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(e)Racing Jennifer Harris

Sexuality and Race, Law and Discourse in *Harris v. Portland*

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In 2007 Penn State basketball coach Rene Portland retired shortly after a confidential settlement ended a discrimination lawsuit brought by former player Jennifer Harris against Portland and Penn State. Because of Portland's infamous policy of not allowing lesbians on her team, her departure was celebrated as a victory against homophobia in sports. Yet although Harris's claims of sexual orientation discrimination were validated in the media, her allegations of racial discrimination were ignored or dismissed as implausible. In this article, we examine the omission of race from the discourse surrounding this case and suggest that both legal and cultural factors contribute to society's tendency to ignore the intersecting discrimination in sport and the multiplicity of identity.

Keywords: *discrimination; sport; race; gender; sexual orientation*

Described as "the most significant thing that has happened in trying to address homophobia in sport to date" (Griffin, qtd. in Hohler, 2006, p. D1), Jennifer Harris's lawsuit against her former basketball coach, Maureen "Rene" Portland, and her former school, Pennsylvania State University, drew an unprecedented amount of focused media coverage to the issue of sexual orientation discrimination in college athletics. Portland's anti-lesbian policy is infamous, and anyone who follows women's basketball knows of her past public statements on the issue, such as "I will not have it in my program" (Figel, 1986; Longman, 1991). It is also well known that Portland engaged in negative recruiting and used her own heterosexuality and that of her players to win over prospective players and their parents (Griffin, 1998). In fact, it was a tactic Harris says Portland had used with her family as she was choosing between University of Virginia—"where they date girls," Portland told them—and Penn State—"where we date boys" (*Harris v. Portland*, Amended Complaint [hereinafter "Complaint"], 2006, p. 17).

Portland dismissed Harris from the team at the end of her sophomore season, citing poor performance and "a work ethic and attitude that was detrimental to the team" (Complaint, 2006, p. 29). Harris's subsequent lawsuit that alleged Portland discriminated against her because of her perceived lesbian sexual orientation was consistent with Portland's reputation for homophobia. After decades of tacit acceptance

on the part of the Penn State athletic department, administration, and even fans, Portland's "policy" was finally being challenged. When, 2 years later, the case settled out of court and Portland subsequently—and "coincidentally"—retired, the litigation seemed to have culminated in a partial victory over homophobia in women's sports even though the settlement terms and all evidence gathered remain confidential. In sports columns, on the blogosphere, in fan forums, and in other media outlets, there was near unanimous condemnation of Portland and her anti-lesbian policy and of Penn State for its failure to do more than mildly reprimand her. Journalists, scholars, and other commentators generally saw the settlement and the replacement of Rene Portland as head coach as a moment of success in the larger struggle against homophobia in women's sports (e.g., Griffin, 2007).

Yet in contrast to the vast public discourse regarding sexual orientation, there was silence on the issue of race, notwithstanding the fact Harris, who is Black, made formal claims of race discrimination in her lawsuit. McDonald and Birrell (1999) critiqued the tendency in and outside of academe to ignore the complexity of intersectional identity and to "frame narratives in terms that privilege one power relationship . . . while ignoring others or overlooking the intersection of several axes of power" (p. 284). Harris's claims of discrimination based on sexual orientation were pondered, discussed, and often validated in the media, whereas the allegations of racial discrimination were largely ignored or summarily dismissed as implausible.

In light of this omission, we view *Harris v. Portland* as a unique opportunity to examine intersecting discrimination in the context of sport and contribute to the effort to pay greater attention to the multiplicity of identity and the need for practices and methodologies that reflect this lived experience (Birrell & McDonald, 2000; Carrington, 1998; McDonald & Birrell, 1999). Our analysis of *Harris v. Portland* attempts to respond to these calls for a deeper understanding of intersectional identity in sport by drawing on theories and methods of intersectionality in the fields of critical legal studies, Black feminist theory, and women's and gender studies. Through these lenses, we examine the public documents in this case, namely, Harris's complaint, media accounts of Harris generally and her litigation with Portland, media coverage (Internet, print, and television) of Portland's history of discrimination, and the reactions to the case on blogs and fan forums. We look specifically for how these sources address, both separately and together, issues of sex and gender, sexual orientation, and race.

We have chosen in this article to focus on the media's erasure of Jennifer Harris's claims of racial discrimination and its corresponding erasure of her racial identity, which we attribute to a general failure to comprehend intersectional discrimination. To this end, we begin by offering a brief background of the case, including the most obvious claims of racism Harris levied against Portland. We then engage in an intersectional analysis that illustrates how Portland's insistence on a model of normative femininity or a female apologetic became a racist standard. In the following section we discuss possible reasons why the media failed to provide as much—or any—attention

to issues of race and racism in this case, in part by examining other recent events in women's basketball, including Sheryl Swoopes's coming out in 2005, Latasha Byars's 2004 lawsuit against the L.A. Sparks, and Don Imus's remarks about the Rutgers basketball team in 2007. Finally, we explore the ways in which the legal system, the venue in which Harris sought to challenge Portland's conduct, similarly operates to disaggregate intersecting discrimination and reduce it to single axes. In light of these limitations, it is perhaps not surprising that Harris's "success" in this case probably did not come as the result of a direct application of antidiscrimination law, but from a tactical settlement that we believe unseated Portland from her long-held position of power, claiming a real and symbolic victory over antigay discrimination. In sum, we hope that by providing a fuller understanding of the case and its outcome, we can contribute to a greater understanding of the ways in which both cultural and legal structures operate to erase the relevance of race in the context of women's sport.

Evidence gathered in this case, including party depositions, remains subject to a confidentiality order and the terms of the closed settlement prohibit the parties from speaking publicly about the case. As a result, we do not know if Harris's attorneys could have introduced trial evidence that would have conclusively demonstrated the intersectional nature of the discrimination Harris faced. In describing and understanding what happened between Harris and Portland, we are limited to Harris's version of the events set forth in her complaint, Portland's general denials, and a few public statements by both parties. Despite these limited resources, we believe it is valuable to proceed with an analysis of this case, as it presents a rare opportunity to examine intersecting discrimination in the context of women's sport.

Harris v. Portland: Where Is the Racism?

The legal case of Jennifer Harris versus Rene Portland and Penn State began officially in the fall of 2005, when Harris's attorneys at the National Center for Lesbian Rights (NCLR) sued Rene Portland, athletic director Tim Curley, and Penn State in federal district court in Pennsylvania.¹ In March of that year, after Liberty University upset Penn State in the National Collegiate Athletic Association (NCAA) tournament, Rene Portland dismissed Harris from the team, ostensibly for poor athletic performance, lack of commitment to the team, and a disrespectful attitude. But Harris's success as a member of the Penn State basketball team cast doubt on Portland's explanation that her decision to dismiss Harris was related to performance. As a sophomore guard, she had started in 22 of 30 games that season and was among the team's top scorers. In fact, of the players eligible to return the following season, Harris had the best statistics for points scored, three-point shots, free throws, assists, and steals (Complaint, 2006). In her complaint, Harris and her lawyers offered an alternative explanation: Coach Portland discriminated against Harris on

the basis of her race, sex, and sexual orientation. Harris alleged that Portland relied on negative recruiting related to sexual orientation, that she continuously questioned players about their and each others' sexual orientations, and that she forced off the team anyone she concluded was a lesbian. Media coverage of the story corroborated Harris's descriptions of these practices; in interviews, former players noted that there was little trust within the team because of Portland's constant vigilance in keeping lesbians off of the team (Fulton, 2006; Lieber, 2006b; Masse & Stewart, 1998).

The complaint further alleged that Portland accused Harris of dating a teammate, another Black player, during Harris's first-year season. She later concluded that the teammate was gay, forbade the team from associating with her, and ultimately kicked her off the team. The following season, Portland again accused Harris of having a lesbian relationship, this time with another Black teammate. Portland tried to catch Harris with this other player and asked their teammates to watch and report on Harris. According to Harris, Portland told the team that she would "do whatever it took to prove that Jennifer was gay" (Complaint, 2006, p. 22).

Portland instructed players to wear their hair in "feminine" styles, to wear jewelry and make-up, and to acquire tans (p. 17). In particular, she told Harris to dress in a more feminine style and to stop wearing her hair in cornrows. When Harris resisted, Portland berated her. On one occasion, she suggested that Harris should "break a leg" and "put me out of my misery"; on another, she stated that Harris is the reason "why they don't let coaches carry guns" (p. 22). She demoted Harris from her position as a starting player and pressured her to take a leave of absence from the team, eventually dismissing her after Penn State's early exit from the 2005 NCAA tournament.

Harris's complaint also describes a pattern of racism in Portland's decision to terminate or harass players. In general, Portland recruited a majority of White players—60% of the players recruited from 1997 to 2005 were White—yet over that same time period, African American players constituted a majority (60%) of the players who were terminated or quit. Harris also points out that Portland terminated all of the African American players who were eligible to return for the 2005-2006 season—Harris, Amber Bland, and Lisa Etienne—and retained all three of the White players who were eligible to return (Complaint, 2006).

These statistics constitute indirect evidence of racism in Harris's case, which can be rebutted legally by evidence that Portland was motivated to demote or terminate Harris for legitimate reasons, such as the performance or behavior problems Portland cited to the press. However, the complaint also alleges direct evidence of Portland's racism and its effect on Harris, namely, that Portland's decision to demote and then terminate Harris was the consequence of "disrespecting" Portland "by not changing her image to be more feminine and to stop wearing cornrows" (p. 23). This evidence was largely misunderstood or absent from the public discourse about the case, which seemed to reduce the Harris/Portland narrative to the single theme of "homophobia in sport."

By interrogating the standards of appearance and behavior that Portland required of her players and revealing them as norms for White, heterosexual femininity, we can better understand the racist overlay in Portland's harassment, demotion, and termination of Jennifer Harris. Portland's mandate that her players appear and behave in a feminine and nonlesbian manner is a clear example of apologetic behavior, a concept well-documented in the literature on women and sport. It is consistent with and draws from the practices of women physical educators in the first half of the 20th century to ensure the viability of their programs (Felshin, 1974; Festle, 1996). As Felshin (1974) explained, female athletes' apologetic behavior is a response to social pressure to reconcile the dissonance created by the participation of women in sport, an activity culturally associated with masculinity. Society's tendency to trivialize, pathologize, and otherwise disapprove of their participation in sport created incentives for women to distinguish their sports from men's. This "apologetic" trades on appearance (emphasizing normative feminine attributes like hair, makeup, and dress), values (prioritizing socially accepted roles for women, such as that of girlfriend, wife, and mother, over participation in sport and one's competitive drive), and sexual normalcy (displaying convincing indicia of heterosexuality).

Festle (1996) made clear that apologetic behavior did not retire with the physical educators of the early 20th century. Even into the 21st century, examples of apologetic behavior from athletes and coaches persist. For instance, there is the continued practice of denoting (and demoting) women's teams by the use of the term *Lady*, as in the *Lady Vols* of Tennessee—a name Pat Summitt, the most successful women's basketball coach in history, wholeheartedly supports. And though the days of beauty pageants before competitions (Cahn, 1994; Festle, 1996) are gone, female athletes are still sexualized in sport magazines and in men's magazines like *GQ*, *FHM*, and *Maxim*—on television (when they receive coverage) and even in colleges' own media guides (Buisse, 2006).

Portland's position on lesbians and normative femininity exhibited attributes of apologetic behavior as defined by Felshin and Festle. As we have explained, she clearly emphasized the importance of sexual normalcy with her players, recruits, and their parents (Complaint, 2006; Figel, 1986; Kaufman, 1993; Lipsyte, 1991; Longman, 1991; Solomon, 1991). It is evident that Portland's now infamous policy of "no drinking, no drugs, no lesbians" was far more invasive than a "don't ask, don't tell"—style code of conduct because she actively interrogated her players about their personal lives and encouraged them to come forward with information about each others' homosexual practices. In addition, Portland employed what amounts to a dress code, requiring her players to "wear their hair in 'feminine' styles, wear jewelry, make-up, and acquire tans" (Complaint, 2006, p. 17). These requirements cannot possibly be read as innocuous remnants of an earlier era when a term like "muscle moll" was a popular epithet. They reflect the continued fear of the masculinization of women, especially the fear of homosexuality or at least the association of homosexuality and female athletes. Given Portland's insistence that the

players' personal appearances convey a traditional femininity, it is likely no coincidence that Penn State is the only Division I institution outside the south that retains the "Lady" prefix in the nickname for their women's teams.

Portland also conveyed commitment to social roles as wife and mother. Her biography on the Penn State athletic department Web site boasted the basketball program's "family atmosphere." It also mentioned Portland's husband and children and noted that when Portland's daughter Christine played for Penn State in the 1990s, it was the second-ever mother-daughter, coach-player relationship in Division I basketball. And though Festle (1996) noted that by the 1990s women in sports no longer needed to eschew the importance of winning or the desire for an athletic career to engage in effective apologetic behavior, Portland's decision to dismiss Harris, her best returning player, seems to prioritize apologetic behavior over winning (a priority that is also likely reflected in her decision to forgo recruiting lesbian players).

Having contextualized Portland's position on lesbians, feminine appearance, and feminine values within the framework of apologetic behavior, we now turn to a deeper examination of the standards of normative femininity Portland imposed. Normative femininity, simply put, is a "white feminine ideal" (Greene, 2000, p. 243). Thus, it is possible to understand her instructions to Harris "to be more feminine and stop wearing [baggy clothes and] cornrows" in one of two ways: Portland saw Harris's clothes and hair as masculine, or Portland saw Harris's clothes and hair as Black. As we address each in turn, we are not suggesting that they are necessarily alternatives. Portland might have held either view or both simultaneously. Regardless, these explanations reveal Portland's simultaneous construction and normative position on Harris's race, gender, and sexuality.

First, we will consider the possibility that Portland read Harris's cornrows and baggy clothes as masculine and objected to them on those grounds. Under this reading, "Be more feminine and stop wearing cornrows" is redundant. "Stop wearing cornrows" is an example of how Portland thought Harris should "be more feminine." Such an interpretation fits squarely with Portland's adherence to the female apologetic at the root of her anxiety about the masculinization of female athletes.

Harris's hair and dress appear to have been influenced by the dominant image of men's basketball culture, and they were thus read by Portland as gender transgressive. This view is supported by the fact that, according to Harris, Portland told her in a December 2004 meeting that she should "wear her hair down or at least in more 'feminine' braids" (Complaint, 2006, p. 21). In other words, Portland was distinguishing between braids that are masculine and braids that are consistent with images of Black femininity. It was masculine cornrows, those popularized by NBA players like Allen Iverson and Carmello Anthony, which drew Portland's objection for their inconsistency with the female apologetic she deemed necessary to keep the women's game distinguishable from the men's.

Even if Portland's hostility to Harris's cornrows was primarily about gender conformity rather than race, the effect of her demands on Harris required that she cover

aspects of her racial identity. Harris's claim that she responded to Portland's "suggestions" that she wear "tighter clothes" and her hair down by saying, "I'm not ashamed of who I am" (Blatt & Harris, 2006, p. 97) suggests that she was performing a strongly held identity. We do not know the extent to which she was performing a racial identity and gender identity (whether butchness or female masculinity [Halberstam, 1998] and/or a version of heterosexual femininity measured by non-white standards [discussed *infra*]). Harris's claim that Portland discriminated against her "for dressing and wearing her hair in ways that reflect [her] African American identity" (Complaint, 2006, p. 64) helps confirm, however, that her style reflects, exclusively or not, an identification with Black basketball culture, which has been incorporating the style of hip-hop culture ever since Chris Webber and other Michigan players began wearing baggy shorts in the early 1990s (Boyd, 2004). Boyd observes that "hip hop and [men's] hoops are blended into one large whole So many players have cornrows and tattoos now that this is no longer even news" (n.p.). This style is not confined to male athletes, but has been incorporated into the style and dress of other young, female athletes of color, as Pascoe's (2007) discussion of the "Basketball Girls" attests. We can find examples of both men and women performing Blackness in ways similar to Harris. NBA players like Iverson and Anthony wear cornrows—but so do many women. Hip-hop artists Queen Latifah, Da Brat, and Missy Eliot have sported basketball jerseys and sneakers. The effect of Portland's prohibition of cornrows and baggy clothes could have seemed, to Harris, a requirement not only that she cover her gender identity, but also that she cover her Blackness.

Of course, we can also read Portland's injunction against cornrows and baggy clothes as a direct requirement that she cover race, which incidentally required her to cover her gender identity as well. Under this reading, "Be more feminine and stop wearing cornrows" and baggy clothes is conjunctive rather than redundant. "Be more feminine" refers to the other ways in which Harris was transgressing gender norms (not dressing like a [White] girl, ostensibly sleeping with women). "Stop wearing cornrows" and baggy clothes simply means "Be less Black."

As critical race feminists explain, the construction of Black femininity in the United States is not necessarily in contrast to, but is different from, that of White femininity. Slavery's exploitation and commodification of Black women created, perpetuated, and benefited from stereotypes about Black women's perceived animalistic physicality and exotic hypersexuality (Collins, 2004; Fordham, 1993). Such stereotypes not only operated as justification for slaveholders' consigning female slaves to hard labor and nonconsensual sex but were also deployed to create and sustain the contrasting myth of White feminine delicacy, physical ineptitude, and sexual purity, which simultaneously served as a tool of the patriarchy.

Modern "caricatures" of Black women also operate to complicate the intersection of race, gender, and sexual orientation (Ammons, 1995, p. 1050). For example, stereotypes of the domineering "Sapphire" and the strong, independent matriarch have been deployed to pathologize Black, female-headed households and scapegoat

them for the perceived greater economic problems experienced by Blacks and Black men in particular (Ammons, 1995; Austin, 1989; Oglesby, 1981; Wallace, 1979). The belief that Black women caused Black men to lack proper masculine traits, thereby contributing to Black poverty, created backlash against strong, independent Black women, including lesbians (Collins, 2000; Shockley, 1983). Together the stereotypes put Black women in a double bind—or “catch 22” (e.g., Ramachandran, 2005)—giving them little space to construct their own identity or display any version of femininity without being read as deviant: hardworking mule (who neglects her own children) or lazy welfare queen (stay-at-home mother), “ho” (sexually available) or emasculating Sapphire (sexually autonomous).

Finding the space to exist within and among the stereotypes can be a difficult challenge for any Black woman, but perhaps especially athletes. Black female athletes are subject to the same sexualizing and dehumanizing comparisons to animals that justified slavery (Oglesby, 1981; Vertinsky & Captain, 1998). In recent years we see this most vividly in the coverage of professional tennis players and sisters Venus and Serena Williams (Douglas, 2002; Schultz, 2005), suggesting that attributes of athleticism such as muscular physique and aggressive style of play render Black athletes susceptible to this comparison. Collins (2004) suggested that as a result of this “different interpretive context” (p. 135), Black female athletes have to work harder to avoid being stigmatized as lesbians by the dominant culture. Thus, although homophobia is deployed against female athletes of all races, the standards of White femininity exert different pressures on Black women to portray themselves as heterosexual and family-oriented, as the marketing strategies of the Women’s National Basketball Association (WNBA) attest (Collins, 2004). This suggests that Black female athletes may experience particularized versions of the double bind that constrains Black femininity. For example, the media’s focus on an athlete’s husband and children may affirm her heterosexuality but undermine her effort to be taken seriously as an athlete. And in light of the Jezebel stereotype discussed above, a coach’s demand that players overcompensate for the lesbian stigma by displaying a heterosexy image can be perilous for a Black athlete who wants to avoid reinforcing the stereotype that Black women are lascivious “hos.”

Portland’s demand that her players engage in apologetic behavior as a condition for remaining on the team would have created a difficult if not impossible negotiation for her Black players to undertake. For one, the stereotypes about Black femininity we have discussed underscore White femininity as the universal norm and the source of standards of beauty and appearance. Against these norms, “African American women are viewed as less feminine and less physically attractive than White women” (Greene, 2000, p. 244). Patricia Hill Collins (2000) noted that Black women cannot live up to the standards of femininity—such as straight hair—which are set by society and based on White womanhood. Moreover, components of Black femininity that are inconsistent with the White feminine ideal are potentially read by the dominant culture as masculine or lesbian (Omusupe, 1991).

Thus, Portland's requirement that Harris forgo her braids and baggy clothes can be read as an impossible demand that she adhere to White standards of feminine beauty as a condition for remaining on the team. Harris says that some of her behavior that offended Portland included suggesting to Portland that "as strong Black women [she] and her mother acted as positive role models for [a] teammate" whom Portland had accused Harris of sleeping with (Complaint, 2006, p. 21). This statement—which draws a distinction between "strong Black women" on one hand and an athlete perceived by Portland to be gay on the other—suggests that Harris and Portland recognized gender nonconformity in very different ways. Though Harris's White teammates may have also experienced Portland's standards as a demand to cover gender nonconforming behavior and appearance, there was no inherent racial judgment attached to this requirement, as there was when the standards were applied to Black women. Moreover, the standards imposed by Portland illustrate her utter lack of awareness of issues of race. That she could stand in a room of players, almost half of whom were Black, and urge them to *tan* would be nearly comic if it did not reflect the ingrained racism in society and the general failure to see the effect of racial stereotypes on gender constructions and vice versa.

Not only did race likely factor into the standards of behavior and dress code Portland required of her players, it probably also mediated Portland's interpretation of Harris's resistance to her demands. Morris (2007) suggested that the long-standing marginalization of Black women from the dominant construct of femininity has "contributed to a standpoint from which [they] could reject the dominant ideology of gender inequality" (p. 511). As Omusupe reinforces, many Black women have internalized a nonwhite definition of femininity and thus do not consider their behavior transgressive or resistant. For example, in Morris's (2007) study, Black middle-school girls were "perplexed" at their teacher's suggestion that being outspoken and assertive is not appropriate ladylike behavior. Moreover, they felt it unnecessary to participate in the (apologetic) strategies of their White classmates: "They spoke up in class, they did not downplay their academic success, and they did not let their male classmates get away with hitting or "messaging with" them (p. 498). As a result, their teachers interpreted them as loud, full of attitude, and a threat to their authority, and they disproportionately disciplined Black girls for behavior and appearance infractions (Evans, 1988; Fordham, 1993; Morris, 2007).

A similar ethic in Harris would have set her on a collision course with Rene Portland. And collide they did when Harris denied Portland's accusations of lesbianism and asserted that "she was comfortable with who she was and did not want to change her image" (Complaint, 2006, p. 21). Like the teachers in Morris's study, Portland interpreted this attitude as a threat to her authority, which could explain why Portland "continually singled [Harris] out in practice for humiliation, berating and demeaning her in front of her teammates" before demoting her from a starting position and ultimately kicking her off the team (p. 22).

In sum, although we cannot know why Harris denied Portland's accusations and resisted her demands, we can identify her double bind. Because she was not acting feminine enough for White society, she was deemed masculine and thus a lesbian. In high school, there was no Rene Portland yet, but the dominant culture constantly reminded her of her deviance. She was taunted in opponents' gyms by fans shouting "Mister Harris" instead of the usual jeers of "miss the ball" (Lieber, 2006a). Playing for Portland's ostensibly, emphatically heterosexual team may have seemed like an opportunity for reprieve from this harassment. Yet Portland's apologetic demands, the quid pro quo for this cover, proved impossible to satisfy. For Harris, there was no appearance, no behavior available to her as a Black woman that was unmarked in contrast to the White femininity that remains exnominated. As Caldwell (1991) has said, Black "women . . . live by the circumscriptions of competing beliefs about white and black womanhood and in the interstices of racism and sexism" (p. 369-370). From the constrictions of this interstitial space, Harris resisted Portland's apologetic and used the legal system to challenge the retaliation she experienced as a result.

Jennifer Harris, Race, and the Media

In general, the press reported on *Harris v. Portland* as a case about sexual orientation discrimination (e.g., Anderson, 2005; Associated Press, 2006). In this regard, the coverage represents a praiseworthy departure from the historic silence on the taboo issue of homophobia in sport (though we do not think this case required sports or mainstream media to stray far from its comfort zone because they could always accurately and appropriately point out to their readers that the victim in this case was merely *perceived* to be gay). The framing of the case reduced it to the single axis of sexual orientation, to the exclusion of the intersecting axes of race and gender.

A failure to acknowledge intersectional discrimination created the space in which Rene Portland was allowed to operate without negative consequences. The media, as not just a reflection of culture, but a creator of it, participated in the construction of this relatively safe space. We examine the rhetorics of colorblindness and racial harmony, the discourse and public perceptions of race (in and outside of sport), to understand how these manifested in the Harris case as well as three other recent events that presented opportunities to the media to address issues of intersectionality in the context women's basketball.

One of the clearest explanations of the perceived absence of race in the media is Penn State's own internal investigation of Jennifer Harris's claims. After Harris filed suit, but before the expected trial date and eventual settlement, Penn State cited and reprimanded Portland for creating a "hostile, intimidating, and offensive environment" because of Harris's perceived sexual orientation, but determined that there was insufficient evidence to find Portland culpable of race discrimination. When race was mentioned at all in the media, it frequently amounted to a one-line statement

about the university's lack of findings on the racial discrimination claim. This had the effect of extinguishing further discussion of the racial and intersectional discrimination and also, we believe, implied that Harris's claims of racial discrimination were unfounded and would have similarly been rejected by the court. Because the investigation report is not public, we cannot know what evidence the internal investigators considered or what standards they used. Thus, we cannot rely on Penn State's internal investigation to judge the extent to which race contributed to Portland's conduct.

There is not enough written evidence to identify a particular reason why it was so easy for the media and public alike to believe that Harris could not have been the victim of racial discrimination. Even fan message boards, which are usually quite candid in their assessment of a team's or university's goings-on, remained silent or dismissive on the issue of race (pointing out, for example, that Portland recruits Black players). The silence, however, is consistent with White cultural attitudes toward race and race and sport. In a so-called post-Civil Rights era, popular rhetoric values the concept of a color-blind society and eschews any mention of the word "race." Indeed, it perpetuates the idea that just talking about race is racist. Sport, like every other institution, fosters this rhetoric. Wrote Schultz (2005): "The purported color blindness of U.S. sport and the media often downplays or obscures direct discussions of 'race'" (p. 339).

Except, that is, when sport is being used as a model of successful race relations (Hartmann, 2007). For example, then-Speaker of the House Newt Gingrich, extolling the racial progress that sport exemplifies by reference to the Chicago Bulls, said,

Obsessing on race will not allow us to move beyond race. Perspiration and teamwork will dissolve racism faster than therapy and dialogue. This is the example for society to follow—a group of individuals so focused on a common goal of winning that they don't have time to worry about what color the other guy is. (qtd. in Hoberman, 1998, p. B06)

These two rhetorics, color blindness and racial harmony, illustrate not contradictory ways of dealing with race but rather complementary ones (Hoberman, 1998, 2002; Springwood, 2006). Springwood (2006) wrote, "Ironically, American sport is an arena, in the popular imagination, which simultaneously celebrates itself as a racial utopia while erasing race and racism" (p. 365). A public discussion of Portland's or Penn State's racism begins to dissolve the myths around race in American culture by acknowledging a potential problem with race relations in sport. For example, such a discussion would shatter the belief that close proximity to a Black person diminishes the racist capacity of a White person.

Why would it be so difficult to believe that a White woman could be homophobic—something the media had no problem reporting—but not racist? In her book on White women who "think[] through race," Ruth Frankenberg (1993) argued that "essentialist racism" characterized by hatred on the basis of biological racial difference

has diminished and given way to color evasiveness and color blindness that is not characterized by most in the dominant culture as racist. She and other critical race theorists have delineated various forms of racism that reflect sociohistorical changes in American culture (e.g., Glenn, 2002). Part of the goal of this work is to challenge the contention that racism no longer exists because practices such as slavery, lynching, and formally segregated schools have been abolished. What Frankenberg (1993) has called color evasiveness does not absolve White women of their "complicity with structural and institutional dimensions of inequality" (p. 143). Claims that Portland is racist are easily dismissed by a culture that pretends not to see color and refuses to discuss it. Arguments that Portland could not be racist because she recruits Black women to her team resemble those that emerged from Frankenberg's (1993) interviews, in which White women claimed that their many interactions with women of color had taught them to see only humans, not race. A perceived lack of discriminatory intent protects White women from accusations of racism. "Good women" cannot be "real racists." (p. 147). And certainly Portland can be seen as a good woman by those who want to, including those who do not see homophobia as a problem. A member of the championship, underdog Immaculata basketball team in the 1970s, she has earned the moniker "women's sports pioneer." She has received awards for her work in women's sports and in 2005 was named "Person of the Year" by the Renaissance Fund for her monetary support of scholarships for student athletes (Hohler, 2006). The joint press release announcing the settlement in *Harris v. Portland* reinforced this image, calling her "a tireless advocate and major spokesperson for equality in women's sports under Title IX" (*Harris v. Portland*, Joint Public Statement, 2007).

We suggest, though, that the media's inability to legitimate the multiple jeopardies Harris faced goes beyond the conclusions of Penn State's internal investigation and Portland's character and speaks more broadly to Crenshaw's (1991) critique of a liberal society in which "race, gender, and other identity categories" are "vestiges of bias or domination" that should be "empt[ied] of any social significance." (p. 1242). Because sport, or at least basketball, has been deemed free from racism based on the prevalence of Black players, sportswriters were free to focus on sexual orientation discrimination. The resulting discourse effectively "emptied" not only Harris's race of its "social significance," but also her claims of racism.

Of course, we do not suggest that the media is solely responsible for the cultural inability to comprehend intersectional identity (in fact, we examine the legal system's contributions to this problem in the following section). Yet we believe it is worth contextualizing the public discourse about Jennifer Harris with other examples in which the intersectional identities of female basketball players have been reduced to a single category.

The first example is Sheryl Swoopes, who told *ESPN the Magazine* in October 2005 that she was a lesbian with a long-time partner (Granderson, 2005). The announcement created a flurry of media commentary that addressed a variety of

themes: Swoopes's belief that she was not born a lesbian, how much more difficult it is for a male athlete to come out, Swoopes as role model, and speculations on whether her announcement would dismantle homophobia in sports. The columns and articles always foregrounded her sexuality and rarely mentioned her race. There were a few exceptions. Mechelle Voepel (2005), writing for the *Kansas City Star*, suggested that Swoopes's coming out broke a few stereotypes (presumably about lesbians), including the fact that she is African American. She also noted that there are few publicly gay Black celebrities. Other articles mentioned this fact briefly as well—in part because Swoopes raised the issue in her coming out story by claiming that she did not know of any high-profile, openly gay African Americans because "it's not accepted in the black community" (qtd. in Granderson, 2005). But Voepel was unable to see how Swoopes's race figures into the stereotypes she was ostensibly breaking by being "strikingly attractive" and "glamorous" (Voepel, 2005). It is not our goal here to deconstruct Sheryl Swoopes or deconstruct her performance of race and gender and sexuality; rather we point out that any commentary by Voepel, or others, on how what is seen as attractive in Swoopes reflects a construction of normative White femininity. Even in his blog post on Swoopes's coming out, public intellectual Keith Boykin (2005), who could arguably be one of those few other gay Black celebrities, used race only as a point of comparison to homosexuality.

Craig Washington (2005), also a Black gay man, was one of the few writers to pay more explicit attention to Swoopes's race and the historical oppression of Black people, including Black athletes. Writing for the *Southern Voice*, Washington noted that Swoopes's openness will help young Black lesbians and that she deserves her status as role model for Black girls even more after coming out. The only commentary we found that considered race and sexuality as inextricable was on a blog, blackfeminism.org, where Tiffany Brown (2005) wrote:

In order to be a woman athlete, you had to be comfortable breaking, or be exempt from, traditional (racialized) gender roles. Lesbians inherently fit the bill. Black women also did because the belief that women were "delicate, fragile flowers" was not a privilege (however double-edged it was) extended to us. (n.p.)

Similarly, race was conspicuously absent from the media's coverage of another story involving a Black, lesbian basketball player, Latasha Byears, who in 2003 was charged with raping a former L.A. Sparks teammate at a team party. Byears denied the charges and, after a 2-year investigation, the Los Angeles police dropped the case for lack of evidence. In a wrongful termination lawsuit (which eventually settled), Byears alleged that her dismissal from the L.A. Sparks during this time was discriminatory on the basis of her gender and sexual orientation, pointing out that the Sparks' brother organization, the Lakers, stood behind and continued to employ Kobe Bryant when he was facing similar charges (Quinn, Red, & O'Keeffe, 2005). Byears's story resembles Harris's in a number of ways. Both wore cornrows and

were perceived as masculine in appearance and behavior, both were dismissed from their respective teams due to allegations of behavior that could never be proven, both had been told by superiors in their respective teams to cover behavior deemed deviant (Bondy, 2005), and both challenged the discrimination they said they faced because of their (perceived, in Harris's case) sexual orientation.

Moreover, the media's coverage of Byears's lawsuit is similar to that of Harris's in its omission of any discussion of race. The media explicitly referenced Byears's masculine appearance and behavior and self-acknowledged lesbian sexual orientation (Quinn et al., 2005). Moreover, descriptions of Byears contained implicit racial references, such as the many comparisons to NBA "thugs" like Dennis Rodman and Allen Iverson, and the numerous recountings of her self-declared childhood desire to be a pimp when she grew up (Jackson, 2005; Kobrin & Levin, 2005; McGraw, 2005; Quinn et al., 2005; Terry, 2006). But the articles never suggested that racial stereotypes about sexually aggressive Black men or sexually promiscuous Black women could have played any role in the rape charges brought against her or in her subsequent dismissal from the team and exile from the WNBA. Again, the myth of a color blind and race-evasive society obscured the intersecting role of race in the alleged discrimination experienced by an openly gay player commonly perceived as a "thug" and a "pimp."

(Perceived) deviancy among female Black basketball players, like Byears and Harris, became the center of attention in April 2007 when radio personality Don Imus described the Rutgers women's basketball team, who had just lost the NCAA championship to Tennessee, as "nappy-headed hos." Program guest Sid Rosenberg² responded to Imus's comment by suggesting that the Rutgers team bore a strong resemblance to the NBA's Toronto Raptors.³ Rosenberg's comment, alongside Imus's "nappy-headed ho" remark, illustrates the complex double bind created when race, gender, and sexuality intersect in sport. Although Imus's remark perpetuated racist/sexist stereotypes about physical appearance and Black women's promiscuity, Rosenberg's paradoxically disparages them for failing to comply with a heterosexy feminine ideal.

Together, Imus's and Rosenberg's comments mark the team members as deviant on the basis of gender, race, and sexuality. Yet the public discussion that followed and ultimately prompted MSNBC and CBS radio to cancel the syndicated broadcast of Imus's program focused largely on the racism inherent in the comment. (McDonagh and Pappano [2007] made a similar observation in their preface.) As one columnist observed, "It isn't the Don Imus 'hos' insult that has a lot of Black people calling for his head. It is his use of 'nappy-headed'" (Mitchell, 2007, p. 12). Though feminists did condemn the racialized misogyny in Imus's comments (Gandy, 2007; Mullins, 2007), their reaction "appeared more muted" (Brennan, 2007) than that of the Black religious leaders and journalists who were among the first to publically criticize the remarks (Some criticized the feminists for arriving late to the conversation [e.g., Knapp, 2007], others faulted the media for framing the issue as race over

sex and thus marginalizing the voices of many feminists who spoke out on this issue [Brennan, 2007]). Characteristically, headlines reduced the controversy to one over Imus's "racial remark," "racist comment," or "racial slur" (Carter, 2007; Carter & Story, 2007; CBS/Associated Press, 2007; National Association of Black Journalists, 2007). This tendency, along with the media's omission of Rosenberg's comment comparing the women to the Toronto Raptors, stymied much examination of the subtle homophobia it deployed (the exception is Carroll, 2007). After all, the "mannish" female athlete stereotype has long and effectively operated to oppress female athletes by casting doubt about their heterosexual orientation (Cahn, 1994; Griffin, 1998).

In contrast to the narratives about Harris, Swoopes, and Byears, which were reduced to a single axis of sexual orientation discrimination with little or no attention paid to race and gender, the Rutgers narrative emerged as one of predominantly racial discrimination, with some examination of sex discrimination and very little attention paid to sexual orientation. Perhaps this distinction illustrates just how obvious racism (and sexism and homophobia and most of the other "-isms") has to be to grab the media's attention. It also may be due to the fact that in the Rutgers story, the discrimination came from Don Imus, an outsider to sport, making it safe to discuss race without challenging the myth of racial harmony and colorblindness within sport. In this way, the Rutgers narrative joins the discourse about Swoopes, Byears, and Jennifer Harris as examples demonstrating our cultural inability to fully examine intersecting discrimination in sport.

Intersectionality, Law, and Discourse

Given the interrelatedness of law and culture, our project would be incomplete without an examination of the legal structures that contribute to public framing of this case. In particular, we argue that in light of the categorical nature of antidiscrimination law, the media and other outlets of public discourse cannot help but replicate the law's tendency to perceive intersecting discrimination as severable, which contributes to the omission and erasure of certain aspects of the case, namely race.

The structure of civil rights statutes both reflects and influences our tendency to assign discrimination to discrete categories of race, sex, or sexual orientation, among others. Some statutes, like Title IX of the Education Amendments of 1972 (prohibiting sex discrimination in federally funded schools) and Title VI of the Civil Rights Act of 1964 (prohibiting race discrimination in public accommodations) address only single categories of discrimination. Other state and federal statutes, like Title VII (prohibiting employment discrimination on various grounds), address multiple categories of discrimination, but do so disjunctively in a manner that forces plaintiffs to articulate a cause of action under one category at a time. For example,

the federal court in *DeGraffenried v. General Motors* (1977) expressly rejected an interpretation of Title VII that would have protected Black female plaintiffs from discrimination based on a combination of race and sex (Caldwell, 1991; Crenshaw, 1989). Beyond statutory law, even the federal Constitution's nondiscrimination provision—which does not reference any categories but generally requires that states provide citizens “equal protection of the laws” (U.S. Constitution, Amendment XIV, § 1)—has been consistently applied in a categorical manner, with courts differentiating between various classes of discrimination (race, gender, and others) to determine the level of scrutiny to apply to laws that invoke a particular categorical distinction.

As a result of the single-axis nature of discrimination law, plaintiffs contesting multiple or intersecting discrimination must rely on separate theories and often separate laws, resulting in a compartmentalization of discrimination that is often to plaintiffs' detriment. Harris's case is no exception, as she was forced by the categorical nature of discrimination law to disaggregate the intersecting discrimination she experienced at Penn State into three separate theories: discrimination on the basis of her perceived sexual orientation, on the basis of sex, and on the basis of race. Even Harris's Equal Protection claim, which addressed all three components of discrimination in a single consolidated claim, was subject to the argument that Portland's attorneys made, that the sexual orientation aspects could be extracted from those aspects of the claim having to do with sex and race (*Harris v. Portland*, Brief in Support of Defendant's Motion to Dismiss, 2006). Had it been successful, this argument would have weakened Harris's Equal Protection claims because the category of discrimination that was perhaps easiest to recognize in her case, sexual orientation, is also the category that receives the least protection in the hierarchy of Equal Protection scrutiny. The case settled before any judge had to consider the merits of this argument. But it is relevant here to demonstrate that even multiple, intersecting forms of discrimination presented in a unified claim may be easily perceived as severable and that it is in some cases advantageous for defendants to argue for such disaggregation.

Turning next to Harris's stand-alone race and sex discrimination claims, it is evident that the single-axis nature of antidiscrimination law also operated to her disadvantage. In her complaint, Harris alleged that Portland violated Title IX's prohibition on sex discrimination “when she demoted, harassed, and dismissed [her] from the team because [she] failed to conform to gender stereotypes.” Read narrowly, Title IX does not apply in this situation. Portland did not discriminate against Harris because her sex is female; rather, she discriminated against Harris because Harris performed her gender in ways that Portland read as masculine. But despite this narrow construction, courts have read Title IX and other sex discrimination statutes to protect against some forms of gender discrimination as well as sex discrimination. Most notably, the Supreme Court held in a 1989 decision, *Price*

Waterhouse v. Hopkins, that an employer could not discriminate against a female employee for promotion because she was perceived as too aggressive for a woman, where aggressiveness, at least in men, was a qualification for advancement. However, this decision did not result in lower courts' uniform acceptance of sex discrimination statutes' protection for gender nonconformity. Some lower courts have read the *Price Waterhouse* decision to stand for the narrow proposition that only sex stereotyping that imposes a demonstrable burden on female employees is actionable. Under this rationale, they have largely upheld workplace dress codes that require conformity to gender stereotypes (Levi, 2008). Another important limitation of the sex stereotyping doctrine occurs when courts reject, as many do, the argument that same-sex attraction qualifies as gender nonconforming behavior, which ensures that gender nonconformity remains eligible for protection as sex discrimination while sexual orientation does not. Both of these limitations would have disadvantaged Harris because much of the discrimination she alleged was either motivated by Portland's self-avowed lesbian bias (her attempts to regulate whom Harris was dating or sleeping with, her accusations that Harris was dating other players, and her enlistment of other players and Harris's mother to catch Harris with another woman and prevent her from associating with other suspected lesbians) or could be characterized as a gender normative dress code (demoting and terminating Harris as punishment for "disrespecting Portland by not changing her image to be more feminine and stop wearing cornrows"). Thus, at the intersection of sex/gender and sexual orientation, the single-axis nature of Title IX disadvantaged Harris.

Not only does Title IX fail to redress discrimination at the intersection of sex and sexual orientation, it also likely contributed to the public framing of Harris's case in a way that erased the racial nature of the discrimination at issue. Both as a federal law in general, and as an antidiscrimination law in particular, Title IX is uniquely pervasive in the cultural discourse. In the words of two authors, Title IX "may be the first federal law to achieve pop status" (Levit & Verchick, 2006, p. 107). It is celebrated in some circles and vilified in others, sometimes receiving more credit, and often receiving more blame, than is warranted by the context. As its popularity attests, Title IX's influence on culture is more than the direct effect of particular, individual enforcement actions brought in its name. It has influenced and continues to influence cultural perceptions of discrimination in and around its scope.

Title IX is credited with increasing the number of opportunities for women to participate in collegiate and interscholastic athletics (Carpenter & Acosta, 2005), but White female athletes have been the primary beneficiaries of this progress. For example, the Women's Sports Foundation (2003) reported that 77% of intercollegiate teams added between 1981 and 1998 were in sports where Black female athletes are moderately or severely underrepresented. Many of the women's sports that have emerged in the Title IX era—like golf, tennis, ice hockey, soccer, equestrian, rowing,

and water polo—are more popular among or are more easily accessed by White athletes (Evans, 1998; Mathewson, 1995). Consequently, Black female athletes remain relegated to two sports, basketball and track (Mathewson, 1995; National Collegiate Athletic Association, 2007; Oglesby, 1981; Olson, 1990). Though Title IX has created more and better opportunities for female athletes of color to compete in basketball and track, racialized patterns of participation create problematic inequities for Black female athletes who participate in these sports, in particular, by perpetuating “the myth that African Americans have naturally superior speed and jumping skills” (Olson, 1990, p. 129; see also Oglesby, 1981). The widespread belief in the inherent, universal talent and ability of Black athletes makes it easy for society to ignore and dismiss the intellect, creativity, and character that Black athletes bring to the game (Davis, 1995), which in turn makes it easy to internalize racial stereotypes about intellectual inferiority and exclude African Americans from positions of power including coaching and athletic administration (Davis, 1999; Hoberman, 1997; Shropshire, 1996; Smith, 1996). Due to its singular focus on sex discrimination, Title IX is limited in its ability to address intersecting discrimination, as in the case of female athletes of color. Owing to the popular status that Title IX enjoys, it is possible that this limitation pervades public discourse about discrimination in its purview.

Harris’s stand-alone race discrimination claims were also operating at a disadvantage created by the single-axis nature of antidiscrimination law, which fails to address additional, particular discrimination that is rooted in the intersection of race and sex. For example, as Caldwell (1991) explained, employers may make adverse employment decisions against Black female employees that reflect and perpetuate stereotypes about Black female sexuality. She examines one case in which an unmarried Black woman lost her position as a youth counselor when she became pregnant because her employer believed that she was no longer able to serve as a role model for teenagers. They may also “exclude black women from jobs that involve contact with the public” because of the premium they place, or assume that their customers place, on (White) female sexuality (p. 375). By declining to mitigate such discriminatory conduct in the workplace, the law has not only failed to produce precedent that would have contributed to the success of Harris’s race discrimination claim, but it also contributed to a public perception that fails to recognize or validate claims of intersecting discrimination such as Harris’s.

Moreover, the essentialist beliefs preventing antidiscrimination law from differentiating between Black women and White women, or Black women and Black men, may also prevent it from differentiating *among* Black women. As Carbado and Gulati (2001) explained,

The social meaning of being a black woman is not monolithic and static but contextual and dynamic. An important way in which it is shaped is by performance. In other words, how black women present their identity can (and often does) affect whether and how they are discriminated against. (p. 717)

They offer the hypothetical example of a Black female employee who is not promoted by her employer, not on the basis of race (because the employer promotes other Black employees), nor gender (because the employer promotes other women), nor even because of her status as a Black woman (because the employer promotes other Black women), but because of how she performs her identity as a Black woman by her appearance and behavior. Applying an essentialist view of race and sex, courts allow employers to regulate indicia of race that are socially constructed and performative, such as appearance and behavior—as did the court in *Rogers v. American Airlines* (1981) when it upheld an employer's policy against cornrows because it did not affect a "natural" hairstyle (Yoshino, 2002, p. 888). Such applications of essentialist beliefs in law suggest that they are pervasive in culture as well, contributing to the public inability to perceive demands that Harris alter her hair and clothing, which may have signified Blackness, as a form of discrimination that intersects with race.

The limits of discrimination law to address intersecting, performance-based identity would have made it difficult for Harris to press her race discrimination claims in court. Neither the fact that Portland dismissed all three active Black players who were eligible to return for the 2005-2006 season and allowing all of the returning White players to continue to participate on the team nor the fact that she tended to dismiss Black players at a relatively higher rate than White players conclusively establishes that Portland intentionally discriminated against Harris on the basis of race as required under Title VI. Had the case proceeded to trial, such evidence would have established at most a presumption of intentional discrimination, which Portland could have rebutted by demonstrating that she had other, legitimate reasons for terminating Harris from the team. To this end, Portland would have attempted to prove in court what she had already stated publicly—that she terminated Harris because of her bad attitude. By allowing Portland to proffer this reason as an alternative to racial animus, the law helps obscure the possibility that Portland's perception of Harris's "bad attitude" was her subjective interpretation of Harris's appearance and behavior. Portland's decision could have instead been about attitude *and* race, namely her performance of her identity as a "strong" black woman who chose to "dress[] and wear[] her hair in ways that reflect [her] African-American identity" (Complaint, 2006, p. 64). Thus, the tendency of antidiscrimination law to compartmentalize discrimination on the basis of sex, sexual orientation, and race, which, when coupled with essentialist omission of performative, constructive attributes of these categories, would have made it difficult for Harris to articulate a race discrimination case against Portland on the basis of the facts alleged.

In sum, we suggest that the single-axis nature of antidiscrimination law contributes to both the framing of particular cases involving intersectional discrimination and generally to the overall perception that sex, and increasingly sexual orientation as Harris's case attests, are the operative forms of discrimination in college athletics. These limitations of law contribute to the explanation for the omission of race from the discourse about Harris's case.

Conclusion

We have identified three reasons why the claims of sexual orientation discrimination were privileged over those of gender and race in the media and public discourse of the Harris case. First, the framing reflects the cultural inability to comprehend race, gender, and sexuality as intersectional. Second, there was a lack of understanding about discrimination based on identity versus performance of identity. And third, many who saw the injustice in Rene Portland's homophobic behavior felt homophobia as the most salient issue in this case and wanted her to be punished for her years of bad behavior.

The last was perhaps the easiest to see and comprehend, and even embrace; however, in this article, we have theorized that the discrimination Harris faced likely derived from a raced and gendered dynamic that was made invisible because of the failure to understand intersectionality and the differences between identity and performance of identity. A disciple of the female apologetic, Portland may have attempted to censor Harris's style because she associated it with masculinity. Such a reading, however, ignores the increasingly gender-nonspecific convergence of hip-hop and basketball. Moreover, Harris could not comply with the femininity standard Portland imposed on the team because this standard is modeled on White femininity. Any effort she could have made to emphasize her heterosexuality, an important component of Portland's femininity ideal, would have likely made her vulnerable to racial stereotypes about promiscuity. We also suggest that race may have modulated Portland's perception of Harris's insubordination and motivated her retaliatory decision to terminate her from the team.

Despite the role race played in this case, it was virtually ignored in the public discourse. Penn State's internal investigators' short shrift to the race claims may offer a partial explanation. However, the fact that the omission of race is consistent with the pattern of single axis, reductionist analysis applied in other stories involving race, sexual orientation, and women's basketball makes it worthy of further analysis. It is a trend that may reflect the perception that sport—in particular basketball, due to its dominance by Black players—is a model of racial harmony, the perception that “good people” are not racist, and the perception that even talking about race is racist in this colorblind society. We have also suggested that the omission of race from the discourse about Harris's case derives in part from the role that single-axis antidiscrimination law plays in the framing of discrimination cases and discrimination generally in the context of women's sport. We hope that this analysis contributes to a greater understanding of the ways in which both cultural and legal structures operate to erase the relevance of race in the context of women's sport.

Notes

1. National Center for Lesbian Rights (NCLR) also filed suit with the agency that enforces state antidiscrimination laws, the Pennsylvania Commission on Human Rights. This suit remained pending until Harris withdrew it as a condition of the settlement.

2. Not coincidentally, Rosenberg was reprimanded and temporarily suspended in 2001 after he remarked on the air that Venus and Serena Williams would be more likely to pose in *National Geographic* than *Playboy*.

3. One possible explanation we have heard for why Rosenberg chose to compare Rutgers to the Raptors in particular is because they too wear red uniforms.

References

- Ammons, L. L. (1995). Mules, madonnas, babies, bathwater, racial imagery and stereotypes: The African American woman and the Battered Woman Syndrome. *Wisconsin Law Review*, 1995, 1003-1080.
- Anderson, S. (2005, November 3). Swoopes, Portland should talk. *Pittsburgh Post-Gazette*, p. C2.
- Associated Press. (2006, May 18). Penn State coach accuses group of trying to exploit bias case. *ESPN.com*. Retrieved July 20, 2008, from <http://sports.espn.go.com/espn/print?id=2450199&type=story>
- Austin, R. (1989). Sapphire bound!. *Wisconsin Law Review*, 1989, 539-578.
- Birrell, S., & McDonald, M. G. (2000). *Reading sport: Critical essays on power and representation*. Boston: Northeastern University Press.
- Blatt, J., & Harris, J. (2006, November). "I was kicked off my team for being 'gay.'" *Cosmo Girl*, pp. 96-97.
- Bondy, F. (2005, October 30). WNBA is terrified of its gay athletes. *New York Daily News*, p. 72.
- Boyd, T. (2004, August 19). They're playing bas-ket-ball. *ESPN.com*. Retrieved March 17, 2008, from <http://sports.espn.go.com/espn/page3/story?page=boyd/040818>
- Boykin, K. (2005, October 26). WNBA's Sheryl Swoopes come out. *KeithBoykin.com*. Retrieved July 20, 2008, from http://www.keithboykin.com/arch/2005/10/26/wnbas_sheryl_sw
- Brennan, C. (2007, April 11). Rutgers women stand tall in class. *USA Today*, p. 12C.
- Brown, T. (2005, October 26). "Oh sh*t" or "No sh*t": Sheryl Swoopes is gay and thoughts on women, masculinity, and pro sports. *blackfeminism.org*. Retrieved July 24, 2007, from <http://blackfeminism.org/index.php/2005/10/26/sexuality-and-women-athletes-or-cheryl-swoopes-is-gay/>
- Buyse, J. (2006). Atalantan distractions. *Scholar and Feminist Online*, 4(3), n.p. Retrieved August 23, 2008, from http://www.barnard.edu/sfonline/sport/buyse_01.htm
- Cahn, S. (1994). *Coming on strong: Gender and sexuality in twentieth-century women's sport*. Cambridge, UK: Harvard University Press.
- Caldwell, P. (1991). A hair piece: Perspectives on the intersection of race and gender. *Duke Law Journal*, 1991, 367-396.
- Carbado, D., & Gulati, M. (2001). The fifth black woman. *Journal of Contemporary Legal Issues*, 21, 701-729.
- Carpenter, L., & Acosta, R. V. (2005). *Title IX*. Champaign, IL: Human Kinetics.
- Carrington, B. (1998). Sport, masculinity, and black cultural resistance. *Journal of Sport and Social Issues*, 22, 275-298.
- Carroll, H. (2007, April 13). *The National Center for Lesbian Rights commends Don Imus firing*. Retrieved April 5, 2008, from http://www.nclrights.org/site/PageServer?pagename=press_st_imus_rutgers041307
- Carter, B. (2007, April 10). Don Imus suspended from radio show over racial remarks. *New York Times*, p. C1.
- Carter, B., & Story, L. (2007, April 12). NBC News drops Imus show over racial remarks. *New York Times*, p. A1.
- CBS/Associated Press. (2007, April 12). CBS fires Don Imus over racial slur. *CBSnews.com*. Retrieved April 5, 2008, from <http://www.cbsnews.com/stories/2007/04/12/national/main2675273.shtml>
- Collins, P. H. (2000). *Black feminist thought: Knowledge, consciousness, and the politics of empowerment* (2nd ed.). New York: Routledge.
- Collins, P. H. (2004). *Black sexual politics: African Americans, gender, and the new racism*. New York: Routledge.

- Crenshaw, K. (1991). Mapping the margins: Intersectionality, identity politics, and violence against women of color. *Stanford Law Review*, 43, 1241-1299.
- Crenshaw, K. W. (1989). Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics. *University of Chicago Legal Forum*, 1989, 139-168.
- Davis, T. (1995). The myth of the superspade: The persistence of racism in college athletics. *Fordham Urban Law Journal*, 22, 615-698.
- Davis, T. (1999). Racism in athletics: Subtle yet persistent. *University of Arkansas Little Rock Law Review*, 21, 881-900.
- DeGraffenried v. General Motors, 558 F.2d 480 (8th Cir. 1977).
- Douglas, D. (2002). To be young, gifted, black and female: A meditation on the cultural politics at play in representations of Venus and Serena Williams. *Sociology of Sport Online*, 5(2). Retrieved August 22, 2008, from http://physed.otago.ac.nz/sosol/v5i2/v5i2_3.html
- Evans, G. (1988). Those loud black girls. In D. Spender & E. Sarah (Eds.), *Learning to lose: Sexism and education* (pp. 183-190). London: The Women's Press.
- Evans, T. (1998). In the Title IX race toward gender equity, the black female athlete is left to finish last. *Howard Law Journal*, 42, 105-128.
- Felshin, J. (1974). The social view. In E. W. Gerber, J. Felshin, P. Berlin, & W. Wyrick (Eds.), *The American women in sport* (pp. 179-269). Reading: Addison-Wesley.
- Festle, M. J. (1996). *Playing nice: Politics and apologies in women's sports*. New York: Columbia University Press.
- Figel, B. (1986, June 16). Lesbians in world of athletics. *Chicago Sun Times*, p. 111.
- Fordham, S. (1993). "Those loud black girls": (Black) women, silence, and gender "passing" in the academy. *Anthropology and Education Quarterly*, 24, 3-32.
- Frankenberg, R. (1993). *White women, race matters: The social construction of whiteness*. Minneapolis: University of Minnesota Press.
- Fulton, B. (2006, January 15). Davies tells her story. *Indiana Gazette*. Retrieved August 22, 2008, from http://www.zwire.com/site/news.cfm?BRD=1078&dept_id=151024&newsid=15933028&PAG=461&rfi=9
- Gandy, K. (2007, April 9). *Comments broadcast on CNN's Lou Dobbs tonight*. Retrieved April 4, 2008, from <http://transcripts.cnn.com/TRANSCRIPTS/0704/09/ldt.01.html>
- Glenn, E. N. (2002). *Unequal freedom: How race and gender shaped American citizenship and labor*. Cambridge, MA: Harvard University Press.
- Granderson, L. Z. (2005, October 26). Outside the arc. *ESPN the Magazine*. Retrieved May 17, 2008, from <http://sports.espn.go.com/wbna/news/story?id=2204322>
- Greene, B. (2000). African American lesbian and bisexual women. *Journal of Social Issues*, 56, 239-249.
- Griffin, P. (1998). *Strong women, deep closets: Lesbians and homophobia in sport*. Champaign, IL: Human Kinetics.
- Griffin, P. (2007, February 6). Settling can mean victory: Reflections on the Rene Portland—Jen Harris lawsuit settlement. *Outsports.com*. Retrieved December 27, 2007, from <http://outsports.com/campus/2007/0206harris.htm>
- Halberstam, J. (1998). *Female masculinity*. Durham, NC: Duke University Press.
- Harris v. Portland, Amended Complaint. (2006, May 26). Filed in the United States District Court for the Middle District of Pennsylvania.
- Harris v. Portland, Brief in Support of Defendant Maureen T. Portland's Motion to Dismiss. (2006, February 9). Filed in the United States District Court for the Middle District of Pennsylvania.
- Harris v. Portland, Joint Public Statement. (2007, February 6). Reported in *The Daily Collegian*. Retrieved August 22, 2008, from <http://www.collegian.psu.edu/archive/2007/02/02-06-07tdc/02-06-07dweb-01.asp>
- Hartmann, D. (2007). Rush Limbaugh, Donovan McNabb, and "a little social concern": Reflections on the problems of whiteness in contemporary American sport. *Journal of Sport and Social Issues*, 31(1), 45-60.

- Hoberman, J. (1997). *Darwin's athletes: How sport has damaged black America*. New York: Houghton Mifflin.
- Hoberman, J. (1998, January 11). How we've whitewashed race in the world of sports. *Newsday*, p. B06.
- Hoberman, J. (2002, November 13). Race and sports: The social costs of black dominance. *Play the game: Home for the homeless questions in sport*. Retrieved July 23, 2007, from <http://www.playthegame.org/Home/Knowledge%20Bank/Articles/Race%20and%20Sport%20The%20Social%20Costs%20of%20Black%20Dominance.aspx#>
- Hohler, B. (2006, March 26). When the fouls get very personal: Player's suit claims Penn State coach was biased against lesbians. *Boston Globe*, p. D1.
- Jackson, S. (2005, September 7). Hard time with Latasha Byears. *ESPN.com*. Retrieved March 17, 2008, from <http://sports.espn.go.com/espn/page2/story?page=jackson/050907&num=0>
- Kaufman, M. (1993, April 21). The last bastian. *Detroit Free Press*, pp. 1C, 6C.
- Knapp, G. (2007, April 10). Women need to raise voices on Imus insult. *San Francisco Chronicle*, p. B1.
- Kobrin, S., & Levin, J. (2005, August 21). The glass closet. *Los Angeles Times Magazine*, p. 10.
- Levi, J. (2008). Misapplying equality theories: Dress codes at work. *Yale Journal of Law and Feminism*, 19, 353-390.
- Levit, N., & Verchick, R. (2006). *Feminist legal theory: A primer*. New York: New York University Press.
- Lieber, J. (2006a, May 11). Harris stands tall in painful battle with Penn State coach. *USA Today*, p. 3C.
- Lieber, J. (2006b, May 11). Others make allegations against Penn State's Portland. *USA Today*, p. 3C.
- Lipsyte, R. (1991, June 21). Center fielder fills void by becoming political. *New York Times*, pp. 1C, 4C.
- Longman, J. (1991, March 10). Lion's women's basketball coach is used to fighting and winning. *Philadelphia Inquirer*, p. G01.
- Masse, C., & Stewart, D. (1998, January 15). Wicks explains departure; Portland stands firm. *The Daily Collegian*. Retrieved August 22, 2008, from <http://www.collegian.psu.edu/archive/1998/01/01-15-98tdc/01-15-98d03-004.asp>
- Mathewson, A. D. (1995). Black women, gender equity, and the function at the junction. *Marquette Sports Law Journal*, 6, 239-266.
- McDonagh, E., & Pappano, L. (2007). *Playing with the boys: Why separate is not equal in sports*. New York: Oxford University Press.
- McDonald, M., & Birrell, S. (1999). Reading sport critically: A methodology for interrogating sport. *Journal of Sociology of Sport*, 16, 283-300.
- McGraw, P. B. (2005, September 10). WNBA's version of Rodman on way back? *Chicago Daily Herald*, p. 1.
- Mitchell, M. (2007, April 12). Nappy-headed? Now those are fighting words; Imus must learn racial insults are off-limits. *Chicago Sun-Times*, p. 12.
- Morris, E. (2007). "Ladies" or "loudies"? Perceptions and experiences of black girls in classrooms. *Youth & Society*, 38, 490-515.
- Mullins, A. (2007, April 9). *Women's Sports Foundation responds to inappropriate comments made by Don Imus regarding the Rutgers women's basketball team*. Retrieved August 22, 2008, from <http://www.womenssportsfoundation.org/Content/Press-Releases/2007/Womens-Sports-Foundation-responds-to-inappropriate-comments-made-by-Don-Imus-regarding-the-Rutgers-w.aspx>
- National Association of Black Journalists. (2007, April 6). *NABJ appalled by Imus' racist comments, calls for boycott of show*. Retrieved July 20, 2008, from <http://www.pnnewswire.com/cgi-bin/stories.pl?ACCT=104&STORY=/www/story/04-06-2007/0004561011&EDATE=>
- National Collegiate Athletic Association. (2007). *Student-athlete race and ethnicity report*. Indianapolis, IN: Author.
- Oglesby, C. A. (1981). Myths and realities of black women in sport. In T. S. Green, C. A. Oglesby, A. Alexander, & N. Frank (Eds.), *Black women in sport* (pp. 1-13). Reston, VA: American Alliance for Health, Physical Education Recreation and Dance.
- Olson, W. (1990). Beyond Title IX: Toward an agenda for women and sports in the 1990s. *Yale Journal of Law and Feminism*, 3, 105-150.

- Omusupe, E. (1991). Black /lesbian/bulldagger. *Differences: A Journal of Feminist Cultural Studies*, 3(2), 101-111.
- Pascoe, C. J. (2007). *Dude, you're a fag: Masculinity and sexuality in high school*. Berkeley: University of California Press.
- Price Waterhouse v. Hopkins, 490 U.S. 228 (1989).
- Quinn, T. J., Red, C., & O'Keeffe, M. (2005, October 30). Battle of the same sex: Byears lawsuit outs WNBA conflict on gay issue. *New York Daily News*, p. 94.
- Ramachandran, G. (2005). Intersectionality as "Catch 22": Why identity performance demands are neither harmless nor reasonable. *Albany Law Review*, 69, 299-342.
- Rogers v. American Airlines, 527 F. Supp. 229 (S.D.N.Y. 1981).
- Schultz, J. (2005). Reading the catsuit: Serena Williams and the production of blackness at the 2002 U.S. Open. *Journal of Sport and Social Issues*, 29, 338-357.
- Shockley, A. A. (1983). The black lesbian in American literature: An overview. In B. Smith (Ed.), *Home girls: A black feminist anthology* (pp. 83-93). New York: Kitchen Table: Women of Color Press.
- Shropshire, K. (1996). *In black and white: Race and sport in America*. New York: New York University Press.
- Smith, R. (1996). When ignorance is not bliss: In search of racial and gender equity in intercollegiate athletics. *Missouri Law Review*, 61, 329-392.
- Solomon, A. (1991, March 26). Passing game: How lesbians are being purged from women's college hoops. *Village Voice*, pp. 142, 92.
- Springwood, C. F. (2006). Basketball, Zapatistas, and other racial subjects. *Journal of Sport and Social Issues*, 30, 364-373.
- Terry, M. (2006, July 10). The quiet court battle back. *Los Angeles Times*, p. 5.
- Vertinsky, P., & Captain, G. (1998). More myth than history: American culture and representations of the black female's athletic ability. *Journal of Sport History*, 25, 532-561.
- Voepel, M. (2005, October 30). Swoopes and homosexuality in sports: Choice to come out is tough for athletes. *Kansas City Star*, p. C1.
- Wallace, M. (1979). *Black macho and the myth of the superwoman*. New York: Warner Books.
- Washington, C. (2005, November 4). Sheryl Swoopes' act of defiance. *Southern Voice*. Retrieved July 20, 2008, from http://www.sovo.com/print.cfm?content_id=4514
- Women's Sports Foundation. (2003). *Title IX and race in intercollegiate sport*. East Meadow, NY: Women's Sports Foundation.
- Yoshino, K. (2002). Covering. *Yale Law Journal*, 111, 769-939.

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