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The color barrier is broken, but bias claims remain in sports

TIME-OUT

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In the week following the racially charged protests and violence in Charlottesville, Va., some have pointed out that condemning blatant racism is a simple task.

However, since acts of racism and discrimination can also be covert, and not always as explicit as a white supremacist rally, sometimes it takes legal action to expose it.

Over time, federal and state laws have been enacted that address and combat discrimination that occurs in various settings. One of these pieces of legislation was the Civil Rights Act of 1964.

Professional and college sports have historically played a significant role in advancing the civil rights movement, both before and after the enactment of the Civil Rights Act of 1964. But, despite giving it a good old college try, the sports world has not entered a "post-racial" era.

Probably because professional sports have a progressive reputation, the racism and discrimination that occur throughout the sports industry is arguably more implicit, especially if it does not involve key players and, therefore, we don't always hear about it.

There are, however, discrimination-based lawsuits that sports teams, leagues and universities face regularly. In fact, there are some notable racial discrimination lawsuits in the pipeline right now.

One lawsuit, filed in the Southern District of Ohio (Case No. 1:17-cv-456), involves umpire Angel Hernandez suing Major League Baseball for racial discrimination in baseball's promotion and postseason assignment policies.

The longtime Cuban-born umpire claims that ever since 2011, when Joe Torre became chief baseball officer for MLB, his upward mobility has been negatively affected. According to Hernandez, Torre has a history of animosity toward him, stemming back to at least 2001 and Torre's time as manager of the New York Yankees.

In his lawsuit, Hernandez alleges he has been turned down four times for a crew chief position for which he was fully qualified and that since 2000, all 23 crew chief positions have been filled by white candidates. He alleges that since 2011, 10 umpires have been promoted to crew chief, all of whom have been white, and almost all of whom had less experience than him when promoted.

Hernandez further alleges that he has been unjustly skipped over to work the World Series, despite above average evaluation marks and consistent praise from the commissioner's office, and that since 1993, he has only been chosen to work two World Series, in 2002 and 2005.

Another lawsuit, filed in the Western District of North Carolina (Case No. 3:16-cv-00843), is against NASCAR and a handful other defendants associated with the racing organization. The CEO of Diversity Motorsports Racing LLC, Terrance Cox III, claims that NASCAR discriminated against him because he is African-American and also discriminated against Diversity Motorsports because it is African-American-owned.

Cox and Diversity Motorsports accuse NASCAR of interfering with contracts and also depriving them of the right to be employed by NASCAR. The plaintiffs allege that the defendants have intentionally prevented the sponsorship of African-American racing teams.

Their claim alleges that because Cox is African-American and because Diversity Motorsports is African-American-owned, NASCAR has denied them the same rights to make and enforce contracts with NASCAR that Caucasian citizens enjoy.

Beyond instances related to Cox and Diversity Motorsports, the claim also asserts the evidence of historical and systematic exclusion of African-Americans from virtually all of NASCAR's business activities, alleging that motor sports remain the most racially segregated sport in the United States.

The aforementioned pending racial discrimination cases are both brought under Title VII of the Civil Rights Act of 1964 and Section 1981 of the Civil Rights Act of 1866. Generally, both federal statutes outlaw employment discrimination based on race.

Title VII makes it unlawful to discriminate against someone on the basis of race, color, national origin, sex or religion. It applies to employers of 15 or more employees and prohibits discrimination in hiring, pay, promotion, termination, compensation and other terms and conditions and employment.

Title VII prohibits both intentional discrimination and also practices that have a disproportionately adverse effect on minorities, even if not intended to discriminate.

Under Title VII, the plaintiff must establish a prima facie case of discrimination by alleging that they are a part of a protected class, that they were qualified for a position, that they were rejected for a position and that an employee outside of the protected class was selected for the position or the employer continued to look for candidates.

Section 1981 applies to all employers of any size and prohibits only intentional racial discrimination. Section 1981 claims are analyzed similarly to Title VII claims. However, Section 1981 claims may be filed directly in federal court whereas Title VII claims must be filed with the Equal Employment Opportunity Commission for investigation prior to being filed in federal court.

Often in Title VII and Section 1981 cases, the plaintiff will lack direct evidence of discrimination and must prove discriminatory intent using circumstantial evidence.

These cases are analyzed using the "McDonnell Douglas burden-shifting formula." This formula was created by the U.S. Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) and provides that the plaintiff has the burden of first establishing a prima facie case of discrimination.

After this, the burden shifts to the employer, who must articulate, through admissible evidence, a legitimate, nondiscriminatory reasons for its actions. Then, in order to prevail, the plaintiff must prove that the employer's stated reason is merely a pretext to hide discrimination.

Assuming they make it to trial, if direct evidence is lacking in the pending suits against MLB and NASCAR, these cases will ultimately be analyzed using the McDonnell Douglas formula.

It will be interesting to see if these cases against major sports organizations will garner up attention by activist athletes, or if they will proceed under the radar, like other sensitive discrimination cases that do not involve accusations of blatant racism.

In these cases, it will likely take a big win for the plaintiff first, but if that is going to happen, MLB and NASCAR could certainly afford to settle before that happens.

Despite whether the discrimination alleged in these pending cases occurred or not, it is important that all sports teams and leagues with goals of being progressive pay attention to all cases of alleged racism and other forms of discrimination in order to continue awareness and to use as guidance in changing their business structures and policies.

It is commendable that leagues, teams and athletes have used their platform to speak out against explicit racism and discrimination.

As one recent example, the Tampa Bay Rays, Buccaneers and Lightning pledged to help pay to remove a Confederate monument from the downtown area of Tampa, Fla. Removing statues in the wake of Charlottesville is symbolic, but the important question is what internal changes against potential implicit racism and discrimination are on deck in the sports industry?