

## Title IX - Part 2, an interview with Pam Gagel

**Joe Mamlin** 00:00

This is **News from the Peak**. I'm Joe Mamlin. This is Part 2 of our series on Title IX. Last time we heard from people who are on the front lines of playing sports in school right when Title IX was first implemented. And on today's episode we hear about it more from a legal perspective. So why don't you give our listeners the background of our guest today and what this is all about?

**Maureen Leif** 00:36

Yeah, so Pam Gagel and I have known each other for a really long time, she used to be the magistrate that heard the child support cases when I was a DA. So after she left the bench, her and another friend of ours, who was also a Deputy DA, Emily, would go to dinner and just connect and talk about our careers. And she would talk a lot about this case, and kind of the mechanics of the case. But this podcast was really meaningful, because it was the first time that Pam and I talked about kind of the emotional pieces of the case and like what it meant to her personally, not just professionally, and also I didn't realize until the interview – it almost kind of fizzled out, like, the courts ruled against them several times and had it not been for their tenacity in the players and the attorneys all kind of willing to keep pursuing it – it might not have happened. And I think about that just on a larger scale that probably happened in all of the cases. And the fact that cases were even brought at some point took a lot of tenacity.

I have gained a new appreciation for the people that were on the front lines of not only litigating it, working on the legislation, implementing it from a boots-on-the-ground standpoint, like we as women who came after Title IX really owe a debt of gratitude to the women that paved the way - women and men - that paved the way so by time I got to school and started playing sports, we had the uniforms and playing time. And you know, it's just as I've gained the maturity and understood more about Title IX that I realized how long and how hard we had to fight to actually have those rights.

**Joe Mamlin** 02:28

Well, I think just the fact that Title IX, as we said in the first podcast, is 50 years old. But this court case that we're talking about today is only 30 years old. It's just one example of how it's an ongoing process and an ongoing fight, and we're lucky that people are still fighting it.

**Maureen Leif** 02:49

Oh, well welcome, Pam, I'm excited that you're on. We've been trying to get this scheduled for a while. And I was excited to have you on to talk about your work in Title IX and how it impacted your early career and you personally. So, thank you!

**Pam Gagel** 03:06

You are quite welcome. It's a very important part of my legal career.

**Maureen Leif** 03:12

Well, that's a really good place to start out because I wanted to kind of just get your take on how you got involved with that case, and maybe just a little bit of the history of Title IX.

**Pam Gagel** 03:25

Oh let's talk about the history of Title IX a little bit. So this year is the 50th year anniversary of Title IX. And it's also the 30th year anniversary of my case that I did. So 50 and 30. President Nixon signed Title IX on June 23, 1972. It was part of the Education Amendments of 1972. And sort of going on from there in 1974 the NCAA was asking if Title IX applied to particularly division one football because the division one football's coaches fought it for quite some time.

A Texas senator named Tower introduced a *Tower Amendment* to eliminate revenue producing sports from Title IX meaning men's football and basketball, I can tell you after doing my case, and there was actually a writer for Sports Illustrated that pursued this. It is a myth that those sports produce revenues in most cases for most universities. The amount of money that is spent on them when you're carrying 100 guys on a football team doesn't take that many to play. And they're all doing training table and everything else. The expenses are really quite incredible.

So, in 1975, there were federal regulations issued to implement Title IX and in 1979, an OCR, Office of Civil Rights Policy Interpretation, came out. I sort of like to talk about who the heroes were of Title IX. And really, the moving force was Patsy Mink, who was a representative from Hawaii and was the first woman of color elected to Congress. And after she died, Title IX was actually officially renamed the *Patsy – I hope I don't mess up this name – Takimoto Mink's Equal Opportunity in Education Act*. And she was very smart, they sort of snuck in this little provision into the Education Amendments Act, and a lot of people weren't paying attention.

Senator Birch Bayh of Indiana, he's called the father of Title IX, he was very important to moving this forward in the Senate. And there were a couple of other people very involved. But what's always so amazing to people is: Title IX is 37 words.

**"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."**

I think one of the first questions that people sometimes ask is, well, it doesn't exempt private universities, even private colleges and universities receive some kind of federal assistance. So it really is across the board.

**Maureen Leif** 07:17

On the prior podcast Coach said: it was never really about at the beginning about sports, it was always about education. It became about sports. But it's interesting that it was under the Education Act.

**Pam Gagel** 07:35

Exactly. And it really was about education. And when I talked about Title IX, even though it became focused on sports, it still in my mind was always about education. When you think about scholarship opportunities that were provided to male athletes, and there were none for women.

**Maureen Leif** 08:08

That's what she talked about.

**Pam Gagel** 08:10

And many women, the only way they would have been able to go to college and pay for it was because they were talented athletically and got scholarships. So I truly believe it was about education. I definitely think that participation in sports was incredibly important. But I would have to agree with that.

So how did we get the case?

This is, you know, one of those – God, I was so lucky to get this case. So first, I was contacted, somebody asked a friend of mine whether I was a lawyer, and the softball coach at Colorado State University was worried she was going to get fired. And she came in and met with us – myself and a couple of other attorneys – we were scrambling because here's the danger of acronyms. Everybody kept talking about OCR, and we were like, what is OCR?

OCR is the *Office for Civil Rights*, which is in the Department of Education. And we met with a softball coach, she told us what was going on up there. She was very nervous. But she ended up not wanting to pursue anything because at that time- and I don't know how much it remains true today. Particularly women coaches were very nervous about rocking the boat because they then got a reputation, and they wouldn't have been hired anywhere else. So maybe two months later in the summer of 1992... 13 softball players got a letter dated June 1, 1992 at Colorado State University after they had gone home for summer break, telling them that CSU was dropping the softball program that would honor their

scholarships for a year. It was too late to try and get a scholarship to play softball at any other school. Season was over. And plus, many of these players were incredibly bright.

Jennifer Roberts, the initial name plaintiff, was about to do her last year in engineering. She was like a straight A engineering student. And you know, they didn't want to leave.

The other thing I always talk about is: it was fathers who drove this lawsuit. Jennifer Robert's father contacted us, because we had had this coach pass our name along. And it's really interesting. I think many of these changes were when fathers got involved with their daughters playing sports. Well, you have daughters who play sports.

**Maureen Leif 11:32**

Yeah, three... None of them collegiately but..

**Pam Gagel 11:36**

Say that.

**Maureen Leif 11:37**

None of them collegiately, but yeah.

**Pam Gagel 11:38**

Well, but I bet you could observe the importance of involvement in team sports or even individual sports for the growth of a young girl.

**Maureen Leif 11:50**

Yeah.

**Pam Gagel 11:51**

It's really incredible. So anyway, that's sort of how we got the case and- I had seen a speech by someone from the *National Women's Law Center*. And we contacted them. And they were brought on board to help us and connected us with the *Women's Sports Foundation*. Donna Lopiano, was the executive director of that at the time, ended up being an expert witness for us. She was a former softball player at Texas. And *Trial Lawyers for Public Justice*, which is now called *Public Justice*, was also involved in these cases. So it turned out that four cases were going on around the nation. And we were coordinating with these organizations and the other cases. And, as happens in-- I now understand this-- cases where there are groups that are looking for a case that has great potential to change the law--They're looking for one where the facts are really favorable. And the fact that CSU dumped on these kids after they'd gone home for the summer. It's the kind of case you want to bring the court.

**Maureen Leif** 13:25

It's just pretty blatant... What was their argument? Like, what was the other side? I know a case like that is really complex, but what kind of, in layman's terms, did it boil down to?

**Pam Gagel** 13:41

It wasn't very complex. I mean, first, it's important to realize that sort of those regulations and everything had sat for 20 years.

**Maureen Leif** 13:51

Well, that's part of why I was-- I have so many questions, but that was one of my big questions, was all four of these cases came a long time after the amendments were done.

**Pam Gagel** 14:04

20 years later. I mean, it really hadn't been tested. There was one earlier one about damages. Sorry, the name's not coming to mind right now. But here's the argument of Colorado State. They dropped men's baseball at the same time. So they looked at it as we dropped this. And we dropped men's baseball. So that's fair.

What evolved during the course of our case, and really the Brown University case, and the First Circuit decisions are the most complex opinions. In fact, it's only in the last two or three years that they finally signed a consent decree to let Brown out from under that case. What evolved in these cases, and what was incredibly important was the concept of proportionality. If 50% of your undergraduate students are women, then they should have 50% of the athletic participation opportunities. If your school has football, and is carrying a 100 people on the football team, you have to add a lot of women's sports. You're going to have more women's sports than men's sports. Just to get those participation numbers up. That establishment of proportionality, and I was so lucky to have two brilliant young women attorneys working with me on this case, one who did all the writing of the briefs, Karen Robertson: she wrote all of this and came up with all these arguments, and the other one was a very accomplished trial attorney already. Is the only case I ever tried my whole life. Thank goodness I had.

So the proportionality is why- in the 30 years you've seen such a growth of women's soccer, women's rowing because you have- you can have so many participants on those teams. So the girls' sports are the ones where they can crank up the numbers.

**Maureen Leif** 16:46

And so how did this case change you or your perspective on a personal level?

**Pam Gagel 16:59**

This is where I always cry. And I don't what to do that. I didn't get to compete in sports. There were no competitive sports, when I was young, and I would have loved it. And anytime I see young women competing, I am moved.

**Maureen Leif 17:24**

Yeah, or getting scholarships to go to school or all of it. And you know what we talked about, now you're making me cry, too. When we talked to the coach this morning. And one of the questions I asked her was she had so many obstacles, so many people saying women couldn't do it, and it was, you know, like- and she didn't give up. And she said the same thing. She said, 'But I saw like how much girls just wanted to play. And it just drove me and it motivated me.'

**Pam Gagel 17:55**

Right when I read her speech, her talking about playing half court basketball. In gym class, I had to play half court basketball because they didn't think girls could run the whole court. Oh, good lord. [laughter] I just saw this morning on the news, the American woman who ran the New York Marathon in the fastest time ever for an American woman. And anyway, all we had to do was give people a chance. So, it just moves me, and the kids- I am in touch with one of the plaintiffs who's now a paralegal. They all got together at CSU. I mean, one of them lives in Hawaii. And I was already living in Kansas City. And this was, well, it was probably four years ago, right after I moved here. And they all got on the phone with me. And, of course, I cried.

**Maureen Leif 19:06**

Yeah, of course.

**Pam Gagel 19:08**

And one of her daughter's playing softball at CSU now.

**Maureen Leif 19:13**

Wow.

**Pam Gagel 19:14**

They finally understand how important it was that they were able to hang together and do this. I guess the thing I should add, you know, you have to be sort of a stupid young lawyer to keep going sometimes. And by the way, our boss never knew what we were doing. He wasn't even interested until we started winning. And I mean a lot of press. Then he insisted on doing the argument of the Tenth Circuit when he knew nothing about the case. Thank God we had built such a solid record at the trial level that he didn't mess it up. And that's the incredible thing. So we went in and asked for a

preliminary injunction to stop the dropping of the team. And we lost on “not likelihood of success on the merits.” Well, most people would think twice about going forward. Not us: why not go forward. The amazing thing is from that, to the US Supreme Court denying cert was 14 months. It is unheard of such a fast time frame.

**Maureen Leif 20:32**

Yeah. I don't think some people would realize that either. Like how really fast that is, but..

**Pam Gagel 20:39**

To get a lower, and well we waited for a while for the district court decision. And Tenth Circuit argument and decision and CSU went to the US Supreme Court and they denied cert. Remarkable time period.

**Maureen Leif 20:40**

Yeah.

**Pam Gagel 20:43**

Okay, I'm yammered about it.

**Maureen Leif 21:07**

I'm curious what you see. And I know you have a lot of - You did a training recently in Kansas City. Kind of what you see as some of the current issues, and not to keep talking about the podcast this morning. But she said, we've still got a fight like we still this-- this has been 50 years in the making, but the fight's not over. And I kind of gather that from your presentation as well.

**Pam Gagel 21:35**

Well, I don't think the fight is ever over. And I mean, we have another example in a recent right, that we thought was an established right, that has been removed by the US Supreme Court. So everything is always fragile, and probably more fragile now than it's ever been before. I'll talk a little bit about that. And then I'd like to talk about some of the positive numbers. Let me start with some of the positive numbers to understand the impact. And then how much is at stake, I guess we'll talk about... So the good news is in 1971-72, at college, there were about 30,000 athletes. In 2021, there were 215,000 women athletes. At the high school level, there were 294,000. In 2018, 2019, there were three and a half million girls participating in sports. 80% of Fortune 500 female executives played sports. And this is one of the really important things I hear about all the time, what one learns in playing particularly game sports, that transfers to a business environment, and leads to success in that arena. U.S Women's Soccer, of course, got a \$24 million settlement and equal pay going forward. But let's talk about the other hand. What just came out about the abuse by coaches of the U.S. women's soccer team all these years.

**Maureen Leif 23:53**

Yeah, I just saw that. And I thought they had to have had such a swing and emotions to feel like we've come so far, but yet- we have so far to go.

**Pam Gagel 24:09**

Well, and the same thing happened with women gymnastics, you know, and they all testified and everything. So sort of the bad news is 80% of televised sports news and highlights have no stories on women's sports. 61% of women's team coaching positions are filled by men. Once they started increasing the salaries, men wanted those positions. And we're still not at 50% either high school or college for the number of athletes. Just a little aside about not showing women's sports on TV. There was recently a piece on TV and I have a friend who's been in this place in Portland, it's a bar that was started. And it only shows women's sports. So small bar has TVs everywhere.

**Maureen Leif 25:09**

That's awesome.

**Pam Gagel 25:10**

Yeah, I've decided that's my new career, I'm going to start a [unintelligible 25:16] So here are the current issues. We just talked about one, the abuse.

Fortunately, President Biden proposed regulations to get rid of the horrible amendments that Secretary DeVos put in place during the Trump administration, which were particularly harsh regarding transgender athletes. And we have to remember, Title IX does not just apply to sports. And over the past years, it is being used more and more with harassment issues on college campuses, university settings. So general harassment in an educational environment, or discrimination by professors or coaches or whatever.

A huge issue that is going on right now, of course, is transgender athletes and how they're treated. I mean, I don't have any magic bullet about that. I think it has some interesting issues, about physical development of people. But it's become a political issue. Here in Kansas, in the governor's race, Laura Kelly, the current governor, has vetoed that legislation twice. And the reason she has vetoed to put - it does not allow any transgender athletes to compete in Kansas. And the primary reason it gets vetoed is all the businesses that say they will not come and bring their conventions or their businesses to your state, if you have that kind of. So her opponent in this governor's race, all his ads—they're horrible—are about this one issue. Do you know how many transgender athletes are competing in Kansas? One.



This is just sort of a non-issue. This is going to be going on for a while. I think high school sports there has been more and more litigation at the high school level, when high school districts. If you studied the litigation, that's where a lot of it is now. So I think those are sort of the current issues that are going on.

**Maureen Leif 28:20**

Yeah, I appreciate that hearing. And that's similar to what we talked about this morning. I'm wondering, your involvement- Well, two things:

1. One, I kind of wanted to go back to something you said and that's when you grew up what it was like not to have sports and something that's kind of been striking me is that I'm so grateful that there are people like you and coach and other women who stayed strong and paved the way so that in 1974, when I came along, that there were sports and then we did have uniforms and playing time and at least an opportunity to play. So I will know if you could just talk about like, the void of not having sports.
2. And then the other part of that is, and you touched on it before but I feel like sometimes in these conversations, sports are like extracurricular. They're nice to have but they're not required- You know, it's not math and science. It's just extra. And to me some of this has brought me to thinking: no, these are critical. It's critical that kids learn how to play team sports and that they have the chance to do some of these extracurricular activities.

**Pam Gagel 29:41**

Where to start?

**Maureen Leif 29:43**

I know, that was loaded.

**Pam Gagel 29:45**

Yeah, you knew that, didn't ya?

First, it is critically important that there's competitive sport: all of my nieces and nephews have been able to play competitive sports. There's just no question. I think, you know, I have a niece and nephew who played ice hockey, all the time they lived in Denver, that my nephew lives here, he still plays an adult Hockey League. So it goes on after you are competing. I don't- It's interesting, you would think not true in the Midwest, but there's a lot of support, and I live in Kansas City, for girls teams and girls competing in sports. And I will suggest once again, that if fathers are interested in what's going on with their daughters, there's not going to be a problem. And they understand that it's important that they

have that base. You know, the statistics are incredible about girls who participate in athletics don't get pregnant. How much healthier they are.

**Maureen Leif 31:13**

Finish school.

**Pam Gagel 31:14**

Finish school, get good jobs, have opportunities. And I would say, you know, for my age group, and for me, we didn't learn- we didn't participate even in being physically fit. I mean, you know how much at age 70, I have become obsessed with being physically fit. I was lucky when I was young, I got to go to camp in Colorado for 8 weeks every summer. And I climbed and backpacked, and I got to be physically active. But that was a very privileged activity that not everybody could have. And my friends and I consider that to be foundational, probably as foundational as when girls participate in sports. But I think I would have taken different paths if I'd been able to be. I would have loved to have played ice hockey or play lacrosse, I watched lacrosse and I'm like, I would have loved to have played lacrosse. And I think I would have been more successful in my professional environment.

**Maureen Leif 32:45**

It's interesting, because I feel like in both my conversations with you and others that what comes out is that you learn leadership and sports and you learn how to be a team player. And there's so many life skills that you learn in sports, both individual and team sports. But and just to think that, you know- I think it's important that women today who were born after Title IX was, you know, instituted, understand that, that was not that long ago when you didn't have those opportunities, and that the fight continues. And it's important for all people, not just women, but to stay active and to understand when those rights are under attack.

**Pam Gagel 33:34**

And I'm concerned, I think a lot of young women, including athletes do not understand this history or know this history, and the importance of their role in taking on the mantle to keep it moving forward. There's some great resources that have come out this year about Title IX. Particularly there was this ESPN documentary "37 Words", it's in four segments. That's fabulous. And then the Women's Sports Foundation and the National Women's Law Center have published a major sort of retrospect, going through the whole history of it. And, you know, it's probably important that we get those things in kids' hands so they have that base to understand what's going on.

**Maureen Leif 34:34**

Yeah. Well, I really appreciate you kind of walking us through your case, kind of the history of Title IX, and what you see are the current issues and being real and talking about this on a personal level too

because that case, I remember meeting you and the first time you and Emily and I went to dinner and we were talking about this case and I've always felt that really defined kind of who you are, and that you found really good success in that. And that kind of launched the rest of your career to know that you were able to do that at such a young age.

**Pam Gagel 35:14**

Yeah, well, I wasn't all that young. I didn't get back to law school until I was 30. I was a newer lawyer with not much power. I guess what I always say is, it was the reason for becoming a lawyer.

**Maureen Leif 35:39**

And I love that. And I love that you- Against a lot of odds with some of them you've talked about today, like stayed strong, just like Coach and paved the way for others behind you to be able to do all of the things that we do and play sports and get scholarships and participate and play.

**Pam Gagel 36:00**

And someone like the coach, they fought that battle on the ground for much longer. I had one case where I fought that battle, and I just got lucky. And you know, it's interesting that I didn't go on and do other cases. But that had to do with where I was practicing law and what was going on more than anything else.

**Maureen Leif 36:25**

Yeah.

**Pam Gagel 36:26**

Anyway, I'm always happy to talk about it. I always need a little cry in my life, you know.

**Maureen Leif 36:33**

It takes a lot to make you cry. So the fact that you cry is that just tells me how important it is.

**Pam Gagel 36:42**

You're right. I almost never ever cry. Every time this case comes up, I cry.

**Maureen Leif 36:51**

I appreciate you my friend.

**Joe Mamlin 37:15**

Thanks again very much to Pam Gagel for joining us on the show today. And of course thanks to her for all the work she did to support Title IX through the years. Thanks also to Maureen for a great interview

and for helping put the episode together. We'd love to hear from you and get your ideas and your feedback. And if you'd like to be a guest on the show, please reach out to us on the contact link on our website.

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