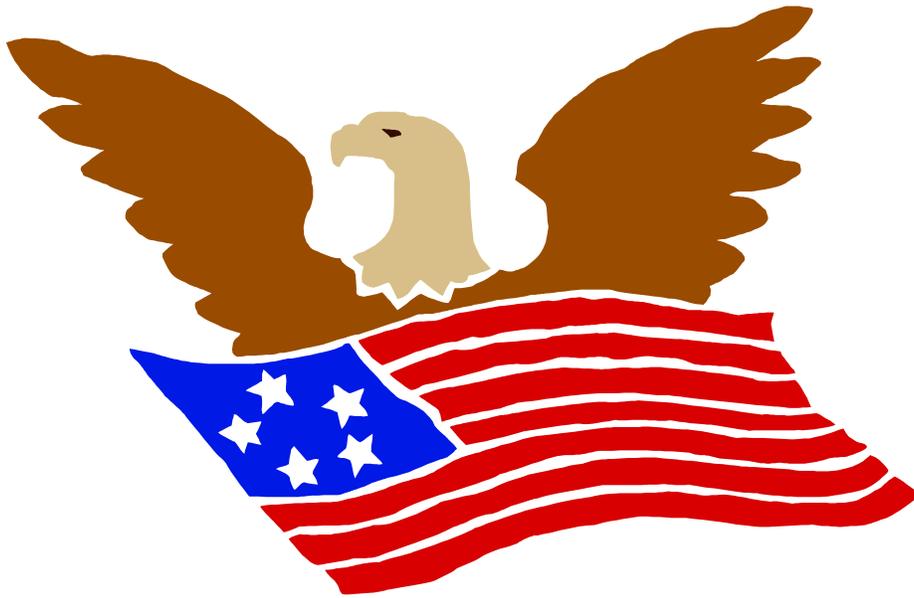


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Table of Contents

Title IX: The Obstacles Still Faced in Leveling the Playing Field
By Maura McKenna.....2

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Islamic Education for Young Children
By Natalie Arndt21

When Doctors Make Mistakes
By: Alexis Golden.....28

The Hessian ‘Invasion’ of the Newly Anointed United States
By: Matthew Fritz.....41

Title IX: The Obstacles Still Faced in Leveling the Playing Field
Maura McKenna

Sports hold an immense amount of power. They have been a common passion and past time for Americans throughout the centuries, providing mutual grounds for those who may otherwise be divided. Sports are also vital aspects of American schooling- a concept that is uniquely promoted in the United States- as they are seen to be beneficial in educating the whole person. By combining the rigors of academics and intellect with sports, it was believed that a person's full character could be developed efficiently. It is no wonder, then, that sports became the central debate of an act passed under the Higher Education Act called Title IX. The provision of the act stated simply that no one, on the basis of sex, could face discrimination or be denied participation in any educational institution that received federal aid but ironically did not include the words "athletics" or "sports" anywhere in the law. Title IX changed the face of athletics for women and continues to do so today especially on college campuses. Despite the increased participation of women in sports, often promoted vociferously using statistical evidence, there are still major obstacles that need to be addressed in regards to Title IX. The deficient implementation and enforcement of the law, the lack of support it offers in increasing women in administration and coaching positions, and the focus on revenue-producing sports are all areas where Title IX falls short in ensuring total gender equality; however, these issues can be countered with a more positive promotion of women in sports in our culture and a more structured program at the federal level that will assist in guaranteeing the implementation of the law on all college campuses across America.

Signed in 1972, Title IX was an added provision of the Educational Amendments Act and aimed to prohibit gender discrimination in any education program (Helgren, 2011). It stated "no

person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal Financial Assistance (Title IX, 44 Fed. Reg at 71413). This original wording, though simple, included educational areas like admissions and recruitment, comparable facilities, access to curriculum, counseling services, financial assistance, and marital and parental statuses of students (Hanson, Guilfooy , & Pillai , 2009 , p. 41). By acknowledging that these were areas in which women were being treated unfairly in, Title IX already paved the way for great change in education. However, even prior to the debates regarding Title IX's involvement with sports, the government began to dismantle the law. In 1984, the Supreme Court ruled in *Grove City College vs. Bell* that only education systems that directly received federal aid would have to comply with Title IX (Hanson, Guilfooy , & Pillai , 2009 , p. 43). Although the decision was corrected a few years later, it proved to be a foreshadowing of future debates. The language of the legislation stretches so far but remains so broad and unclear that some simply use the uncertainty to further their own specific interests and agendas. This is where the disagreements and issues regarding Title IX begin to take shape and more strict guidelines need to be outlined in order for it to achieve its original purpose of gender equality.

The inclusion of sports under an Educational Amendment provision on gender equality was more a natural process than an intentional one. Its true aim was focused on education and ironically enough, nowhere in the original provision of Title IX are the words “athletics” or “sports” even included (O'Reilly & Cahn , 2007, p. 219). Nevertheless, in 1979, the Office of Civil Rights (OCR) of the Department of Education, the agency that was given the responsibility of overseeing Title IX, issued for a Policy Interpretation that outlined the basic parts of Title IX as it applied to athletics (Yuracko, 2002). The three basic parts included implementation of Title

IX through participation, scholarships, and other benefits. O'Reilly and Cahn elaborate on these aspects in the following way:

Participation: requires that women be provided an equitable opportunity to participate in sports as men (not necessarily the identical sports but an equal opportunity to play).

Scholarships: require that female athletes receive athletic scholarship dollars proportional to their participation.

Other Benefits: requires equal treatment in the provision of equipment, scheduling, travel, access to tutoring, coaching, facilities, publicity, recruitment, and support services.

(O'Reilly & Cahn , 2007, p. 328)

There was definite gains made in athletics because of these parts, which is constantly highlighted and boasted by way of statistics that prove the increase in the number of women participating in sport at all levels, including high school and college. One of the most recent studies from the NCAA Sports Sponsorship and Participation Report of 2011 outlines the jump in numbers that occurred in the years following Title IX. For example, from 1971 to 1972, there were just under 30,000 female athletes in college sports. However, in 2010 and 2011, there were just under 200,000 female athletes (NCWGE, 2012). This is almost a 600% increase in women participation, and these numbers only proved that a law like Title IX was necessary. Great changes took place in college athletics particularly because of how many colleges and universities relied on federal funding (Wilson, 1994, p. 44). They were therefore mandated to agree with, and implement, the changes that the law outlined. In addition to the changes occurring at the collegiate level of sports, families and communities also felt the effects of Title IX. Even as early as the 1980s, both boys and girls began to enter Little Leagues after courts ruled that these leagues must admit girls. By 1999, over two million U.S girls were involved with

soccer which aligned with the breaking number of people worldwide who tuned into the U.S. women's soccer team take on China in the World Cup that year, forty million of those spectators were Americans (Hanson, Guilfooy , & Pillai , 2009 , p. 166). In addition to these improvements, the WNBA was made visible with the help of ABC, ESPN, and NBA TV and a small increase in the amount of women sportscasters in on-air positions could be seen. Based on these numbers and shifts, it is evident that Title IX was an imperative law both at the time of its inception and still today. The increase in participation rates must not be overshadowed, and although there are significant changes that need to be made, the positive effects must be acknowledged as well.

The improvements did not come without a fight, however, which played out for years prior. The NCAA opposed Title IX and lobbied against the idea of paying for women's sports, fearful that the increased funding would burden successful men's programs. Alan Chapman, the president of the NCAA during much of the debates, called Title IX "arbitrary government in its naked form" (Wilson, 1994, p. 44). Even in the immediate years following the passage of Title IX, there was resentment surrounding the provision as political and business interests took prominence over gender equality. The statistical evidence of the huge gains that Title IX sparked in women participation, however, only proved that when provided with the opportunity to play girls took advantage of it. Sadly though, multiple arguments and debates take place as some try reduce the power of Title IX.

Although Title IX outlines valuable guidelines to provide opportunities for women to participate equally in sports, little immediate action was taken because of the lack of enforceable means (Wushanley, 2004). In some ways, the legislation was a bill without any teeth and the enforcement of the law was left up for interpretation. The implementation of Title IX in colleges and universities still remains an important issue that needs more attention from athletic

departments. At the college level, any person has the ability to find out if an institution is in compliance with Title IX because of the Equity in Athletics Disclosure Act of 1994. This required that all institutions report yearly its athletic participation, program budgets, scholarships, expenditures, and coaching salaries all by gender (O'Reilly & Cahn , 2007, p. 333) It was not until 2002 that the Department of Education announced the creation of the Commission on Opportunity in Athletics, which would head the mission of reevaluating Title IX's application in regards to sports (Yuracko, 2002). The OCR, Office of Civil Rights, however, is still in charge of enforcing the law but since the inception of Title IX in 1972, not one institution has had its federal funding withdrawn because of its lack of compliance to Title IX (O'Reilly & Cahn , 2007, p. 344). Every institution has three options in meeting participation standards of Title IX, implemented by the Commission on Opportunity Athletics in 2002. None of the requirements involve institutions meeting quotas, a highly misunderstood notion. The first option is for schools to compare the ratio of male and female athletes to male and female undergraduates enrolled. The second and third are less strict; they state that the institution must demonstrate that it has a history of continuing program expansion for the underrepresented gender as well as demonstrate that it has already effectively accommodated for the interests and abilities of the underrepresented sex (O'Reilly & Cahn , 2007, p. 332). It is obvious that especially a school that has problems with proportioning the number of male and female athletes to undergraduates would simply choose to base its compliance off of the last two options. These options are vaguer and probably easier to abide by if they simply must "demonstrate" efforts for program expansion and accommodations. These rules, while they may appear to be an effective way of checking compliance, actually just create loopholes for schools to jump through. Stricter guidelines for the compliance and implementation of Title IX in collegiate sports must be a

priority in ensuring the effectiveness of Title IX, or those who support decreasing the power of the law will find ways to evade complying with the law.

Along with the implementation of Title IX in sports programs across America, the issue of decreasing number of women sport's leaders must be addressed. One of the biggest ironies of Title IX is that as opportunities for women in intercollegiate sports seems to be increasing, women leadership is decreasing as more and more control of women's programs is given to men (Wushanley, 2004). Women in coaching, athletic administration, and other sports positions have yet to see equality in leadership positions like female students and athletes have seen in terms of participation opportunities on the field and court. The number of women in coaching and administration positions have not just stayed stagnant but have actually decreased, an unforeseen consequence of Title IX. In 1972, 90% of women's teams were coached by females while today only 43% of women's teams have a female coach (NCWGE, 2012). This decrease is not met with greater opportunities in coaching men's teams, where women remain only 2-3% of coaches. In addition, the statistics on male and female salaries is not too promising either. The disparity that is still seen in the general workforce between men and women salaries is also reflected in the salaries for men and women in jobs dealing with athletics. In the 2000 Gender Equity report by the NCAA, it showed that women coaches were only getting paid 61 cents to every dollar that men head coaches were being paid (O'Reilly & Cahn , 2007, p. 341). The same trend is seen at the administration level of collegiate sports, where nearly 83.1% of all athletic directors are male. Title IX still needs advocates and supporters to fight for what the law stands for, and with so few women in leadership positions this goal could be threatened. The unforeseen consequence

of decreased leadership roles for women is still an issue of the law that needs to be reversed in order for its full implementation and success.

One explanation of the low numbers of women coaches may be the history of negative attitudes towards women in leadership roles, and especially in coaching roles (Habif, 2001, p. 73). *The Sport Psychologist* outlines one study which sought to examine the attitudes of players towards male and female coaches. It proved, even with providing competitive athletes with hypothetical coaches with the same credentials, that male athletes ranked female coaches more negatively than female athletes (Weiss, 1993). This becomes a problem especially when women with the same qualifications as men are less likely to obtain a professional job in coaching or as athletic administration. The discrimination in hiring males over females is a direct violation of Title IX's true aims. In addition, it reflects the biases that women do not belong in the "man's" domain of sports. In order for an increase of women in athletic leadership roles to increase, changes in the way society views women in athletic leadership roles must change as well. If this remains to be an unsolved issue, the likelihood of sports being a gender neutral domain is impossible and Title IX will be irrelevant.

The final, and perhaps the most controversial, issue surrounding Title IX deals with the business aspect of sports at the collegiate level. Today's college sports, especially Division I sports of football and basketball for men, have millions of followers and are therefore regarded as powerful social and cultural structures. Highly valued by the program's institution because of revenue and promotional effects, and equally as important to the NCAA for networking purposes, these big-time college sports reflect where true interests lie. For example, a \$6 billion dollar deal between the NCAA and CBS network for television rights to the NCAA DI men's basketball championship in 2001 greatly outweighs the \$200 million dollar contract for

broadcasting rights to the women's basketball championships. A more in-depth study of expenditures further suggests the monetary disparities between women and men. For example, the average expenditures for football teams at the DI level exceed average expenditures on all women's sports combined (NCWGE, 2012). In addition, national data highlights the lack of equality in funding with male athletes receiving 36% more college athletic scholarship money than women at institutions under NCAA control. To put it into perspective even more, for every new dollar going into athletics at the DI and DII level, male sports received 58 cents compared to 42 cents for female sports (O'Reilly & Cahn , 2007, p. 340). These numbers and figures validate how women sports are still not catching up to men's sports in a timely fashion and why Title IX still needs more strength. Because women athletics has never been identified in terms of its generating revenue, Title IX is necessary to keep them afloat. However, this cannot happen until organizations like the NCAA and institution's athletic departments are willing to distribute the revenue from men's sports equally. Male-dominated campuses and those more concerned with the business side of sports are not willing to do this yet and have proved in the past that they will do anything in order to combat these mandates.

One lobbying effort by a Texas senator named John Tower sums up the selfish interests that exist in intercollegiate sports. Tower introduced an amendment that would have exempted revenue-producing sports from complying with Title IX (Wilson, 1994). Tower and his supporters would say that because football and basketball bring in the most money, they should also receive the largest portion of the budget. Staying in compliance with the proportional ratio to women's sports would, therefore, be impossible. A former coach of University of Alabama's men's football program, however, admitted that this may not be entirely factual. With only 20% of all college football programs actually producing a net profit, or the amount of money the

program makes in a year after expenses, he states that football could “cut some of the stupid expenditures” (Boyce, 2002). This inside source has seen first-hand where the money goes in a big time football program and suggests that perhaps money is being spent in the wrong places. Instead of conglomerating the money in football and basketball programs, this money could be evenly dispersed to both men and women sports and schools would not have to worry about being out of compliance with Title IX.

In addition, if this practice of distributing money equally was adopted by schools, common issues that have arisen in the past regarding the cutting of both men and women sport's teams, would occur less frequently. Unfortunately, there are recent examples of these practices, including one occurrence at Temple University in 2013. In this situation, which replicates other decisions made by colleges and universities across the nation, Title IX is wrongly used as a scapegoat. Temple University made national headlines when they slashed five men's teams and two women's teams. Title IX was blamed as well as insufficient funds to sustain the programs. Like examined previously, nothing in Title IX requires for schools to spend the same amount of money on male and female teams but it does require proportionality. However, it does make one question as to why a female rowing team, which grows out of two makeshift tents on the bank of the Schuylkill River, was slashed at the same time as a \$10 million indoor practice facility for Temple's football team was being built (Zimmerman, 2014). Title IX is blamed as schools keep spending on football and basketball while having less expensive men's sports compete against women's teams to duke it out. These educational institutions chose to cut the non-revenue sports; a move that speaks loud and clear about where the school's priorities lie. Only when these practices end and revenue-hungry athletic administrators shift their priorities to gender equity in all areas, can Title IX be considered a true success.

Acknowledging continuing problems that Title IX has yet to successfully solve is the first step in advocating change on a large scale. The three issues that are outlined throughout this paper are evidence that there is still work to be done before Title IX is considered a complete success. These issues include the proper implementation of the law, the lack of women in leadership positions within athletic departments, and the overwhelming interest in revenue rather than true equality. However, many future practices and changes could help in closing the gender gap on the playing field and resolving the matters discussed. The first solution is to change the cultural biases that exist in society. When looking at the future of Title IX, the question of “Does law create the culture or does culture create the law?” comes into play. There is no doubt that Title IX was a necessary law and also inevitable. However, no amount of government intervention will alter how boys and girls are still socialized to think about gender roles in sports. Culture changes still need to take place to rid the biases that have infiltrated society’s beliefs on where women belong in the sports world. The proper place for women in sport has always been defined by ideas about health, beauty, femininity, and the distinctive physical nature of women (Wilson, 1994). Sports, however, were identified closely with masculinity and women were discouraged from entering this “territory.” These male-biased attitudes towards sex roles can be traced back to the Victorian Age of the nineteenth century, when the domestic sphere was the only domain in which women could fully participate in (Wushanley, 2004, p. 7). Even physicians supported this type of thinking by promoting the idea that a woman’s physical condition would not allow for them to partake in physical activities like sports because of puberty and menopause, which would periodically weaken their physical capabilities (Wushanley, 2004) A term known as “moderation” came to be practiced in the 1920’s that continued well into the 1960s that held the belief that women should be able to be involved with

sports, however, it was only in the context of activities that allowed for women to remain “feminine” because of her supposed “frailty” (Staurowsky, 2012). The typical characteristics of male athletes including competitiveness, toughness, and strength were, and sometimes still are, translated into negative terms when connecting them to female athletes. John Wilson explains further that “Women athletes [...] must ‘come to terms’ with the possibly masculinizing effects of sport participation, with the homophobia it generates amount both men and women, and take countermeasures to assert their femininity.” (Wilson, 1994). These challenges that a female athlete must face when she decides to join and compete in athletics could dissuade any young athlete who may fear being associated with undesirable stereotypes. Title IX, then, plays an important role in changing the view that society has on this subject. By obligating that institutions recognize and create an environment that supports gender equality in sports, it made gender equality a legal issues and not just a philosophical one. Title IX has given women the opportunity to disprove some of the patriarchal views on gender roles, however, there is still work to be done in guaranteeing false cultural biases disappear.

The solution to combating the ideological struggle concerning women’s place in sports is to change the minds and opinions of younger generations who have yet to be exposed to the conventional ideas of the past. Physical education in public and private schools is one area where society can start to model more positive values and opinions of women in athletics. American culture has always valued physical exercise, however, educators in the late nineteenth and twentieth century particularly began to see the importance of physical education for young people (Wushanley, 2004, p. 11). It was the decade of the 1890’s that a shift in physical education occurred; when regular gym exercises gave way to exciting games and sports. Nearly every institution of higher education offered some sort of physical activity for women at the turn

of the century and the growth of intercollegiate athletics for women in America began (Wushanley, 2004). By looking at the pattern of physical education and its correlation on women sports, a solution to how America can better implement Title IX can be offered. Regardless of skill and ability, it is important to expose both girls and boys to equal opportunities for participation in physical activities and sports during physical education. These opportunities can be offered at the elementary, middle, and high school levels which align with the unique American model of linking sports to educational institutions. Once this step is taken in ensuring that all students receive ample opportunities to play, a positive effect on women sports will be seen. The early exposure to physical activity combined with the positive lessons enforced in teamwork and cooperation, and the development of positive relationships between girls and boy will promote participation to young girls while also moving children away from traditional biases on gender roles.

Nowhere are these misconceptions highlighted more dominantly than in the media. Title IX made opportunities for female athletes to play more accessible and, therefore, provided females with an opportunity to improve athletic performance, closing the gap between men and women. However, these strides are overshadowed and neglected to be shown in the mass media (O'Reilly & Cahn , 2007). Media is one of the first areas that need to address when discussing the cultural biases of women in sports. Television coverage of women sports, movies, as well as magazines dictate and have the power to influence not only the popularity of sports and sports figures, but also which sports related stories are even significant, and why they are newsworthy. This power greatly influences the way cultures view women in sports, but they unfortunately promote a message that is discriminatory and harmful. The first example of this discrimination can be seen on live television coverage of women sports, where a gender-biased language was

discovered to be used by sportscasters. Whether consciously or unconsciously, studies have shown that commenters tend to trivialize or sexualize women's sports and athletes and "gender mark" women's and men's events differently (Messner, Duncan, & Jensen, 1993). The 1989 U.S. Open tennis tournament was used to compare and analyze this debate as well as the NCAA final four basketball tournament from this year as well. Camera angles were seen to be subtly frame women athletes as sexual objects that were not symmetrical with the way in which male athletes were framed (Messner, Duncan, & Jensen, 1993, p. 268). In addition, gender was constantly marked both verbally and graphically to distinguish between men and women's championship games of the final four. Some examples of this distinction include commenters saying that "these were some of the best women's college basketball teams" or that "this NCAA women's semifinal is brought to you by..." (Messner, Duncan, & Jensen, 1993, p. 268). Though the use of the word seems to be used innocently, however, the women's events were gender marked an average of 59.7 times per game while the men's games were simply referred to as "the national championship games." Therefore society subconsciously viewed the women's game as unusual, or divergent from the norm, while the men's games remained superior. Even these small details that appear to be irrelevant and unimportant can negatively affect societies opinion on women's sports, therefore, these practices must be reversed and constantly monitored by those who work in the field of sports broadcasting.

Another aspect of media that can adversely affect the biases regarding women in athletics is sports film. The rise of women's sports film began in the 1990s and it has generally been looked at as a positive step to crediting female athletes with the success and praise that they deserve. However, harmful and underlying themes pervade these movies as well that only further societies conventional attitudes towards women in the sports sphere that Title IX works towards

diminishing. By looking at sports films in two angles; first, movies that include a male athlete as the protagonist and then second, movies that include a female athlete protagonist, these conventional themes of a patriarchal society especially in the sports domain can be seen. Take a film like *Rocky*, where a male boxer is featured as a “heroic individual who overcomes obstacles and achieves success through determination, self-reliance, and hard work [he] defines and proves himself through free and fair competition modeled on American society” (Baker, 2003). At the same time, these films juxtaposition a wife or supportive girlfriend next to the start athlete. She is simply a love interest, totally separate and cut off from even entering the sports world herself, bearing “the traditional values ascribed to [them]: truth, fairness, and home” (Tutor, 1997). On the other hand, women’s sports films that include a female protagonist take a different approach to sports. These woman characters must simply defend their desire to play sports, having to overcome the stigma of being “mannish” in a society that is male dominant (O’Reilly & Cahn , 2007, p. 285). This character is often forced to choose between two desires: sports or love? *A League of Their Own* is one film that follows this storyline, highlighted by the female character of Dottie Hinson. Her husband is away fighting in World War II when she becomes known as one of the best players in the All-American Girls Professional Baseball League. However, in the end, she is torn when her husband comes back from war resulting in her decision to stop playing the game she loves. Ironically, she ends up losing her last championship game. *A League of Their Own* epitomizes how films can highlight women success, but only in relation to the man’s world. A new type of storyline must be utilized in sport’s films to enhance basic change in thoughts and biases regarding the role of women in the sporting world.

The third and last way in which media must be altered in order to change pre-existing cultural views on women in sports is in the way female athletes are portrayed, photographed, and

presented in magazines and other mediums. While women athletes have proven to be strong, tough, and talented, they are not always portrayed to be this way. Instead, women athletes are presented as “trivial, romantic, and hypersexualized. [...]What we see often are pictures of women athletes presented out of uniform” and in roles that are stereotypically feminine (Hanson, Guilfooy , & Pillai , 2009). It furthers the stereotype that women cannot be strong and competitive or meet the demands of sports and that this sphere is meant for males only. This is a particularly harmful message displayed to young girls and adolescence, as well as to men and boys in society as well. One only has to look at *Sports Illustrated* to find the alarming disparities between how male and female athletes are represented. Out of its 508 issues, only 34 of them featured women on the cover and one-third of these issues were the swimsuit issue. The success that women have been able to prove with the passing of Title IX, therefore, is now overshadowed by the sexual appeal that media buys into. The laws and provisions like Title IX that have been pushed through Congress in an effort to achieve gender equality cannot be completely successful without first adapting the way society views women and gender roles. The first way in which this shift can be helped along is by featuring female athletes as athletes first and foremost, as women second. This is not because gender does not matter, but because a woman's athletic success does not depend on her gender. The future generation of female athletes must be able to see successful sports stories of women presented in the media, rather than pictures of female models in swimsuits. By altering the narrow portrayal of women in media, society can begin to reshape how they perceive women in sports. When society starts crediting women for their talent, instead of their sexuality, the marginalization of females in sports can start to diminish as well.

In addition to combating the way society is predisposed to thinking about gender and sports, changes need to be made within all athletic departments across America. This change will

help to aid in the issues surrounding how Title IX is implemented, as well as hopefully keeping revenue and money in its proper place. This solution replicated how the NCAA has representatives stationed at all universities who are members under the NCAA in order to check on compliance of athletes. These representatives are knowledgeable about thousands of rules and regulations that are placed on student-athletes. Like this model, a Title IX representative should be positioned at each school to monitor the school's compliance of the law. This person would be well equipped to handle discrepancies and issues so that problems with compliance could be handled immediately and effectively. This monitoring would reduce the amount of schools who have had to cut sports in order to stay in compliance, as drastic reactionary measures would not need to be taken. These Title IX representatives could also very well be women who could represent and advocate for women and girls in athletics while also increasing the number of women in leadership positions within athletic departments. This measure could successfully support how Title IX is enforced and implemented in schools and would be a positive step in the right direction in closing the gap between men and women sports.

By evaluating the participation levels of women in intercollegiate sports, it can be proven that when given the opportunity to play females will take advantage of those opportunities. This not only shows that women can successfully compete in physical activities and sports at a high level, but also that the argument claiming women are inherently less interested in sports is not valid. Another approach that could be taken when proving a law like Title IX is necessary and important for American society is highlighting the benefits that come from girls and women competing in athletics. These benefits are health related as well as long lasting benefits that have a great impact on society as a whole. For example, female participation in sports slows down the obesity epidemic that is of widespread concern across America. One study found that women

who played sports had a 7% lower risk of obesity 20-25 years later in life (NCWGE, 2012). The regular physical activity can also have effects on reducing health issues like heart disease, breast cancer, and osteoporosis. In turn, America may find that health care will be positively affected when women are given more opportunities to participate in sports. In addition to these health care advantages to Title IX, academic success and leadership skills are also benefits of women participation. A statewide, three-year study in North Carolina found that athletes achieved a higher grade point average by one full point compared to their non-athlete peers as well as higher graduation rates (NCWGE, 2012). Lastly, society reaps the benefits of women athletic participation because of the leadership and teamwork skills that are transferred to the working world. For example, 82% of female business executives were involved with sports at some point in their lives (NCWGE, 2012). Title IX only helps in creating opportunities for women and young girls to learn these beneficial skills and take advantage of the health benefits that result from involvement in athletics.

The passage of a law like Title IX in 1972 proved to be a catalyst for women equality in all areas of life- both in sports and education. This is evident in the increased participation rate of women in athletics at both the high-school and collegiate level. However, women athletes have yet to see a totally leveled and modern playing field compared to their male counterparts. Obstacles still need to be addressed and broken down before Title IX is considered fully effective and successful. The three main obstacles include the loopholes that allow for improper implementation of Title IX on college campuses to occur, the decreasing number of female coaches and administration even with the increase of opportunities for athletic participation, and the unfair practices that occur to protect the interests of revenue over equality. All of these obstacles prohibit women, in some way, in fully receiving equal opportunities in sports.

Regardless of these obstacles, Title IX remains both a necessary and valuable law that all American education institutions should abide to. There are a variety of reasons to validate this, however, none speak as loudly as the benefits that girls gain when they participate in athletics. The skills that are learned are valuable and transferrable to the professional world, and therefore affect all of society. In order for Title IX to be properly utilized for its true purpose, two solutions for the future can be looked at. The first aims to place a Title IX representative at each institution to ensure the compliance of the school. The second, and perhaps the most challenging one to implement is changing the traditional views of gender roles found in society. Sports are essentially a reflection of American culture, but the power of a law like Title IX should not be underestimated in its ability to reverse society's viewpoint on women's rightful place in the picture.

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Islamic Education for Young Children
By Natalie Arndt

All children are required to go to school to get an education, but there is some flexibility in choosing the type of education. There is the main, secular education system, commonly recognized as the general public schools, but there are many other options, including home schooling or private schools, such as Catholic or other religious schools. There are other forms of education as well, such as “Sunday school,” where Catholic children go to the church for a supplemental education on their faith. These are many of the common schools or types of education that society hears about, but many religions have their own schools, as well, to be able to provide that smooth interwoven curriculum between the teaching of general knowledge for every student and the way that religion is applied to that general knowledge. Just as society views education as a high priority, W.D. Mohammed also preached within the Islamic community about the importance of education. He found it so important that, in teaching the people about the three principles, or priorities, that they should live by, “number one, is education” (Curtis, 118). Whether it is an independent private school or the general public school, Muslims regard education with such high importance and “are committed to provide their children with educational opportunities,” as it provides them with “a means of social mobility and integration,” which will allow them to lead people all over the world and spread the message of Islam about Allah (Haddad, Senzal, and Smith, 11).

Throughout the history of Islam, there have been many notions that serve as evidence of the importance of education within the religion. The Qur’an asks, ““Are those who have knowledge equal to those who do not have knowledge?” (39:9)” (Rizvi), demonstrating that they believe everyone should seek knowledge to achieve fulfillment in life and be able to live a proper life, as a Muslim. Another piece of historical evidence is the “promoting of knowledge” through

prisoners of war. In a battle fought by the Muslims, they promoted education by offering freedom to the prisoners who were literate and would “teach ten Muslim children how to read and write” (Rizvi). It is also evident within the teachings of various Muslim groups, such as the Five Percenters, who preach “that education should be fashioned to enable us to be self-sufficient as a people” and “children are our link to the future and they must be nurtured, respected, loved, protected, and educated” (Curtis, 121). These lines about what they teach support their purpose for educating children to help them develop into better people in understanding Islam and participating in the general population.

Islamic education in America has been challenging for Muslims, especially in the post-9/11 era, because of the fears of Americans that these schools are creating radical Muslims and teaching them about terroristic things. In actuality, Islamic education serves a dual purpose, in that

“They must continue to improve the quality of education they provide about the faith and practice of Islam to Muslims themselves...and they must intensify efforts to educate the American public – who may know about Islam only through the often distorted lens of the media – about the elements of their religion that are consistent with the message of the Qur’an and the teachings of Prophet Muhammad” (Haddad, Senzal, and Smith, 4).

This means the students are being taught in an atmosphere that is derived for them to feel safe from prejudices and allow them to get an education that will deepen their knowledge and practice in the faith and provide them with the skills to lead others in teaching America about Islam. By going to a school that provides this type of dedicated teaching to Islamic education, the children receive an “alternative education for character development; protect children from stereotyping and taunting; offer Islamic alternatives to such social ills as premarital sex, drugs, and violence; and allow children to avoid public school curricula that may, in some way, be prejudiced against Islam” (Haddad, Senzal, and Smith, 5).

It seems that they are able to continue promoting the importance of education through these private schools that focus on the incorporation of learning and practicing Islam. These schools today demonstrate that getting a general education is important, and, so much so, that they strive to incorporate their religion into the curriculum to help their students understand how the two curriculums are interconnected and can be applied through one another to lead and spread the message of Islam throughout society. This concept is very similar to that which is implemented in other schools that focus on the incorporation of other religions as well, such as Catholic or Jewish schools. For those who are not able to attend a school for an Islamic education, there are other options, such as sending the children to the public school “for secular education; and for their religious education, send them to the: Sunday schools and summer programs” (Rizvi). In this type of schooling, some Muslims fear the risk that the Islamic knowledge will not be applied to the other knowledge they are receiving in their secular education. This system relies on the parents to fulfill their duty in supporting their children’s education and helping to understand and further apply their knowledge to their daily lives.

One example of a school dedicated to Islamic Education is the Foundation of Islamic Education at the Villanova Academy Honor Studies (VAHS). This school currently serves students ages 3 through 6th grades, but is looking to expand and offer a program for students through high school. This school is much like other private schools that have a religion base, where they provide a general education for the students, but strive to “build a balanced foundation on which students can grow spiritually, intellectually, morally, and emotionally,” (“Villanova Academy for Honor”) by adding the religion component to their educational curriculum. Due to the exclusivity, this school, like many other private, religious schools, is based on an application and admission process, therefore, they have limited resources and only

select certain students for the school and program. This means these children must be students at the top of their class and well behaved, to ensure their commitment to the program and strengthening their education. This also means that these schools often cannot meet the needs of children that require special education services.

In comparing the educational curriculum of the VAHS to that of a typical public school in Philadelphia, VAHS incorporates the general education curriculum and “the Islamic studies curriculum, [which] addresses the main aspects of Islamic teachings, [including] Qur’an, Hadith, Seerah, Fiqh, Tawheed, Islamic History, and Islamic manners and morals” (“Villanova Academy for Honor”). There is a specific period designated for the students to learn their Islamic studies, just as children have specific periods to learn language arts and math, but the Islamic studies is also woven throughout and applied to the subjects in other classes. The school also focuses on teaching its students the Arabic language, since that is the language of the Qur’an, and practices many of the daily rituals of Islam throughout the school day, which enforces their “ideology of the program: ‘knowledge for implementation’” (“Villanova Academy for Honor”).

When considering more advanced Islamic education, such as the secondary level or even in college, for training of teachers in Islamic education, there is some work to be done. There are currently no official programs or any solid curriculum for the higher level, which is why there has been a push for the development of these programs and schools to be able to offer that option, especially since there is such a stress on the importance of education within the religion. There has been a significant “amount of time, energy, and resources [that] have been placed on curriculum development projects” to improve the Islamic education system at the lower levels thus far, but “there has been no formal, research-based deliberation of the principles of an Islamic pedagogy and the training of teachers” (Memon, 289). Compared to other religious

education systems, such as Catholic and Jewish schools, the Islamic schools do not have a teacher training program, but there is a strong desire to start one and further their own knowledge to be able to help others learn about Islam and how it is integrated throughout everything they learn. The reason for this may be that there are fewer Islamic educational schools in the Philadelphia area, in contrast to many of the private Catholic or Jewish schools, therefore, there has not been any discussion or cause that was brought to attention to start any form of teacher training program incorporating any religion, specifically Islam.

This is becoming an increasingly important issue, as the country, and Philadelphia, continues to spread in diversity of people and consist of a wide variety of religions and backgrounds. The more awareness, the easier it is to change or expand things within a society, which means, as the Islamic community grows and expands their educational system, there will continue to be growth into the creation of more advanced education that incorporates the religion with the secular curriculum. Overall, this advanced knowledge would help Islamic education teachers conquer the difficulties of differences among the various Muslim communities “through exploring the multiple types of Islamic schools, curriculum frameworks, and instructional methods without imposing one type as definitively ‘Islamic’” (Memon, 293). This will help the teachers become more rounded in their own education and teaching strategies, while also having a better understanding in how to provide the students with a well-rounded Islamic education in the schools.

Overall, the topic of education is so important to discuss, because it has such an influence on how our children will grow to “become leaders and have a positive influence in society,” (“Villanova Academy for Honor”) as productive citizens. There is a responsibility to educate our youth to ensure that they have “meaningful knowledge, essential skills, positive learning

experiences, and attitudes,” (“Villanova Academy for Honor”) to continue improving society, as a whole. While there are many apprehensions to having private schools that offer an Islamic education, due to prejudices and stereotypes of the religion, especially after 9/11, there are many similarities to those schools that incorporate other religions. In general, Muslims hold education as a high priority, and find it very important to have a good foundation through the secular curriculum to be able to apply their religious curriculum in a way that rounds out their education and prepares them to be leaders within the community, spreading the word and living the practices of Islam.

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When Doctors Make Mistakes
By: Alexis Golden

The notion of “medicine” has shifted throughout time unceasingly. This is true throughout the entire world but in America especially. From prehistoric medicine to modern medicine, this shift has had many attributed factors such as culture, religion, war, epidemics and pandemics, and the advancement of knowledge. These factors have significantly shaped and altered viewpoints of medicine and how it is researched, practiced, and valued. Modern medicine is still facing these factors today. Though medicine can be seen as a success today because of its progressive technology, Americans struggle with the amount of trust or distrust that they put into modern medicine. This is a large consequence of the decisions or actions that modern doctors make which many perceive as being mistakes or errors.

The concept of medical malpractice can be defined as: illegal, improper, or negligent actions performed by a medical professional. “The standard traditionally used to evaluate whether the breach in question rises to the level of negligence is medical custom — the quality of care that would be expected of a reasonable practitioner in similar circumstances.”¹ Medical malpractice has, of course, existed since prehistoric medicine. Though malpractice litigations in the United States arose in the 1800s, the significance and impact of medical malpractice was not until the 1960s and early 1970s. This was due in part to the many cases of human experimentation and patient mistreatment being exposed and disputed during this time. The doctrines of “informed consent” and “res ipsa loquitur,” “the rule that certain events, such as the retention of instruments after surgery, carry an inference of negligence.”² Informed consent is the

¹ Studdert, David M., Michelle M. Mello, and Troyen A. Brennan, "Medical Malpractice," *The New England Journal of Medicine* 350, no. 3 (2004): 283-292, doi:10.1056/NEJMp035470.

² Ibid.

process of obtaining a patient's consent before providing any type of medical treatment. *Res ipsa loquitur* is a Latin word meaning "the thing speaks for itself." In other words, even if there is no evidence of negligence for one's injury, there is still accountability for the action. The expansion of these doctrines created more liability and legal responsibility for the actions of medical practitioners. This gave patients a sense of trust in the care that was being given to them. In addition to, "Advances in medical science and the development of more coherent and visible standards of care,"³ caused Americans to hold physicians more accountable for their actions with a higher set of standards. This step forward for medicine in America during this time did not come about so simply. It took years of trial and error and even cost many of people's lives, especially the lives of a lot of children.

Various major incidents throughout medical history in America are still considered today due to their vast consequences in society. In the mid-1900s, a growing fear in America was the threat of poliomyelitis, or better known as polio. The disease of polio caused parents to live in terror for the health of their children. People all over the world were anxiously waiting for a cure or prevention for this terrible disease, which consequently put everyone's lives on hold. At last, in 1955, Jonas Salk developed a vaccination. Because of how feared this disease was during this time, there were mass immunizations throughout the United States and each and every parent made certain their child would receive it. However, only weeks after the press conference announcing success of the vaccine trials, a doctor in Idaho reported a case of paralytic polio in a girl who had recently been vaccinated; within weeks, many other similar reports were made to local health authorities.⁴ Coincidentally, each of the reports all consisted of the same story—

³ Ibid.

⁴ "The Cutter Incident," *The History of Vaccines*, last modified 2015.
<http://www.historyofvaccines.org/content/timelines/diseases-and-vaccines>

paralysis within the arm that was vaccinated. It then became clear that the vaccine produced and distributed by the Cutter Laboratories in California had failed to, “Inactivate the very first lots of inactivated polio vaccine licensed for use in the United States,”⁵ which then resulted in the, an epidemic of paralytic polio. Over 40,000 cases had risen after the Cutter vaccination, 200 of these cases suffered from paralysis, and 10 had lost their lives.⁶ Tens of thousands of Americans had put their utmost trust and last hope into this vaccine, which only proved to make them all sick with the disease they feared most. This came to be widely known as the “Cutter Incident.” Some who have lived throughout this time period in America and suffered from this disease are still alive today. Their feelings or thoughts towards vaccinations or medical practice in general may have been manifested through this happening. They may also have imposed these feelings or thoughts on their children as well, creating generations of skepticism on medicine in America.

Throughout *The Cutter Incident: How America's First Polio Vaccine Led to the Growing Vaccine Crisis*, the author Paul Offit goes into great detail about the incident. Offit argues in his book that, “This case set a precedent for liability without negligence that ultimately almost destroyed the vaccine industry in the United States.”⁷ In other words, the industry was not found guilty of negligence rather, they were held liable for their implied warranty that the vaccine would be safe and effective, which it was not. Supposedly, “Cutter followed all available guidelines in production of the vaccine and only released lots that had passed recommended safety tests.”⁸ Despite the safety tests the vaccination had passed, this awful incident somehow

⁵ John Treanor, "The Cutter Incident: How America's First Polio Vaccine Led to the Growing Vaccine Crisis." *Environmental Health Perspectives* 114, no. 9 (2006): 1-a556, accessed December 7, 2015, <http://search.proquest.com/docview/222642823?accountid=11999>.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

still occurred. Regardless of the industry's lack of negligence in doing their job, influxes of lawsuits were still made against them because of the vast amount of ramifications. John Treanor believes that this case, which was seen as a catalyst of medical litigations to come, "Continues to have implications for product liability and the health of the vaccine industry today."⁹

As discussed above, wrongful actions in the medical field more likely than not always bear consequences, whether big or small. Each and every profession within the medical field is equally held accountable for their own actions but there are some specialties within medicine that present more risk for practitioners than others. Though there is a fine line between them, there are high-liability risk specialties and low-liability risk specialties. A high-liability risk specialty is one that is, "Assumed to be at higher risk for malpractice suits, and therefore are often perceived to be most affected by high or rising liability costs."¹⁰ Some of the professions that are considered to be in this category are, "Emergency medicine, general surgery, neurosurgery, obstetrics/gynecology, orthopedic surgery, and radiology."¹¹ Though these specialties fall within the high-risk category, malpractice liability is not limited to those specialties alone. As for low-liability risk specialties, this category may consist of general and family practitioners, internal medicine, and pediatrics.¹² Medical professionals in both high and low liability risk specialties express an equal amount of concern about the risk of malpractice.

In 2010, a study was conducted to research medical claims regarding high and low liability risk specialties that had been reported from January of 1985 to December of 2008. The study proved that the high-liability risk specialties do in fact have more claims and indemnity

⁹ Ibid.

¹⁰ Aaron E Carroll, and Jennifer L Buddenbaum, "High and Low-risk Specialties Experience with the U.S. Medical Malpractice System," *BMC Health Services Research* 13 no. 1 (2003): 465, doi:10.1186/1472-6963-13-46.

¹¹ Ibid.

¹² Ibid.

payouts overall. Frequent claims within high-liability specialties were, “Improper performance (31%)...Errors in diagnosis (23%) and no medical misadventure (21%).”¹³ According to the data, most claims in this category were a consequence of improper performance, which is when the physician has performed a procedure incorrectly. As for the claims on low-liability risk specialties, the percentages were as follows, “Errors in diagnosis (31%)...No medical misadventure (23%).”¹⁴ This data displays that the surveyed cases of victims of supposed medical malpractice made most of their claims based on performance or error in diagnosing.

The process of patients making these claims and following through with a medical malpractice case is a long and arduous journey. Unfortunately, almost 70% of claims on malpractice against doctors and hospitals in the United States fail, meaning they simply disappear.¹⁵ The dropping of these cases not only remain unsettled, but also impose costs on all parties involved—patients, lawyers, providers, insurers etc. Claims have been dropped for many reasons such as: frustration with the long process, lawyer’s priorities change, the plaintiff acquiring of more information thus weakening the claim, unforeseeable events that occur while a case is pending, and a change in the plaintiff’s medical condition. Overall, the process of one making a claim for malpractice is seemingly futile and often leaves the patient empty-handed without any retribution for the wrongdoing done by the doctor.

The question of why or how doctors make mistakes often arises to question. Neville Goodman, an author of medical writing, reviewed two books, *Doctors’ Errors and Mistakes of Medicine: Must Health Care Deteriorate?* and *Internal Bleeding: The Truth Behind America’s*

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Dwight Golann, "Dropped Medical Malpractice Claims: Their Surprising Frequency, Apparent Causes, and Potential Remedies," *Health Affairs (Project Hope)* 30, no. 7 (2011): 1343.

Terrifying Epidemic of Medical Mistakes, both written by professors and doctors. Within these books, these experts talk about their own personal medical errors and mistakes and how, “Medicine is immersed in an orgy of self-doubt”¹⁶ and how it is also, “An uncertain activity, in which there is no substitute for learning and training on sick patients; it is inevitable that doctors will make mistakes, and some mistakes will kill people.”¹⁷ Doctors whom are held responsible for diagnosing and treating even the most fatal illnesses and diseases will still admit they do not have every answer.

Similar to these books, Dr. Jerome Groopman published a book called *How Doctors Think* in which he touches on a few themes of the way in which medical practitioners “think,” while reflecting on his on practice and thinking as well. He admits that medicine in itself is an uncertain science; therefore physicians cannot be expected to be infallible. “Physicians, like everyone else, display certain psychological characteristics when they act in the face of uncertainty. There is the overconfident mind-set: people convince themselves they are right because they usually are. Also, they tend to focus on positive data rather than negative data.”¹⁸ With that being said, the process in which doctors think and understand their own thinking, can alone assist in reducing their mistakes. Groopman gives explanations for different types of mistakes or errors that doctors may make within their practice. One error made by doctors is called a “representativeness error” which Groopman describes as a time when a doctor will, “Fail to consider possibilities that contradict the prototype and thus attribute the symptoms to the wrong cause.”¹⁹ Another error is called an attribution error. Contrary to representativeness,

¹⁶ Neville W. Goodman, *Doctors' Errors and Mistakes of Medicine: Must Health Care Deteriorate?*, Book, Vol. 329, British Medical Association, doi:10.1136/bmj.329.7456.58-a.

¹⁷ Ibid.

¹⁸ Jermone Groopman, *How Doctors Think* (New York: Houghton Mifflin Company, 2007), 149-150.

¹⁹ Jermone Groopman, *How Doctors Think* (New York: Houghton Mifflin Company, 2007), 44.

within an attribution error, doctors assume a diagnosis because their patient fits a negative stereotype. When a doctor makes an affective error, he or she tends to prefer a favorable outcome for their patient rather than less appealing alternatives. An availability error is made when a doctor judges a patient based on an example relevant to the one at hand. Comparable to availability errors, confirmation bias errors are when doctors tend to select information that is consistent with what they expect to happen. These errors then lead to the anchoring error.

“Anchoring is a shortcut in thinking where a person doesn’t consider multiple possibilities but quickly and firmly latches on to a single one, sure that he has thrown his anchor down just where he needs to be.”²⁰ One thing each of these errors has in common is that they are solely cognitive errors made by a physician. Groopman mentions throughout the book that not only should doctors have a great self-awareness throughout their practice, but he also believes that doctors and patients must work together and understand one another. Groopman says:

I realized that I can have another vital partner who helps improve my thinking...that partner is my patient or her family member or friend who seeks to know what is in my mind, how I am thinking....By opening my mind I can more clearly recognize its reach and its limits, its understanding of my patients physical problems and emotional needs.²¹

Through the definitions of each of the errors explained above, it is evident that those in the medical profession are only human and are capable of human error. Be that as it may, the lives of human beings are in the palms of their hands and they must make sound and trustworthy judgments on their patients because it is their duty to society. Doctors who are guilty of committing such errors as these contribute to the great skepticism of medicine in America.

²⁰ Jermone Groopman, *How Doctors Think* (New York: Houghton Mifflin Company, 2007), 65.

²¹ Jermone Groopman, *How Doctors Think* (New York: Houghton Mifflin Company, 2007), 269.

All professionals within the medical field are fully aware of the risk they take each day they practice their profession. Regardless of the large income they may receive or the population they serve, their concern for the amount of liability they hold, medical professionals are constantly concerned with the risk they are taking. This is evidence by a study done which surveyed a group of 1,028 practicing neurosurgeons across the United States. Neurosurgeon's focus within medicine is on the nervous system, in particularly the brain and spinal cord. This study examined the neurosurgeon's believed potential malpractice risk. Of the diverse group of neurosurgeons, "seventy-two percent of respondents 'strongly agreed' or 'agreed' that there is a medical liability crisis in their practice area. Furthermore, 50% of neurosurgeons cited liability premiums as a 'major burden,' and 14% labeled liability as an 'extreme burden.'"²² Also, of the group as a whole, 41% have encountered at least one legal settlement within their career.²³ More results from the study appear in Appendix A.

To combat with the fear of malpractice, the professionals in the field of neurosurgery, among other fields as well, practice "defensive medicine." Defensive medicine is a way for medical professionals to protect themselves legally by recommending alternative treatments or diagnostic tests that may not be the best option for the patient; however, this avoids potential criticism for the professional. There are both positive and negative aspects of this. Dr. Jonathan Coates explains in his medical journal that, "Positive aspects of defensive medicine may include practitioners providing more detailed explanations to patients when obtaining informed consent, and practitioners being more detailed in their note taking. Negative defensive medicine occurs

²² Brian V. Nahed, Maya A. Babu, Timothy R. Smith, and Robert F. Heary, "Malpractice Liability and Defensive Medicine: A National Survey of Neurosurgeons," *PLoS ONE* 7 no. 6 (2007): e39237, doi:10.1371/journal.pone.0039237.

²³ Ibid.

when a practitioner performs in a way that is contrary to clinical ideals.”²⁴ He explains an example of prescribing unnecessary drugs or increasing diagnostic tests to avoid treatments that may cause risk as negative defensive medicine.

The practicing of “Defensive Medicine” raises many ethical issues. Practicing medicine in this way means doctors may be compensating quality and vital services for the sake of their reputation. This practicing of defensive medicine is at complete odds with the Hippocratic Oath, which all medical-school students must swear to. It conflicts the most with the line, “I will apply, for the benefit of the sick, all measures which are required, avoiding those twin traps of overtreatment and therapeutic nihilism.”²⁵ This oath is an ethical and moral vow to treat patients to the best of one’s ability. The full modern day version of the oath is displayed in Appendix B.

Dr. Robert Veatch wrote a book called, *Patient, Heal Thyself*, concerning “new medicine.” Throughout the book he focuses on the shifting responsibilities of patients and doctors within medical decision-making. Veatch writes in his introduction,

Physicians no longer can be expected to be able to do what is in their patients’ interest just because they are competent physicians. They cannot be expected to do what best serves patients’ interests because they cannot be expected to know what patients’ interests are. The new medicine will be one that focuses on the value choices that have to be imposed on the facts of medicine in order to decide what is good practice.²⁶

²⁴Jonathan Coates, "Defensive Medicine," *The New Zealand Medical Journal* 115, no. 1160 (2002): U144.

²⁵ “Definition of Hippocratic Oath,” MedicineNet.com, Last modified August 28, 2013, <http://www.medicinenet.com/script/main/art.asp?articlekey=20909>

²⁶ Robert M. Veatch, *Patient, Heal Thyself: How the New Medicine Puts the Patient in Charge*, New York: Oxford University Press, 2009, 4.

Basically, he is advocating for patients to be able to have more choice in their health decisions based on their own beliefs and values. In the epilogue of the book, "A Patient Manifesto," Veatch admits that physicians should in fact provide a degree of their diagnostic information and possible treatment options, however, not whether any particular outcome is good or bad. From this mutual understanding between patients and doctors, this could generate a greater sense of trust within medicine because of the relinquishment of so much decision-making within one party.

Overall, throughout the last one hundred years in America, medicine has endured many reforms, improvements, and adjustments due to ethical issues, major occurrences, higher risk factors, and higher expectations in the medical field. Since the end of the 19th century, the term "modern medicine" has been used to explain the progression in medicine. However, in revealing concepts such as the Cutter Incident, the growing incidence of malpractice suits, and the use of defensive medicine, it is evident that they are quite contrary to the myth of progression in America. With that being said, the degree of trust or distrust Americans have in medical practice today is invariable due to the controversial decisions or actions made by medical professionals.

Appendix A: Malpractice Liability and Defense Medicine: A National Survey of Neurosurgeons

Table 4. Perceptions of Neurosurgeon Respondents.

1 "There is a medical liability crisis in my area"	
Strongly Agree	38.6%
Agree	34.7%
Neutral	17.4%
Disagree	7.0%
Strongly Disagree	2.1%
2 "Medical liability affects my decision on where, geographically, to practice neurosurgery."	
Strongly Agree	39.1%
Agree	32.2%
Neutral	17.0%
Disagree	9.0%
Strongly Disagree	2.5%
3 "Medical liability affects my decision on how long to continue to practice neurosurgery"	
Strongly Agree	40.0%
Agree	31.2%
Neutral	16.8%
Disagree	8.8%
Strongly Disagree	3.0%
4 "I view every patient as a potential lawsuit."	
Strongly Agree	32.0%
Agree	37.3%
Neutral	12.3%
Disagree	12.6%
Strongly Disagree	5.7%
doi:10.1371/journal.pone.0039237.t004	
5 How often do Survey Respondents Make Referrals for Defensive Purposes?	
Always	6.2%
Very Often	26.7%
Sometimes	42.2%
Rarely	20.7%
Never	4.2%
6 What Prompted Discontinuation of High-Risk Services?	
Liability	49.7%
Technical Skill Involves	9.2%
Dislike	13.8%
Changing Practice	24.9%
Other	2.3%
7 What are your Feelings on Malpractice Premiums Related to Maintaining Cranial Privileges	
Very Concerned	29.9%
Somewhat Concerned	32.5%
Neutral	19.2%
Somewhat Unconcerned	5.1%
Completely Unconcerned	6.1%
Cranial Privileges Not Maintained	1.7%
Unknown	5.1%
8 Greatest Concern with Maintaining Trauma Privileges	
Reimbursement	44.6%
Malpractice	44.0%
Unknown	10.9%
Table 5. Defensive Medicine Responses.	
1 Defensive Medicine Practices done SOLELY to Minimize Risk of a Lawsuit	
Ordered lab tests	66.7%
Referred patients	66.0%
Prescribed medication	40.0%
Suggested a procedure	36.0%
Ordered imaging	72.0%
2 How often do Survey Respondents Order Additional Laboratory Tests for Defensive Purposes?	
Always	9.7%
Very Often	31.5%
Sometimes	39.8%
Rarely	15.4%
Never	3.4%
3 How often do Survey Respondents Order Additional Imaging for Defensive Purposes?	
Always	13.0%
Very Often	43.7%
Sometimes	31.7%
Rarely	9.4%
Never	2.2%
4 How often do Survey Respondents Obtain Initial Consultations for Defensive Purposes?	
Always	8.5%
Very Often	32.2%
Sometimes	38.0%
Rarely	17.5%
Never	3.5%

Appendix B

A Modern Version of the Hippocratic Oath

I swear to fulfill, to the best of my ability and judgment, this covenant:

I will respect the hard-won scientific gains of those physicians in whose steps I walk, and gladly share such knowledge as is mine with those who are to follow.

I will apply, for the benefit of the sick, all measures which are required, avoiding those twin traps of overtreatment and therapeutic nihilism.

I will remember that there is art to medicine as well as science, and that warmth, sympathy, and understanding may outweigh the surgeon's knife or the chemist's drug.

I will not be ashamed to say "I know not," nor will I fail to call in my colleagues when the skills of another are needed for a patient's recovery.

I will respect the privacy of my patients, for their problems are not disclosed to me that the world may know. Most especially must I tread with care in matters of life and death. If it is given me to save a life, all thanks. But it may also be within my power to take a life; this awesome responsibility must be faced with great humbleness and awareness of my own frailty. Above all, I must not play at God.

I will remember that I do not treat a fever chart, a cancerous growth, but a sick human being, whose illness may affect the person's family and economic stability. My responsibility includes these related problems, if I am to care adequately for the sick.

I will prevent disease whenever I can, for prevention is preferable to cure.

I will remember that I remain a member of society, with special obligations to all my fellow human beings, those sound of mind and body as well as the infirm.

If I do not violate this oath, may I enjoy life and art, respected while I live and remembered with affection thereafter. May I always act so as to preserve the finest traditions of my calling and may I long experience the joy of healing those who seek my help.

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The Hessian 'Invasion' of the Newly Anointed United States
By: Matthew Fritz

The American Revolution was not a bipolar war, meaning the belligerents were not inclusive to Great Britain and its American colonies. The war saw the bringing in of France, Germany, Spain, and the Native Americans to the theater. Even though Germany was not unified at the time of the conflict, a certain area loaned out its troops to back Great Britain's claims. These German soldiers were called Hessians, meaning they hailed from the Hesse-Cassel state. This group of German fighting men were well disciplined and well-trained. The British were aware of their successes and prowess; however, this reason alone was not the only contributor in Hesse-Cassel's loaning out of soldiers to Great Britain. The connection of Germanic and English cultures had its roots in the Saxon invaders of the large island, now modern day Great Britain. The Saxons were Germanic in root, which explained the close connection in language between the British and Germans. It was not a surprise that Hesse-Cassel came to Britain's aid during the American Revolution. These Hessian soldiers were disciplined; however, many were enticed by the offers in the United States after the defeat of Great Britain to immigrate. The German mercenaries that stayed were deserters and captured prisoners of war. The Hessians were motivated to stay in the newly formed United States as a result of the new life that was able to be fostered in the rich and bountiful lands that made up the previous colonies.

The Hessians were bright soldiers with a lot of discipline and talent and were vital in bolstering the British ranks. These mercenaries were viewed with discontent by the colonists at the time. Leading intellect and colonial Benjamin Franklin held a large disdain for the German soldiers and more so their leaders and princes. In a letter sent to a Mr. John Winthrop of Boston, Franklin voiced his feelings toward the German soldiers being brought in to fight on the side of Great Britain. Franklin commented, "[T]he Conduct of those Princes of Germany who have sold

the Blood of their People, has subjected them to contempt and Odium of all Europe.”²⁷ Franklin talked the Hessians down as being inferior, in large part to the German prince’s siding with Great Britain in the fight against the American colonies. Franklin further commented on the disorderly behavior of the German prince of Anspach, a supplier of German Hessians, when he claimed, “[T]he Prince of Anspach, whose Recruits mutinied and refus’d to march, was oblig’d to disarm and fetter them.”²⁸ Franklin was biased in the matter and neglected some of the ability the Hessians had in and out of battle. The Hessians were competent soldiers, and Franklin pushed past the fact that they may have been an effective tool if turned around on the British. Franklin published satires on the Hessians and sent one with the letter to John Winthrop.²⁹ He reflected the sentiments held toward the Hessians at the time; they were seen as servants of the oppression of Great Britain. This feeling played a role in the way they were judged. In due time though, the Hessians that stayed as immigrants were eventually able to blend in and shed the negative connotation associated with the United States Revolution.

The Hessian spirit was mocked for a time; however, Joseph G. Rosengarten published an important article about the Hessians, calling for their praise. In “A Defence of the Hessians,” Rosengarten called to the positives of the German mercenaries in the Revolution.³⁰ Rosengarten was vehement about protecting the Hessian’s honor. His piece also acted as a resource to understand the fighting style and make-up of the Hessian war mentality. It weighed on the other side of Franklin’s argument heavily and opposed Franklin’s negative accusation established in his satires. Rosengarten started by explaining the close relationship the British and German

²⁷ Benjamin Franklin, *Papers of Benjamin Franklin*, ed. William B. Willcox (New Haven: Yale University Press, 1984) 9.

²⁸ *Ibid.*, 9

²⁹ *Ibid.*, 9

³⁰ Revolution will refer to the American Revolution, otherwise any other revolution will be labeled appropriately.

people shared in aiding to set up why the leader of Hesse-Cassel was apt to send Britain troops. Rosengarten explained, “[I]n the Seven Years’ War, England joined Frederick the Great, so, too, did the Hessians and the other German allies.”³¹ The long term ties of heritage were already knitted from centuries before; however, this renewed comradery during the Seven Years’ War established another bond between the Germans and the British. The Hessians were desirable as soldiers because they were well-trained and efficient at their jobs. Rosengarten suggested that “[T]he ancient glory of Hesse during the Thirty Years’ War was so great that Gustavus Adolphus...asked for a Hessian, Colonel Falkenburg, as military governor of Magdeburg.”³² The Hessians were respected and able to fight effectively through a tradition started in the fire of war in the seventeenth century Europe. The connection between the British and Germans also strengthened the ties between the two countries as allies. The Hessian expertise and the genealogical connections explained the British reasoning for wanting Hessian soldiers as a force in retaking their rebelling colonies.

The Hessians performed well in the British colonies. They were well organized and used their stunning tactics to great advantage on the battlefield. The implication of Hessian soldiers allowed for British success at the fighting on Manhattan Island in the early years of the war. Bruce Bliven, a writer, developed accounts of Hessian fighting ability in the Revolutionary War. Bliven claimed, “[I]n an advance...the *jaegers*, in exception to the general close-order style of march, moved ahead of the grenadiers in an open, irregular fashion, running from point to point and ducking behind trees and boulders.”³³ The *jaegers* acted as the Hessian elite soldiers and some “had been professional hunters or game wardens in Germany, carried rifles instead of

³¹ Joseph G. Rosengarten, “A Defence of the Hessians,” *The Pennsylvania Magazine of History and Biography* 23, no. 2 (1899): 158.

³² *Ibid.*, 157

³³ Bruce Bliven, *Battle of Manhattan* (New York: Henry Holt and Company, 1955), 41.

smooth-bore muskets...and were consequently regarded, with some justification, as sharpshooters.”³⁴ In a Hessian soldier's journal from September Twenty-Eighth, 1778, he claimed, “the Second Battalion [of the *Jaegar* Corps] had butchered the light infantry of the Lady Washington Regiment, so that only three soldiers in the entire regiment escaped.”³⁵ The Hessians were regarded for their ways of fighting. This ability to fight was due to Hessian upbringing, being described by scholar Rodney Atwood as “fitted... to endure the rigours of military service. A young German traveler noted in the 1780s that the men were stout and strongly built, and matched the country, which was rough and wild.”³⁶ The Hessians were not to be trifled with; they were effective in upholding the quality ensured by their tradition and training. The question cycles though of why such loyal soldiers became a part of the United States during and after the war.

The Hessians were well trained and loyal: however, this assertion was not always true, since there were cases of desertion. These Hessians became immigrants if they were able to escape the hangman. In Ernst Kipping's, *The Hessian View of America*, he established that “[T]he persistent American propaganda, the defiant attitude of the American citizens...and... large Hessian casualties... are perhaps the reasons why so few Hessian officers deserted.”³⁷ The Hessian desertions were not anything substantial; however, the desertions were important because they defined the first Hessian immigrants to the newly founded United States. Rosengarten also presented the resistance to abandonment the Hessian soldiers had during their war time actions in the United States. Rosengarten claimed, “In May, 1782...there were complaints of the poor quality of the recruits... [T]hese new recruits were worn-out old soldiers

³⁴ Ibid., 42

³⁵ V.C. Hubbs, *Hessian Journals* (Columbia: Camden House, 1981), 99.

³⁶ Rodney Atwood, *The Hessians* (Cambridge: Cambridge University Press, 1980), 19.

³⁷ Ernst Kipping, *The Hessian View of America* (Monmouth Beach, New Jersey, 1971), 33.

and mere tramps, tempted by...high wages promised by Pennsylvania farmers.”³⁸ Even though a lot of these recruits were not from not the old stock Hessians by Rosengarten’s definition, they were still soldiers fighting under the banner of Hesse-Cassel. Rosengarten uncovered the lure of farmlands as pleasing to the Hessians. The German soldier was able to sign up for service, and once over in North America, desert and start a new life. In *A Generous and Merciful Enemy*, Professor David Krebs established, “[A]lthough American revolutionaries were fully convinced of the irresistible attractiveness of their land and ideas, desertion was a difficult decision for the German soldiers and prisoners.”³⁹ This decision often involved life or death. The evidence of such a consequence was captured in a journal of a *Jaegar* Officer in New York from September Twenty-Third, 1778. The officer declared that “*Jaegar* Reckhagel was hanged today because he was caught when he attempted to desert.”⁴⁰ The Hessians were soldiers forged in discipline. Discipline that dictated desertion as punishable by death; however, this was not enough to stop other Hessians from seeking out the land in Pennsylvania and other areas. Even though desertion was rare compared to the later Hessian immigrants, it still was an example of how the German soldiers spread themselves into the fabric of revolutionary America.

The bulk of Hessian migration was a result of many Hessians being taken prisoner during the Revolution. The effect was a large labor force of German prisoners of war that worked in places in Pennsylvania. The Hessians were enticed with what they found. This caused the conversion of German soldiers to United States citizens. A large number of prisoners came from the run in of Washington’s men with Hessian soldiers at Trenton. Scholar and historian, Hugh

³⁸ Joseph G. Rosengarten, “A Defence of the Hessians,” *The Pennsylvania Magazine of History and Biography* 23, no. 2 (1899): 179.

³⁹ Daniel Krebs, *A Generous and Merciful Enemy: Life for German Prisoners of War during the American Revolution* (Norman, University of Oklahoma Press, 2013), 4.

⁴⁰ V.C. Hubbs, *Hessian Journals* (Columbia: Camden House, 1981), 97.

Rankin accounted the Hessian capture and surprise during the Battle of Trenton in his work, *The American Revolution*. Rankin used the journal of George Washington's advisor, Lieutenant Colonel John Fitzgerald, who was present at the Battle of Trenton. In his entry on December Twenty-Second, 1776, Fitzgerald confirmed that there were Hessians stationed at Trenton. He wrote, "I rode along the river yesterday morning and could see the Hessians in Trenton... Rall has his own regiment and Knyphausen a few dragoons... [T]he Hessians call them Yagers [jaegars]."⁴¹ Fitzgerald continued on December Twenty-Sixth that "[W]e [the American soldiers] have taken nearly 1,000 prisoners... [A]bout forty Hessians were killed or wounded."⁴² Fitzgerald claimed that the success was due to Washington's cunning and in the same journal entry asserted, "Washington has baffled the enemy... [H]e has pounced on the Hessians like an eagle upon a hen."⁴³ The Hessians were being captured, with a large amount of them coming from Trenton in late 1776. The German soldiers were stranded under the rebels; rebels they typically viewed as backwards and lacking discipline

The question of what to do with the prisoners became prevalent. There was a large amount of Germans that were under the United States' care. The United States decided to employ the Hessians as workers in towns. Historian and scholar Ken Miller wrote *Dangerous Guests*, which featured the Hessian prisoners that had to adapt to the surrounding area at the onset of their incarceration. Miller claimed the German soldiers "labored in war-related industries or on flourishing farms dotting the Pennsylvania, Maryland, and Virginia countryside."⁴⁴ The labor went to various areas to be productive members of the emerging United States society. There was a system of ways to pay the Hessian laborers. Writer Clifford

⁴¹ Hugh F. Rankin, *The American Revolution* (New York: G.P. Putnam's Sons, 1964), 106.

⁴² *Ibid.*, 109.

⁴³ *Ibid.*, 109.

⁴⁴ Ken Miller, *Dangerous Guests* (Ithaca: Cornell University Press, 2014), 164.

N. Smith established in his work, *Hessian Laborers at Lancaster, Pennsylvania* that “there is a payroll, dated 19 April 1777, for Hessian laborers working on public buildings.”⁴⁵ Smith claimed that these Germans on the payroll were most likely German mercenaries and that “the term ‘Hessian’ was used at the time to denote all German mercenaries.”⁴⁶ Smith further claimed that “between twenty and forty percent of the German mercenaries, particularly the prisoners of war, remained in America after the termination of hostilities.”⁴⁷ There was a motivation for the German soldiers to stay in the United States. Pennsylvania was already home to a large German immigrant network, an enticing pull for the German prisoners working there. Newspaper writer, Jim Kinter claimed, “[B]ut, having worked out their mutual problems [Americans and Hessian prisoners]...[T]he Pennsylvania Dutch simply couldn’t bear to have all that manpower...going to waste...and the language barrier was minimal.”⁴⁸ The Hessians were pulled in to areas where there was little language block and there were lands to be profited from. Kinter also mentioned the Hessian resistance to returning to Germany because of the farms and American women who functioned well as wives.⁴⁹ Like all immigrants, the Hessians were motivated by opportunity, which was what a lot of them found through these work programs. An interesting tension emerged between the older Pennsylvanian Germans and the Hessians. Miller claimed, “[E]ven the relations between the captive auxiliaries and local German speakers showed strains of older regional divisions newly exacerbated by war.”⁵⁰ Tension from Germany boiled over to the United States; however, Miller still asserted, “[B]y 1778, however, many of the interior’s

⁴⁵ Christopher N. Smith, “Hessian Laborers at Lancaster Pennsylvania,” *National Genealogical Society Quarterly* 59, no. 1 (1971): 188.

⁴⁶ *Ibid.*, 188

⁴⁷ *Ibid.*, 188.

⁴⁸ Jim Kinter, “Lancaster Was Host To 1200 Hessians,” *Der Wunnerfitz*.

⁴⁹ *Ibid.*

⁵⁰ Ken Miller, *Dangerous Guests* (Ithaca: Cornell University Press, 2014), 166.

German speakers were giving their newly captured German prisoners a more enthusiastic reception.”⁵¹ The Germans were welcomed to the United States, especially in predominately German areas of Pennsylvania. The Hessians’ capture allowed for them to be exposed to the American side of the Revolution, and it was tempting to take a wife and land. The Hessians were living the American dream. In the article, “When Lancaster was a Hessian prison” writer Jon Rutter analyzed the Hessians prisoners that came to Lancaster. Rutter wrote, “the Hessian narrative shows prisoners and captors learning to coexist amicably as the Revolution pops around them.”⁵² Rutter also suggested that the Hessian soldiers were not typically disloyal and “rarely broke parole.”⁵³ The Hessians that became prisoners as a result of Trenton, and other resulting skirmishes, allowed for them to be exposed to a vast array of opportunities. Kinter brought up the Hessian officers’ reasoning for why their soldiers that were taken from Trenton were not being professional, therefore easily misled.⁵⁴ This mindset also was seen with the reasoning for desertions.⁵⁵ After the war was over, many stayed as permanent residents of the United States, assimilating in to American society. The Hessians were fortunate to be imprisoned in areas that already had German cultures infused in the local societies. Lancaster especially was an enticing area, with great land and a plethora of native German speaking citizens that was a welcome to the displaced German mercenaries.

The Hessians left a legacy behind. Their Hessian blood still runs through generations of American-German families. Kinter presented the numbers of prisoners in Lancaster County’s townships. There totaled a number of thirty one probable Hessian prisoners that staked up in

⁵¹ Ibid., 167

⁵² Jon Rutter, “When Lancaster was a Hessian Prison,” Lancaster Sunday News (Lancaster, PA), Aug. 7, 2005.

⁵³ Ibid.

⁵⁴ Jim Kinter, “Lancaster Was Host To 1200 Hessians,” *Der Wunnerfitz*.

⁵⁵ Many Hessian officers claimed it was the weak recruit base in Germany that produced subpar soldiers, ones not worthy of the Hessian tradition. Seen Rosengarten’s “Defence of Hessians” page 181 on Seume for more.

Lancaster County.⁵⁶ Kinter also claimed there, “were those [Hessians] who, at the end of the war, owned their own farms or had married American girls, or both.”⁵⁷ The Hessian immigrants set up lives for themselves and for their later generations to come. Marriage acted as the way to continue the legacy, while the farms were able to be passed down through families. Rutter asserted it was common for prisoners to assimilate into the new American society, since “[M]any other former prisoners married into the community, where their descendants still live.”⁵⁸ The Hessians became a large part of the post-revolution immigration to the United States. The German born soldiers forged a life in the United States and is still evident in areas of Pennsylvania to this day.

The Hessians saw what the United States had to offer as far as opportunity went; they wanted to embrace the ability to start a life and a family. The Hessians came in through desertions and prisoner programs, where they were exposed to the other side of the Revolution. Places like Lancaster were even more enticing because of the already existing German culture that made assimilation easier. The Hessians were able to carry on their German language, while also adapting to the newly freed United States. This use of what Horace Kallen called cultural pluralism was evident in the legacies these Germans left behind. The fires of war spat out the Hessians as children of the United States. These soldiers were well-respected for their prowess on the battlefield, and even though most Hessians returned back to Germany, many stayed to call the United States home.

⁵⁶ Jim Kinter, “Lancaster Was Host To 1200 Hessians,” *Der Wunnerfitz*.

⁵⁷ *Ibid.*

⁵⁸ Jon Rutter, “When Lancaster was a Hessian Prison,” *Lancaster Sunday News* (Lancaster, PA), Aug. 7, 2005.

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