

Fall 2010

## Book Review: Playing with the Boys: Why Separate Is Not Equal in Sports

Jeremy Goff

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### Repository Citation

Jeremy Goff, *Book Review: Playing with the Boys: Why Separate Is Not Equal in Sports*, 21 Marq. Sports L. Rev. 449 (2010)

Available at: <https://scholarship.law.marquette.edu/sportslaw/vol21/iss1/17>

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PLAYING WITH THE BOYS: WHY SEPARATE IS NOT EQUAL IN SPORTS

Eileen McDonagh & Laura Pappano

[New York: Oxford University Press, 2008]

274 Pages

ISBN: 978-0-19-516756-6

More than fifty years ago, a unanimous Supreme Court handed down a revolutionary ruling in *Brown v. Board of Education*,<sup>1</sup> and for the first time, our nation's highest court recognized that separate was inherently unequal and therefore unconstitutional.<sup>2</sup> Chief Justice Warren explained in detail how important education was to the survival of our democracy.<sup>3</sup> "Such an opportunity . . . is a right which must be made available to all on equal terms."<sup>4</sup> This ruling, along with the Civil Rights Act of 1964,<sup>5</sup> fundamentally altered the way our society viewed race, and more importantly, the interactions between races. Today, we take this principle for granted and there is little disagreement about whether the policy is correct. The Civil Rights Act of 1964 extended protections to women, with most of those protections coming in the workplace.<sup>6</sup> The basic idea was the same—segregation based on pre-defined stereotypes of gender or race was inherently wrong.

Why then was this principle completely discarded when Congress enacted Title IX in 1972? This is the question that authors Eileen McDonagh and Laura Pappano explore in this book.<sup>7</sup> The authors begin the search for the answer by looking back through the history of our country at the many examples of discrimination women have faced. In 1873, Harvard physician Edward H. Clarke published an influential book regarding women's health and the differences between women and men.<sup>8</sup> He argued that women should not be allowed access to higher education because the resulting additional blood flow to their brains would not leave enough energy for their "complicated and demanding reproductive system," leaving the woman disease-ridden and

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1. *Brown v. Board of Education*, 347 U.S. 483 (1954).

2. *Id.* at 495.

3. *Id.* at 493.

4. *Id.*

5. See Civil Rights Act of 1964, 42 U.S.C. §1971 et seq.

6. *Id.*

7. EILEEN McDONAGH & LAURA PAPPANO, *PLAYING WITH THE BOYS: WHY SEPARATE IS NOT EQUAL IN SPORTS* (2008).

8. *Id.* at 81.

infertile.<sup>9</sup> It is these types of arguments from the country's leading medical minds that our laws and values were based on. Lawmakers of the day argued they were protecting women, not discriminating against them. It is from this paternalistic, male dominant point of view that our first ideas on the position of women in sports were formed. "Organized sports enforce a male power structure that reaches far beyond the field."<sup>10</sup> It was therefore natural to segregate women in sports—to protect them from both injury and from embarrassment. The authors argue that this segregated structure in sports stems from three false assumptions: "female inferiority compared to males, the need to protect females from injury, and the immortality of females competing directly with males."<sup>11</sup> While no one today could make a credible argument for restricting women's rights to higher education based on the assumptions of Dr. Carke, we use the same assumptions from the same time period when deciding that sports should be segregated by gender.

Some argue that the issue has been resolved—Title IX of the Educational Amendments ensures that women are granted the same opportunities as men. McDonagh and Pappano argue that Title IX did not solve the problem of gender equity in sports. Rather, it reinforced an existing system of values that was flawed from the start. While Title IX initiated incredible growth in women's athletics and opened a door that had previously been shut, "it opened a sex-segregated door, a type of door that the federal government would have prohibited if it were a matter of race."<sup>12</sup> Instead of opening a level playing field where athletes were judged based on their athletic skill, Title IX codified and institutionalized the practice of sex-segregation in sports.

The authors point out that in almost every sport or skill in which there is competition some sort of sex-segregation exists.<sup>13</sup> The most obvious is the appropriation of a sport to a single gender. Where football is a male sport, volleyball is a female sport, and where baseball is a male sport, softball is a female sport. Even when males and females play the same sport, the teams are rigidly segregated by gender. With few exceptions, this is true at every level of sports—from high school to college to Olympic competition. Additionally, when men and women play the same sport, there are often sexually discriminatory rules. The most common involve length of races or duration of matches. NBA quarters are twelve minutes long while WNBA quarters are ten; professional men's tennis players play a best-of-five set match while

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9. *Id.*

10. *Id.* at 2.

11. *Id.* at 7.

12. *Id.* at 105.

13. *Id.* at 10-12.

women's professional players play a best-of-three. Implicit in these reductions in length or duration is the discriminatory assumption that females do not have the strength or endurance of males. McDonagh and Pappano show that sometimes these rule differences reach the point of absurdity—as shown by the rules of badminton where men's games are played to fifteen points while women's games are played to eleven. “Is it possible female badminton players cannot physically endure four more points?”<sup>14</sup> Sometimes these rule differences are stylistic variations that reflect the gender stereotypes. This is true of a gymnastics floor routine where men are instructed to “incorporate tumbling passes with substantial difficulty” while women are told to strive for “a dancer-like command of music, rhythm, and space.”<sup>15</sup> Even in the rare sport where men and women compete together, on the same course, and under the same rules, gender segregation still exists. Events such as the marathon and the biathlon have men and women compete in the exact same event, yet determine a male and female winner at the end and view the two as distinctly different victors.<sup>16</sup>

The Supreme Court ruling in *Brown v. Board of Education* was decided under the authority of the Equal Protection Clause of the Fourteenth Amendment.<sup>17</sup> In 1971, the Supreme Court ruled that this protection included not only race-based discrimination but gender-based discrimination as well.<sup>18</sup> In *Reed v. Reed* the Court overturned a law that gave preference to males when deciding who should be the executor of a child's estate because males were assumed to have more business experience.<sup>19</sup> No longer could laws contain gender-based distinctions that were based on arbitrary stereotypes.<sup>20</sup> “Instead, the state must show that the sex difference and the traits or behaviors in question correlate strongly enough to warrant using an individual's sex group as a surrogate for the trait or behavior.”<sup>21</sup> According to McDonagh and Pappano, the type of gender-based segregation that Title IX created and now supports is inherently unconstitutional.

In the authors' ideal world, athletics would be a level playing field where the best athletes compete against each other based on attributes of size, speed, dedication, and endurance, rather than what gender they are.

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14. *Id.* at 11.

15. *Id.* 13-14.

16. *Id.* at 14.

17. *Brown v. Board of Education*, 347 U.S. 483, 489 (1954).

18. *Reed v. Reed*, 404 U.S. 71 (1971)

19. *Id.*

20. *Id.* at 76.

21. MCDONAGH, *supra* note 7, at 119.

We should not sort athletes by what sex they are, but rather by their skill, interest, and ability in relation to the particular sports they wish to play . . . <sup>22</sup> . . . The only qualifications for playing sports, therefore, should be those related to an individual's abilities to play, not attributes stereotypically assigned to the sex or race group to which the individual belongs.<sup>23</sup>

McDonagh and Pappano offer suggestions of how we can move from today's sex-based system to a gender-neutral approach.<sup>24</sup> First, our society must accept a gender-neutral view of sports. This can only start at a young age. Girls should be encouraged to play football, and boys should be encouraged to figure skate. The attitudes and perceptions surrounding particular sports cannot be rooted in gender stereotypes. Next, the authors suggest an expansion of co-ed sports at every level. Teams at every level should be divided by ability to ensure the maximum amount of athletes are competing at the appropriate competition level. In time gender integrated teams will become the norm, not the exception. In addition, gender-related sports rules must be removed. The rule differences reflect outdated ideas about the athletic ability of women, and the very existence of these rules impede the progress of a gender-neutral sports world. Finally, Title IX must be strengthened and reformed. There must be equality of finances, not just opportunity, in educational institutions. The gap between the resources expended on men's and women's sports—especially at the collegiate level—must be closed. Most importantly, Title IX must be reformed so that it does not permit, under any circumstances a coercive, sex-segregated structure for sports.

While the authors make several valid arguments throughout the book, they seem to ignore the counter-arguments to their points. First, the authors rely heavily on the connection between segregation based on race and segregation based on gender. Segregation based on race has no actual basis in the physiology of humans; instead it is based on stereotypes and bias. Segregation based on gender is because of natural physical differences between men and women. The authors seem to ignore the very real-life logistical problems that would be associated with a mixed gender team, especially at the high school and collegiate levels. Separate dressing rooms, shower facilities, and potentially separate equipment would increase the costs of these sports for

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22. *Id.* at 10.

23. *Id.* at 28.

24. *Id.* at 254-56.

educational institutions that already do not have enough cash flow. In addition, separate coaches or chaperones would be needed, further increasing costs. In several instances, the authors seem as if they are about to address this counter-argument then the topic is changed or the counter-argument is merely brushed off.<sup>25</sup> If the authors had effectively addressed this pressing counter-argument, it would have greatly strengthened their own position.

*Playing with the Boys* may not be as relevant to those working in the sports industry today, but it is certainly a valuable tool for today's students. The book gives students an alternative point of view on gender regulation in sports. By making students consider this point of view, the authors may be able to influence how the law in this area is developed in the future. Exposing students to as many perspectives as possible is one of the goals of any formal education. The position taken by the authors is one that most students would not come across during their normal studies. The book may not be as useful to current professionals because the main arguments center around legal theory. It may be useful to some professionals, however, who are looking to expand their horizons when thinking about gender regulation in sports. In addition, if a case involving this issue does make it to the Supreme Court, the law could change rapidly in this area in the near future. Professionals armed with the knowledge in this book would have a leg-up on the competition regarding these potential changes to Title IX.

*Playing with the Boys* is a book that makes a controversial yet compelling argument. By structuring articulate and persuasive arguments coupled with a vast array of examples to support their conclusions, McDonagh and Pappano dissect this complex argument so that it can be understood in both a historical as well as present context. The book is well structured; the authors provide the current status quo, their opinion on what should be changed, and then several examples for each point. Occasionally the examples seem to be more numerous than necessary, and readers may find themselves bogged down with so many illustrations that the focus of the point being made is lost. However, the vast majority of the book is readable and interesting. Because the conclusions of the authors are rarely argued in the sports industry, it is an interesting read.

This is an area of the law that is still unsettled. Controversial gender decisions are made each year in the sports law industry. A case decided by the Court of Arbitration for Sport (CAS) in 2010 illustrates this point.<sup>26</sup> The Virgin Islands did not have enough men eligible to fill its quota of skeleton racers and applied to the International Olympic Committee (IOC) to allow an

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25. See *id.* at 202-06.

26. Virgin Island Olympic Comm. v. Int'l Olympic Comm., CAS arbitration N° OG 10/03.

additional woman to compete in the vacant men's spot.<sup>27</sup> The IOC refused to allow an additional woman to compete from the Virgin Islands because they viewed men's and women's skeleton as separate events and the Virgin Islands had already filled their quota of women's racers.<sup>28</sup> CAS agreed with the decision of the IOC, and the additional woman was prohibited from participating in the event.<sup>29</sup> The authors would argue that this woman was denied an ability to compete based solely on her gender, not her actual ability to race and that this decision—in the United States—is unconstitutional. It is likely that a case involving coercive sex-segregated sports will find its way to the Supreme Court in the near future, and when it does, it will be hard for the Justices to ignore the arguments made by these authors.

Jeremy Goff

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27. *Id.*

28. *Id.*

29. *Id.*