Anniversary puts spotlight on Title IX and Brown

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PROVIDENCE — Ten years ago, with her collegiate gymnastics career ending and her team’s existence bleak, Amy Cohen believed that merely threatening to sue Brown would prompt the university to restore funding it had withdrawn in 1991 as a result of a budget crisis and give her sport a chance to survive.

Without university financial support, Cohen feared, gymnastics at Brown would wither and die. Women’s volleyball faced a similar prospect.

“I never thought we’d sue,” Cohen said.

But Brown administrators refused to reconsider the demotion of the two women’s programs from fully funded to donor funded — men’s golf and water polo suffered the same downgrade — so Cohen and other gymnasts and volleyball players headed to U.S. District Court. They charged Brown, ironically one of the pioneers in women’s intercollegiate sports, with sex discrimination in violation of Title IX of the Education Amendments of 1972.

Thus began, in April of 1992, Cohen v. Brown, a case that cracked the monolithic structure of intercollegiate athletics, produced decisions the impact of which few could have anticipated and became the standard by which colleges and universities — and, increasingly, high schools — measure their compliance with the federal anti-discrimination legislation. Cohen’s name is affixed to the case because she was the first to contact lawyers about filing a complaint.

During a five-year legal battle that Cohen followed from a distance — she graduated two months after initiating the lawsuit — Brown lost at every judicial level. In U.S. District Court in Providence before Judge Raymond J. Pettine. In the U.S. Court of Appeals for the First Circuit in Boston. And, in a sense, in the U.S. Supreme Court because it declined Brown’s request to consider the case.

As a result, Brown had to restore funding to the women’s teams, promote skiing, water polo and fencing to varsity status and ensure that more Brown women got an opportunity to play.

Also, Brown had to pay Trial Lawyers for Public Justice, its local team headed by Lynette Labinger, $1,187,000 in fees and costs for representing the athletes. The university paid an installment of $432,000 last July and the balance in April.

Brown had to cover its own legal costs as well, including the services of Providence lawyers Julius and Jeffrey Michaelson and Detroit litigator Walter Connolly, plus various expert witnesses who testified during the 29-day trial in 1994.

Title IX and Cohen v. Brown are back in the news because this is the 30th anniversary of the legislation that blew open the doors to sports participation for college women and high-school girls. President Nixon signed the bill on June 23, 1972.

Next weekend, ESPN, ESPN2 and ESPN Classic will air nearly 40 hours of sports programming related to women. On Equal Ground, a one-hour documentary on the Brown case, will air on ESPN Saturday at 5 p.m. On the Basis of Sex: The Battle of Title IX is scheduled for ESPN at 8 p.m. and On the Basis of Sex: An ESPN Town Meeting at 9.

The network will host and televise live the town meeting and roundtable discussion at the Bushnell Center for the Performing Arts in Hartford. Panelists will include actress Holly Hunter, a spokeswoman for the Women’s Sports Foundation; Jessica Gavora, policy advisor for U.S. Attorney General John Ashcroft and author of “Tilting the Playing Field: Schools, Sports, Sex and Title IX,” Geno Auriemma, women’s basketball coach at the University of Connecticut; Nancy Hogshead, Olympic gold medal swimmer, lawyer and Title IX expert, and others.

Title IX also is back in court. The National Wrestling Coaches
Association, alarmed by the demise of Olympic sports such as wrestling, swimming, gymnastics and track at the college level and the termination of as many as 400 men’s college teams, in February sued the U.S. Department of Education, which enforces Title IX. The association, with support from gymnastics, swimming and track coaches organizations, alleges that the manner in which Title IX is enforced has eliminated participation opportunities for male athletes and is jeopardizing the very existence of certain sports.

At issue is the first of the three so-called prongs devised to measure Title IX compliance. This is the proportionality prong, which holds that the percentage of male and female athletes should substantially mirror the percentage of male and female students. Thus, if the undergraduate student body is 54 percent female, the athlete population should be 54 percent female. Title IX critics call that a quota system and assert that to meet the proportionality test, schools are cutting men’s teams and establishing roster maximums for men and minimums for women. Newsweek columnist George Will ranted against Title IX in a recent issue, and The Wall Street Journal editorialized against the proportionality test.

Title IX proponents, executive director Donna Lopiano and the Women’s Sports Foundation chief among them, counter that proportionality is only one way to comply with the law. They point out that schools can add sports or demonstrate that they are meeting the interests and abilities of their students with programs already in place.

And, they note, according to national high-school and college participation statistics, more males were playing sports in high school and college in 2001 than in 1972, when Title IX became the law, and in 1992, when Cohen sued Brown.

Also, according to a 2001 General Accounting Office report, between 1981-99, while 311 men’s wrestling, tennis and gymnastics teams were eliminated at four-year colleges, 302 soccer, baseball and basketball programs were added. During that same period, 159 women’s gymnastics, fencing and field hockey teams were dropped and 452 track, lacrosse and swimming teams added.

Brown might never have been involved in its landmark lawsuit in its landmark lawsuit had the administration responded differently to the appeal of the gymnasts and volleyball players. “The lack of support we felt from the athletic director when we tried to overcome the loss of funding” bothered the Brown women, Cohen said in an interview just before returning to College Hill last month for her 10th reunion. “We thought that we had his support, but it was apparent that he wanted us to go away. Had we not felt horribly and slapped in the face and pushed around, we would have probably continued to try to find ways and not been able to do it and gone away,” she said.

“But we were really angry.”

Dave Roach was the director of athletics then and still is. He had been on the job for a year when Vartan Gregorian, the university president, issued his budget-cutting directive. Like the Marine officer he was after graduating from Springfield College, he took his orders and passed them down the line to his coaches without seeking their input. Today, he would handle the situation differently.

“I would like to think I’m a warmer, kinder, gentler A.D.,” he said. “The Dave Roach of 10-12 years ago would have bullied his way through things. Now, I think more and go to my staff more.”

Roach added that he would “still do what’s best for the student-athlete.”

Margaret Degidio Murphy, women’s ice hockey coach at Brown for the last 13 seasons, sees Roach “as very proactive as far as women’s opportunities. I see him as wanting to do the right thing. I see him as very equitable, very mindful of equity. He’s very fair, sometimes fair to a fault.”

Roach, she added “is a great administrator, and I think he has mellowed.”

Is the athletics program at Brown better now than it was 10 years ago? Yes. U. S. News and World Report ranked it among the Top 20 Division I programs in the nation, and gender equity was a factor. There are more participation opportunities for women, with golf and equestrian having been added to the sports lineup and roster minimums for other teams put into place. No men’s teams have been cut, although rosters have been capped, denying walk-ons and end-of-the-bench athletes a chance to practice.

Facilities have improved. The ice hockey teams will get new dressing rooms as a result of renovations at Meehan Auditorium this summer. Squash courts at the Smith Swim Center are being re-done. Stevenson Field, home of Brown’s soccer and lacrosse teams, was renovated last summer.
A new track was installed at Brown Stadium. Brown teams travel and compete from coast to coast. Female athletes receive the same consideration as their male counterparts in areas of medical treatment, equipment, uniforms, coaching, scheduling and publicity. The women’s basketball program is endowed.

The salary gap between male and female coaches has narrowed, although in 2000-2001 the average salary for the head coach of a men’s team was $46,255 compared to an average of $34,635 for the head coach of a women’s team, according to Brown’s most recent Equity in Athletics Disclosure Act filing.

“I would say there have been significant changes at Brown, both in the number of participation opportunities for women and the way those women are treated. I think the women are treated a lot better than when I first got there,” said Megan Hull, a freshman volleyball player in 1991 and a named plaintiff in the lawsuit. She played at Brown for two years, transferred to Georgetown for a year, returned to Brown for her senior year after Pettine ordered Brown to restore funding pending the outcome of the trial and then fought through a bureaucratic morass to play the last couple of weeks of the 1994 season.

“To say that situation didn’t turn out well is an understatement,” she said.

Hull doesn’t have to look very far to see proof of change. Her sister, Courtney, last month finished her first year at Brown, and she played volleyball.

But Megan said, “I still think there’s room for improvement, and Brown has really struggled against making those changes. I hope that five to 10 years down the road, the feeling in the athletic department is different.”

Roach agreed that there’s room for improvement. He said he would like to increase the salaries of his coaches so they “are more competitive within the league. We’re real low for men’s and women’s head coaches and in the middle of the pack for men’s and women’s assistants.”

Diane Short was a part-time volleyball coach in 1993-94 and has been full-time since 1995. She has noticed a difference in the way her program is treated.

“Our budget has gotten bigger. I’ve been able to have enough money to go recruiting, which has made a big difference. I get priority for the gym in September, and starting Oct. 15 we do an equitable schedule with the men’s and women’s basketball teams. That wasn’t always the case,” she said.

Hull testified in 1992 that Brown used to practice at night at East Providence High School.

Norma Taylor has coached women’s tennis at Brown since 1985. She said that her team has been treated equitably during her 17 years and that other sports are better off than they were a decade ago because changes were made.

“I think Brown is a great institution. I’m very proud of where I work. I like working with bright, intelligent kids,” she said.

Labinger has scrutinized Brown’s athletics program for a decade. She has seen presidents come and go, students arrive and graduate, championships won and lost. She agreed the situation at Brown is better now than it was in 1992.

“I don’t think there’s any question about that. . . . Brown made some pretty substantial improvements as the case went on,” she said. Today, “teams are getting enough money to continue to recruit and survive. Teams receive more than minimum funding. I’m happy about that.”

But caution flags still flutter in the ever-changing wind. A component of Brown’s final settlement is that the university must keep the proportion of female athletes to female undergraduates within 3.5 percent. In 2001, women composed 53 percent of the Brown student body, and 51.4 percent of the athletes. Labinger said the percentage of female undergraduates crept up to 54 percent this year and the percentage of athletes dropped to 50.5 percent. Those numbers are unofficial. Brown has until Oct. 15 to complete its 2002 EADA filing.

Complying with that proportionality prong could get more difficult because the percentage of female undergraduates could reach 55 percent when the Class of 2006 enrolls in September.

“If they’re not in compliance, they need to find ways to get into compliance,” Labinger said.

Could that mean a return to court?

“I hope we don’t get into that,” she said.

Roach vowed to reach the 3.5 percent requirement.

“It’ll fall there. It’s just a question of how you get there. Do you add a women’s sport, cut a men’s sport or change the maximum numbers of men’s teams and increase the minimums on women’s teams? I would say the chances are
a lot greater that we would add a women’s sport,” he said.

He wouldn’t elaborate but did agree that rugby is a possibility. Some schools are looking at bowling, he said.

A problem with the proportionality prong, Roach suggested, is that the percentage of women in the student body changes from year to year. “A moving target,” he said. “I don’t think Title IX’s original intent was having administrators counting bodies. We spend a lot of time counting numbers.”

Roach was proud of Brown’s athletics program in 1992 and remains so today.

“I feel real good about what we’ve done and what’s going on now,” he said. “I also feel real good about our staff. This is the best staff I’ve had in the 12 years I’ve been here. They’ve done a great job with our student-athletes.”

Roach manages 120 coaches, administrators and support personnel, 37 teams (20 for women and 17 for men) and an annual budget of $10.5 million.

Roach never believed that Brown discriminated against its female athletes and said the athletics program is essentially “no different than when we started the court case. As Arthur Bryant (executive director of Trial Lawyers for Public Justice) said when we signed the agreement, ‘Brown will be a model when it comes to equity.’”

But if Brown is a model now, 10 years after its Title IX case, it’s partly because Amy Cohen and a few gymnasts and volleyball players felt it was hardly a model then and decided to do something about it.