

Bad Girls and Good Sports: Some Reflections on Violent Female Juvenile Delinquents, Title IX & The Promise of Girl Power

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*There was a little girl, who had a little curl, right in the middle of
her forehead.*

*When she was good, she was very, very good, but when she was
bad, she was awful.*

INTRODUCTION

It was a shocking crime. It was a Tuesday afternoon in San Francisco, a time when most teenagers are in school, but these two hoodlums were on the street and they had a plan.

They would carjack a Jaguar driven by a 57 year-old woman, lock her in the trunk, drive her into the city, and then dump her somewhere. It wasn't clear if they intended to kill her, but they brought along pepper spray, gloves, duct tape, and knives, and then waited until the victim arrived home. When she got out of her car,

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one of the teenagers pointed a .38 caliber pistol at her head and threatened to shoot her if she did not get back into the car. The victim froze, and the carjackers panicked. They took only her keys and her money and sped away. Then getaway driver lost control of the Jaguar and smashed into a parked car.¹

It was not so shocking that the carjackers were only 14 and 15 years old, nor that they were “wanabees” trying to impress a local street gang. Stories of teenagers joining gangs and committing violent crimes are so commonplace these days that we are far more likely to tune-out than tune-in when we hear them. What was shocking is that these hoodlums were girls. And they have plenty of sisters in crime.

While the Justice Department is happy to advertise that violent crime is down nationwide for the fifth straight year,² it fails to mention that violent crime is on the rise for girls under 18.³ Between 1981 and 1997, the Violent Crime Index Rate rose 103% for girls,⁴ signaling a major change in girl violence among today’s generation of young women. And Annie has got her gun: the number of young women using weapons is increasing at a faster pace than the number of boys.⁵ Between 1981 and 1997, female juvenile arrest rates for weapons law violations nearly tripled.⁶

Granted, carjacking girls make the headlines because they are rare. Violent crime is still overwhelmingly boys’ business, and no one

1. See Marshall Wilson, *2 Teen Girls Arrested in Carjacking, Police Say Suspects Tried to Impress S.F. Gang*, S.F. CHRON., Feb. 24, 2000, at A17.

2. See HOWARD N. SNYDER & MELISSA SICKMUND, OFFICE OF JUV. JUST. & DELINQ. PREVENTION, *JUVENILE OFFENDERS AND VICTIMS: 1999 REPORT TO CONGRESS*, at 62, 120 (1999) (stating that “serious violence by juveniles dropped 33% between 1993 and 1997”).

3. See SHAY BILCHIK, OFFICE OF JUV. JUST. & DELIQ. PREVENTION, *JUVENILE VIOLENCE AND JUVENILE JUSTICE IN AMERICA*, (1999) (finding that the growth in juvenile violent crime arrest rates between 1987 and 1994 were far greater for females than for males). See also, HOWARD N. SNYDER, *JUV. JUST. BULL., JUVENILE ARRESTS 1996*, *Juv. Just. Bull.*, at 2 (1997). The report finds that in 1996 females represented 25% of all arrests of juveniles in the United States (712,925 out of 2,851,700). Females represented 7% of arrests for murder/non-negligent manslaughter (203 out of 2,900), 10% of arrests for robbery (5,010 out of 50,100), and 20% of arrests for aggravated assault (15,320 out of 76,600). See also, KIMBERLY J. BUDNICK & ELLEN SHIELDS-FLETCHER, OFFICE OF JUV. DELINQ. & PREVENTION, *WHAT ABOUT GIRLS?*, at 1 (1998) (Noting that as “female involvement in the juvenile justice system continues on a steady course upward – even as juvenile male involvement in delinquency declines . . . Female involvement in the juvenile justice system, once seen as an anomaly, has evolved into a significant trend.”).

4. See Leslie Acoca, *Investing in Girls: A 21st Century Strategy*, 6 *JUV. JUST.* 3, 3 (1999) (finding that between 1981 & 1997, the Violent Crime Index Rate rose 103%).

5. See SHAY BILCHIK, U.S. DEP’T OF JUSTICE, *KIDS AND GUNS* (2000).

6. See SNYDER & SICKMUND, *supra* note 2, at 136.

expects female violent offending to equal that of boys' anytime soon.⁷ While much violent female offending is gang-related – some studies put it as high as thirty percent⁸ – girls rarely commit armed robberies, drive-by shootings, or murder. Girls are more likely to physically attack a family member or an acquaintance than to attack a stranger.⁹

But chivalry is dead.¹⁰ While women in the past were treated more leniently by the criminal justice system, there is now a trend toward equal treatment of women and men. Thus, the rise in the incidence and severity of female violent crimes is a growing cause of concern for the criminal justice system. Girls who behaved badly used to be referred to the mental health system.¹¹ But increasingly, as mad girls are transformed into bad girls, they are being arrested, detained, and “treated” in the criminal justice system. While it is clear from the available research that rehabilitative programs for violent offenders are most effective when they are sex-specific, there is no clear data indicating which programs for girls are most effective in reducing recidivism.¹²

7. See, e.g., Michael J. Sniffen, *Most Female Crime is Simple Assault*, ASSOCIATED PRESS, December 6, 1999 (citing Jack Levin, Director of the Brudnick Center for Violence at Northeastern University as saying, “Women’s criminal behavior is unlikely to ever catch up with that of men.”).

8. See G. DAVID CURRY ET AL., NAT’L INST. OF JUST., *GANG CRIME AND LAW ENFORCEMENT RECORDKEEPING* (1994), compiled in MEDA CHESNEY-LIND, *THE FEMALE OFFENDER: GIRLS, WOMEN AND CRIME* 43 (1997).

9. See SNYDER & SICKMUND, *supra* note 2, at 54-55.

10. In 1975, criminologist Rita Simon speculated that a possible side effect of the women’s liberation movement might be the decline of chivalry – the more lenient treatment of female offenders by criminal justice personnel. RITA JAMES SIMON, *WOMEN AND CRIME* 3 (1975). Fifteen years later she concludes: “There is one avenue, however, through which the women’s movement may already be having a significant impact on women in crime. The movement’s rhetoric and activities may alter the treatment that women offenders receive at the hands of police, prosecutors, and other law enforcement personnel. . . . ‘If it’s equality these women want, we’ll see that they get it.’” RITA J. SIMON & JEAN LANDIS, *THE CRIMES WOMEN COMMIT, THE PUNISHMENTS THEY RECEIVE* 23 (1991).

11. See Anne Bowen Poulin, *Female Delinquents: Defining Their Place in the Justice System*, 1996 Wis. L. Rev. 541, 545-48 (1996).

12. See, e.g., Andrea D. Shorter et al., *Out of Sight, Out of Mind: The Plight of Adolescent Girls in the San Francisco Juvenile Justice System*, Report from the Center on Juvenile Justice & Crime 1, July 1996, at 12-18 (describing San Francisco’s services to adolescent girls and recommending more services and better research); OFFICE OF JUSTICE PROGRAMS, COORDINATION GROUP ON WOMEN, *WOMEN IN THE CRIMINAL JUSTICE SYSTEM: A TWENTY YEAR UPDATE*, at 7 (1998) (“The rapid increase in the number of female offenders has not been matched by an increase in specialized programs for them.”); Acoca, *supra* note 4, at 9 (“The paucity of services targeting female juvenile offenders is deepening the negative impact of the often traumatic life circumstances [of

Why are girls becoming increasingly violent and what should we do about it? Much of the analysis in this field has focused almost exclusively on inter-gender relationships – the battle between the sexes. For example, some theorists argue that violence is a manifestation of the victimization of girls relative to that of boys.¹³ As to the causes of female violence many point to poverty, neglect, sexual abuse, sex and race discrimination, mental illness, eating disorders, and all of the other “usual suspects” – who are usually men.¹⁴ There is a presumption within this “oppression” model – albeit not always an explicit one – that violent females are victims of circumstance. From this viewpoint, female violence proves that the equality glass is still half-empty.

Others argue that girl violence has nothing to do with gender oppression, but with gender equality.¹⁵ As girls gain more access to

these girls].”).

13. See Cheryl Hanna, *Ganging Up on Girls: Young Women and their Emerging Violence*, 41 ARIZ. L. REV. 93, 110-14 (1999) (explaining in depth oppression theory as it applies to female juvenile offenders). See also MEDA CHESNEY-LIND, *THE FEMALE OFFENDER: GIRLS, WOMEN AND CRIME* 22-23 (1997) (arguing that “Girls are aware early in life that, although girls and boys have similar problems, girls ‘have it heaps worse.’”) (citing C. Adler, *Unemployed Women Got it Heaps Worse*, 19 AUSTRALIAN & NEW ZEALAND SOC’Y OF CRIMINOLOGY 210 (1986)).

14. Meda Chesney-Lind, *Girls, Gangs, & Violence: Anatomy of Backlash*, 17 HUMAN. & SOC’Y 321, 339-40 (1993) (arguing that the female “crime wave” is an attempt to reframe the problems of racism and sexism in society). See also SIBYLLE ARTZ, *SEX, POWER, & THE VIOLENT SCHOOL GIRL* (1998) (detailing her study of violent non-marginalized Canadian school girls and suggesting that sex oppression leads girls to offending); Adrien K. Wing & Christine A. Willis, *Critical Race Feminism: Black Women and Gangs*, 1 J. GENDER, RACE & JUST. 141, 158 (1997) (stating that “[t]he black female gang member’s social class, culture, family, norms and values, opportunities, role models, friends and peers, victimization, and powerlessness are all factors that affect black females’ criminality and gang involvement.”).

15. See Hanna, *supra* note 13, at 107-10 (explaining liberation theory and its implications for juvenile female violent offenders); FRED A. ADLER, *SISTERS IN CRIME: THE RISE OF THE NEW FEMALE CRIMINAL* 95 (1975). See also RITA J. SIMON & JEAN LANDIS, *THE CRIMES WOMEN COMMIT, THE PUNISHMENTS THEY RECEIVE* (1991); Josefina Figueira-McDonough & Elaine Selo, *A Reformation of the “Equality Opportunity” Explanation for Female Delinquency*, 26 CRIME & DELINQ. 333, 337-39 (1980) (arguing that crime results from high aspirations and few legitimate opportunities, not because of an inherently unequal system); PATRICIA PEARSON, *WHEN SHE WAS BAD: VIOLENT WOMEN & THE MYTH OF INNOCENCE* 32 (1997) (attacking what she calls the paradox of modern feminism: “We cannot insist on the strength and competence of women in all the traditional masculine arenas yet continue to exonerate ourselves from the consequences of power by arguing that, where the course of it runs out more darkly, we are actually powerless.”)(emphasis omitted); Deborah R. Baskin et al., *The Political Economy of Female Violent Street Crime*, 20 FORDHAM URB. L.J. 401, 413-17 (1993) (Examining violent crime patterns in New York City, the authors embrace the liberation hypothesis as applied to the girl gang context, suggesting that violent behavior is adaptive.

the “boys’ club” they are also more likely to adopt male behaviors – an unintended consequence of equal rights.¹⁶ One need only look at “commercial feminism,” which encourages that in-your-face aggressiveness so popular among girls today.¹⁷ Girl violence is just girl power – bad girl style.¹⁸ From this viewpoint, female violence proves that the equality glass is already half full.

Despite reaching very different conclusions as to the status of girls relative to boys and the impact that the gender gap has on violent offending, both “oppression” and “liberation” theorists assume that behavior is intricately linked to the battle between the sexes for power and status and opportunity. True, many violent girls have been victimized by boys or men. And there is no doubt that contemporary culture encourages girls to be more physically aggressive – like boys. Thus, taken together, both theories add to our understanding as to the multiple factors that influence human behavior.

Yet, current explanations for girl violence remain incomplete. They fail to explain why three out of four violent female offenders have a *female* victim – and in fifty percent of the cases, that victim is

They conclude that “women in inner city neighborhoods are being pulled toward violent street crime by the same forces that have been found to affect their male counterparts . . . (creating) new dynamics of crime where gender is a far less salient factor.”)

16. ADLER, *supra* note 15, (focusing primarily on women’s economic liberation and greater participation in labor market as a casual factor in the increase in female crime.)

17. See Nadya Labi, *Girl Power for the Next Generation, Feminism Is Being Sold as a Glitz and Image. But What Do the Girls Really Want?*, TIME, June 29, 1998, at 60-62. See also Patricia Kitchen, *Summer Reading Sprinkled with a Dash of ‘Girl Power’*, NEWSDAY, July 12, 1998, at F10; Hanna, *supra* note 13, at 99; Cheryl Hanna, *Sometimes Sex Matters: Reflections on Biology, Sexual Aggression, and its Implications for the Law*, 39 JURIMETRICS J. 261, 264 (1999).

For articles on the role of television and the attitudes of young women, see Betsy Sharkey, *Women Get More Cybillized; The Strong, Even Macho Female Lead Is Showing up in More Places on Prime Time TV*, MEDIAWEEK, Nov. 3, 1997, at 28. See also Sheryl Connelly, *Who is the Woman of the ‘90s?*, NEW YORK DAILY NEWS, Jan. 8, 1998, at 47; Patrick Connolly, *Girl Power*, TENNESSEAN, July 4, 1998, at 1D; Joanne Jacobs, *Feminism Is Alive and Well and Thriving in Our Teen-Age Daughters*, BUFFALO NEWS, July 12, 1998, at H4; Dennis King, *Oui Lass from France, a Petit Grand Dame for the Ages*, TULSA WORLD, July 10, 1998, at 13; Kinney Littlefield, *Women Ruled the Airwaves in a Raucous Year of Anger, Angst and Apology*, THE ORANGE COUNTY REG., Dec. 28, 1997, at F26; David Martindale, *Peta Wilson: No Expectations*, SAN ANTONIO EXPRESS-NEWS, June 24, 1998, at 12G; Adam Rogers, *Hey, Ally, Ever Slain a Vampire?*, NEWSWEEK, Mar. 2, 1998, at 60.

18. See GINI SIKES, 8 BALL CHICKS (1997) (describing girl gangbangers). For literature on female aggression see generally, Jacquelyn W. White & Robin M. Kowalski, *Deconstructing the Myth of the Nonaggressive Woman: A Feminist Analysis*, 18 PSYCHOL. OF WOMEN Q. 487 (1994).

an acquaintance.¹⁹ Neither theory explains why girls are attacking girls, nor do they account for the motive behind the violence that these girls themselves articulate. In this Article, I argue that in order to develop a richer understanding of, and therefore address, female juvenile violent crime, we have to examine the phenomenon through the lens of female relationships with other females. My focus here is solely on intra-gender relationships – the battle among the sexes – and what that analysis can tell us about why very good girls can sometimes be awful. There is growing evidence to suggest that violent girls are not fighting back against boys – as “oppression” theorists have suggested, nor are they trying to be boys, as “liberation” theorists have suggested. In far too many cases, girls are trying to attract boys at the expense of other girls. Take, for example, an increasingly common scenario, as described by Boston Globe columnist Bella English:

[T]hree eighth grade girls entered a reading class and dragged another girl out into the hallway, kicking and beating her. It took two male teachers to break up the fight. The three were expelled from school; the victim was treated at the hospital and later enrolled in private school. The reason for the attack? The victim had spoken to the boyfriend of one of her attackers.²⁰

For both the carjackers and the schoolgirls, while their victims varied, their underlying motives were surprisingly similar. These girls, like many of their sisters in crime, were seeking power, status, and ultimately the love and acceptance of their male peers. We know from listening to these girls speak and write about their lives that they join gangs to meet popular guys,²¹ and that they physically attack other girls because sexual jealousy or verbal assaults on their sexual reputations.²² In rare cases, they simply set out to directly “kill the

19. See LAWRENCE A. GREENFELD & TRACY L. SNELL, BUREAU OF JUST. STAT., *WOMEN OFFENDERS*, at 3 (1999).

20. Bella English, *Crime by Girls an Unfortunate Equality*, BOSTON GLOBE, Feb. 20, 2000, at 2.

21. See Los Angeles County Sheriff's Dep't, *Girlz in the 'hood*, in SCHOOL SAFETY, Spring 1996, at 13, 15 (finding that in interviews with thirty female gang members in Los Angeles, the most popular reason given for gang membership was for “fun and excitement, all the parties, and all the people that you meet. It's a good way to meet good-looking guys.”) [hereinafter *Girlz in the 'hood*] See also Columbus B. Hopper & Johnny Moore, *Women In Outlaw Motorcycle Gangs*, 18 J. CONTEMP. ETHNOGRAPHY 363, 377 (1990) (presenting research on a 17 year study of outlaw bikers and their female associates and finding that meeting men is often the motivation for joining a gang).

22. See generally Anne Campbell, *A Few Good Men: Evolutionary Psychology and Female Adolescent Aggression*, 16 ETHNOLOGY & SOCIOBIOLOGY 99 (1995). See also Anne Campbell, *Girls' Talk: The Social Representation of Aggression by Female Gang*

competition.”²³ Unless we are willing to explore the darker side of female relationships, particularly among girls and young women, we will fail to make good on the promise of girl power.

Ours is a culture that remains deeply ambivalent about female aggression, worshipping some bad girls and fearing others. On one hand, we celebrate gold medal and world cup athletes as the heroines of girl power. On the other hand, when girls turn their aggression not to sports, but to criminal violence, we are frightened by their aggression. Yet, girls who play a mean game of soccer and girls who are just mean are both motivated, at some level, by their competitive instincts. They play by different rules, but it is the same game. Yet, we rarely make the connection between promoting healthy, physical female competition and reducing violent female crime. This essay attempts to make that connection.

Thus, when we think about our children and the Constitution in the next millennium, I challenge us to think outside the box. Rather than only look to the Constitution to provide procedural due process protections for children, we should look to the spirit and the letter of Title IX, and its constitutional validity under the Equal Protection Clause of the 14th amendment, to provide substantive content to programs for female juvenile delinquents. We may be able to keep some girls out of court if we keep them on the court. There is evidence to suggest that competitive sports protect boys from engaging in destructive behaviors.²⁴ They may do the same for girls.

In Part I, I explore the theme of female competition, in general, and among girls, in particular, drawing on secondary inter-disciplinary

Members, 11 CRIM. JUST. & BEHAV. 139, 146 (1984) (arguing that most fights in which girl gangs are involved result from either domestic disputes – “physical aggression resulting from a romantic or domestic relationship in which aggression is directed toward the partner,” or loyalty/integrity disputes – “physical aggression resulting from a perceived slight against the public reputation of an individual, such as accusations of cuckoldry, promiscuity, cowardice, or stupidity.”).

23. Between 1980 and 1997, about 130 juvenile females were implicated in a homicide. See SNYDER & SICKMUND, *supra* note 2, at 53. About half of those murders involved an acquaintance. See *id.* at 55. See also Mary B. Harris, *Aggression, Gender and Ethnicity*, 1 AGGRESSION & VIOLENT BEHAV. 123 (1996) (reviewing a number of studies on aggression as they relate to gender and ethnicity and finding that women do tend to be aggressive verbally). As well as providing an outstanding bibliography on research on female aggression, this article also explains the methodological shortcomings of self-reported data. See *id.* at 139-40.

24. See, e.g., LAWRENCE W. SHERMAN, ET AL., NAT’L INST. JUST., PREVENTING CRIME: WHAT WORKS, WHAT DOESN’T, AND WHAT’S PROMISING, (2000) (examining research on sports programs and noting success in reducing delinquency if those programs have strong mentoring components).

research and conversations that I have had with female juveniles detained at the San Francisco Juvenile Hall. The girls themselves talked openly about competition, violence, and the role that sports have played in their lives. And while not a statistically valid study, those conversations begin to give voice to our otherwise silent theories.

In Part II, I examine the current status of Title IX and suggest that the rationale behind gender equity in sports can have enormous implications for juvenile justice in the next millennium, particularly if we examine violent behavior through the lens of female competition. No “model” programs currently have any physical or athletic components, nor do they directly address girls’ relationships with other girls. Thus, I argue that we need to take female competition out of the closet. “Model” programs should be far more explicit about the complicated nature of female relationships, and, to that end, incorporate competitive athletics as one means of channeling female aggression into a more productive and healthy arena than a street fight or a bathroom brawl. A review of the current research on female athletics suggests that the earlier girls start to play sports and the longer they stay in the game, the better their lives tend to be.²⁵

Granted, mine is not a particularly ambitious proposal, nor one that will cure all of the social ills that girls (and boys)²⁶ today face. But my hope is that by exploring the relationship between juvenile violence, female competition, and Title IX, we can help at least some bad girls become good sports, as well as rethink what it means to say, “you play like a girl.” (Remember when that was a bad thing?)

I. Crashing the Net

The issue of female competition, and the link between girl violence and competition over boys, is one that can easily be misconstrued or misapplied. So let me be clear: my intent in this Article is not to insult women, or men for that matter. I do not argue that women are catty, deceitful, or hypocritical about competition. Competition among the sexes is a complex and thorny issue. I seek to

25. See *infra* notes 140-50 and accompanying text.

26. Recently, there has been a great deal of literature on the plight of boys in America. Some have suggested that by focusing our attention on girls, we are ignoring boys and they are suffering. See, e.g., CHRISTINA HOFF SOMMERS, *THE WAR AGAINST BOYS: HOW MISGUIDED FEMINISM IS HARMING OUR YOUNG MEN* (2000). For books on boys that do not pit girls against boys, see WILLIAM S. POLLACK PH.D. ET AL., *REAL BOYS' VOICES* (2000); WILLIAM S. POLLACK, *REAL BOYS: RESCUING OUR SONS FROM THE MYTHS OF BOYHOOD* (1999).

understand the complicated relationships that women have with other women with the ultimate hope that by doing so, we can improve women's lives. Historically, however, we have focused almost exclusively on how males interact with females and how those relationships effect the struggle for equity. We have yet to examine the enemy within.

Resistance to the concept of female competition is understandable. Contemporary discourse within the gender sameness/gender difference debate has presumed that when it comes to competition, women are from Venus and men from Mars. Now, to what extent the differences between the Goddess of Love and the God of War are biological, environmental, social, or spiritual is a fascinating debate – and best left for another time. However, despite the origins of gender difference, it is universally true that males, both across cultures and throughout time, are more physically violent with each other than are females.²⁷ But it is incorrect to conclude that from this observation that by nature and/or nurture that males are competitive and females are cooperative.

Here is the problem: we have used violence as the means by which we measure competition. Yet, competition can take many forms. Thus, even though men are more *violent* towards each other than are women this does not mean that they are more *competitive* with each other than are women. Women do compete with other women. From the Greek goddesses Aphrodite and Athena, to figure skaters Tonya Harding and Nancy Kerrigan, to authors Camille Paglia and Gloria Steinem, to Cinderella and her evil stepsisters, competition is a central theme in women's lives.

Women do compete differently than men, however, most of the time. After all, no one ever says "come on, let's go outside and settle this like women." Men compete face-to-face, man-to-man. In contrast, women seldom compete face-to-face, woman-to-woman (except maybe in beauty contests). Women compete in covert and subtle ways instead of overt and obvious ways. As the feminist writer Natalie Angier writes, girls more than boys engage in a style of aggression called indirect aggression:

27. See generally MICHAEL GHIGLIERI, *THE DARK SIDE OF MAN: TRACING THE ORIGINS OF MALE VIOLENCE* (2000); BOBBI S. LOW, *WHY SEX MATTERS: A DARWINIAN LOOK AT HUMAN BEHAVIOR* 213-41 (2000) (discussing sex difference in warfare and aggression); Neil Malamuth, *The Confluence Model of Sexual Aggression: Feminist & Evolutionary Perspectives*, in *SEX, POWER, CONFLICT: EVOLUTIONARY AND FEMINIST PERSPECTIVES* (David M. Buss & Neil M. Malamuth eds., 1996).

I'll admit up front that I dislike this form of aggression, and that to mention it is to reinforce clichés about female treachery and female conniving. Yet it is an aggression that we gals know, because we grew up as girls and we saw it and struggled against it and hated it and did it ourselves. Indirect aggression is anonymous aggression. It is backbiting, gossiping, spreading vicious rumors. It is seeking to rally others against the despised but then denying the plot when confronted. . . .²⁸

These are harsh and painful words to read, and this is a difficult issue to discuss, in part because the only vocabulary we have to talk about female competition is either judgmental or threatening. Take, for example, the word “catfights” – a term used to describe women fighting other women. It is a term never applied to men. It is quite telling that Webster's Dictionary defines “cat” as: *A carnivorous mammal long domesticated and kept by man as a pet or for catching rats and mice; or, a malicious woman.*²⁹ Catfighting connotes that when women (*i.e.* domestic pets) fight, they are behaving badly. Labeling women as malicious when they compete is just one way in which culture controls how women publicly behave, overlaying a negative meaning on an instinct as common to women as men. Because competitive women are portrayed as evil women, females are forced to secret their competition, to be silent about it, to be embarrassed or ashamed or shocked by it. We teach our daughters not to argue and not to hit. This is why, when bad girls break the rules, the tendency has been to discourage their aggression rather than rethink how that aggression can be redirected.

While there has been a great deal written about the plight of girls in recent year, in few cases does that literature directly address if, how, and why girls compete with each other.³⁰ Nor does the literature on women in contemporary society explicitly tackle the issue of intra-gender relations in any depth.³¹ However, when I ask women about competition and the role that it has played on in their lives, they all have a story to tell me – they are often painful stories of betrayal, disappointment, or regret. Yet, these stories often go unwritten or

28. NATALIE ANGIER, *WOMAN: AN INTIMATE GEOGRAPHY* 266 (1999).

29. WEBSTER'S COLLEGIATE DICTIONARY 178 (10th ed. 1993).

30. See, e.g., PEGGY ORENSTEIN, *SCHOOLGIRLS: YOUNG WOMEN, SELF-ESTEEM AND THE CONFIDENCE GAP* (1994); MARY PIPHER, *REVIVING OPHELIA* (1995); SIBYLLE ARTZ, *SEX, POWER, & THE VIOLENT SCHOOL GIRL* (1998).

31. See MARIAH BURTON NELSON, *EMBRACING VICTORY: HOW WOMEN CAN COMPETE JOYOUSLY, COMPASSIONATELY, AND SUCCESSFULLY IN THE WORKPLACE AND ON THE PLAYING FIELD* 71–75 (1998) (reviewing feminist literature and finding that most either rejects or ignores competition or assumes that women do not compete).

untold because competition among women remains a taboo topic.

Many feminists have either ignored or outright rejected competition as a behavior that women should value or emulate and find this sort of sexual competition, particularly around appearance, as abhorrent.³² Feminism has become a rich and diverse school of thought.³³ Nevertheless, many of the basic principles of feminism are contrary to competition. Solidarity among women, egalitarianism, and consensus are fundamental to feminist thought.³⁴ For example, in the classic feminist utopia *Herland*, by Charlotte Perkins Gilman, there is no place for competition for her all-female world. "They were sisters, and as they grew, they grew together – not by competition. But by united action," she writes. When the male visitors arrive, they tell the Herlanders about the advantages of competition, that it developed many good qualities in men and that it provided the stimulus to industry. The Herlanders don't get it, and cannot fathom a world where competition is necessary.³⁵

In *No Contest: The Case Against Competition*, feminist writer

32. See, e.g., NAOMI WOLFE, *THE BEAUTY MYTH* (1991) (arguing that the idea that women must be beautiful to be happy is a myth perpetuated by a sexist culture.).

33. Today, feminist theory is rich and diverse, with both complementary and competing approaches to questions of gender. For example, the formal equality approach proposes that individuals who are alike should be treated alike according to their actual characteristics rather than stereotypes. See Mary Becker, *Four Feminist Theoretical Approaches and the Double Bind of Surrogacy*, 69 CHI.-KENT L. REV. 303 (1993). In contrast, substantive equality theory requires that rules take into account the significant differences in the characteristics and circumstances of women and men in order to avoid gender-based outcomes. This theory is premised on the idea that neutral rules do not adequately account for the extent to which the realities of women's lives differ from men's. See Herma H. Kay, *Equality and Difference: The Case of Pregnancy*, 1 BERKELEY WOMEN'S L.J. 1, 26 (1985); Linda J. Krieger & Patricia N. Cooney, *The Miller-Wohl Controversy: Equal Treatment, Positive Action, and the Meaning of Women's Equality*, 13 GOLDEN GATE U. L. REV. 513, 537 (1983). Nonsubordination theory, initially developed by Catharine MacKinnon as a way to understand sexual harassment in the workplace, shifts the focus of attention from gender-based differences to the power imbalances between men and women. See CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 40-45 (1987). Different voice theory views women's differences not as problematic, but as potentially valuable resources that might serve as an alternative to 'male' models of social organization and law. These female characteristics could be incorporated into legal concepts so that, for example, tort law would begin with 'a premise of responsibility rather than rights.' See Leslie Bender, *A Lawyer's Primer on Feminist Theory and Tort*, 38 J. LEGAL EDUC. 3, 31 (1988). Finally, some feminist theory is critical of the tendency to produce universalisms instead of accounting for differences among women. See Martha Minow, *Feminist Reason: Getting It and Losing It*, 38 J. LEGAL EDUC. 47, 56, 59-60 (1988).

34. See NELSON, *supra* note 31, at 73-75.

35. *Id.* (citing CHARLOTTE PERKINS GILMAN, *HERLAND* (1979)).

Alfie Kohn argues that women prefer interdependence and relationship over competition and its emphasis on winning.³⁶ Like Carol Gilligan argued in her groundbreaking book, *In A Different Voice*,³⁷ Kohn claims that men are more competitive and hierarchical than are women, but goes one step further than did Gilligan by explicitly arguing that female cooperative behavior is preferable to, and not just different from, male competitive behavior. Kohn writes: “This is why I call the cheerleaders of competition for women pseudo-feminists: they are responding to sexism by appropriating the worst of male values, which represents a serious error in judgment if not a kind of betrayal.”³⁸

In the last few years that I have been researching and speaking about the female competition, “traitor” is one of the milder names that I have been called. (Also, I was, in fact, a cheerleader in high school, and thus feel the double sting of Kohn’s criticism of women like me.) One of the most hurtful things about these verbal attacks from other women is that I had not expected women themselves to be so confrontational, and on occasion cruel, to one of their colleagues. I suppose I expected men to be the ones to challenge me. That is, after all, what we women who came of age in the last quarter of the century were taught: men, not women, were the enemy. Some women have been terrifically supportive as well – fabulous mentors and first class colleagues: it is what I call the best friend/worst enemy conundrum for women. Now that there are more than just a few token women in the academy, I have begun to wonder: are those of us who fight our wars with words and not weapons engaged in a struggle among ourselves for the leadership/control of gender studies? If so, (and I think so) then this competition is an ironic twist on the debate over competition itself.

Truth be told, I do not always respond well to such direct criticism of my work. I forget that I get paid to engage in academic debates and often take professional competition too personally; I respond like a “girl.” I cry on airplanes on my way home from conferences, rather than calling my critic and confronting her directly. Sometimes, I resolve to quit studying competition and move on to a less controversial topic like the Uniform Commercial Code. On occasion, when a female colleague has publicly said that I am wrong – that women don’t compete and that I should not advocate for

36. ALFIE KOHN, *NO CONTEST: THE CASE AGAINST COMPETITION* (1992).

37. CAROL GILLIGAN, *IN A DIFFERENT VOICE* (1982).

38. KOHN, *supra* note 36, at 179.

competition – I flippantly reply, “my point exactly.” My mostly male audience usually laughs and I feel better. Yet, these responses are neither helpful nor productive. With this research, and in this article, I seek to understand the good, the bad, and the ugly of female competition – both in myself, and in girls and women more generally. I firmly believe that competition is both an inevitable and necessary behavior for both men and women, and therefore, the question for me is not how to discourage competition among women, but how women can be better, fairer, and more above-the-belt competitors. It is the personal that has become the political.

“Crashing the Net” is a hockey term, used also in other sports, to describe the action of directly attacking the goal in a forceful way, usually with the support of one or several of your teammates.³⁹ It is also the title of Mary Turco’s book about the 1998 U.S. Gold Medal Hockey team.⁴⁰ As she explains: “The point of the action is to score with power, conviction, and determination.”⁴¹ It is a term that I had never heard before meeting Sarah Tueting, the team’s goalie. Sarah is an amazing young woman, an honor student at Dartmouth College, a superb athlete, and a role model for girls and grown-ups alike. She talks openly and honestly about the value of competition, how it has made her a better student, a better goalie, and a better person. Sarah and the U.S. Women’s Hockey Team exemplify, for me, how competition can lead women to strength and grace and sisterhood.

To destroy another woman’s pursuit to crash the net – to foul – is not fair play. But learning to compete well can be liberating and empowering – as feminist as it gets. So, yes, there are times when we should celebrate competition. “In exercising its talent and tenacity to reach a higher level, [crashing] is forcing its opponent to pay serious attention. It is asking the other team to play a better game. Only one team will win, but it is possible for both teams to be ennobled by the struggle.”⁴² We should not be ashamed or embarrassed or shocked or silent about competition. By confronting it, girls and women can crash their own nets.

A. Girl Power(less)

It is interesting, and sad, that while we are often quite explicit

39. MARY TURCO, *CRASHING THE NET: THE U.S. WOMEN’S OLYMPIC ICE HOCKEY TEAM AND THE ROAD TO GOLD* xxii (1999).

40. *See id.*

41. *Id.*

42. *Id.*

with girls about their relationships with boys, we are rarely so explicit about their relationships with other girls. Yet, in order to understand why some girls become violent, we need to be honest about the nature of female relationships, particularly in those early teenage years. There is something quite universal, an essence, perhaps, about teenage girls, regardless of race or class or the environment in which they grow up. It is an age when matters of the heart often matter most. Early adolescence is the time when girls often first encounter a sense of tension with other girls. As girls develop an interest in boys, their friendships with other girls, which used to be uncomplicated and carefree, can become tricky and sometimes messy. While I may somewhat overstate the competition case, and certainly all girls are not alike, the wonder years are the time when many girls discover that their peers can be both their best friends and their worst enemies. Other girls become the “competition” in the contest for beauty, for popularity, and for boys.

Some girls compete more than others do, and a few opt out all together. Most engage in what I call secondary competition: she has no specific adversary, but she still engages in competitive behaviors. For example, a girl may obsess about her hair, her clothes, and her weight – dye, design, and diet (and sometimes die). Although we try to teach girls that beauty is a myth,⁴³ in their world, beauty is a reality. Physical attractiveness is far more prized than brains or brawn or disposition by both girls and boys.⁴⁴ It is the road to popularity and acceptance. Furthermore, the sense of her physical attractiveness is deeply intertwined with a girl’s sense of self-esteem. As Peggy Orenstein notes in the updated preface of *Schoolgirls: Young Women, Self-Esteem, and the Confidence Gap*:

As I’ve criss-crossed the country, speaking to parents, teachers,

43. See, e.g., WOLFE, *supra* note 32.

44. See, e.g., Philip C. Rodkin, et al., *Heterogeneity of Popular Boys: Antisocial and Prosocial Configurations*, 36 DEVELOPMENTAL PSYCHOL. 14-24 (2000) (finding that while some of the most violent and aggressive boys are considered popular among middle school students, aggression is devalued for girls, and that violent girls were only popular among other violent girls). See also, Kathryn M. LaFontana & Antonius H. N. Cillessen, *Children’s Interpersonal Perceptions as a Function of Sociometric and Peer-Perceived Popularity*, 160 J. GENETIC PSYCHOL. 225 (1999) (noting that adolescents, especially girls, become increasingly concerned about their status and popularity as they reach middle and junior high school, and citing research which suggests that among junior high school girls, there is a correlation between being perceived as popular and being described as mean. “Meanness is an expression of invulnerability and allows the popular girl to protect her popularity against competitors.”). These studies suggest that girls and boys may attribute different qualities to popularity, with boys finding non-aggressive girls popular, while girls find other mean girls popular.

college students, and young girls, I've become more convinced than ever that girls' bodies have become the battleground for their conflicts. Hating one's body, sometimes to the point of starvation, remains a tragic rite of passage for young women . . . appearance remains the most important determinant of teenage girls' self-worth. Meanwhile, girls are under tremendous pressure to become sexual at an inappropriately young age.⁴⁵

What do these observations have to do with female competition? Attractiveness is not absolute. It is relative. Girls strive not just to be pretty, or prettier, but the prettiest among their peers. They gain a sense of their own attractiveness by comparing themselves to other girls. Unlike grades on a math test, one of the few ways in which girls know the "class rank" is to compare who is dating whom. Sexual interest from their male peers is often how girls validate how pretty/important/popular/lovable/valuable/ they really are. The more popular the boy, the more popular the girl. As Anais Nin once wrote: "Every girl of fifteen has put the same question to the mirror: 'Am I beautiful?' . . . there is always the same question. The mirror is not going to answer it. She will have to look for the answers in the eyes and the faces of the boys who dance with her. . . ."⁴⁶ Again, I overstate the case somewhat – but the premise that female status is intricately linked to the status of her mate is nearly universal. When teenagers spend hours in front of the mirror or on the Stairmaster or at the mall, they are engaging in secondary, albeit often subconscious, competition with other girls.

Girls also engage in primary competition with other girls – she has a specific adversary. As described above, this often takes the form of indirect aggression: gossiping about other girls, spreading rumors about another's sexual reputation (she's a virgin/she's a whore), stealing another's boyfriend, or excluding a girl from the group. Girls do not necessarily act alone. Much competition is group competition.⁴⁷ Girls gang up with each other and then against each other. They form cliques or clubs, they try out for the cheerleading team or the debate team, and many join gangs. And within these loosely or highly structured groups, often girls will cooperate with each other to compete against another group of girls, all the while competing among themselves for a position within the group. Indeed, girls at this age must navigate the tricky waters between competition and cooperation with their peers. As any parent of a teenage

45. ORENSTEIN, *supra* note 30, at xii (emphasis omitted).

46. *Id.* at 94

47. See Hanna, *supra* note 13, at 96-97.

daughter will tell you, what a girl lacks in experience about maintaining her friendships, she often makes up for with intensity and self-righteous indignation.

In some cases, the aggression becomes direct. Just like the heroines in the movie *Heathers*, a girl may send a nasty note or a nasty friend to warn another girl to stay away from her boyfriend. And on occasion, and increasingly, she will fight face-to-face, girl-to-girl. Rare? Absolutely. But nonetheless real.⁴⁸

B. Fighting Females

All science begins with observation. As part of an ongoing effort to collect data on female competition, I spent the day with girls in the San Francisco Juvenile Hall and spoke with them about female competition. I recount my visit and my conversations here. In no way do I suggest that these conversations provide anything but anecdotal support to my thesis, and any decent social scientist would find so many flaws in my interview techniques as to render these data useless for any systematic study. However, it is my hope that these stories and observations can guide us in formulating more precise hypotheses and testing them with the same rigor that we have (or should have) tested and studied inter-gender relations. We know so little about how females interact with each other, and yet, we know so much.

Juvenile Hall is dark and dreary, designed in that post-war period when aesthetics were sacrificed for function. It has long dark concrete corridors that lead to the dorm rooms and dining rooms and outdated classrooms. The steel doors are painted orange, but it is a colorless place. Both girls and boys are housed here as they await the disposition of their cases or permanent placement. Yet, because there are so few programs for girls, they tend to linger here longer than the boys do.⁴⁹ The Juvenile Hall has no sex-specific programs

48. See, e.g., Catherine Edwards, *When Girl Power Goes Gangsta*, WASH. TIMES, March 20, 2000, at 17 (describing female on female assaults in Washington); Heidi Evans, *Young, Female, and Turning Deadly: More and More Teenage Girls Are Getting Busted in Serious Crimes*, N.Y. DAILY NEWS, Dec. 19, 1999, at 6 (discussing the case of Dominique Livingston, who stabbed to death an 18 year-old female over an argument the two had five years earlier).

49. See Bernice Yeung, *Girl Problems: The Juvenile Justice System is Ignoring Delinquent Girls and Creating a Social Time Bomb*, SF WEEKLY, July 19-25, 2000, at 14 (quoting Deputy Public Defender Patricia Lee: "It is well documented that when girls remain in custody, that time in custody is longer than that of boys. . . . Girls are sitting here waiting for placement. One girl has been sitting [in the San Francisco Juvenile Justice Hall] for over three months on her first-time offense, an indication that there

yet in place. Few people pay special attention to their individual needs. A comprehensive list of female-target resources in San Francisco does not even exist, and therefore probation officers are often at a loss on what programs exist for these girls.⁵⁰ Many predict that the problems here will only get worse. In 1998, 841 girls were sent to San Francisco Juvenile Hall, up from 448 in 1990.⁵¹

When I met the girls, twenty of them, 13 – 17 years old, they were as I expected them to be – both tragically hip and tragic examples of neglect. They reminded me of the boys in *The Lord of the Flies*, although there was no doubt that they were girls. They were dressed in prison issue attire, yet they maintained a sense of individuality by painting their nails or styling their hair. They were just feminine enough to be sexy, but not so sexy as to appear weak.

Most were minorities who grew up in areas that were deeply affected by poverty and drugs. While only a few had been officially initiated into a street gang, most acknowledged that they hung out with girls and boys in gangs. I didn't ask the girls about any of their alcohol or drug use, nor about their personal histories. However, recent data suggests that many girls who get in trouble with the law have been physically or sexually abused, have substance abuse problems, or have grown up fatherless or in foster care.⁵² The detention center staff confirmed that many of the girls had experienced a number of these risk factors. In addition, Laurie Schaffner, a professor of sociology and currently the San Francisco Juvenile Justice Commissioner, has studied life histories of twenty-eight of the girls in the San Francisco Juvenile Hall. She too confirms that minorities are disproportionately represented, and that these girls have experienced an inordinate amount of violence, sexual abuse, and neglect.⁵³

aren't enough group homes or therapeutic homes for girls."'). Furthermore, there are no long term rehabilitation centers nor residential treatment centers for sexually abused girls in the entire state of California, so many of the girls are sent as far away as Colorado. *See id.*

50. *See id.* at 16.

51. *See id.*

52. *See, e.g.,* MARK S. FLEISHER, *DEAD END KIDS: GANG GIRLS AND THE BOYS THEY KNOW* (1998) (documenting the troubled backgrounds of Kansas City female gang members); SIKES, *supra* note 18 (describing the lives of violent female gang members throughout the United States); Acoca, *supra* note 4, at 5-8; SNYDER & SICKMUND, *supra* note 2, at 8, 72-73; Laurie Schaffner, *Female Juvenile Delinquency: Sexual Solutions, Gender Bias, and Juvenile Justice*, 9 HASTINGS WOMEN'S L.J. 1, 23-24 (1998).

53. *See* Laurie Schaffner, *Urban Girls in Trouble: Highlights from San Francisco Juvenile Probation* (2000) (unpublished manuscript on file with the author).

These were not the “baddest” girls in California. The most violent female offenders are sent to the California Youth Authority in Los Angeles. But these girls are bad enough to be confined. Although many were “in” for drug or status offenses, many were in for violent crimes. Schaffner found that forty-one percent, the largest group, were detained for violent offenses, including assault, carjacking, arson, homicide/murder including attempted murder, and weapons violations.⁵⁴

When I asked them how many had been in a physical fight with another girl – not just a push or a shove but a real fight – all but two claimed that they had. “I slice girls up,” one 13 year-old Hispanic girl said. While her words were boastful, her tone was matter of fact. When I ask them why they would hit another girl, the girls consistently suggested that verbal assault on their sexual reputation or direct competition over a boy was what motivated the violence. “A girl talks trash about me, I’m gonna stop her.” What kind of trash? “Disrespecting me.” “Saying things behind my back.” “Stealin’ my clothes.” “Stealin’ my man.” They emphasized over and over: “Self-defense.”

Schaffner received similar responses when she asked about fights with other girls:

“I got kicked out of school so many times for fighting, whatever. See these scars? This scratch? They from fighting other girls at school.” “I have a temper - I fight back. Girls jump me. I get in so many fights because females hate me. I have so many enemies. All my life girls been pickin’ on me.” “They say I was nuts because I didn’t like people. I used to beat up everybody.”⁵⁵

Why *violent* confrontation I asked? They told me boys encourage them to fight other girls. “Boys that make girls hard.” “Kick her ass, he told me.” They learned to fight from their fathers or brothers or cousins or their boyfriends.

Almost all the girls claimed to have no close girlfriends. They didn’t trust girls, claiming that they preferred the companionship (and protection) of other boys. Boys not only looked after them and watched over them, but being with boys gave these girls status. “Girls ain’t trustworthy.” “They are sneaky.” “They back stab you.” “No girl has ever helped me.” “Most girls are hos.” “Girls be triflin’.”

54. *Id.* at 7.

55. *Id.* at 17; see also Laurie Schaffner, *Violence and Female Delinquency: Gender Transgressions and Gender Invisibility*, 14 BERKELEY WOMEN’S L.J. 40, 59–60 (1999) (discussing girl hating and misogyny).

Had they ever gossiped or spread rumors or stole another girl's boyfriend? "No." "Never." These girls perceived themselves as being victims, not villains. And even though they preferred males to females, many did not trust boys either. As one girl told Schaffner:

"I don't like them. My best friend is a girl but she doesn't like girls either. They are stupid. I'm a tomboy. I wish I were a guy. They have it a lot easier. I have a lot of friends who are guys, but they all want to have sex with me. I wish they would just treat me as one of the guys."⁵⁶

I was curious to see how these girls would react to watching other girls fight, so I brought along some video clips. In one, girls are being "jumped-in" – a common initiation right into gang life. Five girls beat on one other girl – they hit her and kick her and one can hear boys cheering in the background. In another clip, rap music pulsates and a montage of violent girls flash as girls talk trash about how tough they are. Boys in the background agree. Then, three girls viciously kicking another girl while she lay on the ground.

I have shown this video many times to academics, students, and community groups. Most people are shocked or dismayed at watching girls fight each other. They are often horrified to learn that these "real life" home videos have made it into pornography, where now in the privacy of one's own living room one can get some sexual satisfaction at watching *Real Life Catfights*. I had never shown this video to a group of incarcerated girls, however, and was concerned that the girls might be offended by watching girls arguably not so unlike themselves. But they weren't offended. They were fascinated, and disappointed that the video was only three minutes. The girls on the video were faking it, they claimed, not really trying to hurt each other. They boasted that they would be better fighters. A few stood up and demonstrated the proper way to throw a punch. Then more stood up and showed off their physical prowess. I found myself growing tense as I watched them jab and kick and punch their imaginary female opponents. Most of them agreed with one of the boys in the video who said, "Girls can be vicious – more vicious than boys." When I told them about these clips showing up in pornography, one of them said, "yeah – guys can be sick" but, again, I registered no surprise on their faces. Not only did they want to see more, but I also had an eerie sense that they wanted to be on the video. They wanted someone to watch them fight.

Their attitudes about other women were sad and deeply

56. Schaffner, *supra* note 52, at 16 (quoting Cora Greene).

disturbing to me. I had never before interviewed a group of females that voiced such strong distrust of other females, and I have been pondering why their hatred of women is so profound. Current research suggests that when females are faced with stress, they “tend and befriend” – nurturing others and building alliances with other females.⁵⁷ To the contrary, although these girls were under tremendous stress, they seemed to be in fight or take flight mode. They were ready to stand their ground; at the same time, many had fantasies of running away alone.

Schaffner suggests that because these girls live in a society that devalues women, they devalue all things female.⁵⁸ This may in fact be true, but I wonder if there isn’t an explanation that is uglier and harder to accept. I asked all the girls: if they could have one wish granted, what would it be? A number of them said that they wished they had a better relationship with their mothers. We have been conditioned to think about absent fathers in troubled communities – the plight of “Daddy’s Little Girl.”⁵⁹ But even though these girls had mothers present in their lives, they described their mothers as not supportive, strung out, hard, jealous, and absent. Schaffner found that almost half of the girls in her sample estimated that their fathers or mothers would get drunk or use drugs at least once a week.⁶⁰ One counselor suggested to me that many of the girls who have been in foster care have had very bad experiences with their foster mothers as well. They are from zero-parent homes.

Furthermore, a disproportionate number of girls in juvenile detention facilities have been sexually abused.⁶¹ According to the National Council on Crime and Delinquency, ninety-two percent of girls in California’s Juvenile Justice System have been physically or sexually abused.⁶² In Robin Wilson’s review of the research on sexual abuse, she found that the most decisive factor to a girl’s risk of sexual abuse was living with males in the household after a parent’s

57. See *Study on Stress: Women Take Friendlier Approach*, WASH. POST, May 23, 2000, at C6 (citing a study by UCLA psychologists which found that when faced with stress women are more prone to turn to social networks of supportive females than men).

58. Schaffner, *supra* note 52, at 18.

59. See JONETTA ROSE BARRAS, *WHATEVER HAPPENED TO DADDY’S LITTLE GIRL: THE IMPACT OF FATHERLESSNESS ON BLACK WOMEN* (2000).

60. Schaffner, *supra* note 52, at 11.

61. See *id.* at 13 (citing LESLIE ACOCA & KELLY DEDEL, NATIONAL COUNCIL ON CRIME AND DELINQ. NO PLACE TO HIDE: UNDERSTANDING AND MEETING THE NEEDS OF GIRLS IN THE CALIFORNIA JUVENILE JUSTICE SYSTEM(1998)).

62. See Yeung, *supra* note 48, at 16. (citing 1998 study).

separation. Many of these girls are abused by their mothers' boyfriends.⁶³ Many moms are in denial about the risk involved with bringing strange men into a household with daughters. It is very likely that many of these girls felt betrayed by their mother's failure to protect them, and, in some cases, I wonder if there was not even a subversive competition going on between mother and daughter for the affection of the same man. I was struck by how many of the girls claimed that their mothers were jealous of them. Sexual competition between mothers and daughters is an area in which there is almost no research; even though it is painful to talk about, we must begin to be honest about the many ways in which adult women, including mothers, fail our daughters.

Maybe it is not so surprising that these girls do not have good relationships with other girls and women. Many claim that absent fathers can lead girls to distrust men. Absent mothers may also lead girls to distrust women. Women had failed them, and maybe their rage ran deep because they never expected women to be the ones that betrayed them.

Given the instability of their relationships with both men and women, these girls were very alone. Over and over again they told me that they didn't need anybody in their lives. To the extent that people engage in violence instrumentally, weighing the costs as well as the benefits of illegal activity,⁶⁴ these girls perceive that they have very little to lose by breaking the law.

When these girls speak about violence against other girls as a necessary and integral part of their lives, they are telling us

63. Robin Wilson, *Children At Risk: The Sexual Exploitation Of Female Children After Divorce*, 86 CORNELL L. REV. 251 (2001).

64. Understanding female violence as intra-sex competition suggests that much of this behavior is instrumental – a reasonable response to the world in which these girls live. Thus, females ought to be considered autonomous and responsible beings when they choose to be violent. As those early feminists at the Seneca Falls convention argued in their Declaration of Sentiments, men ought not to withhold from women “the right to be held accountable for crime . . .” NAOMI WOLF, *FIRE WITH FIRE: THE NEW FEMALE POWER AND HOW IT WILL CHANGE THE 21ST CENTURY* 201 (1993).

We are cautioned that advocating special treatment that excuses women's individual behavior in the criminal context may come at the expense of undermining our advancement in noncriminal arenas where aggression is instrumental. For example, “[w]itnesses on behalf of VMI testified that most women are physically weaker than men, are more emotional, cannot withstand stress as well as men, are less aggressive, and have more than a hundred physiological differences that contribute to a ‘natural hierarchy’ that makes the sexes unable to compete on equal terms.” Christopher H. Pyle, *Women's Colleges: Is Segregation by Sex Still Justifiable After United States v. Virginia*, 77 B.U. L. REV. 209, 242-44 (1997) (citation omitted).

something. They are not “mad” girls, although their anger runs deep. They seem to be using their violence instrumentally – to establish their status and protect themselves. They believe that, as did Mae West, when they are good, they are very, very good, and when they are bad, they are better. Girl violence is one way in which girls compete with other girls, and competition is part of the human behavioral repertoire.

These observations challenge conventional wisdom that family neglect, low self-esteem, or a history of victimization precedes violent behavior. It is true that these environmental factors increase the risk of violence, but we need to look farther back and examine the more distal behavioral motivation. The far more difficult question is how these and other environmental factors interact with and affect the more baseline motivation of competition, especially among this generation of girls that has been culturally encouraged to be aggressive, assertive, physical, and in-your-face. How can we redirect female competition so that it is consistent with the goals of gender equality? How can we help bad girls make healthy, productive, and positive choices about their lives? Good Sports?

II. The Ride to Equality

In *Embracing Victory*, Mariah Burton Nelson describes a scenario that would never have happened were it not for Title IX and all that it stands for:

Supreme Court Justice Sandra Day O'Connor has not spent much time shooting free throws, so when handed a new leather basketball one day in December 1995, she held it tentatively, like a pumpkin. Earlier in the day she had called the Supreme Court gymnasium “the highest court in the land,” making a joke. Now she was serious, staring at the basket, concentrating.

“Go ahead and shoot,” said Lisa Leslie, the six-foot-five-inch national basketball team member who had just given O'Connor a lesson. Leslie and the U.S. team were touring the country that pre-Olympic year, and O'Connor had invited them to stop by.

O'Connor heaved the orange squash at the basket. It banked off the backboard, nicked the rim, then splatted into the middle of the net. Leslie gave a yelp. O'Connor laughed in glee. They slapped high five, but that wasn't enough. O'Connor made the rounds, slapping high five with other smiling Olympians: Ruthie Bolton, Sheryl Swoopes, Jennifer Azzi. “This is awesome,” said Rebecca Lobo, the former Connecticut all-American.

O'Connor, who regularly attends aerobic classes, had

invited Leslie and her teammates to the court – and to the Supreme Court itself – “because what you’re doing is important,” she told them. Referring to Justice Ruth Bader Ginsburg, O’Conner said: “I can’t tell you how happy I was when she got to the Court. It makes a night-and-day difference to have women on the bench.”

A night-and-day difference.

Night: only men deciding what justice is, only men shooting hoops.

Day: women on the legal bench, on the sports bench, on the legal court, on the sports court. Together. A team. Taking shots, teaching each other, offering high fives.⁶⁵

This generation of young women, and indeed my own generation of not-so-young women, have been living in the light and thus have no memory of a time when girls were forbidden to practice and forbidden to play. Sport, like violence, and the law, has historically been boy’s business. It was incredibly interesting and profound for me to learn that the social reaction to female athletes was not so dissimilar to female criminals, or female attorneys, for that matter. In all three cases, it was presumed that something about women’s inherent biological nature made them unsuited for a court of any kind.

For example, in the 1860, Caesar Lombroso and William Ferrero attempted to discover the causes of female criminality. Deeply affected by the social Darwinism of the time, Lombroso and Ferrero argued that women were weak, childlike, passive and, thus, less able to participate in independent activities like crime.⁶⁶ Hence, criminal women were considered biologically dysfunctional, lacking a maternal instinct. “[F]emale criminals approximate more to males, both criminal and normal, than to normal women . . . What we look for most in the female is femininity, and when we find the opposite in her we must conclude as a rule that there must be some anomaly.”⁶⁷

65. NELSON, *supra* note 31, at 81-82.

66. See CAESAR LOMBROSO & W. FERRARO, *THE FEMALE OFFENDER* 28 (1958).

67. *Id.* at 28 For a historical overview of theories of female offending, see generally Dorie Klein, *The Etiology of Female Crime: A Review of the Literature*, in *THE CRIMINAL JUSTICE SYSTEM AND WOMEN: WOMEN OFFENDERS, VICTIMS, WORKERS* 35, (Barbara Raffel Price & Natalie J. Sokoloff eds., 1982). In this chapter, Klein surveys theorists concerned with the etiology of female crime and delinquency, including Caesar Lombroso, W. I. Thomas, Sigmund Freud, and Otto Pollak and concludes that these “writers see criminality as the result of individual characteristics that are only peripherally affected by economic, social and political forces. These characteristics are of a physiological or psychological nature and are uniformly based on implicit or explicit assumptions about the inherent nature of women. This nature is universal, rather than existing within a specific

Caesar and Ferrero were also concerned that as “civilization marched on the numbers of female criminals would multiply in proportion to her opportunities for ‘evil-doing.’”⁶⁸ Bad women would breed bad women. In the 1970’s the rise of the liberated female crook, albeit an unintended consequence of women’s liberation, was still a good sign that women had come “a long way, baby.” In contrast, Lombroso and Ferraro, while predicting that more women would offend as opportunities arose, were hardly celebratory of women’s emancipation.

So too were women who wanted to practice law considered to be biologically deviant, acting against the laws of God and nature. Take, for example, the case of Myra Bradwell. In 1873, the state of Illinois refused to admit Bradwell to the bar because she was a woman. She took her case all the way to the United States Supreme Court and lost. The Court feared that admitting Bradwell would open the floodgates to women becoming attorneys. Justice Bradley, in writing for the majority held:

Man is, or should be, woman’s protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interests and views which belong or should belong to the family institution, is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband. . . . The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator.”⁶⁹

Thus, women’s physical difference and inferiority was not only

historical framework.” *Id.* at 36 (emphasis omitted).

Other theorists have continued this line of argument, which assumes that females are different physiologically from normal females. See, e.g., JOHN COWIE ET AL., *DELINQUENCY IN GIRLS* 170-71 (Leon Radzinowicz ed., 1968) (arguing that differences in female delinquency were largely explained by hormonal differences between the sexes). See also Artz, *supra* note 30, at 12 (describing recent work by criminologists maintaining that differences in men and women are biological).

68. *Id.* at 112.

69. *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 442, 446 (1873) (Bradley, J., concurring in judgment). For an excellent article on Myra Bradwell’s struggles, including how she eventually became America’s first woman attorney, see Jane M. Friedman, *Myra Bradwell: On Defying the Creator and Becoming a Lawyer*, 28 VAL. U. L. REV. 1287 (1994). See also JANE M. FRIEDMAN, *AMERICA’S FIRST WOMAN LAWYER: THE BIOGRAPHY OF MYRA BRADWELL* (1993).

blamed for their deviance, but also justified limiting their access to positions of power. The notion that women had to be excluded from male dominated activities in order to protect their reproductive capacity and their role as wife and mother was one that ran deep at the turn of the century.

In 1895, nineteen years before women were granted the right to vote, Elizabeth Cady Stanton wrote, "Many a woman is riding to the suffrage on a bicycle."⁷⁰ It is no coincidence that women's physical freedom preceded their political, economic, and social freedom. Indeed, many of us modern gals (gal being defined as: a grown person with a sense of humor whom you had better take seriously)⁷¹ fail to appreciate the intricate link between women's liberation and athletics. Historian Susan K. Cahn describes the relationship between the Wright Brothers' go everywhere cycle and the right of sisters to go everywhere:

The bicycle craze of the late 1880s and 1890s opened up athleticism to middle-class as well as elite women. Cycling won widespread acceptance and broke new ground for women's right to public outdoor exercise. Frances Willard, leader of the Women's Christian Temperance Union, was one of an estimated thirty thousand women who took up cycling in the 1890s . . . The bicycle, according to Willard, was not merely a "vehicle of so much harmless pleasure." Rather, it promised to lay to rest the "old fables, myths, and follies associated with the idea of woman's incompetence" in athletic activities, at the same time augmenting the "good fellowship and mutual understanding between men and women who take the road together . . . rejoicing in the poetry of motion."⁷²

70. Mariah Burton Nelson, *Who We Might Become*, in *NIKE IS A GODDESS: THE HISTORY OF WOMEN IN SPORTS* xiii (Lissa Smith ed., 1998).

71. See Natalie Angier, *Where Woman Was, There Gal Shall Be*, *N.Y. TIMES*, Nov. 19, 1995, at S4 (finding that "gal" is now a term that is gaining political legitimacy).

72. SUSAN K. CAHN, *COMING ON STRONG: GENDER AND SEXUALITY IN TWENTIETH-CENTURY WOMEN'S SPORT* 15-16 (1994) (citing Francis E. Willard, *How I Learned to Ride the Bicycle*, in *OUT OF THE BLEACHERS: WRITINGS ON WOMEN AND SPORT* 105, 110 (Stephanie Twin ed., 1979)).

I recently came across another account of the role the bicycle played in women's emancipation, one that I personally find fascinating:

The disfavor with which many people, both men and women, look upon the stimulation of this feminine passion for wheeling is not surprising. The practise[sic] is undoubtedly revolutionizing habits to which women have been tied, and it runs counter to immemorial prejudices as the sphere within which feminine activities should be confined. It is giving them self-reliance and overcoming the timidity which used to be considered so appropriate to them as beings who needed the shelter of seclusion and the protection of manly courage. It is making them comrades of men in sports and employments from which

At the same time that Lombroso was warning that opportunities for women would breed deviance, and the Supreme Court declared that law was for men only, women started wearing bloomers, designed in 1849 by Amelia Bloomer to make cycling fashionable and feasible.⁷³ Women were now free to travel alone, without chaperones, and explore the countryside, or the city, or their dreams.⁷⁴ Once women, in large numbers, found physical freedom, it was only a matter of time before they would demand things like the right to vote.

After the bicycle came basketball, golf, tennis and swimming. As female participation in sports grew, so did their political power. The public's reaction to the "new athletic girl" was mixed:

The [1911] *Lippincott's Monthly* article was titled "The Masculization of Girls." And while it concluded positively that "with muscles tense and blood aflame, she plays the manly role," women's assumption of "the manly role" generated deep hostility and anxiety among those who feared that women's athletic activity would damage female reproductive capacity, promote sexual licentiousness, and blur "natural" gender differences.⁷⁵

Over time, athletic activity became more acceptable for women as a way to maintain their health and beauty, just as it became more acceptable for women to practice law and cast a vote. But there was great disagreement among both advocates and opponents of women's athletics over the appropriate nature of competition for women. For some, there was the image of the "athlete as beauty queen," noncompetitive, fit and feminine. For others, there was the image of the "wholesome modest athlete" – competitive, yes, but still womanly.⁷⁶ No one wanted women to become like men, however, arguing that women were ill suited for competition. Some feared that competition would take all the fun out of the game. Thus, even though it became somewhat acceptable for girls to be physically fit, so long as it made them more feminine, there remained a deep cultural ambivalence about the role of competition in women's lives. This ambivalence remains today, despite more than a century of debate

before they had turned as unfeminine. It is accustoming them to publicity. It is inciting in them the ambition for muscular development. But, after all, are such results deplorable?

Anonymous, *The Revolutionary Bicycle*, in *WHATEVER IT TAKES* 269 (Joli Sandoz & Joby Winans, eds., 1999).

73. See Nelson, *supra* note 69, at xii.

74. See *id.*

75. CAHN, *supra* note 71, at 8.

76. *Id.* at 56-57.

about what it does, and should, mean to play like a girl.

A. The Right to Try

In 1972, just one year before the Supreme Court decided *Roe v. Wade*,⁷⁷ thus giving women further control of their bodies, President Nixon signed Title IX into law. Title IX of the Education Amendments of 1972 mandates that: "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 education program or activity receiving Federal financial assistance. . . ."⁷⁸ Title IX's intent, according to the legislative history, was to be "a strong and comprehensive measure [which would] provide women with solid legal protection from the persistent, pernicious discrimination which is serving to perpetuate second-class citizenship for American women."⁷⁹

Initially, Congress never intended Title IX to apply to sports programs, just the classroom. But just like the bicycle, and *Roe*, Title IX has become symbolic of the link between physical emancipation and gender equality. (The relationship between sports and the abortion cases is best summed up in a slogan printed on a women's crew team T-shirt: *I'd rather Roe than Wade*.) The value of examining Title IX within a broader discussion about female aggression is that it gives us permission to take competition out of the closet and provides a framework to discuss how it affects every woman's life to some degree. It also compels those of us who consider ourselves "good girls" to see that we are not so very different from these "bad girls" by exposing the ambiguous nature of competition.

The United States Supreme Court first recognized a private right of action under Title IX in 1979, in *Cannon v. University of Chicago*.⁸⁰ Individuals could now bring actions pursuant to Title IX directly without having to exhaust any administrative procedures. So girls and their parents started to sue their local school districts for refusing to let girls play sports. Because Title IX threatened to do for women in the 1970's what the bicycle had done for women a century before, it is no surprise that there was a flurry of litigation surrounding it and

77. 410 U.S. 113 (1973).

78. 20 U.S.C. § 1681(a) (1994). For a history of Title IX, see Diane Heckman, *Scoreboard: A Concise Chronological Twenty-Five Year History of Title IX Involving Interscholastic and Intercollegiate Athletics*, 7 SETON HALL J. SPORTS L. 391 (1997).

79. 118 Cong. Rec. 5804 (1972) (remarks of Sen. Bayh).

80. 441 U.S. 677 (1979).

many schools and universities opposing it.

There were two primary challenges to Title IX: one based on statutory interpretation and the other based on its constitutional validity under the Equal Protection Clause of the 14th Amendment. There were numerous cases brought under Title IX before 1984, the majority of which ruled for the plaintiff. There is one case, however, which I believe best captures the spirit behind Title IX and what it has come to symbolize for this generation of women.

In *Force v. Pierce City R-IV School District*,⁸¹ thirteen-year-old Nicole Force and her parents challenged the school because it would not let her try out for the boys' football team. There was no girls' football team (and no boys' volleyball team), so the coach said that she could play on the boys' team. However, after pressure from the community, the school board would not let her play. Nicole challenged the decision under the Equal Protection Clause of the 14th Amendment, bypassing a Title IX argument altogether. Yet, in an interesting twist, the school district invoked it as a defense, arguing that Title IX did not apply to athletic programs and, therefore, they were not required either by constitutional or congressional mandate to let Nicole tryout for football.

The court simply dismissed the argument that Title IX allowed the school district to discriminate against Nicole. It then examined the other reasons that the school gave for refusing to allow Nicole to try out for the football team – maximizing participation in athletics, safety, and the high school association rule that made football a boys' only sport – and applied the intermediate scrutiny test. The school district argued that the Supreme Court had recognized that governmental bodies are free to take account of actual differences between the sexes, including physical ones,⁸² and, because girls are weaker and could get hurt playing football with boys, their safety justified their exclusion. The court rejected these justifications as paternalistic. It reasoned, “a gender based classification which results from ascribing a particular trait or quality to one sex, when not all share that trait or quality, is not only inherently unfair, but generally tends only to perpetuate ‘stereotypic notions’ regarding the proper

81. 570 F. Supp. 1020 (W.D. Mo. 1983).

82. See *id.* at 1029. Here the school district relied on *Michael M. v. Superior Court of Sonoma County*, 450 U.S. 464 (1981). In this case, the Court upheld California's statutory rape law, which applied only to males. In doing so, the Court held that because the sexes are not similarly situated in certain circumstances, for example that only females may become pregnant, a statute or policy based on gender classification can be constitutionally valid. See *Michael M.*, 450 U.S. at 476.

roles of men and women.”⁸³ The school district failed, the court held, to show that its rule of no-girls on the football team was adequately justified.

What is poignant about the decision is not that Nicole Force got to try out for the football team, but District Court Judge Ross T. Roberts’ heartfelt language in ruling for her. I read his quote often, I have it taped to my wall, and I share it here as a reminder of how important participation in athletics is for girls:

Nicole Force obviously has no legal entitlement to a starting position on the Pierce City Junior High School eighth grade football team... But she seeks no such entitlement here. Instead, she seeks simply a chance, like her male counterparts, to display those abilities. She asks, in short, only the right to try. I do not suggest there is any such thing as a constitutional “right to try.” But the idea that one should be allowed to try – to succeed or to fail as one’s abilities and fortunes may dictate, but in the process at least to profit by those things which are learned in the trying – is a concept deeply engrained in our way of thinking; and it should indeed require a “substantial” justification to deny that privilege to someone simply because she is a female rather than a male. I find no such justification here.⁸⁴

I love this language for many reasons, not the least of which that it implies that there is something unique about a physical challenge, something special about sports, that is fundamental to self-actualization. Like the advent of the Special Olympics for the physically challenged, allowing girls to compete and excel on the playing field opens up opportunities for them to experience the joys and the agonies of human life. To play means to know what it is that boys have known all along. As Mariah Burton Nelson has so eloquently explained, sports teach people whom their teammates really are, to know how to lead, how to bond, and how to ask for help.⁸⁵ It shows them how to take risks, how to forgive themselves and others, to know that they can be strong and successful and free. And, it teaches them how to compete against themselves and against others.⁸⁶ Nicole did not ask for special treatment; she just wanted to the chance to try-out. At its soul, Title IX is the right to try.

Sadly, just one year after Nicole tried out for the football team,

83. Force, 570 F. Supp. at 1029.

84. *Id.* at 1031.

85. Mariah Burton Nelson, *Learning What ‘Team’ Really Means*, NEWSWEEK, July 19, 1999, at 55.

86. *See id.*

the Supreme Court dealt a blow to Title IX. In *Grove City College v. Bell*,⁸⁷ the Court held that the scope of Title IX was limited to specific programs or activities within an educational institution that directly received financial support from the federal government. In the context of interscholastic athletics, the *Bell* decision meant that unless the athletic department of a school district directly received federal funds, Title IX was not applicable to sports programs.

Thankfully, the *Bell* holding had a short life. In 1987, Congress passed the Civil Rights Restoration Act of 1987,⁸⁸ which made clear that a program-specific approach was not Congress' intent under Title IX. Instead, if the school district receives any federal funding for any purpose, the athletic department must comply. Since 1987, then, it has been clear that Title IX covers athletic programs.

Since 1987, numerous secondary schools and colleges have challenged Title IX, with little overall success. Not that advocates of Title IX – particularly those female attorneys who have fought long and hard for the right of girls to get to the court – were able to relax after the Civil Rights Restoration Act of 1987. One of the most threatening challenges to Title IX came in 1996 (the same year that the U.S. Women's Softball Team won the gold medal) in *Cohen v. Brown University*.⁸⁹ Brown University had demoted women's gymnastics and volleyball teams from university funded to donor funded, which essentially destroyed them. Men's water polo and golf were similarly demoted. Members of the women's gymnastic and volleyball team brought a class action lawsuit against the university alleging Title IX violations.

The court determined that there was a three-part test to be considered in determining compliance under Title IX. That test asked: 1) whether intercollegiate level participation opportunities for male and female students were provided in numbers substantially proportionate to their enrollments, or 2) where the members of one sex have been and are underrepresented among intercollegiate athletics, whether the institution can show a history and continuing practice of program expansion; or 3) where the members of one sex are underrepresented among intercollegiate athletics, and the institution cannot show a continuing practice of program expansion, whether it can show that the interests of the members of that sex have

87. 465 U.S. 555 (1984).

88. Pub. L. No. 100-259, 102 Stat. 28 (1988).

89. 101 F.3d 155 (1st Cir. 1996), *cert. denied*, 520 U.S. 1186 (1997).

been fully and effectively accommodated.⁹⁰ Brown maintained a thirteen percent disparity between female participation in athletics and female student enrollment. The district court found that Brown did not satisfy any of the prongs and the First Circuit agreed.⁹¹

This portion of the decision is significant because the court refused to merge the first and third prongs of the test, which would have allowed the university to comply with Title IX by offering athletic opportunities proportionate to the level of interest of males and females. Women were less interested in sports, the court argued, because of past discrimination. If Brown had prevailed, it could have discouraged interest among its female students, and then cut programs according. This would only have further entrenched discrimination.

But Brown's argument went beyond statutory interpretation. It argued that Title IX was an affirmative action statute, and therefore invalid under the 14th Amendment because it mandated preferential treatment for women by imposing quotas in excess of women's relative interest and abilities in athletics.⁹² Because Brown had included an equal protection challenge to Title IX, it was possible that the Circuit, and then the Supreme Court, would invalidate Title IX as a violation of the 14th Amendment. This was a real threat. In 1978, in *Regents of the University of California v. Bakke*,⁹³ the Supreme Court invalidated the University of California Medical School's racial affirmative action program, which was based on strict numeric goals. If Title IX was interpreted as requiring schools to meet the same sort of quotas, then it could be found to be unconstitutional.

Many breathed a sigh of relief when the First Circuit rejected Brown's characterization of Title IX as an affirmative action program, finding that it was an anti-discrimination statute, and thus, when applying an intermediate scrutiny test, found it valid under the 14th Amendment.

Brown's talismanic incantation of "affirmative action" has no legal application to this case and is not helpful to Brown's cause. While "affirmative action" may have different connotations as a matter of politics, as a matter of law, its meaning is more circumscribed. True affirmative action cases have historically involved a voluntary undertaking to remedy discrimination . . . by means of specific group-based preferences

90. *Id.* at 166 (citing 44 Fed. Reg. 71,418 (1979)).

91. *See id.* at 162, 166-67.

92. *See id.* at 170.

93. 438 U.S. 265 (1978).

or numerical goals, and a specific timetable for achieving those goals.”⁹⁴

The court analogized Title IX to school desegregation cases, finding that Title IX neither mandates a finding of discrimination based solely on gender-based disparity, nor does it prohibit gender conscious remedial measures.⁹⁵ Because Title IX did not disadvantage males, but gave opportunities to females, the statute was within Congress’s remedial powers.⁹⁶

Title IX cases seem to inspire judges to write eloquent and impassioned decisions. In writing for the majority, Senior Circuit Court Judge Bownes concluded:

One need look no further than the impressive performances of our country’s women athletes in the 1996 Olympic Summer Games to see that Title IX has had a dramatic and positive impact on the capabilities of our women athletes, particularly in team sports. These Olympians represent the first full generation of women to grow up under aegis of Title IX. The unprecedented success of these athletes is due, in no small measure, to Title IX’s beneficent effects on women’s sports, as the athletes themselves have acknowledged time and again. What stimulated this remarkable change in the quality of women’s athletic competition was not a sudden, anomalous upsurge in women’s interest in sports, but the enforcement of Title IX’s mandate of gender equity in sports.⁹⁷

It became a cause of celebration when the Supreme Court denied Brown’s writ of certiorari,⁹⁸ thus ensuring that the “Right to Try” remained part of our nation’s attempt to level the playing field between boys and girls. Title IX gives girls the permission to be aggressive, at least on the playing field. The mere fact that Justice O’Connor could shoot hoops with Rebecca Lobo in the Supreme Court gym is a testament to just how far women have traveled, and central to that journey has been women’s physical emancipation and the chance to compete.

B. Power Plays

While the Circuit Court noted the success of Olympic athletes as one of Title IX’s most lasting legacies, millions of girls and young women have been the beneficiaries of Title IX. By 1997, the 25th

94. 101 F.3d 155, 170 (citations omitted).

95. *See id.* at 171.

96. *See generally id.* at 172.

97. *Id.* at 188 (citation omitted).

98. 520 U.S. 1186 (1997).

anniversary of Title IX, more than 2.4 million girls – one third of all female students – were playing high school sports, up 800% from 1971.⁹⁹ In that same period, women's college sports participation tripled.¹⁰⁰ The National Women's Basketball League, the U.S. Women's Hockey Team, and those Gold Medal World Cup Soccer Champions have made competitive team sports for girls and women a source of national pride. Furthermore, Title IX has had an impact worldwide. Between the 1972 and 1996 world Olympics, the percentage of female participants rose from fifteen to thirty-four.¹⁰¹ The 2000 games will mark the first time in history that there will be an equal number of men and women's events. And it is quite telling that, "[a]ccording to the Sporting Goods Manufacturers Association, as of 1996, 1,155,000 American women were riding a bicycle at least one hundred days each year."¹⁰²

There is overwhelming evidence that a girl who plays sports past puberty has a much better chance of avoiding those self-destructive behaviors associated with adolescence than one who does not. For example, the Women's Sports Foundation, a National non-profit, educational organization established in 1974 by Billie Jean King and many other pre-Title IX groundbreaking athletes, continues to collect data on female athletes. It found that female teen athletes are less than half as likely to be involved with an unwanted pregnancy than non-athletes,¹⁰³ are more likely to use contraceptives,¹⁰⁴ are 92% less likely to use drugs than non-athletes,¹⁰⁵ and are three times more likely to graduate from high school.¹⁰⁶ They also report having a greater sense of self-esteem and lower levels of depression than do non-athletes.¹⁰⁷

As well as raising a girl's psychological sense of well-being, there

99. See Nelson, *supra* note 69, at xvi.

100. See *id.*

101. See *id.*

102. See *id.*

103. See THE WOMEN'S SPORTS FOUNDATION, THE WOMEN'S SPORTS FOUNDATION REPORT: SPORT AND TEEN PREGNANCY at 4 (1998).

104. See *id.* at 5 (note that male athletes are also more likely to use contraceptives than nonathletes).

105. Women's Sports Foundation, *A Matter of Health and Well-Being* (visited July 18, 2000)

<http://womenssportsfoundation.org/templates/res_center/rclib/results_topics2.html?article=116&record=36> (citing the Institute for Athletics and Education (1990)).

106. See *id.*

107. See *id.* (citing the Ms. Foundation (1991)).

are a number of health benefits for girls who play competitive sports. For example, “[o]ne to three hours of exercise a week over a woman’s reproductive lifetime (the teens to about age 40) can bring a twenty to thirty percent reduction in the risk of breast cancer, and four or more hours of exercise a week can reduce the risk almost sixty percent.”¹⁰⁸ Regular exercise helps curb obesity, which has been rising among children and adolescents.¹⁰⁹ Sadly, the Center for Disease Control found that by the senior year of high school, only a quarter of all young women exercise vigorously on a daily basis compared with half of all boys.¹¹⁰

Furthermore, there is growing evidence that women in business do better if they have played competitive sports. For example, eighty percent of female executives in Fortune 500 companies self-identified themselves as having been “tomboys” when they were young,¹¹¹ just as did the girls in Juvenile Hall. Boys have traditionally learned about teamwork, goal-setting, the pursuit of excellence in performance and other achievement oriented behaviors on the playing field. These skills are critical for success in an increasingly competitive world economy where families are dependent on two incomes.¹¹²

Darla Moore, president of Rainwater Inc., and number nineteen among Fortune Magazine’s Fifty Most Powerful Women in Business in 1998 (the magazine’s first such ranking), attributes her success not to the kinder, gentler, approach we expect from women in the workplace. Rather, hers is an unqualified embrace of competition: “Women’s worst sin is groupthink: ‘You should be a nice girl.’ ‘You ought to fit in.’ ‘You should find a female mentor.’ What a colossal waste of time.”¹¹³ She is also considered to be one of corporate America’s most feared female activists – someone who fights hard to help women shatter the glass ceiling by recognizing that

108. Women’s Sports Foundation, *Women’s Sports Facts* (visited June 17, 2000) <<http://www.girlsandsports.net/WoSport/stage/RESLIB/html/women-sfitnessfacts.html>> (citing Journal of the National Cancer Institute (1994)).

109. See *id.* (citing American Journal Disabled Child (1987)).

110. See JEAN ZIMMERMAN & GIL REAVILL, *RAISING OUR ATHLETIC DAUGHTERS: HOW SPORTS CAN BUILD SELF-ESTEEM AND SAVE GIRLS’ LIVES* 165 (1998).

111. Women’s Sports Foundation, *Sport Opportunities for Our Daughters* (visited Mar. 7, 2000) <http://www.womenssportsfoundation.org/templates/res_center/rclib/results_topics2.html?article+122&record=36>.

112. See *id.*

113. Patricia Sellers, *The 50 Most Powerful Women in American Business*, FORTUNE MAGAZINE, October 12, 1998, at 76, 92.

power comes not from the outside, but from within.¹¹⁴ She is a fierce advocate for competing to promote one's personal potential.

Finally, there is no question that adult women who are physically active report increased well-being. For example, a study by Sharon Guthrie found that adult women who had been practicing martial arts not only perceived improvements in their self-esteem, but reported that learning to defend themselves helped them recover from eating disorders, substance abuse, and other life challenges.¹¹⁵ I found this study particularly interesting because during my tenure year, I took a kick boxing class taught by a martial arts instructor, in which I learned to spar with women and men. Not only did I become more physically fit, but I also noticed that, once I could take an actual physical punch from another person, I could much better tolerate the inevitable intellectual bashing that is part of the tenure process. Yet, if a girl does not participate in sports by the time that she is ten, at least one study has found that there is only a ten percent chance that she will participate when she is twenty-five.¹¹⁶

C. Nobody's Watching

I had been asked to talk with girls at the Juvenile Detention Center about their experiences with sports. The girls never talk about athletics, so I was curious to see what role, if any, other forms of competition played in their lives, if they had been the beneficiaries of Title IX's legacy, and to see what these girls could teach us about how we could do better. Almost all of the girls played sports when they were young. And they had played a variety of sports: soccer, track and field, tennis, basketball, softball, football, and one girl proudly proclaimed that she too had been a cheerleader. What did they like about playing sports? Overwhelmingly the girls told me that it was "fun." A few boasted about races or championships that they had won. At one point we all got quiet: I wonder if they too were remembering being part of a sports team with sense of fondness. "It kept me outta shit," one of the girls said.

When I asked why they quit, at first they started to tell me stories that most of the literature on athletic girls doesn't include: "My mom got sent away and there was no one there to watch." "My

114. *See id.*

115. Sharon Guthrie, *Defending the Self: Martial Arts and Women's Self Esteem*, 6 WOMEN SPORT AND PHYSICAL ACTIVITY J. 1 (1998).

116. *See Women's Sports Facts*, *supra* note 106 (citing Linda Bunker, University of Virginia (1989)).

grandmother couldn't afford the equipment." "My homegirls didn't think that it was cool, so I joined the gang instead." "My coach made me feel bad, so I just dropped out." "I started doing drugs." For these girls, playing sports was another thing that they had failed at – symbolic of the other tragedies of their lives. It was most sad to hear them talk about parents who were MIA – missing in action. What motivated these girls was an adult who cared about them, and when there was no adult to cheer for them, they saw no reason to continue playing.

But then they started to say things that reflected an attitude about sports common to many girls. "Sports ain't lady-like." "I was too concerned with how I looked to be running around and getting' messed up." "Guys don't dig girls who play sports." "Its too manly." "I got a boyfriend." "I lost my virginity." "I didn't like being all sweaty and messy." For many of these girls, sports was a sexual disadvantage – they thought themselves less attractive to their male peers if they continued to play. They got these messages not just from boys, but from other girls as well.

"Do you watch sports?" I asked them, curious to see if they looked to professional female athletes as role models. Many said they watched basketball and football with their brothers or cousins or their boyfriends. They watched male sports. Few had ever seen Sheryl Swoopes dunk or Mia Hamm kick or Jackie Joyner-Kearsey run or Venus and Serena Williams hit. None of the girls had any female sports idols, although many of them worshipped male stars like Michael Jordan. They were interested in sports because they were interested in boys.

Many of the younger girls said that they would play sports again if they could, but were not very hopeful about having the opportunity to play, or the adult support that is so critical in keeping girls in the game. In fact, when I asked them what they would like to play, many of them wanted to return to the games they played when they were younger. One girl talked a lot about wanting to play tennis again, but the courts in her old neighborhood were no longer there.

In contrast, many of older girls did not care one bit about playing sports. Sure, they shoot baskets with the guys at the detention center, they told me, but they had lost all interest in playing competitive team athletics. When I asked them about whether they miss having female teammates, they thought the question strange. "I ain't got time for that nonsense," one said.

D. Drop Outs

While women have indeed come a long way from the days of Amelia Bloomer, it is clear that we have a long way to go. In its Gender Equity Report in 1997, the Women's Sports Foundation found that many colleges and universities are allocating resources and opportunities at a roughly two to one ratio between male and female athletes despite the fact that women outnumber men on most campuses.¹¹⁷ The study further noted that Title IX has become the latest battle between the sexes with continued resistance from coaches and universities who insist that Title IX has resulted in a zero-sum game, draining male football and basketball budgets.¹¹⁸ Yet, the study found that since Title IX, while women have gained a net increase of 1,658 sports programs, men have netted an increase of seventy-four programs.¹¹⁹

It is true that girls become less interested in sports than boys do as they reach their college years. Before the age of twelve, girls and boys participate at about the same rate in athletics. However, between the ages of twelve and fourteen, girls begin to drop out at a faster rate than boys, which has led many to argue that Title IX enforcement should be geared towards primary and secondary school aged girls, not college women.¹²⁰ "While a third of high school freshman girls play sports, that percentage drops to [seventeen] percent in their senior year."¹²¹ In fact, Donna Shalala and the Department of Health and Human Services, in 1996, launched the *Girl Power!* Campaign with the intent of helping 9 – 14 year-old girls make the most of their lives.¹²² One of the explicit goals of the *Girl Power!* Campaign is to keep girls playing sports during that critical adolescent period when girls start to make the transition from childhood to womanhood.¹²³

117. DONALD SABO, WOMEN'S SPORTS FOUNDATION, GENDER EQUITY REPORT, (1998).

118. *See id.* *See e.g.*, Michael Straubel, *Gender Equity, College Sports, Title IX and Group Rights: A Coach's View*, 62 BROOK. L. REV. 1039, 1039-40 (1996).

119. *See Sabo, supra* note 117.

120. *See Straubel, supra* note 116, at 1043 & n.18.

121. ZIMMERMAN & REAVILL, *supra* note 108, at xi.

122. U.S. Department of Health and Human Services, *Secretary Shalala Launches Girl Power!* (visited July 26, 1998) <<http://www.health.org/gpower/campaign/secretary.htm>>.

123. *See HHS' Girl Power! Campaign Fact Sheet* (visited Feb. 2, 2001) <<http://www.health.org/gpower/adultswhocare/campinfo/factsheet.htm>>. (noting the many disadvantages girls face as they get older, such as dropping out of sports and speaking less in class).

Why do girls stop playing sports? It is not quite clear. There is very little data on the reasons that girls drop out of the game. Some have suggested that as girls get older, there is a trend towards elitism – to be a varsity athlete, to be the best, to be a super-competitor, and that there are fewer opportunities for girls to just play sports for fun.¹²⁴ There are, of course, bad coaches who belittle or sexually harass their players. Some parents, particularly when they work outside the home, often don't have the time or resources to make sure that their sons or their daughters make it to practice or get the proper equipment. But there is also something about being physically competitive that still isn't quite feminine – something that the girls in the Juvenile Hall talked about so freely.

Take, for example, the problem of homophobia – the perception that female athletes are lesbians, a stereotype that many girls go well out of their way to avoid. It is one of the most damaging backlashes to the entry of women into competitive athletics: the Ladies Pro Golf Tour is mocked as the Lesbian Pro Golf Tour; basketball players at Texas are dubbed “the lesbian team;”¹²⁵ to be labeled butch or dyke can ruin a girl's reputation. These “sex scares” undermine women's independence by stripping athletic women of their female sexuality. Now the “new athletic girl” must not only endure criticism that she is “manly” but that she is also homosexual. Whether she is or not is irrelevant.

Many girls who play sports must struggle to be athletic and attractive – competitive in the game and competitive in the dating game. We sexualize female sports figures, and find sexy the rivalries that develop between them. Charles Schwab & Co. has tapped right into this phenomenon with a commercial that aired last summer. In it, Mary Jo Fernandez is talking about how all of the other women in tennis hate Anna Kournikova – a blond and beautiful player who has been dubbed “sexy Anna” by the press – because of her “assets.” Anna is then shown explaining a P/E ratio and portfolio diversification to a group of young tennis players. I love this commercial because it turns the public fascination with “catfights” among female athletes on its head. And the athletes themselves get to profit from it, as well as sell women the idea that it is “sexy” to be an investor. It is one of many commercials and public service announcements in which female athletes are demanding to be taken seriously. This is such a welcome change from the Nancy

124. See ZIMMERMAN & REAVILL, *supra* note 108, at 170.

125. *Id.* at 191.

Kerrigan/Tonya Harding or Michelle Kwan/Tara Lipinski rivalries that the press and the public watched with such perverse fascination. Yet, few 14 year-old girls are mature enough to have a strong sense of their own sexuality; they are likely to avoid anything that threatens it. By playing sports, girls often feel that they have to trade in their femininity for their varsity jacket. They opt out of the sports game to make it in the dating game.

E. Whatever it Takes¹²⁶

We are at a funny point in history with this concept of the “new athletic girl.” There is no question that being physically fit and healthy is now considered attractive for women. Sex symbols like Madonna, *Terminator* star Linda Hamilton, the Spice Girls, Xena the Warrior Princess, and a Hollywood catwalk-full of other famous women have made physical, in-your-face aggressiveness sexy. On any given Sunday, read the personal ads in the back of a newspaper. An overwhelming number of men seeking women describe their ideal mate as athletic, and many women seeking men point out that they are. It reminds me of what Dudley Sargent, founder of the prestigious Sargent School for women’s physical education, once said: “Good form in figure and good form in motion . . . tend to inspire admiration in the opposite sex and therefore play an important role in what is termed ‘sexual selection.’”¹²⁷ That was in 1912. Social anthropologist Anne Campbell suggests a similar reason why aggressive females are now considered desirable, in sharp contrast to the meek and mild mannered women of the Victorian era. As well as shifting norms of beauty, the “willingness to risk injury in pursuit of her mate may augur well for her future fidelity and signal equal bellicosity in defending future offspring.”¹²⁸ Perhaps so.

But what is funny is that while men now find athletic, sexually aggressive women desirable, they do not necessarily find competitive women desirable. There seems to be a difference – one that may keep girls on Stairmasters and treadmills, but not on soccer fields or ice rinks. While competitiveness may be “sexy” in the moment it

126. For an inspiring book on the power of sport in women’s lives, I highly recommend, *WHATEVER IT TAKES: WOMEN’S ON WOMEN’S SPORTS* (Joli Sandoz & Joby Winans eds., 1999). It is a thoughtful, funny, and provocative collection of essays by women who share their experiences of self-discovery through sports.

127. Dudley A. Sargent, M.D., *How Can I Have a Graceful Figure?* *LADIES HOME JOURNAL*, February 1912, at 15, (cited in CAHN, *supra* note 71, at 19).

128. Anne Campbell, *A Few Good Men: Evolutionary Psychology and Female Adolescent Aggression*, 16 *ETHOLOGY & SOCIOBIOLOGY* 99, 105 (1995).

takes the form of a WNBA final or female mud wrestling or girls fighting girls on a video, men don't necessarily seek out competitive women for a long term relationship – at least that is the message that young women get. Public, direct competitiveness is still seen as a manly virtue, boy's business, and not necessarily good for girls. Thus, girls today get very mixed messages. Play sports. Be feminine. Speak Up. Don't argue.¹²⁹ Take risks. Avoid risky behavior. Go for the gold (ring).

All of these messages are intricately linked to how we teach girls to both set goals and to compete for them. What most women have in common is that many of our decisions are intricately linked to our status *vis-à-vis* a mate. Even women who were born after Title IX still define themselves through the eyes of men. As long as we live in a world of limited resources and a good man is hard to find, finding and keeping a mate is a competitive endeavor, whether we like it or not. As David Buss has argued, women will compete based on whatever qualities males consider valuable. If physical strength became desirable, women would start wearing clothes that showed off their biceps, or if humor, intelligence and kindness could trump beauty, women would work hard to enhance those qualities. Changing the dimensions that are valued does not alter the fundamental dynamics of same-sex competition.¹³⁰ We rarely discuss sexual competition. Yet, it lurks in our subconscious, making its way into conscious behavior, and often it compromises our sense of self-worth and our well-being.

In Peggy Orenstein's recent study of women twenty-five to forty-five years old, she finds that what many young women fear most is not career failure or illness or the loss of their female friendships. They fear being forty and single.¹³¹ She interviewed women who were well educated and had many opportunities to find suitable partners, and yet she sensed a panic from women under thirty about the prospect of remaining childless and single. Even my women law students often struggle as well to define themselves in a highly competitive academic environment. Many choose legal careers that will allow them flexibility much more often than do the men, as they worry about managing children and a career. Similar to the girls in Juvenile Hall,

129. For an interesting essay on our reluctance to teach girls to argue, see Marie Wilson, *Nice Girls Do . . . Argue*, FAMILY CIRCLE, Nov. 1, 1994, at 148.

130. See David M. Buss, *Sexual Conflict: Evolutionary Insights into Feminism and the "Battle of the Sexes,"* in SEX, POWER, CONFLICT, *supra* note 27, at 311- 312.

131. See PEGGY ORENSTEIN, FLUX 237-258 (2000).

they too walk the thin line between being too smart to be sexy and too sexy to be smart.¹³²

Popular novels like *Bridget Jones's Diary*¹³³ and *The Girls' Guide to Hunting and Fishing*¹³⁴ portray single thirty-somethings as lonely, desperate, and pathetic. Ally McBeal, Fox TV's single, sexy, got-it-all-goin'-on attorney is turning thirty this season. She grows more panicked and neurotic with each episode. How tragic to admit: always a bridesmaid and never a bride.

This sort of privileged self-pity is indeed pathetic when you stop and think how fearful this generation of "bad girls" must be. The girls in juvenile detention are growing up in communities where many men are on probation or in jail, resulting in fewer "good men."¹³⁵

132. For a discussion on the ways in which women law students compete in the classroom, see Cheryl Hanna, *Sometimes Sex Matters: Reflections on Biology and Sexual Aggression and Its Implications for the Law*, 39 JURIMETRICS J. 261 (1999) (describing how female students often compete with each other in classes on rape to appear the most sexually liberated); see also Lani Guinier, *Lessons and Challenges of Becoming Gentlemen*, 24 N.Y.U. REV. L. & SOC. CHANGE 1 (1998) (discussing the negative experiences of women in law school from an "oppressionist" point of view).

For a discussion of how girls compete in the classroom, see the American Association for University Women, *How Schools Shortchange Girls* (1992) (this highly controversial study explores the ways in which girls are discriminated against in the classroom).

133. Helen Fielding, *BRIDGET JONES'S DIARY* (1998).

134. Melissa Bank, *THE GIRLS' GUIDE TO HUNTING & FISHING* (1999).

135. See Campbell, *supra* note 22, at 112-13 (Few Good Men). In support of this thesis, Joan Moore's study of Chicano gangs in Los Angeles found that there were significant differences between earlier and later cliques concerning employment. In earlier ones, 61% of the men and 44% of the women had jobs; in more recent cliques, the figures were 48% and 61%, respectively. See JOAN MOORE, *GOING DOWN TO THE BARRIO: HOMEBOYS AND HOMEGIRLS IN CHARGE* (1991), as cited in Randall G. Shelden, et al., *Girls and Gangs: A Review of Recent Literature*, 47 JUV. & FAM. CT. J. 21, 31 (1996). Of the men and women that were working, about one third worked in semi-skilled factory jobs; about one third of the women, but a fraction of men, were unskilled. While Moore does not explicitly explore Campbell's hypothesis, her data provides some support for the notion that women will compete more as fewer males are able to provide them with resources. See also CARL S. TAYLOR, *GIRLS, GANGS, WOMEN AND DRUGS* (1993) for Taylor's study of young women involved in gangs and drugs in Detroit. It is a community plagued with high male incarceration rates, poverty, and drugs. Even among college girls, high status drug dealers were considered desirable partners worth fighting for. Taylor writes: "(Girls) see the power of the gang, the celebrity status. This is real, it can happen to people just like them." *Id.* at 198. See also MEREDITH F. SMALL, *FEMALE CHOICES: SEXUAL BEHAVIOR OF FEMALE PRIMATES* 113 (1993) (describing how, among primates, limited access to especially preferred males can result in female on female competition).

I should note that if we want to improve the lives of girls, we should improve the lives of boys as well. This battle between the sexes is extremely misguided. And I agree with authors such as Susan Faludi, who, in her latest book *STIFFED*, finds that men in America are suffering because society is devaluing masculinity. For more on this theme, see

Many of their parents are in jail and they have few friends. Their need to compete with other girls for male attention is profound. Schaffner found that these girls often have older boyfriends, and often it is these boys who lead them into trouble.

The charges against girls are often related to their sexual solutions with older boyfriends: violating a valid court order, running away, loitering, curfew, sales of an illegal substance (colloquially known on the street as “taking the fall” – carrying drugs for their older boyfriends) solicitation, auto theft, robbery, and fighting.¹³⁶

They do these things to keep men in their lives, because if they don't, some other girl will. Doing crime, and doing violence, is how these girls please boys. Privileged women may take less demanding (i.e. less competitive) jobs, competing by not being too competitive. Girls in juvenile hall make even more, far more, tragic trade-offs; they compete in far more self-destructive ways.

With a common understanding that competition take many forms, and it is unlikely to vanish from our behavior repertoire, we now move forward and examine how women themselves can control their bodies and their competition.

F. A Sporting Chance

The girls in the San Francisco Juvenile Hall are not unique. There are thousands of girls nationwide who are being detained or imprisoned in facilities that are substandard.¹³⁷ What are we to do with these girls? Historically, violent girls were considered either biologically inferior or mentally ill. I asked the girls if they knew what might have happened to them thirty years ago if they ran away or smoked pot or hit another girl. One girl said she had just read *Girl, Interrupted*, a book by Susanna Kaysen, (and now a Hollywood movie) who herself was committed instead of detained for doing many of the things that these girls do – smoke pot, sleep with boys, run away. “That book made me cry,” she said. “That could have been us.”

Now bad girls are diverted into the juvenile justice system, with

LIONEL TIGER, *THE DECLINE OF MALES* (1999).

136. Schaffner, *supra* note 51, at 17-18.

137. See, e.g., Ken Kolker, *Girls in Prison Have to Cope in Adult Institutions*, GRAND RAPIDS PRESS, May 3, 2000, at A4 (noting the lack of facilities for girls in Michigan); Acoca, *supra* note 4, at 9 (describing the lack of programs for a growing population of delinquent girls). See generally LaWanda Ravoira, *National Girls' Caucus*, 6 JUV. JUST. 21 (1999).

the purpose of rehabilitating them. Different states are trying different approaches. For example, Florida is implementing a program that is focusing on rehabilitation; teaching girls life skills like laundry and childcare.¹³⁸ Other states are trying boot camps.¹³⁹ Most of the model programs focus on helping girls address their substance abuse problems and their past sexual and physical abuse, as well as focus on other high risk behaviors and health.¹⁴⁰ Many also contain programs to help teen parents. Also, while some programs do deal with “conflict resolution,” there is nothing in the literature that helps program providers be more explicit with girls about their female friendships.¹⁴¹

138. See Associated Press, *Maximum-security Girls Prison to Open: Growing Segment Prompts Facility*, FLA. TIMES UNION (Jacksonville), Mar. 21, 2000, at B8.

139. See generally MICHAEL PETERS, ET AL., OFFICE OF JUV. JUST. & DELINQ. PREVENTION BOOT CAMPS FOR JUVENILE OFFENDERS, (1997).

140. See generally MARK W. LIPSEY ET AL. JUV. JUST. BULLETIN EFFECTIVE INTERVENTION FOR SERIOUS JUVENILE OFFENDERS, (2000) (reviewing data on effective model interventions and finding that behavioral programs and interpersonal skills programs are among the most effective in reducing recidivism among serious offenders. No specific data on female offenders is included, however.); WOMEN IN THE CRIMINAL JUSTICE SYSTEM, *supra* note 12, at 9; ; Marian D. Daniel, *The Female Intervention Team*, 6 JUV. JUST. 14 (1999).

141. For comment on existing programs for juvenile offenders, see G. David Curry & Scott H. Decker, *Understanding and Responding to Gangs in an Emerging Gang Problem Context*, 31 VAL. U. L. REV. 523, 533 (1997) (discussing the St. Louis anti-gang program which is “a coordinated, community-based effort that involves grass-roots organizations, government, the juvenile justice system, and law enforcement”); Marian Wright Edelman & Hattie Ruttenberg, *Legislating for Other People’s Children: Failing to Protect America’s Youth*, 7 STAN. L. & POL’Y REV. 11 (1995-96) (arguing that there are many problems facing today’s youth including an unregulated gun industry and not enough positive factors in a child’s life and advocating that policymakers focus on youth, development opportunities during non-school hours, such as athletic programs); Susan Gaertner, *Three Strikes Against Juvenile Crime: Prevention, Intervention, and Detention*, 30 PROSECUTOR 18 (Nov./Dec. 1996) (explaining her program for juvenile crime: prevention, intervention, and detention of very violent children and advocating child support collection to aid children, cutting down on truancy and cracking down on gangs and guns); Frank E. Harper, *To Kill the Messenger: The Deflection of Responsibility Through Scapegoating (A Socio-Legal Analysis of Parental Responsibility Laws and the Urban Gang Family)*, 8 HARV. BLACKLETTER J. 41 (1991) (defining the various ways that states can punish parents for the gang-related activity of their minor children, which rests on the theory that parents have control over their children and arguing that society avoids collective responsibility because taking into account the gender, social, racial, and economic realities facing gang families would amount to a realization that America doesn’t hold the same promise for all of its members); Honorable Barbara Gilleran Johnson & Daniel Rosman, *Recent Developments in Nontraditional Alternatives in Juvenile Justice*, 28 LOY. U. CHI. L.J. 719 (1997) (providing a brief background on the history of juvenile justice, discussing teen court programs that communities have implemented as a result of juvenile problems, and addressing various programs, including those that allow a teen peer jury to punish juvenile defendants, parental responsibility ordinances, and curfew regulations); Stephen

When I asked the girls at the detention center what would help them, many told me that they wished they knew how to cook and clean and care for children better. They saw these skills as necessary to the lives they intended to lead. Some felt that their mothers had not taught them how to do these things. My own sense is that the girls thought these skills would help them be better mothers/wives – to be more competitive for the love from men that they crave. The ones that could cook boasted, putting down girls who couldn't even “fry up some eggs.” “That's pathetic.”

G. Takin' Risks

Despite the mixed messages that girls get about being athletic, as well as what will bring them happiness, upon reviewing the literature and talking to girls and parents there is no question in my mind that sports can ultimately save a girl. Around the time of puberty, girls start to develop a host of problems including eating disorders, low self-esteem, alcohol, drug and tobacco use, self-mutilation, and early sexual activity, which often leads to pregnancy.¹⁴² Many of these behaviors are directly correlated to juvenile delinquency. And, like the middle class white girls described in *Schoolgirls*,¹⁴³ girls in the juvenile detention center experience the same pressures of adolescence. Schaffner found that the girls detained in Juvenile Hall also have distorted images about their bodies, they too feel enormous pressure to have sex at too young an age, and they lack the kind of guidance and support which would help them make the most of their lives.¹⁴⁴

In *Raising Our Daughters*, Jean Zimmerman and Gil Reavill explain why playing sports, especially during those adolescent “Ophelia years” examined by Dr. Mary Pipher,¹⁴⁵ can improve a girl's life.

J. Schulhofer, *Youth Crime—And What Not to Do About It*, 31 VAL. U. L. REV. 435 (1997); Louis Holland, Note, *Can Gang Recruitment Be Stopped? An Analysis of the Social and Legal Factors Affecting Anti-Gang Legislation*, 21 J. CONTEMP. L. 259 (1995); Jack Katz, *Youth Violence—A Special Kind of Addiction*, 16 HUM. RTS. 20 (1989); James A. Maloney, Comment, *Constitutional Problems Surrounding the Implementation of “Anti-Gang” Regulations in the Public Schools*, 75 MARQ. L. REV. 179 (1991); David S. Rutkowski, Student Article, *A Coercion Defense for the Street Gang Criminal: Plugging the Moral Gap in Existing Law*, 10 NOTRE DAME J.L. ETHICS & PUB. POL'Y 137 (1996).

142. See generally ORENSTEIN, *supra* note 30; PIPHER, *supra* note 30

143. See generally ORENSTEIN, *supra* note 30.

144. See generally Schaffner, *supra* note 52, at 1-2; see also Schaffner, *supra* note 51, at 6-8.

145. PIPHER, *supra* note 30.

Athletics offers teenagers a chance to assume independence without losing control. In sports they can make choices, take risks, be assertive, and be independent within a safe setting. It's a positive form of independence, whereas many of the other strategies are flawed, false, or prone to backfire. . . .¹⁴⁶ For everyone, boys and girls alike, the high school years are an emotional crucible. Social demands increase just when the process of self-definition becomes painfully all-consuming. Some girls at this age . . . might have additional challenges of poverty, lack of social resources, or degraded home environments to overcome. Participation in athletics is perhaps the only viable broad-spectrum answer to a whole range of problems confronting our daughters. Those problems may challenge the well-off and the disadvantaged in radically different ways, just as they might challenge a shy girl, say, differently from a girl who is more outgoing. The good thing about sports is that they represent a flexible, adaptable resource for girls in many different situations.¹⁴⁷

Schaffner agrees. One of her recommendations to the state of California is to implement weekly, innovative sports workshops and encourage physical education to help these girls improve their body images and develop a much greater sense of self-esteem.¹⁴⁸ Hers is the first explicit recommendation to incorporate sports into programs for juvenile female delinquents with the explicit goal of *improving* these girls' relationships with their peers. So why don't we do so?

Just as we feared what would happen if women rode bikes or were admitted to the bar, maybe we don't want bad girls to become good at sports because we fear what they will do with their power. Maybe we just don't want to foster any more physical competition among girls who grow up in communities that are already so violent. We worry what will happen if girls become physically stronger and take more risks. There is an under-current that we should weaken bad girls, soften them up, and teach them not to be aggressive, to compete for boys along kinder and gentler variables. Yet, these girls had loads of physical energy. They enjoyed being physical. They need to be physical. Their desire to take risks is not going to go away.

Maybe we think that all girls seek connections with other girls so we don't have to teach them the value of teamwork, of strong female alliances, of female friends.¹⁴⁹ The girls were clear that they did not

146. ZIMMERMAN & REAVILL, *supra* note 108, at 105.

147. *Id.* at 108.

148. See Schaffner, *supra* note 52, at 3 (unpublished).

149. For a discussion of the value of female alliances, see Cheryl Hanna, *Can a Biological Inquiry Help Reduce Male Violence Against Females? or What's a Nice "Gal"*

want to play with other girls. Yet, they were so isolated and lonely. Shaffner also found that these girls need positive female friendships – the kind that can develop when girls are both competing and cooperating on a team. “Loss of access to a sisterhood of solidarity presents itself as a key setback for this population who so desperately need that kind of safety and support that ‘best-friendship’ and cooperation can foster.”¹⁵⁰

Maybe there is a class difference when we think about sports for girls. After all, those soccer moms who drive their children to and from practice in their sports utility vehicles are from middle and upper class families. Sports have often been for the privileged. Unless a lower class girl shows professional potential, we see no value in keeping her active, supporting her interest in athletics. There is so little money, let alone support, for disadvantaged girls to play.

Maybe we don’t think that sports can help these lost girls because we presume that by the time they are detained, they have reached the point of no return. Yet, despite their sense of hopelessness about their lives, they still had dreams. When I asked the girls what they wanted to do with themselves when they got out of detention, a surprising number of them said that they wanted to be lawyers – and I don’t believe that they were saying this for my benefit. They told me how they felt prosecutors had treated them unfairly (and as a former prosecutor, I must agree that girls are often mistreated by over-zealous district attorneys responding to the public pressure to get these bad girls off of the street). Many wanted to be public defenders, to represent girls like themselves, girls who the legal system is clearly failing.

When I explained to them the history of women attorneys and Title IX, they didn’t seem at all surprised to learn that the stereotype of women as biologically inferior is what justified keeping them out of the bar and off the court. “Same thing that got us locked away in the first place,” one mumbled under her breath. “Takin’ risks. Not taking it anymore.” It struck me that the very same qualities that got these girls into trouble – their tenacity, their competitive instincts, their own sense of power in a world where they were relatively powerless – would serve them in pursuing their dreams, especially if they decided on law school.

Like me Doing at a Conference Like This? 22 VT. L. REV. 333 (1997); see also VICTORIA KATHERINE BURBANK, *FIGHTING WOMEN: ANGER AND AGGRESSION IN ABORIGINAL AUSTRALIA* (1994).

150. Shaffner, *supra* note 53, at 43 (citation omitted).

Suppose we were to implement sports programs for female juvenile delinquents, as well as ensure that primary and secondary schools comply with the spirit and the letter Title IX, especially in districts with a high proportion of at-risk girls. I hypothesize that girls would report that they have become better friends with other girls in the process of competing with them and against them. They might find themselves competing for better grades or for better jobs or better colleges – hitting the books instead of other girls. They might discover what men have known for a long time: that competition can bring you closer to your teammates as well as your opponents, and it can make you better at whatever you set out to do. Girls may learn to define their self-worth apart from their relationship to boys, not to fear competition, and to accept life's inevitable failures by hanging in and not dropping out. They might learn to crash their own nets.

The juvenile justice system need only look as far as the legacy of Title IX to imagine how we can help girls who get into trouble because of misdirected aggression. Granted, not all girls will benefit, and it is clear that we have to introduce girls to sports at a young age, and keep them involved throughout their development. There is no doubt that implementing such programs for disadvantaged girls will not be easy. But along with the right to try, we have a responsibility to try.

An afterthought

Every[one] must have something that [s]he follows – something that serves . . . as a lodestar.

Karen Zealand¹⁵¹

Whenever I speak about girls and sports, someone always asks me if I was a child athlete or if I have a daughter. I do not have children, and as for the athlete part of the question . . . well . . . I did grow up in the early days of Title IX. In 1975, when I was nine, I played on my local parks and recreation softball team. My coach assigned me to play catcher, not because of any natural athletic talent, but because I could chatter and distract the batter. I was, otherwise, a liability to my team. I was also on my high school cheerleading squad, and while not a sport *per se*, cheerleading did require some

151. From Karen Zealand, *i ching* #17 following, reprinted in *WHATEVER IT TAKES*, *supra* note 13, at 151. Ms. Zealand, a therapist and poet, wrote this poem for Christine Pihos, a discus thrower who in the tradition of her father and grandfather, threw the discus in the Olympics. *Id.* at 317.

physical coordination. This I did not have. I could, however, write and choreograph cheers, which was enough to get through junior varsity try-outs, that, and only eight girls tried out for eight spots. During varsity try-outs, however, I didn't even make the first cut.

On weekends my mother – an avid tennis player – and I would watch Martina Navratilova, Billie Jean King and Chrissy Everett. After school, I would spend hours hitting a tennis ball against the brick wall of my junior high gymnasium. Sometimes, when I was sure no one was looking, I would hold up my wooden racket as if it were the Wimbledon Cup, wave to my imaginary fans, and bow to the queen. So, when I became a *former* cheerleader, my mother insisted that I join the tennis team; she hoped that would help me get over the depression induced by my sudden loss of cheerleader status. Besides, there were no try-outs. But I lost the one and only match that the coach let me play. (I lost really badly.) Thus, ended my love of sport, until quite recently.

I started to care about athletics again because of Sarah. Sarah's mom Cam is my friend and a single parent. Cam had Sarah later in life, so she often asks me to do things with Sarah that requires a "hipper, younger, person," as she likes to say. So about six years ago, I took Sarah for her first professional haircut on our "girl's day out." She was eleven. She thumbed through beauty magazines and pointed to pictures of supermodels and said, "I want to look like that." She tried to smile as the scissors appeared. She worried whether her friends would like her without her long blond hair. I wondered who she would be when she finally knew who she was. And I worried whether taking Sarah to my hairdresser was really a good idea after all.

Then about two years ago, I watched Sarah play field hockey for her high school. Wearing a short plaid skirt and carrying a big stick, Sarah gracefully attacked the ball with a confidence I had never seen in her before. As I shouted, "You Go Girl!" from the sidelines, she smiled but never lost her concentration. She was confident, collected, and very cool. Playing sports, her mother told me, was helping Sarah discover who she was. Her coach had been a positive role model, she had made good friends with the other girls on the team, and competing was teaching her to take risks, to accept success and defeat. She was getting better grades and had auditioned for the high school play. She had a new respect for her body, and started to like the way she looked. Imagine that. She went from being a scared little girl to one of the braver teenagers that I have known. Although I can't attribute all of these changes to field hockey, there is no doubt

that it played a significant part in her adolescent development.

On our next “girl’s day out,” I plan to take Sarah to her first women’s rugby game. My women law students play one mean game of rugby – and rugby is a very mean game. Yet, these women are as tenacious on the field as they are in the classroom, and hopefully, their ferocity will carry over to the courtroom. The women who play rugby and basketball for the law school are some of my better, bolder, and more confident students. I want Sarah to see that sports can be a positive part of her life as she enters womanhood. That’s hipper than a hair cut.

I once gave Sarah a baseball cap that reads “Girl Power: Have You Got It?” After watching her play field hockey, I no longer wonder. Sarah gets it. Seventeen years later, I now get it. Now, if we can just help other girls to get it too.

The best thing about symposia like this one is not that law professors get a chance to pontificate about the nuances of constitutional doctrine (not to say that that isn’t fun or worthwhile), but that they provide a forum for turning thought into action. I hope that this article inspires some of you to advocate for those forgotten girls in the criminal justice system, to be in-your-face aggressive about getting sports programs in place for all girls, and to become passionately competitive in that pursuit.¹⁵²

152. There are now numerous organizations besides the Women’s Sport Foundation dedicated to helping girls gain access to sports. For an excellent list of resources, see ZIMMERMAN & REAVILL, *supra* note 108, at 243–46.

I list a few below:

Girls Incorporated

120 Wall Street
New York, NY 10005-3902
800-374-4475
www.girlsinc.org

Their motto is “helping girls become strong, smart, and bold.” They provide a host of programs and curricula for girls, including sports programs.

Girl Scouts of the USA

420 Fifth Avenue
New York, NY 10018
212-852-5732
www.girlscout.org

The Girl Scouts sponsor a program called “GirlSports” which emphasizes basic skills for girls 5 to 8 years old, as well as hosting “Sports Days” throughout the summer.

START SMART

National Alliance for Youth Sports
2050 Vista Parkway

West Palm Beach, FL 33411

561-684-1141

www.nays.org

This organization is dedicated to helping young children, both boys and girls, develop basic skills to play sports throughout their lives.

Real Options for City Kids (ROCK)

400 Montgomery Street

Suite 805

San Francisco, CA 94104

415-434-1331

This program provides volunteer mentors to high-risk elementary school aged children in San Francisco.

Sportsbridge

333 Valencia Street

Suite 410

San Francisco, CA 94103

415-865-9774

www.sportsbridge.org

Their goal is to empower girls through sports and leadership. They provide adult female mentors to middle school schools.