

Book Review: Titlting the Playing Field: Schools, Sports, Sex and Title IX

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*TILTING THE PLAYING FIELD: SCHOOLS, SPORTS, SEX AND TITLE IX**

Jessica Gavora

[San Francisco, CA: Encounter Books, 2002]

181 pages [\$24.95 U.S. (cloth)]

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In the study of sports law, there is no more controversial subject than issues related to Title IX. In *Tilting the Playing Field: Schools, Sports, Sex and Title IX* Jessica Gavora does nothing to make the subject less inspirational. In fact, after reading this book I am certain that whichever side of the Title IX battle your heart lays will become more filled with rage (or outrage). Gavora holds no punches and no one is free from support, contempt or ridicule. In fact, even the most neutral, compassionate and level-headed Title IX reader will likely feel a call-to-arms in a statistical “war” that has gone haywire since its official beginning in 1972 with the passage of this federal law that prohibits discrimination on the basis of gender in all federal programs that receive federal financial assistance.

Gavora’s book does not provide a specific plan to resolve the “substantial proportionality” test quandary of Title IX enforcement that has permeated American “kangaroo” courts and federal agencies. Still, she does express her extreme discontent with what she believes has become of this, the only practiced test of the three “safe-harbor” provisions of Title IX. The book does not offer solutions to the federally mandated “separate and equal” status of women’s sports in the college and university setting. The inexplicable sport of college football is noted but is not given much preferential status by Gavora, and specific methods to pare Title IX back to sensible interpretation and modification are not offered either. Gavora’s book is essentially an uncomfortable and personal expose on how the powerful players involved in a political battlefield have turned a federal law designed to prevent discrimination into a weapon to hurt others, namely men.

Gavora’s readers are faced with a challenge that has become largely prevalent in the application of federal laws in the post civil rights era: does the ending of discrimination of a group of persons actually discriminate against another group of persons, and is that fair or even right? Gavora certainly gives the reader pause and encourages us to look at people as individuals with unique talents, abilities and skills rather than sharply defined categories and

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groups.

Gavora condescendingly labels her targets throughout the book as liberal, belligerent, bureaucratic, pious, feminist, quota-loving, victimized welfare-queens, and special interest women's groups of the sports world who use Title IX as an us-versus-them agenda in a last ditch vengeful effort to remedy past discrimination against women. Gavora remains adamant that feminists have a distorted view of their patriarchal and "phallic" society. She asserts that the same women feel oppressed and are attempting to re-engineer gender and society to meet their extreme and insatiable needs. Gavora gives specific examples of how extreme Title IX "witch hunts" have hurt everyone from the ordinary elementary school administrator up through the collegiate landscape.

The book contains an Introduction and then seven chapters making up a very "easy" to read and concise book. For someone already learned in the history of Title IX, you can hit the ground running with ease. However, even for someone with no background or understanding of Title IX, Gavora does provide enough pedagogy explaining the history and evolution of this "gender-equity" law.

In Gavora's words, the enemies include mostly women familiar to the Title IX playing field as having power at the national level. Gavora constantly reminds us that this hardcore roster includes, but is not limited to, the National Organization for Women (NOW), Gloria Steinem, Donna Lopiano (Women's Sports Foundation), Amy Cohen, Julie Foudy, Donna de Varona, Norma Cantu (former head of the Office for Civil Rights), the National Women's Law Center (NWLC), Mary Daly (a former Boston College professor), the American Association of University Women (AAUW) and of course, trial lawyers.

These combatants line up against a the predictable group of Gavora's *personae non gratae*: Vartan Gregorian (former President of Brown University), President George W. Bush, Iowans Against Quotas, Duane Naquin (a Boston College student), Jonathan Prevette (a North Carolina six-year-old who was suspended from school after kissing a female classmate), and other testosterone driven swimmers, wrestlers, baseball players, coaches and others who have been persecuted as insensitive and ignorant by Gavora's liberal activist women.

Gavora provides excellent examples of specific incidents in which Title IX has clearly been abused. For example, Chapter Four, "Playing Doctor with the Law: Title IX and Sexual Harassment," reviews an instance of pure discrimination turned into a gender war under the guise of Title IX. Mary Daly, a former professor at Boston College (once an all male school until 1970), denied entry to the class, "Introduction to Feminist Ethics I" to Duane Naquin a senior at that institution in 1999. While males had been prevented

from taking the course in the past, Boston College tolerated her policy until Duane fought back and enlisted the help of the Center for Individual Rights, a conservative D.C. public interest group.

Faced with a lawsuit, Gavora notes that the college could turn their cheek no more and told Dr. Daly to admit the student to the class or resign. Daly decided to take a sabbatical instead. Upon her return, Daly sued Boston College and later on a radio show claimed that she was a “radical lesbian” and her attorney, Gretchen Van Ness, claimed that the law “recognizes that in some circumstances it is not discriminatory to treat men and women differently.” Gavora finds irony in Daly’s circumstance: Daly’s attorney admits that men and women can be treated differently without necessarily characterizing such differences as being discriminatory in the legal sense.

In another ironic twist, Chapter Six, “Why Can’t a Woman be more like a Man?” the sport of cheerleading takes center stage in addition to all other after-school activities not directly related to sports. Gavora makes an often overlooked consideration: Why have Title IX activists chosen the playing field of sports rather than debate clubs, choir groups, band and orchestra activities, dance, aerobics, and even cheerleading to demonstrate the political power of Title IX? A reasonable reader should again wonder whether Title IX might present an inconsistent application of the law with sports being the only program targeted by activists. Gavora offers that it could be the case because outside of sports, would women and not men have to cut their numbers? One can only guess, but the U.S. Department of Education’s Office for Civil Rights still refuses to recognize cheerleading as a sport under a Title IX analysis.

Additionally, Gavora notes in Chapter Six that while women’s basketball has grown tremendously in popularity at the high school and college levels, the size of the basketball itself is actually smaller for women than men. Could there be a physical rather than political justification for this? Gavora thinks so and also notes that men and women are not equal physically and that much to the chagrin of Gavora’s feminists, it is okay to be different than men.

In Chapter Seven, “Leveling the Playing Field,” Gavora travels down the dangerous road of statistical analysis and talks about one of the most controversial subjects of Title IX: money. She gives numerous examples of the financials involved in the dole of the state and federally subsidized university settings and compares that world to the private world of professional women’s sports. She notes that a storm is on the horizon and reality is slowly settling in to colleges, universities, and athletic departments (including the NCAA) used to making money hand-over fist in the late nineties economy. She notes that the WNBA, the WUSA and several women’s sports magazines stand in the face of fiscal failure on the private side of sports rather than the politically charged and taxpayer-subsidized world of state run colleges and universities.

Tilting the Playing Field: Schools, Sports, Sex and Title IX should leave even the reasonable reader a bit disturbed. In some places, Gavora is downright hostile. Still, I doubt this work will change your own beliefs about the efficacy and interpretation of Title IX. However, it will certainly enhance your feelings about this subject. Ultimately, Gavora's approach is mean spirited and at times hateful. Yet, her work demonstrates that in a world of quotas and preferences, there are indeed never ending "lies, damn lies, and statistics" that are being used on both sides of the equation to wage a hurtful battle.

I would not recommend this book as a required reading in any sports law course. However, mentioning its existence and theme would provide an excellent resource particularly for those readers who feel that the original intent of Title IX has been skewed. By providing it on a syllabus as a suggested or recommended reading would elevate an educator's status on this particular subject as being fair and balanced, even if the politics or position of the professor are different than those of Gavora.

In the end, after reading this book you will likely have an uncomfortable energy about amateur or professional sports and American life in general. Title IX has certainly created a continuing discourse on its effectiveness, but there is no doubt that the law has opened some previously closed doors. While it is a constant challenge to read Gavora's book as a neutral party, this book forces the reader to question whether the debate about Title IX is ultimately about women, men, discrimination, or simply trial lawyers who continue to profit from extreme positions taken by their clients.

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