

TRANSSEXUAL ADVANTAGE IN WOMEN'S COMPETITION?

James C. Kozlowski, J.D., Ph.D.

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Awhile back, I was asked if there is any precedent for whether a transsexual person, formerly male but now female, is considered a female for sports' team purposes. In this particular instance, players in a women's soccer tournament were complaining that the goalkeeper on one of the teams was a "gay male." Further inquiry, however, indicated that the individual at issue was in fact transsexual i.e., "formerly male, but now considers himself/herself female ('has breasts' etc)."

As defined in Webster's dictionary, a transsexual is "a person who strongly identifies with the opposite sex and may seek to live as a member of this sex especially by undergoing surgery and hormone therapy to obtain the necessary physical appearance (as by changing the external sex organs)."

According to the state court in the *Richards* opinion described herein, "[t]he only justification for using a sex determination test in athletic competition is to prevent fraud, i.e., men masquerading as women, competing against women." Moreover, to answer the specific question posed above, the court in this particular case found that a transsexual person would be "considered a female for sports' team purposes."

GENDER DETERMINATION

In the case of *Richards v. United States Tennis Association*, 93 Misc. 2d 713; 400 N.Y.S.2d 267 (8/16/1977), the issue before the state court was whether a male who had had sex reassignment to surgery could qualify to participate in a women's tennis tournament. Plaintiff Renee Richards alleged that she had been "prevented from qualifying and/or participating in the United States Open as a woman in the women's division since defendants require that she take a sex-chromatin test ... to determine whether she is a female." As a result of the surgery, Richards said "for all intents and purposes, I became a female, --psychologically, socially and physically, as has been attested to by my doctors." Richards said she "underwent this operation after many years of being a transsexual, a woman trapped inside the body of a man."

Richards was born Richard Raskind. Raskind was an ophthalmologist licensed to practice in the State of New York. As Dr. Richard H. Raskind, plaintiff was an accomplished male tennis player, and in 1974 ranked 3rd in the east and 13th nationally in the men's 35-and-over tennis.

Following the sex reassignment surgery in 1975, at the age of 41, Raskin had entered nine women's tennis tournaments as Renee Richards and had won two tournaments and finished as runner-up in three. Based on the information available to him, the chairman of a tennis tournament in which Richards had played said he had invited Richards "as a woman" based on his "observation of primary and secondary sexual characteristics".

In July 1976, for the first time, the USTA required a sex determination test for women in connection with the United States Open. Richards applied to play in women's singles in the United States Open. At that time, in a personal letter to the chairman of the United States Open, Richards had provided a "frank presentation of her medical situation." The USTA refused Richards' request to waive the sex determination test.

The USTA test was generally administered by having the individual rinse the mouth and obtaining a sample of cells by scraping the inner lining of the cheek. The sample is then transferred to a slide. Dye is applied and the smear is examined under a microscope. The examiner typically counts 100 or 200 cells and records the percentage of the cells which show the presence of a second x-chromosome. In the female, there are two x-chromosomes. In the male, the sex chromosomes are a larger x and a smaller y.

#### MALE ADVANTAGE

The USTA had adopted the required test to determine the presence of a second "x" chromosome in the "normal female" and, thus, insure competitive fairness. According to USTA, such a test was necessary to avoid "a competitive advantage for a male who has undergone 'sex change' surgery as a result of physical training and development as a male."

We have reason to believe that there are as many as 10,000 transsexuals in the United States and many more female impersonators or imposters. The total number of such persons throughout the world is not known. Because of the millions of dollars of prize money available to competitors, because of nationalistic desires to excel in athletics, and because of world-wide experiments, especially in the iron curtain countries, to produce athletic stars by means undreamed of a few years ago, the USTA has been especially sensitive to its obligation to assure fairness of competition among the athletes competing in the U.S. Open, the leading international tennis tournament in the United States.

In support of the alleged need to "test for the determination of sexual identity," the USTA submitted an affidavit from Dr. Daniel Federman, professor and chairman of the department of medicine, Stanford University School of Medicine. As described by Dr. Federman, "the y chromosome is related to physical characteristics in the normal male that affect an individual's competitive athletic ability." Moreover, Dr. Federman noted that transsexual surgery or drugs can alter external genitalia and hormonal balance, but some features of sexual identity can not be converted to the opposite sex.

In the adult male beyond puberty, neither the removal of the testes by sex reassignment surgery, nor any subsequent treatment with estrogen can affect the individual's achieved height or skeletal structure. Removal of the testes plus ingestion of estrogens can reduce male strength, but any such effect is partial and depends upon continued ingestion of estrogen to be sustained.

Similarly, in the opinion of several female professional tennis players, the immutable features of sexual identity would give an adult male an advantage, regardless of sex reassignment surgery.

According to these women, "the taller a player is the greater advantage the player has" and "the stronger a player is, the greater advantage the player has, assuming like ability." According to the USTA, following sex reassignment surgery, Richards' competitive record was "unparalleled in the history of women's professional tennis" for a woman player over age 40. The USTA maintained that such a record of success was indicative of a competitive advantage for Richards.

## FEMALE IDENTITY

In response, the surgeon who performed Richards' sex reassignment operation said "Dr. Richards' internal sexual structure is anatomically similar to a biological woman who underwent a total hysterectomy and ovariectomy." According to the surgeon, the removal of the testes and administration of female hormones would result in "decreased muscular mass" wherein "the structure of the muscle/fat ratio of the male is changed to a feminine type, together with the development of the breasts." Accordingly, in the opinion of the surgeon, Richards would have no unfair advantage "when competing against other women." On the contrary, this surgeon found Richards' "muscle development, weight, height and physique fit within the female norm." With the exception of "reproduction," the surgeon, therefore, concluded that "Dr. Richards should be considered a woman, classified as a female and allowed to compete as such."

Even though the USTA's chromosomal test would classify Richards as a man, another physician stated that Richards "would be considered a female by any reasonable test of sexuality" because "she has the external genital appearance, the internal organ appearance, gonadal identity, endocrinological makeup and psychological and social development of a female." Similarly, Richards' gynecologist said he examined Richards "as a woman and her perception of herself is entirely as a woman."

In addition, Dr. John Money, a psychologist at Johns Hopkins Medical School in Baltimore, Maryland submitted an affidavit in support of plaintiff's application stating:

For all intents and purposes, Dr. Richards functions as a woman; that is her internal sex organs resemble those of a female who has been hysterectomized and ovariectomized. Also, her external organs and appearance, as well as her psychological, social and endocrinological makeup are that of a woman."

In Dr. Money's opinion, the USTA's chromosomal test created an "irrebuttable presumption as to an applicant's sex, thereby precluding certain applicants from participating in tournaments limited to participants of one sex." According to Dr. Money it was "unfair to use that test as the sole criterion for determining one's sex for purposes of participating in a sports event." In this particular instance, Dr. Money found USTA's use of its chromosomal test "would work an injustice since by all other known indicators of sex, Dr. Richards is a female."

Dr. Richards is psychologically a woman; endocrinologically female; somatically (muscular tone, height, weight, breasts, physique) Dr. Richards is female and her muscular and fat composition has been transformed to that of a female; socially Dr. Richards is female; Dr. Richards' gonadal status is that of an ovariectomized female.

Accordingly, "based on 26 years of professional experience as a psychoendocrinologist," Dr. Money concluded that "Dr. Renee Richards should be classified as female" when measured by "all the factors, including chromosomal structure." Not only would that be a "widely held conclusion of medicine today," in the opinion of Dr. Money, "for anyone in the medical or legal field to find otherwise is completely unjustified." Moreover, Dr. Money found "Dr. Richards will have no unfair advantage when competing against other women" because "her muscle development, weight, height and physique fit within the female norm."

Women's tennis professional star, Billie Jean King, also submitted an affidavit in support of Richards' application. According to King, based upon her tournament experience with Richards, "she does not enjoy physical superiority or strength so as to have an advantage over women competitors in the sport of tennis."

#### UNFAIR TEST

In the opinion of the court, the USTA's decision to require a sex determination test for the 1976 United States Open was "a direct result of plaintiff's application to the 1976 United States Open." Moreover, as noted by the court, until August, 1976, "there had been no sex determination test in the 95-year history of the USTA national championships, other than a simple phenotype test (observation of primary and secondary sexual characteristics)."

Under the circumstances of this case, the court found USTA's requirement that Richards pass a chromosomal test "in order to be eligible to participate in the women's singles of the United States Open" was "grossly unfair, discriminatory and inequitable, and violative of her rights under the Human Rights Law of this State."

It seems clear that defendants knowingly instituted this test for the sole purpose of preventing plaintiff from participating in the tournament. The only justification for using a sex determination test in athletic competition is to prevent fraud, i.e., men masquerading as women, competing against women. This court rejects any such suggestion as applied to plaintiff.

This court is totally convinced that there are very few biological males, who are accomplished tennis players, who are also either preoperative or postoperative transsexuals. When an individual such as plaintiff, a successful physician, a husband and father, finds it necessary for his own mental sanity to undergo a sex reassignment, the unfounded fears and misconceptions of defendants must give way to the overwhelming medical evidence that this person is now female.

While a chromosomal test may be a "recognized and acceptable tool for determining sex," the court found it "should not be the sole criterion, where as here, the circumstances warrant consideration of other factors." As a result, the court found USTA had violated the state human rights law and granted plaintiff's request for a court order which would allow her to "qualify and/or participate in the United States Open Tennis Tournament, as a woman in the Women's Division."