

## The Present Explosion of LGBT Sports

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The present-day explosion of openness and acceptance of Lesbian, Gay, Bisexual, and Transgender (LGBT) athletes in the United States is the culmination of years of effort by participants in the movement for LGBT equality in sports—some public (whether or not entirely by choice) and some behind the scenes.

In the twentieth century, a number of highly successful professional and amateur athletes were known to the public to be LGBT. In 1920, Bill Tilden won the Wimbledon gentlemen's

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Carroll works closely with major national sport organizations, including the Women's Sports Foundation and the NCAA. She has been a featured speaker on panels with Nike, ESPN's *Outside the Lines*, and the *New York Times*, among others. She is featured in *Strong Women, Deep Closets: Lesbians and Homophobia in Sports* by Dr. Pat Griffin, PAT GRIFFIN, STRONG WOMEN, DEEP CLOSETS: LESBIANS AND HOMOPHOBIA IN SPORTS (1998), and *Outsports Revolution: Truth and Myth in the World of Gay Sports*, by Jim Buzinski and Cyd Ziegler, Jr., JIM BUZINSKI & CYD ZIEGLER, JR., OUTSPORTS REVOLUTION: TRUTH AND MYTH IN THE WORLD OF GAY SPORTS (2007). With Dr. Griffin, she co-authored *On the Team: Equal Opportunity for Transgender Student Athletes*, PAT GRIFFIN & HELEN J. CARROLL, ON THE TEAM: EQUAL OPPORTUNITY FOR TRANSGENDER STUDENT ATHLETES (2010), <http://www.wiaa.com/ConDocs/Con550/TransgenderStudentAthleteReport.pdf>, and *NCAA Inclusion of Transgender Student-Athletes*, PAT GRIFFIN & HELEN CARROLL, NAT'L COLLEGIATE ATHLETIC ASS'N, NCAA INCLUSION OF TRANSGENDER STUDENT-ATHLETES (2011), [https://www.ncaa.org/sites/default/files/Transgender\\_Handbook\\_2011\\_Final.pdf](https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf). Carroll is currently assisting state athletic associations in adopting policies for the inclusion of high school student-athletes.

singles title.<sup>1</sup> He went on to secure two more Wimbledon titles,<sup>2</sup> seven U.S. Open championships,<sup>3</sup> and seven Davis Cup victories.<sup>4</sup> In 1950, despite a homophobic sports environment that disapproved of Tilden's sexuality, an Associated Press poll named Tilden "the greatest tennis player of the first half of the [twentieth] century . . ." <sup>5</sup> David Kopay, a National Football League (NFL) running back who played for five teams (San Francisco, Detroit, Washington, New Orleans, and Green Bay) between 1964 and 1972, was the first professional team-sport athlete to come out publicly—doing so in 1975, three years after retiring.<sup>6</sup> In 1981, tennis legend Billie Jean King was outed as a lesbian.<sup>7</sup> That same year, Martina Navratilova, who would go on to win multiple career Grand Slams in tennis, discussed her relationship with Rita Mae Brown with a reporter at the *New York Daily News*.<sup>8</sup> These athletes paved a path that present-day LGBT athletes are following.<sup>9</sup>

In the last five years, LGBT athletes and coaches have gained increasing visibility. The compelling personal stories of these brave individuals have sparked media interest and captivated sports enthusiasts.<sup>10</sup> It seems that almost every day there is a news story about college or professional athletes coming out.<sup>11</sup> LGBT-focused news sources also provide the community opportunities to encounter the stories of LGBT athletes and

1. *Gentlemen's Singles Finals 1877–2015*, WIMBLEDON, [http://www.wimbledon.com/en\\_GB/roll\\_of\\_honour/gentlemenssingles.html](http://www.wimbledon.com/en_GB/roll_of_honour/gentlemenssingles.html) (last visited Feb. 24, 2016).

2. *Id.*

3. See *Men's Singles Championships*, U.S. OPEN, [http://www.usopen.org/en\\_US/about/history/mschamps.html?](http://www.usopen.org/en_US/about/history/mschamps.html?) (last visited Feb. 24, 2016).

4. *Champions*, DAVIS CUP, <http://www.daviscup.com/en/statistics/champions.aspx> (last visited Feb. 24, 2016).

5. Ron Borges, *Tilden Brought Theatrics to Tennis*, ESPN, <https://espn.go.com/sportscentury/features/00016509.html> (last visited Feb. 24, 2016).

6. Robert Lipsyte, *For Gays in Team Sports, Still a Deafening Silence*, N.Y. TIMES (Sept. 7, 1997), <http://www.nytimes.com/1997/09/07/sports/for-gays-in-team-sports-still-a-deafening-silence.html>.

7. Greg Hernandez, *Billie Jean King Remembers Being Outed in 1981 and Losing All Her Endorsements Within 24 Hours*, GAY STAR NEWS (May 27, 2013), <http://www.gaystarnews.com/article/billie-jean-king-remembers-being-outed-1981-and-losing-all-her-endorsements-within-24-hours2/>.

8. See JOHNETTE HOWARD, *THE RIVALS: CHRIS EVERT VS. MARTINA NAVRATILOVA THEIR EPIC DUELS AND EXTRAORDINARY FRIENDSHIP 179–80* (2007).

9. See *The Brief History of Gay Athletes*, ESPN (Dec. 18, 1998), <http://espn.go.com/otl/world/timeline.html>.

10. See, e.g., *Out Athletes*, OUTSPORTS, <http://www.outsports.com/out-gay-athletes> (last visited May 25, 2016) (reporting stories about out LGBT athletes).

11. See *id.*

coaches.<sup>12</sup> Each reported story about an athlete coming out can provide young LGBT sports participants positive role models and changes the participants' lives in a positive way.

There are two fronts to the LGBT sports movement that complement each other, and which are advancing simultaneously. The first is LGBT coaches and administrators navigating how to build or maintain their careers while deciding how to be open about their sexual orientations or gender identities.<sup>13</sup> The second is the increasing efforts to ensure that LGBT athletes and participants are comfortable playing sports while acknowledging their sexual orientations or gender identities/expressions and finding support from their teammates.<sup>14</sup> Each front presents a unique set of challenges.

The Equality Coaching Alliance formed in 2011 as a virtual network to bring together LGBT coaches and their supporters.<sup>15</sup> It is an organization of 250 coaches and administrators who communicate on Facebook, problem-solving and exploring questions that LGBT sports professionals, administrators, and coaches face daily.<sup>16</sup> This positive peer support among coaches also enhances the visibility of LGBT sportspeople.

Women in particular face obstacles in their career advancement as coaches. In 1974, 90% of women's college team coaches were women.<sup>17</sup> As of 2015, that number has shrunk to about 40%.<sup>18</sup> Women of color face additional barriers, as evidenced by the fact that African-American coaches hold only 5.3% of women's head coaching positions.<sup>19</sup> The Alliance of Women Coaches found that women who coach are often "the only female coach at their college or part of a small group and feel isolated, subject to homophobia and negative recruiting, denied

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12. See, e.g., *id.* (affording a platform for athletes to tell their personal coming out stories, regardless of whether they are in high school or college and of whether they are men or women, girls or boys, or identify as neither).

13. See Roger Brigham, *Welcome to the ECA Blog!*, EQUALITY COACHING ALLIANCE (May 30, 2011), <http://equalitycoachingalliance.blogspot.com/2011/05/welcome-to-eca-blog.html>.

14. See *Our Cause*, YOU CAN PLAY, <http://youcanplayproject.org/pages/our-cause> (last visited Mar. 14, 2016) [hereinafter *Our Cause*].

15. Brigham, *supra* note 13.

16. See Equality Coaching Alliance, FACEBOOK, <https://www.facebook.com/Equality-Coaching-Alliance-207259115992500/> (last visited Feb. 24, 2016).

17. Angela Davis, *Report: Number of Female College Coaches Declining*, CBS MINN. (Feb. 4, 2015), <http://minnesota.cbslocal.com/2015/02/04/report-number-of-female-college-coaches-declining/>.

18. *Id.*

19. *Alliance of Women Coaches Begins Mission To Bring Equality to Coaching*, U.S. SPORTS ACAD. (May 10, 2011), <http://ussa.edu/news/alliance-of-women-coaches-begins-mission-to-bring-equality-to-coaching/>.

the resources to be competitive, paid less than their male counterparts, and the list goes on.”<sup>20</sup>

That said, women coaches are, for the first time, breaking into the ranks of coaching men’s professional sports.<sup>21</sup> The importance of this moment is not that coaching men’s sports is the pinnacle of success for women in coaching; rather, it is that more of the overall job market is opening to women, meaning they have more job opportunities to coach either male or female teams. With such employment opportunities in all sports, perhaps the decline in the number of women in coaching will reverse itself.

For example, Becky Hammon is the first female assistant coach for the National Basketball Association (NBA).<sup>22</sup> She was the head coach of a men’s team in the NBA’s 2015 summer practices league, and her team went on to win that championship.<sup>23</sup> She is known as a highly skilled, elite coach.<sup>24</sup>

There are also a number of national groups working to make sports more inclusive of LGBT athletes and participants. For example, Br{ache the Silence (BTS) is a national campaign founded to advance LGBTQ inclusion in intercollegiate and professional athletics, with a focus on women and racial minorities.<sup>25</sup> This organization, led by Nevin Caples, assists athletes and coaches in examining the intersections of their lives and those of their teammates.<sup>26</sup> This is rich, important work. Campus Pride, a group that focuses on LGBT students in college, provides current and prospective students with research and statistics on LGBT participation in sports.<sup>27</sup> The You Can Play Project, led by executive director and former NFL player Wade Davis, provides resources and advocacy for LGBT athletes.<sup>28</sup> Other organizations like the LGBT Sports Foundation, formed in

20. *Id.*

21. See, e.g., Steve Almsy, *Becky Hammon: I Want To Be the Best Coach Possible*, CNN (Feb. 19, 2016), <http://www.cnn.com/2016/02/18/us/becky-hammon-poppy-harlow-interview/index.html>.

22. *Id.*

23. *Id.*; see Jeff McDonald, *Spurs’ Becky Hammon: Just Call Her “Coach,”* SAN ANTONIO EXPRESS-NEWS (July 9, 2015, 7:21 PM), <http://www.expressnews.com/sports/spurs/article/Spurs-Becky-Hammon-Just-call-her-Coach-6375831.php>.

24. Almsy, *supra* note 21.

25. Elliott Moore, *Nevin Caple’s Mission To Change Intercollegiate and Professional Sports*, GLADD (Feb. 28, 2013), <http://www.glaad.org/blog/nevin-caples-mission-change-intercollegiate-and-professional-sports>; see BR{ACHE THE SILENCE, <http://freedomsounds.org/> (last visited Feb. 24, 2016).

26. Moore, *supra* note 25.

27. *Athletics*, CAMPUS PRIDE, <https://www.campuspride.org/topics/athletics/> (last visited Mar. 14, 2016).

28. *Our Cause*, *supra* note 14.

2013,<sup>29</sup> and the Sports Equality Foundation, formed in 2016,<sup>30</sup> award grants for research, education, and visibility of LGBT athletes, coaches, and administrators. This is not, by any means, a comprehensive list of groups that work on LGBT issues in sports.

In addition, since basketball player Jason Collins came out of the closet—the first active NBA player ever to do so—LGBT athletes and allies have organized themselves to end the tradition of the sports locker room as the “last closet,” doing so by coming out and/or by expressing support for LGBT athletes more publicly and in greater numbers.<sup>31</sup>

In February 2014, Michael Sam, the 2013 Southeastern Conference Co-Defensive Player of the Year and former All-American at the University of Missouri, came out as gay in an interview with ESPN.<sup>32</sup> Sam was the first openly gay player to be drafted by the NFL and was congratulated for his groundbreaking achievement by President Barack Obama.<sup>33</sup>

In 2013, Brittney Griner, whom the *New York Times* called “[o]ne of the most dominant basketball players in recent memory,” came out in an interview with a reporter after being the first pick in the Women’s National Basketball Association (WNBA) draft.<sup>34</sup> In 2014, Griner was named the 2014 WNBA Defensive Player of the Year.<sup>35</sup> In 2015, she was awarded the Human Rights Campaign Visibility Award for her activism with LGBTQ youth.<sup>36</sup>

David Denson was the first baseball player to come out as

29. *About LGBT Sports Foundation*, FACEBOOK, [https://www.facebook.com/lgbtsportsfoundation/info/?tab=page\\_info](https://www.facebook.com/lgbtsportsfoundation/info/?tab=page_info) (last visited May 25, 2016).

30. Cyd Ziegler, *Sports Equality Foundation Launches To Support LGBT People Coming Out and Being Out in Sports*, OUTSPORTS (Jan. 20, 2016, 7:51 AM), <http://www.outsports.com/2016/1/20/10796682/sports-equality-foundation-lgbt>.

31. *Jason Collins: The Great Black Hope*, GAY STAR NEWS (May 2, 2013), <http://www.gaystarnews.com/article/jason-collins-great-black-hope020513/>.

32. Chris Connelly, *Mizzou’s Michael Sam Says He’s Gay*, ESPN (Feb. 10, 2014), [http://espn.go.com/espn/otl/story/\\_/id/10429030/michael-sam-missouri-tigers-says-gay](http://espn.go.com/espn/otl/story/_/id/10429030/michael-sam-missouri-tigers-says-gay).

33. Chelsea J. Carter & Ralph Ellis, *Obama Congratulates Michael Sam, First Openly Gay Player Drafted by NFL*, CNN (May 11, 2014, 12:51 AM), <http://www.cnn.com/2014/05/10/us/football-michael-sam/>.

34. Sam Borden, *Female Star Comes Out as Gay, and Sports World Shrugs*, N.Y. TIMES (Apr. 18, 2013), [http://www.nytimes.com/2013/04/19/sports/ncaabasketball/brittney-griner-comes-out-and-sports-world-shrugs.html?\\_r=0](http://www.nytimes.com/2013/04/19/sports/ncaabasketball/brittney-griner-comes-out-and-sports-world-shrugs.html?_r=0).

35. *About Brittney*, BRITTNEY GRINER, <http://brittneygriner.com/about-brittney/> (last visited Feb. 24, 2016).

36. *WNBA Star Brittney Griner Tackles Discrimination; Will Be Honored by HRC with Visibility Award*, HUM. RTS. CAMPAIGN (Apr. 9, 2015), <http://www.hrc.org/blog/wnba-star-brittney-griner-tackles-discrimination-will-be-honored-by-hrc-wit>.

gay during his professional baseball career.<sup>37</sup> Prior to that, at least two major league baseball players had come out, albeit after leaving professional baseball.<sup>38</sup> Glenn Burke, who had played for the Los Angeles Dodgers and the Oakland Athletics, came out as gay in an interview in 1982.<sup>39</sup> Burke died in 1995, and Major League Baseball honored Burke posthumously as a gay pioneer in 2014.<sup>40</sup> Billy Bean played for the Detroit Tigers, Los Angeles Dodgers, and San Diego Padres during his professional career.<sup>41</sup> He retired in 1995, and came out as gay in 1999.<sup>42</sup> In 2014, Major League Baseball hired Bean as its first Ambassador for Inclusion, and he now works to ensure that baseball is a safe workplace for everybody regardless of sexual orientation, gender identity, race, gender, or other traits.<sup>43</sup> In addition, in 1990, Dave Pallone, who was a professional baseball umpire for eighteen years, and who retired in 1988, published a memoir about being a gay man in the world of professional baseball, which became a *New York Times* bestseller.<sup>44</sup>

More recently, in 2015, the publicity accompanying the U.S. Women's Soccer team as they proceeded towards and won the World Cup further fueled the explosion of positive attention for LGBT athletes and coaches.<sup>45</sup> The U.S. team had a number of out lesbian players, and its out lesbian coach led the team to World Cup victory.<sup>46</sup> The positive media coverage, which accepted and

37. Kevin Baxter, *David Denson, Pro Baseball's First Openly Gay Player, Has Help on His Journey*, L.A. TIMES (Aug. 22, 2015, 3:00 AM), <http://www.latimes.com/sports/la-sp-denson-gay-baseball-20150822-story.html>.

38. *Id.*

39. John Branch, *Posthumous Recognition: M.L.B. To Recognize Glenn Burke as Baseball's Gay Pioneer*, N.Y. TIMES (July 14, 2014), [http://www.nytimes.com/2014/07/15/sports/baseball/mlb-to-recognize-glenn-burke-as-a-gay-pioneer-in-baseball.html?\\_r=0](http://www.nytimes.com/2014/07/15/sports/baseball/mlb-to-recognize-glenn-burke-as-a-gay-pioneer-in-baseball.html?_r=0).

40. *Id.*

41. *About*, BILLY BEAN, <http://billybean.com> (last visited Feb. 24, 2016).

42. *Id.*

43. Cyd Zeigler, *Billy Bean Hired by Major League Baseball as Ambassador for Inclusion, Will Lead Gay Inclusion Program*, OUTSPORTS (July 15, 2014, 11:20 AM), <http://www.outsports.com/2014/7/15/5898727/billy-bean-gay-baseball-mlb>.

44. David Colker, *Secret Behind the Mask: A Former Umpire Discusses One of His Life's Tough Calls: Being Gay and in Pro Baseball*, L.A. TIMES (June 22, 1990), [http://articles.latimes.com/1990-06-22/news/vw-349\\_1\\_double-life](http://articles.latimes.com/1990-06-22/news/vw-349_1_double-life).

45. See Laura Vecsey, *Carli Lloyd Leads USWNT to Women's World Cup Title Past Rival Japan*, FOX SPORTS (July 5, 2015, 9:00 PM), <http://www.foxsports.com/soccer/fifa-womens-world-cup/story/uswnt-win-womens-world-cup-title-championship-carli-lloyd-japan-5-2-match-report-070515?%2Fsoccer%2Ffifa-womens-world-cup%2Fstory%2Fuswnt-win-womens-world-cup-title-championship-carli-lloyd-japan-5-2-match-report>.

46. Dawn Ennis, *Lesbian-Led U.S. Women Are One Win away from the World Cup!*, ADVOCATE (July 1, 2015, 5:59 AM), <http://www.advocate.com/sports/2015/07/01/lesbian-led-us-women-are-one-win-away-world-cup>.

celebrated the lesbians on the team, provided hope for young LGBT people—and for all young people in sports. The team’s progress was exciting for fans around the world to watch.<sup>47</sup>

In the last few years, transgender<sup>48</sup> athletes in particular have begun to be recognized and have received increased visibility for their positive contributions to sports, both as skilled participants and as leaders. Of course, there have long been transgender athletes in sports. In 1976, the U.S. Tennis Association (USTA) barred Dr. Renee Richards from playing as a woman in the U.S. Open.<sup>49</sup> She sued the USTA in New York, alleging discrimination by gender in violation of New York’s Human Rights Law.<sup>50</sup> A year later, in August of 1977, the judge ruled in Richards’s favor, saying that what the USTA did was “grossly unfair, discriminatory and inequitable, and violative of her rights . . . .”<sup>51</sup>

In 2005, Keelin Godsey, a student athlete at Bates College, came out as transgender to his community and to other schools in his conference.<sup>52</sup> Right before he came out, Godsey had set a new record in the Division III women’s championship hammer.<sup>53</sup>

In 2010, Kye Allums came out as a transgender man playing on the Division I basketball team at George Washington University.<sup>54</sup> Allums has been recognized as a pioneer in the LGBT community, both for his sporting achievements and for his ongoing advocacy for equality.<sup>55</sup>

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47. See *Women’s World Cup Final Is Most-Watched Soccer Match in U.S. History*, U.S. SOCCER (July 8, 2015), <http://www.ussoccer.com/stories/2015/07/08/16/59/150708-wnt-victory-breaks-tv-records> (“The U.S. fan support during this year’s . . . World Cup [h]as been nothing short of spectacular . . . .”); Tyler Wirfs, *The Rematch: 2015 USWNT World Cup Final*, YOUTUBE (July 1, 2015), <https://www.youtube.com/watch?v=OFmAMMeISoQ>.

48. The term “transgender” can be used to describe a person whose gender expression is non-conforming or whose gender identity is different from that person’s designated sex at birth. The term can refer to a person regardless of what steps have been taken to affirm that person’s gender identity. This could include people who still live as the gender they were designated at birth and who identify as transgender. It is used as an adjective to describe someone, as in “a transgender person” or “a person who is transgender.”

49. *Richards v. U.S. Tennis Ass’n*, 400 N.Y.S.2d 267, 268 (N.Y. 1977).

50. *Id.*

51. *Id.* at 272.

52. Pablo S. Torre, *The Transgender Athlete*, SPORTS ILLUSTRATED (May 28, 2012), <http://www.si.com/vault/2012/05/28/106195901/the-transgender-athlete>.

53. *Id.*

54. Erik Brady, *Transgender Male Kye Allums on the Women’s Team at GW*, USA TODAY (Nov. 4, 2010, 9:56 AM), [http://usatoday30.usatoday.com/sports/college/womensbasketball/atlantic10/2010-11-03-kye-allums-george-washington-transgender\\_N.htm](http://usatoday30.usatoday.com/sports/college/womensbasketball/atlantic10/2010-11-03-kye-allums-george-washington-transgender_N.htm).

55. Elliott Moore, *Kye Allums Discusses His Personal History as a Transgender Athlete*, GLAAD (Feb. 19, 2013), <http://www.glaad.org/blog/kye-allums-discusses->

While, today, there are these and other advocates for young LGBT sportspeople, there is still much work to do so that every athlete is accepted and valued in sports. Two notable women have stood for social justice and equality for LGBT people in sports and have done much of the behind-the-scenes work to bring about progress, not to mention the fact that both have had long and pioneering sports careers of their own.

Dr. Pat Griffin was a college athlete at the University of Maryland, playing basketball, field hockey, and swimming, and she went on to coach swimming and diving at the University of Massachusetts Amherst.<sup>56</sup> At the 1994 and 1998 Gay Games, she won a bronze medal and a gold medal, respectively.<sup>57</sup> Griffin is the founding director of Changing the Game, a Gay, Lesbian, and Straight Education Network (GLSEN) project with the goal to make “K–12 sports and physical education inclusive and safe for all . . . .”<sup>58</sup> Griffin is also the former director of the It Takes a Team! Education Campaign for LGBT Issues In Sports, a project run by the Women’s Sports Foundation.<sup>59</sup> In addition, she authored *Strong Women, Deep Closets: Lesbians and Homophobia in Sports*.<sup>60</sup>

Sue Rankin retired from her position as Associate Professor of Education at Pennsylvania State University in 2013.<sup>61</sup> Rankin, who was also the head coach for the women’s softball team at Penn State for eighteen years, now runs the consulting firm Rankin & Associates.<sup>62</sup> Rankin identifies as queer, and she has written a number of books on LGBT issues and higher education, including *Campus Climate for Sexual Minorities: A National Perspective*.<sup>63</sup>

Advocates have created a number of publications to provide guidance on how the sports world can encourage the full inclusion and flourishing of transgender athletes, coaches, and other participants.<sup>64</sup> These publications have been enthusiastically

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his-personal-history-transgender-athlete.

56. *About Pat Griffin, Founding Director*, GLSEN, <http://sports.glsen.org/about-the-project/about-pat-griffin/> (last visited Feb. 25, 2016).

57. *Id.* Griffin won her 1994 bronze medal in triathlon and her 1998 gold medal in hammer throw. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. Joey DiGuglielmo, *Game Changers*, WASH. BLADE (Aug. 20, 2014, 2:55 PM), <http://www.washingtonblade.com/2014/08/20/game-changers/#sthash.nnrj0c4c.DjrVtTP.dpuf>.

62. *Id.*

63. *Id.*

64. *E.g.*, PAT GRIFFIN & HELEN J. CARROLL, NAT’L CTR. FOR LESBIAN RTS., ON



received by a number of sporting organizations.<sup>65</sup> The first groundbreaking publication dedicated to addressing the complete integration of transgender student athletes within high school and collegiate athletic programs is *On the Team: Equal Opportunity for Transgender Student Athletes*.<sup>66</sup> *On the Team* provides comprehensive model policies and a framework that allows athletic leaders to ensure equal access to school athletics for transgender students.<sup>67</sup> Shortly after *On the Team* was published, the National Collegiate Athletic Association (NCAA) developed membership guidelines for the inclusion of transgender student athletes.<sup>68</sup>

From my extensive work on these issues, and as a former coach, I know that, often, it works best to approach an institution with a policy in a friendly way. For example, we could frame a requested policy as one that has already worked in many other states and that, therefore, could work well for their state or school. We could also offer to help explain the policy and to show how it has worked. At the same time, we must be prepared for rigorous litigation, and we must not be afraid to win significant judgments and to deploy media strategies against organizations and institutions that continue to discriminate and refuse to implement better policies. This is crucial. Sometimes only the threat of significant monetary penalties or negative publicity will motivate an institution to change.<sup>69</sup>

In fact, legal advocacy has been an important part of the overall strategy to improve sports for LGBT people. The National Center for Lesbian Rights (NCLR) became the first national LGBT organization to seriously tackle homophobia and transphobia in sports with the creation of its Sports Project in 2001.<sup>70</sup> Since the

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THE TEAM: EQUAL OPPORTUNITY FOR TRANSGENDER STUDENT ATHLETES (2010), <http://www.ncrights.org/wp-content/uploads/2013/07/TransgenderStudentAthleteReport.pdf>.

65. See, e.g., *Transgender Inclusion Policies*, BATES C. ATHLETICS, <http://athletics.bates.edu/transgender-inclusion-policies> (citing TRANS\*ATHLETE, <http://www.transathlete.com>).

66. GRIFFIN & CARROLL, *supra* note 64.

67. *Id.*

68. *NCLR Applauds New NCAA Inclusion Policy Benefitting Transgender Student Athletes*, NAT'L CTR. FOR LESBIAN RTS. (Sept. 12, 2011), <https://ncrights.wordpress.com/2011/09/12/nclr-applauds-new-ncaa-inclusion-policy-benefitting-transgender-student-athletes/>.

69. See Ben Goessling, *Chris Kluwe, Vikings Avoid Lawsuit*, ESPN (Aug. 19, 2014), <http://espn.go.com/nfl/story/-/fid/11375100/chris-kluwe-minnesota-vikings-reach-settlement-avert-lawsuit>.

70. Cyd Ziegler, *Moment #20: NCLR Initiates Sports Project*, OUTSPORTS (Sept. 13, 2011, 8:25 AM), <http://www.outsports.com/2011/9/13/4051816/moment-20-nclr-initiates-sports-project>.

project's inception, NCLR has worked to eliminate discrimination based on sexual orientation and gender identity in sports through advocacy, outreach, and litigation.<sup>71</sup> As the director of that project, I see education as the base for building sustainable change. Changes must take hold in the hearts and minds of the sports community and the public at large in order for LGBT sportspeople to be accepted. Legal advocacy can provide a strong motivation—especially for institutions—to hasten and strengthen that process. In addition, litigation can be a vehicle to bring attention to and shape discussion of LGBT issues in sports, as well as to educate the public.

In light of this, advocates must be strategic in their litigation, using all the tools at their disposal to maximize the educational value and impact of each case. At NCLR, for example, we will set a strategy in each case for handling media: determining what the plaintiffs and attorneys will say about the case and framing the legal arguments for the public.

In 2005, NCLR filed a groundbreaking lawsuit in the Federal District Court for the Middle District of Pennsylvania.<sup>72</sup> In that case, Penn State student-athlete Jennifer Harris alleged discrimination based on race, gender, and sexual orientation, as well as invasion of privacy.<sup>73</sup> As Harris said, "I'm proud to have brought this case, and I'm thrilled that we have been able to resolve it."<sup>74</sup> She continued: "I look forward to putting this matter behind me and focusing on being the best student and basketball player I can be."<sup>75</sup>

Dr. Griffin compiled a list of discrimination lawsuits filed on behalf of women in athletics for a piece in the Huffington Post.<sup>76</sup> The list provides evidence of a disturbing pattern of sex and sexual

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71. *Id.*

72. *Case: Jennifer Harris v. Maureen Portland, Penn State University, and Timothy Curley, NAT'L CTR. FOR LESBIAN RTS.*, <http://www.nclrights.org/cases-and-policy/cases-and-advocacy/jennifer-harris-v-maureen-portland-penn-state-university-and-timothy-curley/> (last visited Feb. 25, 2016).

73. *Id.*

74. *Id.*

75. *Id.*

76. Pat Griffin, *College Athletics' War on Women Coaches*, HUFFINGTON POST (Jan. 6, 2015, 1:14 PM), [http://www.huffingtonpost.com/pat-griffin/college-athletics-war-on-b\\_6412950.html](http://www.huffingtonpost.com/pat-griffin/college-athletics-war-on-b_6412950.html).

orientation discrimination in college athletics.<sup>77</sup> Since Griffin published the article, at least one of the cases has settled,<sup>78</sup> and another significant case was filed against the University of Minnesota Duluth (UMD).<sup>79</sup>

In 2012, the plaintiffs in a suit against the University of Tennessee, which included Associate Director of Sports Medicine Jenny Moshak, settled their complaints with the university for \$750,000.<sup>80</sup> The plaintiffs' attorneys stated:

The resolution of this matter stands as a testament to the importance of equality for women in sports and those working with women in sports . . . . This settlement sends a clear message to collegiate decision-makers nationwide that disparity in pay, opportunity, funding, participation or otherwise is unacceptable in this day and time.<sup>81</sup>

On September 28, 2015, Shannon Miller, Jen Banford, and Annette Wiles, three openly gay former coaches at UMD filed suit against the University.<sup>82</sup> Their suit claims that UMD discriminated against them based on gender and sexual orientation, created a hostile work environment, and violated both equal pay laws and Title IX.<sup>83</sup>

Some of these cases are part of a developing trend of laying off or finding fault with, and then firing, great women coaches so schools can hire younger coaches for less money.<sup>84</sup> Such acts demonstrate these schools' lack of commitment to excellence for women in athletics. Advocates are trying to figure out what can really stop this from happening. Litigation that seeks monetary damages sends schools the signal that such acts are unacceptable: Thus, such suits may be a key part of this strategy.

Of course, litigation also comes with some personal costs. The cases referenced above show how great women coaches, whose lengthy careers have involved coaching Olympic players and

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77. *See id.*

78. *See* Melissa Ross, *UNF, Former Women's Basketball Coach Settle Title IX Lawsuit for \$1.25 Million*, FLA. POL. (Mar. 11, 2016), <http://floridapolitics.com/archives/204387-unf-former-womens-basketball-coach-settle-title-ix-lawsuit-1-25-million>.

79. Dan Kraker, *Ex-U of Minnesota Duluth Coaches File Discrimination Lawsuit*, MPR NEWS (Sept. 28, 2015, 12:30 PM), <http://www.mprnews.org/story/2015/09/28/umd-coaches>.

80. *Settlement Reached in Suit by Ex-Lady Vols Officials Vs. Tennessee*, ASSOCIATED PRESS, Jan. 4, 2016, [http://espn.go.com/womens-college-basketball/story/\\_/id/14503557/settlement-reached-lawsuit-ex-lady-vols-officials-tennessee](http://espn.go.com/womens-college-basketball/story/_/id/14503557/settlement-reached-lawsuit-ex-lady-vols-officials-tennessee).

81. *Id.*

82. Rachel Blount, *3 Former Duluth Coaches File Discrimination Lawsuit*, STAR TRIB. (Sept. 28, 2015), <http://www.startribune.com/3-former-duluth-coaches-file-discrimination-lawsuit/329788221/>.

83. *Id.*

84. *See id.*

teams, will probably never coach again because of discrimination or speaking up against discrimination.

Historic LGBT athletes, coaches, and educators cleared a path for today's LGBT sports participants and built a visible, vibrant, positive LGBT sports movement. One of the most rewarding parts of my work is being able to share in the tremendous excitement of athletes, coaches, and administrators who participate in sports and tell their powerful personal stories. Still, educators and attorneys must remain vigilant about discrimination and recognize opportunities to challenge it. Using a dual strategy of education and litigation will help the movement progress in a positive direction.

At this point in time, there has been backlash against protections for LGBT people in general,<sup>85</sup> and in the context of sports.<sup>86</sup> We must therefore remain alert and continue to work to ensure the safety and dignity of all sportspeople. We must realize that what I might call the "pink cloud"<sup>87</sup> of public acceptance and support does not always last forever and does not exist for every athlete who comes out. To accomplish these goals, we must recognize and learn from the LGBT pioneers in sports, and we must continue to honor their legacy of integrity and advocacy.

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85. Camila Domonoske, *North Carolina Passes Law Blocking Measures To Protect LGBT People*, NPR (Mar. 24, 2016, 11:29 AM), <http://www.npr.org/section/thetwo-way/2016/03/24/471700323/north-carolina-passes-law-blocking-measures-to-protect-lgbt-people>.

86. See, e.g., Sunnivi Brydum, *Minnesota Republicans Seek To End Trans-Inclusive Sports Teams*, ADVOCATE (Mar. 12, 2015, 3:32 PM), <http://www.advocate.com/politics/transgender/2015/03/12/minnesota-republicans-seeks-end-trans-inclusive-sports-teams>.

87. See, e.g., DANA G. FINNEGAN & EMILY B. MCNALLY, COUNSELING LESBIAN, GAY, BISEXUAL, AND TRANSGENDER SUBSTANCE ABUSERS: DUAL IDENTITIES 182 (2002) (describing the pink cloud phenomenon); Mila Madison, *Tales from the Pink Cloud*, TRANSGENDER UNIVERSE (Feb. 29, 2016), <http://transgenderuniverse.com/2016/02/29/tales-from-the-pink-cloud/> ("[T]he pink cloud. It is when everything is brand new and wonderful.").