



## It's Worth a Shot: Can Sports Combat Racism in the United States?

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### ABSTRACT

Racism has stained this country throughout its history, and racism persists today in the United States, including in sports. Sports represent a reflection of society and its ills, but they can also provide a powerful means to combat racism. This article examines the state of racism in society and sports both historically and today. It also provides background on how racism develops and how it can be countered. Further, the article analyzes what is currently being done to address racism through sports in the United States, and it provides practical and tangible ways sports can be used to battle racism. Several opportunities exist to utilize sports in the battle against racism. Since racial biases can begin in children as young as age four, the article promotes the three Es to fight racism using sports—education and experi-

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ence that occur *early* in one's life. Education and experiences through sports for young children of different races that allow meaningful interaction will help overcome implicit biases and racial stereotypes. Sports can also subvert racism by providing opportunities and access to jobs for minorities in leadership positions. This article concludes that if sports can create any type of positive impact in combatting racism, which it can, then those efforts are shots worth taking.

“Sport has the power to change the world. . .It has the power to unite people in a way that little else does. . .Sport can create hope where once there was only despair. It is more powerful than government in breaking down racial barriers.” — Nelson Mandela<sup>1</sup>

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<sup>1</sup> *Celebrating the Legacy of Our Patron on Mandela Day*, LAUREUS (July 18, 2019), <https://www.laureus.com/news/celebrating-the-legacy-of-a-hero-on-mandela-day> [<https://perma.cc/WN44-B3KL>].

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## I. INTRODUCTION

Racism is the worst stain in our country's history. This United States economy grew on the backs of slaves.<sup>2</sup> After the emancipation of slaves in the United States, lynching, Jim Crow laws of segregation,<sup>3</sup> the emergence and proliferation of the Ku Klux Klan (KKK),<sup>4</sup> and social unrest further tainted our country's short history. Even though the federal government has enacted a plethora of laws to protect minorities — the Civil Rights Act of 1964 (relating to employment and education),<sup>5</sup> the Fair Housing Act,<sup>6</sup> and the Voting Rights Act of 1965<sup>7</sup>—racism endures.<sup>8</sup> Modern events and issues such as the August 2017 Unite the Right rally in Charlottesville,<sup>9</sup> police brutality against Black people,<sup>10</sup> and White<sup>11</sup> people calling the police

<sup>2</sup> See Gerald A. Foster, *American Slavery: The Complete Story*, 2 CARDOZO PUB. L., POL'Y, & ETHICS J. 401, 420 (2004) ("Economically, slavery was the foundation upon which America's international power was developed.").

<sup>3</sup> See, e.g., *Jim Crow Laws*, PBS, <https://www.pbs.org/wgbh/americanexperience/features/freedom-riders-jim-crow-laws/> [<https://perma.cc/8ECU-B5A3>] (last visited Apr. 23, 2021).

<sup>4</sup> *Birth of a Nation* ushered in the motion picture industry in Hollywood in 1915 and was the first movie ever screened at the White House (by President Woodrow Wilson). See IBRAM X. KENDI, *STAMPED FROM THE BEGINNING: THE DEFINITIVE HISTORY OF RACIST IDEAS IN AMERICA* 305 (2016). The movie revitalized the KKK by glorifying the KKK as a heroic organization, and it depicted Black people during the Reconstruction area as Black supremacists and rapists. See *id.* at 306. The movie held the title as the highest grossing movie for two decades after its release. See *id.* Part II of this article discusses lynching and Jim Crow laws.

<sup>5</sup> Pub. L. No. 88-352, 78 Stat. 241 (1964).

<sup>6</sup> Pub. L. No. 90-284, 82 Stat. 73 (1968).

<sup>7</sup> Pub. L. No. 89-110, 79 Stat. 437 (1965).

<sup>8</sup> See Robette Ann Dias, *Racism Creates Barriers to Effective Community Policing*, 40 S. ILL. U. L. J. 501, 508 (2016) ("Changing laws 60 years ago did not heal the collective harm that systemic racism has wrought.").

<sup>9</sup> See *Unrest in Virginia*, TIME, <https://time.com/charlottesville-white-nationalist-rally-clashes/> (last visited Apr. 22, 2021).

<sup>10</sup> See Wenei Phillimon, *Not Just George Floyd: Police Departments Have 400-year History of Racism*, USA TODAY (last updated June 7, 2020), <https://www.usatoday.com/story/news/nation/2020/06/07/black-lives-matters-police-departments-have-long-history-racism/3128167001/>.

<sup>11</sup> It is worth noting that this article capitalizes the words "Black" and "White" because they each describe race. See Nell Irvin Painter, *Opinion: Why 'white' Should be Capitalized, Too*, THE WASH. POST (Jul. 22, 2020), <https://www.washingtonpost.com/opinions/2020/07/22/why-white-should-be-capitalized/> [<https://perma.cc/5U35-J8Y4>] (discussing the reasoning behind the decisions to capitalize the words "Black" and "White"); Ann Thúy Nguy?n & Maya Pendleton, *Recognizing Race in Language: Why We Capitalize "Black" And "White"*, Cent. for Study of Soc. Pol'y.

on Black people for doing everyday things (such as napping<sup>12</sup> or hanging out at Starbucks<sup>13</sup>) provide reminders that racism unequivocally exists today in the United States.<sup>14</sup> The needless killing of George Floyd by a police officer in Minnesota, which sparked nationwide protests calling for an end to police brutality and social injustice, is yet another glaring example of racism in this country.<sup>15</sup>

Racism and racialized issues also surfaced during the coronavirus pandemic.<sup>16</sup> Asian-Americans faced racial discrimination as a result of politicians and others blaming China for the pandemic,<sup>17</sup> which included verbal and physical attacks on Asian Americans, as well as former President Donald

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(Mar. 23, 2020), <https://cssp.org/2020/03/recognizing-race-in-language-why-we-capitalize-black-and-white/> [https://perma.cc/ADK5-UBPB] (same); *but cf.* David Bauder, *AP Says it Will Capitalize Black But Not White*, AP (Jul. 20, 2020), <https://apnews.com/article/7e36c00c5af0436abc09e051261fff1f> (explaining decisions to capitalize the word “Black” but not the word “white”).

<sup>12</sup> Christina Caron, *A Black Yale Student Was Napping, and a White Student Called the Police*, N.Y. TIMES (May 9, 2018), <https://www.nytimes.com/2018/05/09/nyregion/yale-black-student-nap.html>.

<sup>13</sup> Errin Haines Whack, *2 Black Men Arrested at Starbucks Get an Apology from Police*, AP NEWS (Apr. 20, 2018), <https://apnews.com/article/45547c3ae5324b679e982c4847ee1378>.

<sup>14</sup> See Part II of this article for a discussion on these topics; see also L. Darnell Weeden, *Race-Conscious Equality Confronts America, President Obama, Justice Sotomayor, Professor Gates, and Sergeant Crowley*, 35 T. MARSHALL L. REV. 113, 136–37 (2009) (asserting that, after President Obama’s election, this country did not transcend race and, therefore, is not post-racial).

<sup>15</sup> See Michael T. Heaney, *The George Floyd Protests Generated More Media Coverage Than Any Protest in 50 Years*, WASH. POST (July 6, 2020), <https://www.washingtonpost.com/politics/2020/07/06/george-floyd-protests-generated-more-media-coverage-than-any-protest-50-years/> [https://perma.cc/4UCU-AD8B]; ACLU of NC Statement on the Police Murder of Andrew Brown in Elizabeth City, North Carolina, ACLUOFNORTHCAROLINA.ORG (Apr. 21, 2021), <https://www.acluofnorthcarolina.org/en/news/aclu-nc-statement-police-murder-andrew-brown-elizabeth-city-north-carolina> [https://perma.cc/J3QF-MWFC] (listing a number of the Black individuals and other minorities who were shot and killed by police in 2021, including Duante Wright, Ma’Khia Bryant, Adam Toledo, and Andrew Brown, Jr.).

<sup>16</sup> See Sabrina Tavernise & Richard A. Ooppel, *Spit on, Yelled at, Attacked: Chinese-Americans Fear for Their Safety*, N.Y. TIMES (last updated Apr. 10, 2020), <https://www.nytimes.com/2020/03/23/us/chinese-coronavirus-racist-attacks.html> [https://perma.cc/RQV2-CM39].

<sup>17</sup> See Jonathan Martin & Maggie Haberman, *A Key G.O.P. Strategy: Blame China. But Trump Goes Off Message.*, N.Y. TIMES (last updated Oct. 6, 2020), <https://www.nytimes.com/2020/04/18/us/politics/trump-china-virus.html>.

Trump referring to the virus as the “China Virus” and “kung flu.”<sup>18</sup> Moreover, when the Centers for Disease Control and Prevention initially recommended face masks to protect against contracting the virus, Black people became hesitant to abide by that recommendation because of this country’s history of viewing Black people as criminals,<sup>19</sup> fearing that masks would help foster and perpetuate that view.<sup>20</sup> Also, at a rally to protest stay-at-home orders in Michigan, protestors wore swastikas and waved the Confederate flag.<sup>21</sup> Moreover, during a peaceful Black Lives Matter protest, two men wearing KKK hoods and holding Donald Trump flags confronted the protestors.<sup>22</sup>

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<sup>18</sup> *Id.*; Jose A. Del Real, *With the ‘Kung Flu,’ ‘Thugs,’ and ‘Our Heritage,’ Trump Leans on Racial Grievance as He Reaches for a Campaign Reset*, WASH. POST (June 21, 2020), [https://www.washingtonpost.com/politics/with-kung-flu-thugs-and-our-heritage-trump-leans-on-racial-grievance-as-he-reaches-for-a-campaign-reset/2020/06/21/945d7a1e-b3df-11ea-a510-55bf26485c93\\_story.html](https://www.washingtonpost.com/politics/with-kung-flu-thugs-and-our-heritage-trump-leans-on-racial-grievance-as-he-reaches-for-a-campaign-reset/2020/06/21/945d7a1e-b3df-11ea-a510-55bf26485c93_story.html) [https://perma.cc/8XWG-FVZH]; see also Anh Do, *‘You Started the Corona!’ As Anti-Asian Hate Incidents Explode, Climbing Past 800, Activists Push for Aid*, L.A. TIMES (July 5, 2020), <https://www.latimes.com/california/story/2020-07-05/anti-asian-hate-newsom-help> [https://perma.cc/SSH2-YHJV] (noting over 800 anti-Asian hate incidents after the coronavirus pandemic began as some people mistakenly blame Asian-Americans for the pandemic that started in Wuhan, China).

<sup>19</sup> See Mary Beth Oliver, *African American Men as “Criminal and Dangerous”: Implications of Media Portrayals of Crime on the “Criminalization” of African American Men*, 7 J. AFR. AM. STUD. 2, 3 (Sept. 2003).

<sup>20</sup> See Fernando Alfonso III, *Why Some People of Color Say They Won’t Wear Home-made Masks*, CNN (Apr. 7, 2020), <https://www.cnn.com/2020/04/07/us/face-masks-ethnicity-coronavirus-cdc-trnd/index.html> [https://perma.cc/G95X-KPKY]; Jorge L. Ortiz, *Black and Asian Americans Report Increased Discrimination During Pandemic, Survey Says*, USA TODAY (July 1, 2020), <https://www.usatoday.com/story/news/nation/2020/07/01/coronavirus-black-asian-americans-report-increased-discrimination/5356563002/> [https://perma.cc/ZW94-2Y6P] (showing increased discrimination against Black people and Asian-Americans during the coronavirus pandemic).

<sup>21</sup> Quint Forgey, *‘Inexcusable’: Debbie Dingell Slams Michigan Protesters*, POLITICO (Apr. 16, 2020), <https://www.politico.com/news/2020/04/16/debbie-dingell-michigan-protest-190312> [https://perma.cc/6AZV-S8VK].

<sup>22</sup> Ewan Palmer, *Men in KKK Hoods Carrying Trump Flags Interrupt Black Lives Matter Protest in Nevada*, NEWSWEEK (June 11, 2020), <https://www.newsweek.com/kkk-black-lives-matter-protest-fallon-nevada-1510130> [https://perma.cc/695C-GWYV]. Black Lives Matter (BLM) was founded after Trayvon Martin, a 17-year-old Black youth, was killed by George Zimmerman, a neighborhood watch coordinator. *About*, BLACK LIVES MATTER (Jan. 12, 2021), <https://blacklivesmatter.com/about/> [https://perma.cc/D6KA-HPRZ]. BLM seeks “to eradicate white supremacy and build local power to intervene in violence inflicted on Black communities by the state and vigilantes.” *Id.*

Sports provide a reflection of society and its many facets, which include racism.<sup>23</sup> The United States' history of racism in sports includes the exclusion of minorities from all levels of sports, segregation of athletes,<sup>24</sup> and exclusion of minorities from coaching opportunities.<sup>25</sup> For example, even though nearly seventy percent of the National Football League (NFL) players are people of color, the NFL includes only three Black NFL head coaches.<sup>26</sup> Howard Bryant, a Senior ESPN Writer and an award-winning author and journalist, views the Southeastern Conference (SEC) in college football as a system of modern day slavery in which the value of Black people lies in the Black body.<sup>27</sup> He asserts, “[T]here is not a progression from the Black body to the Black brain. . . . That what is really taking place here is we simply shifted from the Black body being used in the fields, to the [basketball] courts, to the football fields.”<sup>28</sup> Similarly, some coaches and players see a “double standard” in how Black players are treated.<sup>29</sup> For example,

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<sup>23</sup> Telephone Interview with N. Jeremi Duru, Professor of Law, Am. U. Wash. College of Law, (Mar. 3, 2020) [hereinafter “Duru Interview”] (on file with author).

<sup>24</sup> See, e.g., Mitchell Kiefer, *Racial Segregation in American Sports*, SPORTS CONFLICT INST., <https://sportsconflict.org/racial-segregation-american-sports/> [<https://perma.cc/2K4K-G77H>] (last visited Apr. 23, 2021); *Negro League Baseball*, HISTORY (last updated Dec. 16, 2020), <https://www.history.com/topics/sports/negro-league-baseball> [<https://perma.cc/NZP8-82FS>].

<sup>25</sup> See, e.g., Timothy Davis, *Race and Sports in America: An Historical Overview*, VA. SPORTS & ENT. L.J. (2008).

<sup>26</sup> RICHARD E. LAPCHICK, THE 2020 RACIAL AND GENDER REPORT CARD: NATIONAL FOOTBALL LEAGUE 27 (stating that 57.5% of players in the NFL identified as Black, and 9.4% of players identified as two or more races, and nearly 70% of the players are people of color); *Pittsburgh Steelers' Art Rooney II Says NFL Will Consider More Ways to Improve Rooney Rule*, ESPN (Jan. 29, 2021), [https://www.espn.com/nfl/story/\\_/id/30802182/pittsburgh-steelers-art-rooney-ii-says-nfl-consider-more-ways-improve-rooney-rule](https://www.espn.com/nfl/story/_/id/30802182/pittsburgh-steelers-art-rooney-ii-says-nfl-consider-more-ways-improve-rooney-rule) [<https://perma.cc/N22T-KC6W>] (providing that as of spring 2021 the NFL has only three Black NFL head coaches, one Latino head coach, and one Lebanese American head coach) [hereinafter *Rooney II Says*].

<sup>27</sup> Telephone Interview with Howard Bryant, Senior ESPN Writer, (March 3, 2020) [hereinafter “Bryant Interview”] (on file with author).

<sup>28</sup> See *id.* (stating that colleges should develop Black athletes as citizens, as they have “value beyond the final score”).

<sup>29</sup> See, e.g., Joseph Zucker, *Texas HC Tom Herman Discusses Fans' “Double Standard” with Black Players*, BLEACHER REPORT (June 1, 2020), <https://bleacherreport.com/articles/2894453-texas-hc-tom-herman-discusses-fans-double-standard-with-black-players> [<https://perma.cc/KV4W-9YYU>]; Adam Rittenberg & Michele Steele, *Iowa Football and Kirk Ferentz See Black Players Speak Out on Program's Racial Inequities*, ESPN (July 27, 2020), [https://www.espn.com/college-football/story/\\_/id/29517486/iowa-football-kirk-ferentz-see-black-players-speak-program-racial-inequities](https://www.espn.com/college-football/story/_/id/29517486/iowa-football-kirk-ferentz-see-black-players-speak-program-racial-inequities) [<https://perma.cc/D4P4-UKGM>] (discussing how Black players were treated differently than White players on the University of Iowa football team).

predominantly White fans will cheer on Black players during a game, but will discriminate against those same Black players off the field or off the court.<sup>30</sup> Racism also reared its ugly head throughout the Colin Kaepernick kneeling controversy, which involved the former NFL player kneeling during the national anthem at games to protest social inequity and police brutality against minorities.<sup>31</sup> Despite Kaepernick's insistence that his protest was not directed at the United States military, which he respects, he earned scorn and hatred for his alleged lack of respect for the military, including from former President Trump.<sup>32</sup> Kaepernick also became "the target of racial slurs and blatant racist attacks" as his message was twisted by some to be anti-American despite his intent and efforts to help the most marginalized Americans.<sup>33</sup> Kaepernick was eventually ostracized from the NFL and has not played in the NFL since those protests.<sup>34</sup>

Sports can also reflect the beauty of society through healing and transforming the world in a positive manner. After the tragedy of the 9/11 terrorist attacks, sports helped bring back normalcy for the United States, gave people a distraction from the sadness, provided entertainment, and united Americans.<sup>35</sup> Even at the beginning of the coronavirus pandemic, sports leagues looked for ways to restart or continue their sports to unite the country, provide something for Americans to cheer about, entertain, and give a

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<sup>30</sup> See *id.*

<sup>31</sup> See Steve Wyche, *Colin Kaepernick Explains Why He Sat During National Anthem*, NFL (Aug. 27, 2016), <https://www.nfl.com/news/colin-kaepernick-explains-why-he-sat-during-national-anthem-0ap3000000691077> [<https://perma.cc/9SKU-K4LJ>].

<sup>32</sup> See *Trump Says NFL Should Fire Players Who Kneel During National Anthem*, L.A. TIMES (Sept. 22, 2017), <https://www.latimes.com/nation/nationnow/la-na-trump-nfl-anthem-20170922-story.html> [<https://perma.cc/3H2P-S49Q>] (quoting Trump saying "Wouldn't you love to see one of these NFL owners, when somebody disrespects our flag, you'd say, 'Get that son of a b— off the field right now. Out!'").

<sup>33</sup> Khaled A. Beydoun, *Colin Kaepernick: Mix of Racism, Anti-Islam Rhetoric are Increasingly Toxic*, THEUNDEFEATED.COM (Sept. 2, 2016), <https://theundefeated.com/features/colin-kaepernick-mix-of-racism-anti-islam-rhetoric-are-increasingly-toxic/> [<https://perma.cc/U7V5-AP2R>].

<sup>34</sup> See Kevin B. Blackistone, *The NFL Has Effectively Blackballed Colin Kaepernick*, CHI. TRIBUNE (Mar. 23, 2017), <https://www.chicagotribune.com/sports/ct-nfl-has-blackballed-colin-kaepernick-20170323-story.html> [<https://perma.cc/EGD6-X8QW>]; Ken Belson, *Athletes' Outpouring on Civil Unrest Rekindles Kaepernick Debate in N.F.L.*, N.Y. TIMES (May 31, 2020), <https://www.nytimes.com/2020/05/31/sports/football/colin-kaepernick-george-floyd.html> [<https://perma.cc/FW4Y-62WF>].

<sup>35</sup> See Tom Junod, *A Small, Good Thing After 9/11*, ESPN (Sept. 11, 2018), [https://www.espn.com/espn/story/\\_/id/24588052/anniversary-9-11-attacks-reminds-us-healing-power-sports](https://www.espn.com/espn/story/_/id/24588052/anniversary-9-11-attacks-reminds-us-healing-power-sports) [<https://perma.cc/K6W2-ZHEX>].

distraction to a world weary of quarantining inside their homes.<sup>36</sup> ESPN aired a documentary series on Michael Jordan and the 1997-1998 Chicago Bulls season throughout April and May of 2020 instead of June 2020 because “viewers [we]re still looking to the sports world to escape and enjoy a collective experience,” and ESPN hoped the series could “serve as a unifying entertainment experience to fill the role that sports often play in our lives.”<sup>37</sup>

Strife and triumph permeate sports and society in the United States. This article examines how racism manifests itself today in society and sports in the United States, and it provides practical ways sports can help combat or overcome racism. In particular, this article contends that sports can help combat racism with the “three Es”: *education* and *experiences* through sports that occur *early* in one’s life.<sup>38</sup> Efforts to educate individuals about the negative effects of racism and the benefits of diversity and inclusion via sports, along with experiences that allow Whites and minorities to interact with each other to break down barriers (both conscious and subconscious) in the sports context, remain critical.<sup>39</sup> Also, given that studies indicate people can demonstrate racial bias as early as four years old,<sup>40</sup> shaping peoples’ minds at a young age through education and experiences becomes crucial.

Sports can also be used to attack institutionalized racism through opportunity.<sup>41</sup> Howard Bryant, interviewed for this article because of his expertise and indelible work relating to racism and sports, believes that shaping or changing the behaviors of racist individuals is meaningless, and

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<sup>36</sup> See Dan Wetzel, *President Trump’s Call with Sports Leagues Was Wishful in Sentiment but Wistful in Reality*, MSN (Apr. 4, 2020), <https://www.msn.com/en-us/sports/more-sports/president-trumps-call-with-sports-leagues-was-wishful-in-sentiment-but-wistful-in-reality/ar-BB12azhO?li=bbnba9I> [https://perma.cc/3C5F-MD25].

<sup>37</sup> *‘The Last Dance’ Documentary Set to Air April 19 on ESPN*, NBA (Mar. 31, 2020), <https://www.nba.com/article/2020/03/31/last-dance-chicago-bulls-release-date-moved> [https://perma.cc/EQH8-TGYU].

<sup>38</sup> See Rochaun Meadows-Fernandez, *Four Ways Youth Sports Can Combat Racism*, GOOD (Aug. 1, 2019), <https://www.good.is/sports/youth-sports-racism-study> [https://perma.cc/FL62-9HML] (citing a University of Toronto study indicating children develop implicit bias regarding race as young as four years old and that exposure to diversity among teammates and coaches can combat that bias); Matthew Halen Specht, *Faster, Higher, Wronger: International Development and the Olympic Games*, 14 VA. SPORTS & ENT. L.J. 300, 302, 308 (2015) (stating that “[s]port is a socially significant tool of inclusion” that can help combat discrimination and stereotyping, and “[t]he international community has also recognized sports as an important avenue for countering racism in young people worldwide”).

<sup>39</sup> See *infra* note 265 and accompanying text.

<sup>40</sup> *Id.*

<sup>41</sup> Bryant Interview, *supra* note 27.

jobs are what will make a difference.<sup>42</sup> Whether a White person today likes Black people more than his ancestors liked Black people is not the right question.<sup>43</sup> Bryant thinks the question should be, “[A]re we[, Black people,] getting jobs? Because who is getting hired will solve a lot of your problems. Name me an affluent Black community that’s got a murder problem.”<sup>44</sup> One potential way, then, to confront racism is to provide opportunities and access to jobs for minorities.

Part I of this article briefly discusses the different types of racism in our culture. Part II sets forth the current state of racism in society and in sports in the United States. Part III provides background on how racism develops and how it can be countered. Part IV analyzes what is currently being done to address racism through sports in the United States.<sup>45</sup> Part V describes practical and tangible ways sports can be used to battle racism, and how more generally this effort can create residual positive effects for society at large. Part VI explains and responds to the counterarguments against those proposed measures. This Article concludes that sports can have a positive impact with respect to combatting racism, and thus any efforts that attempt to make such an impact are shots worth taking.<sup>46</sup>

## II. IDENTIFYING THE DIFFERENT TYPES OF RACISM

Before discussing racism in the United States, a brief explanation of the types of racism is appropriate. Racism can take the form of prejudice and overt racial bias, such as calling someone a racial slur. Racism also includes implicit or unconscious racial bias, as well as institutional racism and White supremacy.

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> See, e.g., *Tackling Racism and Discrimination in Sport: Guide of Promising Practices, Initiatives and Activities*, EUR. UNION AGENCY FOR FUNDAMENTAL RTS. [https://fra.europa.eu/sites/default/files/guide-tackling-racism-in-sport\\_en.pdf](https://fra.europa.eu/sites/default/files/guide-tackling-racism-in-sport_en.pdf) [<https://perma.cc/Q23P-C2P5>] (highlighting European Union attempts to combat racism through various football club initiatives).

<sup>46</sup> As the legendary National Hockey League star Wayne Gretzky once said, “You miss 100% of the shots you don’t take.” Paul B. Brown, ‘*You Miss 100% Of the Shots You Don’t Take.*’ *You Need to Start Shooting at Your Goals*, FORBES (Jan. 12, 2014), <https://www.forbes.com/sites/actiontrumpseverything/2014/01/12/you-miss-100-of-the-shots-you-dont-take-so-start-shooting-at-your-goal/?sh=36220eac6a40> [<https://perma.cc/7C3C-BBKN>].

Unconscious racism and implicit racial bias involve attitudes and beliefs held unintentionally by individuals.<sup>47</sup> Charles Lawrence produced seminal work on equal protection law and unconscious discrimination.<sup>48</sup> He poignantly stated, “[W]e are all racists,” but “most of us are unaware of our racism.”<sup>49</sup> Bias is defined as “a positive or negative preference for a group of people based on social cognitions.”<sup>50</sup> Since “[b]ias links to behavior, [. . .] a positive bias toward a group may lead a person to treat members of that group favorably while a negative bias against a group may incline a person toward negative treatment.”<sup>51</sup> One author, Emile Loza de Siles, argues that regardless of whether explicit bias has decreased in this country, which is debatable, implicit bias remains pervasive in the United States.<sup>52</sup>

Several studies suggest that Americans maintain implicit biases against Black people and prefer White people,<sup>53</sup> including a study in which employ-

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<sup>47</sup> Justin D. Levinson, *Forgotten Racial Equality: Implicit Bias, Decisionmaking, and Misremembering*, 57 DUKE L.J. 345, 354–55 (2007); see Palma Joy Strand, *Racism 4.0, Civility, and Re-Constitution*, 42 HASTINGS CONST. L.Q. 763, 772 (2015) (providing that “[h]umans are hardwired to take cognitive shortcuts based on prior personal experiences and cultural messages and norms that we internalize through socialization”).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Anastasia M. Boles, *The Culturally Proficient Law Professor: Beginning the Journey*, 48 N.M. L. REV. 145, 159 (2018).

<sup>51</sup> *Id.*

<sup>52</sup> Akin to implicit bias, aversive racists perceive themselves as egalitarian and non-prejudiced, but they “repress their negative feelings and beliefs about Black people.” Emile Loza de Siles, *History’s Calling: Today’s Racism and the Elevation of Lawyers and Legal Practice*, 60 ADVOCATE 46, 47 (2017). This prejudice remains hidden and unconscious. *Id.*

<sup>53</sup> See Anastasia M. Boles, *supra* note 50 at 157–58 (2018) (noting that “eighty-eight percent of whites displayed an anti-black (or pro-white bias) compared to forty-eight percent of Black people”); see also William Wan & Sarah Kaplan, *Why Are People Still Racist? What Science Says About America’s Problem*, WASH. POST (Aug. 14, 2017), <https://www.washingtonpost.com/news/speaking-of-science/wp/2017/08/14/why-are-people-still-racist-what-science-says-about-americas-race-problem/> [<https://perma.cc/R6UY-ZKPF>] (finding that in studies seeking reaction to the fact that Whites will no longer be the majority in the United States one day and minorities will, “young white subjects responded just as strongly as older white ones with anxiety and uncertainty, expressing more negative explicit and implicit racial bias in tests”); Sheryll Cashin, *Shall We Overcome? “Post-Racialism” and Inclusion in the 21st Century*, 1 ALA. C.R. & C.L.L. REV. 31, 34 (2011) (stating experimental psychology studies “demonstrate unconscious bias [by] whites and minorities against racial minorities, especially African-Americans,” and according to Harvard University’s anonymous implicit association test (IAT), “seventy percent of the thousands of people who have taken the Black-White IAT registered an automatic preference

ers preferred one applicant over another based solely on their names, as the preferred applicant possessed a name that sounded White and the less-preferred applicant had a name that “sounded” Black.<sup>54</sup> Moreover, research and social science studies indicate that people of many races associate Black people with criminal behavior, violence, and aggression.<sup>55</sup>

Implicit racial bias manifests itself in disparate outcomes throughout society, including in the criminal justice system, housing, health care, and employment.<sup>56</sup> For example, according to a 2014 study, almost three quarters of White families live in owner-occupied homes, while less than 50% of Latinx and Black families do;<sup>57</sup> White people have a longer life span than Black people, Black infants die twice as much as do White infants, and Black people are “25% more likely to die of cancer than Whites.”<sup>58</sup> Black, Latinx, and Native American people in the United States die from COVID-19 at 2.7 times the rate of White Americans and suffer hospitalizations from COVID-19 at almost four times the rate of White Americans.<sup>59</sup> By way of further example, the tech company Google once stated that its lack of mi-

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for whites over black”); John Dovidio, *Speaking of Psychology: Understanding Your Racial Biases*, AM. PSYCH. ASS'N, Episode 31 (2015), <https://www.apa.org/research/action/speaking-of-psychology/understanding-biases> [<https://perma.cc/7NZF-X648>] (discussing “research that shows that only a small proportion of Americans today have old-fashioned kind of racism, explicit kind of racism,” but “about two-thirds to three-quarters [of white Americans], have the unconscious, implicit, racial biases”); Darren Hutchinson, *Continually Reminded of Their Inferior Position: Social Dominance, Omplicit Bias, Criminality, and Race*, 46 WASH. U. J.L. & POL'Y 23, 29-30 (2014) (stating that implicit bias research indicates that White Americans view persons of color as savages, violent, promiscuous, slaves, and foreigners today).

<sup>54</sup> See Eva Paterson & Luke Edwards, *Implicit Injustice: Using Social Science to Combat Racism in the United States*, 2015 HARV. J. RACIAL & ETHNIC JUST. ONLINE 1, 17-18 (2015) (finding in study “that identical resumes that bore traditionally Anglo names, such as Emily or Greg, received fifty percent more calls to interview than resumes with typically African-American names, such as Lakisha and Jamal”).

<sup>55</sup> *Id.* at 15-18.

<sup>56</sup> Strand, *supra* note 47.

<sup>57</sup> IBRAM X. KENDI, HOW TO BE AN ANTIRACIST 18 (2019) [hereinafter ANTIRACIST].

<sup>58</sup> *Id.* at 22.

<sup>59</sup> *The Color of Coronavirus: COVID-19 Deaths by Race and Ethnicity in the U.S.*, AMP RSCH. LAB (Jan. 7, 2021), <https://www.apmresearchlab.org/covid/deaths-by-race> [<https://perma.cc/G8JB-JXKW>] (citing the statistics on death); Nicole Chavez & Jacqueline Howard, *Covid-19 Is Sending Black, Latino and Native American People to the Hospital at About 4 Times the Rate of Others*, CNN HEALTH (Jan. 12, 2021), <https://www.cnn.com/2020/11/16/health/cdc-black-hispanic-native-american-coronavirus-hospitalizations/index.html> [<https://perma.cc/S63M-6VZF>] (citing the hospitalization rates).

nority and women employees, including Black and Latinx employees, may have been due to implicit bias.<sup>60</sup>

Finally, racism also consists of institutional racism and White supremacy. Institutional racism, which has been defined in many ways, involves “the maintenance of institutions that systematically advantage whites.”<sup>61</sup> It amounts to a “modern social contract” that “exploit[s] people of color to the material, mainly economic but also political, advantages of white people.”<sup>62</sup> Similarly, White supremacy is defined as “[a] political, economic and cultural system in which whites overwhelmingly control power and material resources, and in which white dominance and non-white subordination exists across a broad array of institutions and social settings.”<sup>63</sup> Institutional racism and White supremacy result in Whites “own[ing] a disproportionate share of resources” and “exercis[ing] a significant amount of power.”<sup>64</sup> A couple of examples include the racial wealth gap, which indicates that White families make ten times more than Black families on average, and leadership in Congress, as 89% of United States Senators are White, compared to their 60.1% population share for non-Hispanic Whites.<sup>65</sup> One author asserts that White racism entails “all our insti-

<sup>60</sup> See Paterson & Edwards, *supra* note 54, at 15–16.

<sup>61</sup> Emerson Beishline, *An Examination of the Effects of Institutional Racism and Systematic Prejudice on Intimate Partner Violence in Minority Communities*, 4 WM. MITCHELL L. RAZA J. 2, 9 (2013) (citing RICHARD DELGADO & JEAN STEFANCIC, CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR 630 (1997)); see also ELIZA TSAI BISHOP ET. AL., RACIAL DISPARITIES IN THE MASS. CRIMINAL SYSTEM 64 (2020) (reporting the results of a study by Harvard Law School’s Criminal Justice Policy Program published in September 2020 finding that racism, namely institutional racism, served as the cause for the high number of incarcerated Black people and Latinx individuals in Massachusetts); Micheal Harriot, *A Judge Asked Harvard to Find Out Why So Many Black People Were in Prison. They Could Only Find 1 Answer: Systemic Racism*, THE ROOT (Jan. 12, 2021), <https://www.theroot.com/a-judge-asked-harvard-to-find-out-why-so-many-black-peo-1845017462> [https://perma.cc/B2JT-4SGV].

<sup>62</sup> Beishline, *supra* note 61 (citing Marissa Jackson, *Neo-Colonialism, Same Old Racism: A Critical Analysis of the United States’ Shift Toward Colorblindness as a Tool for the Protection of the American Colonial Empire and White Supremacy*, 11 BERKELEY J. AFR.-AM. L. & POL’Y 156, 166 (2009)).

<sup>63</sup> Erika K. Wilson, *The Legal Foundations of White Supremacy*, 11 DEPAUL J. FOR SOC. JUST. 1, 3 (2018) (citing Frances Lee Ansley, *Stirring the Ashes: Race, Class and the Future of Civil Rights Scholarship*, 74 CORNELL L. REV. 993, 1024 n. 129 (1989)).

<sup>64</sup> *Id.*

<sup>65</sup> See Katharina Buchholz, *How Diverse is U.S. Congress?*, STATISTA (Jan. 7, 2021), <https://www.statista.com/chart/18905/us-congress-by-race-ethnicity/> [https://perma.cc/NS53-6Y4Y] (showing 89 out of 100 Senators are White); U.S. CENSUS BUREAU, QUICK FACTS, <https://www.census.gov/quickfacts/fact/table/US/PST0452>

tutions of education and information — political and civic, religious and creative — which either knowingly or unknowingly, ‘provide the public rationale to justify, explain, legitimize, or tolerate racism.’<sup>66</sup>

Sometimes more than one type of racism explains a particular manifestation of racism. For example, health disparities between White and Black people, which include “higher rates of infant mortality, heart disease, and an advanced aging process for Black people,” can be the result of both institutional racism and also implicit bias.<sup>67</sup> Similarly, White families owning more homes than Black families on average, Black people being hired less than Whites because Whites make hiring decisions, and Black people suffering from higher incarceration rates than Whites because most police chiefs and officers are White, can also be explained by the combination of institutional racism, White supremacy, and implicit bias.<sup>68</sup>

### III. THE STATE OF RACISM IN SOCIETY AND SPORTS

Racism remains alive and well in society and sports in the United States.<sup>69</sup> Some may argue that racism is increasing in one or both of those arenas, but the fact that racism persists today is undisputed.<sup>70</sup>

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19 [<https://perma.cc/TT27-CJ6X>] (last visited May 12, 2021) (providing the percentage of the non-Hispanic White population in the United States).

<sup>66</sup> See Beishline, *supra* note 61 (citing Roy L. Brooks, *Critical Race Theory: A Proposed Structure and Application to Federal Pleading*, 11 HARV. BLACKLETTER L.J. 85, 90 (1994)).

<sup>67</sup> Maanvi Singh, ‘Long Overdue’: Lawmakers Declare Racism a Public Health Emergency, *GUARDIAN* (June 12, 2020), [https://www.theguardian.com/society/2020/jun/12/racism-public-health-black-brown-coronavirus?CMP=oth\\_b-aplnews\\_d-1](https://www.theguardian.com/society/2020/jun/12/racism-public-health-black-brown-coronavirus?CMP=oth_b-aplnews_d-1) [<https://perma.cc/5F7B-5KGB>]. (discussing how several city and county lawmakers declared racism a public health emergency stemming from, among other things, institutional racism); Strand, *supra* note 47, at 778 (attributing the disparate health issues to implicit bias).

<sup>68</sup> See, e.g., Wilson, *supra* note 63 (discussing how White supremacy results in Whites possessing more resources and positions of power in the United States); Strand, *supra* note 47 (discussing several of those topics through the lens of implicit bias).

<sup>69</sup> Howard Bryant asserts that the United States “is a really angry racist country.” Bryant Interview, *supra* note 27.

<sup>70</sup> See, e.g., Shayanne Gal et al., *26 Simple Charts to Show Friends and Family Who Aren’t Convinced Racism Is Still a Problem in America*, *BUS. INSIDER* (July 8, 2020), <https://www.businessinsider.com/us-systemic-racism-in-charts-graphs-data-2020-6> [<https://perma.cc/T4FK-4U2J>].

### A. *The State of Racism in America*

The myth that “[w]e just have to wait for racists to die out” is simply that: a myth.<sup>71</sup> Dylann Roof believed Black people were raping White women and taking over the United States.<sup>72</sup> As a result, in 2015, Roof walked into the Mother Emanuel AME Church, a Black church in Charleston, South Carolina, where twelve of its members were praying with their eyes closed, and opened fire with his Glock handgun.<sup>73</sup> Roof killed nine people after being radicalized as a White supremacist merely by what he read on the Internet.<sup>74</sup> Perhaps most stunningly, Roof was just twenty-one years old.<sup>75</sup>

Similarly, in 2015, three White men in Mississippi received sentences for nearly 50 years collectively for hate crimes that included beating a Black man and then killing him by running him over in a car.<sup>76</sup> In the spring of 2011, the same three men were part of a mob that attacked and harassed Black people in Jackson, Mississippi with beer bottles and sling shots.<sup>77</sup> According to prosecutors, the group also went after homeless and drunk Black people whom they believed would not report the mob’s activities to the police.<sup>78</sup> After the mob ambushed and beat James Craig Anderson, a 47-year-old Black man, one of the three White men shouted, “White power,” and then ran Anderson over in a truck.<sup>79</sup> The three White males committed these heinous hate crimes as teenagers.<sup>80</sup>

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<sup>71</sup> See Jenée Desmond-Harris, *Stop Waiting for Racism to Die Out with Old People. The Charleston Shooting Suspect is 21.*, VOX (June 22, 2015), <https://www.vox.com/2015/6/22/8810539/racism-generational-american-views> [<https://perma.cc/W9VH-KN4M>] (positing that people should “[s]top waiting for racism to die out with old people”); see also Wan & Kaplan, *supra* note 53 (quoting a Yale University social psychologist who asserted “[i]t’s simply not true that we just need to wait for the few old racist men left in the South to die off and then we’ll be fine”).

<sup>72</sup> See Rachel Kaadzi Ghansah, *A Most American Terrorist: The Making of Dylann Roof*, GQ (Aug. 21, 2017), <https://www.gq.com/story/dylann-roof-making-of-an-american-terrorist> [<https://perma.cc/Z6B5-Y8RW>].

<sup>73</sup> See *id.*

<sup>74</sup> See *id.*

<sup>75</sup> See Desmond-Harris, *supra* note 71.

<sup>76</sup> See Therese Apel, *Mississippi Men Sentenced for Hate Crimes*, HUFFPOST (Apr. 12, 2015), [https://www.huffpost.com/entry/three-white-mississippi-men-hate-crimes\\_n\\_6655904](https://www.huffpost.com/entry/three-white-mississippi-men-hate-crimes_n_6655904) [<https://perma.cc/R2KA-HCWV>].

<sup>77</sup> See *id.*

<sup>78</sup> See *id.*

<sup>79</sup> See *id.*

<sup>80</sup> See Desmond-Harris, *supra* note 71.

While some argue racism has decreased over the decades,<sup>81</sup> others argue racism has increased in recent years, citing dog whistle politics, instances of people calling the police to complain about Black people doing everyday activities, and the Charlottesville incident.<sup>82</sup> Although these phenomena indicate racism is pervasive throughout the United States, they are far from new.<sup>83</sup> Statistics show that hate crimes reached record highs in recent years.<sup>84</sup>

Dog whistle politics represent a manifestation of racism today. Dog whistle politics are defined as “coded racial appeals that carefully manipulate hostility toward nonwhites.”<sup>85</sup> They are statements that on the surface seem benign, similar to how a dog whistle sounds like nothing to a human, but they send a White nationalist into a frenzy just as a dog whistle does to a dog.<sup>86</sup> The recent administration consistently employed these tactics, such as when former President Trump stated, “Send her back,” referring to four minority Congresswomen who criticized him; Trump recommended those non-White legislators return to their supposed countries of origin while dismissing their allegiance to the United States.<sup>87</sup> Trump also referred to the COVID-19 coronavirus as the “China Virus,” as previously discussed.<sup>88</sup> Dog

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<sup>81</sup> See *id.* (citing a 2013 Gallup poll finding approval of interracial marriage is inversely proportional to age, and interviews with Oprah Winfrey and Charles Krauthammer supporting the idea that racism is tied to older generations of people).

<sup>82</sup> See Susan Ayres, *Claudia Rankine’s Citizen: Documenting and Protesting America’s Halting March Toward Racial Justice and Equality*, 9 ALA. C.R. & C.L.L. REV. 213, 214 (2018) (discussing how the United States entered a post-racial society after the election of President Obama, but this ended once the Ferguson shooting occurred).

<sup>83</sup> See, e.g., Hannah Allam, *FBI Report: Bias-Motivated Killings at Record High amid Nationwide Rise in Hate Crime*, NPR (Nov. 16, 2020), <https://www.npr.org/2020/11/16/935439777/fbi-report-bias-motivated-killings-at-record-high-amid-nationwide-rise-in-hate-c> [https://perma.cc/5M4Z-93NZ].

<sup>84</sup> See *id.*

<sup>85</sup> See Ian Haney Lopez, *DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM AND WRECKED THE MIDDLE CLASS* (2014).

<sup>86</sup> See *White Nationalist*, S. POVERTY L. CTR., <https://www.splcenter.org/fighting-hate/extremist-files/ideology/white-nationalist> [https://perma.cc/4D7S-MHMZ] (last visited July 12, 2020).

<sup>87</sup> See Michael A. Cohen, *Trump Has Turned the Racial Dog Whistle into a Steam Whistle*, BOSTON GLOBE (July 19, 2020), <https://www.bostonglobe.com/opinion/2019/07/19/trump-has-turned-racial-dog-whistle-into-steam-whistle/oxjaxn-NaShQmLg71sHCsSK/story.html> [https://perma.cc/3QUV-L4MC].

<sup>88</sup> See Sabrina Tavernise & Richard A. Opiel, *Spit On, Yelled At, Attacked: Chinese-Americans Fear for Their Safety*, N.Y. TIMES (Mar. 23, 2020), <https://www.nytimes.com/2020/03/23/us/chinese-coronavirus-racist-attacks.html> [https://perma.cc/RQV2-CM39].

whistle tactics, though, were introduced in the United States in the 1960s and have been continually employed since.<sup>89</sup>

After George Wallace lost the race for governor of Alabama in 1958, having been endorsed by the NAACP because of his civil treatment and support of Black people while his opponent was endorsed by the KKK, Wallace told friends, “No other son-of-a-b—— is going to out-n—— me again.”<sup>90</sup> After winning the 1962 election, his inaugural speech in 1963 included the infamous line, “Segregation now, segregation today, segregation forever.”<sup>91</sup> Some of the phrases over the years that also fall under dog whistle politics include the following: “states’ rights” (referring to the states’ ability to allow slavery and later their purported rights to fight integration and continue laws allowing segregation), “freedom of association” (right of business owners to exclude Black people from their premises), “law and order” (used to justify police force and violence against racial activists and protestors), “colorblindness,” “inner city,” “welfare queen,” and “illegal alien.”<sup>92</sup> During the Reagan era, “cutting taxes” was used, and that dog whistle phrase made the connection between demonizing government and minorities in the following manner: “liberal government wastes money on undeserving minorities . . . in the form of welfare, but also in the form of public education or mortgage relief.”<sup>93</sup>

Calling the police to complain about Black people doing everyday tasks represents another manifestation of racism in society.<sup>94</sup> The following are

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<sup>89</sup> See Lopez, *supra* note 85 (stating, for example, “Wallace, Goldwater, and Nixon recognized and sought to take advantage of existing bigotry in the voting public, bigotry they did not create but which they stoked, legitimized, and encouraged”). When Vice President Kamala Harris earned selection as the running mate for President Joe Biden, the mayor of a small Virginia town referred to her as Aunt Jemima, which many denounced as racist. See Janelle Griffith, *Virginia Mayor Urged to Resign After Saying Biden Picked ‘Aunt Jemima as His VP’*, NBC NEWS (Jan. 12, 2021), <https://www.nbcnews.com/news/us-news/virginia-mayor-urged-resign-after-saying-biden-picked-aunt-jemima-n1236601> [https://perma.cc/CJD3-VEZK].

<sup>90</sup> *Id.* at 13-14.

<sup>91</sup> Susan Smith Richardson & Lorraine Forte, ‘Dog Whistle’ Is GOP’s Longtime Political Weapon of Choice, CHI. REP. (Aug. 29, 2016), <https://www.chicagoreporter.com/dog-whistle-politics-is-gops-longtime-political-weapon-of-choice> [https://perma.cc/4Z6E-S9KE]; Lopez, *supra* note 85.

<sup>92</sup> See Lopez *supra* note 85.

<sup>93</sup> See generally Richardson & Forte *supra* note 91.

<sup>94</sup> Brandon Griggs, *Here Are All the Mundane Activities for Which Police Were Called on African-Americans This Year*, CNN (Dec. 28, 2018), <https://www.cnn.com/2018/12/20/us/living-while-black-police-calls-trnd/index.html> [https://perma.cc/L27G-7MDP].

just some of the instances reported by CNN in which someone called the police on a Black person engaged in benign activities:

- Golfing too slowly;<sup>95</sup>
- Waiting for a friend at Starbucks (resulted in arrest);<sup>96</sup>
- Working out at a gym;<sup>97</sup>
- Moving into an apartment;<sup>98</sup>
- Shopping for prom clothes;<sup>99</sup>
- Napping in a university common room at Yale (the person napping was a Yale graduate student);<sup>100</sup>
- Not waving while leaving an Airbnb;<sup>101</sup>
- Redeeming a coupon;<sup>102</sup>
- Eating lunch on a college campus;<sup>103</sup>
- Riding in a car with a White grandmother;<sup>104</sup>
- Babysitting two White children;<sup>105</sup>

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<sup>95</sup> See *id.*

<sup>96</sup> See Amir Vera, *A Video of Black Men Being Arrested at Starbucks. Three Very Different Reactions.*, CNN (Apr. 15, 2020), <https://www.cnn.com/2018/04/14/us/philadelphia-police-starbucks-arrests/index.html> [<https://perma.cc/XWQ8-E2TJ>].

<sup>97</sup> *Gym Apologizes After Profiling Allegation*, CNN (Apr. 15, 2018), <https://www.cnn.com/videos/cnnmoney/2018/04/20/la-fitness-incident-apology-orig-vstop-bdk.cnn> [<https://perma.cc/NX4U-HL9T>].

<sup>98</sup> Holly Yan, *This Is Why Everyday Racial Profiling Is So Dangerous*, CNN (May 11, 2018), <https://www.cnn.com/2018/05/11/us/everyday-racial-profiling-consequences-trnd/index.html> [<https://perma.cc/2Q9K-ZRHF>].

<sup>99</sup> Aaron Smith & Marlena Baldacci, *Nordstrom Rack Apologizes for Falsely Accusing Black Teens of Stealing*, CNN (May 8, 2018), <https://money.cnn.com/2018/05/08/news/companies/nordstrom-rack-shoplifting/index.html> [<https://perma.cc/3LDG-V48P>].

<sup>100</sup> Yan, *supra* note 98.

<sup>101</sup> Dakin Andone, *Woman Says She Called Police When Black Airbnb Guests Didn't Wave at Her*, CNN (May 11, 2019), <https://www.cnn.com/2018/05/10/us/airbnb-black-rialto-california-trnd/index.html> [<https://perma.cc/XE6N-KV56>].

<sup>102</sup> Nina Gologowski, *CVS Employees Fired After Calling Cops on Black Woman Over a Coupon*, HUFFPOST (July 18, 2018), [https://www.huffpost.com/entry/cvs-calls-cops-over-coupon\\_n\\_5b4df7abe4b0fd5c73bf355d](https://www.huffpost.com/entry/cvs-calls-cops-over-coupon_n_5b4df7abe4b0fd5c73bf355d) [<https://perma.cc/EM33-LLF4>].

<sup>103</sup> Daniel Victor, *'All I Did Was Be Black': Police Are Called on College Student Eating Lunch*, N.Y. TIMES (Aug. 2, 2018), <https://www.nytimes.com/2018/08/02/us/black-smith-college-student-oumou-kanoute.html> [<https://perma.cc/Q9H7-RMX7>].

<sup>104</sup> *Police Detain Black Teen Riding with His White Grandmother After Reports of Robbery Attempt*, CBS (Sep. 7, 2018), <https://www.cbsnews.com/news/wisconsin-police-handcuff-black-teen-riding-with-his-white-grandmother/> [<https://perma.cc/S2JP-FH6C>].

<sup>105</sup> Kate Redding & Saphora Smith, *Georgia Woman Calls Police on Black Man Baby-Sitting 2 White Kids*, NBC (Oct. 10, 2018), <https://www.nbcnews.com/news/>

- Working as a home inspector;<sup>106</sup>
- Working as a firefighter;<sup>107</sup>
- Swimming in a pool;<sup>108</sup>
- Shopping while pregnant;<sup>109</sup>
- Driving with leaves on a car;<sup>110</sup> and
- Trying to cash a paycheck.<sup>111</sup>

These types of incidents became so common that the name “Karen” now refers to a privileged, White woman who, among other things, calls the police unnecessarily on Black people.<sup>112</sup> Nevertheless, these occurrences are not novel.

Prominent Harvard Professor of African-American Studies, Henry Louis Gates, Jr., was arrested by the police after they mistakenly believed he was breaking into a house.<sup>113</sup> The problem was that he was arrested after he allegedly broke into his *own* house.<sup>114</sup> A White female called the police after

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us-news/georgia-woman-calls-police-black-man-babysitting-2-white-kids-n918476 [https://perma.cc/6BRP-3J6G].

<sup>106</sup> Doug Criss, *A White Woman Sees a Black Man Inspecting a House and Calls the Cops. But There's a Twist to This Incident*, CNN (May 16, 2018), <https://www.cnn.com/2018/05/16/us/investor-memphis-police-trnd> [https://perma.cc/9UAR-8GXH].

<sup>107</sup> Dan Simon, *Oakland Resident Reports Black Firefighter to Police During Routine Inspection*, CNN (June 28, 2018), <https://www.cnn.com/2018/06/27/us/oakland-firefighter-racial-profiling> [https://perma.cc/G73V-6KKF].

<sup>108</sup> Alisha Ebrahimji, *Hotel Employee Calls Police on Black Family Using the Pool as Guests*, CNN (last updated July 1, 2020), <https://www.cnn.com/2020/07/01/us/hampton-inn-black-family-pool-trnd/index.html> [https://perma.cc/EYT4-9G2G].

<sup>109</sup> Elise Solé, *Pregnant Shopper Says Target Called Police after Shouting Match over Beauty Coupon*, YAHOO! (Aug. 27, 2019), <https://www.yahoo.com/lifestyle/pregnant-shopper-says-target-called-police-after-shouting-match-over-beauty-coupon-225300210.html> [https://perma.cc/BMJ2-WSE2].

<sup>110</sup> Isabella Gomez & Justin Lear, *Police in Kansas Handcuff Black Motorist over 'Vegetation' in His Car Window*, CNN (May 23, 2018), <https://www.cnn.com/2018/05/22/us/police-kansas-detain-man-vegetation-trnd> [https://perma.cc/WD53-P985].

<sup>111</sup> Griggs, *supra* note 94.

<sup>112</sup> Sarah Maslin Nir, *White Woman Is Fired after Calling Police on Black Man in Central Park*, N.Y. TIMES (May 26, 2020) <https://www.msn.com/en-us/news/us/white-woman-is-fired-after-calling-police-on-black-man-in-central-park/ar-BB14BDW8?li=bbnbfcl> [https://perma.cc/J7HP-68MX] (describing an incident where a White woman called the police on a Black man because he asked the White woman to leash her dog in Central Park where the law required she leash her dog).

<sup>113</sup> Abby Goodnough, *Harvard Professor Jailed; Officer Is Accused of Bias*, N.Y. TIMES (July 20, 2009), <https://www.nytimes.com/2009/07/21/us/21gates.html> [https://perma.cc/8RU7-UHPR].

<sup>114</sup> *Id.*

seeing two Black men on the porch of Gates' home, one of whom was Gates.<sup>115</sup> Upon arriving home, the door became wedged, and Gates gained access to his house with the help of his cab driver.<sup>116</sup> Gates' lawyer contended that Gates identified himself as the owner of the house and provided his driver's license and Harvard identification card, but the police officer still did not believe Gates owned the house (which was located close to Harvard Square).<sup>117</sup> The lawyer asserted that Gates, then frustrated, requested the name and badge number of the police officer.<sup>118</sup> Even after seeing Gates' identification, which the police report claims he initially refused to provide, the police still arrested him.<sup>119</sup> This occurred over a decade ago in July of 2009, approximately eight months after the election of the first Black president in U.S. history.<sup>120</sup>

Another more recent and widely publicized racist events is simply known as "Charlottesville."<sup>121</sup> In August of 2017, a "Unite the Right" rally that included neo-Nazis and White nationalists occurred in Charlottesville, Virginia to protest the removal of Confederate statues.<sup>122</sup> When aggressive counter-protestors and the protestors clashed, a twenty-year-old White male ran his car into a group of protestors, killing a 32-year-old woman and injuring nineteen others.<sup>123</sup> The incident resulted in various responses by former President Trump who first said the following: "We condemn in the strongest possible terms this egregious display of hatred, bigotry, and violence on many sides — on many sides. It's been going on for a long time in

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<sup>115</sup> *Id.*; but cf. Weeden, *supra* note 14, at 134 (2009) (stating that the White woman who called the police in this incident "denied that she was a racial profiler" and in response to the question from the 911 dispatcher about the race of the two individuals engaged in suspicious activity, she responded "one of the two men 'looked kind of Hispanic' and she was not able to observe the other man," yet she was branded as a racist after the incident).

<sup>116</sup> See Goodnough, *supra* note 113.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> See Weeden, *supra* note 14, at 136-37 (asserting that, after former President Obama's election, this country did not transcend race and, therefore, is not post-racial).

<sup>121</sup> Joel Gunter & Roland Hughes, *Charlottesville Remembered, 'A Battle for the Soul of America'*, BBC (Aug. 9, 2018), <https://www.bbc.com/news/world-us-canada-44619374> [<https://perma.cc/AH37-L8MF>].

<sup>122</sup> Meghan Keneally, *What to Know About the Violent Charlottesville Protests and Anniversary Rallies*, ABC NEWS (Aug. 8, 2018), <https://abcnews.go.com/US/happen-charlottesville-protest-anniversary-weekend/story?id=57107500> [<https://perma.cc/2J5X-8A2C>].

<sup>123</sup> *Id.*

our country. Not Donald Trump. Not Barack Obama. It's been going on for a long, long time."<sup>124</sup> Trump went on to say a couple days later, "Racism is evil. And those who cause violence in its name are criminals and thugs, including the KKK, neo-Nazis, white supremacists and other hate groups that are repugnant to everything we hold dear as Americans."<sup>125</sup> Trump later, however, said that both sides were to blame for the violence, and each side — the protestors including White supremacists and the counter-protestors — "had some very fine people," along with some bad people.<sup>126</sup>

Although he denounced racism at different points, Trump fueled the fire that his administration not only tolerated, but accepted racist statements and acts to a certain degree.<sup>127</sup> Even during Barack Obama's tenure as president, the "birther" movement marked an apparent racist attempt to undermine the legitimacy of his presidency.<sup>128</sup> This movement, pushed by Trump with support from an "overwhelmingly white, conservative wing," argued that former President Obama was not born in the United States, and, therefore, he was not a legitimate president.<sup>129</sup> Professor Erika Wilson argues, "The election of President Barack Obama at best revealed racial cleavages that have long existed, and at worst, increased rather than ameliorated racial discord" as demonstrated by Trump's slogan "Make America Great Again," along with the notion advanced by Trump's followers that they would "take back our country."<sup>130</sup> Professor Wilson attributes Donald Trump's election to "his naked appeal to white racial nativism."<sup>131</sup>

White supremacist groups formed after the Civil War, and they have been engaging in public activities, including lynchings and rallies, for many

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<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> See Wan & Kaplan, *supra* note 53 (citing a psychology researcher explaining that Trump's initial refusal to "signal out Nazis and white supremacists" provided a powerful message that racial fears are acceptable to express).

<sup>128</sup> Domenico Montanaro, *Without Apology, Trump Now Says: 'Obama Was Born In' The U.S.*, NPR (Sept. 16, 2016), <https://www.npr.org/2016/09/16/494231757/without-apology-trump-now-says-obama-was-born-in-the-u-s> [<https://perma.cc/6NPL-YLR4>] ("The birther movement — questioning the legitimacy of the first black president — has proven to be problematic for Trump in his attempts to appeal to black voters. It's something Republican former Secretary of State Colin Powell called, in hacked emails, 'racist.'")

<sup>129</sup> *Id.*

<sup>130</sup> Erika Wilson, *The Great American Dilemma: Law and the Intransigence of Racism*, 20 CUNY L. REV. 513, 514 (2017).

<sup>131</sup> *Id.*

years in the United States.<sup>132</sup> For example, the KKK started in 1866 in Tennessee, and after its revitalization based on the box office hit *Birth of a Nation*, its cross-burning rallies rose to prominence in 1915.<sup>133</sup> Indeed, this country suffers from a long history of racism.

Professor Bryan Stevenson, Founder and Executive Director of the Equal Justice Initiative,<sup>134</sup> views racism in the United States, which is “deeply embedded in our culture [and] has evolved over time,” in four iterations: Racism 1.0, 2.0, 3.0, and 4.0.<sup>135</sup> Racism 1.0 includes the time of slavery in the United States.<sup>136</sup> Racism 2.0 followed the emancipation of the slaves and involved lynching of Black people.<sup>137</sup> The violence and lynching led to a large migration of Black people from the South to the Northeast, Midwest, and West.<sup>138</sup> Racism 3.0 includes the segregationist Jim Crow laws that separated the races under the theory of separate but equal.<sup>139</sup> During this time, racially restrictive covenants and federal policy purposefully created and ensured residential segregation.<sup>140</sup> Finally, Racism 4.0 entails racial disparity in areas of “incarceration, education, health, economic resources, housing, and employment.”<sup>141</sup> For example, “Black people are 13%

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<sup>132</sup> See Carl Skutsch, *The History of White Supremacy in America*, ROLLING STONE (Aug. 19, 2017), <https://www.rollingstone.com/politics/politics-features/the-history-of-white-supremacy-in-america-205171/> [<https://perma.cc/74D3-48FR>].

<sup>133</sup> Michael Rosenwald, *The Ku Klux Klan Was Dead. The First Hollywood Blockbuster Revived It*, WASH. POST (Aug. 12, 2017), <https://www.washingtonpost.com/news/retropolis/wp/2017/07/08/the-ku-klux-klan-had-been-destroyed-then-the-first-hollywood-blockbuster-revived-it/> [<https://perma.cc/G9VY-6GY6>].

<sup>134</sup> *About Bryan Stevenson*, EQUAL JUSTICE INITIATIVE (<https://eji.org/bryan-stevenson/>) [<https://perma.cc/8RR3-YJLK>] (last visited Apr. 23, 2021).

<sup>135</sup> Strand, *supra* note 47 at 765.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*; see also Noel C. Richardson, *Is There a Current Incarceration Crisis in the Black Community? An Analysis of the Link Between Confinement, Capital, and Racism in the United States*, 23 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 183, 236 (1997) (commenting that “[f]or a dominant economic class, the [United States] has used the confinement of Black people, both civilly and criminally, as a means by which to accumulate and protect capital. Furthermore, the [United States] has utilized its legal system as the primary means by which to manage this exploitative social relationship.”); Jasmine B. Gonzales Rose, *Race Inequity Fifty Years Later: Language Rights Under the Civil Rights Act of 1964*, 6 ALA. C.R. & C.L.L. REV. 167, 167, 211 (2014) (noting that “[e]xpressions of racism have become more subtle and sophisticated,” including “racially discriminatory exclusion” in “employment, education, public accommodations, and civic participation”).

of the general U.S. population, yet they constitute 28% of all arrests, 40% of all inmates held in prisons and jails, and 42% of the population on death row.”<sup>142</sup>

Professor Jeremi Duru, in his powerful article “The Central Park Five, The Scottsboro Boys, and the Myth of the Bestial Black Man,” chronicles the “deeply imbedded myth in American culture that black men are animalistic [subhuman], sexually unrestrained, inherently criminal, and ultimately bent on rape [of White women].”<sup>143</sup> The myth existed from the colonial times in the United States and continues today.<sup>144</sup> Professor Duru details the history of lynching in the United States, which took the place of legal slavery and control of Black men based on the notions that Black men were prone to criminal behavior and raping White women.<sup>145</sup> Lynching entails “killing done by several people acting in concert outside the legal process to punish a person perceived to have violated a law or custom.”<sup>146</sup> Oftentimes Black men were lynched even when not formally accused of rape.<sup>147</sup> Lynchings occurred throughout all of the United States, not just in the South.<sup>148</sup> Lynchings resembled sporting events as sometimes thousands of people, including families with children who packed food and drinks for the event, attended and watched lynchings to enjoy the spectacle and be a part of the experience.<sup>149</sup> The misconceptions about Black men that prompted lynchings are echoed today — 21-year-old Dylann Roof murdered nine Black church members because he believed Black men were “raping our women” and “taking over our country.”<sup>150</sup> Moreover, the countless instances of White people calling the police on Black people for doing everyday things reinforces those embedded fears and misperceptions of Black people’s supposed innate criminality.<sup>151</sup>

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<sup>142</sup> Strand, *supra* note 47.

<sup>143</sup> N. Jeremi Duru, *The Central Park Five, The Scottsboro Boys, and the Myth of the Bestial Black Man*, 25 CARDOZO L. REV. 1315 (2004).

<sup>144</sup> Ayres, *supra* note 82 (finding that perceptions today are still driven by the notion “that the black body in the white imagination is still equated with bestiality, criminality”).

<sup>145</sup> Duru, *supra* note 143.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> Ghansah, *supra* note 72.

<sup>151</sup> Duru, *supra* note 143.

Racism also manifests itself in the United States in police brutality and the use of excessive force by the police.<sup>152</sup> The *Associated Press* named “the killing of unarmed Black males by law enforcement and private citizens[. . .] includ[ing] the killing of Michael Brown, John Crawford, III, Jordan Davis, Eric Garner, Trayvon Martin, and Tamir Rice,” as the “top news” of 2014.”<sup>153</sup> In May of 2020, a potential watershed event occurred when the Minneapolis police killed a Black man, George Floyd, after an officer pushed his knee into Floyd’s neck for eight minutes when Floyd was already handcuffed and in custody, demonstrating yet another instance of excessive force by the police, and police brutality against Black people.<sup>154</sup> Floyd repeatedly gasped, “I can’t breathe,” during those eight minutes.<sup>155</sup> He became unresponsive after four minutes, and, after being taken to a hospital, died shortly thereafter.<sup>156</sup> The four officers involved in the incident were fired, and the officer who kned Floyd’s neck for eight straight minutes, Derek Chauvin, was charged with second-degree murder, third-degree murder, and second-degree manslaughter.<sup>157</sup> Nearly one year later, a jury convicted Chauvin on all three of those charges.<sup>158</sup> The other three officers involved (two initially helped in restraining Floyd and all three later just

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<sup>152</sup> See, e.g., Alex Samuels, *Why a Guilty Verdict for Derek Chauvin Doesn’t Change the Reality of Police Violence*, FIVETHIRTYEIGHT (Apr. 20, 2021), <https://fivethirtyeight.com/features/why-a-guilty-verdict-for-derek-chauvin-doesnt-change-the-reality-of-police-violence/>; see also *984 People Have Been Shot and Killed by Police in the Past Year*, WASH. POST, <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/> [https://perma.cc/7CTP-4VTK] (last visited Apr. 20, 2021).

<sup>153</sup> Hutchinson, *supra* note 53, at 23–24.

<sup>154</sup> Ryan W. Miller, et al., *Minneapolis Mayor Wants Officer Charged; All 4 Cops in George Floyd’s Death ID’d; GoFundMe Page Raises \$123K: What We Know*, USA TODAY (May 27, 2020), <https://www.usatoday.com/story/news/nation/2020/05/27/george-floyd-protesters-clash-minneapolis-police-after-video/5264887002/> [https://perma.cc/UGLE-EASM].

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> Christina Maxouris et al., *Cities Extend Curfews for Another Night in an Attempt to Avoid Violent Protests over George Floyd’s Death*, CNN (June 1, 2020), <https://www.cnn.com/2020/05/31/us/george-floyd-protests-sunday/index.html> [https://perma.cc/T98D-V8U6]; Josh Campbell, et al., *All Four Former Officers Involved in George Floyd’s Killing Now Face Charges*, CNN (June 4, 2020), <https://www.cnn.com/2020/06/03/us/george-floyd-officers-charges/index.html> [https://perma.cc/7NMU-W8G2] (discussing the charges brought against the officers involved).

<sup>158</sup> See Eric Levenson & Aaron Cooper, *Derek Chauvin Found Guilty of All Three Charges for Killing George Floyd*, CNN (Apr. 21, 2021), <https://www.cnn.com/2021/04/20/us/derek-chauvin-trial-george-floyd-deliberations/index.html> [https://perma.cc/AZ6V-SCMN].

watched the other officer kneel on Floyd's neck) were charged with aiding and abetting second-degree murder and aiding and abetting second-degree manslaughter.<sup>159</sup> Floyd's death sparked protests across the United States, and some of those protests became violent.<sup>160</sup> Although most protestors were peaceful, others looted and burned stores, and they also hit police with rocks and battles, which prompted cities to impose curfews to try to curb the violence.<sup>161</sup>

The protests regarding Floyd's murder spanned across the nation and lasted through the summer months of 2020 in the United States.<sup>162</sup> The protests often involved the organization Black Lives Matter, which experienced a dramatic increase in support in the United States.<sup>163</sup> Protests continued into the fall of 2020 after police were not charged with murder in the killing of Breonna Taylor — a Black woman shot in her own apartment after police entered and responded to fire from Taylor's boyfriend (who thought the police were intruders) during the execution of their no-knock warrant.<sup>164</sup> Instead, one officer was charged with wanton endangerment of

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<sup>159</sup> Josh Campbell, et al., *All Four Former Officers Involved in George Floyd's Killing Now Face Charges*, CNN (June 4, 2020), <https://www.cnn.com/2020/06/03/us/george-floyd-officers-charges/index.html> [<https://perma.cc/7NMU-W8G2>].

<sup>160</sup> Maxouris, et al *supra* note 157.

<sup>161</sup> Id.

<sup>162</sup> Howard Bryant, *Police, Protest, Pandemic and the End of the 9/11 Era*, ESPN (Sept. 29, 2020), [https://www.espn.com/espn/story/\\_/id/29979519/police-protest-pandemic-end-9-11-era](https://www.espn.com/espn/story/_/id/29979519/police-protest-pandemic-end-9-11-era) [<https://perma.cc/Z3PV-Q52F>].

<sup>163</sup> Sandra Lemaire, *How George Floyd's Death Has Impacted American Life*, VOA (June 26, 2020), <https://www.voanews.com/usa/race-america/how-george-floyds-death-has-impacted-american-life> [<https://perma.cc/43WZ-Z6LP>]; see Grace Hauck & Deborah Barfield Berry, 'Double Standard': Black Lawmakers and Activists Decry Police Response to Attack on US Capitol, YAHOO! NEWS (Jan. 7, 2021), <https://news.yahoo.com/black-lives-matter-protesters-were-221653420.html> (discussing how many people, including Black lawmakers, activists, and prominent athletes, contend that the docile and lax police response to the mob that that stormed the Capitol building in January of 2021 versus the aggressive police response to Black Lives Matter protests in the summer of 2020 demonstrate the dichotomy between the police's inequitable approach to Black people and White people in the United States) [<https://perma.cc/NUM7-UUYU>]; see also Dave McMenamin, *Los Angeles Lakers' LeBron James: U.S. Capitol Siege Shows 'We Live in Two Americas'*, ESPN (Jan. 8, 2021), [https://www.espn.com/nba/story/\\_/id/30672218/us-capitol-siege-shows-live-two-americas](https://www.espn.com/nba/story/_/id/30672218/us-capitol-siege-shows-live-two-americas) [<https://perma.cc/Z6MJ-LY6K>].

<sup>164</sup> Cameron McWhirter & Arian Campo-Flores, *Breonna Taylor Decision Sparks More Protests as Leaders Urge Calm*, WALL ST. J. (Sept. 24, 2020), <https://www.wsj.com/articles/breonna-taylor-decision-sparks-protests-in-cities-across-u-s-11600949774> [<https://perma.cc/PH3X-66TY>]; see Jordan Culver & Grace Hauck, 'Absolutely Heartbreaking' Ruling in Breonna Taylor Shooting Sparks New Wave of Na-

Taylor's uninjured neighbors based on the shots fired by police that traveled into the neighboring apartment.<sup>165</sup> Protestors also brought awareness to Ahmaud Arbery, a 25-year-old Black man, who was shot by two White men, a 64 and 34-year-old father and son, while Arbery was jogging unarmed in their neighborhood.<sup>166</sup> Amid the national protests based on the deaths of George Floyd, Ahmaud Arbery, and Breonna Taylor, a White Kenosha police officer in Wisconsin shot Jacob Blake, a 29-year-old Black man, seven times in front of his three children ages 3, 5, and 8 years old.<sup>167</sup> Months later, the Kenosha District Attorney decided against charging the officers involved with the shooting, as Blake possessed "a razor blade type-

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*tional Protests for Justice, Racial Equality*, USA TODAY (Sept. 23, 2020), <https://www.usatoday.com/story/news/nation/2020/09/23/breonna-taylor-protests-chicago-brooklyn-philadelphia-louisville/3510963001/> [<https://perma.cc/HB9J-2PRV>]; see also Griff Witte & Mark Berman, *With Breonna Taylor Decision, Summer's Anguished Protests Get Fresh Impetus for the Fall*, WASH. POST (Sept. 23, 2020), [https://www.washingtonpost.com/national/with-breonna-taylor-decision-summers-anguished-protests-get-fresh-impetus-for-the-fall/2020/09/23/1cd15f38-fddb-11ea-8d05-9beaaa91c71f\\_story.html](https://www.washingtonpost.com/national/with-breonna-taylor-decision-summers-anguished-protests-get-fresh-impetus-for-the-fall/2020/09/23/1cd15f38-fddb-11ea-8d05-9beaaa91c71f_story.html) [<https://perma.cc/49U8-CW8K>]; see also Christina Carrega & Sabina Ghebremedhin, *Timeline: Inside the Investigation of Breonna Taylor's Killing and its Aftermath*, ABC NEWS (Nov. 17, 2020), <https://abcnews.go.com/US/timeline-inside-investigation-breonna-taylors-killing-aftermath/story?id=71217247> [<https://perma.cc/77E6-XVTJ>] (discussing how police obtained the warrant for Taylor's address because Taylor's ex-boyfriend was allegedly a known drug trafficker according to police who purportedly was using Taylor's address to mail drugs); see also Jenna West, *WNBA Dedicates Season to Breonna Taylor, Holds Moment of Silence to Honor Her*, SPORTS ILLUSTRATED (July 25, 2020), <https://www.si.com/wnba/2020/07/25/wnba-dedicates-season-breonna-taylor-moment-of-silence> [<https://perma.cc/5XTY-5W35>] (discussing how WNBA dedicated the league's entire 2020 season to Breonna Taylor as part of efforts to bring awareness to racial and social injustice).

<sup>165</sup> Cameron McWhirter & Arian Campo-Flores, *Breonna Taylor Decision Sparks More Protests as Leaders Urge Calm*, WALL ST. J. (Sept. 24, 2020), <https://www.wsj.com/articles/breonna-taylor-decision-sparks-protests-in-cities-across-u-s-11600949774> [<https://perma.cc/PH3X-66TY>]; see Jordan Culver & Grace Hauck, *'Absolutely Heartbreaking' Ruling In Breonna Taylor Shooting Sparks New Wave of National Protests For Justice, Racial Equality*, USA TODAY (Sept. 23, 2020), <https://www.usatoday.com/story/news/nation/2020/09/23/breonna-taylor-protests-chicago-brooklyn-philadelphia-louisville/3510963001/> [<https://perma.cc/HB9J-2PRV>].

<sup>166</sup> See Janelle Griffith, *Ahmaud Arbery Shooting: a Timeline of the Case*, NBC NEWS (May 11, 2020), <https://www.nbcnews.com/news/us-news/ahmaud-arbery-shooting-timeline-case-n1204306> [<https://perma.cc/HZA9-K6HS>].

<sup>167</sup> See generally *id.*; Nicole Chavez et al., *Jacob Blake Needs 'A Miracle' to Walk Again After Kenosha Police Shot Him, Attorney Says*, CNN (Aug. 25, 2020), <https://www.cnn.com/2020/08/25/us/jacob-blake-kenosha-wisconsin-protests/index.html> [<https://perma.cc/3NN4-SHWE>].

knife” during the encounter that would allow the officers to employ a privilege of self-defense, which would make it difficult to obtain a conviction.<sup>168</sup>

Professor Wilson opines that this country fails to acknowledge the explanation for police brutality against Black people despite this country’s “history of state over-policing and brutalization of Black bodies dating back to slavery and Reconstruction.”<sup>169</sup> Instead, the United States avoids “convening a truth and reconciliation process acknowledging its past. . . . The United States does not ensure that its citizens understand or remember that past.”<sup>170</sup>

Yale Law Professor James Whitman provides another chilling and stark reality of the United States’ global prominence in the history of racism.<sup>171</sup> In his book, *Hitler’s American Model: The United States and the Making of Nazi Race Law*, Whitman shows how Hitler, Nazi leaders, and Nazi lawyers looked to American race law in creating the laws for their regime.<sup>172</sup> For example, “[I]n *Mein Kampf* Hitler praised America as nothing less than ‘the one state’ that had made progress toward the creation of a healthy racist order of the kind the Nuremberg Laws were intended to establish.”<sup>173</sup> The Nuremberg Laws, which included the Citizenship Law that “subjected Jews to a form of second-class citizenship” and the Blood Law that “criminalized marriage and sexual relations between Jews and ‘Aryans,’” found inspiration in American law at the time.<sup>174</sup> In particular, for their Citizenship Law, the Nazis looked to the United States’ immigration laws that barred many Asians from immigrating to the United States (the Asiatic Barred Zone Act of 1917) and the Immigration Act of 1924 that favored northern and western Europeans (Nordics) over eastern and southern Europeans.<sup>175</sup> Also, the Nazis revered the second-class citizenship created by the United States for Black people that deprived Black people of various political rights, such as the denial of the right to vote by requiring a literacy test in the south.<sup>176</sup>

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<sup>168</sup> *Kenosha Police Officers Won’t Face Charges in Jacob Blake Shooting*, ESPN (Jan. 5, 2021), [https://www.espn.com/nba/story/\\_/id/30657898/kenosha-police-officers-face-charges-jacob-blake-shooting](https://www.espn.com/nba/story/_/id/30657898/kenosha-police-officers-face-charges-jacob-blake-shooting) [https://perma.cc/C6XH-XEXN].

<sup>169</sup> Erika Wilson, *The Great American Dilemma: Law and the Intransigence of Racism*, 20 CUNY L. REV. 513, 518 (2017).

<sup>170</sup> *Id.* at 519.

<sup>171</sup> See generally JAMES Q. WHITMAN, *HITLER’S AMERICAN MODEL: THE UNITED STATES AND THE MAKING OF NAZI RACE LAW* (2018).

<sup>172</sup> *Id.* at 2, 12, 135.

<sup>173</sup> *Id.* at 2.

<sup>174</sup> *Id.* at 19, 29.

<sup>175</sup> *Id.* at 34-36.

<sup>176</sup> *Id.* at 38-39; see also Hutchinson, *supra* note 53, at 26 (“Historically, many states explicitly discriminated on the basis of race by enacting laws that criminal-

Moreover, Nazis admired the United States' citizenship laws that made Black people, Puerto Ricans, Filipinos, Chinese, and Native Americans second-class citizens.<sup>177</sup>

With regard to the Nazi Nuremberg Blood Law and anti-miscegenation laws, which prohibit marriage between different races, not only did the United States promulgate laws that prohibited marriages between Whites and minorities, but also some states independently made such marriages a criminal offense.<sup>178</sup> This type of law, used extensively by the states, finally ended in the United States in 1967 with the United States Supreme Court decision in *Loving v. Virginia*.<sup>179</sup> Professor Whitman asserts that America's laws and racist practices helped the Nazis create their own laws and heavily influenced one of the most evil regimes in the history of the world.<sup>180</sup> Whitman identified the United States as the global leader in racist immigration and anti-miscegenation laws that the Nazis referenced in meetings to create their own regime.<sup>181</sup>

Finally, it is worth noting that a major subject area of the law, critical race theory, revolves around the notion that racism infests society.<sup>182</sup> In particular, "[c]ritical race theory [. . .] is founded on the proposition that white supremacy pervades society, that it is intertwined with the very institutions of family, market, and state that shape social life."<sup>183</sup> Regardless of whether racism is increasing or decreasing in the United States, this country has blood on its hands from its own history of racism, and those hands remain soaked.

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ized conduct only if the individual who engaged in the activity was a person of color. Statutes also allowed for harsher punishment of persons of color than for whites who committed the same crimes. Even when criminal statutes did not contain racial classifications, legal authorities often enforced these laws more vigorously against defendants of color.”).

<sup>177</sup> See Whitman, *supra* note 171, at 38-43.

<sup>178</sup> *Id.* at 79.

<sup>179</sup> *Id.* at 33; see generally *Loving v. Virginia*, 388 U.S. 1 (1967).

<sup>180</sup> Whitman, *supra* note 171, at 4-5, 160-61; see generally Dias, *supra* note 8, at 502 (acknowledging that the “United States was originally and legally constructed as an apartheid country and all its systems and institutions were built to reinforce and perpetuate the ideology of whiteness as the measure of all that is good, right, moral, and superior in every way”).

<sup>181</sup> Whitman, *supra* note 171, at 34, 78.

<sup>182</sup> See Jerome M. Culp Jr. et al., *Subject Unrest*, 55 STAN. L. REV. 2435, 2436 (2003).

<sup>183</sup> See *id.*

### B. Racism in Sports

Racism certainly exists in sports in the United States today.<sup>184</sup> The University of Central Florida's Institute for Diversity and Ethics in Sport (TIDES) tracks reported instances of racism in sports and found that reported racist acts in sports went from 52 in 2018 down to 25 in 2019 after record increases in 2018 in the United States and the world.<sup>185</sup> Instances of recorded racist acts in sports in the United States in the last several years include, but are not limited to, the following:

- A Black NFL player's home was robbed and vandalized with racial epithets including a spray-painted swastika, the letters KKK, and a message that read "Go Back to Africa," and one spray-painted wall said, "Trump";<sup>186</sup>
- Another Black NFL player received hate mail that called him the N-word repeatedly and threatened his life after he joined Colin Kaepernick in his kneeling national anthem protest;<sup>187</sup>
- A man dressed in a gorilla suit stormed the field at an NFL game in Chicago and wore a T-shirt that read "All Lives Matter" and "Put The Guns Down";<sup>188</sup>
- A fan at a University of Wisconsin-Madison game wore a racist costume representing former President Barack Obama;<sup>189</sup>

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<sup>184</sup> Richard Lapchick, *Racism Reported in Sports Decreasing but Still Prevalent*, ESPN (Feb. 19, 2020), [https://www.espn.com/espn/story/\\_/id/28738336/racism-reported-sports-decreasing-prevalent](https://www.espn.com/espn/story/_/id/28738336/racism-reported-sports-decreasing-prevalent) [<https://perma.cc/L4F6-HA9M>].

<sup>185</sup> *Id.*; see Richard Lapchick, *Once Again, Racist Acts in Sports Are on the Rise*, ESPN (Jan. 3, 2019), [https://www.espn.com/espn/story/\\_/id/25675586/racism-sports-continued-rear-ugly-head-2018](https://www.espn.com/espn/story/_/id/25675586/racism-sports-continued-rear-ugly-head-2018) (citing the number of racist acts in sports identified in the studies in previous years include the following: 41 in 2017 and 52 in 2018) [<https://perma.cc/4JUG-MTFQ>] [hereinafter Lapchick, *Racist Acts 2018*]; see generally Tom Edgington, *Sterling: Is Football Racism Rising?*, BBC NEWS, [www.bbc.com/news/amp/uk-46507364](http://www.bbc.com/news/amp/uk-46507364) [<https://perma.cc/AY8C-3ZJW>]; see generally Richard Lapchick, *Racist Acts in Sports Were on the Rise in 2017*, ESPN (Jan. 11, 2018), [https://www.espn.com/espn/story/\\_/id/22041345/racism-continued-rear-ugly-head-sports-2017](https://www.espn.com/espn/story/_/id/22041345/racism-continued-rear-ugly-head-sports-2017) [<https://perma.cc/SVV8-FGQR>] [hereinafter Lapchick, *Racist Acts 2017*].

<sup>186</sup> Richard Lapchick, *Lapchick: The Year in Racism and Sports*, ESPN (Jan. 24, 2017), [https://www.espn.com/espn/story/\\_/id/18543159/racism-sadly-reared-ugly-head-sports-2016](https://www.espn.com/espn/story/_/id/18543159/racism-sadly-reared-ugly-head-sports-2016) [<https://perma.cc/4L4Q-DD3A>].

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

- A Major League Baseball (MLB) player said he endured racial slurs and a bag of peanuts thrown at him during a game at Fenway Park, the home field of the Boston Red Sox<sup>190</sup>;
- Someone spray-painted a racial slur on the front gate of LeBron James' Los Angeles home;<sup>191</sup>
- A Black head football coach at Texas A&M received hate mail that criticized his coaching, called him the N-word, and threatened him;<sup>192</sup>
- A Missouri bar owner taped Marshawn Lynch (a former NFL player) and Colin Kaepernick jerseys as a doormat to the entrance of his establishment (placed side by side, the jerseys read "Lynch Kaepernick");<sup>193</sup>
- Somebody hung a dummy of a Black Cincinnati Bengals NFL player from a noose near the Pittsburgh Steelers' stadium;<sup>194</sup>
- Five football players from a high school in Iowa were kicked off the team after a photo of them wearing KKK hoods, brandishing a firearm, burning a cross, and showcasing a Confederate flag went viral;<sup>195</sup>
- After a high school football player in Iowa knelt during the national anthem, a Snapchat posting showed a picture of him with a message reading, "kick this f---ing n--- off the football team like honestly who the f--- kneels for the national anthem";<sup>196</sup>
- When predominantly Black men's and women's basketball community college teams from Kansas visited North Arkansas College in Harrison, Arkansas, they heard "monkey noises and crow caws";<sup>197</sup>
- After Florida State's loss to in-state rival Florida in college football, a man posted on Facebook an image of Florida State's Black head football coach at the time (the first Black head coach in its history) being lynched;<sup>198</sup>

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<sup>190</sup> Lapchick, *Racist Acts 2017*, *supra* note 182.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> Lapchick, *Racist Acts 2018*, *supra* note 182.

<sup>198</sup> *Id.*; see also Chaunte'l Powell, *FSU Fan Post Stating Willie Taggart Should Be Lynched Prompts Outrage*, *Review by State Attorney*, SUN SENTINEL (Nov. 25, 2018), <https://www.sun-sentinel.com/sports/florida-state-seminoles/os-sp-fsu-willie-taggart-outrage-1126-story.html> [https://perma.cc/9X7U-RBCR].

- Bananas were left in the locker room of an Ohio high school football team and were thrown at players during the game;<sup>199</sup>
- The Cincinnati Premier Youth Basketball League ejected a team from the league after finding sexist and racist names on the back of the children's jerseys, including "coon" and "knee grow";<sup>200</sup>
- A White referee ordered a Black high school wrestler from New Jersey to either cut off his dreadlocks or forfeit the match;<sup>201</sup>
- A fan allegedly directed "disrespectful" and "racial" comments toward a Black NBA player at a Utah Jazz game;<sup>202</sup> and
- A Black professional hockey player received a racist comment on Instagram saying he should "stick to basketball."<sup>203</sup>

One commentator blames the apparent increase in racist sports incidents on "those in high political office in the U.S. and throughout the world [who] are not reprimanded for making offensive statements regarding minority groups. A lack of accountability while holding our leaders to the highest standards has emboldened many people to lash out with hateful speech and actions."<sup>204</sup> The commentator argues that "[t]his pattern has been amplified and well documented since the 2016 presidential election."<sup>205</sup>

In any event, as noted above in the previous section regarding racism in the United States in general, racism in American sports has existed throughout the country's checkered history.<sup>206</sup> Although Black people participated in organized amateur and professional sports in the United States from the late 1800s to the early 1900s in sports such as baseball, boxing, horse racing, and cycling, they suffered racial abuse from opposing players and fans spewing racial epithets, while enduring the same treatment, as well as physical attacks, from their own teammates.<sup>207</sup> Moreover, after that period ended, a new era of exclusion began in which rules "excluded Black people from organized professional and collegiate sports."<sup>208</sup> According to the noted

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<sup>199</sup> Natalie Grim, *A High School Football Team Was in Tears after Bananas Were Left in Their Locker Room*, ABC (Oct. 8, 2018), <https://abc6onyourside.com/news/local/a-high-school-football-team-was-in-tears-after-bananas-were-left-in-their-locker-room> [<https://perma.cc/2QYN-BRNF>].

<sup>200</sup> Lapchick, *Racist Acts 2018*, *supra* note 182.

<sup>201</sup> *Id.*

<sup>202</sup> Lapchick, *supra* note 181.

<sup>203</sup> *Id.*

<sup>204</sup> Lapchick, *Racist Acts 2018*, *supra* note 182.

<sup>205</sup> *Id.*

<sup>206</sup> Lapchick, *supra* note 181.

<sup>207</sup> MATTHEW J. MITTEN ET AL., *SPORTS LAW AND REGULATION* 699 (5th ed. 2019).

<sup>208</sup> *Id.*

sports and race scholar Kenneth Shropshire, “segregation of sports was the result of whites not wanting to associate with African-Americans, and whites’ belief in the inferiority of African-Americans.”<sup>209</sup>

Racial segregation in college sports included formal and informal rules of exclusion.<sup>210</sup> For instance, formal exclusion took place in the South where laws prohibited Black people from attending White universities, thus preventing Black people from playing sports for schools in the South.<sup>211</sup> Jim Crow (segregation) laws also prevented White people and Black people from interacting.<sup>212</sup> While a Texas statute prohibited White people and Black people from competing in a “boxing, sparring or wrestling contest” with each other, Atlanta maintained an ordinance that forbid amateur baseball teams “of different races from playing within *two blocks* of each other.”<sup>213</sup> Informal rules in the late nineteenth and early twentieth centuries, such as informal Jim Crow laws, involved, for example, Catholic universities denying admission to all Black people, thus prohibiting them from participating in sports for Catholic universities.<sup>214</sup> Some universities prohibited Black people from participating in athletics even if they were students.<sup>215</sup> The University of Kansas’ head of athletics in the 1930s stated, “[N]o colored man will ever have a chance as long as [I am here].”<sup>216</sup> Moreover, northern schools that did allow Black people to play college sports typically did not allow them to travel and play against southern schools, and the number of Black people that played on northern teams was often limited to one or two players.<sup>217</sup> If Black people did play in college, then they were excluded socially from the rest of campus and suffered from demeaning behavior from their own teammates and coaches, particularly as a dearth of Black teammates, faculty, and coaches existed.<sup>218</sup>

Racial segregation in professional sports mirrored the collegiate segregation.<sup>219</sup> For example, racial segregation began in the late nineteenth century in baseball when MLB prohibited Black people and dark-skinned

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<sup>209</sup> *Id.* (citing Kenneth L. Shropshire, IN BLACK AND WHITE: RACE AND SPORTS IN AMERICA 31 (1996)).

<sup>210</sup> *Id.* at 700-01.

<sup>211</sup> *Id.* at 700.

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> *Id.* at 701.

<sup>215</sup> *Id.*

<sup>216</sup> *Id.* (citing Loren Miller, *The Unrest Among College Students*, 34 CRISIS 187 (1927)).

<sup>217</sup> *Id.* at 701-02.

<sup>218</sup> *Id.* at 702.

<sup>219</sup> *Id.*

Latinos from playing, prompting Black people to create a separate entity, “the Negro Leagues,” in which they could compete.<sup>220</sup>

Reintegration of college and professional sports took place over time in the twentieth century.<sup>221</sup> The NFL, integrated from 1920 through 1934, banned Black people until 1946.<sup>222</sup> Professional basketball allowed Black people to compete up until World War I, and then a year after the NBA was formed in 1950, the Boston Celtics drafted a Black player.<sup>223</sup> In baseball, although Black people competed in MLB until the 1890s, once segregated, they did not play again in the major leagues until Jackie Robinson broke through with the Brooklyn Dodgers in 1947.<sup>224</sup> The Boston Red Sox eventually allowed a Black athlete to play in MLB, becoming the last team to integrate, in 1959.<sup>225</sup>

Racism is also evident in the limited number of Black people working in administrative and head coaching positions in sports.<sup>226</sup> Although almost 80% of NBA players are Black and nearly 70% of NFL players are minorities, there are very few Black NBA and NFL head coaches in proportion to the number of athletes.<sup>227</sup> Black people comprise only 23.3% of the head coaches in the NBA and just 9.38% of the head coaches in the NFL.<sup>228</sup> In

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<sup>220</sup> See *id.* at 702-03 (explaining how fair-skinned Latinos who were allowed to play faced derogatory, demeaning, and racist remarks and conduct); see generally WALTER T. CHAMPION, JR., *SPORTS LAW: CASES, DOCUMENTS, AND MATERIALS* 621 (2d ed. 2014) (stating how the separate Negro League was inferior to the White professional baseball league).

<sup>221</sup> Mitten, *supra* note 207, at 703.

<sup>222</sup> *Id.*

<sup>223</sup> *Id.* at 703-04.

<sup>224</sup> *Id.* at 703; Champion, *supra* note 220, at 578.

<sup>225</sup> Mitten, *supra* note 207, at 703.

<sup>226</sup> *Id.* at 705; see generally Timothy Davis, *Racism in Athletics: Subtle Yet Persistent*, 21 U. ARK. LITTLE ROCK L. REV. 881 (1999).

<sup>227</sup> RICHARD LAPCHICK, *THE 2020 RACIAL AND GENDER REPORT CARD NATIONAL FOOTBALL LEAGUE 8* (David Zimmerman et al. eds., 2020) (stating almost 70% of NFL players are people of color); see Etan Thomas, *The NBA's Coaching Dilemma*, UNDEFEATED (Oct. 23, 2020), <https://theundefeated.com/features/nba-coaching-dilemma-black-coaches-in-lead-roles/> [<https://perma.cc/DU25-MDX7>] (noting nearly 80% of the players in the NBA are Black); see Kristian Winfield, *Stephen Silas Could Just Be the Rockets' Newest Scapegoat*, N.Y. DAILY NEWS (Nov. 2, 2020), <https://www.nydailynews.com/sports/basketball/ny-stephen-silas-hired-rockets-20201029-xg6na6wvnrtdljen056w5t3ss4-story.html> [<https://perma.cc/AST2-8VHR>] (noting there were only seven Black NBA head coaches at the start of the 2020 season).

<sup>228</sup> See Winfield, *supra* note 227 (discussing the seven Black NBA head coaches at the start of the 2020 season); see Rooney II Says, *supra* note 26 (noting how there were only three Black head coaches in the NFL in the spring of 2021).

fact, of the 32 teams in the NFL, only three employ Black head coaches.<sup>229</sup> Moreover, executive positions follow the same pattern or worse: less than 11% of NBA teams employ Black CEOs/presidents, and just 12.5% of NFL teams employ Black general managers, which means only four of the 32 NFL teams employ a Black general manager.<sup>230</sup> Owners hire head coaches and CEOs/presidents/general managers in the NFL and NBA<sup>231</sup>. There are no Black majority owners in the NFL and only one in the NBA: former NBA superstar and global icon Michael Jordan.<sup>232</sup>

In college, the statistics remain similarly disappointing. In the revenue-generating sports, which have become an \$11 billion-per-year indus-

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<sup>229</sup> See *Rooney II Says*, *supra* note 26.

<sup>230</sup> Matthew J. Mitten et al., SPORTS LAW AND REGULATION 708 (5th ed. 2019); see Richard Lapchick, *NBA's Racial and Gender Report Card*, ESPN (June 17, 2019), [https://www.espn.com/nba/story/\\_/id/26995581/nba-racial-gender-report-card](https://www.espn.com/nba/story/_/id/26995581/nba-racial-gender-report-card) [<https://perma.cc/Q925-QHCN>]; RICHARD LAPCHICK, THE 2020 RACIAL AND GENDER REPORT CARD: NATIONAL BASKETBALL ASSOCIATION 7 (David Zimmerman et al. eds., 2020) (providing that less than 11% of NBA team CEOs/presidents are people of color); see also *Rooney II Says*, *supra* note 26 (stating that Terry Fontenot of the Atlanta Falcons, Brad Holmes of the Detroit Lions, Andrew Berry of the Cleveland Browns, and Chris Grier of the Miami Dolphins were the only four Black general managers in the NFL in the spring of 2021). Jason Wright became the first Black president of an NFL team in August of 2020 when the Washington Football Team hired the business consultant and former NFL running back. See Ken Belson, *Washington Hires Former Player as N.F.L.'s First Black Team President*, N.Y. TIMES (Aug. 17, 2020), <https://www.nytimes.com/2020/08/17/sports/football/washington-jason-wright-team-president.html> [<https://perma.cc/2KCB-V5N9>]. The Washington Football Team, formerly known as the Washington Redskins, changed its name after years of protests once corporate sponsors finally complained about the name and applied financial pressure to the NFL team during a summer of national racial unrest. See Jeff Kerr, *Washington Redskins Change Name: Here's a Timeline Detailing the Origins, Controversies and More*, CBS SPORTS (July 13, 2020), <https://www.cbssports.com/nfl/news/washington-redskins-name-change-heres-a-timeline-detailing-the-origins-controversies-and-more/> [<https://perma.cc/DJ9K-JYBY>].

<sup>231</sup> See Nancy Armour, Mike Freeman, & Tom Schad, *Why do some NFL teams never hire people of color as GMs and coaches and others do?*, USA TODAY (Jan. 14, 2021, 9:54 AM), <https://www.usatoday.com/story/sports/nfl/2021/01/14/nfl-coaches-best-and-worst-nfl-teams-when-hiring-people-color/6653774002/> [<https://perma.cc/S423-Q78M>]

<sup>232</sup> See Ahiza Garcia, *These Are the Only Two Owners of Color in the NFL*, CNNMONEY SPORT (May 18, 2018), <https://money.cnn.com/2018/05/18/news/nfl-nba-mlb-owners-diversity/index.html> [<https://perma.cc/C2S5-NTBU>] (noting how Michael Jordan owns the Charlotte Hornets).

try,<sup>233</sup> Black people comprise 48.5% of FBS football players and 53.2% of Division I men's college basketball players.<sup>234</sup> However, Black men represent only 10% of head coaches (13 out of 130) in the FBS and only 22.7% of men's college basketball head coaches in Division I.<sup>235</sup> Moreover, 82% of campus leadership positions, which include presidents and chancellors, athletic directors, faculty athlete representatives, and conference commissioners, are occupied by Whites.<sup>236</sup> In particular, nearly 81% of chancellors and presidents are White, a little over 83% of athletic directors are White, 82% of faculty athletic representatives are White, and 80% of conference commissioners are White.<sup>237</sup> There are only twenty-two athletic directors of color (16.9%),<sup>238</sup> and only forty Black people (thirty-one male, nine female) hold campus leadership positions.<sup>239</sup> In fact, White men hold almost 67% of the president or chancellor positions.<sup>240</sup> Much like owners in professional sports hire their head coaches and executives (and nearly every single owner is White), campus leadership hire head coaches, and the overwhelming number of these campus leadership positions are held by White males.<sup>241</sup>

Critical race theory (CRT), briefly introduced earlier in the article, recognizes, among other things, that racism reinforces the White social and economic dominance over Black people and minorities, and CRT confronts "stereotypes employed by dominant groups to justify racial subordination."<sup>242</sup> In addition, "CRT challenges traditional dominant ideologies around objectivity, meritocracy, color-blindness, race-neutrality and equal

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<sup>233</sup> Marc Edelman, *The Future of College Athlete Players Unions: Lessons Learned from Northwestern University and Potential Next Steps in the College Athletes' Rights Movement*, 38 CARDOZO L. REV. 1627, 1630-31 (2017).

<sup>234</sup> RICHARD LAPCHICK, THE 2020 RACIAL AND GENDER REPORT CARD: COLLEGE SPORT, INST. DIVERSITY & ETHICS IN SPORT 9 (Daniel Bowman et al. eds., 2021).

<sup>235</sup> *Id.* at 4.

<sup>236</sup> RICHARD LAPCHICK, THE 2020 DI FBS LEADERSHIP COLLEGE RACIAL AND GENDER REPORT CARD: THE LACK OF DIVERSITY WITHIN COLLEGIATE ATHLETIC LEADERSHIP CONTINUES, THE INSTITUTE FOR DIVERSITY AND ETHICS IN SPORT 8 (David Eichenberger et al. eds., 2021).

<sup>237</sup> *Id.* at 2.

<sup>238</sup> *Id.*

<sup>239</sup> *Id.* at 5, 8.

<sup>240</sup> *Id.* at 8.

<sup>241</sup> Richard Lapchick, *UCF Research Stirs Social Upset: White Men Dominate College Leadership Positions*, UCF TODAY (Feb. 3, 2014), <https://www.ucf.edu/news/ucf-research-stirs-social-upset-white-men-dominate-college-leadership-positions/> [<https://perma.cc/KM8D-YSV9>].

<sup>242</sup> Timothy Davis, *The Myth of the Superspade: The Persistence of Racism in College Athletics*, 22 FORDHAM URB. L.J. 615, 617 (1995).

opportunity.”<sup>243</sup> These concepts in CRT align with the different types of racism, including institutional racism and White supremacy, as well as prejudice and implicit bias, discussed in Part I.<sup>244</sup> CRT and its analysis of the different forms of racism just mentioned explain why there is a lack of Black head coaches in college and professional sports, as well as a lack of Black administrators, executives, and owners in sports; White dominance precludes participation of Black people in power positions, and Black people are thought to be inferior intellectually by Whites.<sup>245</sup> The same stereotype about intellectual inferiority prevented Black individuals from playing quarterback in football for many years because the quarterback position requires superior intellect,<sup>246</sup> but stereotyping still plays a role in how the media talks about Black athletes, including quarterbacks.<sup>247</sup> Professors Amy and Robert McCormick argue that the revenue generating sports in college athletics — football and men’s college basketball — amount to “apartheid-like systems” where White head coaches, athletic directors, school presidents, and NCAA executives profit off of the labor of young Black athletes.<sup>248</sup>

Whether one believes racism in sports has increased recently in America or not, racism continues to exist throughout sports and society in

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<sup>243</sup> KEVIN HYLTON, “RACE” AND SPORT: CRITICAL RACE THEORY 31 (2008).

<sup>244</sup> See discussion *supra* Part I.

<sup>245</sup> See Kwame Agyemang & Joshua DeLorme, *Examining the Dearth of Black Head Coaches at the NCAA Football Bowl Subdivision Level: A Critical Race Theory and Social Dominance Theory Analysis*, 3 J. ISSUES IN INTERCOLLEGIATE ATHLETICS, 35, 35–52 (2010) (discussing how critical race theory explains the lack of Black head coaches in college).

<sup>246</sup> See Davis, *supra* note 242, at 659–60 (explaining “[s]tacking involves the assignment of certain individuals to specific athletic positions based on race or ethnicity rather than ability,” such as Black people playing positions requiring athletes who can run fast and jump high while Whites play positions that require intellect including quarterback and pitcher); Walter Champion, *The O.J. Trial as a Metaphor for Racism in Sports*, 33 T. MARSHALL L. REV. 157, 160 (Fall 2007) (noting implied assertion that Black athletes are “intellectually or ethically inferior”).

<sup>247</sup> See Andrew C. Billings, *Talking Around Race: Stereotypes, Media, and the Twenty-First Century Collegiate Athlete*, 2 WAKE FOREST J.L. & POL’Y 199, 211–12 (2012) (discussing how intellect and work ethic are attributed to reasons for White athletes’ success, but Black athletes’ success hinges on their athletic prowess, such as NFL quarterback Cam Newton’s “fleet feet”).

<sup>248</sup> Amy Christian McCormick & Robert A. McCormick, *Race and Interest Convergence in NCAA Sports*, 2 WAKE FOREST J.L. & POL’Y 17, 17–19, 24–25 (2012).

the United States.<sup>249</sup> The next section discusses how racism develops and how to combat it.

#### IV. THE DISEASE OF RACISM: HOW IT STARTS AND HOW TO CURE

“No one is born hating another person because of the color of his skin or his background or his religion. People must learn to hate, and if they can learn to hate, they can be taught to love, for love comes more naturally to the human heart than its opposite.” — Nelson Mandela<sup>250</sup>

This section discusses how racism can begin at a young age, as early as four years old.<sup>251</sup> This section also provides some background on how to address racism.

##### A. *How Racism Develops*

Racist views and racial bias can start as early as four years old.<sup>252</sup> Some researchers have found that there is “an absence of correlation between children’s attitudes and those expressed by their parents,” meaning that children can develop racist views *without* direct inculcation by their parents.<sup>253</sup> In one study, a White three-year-old answered that it was the Black child who would get reprimanded by the teacher or who threw garbage on the floor simply because, according to the responding child, the hypothetical child was Black, while it was the White child who would win the prize or the game because the hypothetical child was White, again according to the respondent.<sup>254</sup> The young toddler’s mother, a White self-identifying liberal, watched in horror as her daughter provided these responses.<sup>255</sup> “Despite the

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<sup>249</sup> See Nicole Chavez, *2020: The Year America Confronted Racism*, CNN, <https://www.cnn.com/interactive/2020/12/us/america-racism-2020/> [https://perma.cc/W534-XN9B] (last visited Apr. 23, 2021).

<sup>250</sup> *Nelson Mandela’s Most Inspirational Quotes*, ABC NEWS (Dec. 5, 2013), <https://abcnews.go.com/International/nelson-mandelas-inspirational-quotes/story?id=8879848> [https://perma.cc/B6TK-2HY4].

<sup>251</sup> Phyllis A. Katz, *Racists or Tolerant Multiculturalists? How Do They Begin?*, 58 AM. PSYCH. 897 (2003); see Meadows-Fernandez, *supra* note 38 (citing a University of Toronto study indicating children develop implicit bias regarding race as young as four years old).

<sup>252</sup> *Id.*

<sup>253</sup> *Id.*

<sup>254</sup> *Id.*

<sup>255</sup> *Id.*

best efforts of parents/teachers/guardians, children still learn prejudice.”<sup>256</sup> Others argue that parents may or may not directly teach their children to be racist, but “[c]hildren[']s opinions are influenced by what the people around them think, do and say.”<sup>257</sup> Indeed, some argue that prejudice “does not come from children’s awareness of differences among people, but from their perception of negative attitudes about those differences.”<sup>258</sup>

Other reasons why people may become racist include the following: adopting racist views of people they know; failure to spend time with people of other races and culture while spending time only with people who share their background and culture; stereotyping and judging others quickly; and blaming others who are different for one’s own problems.<sup>259</sup> Phrases such as, “[T]hose people take our jobs” or “they get government handouts all the time” exemplify some of those racist underpinnings.<sup>260</sup> Moreover, some argue racism stems from biology as humans innately possess an “us vs. them” predisposition.<sup>261</sup>

Some also argue that racism is a social construct in which “racial construction depicted Whites as free, civilized, and citizens, while persons of color were portrayed as savages, violent, promiscuous, slaves, and foreigners.”<sup>262</sup> Similarly, some argue that racism is based on the “natural state of things” such that “socially constructed ideologies about identities based upon biology and phenotype are created to justify the establishment and maintenance of a racist status quo.”<sup>263</sup> And some argue racism amounts to a “desire of Whites to protect the white supremacist order in the United States” that allows Whites to maintain social, economic, and political dominance in society.<sup>264</sup>

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<sup>256</sup> *How Do Children Learn Prejudice?*, ANTI-DEFAMATION LEAGUE (2013), <https://www.adl.org/sites/default/files/documents/assets/pdf/education-outreach/How-Do-Children-Learn-Prejudice.pdf> [<https://perma.cc/7QMN-KGAD>].

<sup>257</sup> *Id.*

<sup>258</sup> *Id.*

<sup>259</sup> *Racism*, AUSTL. HUMAN RIGHTS COMM’N, <https://humanrights.gov.au/quick-guide/12083> [<https://perma.cc/Y22N-QPNT>].

<sup>260</sup> *Id.*

<sup>261</sup> Wan & Kaplan, *supra* note 53.

<sup>262</sup> Hutchinson, *supra* note 53, at 29-30.

<sup>263</sup> Jackson, *supra* note 62, at 167.

<sup>264</sup> *Id.* at 168; see Strand, *supra* note 47, at 777 (“Through individual perceptions and interactions, implicit bias and White privilege affect institutional and social system culture.”); see also Faraz Shahlaei, *Soccer Stadiums, Where International Law, Culture and Racism Collide*, 7 ARIZ. ST. SPORTS & ENT. L.J. 291, 322 (2018) (“Racism is not about objective characteristics, but is about relationships of domination and subordination, about hatred of the ‘Other’ in defense of ‘self,’ perpetrated and

### B. How Racism Can Be Countered

There are several ways to fight racism: education about the history of racism and its effects on society and individuals; sharing stories and experiences amongst different races; and teaching cultural competency.

The first step in education requires talking about racism.<sup>265</sup> As Justice Sotomayor stated, “The way to stop discrimination on the basis of race is to speak openly and candidly on the subject of race, and to apply the Constitution with eyes open to the unfortunate effects of centuries of racial discrimination.”<sup>266</sup> To build tolerance, speaking of racism must include discussing the roots and history of racism.<sup>267</sup> Moreover, telling stories to people of different races can help create bonds and bridges while educating others about their own race and culture.<sup>268</sup>

Another significant way to fight racism involves generating meaningful interactions between groups of different races.<sup>269</sup> Intergroup contact and cooperation, where different races work together towards some goal, can be effective to reduce prejudice.<sup>270</sup> People of different races must get to know each other to break down barriers and learn what they have in common.<sup>271</sup>

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apparently legitimized through images of the ‘Other’ as inferior, abhorrent, even sub-human.”).

<sup>265</sup> Erika Wilson, *The Great American Dilemma: Law and the Intransigence of Racism*, 20 CUNY L. REV. 513, 513–14 (2017); see Gerald A. Foster, *American Slavery: The Complete Story*, 2 CARDOZO PUB. L. POL’Y & ETHICS J. 401, 406 (2004) (stating that “[i]f we are to progress in the global and diverse political economy of the twenty-first century, we must expand our discussions on slavery to heal our wounds of race and the malignancy of racism”); see also Jamie L. Wacks, *A Proposal for Community-Based Racial Reconciliation in the United States Through Personal Stories*, 7 VA. J. SOC. POL’Y & L. 195, 212 (2000) (“Society’s and the individual perpetrator’s failure to acknowledge the reality of th[e insidious] trauma [inflicted by both unconscious and conscious racism] makes it difficult for the victim to repair the damage to her dignity.”).

<sup>266</sup> Gene Demby, *Two Justices Debate the Doctrine of Colorblindness*, NPR (Apr. 23, 2014), <https://www.npr.org/sections/codeswitch/2014/04/23/306173835/two-justices-debate-the-doctrine-of-colorblindness> [https://perma.cc/T2UU-UT86].

<sup>267</sup> See Shahlaei, *supra* note 264, at 322.

<sup>268</sup> See Strand, *supra* note 47, at 780.

<sup>269</sup> See A.D. Benner, et. al, *Racial/Ethnic Discrimination and Well-Being During Adolescence: A Meta-Analytic Review*, 73 AM. PSYCH. 855 (2018); see Strand, *supra* note 47, at 765, 782 (advocating for civility, which includes “people working together to tackle complex civic challenges,” by Whites and Black people to “forg[e] relationships across racial lines”).

<sup>270</sup> See *Black peopleid*.

<sup>271</sup> *Quick Guide: Racism*, AUSTL. HUM. RIGHTS COMM’N, <https://humanrights.gov.au/quick-guide/12083> [https://perma.cc/Y22N-QPNT] (last vis-

Different races need contact with each other to unlearn implicit biases and overcome deep-rooted prejudices.<sup>272</sup> The costs of programs to provide opportunities for different races to interact may be high, but “the economic and social costs of continuing to ignore adolescents’ experiences of racial/ethnic discrimination are even higher.”<sup>273</sup>

Another way to battle racism includes giving opportunities to minorities in schools and the workplace. “Affirmative action is an important stratum for enhancing genuine equality and respect for disadvantaged people in the United States, especially minorities and women.”<sup>274</sup> The concept of affirmative action, though, remains a contentious issue politically<sup>275</sup> and legally because some people perceive it as guaranteeing spots to minorities who are unqualified or less qualified than Whites.<sup>276</sup> The Rooney Rule requires NFL teams to interview at least two minority candidates before hiring a head coach, but the team need not hire a minority candidate.<sup>277</sup> This approach of simply guaranteeing interviews as opposed to ensuring hiring of minorities may be more palatable to those who resist affirmative action, but its effectiveness can be questioned as discussed below in Part IV of this article.<sup>278</sup>

Yet another way to address racism includes teaching cultural competence. “Cultural competence can be broadly defined as the ability to ‘relate

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ited May 25, 2020); see Sheryll Cashin, *Shall We Overcome? “Post-Racialism” and Inclusion in the 21st Century*, 1 ALA. C.R. & C.L.L. REV. 31 (2011) (“Research suggests that if you know someone from another ethnic or racial group personally you are less likely to see that group in a negative light.”); see also *Milliken v. Bradley*, 418 U.S. 717, 783 (1974) (Marshall, J., dissenting) (“[U]nless our children begin to learn together, there is little hope that our people will ever learn to live together.”).

<sup>272</sup> Wan & Kaplan, *supra* note 53.

<sup>273</sup> See Benner et al., *supra* note 270, at 873.

<sup>274</sup> See Winston P. Nagan, *Reflections on Racism and World Order*, 14 U. FLA. J.L. & PUB. POL’Y 1, 7 (2002).

<sup>275</sup> Nikki Graf, *Most Americans Say Colleges Should Not Consider Race or Ethnicity in Admissions*, PEW RSCH. CTR. (Feb. 25, 2019), <https://www.pewresearch.org/fact-tank/2019/02/25/most-americans-say-colleges-should-not-consider-race-or-ethnicity-in-admissions/> [<https://perma.cc/C8VV-N4LV>].

<sup>276</sup> See Matt Apuzzo et al., *Trump Officials Reverse Obama’s Policy on Affirmative Action in Schools*, N.Y. TIMES (July 3, 2018), <https://www.nytimes.com/2018/07/03/us/politics/trump-affirmative-action-race-schools.html> [<https://perma.cc/XS7Z-B6N3>].

<sup>277</sup> See Dan Graziano, *NFL Approves Rooney Rule Changes, Tables Minority Hiring Incentives*, ESPN (May 19, 2020), [https://www.espn.com/nfl/story/\\_id/29194925/nfl-approves-rooney-rule-changes-tables-minority-hiring-incentives](https://www.espn.com/nfl/story/_id/29194925/nfl-approves-rooney-rule-changes-tables-minority-hiring-incentives) [<https://perma.cc/LU3T-SLTN>].

<sup>278</sup> See discussion *infra* Part IV.

to others comfortably, respectfully, and productively.’”<sup>279</sup> In the law, cultural competency serves as one of the traits required for a successful lawyer under the doctrine of professional identity formation.<sup>280</sup> Professional identity formation educates “law students and lawyers about what characteristics employers want, as well as how law students and lawyers must develop certain traits to be successful lawyers.”<sup>281</sup> At the lowest level of cultural competency, an individual believes their own culture is the best, they only recognize broad categories of culture, and they believe people of other cultures do not have a place or role in their community.<sup>282</sup> At the highest level, a culturally competent person does the following: “sees all people as culturally unique because we each create our own cultural and personal identities, based on the more general cultural contexts and patterns that we experience;” brings together their different cultures “into a positive whole;” “use[s] power in culturally appropriate ways;” seeks and “create[s] opportunities for multicultural interactions;” and “support[s] others in creating their own multicultural or intersectional identities.”<sup>283</sup> Professional identity formation seeks to teach and assess cultural competency in law students, who are typically young adults, but children can also be taught cultural competency.<sup>284</sup>

<sup>279</sup> See Neil Hamilton & Jeff Maleska, *Helping Students Develop Affirmative Evidence of Cross-Cultural Competency*, 19 SCHOLAR: ST. MARY’S L. REV. & SOC. JUST. 187, 197 (2017) (citing Ritu Bhasin, *Cultural Competence: An Essential Skill for Success in an Increasingly Diverse World*, LAWPRO MAG. (Sep. 2014), 9, 10, available at [http://practicepro.ca/LawPROmag/Cul-tural\\_Competence\\_Bhasin.pdf](http://practicepro.ca/LawPROmag/Cul-tural_Competence_Bhasin.pdf)) [<https://perma.cc/FZG8-8NZM>].

<sup>280</sup> Aastha Madaan, *Cultural Competency and the Practice of Law in the 21st Century*, AM. BAR ASS’N (Mar. 1, 2017), [https://www.americanbar.org/groups/real\\_property\\_trust\\_estate/publications/probate-property-magazine/2016/march\\_april\\_2016/2016\\_aba\\_rpte\\_pp\\_v30\\_2\\_article\\_madaan\\_cultural\\_competency\\_and\\_the\\_practice\\_of\\_law\\_in\\_the\\_21st\\_century/](https://www.americanbar.org/groups/real_property_trust_estate/publications/probate-property-magazine/2016/march_april_2016/2016_aba_rpte_pp_v30_2_article_madaan_cultural_competency_and_the_practice_of_law_in_the_21st_century/) [<https://perma.cc/6VR8-JSAN>].

<sup>281</sup> See Martin J. Katz, *Teaching Professional Identity in Law School*, 42 COLO. LAW. 45 (2013).

<sup>282</sup> See HOLLOWGRAN CTR., UNIV. OF ST. THOMAS, PROFESSIONAL IDENTITY: CULTURAL COMPETENCE DEVELOPMENT CONTINUUM (2019), <https://www.stthom.as.edu/media/hollorancenter/pdf/FINALCulturalCompetenceDevelopmentalRubricMarch2019.pdf> [<https://perma.cc/76W4-N67D>].

<sup>283</sup> See *id.*

<sup>284</sup> See, e.g., Christy Tirrell-Corbin, *How to Teach Children About Cultural Awareness and Diversity*, PBS (Aug. 4, 2015), <https://www.pbs.org/parents/thrive/how-to-teach-children-about-cultural-awareness-and-diversity> [<https://perma.cc/NL7W-BNU8>]; CAROLYN WEBSTER-STRATTON, HOW TO PROMOTE CHILDREN’S SOCIAL AND EMOTIONAL COMPETENCE xii (1999) (emphasizing behavioral health research supports early intervention in children to effectively promote cultural competency development).

Celebrating other races and cultures through reading serves as an effective method to teach cultural competency to children, but “actual experiences have the most profound influence on what children think and believe.”<sup>285</sup> For example, parents can “[e]ncourage cross-racial/ethnic/religious/ability friendships; [e]xpose [. . .] children to foods from different cultures; [a]ttend different events/festivals that celebrate a particular ethnic group, holiday or personal accomplishment, like the Special Olympics, the Chinese New Year or Holi, the Hindu festival of colors;” or patron “children’s or history museums[, which] house an abundance of artifacts from different cultures and countries;” and “[w]atch movies set in other cultures.”<sup>286</sup> Finally, parents provide the most powerful role models to help their children become culturally competent.<sup>287</sup> “Children become culturally sensitive and respectful when they see adults who are culturally sensitive and respectful, and who take a stand against bias, racism or insensitivity.”<sup>288</sup> Focusing on the strengths of children from other cultures helps provide a positive image of other cultures.<sup>289</sup>

The phrase “colorblind” comes up quite frequently when talking about racism.<sup>290</sup> When racism is defined too simplistically as “prejudice, bias, or discrimination based on perceptions of skin color,” then people believe that if they act colorblind and do not acknowledge someone’s skin color, then somehow they are not racist and racism will no longer exist.<sup>291</sup> “Colorblindness, as employed in contemporary society, ignores race without first eradicating racism.”<sup>292</sup> Ignoring race via the concept of colorblindness does not make racism obsolete, but “in fact renders racism indestructible.”<sup>293</sup> Someone who is colorblind may fail to recognize how racism remains embedded in this society and how it affects institutions and socioeconomic outcomes.<sup>294</sup> That colorblind person may also (1) ignore the differences that make others special and (2) lack appreciation for how those differences shape

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<sup>285</sup> See Tirrell-Corbin, *supra* note 284.

<sup>286</sup> See *id.*

<sup>287</sup> See, e.g., *id.*; WEBSTER-STRATTON, *supra* note 284, at 6 (discussing the need to involve families in the development of children’s cultural backgrounds).

<sup>288</sup> See Tirrell-Corbin, *supra* note 284.

<sup>289</sup> See *id.*

<sup>290</sup> See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE TIME OF COLORBLINDNESS* 298-303 (2020).

<sup>291</sup> See Jackson, *supra* note 62, at 166.

<sup>292</sup> See *id.*

<sup>293</sup> See *id.*

<sup>294</sup> See Helen A. Neville et al., *The Myth of Racial Color Blindness*, AM. PSYCH. ASS’N, <https://www.apa.org/pubs/books/The-Myth-of-Racial-Color-Blindness-Intro-Sample.pdf> [<https://perma.cc/9SWS-U4YD>] (last visited Apr. 23, 2021).

the way others think, interact, and respond to people, including the negative effects racism imposes on the structure of society and people's own implicit biases.<sup>295</sup> When individuals start to see and appreciate differences in others, then they can better understand, communicate, and interact with others who may be different than them in some or many respects.<sup>296</sup>

One of the modern leading commentators on race, Ibram Kendi, argues that color blindness and the notion that someone is “not racist” are equivalent because “the colorblind individual, by ostensibly failing to see race, fails to see racism and falls into racist passivity,” like someone who is “not racist.”<sup>297</sup> According to Kendi, someone is either racist or antiracist—there is no in-between such as when some people claim to be “not racist.”<sup>298</sup> Someone is racist if they “endorse a racial hierarchy,” “believe[ ] problems are rooted in groups of people,” or “allow[ ] racial inequities to persevere.”<sup>299</sup> Under Kendi's framework, someone is antiracist if they endorse racial equity, “locate[ ] the roots of problems in power and policies,” or “confront[ ] racial inequities.”<sup>300</sup> Sports can also attempt to break down barriers and fight racism as discussed in the next section of the article.

## V. CURRENT EFFORTS AT TAKING A SHOT AT RACISM THROUGH SPORTS

This section describes the various efforts currently underway in sports to combat racism. Those efforts include the work of organizations such as RISE and professional sports leagues, a general effort to punish overt racism, and the well-known Rooney Rule. In the United States, one relatively new entity, the Ross Initiative in Sports for Equality (RISE), stands out for its efforts to use sports to combat racism through education, engagement, and empowerment.<sup>301</sup> Also, sports typically punish racist acts, but rules or reactive behavior that punish racist acts in sports get at the symptom, not the

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<sup>295</sup> See *id.*

<sup>296</sup> See *id.*

<sup>297</sup> See ANTIRACIST, *supra* note 57, at 10; *but cf.* Weeden, *supra* note 14, at 134 (espousing the advantages of a color-blind society and the dangers of race-preference decisions and reasoning by judges and the government as evinced by, among other things, the judicial opinion in the Dred Scott case).

<sup>298</sup> ANTIRACIST, *supra* note 57, at 9.

<sup>299</sup> *Id.*

<sup>300</sup> *Id.*

<sup>301</sup> See *Who We Are*, ROSS INITIATIVE IN SPORTS FOR EQUALITY (RISE) (2020), <https://risetowin.org/who-we-are/index.html#> [<https://perma.cc/RQ3H-Z4FU>].

disease.<sup>302</sup> The Rooney Rule, discussed in detail below, provides another approach to fighting racism in sports, but many are still skeptical of the rule itself.<sup>303</sup> This section addresses these and several other current efforts to fight racism.

### A. *The RISE Model*

NFL team owner of the Miami Dolphins and Wayne State School of Law alumnus Stephen Ross founded RISE, which seeks to “educate[ ] and empower[ ] the sports community to eliminate racial discrimination, champion social justice and improve race relations.”<sup>304</sup> RISE’s efforts fall into three categories: educate, empower, and engage.<sup>305</sup>

The education component includes a multifaceted approach with an interactive curriculum. For instance, it includes the RISE Leadership Program, which “increases an understanding of racial equity and builds cultural competence” by giving its constituents—professional, collegiate and school-aged athletes, coaches, and sports administrators—“the tools to be leaders in addressing matters of racism, prejudice, diversity and inclusion.”<sup>306</sup> RISE helps provide the skills and safe spaces to engage in difficult discussions about “identity, implicit bias, racial ideology and athlete activism” while “teach[ing] skills such as perspective taking, empathy, conflict resolution and leadership.”<sup>307</sup>

RISE also provides multi-week leadership programs for youth and coaches to play and learn together through experiential learning curriculum and sports. “These programs offer opportunities to have important and often

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<sup>302</sup> See Specht, *supra* note 38, at 306 (advocating that “the public and private condemnation that follows displays of racism” serves as a very “effective tool to change minds”).

<sup>303</sup> See, e.g., *Rooney II Says*, *supra* note 26; Rashad D. Grove, *Eight Reasons Why the NFL Should Kill the Rooney Rule & Update Its Policy on Hiring Black Coaches*, OKAYPLAYER (Jan. 8, 2020), <https://www.okayplayer.com/sports/rooney-rule-nfl-statistics-black-coaches.html> [<https://perma.cc/2ZDC-QHF5>]; see also Bryant Interview, *supra* note 27.

<sup>304</sup> See *Mission*, ROSS INITIATIVE IN SPORTS FOR EQUALITY, <https://risetowin.org/who-we-are/index.html#mission> [<https://perma.cc/KL58-ETXS>].

<sup>305</sup> See *What We Do*, ROSS INITIATIVE IN SPORTS FOR EQUALITY, <https://risetowin.org/who-we-are/index.html#> [<https://perma.cc/RQ3H-Z4FU>] (last visited May 30, 2020).

<sup>306</sup> See *How We Educate*, ROSS INITIATIVE IN SPORTS FOR EQUALITY, <https://risetowin.org/what-we-do/educate/index.html> [<https://perma.cc/U5QS-UG36>] (last visited May 30, 2020).

<sup>307</sup> See *id.*

difficult conversations about race, perceptions and stereotypes.”<sup>308</sup> RISE has worked with the NBA, NFL, and NHL teams, along with community organizations such as Boys & Girls Clubs and Police Athletic Leagues, to provide these multi-week programs in cities across the nation, including Baltimore, Chicago, Detroit, Los Angeles, Miami, New Orleans, New York and Tampa.<sup>309</sup> Many of these programs allow “local youth and law enforcement to break down barriers, build trust and strengthen relations” by playing sports together and learning about each other with “leadership activities focused on identity and diversity, empathy and conflict resolution.”<sup>310</sup> The interaction and bonds formed between participants during these events have the ability to change lives. For instance, a Black female teen, distrusting of police before the program, and a police officer created such a strong bond that it lasted well beyond the ten weeks. Their experience with RISE resulted in, among other things, the police officer supporting the teen in her personal life and becoming a part of the teen’s life—e.g., the police officer paid for the teen’s sweet sixteen party.<sup>311</sup>

Moreover, RISE created its Digital Learning Series, which teaches students, athletes, coaches, and fans cultural competency and how to be racial equity advocates in an interactive, web-based platform.<sup>312</sup> “The series features blogs, videos, podcasts, live chats and other interactive games.”<sup>313</sup> Topics covered thus far on the digital learning series include: (1) Racism; (2) Sports as a Vehicle for Change; (3) Privilege; (4) Leadership; and (5) Equity and Equality.<sup>314</sup> RISE also offers additional educational resources in the form of modules that teach concepts with activities. The modules available online cover the following topics: (1) understanding our identities; (2) diversity concepts; (3) equality vs. equity; (4) sports as a vehicle for social change; (5) social media; (6) building community; (7) inclusion, exclusion, and racism;

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<sup>308</sup> See *Multi-Week Leadership Programs*, ROSS INITIATIVE IN SPORTS FOR EQUALITY, <https://risetowin.org/what-we-do/educate/index.html#multi-week-leadership> [<https://perma.cc/3WN9-W433>] (last visited May 30, 2020).

<sup>309</sup> See *Leadership Workshops & Roundtables*, ROSS INITIATIVE IN SPORTS FOR EQUALITY, <https://risetowin.org/what-we-do/educate/index.html#leadership-workshops-roundtables> [<https://perma.cc/34ML-G229>] (last visited Mar. 9, 2021).

<sup>310</sup> See *id.*

<sup>311</sup> See Zoom Interview with Dr. Collin Williams, Senior Director of Curriculum for RISE (May 28, 2020) (on file with the author) [hereinafter Dr. Williams Interview].

<sup>312</sup> See *RISE Digital Learning Series*, ROSS INITIATIVE IN SPORTS FOR EQUALITY (RISE), <https://risetowin.org/digitalllearning/index.html> [<https://perma.cc/K28S-6HNW>] (last visited Mar. 9, 2021).

<sup>313</sup> See *id.*

<sup>314</sup> See *id.*

(8) racial imagery; (9) understanding power; and (10) practicing empathy.<sup>315</sup> Finally, the education component also includes reports on athletes' quest for social justice and athlete activism.<sup>316</sup>

The second category of RISE's approach is empowering the sports community, which includes "athletes, coaches, and sports administrators at all levels," by giving them the necessary tools to battle racism and seek social justice.<sup>317</sup> RISE accomplishes this task by "creat[ing] unique opportunities for athletes, coaches and staff to learn and amplify their voice to make a difference as effective advocates."<sup>318</sup> For instance, RISE puts on leadership and sports advocacy workshops for former and current athletes to learn how to be social justice advocates by teaching them the history, knowledge, skills, and strategies to do so.<sup>319</sup> RISE also hosts "town hall and round table series [. . .] to convene [. . .] athletes, students, coaches, staff, community leaders and law enforcement, to discuss ways they can create positive social change in respect to race relations, inclusivity and social justice."<sup>320</sup> RISE also serves as a member of the Diversity and Inclusion Sports Consortium (DISC), which facilitates "meaningful, thought-provoking and open dialogue" amongst its members," and members create and share "best practices for diversity and inclusion efforts in the sports industry."<sup>321</sup>

The final approach of RISE involves engaging, which occurs through RISE's Champions of Change. "Champions of Change takes [college and professional sports] fans on a multi-sensory journey designed to educate, evoke empathy and inspire action," which includes "learning about the intersection of sport and society through [RISE's] interactive timeline [and] hearing personal stories of athlete experiences with racism."<sup>322</sup> Engagement

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<sup>315</sup> See *Resources*, ROSS INITIATIVE IN SPORTS FOR EQUALITY (RISE), <https://risetowin.org/what-we-do/educate/index.html#resources> [<https://perma.cc/K8BM-KJSX>] (last visited May 30, 2020).

<sup>316</sup> See *id.*

<sup>317</sup> *How We Empower*, ROSS INITIATIVE IN SPORTS FOR EQUALITY (RISE), <https://risetowin.org/what-we-do/empower/index.html> [<https://perma.cc/WMC8-PVHE>] (last visited Mar. 9, 2021).

<sup>318</sup> See *id.*

<sup>319</sup> See *Leadership & Sports Advocacy Workshops*, ROSS INITIATIVE IN SPORTS FOR EQUALITY (RISE), <https://risetowin.org/what-we-do/empower/leadership-and-sports-advocacy-workshops/index.html> [<https://perma.cc/H5UZ-P528>] (last visited Mar. 9, 2021).

<sup>320</sup> See *How We Empower*, *supra* note 317.

<sup>321</sup> See *Diversity & Inclusion Sports Consortium (DISC)*, ROSS INITIATIVE IN SPORTS FOR EQUALITY (RISE), <https://risetowin.org/what-we-do/empower/index.html#disc> [<https://perma.cc/CCX5-BU65>] (last visited Mar. 9, 2021).

<sup>322</sup> See *What We Do*, *supra* note 305.

also encompasses RISE's "Pledge to End Racism," which states, "I PLEDGE to treat everyone with respect and dignity. I will not tolerate racism or discrimination of any kind. I will speak out, RISE up and be a Champion of Change."<sup>323</sup>

RISE works with most of the largest sports organizations and sports media entities in the country, including the NBA (National Basketball Association), NFL (National Football League), MLB (Major League Baseball), NHL (National Hockey League), MLS (Major League Soccer), NASCAR, the NCAA (the governing body of college athletics), PGA (Professional Golfers' Association of America), USTA (United States Tennis Association), USATF (USA Track & Field), AVP (Association of Volleyball Professionals), ESPN, CBS Sports, Turner Sports, NBC Sports Group, and Fox Sports.<sup>324</sup>

RISE's programs focus on athletes in middle school, high school, college, and the professional leagues, as well as coaches in those ranks (some of whom are also teachers).<sup>325</sup> RISE works with a variety of sports in addition to those entities with which it partners and their respective sports, including swimming and lacrosse.<sup>326</sup>

Battling racism means addressing it head-on, which includes increasing dialogue about racism.<sup>327</sup> RISE's programs address racism directly by providing safe environments for tough discussions about race, privilege, power, empathy, diversity, and all the related concepts, to allow participants to learn and grow.<sup>328</sup>

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<sup>323</sup> See *Take Action*, ROSS INITIATIVE IN SPORTS FOR EQUALITY (RISE), <https://risetowin.org/take-action/index.html> [<https://perma.cc/7YMP-BLZV>] (last visited Mar. 9, 2021).

<sup>324</sup> See *Mission*, ROSS INITIATIVE IN SPORTS FOR EQUALITY (RISE), <https://risetowin.org/who-we-are/index.html#mission> [<https://perma.cc/KL58-ETXS>] (last visited Mar. 9, 2021).

<sup>325</sup> Zoom Interview with Scott Koening, Director of Programs for RISE (May 28, 2020) (on file with the author) [hereinafter Koening Interview].

<sup>326</sup> See *id.*

<sup>327</sup> See Nick J. Sciallo, *Richard Sherman, Rhetoric, and Racial Animus in the Rebirth of the Bogeyman Myth*, 37 HASTINGS COMM. & ENT. L.J. 201, 222, 228–229 (2015) (stating that society must admit racism exists, popular culture manifests racism, and those popular manifestations of racism have historical roots).

<sup>328</sup> See Dr. Williams Interview, *supra* note 311.

### B. Professional Leagues' Efforts

The major sports leagues in the United States each employ a diversity and inclusion or social justice arm.<sup>329</sup> For example, the Inspire Change campaign by the NFL promotes and supports programs that seek to bridge the education and economic gaps between underserved communities, improve the relationship between police and underserved communities, and to improve the criminal justice system.<sup>330</sup> Events supported by the effort include “social justice-related events during the Pro Bowl and Super Bowl including events with local law enforcement and RISE”;<sup>331</sup> nationwide programming that includes ads on television and social media;<sup>332</sup> community unity summits held at NFL team facilities or hosted by NFL players; local mentoring of at-risk youth by players, team staff, and executives; community gatherings with players and police; financial contributions to underserved schools; and funding for curriculum on African-American history.<sup>333</sup>

NBA Voices serves as the NBA’s social justice and diversity/inclusion arm.<sup>334</sup> NBA Voices involves “leading community conversations, supporting a network of community partners and amplifying the voices of people and organizations who are making a difference.”<sup>335</sup> NBA Voices accomplishes these goals through several programs, including the NBA Mentoring program, Building Bridges, and Community Conversations.<sup>336</sup> NBA’s Mentoring program “encourage[s] Americans to become mentors using PSAs, grassroots events, ticket donations and online organizing.”<sup>337</sup>

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<sup>329</sup> See, e.g., *Our Philosophy*, MLB, <https://www.mlb.com/diversity-and-inclusion> [<https://perma.cc/RH7S-SEQZ>] (last visited Mar. 9, 2021).

<sup>330</sup> See *NFL Launches Inspire Change, Further Advancing National Conversation, Progress on Social Justice*, NFL (Mar. 9, 2021, 10:00 PM), <https://nflcommunications.com/Pages/NFL-LAUNCHES-INSPIRE-CHANGE,-FURTHER-ADVANCING-NATIONAL-CONVERSATION,-PROGRESS-ON-SOCIAL-JUSTICE-.aspx> [<https://perma.cc/5PQQ-QKJE>] [hereinafter *NFL Launches*].

<sup>331</sup> See *The NFL’s Inspire Change Initiative Showcases How the Players, Owners and The League Work Together to Create Positive Change in Communities Across America*, NFL (Mar. 9, 2021, 10:00 PM), <https://operations.nfl.com/football-ops/economic-social-impact/inspire-change/> [<https://perma.cc/WAA2-73SC>] [hereinafter *Inspire Change*].

<sup>332</sup> See *NFL Launches*, *supra* note 330.

<sup>333</sup> See, e.g., *id.*; *Inspire Change*, *supra* note 331.

<sup>334</sup> See *NBA Voices*, NBA, <https://voices.nba.com> [<https://perma.cc/K9U6-Z3HY>] (last visited June 1, 2020).

<sup>335</sup> See *id.*

<sup>336</sup> See *id.*

<sup>337</sup> See *Mentoring*, NBA, <https://voices.nba.com/mentoring/> [<https://perma.cc/QY4B-B6KM>] (last visited Mar. 9, 2021).

The NBA's Building Bridges program, discussed above as a part of RISE's multi-week programs, entails "community basketball tournaments, a 10-week basketball-based leadership curriculum, and other basketball programs. . .to break down barriers, bring people together and develop important bonds of trust between young people, mentors, community leaders & law enforcement."<sup>338</sup> Along with RISE, the NBA partners with Under Armour to create these programs.<sup>339</sup> Building Bridges Through Basketball "helps kids develop the skills they need to succeed on and off the court through mentorship and guidance from local police officers."<sup>340</sup> This program can foster connection between both the community and police and also the youth participants themselves.<sup>341</sup> Moreover, NBA's Community Conversations program provides "opportunities for young people, parents, local leaders and members of law enforcement to sit down and engage in candid dialogue about the challenges we face and our shared responsibility to create change."<sup>342</sup>

The NBA also maintains a commitment to diversity in hiring. To that end, the NBA trains those who hire for the NBA on best practices for inclusive recruiting and hiring.<sup>343</sup> The NBA works with various organizations including, but not limited to, the National Black MBA Association and the Thurgood Marshall College Fund, to reach more minority candidates.<sup>344</sup>

The WNBA has quietly become the standard of social justice and spearheaded the way for other professional sports leagues to push for social justice reform.<sup>345</sup> The WNBA's unified efforts to fight racial and social in-

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<sup>338</sup> *Building Bridges Through Basketball*, NBA, <https://voices.nba.com/building-bridges-through-basketball/> [<https://perma.cc/GX7B-D46R>] (last visited Mar. 9, 2021).

<sup>339</sup> *See id.*

<sup>340</sup> *See Under Armour, Building Bridges Through Basketball — Creating Community Through Sports*, YOUTUBE (July 10, 2019), <https://www.youtube.com/watch?v=PGXdX3Au94U> [<https://perma.cc/UB2S-B7AZ>].

<sup>341</sup> *See id.* (showing a Lebanese American high-school aged participant feeling accepted in the community).

<sup>342</sup> *See NBA Voices, Conversations*, NBA, <https://voices.nba.com/community-conversations/> [<https://perma.cc/84L7-FBCL>] (last visited Mar. 9, 2021).

<sup>343</sup> *See NBA Diversity and Inclusion, Recruiting and Development*, NBA, <https://inclusion.nba.com/recruiting-and-development/> [<https://perma.cc/9U4N-4FZG>] (last visited Mar. 9, 2021).

<sup>344</sup> *See, e.g., id.; Who We Are*, NAT'L BLACK MBA ASS'N, <https://nmbmaa.org/who-we-are/> [<https://perma.cc/9XLL-78WP>] (last visited Mar. 9, 2021) (describing how the National Black MBA Association guides, coaches, and mentors young Black professionals entering the corporate sector).

<sup>345</sup> *See, e.g., Erica L. Ayala, The NBA's Walkout is Historic. But the WNBA Paved the Way.*, WASH. POST (Aug. 29, 2020), <https://www.washingtonpost.com/outlook/>

justice date back to 2016 and continue today.<sup>346</sup> The WNBA decided not to play its games after the Jacob Blake shooting in 2020, like many other leagues, “[b]ut WNBA players are among the first athletes to wear warm-up shirts with social justice messaging affirming Black Lives Matter, hold media blackouts and even kneel during the national anthem.”<sup>347</sup> In fact, “WNBA players held a pregame news conference to address police brutality following the deaths of Philando Castile and Alton Sterling *a month before Colin Kaepernick took a knee* in a 2016 preseason game.”<sup>348</sup> One of the WNBA’s star players, Maya Moore, even took off two seasons from playing to fight for social justice issues.<sup>349</sup> She successfully worked to overturn the conviction of Jonathan Irons, who had served twenty-two years of his fifty-year sentence.<sup>350</sup> NBA stars such as LeBron James and Kyrie Irving have acknowledged the standard set by the WNBA and made contributions to their efforts.<sup>351</sup>

Even NASCAR, a sport composed of predominately White participants and fans, touts a robust diversity program<sup>352</sup> that includes the following: (1) Rev Racing, which is NASCAR’s supported racing team that “develop[s] female and minority drivers, and pit crew members in the NASCAR devel-

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2020/08/29/nba-wnba-racial-injustice/ [https://perma.cc/Y72V-V969]; LZ Granderson, *No League Was More Essential to the Social Justice Movement in 2020 Than the WNBA*, L.A. TIMES (Dec. 24, 2020), <https://www.latimes.com/sports/story/2020-12-24/2020-in-review-social-justice-sports-wnba-breonna-taylor> [https://perma.cc/P53G-XW26].

<sup>346</sup> See Ayala, *supra* note 345.

<sup>347</sup> See *id.*

<sup>348</sup> See Granderson, *supra* note 345.

<sup>349</sup> See Avery Yang, *Maya Moore Helps Get Inmate’s Conviction Overturned During WNBA Hiatus*, SPORTS ILLUSTRATED (Mar. 9, 2020), <https://www.si.com/wnba/2020/03/09/maya-moore-jonathan-irons-conviction-overturned> [https://perma.cc/7GAD-RP9S].

<sup>350</sup> See *id.*

<sup>351</sup> See, e.g., *Brooklyn Nets’ Kyrie Irving Commits \$1.5M to Help Pay WNBA Players Who Opted Out*, ESPN (July 27, 2020), [https://www.espn.com/wnba/story/\\_/id/29547214/brooklyn-nets-kyrie-irving-commits-15m-help-pay-wnba-players-opted-out](https://www.espn.com/wnba/story/_/id/29547214/brooklyn-nets-kyrie-irving-commits-15m-help-pay-wnba-players-opted-out) [https://perma.cc/8TVF-2N6L]; Ben Morse, *After Leading Lakers to Victory, LeBron James Looks for WNBA Win over Kelly Loeffler*, CNN (Jan. 6, 2021), <https://www.cnn.com/2021/01/06/sport/lebron-james-kelly-loeffler-la-lakers-atlanta-dream-wnba-spt-intl/index.html> [https://perma.cc/P4Z2-NDUG].

<sup>352</sup> See, e.g., *NASCAR Drive for Diversity*, NASCAR (Mar. 9, 2021, 10:00 PM), <https://hometracks.nascar.com/drive-for-diversity/> [https://perma.cc/7EJX-LCWF] (highlighting diversity program); Todd Palmer, *NASCAR Making a Push for Diversity*, KANSAS CITY STAR (May 12, 2018), <https://www.kansascity.com/sports/nascar-auto-racing/article211040289.html> [https://perma.cc/5EMC-FC9T] (noting that NASCAR is a predominately White sport).

opment series for future competition at NASCAR's highest levels";<sup>353</sup> (2) an internship program for college and graduate minority and female students;<sup>354</sup> (3) the NASCAR Opinion Leader Initiative (NOLI), which connects NASCAR with diverse businesses, civic organizations, and community leaders;<sup>355</sup> (4) the NASCAR Diversity Awards, held each year during Speed Weeks, which honors diversity leaders in the motorsport industry;<sup>356</sup> and (5) an initiative that helps provide scholarships to "Historically Black Colleges and Universities (HBCUs) and Hispanic Serving Institutions to nurture diverse talent and raise the sport's visibility."<sup>357</sup> In 2020, NASCAR removed all Confederate flags from its sanctioned events.<sup>358</sup>

George Floyd's murder also spawned a great deal of athlete activism and responses from professional athletes, college athletes, and sports leagues

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<sup>353</sup> See REVRACING, <https://revracing.net/> [<https://perma.cc/97W4-WEAP>] (last visited Mar. 14, 2021).

<sup>354</sup> See *NASCAR Diversity Internship Program*, NASCAR HOME TRACKS, <https://hometracks.nascar.com/drive-for-diversity/nascar-diversity-internship-program/> [<https://perma.cc/RM9S-3WP9>] (last visited Mar. 14, 2021).

<sup>355</sup> See *Opinion Leader Initiative*, NASCAR HOME TRACKS, <https://hometracks.nascar.com/drive-for-diversity/nascar-opinion-leader-initiative/> [<https://perma.cc/2C98-KP2K>] (last visited Mar. 14, 2021).

<sup>356</sup> See *Drive for Diversity Awards*, NASCAR HOME TRACKS, <https://hometracks.nascar.com/drive-for-diversity/nascar-diversity-awards/> [<https://perma.cc/PXP5-54EE>] (last visited Mar. 14, 2021).

<sup>357</sup> See *id.*

<sup>358</sup> See, e.g., Ivan Pereira, *Trump Lashes out at Bubba Wallace, NASCAR over Noose Investigation, Confederate Flag Ban*, ABC NEWS (July 6, 2020), <https://abcnews.go.com/Politics/trump-lashes-bubba-wallace-nascar-noose-investigation-confederate/story?id=71628914> [<https://perma.cc/2GNF-6ZDS>] (discussing the noose found in the only Black NASCAR driver's garage for a race, which the FBI later concluded was not done as a part of a hate crime, prompting former President Trump to declare the noose incident a hoax and demand an apology from the Black NASCAR driver, while also criticizing NASCAR for removing the Confederate flag from NASCAR events); Lia Assimakopoulos, *Mississippi to Change State Flag After Pressure from NCAA, SEC*, NBC SPORTS WASH. (June 29, 2020), <https://www.nbcsports.com/washington/ncaa/mississippi-change-state-flag-after-pressure-ncaa-sec> [<https://perma.cc/G2NW-KRGE>] (discussing that in college sports, the Southeastern Conference (SEC), which includes the University of Mississippi (Ole Miss) and Mississippi State University, and the NCAA put pressure on the Mississippi legislature to remove the Confederate battle emblem from the state flag by threatening to withhold SEC and NCAA championships in the state of Mississippi until the flag changed occurred); Chandler Duster & Paul LeBlanc, *Mississippi Governor Signs Bill to Retire Flag with Confederate Emblem*, CNN (June 30, 2020), <https://www.cnn.com/2020/06/30/politics/mississippi-state-flag-confederate-emblem-removal/index.html>. [<https://perma.cc/L7A9-KPED>].

involving the fight against racism.<sup>359</sup> After the shooting of Jacob Blake, athletes across the country showed support for Blake, who was left paralyzed, and continued their protests against police brutality and racial injustice.<sup>360</sup> Players in the NBA refused to play in the days following the Blake shooting, and other professional athletes in the United States also similarly decided not to play some of their games.<sup>361</sup> The NBA resumed play in Orlando after the league made certain commitments requested by the players to address social and racial injustice, police brutality, and voter turnout.<sup>362</sup> In the fall of 2020, the NHL also pledged to fight against racism by mandating diversity and inclusivity training for players and employees and by

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<sup>359</sup> See, e.g., Dave Zirin, *A New Study Exposes Just How Racist College Sports Have Become*, NATION (Sept. 8, 2020), <https://www.thenation.com/article/society/ncaa-revenue-racism/> [https://perma.cc/T9GH-JBMT] (discussing University of Alabama's head football coach Nick Saban leading a march for racial justice and college athletes seeking racial justice via, among other things, voter registration and helmet decals advocating for change); Harry Lyles Jr., *Why 2020 Was College Football's Summer of Athlete Activism and What Comes Next*, ESPN (Aug. 29, 2020), [https://www.espn.com/college-football/story/\\_/id/29728043/why-2020-was-college-football-summer-athlete-activism-comes-next](https://www.espn.com/college-football/story/_/id/29728043/why-2020-was-college-football-summer-athlete-activism-comes-next) [https://perma.cc/7F7U-ELUU] (summarizing the college athlete movement in the summer that included marches and speeches on campuses and a coalition of athletes seeking racial justice on college campuses); Richard Lapchick, *NBA Plays Leading Role During Coronavirus Pandemic and Racial Reckoning*, ESPN (July 23, 2020), [https://www.espn.com/nba/story/\\_/id/29525197/nba-plays-leading-role-coronavirus-pandemic-racial-reckoning](https://www.espn.com/nba/story/_/id/29525197/nba-plays-leading-role-coronavirus-pandemic-racial-reckoning) [https://perma.cc/2HX9-7DRE] (mentioning the NBA emblazoning the phrase "Black Lives Matter" on the floor of the arenas in the NBA bubble in Orlando, Florida).

<sup>360</sup> See Sean Gregory, *Why Jacob Blake's Shooting Sparked an Unprecedented Sport Boycott*, TIME, <https://time.com/5883892/boycott-nba-mlb-wnba-jacob-blake/> [https://perma.cc/QTV7-7A5K].

<sup>361</sup> See *id.*

<sup>362</sup> See, e.g., Tim Bontemps, *NBA, NBPA Announce Playoffs to Resume Saturday, New Initiatives*, ESPN (Aug. 28, 2020), [https://www.espn.com/nba/story/\\_/id/29759939/nba-announces-playoffs-resume-saturday](https://www.espn.com/nba/story/_/id/29759939/nba-announces-playoffs-resume-saturday) [https://perma.cc/TW7P-DYES] (including promises by the NBA to create a social justice coalition and resources to increase voter turnout for the November 2020 elections); Chris Mannix, *'Our Voices Were Heard': Inside the 48 Hours that Brought Back the 2020 NBA Playoffs*, SPORTS ILLUSTRATED, (Aug. 28, 2020), <https://www.si.com/nba/2020/08/29/players-owners-agreement-successful-protest> [https://perma.cc/LZ9P-U2EX]; Eric Woodyard, *NBA Distributing Money for Social Initiatives*, ESPN (Dec. 17, 2020), [https://www.espn.com/nba/story/\\_/id/30538191/nba-distributing-money-social-initiatives](https://www.espn.com/nba/story/_/id/30538191/nba-distributing-money-social-initiatives) [https://perma.cc/L3BX-XNAD] (discussing the NBA board of governors announcing a "\$300 million initial contribution to establish the NBA Foundation, dedicated to creating greater economic empowerment in the Black community").

forming fan and youth hockey inclusion committees to determine how to include more underrepresented groups in hockey.<sup>363</sup>

### C. Combatting “Overt” Racism

In addition to RISE and the efforts of sports leagues, sports in the United States also attempt to combat racism by punishing overt racist acts in the sports world.<sup>364</sup> For example, a Utah Jazz fan who allegedly made a racist comment to an NBA player during a game was banned for life from Jazz games based on the Utah Jazz’ code of conduct for its fans.<sup>365</sup> The NBA enacted a zero-tolerance policy for abusive or hateful behavior that results in ejections of fans from the game and potentially more severe punishments.<sup>366</sup> Similarly, the wrestling referee in New Jersey who forced a Black high school athlete to cut off his dreadlocks or forfeit a match received a two-season suspension.<sup>367</sup> Although New Jersey’s high school athletic association agreed to train high school athletics officials and staff on implicit bias, it came only after the alleged racist incident.<sup>368</sup>

NASCAR star driver Kyle Larson said the n-word during a televised racing event played online, which resulted in his actual racing team firing him.<sup>369</sup> Prior to losing his spot on the racing team, he had also lost many of

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<sup>363</sup> See Emily Kaplan, *NHL Launches Initiatives with ‘Welcoming, Inclusive’ Mandate*, ESPN (Sep. 3, 2020), [https://www.espn.com/nhl/story/\\_/id/29803252/nhl-launches-initiatives-welcoming-inclusive-mandate](https://www.espn.com/nhl/story/_/id/29803252/nhl-launches-initiatives-welcoming-inclusive-mandate) [<https://perma.cc/6G2S-G4QE>].

<sup>364</sup> *Sports Will Play a Role in Fight for Racial Equality, and Be Held Accountable When Falling Short*, NBC SPORTS (June 6, 2020), <https://www.nbcsports.com/washington/other-sports/sports-will-play-role-fight-racial-equality-and-be-held-accountable-when-falling-short> [<https://perma.cc/V7FJ-DSY4>].

<sup>365</sup> See Cindy Boren, *Fan Banned for Life for Alleged Racial Comments Sues Russell Westbrook, Jazz for \$100 Million*, WASH. POST (Dec. 17, 2019), <https://www.washingtonpost.com/sports/2019/12/17/utah-jazz-fan-banned-alleged-racial-comments-sues-russell-westbrook-team/> [<https://perma.cc/R3MF-7876>] (stating that the fan is now suing the NBA player, Russell Westbrook, and the Utah Jazz for \$100,000,000 claiming defamation and intentional infliction of emotional distress).

<sup>366</sup> See Tim Reynolds, *NBA Enacting Zero-Tolerance Rules for Abusive, Hateful Fan Behavior*, NBA (Oct. 21, 2019), <https://www.nba.com/article/2019/10/21/nba-enacting-zero-tolerance-rules-fan-behavior> [<https://perma.cc/53M9-35HB>].

<sup>367</sup> See Steve Almay & Madeline Holcombe, *Referee in Dreadlock Haircut Controversy Has Been Suspended for Two Years*, CNN (Sept. 19, 2019), <https://www.cnn.com/2019/09/19/us/new-jersey-dreadlocks-referee-suspended/index.html> [<https://perma.cc/V6BV-LH8L>].

<sup>368</sup> See *id.*

<sup>369</sup> See *NASCAR Star Kyle Larson Fired for Using Racial Slur in Virtual Race*, ESPN (Apr. 14, 2020), [https://www.espn.com/racing/nascar/story/\\_/id/29034370/nascar-star-kyle-larson-fired-using-racial-slur-virtual-race](https://www.espn.com/racing/nascar/story/_/id/29034370/nascar-star-kyle-larson-fired-using-racial-slur-virtual-race) [<https://perma.cc/56DN-SVX3>].

his sponsors for his racist remark.<sup>370</sup> Similarly, Donald Sterling, former owner of the Los Angeles Clippers, an NBA team, received a lifetime ban from the NBA for racist comments he made to his ex-girlfriend.<sup>371</sup> He told her that he did not want her associating with Black people, and, at the very least, he did not want her posting pictures of Black people or bringing them to basketball games.<sup>372</sup> Creighton University suspended its head basketball coach, Greg McDermott, from all basketball activities after he told his players after a loss to Xavier University, “Guys, we got to stick together. We need both feet in. I need everybody to stay on the plantation. I can’t have anybody leave the plantation.”<sup>373</sup>

Punishment of overtly racist behavior remains important, but punishing explicitly racist behavior fails to wholly stop the perpetuation of racism or racism at early ages; it just attempts to quell explicit racism with sanctions.<sup>374</sup> This approach, if combined with nothing else, treats the symptom, not the disease. For example, if someone suffers from chronic headaches, then simply prescribing medication for those headaches may treat the symptom, but the reason for those headaches, potentially a disease or whatever the underlying cause is for that symptom (e.g., vision worsening), goes untreated. Similarly, condemning racist acts when they occur helps to recognize those racist acts are inappropriate, but if nothing else is done besides punishing those racist acts, then the underlying cause of those racist acts (i.e., the reason for the racist motivations and feelings that precipitated the racist act) goes untreated, and the disease of racism continues. The Rooney Rule provides another means to combat racism.

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<sup>370</sup> See *id.*

<sup>371</sup> See Joseph Zucker, *Clippers Owner Donald Sterling Banned for Life from NBA for Racist Remarks*, BLEACHER REPORT (Apr. 29, 2014), <https://bleacherreport.com/articles/2042902-clippers-owner-donald-sterling-banned-for-life-from-nba-for-racist-remarks> [<https://perma.cc/UCG4-YJDZ>].

<sup>372</sup> See Braden Goyette, *LA Clippers Owner Donald Sterling's Racist Rant Caught on Tape: Report*, HUFFPOST (Apr. 26, 2014), [https://www.huffpost.com/entry/donald-sterling-racist\\_n\\_5218572](https://www.huffpost.com/entry/donald-sterling-racist_n_5218572) [<https://perma.cc/8QHD-TED4>].

<sup>373</sup> See Jeff Borzello, *Greg McDermott Suspended by Creighton after Racially Insensitive Comments*, ESPN, [https://www.espn.com/mens-college-basketball/story/\\_/id/31007034/greg-mcdermott-suspended-creighton-racially-insensitive-comments](https://www.espn.com/mens-college-basketball/story/_/id/31007034/greg-mcdermott-suspended-creighton-racially-insensitive-comments) [<https://perma.cc/UT93-53FE>] (last visited Mar. 5, 2021).

<sup>374</sup> Lapchick, *supra* note 184.

#### D. Rooney Rule

The original Rooney Rule, enacted in 2003,<sup>375</sup> required an NFL team to interview a minority candidate before it hired a new head coach.<sup>376</sup> The rationale is that the interaction between the minority head coach and the White owner will help break down barriers, conscious and unconscious, by providing direct interaction between the two to help find commonalities and create a relationship.<sup>377</sup> The interaction may also help overcome unconscious bias against Black people for management positions because they are unfairly perceived as incapable of coaching or managing.<sup>378</sup> The Rooney Rule came about because of the lack of Black head coaches in the NFL.<sup>379</sup> Two attorneys—the late Johnny Cochran and Cyrus Mehri—commissioned a University of Pennsylvania economics professor, Dr. Janice Madden, to study the performance of head coaches in the NFL from 1986 to 2001.<sup>380</sup> She found that Black head coaches generally outperformed White head coaches, and Black head coaches were fired after performing better compared to White head coaches who were similarly fired.<sup>381</sup> Based on the study, Cochran and Mehri submitted a report that recommended, among other things, a requirement that NFL teams interview at least one minority candidate before hiring its new head coach.<sup>382</sup> In response to the report, the NFL's Workplace Diversity Committee, chaired by Dan Rooney (the late owner of the Pittsburgh Steelers), adopted the mandatory requirement, which became known as the Rooney Rule.<sup>383</sup>

In May of 2020, based on the efforts of the Fritz Pollard Alliance (FPA) and the NFL, the Rooney Rule underwent revisions.<sup>384</sup> The FPA served its

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<sup>375</sup> See *NFL Expands Rooney Rule Requirements to Strengthen Diversity*, NFL COMM'NS, <https://nflcommunications.com/Pages/NFL-EXPANDS-ROONEY-RULE-REQUIREMENTS-TO-STRENGTHEN-DIVERSITY.aspx> [https://perma.cc/Z9R9-N3W7] (last visited Mar. 3, 2021).

<sup>376</sup> See CHAMPION, *supra* note 220, at 160 (stating Rooney Rule required at least one interview of a minority candidate for all head coaching vacancies).

<sup>377</sup> See N. Jeremi Duru, *The Fritz Pollard Alliance, the Rooney Rule, and the Quest to "Level the Playing Field" in the National Football League*, 7 VA. SPORTS & ENT. L.J. 179, 184 (2008).

<sup>378</sup> See CHAMPION, *supra* note 220, at 612.

<sup>379</sup> See generally *id.* at 611; Duru, *supra* note 377, at 184.

<sup>380</sup> See, e.g., Duru, *supra* note 377, at 184; CHAMPION, *supra* note 220, at 164.

<sup>381</sup> See Duru, *supra* note 377, at 184.

<sup>382</sup> See *id.*

<sup>383</sup> See *id.*

<sup>384</sup> See, e.g., Kevin Seifert, *Fritz Pollard Alliance Seeks Expansion of Rule Beyond Head Coaches, GMs*, ESPN (Jan. 16, 2020), [https://www.espn.com/nfl/story/\\_/id/28497697/fritz-pollard-alliance-seeks-expansion-rule-head-coaches-gms](https://www.espn.com/nfl/story/_/id/28497697/fritz-pollard-alliance-seeks-expansion-rule-head-coaches-gms) [https://

members—coaches, front office executives, and scouts of color—by advocating for a revised Rooney Rule.<sup>385</sup> The result includes the following amendments to the rule: (1) instead of requiring teams searching for a head coach to interview at least one minority candidate, teams must now interview at least two minority candidates from outside of their organization; (2) teams must now also interview at least one minority candidate from outside of their organization for any coordinator (offensive, defensive, special teams) position, which was not required before; and (3) teams and the league office must also interview minorities and/or female applicants for other positions such as “team president and senior executives in communications, finance, human resources, legal, football operations, sales, marketing, sponsorship, information technology and security positions.”<sup>386</sup> In addition, each NFL team must create a minority coaching fellowship program for NFL Legends, minority and female participants, which will hopefully create “a larger pool of qualified candidates in the pipeline from which head-coaching candidates are ultimately drawn.”<sup>387</sup>

The major complaint about the Rooney Rule revolves around its limitation: owners may be required to *interview* minority candidates, but they are not required to *hire* a minority candidate.<sup>388</sup> If minorities attain head coach-

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perma.cc/E5VT-FZDW]; Graziano, *supra* note 277; *see also* Jabari Young, *NFL Owners Approve Rooney Rule Expansion, Teams Required to Interview at Least 2 Minority Head Coach Candidates*, CNBC (May 19, 2020, 5:09 PM), <https://www.cnbc.com/2020/05/19/nfl-owners-approve-rooney-rule-expansion.html> [<https://perma.cc/7MGY-X7HF>].

<sup>385</sup> See Telephone Interview with N. Jeremi Duru, Counsel, Fritz Pollard Alliance, American University Washington College of Law Professor of Law, (Mar. 3, 2020) (on file with author).

<sup>386</sup> See Graziano, *supra* note 277.

<sup>387</sup> See *id.*

<sup>388</sup> See, e.g., *id.*; Charles McDonald, *The NFL Still Hasn't Done Much of Anything to Improve Diversity*, N.Y. DAILY NEWS (May 20, 2020, 12:46 PM), <https://www.nydailynews.com/sports/football/ny-nfl-diversity-rooney-rule-20200520-do2bckm47fgszdhdnrvbk2f6de-story.html> [<https://perma.cc/TA9E-PCZ4>] (asserting the Rooney Rule updates do not strike the heart of the issue within NFL hiring. The root issue lies with the NFL owners, mostly white men, who continue to hire “people that look like them”) (“The easiest solution would be to change the demographics of the people who make the hires, but that will never happen. NFL owners aren’t going to fire themselves or sell their teams unless they’re forced to.”); Jason Reid, *Rethinking the Rooney Rule*, UNDEFEATED (May 20, 2016), <https://www.nydailynews.com/sports/football/ny-nfl-diversity-rooney-rule-20200520-do2bckm47fgszdhdnrvbk2f6de-story.html> [<https://perma.cc/7LGF-SNJA>] (theorizing that “sham interviews” are a large problem in the NFL. This is where teams only interview African American candidates to comply with the rule, since they are still not forced to actually hire any individual candidate.).

ing jobs and executive leadership positions in the NFL, it can help erode institutional racism by redistributing power in the NFL.<sup>389</sup> The issue however still remains that the majority owners in the NFL are nearly all White, which epitomizes institutional racism in which Whites control all of the teams at the highest level due to their wealth and ultimate power.<sup>390</sup> Indeed, at an NFL owners' meeting in the fall of 2017, Houston Texans' owner Bob McNair infamously uttered these words when discussing players kneeling during the national anthem: "We can't have the inmates running the prison."<sup>391</sup>

In any event, the Rooney Rule appeared to work well at its outset, but it seems to be showing fewer signs of effectiveness.<sup>392</sup> The revamped Rooney Rule was meant to produce more consistent hiring of minorities than the original Rooney Rule.<sup>393</sup> According to Jeremi Duru, counsel for the FPA, "All the data shows us that if you have 'two in the pool' you're much more likely to get a diverse hire than you are if you have just one person of color in the pool."<sup>394</sup> However, in the 2021 spring hiring cycle, eleven minority and sixteen White candidates interviewed for seven NFL head coaching jobs,

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<sup>389</sup> See generally, Mike Florio, *NFL's "Broken System" of Minority Hiring Can Be Fixed in Only Two Ways*, NBC SPORTS (May 25, 2020, 10:47 AM), <https://profootballtalk.nbcsports.com/2020/05/25/nfls-broken-system-of-minority-hiring-can-be-fixed-in-only-two-ways/> [<https://perma.cc/KX35-NG9K>] (asserting NFL hiring disparities will only be fixed by a substantial change in minority team ownership, or by a racial discrimination lawsuit similar to how the Rooney Rule was first established); McDonald, *supra* note 388.

<sup>390</sup> See Kurt Badenhausen, *The NFL's Biggest Mismatch: Owners vs. Players in CBA Negotiations*, FORBES (Mar. 16, 2020), <https://www.forbes.com/sites/kurtbadenhausen/2020/03/16/the-nfls-biggest-mismatch-owners-vs-players-in-cba-negotiations/?sh=3869f0362b48> [<https://perma.cc/D568-N5UP>]; Kurt Badenhausen, *The World's Richest Sports Team Owners*, FORBES, <https://www.forbes.com/sites/kurtbadenhausen/2020/04/07/the-worlds-richest-sports-team-owners-2020/?sh=4c59f72227b5> [<https://perma.cc/ZA5K-7PAU>] (last visited Apr. 23, 2021).

<sup>391</sup> See, e.g., Tim Daniels, *Texas Owner Bob McNair on Protests 'We Can't Have Inmates Running the Prison'*, BLEACHER REPORT (Oct. 27, 2017), <https://bleacherreport.com/articles/2741008-texans-owner-bob-mcnair-on-protests-we-cant-have-inmates-running-the-prison> [<https://perma.cc/D29W-JCXH>] (illustrating the complete disregard McNair showed for the racial divisiveness in the league and country with his comment, "We can't have the inmates running the prison").

<sup>392</sup> See Neil Paine, *The Rooney Rule Isn't Working Anymore*, FIVETHIRTYEIGHT (Jan. 14, 2020, 3:17 PM), <https://fivethirtyeight.com/features/the-rooney-rule-isnt-working-anymore/> [<https://perma.cc/8ZVX-MJ9R>]; see also *Rooney II Says*, *supra* note 26.

<sup>393</sup> See Graziano, *supra* note 277 (discussing the potential of the new changes to the Rooney Rule and how the new measures will hopefully improve the "unacceptable record of minority hiring in positions of team leadership").

<sup>394</sup> See Duru, *supra* note 337.

and only two minority candidates received head coaching positions, and only one of those new minority head coaches is Black (the other is Lebanese American and the first Muslim to serve as an NFL head coach).<sup>395</sup>

In the fall of 2020, the NFL also approved a plan that gives a team two third-round compensatory draft picks if one of its minority assistant coaches or personnel is hired or promoted to the position of head coach or general manager of an NFL team.<sup>396</sup> This rule makes sense and incentivizes a team to promote minority coaches or personnel from within the organization. It makes less sense for division rivals and might actually create a disincentive for hiring a minority coach from a rival team.<sup>397</sup> For example, if the Dallas Cowboys employ a Black assistant coach who earns a head coaching job with the Washington Football Team, New York Giants, or any other NFL team, then Dallas would receive additional draft picks, but the Washington and New York teams would not receive additional draft picks for hiring that coach.<sup>398</sup> Others complain this incentive should not be needed as teams should already be hiring minorities, but obviously teams have not done so to this point.<sup>399</sup>

RISE's incredible work to fight racism through sports, along with the efforts of the professional leagues, must continue and expand to more areas and more people. These entities' messages, mission, and achievements regarding race, sports, and unity must also become more visible. The United States is making strides to combat racism through sports, but more can and should be done.

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<sup>395</sup> See *Rooney II Says*, *supra* note 26. Despite its detractors, Division I athletic directors in college adopted a best practice version of the original Rooney Rule that encourages universities to interview minority candidates for head football coaching positions. N. Jeremi Duru, *Call in the Feds: Title VI As a Diversifying Force in the Collegiate Head Football Coaching Ranks*, 2 WAKE FOREST J.L. & POL'Y 143, 151 (2012); Duru, *supra* note 385.

<sup>396</sup> See Adam Schefter, *Sources: NFL Diversity Hiring Plan Draws Mixed Feelings Around League*, ESPN (Nov. 15, 2020), [https://www.espn.com/nfl/story/\\_id/30320664/sources-nfl-diversity-hiring-plan-draws-mixed-feelings-league](https://www.espn.com/nfl/story/_id/30320664/sources-nfl-diversity-hiring-plan-draws-mixed-feelings-league) [https://perma.cc/Q5ZP-A6S7]; see also Kevin Seifert, *NFL Owners Approve Playoff, Diversity Measures*, ESPN (Nov. 10, 2020), [https://www.espn.com/nfl/story/\\_id/30292901/nfl-owners-approve-playoff-diversity-measures](https://www.espn.com/nfl/story/_id/30292901/nfl-owners-approve-playoff-diversity-measures) [https://perma.cc/SU5C-7LXK].

<sup>397</sup> See Schefter, *supra* note 396.

<sup>398</sup> See *id.*

<sup>399</sup> See *id.*

## VI. COMBATTING RACISM THROUGH SPORTS: THE THREE ES AND OPPORTUNITY

This section provides additional, tangible ways to use sports to fight racism. They include the three Es—*education* and *experiences* that occur *early*—along with opportunity.

### A. Education

Education lies at the heart of using sports to combat racism.<sup>400</sup> Education about valuing our differences, the importance of diversity, and the negative impact of racism must be embedded into sports education at an early age and continue throughout high school. The messaging must be constant and consistent.

Mandatory education or training for athletes, parents, and coaches are not uncommon. For example, on the topic of concussions, all fifty states require some type of training on concussions, but the states vary in who must take the training and how often they must do so.<sup>401</sup> In Texas, high school coaches and health care professionals involved in concussion protocols for teams must complete training on concussions every two years.<sup>402</sup> Virginia requires high school athletes, their parents, and coaches take a course on concussions.<sup>403</sup> Florida requires its high school athletes to take a course on concussions as well.<sup>404</sup> A similar approach should be taken with anti-racism education in sports.

The following are proposals to adopt for education on racism and diversity in sports for children:

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<sup>400</sup> See Shahlaei, *supra* note 264, at 324 (providing that the International Convention on the Elimination of All Forms of Racial Discrimination (ICEAFRD) and the Committee on the Elimination of Racial Discrimination promote education and tolerance as means to reduce racism).

<sup>401</sup> See *State Legislation and Policy*, SHAPE AM., <https://www.shapeamerica.org/standards/guidelines/Concussion/state-policy.aspx> [<https://perma.cc/C9ZV-RCQ8>].

<sup>402</sup> See Crystal Conde, *Law Changes Concussion Management*, TEX. MED. (Sept. 2011), <https://www.texmed.org/Template.aspx?id=22265> [<https://perma.cc/Q7CF-VAXU>].

<sup>403</sup> See Andre L. Taylor, *New Virginia Law: Mandatory Concussion Training for Parents, Student-Athletes*, PATCH (last updated Aug. 9, 2011, 5:50 PM), <https://patch.com/virginia/mclean/new-virginia-law-mandatory-concussion-training-for-pa7030be7808> [<https://perma.cc/GM3J-N75W>].

<sup>404</sup> See Laura Godlweski, *FHSAA Mandates Athletes Complete Concussion Course*, ATHLETIC BUS. (July 2015), <https://www.athleticbusiness.com/athlete-safety/florida-prep-athletes-required-to-complete-concussion-course.html> [<https://perma.cc/9HYR-59XN>].

- Required course, which can be virtual, in-person, synchronous or asynchronous, on anti-racism and diversity at every level of sports, both public and private, for every age group starting at four years old through high school;
  - These required courses can be all on-line, particularly for non-school sports leagues, but middle schools and high schools can invite speakers from colleges, the professional leagues, and retired athletes to speak to their schools, or the speakers can appear in pre-recorded videos;
  - Famous athletes and coaches from all of the professional sports leagues in the United States and recognizable college athletes and coaches will participate in the classes virtually or in-person, and famous professional and college athletes and coaches can also promote public service announcements that broadcast daily over television, radio, and social media, and denounce racism while promoting unity and diversity;<sup>405</sup>
  - The course will be applicable to every sport, whether it is a private league or public league, such as Little League Baseball and Softball (four to sixteen years old),<sup>406</sup> Pop Warner Football (five to sixteen years old),<sup>407</sup> YMCA sports (three to fifteen years old);<sup>408</sup> or elementary, middle, or high school leagues;

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<sup>405</sup> See generally FIFA, FIFA Good Practice Guide on Diversity and Anti-Discrimination 48-49, available at [https://resources.fifa.com/mm/document/afsocial/anti-racism/02/70/94/34/goodpracticeguideondiversityandanti-discrimination\\_sept2017\\_neutral.pdf](https://resources.fifa.com/mm/document/afsocial/anti-racism/02/70/94/34/goodpracticeguideondiversityandanti-discrimination_sept2017_neutral.pdf) [<https://perma.cc/XC7X-S2WM>] (advocating for star athletes to promote diversity and anti-racism messages because they are role models that people will listen to and follow); Faith Karimi, *NFL Players Release Video Calling on the League to Condemn Racism and Support Black Players*, CNN (June 5, 2020, 10:42 AM), <https://www.cnn.com/2020/06/05/us/nfl-players-stronger-together-video-trnd/index.html> [<https://perma.cc/8ZUS-UA2C>] (discussing how famous NFL players created a video where they explicitly and unequivocally “condemn[ed] racism and the systemic oppression of black people”).

<sup>406</sup> See 2020 Little League Age Chart for Baseball Division Only, <https://www.littleleague.org/downloads/baseball-age-chart/> [<https://perma.cc/DE6V-AYTE>] (noting baseball ages); see also 2020 Little League Age Chart for Softball Division Only, <https://www.littleleague.org/downloads/softball-age-chart/> [<https://perma.cc/SM95-A74Y>] (noting softball ages).

<sup>407</sup> See *About Pop Warner*, POP WARNER LITTLE SCHOLARS, <https://www.popwarner.com/Default.aspx?tabid=1437873> [<https://perma.cc/N57B-YJFT>].

<sup>408</sup> See, e.g., *Sports*, YMCA, <https://www.ymcatriangle.org/programs/sports> [<https://perma.cc/5LKN-SSGK>] (noting ages and various sports in the YMCA, in-

- The course will vary in length according to the age group and attention span, which is typically three (3) to five (5) minutes for every year of a child's life, meaning courses for four-year-olds would be twelve to twenty minutes long;<sup>409</sup>
- The course will include primarily, if not exclusively, famous athletes and coaches delivering the lessons and messages, including how they learned to appreciate the importance of working with people from different races and cultures, and why it is important to learn about others and how to work with others. Professional athletes who changed positively after interacting with teammates of different races or who gained more cultural awareness when they played with people of different races would be ideal speakers;<sup>410</sup>
- Middle school and high school children can also hear from reformed racists who can bring the shock value to these presentations;<sup>411</sup>

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cluding "basketball, soccer, flag football, volleyball, baseball, tee-ball, softball, futsal and tennis").

<sup>409</sup> See generally *Attention Deficit/Hyperactivity Disorder (ADHD): How to Help Your Child*, SUMMIT MED. GRP., [https://www.summitmedicalgroup.com/library/pediatric\\_health/pa-hhgbeh\\_attention/](https://www.summitmedicalgroup.com/library/pediatric_health/pa-hhgbeh_attention/) [https://perma.cc/QR8S-TMGK] ("A normal attention span is 3 to 5 minutes per year of a child's age. Therefore, a 2-year-old should be able to concentrate on a particular task for at least 6 minutes, and a child entering kindergarten should be able to concentrate for at least 15 minutes.").

<sup>410</sup> See *Drew Brees Stands by Apology over Flag Comments in Response to President Trump*, ESPN (June 5, 2020), [https://www.espn.com/nfl/story/\\_id/29273182/drew-brees-stands-apology-flag-comments-response-president-trump](https://www.espn.com/nfl/story/_id/29273182/drew-brees-stands-apology-flag-comments-response-president-trump) [https://perma.cc/9M23-4VPH] (describing how star NFL quarterback Drew Brees apologized for his insensitive remarks that focused on the American flag instead of the issues facing the Black community, and Brees "pledge[d] to be an 'ally' for the black community in the fight for racial equality and social justice"); see also Daryl Bell, *'Brian's Song' is Forever*, UNDEFEATED (Nov. 30, 2016), <https://theundefeated.com/features/brians-song-is-forever/> [https://perma.cc/69QH-QTLB] (discussing the classic movie *Brian's Song* depicting the real-life friendship between a Black star football player for the Chicago Bears, Gale Sayers, and his White teammate, Brian Piccolo, as they support each other through Sayers' football injury and Piccolo's terminal cancer during the era of the civil rights movement). Frank Reich, Philadelphia Eagles offensive coordinator, said of *Brian's Song*, "[I learned about having] love for your teammates. Going through something together. Your struggles together. Your triumphs together." Daryl Bell, *'Brian's Song' is Forever*, UNDEFEATED (Nov. 30, 2016), <https://theundefeated.com/features/brians-song-is-forever/> [https://perma.cc/69QH-QTLB].

<sup>411</sup> See Nadine Ajaka, *What Does a Reformed Racist Look Like*, ATLANTIC (Feb. 15, 2017), <https://www.theatlantic.com/video/index/516663/what-does-a-reformed-racist-look-like/> [https://perma.cc/K4T4-V3ZJ].

- The course should include a brief history of racism in this country, the advantages of recognizing and appreciating the differences in races and cultures, the necessity of learning to form bonds and getting to know teammates of all races when competing with them to accomplish a goal, the value of unity and working together as a team, and the negative consequences when someone is racist;
- The course could also teach skills such as perspective-taking, empathy, recognizing biases, and cultural competence;
- The middle school and high school children should be required to take a short, multiple-choice quiz at the end of the course to demonstrate comprehension of diversity and unity, the negative consequences of racism, and the importance of cultural competency; and
- Courses and presentations for younger children could include animation with athlete voices.

The following is an example of the main points and potential narration of what the course would include for the youngest age group, four-year-olds:

In this great country of the United States of America, laws prevented some people from having basic rights, such as voting or owning land. People were very mean to each other just because someone looked different than them, had a different color of skin, or came from a different culture. The United States saw this was bad and changed the laws so that everyone may be treated the same, regardless of what they looked like or where they came from, but the laws did not change everyone's attitudes about each other.

Sports are where people of all different colors, cultures, and backgrounds come to play and have fun. To win as a team, you must work together with everyone on your team. Everyone on the team has different gifts, such as throwing, catching, running, or hitting, just like everyone looks different. We should appreciate those differences and celebrate them. Today, some people still treat each other differently because of how they look or because they have a different way of life. And when they do treat someone differently, they sometimes tease or make fun of that person who is different. When people are mean to others, they hurt people's feelings, which we don't want to do. We want to play hard, play fair, and treat people the way we want to be treated. And, remember, we always want to say "yes" to unity and "no" to racism.

If a child hears this type of message of anti-racism and diversity in every sport she or he plays every year from age four through nineteen, then that individual has a much better chance of understanding the value of diversity

and learning the evils of racism than someone who does not hear that message.<sup>412</sup> Moreover, people need a daily barrage of one or two simple, straightforward messages, such as “End Racism” or “Say No to Racism,” on television, radio, and social media that features a mix of high-profile and beloved athletes and coaches from the professional leagues and college ranks to ingrain the message in everyone’s head, and this message should be embedded in youth sports.<sup>413</sup>

Dr. Williams, the Senior Director of Curriculum for RISE, which creates, implements, and assesses the efficacy of its educational programs that use sports to combat racism, believes that educational programs at ages four and up would be beneficial to fighting racism.<sup>414</sup> RISE or another entity could modify its existing curriculum to work with pre-kindergarten and elementary school-age children.<sup>415</sup> The RISE curriculum includes its Digital Learning Series that covers (1) racism; (2) sports as a vehicle for change; (3) privilege; (4) leadership; and (5) equity and equality.<sup>416</sup> These interactive lessons could be modified and adopted for consumption by four-to-twelve-

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<sup>412</sup> See generally Vanessa LoBlue, *Why Children Like Repetition and How It Helps Them Learn*, PSYCH. TODAY (July 10, 2019), <https://www.psychologytoday.com/us/blog/the-baby-scientist/201907/why-children-repetition-and-how-it-helps-them-learn> [https://perma.cc/FUE9-SKF8].

<sup>413</sup> For instance, Minnesota University’s football team wore jerseys this past season in a game that replaced their names on the back with the phrase “End Racism.” See Paul Harvey, *Minnesota Unveils ‘End Racism’ Uniforms for Friday Night Contest with Purdue*, SATURDAY TRADITION, <https://saturdaytradition.com/minnesota-football/minnesota-unveils-end-racism-uniforms-for-friday-night-contest-with-purdue/> [https://perma.cc/8FZS-UG8Z]. Similarly, the NFL’s end zones included the messages “End Racism” and “It Takes All of Us.” See Bryant, *supra* note 162. In the NBA bubble, on the other hand, NBA players wore jerseys with a wide variety of messages, including “Black Lives Matter, Say Their Names, Vote, I Can’t Breathe, Justice, Peace, Equality, Freedom, Enough, Power to the People, Justice Now, Say Her Name, Sí Se Puede (Yes We Can), Liberation, See Us, Hear Us, Respect Us, Love Us, Listen, Listen to Us, Stand Up, Ally, Anti-Racist, I Am A Man, Speak Up, How Many More, Group Economics, [and] Education Reform and Mentor.” *Social Justice Messages Each NBA Player is Wearing on His Jersey*, UNDEFEATED (July 31, 2020), <https://theundefeated.com/features/social-justice-messages-each-nba-player-is-wearing-on-his-jersey/> [https://perma.cc/24D6-8JB6]. The root of racial injustice and social inequity issues remains racism. Numerous and varying messages, other than simple ones such as “End Racism” or “Say No to Racism,” can confuse or distract the recipient of the message.

<sup>414</sup> See Dr. Williams Interview, *supra* note 311.

<sup>415</sup> See *id.*

<sup>416</sup> See *RISE Digital Learning Series*, ROSS INITIATIVE IN SPORTS FOR EQUALITY (RISE), <https://risetowin.org/digitallearning/index.html> [https://perma.cc/K28S-6HNW] (last visited May 30, 2020).

year-olds. *Mister Rogers Neighborhood* and *Bill Nye the Science Guy* provide models for programming that can positively affect children's minds and behavior while also explaining complex issues in a digestible and palatable manner for children.<sup>417</sup> The same approach can be used for the proposals set forth in this article. Moreover, RISE's extensive educational resources also include modules on those same topics in its digital series, as well as related concepts of diversity, racial imagery, empathy, and power.<sup>418</sup>

Education could also take the form of multi-week programs that involve playing sports together, learning about topics relating to racism and diversity, and talking about these topics in a safe environment, just as RISE already does with older athletes, but these programs could be geared toward younger children.<sup>419</sup> It might take more facilitators for younger children when they are in groups or break-out sessions during a lesson, but it could be very effective, even for children as young as four.<sup>420</sup> Dr. Williams of RISE asserts that when children as young as four, five, or six are interacting together through playing then they can "see[ ] each other as other humans. And those differences, they're not being denied, but they're not really that important."<sup>421</sup> Young children building relationships through on-court activities can open up "things to happen off the court."<sup>422</sup> The programs could also build skills on how to talk, treat, and understand others, which RISE also already does with older athletes.<sup>423</sup> In general, the work of RISE to combat racism through sports must be applauded and should be expanded.

Also, sports figures should be utilized to drive home the message of anti-racism and diversity to children because children will listen to and fol-

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<sup>417</sup> See generally Shea Tuttle, *Seven Lessons from Mister Rogers That Can Help Americans Be Neighbors Again*, Greater Good Mag. (July 13, 2018), [https://greatergood.berkeley.edu/article/item/seven\\_lessons\\_from\\_mister\\_rogers\\_That\\_can\\_help\\_americans\\_be\\_neighbors\\_again](https://greatergood.berkeley.edu/article/item/seven_lessons_from_mister_rogers_That_can_help_americans_be_neighbors_again) [<https://perma.cc/2E7N-RAGW>]; Barbara Gutierrez, *The Profound Influence of Mr. Rogers*, Univ. of Miami (Nov. 20, 2019), <https://news.miami.edu/stories/2019/11/the-profound-influence-of-mr.-rogers.html> [<https://perma.cc/MV5X-KR8C>]; Victoria Chamberlin, *Kids Ask Bill Nye the Science Guy Their Science Questions*, WAMU (Apr. 28, 2020), <https://wamu.org/story/20/04/28/kids-ask-bill-nye-the-science-guy-their-science-questions/> [<https://perma.cc/QY7R-Q4LD>].

<sup>418</sup> See *Resources*, *supra* note 315.

<sup>419</sup> See Dr. Williams Interview, *supra* note 311.

<sup>420</sup> See *id.*

<sup>421</sup> See *id.*

<sup>422</sup> See *id.*

<sup>423</sup> See, e.g., *id.*; Koenning Interview, *supra* note 325.

low athletes.<sup>424</sup> Athletes are role models, whether they want to be or not, and children (and adults) look up to athletes.<sup>425</sup>

The following are proposals to adopt for education on racism and diversity in sports for parents, coaches, league administrators, and referees, which include the same proposals for children described above, with the following additions or differences:

- Required course, which can be virtual, in-person, synchronous or asynchronous, on anti-racism and diversity at every level of sports, both public and private;
  - These required courses can be all on-line for parents, referees, and administrators; for coaches, they can be on-line and include in-person presentations for middle schools and high schools who invite speakers from college, the professional leagues, and retired athletes to speak to their teams, or the speakers can appear in pre-recorded videos;
  - The course will either be 30 minutes (for parents) or an hour (for coaches, referees, and administrators);
  - The course could also include reformed racists who can bring the shock value to these presentations,<sup>426</sup> along with referees, parents, administrators, or coaches who failed to act in a culturally sensitive manner and suffered the consequences;
  - The adults should be required to take a short, multiple-choice quiz at the end of the course to demonstrate they understand the value of diversity and unity, the negative consequences of racism for the children and society, and the importance of cultural competency; and
  - The parents, coaches, referees, and administrators must also watch the video that the children watch, and parents must watch that same video with the younger children, ages four to twelve, to ensure the consistency of the message the children receive.

If leagues include training on sportsmanship for parents, which implores parents not to yell at players, coaches, and referees during games, then the

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<sup>424</sup> See *FIFA*, *supra* note 405, at 48-49 (advocating for star athletes to promote diversity and anti-racism messages because they are role models that people will listen to and follow).

<sup>425</sup> See *id.* (advocating for star athletes to promote diversity and anti-racism messages because they are role models that people will listen to and follow).

<sup>426</sup> See Ajaka, *supra* note 411.

unity and anti-racism messages can be blended in with the sportsmanship training.<sup>427</sup>

Educating the parents, coaches, league administrators, and referees remains crucial because racist views can be learned from what children see and hear.<sup>428</sup> Educating parents, particularly ones who may have strong biases against minorities (such as a White nationalist), is necessary.<sup>429</sup> If racism can be learned, then it defeats the purpose of teaching children not to be racist in a video or presentation when a parent five minutes later teaches or shows the child how to be racist. That parent must be educated, too.<sup>430</sup> One approach includes showing those parents that they should endorse anti-racism and tolerance because it will help lead to their children's success. For example, education that focuses on the changing workforce and leaders in the U.S. showing that more employees, managers, and officers of companies are Black or other minorities, and the White child must learn to work with her or his co-workers and supervisors who are minorities, may resonate with that White nationalist parent.<sup>431</sup> Sports, in particular, provide an even starker example. If a White child wants to play in the NBA, then he should know that almost 80% of the players in the NBA are Black,<sup>432</sup> which means that child will need to learn to work with Black people. If the White child wants to play in the NFL, that child should know that nearly 70% of the players in the NFL are people of color.<sup>433</sup> The pitch to all parents, including parents with a strong bias against minorities, can be that the White child must treat

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<sup>427</sup> See Jennifer Christopherson & Bradford Strand, *Mandatory Parent Education Programs Can Create Positive Youth Sport Experiences*, 29 SHAPE STRATEGIES: A J. FOR PHYSICAL & SPORTS EDUCATORS 8 (2016). <https://www.shapeamerica.org//publications/journals/strategies/upload/Mandatory-Parent-Education-Programs.pdf> [<https://perma.cc/66DG-Z8XR>].

<sup>428</sup> See Meadows-Fernandez, *supra* note 38 (noting the importance of educating the adults, including parents, about inclusivity).

<sup>429</sup> See Margaret A. Hagerman, *Why White Parents Need to Do More than Talk to Their Kids About Racism*, TIME (Sept. 4, 2018, 10:19 AM), <https://time.com/5362786/talking-racism-with-white-kids-not-enough/> [<https://perma.cc/C82W-4LQA>] (discussing how even well-intentioned parents can unintentionally promote or pass down racism to their children based on the conduct of the parents observed by their children and the parents' interaction with their children).

<sup>430</sup> See Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523–25 (1980).

<sup>431</sup> See *id.*

<sup>432</sup> See Thomas, *supra* note 227 (noting nearly 80% of the players in the NBA are Black).

<sup>433</sup> See LAPCHICK, *supra* note 26, at 27 (stating that almost 70% of NFL players are people of color).

his teammates with dignity and respect to get the most out of each other if the White child wants to be successful.<sup>434</sup>

Moreover, even if a parent espouses those positive theories in words, the message is lost if the child sees the parent acting in a racist manner.<sup>435</sup> As a result, just as racist acts should be dealt with in a zero-tolerance setting, the parent should avoid racist acts and speech in front of their children to help their child be successful not only in sports, but also in life. White NBA, NFL, MLB, or NHL players, along with reformed racists, could make this pitch to all parents, including parents who are White nationalists. When a White person speaks out about racism and the need for tolerance and understanding, it can have an enormous impact on others.<sup>436</sup>

### B. Experience

Experience plays a vital role in combatting racism by breaking down unseen barriers, implicit biases, and stereotypes.<sup>437</sup> The more meaningful and positive interactions between people of different races, the less likely those people will hold racist views about the other.<sup>438</sup> The following are proposals to adopt for experience regarding racism and diversity in sports for children:

- Hold season kick-off celebrations and season ending celebrations across either leagues or conferences that include teams from every area that competes, allowing children of different races to gather and enjoy each other's company in fun environments;

<sup>434</sup> See Bell, *supra* note 430, at 523-25.

<sup>435</sup> See Margaret Hagerman, *Why White Parents Need to Do More Than Talk to Their Kids About Racism*, TIME (Sept. 4, 2018), <https://time.com/5362786/talking-racism-with-white-kids-not-enough/> [<https://perma.cc/6PMZ-CY5T>].

<sup>436</sup> See Marc J. Spears, *Why Kyle Korver's Words on White Privilege and Racism Matter*, UNDEFEATED (Apr. 9, 2019), <https://theundefeated.com/features/why-jazz-kyle-korver-words-on-white-privilege-and-racism-matter/> [<https://perma.cc/W39S-RSNX>].

<sup>437</sup> See generally Specht, *supra* note 38, at 308, 314 (discussing how sports provide a great vehicle for addressing racism because it allows for interaction between groups of different races, and noting "research suggests that athletic competitions and youth sports programs can be a particularly effective means of creating understanding and trust in post-conflict environments . . . demonstrat[ing] how the foundational aspects of sports have the potential to bring diverse peoples together").

<sup>438</sup> See Benner, et. al, *supra* note 270; see Strand, *supra* note 47, at 765, 782 (advocating for civility, which includes "people working together to tackle complex civic challenges," by Whites and Black people to "forg[e] relationships across racial lines").

- Hold end-of-season all-star games at all levels composed of athletes of different races and a fun, celebratory meal afterwards;
- Allow coaches of varied races to coach players of different races in youth sports,<sup>439</sup>
- Take a pledge during games at all levels, from youth to professional sports, to “say no to racism” or to “end racism,”<sup>440</sup> such as RISE’s “Pledge to End Racism,” which states, “I PLEDGE to treat everyone with respect and dignity. I will not tolerate racism or discrimination of any kind. I will speak out, RISE up and be a Champion of Change”;<sup>441</sup>
- Encourage high school, college, and professional teams extend free tickets to minorities for a game;<sup>442</sup>
- Conduct “play, learn, and talk” programs around the biggest events of the year for each sport, such as the Super Bowl for football (which RISE already does), All-Star Weekend or The Finals for the NBA, and all-star games for all other professional sports, where young children of different races can play sports with each other, learn about concepts relating to racism and diversity, and talk about their experiences in a safe environment.<sup>443</sup>
  - Incorporate drills, such as throwing a football, shooting a free throw, taking a penalty shot, taught by a Black athlete and a White athlete;<sup>444</sup>
  - Host live panel discussions with athletes promoting unity, diversity, and anti-racism;

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<sup>439</sup> See generally Meadows-Fernandez, *supra* note 38; Duru, *supra* note 385 (acknowledging that youth sports tend to be extremely segregated).

<sup>440</sup> UEFA, which stands for the Union of European Football Associations and serves as the European continent’s soccer association, believes that players and coaches are obligated to denounce racism publicly, as shown by its “No to Racism” campaign. See *No to Racism*, UEFA: SOCIAL RESPONSIBILITY, <https://www.uefa.com/insideuefa/social-responsibility/respect/no-to-racism/> [https://perma.cc/T3ZC-KKR8] (last visited May 23, 2020).

<sup>441</sup> See *Take Action*, *supra* note 323.

<sup>442</sup> See Dana Roesiger, #FootballPeople Weeks, FARE NETWORK, <https://farenet.org/campaigns/footballpeople-action-weeks/> [https://perma.cc/L8LC-AQ7C].

<sup>443</sup> RISE already conducts these programs for children in middle school and older. See Dr. Williams Interview, *supra* note 311; see also Koenning Interview, *supra* note 325.

<sup>444</sup> See *Combating Racism and Racial Discrimination in the Field of Sport*, EUR. COMM’N AGAINST RACISM & INTOLERANCE (ECRI) <https://perma.cc/WZ4R-VNA5> (suggesting local “sport-related out-reach activities bringing together people from different backgrounds”).

- Host live educational panels teaching about the positive effects of diversity and inclusion, as well as the negative effects of racism, using interactive teaching and activities;<sup>445</sup>
- Display exhibitions celebrating the local high school, college, or professional team's diversity and commitment to diversity based on its fans, players, and history;
- Display exhibitions similar to RISE's Champions of Change, which "takes fans on a multi-sensory journey designed to educate, evoke empathy and inspire action" by teaching fans about how sport and society intersect using an "interactive timeline [and] hearing personal stories of athlete experiences with racism."<sup>446</sup>
- Conduct multi-week programs that allow pre-kindergarten and elementary age children of different races to play, learn, and talk with each other.<sup>447</sup>

Socializing with other races through sports, competing with athletes of different races, as well as allowing Black coaches to coach predominately White youth teams (and vice versa) are beneficial in youth sports.<sup>448</sup> Professor Duru agrees and states, "[W]ithout question we need to find ways to implement initiatives that push toward racial tolerance and breaking down discriminatory barriers at the earliest levels. . . . [O]nce people come out of the crib, they're hearing inputs from their parents, the same inputs from society, and starting to build up their world view."<sup>449</sup> The messages should include tolerance, diversity, inclusion, and love.<sup>450</sup>

Dr. Williams opines that allowing children as young as four to play, learn, and talk with other races will help break down racial barriers and fight racism, which is precisely what RISE programs already do for older children.<sup>451</sup> Scott Koening, the Director of Programs for RISE, agrees, and

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<sup>445</sup> An interactive educational exercise could involve a "counter-stereotypical exemplar" in which, for example, a White person imagines being beaten up by another White person, and a Black person saves them. This type of exercise plays against the stereotype of Black criminality and aggression that will "temporarily form new neural pathways" and will help overcome those negative stereotypes about Black people. Paterson & Edwards, *supra* note 54, at 20-21.

<sup>446</sup> See *What We Do*, *supra* note 305.

<sup>447</sup> The RISE programs could be modified or adapted for younger children. Dr. Williams Interview, *supra* note 311.

<sup>448</sup> See Duru Interview, *supra* note 23.

<sup>449</sup> See *id.*

<sup>450</sup> See *id.*

<sup>451</sup> See Dr. Williams Interview, *supra* note 311.

states that play, along with conversation and activities, are the keys to providing experiences that can truly educate and transform the way people think and act.<sup>452</sup>

The main hurdle, as stated earlier, to increase interaction between races remains the cost of putting different races together in the same place at the same time.<sup>453</sup> Whether the cost involves staging a multi-week program or bringing together children from different area codes, the main issue will be funding.<sup>454</sup> As noted above, though, the cost of not doing so results in the assured perpetuation of racism in this country.<sup>455</sup> Government funding at the federal, state, or local levels, as well as funding from professional, college, and high school sports teams could assist greatly with these efforts.<sup>456</sup> An organization such as RISE, with ties to the wealthiest sports leagues and sports media entities in the United States, might be able to facilitate these events as it has already established itself as a coalition builder.<sup>457</sup>

Rules that prohibit racist behavior and include swift, harsh penalties should also be employed in all sports, including youth sports.<sup>458</sup> For professional sports, a racist incident by a fan should result in a lifetime ban from the stadium in which it occurs.<sup>459</sup> For all other levels of sports, starting from youth through college, a racist incident by a fan should result in a season-long ban.<sup>460</sup> Parents should not be denied access to all of their child's games for the rest of their lives based on one racist incident, but losing the opportunity to watch them for the rest of a season should function as a strong

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<sup>452</sup> See Koenning Interview, *supra* note 325.

<sup>453</sup> See discussion *supra* Part V.B.

<sup>454</sup> See *Racial/Ethnic Discrimination and Well-Being During Adolescence*, *supra* note 270, at 855-83.

<sup>455</sup> See discussion *supra* Part III.B.

<sup>456</sup> See *Title IX and the Rise of Female Athletes in America*, WOMEN'S SPORTS FOUND. (Sept. 2, 2016), <https://www.womenssportsfoundation.org/education/title-ix-and-the-rise-of-female-athletes-in-america/> [<https://perma.cc/L3SC-HBTA>].

<sup>457</sup> See Koenning Interview, *supra* note 325.

<sup>458</sup> For example, the Football Association (FA), England's premiere league for soccer, announced in the fall of 2020 that its players face bans of six to twelve games for discriminatory or racist conduct, while FIFA and UEFA already set a ten-game ban minimum for racist or discriminatory behavior by a player in their competitions. *New FA Guidelines Could See Footballers Face 12-Match Ban for Racism*, ESPN (Aug. 8, 2020), <https://www.espn.com/soccer/english-premier-league/story/415525/new-fa-guidelines-could-see-footballers-face-12-match-ban-for-racism> [<https://perma.cc/BV79-SCNA>].

<sup>459</sup> See *Reports: Jazz Issue Lifetime Ban to Another Fan*, NBA (Mar. 25, 2019, 1:12 PM), <https://www.nba.com/news/reports-utah-jazz-lifetime-ban-second-fan> [<https://perma.cc/W78H-CSR3>].

<sup>460</sup>

deterrent to racist behavior with a clear message that society condemns such behavior. Moreover, players, coaches, owners, team executives, league administrators, and referees at the professional, college, and high school levels should receive an automatic ban amounting to half of their season if they engage in racist behavior, which can spill into the next season if the season has already progressed past the half-way point. A repeat offender should be banned for an entire season, even if it covers part of one season as well as the next. The third time offender should be banned for life. A consistent, zero-tolerance policy that punishes racist acts must be employed; thus, if an investigation determines an individual committed a racist act, then the punishment must be enforced.<sup>461</sup>

The Rooney Rule, discussed earlier, relies on the education and experience factors to combat racism.<sup>462</sup> In terms of education, initially the Fritz Pollard Alliance (FPA) focused on educating its members through teaching them about the interviewing process, conducting mock interviews, and mentoring.<sup>463</sup> Over the previous two hiring cycles, the FPA came to understand it must also educate the owners on equal opportunity initiatives and the advantages of diversity and inclusion for their teams.<sup>464</sup>

“Our goal is to ensure that these owners recognize not only, in casting a wide net and being broad in your searches and pursuing diversity, not only is that good for society and good for those individuals who are otherwise not being given opportunities, but it’s good for the owners. It’s good for the revenue stream. All the studies that we’ve seen indicate that when you have a broad coalition of individuals making a decision—when you’ve got diversity at the decision-making nodes, you’re going to get better decisions. If owners would embrace this well-established concept, then I think we would, throughout sports, find a great deal more diversity and ultimately more cohesion.”<sup>465</sup>

With regard to experience, the Rooney Rule mandates that a team looking for a head coach must interview minority candidates, and the whole premise is to create meaningful interaction between the White owner and minority coaches.<sup>466</sup> The FPA also wants to institute opportunities for White owners and prospective minority head coaches and general managers to socialize outside of an interview, which will help form those bonds neces-

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<sup>461</sup> See, e.g., *id.*

<sup>462</sup> See Duru Interview, *supra* note 23.

<sup>463</sup> See *id.*

<sup>464</sup> See *id.*

<sup>465</sup> See *id.*

<sup>466</sup> See *id.*

sary to make the hiring of minority candidates more likely.<sup>467</sup> The FPA held a meeting for the last decade, which it hopes to reinstitute, where its members gathered with other NFL coaches, general managers, scouts, and some owners.<sup>468</sup> The FPA and NFL league executives “are recognizing the import of just making sure people know each other.”<sup>469</sup> Placing minorities in leadership positions in the NFL also attacks institutional racism as it redistributes some of the power in the NFL to minorities.<sup>470</sup>

The Rooney Rule inspired the West Coast Conference, a collegiate sports conference, to adopt the Russell Rule, named after Bill Russell, a Black NBA Hall-of-Fame player who also served as a player/coach for the Boston Celtics.<sup>471</sup> The Russell Rule requires universities in that league and the league itself to interview an individual from a “traditionally under-represented community” for any of the following positions that come open: head coach; full-time assistant coach; athletic director; and senior administrator.<sup>472</sup>

The Rooney Rule also demonstrates how changes in sports can bring about changes in society. Entities and companies outside of the NFL have adopted some form of the Rooney Rule including Amazon,<sup>473</sup> tech companies such as Facebook, Xerox, Intel, and Pinterest; Goldman Sachs in the banking arena did as well.<sup>474</sup> The Rooney Rule even expanded to politics and the government.<sup>475</sup> “[B]oth the Democrats in the Senate and the Democrats in the House now have a rule that if you’re looking for a staff person, the Senator or the Congress person has to interview a person of color.”<sup>476</sup>

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<sup>467</sup> See *id.*

<sup>468</sup> See *id.*

<sup>469</sup> See *id.*

<sup>470</sup> See generally Sundiatu Dixon-Fyle et al., *Diversity Wins: How Inclusion Matters*, MCKINSEY (May 19, 2020), <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-wins-how-inclusion-matters#> [<https://perma.cc/U5V8-KVWX>].

<sup>471</sup> See Myron Medcalf, *College Basketball Coaching Groups Endorse WCC’s ‘Russell Rule’ to Diversity Hiring*, ESPN (Aug. 12, 2020), [https://www.espn.com/college-sports/story/\\_/id/29646829/national-coaching-groups-endorse-wcc-russell-rule-diversify-hiring-pools](https://www.espn.com/college-sports/story/_/id/29646829/national-coaching-groups-endorse-wcc-russell-rule-diversify-hiring-pools) [<https://perma.cc/XB9M-4KCX>].

<sup>472</sup> See *id.*

<sup>473</sup> See Hallie Detrick, *Amazon Had Opposed a Requirement to Interview Diverse Board Candidates. Now It’s Embracing the ‘Rooney Rule.’*, FORTUNE (May 15, 2018, 4:47 AM), <https://fortune.com/2018/05/15/amazon-board-diversity-rooney-rule/> [<https://perma.cc/D8B3-SR5U>].

<sup>474</sup> See Duru Interview, *supra* note 23.

<sup>475</sup> See *id.*

<sup>476</sup> See *House Democratic Diversity Initiative*, COMM. ON H. ADMIN. (2017), <https://cha.house.gov/house-democratic-diversity-initiative> [<https://perma.cc/LB7M->

Similarly, the Oregon legislature requires interviewing a person of color in every search for a head coach or athletic director in the state of Oregon.<sup>477</sup> Furthermore, the city of Portland, Oregon requires an interview with a diverse (i.e., minority, female, disabled person) candidate if at all possible when an entity, such as the fire department or the police department, is hiring a bureau chief.<sup>478</sup>

### C. Early

Since children as young as four can start to exhibit racial bias, the education and experience relating to diversity and anti-racism should take place as early in one's life as possible.<sup>479</sup> Shaping children's minds at a young age while parents are a part of the process will help instill and reinforce the powerful and positive messages of unity and inclusion.<sup>480</sup> Internationally, education of the youth through sports has been recognized as a way to combat racism.<sup>481</sup> Thus, the more education and experiences a child can have through sports that encourage diversity and unity, celebrate other races, and reject racism, the better.

RISE provides a framework for fighting racism with sports through education, empowerment, and engagement.<sup>482</sup> RISE should continue its efforts and spread its work to more communities and areas of the country as RISE's capabilities increase. RISE's Board already includes professional sports and college commissioners, as well as sports media entity juggernauts.<sup>483</sup> It should add to its board representatives from Little League Baseball, Pop Warner, the YMCA, public and private school sports organizations

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ZXFU]; *Senate Democratic Diversity Initiative*, SENATE DEMOCRATS (2019), <https://www.democrats.senate.gov/about-senate-dems/diversity-initiative> [<https://perma.cc/9GNP-D9ET>]; Duru Interview, *supra* note 23.

<sup>477</sup> See H.B. 3118, 75th Oregon Legislative Assembly (2009).

<sup>478</sup> See *id.*; see also Duru Interview, *supra* note 23.

<sup>479</sup> See Meadows-Fernandez, *supra* note 38 (stating racial bias can start as early as four years old).

<sup>480</sup> See Hagerman, *supra* note 435.

<sup>481</sup> See Specht, *supra* note 38, at 307–08 (quoting the World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance in 2001 stating that international, regional, and national sports organizations should work together “to intensify the fight against racism in sport by, among other things, educating the youth of the world through sport practiced without discrimination of any kind and in the Olympic spirit, which requires human understanding, tolerance, fair play and solidarity”).

<sup>482</sup> See discussion *supra* Part IV.A.

<sup>483</sup> See discussion *supra* Part IV.A.

starting as young as possible, including elementary grade schools, middle schools, and high schools, to expand its efforts to reach younger children.

#### D. Opportunity

Another way to battle racism is to provide opportunities to minorities.<sup>484</sup> Howard Bryant sets up the approach with this sentiment: he does not care who is racist and who is not; the concern is about who is getting hired.<sup>485</sup> “And so we run into this issue of, instead of talking about jobs and who gets hired and pipelines, instead we wring our hands and have these completely fruitless conversations about who’s a racist and who’s not.”<sup>486</sup> He concludes, “And at the end of the day, if I’m not being hired systematically, does it really make a difference who is racist and who is not? I don’t have a job.”<sup>487</sup> Once minorities have more opportunity, then their lives improve and in turn society improves.

Bryant’s arguments coincide with the notion that racism reflects the current White economic, political, and social dominance in society.<sup>488</sup> If Black people are placed into prominent jobs by giving them those opportunities, and then those Black people hire more minorities and some White people, then the power structure will begin to shift. Opportunity starts to change the way society operates and the way people view and treat each other. Instead of viewing Black people simply as bodies meant to “shut up and dribble”, their minds become appreciated, and they are valued for all of the abilities and talents they possess.<sup>489</sup> Thus, minorities get hired and start

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<sup>484</sup> See Bryant Interview, *supra* note 27.

<sup>485</sup> See *id.*

<sup>486</sup> See *id.*

<sup>487</sup> See *id.*

<sup>488</sup> See generally Wilson, *supra* note 63, at 3; Beishline, *supra* note 61, at 9 (citing Marissa Jackson, *Neo-Colonialism, Same Old Racism: A Critical Analysis of the United States’ Shift Toward Colorblindness as a Tool for the Protection of the American Colonial Empire and White Supremacy*, 11 BERKELEY J. AFR.-AM. L. & POL’Y 156, 166 (2009)).

<sup>489</sup> See generally Emily Sullivan, *Laura Ingraham Told LeBron James to Shut Up and Dribble; He Went to the Hoop*, TWO-WAY (Feb. 19, 2018, 5:04 PM), <https://www.npr.org/sections/thetwo-way/2018/02/19/587097707/laura-ingraham-told-lebron-james-to-shutup-and-dribble-he-went-to-the-hoop> [<https://perma.cc/NFA9-5T7U>] (discussing how a journalist told LeBron James, one of the leading athlete activists in the world who, among other things, started his own school for underprivileged children and worked with former First Lady Michelle Obama to increase voter turnout in the 2020 elections, to “shut up and dribble” and stay out of politics); *LeBron James Responds to Zlatan Ibrahimovic Telling Him to Stay Out of Politics*, NBC NEWS (Feb. 27, 2021, 8:51 AM), <https://www.nbcnews.com/news/sports/>

a different cycle of who is in power and society's view of different races changes.

The history and difficulty of Black people becoming head coaches or managers in the professional sports leagues is exemplified by Major League Baseball.<sup>490</sup> Only former MLB players, most of whom achieved amazing success in their playing careers, have ever been selected to work as managers of MLB teams.<sup>491</sup> And when one considers MLB's four major franchises—the New York Yankees, the Boston Red Sox, the St. Louis Cardinals, and the Los Angeles Dodgers—even though these franchises began as early as 1882 and as late as 1901, only one of those teams has ever hired a Black manager.<sup>492</sup> The Dodgers hired Dave Robertson, their first Black manager, in 2016.<sup>493</sup> “And what does it say to the rest of the league when your premier venerable franchises will not make these types of hires? Or what does it say to the Black people in the industry? You know, it really does tell you a lot of things about your station.”<sup>494</sup>

Bryant, therefore, is a critic of the Rooney Rule that has failed to produce hires of minority candidates consistently.<sup>495</sup> “What’s really being said that hiring somebody who doesn’t look like you requires this great mountain of morale fortitude. . . What it says this is a really angry racist country.

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lebron-james-responds-zlatan-ibrahimovic-telling-him-stay-out-politics-n1259068 [https://perma.cc/F27J-YEUL] (noting LeBron James’ measured response that he will not be silent about social justice issues and instead will continue to “preach about equality, social injustice, racism, systematic voter suppression” when fellow international sports star Zlatan Ibrahimovic told James to stay out of politics).

<sup>490</sup> A former Los Angeles Dodgers executive, Al Campanis, once said when asked about the lack of Black baseball managers, “I truly believe that they may not have some of the necessities to be . . . a field manager, or perhaps a general manager.” Bryant Interview, *supra* note 27. Marge Schott, the former Cincinnati Reds owner, spoke favorably of Hitler and continuously made racial and ethnic slurs, before she was forced out of baseball. A famous sportscaster, “Jimmy the Greek” Snyder, infamously said “Black people were ‘bred to be better athletes because this goes all the way to the Civil War when . . . the slave owner would breed his big woman so that she would have a big black kid.’” Champion, Jr., *supra* note 220.

<sup>491</sup> See Bryant Interview, *supra* note 27.

<sup>492</sup> See *id.*; see generally Rhianon Walker, *The State of the Black Manager in Major League Baseball Would Disgust Jackie Robinson*, UNDEFEATED (Apr. 20, 2018), https://theundefeated.com/features/the-state-of-the-black-manager-in-major-league-baseball-would-disgust-jackie-robinson/ [https://perma.cc/UY27-V4CF].

<sup>493</sup> See Bryant Interview, *supra* note 27; see also *Dave Roberts Becomes 1st Minority Manager in Dodgers’ History*, ESPN (Nov. 21, 2015), https://www.espn.com/mlb/story/\_/id/14188989/los-angeles-dodgers-hire-dave-roberts-manager [https://perma.cc/U8BS-UHP6].

<sup>494</sup> See Bryant Interview, *supra* note 27.

<sup>495</sup> See *id.*; see generally Paine, *supra* note 392; *Rooney II Says*, *supra* note 26.

And a really racist institution if you need to summon all the courage in the world to make a simple hire.”<sup>496</sup>

Bryant proposes an educational pipeline that tailors the education and the path to become a head coach or executive in professional sports to help create those opportunities for minority hires.<sup>497</sup> He states that the pipeline should start in high school and continue through college in sports management programs to teach and develop the skill sets necessary to obtain and thrive in those jobs.<sup>498</sup> He asserts that high schools and colleges, likely with the guidance of professional sports leagues, design those sports management programs “to funnel talent to those sports leagues.”<sup>499</sup>

Sports management and coaching pipelines should be developed for minorities as young as high school. Some professional sports leagues already promote their pipelines that exist for professionals, graduate students, and college students.<sup>500</sup> The major professional sports in the United States should work together to create a sports management pipeline that starts in high school.<sup>501</sup> For a pipeline or any efforts to combat racism in sports systemically to work, there must be coordination between the professional leagues, colleges, and high schools, and RISE could help facilitate those efforts.

## VII. COUNTER-ARGUMENTS

Some of the arguments against the proposals, such as the high cost of bringing different teams together across a city and the issue of parents who may exhibit or pass down racist ideas to their children, have been addressed previously in this article (e.g., the latter issue requires education for those parents). Other counter-arguments to the proposals are addressed below.

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<sup>496</sup> See Bryant Interview, *supra* note 23.

<sup>497</sup> See *id.*

<sup>498</sup> See *id.*

<sup>499</sup> See *id.*

<sup>500</sup> See *MLB Diversity Pipeline Program*, MLB, <https://www.mlb.com/diversity-and-inclusion/pipeline-program> [<https://perma.cc/MJ87-9H9C>] (last visited June 1, 2020); *NASCAR 2020 Diversity Internship Program*, NASCAR HOME TRACKS, <https://hometracks.nascar.com/drive-for-diversity/nascar-diversity-internship-program/> [<https://perma.cc/RM9S-3WP9>] (last visited June 1, 2020).

<sup>501</sup> See Mechelle Voepel, ‘It’s Very Important We Stay Together’: WNBA, NBA Figures Promote Strengthened Bond, ESPN (Aug. 28, 2020), [https://www.espn.com/wnba/story/\\_/id/29762456/wnba-nba-figures-promote-strengthened-bond](https://www.espn.com/wnba/story/_/id/29762456/wnba-nba-figures-promote-strengthened-bond) [<https://perma.cc/3GJ2-XS7Q>] (discussing how the NBA and WNBA seek unity and support from each other in the fight for social and racial justice).

A. *The Proposals Fail to Overcome or Address Each Type of Racism*

One may argue that the proposals in this article may address or attack one type or form of racism, but not all. Recall from Part I the different or major types of racism, which include prejudice and overt racial bias, implicit or unconscious racial bias, and institutional racism and White supremacy. Thus, the counter-argument is that providing opportunities for children of different races to interact together in a meaningful way through sports may help address prejudice and overt racial bias, along with implicit racial bias, but it fails to overcome institutional racism, which requires a redistribution of power and wealth. Likewise, educating someone about the history of racism, sharing stories about racism faced by minorities, and teaching cultural competence via sports may help prevent prejudice and implicit racial bias, but again does little against institutional racism. This argument possesses merit but is short-sighted.

Providing opportunities for minorities in positions of power and leadership in sports would most quickly lead to a redistribution of power and wealth where minorities possess more of both, but to obtain and sustain long-term changes adverse to institutional racism, Whites in power must understand the following: how racism is embedded in society; their own implicit biases; the experiences and perspective of minorities; how they can better understand and communicate with minorities (cultural competence); and the value of diversity and inclusivity. The proposals in this article each chip away at some type(s) or form(s) of racism, and even though a proposal may not fully eradicate every type or form of racism, it can attack one or more forms immediately and may have an effect on another type of racism in the long run.

B. *Some People Will Not Change*

One may argue that no matter how much education some are given they will still be racists. This argument falls in line with one of Critical Race Theory's tenets, which is that racism is permanent.<sup>502</sup> Some people, particularly if they are older, may refuse to change their behavior or views despite what they are taught about the negative consequences of racism.<sup>503</sup> I

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<sup>502</sup> See Andrea Freeman, *Racism in the Credit Card Industry*, 95 N.C. L. REV. 1071, 1106 (2017).

<sup>503</sup> See Lindsay Dodgson, *People Can Seem More Racist as They Get Older, But It's Not Simply a Case of 'Being from a Different Time'*, BUS. INSIDER (July 4, 2018), <https://www.businessinsider.com/why-are-older-people-racist-2018-7> [<https://perma.cc/JL8U-5SMU>].

cannot fully disagree with this proposition, as one set of my own grandparents was racist. I am of mixed race (Black and Polish), and my White maternal grandparents refused to speak to my brother and me before they passed because they were racist. Nevertheless, the counter to this argument that some people will not change is that some people might.<sup>504</sup> Simply because there will be people who resist changing their views or adopting different behavior does not mean efforts to reach others who may be receptive to the messages of unity and anti-racism should cease.

C. *Forcing People to Interact with Each Other Will Create Resentment or Lack of Excellence*

If different races are forced to interact with each other, via community sports events or gatherings, then that forced integration may cause resentment.<sup>505</sup> For example, if a White community must spend additional monies to create opportunities for interaction between the White and Black athletes, and the Black teams have little or no money they can contribute, then the White teams may be upset. Also, if a league or organization decides that a Black coach will go to a White team to coach on the other side of town, the league will likely send one of its better coaches because it wants to give the participants the best experience and interaction possible, then the Black team that the coach would have been a part of loses an excellent coach, making the experience worse for the Black team. Moreover, if that Black coach takes her or his child to the White team, then the Black child may not play as well given the pressure of playing on a potentially non-welcoming team. These were the same issues that arose in school desegregation as the brightest Black students attended the White schools, and some Black students failed to perform as well as they could because of the pressure of being one of the few new Black students at the school.<sup>506</sup> Meanwhile, since the top

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<sup>504</sup> See, e.g., Ajaka, *supra* note 411; ESPN, *supra* note 410 (discussing how star NFL quarterback Drew Brees “pledge[d] to be an ‘ally’ for the black community in the fight for racial equality and social justice” after receiving criticism for his insensitive remarks that failed to acknowledge the plight of the Black community).

<sup>505</sup> See Reid, *supra* note 388 (discussing how the Rooney Rule is supposed to provide opportunities for minority coaches to earn head coaching jobs by requiring interviews of minorities, but these “minority interviews” are sometimes sham interviews that are done only to comply with the rule).

<sup>506</sup> See generally Christine H. Rossell, *An Analysis of the Court Decisions in Sheff v. O’Neill and Possible Remedies for Racial Isolation*, 29 CONN. L. REV. 1187, 1232 n.88 (1997) (noting studies where Black students were harmed based on desegregation, including detriment to their academic achievement); Mark A. Godsey, *Educational Inequalities, the Myth of Meritocracy, and the Silencing of Minority Voices: The Need for*

Black students left the Black schools, those Black schools became less talented.<sup>507</sup>

The response to these arguments is two-fold. First, a major issue of desegregation was sending Black students to schools without Black teachers and administrators.<sup>508</sup> Here, the Black athlete would play on a team where the child's own parent of the same race would coach, helping to make sure the minority athlete would be treated fairly and given equal opportunities. As a result, the Black athlete would have a much better chance of excelling than did Black students who attended White schools as a part of school desegregation. Second, the Black team would be gaining a presumptively excellent White coach and White player, which would not only allow the Black team to succeed, but it would also foster positive interaction amongst the races, which is a key to overcoming implicit bias and stereotypes.<sup>509</sup> The meaningful and shared experiences of the players and coaches of different races on each team would potentially dispel any initial resentment felt by the White teams (e.g. because of increased costs to facilitate the interaction) and the Black teams before they exchanged coaches and players. The good outweighs the costs, and the risk is worth it.

#### VIII. CONCLUSION

Racism remains a deplorable stain on our country, and it is evident throughout society, including in sports.<sup>510</sup> Nevertheless, sports, which has been called a “great equalizer that can build bridges, transcend borders and cultures, and render even the fiercest conflicts temporarily irrelevant,” can

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*Diversity on America's Law Reviews*, 12 HARV. BLACKLETTER L.J. 59, 62, 83 n. 106 (1995) (recounting studies that show the negative effects of desegregation on the “token” Black children's self-esteem).

<sup>507</sup> See Thomas Sowell, *One of the Best Schools for Black Students Was Ruined by Good Intentions*, NAT'L REV. (Oct. 5, 2016), <https://www.nationalreview.com/2016/10/dunbar-high-schools-integration-ruined-exceptional-black-school/> [https://perma.cc/7EXX-JM4N] (discussing how an elite Black high school that produced the first Black judge and the first Black general and boasted graduates of Harvard, Yale, and Dartmouth, among others, lost its most talented students after desegregation and “became a typical ghetto school”).

<sup>508</sup> See Arval A. Morris, *Whither the Neighborhood School?—Comments on Washington v. Seattle School District and Crawford v. Board of Education*, 6 ED. LAW REP. 429, 433–34 (1983).

<sup>509</sup> See Duru Interview, *supra* note 23 (highlighting NFL coach Bruce Arians as an example of a White coach who embraces diversity and communicates well with Black players and, not coincidentally, whose best friend from his childhood is Black).

<sup>510</sup> See discussion *supra* Part II.

help fight racism in this country.<sup>511</sup> Before we attempt to change others, though, we must first examine ourselves.<sup>512</sup> As Nelson Mandela beautifully stated, “One of the things I learned when I was negotiating was that until I changed myself, I could not change others.”<sup>513</sup>

When examining the existing landscape regarding using sports to fight against racism, RISE and professional sports leagues are off to a great start, but more can and should be done. In particular, youth sports should be utilized to help educate young athletes, parents, coaches, administrators, and referees about the values of unity and diversity, as well as the negative consequences of racism. Any education must acknowledge and address racism directly and explicitly or else this country will continue to tip-toe around and avoid the topic of racism, which comes at a steep price. Any efforts to make lasting social change must unequivocally include constant discussion of racism and how it continues to impact the thoughts, views, and behavior of people in this country. Otherwise, sports will only address the symptoms, not the disease. Experiences through sports that involve meaningful interaction between races can break down barriers, including implicit bias and stereotypes.<sup>514</sup> Measures to combat racism via sports should take place as early in one’s life as possible because children as young as four years old can develop racial biases. Furthermore, opportunities for minorities in leadership positions in sports can also help subvert racism.

One of the messages in NFL endzones during the 2020 season regarding the efforts to end racism states, “It Takes All of Us,” and that includes lawyers.<sup>515</sup> As demonstrated throughout this article, lawyers and the frameworks they build play critical roles in the fight against racism, including via sports. From the passing and prosecution of the Civil Rights Act, Fair Housing Act, and Voting Rights Act of 1965 to the Rooney Rule, lawyers actively sought and achieved change.<sup>516</sup> For example, Johnnie

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<sup>511</sup> See Richard Attias, *Sport: Bridging the Gender Gap*, HUFFPOST (Aug. 28, 2012), [https://www.huffpost.com/entry/sport-bridging-the-gender\\_b\\_1836883](https://www.huffpost.com/entry/sport-bridging-the-gender_b_1836883) [<https://perma.cc/VK5V-HLAE>].

<sup>512</sup> Vaishnavi Vaidyanathan, *Nelson Mandela Death Anniversary: 10 Powerful Quotes by the Civil Rights Leader*, INT’L BUS. TIMES (Dec. 5, 2020, 6:50 AM), <https://www.ibtimes.com/nelson-mandela-death-anniversary-10-powerful-quotes-civil-rights-leader-3094683> [<https://perma.cc/99XC-M9D8>].

<sup>513</sup> Id.

<sup>514</sup> See *supra* note 271 and accompanying text.

<sup>515</sup> See Bryant, *supra* note 162.

<sup>516</sup> See generally *Creation of the Committee*, LAWS.’ COMM. C.R. UNDER L., <https://lawyerscommittee.org/history/> [<https://perma.cc/YW5B-APLA>] (showcasing the work of the Lawyers’ Committee for Civil Rights, including collaborating with the Legal Defense Fund and the LCDC to bring suit in federal court challenging the

Cochran and Cyrus Mehri, the two individuals who commissioned a study to determine whether racism and discriminatory conduct existed in the hiring and firing of Black NFL head coaches, both worked as civil rights attorneys.<sup>517</sup> After spotting the issue of racism and discriminatory practices in the NFL and obtaining the findings from the study they commissioned—namely that Black NFL head coaches typically outperform White NFL head coaches, Black coaches face barriers to becoming head coaches in the NFL that White coaches do not, and Black head coaches suffered termination when lower performing White coaches did not in similar circumstances—Cochran and Mehri chose to cooperate with the NFL to seek changes rather than sue the NFL.<sup>518</sup> The persuasion and advocacy of those two lawyers led to the NFL adopting their policy recommendation that sought tangible change, which has influenced other sports leagues and influential entities outside of sports.<sup>519</sup>

Lawyers also serve as leaders of numerous industries, including the sports industry. Take for example Adam Silver, the commissioner of the NBA who embraced and helped lead the charge in fighting racial injustice alongside the players.<sup>520</sup> Three other lawyers also work (or worked) as current or former sports commissioners, Paul Tagliabue (former NFL commissioner),<sup>521</sup> Gary Bettman (NHL commissioner),<sup>522</sup> and Robert Manfred, Jr.

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constitutionality of parade ordinances following the massive arrests in Jackson of demonstrators protesting restrictive voting bills, and noting specifically how the committee urged the passage of the Civil Rights Act of 1964 and Voting Rights Act of 1965); *Fair Housing and Community Development Project*, LAWYERS' COMM. C.R. UNDER L., <https://lawyerscommittee.org/project/fair-housing-and-community-development-project/> [<https://perma.cc/S6T4-93B5>] (detailing the Committee's current work in fighting discrimination in housing through the Fair Housing Act); see generally Duru, *supra* note 329.

<sup>517</sup> See Duru, *supra* note 377, at 186.

<sup>518</sup> See *id.* at 186–88.

<sup>519</sup> See *id.* at 188–89; see also Part V of this Article. Moreover, the terminology and understanding of racism would not be possible without the work of lawyers and law professors, such as Charles Lawrence, whose groundbreaking work on discrimination and bias is cited in Part I of the article. This work must continue.

<sup>520</sup> See Lapchick, *supra* note 359.

<sup>521</sup> See *Profile of Paul John Tagliabue*, SPORTS ENCYCLOPEDIA, <https://sportsecyclopedia.com/nfl/comish/tagliabue.html> [<https://perma.cc/5SY7-T4AC>] (giving an overview Tagliabue's life and time in the NFL).

<sup>522</sup> See *Profile of Gary Bettman*, SPORTS ENCYCLOPEDIA, <https://sportsecyclopedia.com/nhl/comish/bettman.html> [<https://perma.cc/KKY9-QN9D>] (discussing Bettman's work as an attorney and as NHL Commissioner).

(MLB commissioner),<sup>523</sup> and each serves alongside Adam Silver as a member of the RISE Board of Directors.<sup>524</sup> With further regard to RISE, the entity created to combat racism through sports (discussed at length in Part IV of this article), its founder and major financial contributor is Miami Dolphins owner Stephen Ross, who is also a lawyer.

Lawyers are trained to spot issues, analyze the issues in light of the applicable rules and facts, deliver a variety of well-thought-out solutions to clients, and then execute the client's wishes through skillful advocacy. Lawyers in every industry, including sports, must continue to create rules and policies that enhance diversity and promote inclusivity. Lawyers can insert themselves into the situation as Cochran and Mehri did, or they can create the change from within if they are already a part of organizations that can institute the proposals set forth in this article. Lawyers possess unique skills that are critical to meaningful institutional change.<sup>525</sup> Lawyers, for example, used "vision, courage, intellectual heft and hard work" to "conceive[ ], develop[ ] and execute[ ] the plan to dismantle 'separate but equal' in American life" culminating in the landmark decision of *Brown v. Board of Education* that sought lasting institutional reform.<sup>526</sup> Lawyers must denounce racism in all of its forms. And they must serve as passionate and persuasive advocates for changes and reforms in sports that combat racism. Indeed, everyone involved with sports should consider the measures discussed in this article if they truly want to take a shot at fighting racism.

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<sup>523</sup> See *Profile of Robert D. Manfred Jr.*, SPORTS ENCYCLOPEDIA, <https://sportscyclopedia.com/mlb/comish/manfred.html> [<https://perma.cc/3G7C-ZEYC>] (detailing Manfred's path to becoming MLB Commissioner).

<sup>524</sup> See *Board of Directors*, RISE, <https://risetowin.org/who-we-are/index.html#board-of-directors> [<https://perma.cc/3HHM-953S>] (listing the members of the board of directors for RISE).

<sup>525</sup> See generally *Meet the Legal Minds Behind Brown v. Board of Education*, NAACP LDF, <https://www.naacpldf.org/ldf-celebrates-60th-anniversary-brown-v-board-education/meet-legal-minds-behind-brown-v-board-education/> [<https://perma.cc/ES6G-ATPQ>].

<sup>526</sup> See *id.*