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Nick J. Sciallo

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Richard Sherman, Rhetoric, and Racial Animus in the Rebirth of the Bogeyman Myth

by NICK J. SCIULLO*

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I. Introduction

On January 19, 2014, the San Francisco 49ers faced off against the Seattle Seahawks in the National Football Conference (NFC) Championship Game at CenturyLink Field in Seattle, Washington.¹ The game, a hard-fought struggle between two superb teams, ended with the Seattle Seahawks winning 23-17.² The Seahawks would go on to win the National Football League (NFL) Super Bowl by defeating the Denver Broncos.³ While the NFC Championship game was in itself interesting as a sports competition, the media devoted much attention and pundits bandied

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1. See *Scores for Jan 19, 2014*, ESPN, <http://scores.espn.go.com/nfl/boxscore?gameId=340119026> (last visited Feb. 25, 2015).

2. *Id.*

3. See Associated Press, *Seattle Seahawks' D Dominates Manning, Denver Broncos to Win Super Bowl*, NFL, <http://www.nfl.com/gamecenter/2014020200/2013/POST22/seahawks@broncos#menu=gameinfo%7CcontentId%3A0ap2000000324015&tab=recap&recap=fullstory> (last visited Mar. 13, 2015).

about a 30-second post-game interview⁴ of Seattle Seahawks defensive back, Richard Sherman,⁵ which Fox Sports reporter Erin Andrews conducted.⁶ This article utilizes Richard Sherman's interview to investigate the complex relationship among sports, race, law, and racial myth formation in the modern NFL.

Part II of this article will analyze the context and content of the Richard Sherman interview, setting the stage for a larger discussion of rhetoric,⁷ racial animus,⁸ and the myth of the bogeyman.⁹ Part III will consider the evolving rhetoric of black danger in law and media,¹⁰ situating the coverage of the Richard Sherman interview in the larger discursive framework of racialized media. Part IV will expand the discussion of racial animus in sports media to encompass the pernicious myth of the bogeyman,¹¹ which has reared its ugly head in the creation of the Richard Sherman saga. Part V will analyze the myth of the bogeyman in history, paying particular

4. See NFL, *Sherman Calls Out Crabtree in Postgame Interview* (Fox Sports broadcast Jan. 19, 2014), <http://www.nfl.com/videos/nfl-playoffs/0ap2000000315529/Sherman-calls-out-Crabtree-in-postgame-interview>.

5. See *Richard Sherman*, NFL, <http://www.nfl.com/player/richardsherman/2495507/profile> (last visited Mar. 22, 2015), for Richard Sherman's profile.

6. See *Erin Andrews*, TVGUIDE.COM, <http://www.tvguide.com/celebrities/erin-andrews-298855/bio/> (last visited Mar. 22, 2015), for Erin Andrews' biography.

7. The author thinks of rhetoric not simply as Aristotle's finding the available means of persuasion, but instead as Kenneth Burke's equipment for living. That means rhetoric is all around us; it is a way of understanding the world. See JOHN D. RAMAGE, *RHETORIC: A USER'S GUIDE* (2006). Additionally, rhetoric is crucial for understanding the "meaning-making process" in law. Linda L. Berger, *Studying and Teaching: "Law as Rhetoric": A Place to Stand*, 16 J. LEGAL WRITING INST. 3, 5 (2010).

8. Derrick Bell's casebook on race and law provides one of the most developed explanations of racial animus in law. Bell addresses cases and contexts related to racial animus, including criminal law and procedure, and employment law. See generally DERRICK BELL, *RACE, RACISM AND AMERICAN LAW* (Aspen Publishers, 6th ed. 2008).

9. See Robert L. Scott, *On Not Defining "Rhetoric"*, 6 PHIL. & RHETORIC 81, 81-96 (1973); see also David W. Smit, *The Uses of Defining Rhetoric*, 27 RHETORIC SOC'Y Q. 39, 41-42 (1997).

10. See generally Teun A. van Dijk, *The Role of the Press in the Reproduction of Racism*, in MIGRATIONS: INTERDISCIPLINARY PERSPECTIVES 15 (Michi Messer et al. eds., 2012); *Media, Racism and Monitoring*, in INTERNATIONAL MEDIA MONITORING 307 (Kaarle Nordenstreng & Michael Griffin eds., 1999) (discussing the need of journalists and academics to monitor media racism); Stephen Balkaran, *Mass Media and Racism*, 21 YALE POL. Q. (1999), <http://www.yale.edu/ypq/articles/oct99/oct99b.html> (predicting continued racism in media due to economic inequality); HENRIE M. TREADWELL, *BEYOND STEREOTYPES IN BLACK AND WHITE: HOW EVERYDAY LEADERS CAN BUILD HEALTHIER OPPORTUNITIES FOR AFRICAN AMERICAN BOYS AND MEN* 149-68 (2013) (discussing the possibility that people might be able to change media representations of black men and boys).

11. See William Safire, *Bogeyman or Boogeyman? If Mispronounced, He's Gonna Getcha!*, *TAIPEI TIMES*, Feb. 1, 2004, available at <http://www.taipetimes.com/News/editorials/archives/2004/02/01/2003097080>.

attention to its coloration in German¹² and Romanian¹³ myth, and a painting by Francisco Goya¹⁴ to consider the construction of Richard Sherman as modern-day bogeyman and an instance of racialized violence. Richard Sherman, as a relatively dark-skinned black man, embodies a longstanding fear of darkness¹⁵ that often goes unarticulated in public culture.

This approach is appropriate because creating multimodal models of understanding racism is necessary to best critique it. This approach also compliments the author's belief in the value of rhetorical and interdisciplinary inquiry into law. The article concludes by suggesting further research and ways in which the media and law can cease constructing black danger and supporting anti-black racism.

Underlying this examination is an abiding concern for critical race theory as an analytical lens to critique identity politics, performance, and racial and ethnic discrimination. Modern racial thought often fails to realize the "legal racial irony and liberal contradiction of the frustrating legal pace of meaningful reform that has eliminated blatant hateful expressions of racism."¹⁶ This criticism indicates both a reasonable frustration with the lack of real changes within the legal system and a dangerous propensity to ignore the subtleties of more modern forms of racism. As suggested below, people ought to reform their worldviews to one that is cognizant of rhetoric's role in racism. Both media and legal actors will be well served by more carefully thinking about the language they choose that ultimately perpetuate racism. This commitment to critical race theory is borne of a deep concern for the hostility white America

12. The German myth centers on the *schwarzen mann*, literally the black man. See generally DONALD E. PAYNE, I KNOW MANDINGOS SING: THE REAL REASON WHY BLACKS IN AMERICA ARE SO DEADLY TO EACH OTHER 76 (2011); MIKA VIRPIRANTA, SUN CULTS VERSUS THUNDER CULTS: PUBLIC ORIGINS OF DRUIDISM AND CHRISTIANITY 47–48 (2012) (discussing possible meanings behind the Schwarzer Mann mountain in the Shnee Eifel range). The myth is now kept alive in a children's game that is a variant of tag. E-MAIL FROM MONIKA SHROEDER TO AUTHOR (Aug. 22, 2014, 5:06 AM) (on file with author).

13. In Romania, the mythical character is the *omul negru*, also translated to "black man." See Oliver Berry, *Transylvania: Where Every Tale Has a Bite*, NEWS.COM.AU (Jan. 27, 2013), <http://www.news.com.au/travel/world-travel/transylvania-where-every-tale-has-a-bite/story-e6frfqai-1226561937153>.

14. See MUSEO NACIONAL DEL PRADO, *Goya en el Prado, Que Viene el Coco*, <https://www.museodelprado.es/goya-en-el-prado/obras/ficha/goya/que-viene-el-coco-1/> (last visited Mar. 30, 2015); see generally ROBERT HUGHES, GOYA (2006); STEPHANISES STEPANEK, GOYA: ORDER & DISORDER (2014); FRANCISCO GOYA, LOS CAPRICHOS (1969) [hereinafter GOYA, LOS CAPRICHOS]; FRANCISCO GOYA, THE DISASTERS OF WAR (1967).

15. See Leonard M. Baynes, *If It's Not Just Black and White Anymore, Why Does Darkness Cast a Longer Discriminatory Shadow than Lightness? An Investigation and Analysis of the Color Hierarchy*, 75 DENV. U. L. REV. 131 (1997).

16. Laurence Parker, *Critical Race Theory and Africana Studies: Making Connections to Education 1*, 3 (The Cavehill Philosophy Symposium, Working Paper 2008), available at <http://www.cavehill.uwi.edu/fhe/histphil/chips/archives/2008/docs/parker2008.aspx>.

harbors for black and brown people from Canada to Chile. Indeed, as Kevin Hylton argues, critical race theory is “an ontological starting point for the study of sport today.”¹⁷

Sports provide a site to interrogate racism, and this interrogation can help better understand race in society *writ large*. Analyzing sports can create the building blocks for larger critiques of racism in society because sports act as a microcosm of society replete with interpersonal relationships, economics, racism, sexism, capitalism, and constant and complex media coverage. The present study suggests that racism’s salience in society is indeed supported by racism in sports generally, and racism in the Richard Sherman interview, specifically.

II. The Richard Sherman Interview in Theory

The interview was broadcast on countless television and web-based channels and is available across the Internet.¹⁸ It was further circulated¹⁹ in fragments²⁰ across social media networks.²¹ Although not the subject of this article, scholars might think of the fragmentation of black media portrayals, their ready dissemination, and de-contextualization as racist in and of itself.²² This analysis might be fruitful for understanding black criminality as portrayed on legal television shows, as well as on newscasts. To be sure, fragmentation far from being simply descriptive informs post-modern racism. Once fragmented, it becomes easy to portray people as chattels or, more simply, if some people are able to reduce other people to

17. KEVIN HYLTON, ‘RACE’ AND SPORT: CRITICAL RACE THEORY 22 (2009).

18. See, e.g., RocketsRed, *Richard Sherman Rips Michael Crabtree in Erin Andrews Interview*, YOUTUBE.COM (Jan. 19, 2014), <https://www.youtube.com/watch?v=7PH35C7Fhq0>.

19. See Mary E. Stuckey, *On Rhetorical Circulation*, 15 RHETORIC & PUB. AFF. 609, 609 (2012) (citations omitted), for the theory of circulation.

20. See Michael Calvin McGee, *Text, Context, and the Fragmentation of Contemporary Culture*, in CONTEMPORARY RHETORICAL THEORY: A READER 65 (John Louis Lucaites et al. eds., 1999), for a theory of fragmentation.

21. Sean Gregory, *Richard Sherman’s Postgame Interview Was the Best*, TIME, Jan. 20, 2014, available at <http://keepingscore.blogs.time.com/2014/01/20/richard-shermans-post-game-interview-was-the-best/>; see also The Root Staff, *Racist Rants About Seattle Seahawk Richard Sherman*, THE ROOT (Jan. 20, 2014), http://www.theroot.com/articles/culture/2014/01/richard_sherman_gets_racist_tweets_after_his_outburst.html; Greg Botelho, *Don’t Call Him a ‘Thug’ and 4 Other Things You Should Know About Richard Sherman*, CNN (Jan. 23, 2014), <http://www.cnn.com/2014/01/22/us/5-things-richard-sherman/>; Samer Kalaf, *Dumb People Say Stupid, Racist Shit About Richard Sherman*, DEADSPIN.COM (Jan. 19, 2014), <http://deadspin.com/dumb-people-say-stupid-racist-shit-about-richard-sherm-1504843629>.

22. Greg Goodale & Jeremy Engels, *Black & White: Vestiges of Biracialism in American Discourse*, 7 COMM. & CRITICAL/CULTURAL STUD. 70, 71–2 (2010); see also Art Herbig, *Rhetoric and Polymediation: Using Fragments to Understand the Relationship Between “Text” and Discourse*, in BEYOND NEW MEDIA: DISCOURSE AND CRITIQUE IN A POLY-MEDIATED AGE 34 (Art Herbig et al. eds., 2015).

fragments, then it becomes easy to render other people as chattel—objects, not subjects.²³ Fragmentation helps to describe the ways in which individuals can co-opt black performance. That study, however, is available to other scholars.

Instead of uncritically embracing racist reactions against Richard Sherman as somehow angry, violent, mad, maniacal, or troublesome—i.e., that Richard Sherman did something wrong or acted out of turn—critics should instead appreciate the complexities of black performance and refuse its shackling by white norms.²⁴ Rather than ask how Richard Sherman performed incorrectly, the better question to ask is in which ways Erin Andrews performed correctly in her role as a white, well-to-do, media darling. The author is very cognizant of the risk that critique of Erin Andrews may be viewed as a critique on the feminine. It is not. She did nothing wrong in the interview. That she is well-regarded in sports media, commonly referred to as attractive, and quite often adored is wonderful. The author thinks she is a competent sports journalist, and a well-intentioned person. That does not absolve her from her racist comments. A critique of her racist comments and the interlocutors that would cast her as victim does not do injustice to her. What it does, and is intended to do, is correct the injustice done to Richard Sherman.

The question posed above does not assume that Richard Sherman was in error; it does not center blackness as wrong. In other words, did Erin Andrews act out whiteness precisely how one might think she would? John O. Calimore writes, “[w]hiteness is an interlocking pattern of beliefs, values, feelings, and assumptions; policies, procedures, and laws; behaviors and unwritten rules used to define and underpin a worldview. It is embedded in historic systems of oppression that sustain wealth, power, and privilege.”²⁵ Calimore’s description of whiteness guides this article’s discussion of whiteness.

If the impulse is to question black performativity without regard to white performativity,²⁶ then blackness becomes always suspect, and

23. Julia De Foor Jay, “What a History You Have”: *Ancestral Memory, Cultural History, Migration Patterns, and the Quest for Autonomy in the Fiction of Jamaica Kincaid*, in *MIDDLE PASSAGES AND THE HEALING PLACE OF HISTORY: MIGRATION AND IDENTITY IN BLACK WOMEN’S LITERATURE* 117, 119 (Elizabeth Brown-Guillory ed., 2006); see also Michael Hurt, *The Vicissitudes of White Privilege*, *SCRIBBLINGS OF THE METROPOLITICIAN* (Apr. 20, 2006), <http://metropolitician.blogspot.com/2006/04/page/2/>.

24. STEFANO HARNEY & FRED MOTEN, *THE UNDERCOMMONS: FUGITIVE PLANNING AND BLACK STUDY* 47 (2013).

25. John O. Calimore, *Whiteness: Some Critical Perspectives: Whiteness as Audition and Blackness as Performance: Status Protest from the Margin*, 18 *WASH. U. J.L. & POL’Y* 99, 104–05 (2005) (citations omitted).

26. *Id.* at 105–06 (arguing that Whiteness is more akin to audition than performance).

whiteness the unflinching norm of our mass-mediated present. Marking blackness as always questionable makes whiteness present in “almost all facets of social life,”²⁷ not merely a benign reflection of racial difference. Instead of continually placing blame on blackness and black people, society, and the media specifically, should investigate the complex network of white practices that serve as the precondition for the policing of blackness.²⁸ The Richard Sherman interview and the critical reaction to it help to achieve that end by shifting the focus to the intersection of whiteness and blackness in media.

The fear of black danger, then, according to a perverse logic that marks society, makes sense because the networked mythology of black danger is so pervasive. When blackness is continuously defined as other, abject, evil, and criminal, the only way for law to grapple with ontological anti-black is to continually reinscribe criminality in the corporeal reality of black people. That media often represents blacks as criminal (in crime procedural television shows, legal dramas, and on the nightly news) is part of the problem. The other part, often unacknowledged, is the way audiences readily accept mediated images of black criminality, along with constructing their own image based on synchronic snapshots of the black present.

III. The Rhetoric of Black Danger

It seems unnecessary to offer words of caution for the notion that blackness “is complex and intensely contested.”²⁹ Blackness may be a problematic concept from the jump, yet as shorthand, this article refers to blackness while recognizing the way the term may elide a more nuanced understanding of that which it is used to describe. Blackness takes varied forms, and no authentic, proper, or right version of blackness exists. Indeed, there is a plethora of black performances, and it is this plethora that generates black danger because “race is frequently an indicator of suspicion, usually in the case of people of color, or the lack of suspicion, usually in the case of whites.”³⁰ Thus, blackness and its critiques are multivariate, and writing often fails to give the space necessary for exposition.

A number of books trace the notion of black danger: Thomas Ruffin Gray’s *The Confessions of Nat Turner: The Leader of the Late Insurrection*

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27. Zeus Leonardo, *The Color of Supremacy: Beyond the Discourse of ‘White Privilege’*, 36 EDUC. PHIL. & THEORY 137, 139–40 (2004).

28. Ruth Frankenberg, *Introduction: Local Whitenesses, Localizing Whiteness*, in DISPLACING WHITENESS: ESSAYS IN SOCIAL AND CULTURAL CRITICISM 1, 9 (1997).

29. Lionel K. McPherson & Tommie Shelby, *Blackness and Blood: Interpreting African American Identity*, 32 PHIL. & PUB. AFF. 171, 176 (2004).

30. Fran Lisa Buntman, *Race, Reputation, and the Supreme Court: Valuing Blackness and Whiteness*, 56 U. MIAMI L. REV. 1, 2 (2001).

Southampton, Virginia,³¹ Harper Lee's *To Kill a Mockingbird*³²; or perhaps to some of the legal cases Ian F. Haney López highlights in *White by Law: The Legal Construction of Race*.³³ Origins do not so much matter because they alone are insufficient to broadly contextualize an issue—in this instance, black danger—in a social atmosphere of import. As Cynthia Lee argues, “[e]ven individuals who self-identify as egalitarian tend to respond more negatively toward Blacks than Whites when racial stereotypes are activated and there is little or no time to consciously recognize that such stereotypes have been activated.”³⁴

Following Lee, individuals need only think of the notion of the commonly used “thug” as racial coding, a substitute for “black man.”³⁵ To be sure, “thug” is now applied to many races, but this article argues, and the author believes, that most people likely heard this term first applied to a black man. Richard Sherman has been a vocal opponent of the way black men are depicted in the media.³⁶ These sorts of stereotypes, like “thug” or “menace,” perpetuate black danger, which is always in the dark.

Keep in mind, danger always lurks in dark corners,³⁷ and dark matter shapes our phantasmagoric fears. Phasmophobia is the fear of ghosts, specters, or phantasms. Nyctophobia or achluophobia is the fear of darkness. While people typically think of these fears as children's fears, more adults than are willing to let on may harbor some trepidation about the dark. Dangerous things lurk in the shadows, which are always dark.³⁸ The recesses of our mind are dark. Joseph Conrad's Africa is the “Dark Continent.”³⁹ The Dark Ages are regarded as some of the bleakest in world

31. THOMAS RUFFIN GRAY, THE CONFESSIONS OF NAT TURNER, THE LEADER OF THE LATE INSURRECTION IN SOUTHAMPTON (1831).

32. HARPER LEE, *TO KILL A MOCKINGBIRD* (HarperCollins Publishers 1999).

33. IAN F. HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (Richard Delgado & Jean Stefancic eds., 10th ed. 1997).

34. Cynthia Lee, *The Gay Panic Defense*, 42 U.C. DAVIS L. REV. 471, 480 (2008) (citations omitted).

35. Botelho, *supra* note 21.

36. See HARVARD FOUND. FOR INTERCULTURAL AND RACE RELATIONS, *The Modern Black Athlete: Panel Discussion on Race, Justice, and Sports*, 33 HARV. FOUND. J. 5, 5 (2014) (“The discussion took place on April 23, almost three months after the Seahawks won the Superbowl [sic] and Richard Sherman's excited remarks ignited a media flurry and reactions across the Web, in which he was referred to as a ‘thug.’ Since the Super Bowl, Sherman has been vocal across the media about representations of black athletes.”).

37. See Cornel West, *Truth, in EXAMINED LIFE: EXCURSIONS WITH CONTEMPORARY THINKERS* 6 (Astra Taylor ed., 2009) (“William Butler Yates used to say it takes more courage to examine the dark corners of your soul than it does for a soldier to fight on the battlefield.”).

38. Annalise Acorn, *Fear of Crime and Punishment*, 1 J. THEORETICAL & PHIL. CRIMINOLOGY 79, 93–94 (2009).

39. See generally JOSEPH CONRAD, *THE HEART OF DARKNESS* (1899); see also THOMAS PAKENHAM, *THE SCRAMBLE FOR AFRICA: WHITE MAN'S CONQUEST OF THE DARK CONTINENT*

history.⁴⁰ The Black Plague killed millions.⁴¹ Unruly workers are blackballed or blacklisted.⁴² A black soul is uncaring and angry. This is perhaps the most consistent characterization in contemporary United States English: dark is evil.⁴³ It seems odd that people are so quick to admit they have these thoughts that might not be publically expressible, yet they relegate them immediately to the dark corners of their mind. Indeed, the idea that people have dark corners expresses this tension between darkness always being present and always being bad. Blackness is continually reinscribed as bad.

What explains this tendency to associate the dark and the black with the unfavorable? According to Anthony Paul Farley, "[j]ust as there is a sadistic pleasure in the consumption of black criminality, there is a sadistic pleasure in the production of black criminality."⁴⁴ So, even if individuals may decry fear of the black body, they often take a sadistic pleasure in it. They derive strength and wholeness from the threatening abject other. In so doing, the black body is constructed solely of fear—in part because it produces pleasure. The black body becomes object of pleasure through fear. Simply put: black danger is white pleasure in this anti-black logic. This is better understood by comparison to risk-seeking behavior that gives tremendous pleasure through confrontation with fear (skydiving, driving at a high rate of speed, risk-seeking, etc.). It is precisely fear that generates risk-seeking behavior's pleasure.

Black danger is not an idea borne of, or unique to, sports, of course. It has roots in the sexual politics of slavery,⁴⁵ which included sexual abuse

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FROM 1876 TO 1912 (1992) (discussing colonialism and racism in and applied to the African continent).

40. For an interesting study of the time and term, see Janet L. Nelson, *The Dark Ages*, 63 HIST. WORKSHOP J. 191–201 (2007).

41. *De-coding the Black Death*, BBC (Oct. 3, 2001), <http://news.bbc.co.uk/2/hi/health/1576875.stm>.

42. Phil C. Robinson, *The Black English Issue*, 38 EDUC. LEADERSHIP 474, 474 (1981); Evelyn Rodgers, *Is Ebony Killing the Black Woman?*, 6 LIBERATOR MAG. 12, 12–13 (1966).

43. Michael Osborn, *Archetypal Metaphor in Rhetoric: The Light-Dark Family*, 53 Q. J. SPEECH 115, 117, 120 (1967).

44. Anthony Paul Farley, Symposium: *Citizenship and Its Discontents: Centering the Immigrant in the Inter/National Imagination (Part II): Section Two: Echoes of the "Big Bang": Slavery, Race, and the Colonial Encounter Within and Without the Nation-State": The Black Body as Fetish Object*, 76 OR. L. REV. 457, 519 (1997).

45. Adrienne D. Davis, *Slavery and the Roots of Sexual Harassment*, in DIRECTIONS IN SEXUAL HARASSMENT 457–58 (Catharine MacKinnon & Reva Siegel eds., 2003); Adrienne Davis, *"Don't Let Nobody Bother Yo' Principle": The Sexual Economy of American Slavery*, in SISTER CIRCLE: BLACK WOMEN AND WORK 103–27 (Sharon Harley ed., 2002).

and rape, and the Antebellum United States.⁴⁶ It has roots in the vicious attacks on black men as sexual predators,⁴⁷ as well as the trope of the black jezebel.⁴⁸ Fear of a black planet has caused considerable angst.⁴⁹ The comparison of Barack Obama to Adolf Hitler speaks volumes.⁵⁰ If people can equate blackness to Nazi-ness, in their abject otherness, then what greater evil could there be than blackness according to these misguided commenters?⁵¹ Hannah Arendt's discussion of Nazism as the "banality of evil"⁵² belies precisely the danger of Nazism—its overarching and unrelenting evil. To be black, then, is to be evil.

This fear of blackness has been confirmed according to both qualitative and quantitative analysis.⁵³ One scholar found in her review of scientific analysis of prejudice that brain function actually changes to produce stereotyping behavior and bias.⁵⁴ Her work emphasized the role of black

46. See generally CHARLES F. ROBINSON, II, *DANGEROUS LIAISONS: SEX AND LOVE IN THE SEGREGATED SOUTH* (2003) (discussing the history of interracial relationships, including those in the Antebellum United States).

47. BELL HOOKS, *WE REAL COOL: BLACK MEN AND MASCULINITY* 70, 73 (2004); see also CHRISTOPHER B. BOOKER, "I WILL WEAR NO CHAIN!": A SOCIAL HISTORY OF AFRICAN AMERICAN MALES 12, 140 (2000).

48. Carolyn M. West, *Mammy, Jezebel, Sapphire: Developing an "Oppositional Gaze" Toward the Images of Black Women*, in *LECTURES ON THE PSYCHOLOGY OF WOMEN* 286–99 (Joan C. Chrisler, Carla Golden, & Patricia D. Rozee eds., 3d ed. 2008); MELISSA V. HARRIS-PERRY, *SISTER CITIZEN: SHAME, STEREOTYPES AND BLACK WOMEN IN AMERICA* 32–33 (2011).

49. Tricia Rose, "Fear of a Black Planet": *Rap Music and Black Cultural Politics in the 1990s*, 60 J. NEGRO EDUC. 276–90 (1991).

50. John Celock, *Tom Smith, Tea Party Candidate, Says He Missed Obama-Hitler Comparison*, HUFFINGTONPOST.COM (July 3, 2012), http://www.huffingtonpost.com/2012/07/03/tom-smith-tea-party-barack-obama-adolf-hitler_n_1647634.html; Nick Wing, *Nancy Lack, Connecticut Woman, Arrested After Stealing Anti-Obama Signs Showing Hitler Mustache*, HUFFINGTONPOST.COM (Oct. 18, 2012), http://www.huffingtonpost.com/2012/10/18/nancy-lack-connecticut-obama-sign_n_1978937.html; Will Wrigley, *Judson Phillips, Tea Party Activist: GOP Should Shun Obama's 'Hitlerian' State of the Union*, HUFFINGTON POST (Feb. 12, 2013), http://www.huffingtonpost.com/2013/02/12/judson-phillips-obama_n_2672244.html; Ryan Naquin, *Livingston Protesters Put Hitler Mustache on President*, WBRZ-TV (Oct. 8, 2013), <http://www.wbrz.com/news/livingston-protesters-put-hitler-mustache-on-president/>; 6 *Outrageous Obama-Hitler Comparisons*, HUFFINGTON POST (Feb. 5, 2013), http://www.huffingtonpost.com/2013/02/05/obamacare-hitler_n_2617592.html?1381857280.

51. This idea follows an Internet concept known as Godwin's Law, which states that once an Internet discussion, and logically any other discussion, has devolved to claims of Nazism, then the discussion is effectively over. Mike Godwin, *Meme, Counter-meme*, WIRED, http://archive.wired.com/wired/archive/2.10/godwin.if_pr.html (last visited Mar. 30, 2015); see also Dan Amira, *Mike Godwin on Godwin's Law, Whether Nazi Comparisons Have Gotten Worse, and Being Compared to Hitler by His Daughter*, NYMAG.COM (Mar. 8, 2013), <http://nymag.com/daily/intelligencer/2013/03/godwins-law-mike-godwin-hitler-nazi-comparisons.html>.

52. HANNAH ARENDT, EICHMANN IN JERUSALEM: A REPORT ON THE BANALITY OF EVIL, at xiv (Penguin Grp. 2006); Majid Yar, *Hannah Arendt*, INTERNET ENCYCL. OF PHILOSOPHY, <http://www.iep.utm.edu/arendt/#H6> (last visited Mar. 13, 2015).

53. See Lee, *supra* note 34, at 538–48.

54. *Id.*

faces in generating biased responses.⁵⁵ Scholars might then consider the way a darkly complected, locked man, like Richard Sherman, might be viewed by the media and those who watch and participate in sports media. It stands to reason that dreadlocks may as well encourage such bias because dreadlocks are often associated with black bodies.

Black danger manifests itself in anti-black skin bias, or what some have called white skin privilege.⁵⁶ It also manifests in derisive comments about hairstyles⁵⁷ and dress.⁵⁸ The fear of the other means that every instance of otherness informs individuals' politics of difference. Clothing, speaking, skin color, hairstyles, foodways, familial relations, and other characteristics all mark potential sites of difference, which allow people to construct the other as abhorrent, criminal, and strange. Individuals cannot expect to change racial politics unless they continue to confront racism⁵⁹ because, as many scholars, students, and activists understand, individual and collective actions create and maintain race.⁶⁰ Efforts to understand the individual's role in racial formation will help minimize—though perhaps not undo—the continued pernicious impacts of racism.

Richard Sherman's appearance is significant to racial discourse because race functions in the field of the visible.⁶¹ In this regard, it is not sufficient to claim someone was "acting black," because this performance

55. *Id.*

56. Trina Jones, *Shades of Brown: The Law of Skin Color*, 49 DUKE L.J. 1487, 1487–557 (2000); Angela P. Harris, *From Color Line to Color Chart?: Racism and Colorism in the New Century*, 10 BERKLEY J. AFR.-AM. L. & POL'Y 52, 59–62, 69 (2008); Margaret Hunter, *The Persistent Problem of Colorism: Skin Tone, Status, and Inequality*, 1 SOC. COMPASS 237, 237–50; Sylvia A. Law, *White Privilege and Affirmative Action*, 32 AKRON L. REV. 603, 604 (1999); Bridgette Baldwin, Symposium: *Defining Race: Colorblind Diversity: The Changing Significance of "Race" in the Post-Bakke Era*, 72 ALB. L. REV. 863, 873–75 (2009).

57. See generally Camille Gear Rich, *Performing Racial and Ethnic Identity: Discrimination by Proxy and the Future of Title VII*, 79 N.Y.U. L. REV. 1134–270 (2004); D. Wendy Greene, *Title VII: What's Hair (and Other Race-Based Characteristics) Got to Do With It?*, 79 U. COLO. L. REV. 1355 (2008); Michelle L. Turner, *The Braided Uproar: A Defense of My Sister's Hair and a Contemporary Indictment of Rogers v. American Airlines*, 7 CARDOZO WOMEN'S L.J. 115 (2001); Angela Onwuachi-Willig, *Another Hair Piece: Exploring New Strands of Analysis Under Title VII*, 98 GEO. L.J. 1079 (2010); Monica C. Bell, *The Braiding Cases, Cultural Deference, and the Inadequate Protection of Black Women Consumers*, 19 YALE J.L. & FEMINISM 125 (2007); Kobena Mercer, *Black Hair/Style Politics*, 3 NEW FORMATIONS 33–54 (1987); *McManus v. MCI Commc'ns Corp.*, 748 A.2d 949, 952 (D.C. 2000).

58. See generally Tanisha C. Ford, *SNCC, Women, Denim, and the Politics of Dress*, 79 J. SO. HIST. 625–58 (2013) (discussing the cultural politics of dress).

59. See Baldwin, *supra* note 56, at 871 ("We will never reach an equitable race neutral policy built on a politics of colorblindness because so much of how we live is based on race.").

60. Reginald Leamon Robinson, *The Shifting Race-Consciousness Matrix and the Multiracial Category Movement: A Critical Reply to Professor Hernandez*, 20 B.C. THIRD WORLD L.J. 231, 232–35 (2000).

61. Alessandra Raengo, *Optic Black: Blackness as Phantasmagoria*, in BEYOND BLACKFACE: AFRICANA IMAGES IN U.S. MEDIA 159 (Akil Houston ed., 2010).

critique resists the ontic qualities of racialization.⁶² This “realness” or materiality was born in the commodity-cum-slave.⁶³ As Stephen Best writes, slavery is mediated by the commodity, which manifests “a particular historical form of an ongoing crisis involving the subjection of personhood to property.”⁶⁴ In other words, viewing the commodity form inherent in slavery as distinct from anti-blackness today is both illogical and ahistorical. It is not that Richard Sherman made his blackness visible, but that his blackness made him visible, which then served as the precondition for the media’s critique. The haptic form of the commodity⁶⁵ thus assumes the ontologically shattered body of blackness, which allows whiteness room to maneuver using its refined politics of oppression.

The fear of slave revolts characterized much of the politics of the nineteenth century.⁶⁶ Try as some Western scholars might, it is difficult to ignore that “the slave trade and slavery did contribute to Western development.”⁶⁷ Indeed, “blacks entered the modern Western world as devalued human beings.”⁶⁸ This means that blacks were and are always already unequal, always already less than, and always already other. The traumatic moment of being brought against one’s will into the modern Western world was traumatic precisely because it was a decimation of the subject. So, when people think about events like the Middle Passage⁶⁹ and

62. *Id.* at 159–60.

63. *Id.* at 160–63.

64. *Id.* at 162; see also STEPHEN BEST, *THE FUGITIVE’S PROPERTY: LAW AND THE POETICS OF POSSESSION* 81 (2004).

65. See Raengo, *supra* note 61, at 167.

66. Eugene D. Genovese argues that although states often put down slave revolts quickly, and few people had any experience with them, fear still reigned. EUGENE D. GENOVESE, *FROM REBELLION TO REVOLUTION: AFRO-AMERICAN SLAVE REVOLTS IN THE MAKING OF THE MODERN WORLD* 4, 16–17 (1979); see also DANIEL RASMUSSEN, *AMERICAN UPRISING: THE UNTOLD STORY OF AMERICA’S LARGEST SLAVE REVOLT* 24 (2011); HERBERT APTHEKER, *NAT TURNER’S SLAVE REBELLION: INCLUDING THE 1831 “CONFESSIONS”* 69 (Dover Publ’ns 2006); GUILLERMO A. BARALT, *SLAVE REVOLTS IN PUERTO RICO: CONSPIRACIES AND UPRISINGS* (2007) (discussing the complex politics of slave revolts in Puerto Rico before United States occupation).

67. Rhoda E. Howard-Hassmann, *Reparations for the Slave Trade: Rhetoric, Law, History and Political Realities*, 41 CAN. J. AFR. STUD. 427, 444 (2007).

68. Donald F. Tibbs & Tryon P. Woods, *The Jena Six and Black Punishment: Law and Raw Life in the Domain of Nonexistence*, 7 SEATTLE J. SOC. JUST. 235, 238 (2008).

69. See generally STEPHANIE E. SMALLWOOD, *SALTWATER SLAVERY: A MIDDLE PASSAGE FROM AFRICA TO AMERICAN DIASPORA* (2008) (describing the role of the Atlantic in enslavement and diasporic consciousness); MARCUS REDIKER, *THE SLAVE SHIP: A HUMAN HISTORY* (Penguin Books, reprt. 2008) (providing an historical account of the roles of U.S. and British persons and institutions in the slave trade); JAMES T. CAMPBELL, *MIDDLE PASSAGES: AFRICAN AMERICAN JOURNEYS TO AFRICA, 1787–2005* (Penguin Books 2007) (discussing the encounters of black people with Africa on trips that reversed the Middle Passage); CHARLES JOHNSON, *MIDDLE PASSAGE* (Scribner 1st ed. 1998) (a novelization of the difficulties black persons faced at sea and on land in their travels to and around North America).

the Zong massacre,⁷⁰ they should be thinking about thrownness.⁷¹ “Thrownness” is a term that describes the ways in which people are continually interpolated by ideology. In this article, it means both being thrown into the Western world and being the material violence of being thrown off land and thrown from a ship.⁷² Thus, the primary ontological condition of blackness is trauma.

Racial anxiety—the fear of black danger—may be the defining characteristic of whiteness, i.e., whiteness depends on the constant degradation of blackness.⁷³ Therefore, whites may be otherizing blacks to sustain their collective subjectivity.⁷⁴ Put another way, whiteness sustains itself by anti-blackness. In law, from employment discrimination to constitutional law to criminal law, then, legal actors are otherizing blackness not simply to demean a racial group, but instead to construct and sustain whiteness.

IV. Racial Animus in Sports Media

Sports and their representation in the media have proved a central site to reproduce dominant ideas concerning the racialization of different groups.⁷⁵ This reproduction has manifested itself in the media’s treatment of Richard Sherman and other blacks, athletes and nonathletes alike. Race has long been a part of United States history,⁷⁶ and it should be no surprise that race discrimination characterized United States sports history.⁷⁷ Timothy Davis goes so far as to connect the history of race discrimination

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70. JAMES WALVIN, *THE ZONG: A MASSACRE, THE LAW AND THE END OF SLAVERY* 1–3 (2011); Jeremy Krikler, *A Chain of Murder in the Slave Trade: A Wider Context of the Zong Massacre*, 57 INT’L. REV. SOC. SCI. 393–415 (2012); Jane Webster, *The Zong in the Context of the Eighteenth-Century Slave Trade*, 28 J. LEGAL HIST. 285–98 (2007); Anita Rupprecht, ‘A Very Uncommon Case’: *Representations of the Zong and the British Campaign to Abolish the Slave Trade*, 28 J. LEGAL. HIST. 329–46 (2007).

71. MARTIN HEIDEGGER, *BEING AND TIME* (John Macquarrie & Edward Robinson trans., 1962); Simon Critchley, *Being and Time, Part 4: Thrown Into This World*, THE GUARDIAN (June 29, 2009), <http://www.theguardian.com/commentisfree/belief/2009/jun/29/religion-philosophy>.

72. Ian Birrell, *Massacre of the Slaves Who Did Not Die in Vain*, DAILY MAIL (Sept. 15, 2011), <http://www.dailymail.co.uk/home/books/article-2030135/Massacre-slaves-did-die-vain-THE-ZONG-BY-JAMES-WALVIN.html>; Michel Marriott, *Remembrance of Slave Ancestors Lost to Sea*, N.Y. TIMES, June 19, 1994, available at <http://www.nytimes.com/1994/06/19/nyregion/remembrance-of-slave-ancestors-lost-to-the-sea.html>.

73. Harryette Mullen, *Optic White: Blackness and the Production of Whiteness*, 24 DIACRITICS 71, 74 (1994).

74. *Id.* at 88.

75. See HYLTON, *supra* note 17, at 81.

76. Waldo E. Martin, Jr., *Essay: Through the Prism of Brown: Black Memory, Identity, and History*, 47 HOW. L.J. 851 (2004).

77. Timothy Davis, *Race and Sports in America: An Historical Overview*, 7 VA. SPORTS & ENT. L.J. 291, 293 (2008).

in sports to the era of slavery.⁷⁸ If, as Davis argues, the history of racial discrimination in sports parallels the history of race in the United States,⁷⁹ then to see this racism reflected in sports media should be expected and understood as a reflection of the racism in sports. Racial animus serves as a precondition for unfair treatment in the media, generally, and the maligning of blackness, specifically.

If media reproduce dominant ideas about race and difference,⁸⁰ then scholars must attend not only to events, but also to their circulation through media to grapple with the complexities of race discourse in the United States and beyond. Indeed, many scholars have found evidence to support the idea that sports media coverage of black athletes is racist.⁸¹

The negative reporting on the Richard Sherman interview was not Erin Andrews' fault or doing. She reported that she thought the interview "was awesome" and that she "loved it."⁸² All well and good, but Andrews' subsequent comments about the interview suggest a more complex and problematic relationship between Andrews and athletes. She stated in the interview, "You expect these guys to play like maniacs and animals for 60 minutes . . . [a]nd then 90 seconds after he makes a career-defining, game-changing play, I'm gonna be mad because he's not giving me a cliché answer."⁸³ Andrews' words betray her because they signify contempt for black athletes. Andrews and other broadcasters who provide commentary (not analysis or play-by-play) have positioned athletes in general, and Sherman in particular, as expected to be "maniacs" and "animals." This debasement is consistent with that which James Baldwin identified in the 50s and 60s as part of whiteness.⁸⁴ He argued that whiteness blinded whites so that they might only see "the Negro they wished to see."⁸⁵ Assuming Baldwin is correct, then the interlocutor must perceive the black

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78. *Id.* at 293–94.

79. *Id.* at 311.

80. See HYLTON *supra* note 17, at 81.

81. See, e.g., John Carvalho, *Sports Media Is Still Racist Against Black Athletes*, VICE SPORTS (Oct. 3, 2014), <https://sports.vice.com/article/sports-media-is-still-racist-against-black-athletes>; Luther Campbell, *Tackling Racism in Sports Media*, MIAMI NEW TIMES BLOGS (Aug. 23, 2011), http://blogs.miaminewtimes.com/riptide/2011/08/tackling_racism_in_sports_media.php; Filip Bondy, *10 Places Where Racism Is Still a Major Issue in Sports*, N.Y. DAILY NEWS (May 3, 2014), <http://www.nydailynews.com/sports/bondy-10-places-racism-major-issue-sport-article-1.1778178>.

82. Will Brinson, *Erin Andrews on Richard Sherman Interview: 'I loved it'*, CBS SPORTS, (Jan. 21, 2014), <http://www.cbssports.com/nfl/eye-on-football/24415819/erin-andrews-on-richard-sherman-interview-i-loved-it>.

83. *Id.*

84. James Baldwin, *A Fly in the Buttermilk*, in *THE PRICE OF THE TICKET: COLLECTED NONFICTION, 1948–1985*, at 87 (1985).

85. *Id.* at 169.

person, the black body, as something different from the white ideal, or the white ideal might simply be evil blackness.

People have long used insanity⁸⁶ and animalistic⁸⁷ rhetoric to denigrate black people. Indeed, this sort of spiciest rhetoric has a long, complicated history in race discourse.⁸⁸ Diction matters, and Andrews' commentary rings with the history of racial animus. While Richard Sherman may not have "upset . . . frightened . . . [or] threatened" her, Andrews' description of the interview indicates some level of discomfort and racial animus.⁸⁹ Often the things people assure other people of the most, are the things of which people are most afraid. Andrews' discomfort in the interview is noteworthy for its absence. Her discussions about the interview in other media reveal far more discomfort than her reaction in the interview itself. The comparison of athletes to animals is intended to demean athletes, and in Richard Sherman's case, black athletes specifically. Andrews is attempting to explain away the interview, but, in so doing, frames her comfort in language that reveals her discomfort vis-à-vis her relationship to blackness.

In a rapidly modernizing world, society must resist the urge to de-historicize black discrimination and struggle.⁹⁰ Indeed, sports are only part

86. Franz Fanon describes the insanity of emergence into a white world, subjected to a white gaze, made to feel black is bad. See generally FRANZ FANON, *BLACK SKINS, WHITE MASK* (Grove Press 1967) (discussing the psychoanalytic effects of being black and being marginalized in a white world); see also Cynthia R. Nielsen, *Resistance Through Re-narration: Fanon on Deconstruction Racialized Subjectivities*, 9 AFR. IDENTITIES 363 (2011) (discussing, in part, the psychological affect of the white gaze); Kris Collins, *White-Washing the Black-a-Moor: Othello, Negro Minstrelsy and Parodies of Blackness*, 19 J. AM. CULTURE 87 (1996) (discussing the ways in which blackness is pathologized); Sally Swartz, *The Black Insane in the Cape, 1891-1920*, 21 J. S. AFR. STUD. 399 (1995) (discussing the ways in which insane black person in South Africa were treated worse than their white counterparts); Spearit, *Manufacturing Social Violence: The Prison Paradox & Future Escapes*, 11 BERKELEY J. AFR.-AM. L. & POL'Y 84 (2009) (discussing the ways in which prison creates the conditions of possibility for black insanity); Camille Nelson, *Racializing Disability, Disabling Race: Policing Race and Mental Status*, 15 BERKELEY J. CRIM. L. 1 (2010) (discussing the relationship between race and mental health).

87. See Megan H. Glick, *Animal Instincts: Race, Criminality, and the Reversal of the "Human"*, 65 AM. Q. 639, 639-46 (2013); see generally Catherine A. Stewart, "Crazy for This Democracy": Postwar Psychoanalysis, African American Blues Narratives and the Lafargue Clinic, 65 AM. Q. 371 (2013) (discussing the complex relationship between race, disease metaphors, and blackness); Dagmar Schmauks, *Curs, Crabs, and Cranky Cows: Ethological and Linguistic Aspects of Animal-Based Insults*, 198 SEMIOTICA 93 (2014) (broadly discussing animal-based insults).

88. Brigitte Nicole Fielder, *Animal Humanism: Race, Species, and Affective Kinship in Nineteenth-Century Abolitionism*, 65 AM. Q. 487, 490-97 (2013).

89. See source cited *supra* note 82.

90. Hope Lewis, *Blackness in Multiple Dimensions: Obama, Race, and Human Rights in a Complex World*, 72 ALB. L. REV. 999 (2009); Anthony Paul Farley, *Symposium: Defining Race: Shattered: Afterword for Defining Race*, 71 ALB. L. REV. 1053 (2009).

of the larger context of African diasporic movements.⁹¹ As opposed to seeing the world as post-racial because of advances in transportation and telecommunication, society should perceive the world as precisely more racial. Much fine work has been completed on racism and diaspora.⁹² The rise of diasporic consciousness—an awareness of a person's role in the diaspora—suggests that the Richard Sherman situation is worthy of further reflection beyond the context of professional sports. In other words, legal scholars might better understand racism if they study it in the context of professional sports.

Against the backdrop of discussions of the NFL Combine and NFL Draft as modern slave markets,⁹³ the parallel between Andrews' observation and the rhetoric of the slave trade makes racial animus in sports readily apparent. Participation data confirms the majority of NFL players are black,⁹⁴ the majority of head coaches are white,⁹⁵ and that despite the Rooney Rule requiring diversity in interviewing for significant NFL team staff positions,⁹⁶ the NFL sustains problematic racial relationships among athletes, coaches, owners, fans, and the media.

Members of the media deploy overtly and covertly racialized rhetoric in sports media to denigrate black athletes.⁹⁷ Rarely, at least in the media, is racial animus overt. Instead, it functions by racial coding,⁹⁸ stereotypes,⁹⁹

91. Janelle Joseph, *A Diaspora Approach to Sport Tourism*, 35 J. SPORTS & SOC. ISSUES 146, 148–50 (2011); see generally BEN CARRINGTON, *RACE, SPORT AND POLITICS: THE SPORTING BLACK DIASPORA* (2010) (using diasporic studies to understand the history of black athletes).

92. See Michel Wieviorka, *Racism and Diasporas*, 52 THESIS ELEVEN 69 (1998).

93. See generally Mikaela J. Dufur & Seth L. Feinberg, *Race and the NFL Draft: Views from the Auction Block*, 32 QUAL. SOC. 53 (2009); Thomas P. Oates, *The Erotic Gaze in the NFL*, 4 COMM. & CRITICAL/CULTURAL STUD. 74 (2007).

94. Andrew Powell-Morse, *The Unofficial 2014 NFL Player Census*, BEST TICKETS BLOG (Sept. 23, 2014), <http://www.besttickets.com/blog/nfl-player-census-2014/>; Bob Wolfey, *Considering the NFL in Black and White Numbers*, MILWAUKEE WIS. J. SENTINEL (Sept. 16, 2011), <http://www.jsonline.com/blogs/sports/129967143.html>.

95. Dan Levy, *Coaching Diversity Is an Issue in All American Sports, Not Just the NFL*, BLEACHER REP. (Feb. 7, 2013), <http://bleacherreport.com/articles/1520145-a-concern-in-nfl-coaching-diversity-is-an-issue-in-all-american-sports>.

96. See Bram A. Maravent, *Is the Rooney Rule Affirmative Action? Analyzing the NFL's Mandate to Its Clubs Regarding Coaching and Front Office Hires*, 13 SPORTS L.J. 233 (2006); see also Samuel G. Freedman, *What Work Remains for the Rooney Rule*, THE NEW YORKER, Dec. 11, 2014, available at <http://www.newyorker.com/news/sporting-scene/what-work-remains-for-the-rooney-rule>.

97. Andrew C. Billings, *Talking Around Race: Stereotypes, Media, and the Twenty-First Century Collegiate Athlete*, 2 WAKE FOREST J.L. & POL'Y 199 (2012).

98. andré douglas pond cummings, *Racial Coding and the Financial Market Crisis*, 2011 UTAH L. REV. 141, 217–18 (2011).

and seemingly race-neutral insults and jokes. Racial humor is dangerous at best. While some scholars have argued for its critical potential, many remain convinced that racist humor simply exhibits racism.¹⁰⁰ When Andrews indicates that she expects athletes to act like “maniacs” and “animals”—racialized terms she uses in her description of her interview while attempting to address claims of racial animus—she is engaging in a centuries old practice of discriminatory behavior that has salience in racial discussions.

Instances of racism in the NFL and related media range from the general claim that black players cannot play quarterback because they lack the requisite intelligence,¹⁰¹ to Rush Limbaugh’s specific attack against Donovan McNabb.¹⁰² This, of course, says nothing of the anti-Italian animus directed at Rick Pitino when he moved from the University of Kentucky to the University of Louisville,¹⁰³ and the anti-Black racialized rhetoric surrounding LeBron James’s move from the Cleveland Cavaliers to the Miami Heat.¹⁰⁴ No matter what sports position a player holds, or the position he or she plays, race and ethnicity play a central role to complex reckonings with sports and society.

Racism’s impact on athletes extends far beyond unfair media portrayals. Black athletes may experience self-loathing manifested in racialized self-hate, which manifests itself in black athletes hiring white

99. See generally Kelly Welch, *Black Criminal Stereotypes and Racial Profiling*, 23 J. CONTEMP. CRIM. JUST. 276–88 (2007) (describing the ways “criminal” has been used as a stereotype for “young black male”).

100. See, e.g., Edward Schumacher-Matos, *Racism on Fresh Air? Lessons from Archie Bunker and Stephen Colbert*, NPR (Feb. 23, 2012 3:18 PM), <http://www.npr.org/blogs/ombudsman/2012/02/23/147294594/racism-on-fresh-air-lessons-from-archie-bunker-and-stephen-colbert>.

101. CHARLES K. ROSS, *OUTSIDE THE LINES: AFRICAN AMERICAN AND THE INTEGRATION OF THE NATIONAL FOOTBALL LEAGUE* 160 (1999) (“Positions such as quarterback, linebacker, or center, which required more responsibility and thinking, were set aside for white players only. Black players were perceived as not being smart enough to play these positions, so the league once again established an unwritten policy that created a positional system of racial quotas and set-asides.”).

102. *Limbaugh’s Comments Touch Off Controversy*, ESPN (Oct. 1, 2003), <http://sports.espn.go.com/nfl/news/story?id=1627887>; see also *Limbaugh Resigns Over McNabb Comments*, CNN (Oct. 2, 2003), <http://www.cnn.com/2003/SHOWBIZ/10/02/limbaugh/>.

103. Mark Fitzgerald, *Italian-American Group Protests Over Chicago Tribune Story*, EDITOR & PUBLISHER, Aug. 2, 1997, at 7.

104. McClatchy-Tribune News Serv., *LeBron James Agrees with Maverick Carter: Race Did Play a Part in ‘Decision’ Coverage*, SUN NEWS, Oct. 1, 2010, available at http://www.cleveland.com/lebron/index.ssf/2010/10/lebron_james_agrees_with_maver.html; see also Dexter Rogers, *LeBron James Suggests ‘Race’ Played a Role in His Negative Press: Is He Right?*, HUFFINGTON POST (Oct. 1, 2010), http://www.huffingtonpost.com/dexter-rogers/lebron-james-suggests-rac_b_746886.html.

agents.¹⁰⁵ The impact on athletes may also implicate the process of roster construction (e.g., constructing a whites only roster), whereby teams could be racially constructed to serve any number of justifications at both the amateur and professional level.¹⁰⁶

Athletes are not the only individuals subject to racism. Indeed, coaches, many—though not all—of who were athletes, experience racism in hiring, promotion, and firing.¹⁰⁷ The Rooney Rule¹⁰⁸ helps to prevent racial prejudice in professional football, but no similar standard exists to govern hiring decisions in collegiate football.¹⁰⁹

Despite claims that sports unite across racial lines,¹¹⁰ recent incidents involving former Atlanta Braves pitcher John Rocker¹¹¹ and Philadelphia Eagles wide receiver Riley Cooper¹¹² suggest that the sports industry is no

105. Kenneth Shropshire, *Sports Agents, Role Models, and Race-Consciousness*, 6 MARQ. SPORTS L.J. 267, 275–77 (1996).

106. See generally N. Jeremi Duru, *Fielding a Team for the Fans: The Societal Consequences and the Title VII Implications of Race-Considered Roster Construction in Professional Sport*, 84 WASH. U. L. REV. 375 (2006).

107. Diane Heckman, *Educational Athletic Employment and Civil Rights: Examining Discrimination Based on Disability, Age, and Race*, 18 MARQ. SPORTS L. REV. 101, 152–64 (2007).

108. See Brian W. Collins, Note, *Tackling Unconscious Bias in Hiring Practices: The Plight of the Rooney Rule*, 82 N.Y.U. L. REV. 870 (2007); see also Justin Pike, *From the Rooney Rule to the Robinson Rule: NCAA Football and the Quest for Equal Opportunity in Head Coaching*, 3 WIDENER J.L. ECON. & RACE 27, 33–34 (2011).

109. Hannah Gordon, *The Robinson Rule: Models for Addressing Race Discrimination in the Hiring of NCAA Head Football Coaches*, 15 SPORTS L.J. 1, 3 (2008).

110. Arthur Reyna, III, Note, *An Introduction to the Arthur Miller Dialogue on “Sports, Media and Race: The Impact on America”*, 12 TEX. REV. ENT. & SPORTS L. 239, 240 (2011) (“Sport has a tendency to unite across race and ethnicity because athletic competition is inherently equalizing. Sport is the ultimate meritocracy wherein only ability matters, not the color one’s skin.”).

111. Jeff Pearlman, *At Full Blast Shooting Outrageously from the Lip, Braves Closer John Rocker Bangs Away at His Favorite Targets: The Mets, Their Fans, Their City and Just About Everyone in It*, SPORTS ILLUSTRATED, Dec. 27, 1999, <http://www.si.com/vault/1999/12/27/271860/at-full-blast-shooting-outrageously-from-the-lip-braves-closer-john-rocker-bangs-away-at-his-favorite-targets-the-mets-their-fans-their-city-and-just-about-everyone-in-it>; see also Adam Edelman, *John Rocker Blasts President Obama’s Handling of Ebola Crisis in Bizarre Rant*, N.Y. DAILY NEWS, Oct. 7, 2014, <http://www.nydailynews.com/news/politics/john-rocker-blasts-president-obama-handling-ebola-crisis-bizarre-rant-article-1.1966576>; Chris Haire, *New ‘Survivor’ Contestant John Rocker Still Spewing Racist BS as a Columnist*, CHARLESTON CITY PAPER, Aug. 28, 2014, <http://www.charlestoncitypaper.com/HaireoftheDog/archives/2014/08/27/former-mlb-player-survivor-contestant-john-rocker-is-still-a-racist-xenophobic-douchebag-columns-prove; John Rocker Makes Homophobic Remark During Reddit AMA>, HUFFINGTON POST (Aug. 6, 2013), http://www.huffingtonpost.com/2013/08/06/john-rocker-reddit_n_3714754.html.

112. Nick Schwartz, *Eagles receiver Riley Cooper Uses Racial Slur at Kenny Chesney Concert*, USA TODAY, July 31, 2013, <http://ftw.usatoday.com/2013/07/eagles-receiver-riley-cooper-uses-racial-slur-at-a-kenny-chesney-concert>; Stephen Lorenzo, *Riley Cooper Controversy Threatens to Divide Eagles’ Locker Room*, N.Y. DAILY NEWS, Aug. 2, 2013, <http://www.nydailynews.com/sports/football/eagles-forgive-not-forget-cooper-racist-rant-article-1.1415211>.

panacea for racial animus. Indeed, the long history of black quarterbacks being denied starting roles, the overt racism against black quarterbacks,¹¹³ and white collegiate football teams refusing to play not just all-black teams, but also teams with black players¹¹⁴—all seem to counsel against Arthur Reyna's hopeful tone when he writes, "[s]port has a tendency to unite across race and ethnicity because athletic competition is inherently equalizing."¹¹⁵ So racially divided are sports that the old cry of "reverse racism" has resounded across the football landscape in troubling ways.¹¹⁶ This argument is not only historically inaccurate, but also reeks of the colorblind racism so prevalent in today's supposedly post-racial world.¹¹⁷ Indeed, it is not so much that sports cannot unite, but that claiming sports are inherently equalizing suggests some Platonic form to sports that flies in the face history. Individuals must not make such errors if they are to justly interrogate race and sports.

Interestingly, the way media, fans, and pundits have vilified Richard Sherman maps on to a cross-culturally relevant myth allegorizing the fear of "the Other."¹¹⁸ This myth, predominant throughout the United States, as

113. See generally David Nevin, *Race, Quarterbacks, and the Media: Testing the Rush Limbaugh Hypothesis*, 4 J. BLACK STUD. 684 (2005); Eugenio Mercurio & Vincent F. Filak, *Roughing the Passer: The Framing of Black and White Quarterbacks Prior to the NFL Draft*, 21 HOW. J. COMM. 56 (2010); Audrey J. Murrell & Edward M. Curtis, *Causal Attribution of Performance for Black and White Quarterbacks in the NFL: A Look at the Sports Pages*, 18 J. SPORTS & SOC. 224 (1994); Matthew Bigler & Judson L. Jefferies, "An Amazing Specimen": *NFL Draft Experts' Evaluations of Black Quarterbacks*, 12 J. AFR. AM. STUD. 120 (2008); Douglas Hartmann, *Rush Limbaugh, Donovan McNabb, and "A Little Social Concern" Reflections on the Problems of Whiteness in Contemporary American Sport*, 31 J. SPORT & SOC. 45 (2007).

114. David J. Leonard, *Team Colors*, LA REV. OF BOOKS, May 24, 2012, <http://lareviewofbooks.org/review/team-colors>; see also David K. Wiggins, "Strange Mix of Entitlement and Exploitation": *The African American Experience in Predominately White College Sports*, 2 WAKE FOREST J.L. & POL'Y 95, 99–102 (2012).

115. Reyna, *supra* note 110, at 240.

116. J. B. Cash, *The Racial Caste System in Sports*, 8 OCCIDENTAL Q. 37 (2008). *The Occidental Quarterly* is a radical right pseudo-academic journal in which white, racist, nationalist, and objectivist beliefs are often promoted to their most disturbing ends. Nonetheless, it is a source for scholarship that supports the argument about reverse racism.

117. See Ian F. Haney López, *Is the "Post" in Post-Racial the "Blind" in Colorblind?*, 2011 CARDOZO L. REV. DE NOVO 807, 807–08 (2011) (comparing postracialism to colorblindness in law); see also Gregory S. Parks & Jeffrey J. Rachlinski, *Implicit Bias, Election '08, and the Myth of a Post-Racial America*, 37 FLA. ST. U. L. REV. 659, 715 (2010) (explaining why the 2008 U.S. Presidential election demonstrated racism).

118. See SAINSBURY CTR. FOR MENTAL HEALTH, *BREAKING THE CIRCLES OF FEAR: A REVIEW OF THE RELATIONSHIP BETWEEN MENTAL HEALTH SERVICES AND AFRICAN AND CARIBBEAN COMMUNITIES* 21 (2002) ("Fear is a component of race relations and racism. Black people are often cast as 'the Other' and therefore viewed with suspicion, hostility and anger. The basic fear of 'the Other' is a central aspect of racism in all parts of our society and affects relationships within mental health services between Black service users and professionals.");

well as Eastern and Western Europe, depicts a colorized Other wreaking havoc on white families and children. Racism is not a United States creation. Indeed, Europe has long been plagued by racial tensions.¹¹⁹ Jewish and Islamic people were and are most often the victims of this thinking.¹²⁰ This says nothing of modern racism in the U.K.¹²¹ or ethnic conflict with the Roma¹²² or Kurds.¹²³ In this way, Richard Sherman's characterization as the bogeyman suggests the continued cultural relevance of fearing black danger, and may be seen as an extension of global racial otherization and exclusion. Then, like other cases of racism, the racism against Richard Sherman provides an opportunity to discuss the ways in which racism is promoted globally, and how the networked nature of racism may shed light on racism in the United States.

Terry A. Maroney, *Group-Conflict Resolution: Sources of Resistance to Reconciliation: Unlearning Fear of Out-Group Others*, 72 LAW & CONTEMP. PROB. 83 (2009).

119. See generally GEORGE L. MOSSE, *TOWARD THE FINAL SOLUTION: A HISTORY OF EUROPEAN RACISM* (1978) (focusing on the religious underpinnings of racism in Europe); NORMAN M. NAIMARK, *FIRES OF HATRED: ETHNIC CLEANSING IN TWENTIETH-CENTURY EUROPE* (2001) (discussing ethnic cleansing beyond the Bosnia-Herzegovina conflict from which the term "ethnic cleansing" originates); ALANA LENTIN, *RACISM & ANTI-RACISM IN EUROPE* (2004) (analyzing political and social movements concerning racism and anti-racism); NEIL MACMASTER, *RACISM IN EUROPE: 1870–2000* (2001) (connecting anti-black racism and anti-Semitism in Europe); Philippa Watson, *Equality Between Europe's Citizens: Where Does the Union Stand Now?*, 35 FORDHAM INT'L L.J. 1426 (2012) (discussing modern tensions between European Union citizens).

120. See generally LIZ FEKETE, *A SUITABLE ENEMY: RACISM, MIGRATION AND ISLAMOPHOBIA IN EUROPE* (2009) (focusing on the effect migration, immigration, and asylum policies in the European Union have on Islamic persons); DAVID NIRENBERG, *ANTI-JUDAISM: THE WESTERN TRADITION* (2014) (describing anti-Judaism as central to Europe).

121. See Jamie Cleland & Ellis Cashmore, *Fans, Racism and British Football in the Twenty-First Century: The Existence of a 'Colour-Blind' Ideology*, J. ETHNIC & MIGRATION STUD. 638 (2014); Mekada Graham & Gil Robinson, "The Silent Catastrophe": Institutional Racism in the British Educational System and the Underachievement of Black Boys, 34 J. BLACK STUD. 653 (2004); Tariq Modood & Stephen May, *Multiculturalism and Education in Britain: An Internally Contested Debate*, 35 INT'L J. EDUC. RES. 305 (2001).

122. See Fred Bertram, *The Particular Problems of (the) Roma*, 3 U.C. DAVIS J. INT'L L. & POL'Y 1 (1997); Matthew D. Marden, Note, *Return to Europe? The Czech Republic and the EU's Influence on Its Treatment of Roma*, 37 VAND. J. TRANSNAT'L L. 1181 (2004); Alyssa Haun, Note, *The Long Road: The Roma of Eastern and Central Europe and the Freedom of Movement and Right to Choose a Residence*, 33 GEO. WASH. INT'L L. REV. 155 (2000); Iskra Uzunova, Note, *Roma Integration in Europe: Why Minority Rights are Failing*, 27 ARIZ. J. INT'L & COMP. L. 283 (2010).

123. See Jennifer Trahan, *A Critical Guide to the Iraqi High Tribunal's Anfal Judgment: Genocide Against the Kurds*, 30 MICH. J. INT'L L. 305 (2009); Olivia Q. Goldman, Note, *The Need for an Independent International Mechanism to Protect Group Rights: A Case Study of the Kurds*, 2 TULSA J. COMP. & INT'L L. 45 (1994); Edip Yuksel, Yes, I Am a Kurd, 7 J. INT'L L. & PRAC. 359 (1998); see generally KERIM YILDIZ, *THE KURDS IN TURKEY: EU ACCESSION AND HUMAN RIGHTS* (2005) (discussing the broad implications of rights for Kurds in the European Union).

V. The Rebirth of the Bogeyman Myth

The Richard Sherman story is one manifestation of the bogeyman myth. The media and fans have portrayed him as if he were consistent with the evil black other's attack on white purity, which is central to the myth. Why on earth would one return to such an old story? Why myths when material realities mark race relations in such profound ways? Quite simply, narratives provide the glue that holds communities together in the face of oppression. The stories people tell, from origin stories to family history, help bring people together. More generally, myths have long characterized the ways in which civilizations make sense of the world,¹²⁴ to say nothing of the way people make sense of law.¹²⁵ Of course, this making sense of the world is also central to appreciation for, and interest in, media.¹²⁶

People must analyze cultural myths because they are always subject to them.¹²⁷ The word "myth" derives from the Greek *mythos*, meaning not only story or fiction, but containing in at a sense of the verb "story-telling."¹²⁸ As Richard Delgado and Jean Stefancic write, "Critical race theory's challenge to racial oppression and the status quo sometimes takes the form of storytelling, in which writers analyze the myths, presuppositions, and received wisdoms that make up the common culture about race and that invariably render blacks and other minorities one-down."¹²⁹ In the Richard Sherman situation, legal scholars should understand the myths that inform social understanding. Challenging cultural understandings of race requires challenging the myths that guide these understandings, no matter how neglected. One way to do this would be, of course, to reject these myths. Rejection is a positive politics of negativity that asks people to say "no" to rhetorical violence, racial slurs, anti-blackness, and other instances of racism in society. People who refuse to participate in racism, who challenge the racists around them, are engaged in important work.

That a myth—the myth of the bogeyman—is invoked when thinking about Richard Sherman's media portrayal, by virtue of their shared villain

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124. Jerome Bruner, *The Narrative Construction of Reality*, 18 CRITICAL INQUIRY 1, 4, 9–10 (1991).

125. Linda H. Edwards, *Once Upon a Time in Law: Myth, Metaphor, and Authority*, 77 TENN. L. REV. 883, 883–84 (2010).

126. Natalie Fenton, *Bridging the Mythical Divide: Political Economy and Cultural Studies Approaches to the Analysis of the Media*, in MEDIA STUDIES: KEY ISSUES AND DEBATES 7, 7 (Eoin Deverux ed., 2007).

127. Anne Holden Rønning, *Some Reflections on Myth, History and Memory as Determinants of Narrative*, 3 COOLABAH 143, 146–48 (2009).

128. *Id.* at 144.

129. Richard Delgado & Jean Stefancic, *Introduction*, in CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado & Jean Stefancic eds., 3d ed. 2013).

(a black being) and shared victim (innocence and purity), demands a better understanding of exactly how that myth functions. It is insufficient to simply say, "Well, we treat Richard Sherman like the bogeyman." Regardless of how many people overtly call Richard Sherman "the bogeyman," people should attempt to understand the way the media, and society, has participated in constructing Richard Sherman or any other black man, as the bogeyman. This understanding entails an examination of the unstated assumptions about blackness that are concomitant with the bogeyman's cultural mythology.

A. The Legend of the Bogeyman; or, a Chance at Weak Ontology

The bogeyman myth has existed for centuries in many countries. It is a relatively simple story about an otherworldly creature that kidnaps and eats children. This figure is often represented as black or dark in coloration. This monstrosity has many names across many cultures. Monstrosity has, of course, been central to the articulation of law.¹³⁰ Indeed, it seems that law might be metaphorically construed as monstrous—law is monstrous.¹³¹ Thus, it would be no large stretch of the intellectual acumen of careful law consumers to consider the ways in which law mirrored myth, if not was informed by myth.

Myth, relying on narrative theory,¹³² structures much of our lives,¹³³ making discussion of myth consistent with critical race theory's interest in narrative. That scholars may find a resemblance between modern day racial discourse and myth is not so much unique as it is another beacon for continued critical concern for the racialization of popular culture, law, and in this instance, sports. Scholars should be able to use myths to better understand racism today because they inform the present. That the legend of the bogeyman maps so neatly on the evolving discussion of Richard Sherman is necessarily a cause for concern and continued investigation because his interview, and subsequent media reactions resemble the mythology of anti-blackness that motivated racial animus. In the words of Joseph Conrad, from the heavily racialized account of South American silver mining in *Nostromo*, "[t]here is no peace and no rest in the

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130. See Nick J. Sciuillo, *Unexpected Insights into Terrorism and National Security Law Through Children's Literature: Reading The Butter Battle Book as Monstrosity*, 3 BRIT. J. AM. LEGAL STUD. 507, 525 (2014) (describing the centrality of the monstrous and fear to legal actions related to national security policy).

131. See *id.*

132. See generally Joseph Mali, *Narrative, Myth, and History*, 7 SCI. IN CONTEXT 121 (1994) (claiming myth and narrative are central to history); Emily Lyle, *Narrative Form and the Structure of Myth*, 33 FOLKLORE 59 (2006) (describing the centrality of narrative to myths).

133. See Bruner, *supra* note 124.

development of material interests.”¹³⁴ Conrad highlights the impetus for continued racialism. In other words, capital accumulation motivates racism. Individuals should not expect such interests are extricated from the Richard Sherman saga. Put differently, racism and capitalism function together in media. That media outlets subject to, and in service of, capital should be racist, is not so much surprising as it is noteworthy for its consistency—the consistency of the anti-black and pro-capital agenda. Understanding myth should help to clarify the racial animus at work in this saga.

Joan Dayan writes, “[l]egal structures give flesh to past narratives and life to the residue of old codes and penal sanctions.”¹³⁵ In this respect, race becomes something carnal—both metaphorically and actually. Slavery does not simply inform present racial animus. Today’s legal and social institutions help to create slavery’s past and present by both obscuring (post-racialism, multiculturalism, diversity, etc.) and reminding society of its presence (monuments, museums, the rhetoric of *apologia*). The narrativity of racial animus means it will never disappear; it will be told and retold.

Today’s institutions perversely enhance slavery’s oppressive shadow, even as actors and their institutions seek to end slavery’s legacy. How can this be so? The socially dead individuals are those who are biologically living but dead.¹³⁶ Those living who are dead are, in fact, quite bogeyman-like because of the realness of their falsity. They mirror the monster under the bed and related notions that this article has argued underlie much thinking about terrorism.¹³⁷ It is natural, then, to read the bogeyman into law because it is already being completed in a world where law already positions blacks as socially dead. If the black body is seen as always already criminal, as ontologically monstrous, what remains is not social death, but is instead antisocial life. Richard Sherman has not been cast as dead, but he has been made to live as though he were of some singularity apart from the social reality of discrimination and social death because of the interview.

The author has argued that embracing death is an affirmative politics through the complexity of death, blackness, social construction, and life in the context of a hip-hop ontologist, Tupac Shakur (2Pac).¹³⁸ Legal scholars

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134. JOSEPH CONRAD, *NOSTROMO* 58 (Cambridge Univ. Press 1988).

135. Joan Dayan, *Legal Slaves and Civil Bodies*, 2 *NEPANTLA: VIEWS FROM SOUTH* 3, 4 (2001).

136. Dayan is concerned with Orlando Patterson and Claude Messiloux’s notion of social death. *Id.* at 5–6.

137. See FEKETE, *supra* note 120.

138. See generally Nick J. Sciullo, *Ontologies of Death: Being-Towards-Death in Tupac’s Oeuvre and the Criminal Justice System*, in *PAPERS OF THE 2012 TUPAC AMARU SHAKUR*

might then think about the ways in which other popular culture arenas support a theory of anti-blackness, including not simply sports or music, but also foodways, cultural rituals, religious ceremony, etc. The author sees death as life and not nearly as concerning nearly as anti-social life because it is the de-historical singularity that damns blackness to ontological otherness.¹³⁹ If singularity is attempting to be less than nothing, and if nothing and less than nothing are on the same side of the coin,¹⁴⁰ then what is less than nothingness in blackness? Slavoj Žižek's¹⁴¹ Lacano-Hegelian reinterpretation, at work as he is with Democritus,¹⁴² Martin Heidegger,¹⁴³ Friedrich Nietzsche¹⁴⁴ and one might argue Gianni Vattimo¹⁴⁵ and Stephen White,¹⁴⁶ of Nothings is instructive.

Legal scholars must consider less than nothing—that pre-ontological condition before Nothingness can be determined—as Nothingness's enabling Other to better understand the way people construct race, respond to it, and ultimately the way social policy and law impact it. It is thus crucial to distinguish between the two Nothings: the Nothing of the pre-ontological *den*, of "less-than-nothings"; and the Nothing posited as such, as direct negation in order for Something to emerge. The pre-ontological Nothing has to be negated, it has to be posited as a direct/explicit emptiness, and it is only within this emptiness that Something can emerge—that there can be "Something instead of Nothing." This analysis

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COLLECTION CONFERENCE: HIP HOP, EDUCATION & EXPANDING THE ARCHIVAL IMAGINATION 32 (2013).

139. Anthony Paul Farley, *Politics of Global/Local Security: The Bitter Tears of Jesse Owens*, 22 BERKELEY LA RAZA L.J. 231, 241 (2012).

140. *Id.* at 241–42; SLAVOJ ŽIŽEK, LESS THAN NOTHING: HEGEL AND THE SHADOW OF DIALECTICAL MATERIALISM 4, 495, 945 (2012).

141. See generally Nick J. Sciullo, *Žižek/Questions/Failing*, 47 WILLAMETTE L. REV. 287 (2011); KELSEY WOOD, ŽIŽEK: A READER'S GUIDE (2012); SEAN SHEEHAN, ŽIŽEK: A GUIDE FOR THE PERPLEXED (2012); IAN PARKER, SLAVOJ ŽIŽEK: A CRITICAL INTRODUCTION (2004).

142. See Brian Duignan, *Democritus*, ENCYC. BRITANNICA, <http://www.britannica.com/EBchecked/topic/157313/Democritus> (last visited Mar. 27, 2015) (biography of ancient Greek philosopher Democritus).

143. See Richard Wolin, *Martin Heidegger*, ENCYC. BRITANNICA, <http://www.britannica.com/EBchecked/topic/259513/Martin-Heidegger> (last visited Mar. 27, 2015) (biography of German philosopher Martin Heidegger); see generally RICHARD POLT, HEIDEGGER: AN INTRODUCTION (1999); MICHAEL INWOOD, HEIDEGGER: A VERY SHORT INTRODUCTION (2002).

144. See Bernd Magnus, *Friedrich Nietzsche*, ENCYC. BRITANNICA, <http://www.britannica.com/EBchecked/topic/414670/Friedrich-Nietzsche> (last visited Mar. 27, 2015) (biography of German philosopher Friedrich Nietzsche); see generally WALTER KAUFMANN, NIETZSCHE: PHILOSOPHER, PSYCHOLOGIST, ANTICHRIST (1974); MICHAEL TANNER, NIETZSCHE: A VERY SHORT INTRODUCTION (2000).

145. See Gianni Vattimo, INTERNET ENCYC. PHIL., http://www.iep.utm.edu/vattimo/http://en.wikipedia.org/wiki/Gianni_Vattimo (last visited Mar. 27, 2015).

146. See Stephen K. White, UNIV. OF VA., DEP'T OF POLITICS, <http://politics.virginia.edu/people/skw2n> (last visited Mar. 27, 2015).

requires scholars to consider the ontological status of race, as opposed to simply positing racism as something that happens at random, or unintentionally, or as a result of certain actions instead of a cause of certain actions. The first act of creation is thus the emptying of the space, the creating of Nothing (in Freudian terms, the death drive and creative sublimation are intricately linked).¹⁴⁷

It is then not so much that less than nothing is nothing—indeed, it is quite not that, nor is it that less than nothing is lower than nothing. In other words, no lower than nothing exists because less than nothing in blackness is only a reflection and reflector of whiteness's less than nothing.¹⁴⁸ Here, however, Farley and Žižek may be at odds. Is less than nothing something? Is less than nothing a flavor of nothing? Žižek's less than nothing must be negated to create Something, in the same way that Nothing as direct negation can produce Something. These two nothings are distinct, yet both are preconditions of Something. Individuals should recognize the potential of an affirmative racial politics to balance against ontological conceptions of race. One may fruitfully act to address racism in this mindset. Viewing race as ontological and immutable would suggest an inability to participate in social movements, civil rights cases, and other social justice projects.

It is less-than-nothing that creates Nothing. Therefore, the less than nothingness of blackness is the precondition for racism's materiality. By way of explanation, both the ways in which people construct race and race's amorphous nature characterize the ways in which race has material impacts on people. The author has not previously discussed materiality, yet for many in the legal profession and for those activists organizing around legal issues, it is materiality that matters most. People care about the lives of their clients and colleagues, and they protest in order to improve the amount of food on the table for starving families and to help stop police abuses. Žižek asks us not to conflate nothing and Nothing. For it is in fact that people need not fear nothing as such, but perhaps should fear Nothing. The discussion of nothingness is somehow about the stories people tell to narrate their ontological position. Understanding racial identity as ontology necessitates a set of assumptions about the immutability of race and frames ways in which people might seek to disrupt racial identity.

Robert L. Oprisko reframes Žižek in this way by arguing the value of theorizing nothing as a space for everything:

Reality is the tension of the void that is nothing, but is capable of holding everything. The nothingness presupposes the sublimation of

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147. See ŽIŽEK, *supra* note 140, at 495–96, 499–500.

148. See Farley, *supra* note 139, at 241, 255–56.

an emergent something, which will give meaning to the void as the Real that encompasses the somethings and nothings, but IS both of them simultaneously and without contradiction, a pre-ontological proto-reality.¹⁴⁹

Oprisko has given scholars a new approach to Žižek that might make him more intelligible. He argues for a positive version of nothing that allows space for political action. So, when lawyers and scholars face cases similar to that of Richard Sherman, they should see them as an opportunities to create something and challenge racism, classism, and media bias. Lest one lose themselves in the tremendous importance of this ontological discussion, one should remember that the bogeyman has been racialized in U.S. culture.¹⁵⁰ Even discussions of ontology and origin are racialized.

This article does not simply make an analogy between the Richard Sherman saga and some myth, but explores how the specific rhetorical construction of a bogeyman is racialized and how this myth now represents a myth of racial inferiority.¹⁵¹ If Richard Sherman is the dark other, analogous to the bogeyman, then scholars can better understand the narrative investment in racism. The narrative of Richard Sherman, as a “maniac” or an “animal,” is part of racism’s story. Without careful attentiveness to racialized language, legal scholars, as well as others interested in critical race theory, risk glossing over racial animus in some of its multivariate forms.

Blackness matters because it functions both pre-ontologically and ontologically. To effectively address racism’s ordering function, critical race theorists must recognize the complex politics of negation’s positive politics. They must critique racism in both its relationship to Nothing and nothing. Theorizing blackness in this way allows for a more complex and fluid understanding of identity, political action, and materiality.

B. Francisco Goya y *Que viene el Coco*

Francisco Goya painted *Que viene el Coco* in 1797.¹⁵² The painting hangs in el Museo del Prado in Madrid.¹⁵³ The painting depicts the mythical coco frightening two children who cling terrified to their mother as their mother looks beseechingly up at the cloaked coco. El coco is a

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149. Robert L. Oprisko, *Failure as the Real: A Review of Slavoj Žižek’s Less Than Nothing: Hegel and the Shadow of Dialectical Materialism*, 1 THEORIA & PRAXIS 21 (2013) (citations omitted).

150. See Safire, *supra* note 11.

151. *Id.*

152. See GOYA, *LOS CAPRICHOS*, *supra* note 14, at 3.

153. See MUSEO NACIONAL DEL PRADO, *supra* note 14.

figure associated with the deprivation of “el calor, el cariño y la seguridad de tu hogar.”¹⁵⁴ The deprivation of warmth, love, and the security of home make el coco quite an unpleasant creature. Manfred Sandmann argues el coco is directly related to the bugbear, another mythical creature associated with horror and terrifying children.¹⁵⁵ It is the Spanish equivalent to the bogeyman.¹⁵⁶ So important is el coco that Miguel de Cervantes includes it in Don Quijote’s epitaph, describing Quijote as “el espantajo y el coco,” a scarecrow and a bogeyman.¹⁵⁷ The long tradition of el coco as a figure of fear and terror informs modern usages of the bogeyman. When Richard Sherman is viewed as a bogeyman, this comparison conjures up a set of problematic images with deep cultural resonance. He is not just being compared to a child’s fairytale villain, but is instead being compared to an evil specter constituted of a matrix of fear and terror.

Here, the ways in which the media has portrayed Richard Sherman places him as the bogeyman in modern sports discourse. He is the dark other, literally a darkly complected black man. He is cloaked in darkness in the form of his dreadlocks. Descriptions of him as angry, maniacal, and animalistic reinforce his otherness. The only thing the media has not portrayed him as is a child kidnapper. Furthermore, Erin Andrews represents purity and safety just as the bogeyman myth’s children do. The bogeyman is a threat to these children, and some in the media have portrayed Sherman, the maniac, as threatening white purity.¹⁵⁸

If Goya’s painting is taken as an archetypal representation of el coco, then there are several defining characteristics of note. In terms of scale, el coco is quite large—indeed, el coco is physically imposing in the painting. While el coco appears to be only a few feet from the cowering mother and children, he towers over them. The mother’s face reflects awe as much as fear, contrasting with the grimaces of her frightened children. Her face expresses a perverse wonderment, shocked with her mouth ajar. El coco’s shadow is amorphous, suggesting something different from the male figure assumed to be under the cloak. The amorphous shadow suggests something decidedly not of this world as the shadow bears little resemblance to the figure the viewer assumes cast it. This narrative of fear and terror applied to Richard Sherman is then a statement about precisely how alien blackness is.

154. José Luis López Hernández, *La Cuestión de la “Droga” “Duérmete Niño Que Viene el Coco”*, I SALUDA Y DROGAS 289, 289 (2001).

155. MANFRED SANDMANN, ETIMOLOGÍAS Y LEYENDAS ETIMOLÓGICAS (1955).

156. Paul de Villiers, Editorial, *Que Viene el coco*, REVISTA SAVIA 3 (2010).

157. MIGUEL DE CERVANTES, DON QUIJOTE 940 (1605) (Libresa 2005).

158. See sources cited *supra* notes 82–89.

Parallels can be drawn in the Richard Sherman situation. He is in the shadows, racialized, colorized, and phantasmagorified.¹⁵⁹ The problem is not that Sherman will steal anyone's children, but that he, who metonymically stands in for all black men, is lurking in the background ready to steal white peace and joy. Likewise, although there is a very (un)real chance el coco will steal one's children, the real fear is that el coco will steal the happiness, joy, and hope children represent. Sherman then becomes el coco precisely because of the supposed threat he represents to the white status quo—that he will disrupt white purity and safety.

Laws are often generated as responses to behavior, real or imagined. When blackness is portrayed as threatening and dangerous, lawmakers respond.¹⁶⁰ As such, this article intends the above tour through painting to help explain, by way of analogy, the visceral reaction to blackness seen in media and law, because these reactions are constitutive of law. Yes, law contains a traumatic kernel of anti-blackness. Understanding legal injustice is often easier if that injustice is mapped on to a different set of circumstances, told a different way, re-narrated as something seemingly different. Critical race theory's emphasis on narrative¹⁶¹ makes this point clear enough, but it bears repeating.

C. Wer Hat Angst Vorm Schwarzen Mann?

This section begins with a simple question in German that translates to: Who is afraid of the black man (bogyman)? The question suggests a range of possible answers, but those answers rest on the belief that fear is the appropriate response to blackness. This is a startling question because its answer creates a specific politics of fear surrounding a subject position—the black man. As discussed previously,¹⁶² the politics of fear guide law, which is a reactionary politics.

The nuances of the German and Romanian myths help explain racialized stories in race neutral terms. Although most Germans and

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159. Touré describes the ghosts of racism as follows: "There's a sense of malevolent ghosts darting around you, screwing with you, often out of sight but never out of mind." TOURÉ, WHO'S AFRAID OF POST-BLACKNESS?: WHAT IT MEANS TO BE BLACK NOW 121 (2011).

160. The author has in mind Jim Crow laws, black codes, voting rights restrictions, and antisecgregation laws. It is not so much that one finds anti-black comments on the legislative record, although that is possible, but that discussions surrounding the laws the Civil Rights generation fought were shrouded in anti-blackness. Moreover, although legislators talk about "safe streets" and "crime control" today, these coded terms signal a troubling history of anti-blackness in legislatures.

161. Audrey P. Olmsted, *Words Are Acts: Critical Race Theory as a Rhetorical Construct*, 9 HOW. J. COMM. 323, 325 (1998); Angela Onwuachi-Willig, *Celebrating Critical Race Theory at 20*, 94 IOWA L. REV. 1497, 1498 (2009).

162. See *supra* notes 35–74.

Romanians had never met a black person when these myths first began to circulate, they now resound with coloration and racial connections. “Schwarz” refers to the places the man would hide and not his skin color. So, it might be easy for someone to conclude that the bogeyman is not a racial story, but simply a story about the unknown. This conclusion, however, suffers from several flaws. Keep in mind the strong influence of Germanic language on modern United States English.¹⁶³ First, the reading of the bogeyman as a-racial denies the ways in which the story is currently racialized in the United States.¹⁶⁴ Second, it renders present history colorblind by assuming that a racially charged myth is devoid of racial context in the present. Lastly, it assumes far nobler motives of Internet trolls, sports commentators, and various public spheres.

Likewise, in Romanian (*omul negru*) and Italian (*l'uomo nero*), the bogeyman is not black, but is wearing a black coat. Again, while slightly more likely that some Italians would have seen an African man, it is reasonable to assume that virtually all Romanians had not when these myths began to circulate. The Romanian *omul negru* is not a black man, but a man in black. In the United States, this distinction has become conflated into the black man as criminal. Thus, the black man is always the man in black. Today's bogeyman is racialized in ways the original bogeyman may not have been, but such racialization is present nonetheless.

VI. Conclusion

Law and sports are increasingly an area of focus for legal scholars, and the more scholars are able to understand their complex relationships, the better they will understand the intersection of law, media, and sports. That understanding can help enliven scholarship by augmenting one disciplinary knowledge with another. Moreover, given that the recent Donald Sterling story has unfolded in most troubling ways, the need for further analysis of race and sports is imperative.¹⁶⁵

In modern society, one cannot easily avoid race or sports. Unless society as a whole admits that racism exists, that popular culture manifests

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163. See Scott Humphries & Noraseth Kaewwipot, *Germanisms in Modern English Usage: A Cultural, Historical and ESL Perspective*, THOUGHTS 31 (2008).

164. See Safire, *supra* note 11.

165. Jason Hanna, *Donald Sterling Purportedly Says Jealousy Behind Racist Comments*, CNN (May 11, 2014), <http://www.cnn.com/2014/05/09/us/nba-donald-sterling-audio-recording/>; Ben Golliver, *NBA Investigating Clippers Owner Donald Sterling for Alleged Racist Comments*, SPORTS ILLUSTRATED, <http://www.si.com/nba/point-forward/2014/04/26/donald-sterling-nba-investigation-racist-comments-clippers> (last updated June 14, 2014); David Leon Moore, *Donald Sterling Racism Allegations Ignite NBA Outrage*, USA TODAY, Apr. 28, 2014, <http://www.usa.today.com/story/sports/nba/clippers/2014/04/27/donald-sterling-racism-allegations-outrage-los-angeles/8333029/>.

it, and that popular manifestations of racism have historical roots, they will be damned to repeat the callous and calamitous racial politics of the present. This admission begins with individuals, who must turn their critical attention toward each and every incident of racial animus to truly challenge structural racism—whether covert or overt—as well as more insidious forms of racism. Without a refocusing on injustice and animus, violence is doomed to repeat itself.

Specifically, media professionals should actively promote blackness as goodness by more carefully selecting the language used to describe all people of color. They should work diligently to make their writing and speaking supportive of, and responsive to, racial difference. Instead of falling back on journalistic tropes of danger and false controversy, journalists should appreciate and encourage their audiences to appreciate the complexities of race in the United States. Critical engagement with race and racism means being conscious of one's words when describing black athletes, when commenting on games, when presenting information in newspapers, blogs, and journals.

Legal scholars, lawyers, law students, and legal activists must also pay attention to rhetoric to best address anti-blackness. Even the best intentioned legal minds can betray their good intentions with violent words. Although this article does not suggest specific legal reforms, it suggests a new way of looking at law that recognizes the pre-ontological and ontological status of blackness, the significant role racialized rhetoric plays in maintaining violence, and the concomitant inquiry into the ways in which media reifies people's worst racist tendencies. By using the Richard Sherman interview, the legal community can explore the racial nuances of certain legal cases to better appreciate the ways in which blackness is scripted and react accordingly.

Further research should be directed at racial animus in other popular culture contexts to critique racism as the informing logic of our time. That this article's focus is sports should not be read to suggest that sports are more racist than other manifestations of popular culture, nor should it indicate that sports speak for all of popular culture. Society must understand that racism is real, and engage it at every opportunity. People must do so not in the ways in which Western or white notions of these ideas are deployed to produce their other, but in a multicultural, cosmopolitan worldview. Tibbs and Woods remind us, "Western notions of freedom, liberty, individual rights, and property are all profoundly bound up with the enslavement of the racialized Other."¹⁶⁶ Individuals should

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166. See Tibbs & Woods, *supra* note 71, at 247.

head these concerns, and problematize the ways in which media portrays Richard Sherman and other black male athletes.

The author has argued for better understanding of racism through understanding the myths that inform the present. Furthermore, by better understanding anti-blackness's ontological aspects, legal actors will be better positioned to advocate for themselves and others. The author hopes to have provided legal actors with more tools to challenge racism in law and media through myth, narrative, and continental philosophy.