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IF YOU LET ME PLAY SPORTS

MARILYN V. YARBROUGH*

If you let me play, if you let me play sports.
I will like myself more; I will have more self-confidence.
If you let me play sports.
If you let me play, I will be 60 percent less likely to get breast cancer;
I will suffer less depression. If you let me play sports,
I will be more likely to leave a man who beats me.
If you let me play, I will be less likely to get pregnant before I want to.
I will learn what it means to be strong, if you let me play . . .¹

These words, chillingly spoken by pre-adolescent and adolescent girls in a recent Nike commercial, attracted the attention of audiences² and commentators.³ They struck a particular cord with so-called “women of a certain age.”⁴ These women, growing up during an era when women

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1. Nike, Inc. television advertisement. Text as reported in Eleanor Mallet, *Everywoman: Letting Girls Have a Sporting Chance*, THE PLAIN DEALER (Cleveland), Oct. 3, 1995, at 1E.

2. According to Mary Schmitt, *This Ad is Power for Women*, THE KANSAS CITY STAR, Sept. 30, 1995, at D1:

The ad has been running on television for about a month, and the phones in the Nike headquarters have been ringing off the hook the whole time.

. . . Many of the callers are mothers whose voices break when they say they want their daughters to have the opportunities they never had. Some are fathers whose girls are entering those arenas previously reserved for boys only. Some are coaches or teachers who have seen the differences sports can make in the lives of young girls. And some are women who never had the chance to find out. Those are the ones whose messages often are accompanied by tears.

3. See, e.g., Mariah Burton Nelson, *Reebok Ads Give Girls the Right Message*, THE NEWS & OBSERVER (Raleigh, NC), Oct. 15, 1995, at C7; Margo Harakas, *TV Ads Reassure Girls That They Can “Just Do It,”* HOUS. CHRON., Oct. 22, 1995, at 4; Brett Pauly, *Field of Dreams-Come-True: Girls Say Involvement in Athletics Enables Them to Develop Self-Esteem, Mental Acuity*, L.A. DAILY NEWS, Oct. 30, 1995, at L3; Dottie Enrico, *Winners and Losers of 1995 Ad Campaigns: ESPN, Nike Score Points, Coca Cola Falls Flat*, USA TODAY, Dec. 18, 1995, at 3B.

4. E.g., Harakas, *supra* note 3 (quoting Marj Snyder, sports psychologist and associate director of the Women’s Sports Foundation, “As a woman you feel: That could have been me as a kid. I felt like that before, and I didn’t get to play.”); Jennifer Frey, *Nike Puts Shoe on Other Foot: It Fits, Though Perhaps Not Comfortably*, WASH. POST, Oct. 15, 1995, at D7:

I don’t need all their quotations and statistics to embrace the message. I know it’s true from personal experience, and from simply talking to my friends. I have one friend who was the first to play Little League in her New York-area township, and she believes that playing baseball helped her get over the awkward feelings of being the tallest girl in her class. I have another friend who credits her experience on a volleyball

were routinely not permitted to participate in organized competitive sports, were both attracted and repelled by the ads. They were attracted by the notion that a national viewing audience might at last recognize the importance of providing sports participation opportunities to girls and women.⁵ They were repelled that in 1995, women and girls still had to beg for these opportunities.⁶

As an African-American mother of daughters, I was particularly struck by the significance of the benefits touted in the ad for African-American women. The ad was based on a compilation of research assembled by the Women's Sports Foundation.⁷ Among the findings not used in the commercial were the following:

team with helping her build strong female friendships, and another who thinks her endless childhood tennis lessons helped give her the focus and drive she has today.

That is why I like the Nike commercial. Even if opportunities for girls in sports are much more common now — most adolescent girls I know don't think twice about signing up for basketball camp, or the coed soccer team, or even Little League — the message itself is still important to recognize and impart. I like the idea that Nike is telling girls that they don't have to grow up in a world confined to what one friend refers to as "shopping malls, cosmetics and push-up bras."

What I find so disturbing, though, is that the same ad forcefully reminds me that those girls do have to grow up in a world where self-esteem still is intrinsically linked to body image, where institutionalized sexism still fosters feelings of inferiority based solely on gender, and where violence against women is rampant.

I listen to the things those girls say — about wife-beating, about depression, about self image — and it makes me realize that the world is no easier on 12-year-old girls today than it was when I joined my first softball team 15 years ago. I realize that while I value tremendously the things I learned from sports as an adolescent — the self-confidence it gave me, the way it made me feel about my body — I fear what sports has taught me as an adult.

5. *Id.* (quoting Dorothy Leland, director of the Women's Studies Center at Florida Atlantic University in Boca Raton, FL: "[W]hat the girls are saying gives some fairly positive messages about how girls have been disadvantaged by not being allowed to play sports." Karen Johnson, national secretary of the National Organization for Women, agrees: "I think it's a significant message to send. Building self-esteem is critical to a girl's health.")

6. *Id.* (quoting Leland, "The girls are still in a position of having to beg and to ask others to get to play, and that makes me both sad and angry."); Nelson, *supra* note 3, ("I don't like it One obvious problem: why do the girls have to beg? What are their brothers doing while these girls stand passively on the playground? Boys don't have to ask permission to play sports. Like adults, they just do it.")

7. WOMEN'S SPORTS FOUND., WOMEN'S SPORTS FACTS 1 (Updated July 20, 1995) (facsimile on file with author):

BENEFITS

- Women who are active in sports and recreational activities as girls feel greater confidence, self-esteem and pride in their physical and social selves than those who were sedentary as kids (MILLER LITE REP., 1985).
- Research suggests that girls who participate in sports are less likely to get involved with drugs, less likely to get pregnant and more likely to graduate from high school than those who do not play sports (WOMEN'S SPORTS FOUND., 1989).

A 45-year-old black woman is twice as likely to be overweight as a white woman the same age and 29 percent less likely to exercise regularly because exercise is viewed by many blacks as a luxury they don't have time for. Compared to white Americans, African-Americans under the age of 64 are 10 percent more likely to get heart disease, 30 percent more likely to have diabetes, and over 50 percent more likely to suffer from hypertension.⁸

[G]irls derive as many benefits from sports as boys and . . . Hispanic female athletes receive special benefits. They were more likely than their non-athletic peers to score well on achievement tests, stay in high school, attend college and make progress towards Bachelor's degrees.⁹

African-American women have not been represented proportionately among the increasing numbers of female athletes. By 1980, African American women represented only 6 to 8 percent of all women athletes; this was less than their proportion in the general population. Although African-American women were over represented in certain sports such as basketball and track and field, they were almost completely absent from other sports such as tennis and swimming.¹⁰

If a girl does not participate in sports by the time she is 10, there is only a 10 percent chance she will participate when she is 25.¹¹

Sports participation as savior is admittedly an optimistic and reductionist view whether claimed for men or women, whatever race. Even if it were true in some instances, too many variables — what sport, which race, which gender — have to be taken into account. In addition, the individual circumstances of the participant play too big a part. Regardless, the effective denial of even those tentative and unpredictable benefits to a large segment of our population is unconscionable.

Steps are being taken to insure that women and girls have equivalent opportunities to participate. My concern, and the focus of this essay, is

- Half of all girls who participate in some kind of sports experience higher than average levels of self-esteem and less depression (Cotton & Gore, *Risk Resiliency and Resistance: Current Research on Adolescent Girls*, Ms. FOUND., 1991).
- One to three hours of exercise a week over a woman's reproductive lifetime (the teens to about age 40) can bring a 20-30 percent reduction in the risk of breast cancer, and four or more hours of exercise a week can reduce the risk almost 60 percent (J. NAT. CANCER INST., 1994)

8. *Id.* at 3 (citing Shea, S. Walking, p. 9).

9. *Id.* (citing THE WOMEN'S SPORTS FOUND. REP.: MINORITIES IN SPORTS (1989)).

10. *Id.* (citing R. Abney & D.L. Richey, *Opportunities for Minority Women in Sport: The Impact of Title IX*, JOPERD 63(3), at 56-59 (1992)).

11. *Id.* at 4 (citing Linda Bunker, University of Virginia, 1989).

whether African-American women are receiving the benefits in equal numbers. My critique, however, does not investigate or propose solutions for this dilemma except in its plea for less fragmentation in the pursuit of two extremely important and worthy goals: the elimination of race *and* sex discrimination in this aspect of society and the provision of equal educational opportunity for all student athletes.

I. ATHLETIC OPPORTUNITIES FOR WOMEN AND GIRLS

A. Title IX

The history of Title IX, though technically twenty-five years in the making, can be summarized in a few sentences. In 1972, the passage of federal legislation mandated equality in educational opportunity for girls and boys and women and men attending institutions receiving federal funds.¹² Although it was understood from the beginning that equal educational opportunity in this context applied to athletic opportunities, as late as 1996, debate still raged about the means necessary to achieve such equality.¹³

Early responses to the legislation, such as they were, concentrated on increasing participation opportunities for women.¹⁴ Much of the debate in the 1990s, a period of constrained institutional budgets and public criticism of the prominence of athletics in educational institutions, however, has centered on the controversial activity of decreasing opportunities for men in order to equalize opportunity for women.¹⁵ The recent clarification of the U.S. Department of Education's guidelines governing the enforcement of Title IX has done little to squelch this concern.¹⁶

12. Education Amendments of 1972, §§ 901 et seq., 20 U.S.C. §§ 1681 et seq.

13. Despite the U.S. Department of Education Office for Civil Rights' clarification of the guidelines governing the application of Title IX, athletics administrators continue to debate the meaning of the legislation, especially as it pertains to the role of football. Grant Teaff, executive director of the American Football Coaches Association, is quoted as optimistically sensing a change of heart among the public and Congress. Peter Finney, *Coaches Seek Fairness in Dealing with Title IX*, THE NEW ORLEANS TIMES-PICAYUNE, Jan. 9, 1996, at E1 ("As Congress becomes more educated on Title IX application, Teaff feels it will open the door for a more realistic policy interpretation.").

14. B. Glenn George, *Who Plays and Who Pays: Defining Equality in Intercollegiate Athletics*, 1995 Wis. L. REV. 647, 652.

15. See, e.g., *Kelley v. Board of Trustees*, 832 F. Supp. 237 (C.D. Ill. 1993), *aff'd*, 35 F.3d 265 (7th Cir. 1994), *cert. denied*, 115 S.Ct. 938 (1995).

16. Douglas Lederman, *U. S. Civil Rights Office Clarifies Gender Equity in Sports*, CHRON. OF HIGHER EDUC., Sept. 29, 1995, at A65 ("The clarification may pacify those looking for assurance that the civil rights agency weighs other factors [in addition to strict proportionality]. . . . But it was clear that the statement would not satisfy the tougher critics of the current O. C. R. policy on Title IX. Several of them said they heard "nothing new" in the

B. Gender Equity

In addition to the requirements of the federal legislation, individual schools,¹⁷ athletic conferences,¹⁸ and entire state systems¹⁹ involved in scholastic and intercollegiate athletics have defined and mandated gender equity for their particular constituencies. Although these often parallel the requirements of Title IX, they often have more specific goals and propose sanctions beyond those dictated by the federal legislation.

C. Equal Protection

Yet another avenue for equal opportunity for women athletes involves resort to state law guaranteeing equal educational opportunity, whether derived from its constitution²⁰ or legislation.²¹

Each of these avenues has produced limited success for those concerned with equal opportunity. None is without criticism when it has resulted in or has the potential for reducing opportunities for men. One critique that received a great deal of attention in the popular media, largely because of claims that other organized movements within intercollegiate athletics were similarly operating (e.g., heightened academic entrance requirements),²² was that, at least in intercollegiate athletics, gender equity was being achieved at the expense of "minority athletes."²³

II. GENDER V. RACE EQUITY

Although the call to arms for resistance to gender equity was couched in terms of a diminution of opportunities for minority athletes, when understood in context, it is clear that the concern is for African-American males.²⁴ By the same token, like so much of the campaign for

clarification and doubted that it would help to resolve the campus and courtroom disputes over gender equity in college sports.").

17. Julie Dunn Crawford & John L. Strobe, *Gender Equity in College Athletics: How Far Have We Really Come in Twenty Years?*, 104 ED. LAW REP. 553 (1995), available in WESTLAW.

18. *Id.*

19. *Id.*

20. *E.g.*, WASH. CONST. art. 31, § 1, Blair v. Washington State University, 740 P.2d 1379 (Wash. 1987)

21. *E.g.*, OR. REV. STAT. § 659.150 (1995); FL. STAT. ANN. § 240.533 (West 1988).

22. Debra E. Blum, *The Battle for Gender Equity*, CHRON. OF HIGHER EDUC., May 26, 1995, at A37.

23. *See, e.g.*, Blum, *supra* note 22, at A37; George, *supra* note 14, at 653.

24. A striking example of this is the wonderfully detailed discussion of racism in athletics, Timothy Davis, *The Myth of the Superspade: The Persistence of Racism in College Athletics*, 22

equal opportunity for women, it is clear that leaders of the feminist movement within interscholastic and intercollegiate athletics are not always as concerned about minority and poor women as they were about girls and women from middle-class backgrounds.²⁵ This leaves minority women in a place that has become all too familiar, at the intersection of race and gender.

III. THE INTERSECTION OF RACE AND GENDER

Although each of us is defined by race and gender, those of us who are neither white nor male often experience invisibility as a result of our dual subordinate status.²⁶ In 1989, in path-breaking work²⁷ on what is referred to as "intersectionality," Professor Kimberle Crenshaw described three Title VII cases in which courts declared Black women not to be representative of either African-American people or women generally, yet refused to recognize African-American women *qua* African-American women as a classification with recognizable rights to redress when they have been discriminated against.²⁸ Although these cases are not directly related to Title IX or gender equity notions, they are illustrative of the general treatment of Black women in society.

FORDHAM URB. L.J. 615 (1995), that seemingly uses "student athlete" and "male student athlete" as synonyms. In all of its 80+ pages and 413 footnotes, the article contains one reference to female student athletes, in footnote 313.

25. See WILBERT MARCELLUS LEONARD, *SOCIOLOGICAL PERSPECTIVE OF SPORT* 261 (1993):

The female experience in society is not the same for economic and racial stratification. Thus, the experience of the black woman in sport has differed from that of the white woman. Black colleges encouraged black women in track and field when white women's colleges were encouraging more "feminine" activities. Black women have excelled in the nontraditional fields but have rarely been seen in the country club sports. . . . A pale complexion might have been an approved image for the woman in America, but the referent was clearly the white woman. Black women could not be pale, rosy-cheeked, or really feminine, just as the Victorian medical definition of innately fragile women applied only to the middle class, not the immigrant "racial hordes." Black women often formed the vanguard of those pioneering new sports ground for women in general but only because a racist culture did not define them as "real" women.

26. See, e.g., Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL FORUM 139; Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); Tina Grillo & Stephanie Wildman, *Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism*, 1991 DUKE L.J. 397.

27. Crenshaw, *supra* note 26.

28. *Id.* at 141-151.

In the first case discussed in Crenshaw's article,²⁹ the court stated that the lawsuit brought by black women who protested discriminatory hiring and layoff patterns against them were not subject to remediation, because no such discrimination existed against black men or white women, reasoning:

[T]his lawsuit must be examined to see if it states a cause of action for race discrimination, sex discrimination, or alternatively either, but not a combination of both.³⁰

...

The legislative history surrounding Title VII does not indicate that the goal of the statute was to create a new classification of 'black women' who would have greater standing than, for example, a black male. The prospect of the creation of new classes of protected minorities, governed only by the mathematical principles of permutation and combination, clearly raises the prospect of opening the hackneyed Pandora's box.³¹

As Crenshaw observed, "the court's refusal . . . to acknowledge that Black women encounter combined race and sex discrimination implies that the boundaries of sex and race discrimination doctrine are defined respectively by white women's and Black men's experiences."³²

As noted earlier, in sports participation, the experience of the African-American woman has never been that of the white woman.³³ Like the feminist movement in general,³⁴ this is true whether we examine events that led to the passage of Title IX or terms of its subsequent enforcement. As one sociologist has observed:

(a) Black women have been disproportionately located at the lower end of the economic hierarchy and, therefore, have been unable to afford private golf, swimming, or tennis lessons. (b)

29. *DeGraffenreid v. General Motors*, 413 F. Supp. 142 (E.D. Mo. 1976).

30. *Id.* at 143.

31. *Id.* at 145.

32. Crenshaw, *supra* note 26.

33. Despite the differences in the promotion of sports participation for white and Black women noted (*see supra* note 25), minority women have suffered from a lack of participation opportunities as well.

According to *Women and Sports*, CONG. Q., Mar. 6, 1992, at 194-215: In 1976-77, minorities constituted 16% of female undergraduates but eight percent of female athletes. In 1986-87, the percentage of black women was about ten percent of intercollegiate athletes, approximately the same as their enrollment rate.

34. *See* BELL HOOKS, *FEMINIST THEORY: FROM MARGIN TO CENTER* (1984) for a general critique of the inapplicability of the feminist movement. Others include Kimberle Crenshaw and Angela Harris. *See supra* note 26.

Overt racial discrimination prevented black women from gaining access to the sports participated in by white women.³⁵

To the extent that the main thrust of solutions to gender inequity and a lack of adherence to Title IX mandates has been the addition of opportunities in the country club sports or those sports not traditionally accessible to Black women, we lose yet again.

By the same token, Black women, like white women, have not been afforded sports participation opportunities afforded men. They remain at that intersection that fails to recognize them as specially discriminated against. Solutions that produce or are perceived to produce competition between "minorities and women" for limited pieces of the sports participation pie force Black women to "take sides against themselves."³⁶

Professor Tina Grillo, a female African/Cuban/Italian American law professor, speaks of wrapping herself in "intersectionality³⁷ and anti-essentialism³⁸ to guide [her] own academic, political, and spiritual work," to overcome uncertainty and an inability to speak, to "help [her] sort through [her] own confusion about what work [she] should be doing and how [she] should be doing it."³⁹ That is all well and good for one's own focus and well-being, but this is of value only to the extent that it produces advocates for change to the systems that constrain us. How do we get the boot from our necks? How do we get up? What works to help us overcome and achieve beyond the spiritual and the political work we do ourselves? What is necessary to insure that we and our daughters cannot just survive, but overcome?

In another article,⁴⁰ Grillo and a colleague who, although also female, is perceived as white, advocate recognition time and coalition work as essential tools in insuring daily discourse that permits the use of

35. LEONARD, *supra* note 25, at 261.

36. Although several thoughtful articles and books (e.g., Wildman and Grillo, *supra* note 26) examine the necessity for Black women to split themselves into parts in order to combat discrimination against them, this phrase is taken from the extremely provocative article "Taking Sides Against Ourselves," written in response to the controversy surrounding the Clarence Thomas confirmation hearings. Rosemary L. Bray, *Taking Sides Against Ourselves*, N.Y. TIMES MAG., Nov. 17, 1991, at 56.

37. "The basis of intersectionality and anti-essentialism is this: Each of us in the world sits at the intersection of many categories: She is Latina, woman, short, mother, lesbian, daughter, brown-eyed, long-haired, quick-witted, short-tempered, worker, stubborn. At any one moment in time and in space, some of these categories are central to her being and her ability to act in the world. Others matter not at all." Tina Grillo, *Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House*, 10 BERKELEY WOMEN'S L.J. 16, 17 (1995).

38. *Id.*

39. *Id.*

40. Grillo & Wildman, *supra* note 26.

comparisons (i.e., of race oppression and gender oppression) without perpetuating patterns of racial domination and marginalization. Other authors likewise propose that we turn to coalition building as a means to combat essentialism and the resulting invisibility that so afflicts women of color and other "outsiders."⁴¹ Such a coalition among traditionally subordinated groups seems essential if we are all to achieve our goals.

The question remains: Will it make a difference legally? Present anti-discrimination laws and those intended to provide for equality of educational opportunity in sports participation are sufficient to accomplish their goals if there is wholehearted enforcement. Wholehearted enforcement is more likely to be achieved if there is wholehearted endorsement. Once those who champion the cause of minority males recognize that the plight of women, whether women of color or white women, is inextricably tied to the promise of equality for everyone, progress will be made. In the context of intercollegiate sports, this would require close attention to proposed solutions to problems of inequality.

Illinois provides an example of one state's attempts to promote gender equity without disadvantaging existing men's opportunities or denying opportunities to women. The University of Illinois received a fair amount of publicity when it eliminated men's swimming and diving in an attempt to reduce the cost of its athletics program.⁴² In response to a suit by male participants in the program,⁴³ the University revealed that one reason it chose to reduce men's swimming and diving while continuing to increase women's opportunities was a desire to satisfy the requirements of Title IX and gender equity.⁴⁴ The court upheld the University's decision and endorsed its reasoning.⁴⁵

In response, a coalition of politicians, academicians and athletics administrators in Illinois proposed and passed legislation that will provide an additional \$5 million a year in available tuition waivers to be used specifically to achieve gender equity in the eleven public colleges and universities, this in addition to the approximately \$3.4 million allotted in

41. See, e.g., Mari Matuda, *Beside my Sister, Facing the Enemy: Legal Theory out of Coalition*, 43 STAN. L. REV. 1183 (1991); Bernice Johnson Reagon, *Coalition Politics: Turning the Century*, in HOME GIRLS: A BLACK FEMINIST ANTHOLOGY 356 (BARBARA SMITH ED., 1983).

42. Craig L. Hymowitz, *Athletes Lose As Schools Play the Quota Game*, CHI. TRIB., Sept. 13, 1995, at 17; Andrew Gottesman, *Gender Equity Has its Price: Do You Pay It?*, CHI. TRIB., June 13, 1995, at 1; Andrew Gottesman, *Hastert Bandstands for Revisions in Title IX — Illinois Politician Thinks Men's Sports Are Hit Too Hard*, CHI. TRIB., May 10, 1995, at 1.

43. *Kelley v. Bd. of Trustees*, 832 F. Supp. 237 (C.D. Ill), *aff'd*, 35 F.2d 265 (7th Cir. 1993), *cert. denied*, 115 S.Ct. 938 (1995).

44. *Id.* at 269-70.

45. *Id.* at 272.

1993-94.⁴⁶ The additional amount available to the University of Illinois would be just under \$1.6 million, enough to fund a significant number of new scholarships and to free up money now used for athletic scholarships in order to hire coaches, buy equipment or otherwise fund expanding opportunities for women.

Though not without critics,⁴⁷ this type of shared responsibility for the provision of equal educational opportunity for women while maintaining already existing opportunities for men, expanding the proverbial pie rather than diminishing the slices, can work. It will not work, however, unless the affected constituencies cease fighting each other and band together to find solutions. The Illinois solution is just one example of what can be done. Others can no doubt be devised through conversations involving those who care.

IV. CONCLUSION

Professors Grillo and Wildman's call for recognition time and coalition building is sorely needed as we seek opportunities for African-American women and girls. Recognition that, as one author put it, too often we think that "all the women are white, [and] all the Blacks are men";⁴⁸ coalition building among us all.

46. Ill. Rev. Stat. ch. 110, ¶ 205/9.24 (1991); Gottesman, *Gender Equity Has its Price*, *supra* note 42, at 1.

47. Gottesman, *Gender Equity Has its Price*, *supra* note 42, at 1.

48. ALL THE WOMEN ARE WHITE, ALL THE BLACKS ARE MEN, BUT SOME OF US ARE BRAVE (Gloria Hull et al. eds., 1982).