks continued to be ignored in their requests for access to education, housing, recreational facilities, libraries, and health care. Any attempts by local citizens and business owners to organize interracial communities were either disregarded or met with hostility by local Ku Klux Klan members.\(^\text{81}\) The bombs of vigilantes proved most effective at what progress slipped past the local government. Anytime a black homeowner overstepped the zoning for Negro housing, their residence was promptly bombed. Historian Edward Shannon LaMonte marked this time frame as “The Missed Opportunity” between Birmingham whites and blacks to settle racial differences. LaMonte further wrote,

One thing is certain: Birmingham entered the era of the revolution in race relations lacking channels of communication between Blacks and Whites….The city would pay dearly for this lack in the early 1960s, and its significance was quickly grasped by those from outside the South who analyzed Birmingham in 1963 and tried to understand why the events of that summer transpired.\(^\text{82}\)

\(^{81}\) LaMonte, *Politics and Welfare*.

\(^{82}\) Ibid., 156.
This “missed opportunity” in Birmingham would be brought to the national spotlight throughout the early 1960s and would ultimately paint Birmingham as a racist city with uncompromising segregationist values.

Birmingham had experienced dramatic change over the previous three decades. The First World War brought a great increase in production and additional plants and mines were developed to support the demand for government contracts. Labor issues were at an all-time high as the struggle over union membership and convict labor continued. The Big Mules threw their power around even more to the detriment of the poor, working class. Even before the Great Depression was in swing, Birmingham was at an economic low with the loss of government contracts. World War II soon brought those government contracts back to the mines of the Magic City. Just like after World War I, the Second World War ended, and the city found itself in a dark place. That economic gloom, however, did not compare to the civil unrest about to take place in Birmingham throughout the civil rights movement.

*Key Civil Rights Events*

The year 1963 marked a momentous change in the civil rights movement, especially in the city of Birmingham. The events of that earth-shattering year were some of the most influential in changing the landscape of Birmingham and of the civil rights movement. However, a series of key events in various cities had already helped set the stage for what would happen in Birmingham that year. Although these events are crucial in understanding what happened in Birmingham in the 1960s, most of them took place
outside of the city, and some outside of Alabama. Since this section seeks to lay the
foundation for understanding this particular city, these events are only touched upon here.

*Rosa Parks.* In early December of 1955, the now-famous Rosa Parks refused to give up
her seat near the front of the bus to a white man, and move to the back, as was required
for African Americans in Montgomery, Alabama. Like many before her who refused to
give up their seats, Parks was arrested. This time was different, however, as Parks’s arrest
made news, partly due to her active role in the African American community and local
National Association for the Advancement of Colored People (NAACP) chapter. Parks’
arrest sparked a meeting and a decision by local African American leaders to launch a
boycott of the Montgomery bus system. The day-long boycott, so successful, turned into
a year-long nonviolent protest. The boycott came to an end in late December 1956, when
the US Supreme Court ruled in favor of the NAACP’s “complaint on behalf of the whole
‘class’ of Montgomery’s African-American bus riders.” Buses in Montgomery were
then legally desegregated.

*Little Rock, Arkansas.* In September of 1957, the first, but not the last, major catastrophe
in desegregating public schools took place at Central High School in Little Rock,
Arkansas. The Little Rock School Board sought to emulate the integration already in
place in the city’s buses and public libraries. The board’s plan was to begin integration at
this particular high school and gradually desegregate the remaining public schools over

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83 Charles George, *Black Nationalism*, Lucent Library of Black History (Farmington Hills, MI: Lucent
World History Series* (San Diego, CA: Lucent Books, 1998); and Diane McWhorter, *A Dream of Freedom:

84 Altman, *American Civil Rights Movement*.

85 McWhorter, *A Dream of Freedom*, 44.
the next six years. Nine African American students attempted to enter Central High School on the morning of September 4th, only to be turned away by the Arkansas National Guard, which had been set in place by Governor Orval Faubus. Several days later, a district court judge ruled that the guardsmen be removed and the students be allowed to enroll. Violent outbursts from adults and students alike caused school officials to fear for the lives of the nine students. “Faubus’s contempt for the law was now so flagrant and the danger of the mob violence so imminent” that President Eisenhower sent in US Army paratroopers and put the National Guardsmen under his own command. On September 25, 1957, the nine students were escorted into school by federal troops and received their own personal bodyguard for the entire school year.

*Freedom Riders.* The 1960s saw an era of heated civil rights movements in Birmingham and the entire state of Alabama. A Supreme Court decision in 1960 followed up a 1946 decision banning discrimination on interstate buses, trains, and airplanes. The 1960 decision expanded this and desegregated railroad stations and bus terminals. Since actual changes were far from being put into practice and enforced in the South, the court felt it necessary to issue the same decision again and expand upon it. Seeking to put law into practice, members of the Congress of Racial Equality (CORE) orchestrated a series of trips through various southern cities on regularly scheduled buses. This group of Caucasian and African American college students, called “Freedom Riders,” endured
several brutal attacks, including one in Anniston and one in Birmingham. Television
coverage of the violent harassment and charred bus remains sparked action by both state
and federal governments, and a ruling was issued requiring the desegregation of all bus
and train terminals by November 1, 1961.92

*Birmingham’s Own Resistance.* Eugene “Bull” Connor was born in Selma, Alabama on
July 11, 1897. He became a resident of Birmingham in 1922, at the age of twenty-five.
Connor gained his nickname as the local radio announcer for the Birmingham Barons
baseball games. He was tagged as “‘Bull’ because of his gruff voice, a mistaken
comparison to a local newspaper columnist, and his ability to ‘shoot the bull’ while
describing games on the radio.”93 His status helped secure him a position in the state
House of Representatives in 1934, and he entered the 1937 race for Birmingham City
Commissioner at the urging of Jim Simpson.94

Connor won the race for City Commissioner and made it his mission to defend
and uphold the values of the Birmingham elite, namely those involved in the city’s steel
and iron industries. He had a reputation for inhibiting the unionization of Birmingham’s
major industries in order to protect the agendas of the Big Mules. Connor’s prominent
reputation came from his stance on racial segregation, which intertwined with his support
of the Big Mules. If the labor force maintained its racial segregation, the Big Mules

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92 McWhorter, *A Dream of Freedom*; George, *Black Nationalism*; Dunn, *The Civil Rights Movement*; and
Altman, *American Civil Rights Movement*.
94 Jim Simpson was known for his support of the city’s major corporations, including TCI and the
*Birmingham News*. He was an insider among the Big Mules and fought for the protection of the privileged
and defended the absentee-owned corporations in the city. Simpson, labeled as the principal spokesman for
the Big Mules, used Bull Connor to put into practice the plan to support and uphold the interests of
would not need to worry about unionization or changes in their dominated work force. In keeping with these values, Connor consorted with the Ku Klux Klan and eventually came to be known as the city’s most determined segregationist. He was ultimately tied to nearly all the racist government acts and some racially charged civilian acts in the city of Birmingham. That is, Connor was the force behind Birmingham’s own resistance to racial integration.95

It is argued that Birmingham and its city officials put up one of the greatest fights against integration, and several audacious acts by the city government confirm this analysis. In November of 1962, an Alabama district court judge ordered the integration of public parks and recreation facilities by January 15th of 1963.96 Rather than complying, Connor and the city of Birmingham closed the facilities.97

Most white Alabamians rejected violence. Most preferred to resist integration in other ways. Cities closed parks, padlocked playgrounds, drained pools, and in one case went out to the public golf courses, out onto the greens, and ceremoniously removed the flags and poured concrete into the cups. But if you looked around you could see that already the defense was not 100 percent. Some white Alabamians, businessmen mostly, had begun to make adjustments, crack the doors a bit so blacks could claim progress and would continue to spend money. In Birmingham, which Dr. King called “the most thoroughly segregated city in the United States,”

95 Eskew, But for Birmingham.
merchants fearing economic boycotts tried to integrate public facilities in their stores, and a few even went so far as to take down the “Colored Only” signs. But the city’s leading segregationist, Public Safety Commissioner Eugene “Bull” Connor, had those stores cited for building code violations, so the signs went back up, and Birmingham went back to being what it was. Which is also why Birmingham became what it became—the city that had to be broken if the Civil Rights Movement was to succeed.98

In the months that followed, blacks chose not to support white businesses. City officials retaliated by ending funding to a food program whose proceeds mainly supported blacks. “‘Bull’ Connor observed of the food cutoff, ‘Let ‘em root, hog, or die.’”99 City officials led by Connor, with the support of members of the local community, made it their undertaking to prevent desegregation, and that often meant brutality to ensure compliance.

Even though certain citizens of Birmingham rejected desegregation in nonviolent ways, there were still many brutal attacks on civil rights advocates. Birmingham was the home of perhaps the most violent Ku Klux Klan chapter in the country, and that chapter was in league with Connor, who provided them with inside information. With the help of Connor, “white supremacists held Birmingham in their grip. The local chapter of the Ku Klux Klan was powerful and popular.”100 These inside tips allowed Klansmen to perform

98 Jackson, Inside Alabama, 253.
100 Dunn, The Civil Rights Movement, 82.
violent acts without police interference.101 “Since the end of World War II, terrorists had bombed fifty black homes and churches. Not one of these crimes had been solved, nor were they likely to be solved, given the brutality and openly expressed racist views of Bull Connor and many of the local police.”102 The hostility led the Birmingham blacks to call the once Magic City the “Tragic City” and “Bombingham.”103

1963: The Year of Birmingham. Some of the most influential times for civil rights and for the city of Birmingham came in the spring of 1963. Birmingham’s reputation for such hostility towards integration even caused Martin Luther King Jr. to avoid taking his movement there.104 King was finally persuaded, however, when several civil rights leaders met to plan “Project C, a code name for ‘confrontation.’”105 Project C involved a series of nonviolent protests, including marches, boycotts, sit-ins, voter registration drives, and pickets.106 The aim of the protests was to gain media awareness and test Bull Connor and his police force.107 More specifically, “the goal was to jar the Kennedy administration into introducing civil rights legislation outlawing segregation and to force the administration to protect civil rights workers from the Ku Klux Klan and racist local and state officials.”108 King had not seen significant progress since the Montgomery bus boycotts some seven years before. Therefore, for King, Project C and Birmingham were a “make-or-break effort. If successful, it would dramatize the evils of segregation so

101 McWhorter, A Dream of Freedom.
102 Dunn, The Civil Rights Movement, 82.
103 McWhorter, A Dream of Freedom, 75.
104 McWhorter, A Dream of Freedom.
105 Dunn, The Civil Rights Movement, 82.
106 Dunn, The Civil Rights Movement.
107 McWhorter, A Dream of Freedom.
forcefully that the government would be compelled to act. If it failed, King felt, he would be out of business as a civil rights leader."\textsuperscript{109}

The initial days’ attempts at mass arrests stalled, leaving leaders looking for new ways of gaining attention. “Mass arrests made headlines and crowded the city jails. They turned breaking the law into a moral statement about injustice.”\textsuperscript{110} On Good Friday, King, his colleague Ralph Abernathy, and Fred Shuttlesworth led a march against court orders and were promptly arrested, finally garnering some national coverage. The national publicity was short-lived, however, as Project C sputtered through the month of April with little visible progress and many discouraged protesters. This changed as King allowed a young up-and-coming leader, Jim Bevel, to train not only adult demonstrators but also high school, junior high and elementary students. The “children’s crusade,” as these youth-filled protests were called, began on May 2nd and produced a large number of arrests. So many arrests were made, that after several days of protests there was not sufficient room in the Birmingham jail, and students had to be bused to make-shift jails at the local fairgrounds.\textsuperscript{111}

Project C gained the publicity it desired when Bull Connor unleashed police dogs on young demonstrators and sent youth sprawling with high-pressure fire hoses. The televised and published images of young African American children being attacked by dogs and toppling under the force of water from the hoses were ghastly. The national media coverage appalled the rest of America, and the Kennedy administration called for a

\textsuperscript{109} Ibid.
\textsuperscript{110} Altman, \textit{American Civil Rights Movement}, 81.
\textsuperscript{111} Altman, \textit{American Civil Rights Movement}; McWhorter, \textit{A Dream of Freedom}; and Kotz, \textit{Judgment Days}. 
truce. Project C refused to back down, at first. When the nonviolent demonstrations turned riotous, the leaders of Project C called a meeting with local white business leaders to discuss a plan to dismantle segregation. With a plan in place, a truce was called and Project C ended. Even though the project ended in Birmingham, during the next six weeks nearly fifteen thousand arrests took place in 178 cities during 758 demonstrations. The impact of Project C was so wide-spread, the federal government acknowledged the need for change and new legislation.112

*March on Washington.* The events in Birmingham led President Kennedy to send a major civil rights bill to Congress, addressing issues of both segregation and employment. Advocates responded with a march on Washington. The March for Jobs and Justice was intended to show support for the President’s bill and encourage Congress to push it through. Despite President Kennedy’s fears of bedlam, over 200,000 black and white Americans peacefully marched, prayed, and sang freedom songs in the nation’s capital.113 Martin Luther King Jr. ended the day’s marches with arguably his most famous speech, in which he declared “I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but the content of their character.”114 King’s hopefulness for African-Americans, including his four children, would come to a terrible halt, just days following the march, with the death of four Birmingham girls.

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112 Ibid.
114 Dunn, *The Civil Rights Movement*, 86.
Sixteenth Street Baptist Church. Only a few short weeks had passed since the March on Washington, but the progress made was quickly overshadowed by the grim events of the morning of September 2nd. In the moments before the Sunday morning church service at the Sixteenth Street Baptist Church, a strategically placed bomb exploded, killing four young girls. Addie Mae Collins, Denise McNair, Carole Robinson, and Cynthia Wesley were martyred in the struggle for African American emancipation at 10:22 a.m. in the basement of the church building, at the hand of Ku Klux Klan bombers. Pandemonium erupted in the city streets, and before the day ended, two more black teenage boys were killed in the city, one by a police officer and the other by a young white boy.

Following the explosion, King joined Shuttlesworth in insisting that Kennedy take control of the city of Birmingham and send federal troops to aid the African American population. These two leaders feared that without government intervention, the hopes of Birmingham blacks and the civil rights movement would be lost forever.

The bloody act of the Ku Klux Klan terrorists brought home the stark extremes of race relations in Birmingham and beyond. The bombing—the fiftieth in Birmingham since World War II—along with the failure of Birmingham merchants to fulfill their pledge to end segregation, and the slow pace of action on legislation in Congress, reduced King to despair.

The hopelessness of local civil rights leaders was only fueled by local authorities’ inability—or refusal—to find the culprits of any of the previous forty-nine bombings, let

115 Eskew, But for Birmingham.
117 Kotz, Judgment Days, 65.

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alone the one at the Sixteenth Street Baptist Church. White community members rebuked the behavior of terrorists, but turned a blind eye when the local law enforcement officials were “unable” to convict anyone of the bombings.\textsuperscript{118}

\textit{Civil Rights Act of 1964}

Although Birmingham did not see immediate results from the events of 1963, President Kennedy had witnessed enough violence and brutality. He proposed and pushed for radical change in civil rights legislation. On July 2, 1964, hope was restored to the movement with the Civil Rights Act of 1964. The act unraveled Jim Crow laws that permitted segregation in public places and job discrimination on the basis of race, religion, or national origin.\textsuperscript{119} In spite of this gain, much had been lost. President Kennedy was assassinated just five weeks after the murders of those four young girls at the Sixteenth Street Baptist Church. Lyndon B. Johnson took over as President and ensured that Kennedy’s wish for civil rights legislation was completed.

Several key events throughout the late 1950s and early 1960s, including Rosa Parks’ resistance and the Freedom Rides, helped set the stage for the racial tensions in Birmingham. This city was the home of a powerful, local Ku Klux Klan group and an overtly racist politician in Bull Connor. In 1963, Project C, led by key civil rights activists King and Shuttlesworth, organized the Children’s Crusade. The city’s response to the non-violent crusade was police dogs and fire hoses, and these dreadful acts were broadcast to the entire nation. Arguably the most terrible act of violence yet came in the

\textsuperscript{118} Eskew, \textit{But for Birmingham}.

\textsuperscript{119} Dunn, \textit{The Civil Rights Movement}; and McWhorter, \textit{A Dream of Freedom}.
form of the Sixteenth Street Baptist Church bombing. The much-needed Civil Rights Act of 1964 soon followed, giving Birmingham an opportunity to right its racial wrongs.

*Post-Civil Rights Birmingham*

Post-civil rights Birmingham responded to the 1964 legislation with characteristic indifference and modest changes. The Community Affairs Committee was the first biracial committee endorsed by public officials to tackle the city’s most pressing issues, including social, economic and governmental problems.\(^{120}\) The Community Affairs Committee eventually spread into Operation New Birmingham, a movement dedicated to dealing with police-community relations, poverty, and the hiring of local black community members as government officials.\(^{121}\) Change came to Birmingham eventually, but at a snail’s pace—the same pace that would apply to the *Jackson* case some thirty years later. Finally, after 1966, the first black officer was hired to be a member of the Birmingham Police Department.

Downtown Birmingham was integrated by 1976, presenting a stark contrast to just thirteen years before. Blacks and whites now shared such places as public schools and parks, and blacks were employed in city offices and the police force.\(^{122}\) Despite the outward display of integration, Birmingham blacks and whites still tended to maintain separate neighborhoods, to worship in separate churches, and to live separate lifestyles. The Birmingham white elites still maintained racial segregation, except for daily interaction with the hired help.

\(^{120}\) LaMonte, *Politics and Welfare*.

\(^{121}\) Ibid.

\(^{122}\) Hamilton, *Alabama*, 147.
Once again, hard economic times hit the US throughout the mid-1970s. This time, however, Birmingham’s businesses withstood the downturn. Heavy industry faltered during this time, but the city experienced growth in wholesale and retail trade, finance, and government. Although still the largest employer in the county, United States Steel was no longer the largest employer within the city of Birmingham. The University of Alabama in Birmingham with its professional schools of medicine, dentistry, and optometry and college of arts and science took over as the largest employer in the city.\(^{123}\) Steel production faltered in the 1970s; the industry blamed the Environmental Protection Agency (EPA) standards. Perhaps more crippling than EPA regulations was the end of “systematic discrimination in the factory,” thus depriving factories of cheap labor.\(^{124}\) The industrial diversity offered by the university improved Birmingham’s ability to withstand hard economic times. No longer did the city rely solely on heavy industry to maintain its economy and employ its citizens. Instead, Birmingham now had other industrial options to withstand the economic roller coaster of the local steel industry.

As the city witnessed changes in its industry, some changes in how Birmingham handled racial tensions were not far behind. In regards to the Sixteenth Street Baptist Church bombing, one piece of the puzzle was put into place in 1977. For his role in the bombing, Robert Chambliss, also known as “Dynamite Bob,” was convicted of first-degree murder. Testimony given by his niece, Elizabeth H. Cobbs, sealed his fate. Cobbs bravely offered testimony in spite of the fear that if Chambliss were not convicted, he or

\(^{123}\) Ibid.
other Ku Klux Klan members would probably kill her for testifying.¹²⁵ Chambliss received life in prison, where he died in 1985.¹²⁶ It took until 2001 and 2002 for two of Chambliss’s accomplices to also be charged with murder. Thomas Blanton Jr. was convicted and sentenced to jail in 2001, after a 1964 recording surfaced in which he admitted his role in the bombing.¹²⁷ Bobby Frank Cherry received his final conviction in 2002. Two other suspects died before ever being charged with the crime.

Birmingham was at the center of yet another racial battle in 1990. This time, however, the battle was staged at the local Shoal Creek Country Club. The Professional Golf Association (PGA) instituted guidelines requiring participating clubs to be open to all races. Members of the Shoal Creek Country Club warned of possible demonstrations against the local club because of its segregated membership. In order to keep an annual PGA event at Shoal Creek, the country club underwent “emergency desegregation” by admitting “qualified” blacks as members.¹²⁸ For fear of losing their relationship with the PGA, many prestigious clubs followed suit, including the Mountain Brook Club.

Finally, in 1992, Birmingham seemingly accepted its place in civil rights’ history by opening the Civil Rights Institute. The museum was positioned across the street from the site of the most heated local civil rights encounters, the Sixteenth Street Baptist Church and Kelly Ingram Park. Martin Luther King Jr. and Fred Shuttlesworth were enshrined in bronze at the entrance of the Institute. Some ten years later, following the final conviction of the bombers of the Sixteenth Street Baptist Church, Birmingham

¹²⁵ Smith, Long Time Coming.
¹²⁶ McWhorter, A Dream of Freedom.
¹²⁷ Ibid.
¹²⁸ Ibid., 585.
finally came to some terms with—albeit slowly—its key position in shaping the civil rights movement. With the opening of this institute and the incredibly slow process to convict those involved with the fatal church bombing, it seemed as if so much and quite possibly so little had changed in Birmingham since it came into existence. This small degree of change is also displayed in the soon-to-be-discussed Jackson case.

*The Birmingham City School System*

According to the Birmingham City Schools website, the first public school—or as it was called at the time, “free school”—opened its doors on March 1, 1874, just three years after Birmingham was formally organized as a city. The school was constructed as a result of the efforts of Colonel John Terry and James Powell, the president of a land company and the mayor of Birmingham at the time. Powell’s Elyton Land Company donated a piece of property for the school building on the corner of 6th Avenue and 24th Street. This location drew many complaints from local individuals, who argued that the school was being built “out in the country,” as it was far southwest of the city’s center. As stated in the deed, the school was only to be used for the instruction of white children residing within Birmingham, who were to be instructed by white teachers. When citizens’ donations ran out, Terry loaned $3,000 to finish the construction of the building. The city’s first school bonds were issued to pay back the loan.

Under new leadership, the city of Birmingham reorganized the school system in 1883. A superintendent was appointed to take the place of the mayor as the head of the

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school system. The first Birmingham school superintendent, Professor John Phillips, broke the system into three divisions—primary, grammar, and high school—in addition to instituting a board of education. By 1887, the city of Birmingham had seven schools in its district. By 1889, Professor Phillips had helped construct the Birmingham Public School system into a high-level modern system; it was such an elite school system, it became an example for many other contemporary cities in the US.\textsuperscript{132}

In 1877, in response to requests made by the local black community, the city agreed to pay a teacher to instruct black students at a school provided by “civic-minded Blacks.”\textsuperscript{133} The early educational opportunities offered to local blacks were far short of excellent. By 1885, two schools existed for blacks, offering up to six years of instruction. By this time, white students were receiving up to eleven years of education. Facilities were lacking for black students and no new construction took place between 1891 and 1907. Those facilities that did exist were frame building rather than brick, and were without necessary lighting, heat, and school supplies. Not only were facilities inadequate, but not enough teachers were available to instruct the students. There was only one instructor per seventy-three black students, but in the white schools, there was one instructor for every forty students. Faced with requests for improved black facilities, the board deemed the appeals “ill-advised” and “a practical insult.”\textsuperscript{134}

Regulations put forth by the Alabama state legislature caused great changes in the school system in 1910. This bill created Greater Birmingham, allowing the city to take

\textsuperscript{133} LaMonte, \textit{Politics and Welfare}, 10.
\textsuperscript{134} Ibid., 11.
control of the nearby areas’ school systems. Prior to the restructuring, each of the schools dotted along the periphery of the city operated independently, managing their own affairs. Arguably, the legislation was passed in order to take control of the surrounding black community schools, as they represented the majority of the schools just outside of the city limits. Through this bill and the control it provided over the black schools, city officials were then able to monitor and influence what was being taught to black students. Furthermore, this newly gained control ensured that black students were placed in black schools, separate from their white counterparts. Forty schools were annexed following this legislation, twenty-two of which were black schools.\textsuperscript{135} Shortly following the legislation, in 1910, construction began for the first brick black school facility in the county, but little improved outside of this new facility, as board members saw the needs of the white students as the most immediate.\textsuperscript{136} By 1925, thirty-three elementary schools served the white students and twenty-two schools served the black students of Birmingham.\textsuperscript{137} Black adults were excluded from serving in the public education system because of the control exercised by white citizens. White control over black schools not only excluded blacks from public service, but also increased segregation.\textsuperscript{138}

Following the 1910 annexation of surrounding school systems, Western High School was converted to Ensley High School, representing the western side of the city and the Ensley community. With help from the city, the building underwent construction in 1910 and again in 1925. Ensley High School was at the forefront of the Birmingham

\textsuperscript{135} Jefferson County, \textit{Heritage of Jefferson County}.
\textsuperscript{136} LaMonte, \textit{Politics and Welfare}.
\textsuperscript{137} Jefferson County, \textit{Heritage of Jefferson County}.
\textsuperscript{138} LaMonte, \textit{Politics and Welfare}.
education system. It represented the only school in Birmingham in 1937 with an area fully equipped for film and a modern address system. Later, Ensley would add a speech correction class, a reading clinic, and a language laboratory, and expand the building to add room for a new library, gymnasium, and music and art facilities. Twenty-five hundred students were enrolled at Ensley High School in 1938, but that number had decreased to 1,460 students in 1951, reflecting the downturn in the local population.\textsuperscript{139}

Western High School was constructed in 1952 to also serve the growing needs of the western portion of Birmingham. The school opened its doors on 12th Street in Ensley and served 490 students. Made possible by donations from the Olin Foundation, Western High School expanded to include a vocational wing serving 600 students. The school was renamed “Western-Olin High School.” The name would change again in 1973 to “P. D. Jackson-Olin High School” with the addition of the Jackson Building, an enlarged cafeteria, auditorium, additional classrooms and offices. Before merging with Ensley High School into the new P. D. Jackson-Olin building, the former facility boasted both an academic and vocational wing.\textsuperscript{140}

In 1954, the Supreme Court ruled in favor of desegregation of American public schools. Like many other southern cities, Birmingham took an indifferent attitude and dragged its feet. It seemed as if the “white educators and white policy-makers were ‘indecisive’ while Black Birmingham was characterized by the ‘staggering’ silence of the black community in general and the ‘silence of the Negro educator’ in particular.”\textsuperscript{141}

\textsuperscript{139} Ibid.
\textsuperscript{140} Jefferson County, \textit{Heritage of Jefferson County}.
\textsuperscript{141} LaMonte, \textit{Politics and Welfare}, 138.
Birmingham appeared to find comfort in ignoring the issue and relief in the possibility that the court order might not trickle down to the city. Birmingham finally integrated its schools in 1963, nearly ten years after the ruling.

Over the next several decades, the Birmingham school system went through periods of growth and development as well as decline. All of these changes corresponded to the expansion and dwindling of surrounding communities. During the 1980s, the school system made a push to establish more middle schools. These middle schools lessened the gap between the thirteen high schools and seventy-seven elementary schools that comprised the school system in the 1970s. Throughout the 1990s and through the early stages of the twenty-first century, a number of schools in the system closed, while other systems merged to accommodate rezoning and ever-changing demographics.

Change came when Ensley High School merged with rival school P. D. Jackson-Olin High School. The two schools combined as part of the plan set forth by the school board to repair and/or improve run-down facilities.142 Ensley High School, more recently known for its violence and poverty, officially closed its doors in 2006, and its students along with the former P. D. Jackson-Olin students now attend the new P. D. Jackson-Olin High School. Construction began in 2004 on Avenue F for the new state-of-the-art facility. The resources of this building are intended to prepare students for technical careers. As of 2012, fifty-one schools made up the Birmingham Public School System. As in the early days of the system, a superintendent, along with a board made up of nine

members, governs the schools.\textsuperscript{143} This information comes into play on several different instances in the lawsuit central to this project.

\textit{Birmingham in the Twenty-first Century}

Much has changed for Birmingham since its inception in the late 1800s. More recent data reveals a deeply altered landscape for the city and its public schools.\textsuperscript{144} According to the US Census Bureau, approximately 212,237 individuals made up the community of Birmingham, Alabama in 2010.\textsuperscript{145} In regard to gender, 53.2 percent of the population consists of females. This number is quite consistent with the gender breakdown for the state and the country: females make up 51.5 percent of the state population and 50.8 percent of the country’s population. In regards to race, black or African American individuals account for almost 73.4 percent of the Birmingham landscape, while white individuals make up a little over 22 percent. The remaining 5 percent encompasses five other racial groups. These figures are nearly reversed when compared to the state of Alabama and to the larger United States. White Americans make up 68.5 percent of the population of the state of Alabama and 72.4 percent of the US inhabitants. Blacks or African Americans account for 26.2 percent of this state’s residents and 12.6 percent of the US’s residents. Alabama’s remaining 5 percent is spread over five

\textsuperscript{144} As of publication date, the latest Census Data was from 2010. The Census Bureau is releasing Summary File 2 data on a state-by-state flow basis from December 2011 through April 2012 with the data for the state of Alabama being one of the states not yet released.
racial groups. Asian individuals make up 4.8 percent of the US population and other racial groups account for 8.9 percent.\footnote{US Census Bureau, “State and County QuickFacts: USA,” last modified January 17, 2012, http://quickfacts.census.gov/qfd/states/00000.html.}

When it comes to economics, the city of Birmingham currently finds itself behind compared to the state of Alabama as a whole, as well as to the United States. For example, the median household\footnote{A household includes all the people who occupy a housing unit as their usual place of residence. Households are classified by type according to the sex of the householder and the presence of relatives. Examples include: married-couple family; male householder, no wife present; female householder, no husband present; spouse (husband/wife); child; and other relatives.} income in 2010 inflation-adjusted dollars for the city of Birmingham was $31,827. The median household income for the state was $42,080 and for the entire US rounded out at $51,914. The household income is reflected in the local poverty level as well. In the city 26.4 percent of individuals are below the poverty level, and 17.1 percent of individual Alabama residents are below poverty. This ranks Alabama as the tenth poorest state in America. In contrast, 13.8 percent of individual US citizens are below the poverty level.\footnote{US Census Bureau, “QuickFacts: Birmingham.”}

Prior to the merger with P. D. Jackson-Olin High School, the demographics of the former Ensley High School are found to be both consistent and in conflict with those of the city and the state. Of the Ensley High School students, 53.1 percent were female and 46.9 percent male. The ratio of female students to male students for the entire district was 49.6 to 50.4 percent. Finally, females made up 48.4 percent of the state’s student population with males representing 51.3 percent. Ensley High School’s student body consisted of 99.9 percent African American students. The remaining 0.1 percent were Hispanic students. The entire Birmingham Public School district was 97.0 percent black,
1.1 percent white and 1.7 percent Hispanic. School systems in the state of Alabama consisted of 59.2 percent white students, 35.9 percent black students, 2.8 percent Hispanic students, 1 percent Asian students, and 0.8 percent American Indian or Alaskan native students.\(^{149}\) Caucasian families tended to be situated in the suburban areas outside of Birmingham, and consequently, Caucasian students attended suburban schools. This helped explain the differences in the data across the three areas.

Consistent with the data regarding the economic situation of the city of Birmingham, 73.3 percent of the students at Ensley High School were considered economically disadvantaged. According to the National School Data Bank, “economically disadvantaged” is the term used to classify a student from a low-income family. This classification is consistent with the data from the US Census Bureau. The National School Data Bank believes this classification to be important because a strong correlation exists between student achievement levels and household income.

Additionally, economically disadvantaged students fall under the category of students with special needs. According to the standards set forth by the National School Lunch Program, these students are eligible to receive free or reduced-price lunches. Seventy-eight percent of the entire school district is classified as economically disadvantaged, while 51.7 percent of the state’s students fall under this designation.\(^{150}\)


In terms of academic achievement, the last group of students at Ensley High School in 2006 did not prepare to attend college. For example, only 29.8 percent of Ensley students took the ACT college entrance exam. On the other hand, over half of the entire school district, 51.9 percent, took this college entrance exam, and 61.3 percent of students in the state took the exam. Those students at Ensley High School who did take the exam did not fare as well as fellow students in the district and the state. Ensley students scored an average of 16.5, while students in the district averaged a 17.0, and students from the state scored an average of 20.1.\footnote{National School Data Bank, “College Entrance Exams,” accessed April 15, 2009, http://www.schooldatadirect.org/app/data/q/stid=1/lclid=118/stllid=386/locid=1033230/catid=1024/secid=4610/compid=851/site=pes.}

The P. D. Jackson-Olin demographics, the year prior to the merger, were rather similar to those of the former Ensley High School. African American or black students comprised 99.8 percent of the student body. The remaining 0.2 percent consisted of Caucasian students. Only 60 percent of the students from P. D. Jackson-Olin were considered to be economically disadvantaged, a twenty-point difference from Ensley’s numbers. The average ACT score was 16.0, half a point below the Ensley High School average. However, more students from this school were taking this college entrance exam, 49.5 percent compared to 29.8 percent. Finally, there was a slight difference in the gender representation at Jackson-Olin when compared with Ensley. At Jackson-Olin, 51.7 percent of the student body was male and 48.3 percent females, which is slightly different than the 46.9 percent to 53.1 percent male-to-female ratio at Ensley.
These numbers give an interesting account of the early twenty-first century climate at this particular high school. The statistics indicate that former students of Ensley High School, as well as the current students at Jackson-Olin High School, were overwhelmingly African American. When comparing these local schools with state and national numbers, the students are also poor and disadvantaged. This classification is particularly important because of the strong correlation between student-achievement level and household-family income, and the number of students scoring poorly on college entrance exams supports that correlation. Not only are these students behind state and local peers, but they will also have difficulty gaining entrance into many colleges and universities.

Summary

In the early days of Birmingham, its geographical location made it a prime site for the iron and steel industry. Battles emerged between laborers and employers over issues of convict labor, unions, and working conditions. Clear racial and class differences also emerged between the wealthy, social elite and the poor, laboring force. The economic struggles, over time, gave way to dramatic racial battles. The heated racial tensions of Birmingham ultimately forced the hand of politicians resulting in the Civil Rights Act of 1964. Following the legislation, the city responded at a similar slow pace to racial changes. The city’s downtown was integrated, but separation was maintained in neighborhoods, churches, and lifestyles. The economy evolved away from relying solely on the steel industry, thus increasing the city’s economic stability. The city continued its
efforts to bridge racial gaps by opening the Civil Rights Institute to commemorate the struggle in Birmingham.

The early Birmingham Public School System served the needs of its white students, while overlooking black youth. The racial struggle in the community was also evident in the dealings of the school system. In 1963, nearly ten years after the Supreme Court ruled in favor of desegregation, the Birmingham schools were integrated. The growth and decline of the school system reflected the economic expansion and downturn of the city. In the twenty-first century, Birmingham lags behind state and national numbers in income and scores above the state and national averages in households below the poverty level. These numbers reflect the number of economically disadvantaged students in the public school system. The issue with this lies in the fact that these students tend to lag behind those above the poverty level.

The statistics presented here portray the city of Birmingham and the community surrounding this high school as a poor, African American community. The inequity in race and class is deeply rooted in the community’s history. In the case of *Jackson v. Birmingham*, these facts arguably affect every aspect of the lawsuit and why the city failed to enforce the court’s decision. The local community and ultimately the national community may have ignored enforcing this ruling because it had little compassion for this poor community. Furthermore, the city of Birmingham has a clear history of indifference when it comes to issues impacting its black citizens. In addition to race, an area as “trivial” as girls’ athletics does not typically receive much attention in the first place. So, it is possible the school system did not believe addressing these inequities
mattered. Perhaps the system did not agree with Jackson’s complaints or did not believe they would be held accountable regarding these complaints. In some ways, it is not surprising that enforcing the \textit{Jackson} ruling was not a top priority for the Birmingham Public School System. The issues were pushed aside for several years until national publicity brought them to light. Despite other difficult issues facing the Birmingham Public School System, this neglect cannot be condoned. Title IX, in theory, was set into place to ensure such neglect did not and does not persist. However, it soon will be made clear that Title IX is limited in its enforcement and application in regards to issues of race and class.
Chapter 3: *Jackson v. the Birmingham Board of Education:*

The Legal and Cultural Story of Roderick Jackson

*The Proceedings*

In 1999, Roderick Jackson was hired as the head girls’ basketball coach of Ensley High School in the Birmingham Public School District, and he would continue as head coach until 2001. After being fired and eventually reinstated, Jackson would again take the helm in October of 2003.\(^{152}\) Before being hired at Ensley, Jackson had nearly fifteen years of experience coaching both boys and girls at the elementary and secondary levels. Throughout his coaching tenure and particularly at Ensley High School, Jackson enjoyed numerous on-the-court successes. Those successes included finishing the 1999-2000 season going 6-2 with an overall record of 11-11 and finishing second in the conference.\(^{153}\) According to Jackson in his statement before the Supreme Court, six of his seven seniors in 2001 were so skilled that they received college scholarships.\(^{154}\)

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\(^{153}\) Ibid., 7.

However, Jackson’s tenure, he maintained, was marred by gender inequities: his girls’ team did not receive the same treatment as the boys’ team. Jackson claimed his team was forced to practice and even compete in an old, unheated gym with wooden backboards and bent rims. The Associated Press described the gym like this: “Built in 1908, the old gym was smaller than regulation, and its tan-and-white walls were covered with graffiti. The floor was slick, the hoops were the wrong size and the backboards were made of plywood, making it difficult for players to adjust to the Plexiglas ones used in games.”

These conditions typically do not lead to on-the-court success, but somehow Jackson and his teams managed to achieve numerous accomplishments.

In addition to inadequate facilities, Jackson complained that the girls’ program was treated unfairly in various other ways. The school did not offer transportation to and from games for the girls’ team, forcing Jackson to form carpools to ensure that his group could travel to competitions. Both the boys’ and girls’ teams were required to pay for their own game officials, but this proved to be a serious problem for Jackson and his squad, since the girls’ program did not receive any funds from gate receipts or concession profits. Similarly, the girls’ squad was denied any allocation of funds donated by the city of Birmingham. Finally, Jackson and the girls’ squad did not have access to weight facilities, expense accounts, or even the ice machine. During one game, one of Jackson’s players went down with an ankle injury that needed to be iced. After repeated attempts to notify the administration of the need for assistance with no avail, Jackson sent an

assistant coach to break the lock on the ice machine and come to the aid of the injured player.\textsuperscript{156}

Jackson also contended that the boys’ team, on the other hand, experienced preferential treatment. The boys’ team used the new, regulation gym for both practice sessions and games. The school provided transportation to and from away games for the male squad, and the boys’ program kept money from ticket and concession sales. In addition, the boys’ program often received funds donated to the school’s athletic programs.\textsuperscript{157} In one instance, Jackson entered the gym to find an AAU basketball tournament taking place. He had no knowledge of the event. When he approached the boys’ basketball coach and athletic director to request that his team have a part in the fundraising event, he was denied. Instead, the funds were allocated to the boys.\textsuperscript{158}

Frustrated with the unfair treatment, Jackson vocalized his grievances, hoping to level the playing field for the boys’ and girls’ programs. Although he did not file a complaint with the Office of Civil Rights (OCR), Jackson was persistent in making sure that his complaint made its way up the chain of command from the school athletic director to the principal, and eventually to the Deputy Superintendent of Instruction, second in command of the Birmingham Public School System.\textsuperscript{159} His complaint was ignored, and Jackson was ultimately fired from his coaching position in May of 2001;

\textsuperscript{156} Jackson, \textit{Landmark, Get Set.}  
\textsuperscript{157} National Women’s Law Center, “Statement of Roderick Jackson;” and Jackson, \textit{Landmark, Get Set.}  
\textsuperscript{158} Jackson, \textit{Landmark, Get Set.}  
\textsuperscript{159} National Women’s Law Center, “Statement of Roderick Jackson.”
however, he was allowed to retain his position as a physical education instructor within the district.\footnote{Jackson, \textit{Landmark, Get Set}.} Jackson felt he knew why he lost his job. He stated:

Why I was fired is clear cut. I spoke up on an issue that no one was ready to deal with, an unpopular issue, and I got penalized for it. I not only lost the pleasure of coaching; I lost the extra income I earned and the higher retirement benefits I would have gotten based on the extra money…. And the young ladies at Ensley lost the only person who was willing to speak up for them.\footnote{National Women’s Law Center, “Statement of Roderick Jackson.”}

Jackson, wanting to get his job back and fighting for the rights of these young girls, hired a young local lawyer to help him.\footnote{Jackson, \textit{Landmark, Get Set}, 24.} Jackson filed a Title IX suit in the United States District Court, alleging that the Birmingham Board of Education had retaliated against him because he questioned the disparate treatment his team members were receiving. Additionally, Jackson maintained that this retaliation was in violation of Title IX. Once Jackson brought these allegations before his various supervisors in the Birmingham School District, he received poor evaluations of his coaching skills for the first time since being hired. These negative evaluations hindered any move towards advancement or promotion, and Jackson was eventually relieved of his coaching duties.\footnote{Jackson, \textit{Landmark, Get Set}.} Finally, the district court dismissed the complaint, on the grounds that Title IX’s private cause of action did not include claims of retaliation.\footnote{Jackson v. Birmingham Board of Education, 544 U.S. 167 1497 (2005).}
The District Court Judge T. Michael Putnam, explained his reasoning. Putnam confirmed that the members of the Ensley High School girls’ basketball team were treated less favorably than the boys’ team because of their gender. Nevertheless, the judge explained:

The “persons” being subjected to the illegal discrimination are the female members of the basketball team, not the coach; it is they who are being “denied the benefits of” the educational activity of basketball. Their coach has no standing to assert for them their claims of discrimination in this regard because he has suffered no personal loss or injury due to the discrimination.165

Putnam further concluded that because Jackson was fighting for employment benefits, a Title VII166 claim should be filed, not Title IX. Judge Putnam thus ruled that the plaintiff had no grounds for a suit under Title IX because he was the whistleblower167 and not the

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166 Title VII of the Civil Rights Act of 1964 asserts that it is illegal for an employer 1) to fail or refuse to hire or discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex or national origin; or 2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin; Glenn M. Wong. Essentials of sport law, 3rd ed. (Westport, CT: Praeger Publishing, 2002).
167 Whistleblowing as a metaphor refers to the act of disclosing information concerning conduct within or by an organization that the whistleblower believes to be unethical, illegal, or dangerous with the intent of having the conduct reviewed and stopped. Whistleblowing occurs in two contexts: internal whistleblowing involves disclosure to higher authorities within an organization, and external whistleblowing involves disclosure to outside enforcement authorities and/or the press. Legal protection for whistleblowers does not prevent them from suffering adverse employment consequences. Rather, the law only provides them a remedy for injuries suffered as a result of whistleblowing. See Appendix 3 for further discussion of whistleblowing. John A. Gray, “Is Whistleblowing Protection Available Under Title IX? An Hermeneutical Divide and the Role of Courts,” William and Mary Journal of Women and the Law 12 (2006): 671-673.
one directly experiencing the disparate treatment. The female basketball players were the underrepresented party, not Jackson.\textsuperscript{168}

Jackson, being represented by a new firm, then appealed his case to the United States Court of Appeals for the Eleventh Circuit, but the Eleventh Circuit upheld the district court’s verdict.\textsuperscript{169} The Supreme Court interpreted the Eleventh Circuit Court of Appeals verdict as follows:

It [the Court of Appeals] assumed, for the purposes of the appeal, that the Board retaliated against Jackson for complaining about Title IX violations. It then held that Jackson’s suit failed to state a claim because Title IX does not provide a right of action for retaliation. … Finally, the court held that, even if Title IX prohibits retaliation, Jackson would not be entitled to relief because he is not within the class of persons protected by the statute.\textsuperscript{170}

The Eleventh Circuit reasoned that because Title IX makes no mention of retaliation, it does not cover retaliation. Furthermore, even if the order expressly included a prohibition against retaliation, Jackson was not under that umbrella, as he was not a member of the underrepresented sex.

Unwilling to accept the two rulings, Jackson then requested that the United States Supreme Court hear his case. Jackson was only able to do this when the National Women’s Law Center (NWLC) agreed to become Jackson’s counsel in November of

\textsuperscript{169} Jackson, \textit{Landmark, Get Set}, 24.
\textsuperscript{170} Jackson, 544 U.S. 167 at 370.
2002. The two previous lower court rulings had put a real strain on Jackson’s personal finances, as he was solely responsible for funding those court appearances. According to Jackson, the NWLC was “willing, due to national ramifications of the adverse ruling down low, to assist pro bono.” In June of 2004, the court agreed to hear the case. In March of 2005, in a ruling that surprised many, the Supreme Court reversed and remanded the previous courts’ decisions in a close 5-4 vote; Justice Sandra Day O’Connor wrote the majority opinion and Justices John Paul Stevens, David Souter, Ruth Bader Ginsburg, and Stephen Breyer concurred. Justices Clarence Thomas, William H. Rehnquist, Antonin Scalia, and Anthony Kennedy dissented.

The Majority Opinion

Justice O’Connor stated five main reasons why the concurring justices believed that victims of sex discrimination by federally funded educational institutions were protected against retaliation. First, the majority opinion maintained, “when a funding recipient retaliates against a person because he complains of sex discrimination, this constitutes intentional ‘discrimination’ ‘on the basis of sex,’ in violation of Title IX.”

The district court had ruled, and the Court of Appeals for the Eleventh Circuit had confirmed, that Title IX does not prohibit retaliation. Reversing the rulings of both lower courts, the Supreme Court stated that Title IX does cover retaliation claims—especially when an institution receiving federal dollars retaliates after allegations of sexual discrimination have been made. When an individual complains of sex discrimination,

171 Jackson, Landmark, Get Set, 76.
172 Ibid., 25.
174 Id.
and the complaints result in retaliation, this is intentional sex discrimination and ultimately falls under Title IX’s private cause of action. According to Justice O’Connor, “Retaliation is discrimination ‘on the basis of sex’ because it is an intentional response to the nature of the complaint: an allegation of sex discrimination.”\(^{175}\) Therefore, claims of retaliation are within the jurisdiction of Title IX.

Second, the majority noted that the US Supreme Court has frequently interpreted discrimination broadly, especially under Title IX. In response to the court of appeals’s conclusion that Title IX makes no discussion of retaliation, and, therefore does not permit it, the Supreme Court decided that the court of appeals failed to recognize the “repeated holdings construing ‘discrimination’ under Title IX broadly.”\(^{176}\) For example, although Title IX does not explicitly refer to sexual harassment, the courts have consistently included claims of sexual harassment under Title IX, including teacher-on-student and student-on-student harassment.\(^ {177}\) Therefore, the majority concluded that it was the intention of Congress, as well as the courts, for the law to encompass various situations that were not explicitly mentioned.

Third, Justice O’Connor emphasized that Congress deliberately used the term \textit{discrimination} to convey its broad meaning. She stated, “‘Discrimination’ is a term that covers a wide range of intentional unequal treatment.”\(^ {178}\) Consequently, an expansive range of behaviors would be included under the umbrella of this statute. This reasoning helped counter the district court judge’s argument that employment retaliation is covered

\(^{175}\) Id.
\(^{176}\) Id.
\(^{177}\) Franklin, 503 U.S. 60; Gebser, 524 U.S. 274; and Davis, 526 U.S. 629.
\(^{178}\) Jackson, 544 U.S. 167 at 371.
under Title VII but not Title IX. O’Connor maintained, “Because Congress did not list any specific discriminatory practices when it wrote Title IX, its failure to mention one such practice does not tell us anything about whether it intended that practice to be covered.”\textsuperscript{179}

In the fourth rationale for their ruling, the majority referred to precedent set in a prior decision. Title IX was enacted three years after the decision in \textit{Sullivan v. Little Hunting, Inc.}\textsuperscript{180} According to the Court in \textit{Sullivan}, this decision, which protected a white lessor from retaliation when advocating the rights of a black lessee, provided a valuable context for understanding Title IX. Thus, the retaliation against Jackson for his efforts to advocate for the rights of his female players was “‘discrimination’ ‘on the basis of sex,’ just as retaliation for advocacy on behalf of the lessee in \textit{Sullivan} was discrimination on the basis of race.”\textsuperscript{181}

In the fifth and final basis for their ruling, O’Connor and the majority addressed how the underrepresented or represented sex fits into the equation when discussing retaliation. The majority opinion contended that regardless of the individual’s sex or whether he or she is the subject of the original complaint, a person treated unfairly for making complaints regarding an alleged Title IX violation is a victim of discriminatory retaliation. In the initial ruling, District Court Judge Putnam argued that the female members of the basketball team were subjected to the illegal discrimination and not the coach. Since Jackson did not himself suffer personal loss or injury because of the

\textsuperscript{179} Id. at 372.
\textsuperscript{181} \textit{Jackson}, 544 U.S. 167 at 373.
discrimination, he had no right to stand in the place of his players. The Supreme Court responded that Title IX does not require that the victim of the retaliation also be the victim of the discrimination. The basis of the sex requirement is fulfilled when the plaintiff speaks out about sex discrimination and is retaliated against because of these complaints. Regardless of the sex of Jackson or whether he was the subject of the original complaint, Jackson was the victim of discriminatory retaliation.

Finally, Justice O’Connor commented on the importance of protecting those who speak out on behalf of victims of discrimination:

Reporting incidents of discrimination is integral to Title IX enforcement and would be discouraged if retaliation against those who report went unpunished. Indeed, if retaliation were not prohibited, Title IX’s enforcement scheme would unravel. If Title IX’s private right of action does not encompass retaliation claims, the teacher would have no recourse if he were subsequently fired for speaking out. Without the protection from retaliation, individuals who witness discrimination would likely not report it, indifference claims would be short-circuited, and the underlying discrimination would go unremedied. Title IX’s enforcement scheme also depends on individual reporting because individuals and agencies may not bring suit under the statute unless the recipient has received “actual notice” of the discrimination. Moreover, teachers and coaches such as Jackson are often in the best position to vindicate the rights of their students.
students because they are better able to identify discrimination and bring it to the attention of administrators. Indeed, sometimes adult employees are “the only effective adversaries” of discrimination in schools.\textsuperscript{184}

In this statement, O’Connor and the majority opinion provide an avenue for coaches and teachers to speak out on disparate treatment without the fear of retaliatory action. In doing this, the courts provide needed protection for whistleblowers to speak out on behalf of underrepresented students. O’Connor asserted that this form of protection is necessary to uphold the standards of Title IX.

\textit{The Dissenting Opinion}

Justice Thomas, writing for the dissenting justices (Rehnquist, Scalia, and Kennedy), maintained that a retaliation claim does not constitute a claim of discrimination on the basis of sex, and Justice Thomas further argued that the phrase “on the basis of sex” has commonly been understood to mean “on the basis of the individual’s sex.”\textsuperscript{185} Thomas provided the following example to bolster the argument of the dissenting opinion: “Suppose a sexist air traffic controller withheld landing permission for a plane because the pilot was a woman. While the sex discrimination against the female pilot no doubt adversely impacted male passengers aboard the plane, one would never say that they were discriminated against ‘on the basis of sex’ by the controller’s action.”\textsuperscript{186} The dissenting opinion again returned to the sex of the whistleblowers themselves. Thomas argued that, “for a disparate-treatment claim to be a claim of discrimination on the basis

\textsuperscript{184} Jackson, 544 U.S. 167 at 375-76.
\textsuperscript{185} Jackson, 544 U.S. 167 at 378.
\textsuperscript{186} Id.
of sex, the claimant’s sex must have actually played a role in [the decision-making] process and had a determinative influence on the outcome.” In the instance of Jackson, Coach Jackson never claimed that his sex had any part in his being relieved of his coaching position. Instead, he alleged that he was removed from his coaching job for complaining about sex discrimination against his team. Because Jackson’s sex played no part in this unfavorable treatment, according to Thomas, Title IX does not protect Jackson.

Like Judge Putnam at the district court level, Justice Thomas was concerned that retaliation is not mentioned in Title IX and believed this omission to be deliberate and significant. Retaliation was not intended to be included under Title IX, but rather Title VII, where acts of retaliation were specifically prohibited. Furthermore, the dissenting opinion was unable to come to terms with one of the majority’s fundamental assertions. The majority maintained that the school board was responsible for knowing that Title IX has historically been interpreted broadly to cover varied forms of sex discrimination. Thomas, however, argued that this does not indicate in any way that Title IX includes “diverse forms of intentional sex discrimination.” Instead of providing clarity, Thomas held that the previous cases gave no indication to the Birmingham Board of Education that retaliation could possibly have been a liability under Title IX.

Justice Thomas went on to critique the concurring justices’ use of Sullivan v. Little Hunting Park, explaining that “the majority creates an entirely new cause of action for a secondary rights holder, beyond the claim of the original rights holder, and well

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187 Id. at 379.
188 Id.
beyond *Sullivan*.”\(^\text{189}\) In order to make a claim under *Sullivan*, the white lessor was required to show that the defendant had discriminated against the black lessee on the grounds of race. Thomas was concerned that a favorable verdict in *Jackson* did not require actual sex discrimination, while *Sullivan* did require actual racial discrimination.

In the case of *Jackson*, Thomas argued that Jackson would not have to prove that there was actual sex discrimination against the girls’ basketball team at Ensley High School in order to claim that he had suffered retaliation. Jackson could claim that there was discrimination, even if no unfair treatment was present, be fired, claim retaliation, and file suit. Thomas’ fear was that Jackson could win a retaliation suit without ever proving there was any sex discrimination involving the team. Therefore, according to Thomas, *Jackson* oversteps the bounds of *Sullivan*.

Finally, Justice Thomas feared that giving rights to whistleblowers could open up an entirely new set of problems. He reasoned that the language of Title IX does not defend whistleblowers. Instead Thomas argued: “The Court established a prophylactic enforcement mechanism designed to encourage whistleblowing about sex discrimination. The language of Title IX does not support this holding. The majority also offers nothing to demonstrate that its prophylactic rule is necessary to effectuate the statutory scheme.”\(^\text{190}\) Thomas stated that this particular ruling now gives more protection to, or overprotects, whistleblowers that make claims regarding sex discrimination. The dissenters viewed this as outside the scope of the law, a failure to consider the

\(^{189}\text{Id. at 384.}\)
\(^{190}\text{Id. at 385. For further discussion of prophylactic rules, see Michael Plaxton, “In Search of Prophylactic Rules,” *McGill Law Journal* 50 (2005): 129- 30.}\)
alternatives. Thomas speculated that “nothing prevents students—or their parents—from complaining about inequality in facilities or treatment….The next step is to say that someone closely associated with the complainer, who claims he suffered retaliation for those complaints, likewise has a retaliation claim under Title IX.” Moreover, Thomas expressed concern that such a ruling would give the lower courts increased power, and that the lower courts would expand legal responsibility to use at their own discretion. For the reasons discussed above, the dissenting opinion believed retaliation not to be a private action and, therefore, outside the scope of Title IX.

Analysis of the Lawsuit

One legal scholar, John A. Gray, considered these divergent methodologies to be emblematic of the differences between the textualist and contextualist approaches. Jackson … illustrates a contest of wills between justices who adhere to the textualist approach to statutory interpretation, articulated in Sandoval, and those who follow a contextualist approach. Textualists restrict themselves to interpreting the language of the text and the statutory structure, whereas the contextualists in an effort to understand the text, also consider the legal context at the time of enactment and the purpose of the statute.

O’Connor and the majority opinion fell on the contextualist side, while Thomas and the dissenting justices tended toward a textualist approach. The difference in approaches is most evident in how the two sides interpreted such key areas as: the meaning of “discrimination based on sex;” how that applies to retaliation and how to fit a member of

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191 Jackson, 544 U.S. 167 at 385.
the represented sex into that equation; the application of *Sullivan*; and how the similarities and differences of Title IX and Title VII pertained to the case at hand.

*Discrimination on the Basis of Sex and its Application to Retaliation and the Represented Sex.* The first major issue to separate the justices was whether the phrase “on the basis of sex” was intended, or should be understood, to include claims of retaliation. Thomas and the dissenting justices took the written law at face value. As Thomas emphasized, the text does not explicitly include claims of retaliation. In this instance, Jackson was not retaliated against on the basis of *his* sex, but rather because he made a complaint regarding the inequities that took place because of the sex of his players. However, discrimination “on the basis of sex” has been historically used to signify inequity “on the basis of the claimant’s sex,” argued Thomas. “Therefore, Jackson should not have received protection under Title IX because Jackson’s sex was not considered in the decision to remove him from his coaching position.” According to Thomas, because Jackson’s sex was not the reason for the retaliatory behavior, “he fell outside the statute’s bounds of protection.”

On the other hand, O’Connor and the majority opinion claimed that the language of Title IX did, in fact, include claims of retaliation. The majority concluded that retaliation is an intentional act, a form of discrimination, and an intentional response to allegations of sex discrimination. Therefore, when retaliation occurs because of complaints about sexual discrimination, this constitutes intentional “discrimination” “on

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195 Ibid.
the basis of sex,” and is in direct violation of Title IX.\textsuperscript{196} With this argument, though, Elisa Butler points out that O’Connor and the majority may have overstepped the bounds of Title IX. According to Butler, it “was not imperative, and may have been damaging, for the majority to include this reasoning.”\textsuperscript{197} O’Connor and the majority formulated several other rationales sufficient to justify their ruling. Therefore, it was not completely necessary to include this reasoning. Even though this argument did not negatively impact the outcome in \textit{Jackson}, it arguably may have harmful ramifications if relied upon in future lawsuits.

Arguably Thomas’ support for the literal reading of the statute was well grounded, and his opinion in this instance better explained the possible harmful outcome in maintaining this reasoning. In the dissenting opinion, he raised an important concern regarding the disconnect between sex discrimination and retaliation. In the lawsuit in question, Jackson alleged that he was treated unfairly because he made complaints about inequities, not because of discrimination based upon sex. The dissent argued Jackson was not entitled to claim sex discrimination. In a retaliation claim, Jackson need only prove that he was retaliated against, not that the content of his original complaints was true.\textsuperscript{198} In other words, Thomas’s opinion states, “retaliation therefore cannot be said to be discrimination on the basis of anyone’s sex, because a retaliation claim may succeed where no sex discrimination ever took place.”\textsuperscript{199} The concern, then, is that a retaliation claim could succeed under Title IX even when no Title IX discrimination violations had

\begin{footnotes}
\item[196] \textit{Jackson}, 544 U.S. 167 at 371.
\item[197] Butler, “No Hitting Back,” 595.
\item[198] Ferguson, “Whistleblowing.”
\item[199] \textit{Jackson}, 544 U.S. 167 at 380.
\end{footnotes}
occurred. In the case of *Jackson*, Coach Jackson may be victorious in making retaliation claims if he was retaliated against for merely complaining, even if those complaints were not found to be true. Hausrath stated it this way: “Justice Thomas argued that protection against retaliation is therefore a ‘separate and distinct right,’ not to be confused with the right to be free of gender discrimination under Title IX.” Because of this reason, the dissenting justices’ concern for including retaliation under sex discrimination is possibly valid.

Even though the majority’s opinion may be flawed in this one regard, its attempt to situate Title IX within the context of other legislation throughout this historical timeframe is legitimate. For example, it is common in civil rights legislation for the concept of retaliation to be either included in the direct language of the statute or applied by the courts. It is commonly understood that in civil rights, protection against retaliation is critical in maintaining claims of discrimination. Therefore, the ruling in *Jackson* puts Title IX up to speed with other civil rights statutes of the same time period. Instead of “creating a new cause of action or a new interpretation of discrimination,” this ruling should be viewed as “bringing Title IX in line with other statutes.” Considering Title IX’s long and tumultuous history, the outcome in *Jackson* seems to be a logical progression. Taking a contextualist approach, the majority considers retaliation under Title IX in relation to other critical legislation of its time, such as *Sullivan*; this better serves the purposes of Title IX than the dissenting justices’ opinion.

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201 Ibid., 627.
202 Butler, “No Hitting Back.”
Application of Sullivan. The meat of O’Connor’s argument lies in applying Sullivan to Jackson in order to maintain an effective enforcement scheme under Title IX. Sullivan, decided in 1969, provided the legal foundation on which Title IX was based, according to O’Connor. She argued that when Congress enacted Title IX in 1972, Congress was aware of the outcome of Sullivan, and intended for Title IX’s statutes to conform to the ruling in Sullivan. More specifically, “based on canons of statutory construction, Congress is assumed to be aware of the Court’s decision and therefore, meant for Title IX prohibitions to be in line with the Court’s holding in Sullivan.” On the other hand, Thomas, considering the literal meaning of the law, believed the majority to have misunderstood the outcome in Sullivan and ultimately the history of the drafting of Title IX. Thomas believed that nowhere in the written language of Title IX, or its context for that matter, did Congress intend to include claims of retaliation.

Regardless of Thomas’s position, it is nearly impossible to ignore the fundamental similarities between Jackson and Sullivan. “In both cases, the people who were retaliated against complained of violations of anti-discrimination statutes designed to protect a

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203 To review, the following is a summary of Sullivan v. Little Hunting Park. Under the bylaws of a nonstock corporation organized to operate a community park and playground facilities for the benefit of area residents, a person owning a membership share was entitled when he rented his home to assign the share to his tenant, subject to approval of the board of directors. A homeowner-member bought another house in the area and leased the first one to a Negro. The lessor also assigned his membership share to the lessee. When the board refused to approve the assignment because the lessee was a Negro, the lessor protested and was expelled from the corporation by the board. The lessor and lessee sought injunctions and monetary damages in Virginia trial court, which denied relief. The Supreme Court of Appeals of Virginia denied the appeals saying it lacked jurisdiction to hear them. On certiorari, the US Supreme Court reversed. In an opinion by Douglas, expressing the view of the five members of the court, it was held that the board’s refusal to approve the assignment violated 42 USC 1982, which guarantees the property rights of all citizens, and that the expulsion of the lessor for trying to vindicate the rights of minorities protected by 1982 was a sanction that could not be imposed. Sullivan, 396 U.S. 229 at 232-240.


certain class of people…. Because these cases’ facts are so similar the outcome should be equally similar.”206 As was argued above in the majority opinion, the retaliation against Jackson for his efforts to advocate for his female players was “‘discrimination’ ‘on the basis of sex,’ just as retaliation for advocacy on behalf of the lessee in Sullivan was discrimination on the basis of race.”207 Although Sullivan and Title IX have differences—Title IX forbids discrimination in federally funded educational systems and Sullivan forbids discrimination in land ownership—they are both concerned with the same problem: prohibiting discrimination.208

O’Connor’s most convincing argument in applying the fundamentals of Sullivan, and perhaps Thomas’s weakest, argued that retaliation is necessary to execute Title IX enforcement strategies. Thomas contended that nothing prevents students or their parents from making complaints about gender inequity. For many students and parents, that could not be farther from the truth. Parents are not the ones in practice or administrative meetings, and students who are discriminated against fear losing playing time, rocking the boat, or simply being punished if they complain. Indeed, “Because students are considered inferior in the school setting, teachers are in the best position to report abuse because they have more power. Therefore, they must be protected from retaliation for taking steps to remedy the violations.”209 Furthermore, if those in authority were unable to bring complaints without retaliation, those complaints would likely be stifled and

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206 Butler, “No Hitting Back,” 596.
207 Jackson, 544 U.S. 167 at 373.
208 Butler, “No Hitting Back.”
209 Ibid., 596.
ultimately go unresolved. Without protection for teachers and coaches, students, especially females, would have no knowledgeable advocate to stand up for them.  

*Applying Title VII to Title IX.* While Title IX does not explicitly address retaliation, Title VII does. Thomas, therefore, reasoned that Congress intended for retaliation to be addressed under Title VII, and not Title IX; “that Congress’s failure to include the retaliation provision proves that Congress did not want to allow the provision.”

Thus, the dissenting opinion argued that Jackson should have or could have brought his claims of retaliation under Title VII, rather than Title IX.

According to one legal analysis, however, this argument may be flawed:

The Court should be wary, however, when comparing Title VII to Title IX. These statutes were enacted according to two different Congressional powers. Title VII should be narrowly construed while Title IX should have a broader reach. Congress enacted Title VII using “its general constitutional authority under the Commerce Clause.” Conversely, Congress enacted Title IX under the Spending Clause. Because Title VII was enacted under the Commerce Clause, it applies to all employers affecting interstate commerce. Title VII is not voluntary. Instead, if an employer is “above a certain size” and “in the private labor market,” Title VII applies. Title IX, in contrast, only applies to entities that opt to use federal educational funding. Because Title VII applies to a wider range of

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210 *Jackson,* 544 U.S. 167 at 371.
entities, there is a good policy reason for construing it more narrowly than Title IX.  

Essentially, the cause of action in Title VII is explicit, while the cause of action in Title IX is implied. In other words, the intention of Title VII was to have narrow application to a broader range of entities. Title IX, on the other hand, is applicable to a select few entities but is to be applied broadly to those entities. The dissenting justices’ application of Title VII to Title IX is largely incorrect.

O’Connor and the majority argued that Title IX could have included claims of retaliation. It is necessary to note, however, that Congress did not make mention of any specific biased behaviors under Title IX. “The dissent’s argument that Congress should have included a specific prohibition against retaliation is misplaced because the statutory text of Title IX does not include a laundry list of covered practices, unlike Title VII, which spells out conduct that is considered discrimination.” O’Connor then argued that the mere omission of retaliation under Title IX reveals nothing about Congress’s intentions and further supports her argument that Title VII is not applicable to Title IX in this instance.

Post-Supreme Court Legalities

211 Butler, “No Hitting Back,” 597-98.
213 The language in Title IX was modeled after Title VI of the Civil Rights Act of 1964. Therefore, the outcome in this case is bound to make its way into Title VI cases. Title VI, like Title IX, forbids those institutions that receive federal financial funding from discriminating on the basis of race, color, or origin. Due to the resemblances between Title IX and Title VI, the “courts may be more likely to allow private causes of action for retaliation under Title VI as well.” It is likely, then, that Jackson will be applied in future cases involving third-party retaliation claims. Michael D. Nosler, “Supreme Court Broadens the Scope of Title IX,” Newsletters and Articles: Law Firm of Rothgerber, Johnson, and Lyons, 2005, accessed November 11, 2005, http://www.rothgerber.com/newslettersarticles/le0062.asp; and Butler, “No Hitting Back.”
The legal conflicts between Roderick Jackson and the Birmingham Board of Education did not end with the Supreme Court’s decision. Jackson’s case returned to the lower courts to be heard for a second time. Over the next several years, a series of conflicts continued between the coach and the board, while the case was pending in the lower courts.\footnote{During the trial, Jackson was rehired as the coach of the Ensley High School girls’ basketball team on an interim basis. He would later become the interim girls’ coach at Jackson-Olin High School when Ensley and Jackson-Olin merged to form one school. Because of his position as the coach again, he was in a position to speak of the unfair conditions and/or disparate treatment.} According to the \textit{Birmingham News}, in December of 2005, over nine months after the Supreme Court’s verdict, Jackson felt that the conditions that led him to complain in the first place were still persisting. This time, Jackson complained that he was denied assistant coaches, forcing him to coach both the varsity and junior varsity squads, while the boys’ teams were allowed paid assistant coaches. Gym access and priority practice were still among Jackson’s complaints.\footnote{\textit{Birmingham News Online}, “Unsettling Allegations,” December 31, 2005, http://www.nlnewsbank.com/.
\textit{Jackson, Landmark, Get Set}.
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Nearly a year later, in October of 2006, the board attempted to have Jackson’s new complaints thrown out in the lower courts, but the motion was denied. Subsequently, in late November of 2006, the Birmingham Board of Education agreed to the basic terms Jackson requested.\footnote{\textit{Birmingham News Online}, “Unsettling Allegations,” December 31, 2005, http://www.nlnewsbank.com/.
\textit{Jackson, Landmark, Get Set}.
} The settlement included financial retribution to Jackson for back pay and compensatory damages, as well as legal fees. Jackson also requested that the school system agree to “appoint Title IX coordinators for the system and each school, adopt Title IX policies and grievance procedures, and conduct compliance training and a review of compliance with Title IX athletics regulations.”\footnote{\textit{Birmingham News Online}, “Unsettling Allegations,” December 31, 2005, http://www.nlnewsbank.com/.
\textit{Jackson, Landmark, Get Set}.
}
Shortly following this agreement, during the 2006-07 basketball season Coach Jackson stepped down from his coaching position, stating that with his school work schedule, he was unable to effectively hold the coaching position. Furthermore, Jackson felt that the proceedings were proving to be a distraction for the team. The Birmingham News reported that Mike Clisby was hired to replace Jackson. Soon after stepping down from his position, Jackson re-evaluated his decision, after receiving letters from players who maintained that Jackson had been a “father figure” to the team. He met unofficially with members of the school board and agreed to withdraw his resignation just eight days after filing it. He then asked to be reinstated to the position in full capacity, rather than as the interim coach.

Jackson, however, was not reinstated during the remainder of the 2006-07 season. He did return to coaching duties in the offseason, according to local press. Following the start of the 2007-08 season, in November of 2007, the Birmingham Board of Education made a change to the Jackson-Olin girls’ team. Jackson, despite being the coach throughout the summer and the beginning of the 2007-08 season, was relieved of his coaching duties, and Clisby was appointed to take over for the remainder of the

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221 Solomon, “Jackson Claims Retaliation.”
222 Crenshaw, “Jackson Finds New Fame.”
223 Beaudry, “Birmingham School Board.”
224 As a reminder, the Birmingham Public Schools closed the doors of Ensley High School following the 2006 school year. Ensley students were merged with students from Jackson-Olin High School in a new Jackson-Olin building. Therefore, the Ensley girls’ basketball coaching position no longer existed, but the coaching position in question is the one at the new Jackson-Olin High School.
season. Jackson was clearly distraught about the change: “Now I have to tell the kids the gentleman who didn’t coach them in the spring and summer and at the start of the season is (now in charge)…. Now they’re breaking us apart.” 225 Not only was Jackson disgruntled about not being hired for the job, he was dissatisfied with Clisby’s coaching. According to Jackson, Clisby was more focused on his role as football coach, had modest knowledge of the game of basketball, and treated the girls disrespectfully. Clisby, on the other hand, called Jackson’s allegations lies. 226

Shortly after Jackson’s dismissal from his coaching duties, he filed a motion asserting that the board of education had gone against the terms agreed upon in the settlement, and he demanded that they demonstrate compliance with the November 2006 agreement. 227 Jackson argued that the board had continued to retaliate against him by relieving him of his coaching duties, as well as violating other aspects of Title IX, including unequal treatment for the girls in transportation, gym availability, uniforms, and refreshments. While the board maintained that they were forced to hire an available coach when Jackson resigned, Jackson regarded Clisby as unsuitable. Jackson requested reassignment to his coaching duty, back pay for himself as well as for his assistants, and remuneration for his legal costs.

The board responded by filing its own case, stating that Jackson’s allegations were unfounded. The board maintained that the girls and boys were treated equally. The board believed that it was not only in compliance, but was also in possession of an

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225 Beaudry, “Birmingham School Board.”
226 Solomon, “Jackson Claims Retaliation.”
227 Ibid.
assessment, which showed that the accusations of inequality were false. The board contended that its decision to hire Clisby was founded on good principle and stated, “Jackson bailed out on the girls and proved to be unreliable.” The board also produced sworn statements from current team members, stating that transportation and food was provided for each necessary game, Coach Clisby treated them fairly, and uniform conditions were satisfactory. In the board’s response, Jackson was also blamed for playing an ineligible player early in the 2007-08 season, which was a violation of rules set forth by not only the school board, but also the Alabama High School Athletic Association.229

US District Court Judge Karon Bowdre denied Jackson’s request that the board be required to demonstrate that its members were not in violation of the 2006 agreement. She did, however, order that the US District Court Monitor conduct a three-month investigation of the Birmingham School System’s athletic department to determine the current level of Title IX compliance. The appointed court monitor, Ken Simon, reported that the system was in “substantial compliance” with the agreement, but he wanted to conduct a more thorough investigation to verify that the boys’ and girls’ squads were being treated fairly. Simon went on to report that several necessary changes had already taken place in the athletic department. Previously, the moneys available to each team for uniforms, equipment, and necessary supplies, had been based upon ticket and concession sales and other revenue sources. Following the 2006 agreement, money was deposited

229 Walton, “School Board Disputes.”
into a single athletic account and distributed to teams evenly regardless of gender. Simon responded to Jackson’s claims of unequal treatment across gender by stating that even if unequal treatment did exist, the school might be in compliance if the differences were the product of nondiscriminatory factors. If the rationale for the differences across the boys’ and girls’ teams were for reasons outside of discriminatory practices, Simon believed the differences across the genders could exist.

In February of 2009, just one month into the investigation by Simon, Jackson was hired to coach the newly formed Jackson-Olin High School girls’ soccer team. Jackson was appointed to build a team from scratch in response to the interest from Jackson-Olin’s female student body. Jackson, however, refused to indicate whether this coaching job was part of the settlement terms he had agreed to with the school board. Shortly following this announcement, the Jackson-Olin High School recommended that the soccer team be disbanded, due to inadequate participation. The Jackson-Olin principal submitted a letter on March 27, 2009, stating Jackson was told the team would be dropped because only four girls were eligible to participate under state rules, in spite of the thirty-seven girls that showed interest in the team and the nineteen present at the first team meeting. The school asserted that they had insufficient paperwork for the eligibility of special education students, although Jackson believed only four athletes fell under this criteria. Jackson, furthermore, contended that these numbers were impacted by a newly instituted school rule allowing students to participate in only one sport per season, thus

drastically reducing the number of girls able to play on the newly formed soccer team. The school system, however, believed the issues to be greater than Jackson claimed. The school system, citing several recent state penalties, had become more cautious in regard to academic eligibility and participation forms. Regardless, Jackson maintained that the thirteen girls who practiced daily were quite discouraged by the outcome. At the time, Jackson Olin was considering allowing the four eligible players to join the boys’ squad, but ultimately no girls participated.232

Roughly six months after the court monitor’s investigation and eight years after the original lawsuit, a final settlement was reached between Jackson and the board in July of 2009. The terms of the settlement included Jackson’s acknowledging the school’s compliance with Title IX, and Jackson’s receiving back coaching pay. Jackson stated that he believed the board had “done what they reasonably can do.”233 Meanwhile, the board’s attorney reiterated the board’s belief that “it has always been in compliance with Title IX.”234 In spite of the agreement a district court judge was still required to rule whether the board is in compliance; since both sides had reached an agreement, this ruling was a formality and finalized just a few months later formally ending the case.

Just prior to the 2009-10 school year, Jackson, still employed as a teacher at Jackson-Olin, decided to give up coaching. He stated that he did not want players to be affected any longer by retaliatory actions against him. Jackson indicated that he will work

233 Solomon, “Court Will Inspect Birmingham.”
closely with the school board to uphold Title IX policies and announced that he was running for a seat on the Birmingham City Council. In doing so, Jackson hoped to create stronger bonds between the city of Birmingham and its school system.\footnote{Solomon, “Former Birmingham School Coach.”} Jackson would not be given a chance, however, to create this bond as he failed to be elected to the City Council.
Chapter 4: Multiple Sides to Every Story

The task of this chapter is to give voice to the many points of view in *Jackson*, and this chapter does several things to accomplish this task. First, the multiple sides are grounded in theoretical frameworks. Then, the post-ruling events surrounding Jackson and this community are summarized as told by the local media. Second, through information gathered from first-hand interviews, I, the researcher, provide an account of the events from the perspective of former team members, a parent, a female member of the student body, an athletic administrator, and Coach Jackson. Finally, by placing the voices heard in these interviews at the center of the research, I used this information to deconstruct and analyze the construction of sport and Title IX and connect the history of Birmingham and this lawsuit with race, class, and gender.

_Framing the Multiple Sides_

More than twenty years ago, Nancy Struna urged academics to ponder the questions, “Has our literature moved beyond the parochial to the universal questions which historians ask; has it begun to suggest what ‘ultimate difference’ women’s sporting experiences make in our ‘total understanding of human experience?’” Is it contributing to
theoretical debate and methodological innovation? A decade later, Catriona Parratt suggested those writing on women’s experiences had still failed to add to both the conceptual and methodological discussion. Instead, Parratt considered meaning to be continually constructed based upon a male standard. “Research grounded in such a framework provides only limited insights into women’s experiences of sport, and more serious, distorts our understanding of the significance of those experiences.” Accepting the challenge of Struna and Parratt, I seek to ground this research based upon a critical feminist framework in this first portion of this chapter, one devoted to the voices of women’s lives and understanding how those lives shape and are shaped by human experiences. Also in this chapter, I utilized this foundation when a few of the girls from Jackson’s former teams are interviewed.

Also, a critical feminist perspective helps trouble the gender dynamic in this instance. Critical theory is not based upon merely examining power relations on a surface level. Instead, critical theorists seek to go deeper than the superficial and investigate the underlying meanings behind the dynamics governing actions and understandings of power relationships. The purpose of feminist theory, in addition, is to “explain, challenge, and hence change the existing patterns of relations between the sexes.”

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238 Ibid., 5-6.
two combined seek to address the underlying power relationships governing actions and relationships as they apply to gender. Central to feminist theory is the inclusion of voices in women and girls’ experiences. In order to clearly hear these often silenced voices, feminist theory is mindful of issues of positionality and reflexivity. Careful attention must be paid to the power difference in the research dynamic as well as to the assumptions I, the researcher, bring to the research. This is to assure these voices are undoubtedly heard.\footnote{Burns and Walker, “Feminist Methodologies.”} As the researcher, I sought to be mindful of my position in the research process in relation to the former players. I understand that being a female may be helpful in this discussion with the female athletes. I am, though, very aware that I am not of the same race and possibly not in the same socioeconomic group as all of the individuals being interviewed. Furthermore, it is necessary to use this framework in considering the power relationship among Coach Jackson, the former players, and the administrator interviewed for the project.

In addition to critical theory and the use of a critical feminist perspective, intersectional analysis is essential for these topics. Kimberle Crenshaw warns against the tendency to treat experiences and analysis of race and gender as mutually exclusive.\footnote{Kimberle Crenshaw. “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics” in \textit{Feminist Legal Theory}, ed. D. Kelly Weisberg (Philadelphia: Temple University Press) 1993.} Instead, intersectionality challenges single-issue analyses, or the emphasis on only race or only gender. That is, considering women of color only in terms of their gender overlooks racial factors, and considering women of color only in terms of their race overlooks gender issues. Crenshaw puts it this way, “I am suggesting that Black women can
experience discrimination in ways that are both similar to and different from those experienced by white women and Black men…Yet often, they experience double-discrimination – the combined effects of practices which discriminate on the basis of race, and on the basis of sex.”

These perspectives, then, consider the three previous chapters to provide a “total understanding” of the “human experience” for those in this community and also involved in this lawsuit, and intersectionality helps make sense of this double-discrimination. In addition to using these theories to hear the voices of marginalized females, critical theory can be useful in examining the legal framework of Title IX, and the existing patterns among the Birmingham Athletic Department and Coach Jackson. Law is not created in a vacuum absent of personal agendas and ideas. Therefore, it is essential to look past the surface of the legal writings and literature and examine the outside forces shaping the law, which in turn shape female athletics. Critical theory provides a framework for examining the inner workings of the power dynamics governing law and relationships.

The intention of this discussion is much more than simply writing about the lives of this community and the impact Title IX had on its women and girls. Instead, following Patricia Vertinsky, this work “seeks to forge new understanding of the historical relationship between sport and the social construction of gender by examining gender as a dynamic, relational process through which unequal power relations between men and women have been continually constructed and contested.” In addition to Vertinsky and

243 Crenshaw 385.
spurred by Crenshaw, this project also pushes to go outside of “white” feminist theory by addressing race and gender in a single sphere. In order to forge this understanding, all sides of the legal battle are weighed.245

As in every legal battle, there are multiple sides to every story. This is especially true for the case of *Jackson v. Birmingham Board of Education*. In most of the national and the little local coverage provided, Jackson’s side of the story was told. The legal documents, detailed earlier, described Jackson’s complaints, but offered little explanation from the perspective of the school system and its administrators. Supporters of Title IX, and ultimately those pleased with the *Jackson* verdict, are less concerned with the “other” side of the story and seem to put forth much less effort in local and national writings in considering counter argument to this case. After spending some time in this Alabama community, I realized there was clearly another side to this story. As an avid supporter of this law, I had some reservations in giving time and voice to those who counter and find fault in such a landmark case. However, I soon came to realize that examining the other side of the story does not necessarily diminish Jackson’s efforts, but rather informs and educates even more so on the aspects of the law and helps provide an understanding of those areas of the law’s application that both add up to and fall short of its intended purposes.

*Bringing Jackson Up-to-date According to Local Writings*

In light of the negative publicity Ensley High School and the Birmingham Public School System received once Jackson’s case garnered media attention, new school board
members and administrators were elected. Later, in 2003, shortly after a new principal was hired at Ensley, Jackson again interviewed for the girls’ basketball coaching position and was hired on an interim basis. In March of 2005, Jackson’s case, according to the Supreme Court, was subject to Title IX. Furthermore, the Supreme Court ruled Title IX protected Jackson and will protect those in the future who are retaliated against when speaking out on behalf of gender equity. Therefore, it is hard to comprehend that some nine months after the High Court’s ruling, in December of 2005, the discrimination against the girls’ team, at least according to Jackson, had not yet ceased. It seems that rather than taking the lead and resolving the past complaints, the school board stood idle and waited for the legal system to force its hand. According to Jackson and a local *Birmingham News* editorial,

> Even before his long-running gender bias case against Birmingham schools is settled, a girls basketball coach claims his team is still being discriminated against. How can that be? Lawyers for Ensley High School girls basketball coach Roderick Jackson and the Birmingham school system have been talking about a settlement to Jackson's gender discrimination lawsuit against the system and say they may reach an agreement by February. That's the good news. The bad news is, Jackson says some of the same conditions that led him to complain his girls team was discriminated against are being repeated.

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247 George Tanber, “Coach Puts Title IX;” and Jackson and Greenberger, “American Morning.”

248 *Birmingham News Online*, “Unsettling Allegations.”

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Despite the litigation, Jackson continued to argue that discrimination was persisting in the form of practice time and gym availability. The boys’ squad was practicing in the timeslot directly after school, while the girls’ team was practicing at a later time—5:00 p.m. to 7:00 p.m.—in the old dilapidated gym, even though Jackson had asked for a rotating practice schedule to ensure fairness for both the boys and girls. Jackson also argued that the boys’ team had been granted paid assistants by the school board, but the girls’ team was no longer offered a paid assistant coach and was not allowed a volunteer assistant. The local press reported,

Those circumstances, paired with a series of administrative blows dealt him, have convinced Jackson the board is singling him out. Jackson said the principal notified him around Nov. 21 he would no longer have an assistant coach, nor be allowed to have an adult volunteer coach. Jackson said he has tried unsuccessfully to have school officials explain their decision. “Girls deserve the opportunity to have a certified assistant,” Jackson said. “Boys teams have paid assistants.”

The refusal of the school administrators to right the wrong, or simply end the court battle, caused many locals, or at least several newspaper editors, to shake their heads in frustration and astonishment.

It continues to amaze that school officials haven't put this case to rest, and instead have wasted thousands of taxpayers' dollars fighting a case that went all the way to the U.S. Supreme Court. School officials should have settled the case years ago. In his suit against the school system, filed in 2001, Jackson sought to recoup

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his lost coaching salary of $6,900 a year. It's distressing—and costly to taxpayers—that this case continues, 4 ½ years later, over such a small compensation. The sooner this case is settled, the better for everyone.\textsuperscript{250}

Fortunately or unfortunately, when members of the community see large amounts of taxpayer dollars being used to cover such expenses, individuals call for action. The frustration can be sensed in the voices of these taxpayers as they pushed for a settlement to be reached. However, one has to wonder to what degree the frustration was over concern for the young girls of this community who were not treated fairly, or if money, or various subcategories of spending of public dollars, were not the main concerns?

The goal of coming to an agreement just a few months after the publication of this Birmingham News article, in February, was actually optimistic. A settlement was finally agreed upon at the end of November of 2006. According to a local editorial,

“Birmingham school officials fought a foolish battle over gender bias in the courts, and taxpayers are the losers.”\textsuperscript{251} The article went on to state that if the Birmingham Board of Education had come to this settlement some years ago, it would not have had to hand over more than $500,000 to Jackson and his legal team, in addition to their own legal counsel.\textsuperscript{252}

For school officials' past stubbornness, taxpayers are the losers, having to fork over more than a half-million dollars in legal fees alone, even though the coach only wanted about $12,000 in back pay for the two years of coaching supplements

\textsuperscript{250} Ibid.
\textsuperscript{251} Birmingham New Online, “A Costly Lesson.”
\textsuperscript{252} This amount may be on the low side, as mentioned above. Another article mentioned that the Birmingham School Board was responsible for nearly $2 million total in legal fees; Tanber, “Coach Puts Title IX.”
he would have received. Under the agreement, Roderick Jackson, now the girls’ basketball coach at Jackson-Olin High School, will be paid $50,000-$36,000 in compensatory damages, $12,000 for back pay and $2,000 for out-of-pocket expenses. His lawyers will be paid $340,000 for the five years the case has been in the courts. In addition, the school system’s lawyers’ bills are an estimated $180,000. That brings the total bill for the school board’s obstinacy to $570,000, which will come out of the school system’s general fund. What a waste of money.\textsuperscript{253}

It is apparent in the tone of this argument that the settlement was long in coming and many were relieved an outcome was finally reached. Moreover, the public expressed their unhappiness with what some considered being the stubbornness of the board. In the instance of \textit{Jackson}, the plaintiff was awarded $50,000, while his lawyers were paid $340,000 for their duties. The settlement additionally promised that the Birmingham Board of Education would take the necessary steps to ensure the female athletes were offered comparable athletic opportunities to their male counterparts and granted that Jackson would continue his coaching duties for the girls’ basketball squad.\textsuperscript{254} The system was being told to change in a number of ways. “The court ordered the school board to have a Title IX checks and balances policy in place in 60 days and to appoint Title IX coordinators in every school and on the board. The court approved the appointment of Kenneth Simon, a former judge, as the program’s monitor, who will report any infractions

\textsuperscript{253} \textit{Birmingham News Online}, “A Costly Lesson.”

Arguably, this ruling, along with previous Title IX rulings, sends the message to public institutions that they should either abide by gender equity rules, or be prepared to face financial consequences if found in violation of the law.

More importantly, though, for the females at this high school, the school board promised to take the steps necessary to ensure equity for girls as well as boys. For some members of the community, the emphasis on equity should have been clear from the beginning:

That kind of result makes the five-year court battle and the large legal bill even more difficult to understand. Why didn't school officials settle years ago when the costs would have been a fraction of the payoff agreed to last week? At least it ought to be clear now that girls who take part in school athletics should be treated as fairly as their male counterparts, and that whistleblowers who call attention to discrimination can't be punished.\textsuperscript{256}

While the lesson learned here might have been financially costly, the ultimate outcome, according to this editorial, was the right one.

The publicity from \textit{Jackson} perhaps sparked another filing, in July 2006, of a gender equity lawsuit in nearby Cullman County; it garnered enough attention to be reported in the larger \textit{Birmingham News}. More importantly, though, this lawsuit in Cullman County proceeded quite differently as compared to Ensley High School. Parents of three female athletes alleged female members of the institution were treated unfairly in terms of scheduling, funding, facilities, and equipment. As was reported, the particular

\textsuperscript{255} Tanber, “Coach Puts Title IX.”
\textsuperscript{256} Ibid.
focus of this case surrounded the softball team being forced to compete at a field approximately five miles from the school’s campus.\textsuperscript{257} Furthermore, this field did not offer access to locker room facilities. Similar to that of \textit{Jackson}, this case further alleged the girls’ basketball team practice times were scheduled in deference to the boys’ practice schedule and, and the practices were held in an old gym.\textsuperscript{258}

Unlike the Birmingham Board of Education, the Cullman City School Board did not waste any time in taking steps towards equity. In August of 2006, the school board awarded $486,000 toward the construction of new sports facility. “The new facility, including a two-story building with dressing rooms, a press box and coach’s offices, will be located at the site of the current softball field near Cullman Middle School.”\textsuperscript{259}

President of the Cullman School Board stated that the board had been working toward remedying the Title IX issue at Cullman High School.\textsuperscript{260} Cullman High School announced in November of 2007 that it would be getting a new gymnasium. According to Cullman High School Principal, Lane Hill, the school had been planning a new gymnasium to accommodate storage and lack of adequate locker rooms for particular sports teams. Superintendent of schools, Jan Harris, spoke to another reason for pushing for a new gymnasium: Title IX. Harris stated the construction of a new facility would

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alleviate issues related to complying with Title IX. “When you know you’re not in contact with the law, I think it raises the priority issue,” Superintendent Harris said.\textsuperscript{261}

Jackson and the Birmingham Public School System did not take any notes from the quick resolution at Cullman High School, as the battle was on going. In May of 2008, the \textit{Birmingham News} reported a hearing date was scheduled for late in the month for the Birmingham Board of Education to prove its system was complying with the standards set forth by Title IX and with the requests from the previous lawsuit. Jackson contended he was relieved of his coaching duties at Jackson-Olin High School and further argued the girls had yet to receive fair treatment.\textsuperscript{262} During that court date, the lawyers for the Board of Education stated the contrary. The board believed it had “not only complied ... but also taken all reasonable additional steps that it could to accommodate and to meet the demands.”\textsuperscript{263} Jackson resigned from his coaching position at Jackson-Olin in 2006 for fear of being a distraction to the players. When he did reapply for the position the following year, the board hired another candidate instead of Jackson. Jackson contended the new coach, Michael Clisby, did not treat the girls well and the girls’ team was still being denied transportation, quality uniforms, as well as food and drink. Furthermore, the board alleged it was Jackson himself who failed to follow the rules set forth by the state athletic association and was searching for another means to gain compensation. The board of education provided sworn statements from members of the girls’ basketball team

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\item \textsuperscript{262} Walton, “Birmingham School Board Faces.”
\end{itemize}
that stated they were treated fairly as compared to members of the boys’ team, and Coach Clisby treated them appropriately as well. Jackson, on the contrary, alleged the board’s findings were false and simply hid the truth and, furthermore, exclaimed he was shocked the system still persisted in fighting against a legal decision.\textsuperscript{264}

In spite of the settlement and agreement reached between the school board and Jackson, members of the school board remained silent. While most publications focused on Jackson, the following article explained the rationale for the school board’s resolve in fighting this lengthy court battle.

“These people are elected officials. It's something they want to put behind them,” said the board's attorney, Kenneth Thomas of Birmingham. In the settlement, the board did not admit wrongdoing. In Thomas’ view, the publicity Jackson received after the Supreme Court ruling would have made it difficult for the board to win at trial. Financially, a loss was not a viable option. “Even if they would have awarded [Jackson] one dollar, the board would have been responsible for [nearly $2 million] in attorney's fees,” Thomas said. Thomas said Jackson’s campaign was based on fabrication. Thomas said officials at Ensley, where Jackson also taught driver's education, testified in depositions that the coach was inflexible in scheduling practice times in the main gym. Thomas also said there was no evidence that Ensley’s girls programs received less funding than the boys.\textsuperscript{265}

\textsuperscript{264} Ibid.
\textsuperscript{265} Tanber, “Coach Puts Title IX.”
Jackson denied the accusations that his story was made up. “I wouldn't take five years out of my life making up something,” Jackson said. “There are better things I could do.”

Troy King, Alabama attorney general and member of the office that supported the school board, defended the school board’s staunch stance against Jackson’s lawsuit based upon legal principles:

This case presents a very real “rule of the courts” issue. Is it really the province of a federal court to take a duly enacted congressional statute and refashion it to suit the seeming equities of the case before it? I, for one, say “no.” However tempting it may be in any given situation—and I do not deny some sympathy for Jackson’s predicament—courts must resist the urge to substitute their own views of fairness for those of our duly elected representatives. The court’s duty—and mine, as Alabama’s attorney general—is to enforce the law as written, not to make and mold it as they go along. That, among other things, is what makes us a society governed by rule of law rather than the rule of men.

King was adamant in pointing out that fighting Jackson’s lawsuit did not make the board or its supporter’s anti-Title IX, in favor of discrimination, or opposed to gender equity. Instead, King believed it was their correct attempt to simply uphold the law, and King believed this was key in maintaining a democratic system.

In addition to legal principles, money was a concern. Those in support of the Birmingham Board of Education’s steadfastness argued that the leverage construed by

\[266\] Ibid.

the Supreme Court’s ruling resulted in excess litigation battles, costing public institutions and taxpayers dollars. Particularly, the National School Boards Association, in addition to nine states (Alabama, Delaware, Hawaii, Nevada, Oregon, South Dakota, Tennessee, Utah, and Virginia) posed the argument that claims of retaliation under Title IX would “unfairly open the door to a flood of litigation.”

Publicly funded educational settings were already feeling the money crunch as both federal and state funds have slowed. Administrators have feared excessive litigation would lessen school-spending accounts even further.

A representative from the National School Boards Association spoke on several of these issues, including why Title IX should not cover retaliation, in an interview with CNN anchor Miles O’Brien conducted with Jackson, his lawyer, Marcia Greenberger, and Naomi Gittins, the senior staff attorney for the National School Boards Association, just a few months before the Supreme Court made its final decision. Gittins was steadfast in how the National School Board Associations believed Title IX should be interpreted. She stated:

Well, Title IX does say that school districts can't discriminate against people on the basis of sex. And so it all comes down to what does on the basis of sex really mean? Well, Congress clearly was trying to protect girls and women and to give them equal opportunities and educational programs. They weren't thinking about

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268 Biskupic, “High Court.”
people who might stand up and say, these people have been discriminated against. They were thinking of girls and women and not people like Mr. Jackson.\textsuperscript{269} The National Board’s lawyer made it clear that Title IX was not the only way Jackson could have challenged his situation. “In this case, if you want to say that Mr. Jackson was discriminated against, he was discriminated against on the basis of speaking up. And contrary to what he said, he seemed to suggest that Title IX was his only avenue for relief. Well, that isn't exactly correct. He could have, for instance, brought a claim under the First Amendment.”\textsuperscript{270} Gittins comments help explain this national association’s fear of the Supreme Court ruling in favor of Jackson. That is, at the time, Gittins, along with the association, believed that if the Supreme Court ruled that Title IX did cover retaliation and would do so in the future, then all federally funded schools would have to comply to an additional standard set forth by Title IX, and compliance often equates to additional spending. Because the threat of litigation and monetary damages is much greater for a school district under Title IX than cases alleging First Amendment violations, a ruling in favor of Jackson would likely open the doors for litigation. As witnessed in the instance of \textit{Jackson}, litigation is very costly. That, at least, is what the National School Boards Association feared.\textsuperscript{271}

As stated earlier, over eight years after the initial lawsuit, a settlement was finally reached between Jackson and the school board. Jackson agreed the board was in compliance and was pleased with the agreement to train all new employees. “I take great

\textsuperscript{269} Jackson and Greenberger, “American Morning.”
\textsuperscript{270} Ibid.
\textsuperscript{271} As of March 2012, only one Title IX lawsuit has been filed in courts. \textit{Fitzgerald v. Barnstable School Community} was an application of Title IX to sexual harassment. Therefore, the fear of excess litigation has not come to fruition. Fitzgerald v. Barnstable School Community, 555 U.S. 246 (2009).
pride there are now mechanisms in place to ensure equal treatment,” said Jackson.272 The school board’s lawyer, Kenny Thomas, pointed out that in spite of the settlement, the fears of opening up the doors for additional litigation were being realized. Thomas explained the settlement gave Jackson further rights to pursue additional recompense if the state Supreme Court ruled in favor of a fellow Alabama high school coach, Francine Boone. Boone claimed her contract was not renewed for wrongful reasoning and filed a complaint seeking recompense. If the courts found that Boone’s claims against the school system infringed upon state teacher’s tenure law, she could be awarded back pay for each year of lost coaching. Jackson, too, would fall under this category and could be rewarded back pay if Boone was the winner in her lawsuit. Despite Thomas and the boards’ concern for additional litigation, Jackson maintained the concern should fall upon Thomas and the city of Birmingham. Jackson congratulated Thomas for making a pretty penny for his firm and stated, “However, his (Thomas) running up legal bills senselessly is robbing our hard-working children in Birmingham. I only regret that the Mayor’s Office or City Council won’t work with the two or so fair-minded board members to discontinue this process.”273 Regardless on which side of the fence one stands, *Jackson v. Birmingham Board of Education* has thus far proven to be a key influence on Title IX. If history repeats itself, this lawsuit is likely to have a major bearing on the future of this law, as more individuals blow the whistle on gender inequities.

*Getting Connected: The Players*

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272 Solomon, “Court Will Inspect Birmingham.”
273 Ibid.
This outcome of this lawsuit has set the groundwork to possibly change the face of Title IX, and only history is able to tell that. The real face of Title IX has yet to have their story told. This lawsuit impacted the lives of many young girls, and a few get to tell their thoughts here. In order to be able to do this, I was presented with the challenge of finding some of these former players, and to no surprise, several barriers present themselves when searching for a specific group. Time, financial resources, and geographic barriers can prove to be serious hurdles to cross in order to gather information, especially from a group as small and specific as the individuals involved in this lawsuit. I choose to utilize the Internet and social network sites, namely Facebook, to provide a timely and cost-effective way to maneuver these barriers. According to its site, Facebook is “a social utility that connects you with the people around you.”274 This networking system is for individuals 13 years of age and older with a preference given to students, both high school and college aged. Users must abide by the rules set forth in the terms of use of the user code of conduct. Furthermore, users are prohibited to post any unlawful or harmful content or conduct. Individuals agreeing to this code of conduct are asked to provide “accurate, current, and complete information.” Despite this, Facebook warns it users that the Cite does not investigate nor monitor individual content for accuracy.

Facebook is advantageous to use as a search engine for several reasons. First of all, as indicated above, Facebook is geared towards school-aged individuals. Not only are the majority of the patrons young adults, but Facebook is known nationwide.

Facebook is a platform for young individuals to not only stay connected with past and present classmates, but also as a way to express oneself. Conveniently, this site allows for the searching of individuals from all across the country; thus making the process of seeking out individuals in a specific criteria – designated part of country, graduating from a particular high school and being involved in a specific event – possible. The site is specifically geared towards the ability to search for individuals as well as networks, such as specific high schools, colleges, or universities. This network is free and is a convenient, non-confrontational way to connect with various individuals.

Like any other online method of contact, the use of this method to find individuals willing to take part in the project does have its limitations. First of all, using Facebook limits the pool to only those individuals that have an account with the site. This issue can be a problem in itself because in order to have a Facebook site, one must have a computer with internet access or have regular access to such a luxury in addition to having the technical knowledge to navigate the site. Therefore, the pool of potential female athletes playing under Coach Jackson and after the filing of his lawsuit was limited to those found on Facebook. Even when contacting those females known to have played for Coach Jackson, they can feel deceived or uneasy. Facebook can be deceptive and one can hide their true identity, which was one of the concerns with using this methods. Was the person I was attempting to contact really who they said they were, and conversely, did those individuals feels as if I was the person I indicated? Finally, in using this method, it limits the search to former students. This ultimately leaves out the adult community members as this form of connection is not as commonly used among adults.
It should be noted that when originally constructing this paper, I had the goal of utilizing discussions from local blogs. That is, I was hoping that local voices would express their opinions on this controversial matter and greatly add to this project. My goal was to create a sort of dialogue surrounding this issue, which would serve to both give voice to the community while answering questions I had surrounding the lawsuit. I had hoped these blogs would provide a space for any community member to express an uncensored opinion, regardless of what that viewpoint was. I sought to post questions that were non-confrontational while showing a research interest in the impact of Title IX. I offered questions in three separate areas. First, I posted a question to the “MyFox Message Board” on the Birmingham Fox News Station. The question, posted under the “General Sports” category stated the following, “I have been doing some research about Title IX and wanted to see how the community responded to the recent ruling and settlement in the Jackson v. Birmingham Board of Education case. Were you pleased, unhappy, indifferent with the decision? Has it made things different in the community?”

As of completion of this project in 2012, there are still no replies to this post.²⁷⁵

The next two posts were listed at the “Everything Alabama” website. This site is the online home of several newspapers including The Birmingham News, The Huntsville Times, and the Press-Register. The forum page offers over 200 forums to discuss topics from particular sports to the metro areas of Birmingham and Huntsville to entertainment. I offered two separate questions to these forums. The first question, “I am an out of towner wondering how the local community felt about the Title IX case involving Coach

²⁷⁵ This message board post can be viewed at http://community.myfoxal.com/Boards/forum.aspx?forum_id=18.
Jackson. Any thoughts?” can be found under the “Sports Central” area. The second question, “I am researching Title IX and was wondering the impact the case involving Coach Jackson had on the local Alabama community. Any thoughts?” could be found under the “High School Sports” section, subtitled “All Sports.”

Several explanations can be offered for why I received no responses to these message board and/or blog postings. First of all, it appears as if there is not a significant pattern to responding to the message board posts at the “MyFox Message Board.” For example, of the four questions posts offered under the “General Sports” category, only two had been replied to out of the 682 times the posts had been viewed by others. Secondly, the sheer number of forums that are available at Al.com sites is overwhelming. It is possible that the questions I posted were overlooked, or this topic is old news considering the lawsuit was settled in 2006. Members of this community, also, may be tired of speaking to outsiders on this issue, or may just not want to open up old wounds.

Even though this option did not produce any results to date, I still intend upon attempting to utilize this option for future research. I believe blogs pose an interesting tool to research because of their ability discuss topics without “showing face.” Blogs are also inexpensive and easy to access. In spite of the positive attributes of blogs, I am aware that in blogs may only give voice to specific demographics, particularly educated or technologically savvy individuals. Therefore, for future research, I intend upon still checking these posts as well as creating new posts to encourage dialogue surrounding the topic but will exercise this option with extra caution.

276 This message board post can be viewed at http://www.al.com/forums/sports/index.ssf?initial=true.
277 This message board post can be viewed at http://www.al.com/forums/hssports/index.ssf?initial=true.
My initial connection with a former player came through Misty Jones. A 2006 graduate from Ensley High School and a former member of the girls’ basketball team there, Jones wrote a forward on the player’s perspective in Roderick Jackson’s book, *Landmark, Get Set...Go!* After I conducted an Internet search of Jones, I discovered she had a Facebook site. I contacted Jones via the Facebook messaging system, and she agreed to speak about this topic. This initial note to Jones was sent via Facebook on October 20, 2008.

In his book, Jackson listed several members of his former teams, Jones being one of them, who truly supported him throughout this lengthy legal battle. Similarly to finding Jones, I searched for those players Jackson listed in his book on the Facebook site. I sent messages via the messaging system to individuals found to have a Facebook page. I sent messages to five additional athletes on November 3, 2008. The original message sent to these five additional athletes was the same original message as the one sent to Jones. Mercedes Smith was the second individual willing to discuss the Jackson lawsuit on a one-on-one basis. In addition to Smith and Jones, Amber James also offered to discuss the project. James, however, did not want to meet in person. Instead, she was willing to dialogue via email.

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278 In order to maintain anonymity and to protect those willing to speak with me, all individuals interviewed are given pseudonyms. I also believed by giving pseudonyms, the individuals interviewed would be more willing to speak with me openly about the lawsuit. Because of his role in the case, Coach Jackson’s identity is maintained throughout.

279 Jackson, *Landmark, Get Set*.

280 The Facebook messaging system allows individuals with Facebook sites to communicate with each other on a private messaging area, or rather, their messages are not for the entire public Facebook page.

281 See Appendix 4 for a copy of the Facebook message.

While in Birmingham on two separate trips, I met with Jones twice by herself and once with Coach Jackson. Each meeting was in a public setting and over either lunch or dinner. Jones was a young, African American woman enrolled in a local community college. She claimed she was in much better shape in high school and explained that since she no longer played sports, she had packed on a few pounds. Jackson pointed out that while in high school, Jones was a sharp shooter from behind the three-point arc. For the most part, Jones was quite shy and soft-spoken. She talked more openly and with a bit more excitement when we were discussing her faith and family. Jones still lived with her family in Ensley, and besides school, church activities took precedence in her life.

I met with Smith a total of five times over the two trips. Smith and Jones had graduated within a year of each other. Smith worked in the automotive department at a local suburban Sam’s Club, which is where our first meeting took place. Smith, an African American, wore her hair in dreads, and the times that I met with her, she was dressed in baggy clothes. Gold teeth were a key accessory for Smith. She wore them on a regular basis, but not while at work. Smith owned a home with her partner, Deva Doe, on the outskirts of Ensley. On one occasion, I met with Smith at her home. Not wanting to be a burden, I offered to take public transportation to her home, but Smith was adamant I should not be walking alone in her neighborhood. Smith’s home was situated in an older neighborhood. Her home was a simple bungalow with simple furnishings. Her home was quite clean and tidy, and although she smoked Black and Mild’s, Deva did not allow her
to do so in the house. The simplicity of their home reminded me of furnishings typical for a college student.\textsuperscript{283}

\textit{Getting Connected: Voices of the Players in Considering Jackson}

The two ladies, Jones and Smith, who met with me did not have as much in common at this point in their life. However, these women recalled several similarities when speaking of their experience at Ensley High School and the events surrounding Jackson’s lawsuit. Both ladies had fond memories of certain aspects of attending high school and playing for Coach Jackson but also unpleasant memories of several accounts of what they believed to be unfair treatment.

One of Jackson’s first complaints in 1999 surrounded the use of the gym for practice. Again, he claimed his team practiced and even competed in an old gym, while the boys’ team had use of the regulation gym.\textsuperscript{284} Jones, agreed with his sentiments. Jones recalled the boys always got the gym first. If the girls did choose to practice in the regulation gym, they had to wait for the boys to complete their practice, making it a rather late evening for the girls. According to Jones, “the only time we had the gym was on a Sunday when they were not there.”\textsuperscript{285} Another one of Jackson’s former players, James, stated it this way, “We still had to practice in the old gym, having to wait on the boys to get done. So instead of practice starting at 3:45 and ending around 6:00, we actually started practicing in the game gym at 5:00 leaving at almost 7:00. That took time away from homework, studying, and also chores at home.”\textsuperscript{286}

\textsuperscript{283} Mercedes Smith, interview with the author, November 20, 2008.
\textsuperscript{284} National Women’s Law Center, “Statement of Roderick Jackson.”
\textsuperscript{285} Misty Jones, interview with the author, November 25, 2008.
\textsuperscript{286} Amber James, email message to author, November 5, 2008
older gym at times it was so cold, the girls’ team “actually had to put on coats and sweat pants just to warm up.” Jones did indicate that eventually the practice schedule was changed to an alternating schedule to give the girls an opportunity to use the facility.

When asked if any other forms of unfair treatment occurred, Jones contended the uniforms for the boys were quite different from those of the girls. Jones stated the girls’ team had to use old uniforms, while the boys’ team bought new ones. Jones maintained the uniforms they did wear were “wrinkled and the numbers were peeling.” She further asserted a woman from California heard of their situation and donated new uniforms to their team. Jones explained the reason for the difference in the uniforms stemmed from the team’s inability to get funds raised from concessions and ticket sales. “They [referring to the boys’ team] took the money we made on the games. They didn’t split it with us. They took it, and it’s all for them. They bought new uniforms or whatever.” Jones further explained the money they raised came from their own efforts. That is, “we actually had to get out and make, raise our own money doing … car washes and different other things.” Jones believed if the girls wanted to have additional funds for the team, the school district would not supply them. Instead, the girls had to do the work themselves.

Jones, in agreement with Jackson, stated the discrepancy in transportation proved to be a hindrance for the girls’ team. Jackson contended the girls carpooled to games, while the boys were provided with a bus for travel to and from away competitions. Jones

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287 Misty Jones and Roderick Jackson, interview with the author, November 22, 2008.
288 Jones, interview.
289 Ibid.
290 Jones and Jackson, interview.
explained that either Coach Jackson or parents of her teammates were the ones to transport the girls to the away games. If both teams were playing at the same place, one bus was provided to transport both squads together, and Smith pointed out that at times, the boys would have their own bus and the girls’ squad traveled with the cheerleaders. Jones explained the problem arose when the teams played at different venues. Since only one bus was provided, the boys’ rode that bus and the girls were forced to find their own method of transportation.

For the girls interviewed, it seemed to get down to a matter of respect, or lack thereof. Smith made note that while she played for Ensley, the girls’ team won more games than the boys’ squad, but yet they were not treated as well.291 James noted that, “The boys’ team and some of the guy teachers were saying things to us that were very inappropriate, such as ‘nobody goes to the game to see the girls play, so let the guys practice longer.’”292

While it seemed others did not respect the girls at times, according to some of his former players, Coach Jackson did not fall into that category. James wrote of Coach Jackson that she was “glad we had someone like coach to stand up for our rights.”293 Smith, too, spoke highly of Coach Jackson and how he treated the athletes he coached. He “treated us like we were his kids. He didn’t disrespect us.”294 Smith told a story of a teammate, Angie T., and how Angie “had a troubled home life.”295 Coach Jackson would take Angie to her home to make sure she was taken care of. Smith made no qualms about

291 Mercedes Smith, interview with the author, November 20, 2008.
292 Amber James, email message to author, November 5, 2008.
293 Ibid.
294 Ibid.
295 Mercedes Smith, interview with the author, November 20, 2008.
296 Ibid.
the fact that playing for Coach Jackson was hard at times, as he required discipline and hard work. Just like a father, there would be trouble from Coach Jackson if his athletes were late practice or games and got poor grades.

*Getting Connected: The Athletic Administrator and His Voice*

These stories, those told by Jackson and his players, are bleak. Both Jackson and his players were disheartened and discouraged by the events they believed they were forced to overcome. To many, especially from a national perspective, the claims seem outdated, and it is hard to comprehend such behavior still persists in the twenty-first century. However, when sitting down to hear the story from the side of the school district, a story is told that does not appear nearly as severe as the one portrayed in national media and legal documents.

I thought it was apparent that the voices of the school administrators were muffled and even silenced in the local writings. Thus, it was fitting to attempt to contact and seek the voice of school administrators. Following a few phone calls and several emails, I made a connection with the dean of students for the Birmingham City School District. In an email to this administrator, I described the project, and I pointed out how little of the viewpoints of the administrators was present in the literature. In an attempt to gain trust, I explained in the email that administrators were likely contacted to dig up “dirt” on the topic, and I assured the administrator that this was not my intention. Instead, I emphasized that my goal was to give a broader perspective than the accounts given in the newspapers and legal documents.
The school administrator ultimately provided a connection with an individual working in the athletic department, Mr. James Cole. The administrator also provided an interesting insight into the matter. In a rather shocking statement, the administrator confessed no one else had inquired about the lawsuit. In email she stated, “Surprisingly, there have been no other inquiries concerning the Title IX suit at Ensley. Since Ensley was slated to close soon after the court decision was made, I think the administrative impact was not as great as it could have been.” While this explanation could have been the case for the lack of particulars offered by the school administrators, it does not excuse the fact that no individual even inquired about the situation at hand.

The Birmingham City School administrator put me in connection with James Cole, an upper-level athletic administrator for the Birmingham City School District. Following the administrator’s prompting, Cole was quite willing to meet with me. I met him on my first trip to Birmingham at the legendary Rickwood Field, which serves as the home for the Birmingham City School Athletic Department offices. Cole was a tall, middle-aged, African American gentleman. He, himself, was a former athlete and football coach in the school district, which ultimately led him to his role as an upper-level administrator. My visit with Cole lasted several hours, with Cole doing the majority of the talking. Cole was open and candidly commented about many of the points Jackson brought up in his lawsuit. After this visit, however, Cole failed to return any of my emails and phone calls.

296 Claudia Williams, email message to author, November 21, 2008.
Cole painted quite a different picture than the one constructed by Jackson and some of his players. Cole had been a major part of the Birmingham City Schools Department of Physical Education and Athletics for over nine years; rather, Cole was in his role throughout the duration of Jackson’s complaints and subsequent lawsuit. When interviewing Cole, he was adamant that he believed on the surface Jackson’s claims did appear to demonstrate a clear picture of gender discrimination. However, after further review, Cole believed Jackson’s accusations were unwarranted, unjustifiable, and preventable. Cole stated, “But what happened in that case, as I remember, I did review some of the claims of Roderick Jackson, and I didn’t find that those claims were justifiable…. That’s from my visiting with him and asking him to do certain things… that would have eliminated some of the claims he had brought forth.”

Cole believed Jackson failed to fully cooperate with the efforts of the athletic department to rectify the situation because of pending lawsuits. Furthermore, Cole had an explanation for nearly every complaint Jackson had raised.

Cole believed the contentions made by Jackson regarding the disproportionate use of the gym could have been eliminated had Jackson cooperated. Cole stated:

Because if you look at how he said that many times he wasn’t offered to practice in the same facility as the boys. Well, I was a part of the team that worked out the practice schedule that gave him an equal opportunity to practice in the competition gym the boys practiced in and they worked out where the boys would practice where he practiced, which was in another gym…. But Mr. Jackson failed

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to take advantage of that and I thought that that was in a way, kind of undermining what we were trying to do.\footnote{Ibid.}

Cole further discussed how a similar situation occurred at another city school and how that situation was remedied with no damages being brought. He explained the parent of a female athlete complained that the girls did not have equal access to a new gym. The OCR came in to investigate, a plan was worked out to assure the girls had proper access to the facilities, and the claims were dismissed. Cole believed Jackson’s complaints had the potential to end similarly to this one.

Cole further maintained the complaints regarding the withholding of funds from concession sales were unjustifiable. According to Cole, if teams wanted to be involved in the distribution of concession monies, they were responsible for the purchasing of the concession products. It fell upon the individual team to put forth the money and effort to provide concessions to be sold for a profit. If a team fails to buy or contribute concession products, they are not allotted any of the money generated from concession sales. This was true for the Jackson situation, according to Cole. “But when you say… that I wasn’t given opportunity to do concessions, well it was only because you didn’t buy the products to go ahead and do the concessions,” explained Cole.\footnote{Ibid.} Cole further maintained that, again, on the surface these allegations appear to be serious discriminatory infractions. However, Cole believed once the allegations were thoroughly investigated, a different story was told.
For Cole, the complaint regarding uniforms was irrelevant. Cole claimed, “He placed the order and the boys coach placed their order. So, I think he claimed there were some differences on that and I know there weren’t any differences…. I was there when he ordered…. And they order new uniforms every season at the same time.”³⁰⁰ Cole asserted both Jackson and the coach of the boys’ team came to his office and ordered new uniforms, free from restrictions on quality or fabric, thus giving both teams an equal opportunity to have up-to-date uniforms. Finally, Cole also insisted he had the order forms to support his statement.

One of Jackson’s complaints settled around the lack of transportation offered for the girls’ team. Continuing with the issues he had with the case, Cole explained the issue at hand regarding transportation. Each athlete, both male and female, has the right to be provided with transportation to and from away events, stated Cole. He justified further that coaches have the right to order a bus for game travel. If the school in question does not have the funds necessary to provide that transportation, then the school district is responsible to provide the means necessary to pay for the transportation. According to Cole, transportation should not have been an issue for any team. Cole provided another example of how a school in the district was providing transportation for a boys’ squad, which filled the entire bus. The district in question did not feel it had the funds to be able to provide an additional bus for the girls’ squad. Cole stated his department intervened and the situation was rectified to provide both boys and girls with transportation.

The crux of Jackson’s lawsuit is based upon the premise that he was retaliated against due to his assertion of gender discrimination, not whether his complaints of disparity were actually true. Even though this Birmingham City athletic administrator did not believe Jackson’s complaints were all in truth, it ultimately did not impact the outcome of the lawsuit. The district court judge, despite the board’s denying Jackson’s claims of retaliation, agreed Jackson’s basketball team was treated unfairly when compared to the boys’ squad because of their gender. Although the court of appeals countered the district court’s opinion, the Supreme Court handed down the final decision, agreeing that Jackson was retaliated against based upon complaints of gender discrimination. So while this side of the story ultimately did not have an impact on the court of law, it arguably can impact the court of public opinion.

Discussion

There are multiple sides to every story. Each individual comes from a different vantage point, and those vantage points result in differing experiences and opinions. The opinions of Jackson, thoughts on the lawsuit, and the standpoint of the school board were explored from the local writings. In these writings, it is clear that the local community was angry over the high financial price the lawsuit cost local taxpayers and some of that anger was directed at the school board’s refusal to settle the case. The media accounts from early in this section seem to suggest the media believed Coach Jackson and the girls. I, myself, believe that I would have been angry, as well, with how long this case seemed to drag. I can understand how the community, as indicated in the media accounts, just wanted an end result to be reached. Yet, from the side of the school board and its
representatives, they believed to be upholding the principle of the law, and the athletic administrator believed the athletic department had, indeed, acted fairly.

The opinions, experiences, and stories of Jackson, the players—Jones, Smith, and James—and the Birmingham City School athletic administrator, Cole, examined in the interviews were personal, real, and at times, contradictory. The players relayed stories of Jackson sticking up for them, helping them out, and pushing them to be better. These females recounted dealing with the day-to-day struggles of being girls trying to play their sport in a setting that did not value them as athletes. I heard the respect and admiration in the voice of these two girls as they spoke so highly of Coach Jackson. Yet, Cole’s view of the events, which at times were in direct conflict with Jackson’s interpretation of the events, is hard to ignore. According to Cole’s point of view, it was possible that the issues of gender inequity could have been dealt with outside of a courtroom, and I can understand how, in theory, settling outside of the courtroom is ideal. However, I believe this administration had ample opportunities to right the wrong, and they choose not to uphold the law. The athletic department and school administration continued an attitude of apathy and indifference throughout the entire time of the prolonged court battle. If the school had showed an attitude of change early on in the court proceedings, then it might have been possible to settle out of court. However, this was never the case. Instead, the administration remained obstinate against any serious remedying of the gender inequity.

With that all being said, however, one thing is certain about this lawsuit and Birmingham; this is not an ideal situation or city in which we are dealing. It is simple for me to deduce from the previous chapters that Birmingham has a dark history of
discrimination, and, even a law, such as Title IX, was not enough to overcome this history. Race and class discrimination has been a marked part of the entire history of this city, and it is really no wonder that such behavior was exhibited at Ensley High School to Jackson and these girls. Nonetheless, a troubled history is no excuse for an inequitable future. Just because the history of Birmingham has been repeatedly marked with acts of racial and class discrimination, it is no reason for acts of intolerance to persist. I may be an optimist, but I do not believe it is too far out of line to believe that girls should have equal access to opportunities, equipment, gym time, coaching, and transportation.
Chapter 5: Analysis and Conclusion

This chapter takes on the difficult task of understanding the future legal implications, making sense of what the varying voices tell us, and drawing conclusions. First, the chapter reflects on the practical implications of what the Jackson ruling means with special attention given to the significant changes in the Supreme Court shortly following the final outcome. Next, I pull out key themes that were constant throughout the entire project and try to understand what those themes mean for not only this law but also this community, and lastly, I draw several final conclusions to sum up the chapter and the entire project.

Legal Implications

Even though the focus of this paper has been on the local implications of this Title IX battle, it is still beneficial to briefly consider the legal implications of this ruling from a broader vantage. Not only will the broader viewpoint—rather than just considering the application of Jackson to this local school system—provide a national perspective, but it will also give insight into what is at stake legally if local public schools fail to comply. In many instances, the potential legal ramifications of failing to comply with Title IX will ultimately exert some leverage at the local level. This section, then, seeks to consider
how the outcome in *Jackson* affects the legal rhetoric of Title IX from a national perspective.

It is difficult to know whether the impact of *Jackson* will be as extensive as the cases that came before it. Verdicts in notable cases, such as *Franklin v. Gwinnett County Public School*, *Gebser v. Lago Vista Independent School District*, and *Davis v. Monroe County Board of Education et al.*, have altered the legal and cultural landscape of Title IX. Although there has not been adequate time for *Jackson*’s legal ramifications to achieve full precedence, one can speculate as to how the law will play out in the near future.

Regardless of political orientation, almost all critics agree that as a result of this verdict, coaches, teachers and administrators now have much greater leverage when complaining about gender inequities. That is, “coaches and teachers who face retaliation for complaining about sex discrimination in sport and other programs can sue

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301 *Franklin*, 503 U.S. 60.
302 *Gebser*, 524 U.S.
303 *Davis*, 526 U.S.; As was discussed under the case law section, these three particular cases, among a few others, have come to legally shape the landscape of Title IX. These three cases, in summary, are especially important for the following reasons. Particularly, in the case of *Franklin*, monetary damages can be awarded to individuals discriminated against on the basis of sex. This case alone, arguably, has given the greatest teeth to this law, for individuals can now sue for damages and institutions could have to pay restitution. *Gebser* and *Davis* further increased the responsibility of publicly funded institutions to comply with the law, by making educational institutions responsible for protecting students against sexual harassment from teachers/coaches as well as student-on-student harassment. Again, as set forth by *Franklin*, institutions found liable of knowing about the harassment and deliberately being indifferent are responsible for monetary damages to the harassed individual.
under a federal law that prohibits bias in school.\textsuperscript{305} If procedures are not in place to prevent unfair retaliatory behaviors, school systems may find it necessary to provide them to avoid possible litigation. One expert suggests, “If an institution wishes to make an adverse decision against an individual who has previously complained of sex discrimination, the institution must ensure that the decision was non-retaliatory in nature, clearly documented, and legally defensible.”\textsuperscript{306} Institutions receiving federal funding have been unequivocally informed by this ruling that backlash for gender equity complaints will not be tolerated and the threat of losing funding is enough to scare many public institutions into compliance.

Title IX provides not only protection, but also restitution for victims, if an institution is found to be in violation of the law. The plans for financial restitution under \textit{Jackson} cause uneasiness for some, however. “Critics of the Court’s decision assert that if a third party victim of retaliation succeeds in proving his or her claim under Title IX the monetary compensation will go directly to that individual instead of the real victims of the discrimination.”\textsuperscript{307} That is, the whistleblower, rather than the actual victim of Title IX discrimination, would receive the compensation. For opponents, it is hard to swallow the idea that the “indirect victims” would collect damages while the “direct victims” received nothing, and it is questionable whether Congress intended this in the drafting of the law.\textsuperscript{308}

\begin{footnotes}
\footnotetext{305}{Biskupic, “High Court.”}
\footnotetext{306}{Moto, “Title IX,” 266.}
\footnotetext{307}{Asmussen, “\textit{Jackson v. Birmingham Board},” 88.}
\footnotetext{308}{Thomas and Salaam, “The Face,” 434.}
\end{footnotes}
Even though this objection is theoretically valid, there arguably may be much greater value in a third party exposing sex discrimination than in the dollar amount that that third party might receive in restitution, and this case is a fine example. According to one legal scholar, “The Court’s decision in Jackson should be viewed as widening the scope and availability of assistance for all individuals who are suffering from Title IX violations.”\textsuperscript{309} The female members of Jackson’s team and their parents, as will be discussed in more depth later, lacked the resources to bring a suit on their own, so Jackson was in the best position to do so. By bringing this suit and winning, Jackson received financial restitution for his lawsuit, and yes, it took some time for the ruling to actually trickle down to the girls at this high school. However, protection for future whistleblowers and ultimately opportunities for future female athletes are of greater social value than the mere dollars Jackson received. This case added yet another layer to the already complicated history of Title IX, but this new layer offers much greater protection and opportunity for advocates of female athletics.

Some argue that with the legal protection and financial restitution now available to whistleblowers, the ruling in Jackson will produce an unavoidable increase in litigation.\textsuperscript{310} Others, however, expect less of a change. One lawyer specializing in education policy maintains that the outcome in Jackson only verifies what has already been recognized. “The U.S. Department of Education’s regulations for the law already consider retaliation a form of discrimination,” stated Arthur L. Coleman.\textsuperscript{311} Since the

\textsuperscript{309} Asmussen, “Jackson v. Birmingham Board,” 89.
\textsuperscript{310} Thomas and Salaam, “The Face;” Mota, “Title IX,”; and Eckes, “Title IX.”
Department of Education already operated according to this standard, this Washington lawyer anticipated hardly any change in Title IX litigation.

Robb Jones, senior vice president and general counsel at United Educators—an insurance company responsible for covering schools and universities regarding legal and other risks—agreed with Coleman.\textsuperscript{312} Because the Title IX mandate to provide equality across genders is taken seriously by schools, colleges, and universities, Jones did not believe the backdrop of athletics would be changed. Jones further maintained that in his experience, he had never witnessed any fear of retaliatory actions or anxiety when teachers or coaches brought forward claims of discrimination. He attributed this to the compliant institutions in stating that, “there are few things that our college clients take more seriously than Title IX’s commands.”\textsuperscript{313} Jones believed that colleges were very mindful of the requirements of Title IX and were persistent in their efforts to comply with its standards, especially when complaints are made. Therefore, he did not anticipate an increase in complaints or litigation.

Jocelyn Samuels of the National Women’s Law Center also agreed with Jones and Coleman, but for different reasons. Samuels believed that litigation would be limited; she stated, “This ruling ultimately is a benefit to schools because it will encourage people to come forward to make schools aware of potentially discriminatory conditions and to enable them to address the conditions before the situation ripens into a lawsuit.”\textsuperscript{314} Samuels believed that without the fear of retaliatory measures for complaining of gender


\textsuperscript{313} Ferguson, “Whistleblowing.”

\textsuperscript{314} Lipka, “High Court Expands.”
discrimination, teachers, coaches, and parents will more readily take their concerns to the school system before heading to court. With the freedom to openly discuss these issues with schools, gender discrimination can be addressed more readily and quickly within each school’s walls rather than in a lengthy and costly legal battle.

Even though Coleman, Jones, and Samuels offered optimistic projections for Jackson’s legal consequences, Nancy Hogshead-Makar provided a more realistic portrayal of the current and future gender-equity environment. Hogshead-Makar, a former Olympic swimmer and now professor at Florida Coastal School of Law, is arguably in better touch with what is occurring in the early twenty-first century and offered a different perspective. According to her the reality of Title IX compliance is that, “The women coaches who call me and want to talk about bringing a suit are just scared to death. They’re worried not only that they’ll get fired but that they’ll get blackballed and never coach again.”

Hogshead-Makar anticipated that previously reluctant or frightened coaches will have the means “to be good advocates, to solve problems informally, to ask hard questions [about budgets] that athletes themselves can’t.” A likely result of Jackson, then, according to Hogshead-Makar, is not only an increase in legal battles that the likelihood of retaliation is diminished, but also an improved dialogue between coaches and administrators. The coaches she made reference to were then better protected against being fired from the profession.

315 Ferguson, “Whistleblowing;” and Lederman, “Protection for Title IX.”
316 Ferguson, “Whistleblowing,” 188; and Lederman, “Protection for Title IX.”
317 Lederman, “Protection for Title IX.”
The Changing of the Court. One of the biggest legal discussions surrounding Jackson revolved around the retirement of Justice O’Connor, who wrote the majority opinion. Historically, O’Connor’s votes were swing votes. Some justices are counted on to be liberal and some conservative; she has been known to vote for both “liberal and conservative measures,” which often made her vote the deciding one. In several instances, those swing votes resulted in broadening Title IX’s scope. O’Connor wrote opinions in the three previous Title IX decisions, all of which were 5-4.

With her retirement and the addition of Justices Roberts and Alito to the court, proponents of Title IX were concerned for the future of this law. Following the appointment of Justice Roberts, Democrats made a statement opposing Roberts and his “anti-civil rights” position on four specific issues, one of which was Title IX. The National Women’s Law Center, agreeing with the Democrats’ announcement, disagreed with Roberts’s appointment to the court, in part due to his stance on Title IX. Furthermore, Justice Alito’s record as a judge on the Third Circuit Court of Appeals revealed opinions similar to Justice Roberts’s. One can speculate that Alito “may interpret Title IX conservatively and favor schools over female athletes in Title IX cases.” Moreover, since both justices are new to the court, it is unlikely they will take the same approach as O’Connor, who was a veteran justice. All things considered, it is fair to conclude that these two justices are likely to construe Title IX more narrowly.

318 Eckes, “Title IX,” 192.
319 Ferguson, “Whistleblowing.”
320 Ibid., 193.
321 Eckes, “Title IX.” 192.
322 Eckes, “Title IX.”
The recent judicial changes create considerable uncertainty regarding how the new members will interpret past decisions, and how these interpretations will impact the future of Title IX. The following explanation by academic and legal analyst John A. Gray helps make sense of interpreting this state of affairs:

Finally, “[t]his 5-4 decision also underscores the critical point that the Court [has been] closely divided. . . . Every nomination to the Court can make a tremendous difference in the outcome of real cases affecting real people for decades to come.” While the composition of the Court has changed since this decision, it remains to be seen on which side of the hermeneutical divide Justice Roberts and Alito fall. The significance of the composition of the court in terms of textualists or contextualists depends on whether Congress itself is liberal or conservative. A liberal Congress would respect a broad interpretation of statutory intent; a conservative Congress, a narrow one. With a liberal Congress, a textualist majority would mean that Congress would have to exercise greater care in legislating and would have to amend statutes whenever it concluded that the Court was interpreting its intent too narrowly. With a conservative Congress, a contextualist majority would mean the same. In light of the ever-changing composition of the Supreme Court, this hermeneutical divide remains a salient and useful method for understanding the justices who make up the Court.  

The body of work for both Alito and Roberts is too short to offer reliable predictions. It is still unknown whether these new justices will maintain or change the landscape of Title IX. Regardless of how these two vote, the retirement of O’Connor left big shoes to fill and even more uncertainty as to the future of Title IX.

Money: The Big Concern

It became apparent in the writings from members of the local community that as the lawsuit between Jackson and the school board progressed, the major concern with the litigation quickly became its financial cost. Title IX impacted on the microlevel. That is, this law hit home for the individual people and the families of this community; their taxpayer dollars were at stake. On several occasions, Birmingham citizens expressed their frustration over the amount of money being spent to fight the legal battle. As stated previously, one citizen believed the board “wasted thousands of taxpayers’ dollars fighting the case.” Another stated, “taxpayers are the losers. What a waste of money!” In the local writings, very little concern was paid to the issues of inequity. The discussions did not touch upon the girls being the “losers” for the opportunities they forfeited to discriminatory behaviors or upon the disproportionate resources allotted to the girls. No one mentioned the number of girls who endured unfair treatment for an extended period before Jackson complained. Instead, for the local community, the lawsuit was too financially damaging. At the microlevel, money mattered most.

Some questioned why the lawsuit was not settled much sooner at a fraction of the cost, but the exorbitant cost of the lawsuit seemed to be the big factor in pushing

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324 Birmingham News Online, “Unsettling Allegations.”
325 Birmingham News Online, “A Costly Lesson.”
members of the community to seek a resolution. Following, a million dollar lawsuit, it became very apparent that there should be equitable treatment. In other words, “At least it ought to be clear now that girls who take part in school athletics should be treated as fairly as their male counterparts.”  

Things were very clear after the huge fees. Whereas allegations of discrimination once provided the uncertainty, the high cost of the litigation quickly cleared up the confusion, thus making the cost to the community the biggest eye opener.

Even the local school board and National School Board for that matter attempted to refute the protection of whistleblowers for the concern of undue litigation. The fear was and is that one of the outcomes of the *Jackson* decision will be excess litigation; ones that school systems are unable to afford. Considering the state of school funding and public education in the United States, it is irresponsible to not take into consideration some of the financial ramifications of such an outcome. However, it is deplorable to let the financial concern supplant the concern for protecting the rights of young students.

*No Complaining Means Nothing Is Wrong, Right?*

One of the key questions raised in the legal discussion spoke to why the members of Jackson’s teams had not raised any concerns for the inequities. Where were the Title IX complaints from these girls? In reference to that, I asked Mercedes Smith what she thought Title IX meant. Shockingly, she responded by saying that she was not sure what the law did or does, and she asked for an explanation of the law. When I told her that Coach Jackson had filed a Title IX lawsuit, Smith, again, inquired about the particulars of

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*Tanber, “Coach Puts Title IX.”*
that lawsuit and whether Jackson’s lawsuit had ended or not. Smith indicated when she was playing for Coach Jackson, she and her teammates knew *something* was going on, but obviously knew little of the details. They simply just thought Coach Jackson was trying to get the girls some better uniforms and more convenient gym time—for them, representing Title IX on a microlevel. When I showed her a copy of Jackson’s book and the page in which her name appeared, she was completely surprised a book was published, and yet rather pleased her name was found on the pages of the text. So pleased in fact, her response was, “where can I get a copy of that book?”

Smith’s girlfriend at the time of the interview, Deva Doe, offered her thoughts as well. Doe was a member of the dance team at Ensley High School that performed at every football game. She graduated top five in her class, and although she did not play for Coach Jackson, she knew him. Her dance squad fundraised for uniforms, and Doe stated her coach paid for some items out of her own pocket, as the school did not provide any funds for the dance team. When asked if any of the boys’ teams had to raise money for their extra-curricular activities, Doe replied, “I ain’t never seen no boy standing on the corner of the street doing car washes to raise money!”

So, I inquired why the girls did not complain. Doe explained that the girls noticed it but did not know any different. She and other girls wanted to play their sport, and they were willing to do what was necessary to be able to do so.

Why did these young girls not speak out about the unfairness? First, some did not see or believe any problems existed. Smith did not even know such protection, such as

327 Smith, interview.
328 Deva Doe, interview with the author, November 21, 2008.
Title IX, existed for girls. Realistically, girls’ sports were always secondary. As discussed above, some of the girls did see there was a discrepancy between the ways they were treated in comparison to the boys, but they wanted to play their sports. That often meant they were forced to play in whatever manner they knew how, even if that meant playing at a disadvantaged state.

These girls did not speak up because they did not know they were intended to have equal rights with their male counterparts. The girls interviewed in this paper did not even know such a law existed offering girls a level playing field. How did they not have any idea? These girls had bigger issues with which to deal. From the statistical data offered in the history section on the Birmingham community and from my first-hand experience with this community, these girls are poor, black, and disadvantaged. Girls like Angie T. had serious home issues. Coach Jackson looked into taking care of her. These girls could not fathom fighting a “big” system when their families could barely afford the basic necessities of life, and neither could their parents for that matter. Sport was not a necessity in this community. It is a luxury, and luxuries were more easily expendable. The concern from this community and its school administrators was less about equal opportunity in sport and more about basic educational concerns, like increasing scores for college entrance exams and gaining vocational skills.

*Where Are the Parents?*

One of the more interesting questions raised in the litigation spoke to the issue of why Jackson was the one that brought these issues to the attention of the board. Why did
it require a coach, a male coach at that, to stand up for the girls? Where were the parents of these girls?

While spending time with Mercedes Smith, it became apparent that she, at times, was forced to be the parent. Even though Smith was an adult at the time of this research and living on her own, it was obvious that she had been living with this role for some time. Smith was the one required to take her mother to work, as her mother was not stable and even a bit “messed up,” as Smith put it.\(^{329}\) Her mother had her own issues to deal with and did not have the wherewithal to launch a gender equity suit. Additionally, Smith’s father had the mentality that “you can’t get butter from a duck.”\(^{330}\) Smith’s father did not feel anything could be gained or accomplished by raising an issue and believed there was no point in trying. In an opinion piece published in the *Birmingham News* sports section, a citizen of Hoover, one of Birmingham’s suburbs, shed some interesting light on the subject. Lynda Lamb wrote:

> I am saddened by the fact that it was necessary for a school employee to do what the parents of these girls should have been able to do themselves. I doubt that such an extreme example of illegal discrimination would have happened in any of the “over the mountain”\(^{331}\) school districts where parents have ready access to the kind of legal representation necessary to deal appropriately with this discrimination at the local level. The Supreme Court’s decision wasn’t only about

\(^{329}\) Smith, interview.

\(^{330}\) Michael Smith, interview with the author, November 20, 2008.

\(^{331}\) Just south of downtown Birmingham lays Red Mountain. The area south of this mountain came to be known as the “over the mountain” area. This terrain not only protects the southern suburbs from the waste of Birmingham’s industrial plants, but also acts as a geographic boundary separating Birmingham from its most affluent suburbs.
the rights of girls’ sports teams to be treated equally with boys’ sports teams. It demonstrated that girls’ sports teams in economically disadvantaged areas have the same rights to equal treatment that their more fortunate suburban sisters already enjoy.\textsuperscript{332}

It is apparent to this suburban parent that the parents of these girls lack the educational and financial resources to file a claim, but that does not diminish the fact that these girls deserved every right to play as the boys.

Jackson spoke similarly as Lamb on this issue. When I asked him how parents reacted to the lawsuit, he responded with, “I think most of them didn’t. It’s a very complex law.” He went on to further explain that he believed parents of these girls did not know of anybody who had taken on such a task, and Jackson confessed that it took quite some time before he personally knew of anyone who had fought a legal battle similar to his. Jackson explained his case gained local and national momentum as more learned of it. “The more people are made aware of any social issue they usually come around. You know, I think others came around. I think parents came around. It was evident in us starting to draw a nice crowd. We wanted to play and people wanted to see who were these kids and this guy. I think it got some respect in that aspect also.”\textsuperscript{333}

Regardless of the momentum and awareness, the issues of race and class that permeate this project cannot be ignored. Yes, these individuals may be made aware of the social justice, but they lack the power and resources to be able to wage a fight. The reason these girls and their parents did not speak out was because they did not know how.


\textsuperscript{333} Misty Jones and Roderick Jackson, interview with the author, November 22, 2008.
This community lacked the resources to wage a war. Furthermore, the parents of these players were likely more concerned with their children’s high school graduation and possibility of attending college than with gender equity in their high school sports. Again, this community was and is concerned with surviving the day-to-day, and the thought of waging a war against gender equity was a burden these parents and girls were not able to bear financially, physically, or mentally.

Where Do We Go from Here?

For Coach Jackson, he believed he did his part in making this social injustice known to the public. He made a series of complaints but, as so many people in power do, his superiors ignored his complaints. Those complaints, though, eventually led to progress and ultimately to change. I believe one of Jackson’s strongest notions is the more people are made aware of a social justice, the more they are likely to act upon it. With that in mind, through this project, I believe I am—along with many others—sounding the horn on how the application of Title IX is currently falling short of issues of race and class. Like Jackson, I fully expect there to be a slow response to change. Ignoring this issue, however, is no longer acceptable. As a Caucasian female, I have been eating from the whole pie of athletic opportunities offered to women. It is now time that whole athletic pie be shared with fellow women and girls of color.
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APPENDIX A: Overview/Interpretation of the Law

In order to examine the current issues surrounding Title IX, one must understand the nature of the law of Title IX itself, as well as its regulations. This section will provide a concise outline of the parameters of Title IX. Today, Title IX is made up of four components: the law, the regulations, the policy interpretations, and the letters of clarification. While each of these sections is quite vast, for the purpose of this article, these areas will be condensed.

**The Law**

On June 23, 1972, the Title IX law was ratified and is summed up in the following statement.

> 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.\(^{334}\)

**The Regulations**

\(^{334}\) Carpenter and Acosta, *Title IX*, 3.
The regulations of Title IX were created by the executive branch and accepted by Congress thus assigning these regulations power. The purpose of the regulations is to provide a means to measure and enforce compliance. However, the regulations do fail to provide exact direction on how to specifically measure compliance. The regulations are comprehensive and rather in depth. For the sake of time and space, a list, rather than details, will be provided in this section. The regulations are succinctly listed below:

Subpart A – Introduction

106.1 Purpose and effective date
106.2 Definitions
106.3 Remedial and affirmative action and self-evaluation
106.4 Assurance required
106.5 Transfers of property
106.6 Effect of other requirements
106.7 Effect of employment opportunities
106.8 Designation of responsible employee and adoption of grievance procedures
106.9 Dissemination of Policy

Subpart B – Coverage

106.11 Application
106.12 Educational institutions controlled by religious organizations
106.13 Military and merchant marine educational institutions
106.14 Membership practices of certain organizations
106.15 Admissions
106.16 Educational Institutions eligible to submit transition plans
106.17 Transition plans

Subpart C – Discrimination on the Basis of Sex in Admission and Recruitment Prohibited
106.21 Admission
106.22 Preference in Admission
106.23 Recruitment

Subpart D – Discrimination on the Basis of Sex in Education Programs or Activities Prohibited
106.31 Education programs or activities
106.32 Housing
106.33 Comparable Facilities
106.34 Access to course offerings
106.35 Access to schools operated by LEAs
106.36 Counseling and use of appraisal and counseling materials
106.37 Financial Assistance
106.38 Employment assistance to students
106.39 Health and insurance benefits and services
106.40 Marital or parental status
106.41 Athletics
106.42 Textbooks and curricular materials

Subpart E – Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited
106.51 Employment
106.52 Employment criteria
106.53 Recruitment
106.54 Compensation
106.55 Job classification and structure
106.56 Fringe benefits
106.57 Marital or parental status
106.58 Effect of state or local law or other requirements
106.59 Advertising
106.60 Pre-employment inquiries
106.61 Sex as bona-fide occupational qualification

Subpart F – Procedures (Interim)
106.71 Procedures

**Policy Interpretation**
The policy interpretations were finalized on December 11, 1979 to help fill in the gaps left by the regulations. These guidelines provide parameters in which to measure compliance. This section is typically known as the “three-prong test.” Briefly stated, the three segments of this test are 1) Provide participant opportunities substantially proportionate to the ratio of males to females in the student body 2) Show a history of progress and continuing practice of upgrading girls’ and women’s programs 3) Meet the interests and abilities of the females. The three sections are fully described below:

- Compliance in Financial Assistance (Scholarships) Based on Athletic Ability: Pursuant to the regulation, the governing principle in this area is that all such assistance should be available on a substantially proportional basis to the number of male and female participants in the institution’s athletic program.
- Compliance in Other Program Areas (Equipment and supplies; games and practice time; travel and per diem, coaching and academic tutoring; assignment and compensation of coaches and tutors; locker rooms, and practice and competitive facilities; medical and training facilities; housing and dining facilities; publicity; recruitment; and support services): Pursuant to the regulation, the governing principle is that male and female athletes should receive equivalent treatment, benefits, and opportunities.
- Compliance in Meeting the Interests and Abilities of Male and Female Students: Pursuant to the regulation, the governing principle in this area is that the athletic interests and abilities of male and female students must be equally effectively accommodated.

Letters of Clarification

Since the commencing of Title IX, there have been three letters of clarification presented by the Office of Civil Rights (OCR). The rationale of these letters is to clarify issues that
have raised questions or have caused confusion. The intent of each letter is summarized below:

1996 Clarification Letter (Guidance on Participation and Proportionality)

- Three-Part Test – Part One: Are Participant Opportunities Substantially Proportionate to Enrollment?
  - The Policy Interpretation defines participants as those athletes:
    - Who are receiving the institutionally-sponsored support normally provided to athletes competing at the institution involved, e.g., coaching, equipment, medical and training room services, on a regular basis during a sport’s season; and
    - Who are participating in organized practice sessions and other team meetings and activities on a regular basis during a sport’s season; and
    - Who, because of injury, cannot meet the three items above but continue to receive financial aid on the basis of athletic ability.
- Three-Part Test – Part Two: Is there a History and Continuing Practice of Program Expansion for the Underrepresented Sex?
- Three-Part Test – Part Three: Is the institution Fully and Effectively Accommodating the Interests and Abilities of the Underrepresented Sex?
  - Is there sufficient unmet interest to support an intercollegiate team?
  - Is there sufficient ability to sustain an intercollegiate team?
  - Is there a reasonable expectation of competition for the team?

1998 Clarification Letter (Financial Aid)

- Athletics: Scholarship Requirements
  - The Policy Interpretation does not require colleges to grant the same number of scholarships to men and women, nor does it require that individual scholarships be of equal value. What it does require is that, at a particular college or university, “the total amount of scholarship aid made available to men and women must be substantially proportionate to their overall participation rates.”

Further Clarification Letter of 2003 [Reaffirmation of Title IX’s Requirements in General and Proportionality in Particular]
First, with respect to the three-prong test, which has worked well, OCR encourages schools to take advantage of its flexibility, and to consider which of the three prongs bests suits their individual situation. All three prongs have been used successfully by schools to comply with Title IX, the test offers three separate ways of assessing whether schools are providing equal opportunities to their male and female students to participate in athletics. If a school does not satisfy the “substantial proportionality” prong, it would still satisfy the three-prong test if it maintains a history and continuing practice of program expansion for the underrepresented sex, or if “the interests and abilities of the members of [the underrepresented] sex have been fully and effectively accommodated by the present program.” Each of the three prongs is thus a valid, alternative way for schools to comply with Title IX.

Second, OCR hereby clarifies that nothing in Title IX requires the cutting or reduction of teams in order to demonstrate compliance with Title IX, and that the elimination of teams is a disfavored practice. Because the elimination of teams diminishes opportunities for students who are interested in participating in athletics instead of enhancing opportunities for students who have suffered from discrimination, it is contrary to the spirit of Title IX for the government to require or encourage an institution to eliminate athletic teams.

Third, OCR hereby advises schools that it will aggressively enforce Title IX standards, including implementing sanctions for institutions that do not comply. At the same time, OCR will also work with schools to assist them in avoiding sanctions by achieving Title IX compliance.

Fourth, private sponsorship of athletic teams will continue to be allowed. Of course, private sponsorship does not in any way change or diminish a school’s obligation under Title IX. Finally, OCR recognizes that schools will benefit from clear and consistent implementation of Title IX. Accordingly, OCR will ensure that its enforcement practices do not vary from region to region.
Appendix B: Key Terms

Whistleblowing

A great variety of laws and enforcement systems exist at both the federal and state levels. Federal statutes that protect whistleblowers in certain circumstances include the False Claims Act, anti-retaliation provisions of employment discrimination laws and of worker health and public health laws, the executive branch employees' whistleblower act, and most recently, provisions of the Sarbanes-Oxley Act of 2002… Legislatures and courts provide remedies to whistleblowers for a number of reasons. The foremost rationale is two-fold. Whistleblowers serve to protect public health and safety, but often suffer severe adverse employment and career consequences for following their consciences and acting to protect the public. Thus, whistleblower protection alleviates the career and financial risks that may otherwise deter whistleblowing. Other reasons include: (1) that it is unjust to penalize individuals for reporting what they reasonably and in good faith believe to be conduct that is not only unethical and/or illegal but also sufficiently dangerous to others, physically or economically, that it must be stopped; (2) that many, perhaps most, people would be reluctant to jeopardize their own jobs and
careers in the absence of legal protection; ad (3) that the public would suffer more
injuries in the absence of legal protection for whistleblowers.\textsuperscript{335}

\textit{Prophylactic Rule}

When the Supreme Court says that the constitution requires the state and its
agents to do something, the Court makes one of two claims. It either claims that the
constitution requires the state to take a particular course of action, or it claims that the
constitution requires the state to achieve a certain state of affairs and that the government
must take the step in question in order to reach that constitutional end. If the government
can achieve the constitutional goal through only one course of action, the constitution
requires the state to take it; there is, in effect, an implied provision in the constitution
directing the government to take that step. If, however, the course of action is just one of
several possible strategies for achieving the constitutional end, the rule enunciated by the
Supreme Court does not count as a constitutional rule. Its authority stems not from the
constitution, but from the Supreme Court’s law-making authority. The directive has no
constitutional status per se, since Congress could substitute a new strategy for that
devised by the Court without necessarily breaching the constitution. It has constitutional
significance, though, since it cannot simply be abolished or ignored; doing so would
leave the state without any means of fulfilling its obligations under the constitution.
Unless and until the state creates an alternative strategy for achieving its constitutional
ends, the state must respect the directive issued by the Court—not because the Court’s

\textsuperscript{335} Gray, 2006.
strategy is superior to any and all other possible mechanisms, but because the constitution will not permit a strategic vacuum. The rule, issued by the Court in recognition of the state’s constitutional responsibilities, is not a constitutional rule, but a prophylactic rule—“prophylactic” since it acts as a barrier against the sort of strategic vacuum that would compromise constitutionality.336

Appendix C: Informed Consent Script and Sample Interview Question

Hello ____________________,

My name is Kylee Short. I am a graduate student at The Ohio State University. I am conducting interviews to research and write about the impact Title IX can have on local communities for my dissertation project. I have learned of your involvement in this community from ___________ and am hoping you would agree to discuss with me how you feel about Title IX in this community.

If you agree to participate, I will be asking you questions regarding how you personally and those around you have been impacted in the past and will be impacted in the future by Title IX. I anticipate the interview will take 30-60 minutes.

I understand that privacy is very important. Therefore, in order to maintain confidentiality, my advisor, Dr. Sarah K. Fields, and I will be the only individuals with access to the materials regarding our meeting. All those materials will be stored on a password protected computer and in a locked file. Additionally, your identity will not be revealed in any written work. Instead a pseudonym will be used.

Your participation is completely voluntary. At any point you can refuse to answer questions, refuse to participate, and/or withdraw without any penalty or repercussion.
Would you agree to participate in this discussion regarding Title IX?

- If no
  o Thank you for your time.
- If yes
  o In order to maintain accuracy, I would like to video/audio tape our conversation. Following the completion of this project, all data collected both in terms of notes, tapes and transcriptions will be destroyed. Do you agree to our discussion being taped?

If at any point following our discussion you have questions or areas you want to discuss more, feel free to contact me at 614-404-0705 or by email at short.154@osu.edu or Dr. Sarah K. Fields at fields.214@osu.edu.

Again, your time is greatly valued and appreciated. Thank you.

*Sample Interview Questions*

The following are a list of research questions intended to be discussed during the interview process.

1. What is your current role in the local Birmingham community? Additionally, what has been you or your family members past roles in the local community?

2. Describe what life is like in this community.

3. What is Title IX?

4. When did you learn or know about Title IX?

5. What role has Title IX had on you personally?

6. What role has Title IX had on those close to you?

7. What role has Title IX had on the community as a whole?
8. Tell me what you can remember leading up to the lawsuit. During the lawsuit. After the lawsuit

9. How do you feel Title IX has impacted and will impact your community?

10. How has Title IX legal battles impacted you and your community?

11. How do you view Title IX following a court battle over gender equity issues?

12. Is this view different than the stance you had prior to a lawsuit?

13. How do you feel the community views Title IX?

14. Do you believe this view is different or similar to the opinion of Title IX prior to the lawsuit? If so, how?

15. Has your community improved or digressed because of Title IX? In what ways?


17. Describe playing for Coach Jackson.

18. What were the expectations for female athletes at Ensley High School?

19. Did other students at the high school know about the lawsuit? If so, how did they respond?

20. Are there any further areas you want to discuss regarding Title IX?

21. Who of your former teammates would be willing to discuss their story about Title IX? Any community members willing to share their story?
Appendix D: Sample Facebook Message

Hello __________,

My name is Kylee Short, and I am in the process of working on my dissertation from Ohio State University. The focus of my project is on Title IX. I have a great interest in your experience at Ensley with the lawsuit Coach Jackson went through. Would you be interested in being interviewed for this project?

Thank you very much for your time.

Kylee J. Short
The Ohio State University
KS: So, you learned about Title IX?
RJ: Yeah, in college basically. You know, I remember even in high school they started, I mean it was back in the 70s, they started a team. I was on the freshman team in 79 and I remember we all we knew well, we had stuff but I don’t remember the girls having anything. And, uh, they started one and it was kind of half, half cocked. And uh, but anyway, that when I learned in college the mid-80s, late 80s.
KS: So, when, when did you first learn about Title IX?
MJ: When he went to court.
KS: And what was that like? You were playing for him at the time and he was going to court. At what point in your battle was this? District court?
RJ: Lashundra was on the last team
KS: So it would have been Supreme
KS: Right, right.
RJ: But uh, yeah.
KS: So what do you remember? What was that like?
MJ: Well, I remember it was hard. After school going to a cold gym. Sometimes we had to wait to the boys get through with the new gym and it be real late and whatever. And we have to wait for them, wait til got through first with practice. And we were never excited or anything. And we actually had to put on coats and sweat pants just to warm up.
KS: Now Keeyon remembered you guys used to practice on the weekends
RJ: Yeah, Yeah
KS: at times to get in the gym. Now did you still have to do that? Practice Saturday and Sundays so that you could have gym time.
MJ: Nope
KS: Now was there other things that, I mean, um, anything else besides the gym?
MJ: The uniforms. The boys they had got new uniforms we couldn’t get. They used the money from the concessions stands and now and then from folks coming to the game. But we actually had to get out and make, raise our own money doing like car washes and different other things.
KS: Really. Ok. So, when this is going on, how did other people respond to you as someone on the team or how did people in the community respond. I am sure….
RJ: We had tremendous support, I recall, umm. The first thing I think about is that carwash we had and people would just drive up and offer donations. So, uhh, I think all the publicity helped tremendously, you know, where people became aware. Still a lot of people were not aware of the law and when they learned about it, it kinda helped raise awareness. And uh, these young ladies on the front lines were __________ (2:45).
KS: How were treated by people at school? Any different from the boys team or?
MJ: Not really but like, as far as like him not own transportation. The boys had theirs but we had to, uh, carpool or whatever, either have some of the other girls parents come take us here, there wasn’t enough room or whatever. He had to take some girls down here, to come back, pick ’em take ’em. It wasn’t no pleasant feeling.
KS: So, after, after the lawsuit, you would have been in your senior year
MJ: Correct
KS: After things settled, because it settled in ‘05
RJ: No, because it settled in ’06 after they graduated. But, uh, it helped. Ever step. Every baby step helped along the way. Another thing, you got to remember kids are kids no matter where they at geographically, race, gender, soul. I’ve never believed that anybody faulted the kids. Young men didn’t know about this either, you know. It was the adults in charge that caused this to be a separation. So. That’s another key, I think I even read about a young man who helped called Underwood. Big kid, ____________ did all he could to help us. Even practiced with us all kinds of other things. From New York. I forget his name. Uh, Ben. I think Ben really helped support us. Even went on the news and gave an interview. Uh, so, you know the kids sort of got caught in this thing here.
KS: Did you know about Title IX before playing
MJ: Not at all.
KS: Nothing?
MJ: Nothing at all. Never heard of it.
KS: No. And do you think that is the general idea? Before this lawsuit. If, this had not happened would people still not know about Title IX?
MJ: Well, I don’t think so.
RJ: Yeah, and that’s something we maybe need to start teaching in high school. Not just in college. Uh, you know there is a case in California right now where a lady, uh, trying to think of the name of it. Cause I had an article in it, my brief did, made that case, uh, where, uh, she had to go up against the whole California system and, uh, but she did a whole lot better than we did (chuckling) uh, but uh, it turned out pretty good. One of the good things we can take from this is that she cited Jackson v. Birmingham, and that helped. Yeah, one of the cases was cited so you know, you see that little thing. that retaliation thing was a little harder and so that helped. And then I hear people say that you
uh, a couple guys at the gym I work out are attorneys, they say hey are you that ______ (5:28) and so that’s just a very good thing to hear.

KS: Thank you…to waiter
RJ: ________________ (5:42)
KS: Since I did just read and I was looking at the issue of contempt of court, and I don’t know if you can talk about that because of, of what is going on, but are things better? I mean, um, ism are situations better for girls in Birmingham?
RJ: Is that to both?
KS: Either, either of you. You can tell me.
MJ: You can take it.
RJ: I think that, uh, things are better. I think that our, uh, step by step, you don’t get anywhere overnight. I can’t comment on the mediation, you know. Uhh, currently we are in mediation.
KS: Right
RJ: And so that is confidential. We are hoping it gets there. We are hoping it gets there. Eventually.
KS: So tell me what you remember about going through the lawsuit itself. What was it like being a member of Coach Jackson’s team while he was going through this?
MJ: I’ve been up around him ever since my 9th grade year. He is like a father to me, you know. Knowing that you got somebody that’s looking out for you going to stand by your side and you there and there going through this giant struggle. So..
KS: How did your parents react, um, to, to the lawsuit? How did parents react, I should say, of girls that are participating.
MJ: Mine, she thought it was, uh, kinda, uh, kinda awesome, or whatever. Like someone out there fighting for girls, fighting for their rights knowing that we’re not alone in this world.
RJ: And again, I think most of them, didn’t. It’s a very complex law. Lot of people didn’t know of anybody. You know, I told you how long it took before I knew of anybody. Uh. The more people are made aware of any social issue they usually come around. You know, I think others came around. I think you know, parents came around. You know, it was evident by us starting to draw in a nice crowd, you know. We wanted to play and people wanted to see who were these kids team and this guy. I think it got some respect in that aspect also.
KS: Yeah, what’s it about.
RJ: Uh, huh. What is it about
KS: So, I guess, again, I am an outsider. You got to fill me in. What is life like here in this community? What do sports mean in this community? What is high school like in this community? Again, I am an outsider. So, tell me.
RJ: High school sports is big. Again, Alabama is a football state. Football rules.
KS: Laughing…yes, I am learning.
RJ: Football is a religion. But, uh. Basketball is a close second, a close second. And it is big. I hear people talk about Texas like, but you know, it is big in Alabama also. But basketball is high on the list. You know, basketball is a national sport, an Olympic sport. So, uh, I, uh, it is important to the community, you know. Friday night you going to go
to the game. You know, in fact we had games last night. I didn’t attend that. Yeah, I went over to see my son’s school play but uh, it is big. I think, what you think?
MJ: Yeah. Basketball is. What it means to me is that it give you something to do besides going out and doing drugs or whatever. Uh, a different alternative.

_____________ (9:00) didn’t become who they realize.
KS: Is that what this community sees sports as?
RJ: I think so. I think so. Uh, huh.
KS: What is high school like here?
MJ: At first…people. Uh, the high school I went to I hated it at first.
KS: At Ensley?
MJ: Yeah, I hated it. But as time
KS: Why?
MJ: I have, I have no idea. I just didn’t even like it. And my brother, he graduated from that school and he was talking about it or whatever. I didn’t really know nobody up there and he was telling me about this teacher and I ended up having the same teachers that he had. And he loved it there. As time progressed, or whatever, I made friend and I feel like that was my family and I didn’t want to go no where.
KS: So, how did you feel when it closed. Like what did, what was that like?
MJ: It was kinda crazy. That school had been there for a long time and it’s gone. Like, you meet some body and you open up to a friend and as you get to know that person or whatever and then all of a sudden they gone. Like the same, way. One minute you’re here and the next minute you’re gone. It’s, it’s hard.
KS: Uhh, Keeyon and I were up. We went by yesterday,
RJ: Did you?
KS: the old school, and then we went by the new school. What a facility!
RJ: Yeah, beautiful, isn’t it.
KS: The new school is very nice.
RJ: Yup
KS: How long have you all been in that facility?
RJ: This is the third year. Yeah, third year.
KS: It is very. It is unbelievable. I was…. What a facility.
RJ: Yeah, There has been a commitment, I think, to build newer schools across the board here. So, yeah, that’s a good thing. Yeah, that’s a good thing. We have one cent sales tax that was levied in the county and in the state, I mean in the city, and so it is supposed to go to new school construction. And I think it is time some of these schools built like Ensley was in 1908, I believe they have said 1909, and I have heard 1904.

______________ Kids deserve something state of the art, something new, something with all of the technology now. You need to take a tour of the building. Beautiful.
KS: Yeah. Do you think the condition of the Ensley High School was somewhat that way because they knew they were closing it so they didn’t do any improvements to it? I think I was amazed at the big disparities between the two schools.
RJ: I wouldn’t know. That is something you might have to ask, uh, Barbara Allen. You might have to talk to you.
KS: No, I emailed. I did get her secretary. And I emailed her. Then I emailed, uh, Ms.
Williams, uh, Dr. Williams. And she contacted me immediately back. And actually I
think she was surprised that someone wanted to hear from the administration because I, I
told her, I said you know, in my email well I’m sure you probably had been asked a lot
of questions and she wrote back and said actually no. No one has ever asked her
RJ: Is that right?
KS: Which I thought in itself was almost puzzling and I thought that was a problem in
itself.
RJ: Yeah, that becomes a problem in itself, yeah.
KS: And then she passed me. She gave me some information. And then she also gave
me the contact of the athletic director.
RJ: Ok, great.
KS: Mr. Moore
RJ: George Moore, great.
KS: And I thought it would be interesting to get some general takes from these people.
Cause again that is one of the problems I feel like with this lawsuit there is a big
disconnect in the law itself between the law and what is going on at the local level and
how we carry it out, what it means to local people, to students, why aren’t we speaking
with athletic directors. Why aren’t we talking to administrators. Why is no one looking
at that because I think there is some value to that to how…
RJ: Yeah, we need some dialogue
KS: Yeah,
RJ: Dialogue
KS: Yeah, to how we can improve the conduct of this law.
RJ: Yeah, that is good. Whoever that person was gave you a good suggestion. There.
That is good.
KS: Laughing…yeah, that is. That is. Uh, huh. I thought that was a really good idea. It
may be pretty good. We will see how that comes out. So, but…
RJ: Laughing.
KS: Well, um, I guess one… The title of my project is Lost in Litigation: Untold Stories
of Title IX. So, what is the local press not telling. Again, cause I am an outsider. So,
what I read is the Birmingham News. So, what is the Birmingham News not telling us
about what’s going on. What, what. I mean, can you think of anything.
RJ: I mean, uhh, I can’t. They have been pretty….they’ve been….But I notice, you
know, lawyers can put a spin on things. That is there job, but uh, they said, there is one
report I read where it said, uh, after the national and local press got involved. Well,
actually the local press was not involved early on. It was outside press that helped. And
then, you know, it looked kinda awkward. Everyone else is covering this thing. The
Then that was one the local jumped in I think. That is a good thing. That is a good
problem to have. Yeah.
KS: I wonder why. I wonder why it took ‘em a bit to jump on the band wagon or jump
on like the band wagon.
RJ: Laughing. ___________________ (14:45)
MJ: I guess they didn’t feel like it wasn’t that important like other stuff that’s going on in the world.
KS: Yeah, just girls sports.
RJ: laughing. Yeah.
KS: Just girls sports.
MJ: Yeah. They will get over it but we have feelings too.
KS: Keeyon and I were talking about, and again I am the outside person, about Hoover and how they were on VH1.
RJ: Yeah, they had their own reality show.
KS: Yeah, they had their own reality show. And I guess, I was kinda like, why does a place like Hoover and I am asking you to help me with this.
RJ: Suburbs. Suburb. Money talks and the rest walks. I don’t know if you had that already (handing me business card).
KS: No, thank you. Now say that again.
RJ: I think money talks. A little bit more money. A little bit more clout in the suburbs. I mean, no one wants to say that but that is the life. You know, uhh,
KS: Is there a racial issue?
RJ: It, it borders on that also.
KS: Tell me what Hoover looks like in terms of, I do not know.
RJ: You might want to drive and take a look at business facilities
KS: Well, I went to their mall.
RJ: Ok
KS: Well, Keeyon took me to their mall and I was like it was beautiful. It was like a palace. And Keeyon was taking me through the areas and there is huge, there is a very big difference between the areas.
RJ: Well you know economics is a big thing. That’s, that’s, that’s the life. Uh. Yeah, I would say there is clout too. ____________ (16:20) This happens everywhere you know. As I have been traveling the country speaking, I hear people say the same thing. You know, that the little kid can make some things. Nothing would have ever happened with my case. It would have been dismissed. It’s the same thing that came up in other, uh, uh, circuits. You know, and it was ready.... And
Food arrives at lunch. Various things going on with eating lunch, discussion of the server. (17:00-17:45).

KS: Now, Coach, you have two kids.
RJ: Yeah
KS: How old?
RJ: 19 and 17.
KS: Ok, so what are they doing?
RJ: Well, my daughters in college.
KS: Ok
RJ: And my son is finishing up 12th grade. He’s over there at Grambling High School. Grambling has a pretty good girl’s team. Did you ever hear about that?
KS: No, where is that?
RJ: it is on the south side of Birmingham. And I would think that you would talk to ________. They should have a reality show, you know. They need someone to promote them probably, you know, but uh, they won like four state championships like back to back to back. Laughing. That is pretty good. Yeah.
KS: LaShundra, do you have children?
MJ: Uh, huh. No. No can do.
KS: I got a dog.
All laughing
RJ: You hadn’t talked with her much have you? She….
MJ: I have been talking
RJ: She’s a very spiritual girl. Yeah, she used to, uh, baby-sit the pastor’s kids or you..
MJ: They’re my second family.
RJ: Yeah, her second family. Now, a lot of times she would leave practice and go on straight to church. I mean. Ahh, she just has a dear place in my heart, seriously. She does.
KS: I did read in your book how really your faith maintained you. And I don’t know in this situation a faith, your faith can not maintain. I have grown up in the church. My brother is a youth pastor, my brother-in-law is a youth pastor. My parents are on the board of their church in Ohio. I mean, I have grown up. And I read this and I say I don’t know how a man of faith. A man that doesn’t have faith could have done this. I don’t think, I don’t think you could.
RJ: You have to believe in a higher being, no doubt about that. You have to.
KS: What church do you attend?
RJ: St. Martin Missionary, a small church up in, in Tisdale.
KS: Ok, ok
RJ: That is not too far from UAB, south side.
KS: LaShundra, where do you attend?
MJ: A church that is right up the street.
KS: Ok, ok so a local church. Is it very large. No, it’s small.
MJ: But big in heart.
KS: Usually the small ones are aren’t they?
KS: Have you all heard of… Well, I should even tell you this. My, my husband and I have just moved to Texas. We have been in Texas about four months. My, I was at a place in my schooling where I just need to write my project, my dissertation. So I can do it from wherever. So, my husband is in energy and so we went to Houston…
RJ: Yeah, yeah, it is big.
KS: Do you know Lakewood Church and Joel Osteen?
RJ: Yeah, yeah.
KS: He is my neighbor. No joke. My apartment complex is like from here to that building to Lakewood Church.
RJ: Do they draw from over the entire state or what?
KS: Yeah, yeah, like they…it is the biggest church in the US. It is…..They bus people in on the weekend to come and attend. It is huge.
RJ: They bus people in?
KS: Yeah, like charter buses. People like charter buses to bring groups in. There…
RJ: It is hot right now. I tell you it is and his wife just wrote a book.
KS: Yeah, Victoria did. We don’t attend. R, uh, We had some family in last weekend that wanted to attend so we did. But we don’t attend there regularly
RJ: Oh, ok
KS: because it is so large.
RJ: Huge
KS: I mean it is just
RJ: Too big.
KS: Yeah, there are twenty thousand people in a service. That’s. That’s just. Although the praise and worship is pretty impressive when there’s that many people singing.
RJ: ____________ (21:50) and she just loves Joel Osteen.
KS: Yup, he is pretty popular. We attend a bit smaller church than that.
RJ: Do you all have kids or no time for that?
MJ: She has a dog.
RJ: Laughing. She told me that.
KS: I have a dog. That is all that matters. He is the child though, let me tell you. He likes his mom.
RJ: And a lefty at that.
KS: I know. Look at that. I shot it right handed though.
RJ: Laughing. You did.
KS: I did. I shot it right handed
RJ: Amadextrious.
KS: I was. My favorite was though two dribbles to the left and pop it. That was my favorite. I liked to dribble off my left but I always shot it right.
KS: Do you have any speaking engagements lined up now?
RJ: I have one outside, um, Alexandria. Isn’t that a suburb of DC?
KS: Yes, it is in West Virginia.
RJ: West Virginia. And the AAUW. I do a lot with them. The American Association of university women.
MJ: ____________ (23:15)
RJ: Yeah, um, yeah. Them and the National Women’s Law Center have been real supportive. Yeah, but uh, yeah, you kind of ____________ (23:30) Yeah, it’s it’s starting to get out a little bit and that’s kinda good. Cause I tell you, this last one I went to in Dallas, Texas, I think I told you. I was so tired. I mean, I worked all day, caught a flight, and I got home late that night. Had a flight that morning and the ________ (23:55) wanted me to be at the luncheon. I was the keynote that evening. I skipped the lunch. I just wanted to crash. It felt good.
KS: What was that event?
RJ: It was the AAUW Texas Convention. You know one of their fundraisers, you know. That is, you know, a feeling in itself. When you go somewhere and they say you ought to have sixty or seventy and you go in and you have over a hundred or a hundred and twenty. But, uh, I am glad that is done now. Laughing.
KS: I bet your wife is too.
RJ: Oh man, I don’t know.
KS: You know what, what is lawsuit like for someone like that? for, for your wife.
RJ: It is tough on a family
KS: I bet
RJ: You know, I tried to shelter, but you just can’t do it. You can’t do it. Uh, Like I tried to shelter the players, that’s another one. But you can’t do it. They want to be a part of it. You know, not everybody complimentary. Some compliment you and you got some other people and uh, they are trouble makers, rebel rousers, agitators. So, uh, but that’s the reality. The chance you take.
KS: Where does your daughter go to college?
RJ: A&M. Alabama A&M. She was very lucky. A man up there offered her a scholarship. Of course she is a business minor, but she is majoring in retail merchandising.
KS: Yes,
RJ: Of course, I didn’t like that. I mean, what kinda job you gonna get? She will be buying for department stores.
KS: Uh, huh. That is what it is. My sister-in-law. That is my major. I have a good friend I went to college with at Miami that is a buyer for Dick’s sporting goods.
RJ: Right.
KS: Do you have those in Alabama?
RJ: Ok, yeah
KS: So, she just started out at Dick’s and moved her way up and now buys their Nike. So, I mean…
RJ: That is encouraging. That is my baby… You tell kids all their life do something you enjoy. You know, Carter, your parents said the same thing. Do something you enjoy. You know, you don’t what to hit the clock and hate to go to work. Even I love what I do. I got the grey hair to prove and the receding hair line to prove but uh. Laughing.
MJ: You are getting old.
RJ: Carter, that ain’t funny. That ain’t funny.
KS: She just said you’re getting old.
RJ: Just because you ain’t balling doesn’t mean you still can’t run some laps.
MJ: ______________ (27:10)
RJ: Laughing. You know, when she told me retail merchandising, I didn’t want to hear anything about it.
KS: You were thinking, how’s that going to pay the bills? That’s what you were thinking.
RJ: Yeah. She’s probably going to have to leave Birmingham, I am thinking. But uh, go where the opportunities are. Yeah, where they are. My son. He’s changed his mind. His name is Nick. And Nick got a lot of time. He was around the girls a lot. In fact one game, we were playing right here at South Park in a tournament.
MJ: I don’t remember that.
RJ: You don’t remember that? Nick said, Dad, I haven’t seen the girls play this year. I said, you oughta go. And he actually did go on and everything. Mind you, he’s an athlete
himself now. I really count on that what you do, kids watch you. Kids really watch you. They don’t really hear what you say now. They watch and see what you do. Yeah, a lot of parents don’t understand that. Now, I talk to them.
KS: Now, Lashundra, do you live with your family? Do you live with your family?
MJ: Uh, huh
KS: Cause, I phoned earlier to your alls place, and I think I talked to your momma maybe.
RJ: Now, I was saying, he, uh, wanted to major in journalism, ________ (29:10) but he, uh, changed now.
KS: What’s he want to do?
RJ: Because journalism required deadline. He didn’t like that. That boy move like a snail so. So, anyway, he changed now to, uh. He say he either wants to do engineering. He likes math and science. Or, uh, computer science. He likes computers. I said, well, you got time, you know. So, we’ll see. We’ll see.
KS: My husband’s undergraduate degree is in computers.
RJ: In computer science? He like working? He like hangin around
KS: Although he gets annoyed because anyone that has computer problems call him.
RJ: Call him
RJ: Nice place. This my first time here.
MJ: Me too
KS: It’s new isn’t it? It’s gotta be new
Discussion with waiter about lunch.
RJ: So, you all live in Texas now. Do you commute back and forth.
KS: I am at a point where I do not have to take, I have really maxed out all the classes I can take. So, I just have to write my project. So, it is the thing where I submit stuff to my advisor online. She and I communicate over email. That is all it is really. I will have to go back in to defend when I am ready in May. But really I am just at that point where I can write. My advisor is very supportive. And she actually, she did the same thing when she was doing her Ph.D. She’s like, we can make it work, which is awesome. My husband had this job offer and debated and I went to her and said can we make this work. And she said yes. So that is why we went to Texas. It was a hard move. Our..both of our families are in Ohio so we are far from home.
RJ: What part of Texas are you all in?
KS: Houston
RJ: Houston, ok. Is that on the east part?
KS: Yeah, and it’s warm. I mean, it’s warm. I think like it can be here in the summer, but it is like 60s right now.
RJ: Ok, Now I know in Dallas they were telling me that a lot of people are lured from LA to Dallas because of the price of the houses you can get in Dallas. Nice homes.
KS: You know what, that is the way it is in Houston. The cost of living is not bad. You can get very nice homes for...just....
RJ: Uh huh. That’s important.
KS: That is important.
RJ: You know, when I go somewhere I talk to the cab driver. They know.
KS: They do.
RJ: ____________ (33:10)
KS: You know, something else Keeyon and I did yesterday, we went to the Civil Rights Institute. And saw the 16th Street Baptist Church. That was fun.
RJ: Ok, ok.
KS: The Civil Rights Institute was undergoing some construction. Some renovations. But we did get to go part of it. But part of it is under construction. That was very, very interesting.
RJ: We have people come from everywhere, and from all walks of life and from all races. Every time I am down there or every time I pass by there, there is a charter bus pulled up outside. So, there are a lot of mixed perceptions when it was first being built. How long has it been now?
MJ: _________________ (33:48)
RJ: Laughing. It has been over fifteen years I think.
KS: I did not realize how tumultuous Birmingham’s history was…
RJ: Birmingham had a big part in a lot of stuff…a lot of stuff. They were talking about televising Obama’s inauguration on a big screen down there. So that’s going to be really nice.
KS: That is going to be interesting as well.
RJ: Hotbed. Hotbed for civil rights. And one day we might say gender rights. We might say age discrimination. Who knows. You here, Carter
MJ: What bring you to Birmingham?
KS: Well, really just the lawsuit itself. Just trying to find out…because.. since it is the most recent one to go through the Supreme Court. And the history of it is so fresh. You know. I mean not others before that are not as fresh in the minds of the community and that is why I came wanting to find out, you know, the community aspect of it because it is fresh. So, that brings me to Birmingham.
MJ: First hand
KS: First hand. You are exactly right.
KS: You know, you said something earlier about sheltering the girls. Do you think that is the reason why Keeyon had no idea… because when she was playing. She graduated in ’02. Some things had to have been doing on. Did you not tell the girls?
RJ: I tried not to involve the kids in adult stuff. That’s the first thing. Some people don’t care. But uh, I am a long way from perfect. Long way. But I tried to talk the talk and walk the walk and I tried to keep in mind that. Well, I think even Stephanie said. You didn’t talk to Stephanie, did you?
KS: I have not.
RJ: Fine. You might want to talk to her. Talk to Stephanie. Well, anyway, Stephanie said that, uh, her time… this was before LaShundra. That, uh, they had gone on into the principals on their own to works some things out and then I didn’t know of that. So, I am
sure, uhh, they didn’t know the full. All they know is that this is what it is. And, that is all you know. Keeyon, uh, she was, uh, some kid. Not the most talented girl but had a heart of gold. You know Keeyon? Now, ___________ a 3-point shooter specialty.
KS: She stopped and popped it?
RJ: She could light ‘em up. That’s right. That’s right. Now, you when you play defense you got play one on one with her.
KS: You gotta play defense on her?
RJ: Yeah, that’s right. Play uptight. Don’t give her no room.
KS: We were talking earlier about how I ran in college and then after college I got together with a group of girls that wanted to play in a league. So, I said I’d play. I played my first game and could not get out of bed the next day. It was…I had not done…You know when you run..I was a distance runner. When you run distance you run in a straight line. You don’t do that change of motion.
RJ: Change of motion, up and down.
KS: Yeah, I forgot what it required. Oh buddy. I was hurting. I mean, I hadn’t been out of college that long. I wasn’t in poor shape, I just hadn’t…
RJ: I used to play a little faculty game we had. I tore my knee. I had strained calf and a sprained knee. _____________. Well, anyway, man. So, I know what you are talking about. Looking older. So, now they ask me to play in the game, I’ll referee.
KS: Yeah
RJ: I’ll referee. I’ll take three steps past half court and I’ll blow the whistle.
KS: That’s the easiest.
RJ: Half court and blow the whistle.
KS: Now I wanted to ask, what are the expectations for females, female athletes at…
What were the expectations in high school? Were you expected to be good? Were you expected to win? What do you think? I mean, what was expected of…
MJ: My whole time I expected that..for us to win because we practiced so hard and once we come together as a team, everyone playing their part it should be, it should get our best result.
KS: Do you think the community expected similar things….what I am trying to get at is are the expectations in this community different for boys and girls? Uh…….
MJ: I think most people see young people as failures They this and they that. All they care about money, money, money. You know, but we have a heart, we have a _____, we have goals that we’d like to reach in all
KS: I know in my, my community growing up sports was a huge deal. Small town so that wasn’t much else but sports but the girls team that I played on was nearly as good as the boy’s team if not better. So our expectations were we were to win. It was one of those that it wasn’t an expectation that we were just going to come in and play but our community expected us to come in and win and perform and do well. And so, they had that same expectation for boys as well.
RJ: That is the way it should be.
KS: I know. I agree. I completely agree. But I know for example of other teams that I participated on that had no expectations. We were expected to come out and just play. You know, I mean,
RJ: School teams?
KS: Yeah, you know, just come out and play. But I can’t ever recall that being that way for like the football team. No one says the football team is just coming out to play.
RJ: Football pretty big in Ohio?
KS: Yeah, we have that team called the Ohio State Buckeyes. Laughing.
RJ: Yeah, I know about the Buckeyes. I thought I might get in a little trouble mentioning that name in Bowling Green. Yeah, yeah. I didn’t know Ohio
KS: It is. It is. High school football is probably the same as it is. I am not sure it is as big as in Texas and Alabama, but it is probably the biggest in the state.
RJ: _____ revenue. People pack it. Yeah. ________ Football is supreme. I think it actually is ______ depends on who is at the helm in terms of coaching, athletic administration. Uhhhh, there is time when I felt like it wasn’t more expected to win. But then I know the kids expectations. They wanted to win and I wanted to win. So, I guess it depends upon who is calling the shots at that time, I think. Yeah, I really do. You know, __________ on the south side, they’re expected to win. The coach, and the administration are all supporting it and as a result they win. And here we have a the parents support, we have the kids, we have the coaches, but I don’t think we have the top tier...their support. And it helps __________ (41:30)
KS: You think they don’t …the top tier doesn’t support because they don’t expect athletics to bring…..
RJ: I’m talking the city administration downtown. That’s what I am talking about. I don’t think they realize how big a role that athletics play in young person’s development….and…and…shaping them. You young ladies, had a chance, in my opinion____________ at least two state championships. Do you imagine what that does to your, your confidence? The rest of your life your knowing, we were the state champs 2001 or 2005.
Talking with server
KS: Do you…I, I, I completely agree
RJ: There is a point of it and you have that within your own education and academia. Uh, now I was teaching third grade, I had to justify how important it was. It was something you are going to need the rest of your life
KS: Is that how you felt that basketball was that important to you, that it did
MJ: It was important to me more than what, besides God and friend. Everyone talking to me like what you want to do in life, I was like play basketball. That the first thing
KS: That was it.
MJ: In my heart and
RJ: She was good at it now..
KS: Were there other girls that felt the same way?
MJ: They probably did but they don’t probably show it as much. I mean, dedication, commitment.
KS: So, they wouldn’t show it in their commitment? They would say it, but not show it.
RJ: That’s a definite
Noise from boxing food. MJ is text messaging.
MJ: I’ve been doing presentations and ________
RJ: I’d go back myself but I’d
KS: Are you thinking about it?
RJ: Yeah, but I did but not with two about to be in college. No
MJ: You got two on your own.
RJ: Yeah, uh, I, I don’t want a doctorate per se. I imagine, I’d want to do the EES, the
educational specialist or a JD. I’d want get a JD. I have become fascinated
MJ: What’s a JD
KS: A law degree
RJ: A law degree, yeah.
MJ: I actually thought about that. I never figured that.
RJ: It’s still a doctorate, uh, but
KS: yeah, in law.
RJ: It helps on the pay scale too. You don’t call ‘em doc. There is a lady that worked
with me ___________ and she got her’s and she told us adios. She’s gone. You
know, so it is flexible degree. I tried to tell my daughter work with something flexible.
You can do so much with a business degree. You can do so much with a law degree.
KS: Any more there are a number of programs that will even do a law degree
specifically for sport, which is kind of interesting. Um, we talked about this before dinner
came but maybe I am getting at a hotbed issue but if this lawsuit had come through a
school or if this issue had been brought to the board of such a school as Hoover would it
have gone to this lengths? I mean….

MJ: I think they probably would have paid ‘em off. Give ‘em some hush money.
KS: I never thought of that.
RJ: I concur. I concur.
MJ: You know, most people don’t like to, um, mess up their reputation.
KS: Ok,
RJ: I think a cooler head would have prevailed, maybe. Somewhere. somewhere
KS: and said ok
MJ: You not doing this for __________, it’s other people coming up behind you. Look
out for other people.
KS: And this may be a dumb question, but why did Ensley fight this. Why did the
Birmingham school system fight this.
RJ: Laughing. I have no idea.
KS: I look at that and I just say dumb. How dumb. But why do you think they fought?
RJ: I don’t know.
MJ: I think they thought he was going back down but he didn’t.
RJ: Might have been. I never thought of it that way.
KS: Calling his bluff?
RJ: A little bit of ego. A little bit of bravado. Yeah, you know. Make an example out of
ya. That was something even until today. Make an example out of ya. You better have a
strong constitution. You better do it and believe in a high being. I really believe that.
.........Nice little pen I got from…nice pen they gave me at the AAUW. Now your pen.
MJ: Thank you.
KS: Look at that. That will help you write your papers.
RJ: I used that one a lot. I have a couple more in the car.
KS: Tell me this, do you have in this in one way would be awesome, do you have any girls you think would want to chat about this? Um, Brittany Fisher didn’t want to me with me but I did email her some stuff. Any girls you think, think would want to chat about it. Really I just want to try to get as many voices. That is my goal. You said Stephanie Nelson and I had read where she had made some complaints. Do you know where she can be contacted?
RJ: I can check if I have numbers at home.
KS: Ok.
MJ: You can try Schadell Lewis.
KS: Also, Keeyon said Angie Todd.
RJ: I don’t have her number.
KS: I sent her a note on facebook.
RJ: You did
KS: Yeah, there’s my facebook coming in. I thought how else am I going to talk to…you know…
RJ: Young people. Obama did it. He, uh,
KS: Went to facebook.
RJ: Went the internet route. Those people are connected. Technologically savvy. I don’t count myself in the young group now. I’m 43.
KS: Wow! Getting up there.
RJ: She enjoyed that one. She enjoyed that one.
KS: Anyone else you can think of in terms of girls?
RJ: Many of them are scattered here and there. One girl is in California. I hadn’t talked to her in a while and she called me during this.
MJ: Who?
RJ: Shanita Lou, Shanita Green. Nasty. We called her nasty cause she was mean on that court.
MJ:
RJ: Yeah, the one who reminded me of Carter.
KS: Where did she go play? She went and played, um.
RJ: She played at a JUCO in California but I lost contact with her….. she went to California.
KS: Who went and played at Tuskegee? Lottie…..
RJ: Lottie Moon went to Tuskegee. Uh, I don’t know. Pretty rough on her. College was pretty rough on her. Tremendous talent. Great ability. Put it all on the court. Uhhh, Shanita Green was my first on my first team over there in 99. Outstanding leader.
KS: So she was, she was on the old team. She was from the old team.
RJ: Yeah, and I always tell LaShundra, you remind me of Shanita Green when no one wanted to run Shanita said let’s go. I am running. And they look and then they start running. So you know you those kinds of kids. I don’t understand why kids have so called ______. But I see now, we were knuckle heads and these kids who made the job
lot easier than we did. I see now. Yeah….yeah…she made my job a lot easier.
LaShundra, day in and day out. I am glad I got a chance to chat with you.
KS: Do you all mind if I, um, if I go back through this, if I have other things that I think
of that I can email you
RJ: Yeah, call me.
KS: call or email?
RJ: email or call.
KS: Is that ok?
RJ: Whatever works
KS: Ok, cause that would be fabulous. I would love that. I am sure when I get home I
think I should have asked them that. We should have talked about that. That’s always
how it happens.

Chit chat……. Tipping the server.
KS: Anything else you can think of?
MJ: No, it probably come to mind later but no, not right now.
KS: Cause my goal, I really want to know what it is like for you to and know there are
discrepancies and yet.
MJ: I try not to look at the negative. You know, the things I go through on a daily basis,
I turn to basketball to fill this hole this void in my life. You know playing basketball, I
mean, just give me something. I had something to, you know, do. We just get out of
school get my sister and go straight to the park. I’m like yeah, I got homework. Still
going straight to the park. Then, when light go down and time for us to go to bed, that’s
when we did our homework. That came first. Then our homework. I mean, playing
basketball came first and I was like I could do the homework later.
KS: I heard another girl I saw this week, she was
talking about and she was on the dance
team at Ensley. And she talked about they did fundraisers too and she said we knew it
wasn’t right but that is what we needed to do in order to play. So, we were going to do
whatever we needed to do in order play. You probably can speak similarly to that.
Whatever it was going to take.
MJ: That’s why if you’re a man, it’s easier.
KS: Yeah, so it didn’t matter. Whatever you were going to do. Interesting, k. So, you
think you’ll stay in the area.
MJ: This area?
KS: Yeah.
MJ: Most likely. It depends on what God…
KC: Where He takes ya? Yeah, I never thought I would be in Texas. I swear. Never
thought I’d be a Houston Texan.
RJ: She told me that….She has a heart of gold. She has a heart of gold. I get to talking.
I forgot your major one more time.
MJ: criminal justice.
RJ: Criminal justice.
MJ: But now I am thinking about real estate.
RJ: Its your prerogative. It’s your prerogative.
MJ: Not just doing it as making money wise, just building up run-down houses to fix em up. If I was to that, I wouldn’t want to try to make no body pay $500/$600 a month knowing you can’t make that payment. I would try to work with you. I would ask $200 a month. __________. Because of the stuff I been through, I won’t try to make it harder on nobody knowing they can’t.

RJ: ______ You just don’t want to try to make a dollar. I wouldn’t be very good at business. I wouldn’t be very good in business cause I have a heart. I have a conscience. Serious. Some of the business I have dealt with, not all. I wouldn’t say all across the board there are some places that are just….

MJ: I had told my sister one time once I get __________ I going to buy this big ol place like, like an apartment complex. ________________________________ (55:50) Chit chat about living on campus in college. Communicating after this meeting.

KS: And also, I do want you to know that I will not include any names. I will do pseudonyms. I will make up a fake name for all of you so that your confidence….it is confidential. I will do that. And the information right now only goes between my advisor and I. That is only where it goes. So, I wanted people to know. I thought that was especially important for school administrators. That they knew I wasn’t...I am not attempting to dig up dirt. I am really attempting to give voice to what is going on. So RJ: I am thinking they might like that one. I mean, we’re ok but that is fine. It is your project.

KS: So, um, I think it is probably. I think it is fair to people that you can be honest and not having that hang over your head.

RJ: I talk about ‘em whenever I go. LaShundra Carter. That’s why I asked her to do my forward. It is being just to the…. And uh, they are dear to me. LaShundra Carter, Keeyon Turner. The list goes on. Stephanie. Shanita Green. Angie Todd. Angie called me and said she was coming to town. What is her newest number? I don’t know. People change numbers.

Chit chat of the newest phones.

KS: If you all think of things that pop into your head, do not be afraid to shoot me a call and I will shoot you all emails so that you have my email address. Don’t be afraid to shoot me an email.

Exchange of contact information.

RJ: Are you going to be teaching in Texas?

KS: Umm, I actually just applied for a job at Texas A&M.

RJ: To be an Aggie?

KS: Yeah, to be an Aggie. I don’t know.

RJ: Is that the home of the 12th man?

KS: It is. The home of the 12th man.

Chatter.…

KS: Are you doing any conferences?

RJ: I had one fall through in December so right now I am just enjoying. I mean I love speaking but it has taken a tremendous toll. But I am glad to hear but when I heard and I remember the name I was glad I could redeem myself.
KS: Well when LaShundra was like call Coach Jackson and I was like ok. Laughing. She was so funny. She was like he’ll do it. She has great confidence in you.

RJ: Oh man, they… she made me a better coach. I heard Camp Brown say one time..this is a legendary guy…something about Rah-rah Sky. He said, this guy made me a whole lot better…made me a better coach then I ever was. Kids like that make you better. Teach you that there is something more important than just basketball…put a face on it. So, stay focused.

Setting up meetings……
Appendix F: James Cole Interview Transcript

11/24/08 Cole Interview
KEY: JC = James Cole
      KS = Author

JC: The way I feel about this issue is, #1, I am all for, you know, the Title IX is something that I do not have an issue with. I have supported it 100%. I am the district’s Title IX coordinator. So, I am interested in our young ladies and for that, reference to that case and all situations like that having their fair share, a fair shake and giving equal opportunities as do male students. So, I am all with that. But what happened in that case, as I remember, um, I did, uh, review some of the claims of Roderick Jackson and I didn’t find that those claims were justifiable and that’s that’s from my visiting with him and asking him, um, to do certain things, uh, that would, uh, that would have eliminated some of the claims he had, he had brought forth. Because of you look at, uh, he said that many times he wasn’t afforded to practice in the same facility as the boys. Well, I was a part of the team that worked out the practice schedule that gave him an equal opportunity to practice in the, in the competition gym the boys practiced in and they worked out where the boys would practice where he practiced, which was in another gym. Uh, but Mr. Jackson failed to take advantage of that and I thought that that was in a way, kind of undermining what we were trying to do. And maybe, I am not trying to say that what he did was, was very well thought out, but I do think that there was some motives there because of the case that he had pending. And I don’t want to maybe speak to that issue as much as because that is my opinion. The court has ruled. Well, the court has ruled and I don’t want to speak to that issue. I may do better by asking you questions because I felt from the start that the claim was not a legitimate claim. I felt that way, even though I supported the fact that, you know, young ladies deserve the same opportunities, as, as, um, young men. When he claimed that there was some issues about concessions, that the girls did not have proper access to the concessions and that was because of some reasons that was set, uh, by, by the school where it says that if you want to do concessions you have to buy the products to do the concessions with it. So, if you fail to buy the products, then you don’t do the concessions. But when you say in your case that I wasn’t given
opportunity to do concessions well it was only because you didn’t buy the products to go ahead and do the concessions. Now, when you say to, to your attorney, well, you know, I wasn’t afforded the same opportunity as the male students because I didn’t get concessions, that sounds bad on the surface, but when you look into it, it’s all together different. You know, I don’t know, I probably would do better by just focusing on some of the questions that you have that would kind of shed some light on our position. Cause I really still, he’s still, there are some challenges going on now in reference to that case. And I think they are unwarranted because, you know, I don’t want to rehash the case, but he, he, Mr. Jackson, I talk to him all the time. He has a son that participates on a team here in Birmingham and I talk to him sometime about that. But, uh, you know, he brings about some issues that I think are irrelevant because he says that the girls were not afforded the same uniforms as the boys. Now, like I said on the surface that sounds bad, but I was, I was, uh, sitting in the…I brought the boys coach and Roderick Jackson out here to order uniforms. We sat at the table together. The boys ordered theirs and the girls ordered theirs. No restrictions on what quality, you know….on what fabric. Mr. Jackson, you order what you want to order. Mr., Mr., the other coach you order what you want to order. He placed the order and the boys coach placed their order. So, I think he claimed there were some differences on that and I know there weren’t any differences. Cause I was there when he ordered…they were ordering. And they order new uniforms every season at the same time. So, you know, there’s a lot of issues. What I am saying might be, I don’t know. I don’t know how you’re going to present this but…
KS: That there is another side to the story.
JC: There is another side to the story and uh, and uh so when he claimed that the boys received new uniforms and the girls didn’t and there again on the surface that sounds bad, if it actually happened. But it didn’t happen that way because I have the orders to support and the attorneys have it too. I don’t know, some issues that were raised seemed to be really very important and our attorneys maybe didn’t have a chance to dispute them or something. I don’t know what or why. But, I, uh, I have some issues with that case. I really do. Transportation, we offer transportation to all of our students whether they are male or female. They have a right, to uh, to uh, to order a bus and if the school does not have the funds to provide transportation than the district would come in and pay for transportation. So, that should not have been an issue. Uh I don’t know what else. I think there was one other claim he had to, uh, I can’t remember all of them. But that was just some on the surface. Transportation may have been one.
KS: Yeah, it was.
JC: Uh, I don’t know were pregame…were pregame meals one?
KS: Those came in later.
JC: Later, ok.
KS: It is in the issue of contempt of court at this point.
JC: ok, ok. Well, we did not…you know, a lot of times, I think one of the issues came up about eligibility paperwork. He turned in his eligibility paperwork and we require all of our coaches to have an eligibility folder and in that folder, it lists all of their certain athletes and they have to have certain information for each student. And he turned in his
folder and he did not have all the information and as a result, uh, those particular students
that lacked information were unable to play.
KS: Right, they are ineligible.
JC: Right, they are ineligible until he got it. So, he claimed that we...that was something
that we were treating him different than the boys and that was not true. We have the
same standard for all athletes and we have a timeline where when that information is due
in. If you fail to meet the timeline then your kids are not eligible until you get it. And so
that was a major concern of his. He thought we were making a difference there and I
know that wasn’t the case because I helped the eligibility coordinator do that, uh, check
that work. So that was something. And I don’t know if, um, whether that was...those
little issues I just raised were the major concerns of the court but, you know, they ruled
and I guess, you know, that’s what we have to go by. But I do know that there is another
side and he is claiming now, that, uh, you know, he was not, when he turned in a
resignation for girls basketball coach, uh, he did, uh, give it to me. I turned it in to the
superintendent. The superintendent gave it to our attorneys. And as far as I was
concerned, a resignation is a resignation. Now the board has to act on it. So the board
had not acted on it. So, he rescinded it. Now, in the time he turned in his resignation,
basketball season was going on. So, the principal had to have somebody to coach the
team. So, she got somebody else to coach it. So, now he rescinds his resignation. So,
now I guess. So, what he wanted, I guess, in so many words to get his job back. So, but
the season was half over.
KS: And they didn’t give him his job back.
JC: No. Well, he wasn’t given it back because no one knew he was supposed to have it
back in my opinion. You know, we were not told by the attorneys that he should have
had his job back. He got paid for the work he had done. He did not get paid for the
whole season cause we couldn’t pay two coaches for doing the same job. So, he
resigned. Of course, he rescinded it. It was a strange situation to be in. Now he claimed,
as of today, he is claiming that he should have been coaching. So, now since I wasn’t
given my job back, I want to be paid for the time that I wasn’t coaching. So he wants the
rest of his supplement I assume. And maybe I don’t know, what I should be talking
about that. Cause I think that is ongoing litigation, I believe, but you know. When are
you going to do your dissertation?
KS: It will be done by June.
JC: By June? Well, it may be settled by then.
KS: Maybe. That is something I will look in to.
JC: Yeah, it may be settled by then. Yeah, so, that is a tough situation. We have...They
are working on a settlement. I don’t think I can comment on that. But they are working
on a settlement to, to, finally bring closure to this issue. So, I guess now if something
comes up in the very near future, he could bring those issues up too. I guess it never
closes as far as I know.
KS: Probably not technically.
JC: Yeah, if, if there is retaliation or something claimed that somebody is retaliating
because...I don’t think any of our people would do that. In fact, I know no one would do
that. But, uh, because, you know, we, you know, nothing is held against the person for
speaking up for the rights of our ladies. But I don’t think it was as bad as it was made to seem, and I don’t think it was bad enough to go to the Supreme Court. I really don’t. Now, he also claimed that the boy’s, uh, had to go to a locker room and his girls changed clothes in the restroom. Now, that choice was his. Not….. do you mind?
KS: No, go ahead…
JC: takes phone call.
File 002
JC: Sorry about that…
KS: No, no, no. That is fine.
JC: But go on. Maybe I will just give you an overview of what my feelings were, which don’t matter to a hill of beans. But you may want to focus on some of the interests you have.
KS: I do want to know. What exactly is your role?
JC: My, my job is the director of athletics, director of physical education and athletics. My role as athletic director is to oversee our athletic program and assist our coaches in terms of professional development, and uh, compliance with the eligibility state rules and the city rules on eligibility. And, uh, of course we get involved to some degree on, uh, hiring of coaches and also uh, recommendations for termination from coaching only. Uh, we can’t terminate from teaching positions, but from coaching positions. So, it takes in a lot, but that gives you a little small, you know, picture.
KS: How long have you been doing this?
JC: In this position, eight, uh, nine years.
KS: Nine years. So, you were in this position the entire time the lawsuit was going on.
JC: Uh, yeah. Basically. Basically. But like I said, I, uh, I had a little bit of information firsthand about what was going on because some of the things, uh, Jackson complained about we addressed and, uh, resolved. But it remained an issue in his mind. You know, uh, you know, because, like I say, stuff sounds bad. But, let’s see if it really is the way you say it is. And that was never investigated to my satisfaction. It was in the hands of the attorney. So, I don’t know. I just, just, going to try to comply with whatever the decision was and if we have to make changes we’ll do it.
KS: Tell me about high school sports in this community. What is, what is the climate like? What is high school sports like in this community?
JC: Well, you know, there is a lot of interest. Of course, we just finished football season. Football in this area is very big. Uh, in the metropolitan area of the city, we have 7 high schools, 6 of our high schools participate in football. Uh, we have not done well this year. Uh, we’ve had, of the 6 schools, we made 4 coaching changes prior to football season. And as you know, being around sport, it takes a little time to get your program in and start developing and so four of our coaches, they were new. And they didn’t do very well. In fact, they had losing seasons. Starting off the year, football is the first sport and volleyball. We didn’t do well and that almost set the tone for the condition of our athletic department. In fact, we are trying now to assess what we need to do to improve our athletic program, getting our coaches input, and uh, trying, we are in the midst of a big, uh, building project for the whole district as far as facilities are concerned. We are trying to identify needs and trying come up with a plan to improve facilities and our programs at
the same time. But, we gotta give these coaches an opportunity to develop their program. And I think once, they, they, they have had maybe a couple of years under their belt than we might see a little progress in that regards. But right now, football we haven’t done real well. Uh, basketball, we have uh, that is what sport we are in now. We just started. Basketball teams are performing very well. As you know, we have one of our teams, they won 5 straight state championships for girls. That is Ramsey High School. And they didn’t win it last year, but prior to that they had won five times consecutively. And, uh, and then we have had several teams participate in the state tournament and the final four for basketball. Uh, which is probably our better sport as far as on a state level and some of them on a national level.

KS: Football gets the biggest following?

JC: Football gets the biggest following. Uh, and, and, and the biggest complaints when you don’t do well. So, so, that is where we are. As far as the other sports are concerned, we are trying to progress along the other sports in baseball and softball. And I know that is not your interest right now, but we find it hard to do. You know, because in my estimation, it is very hard to ask for, uh, a coach to do a good job and hold him accountable when he doesn’t have the facilities. When he doesn’t have what he need to do a good job that you want him to do. So, we are asking our schools to perform in baseball and softball where they don’t even have a practice field to practice on. So, I mean, you know, it just seem, it is just totally backwards, you know. We have got to give them the facilities first and then let’s put these demands on them. Give them everything they need to be successful and now hold them accountable. But, but, what we have done in the past, we have no track, but we want you to participate at the state track level, you know, you know, for a championship. You have no baseball field, but we want you to be first or second in baseball. You have no softball field, but the same thing. You know, our expectations are that you, you know. SO, that does not go along with being successful as far as I am concerned. And we are trying now to change all of that with this facility building project that we have going. So, we, we, we are advocating building and constructing all of the facilities needed at all of our schools to be successful. We have, we have kids participating in football at some of our middle schools and they don’t even have a practice field. So, how can you, you know, I mean, and we’ve got trying to participate in basketball and have a team, boys and girls, on the middle school level and you go in the gymnasium and there are only two basketball goals. I mean, boys on one end and girls on the other. Now, that seems to be dark ages to me, because you know, you go into a gym and you need six goals. You know. That is where most gyms are at. Most of ours are inadequate. And we are trying to improve that now. And it is, uh, uh, tough. Our coaches are doing pretty good with a little bit. Probably a lot better than, than, some coaches do with a lot. But, uh, we get criticized for it. I think our people, that are in administration down town, don’t look at that. They look at the end result. Who is in the championship? Who is out there participating for a state championship? You know, it is hard to do when you don’t have the proper facilities. I am not making any excuses but we have got to improve that.

KS: So, then how are you…how are your facilities funded? How do your athletics get funded?
JC: To be honest with you, there is no money for athletics coming directly from our board of education. If we get money, it is derived from, uh, donations. A lot of our schools receive donations from corporate entities. Individually, the athletic department, this department, do not receive any funding. Well, some funding we receive from the local politicians like the legislators, city hall. We have solicited funds from them and what we use those funds for is, uh, professional development. You know, trying to bring in coaches that will teach our coaches, you know, some things about their sport. But, uh, as far as having an active budget, we don’t have that and that is part of our problem as well. We cannot, you know, function effectively if we don’t have the funds necessary to function. I mean, you got ongoing programs, and you know, you want to have professional development in every sport but you don’t have any money so what, you know. Now fortunately, there is one, there is an organization that came in about 2001, there interest was, let’s, let’s try to give our kids in the city of Birmingham some things they probably couldn’t get on their own. This organization is called the Birmingham Athletic Partnership. It is headed up by a person who wants to help inner city kids. He goes, what he has done, he’s got 10 corporations to donate $25,000 for 4 years. So, uh, 10 corporations…
KS: So, That is million dollars over 4 years.
JC: That is a million dollars over 4 years. So, what is happening there, they direct those funds. They determine what they use them for. Our schools will do, uh, do uh, a request if they want certain items and they will have to ok it. But my interest in that organization is, let’s do some things our students really cannot get. Uh, you know, they will buy things like uniforms. They will buy if you need balls or bats or things like that. They will purchase that. But I am not a proponent of that. I think our schools will do that on their own. I want them to do things like a recruiting program that costs maybe $1500 per student. Where a kid and parents can go in and uh, uh, put in their information and goes all over the country. All over to the colleges. It includes pictures and stuff like that. That is stuff we can’t do, but they can do that. We are still working on that. But they help a lot and we got to change the focus of that group. But as far as funding is concerned, we do not have very much funding directly from school board. I guess we are just expected to operate. We do have a budget, but in our budget, it contains things like we have to maintain all of our equipment as far as our lawn mowers and tractors and fertilizers and seeds. We maintain all of the athletic facilities all over the city. And, uh, of course we get a little money for that, but as far as other programs of, uh, professional development, we don’t get anything.
KS: Ok, ok. So, speaking of you talking about recruitment, how often are your athletes in this city going to play college ball? Going to
JC: we have most of our...as far as...we have kids all over the country. We took a poll last year, I don’t have access to it. We had, uh, in every sport, we had kids signing from either junior college, division I, division II, um, all the way. You know, we have kids going to Notre Dame, Vanderbilt, Alabama, uh, so we have them going all over. We do have quite a number of kids going off to college each year. I don’t have the numbers with me but I can get those.
KS: So, there is some level of expectations that these kids are going to compete well that they will go on and compete...
JC: Yes, they will go on, but you see what is happening, the, the, the blue chip players that are going to get a scholarship anyway. You know, like Leandre Smith went down to Alabama last year or the year before, no last year from Huffman. You know, he was the top player in the country as a linebacker. So, you know, they will get a scholarship, but you know the problem is, those kids that may not go on that level. You know, we need the junior college, the, you know the division II, the division III. You know, those kids are sometimes overlooked.
KS: Those kids that are on the bubble but could make it if they could get a look.
JC: Right, if they get a shot, they probably could make it. Those. This is why we are really trying to have BAP purchase this recruiting tool so these kids can kind of really put themselves out there. Their parents can have access to put this information in and all those colleges all over the country can have access to it. That is the kind of thing.
KS: That is an interesting initiative.
JC: Yes, very much so.
KS: So, you have kind of given me your thoughts on Title IX a little bit. How does it impact your job?
JC: Well, I'll tell you. Laughing. It it is, something you always have to be mindful of because someone not knowing usually can cause problems. You know, just because they don’t know. So, what we are try to do, I attended the Title IX workshop, uh, a couple of months ago. The OCR had over in Atlanta, and that was one of the main things that sometimes people may make a mistake just because they don’t know. We had a situation here. We intervened and stopped it, but one of our schools was providing transportation for the boys and because the boys filled up the bus, they did not feel they had enough money to order another bus for the girls. So, so, so, the bottom line was, if you provide transportation for boys you better provide transportation for the young ladies. So, we, we intervened in that issue. In some schools they ride together. So, they had more boys… And then… I was telling you about the construction projects going on now. We had a situation where, and I guess this is how it impacts my job. For a lot of years, we were not involved in the facilities, uh, uh, and constructing, anything development for our local schools athletically. Here recently, we have become more involved proving plans and things like that. So, at one of our schools we built a very nice football stadium with a track going around it. And, um, um, and the school is not on enough property, not on enough land but to build but one baseball field. But now they are trying to say they have the plans for the baseball field but there is no plans for a softball field. So, I raised that question at the, at the, at the session in Atlanta. What if you would build, you could build a softball field but you just don’t have the space. Are we to deny the boys an opportunity to have a stadium just because we don’t have the space we can’t build the girls. But there position was they say take it case by case. You can’t just look at that issue by itself and feel that Title IX has been infringed on. So, what their position was is this. That. Who was the football stadium for? You know, was it for male and female or was it for boys, you know the males. And so, they say, you built this $5 million stadium for males and you haven’t built anything for females. Now I can understand that to a certain degree.
But I didn’t understand why we were have not, why we can’t build a baseball field just because we do not have the land for a softball field. So, uh, the final analysis, I think, is you better build a softball field. So, it is not fair to ask the young ladies to get on a bus and go somewhere to practice every day when the boys walk out the gym and go out there on the field and play and practice. And I can understand that though. What they said was you probably need to come up with a plan that would incorporate both of them using that one field or you probably may not build that baseball field. And I thought that was kinda strange, you know. And I think it had to do with cause we had already built that facility for males.

KS: Although the track does accommodate both genders
JC: Yeah, and on that football field, we have soccer… and that would accommodate both. Still, just the idea that the girls had to go somewhere for practice and the boys would be right on campus. So, if you just built the baseball field. And you see the problem was, when they decided to build an athletic facility, no one researched the amount of land necessary to encompass all of that. And, uh, so, when that happened, we just, we just left out. I think maybe they are trying now to purchase more land so that we can do both fields. And if that happens, we will be ok. But, uh, the guy in Atlanta told me, it may not have been a problem initially, but as soon as you start playing games and as soon as you start hauling those girls off to practice, then, if one parent raises an issue, we have got to become involved.

KS: We have already talked about the lawsuit. Does that type of lawsuit impact your job or change your job in any ways?
JC: No, not really because we are trying to make sure and we are committed to giving, you know, being equal anyway. We are committed to that. I think what it does, it makes us more mindful of the fact that we could easily, uh, uh, have some violations, you know, if we are not proactive or thinking about those kind of things.

KS: When did you learn about Title IX? Is it something that has always been required of your..
JC: Not really, I guess, I always have known about Title IX, ever since…Well, it became a little bit more popular as far as I was concerned probably when I was in grad school. I went to UAB. And, uh, probably then because we had issues talked about those issues then. But here locally, we we have always had issues. We, we. I. I was a part of… I was coaching basketball at one of our local high schools. We had two gyms there. And, uh, pretty much the same frame as Roderick Jackson. One parent claimed the girls were not having access to the newer gym. They came in, OCR came in and had us do a survey, and, and there was no damages brought about. But they asked us to work out a plan that would give the girls access to equal facilities and we did that and it was dismissed, the claims that the parent had brought. And that was the only thing she was saying. But Roderick Jackson took on a whole, took on everything. So, you know. Title IX has always been something I have thought about, even more when I came in this position and then even more so when Roderick Jackson filed his lawsuit. You know, I went out there to investigate on a number of cases his claims and I found that they, you know, were not substantiated but you know. Maybe I wasn’t looking at it the right way.
KS: So, from an administrator's perspective how does this city of Birmingham view this lawsuit.

JC: You know, sometimes I think that, uh, I don’t think it has on the impact in our local school district that it should have had. The reason I say that, is it has had impact as far as having to pay out money. But because he is still bringing issues, I don’t think our district understands the impact of this type of lawsuit. I mean, this is something that, that, uh, that really, uh, is a serious deal, you know, to me. When, when, when Roderick Jackson comes up and files another claim that all of the mandates in his case have not been met, that lets me know that evidently, we are not paying attention to what he is talking about. You know, that million dollar lawsuit. It probably cost more than that. And the, uh, when, our board attorneys…and, uh, I don’t know how much you are going to put in that. But when our board attorneys failed to notify somebody at the school that he should have been coaching, I mean, somebody is not paying attention. You know, when he rescinded his lawsuit, I mean his resignation. Somebody did not tell the principal that this man is supposed to be still coaching. Whether that meant you took the gym from the person you gave it to, or whether that meant you got to pay him anyway or something I don’t know. We dropped the ball on that. I don’t think it had the impact it should have had because he are not taking it seriously, I think.

KS: Do you think that is because girls sports aren’t taken as seriously? I am kind of speculating, I suppose.

JC: I don’t think it is because girls sports are not taken seriously, I think it is just that in the daily operation of a school district, there are so many other things that occupy your time. You try to deal with so much that you just don’t…The impact of this case if probably registering more with you, then the people directly involved.

KS: When I went back through looking at some of the local writings or whatever. It got more national coverage...

JC: Yeah, than local.

KS: yes, than local coverage.

JC: It did and I just…

KS: And I guess one of my questions in the local coverage was, again, I was an outsider. Does this have to do with race, politics and money in the community? Were they not looking at this because, it is a community and area that people are less concerned about. Or, was it just overlooked. I just thought it was interesting that it got more national coverage than local coverage.

JC: It did. It definitely did. And, uh, I think on a local level just like I was telling you earlier, it just seems worse on the surface than it really is. Because we are actually here dealing with it. We knew that what he was claiming was not necessarily true, but I guess our attorneys could not prove that he had equal access to a gymnasium but he chose not to go in there. He could have ordered a bus for transportation, but he chose to take em in his cars. One claim he has, he has claimed just recently, last summer he claimed he asked the principal keys for the gym and he was denied. And the principal said he never asked. And as a result, what he did, so he just went across the street to the recreation center and practiced his girls. So, now, on the surface I am denied an opportunity to practice, I have got to go the recreation center, but the boys are practicing in the gym. But in my opinion,
the principal said he never asked for a key. You know, it looks bad and sounds bad, but I
don’t think it ever happened that, they way he said. Now, he raised the issue because he
has filed another claim. So,
KS: Are girls any better? Are girls sports any better? Has things changed because of
this lawsuit?
JC: No because I don’t think it was that bad in the first place. We have always. Now, I
have been watching it real careful because of the case. There was not any major issues..
One time we had a problem at our local school where they did…uh, have an issue on
transportation. And they were trying…they were transporting the boys by bus and the
girls were not. But beyond that I can’t see anything, well, you know, that was
happening, you know, that was even more so because of this case or even less because of
the case. I think we were doing what we were asked to do anyway. We were supposed to
anyway on that issue, Title IX.
KS: It might be getting back to that thing where we are seeing more national, national..
JC: I think so. That is because people not directly involved, they hear one one side…and
oh, you are mistreating the girls. You are mistreating the girls. But that is not the case, I
don’t think. I don’t think that is the case at all. Maybe I am looking at it totally wrong
too. Maybe it is as bad, you know, but being directly involved I don’t think it is. I don’t
think our young ladies are treated any more unfair than the young men
KS: I have gone out by the old Ensley High School and I have seen the new Jackson-
Olin. It is fabulous. The facility itself looks top-notch.
JC: One claim he claimed too that, uh, and this is just recently, is that the girls have to
practice in the practice gym. But the competition and the practice gym, the only thing
missing is the bleachers. But as far as everything else, it is the same.
KS: Yeah, I would assume in a new facility like thers…..
JC: Also, if he said to the boys coach, these are the days I want to practice in the
competition gym, he wouldn’t have had an issue with that. But that never comes up. But
he will claim, I don’t have a chance to practice in the competition gym, but you never
ask. I don’t know.
KS: So, what I hear you telling me is that the community didn’t think it was that bad?
JC: No, the community didn’t raise up on this issue at all. Because, uh, all the research
that was done by the attorneys did not show there was a major violation. It did not point
that out as far as the boards attorneys, obviously, and what they tell me. But then again,
there must have been something if the Supreme Court… You know. And I was listening
to the attorneys talk the other day, they were trying to do a settlement with him. They
were saying that he lost the case in the local courts on the merit of the case, but the
Supreme Court it was based on something else. I didn’t quite understand…
KS: So, what happened in the local, the District Court as well as the Court of Appeals,
Title IX is founded upon the premise that in order to file gender discrimination, you have
to be a member of the gender. And he wasn’t. And also it was founded on the premise
that it did not cover retaliation. It did not deal with retaliation. So, when it got to the
Supreme Court, the Supreme Court said, that when Title IX was founded, yes, we wanted
it to cover retaliation. So, yes, it does cover retaliation. Yes, he is covered under Title
IX.
JC: Ok, and he could represent..
KS: Well, that is what the decision indicated. Never in a time before this decision had they indicated that. It appears to be a whole new, you know, layer to what Title IX can do. Which may make it why nationally it is getting so much of a look because he was man and now it does cover retaliation. One of the key issues the court pointed out that the court pointed out that I feel is important in the issue of retaliation that usually people as yourself, in your role, coaches, teachers are the ones that can stick up for athletes can stick up for students. And So, if we don’t have them having the opportunity to stick up for students, who is going to do it.
JC: I mean I didn’t have a problem with that part of it. But, uh, you know, there is an issue that, which actually had an impact on our administration, from an administrative standpoint, I think what it has done for, to a certain degree. We have, like I told you, 7 high schools. And of the 7 high schools, we have…of the seven high schools, we do not have but one female basketball coach. And that is kind of….and that is kind of came to my attention during this time. I said, you know, I would like to…we have had some good female applicants. And you know, we just need some female.. We need something the girls can really relate to, somebody.
KS: I completely agree with you. I do. But I was an athlete. I grew up and I never had a female coach either.
JC: Is that right?
KS: I didn’t. I played in college. I… None of my head coaches. I ran in college, I should say. Um, they were all…all of my head coaches were males.
JC: That is something that I thought about consistently and try to figure out how we got into that shape and how we can get out of it. Cause I think females have a right…not a right, but they need an opportunity to have someone of their gender that they can….you know.
KS: As a role model.
JC: Yeah, as a role model. And we got to correct that…Not that our coaches…..let me answer this if you don’t mind…
File 004
KS: Is this your last day in the office before the holiday?
JC: Before the holidays, yeah, yeah. They got paid today.
KS: So, yeah, yeah.
JC: Coaches and everybody. So, I don’t know…That case will definitely make you think. And maybe that is one good thing that may have come out of it. It make you more mindful of the fact that, you know, may could easily have Title IX issues. Every time I go to the school I try to, you know, ask questions, look around, see if there’s any problems.
KS: Do you as a district put your coaches through any form of, uh, training, classes? What is required of you.
JC: For Title IX?
KS: Yes.
JC: No. but we have a Title IX coordinator at each school. That coordinator is expected to, uh, we haven’t set the groundwork. This Title IX position that I have, came out of
that case with Roderick Jackson. And, uh, in fact he even, I don’t know why he put me in this spot. He picked who he wanted who he thought was fair and would be fair in that regards. So, I was told by our attorney that he wanted me to serve as the Title IX coordinator. So, what I have done is try to gather as much information as I could on the subject and attend as many workshops as I could to, uh, kinda stay abreast of what changes may occur and things that we are required to do and then I pass that on to each coordinator at each school.

KS: And obviously, it is probably their responsibility to ensure the coaches

JC: Right, right. And what I do at our annual coaches meeting, we have a coaches meeting prior to each sport season and we require all of our coaches to attend and we have. We cover issues like this and make sure they sign off on it and sign that they have heard the presentation. But, but, uh, we probably need to do more on that line because, uh, like I said, sometime there can be a violation and you not even know it. And that is what I have found to be the case.

KS: So, as a result of the litigation, you guys were required to put those coordinators in place, correct?

JC: We were required. Correct and I was required to serve in that capacity and receive training. I have had some training by the board attorney and uh, we’ve, we’ve gone over some things. But I really learned a lot when I went to the Title IX session in Atlanta.

KS: There’s a lot of ins and outs of the law.

JC: Oh, you better know it. And they went over it so much, that you know. You just gotta keep going. Cause, uh, some things change all the time. Even that case I talked to you about. The stadium. Where they built the football stadium and was going to build a baseball. They said on the surface, you know, it looks like it may be a Title IX issue. But once we look at the whole program that is provided, it may not. But on the surface it does. So, we said what we will have to do is come in and evaluate what you have and then make a decision. But right now, it couldn’t …What looked like to me it’s going to be a Title IX issue. And then, I tell you something else that I didn’t know could be a problem. I was telling you about BAP, Birmingham Athletic Partnership. I didn’t know that could be a problem until I went over there to that workshop. Uh, what they do is they have this million dollars, a coach can request x number of dollars. Now, let’s say you go two or three years and a female coaches never request anything. And then you pull the record, it looks like they are giving more to males than they are giving to females. Now, initially, I thought that they had control of their own money. They do what they want to do. But if they give it to the district, the district is responsible. And that could be a Title IX issue.

KS: I have heard the example that money was donated from an individual to a school specifically for a baseball stadium. So, they wanted to build this baseball stadium. But if you aren’t going to build a comparable softball field. Don’t take the money.

JC: Can’t take the money.

KS: It’s very interesting.

JC: Yeah, I, I, uh, I was kind of shocked at that. But I was saying these people went out and solicited the money and they feel they have the right to do what they want with it. But if it’s going to show…
KS: A disparity..
JC: Yeah, you can’t get involved.
KS: Well, that is really all I have. I really appreciate your time Mr. Moore. It has been quite interesting. It is interesting to hear your perspective.
JC: Yeah, you know. I try to be fair and I have told Roderick Jackson on a number of occasions, you know, my interest is everybody do well. You know and be fair to everybody. Maile and female. There is nothing more I like to see than our female programs advance and progress, but I wouldn’t dare treat anyone any different. You know, males and different than females. You know, why. Like I said, I like to see everyone succeed. I guess that was one of the issues he wanted me to serve in this capacity. I guess he felt he couldn’t trust anybody else because he has had such a hard time, I assume.
KS: I was also amazed. I contacted Dr. Williams. She’s the one that gave me your name. And I stated that I am sure you have probably been asked. And she wrote back and said actually, you are the first person that has asked me.
JC: Is that right?
KS: To give… and I, you know, was really surprised. I felt that was very sad.
JC: It goes back to what you said earlier. It is just not a big issue.
KS: And nationally, which is where I have been getting my information, they don’t care to ask people like you. Which is, I am not saying that is right. So, it is going to take someone like me coming to the city to ask a few questions.
JC: Yeah, yeah.
KS: If you don’t mind, I will probably email you.
JC: Please do that.
KS: and when the project is finished, I will send you a copy of the big thing.
JC: I would love to have that. Cause, I, uh, I have the results it is probably not of any importance to you. I was looking through some paperwork just the other day. Probably not the other day but a month or so ago. And I had a copy of the, uh, the uh, that we had to do over at the school after the OCR came in and needed to show us…I don’t know if that would be of any importance to you. I probably wouldn’t find it. I wasn’t even looking for it. I would like to see your final draft of your paper.
KS: It won’t be short but you can look at it.
JC: I know it won’t be short.
KS: It is a lot of writing. My husband’s ready for me to be finished. He is ready for me to get a job. I am ready for you to get a job, he keeps telling me.
JC: You know, you know you were talking about being a professor.
KS: Yeah.
JC: SO, so,
Appendix G: Misty Jones Interview Transcript

Jones Interview 11.25.08
KEY: MJ = Misty Jones
     KS = Author

KS: Ok, so, we were talking on Saturday about how the girl’s team was treated unfairly. Can you tell me…in your words, tell me about that. So, what, how were you treated unfairly than the boys team, when compared to the boys team.
MJ: One aspect of it was, um, like the uniforms.
KS: Ok
MJ: The, um, like I had said before, um, they took the money that we made on the games, they didn’t split it with us. They took it. And its all for them. They bought new uniforms, or whatever. We had to use the old uniforms. Like, they was like all wrinkled and the numbers were peeling and everything. It was a women’s…. I think it was a woman from California. They donated our uniforms. It was just they always got the gym first. Their head coach was over the department over there. Like they always got first come first serve on the bus and everything.
KS: Ok, what’s that mean?
MJ: When they got there first…
KS: They got to…
MJ: They got to pick and choose.
KS: Would you always ride the bus with them.
MJ: Not all the time, but, that… Sometimes it would be like one bus if we were all going to the same place. They only provided one bus. That’s why we have to car pool.
KS: Ok. What about, um, there’s something else….transportation. When did you guys practice? So, we said you didn’t have fair practice, when would you practice? What time? Right after school?
MJ: Yeah, but then we started right after school for him, keeping us there so late we would go ahead and stay in the old gym and they would have the gym and whatever. The only time we had the gym was on a Sunday, when they wasn’t there. Then they started to have practices on alternate time with the coaches.
KS: Ok, how did….like when you would ride the bus with the boy’s team, did they ever say anything? Would they ever comment?
MJ: We would joke around. Everyone used to get together and have fun. As together we was all one. They didn’t see it as them being unfair, I mean being fair to us. They didn’t see it like that. But like Coach Jackson has said, the students didn’t know what was going on until he went to the Supreme Court.

KS: Yeah, ok, yeah. Tell me how everyone else felt playing for coach Jackson. I know how you feel, but how did the other girls like playing for coach Jackson.

MJ: I think most of them they pretty much liked him and whatever, coach-wise. They only thing that they hated was that we had to practice on a Sunday. We had to practice on a holiday and stuff like that. I think overall they was satisfied playing for him.

KS: How did they feel? Did any of the other girls know? I know specifically you knew a lot about the lawsuit and stuff going on. Did anyone else know what was going on?

MJ: They probably knew but I didn’t really affected them like it affected me, but they probably see how supportive we were and whatever about it.

KS: What do you mean how it affected you?

MJ: By me being close to him, knowing him personally all my life from growing up and going to school. I know him since the 9th grade. Most of em transfer from another school. They just knew him as, this my coach.

KS: Ok, um, while you were in school, can you tell me what you considered Title IX to be? Um, if you even knew what it was. But tell me, while you were in school, what was Title IX.

MJ: Hmm, good question. I thought it was something you would deal with on a personal level not probably dealing with us as his basketball team. I didn’t know what it was at first. I heard from him.

KS: So you didn’t know prior to that?

MJ: Not really.

KS: So what as an adult, as someone who is out of school and looks back. What do you consider Title IX to be?

MJ: I consider Title IX to be the right for women to have equal rights, um, pertaining to sports and other things. Just women’s rights, period.

KS: Do you think it was effective? Was, is Title IX effective? Um, because of how you went through this lawsuit and you saw what was going in. Did you see it as effective?

MJ: Yeah, I see it as kinda effective because now that you have J.O. they pretty much got everything that the boys got. You kinda bring a balance between the boys and the girls.

KS: So, it seemed to be effective in that case. What do you think about the people in Birmingham. We talked about this a little bit, in terms of the community wide standpoint. Were people supportive of Coach Jackson?

MJ: Yes, I know for a fact that my pastor supportive of him. He said that was a good thing that he was doing, how a man could stand up for his basketball team not letting folks run over him or the girls. So, they were pretty much supportive of him.

KS: Anyone not supportive of him. Can you remember anybody that was somewhat against him?

MJ: Maybe the principal because she didn’t really want him, she didn’t really want us to have anything. If she saw one of the girl’s basketball team not in class or anything she
would jump on our case, but if it was a boy on the basketball team she wouldn’t say much to them.
KS: Why do you think that is?
MJ: I don’t think she wanted him to have that position or whatever and just the fact that he was going to the Supreme Court. He went to her first and she didn’t do anything about it.
KS: Is she angry?
MJ: Yes, it just got her upset.
KS: Interesting, ok.

File 003
KS: Ok, tell me about Ensley. Have you lived here your whole life?
MJ: Yeah, not in the same area but basically.
KS: Uh, huh. So, tell me about it. Where do people work? What do people do in their free time?
MJ: Most people work like at different little restaurants or selling clothes in a store. I know most of the teenagers and the youth we have like every day…every Sunday game have a basketball game going on, football. Most of it spending time at the park.
KS: Where does your mommy and daddy work?
MJ: Right now, my mom…uh, they are not working. And, um, we are on fixed income.
MJ: There’s skating.
KS: Skating, ok.
MJ: but you find most people at a park just playing around. Or even just going to the mall walking around.
KS: What mall?
MJ: Westend Hills Mall, it’s over there in the Five Points area, shopping area.
KS: Ok, alright. So, if you live in Ensley, you go to Jackson-Olin High School?
MJ: At first it was between Ensley and JO but now it is just one school.
KS: How many elementaries, do you know?
MJ: Not right off hand. I know they closed a couple of them down. I know the elementary I went to it was like right up the street, they tore it down and build houses, habitat houses.
KS: I was reading in the history that Ensley started around coal minds. Do you know anything about that? Do people still work in those coal mines?
MJ: I never heard of that, but I knew it was built way back then. I don’t know if it was on that site, but I know when I had looked it up the Ensley High School whatever, it was like a pet farm with just rocks and all that. It was like old. You couldn’t even tell our school would be built there. It was kind of deserted.
KS: Anything else?
MJ: Not right now. It will probably come to be back later on.