



Bridgewater Review

Volume 2 | Issue 2

Article 5

Mar-1984

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Marjorie Heins

Recommended Citation

Heins, Marjorie (1984). Guest Opinion: Sex Discrimination in Sports. *Bridgewater Review*, 2(2), 3.
Available at: http://vc.bridgew.edu/br_rev/vol2/iss2/5

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GUEST OPINION

Sex Discrimination In Sports

Marjorie Heins

“Athletic competition builds character in our boys. We do not need that kind of character in our girls.”

— a Superior Court judge in Connecticut, in the case of *Hollander v. Connecticut Interscholastic Conference* - 1971 —

Twelve year-old Denise Simpson is one of the stars of the Upton Youth Club soccer team. By 1983, Denise had been playing on the team, which represents the towns of Upton and Mendon in Worcester County, for three years. There was only one problem: in the spring season, Denise was not permitted to play.

That was because spring soccer competition in eastern and much of central Massachusetts is dominated by the Boston Area Youth Soccer League (BAYS), and, until Denise and her parents brought BAYS to court, the league required strict sex segregation on all local teams that participated in league competition. If a town did not have a girls' team, as Upton and Mendon did not, then a girl could either try to find a nearby town that did have one and might accept her, or she could sit the season out.

Denise and her parents were not satisfied with these alternatives. For one thing, transportation to neighboring towns was a problem. For another, Denise wanted to play for the home team, as her brother and her friends did. Finally, Denise was a superior player who needed the challenge of coed competition. The team's coach and manager both wanted her to play.

The directors of BAYS firmly refused to consider it. If the team dared to include a girl, they said, it would forfeit all its league games.

The Civil Liberties Union of Massachusetts took Denise's case to court and, in May 1983, won an injunction requiring BAYS to let Denise play. In October, prodded by the injunction, BAYS revised its rules to permit coed teams to compete in its "boys" division. BAYS refused, however, to rename the division to reflect the change. The board strongly felt that boys and girls should be encouraged --

even if they could not legally be required -- to play on separate teams.

The BAYS case dramatized the paradox of sex discrimination in athletics. Denise faced a classic type of discrimination: if not for her sex, she could have played on the team. Even if there had been a girls' team at her age level in town, it obviously would have been discriminatory to refuse to let Denise play on the boys' team if she could qualify.

But girls' and women's sports have been kept separate for so long that it is almost



unthinkable to most of us that segregation -- what are conveniently but mistakenly called "separate but equal" teams -- should be eliminated. This is, of course, because we assume, with some justice, that men's and women's athletic abilities are not equal. Thus, the teams are kept separate precisely because they are not equal. If integration were required, so the conventional wisdom runs, most women would be eliminated from town, league, or school athletic competition.

Most courts confronted with legal questions involving sex discrimination in athletics have accepted this logic and assumed, often without much analysis, that "separate but equal" is lawful. That is, as long as opportunities, facilities, financial support, and coaching are offered equally to girls' and boys' athletic programs, segregation is acceptable. BAYS took this assumption an extra step: segregation was not only acceptable, all other things being equal -- it was necessary.

One problem with this approach is that "all other things" rarely are equal. Separate teams are created because girls are presumed to have inferior athletic ability. It is not really clear to what extent the ability gap is culturally rather than biologically determined. As the U.S. Supreme Court has observed, it is "habit, rather than analysis or reflection," that accounts for most sex discrimination. It may be that segregated teams operate as self-fulfilling prophecies.

This is not to say that males, at least as adults, are not on the average bigger and stronger than females. It takes no sociological treatise to demonstrate this obvious fact. Size and strength give adult males advantages in many sports. And if competition for places on teams in these sports at the high school level or above were fully integrated, few females would qualify.

But this does not justify strict segregation in all sports and at all age levels. Nor is it a reason ever to bar the exceptional female athlete of any age from trying out for the best team on which she is able to compete. It is probably feasible to have coed competition in virtually all sports up to the age of thirteen or fourteen.

Given training, encouragement, and true equality at the younger ages, girls and women may be better able to compete on an integrated basis on many sports, even after puberty. Tennis, skiing, golf, archery, swimming, diving, gymnastics, volleyball, track, even soccer, may turn out to be amenable to coed competition. If equality and integration are promoted to the extent they are feasible, we all could be surprised at the athletic abilities -- not to mention the "character" -- that develops in our sisters and daughters.

Marjorie Heins is a staff attorney at the Civil Liberties Union of Massachusetts. She represented the Simpson family in their lawsuit against BAYS.