

Episode 3: Tarnished Gold

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Sara Gras: I'm Sara Gras and this is Season 1 of Hearsay from the Sidelines, a show about the place where law, sports and culture intersect brought to you by Culture in Sports and Seton Hall Law School's Gaming, Hospitality, Entertainment and Sports Law program. Welcome to Episode 3: Tarnished Gold. To fully engage in the current conversation about trans inclusion in youth sports, I think it's necessary to go back in time to where interscholastic sport originated. This allows us to understand why athletics were introduced and nurtured in educational institutions. It also presents an opportunity to learn from the unfortunate history of race and gender discrimination and the structural inequalities that were present, almost from the point of inception.

I realize that throughout interviews and my own comments, there have been references to scholastic sports, interscholastic athletics, youth sports and a few other variations. While I've used them somewhat interchangeably, it's worth mentioning that they are not functionally the same. And while they currently co-exist, in the historical context, they emerged at different times focused on varying objectives.

Interscholastic athletics are athletic activities that a school or school district sponsors or participates in that includes athletes from more than one school or school district, while scholastic sport refers to games played by members of the same school. Youth sports is a broader umbrella which includes community teams sponsored by towns or organizations like the YMCA or Police Athletic Leagues, as well as private club teams, all of which require athletes to pay some amount to participate. These distinctions are significant from a legal standpoint. Most of the state law bans on trans participation I discussed in Episode 2 applied specifically to interscholastic competition involving public schools who are members of state athletic associations. In those states, private and community teams and teams at private schools are still free to allow trans athletes to play on the team that aligns with their gender identity as long as they do not compete against teams to which the bans apply. They are also free to implement more stringent participation standards, so long as they do not illegally discriminate. And while my focus for this podcast is mainly on scholastic and interscholastic athletic inclusion, this private sphere is a major part of the youth sports culture surrounding the debate about trans inclusion.

I had a really eye-opening conversation with [Kirsten Jones](#), a former D1 athlete, now a peak performance coach and host of the [#Raising Athletes podcast](#), who recently released a book, [Raising Empowered Athletes](#),¹ that provides parents with practical advice and guidance on keeping youth athletics in perspective. For someone like me who never participated in competitive sports as a kid or adolescent, the book also gives an inside look at how youth athletics can become all-consuming for some families.

Kirsten Jones: So maybe it helps if I give you a little context of how we got here, and then I'll tell you about what's going on now. But basically, in the 60s and 70s, 26% of women worked outside of the home. By the mid 70s or early 80s, now more than double that had started working outside of the

¹ Kirsten Jones, RAISING EMPOWERED ATHLETES: A YOUTH SPORTS PARENTING GUIDE FOR RAISING HAPPY, BRAVE, AND RESILIENT KIDS (2023).

home. So now you have two working parents. So you have, you know, what basically is the start of latchkey kids. Kids are coming home, there's nothing to do, there's no parent there.

In the late 70s, actually early 80s, 1983, a report came out that said, America, you're behind educationally. You're not doing this right. Our kids are not the leading, the most knowledgeable kids in the world. And we're falling behind. And parental foes started kicking in. And then at the same time, ESPN is born in 1979. ESPN comes online and now you can watch sports 24 7 and you can see there's these athletes and you see little two year old Tiger Woods showing up on the course and you see Nadia Comaneci and you see Wayne Gretzky and so I don't think there was like an aha moment I don't think anybody like just one day realized this could be a thing but you know eventually you get you know the 10,000 hour rule and so you kind of have this combination of parents needing to be more involved because they needed to put some structure in because they're both working. So they start implementing some organized sports. Back in our day, you'd sign up for the YMCA and you'd probably pay \$50 and your kid would play for three months. And then eventually we got to where we're adding the dads in.

In 1981, Adam Walsh is abducted and 38 million people tune in to find out that the world is a really scary place and we can't just let our kids Go play in the street. So like there was this swirling of events that were kind of happening and then again with a more income and Dad saying well, I played baseball I could be a coach. They start getting involved and I think it's all out of goodwill and it's all out of the best intentions. I don't think anybody was necessarily setting out to like, oh, but when they start seeing, oh, at 10,000 hours and I can start, Johnny cannot just play middle school and high school, but he could actually play in college, and oh, there are things called scholarships, it started to be, the dial just started slowly getting turned up.

To your question today, what's happening is, I live in Los Angeles. There are a lot of places in America now where you can't even find a rec team for anything north of 10 years old which is crazy. Like what about the 15 year old kid I was doing my book talk the other night and the mom's like, my daughter's 13. She wants to play soccer. She just wants to play. She doesn't care about playing in college. And she's like, you know, where's the team that she can just sign up and go have fun? And unfortunately, in a lot of these places, you have to sign up for your school team. And that's about all that they're offering because now clubs, it's all pay to play.

And kids are paying up to, you know, parents are paying up to, you know, the average is like \$12,000, not average, up to \$12,000 for youth sports per year per child. So all of your disposable income, there's no more family vacations because, you know, my son plays basketball. He gets 36 hours off at Christmas this year. Right. There's no more spring break. There's no more summer break because if you want to make the top travel team, you got to be there June, July and August. So it shifted and as parents buy into that, then well, if Johnny doesn't play at 10, then he won't make the team at 12. He doesn't, you know, like, so the FOMO of you gotta buy in early or he'll be behind. And it's gotten out of control.

Sara Gras: With private youth sports at such a competitive level, it's not entirely surprising that the dial on school sports has been turned up. We have traveled so far from where sports and education, particularly at the K-12 level, first intersected and became so intertwined.

Historians report formal physical activity programs like gymnastics and swimming emerging in private U.S. secondary schools as early as the 1830s, as well as student-run sports clubs. Organized entirely by students, some of these clubs soon came together in informal competitions in the 1850s, although the

list was relatively small and comprised entirely of boys prep schools in New England and the Mid-Atlantic.² But with free public education starting to emerge in the United States, competitive sports in public schools would slowly start to develop over the next several years.

Enrollment in public secondary-school eventually surpassed private school enrollment in 1888.³ Educators of the time believed that schools, since they were taxpayer funded, should be inclusive of all students. The Chicago Board of Education wrote in 1906 that “The American common school system stand for equal opportunities for all pupils to get a preparation for the responsibilities that come with maturity.”⁴ As the nation moved into this new Progressive Era, sport took on a new role in a post-war, post-Victorian society. Sports gained popularity as a way to keep middle- and upper-class boys strong and virile in the absence of manual labor, as well as to channel the energy of working-class youth, “who, left to their own devices, might turn their fervor toward sexual and criminal delinquency.”⁵ In addition to school athletics, sports teams were facilitated by community organizations like the YMCA, settlement houses, and churches.⁶

While many earlier youth athletic competitions were organized by the athletes themselves, that quickly started to change. For a few decades, physical education as a part of school curriculum had been developing alongside, but independently of, extracurricular sports. After the turn of the century, physical educators began efforts to bring interscholastic sports under school control for a couple reasons:⁷ First and foremost, students liked it. They found it more engaging and fun than repetitive physical exercises. And educators recognized the importance of athletic competition to character development. Second, interscholastic sports were in need of reform as loose organization had led to issues like the use of ringers, corruption in conduct, and commercialization. Some of the other problems educators of the day commented on: the desire to win at any cost, pressuring athletes to play when hurt and causing the injury, offering financial inducements to athletes to get them attend their institutions, and the involvement of a few rather than the many.⁸ Progressive educators recognized that it would be counterproductive to try and suppress sports, so the necessary next step was for faculty to become involved in sports as part of education.⁹ In its earliest days, interscholastic athletics were explicitly intended to provide what Kim Yuracko referred to in Episode 1 as basic benefits to all participants – health, scholarship, moral and manly character, and self-control, with just a hint of group benefit in the form of fostering school spirit.

Law professor and sports lawyer, Bob Boland, and I talked a bit about how this history of benefits and participation in sport has carried over into our current social climate, particularly whether the group benefit is still an important element of interscholastic athletic competition. He agreed that this is still an important aspect of sport in the school setting.

² Robert Pruter, *THE RISE OF AMERICAN HIGH SCHOOL SPORTS AND THE SEARCH FOR CONTROL: 1880-1930*, 4 (2013).

³ *Id.* at 7.

⁴ *Id.* at 45.

⁵ Susan K. Cahn, *COMING ON STRONG : GENDER AND SEXUALITY IN WOMEN'S SPORT*, 12 (2nd ed. 2012).

⁶ *Id.*

⁷ *Supra* note 2, at 48.

⁸ *Id.* at 55-56.

⁹ *Id.* at 49-51.

Bob Boland: In a perfect world, the community is the first beneficiary of a vibrant high school athletic program. That retention rates in school, graduation rates among athletes, behavioral issues, just community feeling tend to be heightened when there's a successful, vibrant, large-scale participation in high school athletics. And we think about it, it may be a historic and archaic model to some degree, but it's the idea that if kids are busy, if kids are engaged, they're going to be happier, they're going to be more successful and less prone to some of the problems in the community. That can mean an awful lot, and we may take that to extremes now with having our kids engaged from a very early age at a myriad of things.

But at least kind of the classic Victorian ideal that we carry through almost all our sports today is that a broad pattern of sport engagement, opportunities for growth and health are all implicit in it. And to some degree, this was sort of the reason why Title IX was extended to the schools and is such an important aspect sociologically for the United States, has been for a while, is that we've extended physical activity to women and as well to men, phys ed classes, or have had a long and important lobby in the high school ranks. So the idea that this is a sign of a healthy community is sort of maybe an archaic idea for us, but it's one that I think still really hangs on and has really important lobbies, particularly in today's society where we don't quite have those same measures.

Sara Gras: The special benefits enjoyed by top athletes, once just bragging rights, can now be far more substantial. There were, and still are, also benefits to their institutions. Again, while this was historically in the form of school spirit, name recognition, and perhaps prestige, it has also evolved over time.

Here's a bit more from Bob, talking about how successful athletic teams can have a huge impact on their school's academic rankings and overall financial well-being.

Bob Boland: In the 1990s, the University of Miami had a bit of a renaissance in college football that came at some price. They were federally investigated for a Pell Grant scandal. They were placed on probation for NCAA violations. But the University of Miami's SAT median increased in their entering freshman class during that time period, increased by about 100 points, and they went up in the rankings broadly. You can trace this in a number of schools, and probably no school is a better beneficiary of this than maybe Duke University from its basketball tenure. I kind of correspond in age with this. I'm a guy who played football in the Ivy League and was really looking exclusively at Ivy schools when I was graduating from high school and where I would play. To me, Duke was a nice school in North Carolina. In the course of my time graduating from college, they had a renaissance in basketball. Their SAT meeting had jumped by 200 points and they were getting kids that would normally go to Harvard or Yale or Stanford. So everybody kind of wants to be in this happy kind of panacea campus that athletics can create.

Sara Gras: With so much at stake, it makes sense that schools want some say over student athletics. Naturally, once educators stepped in and invested in sponsoring formal competitions, it became necessary to create a system by which standards and rules could be promulgated and enforced across institutions. High school athletic leagues and state high school athletic associations quickly emerged as the bodies who would dictate which students could play. And these types of associations still exist to serve this function, although they have certainly grown in scope and size. What this meant at the time and still means today, is that participation in interscholastic athletics is not necessarily open to everyone.

During what has been called the Golden Era of Sport in the first decades of the 20th century, there were broad and diverse opportunities for people of all genders and races to play. But as school athletics grew in both popularity and importance, they also became more divided, in some cases merely mirroring race and gender divides that already existed in American culture, but often going further to maintain separate and unequal playing fields for both female and Black athletes.

In segregated parts of the country, where existing athletic associations were officially whites-only, black high schools created their own athletic programs with structures similar to those at white schools. They also formed separate athletic associations which facilitated the development and growth of their interscholastic athletic programs up until the Supreme Court's decision in *Brown v. Board of Education* led to the desegregation of school sports throughout the south. Most black college athletes played at one the country's HBCUs, but a small number played on teams at Northern universities like Harvard, Penn, Michigan State, and Rutgers.¹⁰

But just because they were allowed at the school or on the team did not mean they were always welcome or supported. As veteran sports writer and professor David Wiggins wrote in his book, *More Than a Game: A History of the African American Experience in Sport*, "The rate, pattern, and degree of exclusion of African Americans from predominantly white organized sport was largely dependent on the status and prominence of the sport in question as well as the context in which they were held."¹¹ Paul Robeson, who played football at Rutgers from 1915-1919 was kept out of a home football game against Washington and Lee when the visiting team refused to play against him. And this was not an isolated incident – there are many similar examples over the next two decades from multiple schools.¹² Teams from Chicago's Phillips High, a largely black school, struggled to find opportunities for post-season competition outside the city and suffered racial bias from both crowds and officials when playing white teams.¹³

The end of legal segregation did not bring an end to racial discrimination in sports. In 1955, an all-black team of eleven- and twelve-year-olds from the Cannon Street YMCA Little League Team from Charleston, South Carolina, were unable to compete in the city, state, and southeastern regional tournaments because white teams refused to play against them. Wiggins notes in his book that these boycotts weren't maintained by white children, who at that point were used to playing with and against black children, but by their parents.¹⁴ The 1963 NCAA Basketball Championship game between Loyola Chicago and the University of Cincinnati made history when seven of the ten starters on the court were black, upending the racial quota maintained by college basketball coaches up to that point.¹⁵ And shockingly, Mississippi State University's mens basketball team did not integrate until 1972.¹⁶

¹⁰ David K. Wiggins, *MORE THAN A GAME : A HISTORY OF THE AFRICAN AMERICAN EXPERIENCE IN SPORT*, 43 (2018).

¹¹ *Id.* at 36.

¹² *Id.* at 48.

¹³ *Supra* note 2, at 275-78.

¹⁴ *Supra* note 10, at 121.

¹⁵ *Id.* at 129.

¹⁶ *Id.*

As black athletes were grappling with institutional racism as they rose to new levels of athletic competition, they were also forced to contend with racialized theories about their athletic superiority. These arguments sought to invalidate or diminish the success of black athletes by attributing it to racial characteristics rather than hard work or discipline. USC and Olympic track coach Dean Cromwell wrote in his book that closer proximity to our primitive origins made black athletes better at sprinting and jumping, that the “ability to sprint and jump was a life-and-death matter to him in the jungle. His muscles are pliable, and his easy-going disposition is a valuable aid to the mental and physical relaxation that a runner and a jumper must have.”¹⁷ Multiple research studies were undertaken to identify what innate physical differences could be credited with the high performance of black athletes, none of which managed to put an end to the debate.¹⁸

In a Sports Illustrated article published in January of 1971, Martin Kane’s essay, *An Assessment of ‘Black is Best,’* resurrected this myth of black superiority in the public sphere.¹⁹ In it he cites a number of dubious sources to support his arguments, crediting everything from body proportions, denser bones, hyperextensibility, general limberness, and more white muscle fibers with black excellence in speed and power sports. This scientifically ungrounded theory of black dominance in athletics reemerged yet again years later in Jon Entine’s book, *Taboo: Why Black Athletes Dominate Sports and Why We’re Afraid to Talk About It.*²⁰ As one reviewer noted at the time, the book does little more than present selective examples of black athletic success without providing any real evidence of cause.²¹ This included what Wiggins called a “convoluted explanation about the differences between distance runners and sprinters resulting from variations in lung capacity, muscle mass, body size, muscle fibers, enzymes, and centers of gravity,” again making the claim that black bodies were somehow better designed to run short distances than white ones.²²

Along similar lines, biological difference has historically been weaponized against the full inclusion and support of female athletes. Around the time when recreational sports started to grow in popularity, medical science still openly characterized women as the weaker and physically inferior sex due to their reproductive systems. To combat the possible harm to those fragile systems caused by women pursuing higher education and pulling all that blood to their brains, some doctors recommended moderate physical exercise to “return energy to the body and strike a proper balance between physical and mental activity.”²³ But as girls enthusiasm for competitive physical activities grew, so did fears that athletics would disrupt traditional gender norms and threaten both women’s health and their morality. Female physical educators of the day went to great lengths to protect women and girls from the corrupting effects of athletic competition, and by the 1920s, intercollegiate sports for women were stifled and

¹⁷ Dean B. Cromwell and Al Wesson, CHAMPIONSHIP TECHNIQUES IN TRACK AND FIELD (1941).

¹⁸ David K. Wiggins, *Great Speed But Little Stamina: The Historical Debate Over Black Athletic Superiority*, 16(2) J. SPORT HIST. 158, 161-63 (1989); Wiggins, *supra* note 10, at 96.

¹⁹ Martin Kane, *An Assessment of ‘Black is Best,’* SPORTS ILLUSTRATED, Jan. 18, 1971, 72-83, *available at* <https://vault.si.com/vault/1971/01/18/an-assessment-of-black-is-best>.

²⁰ Jon Entine, *TABOO: WHY BLACK ATHLETES DOMINATE SPORTS AND WHY WE’RE AFRAID TO TALK ABOUT IT* (2000).

²¹ Michael J. Dougherty, *Taboo: Why Black Athletes Dominate Sports and Why We’re Afraid to Talk About It*, 76(3) Q. REV. BIOLOGY 399 (2001) (book review).

²² *Supra* note 10, at 151.

²³ *Supra* note 5, at 13.

intramural sports considered more moderate, like golf, tennis, and horseback riding were promoted as alternatives.²⁴ These same groups of educators led the fight against community and high school sports for younger girls who they feared would be exploited or pushed into overexertion by promoters, coaches, and media.²⁵ Studies in the 30s and 40s found only 16-17 percent of colleges had intercollegiate varsity sports for women and thirty-six states offered no high school sports tournaments for girls.²⁶ State athletic associations would sometimes take on governance of girls sports in order to sabotage them, like in Wisconsin where the state association voted 169-22 to govern girls sport but then voted against sponsoring any interschool girls competition.²⁷

Throughout much of the first half of the 20th century, girls were thought of as physically and emotionally unsuited to public athletic competition. Their small shoulders and childbearing hips were simply not conducive to sports performance, it was concluded – “masculine” attributes were required for these activities.²⁸ Even though there was no scientific evidence that strenuous physical activity was specifically dangerous to the female body, there continued to be vocal concern that vigorous competition would use up “more vital energy than most girls have to give.”²⁹ When girls played what were thought of as boys sports, they often did so under different rules. The first women’s rulebook for basketball was released in 1901. There were six players instead of five who all played designated positions that confined them to zones on the court. No physical contact was allowed and there were even restrictions on how many times they could dribble the ball, all to prevent any chance of unladylike roughness.³⁰ Boys rules for sport would be unnatural for girls who were, according to educators, “naturally less physical, aggressive, competitive, and vocal than boys.”³¹ Again, the purpose was not to bar them from the basic benefits of sports, but the separateness was required – because the male body was different and naturally better designed for the rigors of competition.

Girls could be active – but not too much. Girls could play sports – but not too hard and not too publicly. Girls could have their own athletic facilities, but they didn’t need to be as big or as well-equipped because, well, their bodies weren’t designed for real competition. And when resources grew scarce, it was girls sports programs that were eliminated because athleticism was not as critical to her development as a good wife and mother as it was for a his development into a strong man. In the next episode, I’ll pick up the history of girls sports with an in-depth look at Title IX and how changes to the law finally gave women and girls the resources and opportunities for meaningful athletic competition.

In reading about this particular strand of sports history I was struck by the parallels between these racialized and gendered characterizations of athletes and the legislative justification for excluding trans kids from sports, like this section of the Mississippi law:

²⁴ *Id.* at 27-30.

²⁵ *Id.* at 63-64.

²⁶ *Id.* at 79.

²⁷ *Id.* at 90.

²⁸ *Id.* at 20.

²⁹ *Supra* note 10, at 246.

³⁰ *Supra* note 5, at 86.

³¹ *Id.* at 63.

Men generally have denser, strong bones, tendons, and ligaments and larger hearts, greater lung volume per body mass, a higher red blood cell count, and higher hemoglobin. Men also have higher natural levels of testosterone, which affects traits such as hemoglobin levels, body fat content, the storage and use of carbohydrates, and the development of Type 2 muscle fibers, all of which result in men being able to generate higher speed and power during physical activity.³²

There's a difference between correlation and causation. Yes, there are some biological differences between male bodies and female bodies when considered in the aggregate, just as there may be observable physiological differences between bodies of African descent and European descent. And there are, and have been, many amazing black and male athletes. But that cannot lead us to the conclusion that race-linked or sex-based biological differences provide a specific or identifiable athletic advantage across the board. Athletic performance is about sooo much more than biology, and frankly, we do athletes of every age, gender, and race a disservice by reducing their performance to a sum of their physical parts. If we perpetuate the myth that athletes should expect more or less of themselves because of characteristics they cannot control or change about themselves or their competitors, we destroy the foundation of youth sport, which was born of students simply wanting to have fun and educators realizing this fun could also support physical and mental wellness, academic success, and school pride.

Kirsten Jones: 70% of kids by age 13 are dropping out altogether now. Why? Because they're not having any fun. Why? Because there's all this pressure to perform and to win and to compete.

And when I'm looking to mom and dad, and all I really want is them to tell me I'm enough, and the message I'm getting is, well, we got thrown out at second, and whatever, we lost, and what does that mean? And that pressure that I know parents don't mean to send down to their kid, but comes through what they do, they say, you know what, I don't need this. I would rather go hang with my friends, or play a video game, or hopefully do something positive, but not do sports.

And what is that leading to? Depression, overwhelm. What we know is kids who are still active at 23, you've set that habit. Now you're going to be an athlete for life. And I don't mean competitive athlete. I mean, you're gonna wanna go hiking and you're gonna go biking and you're gonna see yourself, you and I spoke about it the other day, as I'm gonna try a new sport because I'm curious versus what I hear now are some kids of that coach beat my son in submission about soccer that he has never picked up a soccer ball since and now he won't ever play again. And that is sad. That's a very sad state when it's not only not a ticket to anything, but it's actually helping people opt out altogether.

Sara Gras: It feels like this should be what concerns us and educators – this culture that has pushed kids away from the very basic benefits of playing sports that motivated schools to get involved in their management. Maybe this should be what we mobilize to address rather than standing in the way of a handful of trans kids simply trying to enjoy their high school experience and engage in extracurriculars like their peers. And if one of the driving motivations behind student participation in sports is character

³²S.B. 2536, 2021 Reg. Sess. (Miss. 2021).

development, then what do we teach kids by removing everyone who isn't like them from the playing field?

Kirsten Jones: One fifth of 1% of athletes that are competing in youth sports are trans. It's nothing. It's like saying, the kids who are whatever, seven feet tall and above are not allowed to play. It's irrelevant and it's so important for us to be inclusive. They've got enough going on. I don't think, again, I don't think anybody sets out to say, I'm gonna do this so I can further my athletic career. No, I'm just trying to be a human that's, again, wants to know I'm enough and loved and accepted, and who knows what each of them are going through on the inside and at home and whether they're accepted in their community or not. Absolutely, 100%. Kids should be embracing and allowing people to be who they are. And when we do that, we're not all going to be, again, black or white or female or male or whatever, seven feet tall or five feet tall. But we all add value. We all have gifts. And if we think that only certain gifts are allowed, we're losing as a society. Because just like the kid that the transfer student that comes from France or Ecuador and what you learn about their culture and their language, this the same thing what you're going to learn. I mean, I played for a lesbian coach in high school for volleyball and then in college. I remember when I was getting recruited. I remember one of the coaches said, Well, you're not going to want to go to that school because you know, she's a lesbian, right? And like that people were discriminating out loud about a choice I was going to make was like, okay, well, I'm definitely not going to your school. Whereas if you know, like, and PS I did, I chose the woman who was in my wedding, by the way, and is one of my best friends and I speak to every week because she's a good human. And that's who I want my kids and I want to be surrounded by. I'm choosing the best people. And I would love to say I was actually listening to a fabulous podcast about bias and we all like to think we don't have biases, but we all have implicit biases. And even though we're like, no, I don't. Yes, you do. And unless we openly address and talk and welcome all, we're going backwards.

Sara Gras: It was interesting to me that in her experiences working with athletes as both a performance and a team coach, Kirsten observed that most kids aren't playing sports primarily for the tangible special benefits. It's often the parents who are focused on those.

Kirsten Jones: Yeah, most kids, I think they want to be active and they want to be social. You know, most girls care more about the color of the ribbon in their hair than they care about, you know, whether the team won or lost. And of course, that's the most important thing I say to the parents. The only six words your kid needs to hear you say: "I love to watch you play." That's it. And so many parents, "well, this and that coach stinks and we're gonna go to a different team and you are awful." And then that's when it erodes. And PS, as I mentioned in the book, it's happening in other parts of their life too, right? That's the college cheating scandal. That's message, that subliminal message of "you are not enough so I need to jump in, my ego is involved and I'm gonna go in and talk to that teacher. I'm gonna go in and talk to that principal. I'm gonna, we're gonna change schools. You got an F, it couldn't possibly be your fault." You know, it, and so giving, that's the gift that you're gonna get from sport. Just like when they don't do the homework assignment and they get an F, what did you learn? What happened? I don't know. Well, let's unpack that and allow them to learn for it. And we are living in this snowplow drone, helicopter, pick your metaphor, you know, climate where we're not allowing them to fail and learn.

Sara Gras: We've reached a time in this country where we no longer see girls only as future mothers and wives, where women are taking their well-deserved seats at the top of every profession. We don't tolerate gender separation in education, won't accept the tracking of girls away from math, engineering,

and biology. We expect boys and girls to learn together, afforded all the same exposure to information and challenges and developmental opportunity. And when you really think about this, then it makes it a little tougher to reflexively defend gender separation in kids sports – unless, perhaps, you are clinging to those Victorian ideals about a girls lack of vital energy. This is not simple - breaking down gender lines in sports is about more than coed teams. My son’s flag football league is co-ed all the way up to 9th grade. But this morning when I stood on the field watching over 200 kids play, every single one was a boy. All the girls, I found out, play in a separate girls-only division that was created based on demand. And that separation, starting as early as second grade, can help maintain the belief that boys and girls should really play separately.

Here's Val Moyer, researcher for Athlete Ally, talking about the need to rethink our rigid adherence to gender separation in sports.

Val Moyer: There’s sort of a missed opportunity to think critically about when and where we need gendered categories in sports, especially youth sports, I think. And that could be a great question, like more of an open-ended question about, you know, do we need, what about co-ed youth sports? What about different models of play and competition that encourage the kinds of things we want to encourage, like teamwork, communication, confidence, mental health, all those great things, and downplay the scores and the star player and things like that. And so it's tricky also because I do think non-coed girls sports at times is built to combat the sexism of coaches who might play young boys might get more playing time on co-ed teams because of that ingrained sexism. But I think that that's been its own little problem rather than making a whole model to try to combat that. So I do think we need to really think about what is the purpose of gender categories, when, where, and when can we push against them and kind of play with them, especially for non-binary kids, of which there's like a growing population of youth who identify as non-binary, and just the structure of sports itself as in binary gender categories can feel exclusive to them. So yeah, I'm up for much more... co-ed is not always the right term, but much more play with gender and sports categories, particularly at the youth level. I think there needs to be room for that.

Sara Gras: I understand how difficult it must be for female athletes to feel like they are losing precious opportunities to play and be recognized for their excellence. It was only a couple generations ago that the physical inferiority of women and girls was considered a fact by pretty much every formal institution from education to medicine to the military. So when female athletes are told that trans inclusion means they will now be forced to compete against bodies who they have been told are biologically superior, it's no surprise that the reaction is not unanimously positive. It's worth remembering that these opportunities are so precious because they are still objectively unequal to those of male athletes. When cis women are pitted against trans women in the sports inclusion debate, the only winners are men.

Northwestern law professor, Kim Yuracko, addresses this point directly in her work when she wrote, “however we categorize sports, cisgender men are the winners. It is women and girls (both biological and trans) who are fighting for the scraps.”³³

Kim Yuracko: Yeah, I think it's such an unfortunate part of this sort of debate and disagreement and the fighting that's happening on this particular issue. I mean, when I started writing about sports about 25

³³Kimberly Yuracko, *The Culture War Over Girls’ Sports: Understanding the Argument for Transgender Girls’ Inclusion*, 67 VILL. L. REV. 717 (2022).

years ago, the fight was really about – it was really between women and men, and it was about the women's category of women and girls seeming to be taking resources away from men's sports. And so the requirement there, as Title IX was being interpreted, was that athletic opportunities had to be allocated in proportion to women and men, girls and boys, sort of numbers in the undergraduate population or lower school, K through 12 as well.

And so the fight there was really to increase the share of resources to girls and women's sports. And what made it contentious was this idea that something was going to be taken away from boys and men. It didn't have to be what happened, but we have a limited pool, it turns out, often to be resources are going to get shifted. What is so unfortunate about the fight that's happening now is, as you say, you've got pool of resources that remains not as significant as the pool of resources that's devoted to men's sports. We haven't actually realized not only the promise but actually the legal mandate of Title IX as it was meant to be enforced. So there are not as many resources, that is scholarships, financial support for women's athletics as there are for men's athletics.

And now we have a sort of a kind of an in-fighting over that smaller pool of resources. And so it's unfortunate because I think we're taking groups that should otherwise be allies and fighting each other and we're fighting to divide a smaller pool of resources. And so that was why I do think these questions about inclusion or exclusion of transgender girls, they're really interesting and they're really hard. But I did want to at least bring people back to a recognition of this fact that is really unfortunate in this debate, which is men's sports is being completely unscathed by this debate. And so there is nothing about this debate that is going to challenge or potentially diminish or even sort of equalize, help push to equalize resources between men's and women's sports. It's like men's sports is just, you know, they get to kind of keep going off and doing their own thing and they are completely untouched by this debate. And so I just kind of at least wanted to kind of bring us back full circle because there's been such heated debate on this topic and it is super important. But it's also kind of really a shame that this debate does not include.

Sara Gras: As much as opponents of trans inclusion would like this debate to stay focused on the opportunities that trans girls (who they relish referring to as biological males) take away from cis girls, any loss is negligible in comparison to the chasm that still exists between the benefits and opportunities that exist for male vs. female athletes. The next episode will focus entirely on Title IX – its history, impact, and role in the future of trans kids in sport.

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