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Friday Night Lite: How De-Racialization in the Motion Picture Friday Night Lights Disserves the Movement to Eradicate Racial Discrimination from American Sport

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FRIDAY NIGHT ‘LITE’:
 HOW DE-RACIALIZATION IN THE MOTION PICTURE *FRIDAY
 NIGHT LIGHTS* DISSERVES THE MOVEMENT TO ERADICATE
 RACIAL DISCRIMINATION FROM AMERICAN SPORT

N. JEREMI DURU*

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We must reclaim . . . the true spirit of sport, deconstructing discriminatory barriers and ensuring they will never rise again. By doing so, we can enjoy for once the actual design of sport: to rise, and fall, and rise again together, all cultures, all nations, all races.

- Muhammad Ali¹

INTRODUCTION

Sport has a unique power to unite.² It has the power to cut across racial and socioeconomic lines and join individuals, regardless of background, in athletic competition.³ Team sport, which requires concerted group effort, can be particularly powerful in this respect, as success demands cooperative interaction among all team members, whatever the differences among them.⁴ Indeed, sport's unifying power is such that it is credited, "[m]ore than any other [institution, with proving] . . . that racial integration can work."⁵

The power of sport to unite, however, has unfortunately obscured the extent to which sport is beset with the sociological ills plaguing broader society. Indeed, there exists in contemporary America a widely-held belief that sport is a utopian realm, immune to the issues of race with which society in general must grapple.⁶ The "perception [is] that sport itself transcends

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¹ Muhammad Ali, *Foreword* to RICHARD LAPCHICK, *SMASHING BARRIERS*, at xi (2001).

² Derek M. Mercadal, *St. Augustine v. LHSAA: Discrimination, Desegregation, and the State Action Doctrine*, 6 SPORTS L.J. 107, 108 (1999).

³ *See id.*

⁴ *See id.*

⁵ Paul Finkelman, *Baseball and the Rule of Law*, 46 CLEV. ST. L. REV. 239, 255 (1998).

⁶ Paul M. Anderson, *Racism in Sports: A Question of Ethics*, 6 MARQ. SPORTS L.J. 357, 357 (1996). Consider former United States Senator George Allen's perspective on the impact of race in sport, which illustrates both the view of sport as immune from racial discord or distinction, and the fallacy of that view. Allen, a former collegiate quarterback at UCLA and the University of Virginia and the son of former National Football League Coach George Allen, Sr., describes sport as a racially neutral utopia: "On football teams and every team sport, you don't care about someone's religion, race or their ethnicity. . . . All you care about is if that person can help your team. . . . It's a true meritocracy." Warren Fiske, *Sen. Allen Offers Another Apology For Rally Remark*, THE VIRGINIAN-PILOT, Sept. 13, 2006 at A1. Although he articulates this view, Allen, who once hung a noose in his law

race,” and, consequently, “[i]n our culture sport is often presented as one area that is free from racism.”⁷ The perception, however, is illusory.⁸ While the sports world may appear a “model of race relations for the rest of society[. . .]. . . . [a] more sensitive look at the sports world reveals that this idyllic picture is misleading.”⁹ Sport is, of course, a microcosm of society and, just as racism persists in society, so too does racism persist in sport.¹⁰ Thus, as attractive as the utopian vision may be, racism is undeniably “intertwined in the sports culture.”¹¹

The basis for the idyllic picture of uniform racial cohesion in American sport lies largely in the misguided belief that the cessation of overt racial barriers to membership on athletic teams meant the elimination of racism from sport altogether.¹² And, as players of color have gained access to competitive athletic outlets previously reserved for whites, and indeed, as their numbers have predominated in some professional leagues, such as the National Football League (“NFL”) and the National Basketball Association (“NBA”), this idyllic picture has gained sustenance. In actuality, however, rather than signaling an end to discrimination in sport, “[b]lack visibility in collegiate and professional sports has merely served to mask the racism that pervade[s] the entire sport establishment.”¹³ Indeed, racial discrimination remains a factor in professional and amateur athletics alike, impacting team membership, management, and ownership.¹⁴

Still, the idyllic picture persists, and it persists because an unintrusive view of sport supports it. On its face, a sporting

office and has long publicly revered the Confederate flag, reportedly routinely referred in college to blacks as “niggers” and left UCLA for Virginia “because he wanted to play football in a place where ‘blacks knew their place.’” Michael Scherer, *Teammates: Allen Used “N-word” in College*, SALON.COM, Sept. 24, 2006, http://www.salon.com/news/feature/2006/09/24/allen_football/.

⁷ Timothy Davis, *The Myth of the Superspade: The Persistence of Racism in College Athletics*, 22 FORDHAM URB. L.J. 615, 639 (1995) (quoting Alison Dewar, *Intergroup Race Relations: Success or Failure?*, in RACISM IN COLLEGE ATHLETICS: THE AFRICAN-AMERICAN ATHLETE’S EXPERIENCE 225 (Dana D. Brooks & Ronald C. Althouse eds., 1993) [hereinafter RACISM IN COLLEGE ATHLETICS]); see also Anderson, *supra* note 6, at 365.

⁸ Anderson, *supra* note 6, at 359 (“To most outward perceptions, sports has become a place where racism is no longer a problem, yet . . . the facts do not bear out this conclusion.”).

⁹ *Id.* at 357.

¹⁰ Matthew J. Mitten, *Foreword to Symposium, Sports Law as a Reflection of Society’s Laws and Values*, 38 S. TEX. L. REV. 999 (1997).

¹¹ Anderson, *supra* note 6, at 365-66 (quoting KENNETH L. SHROPSHIRE, IN BLACK AND WHITE: RACE AND SPORTS IN AMERICA 64 (1996)).

¹² Timothy Davis, *Who’s In and Who’s Out: Racial Discrimination in Sports*, 28 PAC. L.J. 341, 342 (1997) (citing KENNETH L. SHROPSHIRE, IN BLACK AND WHITE: RACE AND SPORTS IN AMERICA 64 (1996)).

¹³ Davis, *supra* note 12, at 342 (quoting D. STANLEY EITZEN & GEORGE H. SAGE, *SOCIOLOGY OF NORTH AMERICAN SPORT* (5th ed. 1993)).

¹⁴ SHROPSHIRE, *supra* note 11, at 17-18.

contest involving players and coaches of different races pursuing the shared goal of victory is unlikely to betray any racial discord potentially existing within the organizations involved.¹⁵ Such interaction, of course, implies a racial harmony that may not, in fact, exist.¹⁶ To the extent, however, the surface is not disturbed, any disharmony remains obscured. So, the idyllic picture persists when the surface is left undisturbed – when we portray sport as devoid of the racial discord that continues to plague it. It persists because of films such as *Friday Night Lights*, Universal Pictures' 2004 motion picture based on Pulitzer Prize-winning investigative reporter H.G. Bissinger's chronicle of Odessa, Texas' 1988 Permian High School Panthers football team.¹⁷

Playing in a \$5.6 million dollar, 20,000 seat, state-of-the-art stadium tended by a full-time groundskeeper housed on the premises, and spending \$70,000 on chartered jets for flights to away games,¹⁸ Permian's football program was, in 1988, perhaps the most intense and successful high school football program in a

¹⁵ Anderson, *supra* note 6, at 357.

¹⁶ *Id.*

¹⁷ The film *Friday Night Lights* is not to be confused with the National Broadcasting Corporation's television program of the same name, which follows the fortunes of a fictional high school football team. See David J. Lee, *NBC Greenlights Friday Night Lights*, ODESSA AM., Feb. 5, 2006, at B1. The television program acknowledges drawing inspiration from the story of the 1988 Permian Panthers. *Id.* The influence is obvious, as evidenced by the featured team's location in a small football-fanatical Texas town and by the team's nickname – the Panthers. Unlike the film, however, the television program does not purport to tell the tale of the 1988 Permian Panthers. *Id.* Indeed, its Panthers represent fictional Dillon High School and share no names with the Permian Panthers' players. *Id.*

Interestingly, Peter Berg, the director and co-writer of the film, writes, executive producer, and directs the television program. *Id.* Perhaps recognizing the folly of de-racializing the Permian Panthers' experience in the film, Berg addresses the issue of racism within the first five minutes of the television program's first episode through a conversation between one of the Dillon Panther players and a television reporter. *Friday Night Lights* (NBC television broadcast Oct. 3, 2006). Berg further explores issues of race and sport – and particularly the issue of race-based positional segregation – in episodes airing several months later, in which racial divisions develop among teammates after an assistant coach suggests the team's star black running back is ill-equipped to play the quarterback position. *Friday Night Lights* (NBC television broadcast Feb. 7, 2007; *Friday Night Lights* (NBC television broadcast Feb. 14, 2007).

Burdened with the stereotype of inferior intelligence but superior physical attributes, black football players have long been discouraged, and in some cases banned, from playing quarterback, "a position considered to be football's thinking and control position," and instead steered toward positions such as running back, "where speed and reactive ability are considered essential." LAPCHICK, *supra* note 1, at 229; see discussion *infra* Part II.B.1. Indeed, through the 1998 NFL season "only three black quarterbacks had been drafted in the first round in the history of the NFL draft," and, during that season, 91% of the NFL's quarterbacks were white, while 87% of the NFL's running backs were black. *Id.* Although circumstances for black quarterbacks have improved marginally since then, segregation at the quarterback position remains stark: fewer than 20% of the 101 quarterbacks listed on NFL teams' rosters at the 2006 season's inception were black, despite 66% of the League's overall players being black. See Richard Lapchick, *The 2005 Racial and Gender Report Card: National Football League*, Aug. 17, 2006, available at http://www.bus.ucf.edu/sport/public/downloads/2005_NFL_RGRC.pdf.

¹⁸ Michael Swindle, *In Short/Football*, N.Y. TIMES, Oct. 7, 1990, §7, at 20.

state renowned for intense and successful high school football.¹⁹ The film explores the bonds formed among Permian's players, known affectionately as "Mojos," as well as the players' relationships with the broader Odessa community and the pressure the players endured as they pursued a state championship. Ultimately, the film celebrates the team and the adversity it surmounts in heart-warming fashion. In doing so, however, the film dramatically alters the story of the 1988 Permian Panthers.

Some alterations—such as sending the Permian Panthers to a high-scoring championship game defeat only after a Herculean second half Panthers comeback in front of 55,000 spectators, when, in fact, the Panthers lost, not in the championship, but in the semi-finals in a low-scoring affair in front of 10,000 spectators²⁰—appear harmless and understandable gambits aimed at increasing marketability. Other alterations, however, are harmful, indeed. Most notably, the film essentially ignores what Bissinger described as "the most ugly racism [he] ha[d] ever encountered,"²¹ giving scant attention to the substantial racial discord and discrimination at the core of the 1988 Permian Panthers' experience; discord and discrimination that found expression at Permian in many of the ways in which they find expression in the broader world of American sport.²² While the film's de-racialization of the story, may, like its hyperbolic rendering of the team's success, have served to increase the film's

¹⁹ Between the years 1964 and 1990, the Permian Panthers football team had won four state championships, been to the state finals a record eight times, and made the playoffs fifteen times. Its worst record in any season over that time span had been seven and two, and its winning percentage overall, .825, was by far the best of any team in the entire state in the modern era of the game dating back to 1951. *Id.* (quoting LARRY MCMURTRY, *TEXASVILLE* (Pocket Books 1988) (internal quotation marks omitted)).

²⁰ Jon Mark Beilue, *This 'Friday Night Lights' Fails to Shine*, AMARILLO GLOBE-NEWS, Oct. 10, 2004, at B1, available at http://www.amarillo.com/stories/101004/hss_beilue.shtml; Tobias Xavier Lopez, *Movie Fails to Touch on Vital Issues*, FORT-WORTH STAR TELEGRAM, Oct. 10, 2004, at C20; David Barron, *Real Life vs. Reel Life*, HOUS. CHRON., Oct. 8, 2004, at 4.

²¹ H.G. BISSINGER, *FRIDAY NIGHT LIGHTS: A TOWN, A TEAM, AND A DREAM* 363 (1990); see also Barron, *supra* note 20, at 1 ("If you're looking for two hours of entertainment, check out the movie version of Friday Night Lights. But if you want to know the truth about the 1988 Odessa Permian football team, read Buzz Bissinger's book.").

²² Earl Ofari Hutchinson, *'Friday Night Lights' Fumbles Opportunity*, L.A. TIMES, Oct. 18, 2004, at 3; Lopez, *supra* note 20, at C20. The film touches on race in only two respects. The first involves what is, in the movie, an anomalous utterance of racial rhetoric when a Permian supporter suggests Permian should play its star running back, Boobie Miles, on defense as well as offense, insisting that despite the heavy load such a commitment would entail, "that big nigger ain't gonna break." *FRIDAY NIGHT LIGHTS* (Universal Pictures 2004). The second involves the dynamic surrounding Permian's final game of the season against the almost entirely black Carter Cowboys, which the film severely skews. See *infra* Part IV.

appeal,²³ it did so at a tremendous cost. Namely, it buttressed the idyllic picture through projecting a false portrait of the racial dynamics attendant to Permian football in 1988 and lent big-screen credence to the misguided view that sport is a bastion of meritocracy, devoid of the racial prejudice and conflict afflicting our nation more broadly.

The idyllic picture that the film projects is, while ostensibly comforting, deeply dangerous. It is dangerous not simply because it obscures the racial tension and discrimination that still exist within the world of sport, but because of what that obfuscation breeds: disinterest in, and resistance to, the movement to eradicate racial discrimination from sport. Assuming the accuracy of the idyllic picture, any effort to identify and address problematic issues of race in sport is a fool's endeavor. The search is bound to be fruitless and, what is worse, is bound to consume resources better directed toward actual problems necessitating remedy. And under that view, those engaging in the search are at best foolish do-gooders wasting time, and at worst agitators seeking to create problems where they do not exist. The former characterization inspires indifference toward efforts to eradicate racial discrimination from sport, and the latter inspires antipathy. No anti-discrimination effort viewed thusly can expect to engender the popular support so crucial to achieving success.

Indeed, to effectively battle racial discord and discrimination in sport, the existence of that discord and discrimination must be laid bare and acknowledged. This is because "[a] crucial first step in addressing the problem of racial inequality is to understand and appreciate the scope and magnitude of the problem."²⁴ Such was true of America's broader battle against racial discrimination during the civil rights movement of the mid-twentieth century,²⁵ and it remains true today, in the context of the modern movement to eradicate racial discrimination from sport. The idyllic picture

²³ The film *Friday Night Lights*, de-racialized as it was, achieved substantial success, both in terms of revenue and with critics. The film grossed \$161 million in box office receipts, DVD sales, and rentals. Thomas K. Arnold, *Older Audiences Pass on Theaters*, USA TODAY, July 5, 2005, at 12C. The film also received glowing critical reviews, including Larry King's designation of the film as "[o]ne of the greatest sports movies ever made" and Roger Ebert & Richard Roeper's awarding of "[t]wo thumbs way up." FRIDAY NIGHT LIGHTS (Universal Studios 2004) (commentary of Larry King and Ebert & Roeper).

²⁴ Christopher Bracey, *Thinking Race, Making Nation: Reviewing The Anatomy of Racial Inequality* By Glenn C. Loury, 97 NW. U. L. REV. 911, 917 (2003).

²⁵ Despite the extent to which racial discord was apparent to individuals "intimately involved" with the civil rights movement, not until the discord received live national media attention did the American populace and its lawmakers appreciate its pervasion and consequences and assiduously turn to enacting wide-ranging federal civil rights legislation. Emmanuel O. Ihekweumere & Phillip C. Aka, *Title VII, Affirmative Action, and the March Toward Color-Blind Jurisprudence*, 11 TEMP. POL. & CIV. RTS. L. REV. 1, 21 n.134 (2001).

thwarts such appreciation. Since “[a]cknowledging and understanding [racism] are prerequisites to the discovery of an appropriate cure,”²⁶ the idyllic picture inhibits access to that cure. And by recasting a true but disturbing story largely about the impact of race on interscholastic athletics into a highly fictionalized and de-racialized vehicle buttressing the idyllic picture, *Friday Night Lights* enables that inhibition.²⁷

Just as disturbing as the film’s de-emphasis of race, generally, is the film’s curious and factually bereft treatment of its one foray into the racial dynamics impacting the Permian football team’s season, in which the blacks involved are demonized and portrayed as primarily responsible for racializing the encounter. Consequent to this portrayal, the film’s only substantial departure from the idyllic picture of racial cohesion involves – rather than factual explorations of discrimination and discord negatively impacting blacks and Latinos – fictional depictions of black racial antagonism. To the extent, then, that *Friday Night Lights* projects the idyllic picture to the detriment of the movement to eradicate racial discrimination from sport, the film further hinders the movement by incorrectly suggesting that the rare incursion of racial prejudice into the world of sport results primarily in white victimization.

Part I of this article explores Odessa’s longstanding racial difficulties. Specifically, this part explores the community’s resolute resistance to the United States Supreme Court’s desegregation mandate issued in *Brown v. Board of Education*, the necessity of subsequent litigation to effectuate *Brown*’s promise, and the implications of the eventual desegregation and accompanying racial discord for the community, its schools, and, in particular, the Permian High School football program. In addition, this part examines the *Friday Night Lights* filmmakers’ choice to exclude the racial discord plaguing the 1988 Permian Panthers from the team’s story, choosing instead to present the story as largely reflective of the idyllic picture.

Parts II and III examine vexing issues at the intersection of race and sport and suggest the discord plaguing the 1988 Permian Panthers’ football program – the discord the *Friday Night Lights* filmmakers disregarded – is, rather than aberrant, reflective of the racial discord impacting the broader sporting community. In

²⁶ Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 321 (1987).

²⁷ The film, of course, betrays neither its roots nor its transmogrified character to its viewers, and indeed, commencing with the statement, “The following is based on a true story which took place in West Texas, 1988,” the film suggests the absence of any such transmogrification. *FRIDAY NIGHT LIGHTS*, *supra* note 22.

particular, Part II exposes the phenomenon of black athletes' prevalence among their teams' standouts and their discriminatory disproportionate scarcity among their teams' reserves as well as the manifestation of that phenomenon at Permian. Part III examines the concept of the disposable black student-athlete and the degree to which James "Boobie" Miles' Permian football career illustrates that disturbing concept.

Part IV explores the film's sole substantial treatment of the racial discord attendant to Permian's 1988 season and the filmmakers' troubling choice to portray the blacks involved as the encounter's prime antagonists.

Finally, Part V concludes that the film *Friday Night Lights*, through largely de-racializing the story of the 1988 Permian Panthers—and, where race is addressed, depicting blacks as instigating the relevant racial discord—disserves the movement to eradicate racial discrimination from sport.

I. FROM REAL TO REEL:²⁸ CRAFTING THE IDYLIC PICTURE

As the film *Friday Night Lights* commences, the viewer is greeted with images of football-crazed Odessa, a hardscrabble West Texas town desperately clinging to life in the aftermath of the great Texas oil boom and bust of the 1970's and 1980's.²⁹ The camera reveals numerous out-of-use oil drilling rigs dotting the landscape, seemingly endless roads cutting through infertile brush land, and small tattered homes in front of which stand large pristinely painted plywood signs honoring members of the 1988 Permian High School football team.³⁰ Interspersed with these images are images of the five Permian players most fully developed in the film—two white, two black, and one Latino—converging on the football stadium, exchanging greetings, and entering as a unified group to begin their quest for a 1988 Texas State High School Football Championship.³¹ This unfolds to the soundtrack of a call-in radio show, on which fanatical supporters of Permian football debate the talent of the youngsters and the prospect of a state title.³²

It becomes clear to the viewer, as the players meet to enter

²⁸ Journalist David Barron employs a similar turn of phrase, "Real . . . vs. Reel," in considering differences between Bissinger's chronicle and the film *Friday Night Lights*. Barron, *supra* note 20; see also Greg Rajan, *Friday Night Lights: Movie Kinder than Book to Football-Mad Texas Town*, CORPUS CHRISTI CALLER-TIMES, Oct. 3, 2004, at A1.

²⁹ FRIDAY NIGHT LIGHTS, *supra* note 22.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

the stadium, that they carry the hopes of a struggling town on their shoulders, and, as the season progresses, they are portrayed as doing so honorably. Playing against larger opponents, these players, their teammates, and their coaches are depicted working together, irrespective of racial difference, through injury, disappointment, and loss, to come within seconds of the State Title and its attendant glory.³³ The film's depiction neglects, however, to address the myriad troubling issues of race, integral to the true story of the 1988 Panthers.

A. *Odessa, Texas: A History of Racial Discord and Discrimination*

In reflecting on the year he spent in Odessa, Texas, chronicling Permian Panthers football, Bissinger witnessed appalling racism.³⁴ He described the racial animus he observed as shockingly raw and undisguised.³⁵ Racial animus was deeply rooted in Odessa, as it was in many other sectors of the nation, as Odessa had suffered from the same racial ills afflicting much of America during the twentieth century: the harsh *de jure* segregation of the 1940's and 1950's, the ordinances prohibiting miscegenation, the restrictions on real estate alienation to blacks, and the prevalence of financial institutions' red-lining, among

³³ *Id.*

³⁴ BISSINGER, *supra* note 21, at 363.

³⁵ *Id.* at 89. The racial animus Bissinger observed was reflected, in part, in many white community members' unrestrained and varied usages of the word "nigger"; among them, "Dumb ol' nigger. Cocky nigger. New Jersey nigger. Smart-aleck nigger. Talk nigger. Blame it on the niggers. Afraid of the niggers. Nigger lady. Let the nigger girl do it. Nigger ball. Run, you nigger." *Id.*

In Odessa, "nigger" was apparently routinely used "in casual conversation" as if it were "just another descriptive adjective," suggesting that perhaps those who used it, believed its use to be non-offensive. *Id.* Perspectives vary as to the utterance's propriety when the user intends no offense. For instance, race law expert Randall Kennedy notes in his book, *Nigger: The Strange Career of a Troublesome Word*, that "[w]hites are increasingly referring to other whites as niggers, and indeed, the term . . . as a sign of affection is being affixed to people of all sorts." RANDALL KENNEDY, *NIGGER: THE STRANGE CAREER OF A TROUBLESOME WORD* 174 (2002). Kennedy finds no harm in such uses of the word nigger and, in fact, insists, "there is much to be gained by allowing people of all backgrounds to . . . subvert [the word nigger's] ugliest denotation, and convert [it] from a negative into a positive appellation." *Id.* at 175.

Author and Political Analyst Earl Ofari Hutchinson rejects Kennedy's analysis and describes Kennedy's book as "a provocative but misguided polemic." Earl Ofari Hutchinson, *No Excuse for This 'Troublesome Word'*, NEWARK STAR-LEDGER, Jan. 20, 2002, at 5. In Hutchinson's view,

a word as emotionally charged as "nigger" will always reinforce and perpetuate stereotypes. It can't be sanitized, cleansed, inverted or redeemed as culturally liberating. "Nigger" can't and shouldn't be made acceptable, no matter whose mouth it comes out of or what excuse gets made for it The word . . . still has a grotesque and deadly meaning.

Id.; see also Earl Ofari Hutchinson & Robert Lusetic, *US Fears the Verbal N-Bomb*, WEEKEND AUSTRALIAN, Jan. 19, 2002, at 14.

others.³⁶ And, like many American towns, Odessa also suffered from battles born of the fierce opposition to civil rights developments of the 1950's and 1960's, such as the school desegregation movement.³⁷

Odessa segregationists were, however, particularly resolute in their stance. A full "decade after many high schools in the deeper South states of Mississippi and Alabama had integrated their schools, Odessa officials were still bitterly resisting school integration."³⁸ Indeed, as of 1982, nearly thirty years after the Supreme Court's landmark school desegregation decision in *Brown v. Board of Education*, the Odessa public schools remained conspicuously segregated.³⁹ They were, in fact, so segregated that aggrieved residents filed a federal suit seeking the desegregation both promised and denied decades earlier.⁴⁰ In a scathing forty-three page opinion, Judge Fred Shannon of the United States District Court for the Western District of Texas documented the depth of segregation afflicting the Ector County Independent School District (the "School District"), within which Odessa is located,⁴¹ noting that the School District had "never remedied the dual school system existing at the time of *Brown*."⁴² Rather, Judge Shannon discovered, the school district had, since *Brown's* decree, managed to "actually increase[] the segregation in its schools"⁴³ Finding that the school district "established and operated a pervasive *de jure* segregated school system [and] provided disparate and inferior educational facilities and opportunities to the segregated minority students[,]"⁴⁴ the Court charged the school district "with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch."⁴⁵

³⁶ BISSINGER, *supra* note 21, at 91.

³⁷ *Id.* at 98.

³⁸ Hutchinson, *supra* note 22, at 3.

³⁹ United States v. Ector County Indep. Sch. Dist., Civ. Act. No. MO-70-CA-64, at 35 (W.D. Tex. May 28, 1982).

⁴⁰ *Id.*

⁴¹ United States v. Crucial, 722 F.2d 1182, 1184 (5th Cir. 1983).

⁴² Ector County, Civ. Act. No. MO-70-CA-64, at 36.

⁴³ *Id.* at 37. Indeed, while the schools in south Odessa, where the bulk of Odessa's minorities reside, catered to an 87.4% minority student body during the 1967-68 school year, by the 1980-81 school year, 96.4% of the students enrolled in these schools were minorities. *Id.*

⁴⁴ *Id.* at 43.

⁴⁵ *Id.* at 42 (quoting *Green v. County School Board of New Kent County*, 391 U.S. 430, 437-38 (1968)). Although the United States Court of Appeals for the Fifth Circuit reversed and remanded the district court's decision regarding the nature of its proposed remedy, the appellate court took exception neither to the district court's analysis revealing the extent of the school district's segregative practices nor to the district court's conclusion that desegregation was necessary. See *Crucial*, 722 F.2d at 1184. On the contrary, the appellate court lauded the district court's "comprehensive and detailed

After significant debate as to how desegregation should occur,⁴⁶ the Court ordered implementation of a desegregation plan that would, among other things, close the city's majority minority high school, Ector High, and distribute its students to each of the two other Odessa high schools, Permian High and Odessa High.⁴⁷ By 1988, the composition of the Odessa schools had changed markedly; Permian High, almost entirely white before the desegregation order, had, in 1988, a student body that was almost one-third minority, and Odessa High, which was also primarily white, although not as homogeneous as Permian, was for the first time comprised of more non-whites than whites.⁴⁸ Many in Odessa viewed the federal intervention "not as social progress but as outrageous harassment"⁴⁹ and blamed the intervention for damaging the character of the Odessa schools. Some Permian teachers quietly began to attribute the school's troubles to the influx of "Mexicans" and blacks.⁵⁰ Others were more vocal and direct in their sentiments, as evidenced by one Odessa resident's lamentation of desegregation's impact and what it held for the future of Permian High: "My God, Mexico's nothing but a big goddamn pigpen . . . Hell, look at Africa. They've been here a lot longer than North America and they could be civilized and they're the same way they were three or four hundred years ago."⁵¹

findings of fact and conclusions of law which can only be described as a model" and noted that they were thorough enough to be "unchallenged on appeal." *Id.*

⁴⁶ While no party to the suit challenged the district court's liability finding, the nature of the appropriate remedy sparked significant debate. Although the United States and the School District agreed to the Court's proposed plan, CRUCIAL (Committee for Redress, Unity, Concern and Integrity at All Levels), a plaintiff-intervenor in the case, strenuously objected. *Id.* at 1185. Rather than hold an evidentiary hearing to consider the plan's merits or any alternative plans, the Court adopted the proposed plan over CRUCIAL's objections. *Id.* CRUCIAL appealed the decision, and the United States Court of Appeals for the Fifth Circuit reversed and remanded the case, instructing the district court to hold the evidentiary hearing that it did not hold previously. *Id.* at 1191. On remand, the district court, after holding the required evidentiary hearing, ordered the desegregation plan to be implemented. *United States v. Ector County*, Civ. Act. No. MO-70-CA-64, at 3-4, 18-19 (W.D. Tex. Mar 27, 1984).

⁴⁷ *Id.* The federal desegregation order governing the Ector County Independent School District remains in effect. David J. Lee, *Unitary Status up to Judge*, ODESSA AM., June 17, 2006, at A1. On June 16, 2006, the School District's board of trustees reviewed and approved an agreement among the United States Department of Justice, the Mexican American Legal Defense Fund (on behalf of CRUCIAL), and the School District, which would, assuming court approval, cease the desegregation order's applicability as of January 1, 2009. *Id.* United States District Court Judge Rob Junell approved the agreement a month later, setting the stage for the decades-old federal oversight to end. *Id.*; *Desegregation Agreement a Hard-Earned Deal*, ODESSA AM, Aug. 21, 2006, at A1.

⁴⁸ BISSINGER, *supra* note 21, at 161.

⁴⁹ *Id.* at 33.

⁵⁰ *Id.* at 131.

⁵¹ *Id.* at 94.

B. *Race and Football in Odessa*

Once desegregation was inevitable, however, it was clear to many that the changing societal tides carried with them a collateral benefit—an opportunity to access talented black football players previously slated to attend Ector High School.⁵² Indeed, when the desegregation plan was announced, the primary focus of debate did not regard curricular challenges involved in merging one school's student body into another, but rather which school, Odessa High or Permian High, would inherit the larger number of black students, perceived as potentially strong football players, and which school would inherit the larger number of Latino students, perceived as weak football players.⁵³ Describing the debate, Vicki Gomez, the school district's first school board member of color stated, "It was gerrymandering over football. . . . Whatever [the school board] did, they did not want to hurt the dynasty that was being established at Permian."⁵⁴ Permian ultimately won the gerrymandering battle and the presumed treasure trove of black football talent that came with it.⁵⁵ In the view of many Odessa High supporters, desegregation was a doubly brutal blow: they lamented that they had to accept desegregation as well as watch their school become "a dumping ground for Hispanics who, among other things, couldn't play football worth a lick."⁵⁶ As a former Odessa city councilman and Odessa High graduate crudely expressed the fallacious, albeit widely-held, stereotype, "[s]ome kids don't like to play football and the Spanish-Mexicans are one of them. . . . Look at the enrollment of the school, and damn sure that's what you got. So they need to take up another sport, like beer drinking."⁵⁷

Just as many Odessa High supporters bemoaned the post-desegregation increase in its population of Latino students, many Permian High supporters would come to bemoan the increase in its population of black students. While the desegregation order may have enlarged Permian's pool of black football talent, it also created a racial dynamic with which neither the school nor the football team had previously grappled—a dynamic breeding tension and, at times, racially-inspired violence between the very players the film depicts as unified in entering the stadium to

⁵² *Id.* at 105.

⁵³ *Id.* at 105, 161.

⁵⁴ *Id.* at 105.

⁵⁵ *Id.*

⁵⁶ *Id.* at 161.

⁵⁷ *Id.*

commence the 1988 football season. Indeed, two of these players, Don Billingsley, white, and Boobie Miles, black, had, as sophomores, squared off in a fight at the core of which lay Permian's uncomfortable post-integration racial dynamic. Billingsley both instigated and dominated the fight, later explaining he was eager to fight Miles because Miles was an overly talkative "nigger."⁵⁸

While Permian's prevailing racial dynamic did not routinely spark violence, it certainly served to sow substantial racial discord and discrimination in the Permian football program, which the film *Friday Night Lights* virtually ignored.

C. *The Decision to De-racialize*

Notably, the *Friday Night Lights* filmmakers' choice to ignore the racial discord and discrimination was not motivated by skepticism as to the veracity of Bissinger's chronicle. Indeed, although the book offered a biting indictment of the culture surrounding Permian football, those most intensely chronicled, the Permian student-athletes, attest to its accuracy.⁵⁹ For instance, Brian Chavez, Permian's 1988 tight end, of Mexican ancestry, explained after reading the book that he "found its honesty both

⁵⁸ *Id.* at 83. Although the film portrays a fight between Billingsley and Miles, it presents a fictionalized account that reveals no inkling of the racial animosity sparking the actual altercation. The film portrays Miles, rather than Billingsley, as the instigator and portrays Billingsley as engaging only after Miles insults both he and his father. See *FRIDAY NIGHT LIGHTS*, *supra* note 22. The film further buries the racial discord between Miles and Billingsley by framing them as mutually supportive and compassionate as they each face challenges during their senior years. As Miles empties his locker after realizing his injury will prevent him from completing the season, the film pictures Billingsley offering kind words about the possibility of Miles recovering and eventually finding fame through football. *Id.* And as Billingsley, who had a propensity for fumbling the football, prepares for an important play toward the end of Permian's last game of the season, the film pictures Miles giving him important and thoughtful technical advice to assist him in effectively grasping the ball and then enthusiastically and affectionately imploring him to succeed with the words, "You got it, baby!" *Id.* While these fictional scenes would suggest that perhaps by Billingsley's senior season, the 1988 season, his racial animosity had receded, such was not the case. After Miles' pre-season injury, Billingsley believed he would become Permian's featured running back. *BISSINGER*, *supra* note 21, at 88. After performing poorly, however, Billingsley lost his position to Chris Comer, a black teammate. *Id.* at 84-86, 87. Billingsley was incensed. What he perceived as the black players' swagger and lack of discipline perturbed him, as did the idea that a black player would ascend to the post he believed would be his after Miles' injury: "In practice, the niggers, they do what they want to do, and they still start Friday night." *Id.* at 88. Billingsley lamented, "I didn't get to carry the ball . . . They moved up another nigger to carry the ball." *Id.*

⁵⁹ Joseph P. Khan, *H.G. Bissinger Finds A Town's Salvation – Football – Is Also the Root of Its Evils*, *BOSTON GLOBE*, Oct. 25, 1990, at 77 (The 1988 team's tight end notes that "only one former Permian teammate, quarterback Mike Winchell, was upset by Bissinger's treatment, and that had more to do with the description of his family situation."); see also Rajan, *supra* note 28, at A1.

surprising and refreshing,” noting, for example, that “[w]hat [Bissinger] wrote about fans rooting for black players but not associating with them off the field is true.”⁶⁰ Even running back Don Billingsley, unforgivingly revealed as an alcohol-abusing and angry racist, takes no exception to the content of Bissinger’s chronicle.⁶¹

The players’ assessment of accuracy is joined by many members of the Permian football staff, public officials, and other community members.⁶² Perhaps the most compelling testament to the accuracy of Bissinger’s chronicle was the high school’s reaction once the initial sting of criticism waned: “Permian took a look at itself. It tightened educational standards and debated racism.”⁶³ Indeed, issues of race at Permian are “now dealt with openly on campus,” with students and teachers candidly working through concerns about “tensions and racial divides.”⁶⁴

Certainly, some Odessa residents affiliated with Permian, including the 1988 team’s head coach, Gary Gaines, were displeased when the book was published.⁶⁵ Indeed, a few community members were so displeased they threatened Bissinger with bodily harm if he returned to town for a scheduled book-signing.⁶⁶ Many of those displeased, including Gary Gaines, however, had not actually read the book and, of those who had, few denied the accuracy of Bissinger’s facts.⁶⁷ Still, having opened their community and lives to Bissinger, many residents expected an uplifting book praising the Permian football program and felt betrayed by the book Bissinger penned,⁶⁸ which they believed

⁶⁰ Khan, *supra* note 59, at 77.

⁶¹ Rajan, *supra* note 28, at A1. While Billingsley acknowledges his portrayal was potentially embarrassing, he proudly notes he has since experienced a life-changing “religious awakening,” becoming a different person. *See id*; *see also* BISSINGER, *supra* note 21, at 359.

⁶² Barbara Novovitch, *Film Helps Stung Town Revisit Book*, N.Y. TIMES, Mar. 30, 2004, at A14; Khan, *supra* note 59, at 77. As one community member acknowledged after reading the book and agreeing with the portrait it painted of 1988 Odessa, “It’s not a pretty thing sometimes to look in the mirror.” Novovitch, *supra* at A14.

⁶³ E.A. Torriero, *Friday Night Lights’ Salves City’s Old Sting*, CHI. TRIB., Oct. 16, 2004, at 1.

⁶⁴ *Id.*; Robert Philpot, *From Odessa, With Love*, FORT WORTH STAR-TELEGRAM, Oct. 8, 2004, at E1. According to the school board and county superintendent, “the book had an impact . . . and caused change.” (internal quotation marks omitted).

⁶⁵ Arnold Hamilton, *Odessa Hopes Movie Brings Redemption - Many in Town Say Film Rights the Wrongs of 14-Year-Old Book*, DALLAS MORNING NEWS, Oct. 8, 2004, at 1A; Matthew Postins, *Will Coaches Like What They See?*, DENTON REC.-CHRON., Oct. 8, 2004, at 4b.

⁶⁶ Danny Robbins, *The Lights Are Back On at Permian High*, L.A. TIMES, Dec. 10, 1991, at 4; Roger Cohen, *Author Cancels Trip After Threats in Texas*, N.Y. TIMES, Sept. 25, 1990, at A22; Novovitch, *supra* note 62.

⁶⁷ Hamilton, *supra* note 65; Robbins, *supra* note 66.

⁶⁸ Katherine Cromer, *School Officials Recall the Glory Days of Mojo Magic*, FORT WORTH STAR-TELEGRAM, Oct. 7, 2004, at B5. Bissinger set out to write the uplifting story Odessans expected, but he “wasn’t prepared for the intensity of [the Permian football] program – for the racism and the pressures.” Bruce Westbrook, *Friday Night Lights, Texas City*, HOUS. CHRON., Oct. 7, 2004, at 4. Indeed, once Bissinger began his chronicle of the Permian

focused too heavily on the “negative” aspects of Odessa and of Permian football.⁶⁹

Anxious to avoid a “negative,” even if accurate, cinematic portrayal of Permian football, the Odessa school board refused Director Peter Berg’s request to record footage in Permian’s stadium—the quintessential symbol of Permian football—unless Berg guaranteed he would not portray the town or its residents as “racist.”⁷⁰ Berg acceded, promising a “softer, gentler” rendering of Odessa, one that avoided exploring the town’s and the team’s sociological ills.⁷¹

In doing so, Berg and Universal Pictures abdicated the opportunity to explore on the silver screen, a platform as accessible to the American populace as any, enduring concerns at the intersection of race and sport, and thus re-emphasized the idyllic picture.

II. RACIAL DISCRIMINATION AND THE ATHLETIC DOUBLE STANDARD

A. *The Discriminatory Double Standard – Applied*

Since the early days of integrated sports competition in this nation, black athletes have faced standards more exacting than those with which their white colleagues have had to contend. Acclaimed sports journalist and author, William C. Rhoden, makes this point in *Forty Million Dollar Slaves: The Rise, Fall, and Redemption of the Black Athlete*, a comprehensive and historical exploration of racial discrimination and its associated dynamics in American sport, explaining that blacks simply “had to play at a higher level than their white counterparts” to achieve success.⁷² This double

football program, he knew his book would be one “with more than a passing share of darkness.” Cromer, *supra* at 5B.

⁶⁹ Robbins, *supra* note 66. Permian’s athletic trainer of many years, Trapper O’Connell, held this view, explaining, “Mr. Bissinger got his information right, but the book ‘didn’t mention enough of the positive things.” Novovitch, *supra* note 62, at 14.

⁷⁰ Hutchinson, *supra* note 22, at 3; see also Patrick Goldstein, *Fall Sneaks: The Game of Life*, L.A. TIMES, Sept. 12, 2004, at 25.

⁷¹ Novovitch, *supra* note 62, at 14.

⁷² WILLIAM C. RHODEN, *FORTY MILLION DOLLAR SLAVES: THE RISE, FALL, AND REDEMPTION OF THE BLACK ATHLETE* 158 (2006). Even when black athletes have succeeded in playing at a higher level, individuals responsible for establishing the rules governing sport have routinely altered them to undermine the black athletes’ advantage. Rhoden dubs this phenomenon “the Jockey Syndrome,” in reference to the white horseracing establishment’s selective and discriminatory licensing of jockeys for competition, which served to drive black jockeys, who dominated horse racing during the second half of the nineteenth century, out of the sport. *Id.* at 61, 68, 71-77. The Jockey Syndrome and its consequences have reverberated throughout American sport. They have served as vehicles of exclusion as illustrated by, among other occurrences, the

standard finds illustration in the experiences of athletes across the spectrum of sport and became most glaringly obvious early in the twentieth century, in the form of blatant sports rules' violations.

For instance, during the late 1890's and early 1900's, when bicycle racing was one of America's most popular sports,⁷³ Major Taylor, a black cyclist, dominated the sport despite being consistently set upon and abused by groups of white riders during races.⁷⁴ With neither expectation of, nor meaningful access to, protection under the sport's rules, in order to win, Taylor had to break away upon the race's commencement and hold the lead, for to find himself in the midst of a crowd of white riders meant being assaulted, perhaps dismounted, and certainly defeated.⁷⁵ Taylor, therefore, necessarily developed the ability to win an early sprint and hold the lead for the length of the race, despite facing greater wind resistance than he would have were he riding with the pack.⁷⁶ Thus, to triumph, Taylor had to perform at a higher level than his competitors, because, for him, riding with the pack and sprinting late to a narrow victory was not an option.

League of American Wheelmen's 1894 decision to bar blacks from membership and thus inhibit their ability to engage in competitive cycling, *id.* at 87, as well as the infamous "gentlemen's agreements" banning blacks from organized American baseball played by whites in the late 1800's and keeping them out until Branch Rickey signed Jackie Robinson to play for the Brooklyn Dodgers in 1947. PATRICK CLARK, *SPORTS FIRSTS* 12 (1981); SHROPSHIRE, *supra* note 11, at 29. And when not excluding entirely, the Jockey Syndrome has served to decrease black athletes' efficacy and thus limit their achievement. Examples abound. When a talented black basketball player named Wilt Chamberlain starred at the center position for the University of Kansas in the late 1950's, he dominated so completely that the National Collegiate Athletic Association (the "NCAA") changed a bevy of rules fundamental to the college game: "[t]hey widened the lane from eight feet to twelve feet, instituted offensive goal tending, and forbade the foul shooter from crossing the free-throw line until the ball hit the basket (Chamberlain would dunk his missed free throws)." RHODEN, *supra* at 163. A few years later, when Lew Alcindor, who since changed his name to Kareem Abdul-Jabbar, dominated from the center position as Chamberlain had before him, the NCAA outlawed the slam dunk altogether to neutralize his offensive superiority. *Id.* at 163-64. R.C. Owens, a talented leaper who played football for the NFL's San Francisco 49ers and Baltimore Colts in the 1950's and 1960's, prompted a change in NFL rules just as Chamberlain and Alcindor had in the NCAA context. *Id.* at 158-63. In a game against the Washington Redskins, Owens stood under the goal posts as Washington's kicker attempted a field goal, and as the ball approached the goalposts Owens jumped and knocked it off course. *Id.* at 162-63. It was an unprecedented field goal block, and it would never be repeated, as the League thereafter disallowed defensive players from standing near the goal posts during field goal attempts. *Id.* at 163.

⁷³ During this time period, "cycling became a fad of epidemic proportions . . . there were more than 100,000 cyclists in the United States. Clubs were organized in nearly every town in the nation." *Id.* at 86.

⁷⁴ *Id.* at 88.

⁷⁵ *Id.* at 76, 88. After one race, during which such tactics apparently failed to prevent Taylor from finishing below second place, the incensed third place finisher "grabbed Taylor from behind and choked him into unconsciousness." *Id.* at 87. After the attack, a group of white cyclists, rather than supporting the victimized Taylor, donated money to help the assailant pay the fine levied against him for committing the assault. *Id.*

⁷⁶ *Id.* at 88. A cyclist leading a race works "significantly harder than the others because of the wind resistance." Dennis Taylor, *Peloton Success Rides on Teamwork: Focus Must Be on the Win, Not Personal Glory*, MONTEREY COUNTY HERALD, Apr. 9, 2006, at 1.

Former World Heavyweight Champion boxer, Jack Johnson, who starred in his sport a decade after Taylor starred in his, was similarly forced to compete at a higher level than his competitors in order to succeed. This was evidenced, perhaps most clearly, when he battled Jim Jeffries, who was white, for the Championship Title in 1910.⁷⁷ During the fifteenth round of the match, which was trumpeted nationally as a racial confrontation as well as an athletic one, Johnson knocked a dazed Jeffries to the canvas.⁷⁸ Realizing Jeffries would be unable to rise on his own, members of the audience began screaming, “Don’t let the nigger knock him out,” to which members of Jeffries’ entourage responded by entering the ring, picking Jeffries up, and standing him on his feet, so the match could continue.⁷⁹ Without objection from the referee or any other official charged with enforcing the sport’s rules, the match recommenced in spite of the obvious violation.⁸⁰ Because the legislated rules of the sport would not protect him, Johnson was forced to raise his performance to a higher level; he was forced to summon and expend greater energy, strength, and stamina than would a boxer in the absence of the racially-inspired impropriety.

Even in the absence of black athletes’ competitors and their supporters brazenly violating sports rules to the black athletes’ detriment, a practice that has faded in more recent years, black athletes have often faced higher thresholds for achievement than their white colleagues.⁸¹ As Rhoden argues, the baseball career of Willie Mays, the standout centerfielder for the New York and San Francisco Giants during the 1950’s and 1960’s,⁸² is illustrative.⁸³ Despite amassing perhaps the most impressive all-around statistics in the history of the game,⁸⁴ Mays never received quite the public support and acknowledgement granted the other great centerfielder of his day, the New York Yankees’ Mickey Mantle, as Mays’ style of play was “too ‘black’ to sit comfortably with mainstream America.”⁸⁵ No matter how exquisitely he played, “Mays would never eclipse Mantle as a cultural icon Mays had

⁷⁷ RHODEN, *supra* note 72, at 95.

⁷⁸ GEOFFREY C. WARD, UNFORGIVABLE BLACKNESS: THE RISE AND FALL OF JACK JOHNSON 210-11 (2004).

⁷⁹ *Id.* at 211.

⁸⁰ *Id.*

⁸¹ RHODEN, *supra* note 72, at 88.

⁸² BIOGRAPHICAL DICTIONARY OF AMERICAN SPORTS: BASEBALL 1035 (David L. Porter ed., 2000).

⁸³ RHODEN, *supra* note 72, at 158.

⁸⁴ CHRISTOPHER RUSSO, THE MAD DOG HALL OF FAME: THE ULTIMATE TOP TEN RANKINGS OF THE BEST IN SPORTS 279-81 (2006).

⁸⁵ RHODEN, *supra* note 72, at 154-56, 155.

hit a glass ceiling.”⁸⁶ Even playing at a higher level did not garner Mays the respect *vis a vis* his contemporaries that he, perhaps, deserved.⁸⁷

The consequence, in the team sport context, of this discriminatory double standard is that only the best black players were likely to secure roster spots on integrated teams. This was particularly the case as the twentieth century wore on, because, “[f]aced with an expanding influx of black athletes, owners—in conjunction with general managers, coaches, and managers—set artificial limits on the number of black athletes who would make their teams.”⁸⁸ The double standard, together with these artificial roster limits, presented black athletes with long odds on inclusion. For instance, although National Football League rosters in the 1960’s generally included thirty nine or more players,⁸⁹ there were generally no more than two blacks per roster, and only rarely were there as many as four.⁹⁰

The same phenomenon prevailed at the time in Major League Baseball. Hall of Fame outfielder Frank Robinson, then one of the Cincinnati Reds’ few black players, observed of the era, “There was a quota on a lot of ball clubs If you saw a few [blacks] at spring training at a major league camp and there was

⁸⁶ *Id.*

⁸⁷ Although both Mantle and Mays were extraordinary players and both have been labeled “five-tool” players, which is baseball parlance for players possessing the five skills necessary for exceptional all-around performance (hitting for average, hitting for power, throwing ability, fielding ability, and running speed), George Vass, *Durability . . . A Forgotten Asset When Rating Players With All-Around Talent*, *BASEBALL DIG.*, July 1, 2006, at 24, Mays’ mastery of the five tools was superior to Mantle’s. RUSSO, *supra* note 84, at 279 (“If you want to rate a guy on a scale of one to ten in each of [the five tool] categories, with ten being as good as anyone ever, there’s only one player in baseball history who would get nines or better all the way across. That’s Willie Mays.”). The two players’ statistics tell the tale. Even if an analysis of their careers is limited to the 17 seasons both played (although both players debuted in 1951, Mays’ career extended for five seasons beyond Mantle’s retirement in 1968), the comparison would reveal Mays’ career as more spectacular; Mays had a higher batting average, hit more home runs, batted in more runs, stole more bases, and had more outfield assists than Mantle, and Mays received twelve Gold Glove Awards for outstanding fielding to Mantle’s one. Willie Mays Statistics, *BASEBALL-REFERENCE.COM*, <http://www.baseball-reference.com/m/mayswi01.shtml> (last visited Sept. 6, 2007); Mickey Mantle Statistics, *BASEBALL-REFERENCE.COM*, <http://www.baseball-reference.com/m/mantlmi01.shtml> (last visited Sept. 6, 2007). Author and sports journalist Christopher Russo, who lists Mays as the second best player in baseball history and Mantle as the fifth, offers insight into Mantle’s iconic status despite Mays’ superior on-field performance, noting that Mantle would not merit inclusion among baseball’s top ten players based on his play alone, but should be included because he “was baseball’s first television star.” RUSSO, *supra* note 84, at 270. Mays, unlike Mantle, who was “blue-eyed and blond, [and] nursed in the heartland of America,” RHODEN, *supra* note 72, at 154, could not rely on television stardom to cement his place among baseball greats, as such stardom was not meaningfully available to black athletes until decades later with the successful public marketing of basketball great Michael Jordan in the 1980’s. *Id.* at 203-04. Mays’ only route to baseball immortality was pure baseball prowess. *Id.* at 158.

⁸⁸ RHODEN, *supra* note 72, at 161.

⁸⁹ ROGER TREAT, *THE OFFICIAL ENCYCLOPEDIA OF FOOTBALL* 149-79 (1967).

⁹⁰ RHODEN, *supra* note 72, at 161.

[sic] more than four, you said ‘Uh-uh, someone’s gotta go.’”⁹¹ For blacks, therefore, playing ability as compared with the full complement of those seeking to make a team was largely irrelevant. What mattered was how they compared with other black players. If they trailed among the blacks, even if they were otherwise among the better players vying for roster positions, their prospects were bleak. As Henry “Hank” Aaron, who began his professional career in the segregated Negro Leagues but went on to set Major League Baseball’s career home run record, bluntly explained, the “baseball establishment would only make room for exceptional black players.”⁹² Aaron viewed this to be “one of the least-discussed examples of . . . ingrained racism” in baseball.⁹³

Notably, the double standard requiring higher-level play on the part of black athletes is not a phenomenon particular to professional sport. Legal scholar Paul Anderson explains that the phenomenon has reigned at the amateur level as well:

Since their first inclusion in the college sports scheme, African-American athletes have had to be . . . black super athlete[s]. This has meant that blacks usually had to perform at a higher level to become involved in college sports than white student athletes. Historically, blacks had to be the superstars on their teams in order to get the chance to participate.⁹⁴

Anderson acknowledges that the double standard has weakened somewhat since the early days of integrated sports competition but notes that it still exists.⁹⁵ The extent to which this phenomenon has weakened is subject to debate. What is clear, however, is that it certainly existed as the Permian football team played its 1988 season.

Nate Hearne, at the time Permian’s only black coach,⁹⁶ “whose primary responsibility was to handle the black players on the team,” stated during the 1988 season, “[t]here will never be a

⁹¹ BRAD SNYDER, *A WELL-PAID SLAVE: CURT FLOOD’S FIGHT FOR FREE AGENCY IN PROFESSIONAL SPORTS* 52 (2006).

⁹² HOWARD BRYANT, *SHUT OUT: A STORY OF RACE AND BASEBALL IN BOSTON* 63 (2002).

⁹³ *Id.*

⁹⁴ Anderson, *supra* note 6, at 367-68.

⁹⁵ *Id.* The double standard’s continued resonance is reflected in the perspective of current Detroit Tiger Gary Sheffield (then of the Florida Marlins), a perennial Major League All-Star who began playing Major League Baseball in 1988 and whose comments are eerily reminiscent of Henry Aaron’s comments decades earlier: I can honestly say racism is worse today than it’s ever been in the years I’ve played You want to know why there aren’t any black players? Because you’ve got to be twice as good as anyone else. If you’re not, you just won’t make it. Why do you think you hardly ever see any black bench players? You better be a star, or you’re not making this team. Bob Nightengale, *Wonder What Jackie Is Thinking Now?*, *SPORTING NEWS*, Apr. 21, 1997, at 13 (internal quotation marks omitted).

⁹⁶ Cromer, *supra* note 68; BISSINGER, *supra* note 21, at 107.

mediocre black athlete to play at Permian.”⁹⁷ And, indeed, during that season, the Permian roster contained no mediocre black players. At the inception of the 1988 season, Permian had six black players.⁹⁸ One of them was injured, and the other five were starters and impact players.⁹⁹ Two of these five players started on both offense and defense, a feat accomplished by only the most outstanding high school football players, and, on the Permian team, a feat accomplished by only these two.¹⁰⁰ So, while the team had several black stars, it had no black reserves. As was the case with the teams Hank Aaron observed during his Major League baseball career, the only black players on the Permian football team were exceptional.

B. *Bases for the Discriminatory Double Standard and Its
Manifestation at Permian*

Various explanations may account for this phenomenon of disproportionately low black representation among many athletic teams' reserves and the absolute absence of black reserves on the Permian team. Among them are: (1) the stereotype of black intellectual inferiority and physical superiority; and (2) the phenomenon of customer discrimination.

1. **Stupid but Strong: The Myth of the Intellectually Inferior
but Physically Superior Black Athlete**

The early exclusion of blacks from American sport found root in the belief that blacks, although physically imposing and gifted, were intellectually weak and lazy and, therefore, unable “to participate within the structure of sports rules with the same degree of sophistication as whites.”¹⁰¹ While overt race-based athletic exclusion has decreased dramatically in the post civil-rights era, the stereotype of black athletes as “less motivated, less disciplined, less intelligent, . . . and more physically gifted” has persisted into the modern era of American sport.¹⁰² And the stereotype certainly found traction in the American consciousness

⁹⁷ BISSINGER, *supra* note 21, at 17, 108.

⁹⁸ *Id.* at 107.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Davis, *supra* note 7, at 645 (quoting HARRY EDWARDS, *SOCIOLOGY OF SPORT* 41 (1973)).

¹⁰² RICHARD E. LAPCHICK, *SPORT IN SOCIETY: EQUAL OPPORTUNITY OR BUSINESS AS USUAL?* 9-10 (1995).

while Permian played its 1988 season, as evidenced by the notorious televised comments of then-Los Angeles Dodgers' Vice-President for Player Personnel, Al Campanis, and then-CBS sports commentator, Jimmy "The Greek" Snyder, during the late 1980's. Attempting to explain the absence of black managers in Major League Baseball in April of 1987, Campanis lauded blacks' athletic capabilities, but questioned whether they possessed the necessary non-physical attributes: "They are gifted with great musculature and various other things. They're fleet of foot. And this is why there are a lot of black major league ballplayers. Now as far as having the background to become club presidents or presidents of banks . . . I don't know."¹⁰³ The following year, Snyder crassly articulated his belief in black athletic superiority, tracing it to the breeding of blacks during chattel slavery. "[H]e's bred to be the better athlete," Snyder opined, "because this goes all the way to the Civil War when, during the slave trading, the owner, the slave owner would breed this big black woman so that he would have a big black kid."¹⁰⁴ While Snyder made no mention of black players' intellectual capacity, his attribution of their success to size and strength consequent to slave-masters' breeding strategies suggests a belief that said success owes little, if anything, to intelligence.¹⁰⁵

¹⁰³ PHILLIP M. HOOSE, *NECESSITIES: RACIAL BARRIERS IN AMERICAN SPORTS*, at xvii (1989). Campanis, who, prior to these comments, was reputed to be a fair-minded executive and was described by Don Newcombe, a black former Dodgers pitcher as not having "a prejudiced bone in his body," seemed genuinely surprised and confused by the criticism his comments provoked. He was, nonetheless, fired two days later. JON ENTINE, *TABOO: WHY BLACK ATHLETES DOMINATE SPORTS AND WHY WE'RE AFRAID TO TALK ABOUT IT* 234 (2000).

¹⁰⁴ Leonard Shapiro, *Jimmy the Greek Says Blacks Are Bred for Sports*, WASH. POST, Jan. 16, 1988, at A1. Author Jon Entine, who argues the accuracy (while acknowledging the crudity) of Snyder's point, notes that Snyder was not alone in his view that black athletic success is consequent to the breeding of particularly strong blacks by slave masters and that Snyder was, in fact, joined in that view by some high profile black athletes. See ENTINE, *supra* note 103, at 71-72. And even beyond the black athletes Entine identifies, it is clear that "[t]he argument that black athletic superiority was the result of innate physical differences was . . . held . . . by many black[] [non-athletes] as well." David K. Wiggins, *Great Speed But Little Stamina: The Historical Debate Over Black Athletic Superiority*, 16 J. OF SPORTS HIST. 158, 184 (1989). Whatever the racial identities of those holding such a perspective, however, the perspective demands intense scrutiny. Professor David Wiggins explains:

Drawing links between genetic makeup and athletic ability is highly suspect . . . because as . . . [numerous] academicians have made plain through the years, it is highly questionable whether there is such a thing as a racial group considering the enormous lack of homogeneity within this country's black and white communities. The anthropometric differences found between racial groups are usually nothing more than central tendencies and, in addition, do not take into account wide variations within these groups or the overlap among members of different races. This fact not only negates any reliable physiological comparisons of athletes along racial lines, but makes the whole notion of racially distinctive physiological abilities a moot point. *Id.*

For a comprehensive and historical analysis of theoretical bases supporting a view of black athletic superiority, see generally JOHN HOBERMAN, *DARWIN'S ATHLETES: HOW SPORT HAS DAMAGED BLACK AMERICA AND PRESERVED THE MYTH OF RACE* 143-242 (1997).

¹⁰⁵ Wiggins, *supra* note 104, at 180 (Snyder was criticized for "not acknowledging that other factors [besides physical prowess] perhaps contributed to the outstanding

To the extent Campanis and Snyder questioned the strength of blacks' non-physical attributes, such as intelligence and industriousness, they were not alone in their views. In his 2001 book, *Smashing Barriers: Race and Sport in the New Millennium*, Dr. Richard Lapchick, director of the University of Central Florida's DeVos Sport Business Management Program, reported, based on a University of Chicago-sponsored study, that 53% of whites believe blacks are less intelligent than whites.¹⁰⁶ According to the study, an even higher percentage of whites, 62%, believe blacks do not work as hard as whites.¹⁰⁷

In 2006, Major League Baseball glaringly reinforced the prejudicial stereotype of blacks embedded in the latter statistic in soliciting votes on its website, MLB.com, for the Major League Baseball "Look Again Player of the Year Award."¹⁰⁸ The website explained that "[b]ehind every great team on the [baseball] diamond, lurking in the shadow of baseball superstars, live the role players who sacrifice for their team in often unrecognized effort," and then requested that fans vote for one player from the American League and one from the National League who fit the description.¹⁰⁹ As law professor David Hoffman notes, Major League Baseball was, through the contest, seeking to recognize "the overlooked hustle guys The fan favorites. The gritty, wants-it-more, working-man's players."¹¹⁰

In voting, fans were permitted to select among thirty players—one from each Major League team—whom MLB.com pre-identified as worthy of the award.¹¹¹ Interestingly, not one of the thirty candidates for the award was black.¹¹² Purposeful or

performances of black athletes [Indeed,] Snyder's comments were interpreted more as an indictment of black intellectual ability rather than acknowledgment of black athletic superiority."); see also Dorothy Gilliam, *Concerns About the Unspoken Linger After Jimmy the Greek's Departure*, WASH. POST, Jan. 21, 1988, at C3.

¹⁰⁶ LAPCHICK, *supra* note 1, at 268-69.

¹⁰⁷ See *id.*

¹⁰⁸ MLB Look Again Player of the Year Award, http://mlb.mlb.com/NASApp/mlb/mlb/fan_forum/holiday_inn/lapy/index.jsp (last updated Feb. 8, 2007).

¹⁰⁹ *Id.*

¹¹⁰ Posting of David Hoffman to http://www.concurringopinions.com/archives/2006/10/race_sports_and.html (Oct. 27, 2006, 12:17 EST).

¹¹¹ MLB Look Again Player of the Year Award, *supra* note 108.

¹¹² Considering this article's assertion that discriminatorily high standards for black athletes result in black players being disproportionately scarce among teams' reserves, one might argue their absence among MLB.com's pre-identified candidates for the "Look Again Player of the Year Award"—an award for unheralded players "lurking in the shadow of baseball superstars"—is the understandable consequence of their absence among the Major League's unheralded players and not a reflection of the stereotypes inspiring the discrimination. See MLB Look Again Player of the Year Award, *supra* note 108. The argument, however, would be unavailing. Although often underrepresented among teams' unheralded players, unheralded black players, such as the Los Angeles Angels of

otherwise, this conspicuous omission underscores the stereotype, reflected in the aforementioned University of Chicago study, of white players as hard-working and black players¹¹³ as substantially less so.¹¹⁴

Unfortunately, the belief that, although perhaps “slothful and obtuse,” blacks excel in sport because they “possess natural athletic

Anaheim’s Chone Figgins, “the scrappiest role player of them all,” do exist. Posting of Chris Pearson to <http://hugetinymistake.wordpress.com/2006/10/24/white-guys-play-baseball-too/> (Oct. 24, 2006). Moreover, among MLB.com’s pre-identified candidates for the award, several – Garrett Atkins, Nick Johnson, Joe Crede, Andre Ethier, Kevin Youkilis and Brian McCann, among others – are neither reserves nor role players and are, in fact, among the Major Leagues’ better players, *id.*, a category in which this article does not claim blacks to be underrepresented.

¹¹³ Notably, Latino athletes, like black athletes, must contend with the stereotype of laziness. See Timothy Davis, *Racism in Athletics: Subtle Yet Persistent*, 21 U. ARK. LITTLE ROCK L. REV. 881, 890-91 (1999). And, although Latinos account for nearly one-third of all MLB players, see Richard Lapchick, *The 2005 Racial and Gender Report Card: Major League Baseball*, http://www.bus.ucf.edu/sport/public/downloads/2005_Racial_Gender_Report_Card_MLB.pdf (last visited Sept. 6, 2007), only one of the thirty pre-identified players for the “Look Again Player of the Year Award,” Jose Valentin, is Latino. See *Vote For Your Favorite White Guy!*, DEADSPIN, <http://deadspin.com/sports/baseball/vote-for-your-favorite-white-guy-209985.php> (last visited Sept. 6, 2007). While Valentin’s inclusion among the thirty pre-identified candidates may suggest an exception, however minor, to the seemingly stereotype-infused pre-identification process, Valentin’s light complexion is relevant to determining the degree to which it does. The extent to which Latino athletes have suffered racism’s consequences has rested in part on where along the spectrum of color their skin falls. Davis, *supra* at 890-91. Indeed, white or light-skinned Latinos were permitted to play Major League baseball before the Major Leagues desegregated in 1947. *Id.* The experience of Hiram Bithorn, the first Puerto Rican athlete to play for a Major League team is illustrative: “[t]hat Bithorn had white skin meant little in San Juan, [Puerto Rico], where he had played But it meant everything to the men who ran organized baseball in the States. It was the only reason they let him play.” DAVID MARANISS, CLEMENTE: THE PASSION AND GRACE OF BASEBALL’S LAST HERO 28 (2006). So strong was the preference from which light-skinned Latino baseball players benefited, that light-skinned blacks often tried to pass as Latino, so as to be given an opportunity to play. SHROPSHIRE, *supra* note 11, at xxii. Although light-skinned Latino Major Leaguers were certainly discriminatorily remunerated and stereotyped, see Davis, *supra* at 890-91, their preferential treatment as compared with dark-skinned Latinos and non-Latino blacks suggests they suffered a lesser degree of antipathy and preconception. Perhaps, then, Valentin’s inclusion does not suggest the exception it might, had Valentin been more darkly complected.

¹¹⁴ The MLB.com on-line poll sparked significant on-line commentary concerning the disturbingly stereotypical tenor of the Look Again Player of the Year Award. See, e.g., Posting of David Hoffman, *supra* note 110 (asking whether readers “[n]otice anything interesting about the list?” and referring readers to websites addressing the list’s demographic constitution); see also *Vote For Your Favorite White Guy!*, *supra* note 113 (“It is, without question, a poll to choose your favorite white guy We can’t believe they went through with this.”); The David Eckstein Memorial of the Year Award, <http://firejoemorgan.blogspot.com/2006/10/david-eckstein-memorial-eckstein-of.html> (last visited Sept. 6, 2007) (“Notice anything? Yep, two non-[white players]. White people: role players who are always sacrificing for the glory of the non-whites”); Posting of Chris Pearson, *supra* note 112 (“White Guys Play Baseball Too! And they have their own special award now, courtesy of the MLB”); Posting of nycfan to Baseball Primer Newsblog, http://www.baseballthinkfactory.org/files/newsstand/discussion/mlbcom_look_again_player_of_the_year/ (Oct. 24, 2006, 00:03 EST) (referencing the “predictable racial makeup of the nominees”). Indeed, one commentator sarcastically called for future polls that would allow fans to vote for “their favorite lethargic Latino player, their favorite math-problem-solving Asian player and their favorite disinterested black player.” *Vote For Your Favorite White Guy!*, *supra* note 113.

ability” is nourished, rather than disabled, through athletes’ descriptions in the popular media.¹¹⁵ While white athletes are generally lauded for their intellectual strength and work ethic, black athletes are instead generally lauded for their physical attributes.¹¹⁶ This is not to suggest that members of the media consciously perpetuate these stereotypes. Rather, as Dr. Lapchick explains, white news writers were, generally speaking, “raised in a culture in which many white people have strong beliefs about what it means to be African American. The obvious result is that their reporting provides reinforcement of white stereotypes of African American athletes.”¹¹⁷

Viewed through the lens of these stereotypes, the black player who may be somewhat talented, but not supremely talented, suffers mightily. Stereotypically deemed a superior athlete by virtue of race, the player’s non-exceptional performance is wholly unacceptable. Indeed, if clouded with the stereotype of black athletic superiority, an evaluative coach is unlikely to recognize the player’s maximum effort and is instead likely to view the player as failing to achieve his or her natural potential. And, if blended with the stereotype of blacks as non-industrious, this failure may be conveniently attributed to laziness and poor work ethic—characteristics coaches generally loathe and are loath to tolerate.¹¹⁸ While perceived laziness may be acceptable among a team’s best players, it is unacceptable among the reserves battling for the remaining roster positions. So, when final rosters are compiled, the non-exceptional black player, saddled with unrealistically high expectations and viewed as both failing to meet expectations consequent to insufficient effort and

¹¹⁵ Davis, *supra* note 7, at 647-48 (quoting Othello Harris, *African-American Predominance in Collegiate Sport in RACISM IN COLLEGE ATHLETICS*, *supra* note 7, at 61-62).

¹¹⁶ *Id.* at 648-49; Wiggins, *supra* note 104, at 182. The extent to which contemporary black dominance in certain sports is attributed to physiological supremacy is particularly striking when placed in historical context. At various points during the development of professional sport in America, white athletes of particular ethnic groups – Irish boxers in the 1800’s, Jewish basketball players in the early 1900’s, Slavic football linemen in the 1930’s and 1940’s – were disproportionately over-represented in their respective sports, yet commentators rarely focused their attention on allegedly ethnically unique physiological attributes, or even, physical prowess. *Id.* “There might occasionally be comments about physical strength, speed, or stamina of these athletes, but more often than not their success was accounted for by such factors as . . . pride in performance, work habits, intelligence, and the commitment and discipline they brought to each contest.” *Id.*

¹¹⁷ LAPCHICK, *supra* note 1, at 268.

¹¹⁸ William F. Stier Jr. & Robert C. Schneider, *Preferred Player Characteristics and Skills of Division I Men’s Basketball Coaches*, SPORTS J., <http://www.thesportjournal.org/2006Journal/Vol9-No3/Stier.asp> (last visited Sept. 6, 2007); *Work Ethic, Style of Play, and an Attitude of Enthusiasm*, Oct. 11, 2006, <http://gomarquette.cstv.com/sports/m-baskbl/spec-rel/101106aaa.html>; John Oehser, *Jaguars: Character Will Count*, Apr. 16, 2001, http://www.jacksonville.com/tu-online/stories/041601/jag_5920177.html.

insufficiently intelligent to overcome the non-exceptional physical performance through smart play, is unlikely to be a strong candidate for selection.¹¹⁹

Permian's lack of non-exceptional black players was certainly caused, at least in part, by these stereotypes. As noted above, each of Permian's black players was among the team's best. And this, it turns out, is precisely what Permian's coaches expected.¹²⁰ They flatly believed that their black players should be better than their white players on the strength of sheer athletic ability because of their view that the black players' bodies were quicker to mature.¹²¹ When a black player did not meet coaches' elevated expectations, therefore, the failure was deemed the result of poor work habits, rather than lack of ability.¹²² So, the stereotypes of black athletes' attributes, which once supported their exclusion from playing fields and which, according to the aforementioned University of Chicago study, prevail amongst over 50% of American whites, apparently existed among Permian's coaches. It is little wonder, then, that Permian's only black players were exceptional and that the team's one black coach predicted such would always be the case.

2. Give the People What They Want: Customer Discrimination and the End of the Bench

In addition, the historic dearth of non-exceptional black players on sports teams may stem from customer discrimination – a preference among some members of majority white fan-bases that their teams field substantial numbers of white players, even if those players are only marginal contributors.¹²³ While star players are indispensable, whether white or black, a team's reserves are generally not as crucial to success, and, if spectators prefer seeing white players, a sports organization may believe it serves its interests by comprising a disproportionately white core of reserve players.¹²⁴ The experiences of the NBA seemingly bear out this

¹¹⁹ Davis, *supra* note 7, at 658-59 (“[S]tereotypes that nurture unconscious racism cause a myriad of negative effects, including . . . marginal whites being kept on the bench while only blacks who play are retained . . .”).

¹²⁰ BISSINGER, *supra* note 21, at 108.

¹²¹ *Id.* While scholars and commentators have posited numerous physiologically-based theories for black athletic superiority, see *supra* note 104, quicker physical maturation is not among those most frequently cited.

¹²² BISSINGER, *supra* note 21, at 108.

¹²³ N. Jeremi Duru, *Fielding a Team for the Fans: The Societal Consequences and Title VII Implications of Race-Considered Roster Construction in Professional Sport*, 84 WASH. U. L. REV. 375, 395-98 (2006) (citing Eleanor Brown et al., *Wage and Nonwage Discrimination in Professional Basketball: Do Fans Affect It?*, 50 AM. J. OF ECON. & SOC. 333, 343 (1991)).

¹²⁴ *Id.* Such “race-considered roster construction” in the professional context violates

theory. Scholars Eleanor Brown, Diane Keenan, and Richard Spiro studied the composition of NBA teams in 1991, just three years after the 1988 Permian season, and concluded in the *American Journal of Economics and Sociology* that “white fans have a taste for seeing white players,” even if those players receive little playing time.¹²⁵ And, as the theory would suggest, NBA rosters seemed to reflect the fans’ desires: although “72.4% of the league’s players were black and 27.6% were white, of the [least productive reserves], only 47.4% were black and 52.6% were white.”¹²⁶

Rather than disappear, the phenomenon has persisted. A 2002 *Journal of Sports Economics* study confirms that the disproportionality of whites among NBA teams’ scarcely used players has continued, noting that, although time has passed, it remains the case that “teams are responding to customer discrimination.”¹²⁷ Further, a 2001 study published in the *Texas Hispanic Journal of Law and Policy* drew similar conclusions in the Major League Baseball context, finding that, like the market for NBA players, “the market for MLB players is characterized by customer discrimination.”¹²⁸ This phenomenon of teams responding to customer discrimination in crafting their rosters impacts not only professional basketball and baseball, but the sporting world more broadly.¹²⁹ And, considering the circumstances surrounding Permian High School football in 1988, the phenomenon may well have impacted Permian.

The majority of Permian’s followers, like the majority of Permian’s students, were, in 1988, white. If members of the 1988 Permian fan base had preferences similar to those revealed in the

Title VII of the Civil Rights Act of 1964. *See id.* at 376-77. It arguably violates Title VII in the amateur context as well. Robert A. and Amy C. McCormick, in their article, *The Myth of the Student-Athlete: The College Athlete as Employee*, argue that student-athletes are employees of their academic institutions for purposes of the National Labor Relations Act. Robert A. McCormick & Amy C. McCormick, *The Myth of the Student-Athlete: The College Athlete as Employee*, 81 WASH. L. REV. 71, 155 (2006). A similar argument in the Title VII context, if successful, would potentially subject student-athletes’ academic institutions to Title VII liability.

¹²⁵ Duru, *supra* note 123, at 397 (quoting Brown et al., *supra* note 123, at 333, 343).

¹²⁶ *Id.* at 397.

¹²⁷ Richard Burdekin et al., *Are NBA Fans Becoming Indifferent to Race? Evidence from the 1990s*, 6 J. OF SPORTS ECON. 144, 147-48 (2002). Indeed, according to Rhoden, “the NBA actively grooms as many non-black players as it can.” RHODEN, *supra* note 72, at 67. Notably, while the 2002 study “indicates [that] there remains a correlation between a team’s racial composition and the racial composition of the city in which the team is based” and that particular teams seemingly cater, to some extent, to customer discrimination, there do not appear to exist league-wide barriers to entry for black players. Burdekin et al., *supra* at 155.

¹²⁸ Ilyana M. Kuziemko & Geoffrey C. Rapp, *Customer Racial Discrimination in Major League Baseball: Is There No Hope For Equal Pay?*, 7 TEX. HISP. J.L. & POL’Y 119, 142 (2001).

¹²⁹ For an in-depth exploration of the race-based roster construction phenomenon, *see generally* Duru, *supra* note 123.

aforementioned studies, then they preferred to cheer for teams with a significant number of white players, even if in reserve roles. While no studies exist to confirm such preferences, it is clear at least some Permian fans preferred to watch white Permian players, as they believed the post-1982 inclusion of black players was destroying the character and tradition of the Permian football program.¹³⁰ As one former Permian football player, who held this view, pointedly stated during the 1988 season, “I blame it on the niggers’ coming to Permian.”¹³¹

In light of Odessa’s charged racial atmosphere, and with a 20,000 seat arena to fill during Friday night home games, perhaps Permian football decision-makers opted to limit the blacks on the football team to the truly outstanding players. If so, their actions were not aberrant, but instead in keeping with a long and troubling history of race-considered roster construction in American sport.

Although athletics enjoy a reputation as a de-racialized realm, it is clear that both customer discrimination in favor of white athletes and negative stereotypes regarding black athletes have long plagued American sport, spurring discrimination in roster construction. Just as they plague American sport generally, these phenomena seemingly plagued the Permian football program in 1988, potentially spurring the same consequences. Rather than expose this racial discord at Permian and acknowledge these troubling issues at the intersection of race and sport, *Friday Night Lights* ignored them altogether, choosing instead to bask in the idyllic picture’s comfort and to further cement American sport’s mythic reputation.

III. THE MIS-EDUCATION AND COMMODIFICATION OF THE BLACK STUDENT-ATHLETE

Just as the film *Friday Night Lights* ignored Permian’s absence of non-exceptional black players and the extent to which such absence reflects a vexing problem at the intersection of race and sport, the film failed to explore the concept of the black student-athlete as lacking value outside of the athletic context, though that was precisely the real-life experience of star running back, Boobie Miles, one of the film’s major characters.

¹³⁰ BISSINGER, *supra* note 21, at 94.

¹³¹ *Id.*

A. "Just Another Nigger"?¹³² – *The Black Student-Athlete's Precarious Position*

The view of the black student-athlete as valueless outside of the athletic context is frighteningly pervasive and debilitating and often reduces the black student-athlete to a dehumanized "commodity serving the . . . interests of the institution[]" for which he competes.¹³³ Certainly, all student-athletes, regardless of race, face, to some extent, the possibility of institutional commodification.¹³⁴ The risks and consequences of such commodification for black student-athletes, however, are particularly severe due to the long-standing, previously discussed, stereotype of the "intellectually inferior, yet athletically superior, black athlete."¹³⁵ If, indeed, a black athlete is intellectually inferior, an institution's subordination of that athlete's academic career to his athletic ability is no great tragedy, since his personal potential lies not in intellectual endeavors, but strictly in the athletic realm. The stereotype places paramount value on black student-athletes' athletic endeavors and "all but disregards the[ir] educational interests."¹³⁶ Consequently, "far too little is expected academically of the black student-athlete,"¹³⁷ and he is often unprepared to make a living outside of athletics. Unfortunately, only a fraction of aspirants eventually achieve professional athletic status, leaving the multitude to seek employment in a workforce for which they are unprepared.¹³⁸

¹³² Kellen Winslow, Sr., *Foreword to SHROPSHIRE*, *supra* note 11, at xi.

¹³³ Davis, *supra* note 7, at 669.

¹³⁴ *Id.* at 669 (citing Harry Edwards, *The Black "Dumb Jock": An American Sports Tragedy*, 131 C. BOARD REV. 8 (1984) (noting that all student-athletes, regardless of race, "must contend with the reverberations of the 'dumb jock' caricature").

¹³⁵ Davis, *supra* note 7, at 668.

¹³⁶ *Id.*

¹³⁷ *Id.* at 669.

¹³⁸ The NCAA estimates the probability of student-athletes' ascension to the ranks of professional athletics as extraordinarily low. Estimated Probability of Competing in Athletics Beyond the High School Interscholastic Level, http://www.ncaa.org/research/prob_of_competing/probability_of_competing2.html (last visited Sept. 7, 2007); *see also* NCAA, *What Time Is It, Vol. II*, www.ncaa.org/edout/basketball_mentoring/newsletters/volume2.pdf (last visited Sept. 7, 2007). The NCAA study considered the six sports for which there exist professional leagues in the United States: men's basketball, women's basketball, men's football, men's soccer, men's baseball, and men's ice hockey, and produced the following results: Three of 10,000 (0.03%) male high school basketball players are eventually selected in the National Basketball Association draft. Two of 10,000 (0.02%) female high school basketball players are eventually selected in the Women's National Basketball Association draft. Nine of 10,000 (0.09%) high school football players are eventually selected in the National Football League draft. Eight of 10,000 (0.08%) high school soccer players are eventually selected in the Major League Soccer draft. One of 200 (0.5%) high school baseball players is eventually selected in the Major League Baseball draft. One of 250 (0.4%) high school hockey players is eventually selected in the National Hockey League draft. *Id.* Although the percentages of high school baseball and hockey players to be

Tragically, the same stereotypes of blacks as athletically-gifted but intellectually-challenged individuals that spur commodification and “academic neglect”¹³⁹ and that hinder black student-athletes from availing themselves of career options outside of athletics, also promote these athletes’ devaluation once a career in athletics falls out of their reach. Even the most accomplished and educated black athletes suffer this devaluation. Consider the perspective of Kellen Winslow, Sr., a 1995 National Football League Hall of Fame inductee and one of the League’s “all-time great” players, who, after graduating from college and playing professional football, obtained his *juris doctorate*.¹⁴⁰

As long as I was on the field of play I was treated and viewed differently than most African-American men in this country. Because of my physical abilities, society accepted and even catered to me. Race was not an issue. Then reality came calling. After a nine-year career in the National Football League, I stepped into the real world and realized . . . I was just another nigger . . . [T]he images and stereotypes that applied to African-American men in this country attached to me.¹⁴¹

Extraordinarily few black athletes will rival Winslow’s athletic accomplishments and renown. Fewer still will, in addition, rival his academic accomplishments. If Winslow, draped in athletic fame and academic credentials, were, upon leaving sport, beset with the stereotype of intellectual inferiority and viewed as “just another nigger,” the prospects facing black athletes who attain neither his fame nor his education are bleak indeed. These are the circumstances Boobie Miles confronted when his football career ended during Permian’s 1988 season.

professionally drafted, while still low, are substantially higher than those of the other high school athletes studied, Major League Baseball and the National Hockey League have extensive minor league systems through which a large proportion of drafted players do not successfully progress. See Dave Cohen, *The Major League Baseball Draft: A Primer*, http://baseball.about.com/od/newsnotes/a/draftprimer_2.htm (last updated Feb. 8, 2007) (“Of [baseball] players drafted in the first 20 rounds, only about one in six make the majors.”); see also JOHN CHI-KIT WONG, *LORDS OF THE RINKS: THE EMERGENCE OF THE NATIONAL HOCKEY LEAGUE* 118 (2005). Consequently, many draftees never play for a Major League Baseball or National Hockey League team. Cohen, *supra*; *The NHL Meat Market: Every Kid Is a Future Star and Every Team a Big Winner at the NHL Draft* (June 24, 2002), <http://proicehockey.about.com/library/weekly/aa062402a.htm>.

¹³⁹ Davis, *supra* note 7, at 660.

¹⁴⁰ RHODEN, *supra* note 72, at 184.

¹⁴¹ Kellen Winslow, Sr., *Foreword* to SHROPSHIRE, *supra* note 11, at xi.

B. *The Tragedy of Boobie Miles*

As the 1988 season approached, Miles was unquestionably Permian's marquee player.¹⁴² He was a running back of tremendous size, speed, and ability who was courted by some of the most successful collegiate football programs in the nation, including the University of Notre Dame, the University of Nebraska, the University of Oklahoma, Oklahoma State University, Texas A&M University, the University of Houston, the University of Arkansas, Louisiana State University, Clemson University, and UCLA.¹⁴³ Anointed "the chosen son," and projecting an arrogant persona to match the moniker, it seemed certain Miles would bring glory to Permian High School football.¹⁴⁴ During a pre-season scrimmage, however, at the end of an impressive fifteen yard run, Miles planted his left leg awkwardly and fell to the ground.¹⁴⁵ The anterior cruciate ligament in his left knee torn, his high school football career was, for all intents and purposes, finished.¹⁴⁶ Miles attempted a comeback despite the damage, but he was largely ineffective and received little playing time.¹⁴⁷

Ultimately, Miles quit the team mid-season to undergo the full reconstructive knee surgery that doctors told him would eventually be necessary if he hoped to recover and play college football the following year.¹⁴⁸ If Miles were unable to play football after his Permian career ended, he would, in his view, have nothing. Indeed, a life without football, to Miles, would be "a big zero," and as he sat on the bench after his injury, recognizing the possibility of such a life, he "was scared to death."¹⁴⁹ His only aspiration was to "[m]ake it to the pros," which required, as a prerequisite, a successful college football career, and with that possibility encumbered, Miles was forlorn.¹⁵⁰

¹⁴² BISSINGER, *supra* note 21, at 53-55.

¹⁴³ *Id.* at 53-54, 64.

¹⁴⁴ *Id.* at 1, 55.

¹⁴⁵ *Id.* at 56.

¹⁴⁶ *Id.* at 261.

¹⁴⁷ *Id.* at 198, 201-02.

¹⁴⁸ *Id.* at 260-61.

¹⁴⁹ *Id.* at 56, 57.

¹⁵⁰ *Id.* at 57.

1. Commodification's Roots

Tragically, Miles' non-football post-secondary school options, were, indeed, limited, and these limits may well have resulted from racial prejudice and discrimination. Well before high school, Miles was labeled as learning-disabled and tracked into special education classes,¹⁵¹ and while race may not have impacted this tracking decision, it certainly may have. Indeed, the chances of Miles being labeled learning-disabled as a young student were disproportionately high, as even today black children are twice as likely as their white peers to be deemed learning-disabled and placed in special education classes,¹⁵² with black boys identified as learning-disabled at an even greater rate than black girls.¹⁵³ So severe is this overrepresentation and the consequences it breeds, that the United States House of Representatives Committee on Education and the Workforce, in 2001, held hearings on the disparity and its societal implications.¹⁵⁴ Although these relatively

¹⁵¹ *Id.* at 65.

¹⁵² Theresa Glennon, *Race, Education, and the Construction of a Disabled Class*, 1995 WIS. L. REV. 1237, 1250 (1995) [hereinafter Glennon I] (noting that "African-American students are classified as disabled and placed in special education at a rate double that of white students."). Glennon's figures reflect a composite of the three disability classifications upon which the United States Department of Education's Office for Civil Rights has principally focused in examining the potentially discriminatory identification of students: mental retardation, serious emotional disturbance, and specific learning disabilities. See Theresa Glennon, *Knocking Against the Rocks: Evaluating Institutional Practices and the African American Boy*, 5 J. HEALTH CARE L. & POL'Y 10, 18 (2002) [hereinafter Glennon II]. A category-by-category examination suggests that, in addition to influencing the likelihood of being identified as disabled, race influences the likelihood of being labeled as suffering from one of the more highly stigmatized categories of disability. While identification rates vary among states, "at a national level," blacks, and particularly black males, are "most overrepresented" in the highly stigmatizing mental retardation and serious emotional disturbance categories and "less disproportionately represented" in the less stigmatizing specific learning disability category. See *id.* at 18-19.

¹⁵³ Daniel J. Losen & Gary Orfield, *Introduction to RACIAL INEQUITY IN SPECIAL EDUCATION*, at xvii (Daniel J. Losen & Gary Orfield eds., Cambridge Mass. 2002). Indeed, while African American females are 2.02 times as likely as white females to be identified as mentally retarded, African American males are 3.26 times as likely, [and while] African American girls are 1.4 times as likely as white females to be identified as having serious emotional disturbance . . . African American boys are a remarkable 5.5 times as likely to be identified. Glennon II, *supra* note 152, at 20.

¹⁵⁴ Losen & Orfield, *supra* note 153, at xviii. In concluding his testimony on the matter, Pennsylvania Congressman Chaka Fattah illustrated the challenges facing the black students who are misidentified as learning-disabled and the extent to which athletic accomplishment may represent their only hope. *Id.* Representative Fattah described the plight of a young man named Billy Hawkins who, throughout his academic career, up to the age of fifteen, was classified by teachers as "educable mentally retarded." *Id.* Only after he joined his high school football team as a backup quarterback – and, upon entering a game in which his team was badly trailing, engineered a comeback through executing "complicated plays" – did his educators view him as at all intelligent. *Id.* After overcoming the tragic misidentification, Hawkins thrived academically, eventually earning his Ph.D. *Id.* He is now the President of Texas College in Tyler, Texas. See Ferris State

recent hearings might suggest otherwise, it merits noting that the disproportionate identification of black children as learning-disabled is long-standing. It has endured for decades,¹⁵⁵ and, perhaps counter-intuitively, finds its root partially in the wake of the Supreme Court's 1954 decision in *Brown v. Board of Education*.¹⁵⁶

In the *Brown* case, the Court famously prohibited the perpetuation of racial segregation in public schools, holding that "disparities in public education opportunities that were based on the race of America's children had to end."¹⁵⁷ The decision, which emboldened civil rights activists and "fuel[ed] the civil rights movement,"¹⁵⁸ inspired intense and widespread resistance among those opposing educational integration.¹⁵⁹ Some segregated school districts abandoned operations altogether rather than provide racially integrated education.¹⁶⁰ Others took an ostensibly less extreme, though no less benign, approach: they nominally accepted students of color into their schools, only to segregate them inside the institutions. These school districts did so through "implement[ing] 'ability grouping,' or 'tracking' practices," which involved placing children of color in separate classes and justifying the separation as academically necessary.¹⁶¹ In doing so, the districts managed to comply with federal law while, at the same time, limiting interaction among children of different races.¹⁶²

As noted *supra* in Part I.A., the Supreme Court's decision in *Brown* seemingly meant little in Odessa, which avoided meaningful desegregation until 1982, when the United States District Court

University, <http://www.ferris.edu/htmls/alumni/c&g/spring2003/hawkins.htm> (last visited Sept. 7, 2007); see also A Message from the 20th President, <http://www.texascollege.edu/welcome.htm> (last visited Sep. 7, 2007).

¹⁵⁵ Since the Department of Education's Office for Civil Rights began, in the early 1970's, to conduct national surveys on disability identification among children, the surveys have consistently revealed minority overrepresentation. Losen & Orfield, *supra* note 153, at xv.

¹⁵⁶ Glennon I, *supra* note 152, at 1250-51.

¹⁵⁷ CHARLES J. OGLETREE, ALL DELIBERATE SPEED: REFLECTIONS ON THE FIRST HALF CENTURY OF BROWN V. BOARD OF EDUCATION, at xiii (W.W. Norton 2004).

¹⁵⁸ *Id.* at 124. The civil rights community's enthusiasm was substantially dampened a year later, when the Court in *Brown v. Board of Education II* "refused to grant petitioner's request that all schools be enjoined to desegregate immediately," opting instead to remand the desegregation cases at issue to the district courts from which they came "with directions to desegregate the school 'with all deliberate speed.'" *Id.* at 126-27 (quoting *Brown v. Bd. of Educ.*, 349 U.S. 294, 301 (1955)). The court's decision substantially weakened the desegregationist mandate and foreshadowed "the slow and ultimately unsuccessful effort to eliminate segregated education" in America. OGLETREE, *supra* note 157, at xiii.

¹⁵⁹ See OGLETREE, *supra* note 157, at 124-31. Opponents of the Court's desegregation mandate included then-President Dwight Eisenhower, who privately stated that "the Court's decision had set race relations progress back fifteen years and that desegregation could lead to social disintegration." *Id.* at 126.

¹⁶⁰ *Id.* at 131.

¹⁶¹ Glennon I, *supra* note 152, at 1250.

¹⁶² See *id.*

for the Western District of Texas, in *United States v. Ector County Independent School District*, mandated immediate implementation of a desegregation plan upon recognizing that “[t]he historically black schools ha[d] never been desegregated, and since 1954 ha[d] remained either all Black or virtually all Black and Mexican American.”¹⁶³ If school systems elsewhere in the country “implemented ‘ability grouping’ and ‘tracking’ practices”¹⁶⁴ to maintain segregation among students in response to *Brown*, might the Odessa school system, still “bitterly resisting”¹⁶⁵ integration during Miles’ elementary school years, have subtly done the same in anticipation of, and in response to, *United States v. Ector County Independent School District*? Perhaps.

Even, however, if no such intent existed, race, and particularly the stereotype of blacks’ intellectual inferiority, may well have influenced Miles’ classification as learning-disabled. As noted above, black students are identified as disabled at a rate twice that of white students, and as law professor Theresa Glennon explains, the consequent overrepresentation of black children in special education classes “reflects the belief that a higher percentage of these students are deficient in some important manner.”¹⁶⁶ Further, to the extent that “learning difficulties” are identified among these students, “they are often understood as reflecting innate limitations” rather than previous unsatisfactory educational experiences.¹⁶⁷ This being the case, it is difficult to avoid the conclusion that the stereotype of blacks’ intellectual inferiority—of laziness and stupidity—potentially impacted Miles’ identification as learning-disabled.

Importantly, the stereotype of the intellectually inferior black and the preconceptions accompanying it may not always operate at a conscious level, a point Georgetown law professor Charles Lawrence makes at length in his groundbreaking article, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*.¹⁶⁸ As Lawrence notes, “[b]ecause racism is so deeply ingrained in our culture, it is likely to be transmitted by tacit understandings: Even if a child is not told that blacks are inferior, he learns that lesson by observing the behavior of others.”¹⁶⁹ As a consequence, an individual may well be unaware that “the ubiquitous presence

¹⁶³ *United States v. Ector County Indep. Sch. Dist.*, Civ. Act. No. MO-70-CA-64, at 35 (W.D. Tex. 1982).

¹⁶⁴ Glennon I, *supra* note 152, at 1250.

¹⁶⁵ Hutchinson, *supra* note 22, at 3.

¹⁶⁶ Glennon I, *supra* note 152, at 1240.

¹⁶⁷ *Id.*

¹⁶⁸ See Lawrence, *supra* note 26, at 317.

¹⁶⁹ *Id.* at 323.

of . . . [the] stereotype has influenced her perception that blacks are lazy or unintelligent.”¹⁷⁰ Thus, it would seem even well-intentioned educators, may, without consciously doing so, rely on negative stereotypes in categorizing black students as learning-disabled.

2. Commodification's Fruits

Once a student is identified as learning-disabled, an ugly cycle is born in which “[t]eachers often have diminished expectations” for the student, and the diminished expectations “in turn lead to reduced achievement.”¹⁷¹ The few students who, later in their academic careers, return to non-special education classes, have by that time generally fallen well behind their peers and suffered self-esteem erosion.¹⁷² This fate, which claims so many students identified as learning-disabled, claimed Boobie Miles.

Although mainstreamed out of special education classes at Permian, by the end of high school Miles had fallen dreadfully behind and harbored no academic aspirations.¹⁷³ As a senior, he took a math course many students completed in the eighth or ninth grade, a science course most took as tenth graders, a language arts course strictly for students two or more years below their reading and writing grade levels, and a creative writing course in which his teacher expected little from him, because, in her words, “the only thing kids like that have going for them, is that physical strength.”¹⁷⁴ Miles’ creative writing teacher was not his only Permian teacher to abdicate instructional responsibility. While some of Miles’ high school teachers diligently instructed him, others simply babysat the young man who, as another teacher put it, “was destined to become the next Great Black Hope of the Permian football team.”¹⁷⁵

¹⁷⁰ *Id.*

¹⁷¹ Glennon I, *supra* note 152, at 1240-41.

¹⁷² *Id.* at 1240-41.

¹⁷³ BISSINGER, *supra* note 21, at 150-52.

¹⁷⁴ *Id.* at 65, 151.

¹⁷⁵ *Id.* at 66. It merits noting that whites are not alone in enabling the academic underachievement of black student-athletes. Indeed, just as Miles’ academic needs were largely ignored at Permian by the school’s overwhelmingly white faculty, the academic needs of Gary Edwards, an extraordinary football player at Carter High School, the team Permian would face in the 1988 state semifinals, were largely ignored by the overwhelmingly black faculty responsible for instructing him. See BISSINGER, *supra* note 21, at 291-93. “If Gary Edwards and [his fellow stars on the Carter football team] felt like missing class and going to the lunchroom, they went to the lunchroom. If they were bored and felt like leaving class early before the bell, they just got up and walked out before the bell.” *Id.* at 291. Some of Edwards’ teachers did not stop merely at failing to instruct him, deciding in addition to actively assist in his avoidance of academic rigor

Miles' education, as of 1988, left him inadequately prepared for a productive life off of the football field, and, knowing this, he did all he could to extend his football career beyond high school. This, of course, included quitting the Permian football team to expedite surgery, for which Miles suffered condemnation from those either unaware of or unconcerned with the fragility of his sole promising post-secondary school option.¹⁷⁶ Unfortunately, reconstructive knee surgery was not enough. Miles never regained his form, became unattractive to the University football programs once vigorously courting him,¹⁷⁷ and played football only briefly at a junior college before failing out of school.¹⁷⁸ He has since held a series of warehouse jobs and struggled economically.¹⁷⁹

Just as racial preconceptions were likely responsible, at least in part, for rendering Miles undereducated and option-less as he concluded his senior year of high school, they indubitably impacted his devaluation upon quitting the team, revealing Winslow's statement that "people treat African American athletes differently than they treat African American [non-athletes]"¹⁸⁰ to be no less true of Permian high school football followers than of NFL followers. Just as Miles' football career at Permian was finished, so too, in the eyes of many affiliated with Permian High School football, was his value as a human being. Miles' post-injury worth was, in many quarters, perhaps best reflected in a conversation three Permian supporters had as they watched a practice during the 1988 season. One of the three suggested that Miles' best recourse, once he could no longer compete on the football field, was to end his life.¹⁸¹ Another objected, not because

through giving him answer sheets to exams or excusing him from exam-taking altogether. *Id.* at 293. The consequences of such extraordinary impunity for young student-athletes can be severe, as evidenced by the post-high school experiences of Edwards and Derrick Evans, a fellow Carter football star and Edwards' best friend. *See id.* Accustomed to routinely breaking rules with no consequences, the two star players, who were well financially supported by middle-class parents, committed several armed robberies for fun. *Id.* at 341. Even upon being arrested, they were convinced no significant consequences would follow and that instead they would "go to jail for a little while and [their] mothers would come bail [them] out and [they'd] go back home and it would be over with." *Id.* To Edwards' and Evans' shock, they were ultimately handed prison sentences of sixteen and twenty years, respectively. *Id.* at 342. Edwards' and Evans' experience illustrates the well-established danger of shielding exceptional high school and college student-athletes from the consequences of their actions. *See* Thomas N. Sweeney, *Closing the Campus Gates – Keeping Criminals Away from the University – The Story of Student-Athlete Violence and Avoiding Institutional Liability for the Good of All*, 9 SETON HALL J. SPORTS L. 226, 234-35 (1999).

¹⁷⁶ BISSINGER, *supra* note 21, at 260-63. A subset of the community, comprised primarily of black Odessans, had long worried about the prospects for Miles' future outside of football, *id.* at 66-67, and, thus, likely did not condemn Miles' decision to quit.

¹⁷⁷ *Id.* at 350-52.

¹⁷⁸ *Id.* at 350-51, 361.

¹⁷⁹ *Id.* at 361.

¹⁸⁰ RHODEN, *supra* note 72, at 194.

¹⁸¹ BISSINGER, *supra* note 21, at 262.

of the sentiment's absurdity, but because Miles' dying by gunshot would be a worthless use of ammunition.¹⁸² He remarked, to the laughter of his companions, "[w]hen a horse pulls up lame, you don't waste a bullet on him."¹⁸³

Some other community members did not go so far as to assert Miles might be best off dead but "gleefully suggested that [Miles], without the ability to carry a football in his hand might as well get a broom and start preparing for his other destiny in life – learning how to sweep the corners of storerooms."¹⁸⁴ Even Miles' coaches, who, until his injury, were supporting and guiding him in an attempt to together win football games, turned against him, dismissing his reasons for quitting the team as pretextual and insisting Miles had always been a "quitter" and was mentally unfit or unwilling to adjust to playing after suffering the injury.¹⁸⁵ Viewing Miles as "selfish and undisciplined and utterly undedicated to the great cause of Mojo,"¹⁸⁶ members of the coaching staff, like others in the community, seemingly viewed Miles as worthless outside of sport. Indeed, in response to the question, "What would [Miles] be without football?" one of his coaches, with no hesitation, responded, "A big ol' dumb nigger."¹⁸⁷

Notably, Miles' nearly instant transmogrification from valuable to valueless was not aberrant at Permian. When starring for the Panthers, black players were acknowledged to be members of the community, but when no longer playing, that status evaporated. As one community member stated, "Those [black players] are not niggers to them They are Mojoes."¹⁸⁸ When they ceased to play football, and were thus no longer Mojoes, they once again became niggers.¹⁸⁹

¹⁸² *Id.*

¹⁸³ *Id.* The comparison of Miles to an animal, an exercise these three Permian supporters very much enjoyed, and, in fact, repeated, *id.*, was not anomalous in the Permian community. For instance, one of Miles' own coaches described him as mentally challenged and weak-willed, explaining that, in response to criticism, he "laid down just like a mule." *Id.* at 66. While comparisons to animals would, for any human being, be insulting, such comparisons carry additional significance and insult for blacks, who, for centuries, have battled to debunk the myth of their animalistic sub-humanity. See *infra* text accompanying notes 203-08.

¹⁸⁴ BISSINGER, *supra* note 21, at 67.

¹⁸⁵ See *id.* at 200, 262-63. Nate Hearne, Permian's only black coach at the time, was unique among Permian's coaches in sympathy and continued support for the injured Miles. *Id.* at 262-63.

¹⁸⁶ *Id.* at 200.

¹⁸⁷ *Id.* at 67.

¹⁸⁸ *Id.* at 108.

¹⁸⁹ Nate Hearne expressed this precise sentiment in different terms: "We know that we're equal as athletes, but once we get off the field, we're not equal." Roger Cohen, *Author Cancels Trip After Threats in Texas*, N.Y. TIMES, Sept. 25, 1990, at 22A (internal quotation marks omitted).

3. Betraying Boobie

The film *Friday Night Lights* entirely ignores the complex racial dynamics inherent in Boobie Miles' experience as a Permian student-athlete. Although the film reveals his clear preference for football over academics, it fails to reveal the experiences and circumstances that helped generate both that preference and his view that football was his only professional option. And although the film reveals Miles' devastation upon realizing his football career is over, it ignores his rapid post-injury descent in value and the accompanying racially demeaning rhetoric.¹⁹⁰

Worse even than neglecting the racial dynamics that framed Miles' experience as a Permian player and a former player, the film fictionally portrays Miles' post-injury experience with the team as triumphant and redemptive. In the film, as team members and coaches gather in their stadium parking lot in preparation for travel to the state championship game against the Carter Cowboys,¹⁹¹ the injured Miles shows up wearing his team letterman jacket and is offered a seat on the team bus.¹⁹² The film depicts Miles traveling with the team, cheering passionately from the sidelines, and joining the team in the locker room during halftime.¹⁹³ And at halftime, as Permian's head coach seeks to rally his team from a sizable deficit, he is depicted nodding toward Miles and telling his players to "close [their] eyes and . . . think about Boobie Miles."¹⁹⁴ As the actor portraying Miles stands against the wall balancing on his crutches with tears in his eyes, the coach tells them Miles is their "brother" and that he would "die to be out there" on the field with them.¹⁹⁵

Although touching, the film's treatment of Miles' post-injury experience is disingenuous and destructive. In truth, Miles never rode the bus and never attended the game. Indeed, by the time

¹⁹⁰ Interestingly, Universal Pictures' DVD version of *Friday Night Lights* contains bonus features which include deleted scenes, one of which tangentially addresses Miles' post-injury devaluation. See *FRIDAY NIGHT LIGHTS*, *supra* note 22. In the scene, Miles' uncle and guardian visits Permian's head coach Gary Gaines at Gaines' home. *Id.* He laments that although Miles "carried the hopes, the dreams, and the souls of [Odessa] on his shoulders[,] . . . giving his body, heart, and soul, everything he had" to the cause of Permian football, the entire town was prepared to "throw him away like garbage." *Id.* The scene, however, makes no reference whatever to the issues of race surrounding Miles' devaluation. *Id.* The scene's deletion reveals the *Friday Night Lights* filmmakers' decision to exclude even its de-racialized sentiment.

¹⁹¹ In actuality, the Permian Panthers' game against the Carter Cowboys was not a championship final match, as portrayed in the film, but rather a semifinal match. *BISSINGER*, *supra* note 21, at 304.

¹⁹² *FRIDAY NIGHT LIGHTS*, *supra* note 22.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

Permian played Carter, Miles had long since quit the team, was estranged from it, and suffered his community's and his coaches' race-infused disparagement.¹⁹⁶ By incorporating this fictional locker room vignette while simultaneously ignoring Miles' potentially race-influenced academic neglect and the demeaning and race-infused rhetoric accompanying his departure from the team, the film disregards the existence of, and the danger accompanying, the perception of black student-athletes as valueless outside of the athletic context. In doing so, the movie reinforces the idyllic picture of American sport as devoid of racial discrimination.

IV. RECASTING THE RACIAL DYNAMIC: THE PERMIAN-CARTER CONFRONTATION

Interestingly, although the film scrubs the story of the 1988 Permian Panthers virtually free of race, the film touches on race in one context—the circumstances surrounding Permian's final game of the season against the Carter Cowboys, an almost entirely black team from Dallas. Even in that context, however, the film failed to reflect the extent to which the game approximated a racial encounter.

The film did faithfully portray a tense meeting occurring a week before the game during which representatives of the two schools discussed where the game should be played, where the two schools' contingents should sit and what the racial composition of the officiating crew should be,¹⁹⁷ but even that meeting failed to reveal the racially charged atmosphere developing around the athletic confrontation.

Several weeks before the game, one of Carter's players was ruled academically ineligible and Carter was forced to forfeit the games in which he had played, as well as the team's playoff birth.¹⁹⁸ Controversy raged, legal appeals were filed, and a public battle ensued before Carter eventually regained its position in the playoffs.¹⁹⁹ As the controversy unfolded, perspectives on the propriety of Carter's eligibility seemed delineated along racial lines:

[t]o whites across the state of Texas, Dallas Carter was a no-good

¹⁹⁶ BISSINGER, *supra* note 21, at 260-63.

¹⁹⁷ FRIDAY NIGHT LIGHTS, *supra* note 22; BISSINGER, *supra* note 21, at 305.

¹⁹⁸ BISSINGER, *supra* note 21, at 297-303.

¹⁹⁹ *Id.* at 303-04.

bunch of cheaters who didn't deserve the honor of playing for a state championship To blacks, Dallas Carter was being persecuted by whites who did not want to witness a black school with black players and black fans go to State and win it.²⁰⁰

The film omitted this racially polarized eligibility battle,²⁰¹ so while the film's portrayal of the logistical meeting between the Permian and Carter officials revealed some concern about the racial implications of the game, it fell far short of indicating the brewing racial hostility's intensity. Indeed, although the film fails to reflect it, "[a]s the contest approached, it didn't seem as if Permian and Carter were playing a football game at all, but were representing two vast constituencies desperately intent on bludgeoning each other, one exclusively black, the other exclusively white."²⁰²

Just as disturbing as the film's de-emphasis of race is the film's approach to portraying the racial dynamics surrounding the game that it did touch upon. In essence, the film demonizes the Carter team and fictionally portrays its members as solely responsible for racializing the conflict, while fictionally portraying the Permian team and its supporters as innocents in the racial encounter.

A. *Of Black Antagonism and White Innocence*

The film's depiction of Carter's players powerfully evokes the "brute caricature:" a caricature reflecting presumed savagery and bestiality, long stereotypically associated with persons of African ancestry.²⁰³ This myth of black bestiality reflected in the "brute caricature" attached to blacks in Africa, shadowed them as they were carried, enslaved, to the new world, persisted throughout America's several-century experiment with chattel slavery, and remained deeply entrenched even after emancipation.²⁰⁴ Its persistence owes in large part to the ends it served—the

²⁰⁰ *Id.* at 304-05.

²⁰¹ *FRIDAY NIGHT LIGHTS*, *supra* note 22. Just as Universal Pictures' DVD version of *Friday Night Lights* contains bonus features including a deleted scene tangentially addressing Miles' post-injury devaluation, it contains scenes addressing the racially polarized eligibility battle. *See id.* These scenes' exclusion from the film further evidences the filmmakers' desire to limit its exploration of the impact of race on Permian's 1988 season.

²⁰² BISSINGER, *supra* note 21, at 304.

²⁰³ Ryan Patrick Alford, *Appellate Review of Racist Summations: Redeeming the Promise of Searching Analysis*, 11 MICH. J. RACE & L. 325, 344-46 (2006); R.A. Lenhardt, *Understanding the Mark: Race, Stigma, and Equality in Context*, 79 N.Y.U. L. REV. 803, at 858-59 (2004).

²⁰⁴ N. Jeremi Duru, *The Central Park Five, the Scottsboro Boys, and the Myth of the Bestial Black Man*, 25 CARDOZO L. REV. 1315, 1321-25 (2004).

justification of blacks' enslavement as well as their post-emancipative repression.²⁰⁵ And, indeed, rather than dissipating, the myth gained strength and influence in post-emancipation America by way of sensationalist journalism, cartoons, and other media vehicles projecting images of the myth's personification.²⁰⁶ As a consequence, the myth of black bestiality and the "brute caricature" personifying it endure in contemporary America.²⁰⁷ Black athletes are certainly not immune from this stereotype; indeed, the athletically superior, intellectually inferior stereotype exists "in conjunction with [the] stereotype[] that black athletes like other African-Americans are . . . 'savage.'"²⁰⁸

While the *Friday Night Lights* filmmakers may not have intentionally evoked the "brute caricature" in their depictions of the Carter team, they certainly did so. The film consistently depicts Carter players as unsportsmanlike and cruel and as relishing the pain they inflict on the Permian players.²⁰⁹ One scene, in particular, rises above the others in its unmistakable evocation of the "brute caricature:" after a play during which the Permian quarterback is knocked to the ground and his helmet is ripped off, a Carter player is pictured intentionally kicking the helmet into the downed quarterback's face from close range, bloodying his face and jersey and causing him excruciating pain.²¹⁰ Far more brutal than even excessively rough and injurious tackling, striking a helmet-less player in the head with a football helmet is not only horrific, but arguably criminal.²¹¹ Such

²⁰⁵ Lenhardt, *supra* note 203, at 859-60; Alford, *supra* note 203, at 345.

²⁰⁶ Lenhardt, *supra* note 203, at 860; Alford, *supra* note 203, at 345.

²⁰⁷ Alford, *supra* note 203, at 345; LAPCHICK, *supra* note 1, at 268 ("Fifty-six percent of whites think African Americans are more violent").

²⁰⁸ Davis, *supra* note 7, at 648 n.163 (citing David K. Wiggins, *Critical Events Affecting Racism in Athletics*, in *RACISM IN COLLEGE ATHLETICS*, *supra* note 7, at 42).

²⁰⁹ *FRIDAY NIGHT LIGHTS*, *supra* note 22. Members of the Carter team interviewed after the movie's release acknowledged they and their teammates were arrogant, but denied they were the bullies the film made them out to be. Tim MacMahon, *Carter Grade Scandal Left Out - Ex-Players Say Movie, Though Entertaining, Is Not Entirely Accurate*, DALLAS MORNING NEWS, Oct. 8, 2004, at 5A.

²¹⁰ *FRIDAY NIGHT LIGHTS*, *supra* note 22.

²¹¹ See Clete Samson, *No Time Like the Present: Why Recent Events Should Spur Congress To Enact a Sports Violence Act*, 37 ARIZ. ST. L.J. 949, 958 (2005). "Criminally prosecuting athletes for acts they committed in the course of a game has traditionally been a difficult task . . . [because of the] problem [of] trying to draw the line between what is aggressive play within the rules of the game and what is reprehensible enough to be considered criminal." *Id.* at 958. If the public response to a 2006 in-game incident during which a University of Miami football player swung his helmet at a Florida International University football player is any indication, an attack or attempted attack with a football helmet crosses the line into the reprehensible and, thus, the criminal. See, e.g., Jay Price, *A Game 7 Classic That No One Saw Coming*, STATEN ISLAND ADVANCE, Oct. 22, 2006, at S05 ("Swinging your helmet like an axe . . . is criminal behavior . . ."); Shelly Anderson, *Big East Doesn't Miss Miami Mess*, PITT. POST-GAZETTE, Oct. 21, 2006, at C2 ("During the fight . . . at least two Miami players surely committed criminal assault or attempted assault. Safety Anthony Reddick swung his helmet. Safety and defensive captain Brandon Meriweather stomped

criminality and savagery are reflective of the “brute caricature,” and the attack’s depiction thus intensifies the black bestiality myth’s evocation.²¹² The helmet-kicking scene, likely fabricated from whole cloth,²¹³ epitomizes the manner in which the almost entirely-black Carter team is portrayed—savage, brutal, and unfeeling.

In addition to depicting Carter’s players as savage, the film depicts them as racializing the game at its very outset. As the film’s portrayal of the game begins, the team captains meet at midfield while the referee flips a coin to determine which team will first possess the ball.²¹⁴ Once possession is determined, one of the Carter captains is shown gesturing to Permian player Brian Chavez and saying, “I’m gonna ring your bell all day long, Mexican.”²¹⁵ He is then depicted as pointing to Don Billingsley, also a Permian player, and, in reference to his long straight Caucasoid hair, remarking, “You too, Goldie Locks.”²¹⁶

That the film depicts fabricated scenes in which Carter’s captain spews racial rhetoric and Carter’s players engage in savage behavior is particularly interesting in juxtaposition with the filmmakers’ decision against exposing Permian’s heretofore discussed internal racial discord or depicting incidents of white Permian players and supporters racializing the game, of which there were many. For instance, at one crucial juncture in the game, an official missed a call, ruling a pass from Carter’s quarterback to one of its wide receivers a reception, when it was, in fact, an incompleteness.²¹⁷ Rather than attributing the mistake to bad refereeing, some Permian fans, noting the official was black, complained that he favored Carter because of race and made the call as he did for that reason.²¹⁸ As the game progressed, and the cheers in the stadium grew louder, one longtime Permian booster

on FIU players with his cleats.”); Rick Telander, *Miami Shame: Thugs Don’t Need Hugs*, CHI. SUN TIMES, Oct. 20, 2006, at 127 (“After watching the tape of the vicious brawl, again and again, I can’t help wondering where the criminal charges are”); Ben Volin, *A Question of Crime*, PALM BEACH POST, Oct. 20, 2006, at 1C (“The possibility of athletes facing criminal charges has been raised . . . in the aftermath of the FIU-Miami brawl.”).

²¹² In addition to reflecting the supposed savagery and bestiality of black men, the “brute caricature portrays Black men as innately . . . criminal.” Alford, *supra* note 203, at 345 (internal quotation marks omitted) (quoting David Pilgrim, *The Brute Caricature*, <http://www.ferris.edu/news/jimcrow/brute/> (last visited Sept. 7, 2007)).

²¹³ When interviewed years later about the 1988 Carter-Permian game and the manner in which the film *Friday Night Lights* portrayed the game, one of the Carter players who participated in the game took particular exception to the helmet-kicking scene, which he indicated was a fictional creation. MacMahon, *supra* note 209, at 5A.

²¹⁴ FRIDAY NIGHT LIGHTS, *supra* note 22.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ BISSINGER, *supra* note 21, at 325.

²¹⁸ *Id.*

and a state district court judge, indicated annoyance at the Carter fans' cheers, which he described as sounding "like a bunch of African natives."²¹⁹ He tried to drown them out with his own cheers as the game neared its final play, a play whose result cemented a six point loss for Permian.²²⁰ As that play began, Permian's center, after hiking the ball to his quarterback, assumed his pass-blocking stance and concentrated on his task as Permian's final pass of the season fell incomplete.²²¹ He did not see the ball hit the ground, but he knew Permian had lost by the sound of the crowd and because, as he phrased it, he "saw a bunch of cocky niggers jumping up and down."²²²

It is, of course, difficult to imagine, considering the extent to which black and white communities in Texas were polarized over the Permian-Carter football game, that only the Permian contingent viewed the game in racial terms and emitted racial rhetoric. It is far more likely some players and fans on both teams racialized the contest to some extent, and, had a journalist documented the Carter fans' and players' experience as Bissinger documented the Permian fans' and players' experience, the Carter contingent would, indeed, be revealed as somewhat responsible for exacerbating the racially polarized atmosphere surrounding the game.²²³ Without question, however, while members of the Permian contingent may not have been alone in racializing the contest, they were certainly highly contributory.

B. *The Power of Portrayal*

Considering the film's refusal to engage racial issues plaguing the 1988 Permian football team, one might expect the film to avoid the racial overtones of the Permian-Carter game as well. In that the filmmakers chose to engage race in this one aspect of the film, however, the filmmakers' choice to portray Carter as the racial antagonist and Permian as the innocent victim is both curious and deeply unfortunate. In doing so, the film goes beyond ignoring the "ugly racism"²²⁴ directed toward blacks in Odessa generally and within the Permian football program

²¹⁹ *Id.* at 328.

²²⁰ *Id.*

²²¹ *Id.* at 333.

²²² *Id.* at 334.

²²³ Indeed, while not entirely clear, it appears members of the Carter team may have targeted a black Permian teacher with chants of "Oreo," BISSINGER, *supra* note 21, at 317, a derogatory term for blacks viewed by other blacks as "black on the outside, [but] white on the inside." Michael Sokolove, *Why Is Michael Steele a Republican Candidate?*, N.Y. TIMES, Mar. 26, 2006, §6, at 32.

²²⁴ BISSINGER, *supra* note 21, at 363.

specifically; it inaccurately portrays the overwhelmingly white Permian football team as being victimized by racist black opponents.

This portrayal's consequences are tragic. The portrayal brands black as villain and white as victim, potentially inspiring among viewers general reprobation for the former group and sympathy for the latter. While viewers may not recognize or articulate such emotional association, it may adhere nonetheless. Indeed, as Professor Lawrence and other scholars investigating subconscious racism have revealed, such emotional association potentially attaches at a subconscious level, triggering biases of which their holders are entirely unaware and thus unable to consciously shed.²²⁵

Research on implicit racial bias, once relatively sparse, has expanded and gained momentum in recent years with the development of implicit association tests.²²⁶ These tests assess the speed with which respondents associate “pleasant-meaning words” and “unpleasant-meaning words” with randomly displayed faces of black Americans in comparison with the speed with which they associate the same words with randomly displayed faces of white Americans.²²⁷ In doing so, the tests seek to measure “implicit attitudinal preference.”²²⁸ For seven years, Harvard University’s Project Implicit has utilized implicit association tests to assess the subconscious preferences of Americans,²²⁹ and a database of over 3 million administered tests clearly reveals pervasive implicit anti-black sentiment.²³⁰ Indeed, Professors Anthony Greenwald and Linda Krieger, having analyzed the data, conclude that “any non-African American subgroup of the United States population will reveal high proportions of persons showing statistically noticeable race bias in favor of [white Americans] relative to [black Americans].”²³¹

Importantly, race-based emotional associations, such as those unveiled through implicit association tests, often find root in dishonest and stereotypical portrayals. Consider the childhood incident that drove Professor Lawrence, years later, to explore

²²⁵ Lawrence, *supra* note 26, at 323; Lenhardt, *supra* note 203, at 829.

²²⁶ Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CAL. L. REV. 945, 952 (2006).

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ Project Implicit (2006), <http://www.projectimplicit.net/generalinfo.php>.

²³⁰ Jerry Kang & Mahzarin R. Banaji, *Fair Measures: A Behavioral Realist Revision of “Affirmative Action,”* 94 CAL. L. REV. 1063, 1072 (2006).

²³¹ Greenwald & Krieger, *supra* note 226, at 956. Professors Jerry Kang and Mahzarin Banaji note that even the blacks tested have a weak implicit preference “for Whites over Blacks.” Kang & Banaji, *supra* note 230, at 1072.

unconscious racism. As a boy of five years, Lawrence, who is black, gathered with his classmates and teacher—all of whom were white—for story time.²³² The story for the day was titled *Little Black Sambo* and featured a “very black” boy named Little Black Sambo with a “minstrel’s white mouth” and his hair fashioned into numerous pig-tails, each “tied with a different color ribbon,” dashing around a pile of pancakes while a tiger pursued him.²³³ The story’s title character is an unmistakable reflection of the stereotypical sambo, a child-like, frivolous, and irresponsible black buffoon “quick to avoid work while reveling in the easy pleasures of food, dance, and song.”²³⁴ Lawrence’s classmates and teacher enjoyed the entertainment the story provided, seemingly oblivious to the damaging stereotype of black inferiority it furthered.²³⁵ Lawrence, having suffered “psychic harm” from the story’s reading, felt differently.²³⁶ As an adult, he gives voice to the emotions he was unable to express at five: “There is a knot in the pit of my stomach. I feel panic and shame. I do not have the words to articulate my feelings—words like ‘stereotype’ and ‘stigma’ that might help cathart the shame and place it outside of me where it began.”²³⁷

Lawrence’s words, spoken in reaction to Little Black Sambo’s jaunt around the pancakes, would be no less applicable in reaction to Carter’s defensive player assaulting Permian’s quarterback with the helmet. Both characters personify a stereotype of blackness—Little Black Sambo as the happy-go-lucky fool; Carter’s defensive player as the savage aggressor—and just as Lawrence suggests Little Black Sambo’s version of blackness likely fueled subconscious racial perceptions, Carter’s defensive player’s version may well have done the same.²³⁸ In that Harvard’s Project Implicit reveals implicit associations, like explicit associations, predict

²³² Lawrence, *supra* note 26, at 317.

²³³ *Id.*

²³⁴ Jon Hanson & Kathleen Hanson, *The Blame Frame: Justifying (Racial) Injustice in America*, 41 HARV. C.R.-C.L. L. REV. 413, 436 (2006) (quoting ETHNIC NOTIONS (California Newsreel 1986)); see also Lenhardt, *supra* note 203, at 858; Melissa K. Hughes, *Through the Looking Glass: Racial Jokes, Social Context, and the Reasonable Person in Hostile Work Environment Analysis*, 76 S. CAL. L. REV. 1437, 1441 (2003).

²³⁵ Lawrence, *supra* note 26, at 317; Edward M. Chen, *The Judiciary, Diversity, and Justice For All*, 91 CAL. L. REV. 1109, 1121 (2003).

²³⁶ W. Bradley Wendel, *The Banality of Evil and the First Amendment*, 102 MICH. L. REV. 1404, 1405 n.17 (2004).

²³⁷ Lawrence, *supra* note 26, at 317.

²³⁸ While stereotypes of the sambo and the brute caricature both took root during slavery, the brute caricature stereotype “became more dominant” than the sambo stereotype after emancipation. Lenhardt, *supra* note 203, at 859. As the turn of the nineteenth century approached, it “functioned as a barometer of the fears of Whites who were alarmed by the idea that black men might prove able to compete with them economically, politically, and sexually,” and served to support their repression. *Id.*

behavior,²³⁹ the film's portrayal potentially renders viewers less outwardly sympathetic to black athletes, and thus to the challenges they face, than the viewers might otherwise be.²⁴⁰

Inaccurate characterizations of whites as a "victim group" or as "innocents" have served to deflate anti-discriminatory movements in various contexts through deflecting attention from those most discriminatorily disadvantaged.²⁴¹ And inaccurate and unsympathetic characterizations of blacks have done the same.²⁴² Nothing about the nature of inaccurate characterizations in the sports context suggests a different result and, as such, the film *Friday Night Lights* deserves the movement to eradicate racial discrimination in sport not only by fictionalizing the Permian Panthers' story to largely reflect the idyllic picture, but by fictionalizing the story to portray ruthless blacks as the principle instigators, and whites as the innocent victims, of the minimal racial discord it acknowledges.

V. CONCLUSION

Sport's potential as a uniting force is unbounded. Sport provides a forum for individuals of disparate backgrounds to meet and interact around a common interest and, in the case of team sport, to toil physically together in pursuit of a common goal. Indeed, "[f]or all sports are and claim to be—entertaining, brawny, commercial, tough, competitive, fulfilling—they are . . . a catalyst for human interaction."²⁴³ And the results of that

²³⁹ Project Implicit, *supra* note 229.

²⁴⁰ Indeed, "implicit biases correlate[] with real-world behaviors like being friendly toward a target, [and] allocating resources to minority organizations . . ." Kang & Banaji, *supra* note 230, at 1073.

²⁴¹ See, e.g., Seth D. Harris, *Innocence and the Sopranos*, 49 N.Y.L. SCH. L. REV. 577, 579-81 (2004) (workplace discrimination context); Art Alcausin Hall, *There Is a Lot to Be Repaired Before We Get to Reparations: A Critique of the Underlying Issues of Race That Impact the Fate of African American Reparations*, 2 SCHOLAR 1, 25-26 (2000) (reparations context). Notably, the "innocents" of whom Harris speaks have a far greater claim to innocence than members of the Permian contingent had. While Harris' "innocents" are "innocents" only in the sense that they satisfy the narrow definition: 'freedom from specific guilt,' Harris, *supra* at 580, some members of the Permian contingent did not satisfy even that narrow definition, and, on the contrary, were guilty of racializing the encounter. See *supra* text accompanying notes 217-222.

²⁴² See Richard Delgado & Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?*, 77 CORNELL L. REV. 1258, 1287 (1992) ("[W]ho would credit[] a speaker or writer one associates with watermelon-eating, buffoonery, menial work, intellectual inadequacy, laziness, lasciviousness, and demanding resources beyond his or her deserved share?"); Lenhardt, *supra* note 203, at 824 (quoting Stephen C. Ainsley et al., *Stigma Reconsidered* in THE DILEMMA OF DIFFERENCE: A MULTIDISCIPLINARY VIEW OF STIGMA 3 (Stephen C. Ainsley et al. eds., Springer 1986)) ("[S]igmatized persons possess an attribute that is deeply discrediting and . . . they are viewed as less than fully human because of it." (internal quotation marks omitted)).

²⁴³ Muhammad Ali, *Foreword* to RICHARD LAPCHICK, *supra* note 1, at xi.

interaction can be beautiful. They can also be disgraceful. In the context of American sport, existing in a society long beset with racial distinction and division, both the beauty and the disgrace often implicate issues of race. While the sporting community readily celebrates the beauty of sport's unifying power, it tends to ignore the disgrace lurking at the intersection of race and sport. Universal Pictures' *Friday Night Lights* does this precisely.

The film inherits the true story of a football team enmeshed in disgraceful racial dynamics and purges the story of those dynamics and the attendant racial discord and discrimination. In that the discord afflicting the Permian football team reflected, in many respects, the discord afflicting American sport more broadly, the filmmakers' choice to ignore it is deeply regrettable. Rather than acknowledge the phenomena of black athletes' disproportionate scarcity among their teams' reserve players, the concept of the disposable black student-athlete, the reality of disharmonious intra-team racial discord, and the stereotypes and perceptions at the core of these phenomena bearing directly on the 1988 Permian Panthers' experience, the film avoided them altogether. In doing so, the film created a tale largely reminiscent of the idyllic picture, thus re-emphasizing the longstanding perspective of sport as an "area that is free from racism."²⁴⁴ Because recognizing racial discord and discrimination is necessary to appropriately combating it, the film patently disserves the movement to eradicate discrimination from sport. Considering its nearly wholesale avoidance of racial issues, compounding the film's disservice is the nature of the racial discord it does depict – fictional accounts of blacks as the instigators of racial conflict and whites as their largely-innocent victims.

If the sporting community is, indeed, to "reclaim . . . the true spirit of sport, deconstructing discriminatory barriers and ensuring they will never rise again,"²⁴⁵ it must not deny their existence. Rather, it must acknowledge those barriers and engage them honestly. Only then will the idyllic picture fade and reveal sport for what it is—a simultaneously wonderful and troubled institution with the potential to unite as few institutions can. De-racialized representations of sport, such as those proffered by *Friday Night Lights*, inhibit this revelation, thus thwarting sport's unifying power and limiting its potential to positively impact the society within which it exists.

²⁴⁴ Davis, *supra* note 7, at 639.

²⁴⁵ Muhammad Ali, *Foreword* to RICHARD LAPCHICK, *supra* note 1, at xi.