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Who's In and Who's Out: Racial Discrimination in Sports

IN BLACK AND WHITE: RACE AND SPORTS IN AMERICA. By Kenneth L. Shropshire.[†]
New York and London: New York University Press, 1996. Pp. xxvii, 212. \$24.95.

Reviewed by Timothy Davis*

I. INTRODUCTION

Professor Kenneth Shropshire's important book *In Black and White* examines the controversial issue of racism in professional sports.¹ Like scholars before him, Professor Shropshire argues that sports, as a microcosm of American society,² reflects American social realities in which racism and discrimination remain dominant.³ The essence of *In Black and White* is Professor Shropshire's contention that the persistence of racism denies African-Americans ownership and leadership opportunities in professional sports.⁴ Professor Shropshire specifically analyzes the manifestations of unconscious racism in sports, and the law's ineffectiveness to enhance racial equity.⁵ He concludes with suggestions that, if followed, could diversify the ownership and management ranks of the major sports franchises.⁶

Readers are likely to find Professor Shropshire's rendering of the state of African-Americans⁷ in sports sobering and disturbing. First, *In Black and White*

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1. KENNETH L. SHROPSHIRE, *IN BLACK AND WHITE: RACE AND SPORTS IN AMERICA* (1996).

2. See, e.g., D. STANLEY EITZEN & GEORGE H. SAGE, *SOCIOLOGY OF NORTH AMERICAN SPORT* 17 (5th ed. 1993) (commenting that sports provides a useful institution for examining the complexities of the larger society since it represents a microcosm of the society in which it is embedded).

3. See generally Harry Edwards, *Playoffs and Payoffs: The African-American Athlete as an Institutional Resource*, in *THE STATE OF BLACK AMERICAN* 85 (Billy J. Tidwell ed., 1994) (discussing how sports reflects and recapitulates America's evolving social realities, including race); Ben Lombardo, *The Harlem Globetrotters and the Perpetuation of the Black Stereotype*, 35 *PHYSICAL EDUC.* 60 (1978) (acknowledging that racism is a problem in athletics just as it is in the rest of American society).

4. See *infra* Part II.

5. See *infra* Parts IV, V.

6. See *infra* Part IX.

7. In the preface to *In Black and White*, Professor Shropshire acknowledges that racism limits opportunities in sports to members of ethnic groups other than African-Americans. He also notes the criticisms of the two-sided—black and white—view of race in America. Notwithstanding these observations, analysis of racial discrimination encountered by other ethnic groups in sports is beyond the scope of *In Black and White*. Professor

rebutts the popularly held belief that the elimination of overt racism—that excluded blacks from majority professional sports teams—signaled the end of discrimination in American sports. This present-day belief stems from African-American athletes' disproportionate representation in major sports such as football and basketball.⁸ According to one commentator:

[B]lack visibility in collegiate and professional sports has merely served to mask the racism that pervaded the entire sport establishment. According to these critics, the existence of racism in collegiate and professional sports is especially insidious. They hold that promoters of and commentators on athletics have made sports sacred by projecting its image as the single institution relatively immune from racism.⁹

Secondly, Professor Shropshire effectively refutes the belief that sports is perhaps the only venue in American society where the playing field is level and opportunities for advancement are unimpeded by racial prejudice. According to this view, sports is an endeavor in which one can be judged solely on the basis of merit. Thus, African-Americans are presumed to have an equal opportunity to share in the rewards arising from sports participation.¹⁰ Professor Shropshire's book exposes the reality of this desired, yet elusive, ideal.

In Black and White's importance lies in more than its examination of racism in sports. Professor Shropshire makes a major contribution to a growing area of scholarly discourse that addresses the intersection of law, economics, sociology, and sport. As such, his book will provide a valuable resource for scholars and others engaged in the critical assessment of sports. Furthermore, readers interested in racial

Shropshire justifies his narrow focus on blacks, and in particular African-American males, by what he views as the distinct experiences of blacks in the history of American sports. SHROPSHIRE, *supra* note 1, at xxii-xxiii. The uniqueness of the African-American experience is attributable to their prominence in American sports. EITZEN & SAGE, *supra* note 2, at 323. This prominence ensues in large part from the perception among blacks that sports is one avenue for potentially rapid socio-economic mobility. HARRY EDWARDS, *SOCIOLOGY OF SPORT* 188-89 (1973). African-Americans' peculiar status in American sports is also attributable to stereotypes such as the myth that blacks possess innate athletic superiority. *Id.* at 190-91.

8. Peter Donnelly, *Approaches to Social Inequality in the Sociology of Sport*, 48 *QUEST* 221, 230 (1996); see EITZEN & SAGE, *supra* note 2, at 323, 332 (noting that the disproportion between African-Americans in society and their participation on major sports teams obscures the racism existing in sports).

9. EITZEN & SAGE, *supra* note 2, at 332. The belief that racism has been eradicated in sports also reflects the differing perceptions of white and black Americans. As suggested by Professor Shropshire, whites and blacks view events differently, including the impact of racism. SHROPSHIRE, *supra* note 1, at 2-3. A series of surveys conducted in 1991 confirmed that, unlike blacks, many white Americans refuse to acknowledge race as a factor that influences sports. In contrast to white Americans, the majority of African-Americans surveyed believed that prejudice remains a component of sports. Jim Myers, *Race Still a Player: Stereotypes Pit Ability vs. Intellect*, *USA TODAY*, Dec. 16, 1991, at 1A. For example, 73% of the blacks surveyed believed that racism limits coaching opportunities for African-Americans, while only 31% of whites held that view. *Race in Sports: A Black-and-White Issue*, *USA TODAY*, Dec. 18, 1992, at 3C.

10. Timothy Davis, *The Myth of the Superspade: The Persistence of Racism in College Athletics*, 22 *FORDHAM URB. L.J.* 615, 639 (1995) [hereinafter Davis, *Myth of the Superspade*].

equity in settings other than sports will appreciate *In Black and White*'s theoretical analysis of the subject.

Through his thorough assessment of racism's impact on sports, Professor Shropshire also elevates the academic community's intellectual discussion regarding sports—a substantive area that has tended to be trivialized.¹¹ This predilection of academicians to marginalize the myriad of legal and social issues that arise in sports is surprising given the commonly held view that sports serves as a microcosm of the broader culture.¹² Like Professor Shropshire and others, I agree that the study of sports provides an excellent forum within which to examine complex social issues that confront American society. Commenting on the significance of the study of sports, sociologist Harry Edwards recently wrote, "American sports invariably, unavoidably, and quite predictably looks, sounds, and behaves very much like American society."¹³ Given my agreement with this view, I read *In Black and White* with considerable anticipation. While in a few instances greater analysis would have been instructive,¹⁴ Professor Shropshire's book provides a comprehensive and thoughtful analysis of racism in the upper echelons of professional sports.

Professor Shropshire crafts arguments that convincingly flow from his theoretical premise. He achieves his goal of informing readers of his philosophical framework in his thought-provoking "Introduction." Indeed, *In Black and White*'s most significant and long-lasting achievement may reside in its introduction and first chapter. In these parts of the book, Professor Shropshire establishes a theoretical approach to assessing the racial conundrum in professional sports that is fairly novel to sports law scholarship. Consequently, a significant part of this Essay is devoted to examining his proposed theory.

11. See Rodney K. Smith, *When Ignorance Is Not Bliss: In Search of Racial and Gender Equity in Intercollegiate Athletics*, 61 MO. L. REV. 329, 333-34 (1996) (discussing the harmful consequences of the unjustified marginalization of sports by the academic community); Elliott J. Gorn & Michael Oriard, *Taking Sports Seriously*, CHRON. OF HIGHER EDUC., Mar. 24, 1995, at A52 (criticizing the relegation of the study of sports to the fringes of the academic mainstream).

12. See EITZEN & SAGE, *supra* note 2, at 17 (stating that sports represents a microcosm of society); Paul M. Anderson, *Racism in Sports: A Question of Ethics*, 6 MARQ. SPORTS L.J. 357, 361 (1996) (noting that most commentators agree that sports is a reflection of society in that it often acts as a microcosm of society).

13. Edwards, *supra* note 3, at 87. Professor Harry Edwards further argues that the position of black athletes in sports serves as a barometer of the state of Black America. *Id.* at 86; see EITZEN & SAGE, *supra* note 2, at 323 ("Rather than be free from racism, sport as a microcosm of the larger society reflects the same racial problems as society."); George H. Sage, *Introduction to RACISM IN COLLEGE ATHLETICS: THE AFRICAN-AMERICAN ATHLETE'S EXPERIENCE* 3 (Dana Brooks & Ronald Althouse eds., 1993) (noting that racism has been a salient part of the history of college athletics); Lodis Rhodes & Johnny S. Butler, *Sport and Racism: A Contribution to Theory Building in Race Relations?*, 55 SOC. SCI. Q. 919, 922 (1975) (noting the significant extent to which racism has impacted the participation of black athletes throughout the history of organized American sport activity).

14. See *infra* notes 49-61, 78-80 and accompanying text.

II. ANALYTICAL FRAMEWORK

Professor Shropshire begins with the contention that the statistical underrepresentation of African-Americans in top-level positions reflects racial bias in professional sports.¹⁵ However, he quickly acknowledges the shortcomings attendant to a strict reliance on statistics to determine the extent of racism in professional sports.¹⁶ According to Professor Shropshire, the story of racism in sports can only be effectively told by embracing other themes—in this instance, themes central to critical race scholarship. Thus, the analytical framework of *In Black and White* is shaped substantially by themes appearing in critical race literature.¹⁷

One such theme is the critical assessment of “themes that dominate mainstream legal discourse,”¹⁸ including the notion of colorblindness.¹⁹ In the context of constitutional doctrine, the colorblindness principle disapproves of the use of race-dependent decisionmaking and conduct.²⁰ “By race-dependent, it is meant decisions and conduct that would have been different but for the race of those benefitted or disadvantaged by them.”²¹ Although originating in the constitutional context so as to limit certain governmental conduct, advocates of the colorblindness norm argue for its applicability to private arms-length transactions.²²

According to Professor Shropshire, sports provides a striking example of why reliance on colorblind policies is premature.²³ He stresses that “[f]ew, if any, of the people in power in sports in the United States are colorblind, and few make

15. SHROPSHIRE, *supra* note 1, at 3-4.

16. “It is completely unrealistic to assume that individuals of each race will gravitate with mathematical exactitude to each employer or union absent unlawful discrimination.” *Id.* at 6 (quoting *Local 28 Sheet Metal Workers’ Int’l Ass’n v. EEOC*, 478 U.S. 421, 494 (1986) (O’Connor, J., concurring in part and dissenting in part)).

17. For an excellent discussion of the themes appearing in critical race literature, see John O. Calmore, *Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World*, 65 S. CAL. L. REV. 2129 (1992), and see also Richard Delgado, *When a Story Is Just a Story: Does Voice Really Matter?*, 76 VA. L. REV. 95, 96 n.4 (1990) (discussing the nature of critical race scholarship).

18. Professor Calmore describes these themes as including concepts “such as formal equality, individualized opportunity, neutrality, objectivity, color blindness, and meritocracy.” Calmore, *supra* note 17, at 2161-62 n.107.

19. See *id.* (commenting on how critical race theory unmasks themes in mainstream legal discourse); Bryan K. Fair, *Forward: Rethinking the Colorblindness Model*, 13 NAT’L BLACK L.J. 1, 5, 68-69 (1993) (criticizing the colorblindness concept as antithetical to the interests of people of color).

20. T. Alexander Aleinikoff, *A Case for Race-Consciousness*, 91 COLUM. L. REV. 1060, 1063 (1991). Justice John M. Harlan is said to have introduced the colorblindness concept into American constitutional law in his dissenting opinion in *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (“There is no caste system here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens.”).

21. Aleinikoff, *supra* note 20, at 1063. Similarly, Professor Flagg defines the colorblindness principle as disapproving of the use of a race-specific criterion in decision-making regardless of the “race of the decisionmaker or of the persons respectively advantaged or burdened by that criterion.” Barbara J. Flagg, “*Was Blind, But Now I See*”: *White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953, 1005 (1993). Professor Flagg adds that the principle of colorblindness objects to holding persons responsible for personal characteristics over which they have no control, such as race or gender. *Id.* at 1011.

22. Aleinikoff, *supra* note 20, at 1063.

23. SHROPSHIRE, *supra* note 1, at 7.

employment and other management decisions without regard to race.”²⁴ Professor Shropshire explains that owners in sports do in fact believe that they conduct their business without regard to race.²⁵ “But this innocent conduct of business may be accompanied by an ingrained view that the person to hire should look like the previous white males that were hired.”²⁶ Elaborating, Professor Shropshire advances the point made by other scholars that racially neutral hiring policies fail to reflect neutrality because they are made in the context of the cultural background of decisionmakers.²⁷ From his perspective, “race is a determining factor for the absence of blacks in the positions of power in sports.”²⁸

Professor Shropshire underscores this assertion by embracing another theme that appears often in critical race scholarship.²⁹ He posits that—reflective of American society—unconscious rather than overt racial discrimination circumscribes high-level managerial and ownership opportunities for African-Americans in professional sports.³⁰ In the world of sports, the manifestations of unconscious racism include decisions by owners not to afford African-Americans access to power positions.³¹ Without stating so, Professor Shropshire essentially argues that these decisions are frequently motivated by stereotypes that “provide the basis for assessing individual and group conduct.”³² As I note below, a more forceful statement by Professor Shropshire regarding the impact of stereotypes of the “dumb black jock” would have enhanced *In Black and White*’s critical assessment of racism’s impact on hiring decisions.

Following the lead of other noted scholars, the final component of *In Blacks and White*’s theoretical framework is the view that racism is a permanent feature of American society. Professor Derrick Bell wrote that “racism is an integral, permanent, and indestructible component of this society.”³³ Professor Harry Edwards added that “racism is today a highly mutable constituent feature of American liberal democracy.”³⁴

While adopting the theme that racism is a permanent fixture in American sports, Professor Shropshire avoids taking a stance that is either overly pessimistic or

24. *Id.*

25. *Id.* at 8.

26. *Id.*

27. *Id.*; see Richard Delgado, *Rodrigo's Fourth Chronicle: Neutrality and Stasis in Antidiscrimination Law*, 45 STAN. L. REV. 1133, 1152 (1993) (discussing the illusions of fairness as well as the harm to minorities ensuing from a race neutral model).

28. SHROPSHIRE, *supra* note 1, at 15.

29. See generally Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987).

30. SHROPSHIRE, *supra* note 1, at 15.

31. *Id.* at 8-9, 15.

32. Davis, *Myth of the Superspade*, *supra* note 10, at 642.

33. Derrick Bell, *The Racism Is Permanent Thesis: Courageous Revelation or Unconscious Denial of Racial Genocide*, 22 CAP. U. L. REV. 571, 573 (1993).

34. Edwards, *supra* note 3, at 87.

idealistic. Noting the significance of the problem of race, he aligns with those who view the recognition of racism's permanence as a necessary antecedent to consigning it to its proper place among other problems faced by African-Americans.³⁵ Professor Shropshire and others believe that such recognition will hasten the development of strategies that will generate black advancement in sports and other mainstream institutions of American society.³⁶ In this regard, Shropshire states: "The key point here is that the present cannot help but be tainted by the racism of the past. Hence attempts at reform must take into account [racism's] presence for the historical foundations of the sports business."³⁷

III. A HISTORICAL OVERVIEW OF RACISM IN SPORTS

Chapter One, which is appropriately entitled "The Roots of Racism and Discrimination in Sports," provides an opportunity for Professor Shropshire to develop further the theme that racism, as it currently exists in sports, can only be accurately interpreted in light of the historical experiences of African-American athletes. Thus, in this chapter he outlines the historical impact of race on African-Americans' sports experience.

In his historical summary of blacks in American sports, Professor Shropshire notes that during the early years of professional and collegiate sports—a period extending from after the Civil War to the late 1800s and early 1900s—blacks participated in organized sports at the amateur and professional levels.³⁸ He points out, however, that the right to participate during this period was not accompanied by equality of treatment.³⁹ Expounding on this point, Shropshire emphasizes that African-Americans were both exploited for their athletic ability and subjected to the indignities that flowed from racial discrimination.⁴⁰ To illustrate, African-American athletes suffered the racial epithets of fans and opposing players and the discriminatory acts (*e.g.*, physical attacks) of their own teammates.⁴¹ Professor Shropshire illustrates the nature of such discrimination by recounting an experience of African-American, All-American Paul Robeson. "On the first day of practice, I was attacked by twenty-one guys. All the guys on defense, and all of the guys on my team."⁴²

The early years of inclusion, albeit limited, were followed by a period during which formal and informal rules excluded blacks from organized professional and

35. *Id.* at 87-88; see Davis, *Myth of the Superspade*, *supra* note 10, at 678.

36. Edwards, *supra* note 3, at 87-88.

37. SHROPSHIRE, *supra* note 1, at 11.

38. *Id.* at 27-28.

39. *Id.* at 25-26.

40. *Id.* at 25.

41. *Id.*

42. *Id.*

collegiate sports.⁴³ Professor Shropshire cites two reasons for the segregation of sports:

The most obvious [reason] is simply the desire of whites not to associate with African-Americans. . . . Associated with this desire for separation was . . . the other broad explanation: a view that African-Americans are inferior. This view, of course, finds its roots in slavery and provided a common excuse for separation of the races.⁴⁴

This period of segregation was followed by what Professor Shropshire describes as the reintegration of sports.⁴⁵ He underscores the significance of Jackie Robinson's joining the Dodgers in 1947 by noting that professional baseball had remained segregated since 1889.⁴⁶ However, Robinson's signing led the way for the desegregation of other professional leagues and of college sports over the following two decades.⁴⁷

Professor Shropshire's laudable historical account aptly describes America's schizophrenic attitude towards black athletes. As one writer concluded, this dual existence for black athletes—"both scorned and loved"—represents "a microcosm of the contradictions of a segregated society."⁴⁸

Early on Professor Shropshire warns readers that he does not intend to provide an exhaustive historical account of blacks in American sports.⁴⁹ Rather his intent is to provide a brief overview to facilitate the placement of racism's present day manifestations in sports in historical perspective.⁵⁰ However, since he chose not to include a more in-depth historical analysis, Professor Shropshire's book does not acquaint readers with more of the parallels between the plight of blacks in sports and in society at large. For example, more detailed analysis could have included additional discussion of the confluence of social, economic, and political pressures that resulted in the segregation of sports.⁵¹ As noted by another scholar in the area, the initial deterioration of black rights was illustrated by the southern codes passed

43. David K. Wiggins, *Critical Events Affecting Racism in Athletics*, in *RACISM IN COLLEGE ATHLETICS: THE AFRICAN-AMERICAN ATHLETE'S EXPERIENCE*, *supra* note 13, at 2, 5.

44. SHROPSHIRE, *supra* note 1, at 31.

45. *Id.* at 29-31.

46. *Id.* at 29.

47. Wiggins, *supra* note 43, at 34.

48. Donald Spivey, *The Black Athlete in Big-Time Intercollegiate Sports, 1941-1968*, 44 *PHYLON* 116, 116-17 (1983).

49. SHROPSHIRE, *supra* note 1, at 17.

50. *Id.*

51. A historical perspective is important inasmuch as racism as it currently exists can only be interpreted in light of the historical experience of the subordinated. See George A. Martinez, *Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience: 1930-1980*, 27 *U.C. DAVIS L. REV.* 555, 557-58 (1994) (noting that critical race theorists recognize the importance of reinterpreting history).

shortly after the Civil War.⁵² This deterioration was furthered by United States Supreme Court decisions—most notably *Plessy v. Ferguson*.⁵³ These decisions coincided with commonly propagated beliefs regarding the inferiority of blacks to whites.⁵⁴ Consequently, blacks' exclusion from sports mirrored their exclusion from a broader spectrum of American life.⁵⁵

A confluence of social, political, and economic variables also resulted in the integration of professional sports and broader American society. Significant among these variables are: (1) Expectations for desegregation created by the "democratic idealism spawned by World War II,"⁵⁶ (2) opportunities created by a shortage of players due to World War II's decimation of the talent pool of white athletes,⁵⁷ (3) political activism by blacks and their white allies demanding the desegregation of professionals sports,⁵⁸ (4) Supreme Court desegregation decisions,⁵⁹ and (5) enactment of federal civil rights legislation.⁶⁰

Building on his theoretical premise, Professor Shropshire also subtly suggests an interest convergence analysis of sports. He concludes that economics was key among the multiple factors that led white owners to integrate their sports teams.⁶¹ He stops short, however, of specifically using or defining the concept. This omission creates ambiguity as to the primary factors that influenced the integration of sports. More explicit reference to the concept would have provided additional opportunity for Professor Shropshire to elaborate on the critical race methodology for analyzing racism in sports.

With respect to this concept, the interest convergence principle provides that the "interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites."⁶² In this regard, Professor Shropshire shares the view of other commentators regarding the principal factors leading to the integration of American sports.⁶³ In discussing the reasons that led to the integration of baseball, Professor Harry Edwards wrote: "Quite simply, the color ban in pro-

52. Wiggins, *supra* note 43, at 25-26.

53. 163 U.S. 537 (1896), *overruled by* Brown v. Board of Educ., 347 U.S. 483 (1954).

54. Wiggins, *supra* note 43, at 26.

55. *Id.*

56. Edwards, *supra* note 3, at 92.

57. *Id.* at 91. Although World War II decimated the talent pool for white players, the talent pool for black players thrived. This was due in large part to the exclusion of blacks from some military branches and their relegation to noncombat roles in most instances. *Id.*

58. *Id.* at 92; Othello Harris, *African-American Predominance in Collegiate Sport*, in RACISM IN COLLEGE ATHLETICS: THE AFRICAN-AMERICAN ATHLETE'S EXPERIENCE, *supra* note 13, at 57, 57-58.

59. Davis, *Myth of the Superspade*, *supra* note 10, at 636.

60. Edwards, *supra* note 3, at 93-94. In addition, technological advancements—most notably television and its potential for turning sports into mass entertainment—contributed to the desegregation of sports. *Id.* at 94.

61. SHROPSHIRE, *supra* note 1, at 30.

62. Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980).

63. See Davis, *Myth of the Superspade*, *supra* note 10, at 635 (making a case for the interest convergence theory in the context of college sports).

fessional baseball locker rooms was lifted more as a result of Major League Baseball's Achilles's wallet than its conscience."⁶⁴ Professor Edwards holds similar views with regard to the integration of professional football. "The precipitating factors [behind desegregation] were the prospects of financial gain, combined with black and white liberal protest efforts."⁶⁵

Professor Shropshire is not quixotic in assessing the ramifications of the racial integration of American sports. Although he acknowledges that conditions have improved for blacks in American sports, Professor Shropshire cautions readers that "racism is ingrained in the sports culture."⁶⁶ He adds that "[a]lthough the racial percentages of those on the playing fields have changed over time and the formal and most of the informal agreements against discrimination have disappeared on the field, racism is prevalent in the front office."⁶⁷ A point made by Derrick Bell seems applicable here: "What appears to be progress toward racial justice is, in fact, a cyclical process. Barriers are lowered in one era only to reveal a new set of often more sophisticated but no less effective policies that maintain blacks in a subordinate status."⁶⁸

Addressing the reasoning for the lingering presence of racism in sports, Professor Shropshire concludes that stereotypes from the past are "largely responsible for African-American exclusion from power positions today."⁶⁹ He notes that high-level management of sports teams have adopted the beliefs and fears associated with black intellectual inferiority that resonate in statements made by Al Campanis, Jimmy "The Greek" Snyder,⁷⁰ and Marge Schott. These beliefs assume that the athletic success of the black athlete is attributable to innate physical skills rather than hard work and intellect.⁷¹ As one commentator noted:

African-Americans are thought to possess natural athletic ability in speed, quickness, and jumping ability, traits that many coaches believe cannot be taught; you are either born with these qualities or you do without them. That

64. Edwards, *supra* note 3, at 92.

65. *Id.*

66. SHROPSHIRE, *supra* note 1, at 32-33.

67. *Id.* Another commentator notes: "The outcome of this advancement process has been the evolution of a plantation system of black-white status and authority relations in both sports and society accomplished through a shift from the black collective exclusion and subordination of segregation to the black selective inclusion and subordination of radical integration." Edwards, *supra* note 3, at 85.

68. DERRICK A. BELL, JR., RACE, RACISM AND AMERICAN LAW 8 (3d ed. 1993).

69. SHROPSHIRE, *supra* note 1, at 26.

70. Jimmy "The Greek" Snyder caused an uproar when he posited that "the black is the better athlete to begin with because he's been bred to be that way because of his thigh size and big size. [They] jump higher and run faster. . . . All the players are black; the only thing that whites control is the coaching jobs." *Id.* at 23.

71. Wiggins, *supra* note 43, at 42. According to Professor Wiggins, such beliefs are tied to myths that "black athletes, like other members of the black community, are either docile, savage, deceptive, childlike, oversexed, or a combination of all of the above." *Id.*

they excel in sport, then has little to do with their work ethics or their intellect, according to this perspective.⁷²

Consistent with these ideas, Professor Shropshire proposes that the failure of blacks to achieve full equality results from the unconscious racism that comes with the "internalization of stereotypes concerning black athletes' physical superiority depicted above."⁷³ Furthermore, Professor Shropshire alleges that although these derogatory images are more subtle because they are often repressed within the white consciousness, they still persist today.⁷⁴ He relies on a series of well-known incidents to support this premise. For example, Al Campanis's comments, that "I truly believe that [blacks] may not have some of the necessities to be, let's say, a field manager or perhaps a general manager,"⁷⁵ is used to illustrate the harmful consequences of stereotypes regarding the black athlete's athletic superiority yet intellectual inferiority.⁷⁶ In *Black and White* attributes the views expressed by Campanis and others to deeply held unconscious beliefs and not overt racism. Thus Professor Shropshire writes:

Campanis was confirming what seemed to be otherwise unverifiable: that racism permeated sports. The Dodgers executive was simply stating what he believed the world knew as a fact. Like many who profess to conduct business in a color-blind manner, Campanis exhibited some deeply held beliefs. In his initial words, and the words of those who spoke for him after the fact, there was no racial ill will intended. This was just what he believed to be true.⁷⁷

72. Harris, *supra* note 58, at 61. Professor Harris adds that "[t]his view allows African-Americans to be outstanding athletes without negating the belief that they are lazy and ignorant; in fact, it reinforces the belief in their indolence and incognizance." *Id.*

Belief in and expressions of these stereotypes are simply not vestiges of the distant past but continue to be reinforced. For instance, the debate concerning whether black predominance in athletics was attributable to physiological characteristics has appeared throughout the twentieth century despite their having been discredited in scientific literature. See EDWARDS, *supra* note 7, at 193-200 (discussing the mythology of race-linked characteristics attributed to the black athlete's success); Donnelly, *supra* note 8, at 227-28 (noting the same); Earl Smith, *The Self Fulfilling Prophecy: Genetically Superior African American Athletes*, 21 HUMBOLDT J. SOC. REL. 139 (1995) (discussing the same); Wiggins, *supra* note 43, at 42 (noting that scientific studies do not support such views).

Even today one can find expressions of the belief in the genetic superiority of the black athlete even though they have been refuted. In addition, the media continues to reinforce images of black athletes that feed these stereotypes. For a detailed discussion of the media's role in perpetuating derogatory images of African-American athletes, see Davis, *supra* note 10, at 648-50.

73. Davis, *Myth of the Superspade*, *supra* note 10, at 644.

74. SHROPSHIRE, *supra* note 1, at 21.

75. *Id.*

76. See Davis, *Myth of the Superspade*, *supra* note 10, at 643-50 (discussing these beliefs).

77. SHROPSHIRE, *supra* note 1, at 22.

While instructive, Professor Shropshire's discussion of the impact of stereotypes on decisionmaking in hiring is perhaps too general and understated. More specific and forceful references to the nature of the derogatory stereotypes regarding African-American athletes would have been beneficial.⁷⁸ First, it would have enlightened readers of the extent to which these false images nurture the unconscious racism that have denied African-Americans opportunities throughout the history of American sports.⁷⁹ In addition, the absence of a detailed discussion of stereotypes denies Professor Shropshire an opportunity to integrate into his book the theme of the deleterious effect of unconscious racism.⁸⁰

Nevertheless, in concluding the chapter, Professor Shropshire emphasizes that subconscious racism fed by stereotypes limits opportunities in sports for African-Americans. He asserts that recognition of this is important to "provide a proper perspective for seeking prescriptions" for the present day realities of racial discrimination in sports.⁸¹ Professor Shropshire adds that achieving racial equity in sports will be impeded by beliefs that African-Americans' gains translate into a corresponding loss of power by whites.⁸²

In sports what must be sacrificed is the right of whites, primarily white men, to appoint top-level management positions and sell franchises to their white friends. . . . The sacrifice is not so much giving up one's own job as it is giving up the power to give a job to someone else.⁸³

He adds that "[a]ll of the parties need to remove their color blinders and recognize the harm of discrimination and the positive value that diversity brings."⁸⁴ Such recognitions will be difficult given a point Professor Shropshire makes earlier in his book: racial equality in sports will be hampered by differing perceptions of white and black Americans regarding racism and the extent to which they deny African-Americans equality in sports.⁸⁵

78. See Davis, *Myth of the Superspade*, *supra* note 10, at 643-50 (detailing the fraudulent images that have been assigned to African-American athletes).

79. For thorough discussions of the historical significance of racial stereotypes on black athletes' experiences, see the following: EDWARDS, *supra* note 7; Wiggins, *supra* note 43; and Davis, *Myth of the Superspade*, *supra* note 10.

80. See *supra* notes 30-31 and accompanying text.

81. SHROPSHIRE, *supra* note 1, at 33.

82. *Id.* at 34.

83. *Id.*

84. *Id.*

85. See *supra* note 9.

IV. FRANCHISE OWNERSHIP AND RACIAL DIVERSITY

Having shared with readers his historical and theoretical framework, Professor Shropshire turns to the core of *In Black and White*: three chapters in which he discusses the absence of African-Americans in power positions in professional sports. In the chapter entitled "Sitting in with the 'Good Old Boys': Ownership," Professor Shropshire addresses the absence of black ownership of professional sports franchises and the role of the law in achieving greater diversity. He relies on statistical evidence to paint a stark picture: the virtual absence of diversity among the ownership elite of professional sports. He notes that blacks accounted for only seven of the 275 individuals with ownership interests in professional baseball, football, and basketball in 1994.⁸⁶ This disappointing figure is augmented by the fact that none of these seven possessed a controlling ownership interest in a professional sports franchise.⁸⁷

Professor Shropshire provides this information in support of his contention that despite African-Americans' distributive equality on the playing field, "equality, equal achievement has not occurred in terms of success at the highest levels."⁸⁸ A proponent of affirmative efforts to achieve racial diversity, Professor Shropshire believes that such underrepresentation is problematic. However, he candidly acknowledges the difficulty in assessing the specific benefits that might accrue to professional sports from black ownership given the lack of actual experience.⁸⁹ In this regard he states that "while some of the social values of diversity are real, others are difficult or even impossible to validate."⁹⁰ Indeed, the difficulty in assessing foreseeable consequences—namely, benefits and harms—is a practical problem confronting any efforts aimed at increasing racial diversity.⁹¹ Nevertheless, having recognized this issue, Professor Shropshire still explores the likely consequences of increased black ownership in sports.

The linchpin of Professor Shropshire's call for greater racial diversity in professional sports ownership is based upon what he perceives as the positive values that diversity promotes. Before examining these values, however, I will briefly consider the economic benefits that Professor Shropshire argues may result from increased minority presence in sports-franchise ownership. In this regard, he begins by noting that low African-American attendance at sporting events provides a convenient

86. SHROPSHIRE, *supra* note 1, at 36.

87. *Id.*

88. *Id.*

89. *Id.* at 46.

90. *Id.* at 37.

91. See MICHEL ROSENFELD, AFFIRMATIVE ACTION & JUSTICE: A PHILOSOPHICAL & CONSTITUTIONAL INQUIRY 95 (1991) (noting that the inability to assess likely outcomes represents a fundamental frustration for proponents of utilitarian justifications for affirmative action efforts); Shelia Foster, *Difference and Equality: A Critical Assessment of the Concept of "Diversity,"* 1993 WIS. L. REV. 105, 113 (noting that forward looking rather than remedial justification for affirmative action policies are criticized as "too vague to be compelling").

economic rationale for owners who seek to justify paying African-American athletes, on average, lower salaries than white athletes.⁹² According to Professor Shropshire, racial diversity in ownership would, at a minimum, eliminate perceptions of a racial component to salary decisions.⁹³ He further presumes that African-American owners would ignore any attendance statistics in making salary determinations or would initiate the changes needed to attract black fans.⁹⁴ Thus, he surmises that this economic argument for salary discrimination could be eradicated.⁹⁵ He astutely concludes, however, the dearth of “instances of modern-day African-American sports-franchise ownership to verify that greater equity will actually arrive with diversity.”⁹⁶

Professor Shropshire next turns his attention to other race-related inequities in professional sports resulting from a lack of diversity. Conceivably these too could be impacted by increased minority ownership. To begin, relying on studies from other industries, Professor Shropshire contends that black ownership would in fact increase the likelihood that African-Americans would be hired for management level positions.⁹⁷ In addition, he refers to studies that reveal that the market value of companies increase with diversity. This particular assertion is specifically intended to address concerns that the quality of sports would decline under black ownership.⁹⁸ At this juncture, Professor Shropshire should have informed the readers of the relationship between these concerns and images regarding African-Americans in sports.⁹⁹ By not doing so, he once again forgoes an opportunity to highlight an important aspect—the influence of negative stereotypes—of his theoretical premises.

Professor Shropshire attempts to support his suppositions by drawing on the few instances of black ownership of professional sports franchises. He cites to black ownership of Negro League baseball teams and the minority interest held by African-Americans in the NBA's Denver Nuggets.¹⁰⁰ Of the illustrations provided by Professor Shropshire, one provides minimal support for his views concerning the possible positive impact minority ownership might have on increasing the hiring of African-Americans. The Savannah Cardinals, a minor league baseball franchise, had minority owners from 1985 to 1987. He emphasizes that during this period, the management of the Cardinals was predominantly African-American.¹⁰¹ Ultimately, Professor Shropshire concedes that “[w]hat is missing is a long-term experience in

92. SHROPSHIRE, *supra* note 1, at 43-44.

93. *Id.* at 45.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.* at 45-46.

98. *Id.*

99. *See supra* notes 69-77 and accompanying text.

100. SHROPSHIRE, *supra* note 1, at 46-48.

101. *Id.* at 46.

integrated sports ownership to test" whether minority ownership enhances chances of "meritocratic employment for African-Americans in professional sports."¹⁰²

Notwithstanding his discussion of the financial implications that would likely result from diversity in sports-franchise ownership, the reader senses that Professor Shropshire relies most substantially on the social benefits of diversity in calling for change.¹⁰³ Drawing on events outside the realm of sports and personal experiences, Professor Shropshire emphasizes what he characterizes as the "actual value of diversity." One such value is the consciousness raising potential of racial diversity. He summarizes his views in this regard as follows:

Once diversity is introduced into any setting, those accustomed to a monochromatic institution must change. Both blatant and unconscious acts of racism are more likely to be addressed by a diverse group. People of diverse backgrounds generally will provide a varied perspective and encourage more thoughtful viewpoints from others.¹⁰⁴

Professor Shropshire next discusses what he denotes as the "perceived value of diversity," presumably the benefits of diversity that are more difficult to assess.¹⁰⁵ He points out that persons of color in positions of leadership enhance both the perception and the likelihood that blacks and other minorities will receive equitable treatment.¹⁰⁶ In reaching this conclusion, he gently suggests that blacks in positions of authority will be better equipped to overcoming the unconscious stereotypes that impede opportunity and advancement for minorities.¹⁰⁷ Professor Shropshire also believes that diversity adds an element of racial sensitivity in decisionmaking.¹⁰⁸

Several themes appear within Professor Shropshire's discussion of the social benefits of diversity. Implicit in his analysis is the controversial theme of critical race theory, which posits that African-Americans and other people of color have life experiences that give them a dual consciousness.¹⁰⁹ This, in turn, produces a racially

102. *Id.*

103. This sense is confirmed later in *In Black and White* when Professor Shropshire concludes that the social benefits of diversity present the strongest arguments in support of increased minority ownership in sports. *Id.* at 61.

104. *Id.* at 39.

105. *Id.*

106. *Id.* at 36, 41.

107. *Id.* at 40-41.

108. *Id.*

109. Professor Barnes offers the following quotation from W.E.B. DuBois to describe the theory of dual consciousness:

After the Egyptian and Indian, the Greek and Roman, the Teuton and Mongolian, the Negro is a sort of seventh son, born with a veil, and gifted with second-sight in this American world,—a world which yields him no true self-consciousness, but only lets him see himself through the revelation of the other world. It is a peculiar sensation, this double-consciousness, this sense of always looking at one's self through the eyes of others, of measuring one's soul by the tape of a world that looks on in amused contempt and pity. One ever feels his twoness,—an American, a Negro; two souls, two thoughts, two unreconciled strivings, two warring ideals in one dark body, whose dogged strength alone keeps it from

distinctive voice.¹¹⁰ Moreover, on the notion of a racially distinctive voice and perspective,¹¹¹ Professor Robin Barnes states:

Critical race scholars recognize that the unique perspective of many minority scholars has developed from their experience and progress in the face of racially invidious treatment and from their empathy with the physical and psychological conditions of those who have been marginalized. . . . Social-political reality can be understood only if a plurality of voices articulates different point[s] of view; understanding suffers when some voices are silenced. Minority scholars are uniquely positioned to assist in the goal of breaking this silence.¹¹²

Professor Shropshire apparently shares such sentiments in arguing that increased diversity in ownership will open the way for people with different perspectives to address the issues, including race, that confront sports. From my perspective, he could have bolstered the race consciousness thread of his theoretical framework by expressly addressing the notion of a racially distinctive voice. Such a discussion would have also provided a point of departure for examining the debate—even among scholars of color—regarding the merits of diversity.¹¹³ This, in turn, would have better informed and enabled readers to evaluate Professor Shropshire's unqualified endorsement of increased diversity in sports-franchise ownership.

Professor Shropshire's social values arguments in favor of diversity parallel arguments advanced to justify affirmative action programs in education and in broad-

being torn asunder.

Robin D. Barnes, *Race Consciousness: The Thematic Content of Racial Distinctiveness in Critical Race Scholarship*, 103 HARV. L. REV. 1864, 1866 (1990) (quoting W.E.B. DuBois, *THE SOULS OF BLACK FOLK* 3 (1903)).

110. *Id.* at 1865-66.

111. Commenting on this racially distinctive voice, Professor Calmore states:

Although the world of black Americans since slavery has been an integral part of American society, the worlds of blacks and whites have been intensely separate. Inevitably, this has resulted in distinctive histories and features of African-American culture, institutions, and society. It is, therefore, no surprise that blacks and whites so often see quite different realities at both the perceptual and experiential levels.

Calmore, *supra* note 17, at 2144.

112. Barnes, *supra* note 109, at 1869-70. Professor Barnes adds that the notion of a dual consciousness that imbues people of color with a "minority voice" has been severely criticized. Professor Randall Kennedy warns that the idea of a minority voice risks essentialism. He adds that "racial groups are not monolithic." He concludes that ignoring the diversity of experiences of minorities does them a disservice in their quest for equality. *See* Randall L. Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745, 1782-83 (1989). *But see* Foster, *supra* note 91, at 141 (proposing that the tension between diversity and essentialism can be resolved by acknowledging that the value of diversity lies both in diverse viewpoints contributed by those from different backgrounds and the inclusion of those systematically disempowered).

113. *See, e.g.,* Spencer A. Overton, *The Threat Diversity Poses to African Americans: A Black Nationalist Critique of Outsider Ideology*, 37 HOW. L.J. 465, 488 (1994) (arguing that "[b]lack[s] should reject diversity because it promotes the use of victimization as a rationale to gain entry into majoritarian society").

casting. After discussing the relevant cases, he assesses whether existing precedent can compel greater African-American sports-franchise ownership.

Professor Shropshire's review of case law begins with the landmark case *Regents of the University of California v. Bakke*,¹¹⁴ in which the Supreme Court addressed the significance of diversity in the context of university admissions programs. Justice Powell, writing alone, concluded that the University of California at Davis's race conscious dual admissions policy was unconstitutional under the strict scrutiny standard of review.¹¹⁵ In reaching this conclusion, however, Justice Powell conceded that diversity was a compelling governmental interest in the context of university admissions programs.¹¹⁶ In support of his position, Justice Powell attributed special significance to diversity in the higher education context because of the intimate experiences, varying outlooks, and the "robust exchange of ideas" that are essential to the quality of higher education.¹¹⁷ He added that the "atmosphere of 'speculation, experiment and creation'—so essential to the quality of higher education—is widely believed to be promoted by a diverse student body."¹¹⁸

The Supreme Court examined the importance of diversity within the broadcasting industry in *Metro Broadcasting, Inc. v. FCC*.¹¹⁹ The Court held that the FCC's program seeking to enhance minority ownership within the broadcasting industry did not violate the Constitution under the intermediate scrutiny standard of review.¹²⁰ In so holding, the Court stated, "[the] broadcasting industry with representative minority participation will produce more variation and diversity than will one whose ownership is drawn from a single racially and ethnically homogenous group."¹²¹ It concluded that "the interest in enhancing broadcasting diversity is, at the very least, an 'important' governmental objective." The Court also found the importance of diversity of views and information over the airwaves analogous to that of the robust exchange of information and ideas in the university setting.¹²²

Recently, in *Hopwood v. State of Texas*,¹²³ the United States Court of Appeals for the Fifth Circuit revisited the issue of diversity in the context of higher education. A three-judge panel decided that consideration of race or ethnicity by the University

114. 438 U.S. 265 (1978).

115. *Bakke*, 438 U.S. at 320.

116. *Id.* at 313-14.

117. *Id.* at 313.

118. *Id.* at 312.

119. 497 U.S. 547 (1990), *overruled in part by* *Adarand Constructors v. Peña*, 115 S. Ct. 2097 (1995).

120. *Metro Broadcasting*, 497 U.S. at 564-66.

121. *Id.* at 579.

122. *Id.* at 568. *Metro Broadcasting* has been overruled to the extent that it required an intermediate level of scrutiny for federal affirmative action programs. *Adarand Constructors v. Peña*, 115 S. Ct. 2097, 2013 (1995); Patricia M. Worthy, *Diversity and Minority Stereotyping in the Television Media: The Unsettled First Amendment Issue*, 18 HASTINGS COMM. & ENT. L.J. 509, 529 (1996); see *infra* note 126 (discussing the vitality of *Metro Broadcasting* in the aftermath of *Adarand*).

123. 78 F.3d 932 (5th Cir.), *cert. denied sub nom.* *Thurgood Marshall Legal Soc'y v. Hopwood*, 116 S. Ct. 2580 (1996).

of Texas Law School for the purpose of achieving a diverse student body is *not* a compelling interest under the Fourteenth Amendment.¹²⁴ The court argued that Justice Powell's view in *Bakke* was not binding precedent because he failed to represent a majority of the Court on the issue of diversity as a compelling governmental interest.¹²⁵

Obviously, the Supreme Court will have the final say on the question of racial diversity in the educational setting. Nonetheless, *Hopwood* seriously clouds the question of the constitutionality of employing race conscious affirmative action initiatives premised on promoting diversity.¹²⁶ Even without the benefit of the *Hopwood* decision, Professor Shropshire acknowledges that making a case for diversity as a compelling governmental interest in the context of professional sports ownership will be difficult.¹²⁷ Nevertheless, he stops short of conceding the point.

Relying on the principles expressed in *Metro Broadcasting*, Professor Shropshire suggests that professional sports, if viewed as a form of entertainment, may have societal impact similar to that of the broadcasting industry, and may derive similar benefits from diversity in franchise ownership.¹²⁸ In support of his position, Professor Shropshire argues that the message conveyed by professional sports is either communicated by the images on the field or by the images of the people in charge of the sports industry, presumably owners.¹²⁹ He asserts that:

[Y]outh who see[] only whites as owners, officials, and quarterbacks gain[] an understanding of who the leaders are in society, as well as of who the leaders are not. This reinforces both the conscious and unconscious beliefs regarding race held by all who watch. This message delivered by sports franchises—that is, who occupies leadership roles—is determined in large part by the owners.¹³⁰

124. *Hopwood*, 78 F.3d at 943.

125. *Id.*

126. Such uncertainty is heightened given the Supreme Court's holding in *Adarand Constructors*, to the effect that all race conscious affirmative action policies are unconstitutional unless the policy is "narrowly tailored" to further a "compelling governmental interest." *Adarand Constructors*, 115 S. Ct. at 2113. Thus after years of debate concerning the appropriate standard of review of race conscious affirmative action policies, the U.S. Supreme Court held that, "all racial classifications, imposed by whatever federal, state, or local governmental actor, [whether benign or invidious], must be analyzed by a reviewing court under strict scrutiny." *Id.* It should be noted that, in dissent, Justice Stevens argued that the Court's opinion in *Adarand* did not diminish the important interest of fostering diversity that was recognized in *Metro Broadcasting*. *Id.* at 2127 (Stevens, J., dissenting). The Supreme Court's holding in *Adarand* has unequivocally answered the question concerning the proper standard of review to be applied in race conscious affirmative action programs; however, the question remains whether "diversity" is a compelling governmental interest.

127. SHROPSHIRE, *supra* note 1, at 51.

128. *Id.* at 50.

129. *Id.* at 51.

130. *Id.* at 50-51.

Professor Shropshire adds, however, that regardless of the positive message that could be conveyed by greater visible diversity in sports, it is not on the order of the congressionally recognized interest the Court sought to protect in *Metro Broadcasting*.¹³¹ This is especially true given the tendency discussed above to trivialize the significance of sports in our society.¹³² Professor Shropshire's sports-broadcasting analogy will be all the more difficult for courts to accept since television audiences rarely see owners. Clearly what audiences see is disproportionately high numbers of African-Americans playing high profile sports. As discussed above, these large numbers in the player ranks, in turn, create the perception that African-Americans have achieved equality and that opportunities abound in the world of sports.¹³³ This latter message, while facially positive, is particularly harmful to African-American youth.¹³⁴ In short, it is arguable that the images depicted in the sports of basketball and football, at least with respect to the issue of franchise ownership, indirectly undercut the underrepresentation of minorities in television that disturbed the *Metro Broadcasting* Court.¹³⁵

In summary, given the current status of the law regarding affirmative action, the argument that diversity in sports ownership is a compelling governmental interest is a difficult one to make. To his credit, Professor Shropshire cautions readers regarding the difficulties of equating the significance of diversity in sports ownership with that of broadcasting or higher education from a legal standpoint.¹³⁶ Having done so, he next considers antidiscrimination laws as a vehicle for increasing diversity in the ownership ranks of sports franchises.

Turning to Title VII,¹³⁷ Professor Shropshire concludes that this legislation holds little promise as a basis for judicially mandating diversity in ownership.¹³⁸ He begins by appropriately pointing out that it is the employment relationship that invokes the application of Title VII.¹³⁹ No such relationship exists between owners and prospective owners or between sports leagues and prospective owners. Although

131. *Id.* at 51.

132. *See supra* notes 11-12 and accompanying text.

133. *See supra* notes 8-9 and accompanying text.

134. *See* SHROPSHIRE, *supra* note 1, at 145-46 (discussing the harmful consequences in the African-American community of the emphasis on sports as a vehicle for upward mobility); Davis, *Myth of the Superspade*, *supra* note 10, at 650-51 (discussing the same).

135. *See generally* Worthy, *supra* note 122 (discussing diversity in broadcasting).

136. SHROPSHIRE, *supra* note 1, at 51.

137. Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, 42 U.S.C.A. §§ 2000e-2017 (West 1994).

138. SHROPSHIRE, *supra* note 1, at 53-54.

139. *Id.* In support, Professor Shropshire quotes as follows from a leading case: "The contractual relationship of employment triggers the provisions of Title VII governing 'terms, condition, or privileges of employment.'" *Id.* at 176 (quoting *Hishon v. King & Spalding*, 467 U.S. 69 (1984)); *see* 1 MARK A. ROTHSTEIN ET AL., *EMPLOYMENT LAW* 154 (1994) (noting that to invoke Title VII the "relationship between the complainant and the respondent must be one of 'employment'").

partnership decisions are not immune to Title VII, uncertain legal precedent,¹⁴⁰ freedom of association concerns,¹⁴¹ and judicial deference to subjective criteria¹⁴² further circumscribe its applicability to franchise ownership.¹⁴³ Likewise, Professor Shropshire places little faith in 42 U.S.C.A. § 1981 as a legal mechanism for increasing minority ownership. I consider these antidiscrimination norms more fully in the discussion, which follows, regarding racial inequities in hiring high-level employees.

In concluding his discussion of diversity in ownership, Professor Shropshire suggests that voluntary rather than court-imposed efforts represent a better approach to diversifying ownership of sports teams. He argues that this will depend on recognition by players, owners, and league commissioners and leaders of the benefits that sports can derive from racial diversity.¹⁴⁴ In this regard, he suggests a special role for league commissioners such as David Stern.¹⁴⁵ Professor Shropshire asserts that they can be proactive in attempts to include minority owners in expansion deals.¹⁴⁶ Similarly, he assigns a special role for African-American athletes who may have the interest and financial wherewithal to gain an ownership interest in a sports team.¹⁴⁷ He stops short, however, of proposing some of the more radical forms of action by African-American athletes suggested by certain commentators.¹⁴⁸

Ultimately, however, Professor Shropshire concludes that franchise owners are the key to effectuating change. While he applauds recent efforts to include African-Americans within the ownership groups in recent NFL expansion teams, he wisely cautions against becoming overly optimistic.¹⁴⁹ Instilling within owners the desire to promote diversity is a daunting task given that "owners suffer from the same levels of conscious and unconscious racism as are present in the rest of society."¹⁵⁰ This may particularly be the case if one believes that change will only come about if owners perceive it is within their economic interests to do so.

V. INTEGRATING THE FRONT OFFICE

In Chapter Three, entitled "The Front Office and Antidiscrimination Law," Professor Shropshire briefly examines existing antidiscrimination law as a means of recourse for increasing the African-American presence in sports management. Based

140. See *Price Waterhouse v. Hopkins*, 490 U.S. 228, 233 (1989), *superseded in part* by the Civil Rights Act of 1991, Pub. L. No. 102-166, § 107, 105 Stat. 1071, 1075-76 (1991) (amending 42 U.S.C. § 2000e-2); *Hishon v. King & Spalding*, 467 U.S. 69 (1984).

141. See *Hishon*, 467 U.S. at 77.

142. See *Zahorik v. Cornell Univ.*, 729 F.2d 85, 93 (2d Cir. 1984).

143. See *Hishon v. King & Spalding*, 467 U.S. 69 (1984).

144. SHROPSHIRE, *supra* note 1, at 58-59.

145. *Id.* at 58.

146. *Id.*

147. *Id.* at 61.

148. See generally Edwards, *supra* note 3.

149. SHROPSHIRE, *supra* note 1, at 58, 60.

150. *Id.* at 60.

upon his review of key statutes (Title VII and § 1981) and cases, Professor Shropshire views the law as an ineffective vehicle for achieving this objective.

My review of the pertinent statutory and case law finds me in agreement with Professor Shropshire's conclusion. I begin with the statute that Professor Shropshire considers potentially most significant. Title VII of the amended Civil Rights Act of 1964 makes it unlawful to fail or to refuse to hire individuals on account of race, color, religion, sex, or national origin.¹⁵¹ The thrust of Title VII prohibits employers from discriminating against any individual with respect to that individual's compensation, or privileges of employment.¹⁵²

The most common type of Title VII claim is for disparate treatment, when a plaintiff alleges that the worker has been treated less favorably than the worker's peers on account of race. To prevail on such a claim, the plaintiff must prove discriminatory purpose on the part of the employer.¹⁵³ Thus, the key to proving disparate treatment is intent to discriminate.¹⁵⁴

To prevail on a Title VII disparate treatment claim, a prospective African-American coach or executive would be required to prove that the motivation behind an owner's decision not to promote the coach or executive was made with a discriminatory intent. However, as Professor Shropshire points out, the manner in which hiring decisions are made in professional sports creates impediments to producing such evidence. As he appropriately notes, given that race on a conscious level typically is not a factor in hiring decisions, when a sports franchise owner hires a family member or a friend, the odds are against establishing a Title VII disparate treatment claim.¹⁵⁵

These features of sports hiring create potentially insurmountable evidentiary barriers to sustaining a disparate impact claim under Title VII. In *Griggs v. Duke Power Co.*,¹⁵⁶ the Supreme Court held that Title VII, in addition to banning intentional discrimination, also bans neutral employment practices that have a disparate impact on blacks, unless those practices are shown to be justified by business necessity.¹⁵⁷ In this regard, the Court stated that facially neutral practices that "operate as 'built-in headwinds' for minority groups and are unrelated to measuring

151. Title VII renders it unlawful "for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin." 42 U.S.C.A. § 2000e-2(a)(1) (West 1994).

152. ABIGAIL COOLEY MODJESKA, *EMPLOYMENT DISCRIMINATION LAW* § 2.01-22 (3d ed. 1993).

153. *Id.* § 1.09, 1.10.

154. *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 510-11 (1993); *Anderson v. Douglas & Lomason Co.*, 26 F.3d 1277, 1284 (5th Cir. 1994).

155. SHROPSHIRE, *supra* note 1, at 66; see Robert E. Suggs, *Racial Discrimination in Business Transactions*, 42 HASTINGS L.J. 1257, 1275-76 (1991) (noting, in the context of Title VII, that only in cases of extreme discrimination can a plaintiff show the requisite intent to discriminate short of an admission of culpability by the defendant).

156. 401 U.S. 424 (1971).

157. *Griggs*, 401 U.S. at 431.

job capability" violate Title VII regardless of the employer's good intent or lack of discriminatory intent.¹⁵⁸

In prevailing on these types of cases, plaintiffs must establish by statistics that the practice at issue results in a substantially disproportionate underrepresentation of statutorily protected persons.¹⁵⁹ However, they cannot sustain an action simply by proving the existence of a racial or other imbalance in the employer's work force.¹⁶⁰ A disparate impact claimant must also demonstrate that this imbalance was caused by a specific discriminatory practice and "that each challenged employment practice causes a disparate impact."¹⁶¹ The most viable suits in this area are those brought by a party denied a job opportunity based on a discriminatory selection device or hiring practice.

Professor Shropshire reiterates his earlier point that in making hiring decisions in sports, employers typically will not use a selection device or specific hiring practice.¹⁶² In this regard, he notes a recent NAACP study that revealed an absence of hiring or promotion practices in sports that amount to disparate impact or treatment.¹⁶³ Professor Shropshire concludes:

Employers in sports tend to use a series of subjective criteria, varying among employment decisions, with no elements necessarily being weighed more heavily than others. With no unique practice to target as discriminatory, it is difficult to bring an action under Title VII no matter what the statistics show regarding the underrepresentation of any group at any job level.¹⁶⁴

158. *Id.* at 432. The Court further stated as follows:

The objective of Congress in the enactment of Title VII is plain from the language of the statute. It was to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees. Under the Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to "freeze" the status quo of prior discriminatory employment practices.

Id. at 429-30.

159. *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 994 (1988).

160. *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642, 653 (1989), *superseded in part* by the Civil Rights Act of 1991, Pub. L. No. 102-166, § 105, 105 Stat. 1071, 1074-75 (1991) (amending 42 U.S.C. § 2000e-2).

161. 42 U.S.C.A. § 2000e-2(k)(1)(B)(i) (West 1994); *Atonio*, 490 U.S. at 645; *Johnson v. Uncle Ben's, Inc.*, 965 F.2d 1363, 1367 (5th Cir. 1992).

The burden of proof in disparate impact cases is described as follows:

An unlawful employment practice based on disparate impact is established under this title only if (i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact . . . and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or (ii) the complaining party makes the demonstration described in paragraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

42 U.S.C.A. § 2000e-2(k)(1)(A) (West 1994).

162. SHROPSHIRE, *supra* note 1, at 65-66.

163. *Id.* at 65; Telephone Interview with Newton Jackson, Consultant, NAACP (Jan. 15, 1995) (notes on file with the author).

164. SHROPSHIRE, *supra* note 1, at 65.

I agree with Professor Shropshire's conclusion that the absence of objectively quantifiable factors on which employment decisions are made will pose difficulties for African-Americans who challenge hiring and promotion decisions in sports. Similarly, I concur with his conclusion that such challenges will likely be unsuccessful inasmuch as courts—which presume to lack the requisite expertise—"are reluctant to second-guess the validity of such subjective criteria."¹⁶⁵

Professor Shropshire appropriately points out, however, that the use of subjective criteria will not provide an absolute shield against a Title VII disparate impact claim.¹⁶⁶ The Supreme Court has held that subjective criteria, under which employers or their agents have substantial discretion in identifying desired traits or characteristics, are subject to disparate impact theory.¹⁶⁷ Once again, however, plaintiffs are confronted with a formidable obstacle: establishing the requisite relationship between particular subjective employment practices and disparities in the work force.¹⁶⁸ Given these evidentiary requirements, African-Americans are likely to find that disparate impact theory offers little recourse as a basis for challenging employment practices in sports.

I also agree with Professor Shropshire's conclusion that a plaintiff seeking a position in sports management is not likely to encounter greater success pursuing a § 1981 action.¹⁶⁹ 42 U.S.C.A. § 1981 prohibits racial discrimination in the contracting process.¹⁷⁰ Like Title VII disparate treatment cases, § 1981 proscribes only intentional acts of racial discrimination.¹⁷¹ Given the nature of the hiring process that occurs in professional sports, as Professor Shropshire observes, absent the "rare 'smoking gun' event, where the employer says, for example, 'We don't want to hire you because you are black,'" prevailing on a § 1981 claim is unlikely to occur.¹⁷²

Given his philosophical premises, Professor Shropshire's analysis of the utility of antidiscrimination norms is surprisingly doctrinal. The limited usefulness of traditional antidiscrimination laws in the context of sports hiring provided Professor Shropshire with an occasion to explore another strand of his theoretical framework:

165. *Id.* at 67.

166. *Id.* at 68.

167. *Watson*, 487 U.S. at 989-90.

168. *See, e.g., Johnson v. Uncle Ben's, Inc.*, 965 F.2d 1363 (5th Cir. 1992); *Lowe v. Commack Union Free Sch. Dist.*, 886 F.2d 1364 (2d Cir. 1989).

169. SHROPSHIRE, *supra* note 1, at 54.

170. 42 U.S.C.A. § 1981 (West Supp. 1994). Prior to 1991, the U.S. Supreme Court rejected decades of contrary precedent in *Patterson v. McLean Credit Union*, 491 U.S. 164, 176-78 (1989), *superseded by* the Civil Rights Act of 1991, Pub. L. No. 102-166, § 101, 105 Stat. 1071, 1071-72 (1991) (amending 42 U.S.C. § 1981), by narrowly interpreting the scope of § 1981 as applying to the initial formation and the enforcement stages of a contract only. Thus, discrimination that involved contractual performance was held to fall outside the strictures of the statute. The Civil Rights Act of 1991 states, in part, as follows: "the term 'make and enforce contracts' includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." 42 U.S.C.A. § 1981(b) (West Supp. 1994).

171. *Id.*; *see, e.g., Durham v. Xerox Corp.*, 18 F.3d 836, 839-40 (10th Cir. 1994) (noting only intentional discrimination may violate § 1981); *Edwards v. Jewish Hosp.*, 855 F.2d 1345, 1349 (8th Cir. 1988) (same).

172. SHROPSHIRE, *supra* note 1, at 64.

the need to “unmask themes that dominate mainstream legal discourse.”¹⁷³ Indeed, African-Americans’ inability to rely on established antidiscrimination laws to achieve racial justice illustrates the limitations inherent in an antidiscrimination legal framework that fails to take into account unconscious racism.¹⁷⁴ For example, in urging that the equal protection doctrine come to grips with unconscious racism,¹⁷⁵ Professor Charles Lawrence commented that:

[t]raditional notions of intent do not reflect the fact that decisions about racial matters are influenced in large part by factors that can be characterized as neither intentional—in the sense that certain outcomes are self-consciously sought—nor unintentional—in the sense that the outcomes are random, fortuitous, and uninfluenced by the decisionmaker’s beliefs, desires, and wishes.¹⁷⁶

By more fully elaborating, Professor Shropshire would have done readers a service. He would have equipped them with yet another lens through which they could view the limited role of antidiscrimination norms in sports.

VI. DISCRIMINATION IN THE FRONT OFFICE

In Chapter Four, entitled “Fear of a Black Planet: The Front Office and Antidiscrimination Law,” Professor Shropshire again turns to statistics that demonstrate the consistent under-representation of African-Americans in management and leadership positions in the three major sports.¹⁷⁷ He condemns this paucity of blacks in professional sports teams management. According to Professor Shropshire, blacks desiring management positions find the odds stacked against them.¹⁷⁸ He notes that for African-American athletes who desire a career in management following their playing days, the transition up the sports-business ladder is considerably more difficult to traverse than for their white counterparts.¹⁷⁹ Using baseball as an example, Professor Shropshire, voicing the view of other commentators,¹⁸⁰ asserts that even when blacks attain management positions, they often confront enormous odds against

173. Calmore, *supra* note 17, at 2161-62 & n.107; see *supra* notes 18-28 and accompanying text.

174. See Lawrence, *supra* note 29, at 319; see also Linda S. Green, *Race in the 21 Century: Equality Through Law?*, 64 TUL. L. REV. 1515 (1990).

175. Lawrence, *supra* note 29, at 322-23.

176. *Id.* at 322.

177. SHROPSHIRE, *supra* note 1, at 78. He does note that the National Basketball Association track record is better with respect to hiring. *Id.* at 79.

178. *Id.* at 77-78.

179. *Id.* at 77.

180. According to Harry Edwards, blacks, with few exceptions, are “offered the top coaching job principally with death bed or low profile programs.” Edwards, *supra* note 3, at 100.

their success.¹⁸¹ "Prior to the Campanis event, . . . the three blacks who were hired to manage in the major leagues were given garbage teams"¹⁸²

Professor Shropshire argues that the inability of African-Americans to break into leadership is attributable in large part to negative stereotypes.¹⁸³ These stereotypes, in conjunction with the "good old boy" system of hiring, result in lower numbers of blacks in authority positions in sports.¹⁸⁴ Emphasizing the impact of the old boy network, he quotes a sports executive as follows: "If you're starting off with a predominantly white male work-force and who they know and who they network with is predominantly other white males, that's what I think has happened in the business years ago and even now"¹⁸⁵ Given these dynamics, Professor Shropshire concludes that "[a]ffirmative action must be taken for more African-Americans to become a part of these hiring networks."¹⁸⁶

Having reached this conclusion, the remainder of the chapter is devoted to a discussion of the merits of enacting affirmative action measures in sports. Attempting to justify his argument for increased hiring of blacks in front office positions, Professor Shropshire notes the applicability of the values associated with diversity in the context of franchise ownership.¹⁸⁷ He adds, however, that additional reasons support increasing the numbers of African-Americans in front offices.¹⁸⁸ These include psychological reasons such as the similarity of experiences.¹⁸⁹ He argues that "the basic point is that a person with similar life experiences, another African-American, is likely to have a better understanding of the African-American athlete on a personal level than a white coach."¹⁹⁰

Having established that sufficient justification exists for making race-conscious hiring decisions in sports, Professor Shropshire concludes that given the nature of racism in sports, affirmative action strategies must revolve around opening hiring networks.¹⁹¹ He also offers readers a glimpse of strategies that have been either proposed or instituted to bring African-Americans into the mainstream of the sports management network.¹⁹² Illustrative of such initiatives is one involving a "group called the Baseball Network [that] was formed to attempt to inject minorities who

181. SHROPSHIRE, *supra* note 1, at 78-79.

182. *Id.* at 79.

183. *Id.* at 78.

184. *Id.* at 83.

185. *Id.*

186. *Id.*

187. *Id.* at 80.

188. *Id.*

189. *Id.* at 80-81.

190. *Id.* at 81.

191. *Id.* at 83-84.

192. *Id.* at 84-90.

normally would not be a part of the old boys' network into that networking structure."¹⁹³

According to Professor Shropshire, such league-sponsored plans tend largely to be of symbolic value.¹⁹⁴ He argues they fail to incorporate mechanisms specific enough to provide a realistic basis for enhancing diversity in power positions.¹⁹⁵ Apart from this criticism, Professor Shropshire offers little elaboration on the reasons underlying the limited utility of such programs. He apparently believes that the success of sports-related affirmative action plans is dependent on the commitment of those in leadership positions, principally owners and officials.¹⁹⁶ "Unlike the ownership level with its problems of financing and the legal protections that protect clubbiness, much can be done fairly rapidly and with the help of strong leadership to increase the numbers of African-Americans in front-office management and coaching positions."¹⁹⁷

Professor Shropshire clearly views franchise owners and league officials as the pivotal players in promoting diversity in sports management. For example, he assigns to them the task of taking steps to rebut negative public sentiment regarding affirmative action.¹⁹⁸ In this regard, Professor Shropshire states:

To promote affirmative action in sports, the commissioners and owners must articulate the historical diversity shortcomings of their sport and the fact that racism is deeply ingrained in the culture of sports. The view of Professor Charles Lawrence that permanent unconscious racism exists in all of us must also be conveyed.¹⁹⁹

Similarly, he envisions league officials and owners as taking the lead in responding to the resistance to affirmative actions programs that stems from fears of quotas and unfair advantage.²⁰⁰ In this regard he notes that "[t]he response from the league and owners to quota arguments must incorporate the broad benefits of diversity, the realities of the skills and capabilities of African-Americans, and the cultural history of the sports industry."²⁰¹ At another point he states that "the commissioners of the respective leagues, as well as the team owners, must anticipate the resistance to

193. *Id.* at 87. Similarly, he directs the reader's attention to plans generated by external groups such as Jesse Jackson's Rainbow Coalition for Fairness in Athletics (RCFA). He notes the RCFA plan that established steps for increasing diversity in sports was criticized for setting specific numerical goals for hiring African-Americans. *Id.*

194. *Id.* at 85.

195. *Id.* at 85-90.

196. *Id.* at 90.

197. *Id.*

198. *Id.* at 92-94.

199. *Id.* at 94.

200. *Id.* at 92.

201. *Id.* at 93.

changes that always lurks behind any sudden push forward, particularly with regard to race."²⁰²

I agree with his conclusions regarding the significant role owners and league officials must play in increasing diversity in front office and coaching positions in professional sports. However, perhaps more so than Professor Shropshire, I question whether these power players are willing to accept the enormous task that Professor Shropshire asserts they must accept. In mild fashion, Professor Shropshire states, "Implementing programs and bringing owners on board is a difficult balancing act."²⁰³ Notwithstanding these words of caution, he seems to assume a readiness and willingness on the part of owners and league commissioners to accomplish the tasks necessary to integrate sports management. In so doing, he departs from a critical element of his underlying thesis—the pervasive influence of stereotypes and unconscious racism on the mind set of these decisionmakers.²⁰⁴ Drawing from his discussion concerning the role of stereotypes made earlier in the chapter would have established this connection.

Furthermore, an obvious question that arises from Professor Shropshire's discussion is who or what will sensitize owners and league officials to the merits of diversity. What will propel owners to want to change? Rather than confront such issues squarely, Professor Shropshire suggests that external pressure from groups such as the Rainbow Coalition for Fairness in Athletics may stimulate action by league officials and owners.²⁰⁵ Such external pressure was brought to bear in 1994 when the NAACP threatened a boycott to protest the NFL Dallas Cowboys' minority hiring and vendor practices.²⁰⁶ The NAACP charged that although seventy percent of Cowboys players were black, no blacks held front office positions with the organization.²⁰⁷ In response to these charges, Cowboys owner Jerry Jones "conceded that there [were] no minorities among the top echelon of the Cowboys management."²⁰⁸ He added, "[T]hat's because the organization is small and all the key managers are his family members or people who have spent their careers working for him."²⁰⁹ He later agreed to add three African-American staff positions. Mr. Jones's response reflects the complexity of the issue of race in sports. It also demonstrates the

202. *Id.* at 91.

203. *Id.* at 96.

204. In another instance, Professor Shropshire seems to minimize the aspect of his theoretical premise that maintains that unconscious racism creates inaccurate perceptions of the ability of African-Americans in sports to perform nonathletically related tasks. He states that "the uniqueness of affirmative action in sports is that there so clearly is no basis for the white societal presumption of African-Americans being less qualified than whites. . . . This is a question not of lack of merit but rather of a lack of opportunity." *Id.* at 86.

205. *Id.* at 89-90.

206. Jessamy Brown, *NAACP Threatens Boycott of Dr. Pepper, 7-Up Products*, FT. WORTH STAR TELEGRAM, Jan. 31, 1995, at 1A.

207. Christopher Lee, *NAACP Investigate Cowboys' Hiring: Jones Rejects Criticism About Lack of Minorities in Top Jobs*, DALLAS MORNING NEWS, June 2, 1994, at 27A.

208. *Id.*

209. *Id.*

awakening that owners must undergo before they are adequately prepared to assume the leadership role Professor Shropshire has set aside for them.

In the conclusion to Chapter Four, Professor Shropshire offers insight into some of the critical factors that may motivate owners to take the lead in diversifying sports. Returning to the notion of interest convergence, he concludes that the selling of affirmative action in sports will hinge on making the case that diversity is good for the business of sports.²¹⁰ Thus, here Professor Shropshire returns to one of his initial, over-arching themes—economics will be the critical factor in propelling owners and league officials to integrate coaching and managerial positions in sports.

VII. RACISM IN COLLEGIATE ATHLETICS

In the next two chapters, Professor Shropshire deals with matters that are important but only peripherally related to the theme of increasing minority ownership and hiring in professional sports.²¹¹ Consequently, they are briefly considered.

Chapter Five, entitled "Color-Blind Propositions: The Collegiate Ranks," explores racism in college athletics. Professor Shropshire begins by identifying the two primary manifestations of race-related concerns at the collegiate level: the impact of race on the academic opportunities afforded African-American student-athletes, and the absence of African-Americans in the power positions of collegiate sports.²¹²

In this section, Professor Shropshire asserts that the perceived unfairness of National Collegiate Athletics Association (NCAA) initial eligibility rules illustrates the racial tensions surrounding the academic experiences of African-American student-athletes.²¹³ As is commonly known, tensions rose to the surface after the NCAA adopted stricter standards—commonly known as Proposition 48—for determining the eligibility of prospective first-year student-athletes to receive athletic scholarships.²¹⁴ Professor Shropshire shares with readers the concerns of critics who

210. SHROPSHIRE, *supra* note 1, at 100.

211. This is not intended to suggest the nonexistence of a relationship between what occurs at the collegiate and professional levels. For example, Professor Shropshire astutely notes that racism in collegiate sports can impact opportunities for African-Americans at the professional levels. "Playing at the college level may lead to the pros and opportunities to progress up the sports-business administrative ladder. It also often leads to graduate assistant positions which in turn may lead to college coaching positions and eventually to positions in the pros." *Id.* at 106.

212. *Id.* at 103-05.

213. *Id.* at 103-04.

214. Enacted in 1983, to take effect in 1986, NCAA regulations commonly known as Proposition 48 required that a Division I scholarship athlete was eligible to compete during the first year only if the athlete had a score of 700 on the SAT or 17 on the ACT, and at least a 2.0 grade-point average in a core curriculum comprised of eleven courses, NCAA OPERATING BYLAW, art. 14, § 14.3.1.1(a), (b), in NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, 1995-96 NCAA MANUAL 142-43 (1995). Proposition 48 standards have been superseded by more stringent requirements known as Proposition 16. These regulations, which went into effect for students entering college after August 1, 1996, provide that Division I eligibility is to be determined pursuant to an indexed scale requiring that high school graduates with a 700 SAT score or a 17 ACT score must have at least a 2.5 GPA in a core curriculum consisting of 13 courses. A prospective Division I student-athlete with a 2.0 GPA would be required to score at least 900 or 21 on the SAT or ACT, respectively, to be eligible to compete and be awarded an athletic scholarship during

challenged Proposition 48 as racist "not only for the projected negative impact on African-American enrollment but also for the lack of inclusion of African-Americans in the original creation of the rule."²¹⁵ In addition, Professor Shropshire points out that much of the criticism of Proposition 48 involves the significant extent to which eligibility standards are based on standardized tests.²¹⁶ A common complaint regarding such tests is that they are culturally and racially biased against minorities.²¹⁷

Professor Shropshire concludes his discussion by assessing the role of the law in achieving racial equality for African-American student-athletes.²¹⁸ Like other commentators, he believes that with the possible exception of Title VI (and only to a limited extent), traditional antidiscrimination norms will not provide a realistic means of accomplishing this goal.²¹⁹ This is due largely to the proof required to sustain actions under such statutes.²²⁰ One commentator notes, "In the intercollegiate context, where persons of color predominate (at least in the numerical sense), inequitable treatment is often far more subtle and far less susceptible of proof than in a traditional discrimination suit."²²¹ Professor Smith adds that the "intent requirement, coupled with the Supreme Court's present unwillingness to permit 'affirmative action,' makes it unlikely that student-athletes of color will be able to address racial inequities of the sorts that exist in the intercollegiate athletics context, . . . through federal constitutional or related means."²²² These realities have led Professor Shropshire and others to recommend a broad range of legal and nonlegal approaches to combating racial inequities in college sports.²²³ These approaches include using common law doctrine, NCAA rule-making, state and federal legislation, and political action as a means of ameliorating racial inequities in sports.²²⁴

With respect to the underrepresentation of African-Americans in college sports administration, Professor Shropshire asserts that the lack of diversity "parallels the problems at the professional level."²²⁵ Here too he envisions a very limited role for law as a vehicle for mandating increased diversity in this setting. Instead, he sees a

the student-athlete's first year of college. NCAA OPERATING BYLAW, art. 14, § 14.3.1.1(a), (b), in NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, 1995-96 NCAA MANUAL 142-43 (1995).

215. SHROPSHIRE, *supra* note 1, at 108.

216. *Id.* at 111.

217. *Id.*

218. *Id.* at 125.

219. *Id.*

220. See Smith, *supra* note 11, at 361-62; see also Davis, *Myth of the Superspade*, *supra* note 10, at 681-83 (arguing the same).

221. Smith, *supra* note 11, at 362; see Davis, *Myth of the Superspade*, *supra* note 10, at 681-83 (arguing that the inability of student-athletes to prove intentional racism limits the effectiveness of traditional antidiscrimination laws in this context).

222. Smith, *supra* note 11, at 362-63.

223. SHROPSHIRE, *supra* note 1, at 125-27.

224. See Davis, *Myth of the Superspade*, *supra* note 10, at 695-97; Smith, *supra* note 11, at 378-79.

225. SHROPSHIRE, *supra* note 1, at 124.

critical role for college presidents and athletic directors in taking the initiative to increase diversity at the collegiate level.²²⁶

Professor Shropshire's discussion of initial eligibility rules is related to a larger concern: To what extent do facially neutral NCAA rules and regulations reflect unconscious racial or cultural bias? Indeed not just initial eligibility, but other NCAA rules, such as those involving financial limitations imposed on student-athletes, disparately impact African-American student-athletes.²²⁷ Such harm results from the dissonance between NCAA rules and the economic and social realities of African-Americans' life experiences.²²⁸ The consequence of this incongruence is not the unfairness discussed above, but the marginalization by African-American student-athletes of the NCAA regulatory process.²²⁹

Professor Shropshire might also have explored more extensively the harms caused by stereotypes to other educational as well as social, economic, and psychological interests of black student-athletes.²³⁰ Indeed, a mind set nurtured by these stereotypes results in the exclusion of "African-American student-athletes from the academic and social mainstream in many predominately white colleges and universities,"²³¹ with the potential exploitation of their athletic abilities for financial reasons.²³²

Similarly, the underrepresentation of African-Americans in college sports administration is derived from the negative stereotypes that nurture unconscious racism. In turn, collectively they serve to limit the opportunities for African-Americans to move into power positions in sports. I previously wrote: "The inequality of access for blacks to the administration of college athletics demonstrates the persistent influence of a particular racial stereotype: the black athlete as inferior to the white athlete regarding intellectual and leadership abilities."²³³ While Professor Shropshire touches on these broader considerations, more explicit and detailed discussion would have been instructive. It also would have allowed him to establish more firmly the applicability of those strands of his theoretical premises relating to colorblindness and the limits of antidiscrimination in the collegiate context.

226. *Id.*

227. See generally Timothy Davis, *African-American Student-Athletes: Marginalizing the NCAA Regulatory Structure?*, 6 MARQ. SPORTS L.J. 199 (1996) [hereinafter Davis, *African-American Student-Athletes*].

228. See generally Anderson, *supra* note 12; Davis, *African-American Student-Athletes*, *supra* note 227.

229. See generally Anderson, *supra* note 12.

230. *Id.* at 368-71; Davis, *Myth of the Superspade*, *supra* note 10, at 668-78.

231. Davis, *Myth of the Superspade*, *supra* note 10, at 669; see Anderson, *supra* note 12, at 370-71 (commenting on the academic and social marginalization of African-American student-athletes); Edwards, *supra* note 3, at 99 (noting the social isolation many black athletes encounter at predominantly white institutions).

232. See Smith, *supra* note 11, at 348 (arguing that the "fact that African-American athletes dominate in the revenue producing sports raises concerns that the athletes are being exploited or taken advantage of for financial reasons); see also Davis, *African-American Student-Athletes*, *supra* note 227, at 224-26 (voicing similar concerns).

233. Davis, *supra* note 10, at 657; see Anderson, *supra* note 12, at 363; see also Smith, *supra* note 11, at 333-34.

VIII. AGENT SELECTION

In Chapter Six, entitled "The White Man's Ice is Colder, His Sugar Sweeter, His Water Wetter, His Medicine Better: Sports Agents," Professor Shropshire artfully weaves his views regarding the significance of stereotypes of African-Americans into his discussion of racism in agent selection. Once more, he relies on statistics to aid in telling his story. Professor Shropshire tells the reader that in 1992, 150 of the 200 agents registered to represent Major League Baseball players had an active clientele.²³⁴ African-American agents accounted for a mere three percent of this 150.²³⁵ In professional football, African-Americans made up fourteen percent of the registered agents with active files.²³⁶

In analyzing these numbers, Professor Shropshire concedes that one would not expect to see exact correlations between African-American athletes and agents.²³⁷ He nevertheless argues that given the substantial numbers of African-American athletes currently participating in professional sports, "a greater African-American presence in the agent business than the percentages noted would seem reasonable."²³⁸

Professor Shropshire attributes the seeming reluctance of African-American athletes to select agents of their race to a number of factors. These factors include the historical allegiance of black athletes to white agents, the negative rhetoric of white agents and the media regarding the professional capabilities of black agents, and the resources available to white agents to woo black athletes.²³⁹ Notwithstanding the significance of these factors, Professor Shropshire believes that lingering perceptions regarding whites possessing business acumen superior to that of blacks are perhaps the most influential.²⁴⁰ Through the use of stories, Professor Shropshire demonstrates that the influence of this perception is not unique to sports. In so doing, he makes the case that the reluctance to retain black professionals as sports agents reflects attitudes that are deeply rooted in American society.

Professor Shropshire contends that even though most would perceive that agent selection is colorblind, race is indeed a factor.²⁴¹ Historically, he contends it has been taken into account to the detriment of African-Americans.²⁴² In this regard, he states that "[r]ace has always been a factor, but one in which being white was positive and black negative."²⁴³ To counter this reality, Professor Shropshire argues for

234. SHROPSHIRE, *supra* note 1, at 131.

235. *Id.*

236. *Id.* at 131.

237. *Id.* at 131-32.

238. *Id.* at 132.

239. *Id.* at 134-35.

240. *Id.* at 135.

241. *Id.* at 137-38.

242. *Id.* at 138.

243. *Id.*

consciously taking race into account in hiring agents.²⁴⁴ He offers economic and sociological justifications for his position that race should be among the many qualifications that athletes consider when selecting an agent.²⁴⁵ After noting the impotency of the law to increase the hiring of black agents, Professor Shropshire offers suggestions of how to increase the use of black agents.²⁴⁶ Although he does not expressly state so, he suggests that a change in perception must occur for black agents to emerge as equal participants in professional sports. He suggests that key black athletes, by hiring black agents and speaking out on the issue, may help to effectuate this change of practice and mind set.²⁴⁷ However, like other commentators, he acknowledges that changing such deeply-held beliefs will not be easy. Addressing this issue, one scholar argues that "for perspective, definitions, and direction relative to sports, its potential, and proper priority, the black athlete has, therefore, become increasingly more reliant upon conventional wisdom, coaches, athletic boosters, recruiters, and school alumni, and an impersonal . . . mainstream sports media which are the most influential force defining sports-related realities."²⁴⁸ Professor Shropshire argues that a "positive expression of race consciousness" occurs when black athletes consider race as a variable in hiring black agents.²⁴⁹ However, the occurrence of such an expression will require the development of a level of racial identification and consciousness from which athletes are arguably shielded during their athletic careers.

IX. SHROPSHIRE'S CONCLUSIONS

In the concluding chapter—"The Next Millennium"—Professor Shropshire reiterates many of the themes shared throughout *In Black and White*. He argues that achieving the ideal level of diversity in sports will first require recognition of racism as limiting opportunities.²⁵⁰ He next asserts that recognition of this problem must be followed by a transition "period where racial diversity is the standard."²⁵¹ Professor Shropshire believes a form of affirmative action "focusing on breaking down the sports old boy network is the vehicle for arriving at this diversity."²⁵² Suspecting that sports represents a segment of society in which racism will remain a permanent part, he asserts that efforts aimed at diversity will at a minimum create a "more representative role and improved status for African-Americans."²⁵³

244. *Id.*

245. *Id.* at 137.

246. *Id.* at 130.

247. *Id.* at 141.

248. Edwards, *supra* note 3, at 97.

249. SHROPSHIRE, *supra* note 1, at 133.

250. *Id.* at 143.

251. *Id.*

252. *Id.*

253. *Id.* at 146.

Professor Shropshire reiterates his view that traditional antidiscrimination laws will be of extremely limited usefulness in increasing diversity in sports leadership.²⁵⁴ This increases the significance of voluntary action by those in positions of power. Consequently, he urges professional and collegiate sports power brokers to engage in proactive efforts to enhance racial diversity in sports ownership and management.²⁵⁵ Additionally, Professor Shropshire also envisions a significant role for black athletes. He calls upon them to use the leverage that their distinctive power as athletes provides to act on behalf of diversifying sports' upper levels.²⁵⁶

Despite his belief that concerted action by those internal and external to sports is the key to improving racial equity, he recognizes the obstacles confronting those who take up the challenge. For instance, while calling on athletes to become more active, he recognizes that their socialization militates against them doing so.²⁵⁷ Similarly, he acknowledges that it will take time to change the "hearts, minds, ideas, and beliefs of sports leadership."²⁵⁸ Indeed, Professor Shropshire concludes with a story that reinforces his beliefs regarding the slow-going process involved in changing perceptions and attitudes. He shares with readers his experiences at a sports law conference at which he had given a presentation on affirmative action in sports franchise front offices.²⁵⁹ He characterizes the reactions of many of those in attendance as "you couldn't possibly be talking about me."²⁶⁰ This unspoken convergence of disbelief and denial implies that regardless of the plans that are set into motion, the critical determinant in changing the racial composition in the upper echelons of sports will require a concomitant change in perspective by those in positions of power in sports. In recounting this story, Professor Shropshire effectively tempers the idealistic call for concerted action as a means of eradicating the unconscious racism that denies complete equality for African-Americans involved in sports.

One of Professor Shropshire's goals in writing *In Black and White* was to identify and assess the impact of racism on African-Americans involved in professional sports. He convincingly achieves this objective. His theoretical framework allows readers to understand the complexity of the issue of race in sports. Moreover, it provides a perspective from which to view the underlying causes that result in African-Americans being denied opportunities in the upper echelons of sports. While Professor Shropshire does not always fully integrate his theoretical methodology into his examination of specific issues, he has written an insightful book that should stimulate dialogue. In so doing, he brings into sharp focus an often overlooked issue: racism in athletics.

254. *Id.* at 58.

255. *Id.* at 144.

256. *Id.* at 146.

257. *Id.* at 158.

258. *Id.*

259. *Id.* at 159.

260. *Id.*