

**Podcast:** *Hiring to Firing* Podcast

**Episode:** Tangled Up in Title VII: Hairstyle Discrimination in the Workplace

**Hosts:** Tracey Diamond and Emily Schifter

**Guests:** Casselle Smith and Sarah Mesle

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**Tracey Diamond (00:15):**

Welcome to [Hiring to Firing](#). I'm Tracey Diamond, labor and employment partner at Troutman Pepper Locke, and I'm here with my partner and co-host, Emily Schifter. We tackle all employment issues from hiring to firing.

**Emily Schifter (00:27):**

Today, as our intro song may have clued you in on, we're going to be tackling an interesting topic. We'll be talking about hair discrimination, unconscious bias, and the surprising ways that this issue can show up in the workplace. And to help us, we are so excited to welcome two guests. Our first guest is our partner, Casselle Smith. Casselle represents companies in sensitive, high-stakes internal and regulatory investigations and enforcement matters. Welcome to the podcast, Casselle. Why don't you give us a quick synopsis of your practice?

**Casselle Smith (00:43):**

Thank you for having me. I'm very excited to be on the podcast today. In terms of my practice, I represent companies and executives mainly in government investigations, a lot of DOJ investigations on the white-collar defense side and then securities regulatory investigations, so SEC investigations of public companies. So high-stakes stuff. My clients are not excited to need me.

**Tracey Diamond (01:07):**

Our clients are not excited to need us either.

**Emily Schifter (01:11):**

We're also thrilled to welcome Sarah Mesle, professor of writing at the University of Southern California and author of the book *Tangled: Seven Iconic Moments in White Women's Hair and What They Tell Us About Power, Pleasure, and Complicity*. So welcome, Sarah, and can you tell us a little bit about your work and what drew you to analyze the power of hair to shape American identity?

**Sarah Mesle (01:31):**

I'm so glad to be here. My background is thinking about the origins of women's culture, and how even in women's media that doesn't necessarily seem to be addressing race, often race is an unspoken factor that shapes how women relate to each other and how

women think about their position within US culture more broadly. So I think of myself as a cultural historian of US women's culture, and I'm also a girl or a lady who grew up in this culture. And for a long time, when I wrote about television, which I'd done quite actively, I wrote a lot about the way that women's hair was portrayed. And I often focused on the way women's hair would appear in the TV show *Lost* or in the TV show *Game of Thrones* and the different kinds of magical things women's hair would be doing. You're on an island and you're planewrecked, but you still somehow can shave and have...

**Tracey Diamond (02:26):**

And have makeup on.

**Sarah Mesle (02:27):**

Right, right. That seems so magical. And I was really interested in the representation of women's hair as a matter of gender. And then at some point, I realized that this whole time I'd been thinking about hair and femininity, what I had really been thinking about was white femininity. And there was something about the way white femininity works that allowed me to forget the racial aspect. And so I really wanted to look into that in myself and be like, how is it that whiteness doesn't have to look at itself? How did I not have to look at my own whiteness as a part of the femininity I was doing? So I wanted to trace that history because I think it's not just me. I think it's pretty common.

**Tracey Diamond (03:08):**

In your book, you actually focus on the time period very specifically 1979 to 2016 and the hair of seven women in particular, some of whom are actually real women and some of whom are not. So you focus on Mary Lou Retton, famous for her gymnastics skills and her bob. Britney Spears, who infamously shaved her head. Gwyneth Paltrow, known for her public discourse about body hair. And then others are actresses playing movie and TV characters, such as Bo Derek's character in the movie *10*, who seductively shakes out her cornrows as she emerges from the ocean. And then there's Julia Roberts, who removes her platinum wig to display unruly red curls in *Pretty Woman*. And of course, Jennifer Aniston's "the Rachel." And then finally, you focus on Anne Shirley, the fictional character from *Anne of Green Gables*, and her red carrots hair. What drew you to this time period and to those seven hairstyles in particular?

**Sarah Mesle (04:05):**

One of the things I think about in the book is that I wanted to tell a political history by looking at women's culture. Usually when we are trying to talk about politics, we talk about polls, we talk about who got elected to the White House. But I had a real intuition that these things that women are spending all their time looking at are also making politics and telling politics. So if we look at... I wanted to go from the election of Reagan to the election of Trump, and I think one of the big media stories when Trump was elected the first time was, wow, Trump seems to really be a terrible misogynist with the... I mean, you can remember some of the stories that were coming out at the

beginning of 2016, grab them by the P-word. And yet all of these white women are voting for him. Where did that come from? How do we see the attraction to this political program that is bad for women collectively to be something that white women could still be attracted to?

And that seemed to come out of nowhere in terms of... There were so many people... Obama's ratings were high. Where did this conservatism come from? So I was like, well, if we look in women's media, can we find it? Can we see the growing attraction to white women as a luxury status item within that? And I would say part of what the book proposes is we can. So that was the question that I was looking for. And in terms of how I chose those people, I really wanted to think about people who were important to me, honestly, but also celebrities who became famous not just because of what they do, but how it seemed like we couldn't quite detach their fame from the way that people talked about their hair. So where a lot of the media coverage was about their hairstyle as much as their part, or their clothes or their body.

And I also wanted to think really seriously about the kind of media that women spend a lot of time watching that often is dismissed as not important, so music videos or women's magazines or gymnastics routines, which I just watched over and over again, or little girls' novels. So I wanted to pick some things from the different ranges, people who had some purchase in different ranges of media. Because as one of my friends who also studies hair history says, anything women spend their time on is worth taking seriously. So I really wanted to look at that. I wanted to look at Gwyneth Paltrow's Instagram account, where I would say she actually doesn't talk about body hair. She just always has perfectly groomed body hair. So I was really interested in that. When she's talking about literally everything else, why is that the thing that's so secret? So those were some... I was kind of looking to take women's culture really seriously and then to assign it responsibility. If it matters, we have to be responsible for what it does.

**Emily Schifter (06:55):**

That's so interesting. And completely relate. I'm fascinated by gymnasts. They're incredible athletes. How do we not take them more seriously? I think maybe we've gotten a little bit better.

**Tracey Diamond (07:03):**

Yeah. For me, I remember the whole Britney Spears shaving of the head thing. It was in the background of my life, but I didn't really pay all that much attention to it other than to sort of scoff at it, right. And then after having read that chapter in your book, I went back and did the deep dive of all those videos that you mentioned, the music videos and her video with Michael Jackson, for example. And it was kind of horrifying and sad.

**Sarah Mesle (07:25):**

Yeah.

**Tracey Diamond (07:26):**

Yeah, it's a very sad story.

**Sarah Mesle (07:27):**

Yeah, it is a really sad story. I mean, as I say in the book, writing that chapter literally gave me nightmares. I felt like I was back in a terrible thing. And it's really interesting. One of the things I think about in the book is that the same year that she shaved her head was the one that she got assigned to this conservatorship that took away all of her legal rights at the most intimate level. So what is it about shaving her head that helped the culture more broadly think, yeah, that woman needs some help. There's no reason... And I mean, I do think she did need some help, and also the signification of the hair.

**Tracey Diamond (08:02):**

Shaving her head after having strutted her hair around for years right before that, right? So hair was a big part of her persona.

**Sarah Mesle (08:10):**

Absolutely.

**Tracey Diamond (08:10):**

And then to shave it off. Yeah. Fascinating.

**Emily Schifter (08:12):**

So on another hair topic, another of the characters that you focused on. This'll be a good transition to our first clip. We are spending some time talking about the Rachel. So we thought it would be fun to start with a clip from *Friends* on a slightly lighter note than Britney Spears. So in this clip from the first episode of season two, called "The One with Ross's New Girlfriend," Phoebe agrees to cut Monica's hair after Monica promises not to be all controlly and bossy and all Monica about it. So let's take a listen.

[BEGIN CLIP]

**Phoebe (08:42):**

I know what I am doing. This is how he wears it.

**Monica (08:48):**

How who wears it?

**Phoebe (08:50):**

Demi Moore.

**Monica (08:52):**

Demi Moore is not a he.

**Phoebe (08:54):**

Well, he was a he in Arthur and in 10.

**Monica (08:59):**

That's Dudley Moore. I said I wanted it like Demi Moore.

**Phoebe (09:05):**

Oh. Oh. Oh, my God! Oh, my God! Oh, my God! Oh, my God! I'm sorry! I'm sorry! I'm sorry! Which one is Demi Moore?

**Monica (09:13):**

She's the actress that was in Disclosure, Indecent Proposal, Ghost.

**Phoebe (09:18):**

Oh. Oh, she's got gorgeous hair.

**Monica (09:21):**

I know! Oh, my God!

[END CLIP]

**Emily Schifter (09:23):**

Monica wanting her hair to look like Demi Moore seems to be a play on the fact that so many women wanted their hair to look like Rachel. What does this say about the psyche of American women?

**Sarah Mesle (09:33):**

I have so many thoughts about this clip. One thing I would say to answer your question directly is that it is a kind of a small internal to the show proof that the intersection between real media... Or real women and media reflections of women, it's very fluid, right. That the Demi Moore on the cover of Vanity Fair especially happened right at that moment. I don't know if all of you could picture it. She had this very short hairdo that was very exciting. Demi Moore could have been in the book, a real hair icon. But so she's an actress, but she was on a movie cover, and so then it moved into the TV show, which is supposed to be a representation of the real world. So the fluidity between media culture and women's lives is very powerful in ways that it's really important to account for. So that's one basic thing I would say.

But I will also, here I am, I'm not a lawyer, but as a cultural critic, I'm also a close reader. So I want to look at all of the evidence. And so here's some more details. So one thing is, as you said, the episode is called "The One with Ross's New Girlfriend." Here's the thing about Ross's girlfriends. He was always in love with Rachel, so he was always kind of dating other women who the audience knew were never going to be serious. And most of them were women of color. Ross's girlfriend was where the show kind of

could plug its representation gap. So it's interesting that Ross's new girlfriend is Asian. That's the real context for the backdrop of this show. Phoebe also cuts the new girlfriend's hair in this episode, and Rachel sabotages it. And both times they substitute it by she wants it to look like Demi Moore, but in fact, Phoebe cuts it to look like Dudley Moore. She gets the name wrong. And that is, of course, the male actor in the movie 10. So there's a weird way that all of this media is circling together.

**Tracey Diamond (11:29):**

Do you think that was a coincidence or do you think that there was a message there?

**Sarah Mesle (11:32):**

Well, I don't know what the difference is. I think there's a message there even if they didn't know what they were doing, right? It's a point of evidence that shows us what are the names that circulate through culture. So that Dudley Moore, Demi Moore, they kind of sound the same, but it's also telling us that in this character's head, those are two of the people who are just in there percolating around. And I think it's a real example of the way that images from media get into us and then affect what we think is normal and affect the ways... And I think this might circle back to maybe what Casselle has to say, but the ways that we judge each other and the ways that some of us are judged differently than others and to different kinds of standards.

**Tracey Diamond (12:14):**

So that kind of brings me to my next question. In your book, you discuss the impact of hairstyles and race and how beauty standards benefiting one group can simultaneously disadvantage another. Can you explain what you mean by this?

**Sarah Mesle (12:27):**

I think, and it's hard to speak about collectives, but here, let me say something like that most women I know think about their hair. I don't know many who don't. We think about it in different ways. We put different amount of work into it. And I think that certainly the white women that I grew up around, went to slumber parties with, that were in my family, really felt like their hair mattered, but also like their hair wasn't serious, or the time that they put in their hair was... That's not really a serious thing to do. I guess I think it is really a serious thing to do, that women are right to notice that we feel so much intensity about our hair. So I wanted to take that seriously.

And I think one thing that's complicated is that when white women like me, and I will say for myself, I feel a lot of intensity about my hair, and I often experience it as a kind of pressure, sometimes a satisfaction, but like, okay, well, I want it to be good, or I want it to be like this. And one thing that I think that white women don't often, are not encouraged by the media to think about, is how even the pressure that we're feeling is about creating an ever kind of more perfect kind of whiteness representation in our hair, and that we're taught to think about our hair personally rather than politically or socially.

And I think that that's wrong. I think that the reason we feel so intense is because our hair is wrapped up in a huge professional, political, personal signification.

And a basic thing I think about in the book is that when I was growing up, I would think about, okay, I knew the history of the Black Power movement or the Black Panthers, and I would have been able to say, like, Angela Davis, she had Black Power hair. Her Afro was a symbol of racial politics. But hair like Angela Davis could only become a symbol of racial politics and Black Power if, in contradiction, hair like mine was always a sign of whiteness and white politics and even sometimes white power. And I think that white women have not been taught to think about that. In fact, I think we've been discouraged from thinking about that.

I think when we talk about race, it becomes awkward, and we're judged and seen as... Body, but when we just lean into femininity and separate femininity from gender, we're rewarded by media. So I really feel like it's really important to undo that, if we want to have, as I do, cross-racial political solidarity to address the political issues that are coming for us all and not feel like we could escape them by doing whiteness more perfectly.

**Emily Schifter (15:09):**

Casselle, let's bring you into the discussion. What has been your personal experience?

**Casselle Smith (15:13):**

Yeah, so it's interesting. My parents, and I wasn't even necessarily thinking about talking about this in this conversation, but since Sarah mentioned it, my parents were in the civil rights movement. I'm from Greensboro, North Carolina, the city where the sit-ins began. I was born in 1982, to give you some time frame reference. And my mother, when I was maybe like five years old, six years old, cut my hair off and I had an Angela Davis Afro in kindergarten. And it was rough. And for my parents it was like, "Oh, yes, you're beautiful. This is Black beautiful, powerful," all of these things. And for me, I'm in kindergarten and I'm like, "But I'm different." And so that was really hard for me. And I finally got my mom to accept that I was going to straighten my hair to be like other people. And she hated it, but she gave in as a child.

And so I think by maybe fourth grade, definitely by fifth grade, I had straight hair. And so then I think I kept that and got braids done throughout high school. I ended up going to Howard University, a Historically Black University in Washington, DC, where there's all sorts of hair. And so I think there I felt liberated in a way to engage with my hair more freely. And ultimately I ended up cutting off my straight hair and growing it natural and getting braids and now going to law school and straightening it again.

So I hadn't actually ever thought about this trajectory of my hair and my life and the spaces that I was in and how my hair conformed to where I was. But it did. So in law school, I straightened my hair again and processed it, chemically straightened my hair.

And then I kept that and I thought that I needed to. I remember thinking, I don't know if anyone ever said it to me, but I felt like an innate pressure to have straight hair as a lawyer, that that is just the expectation. And so it was around 2010 when I graduated from law school, to put a time frame on that. And so, yeah, I did that. And I remember noticing some friends of mine who didn't do that and who got braids or wore an Afro, and I was like, "Oh, my gosh, that's so daring. Are we allowed to do this?"

I went to Harvard Law School. These are brilliant women who were at the top of their game, and I'm surprised that they feel free enough to wear their hair the way it grows out of their head. Ultimately, by the time I was a mid-level associate, I decided to wear my hair natural, and then I locked my hair when I was pregnant with my son. And so I can always think about how old is he? So it was about nine years ago. And now my hair is down the middle of my back. It gets all the way to my pants if I'm not trimming it. And people notice it, and it's a thing about me. You would not describe me and not mention my hair, and that is anyone of any race. Tracey told me when we were prepping for this that I have amazing hair. I'm not saying I have amazing hair, but Tracey said she really likes it.

**Tracey Diamond (18:00):**

I love it.

**Casselle Smith (18:00):**

It's a thing. People like it. So, yeah, as I became more comfortable as a lawyer and times changed, I locked my hair. And now, and I remark often about what it meant for me to make partner in Big Law with locs, right? I was like, I had locs down my back, two kids under five, and a nose ring when I made. And that said a lot to me about who I was as a person and where I'd come, and then also, frankly, and this is not a commercial for Troutman, but also about where I am at a law firm, that I could do that and be that and look this way and do the type of high-stakes work that I do, right.

And I'll say also in my experience, I don't think I experienced any actual discrimination about my hair that I understood in the moment to be that, but it was more so how I had been enculturated to believe that my hair had to look a certain way depending on the people that I was around. And so in my culture, in the Black culture... Oh, I'm African American, I should probably also mention that, in my culture, we have a term called the white gaze, which is when you're worried about how white people see you. Nowhere in my own culture do I worry about it, but I could worry about how it is seen by people outside of it, and I have to like... I felt that I need to operate on both sides of that. And if I wanted to grow professionally, I needed to lean into the white gaze, as opposed to what I thought about my own hair in my everyday life. So, yeah, that's kind of my story of my hair.

**Tracey Diamond (19:32):**

It's a fascinating story about hair. And also, I feel for you, Casselle, that it had to be

something that you carried with you in one way or another throughout your life. I think, to Sarah's point, white women, it's a bit of a privilege that we don't really think about it in that way. We don't have to sort of carry it with us the way you're carrying with us. Except for, I think, maybe on the age side of things. I'm a little bit older, and as my hair's starting to gray and figuring out what to do about gray, then it becomes more of a thing in my head, but it didn't when I was younger. And kudos to you for being yourself and expressing your individuality and not having it hold you back. I would like to ask you about the term unconscious bias. Do you see this differentiation of an individual based on their race and hair as a form of unconscious bias? And maybe you can explain what unconscious bias actually is?

**Casselle Smith (20:23):**

Yeah, so just to level set, I think of unconscious bias as kind of an automatic, unintended stereotyping or an attitude about a group of people that influences how we act and the decisions we make without knowing it. And so it's the without knowing part that is why we call it unconscious. And I think everyone... Everyone has unconscious bias and it shows up in different ways. And I'll say that part of my... Bias doesn't even have to be directional about other people, because I had a bias against my own hair. I understood it to mean a certain thing. So some examples in general of unconscious bias are affinity bias, which is favoring people who look and act like you, and gender or race bias, which is unconsciously expecting certain traits based on people's gender or skin color.

**Tracey Diamond (21:12):**

How do you reduce unconscious bias if it's unconscious?

**Casselle Smith (21:16):**

I think knowing. Knowing that it's a thing. Knowing that it's a thing that impacts everyone, because I think there can be some guilt, and people want to believe that they are good. They want to believe that they are kind. And so if people are thinking about unconscious bias as something that plagues only bad people, then they want to distance themselves from it. But if people understand that it's something that we all carry, then I think they can analyze their own actions and check for the unconscious biases. One thing that I think to kind of correct for unconscious bias is to think about decisions that you're making and whether or not... Like, what are the bases for a decision that you're making? Think it through and whether or not you're judging people the same way across the various spectrums of potential bias.

**Sarah Mesle (22:10):**

Can I jump in and just say that I think that's such a good answer? And to connect it to something that I was saying before, when we feel intense about something, like, oh, I've got a... I really have to do my roots or I have to blow out my hair or I have to wear this or I shouldn't wear that color, and there's an intensity there, as Casselle is saying, it's worth pausing and even notice what the expectations you're bringing to yourself are.

And again, Casselle's point of just think it through, notice it. Where did that come from? Did it come from watching *Friends*? Did it come from a thing that you heard somebody say over coffee? Did it come from something that you said over coffee? And the slow process of just being interested in the self in the way that we are in the world and generous, in the hopes of you can be a kind, good person and still, you know, we're all so imperfect and we're all in the world. So being generous to our own process of growth, really noticing those intensities so that we can, if there's an intensity there, if you're like, oh, I just don't feel right unless I blow my hair out, like, oh, that's really interesting. Why is that? Where did that come from? If you're judging yourself in a way, you're also probably judging somebody else.

**Emily Schifter (23:26):**

Tracey, are there areas where unconscious bias comes up specifically in the workplace? I mean, obviously, it can come up in a lot of situations. And I know we just talked about this a little bit in our hiring and background check episode about that unconscious bias and why you might click with a particular candidate just because they like the same football team as you. And is that really, does that mean they're the best fit for the job? So where do you see it come up, and how do you think employers can mitigate against that?

**Tracey Diamond (23:51):**

Yeah, it certainly can be an issue in hiring, but we do spend a lot of time in our world talking about that, and also in performance management. So the person that looks like you and is the same gender as you, the same race as you, the same age as you, maybe you give that person a pass when they're late for work or they're leaving early. You have kids too, and so you're sort of sympathetic that they're leaving early, whereas the person of the opposite gender, you're not so sympathetic, for example.

Ways to mitigate it would be to use, in the hiring process anyway, would be to use blind resume reviews when possible, use a structured interview process where all interviewers are asking all candidates the same questions, and then scoring the candidates based on as an objective of a scorecard as you could create when you're dealing with something as subjective like this, right? And then making sure your job postings and your job descriptions use neutral language. That's on the hiring front.

And then on the performance management front, again, using as much as you possible, objective, measurable criteria for measuring performance is really important. Emily and I have talked on past episodes about the use of AI in both hiring and performance management and how that could lead to bias in the algorithms, because I always like to call it sort of garbage in, garbage out, and how important it is for hiring managers and managers of performance to be conscious of that if they're using these tools and make sure that there's no bias in the tools that they're using.

**Emily Schifter (25:16):**

That's right. And of course, it's important to use objective criteria to measure performance for lots of reasons, as we've talked about on other episodes. So a good practice in general, I think. Sarah, in your book you mentioned the CROWN Act. Can you tell us a little bit about that law?

**Sarah Mesle (25:29):**

Yes, I will mention what I know about it here. You all are the lawyers, though, so the cultural critic, I will weigh in. The CROWN Act was a series of laws that was started in California in 2019. It stands for Creating a Respectful and Open World for Natural Hair. So these are laws that protect workers from race discrimination based on their hairstyles, some of the things that Casselle was mentioning. One fact is that the law was created in partnership with Dove, the soap company. And I will say, just as a cultural historian, this was really important, because there's a lot of... The way that beauty salons are regulated I think is actually in partnership with this. New York State actually just passed a law that made being able to deal with textured hair a part of cosmetology requirements. And that's a huge deal, right? That there's a kind of a de facto segregation that happens in funny places that we don't think about, like beauty salons where beauty cosmetology licenses are actually legislating what hair matters. In the place where beauty is made, textured hair has been de facto pressed out. So I think there's a whole range of questions about how our law creates particular hair as normal and other hair, despite being natural, as abnormal.

**Tracey Diamond (26:46):**

Emily, wearing your employment lawyer hat, can you explain for our listeners why these laws are necessary in the first place?

**Emily Schifter (26:52):**

Definitely. In 2023, there was a survey done on the impact of hair discrimination in the workplace that found it to be significant. The study found that 25% of Black women believe they have been denied a job because of their hair, and two-thirds of Black women feel the need to change their hair for a job interview. Of those, 41% change their hair from curly to straight, which kind of goes back to what you were mentioning about in law school, Casselle. Additionally, more than 20% of Black women reported being sent home because of their hair. And I mean, just to put... Those are huge numbers, right? Those are not insignificant impacts.

**Tracey Diamond (27:26):**

I also think it's interesting that it was Dove and LinkedIn that partnered for the study. It's just sort of fascinating to me that those were the companies. In terms of litigation, Casselle, bringing it back to you again, has there been any litigation over hair discrimination in the workplace that you're aware of?

**Casselle Smith (27:41):**

Yeah, one case was in 1981, so the year before I was born, to put a time on it, right, in the evolution of Black hair and it being an issue in front of our larger culture. In 1981, Renee Rogers, so she was a Black airport operations attendant for American Airlines, and she brought a lawsuit in the Southern District of New York. She alleged that the airline's grooming policy, which prohibited braided hair, violated the Thirteenth Amendment and constituted sex and race discrimination in violation of Title VII of the Civil Rights Act, and race discrimination in violation of Section 1981, so the discrimination laws.

While Title VII prohibits employment discrimination on the basis of race, color, and religion, sex, or national origin, back in 1981 and today, it doesn't provide an explicit protection for Black women's protective or non-Afro hairstyles, including cornrows. And so what that means is how your hair naturally grows out of your head is a manifestation of race, but how you decide to style your hair, which may be a direct consequence of how your hair grows out of your head, is not a protected status.

And so Rogers, back in 1981, argued that the right to wear cornrows at work should be protected as a cultural, historical essence of Black women in American society. The court disagreed, though, and they stated that Rogers only started wearing cornrows, this is really interesting, after it was popularized by Bo Derek's cornrows in the movie 10. And so just to put a finer point on that, it may have been that the movie 10 with a white woman wearing cornrows made Ms. Rogers feel like the cornrows that she had wanted to wear and that were a part of her culture would be accepted in the broader employment landscape. That's the case I'm aware of.

**Tracey Diamond (29:32):**

There's so much to unpack there. And Sarah, you spend a bit of time discussing this case in your book. Can you explain the context here?

**Sarah Mesle (29:41):**

Yeah, I mean, I have many things to say about it. One, Casselle, I liked the way that you frame that so much that here is a woman who had textured hair that would be well served by wearing what you call a protective hairstyle like braids, which are also a huge, rich aesthetic tradition of caretaking and thought, okay, well, maybe... I mean, maybe she did, maybe she didn't. Maybe she thought, now that a white woman has made this style popular, I have cover, I can do this. Or maybe she wasn't thinking about Bo Derek at all, who knows? But really fascinating that in both the prosecution and in the ruling, Bo Derek is mentioned by name. And that is fascinating that this really kind of dumb movie... I think it's interesting.

**Tracey Diamond (30:27):**

It really was kind of a dumb movie.

**Sarah Mesle (30:29):**

Yeah, it's a real slapstick, people falling down hills and showing their boobs. It's a real kind of sex romp. But that this would be named in a discrimination case as a point of evidence, and that this dumb movie would trump millennia of Black cultural practice as a sign of what this would mean to her. One thing to say is that it is a real sign of how media that is very easy to dismiss as trivial has real effects on real people's lives, Renee Rogers particularly, but everybody working in the wake of this courtroom. A couple of other things to say: I have spent a long time learning about this case. I looked up all of the lawyers who were in the courtroom that day. I don't know about the court reporter, I don't know about the other people who were there, but they all have... All of them, men and women, have the same salt and pepper, short white hair.

There's a real sense... I looked at all their headshots, I looked at all of their trial records... I mean, a real sense of, okay, this is the professional hair. And then here's Renee Rogers in that space. What is that like for her? It's really interesting to imagine. And then the final thing I'll say is that I first became aware of this because I was trying to read a lot about the history of hair and discrimination, and I was very interested in this movie 10, which kept showing up in popular culture. Bo Derek's cornrows in this dumb movie, they just keep circulating around. And I have more things to say about that if you're interested, how they move through changing laws.

But I really first learned about this court case because of an amazing essay in the Duke Legal Review by a woman named Paulette Caldwell, who I'll mention by name, who I think is a genius, who published this gorgeous essay about this court case that is also about teaching discrimination law at NYU Law School while also being a woman who wore her hair braided. And the way that it was impossible for her to talk about the law without her body and her hairstyle becoming an object in the classroom, that she had to stand in for this discriminated-against subject in a way that her male colleagues, who were often commenting like, "Oh, love your braids, love your hair," did not have to do.

The burden that she carried was very intense. And what she says is, "I learned about this law from my grandmother braiding my hair." All of these experiences that we have in these intimate situations are full of knowledge-making that we need to acknowledge. And I will say that that essay, it's called A Hair Piece, was published in 1991, but it was workshopped in 1989 at the very first Critical Race Studies workshop. So right at the moment that American legal culture was trying to develop its best language for talking about how discrimination works, hair is right there at the foundation. Over the last five years, we've seen a huge attack on this as this is what racist culture does not want to be taught. People don't want their kids to learn this history. When I say people, I mean people who don't want to confront their own privilege don't want this to be taught. And we have to learn it for precisely that reason.

**Emily Schifter (33:37):**

In the Rogers case, to your point, that was decided in 1981, but courts have continued

to rule similarly in years since. As recently as 2016, in a case, *EEOC v. Catastrophe Management Solutions*, the Eleventh Circuit held that an employer's ban on dreadlocks does not violate Title VII's prohibition against race discrimination. So in that case, Chastity Jones, a Black woman, she applied for a customer service job, and the company offered her the job. But later, the human resources manager told her that she had to cut her dreadlocks because they, quote, "tend to get messy," under the company's race-neutral grooming policy.

Jones refused to cut her hair, and then the company rescinded the job offer. So the Equal Employment Opportunity Commission sued the company on her behalf, arguing that banning dreadlocks is race discrimination, because the hairstyle is culturally and physiologically tied to Black people. But the Eleventh Circuit ruled that Title VII only protects against discrimination based on immutable or unchangeable biological traits, as they described it, such as skin color or natural hair texture. And in that case, the court found that a hairstyle is a mutable choice, meaning it can be changed. So banning a specific hairstyle, even one closely associated with a specific race, did not legally qualify as race discrimination.

In fact, the CROWN Act that we talked about earlier was the result of these cases, trying to fill that gap to provide statutory protections, at least in those states and local jurisdictions where it's been enacted for hairstyles.

**Tracey Diamond (35:03):**

At its core, it sounds like the issue is bias as to what is perceived to be, quote-unquote, professional workplace attire and how that standard is based on white culture. And this brings us to our next clip. This is from the 1988 movie *Working Girl*. And Tess McGill, played by Melanie Griffith, works in the typing pool at a Wall Street firm, but is desperate to be taken seriously. As she makes herself over, we hear her say this famous line.

[BEGIN CLIP]

**Cyn (35:30):**

Are you sure about this?

**Tess (35:33):**

You want to be taken seriously, you need serious hair.

[END CLIP]

**Tracey Diamond (35:40):**

So, Sarah, turning it over to you, what do you think about that?

**Sarah Mesle (35:44):**

Yeah. Working Girl is a delightful, beautiful, and exceptionally toxic movie.

**Tracey Diamond (35:52):**

Very dated. Yeah.

**Sarah Mesle (35:53):**

Well, yeah. Yeah, but we're still living in its world. Yeah. One of the things about that movie is that it's definitely about a kind of a class passing. The Melanie Griffith character is from Staten Island. She has friends with big hair. They're all very white-ethnically marked. She has this big, like, big bangs and big frizzy hair. And she feels like, "Okay, I've got to become this other thing." And that motif of class passing percolates through a huge number of romantic comedies, again, a very easily dismissed genre, but that are hugely popular and do both reflect and shape culture in really powerful ways.

**Tracey Diamond (36:39):**

Yeah.

**Sarah Mesle (36:39):**

And I guess I would say one of the things that's really interesting there is that it's pretty easy for Melanie Griffith, who, despite her class difference, which is very real... I mean, a huge cultural background that's very different and very real, she can cut off her hair and look like this other thing. She gets the same hairstyle as her boss, Sigourney Weaver, who is totally thrown under the bus by this movie, humiliated and mocked at the end in a fairly disgusting way for her body. But she feels this pressure like, "Oh, I've got to kind of get this up." But she can move to it. And I do think it's a really good test case of all of the way that even within whiteness, white women are pressured to an extremely narrow ideal of what's appropriate, and an ever-receding one.

I, as a white woman, experience pressure around my hair, and we do face this very real misogyny around that pressure. But the misogyny that we face kind of allows us to say, "Oh, well, we're just the victims. We're just pressured," and to not see how that misogyny takes place in a larger sphere that's also racist. So the misogyny actually provides cover for a pressure that when we give into it, gets extended outwards in ways that we... I would say I carry responsibility for.

**Tracey Diamond (37:54):**

Yeah. And I would say on top of that, there's this tension between this fantasy or unachievable norm of what is appropriate or professional in the workplace that's sort of at odds with how men perceive women from a sexual fantasy perspective, right? So the Julia Roberts Pretty Woman unruly red hair would not be considered what's professional workplace hair.

**Sarah Mesle (38:18):**

Definitely not serious hair.

**Tracey Diamond (38:20):**

Yeah. Versus Melanie Griffith cutting off her hair to meet Sigourney Weaver's short hair for the power haircut.

**Sarah Mesle (38:27):**

Right.

**Tracey Diamond (38:27):**

So what's a woman to do? You can't be both, right? But you're expected to be it all.

**Sarah Mesle (38:31):**

Yes. Yes. In all of those rom-coms, there's a woman with serious hair who looks like the ideal, and the movie punishes her, makes fun of her, makes her look like a terrible, icy B. So you need to be wild enough to be desirable to the man, but not so wild that you threaten the protocols that uphold his status as usually a white man.

**Emily Schifter (38:54):**

Makes me think a little bit about Legally Blonde, another movie with a lot of hair pieces, and I will not derail us. But bringing it back to the workplace, Tracey, what should employers be thinking about practically? We've covered a lot of ground today. What should employers be thinking about when they're thinking about this topic?

**Tracey Diamond (39:09):**

Well, like we always say in our podcast, make sure you're up on the law in the jurisdictions in which you do business. So CROWN Act is making its way through the various states, and so make sure, particularly if you're a multi-state employer, that you are aware of the legal requirements in the states in which you do business. Review and update your dress and grooming policies to ensure they're compliant with the law, and make sure that you train your HR and managers to avoid both intentional bias and also unconscious bias based on how someone looks.

**Emily Schifter (39:41):**

Thank you so much, Sarah and Casselle, for joining us today. Thank you as always to our audience for listening to today's episode. Don't forget to visit our blog, [hiringtofiring.law](http://hiringtofiring.law), and subscribe so you can get the latest updates. Please make sure to also subscribe to this podcast on any of the major platforms, and don't forget to check out our firm's other podcasts on [troutman.com/podcasts](http://troutman.com/podcasts). Thanks so much, and until next time.

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