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Introduction: The Arc of Race in Professional and Collegiate Sports Symposium

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INTRODUCTION: THE ARC OF RACE IN PROFESSIONAL AND COLLEGIATE SPORTS SYMPOSIUM

Kenneth Ferguson*

I. INTRODUCTION

This introduction will highlight the five Articles¹ featured in the symposium issue of the *UMKC Law Review* and will also situate those articles in the Sports Law Symposium titled, *The Arc of Race in Professional and Collegiate Sports*.² The goal of the two-day virtual symposium was to bring together leading legal, social science, and medical science scholars to engage in discourse concerning how race and gender have affected and continue to influence decision making in professional and collegiate sports. The symposium exposed how race,³

* Kenneth D. Ferguson is a Professor of Law at UMKC School of Law. He is recognized nationally for his sports law and bankruptcy law scholarship. Professor Ferguson's sports law scholarship has considered application of assumption of risk theory to distinguish liability for injuries to athletes in amateur and professional sports athletes. His sports law scholarship has also focused on whether gender equity under Title IX is being achieved for girls from economically disadvantaged communities, and from urban, rural, and minority communities. His bankruptcy law scholarship has evolved from addressing the intersection of preferential transfers law and payment systems law, to applying linguistic theory to bankruptcy law, and recently to proposing an innovative two-part business in-fact and business in-law analytical process that courts should consider in determining whether a debtor can avoid the reorganization process of Chapter 11 bankruptcy by instead selling their business under Bankruptcy Code § 363. Ferguson has served as the Chair of the Sports & Law and the Debtors & Creditors sections of the American Association of Law Schools. Professor Ferguson is currently a member of the NCAA's Committee on Competitive Safeguards and Medical Aspects of Sports and has employed his sports law expertise in shaping national athletic policy while serving as a member of the Board of Directors USA Track & Field—the National Governing Body for the United States Olympic Track & Field Program and as UMKC's NCAA Faculty Athletics Representative.

¹ Marc Edelman, *Promoting College Athletes' Rights Through Economic Reform: A Healthy Confluence of Free Market Capitalism and Social Justice*, 91 UMKC L. REV. 717 (2023); David A. Grenardo, *Getting to the Root of the Problem: Where Are All the Black Owners in Sports?* 91 UMKC L. REV. 727 (2023); Dr. C. Keith Harrison, *The Arc of Hiring, Firing, and Rehiring: Trends, Patterns and the Future of Occupational Mobility Opportunities in College and Pro Sport*, 91 UMKC L. REV. 767 (2023); Alicia Jessop, *Winning Incentives: Proposed Amendments to Title VII of the Civil Rights Act and Equal Employment Opportunity Act to Foster Diverse Workplace Hiring and Promotion*, 91 UMKC L. REV. 775 (2023); Amanda Siegrist & Justin Lovich, *Racing for Equity in Professional and Collegiate Sport*, 91 UMKC L. REV. 807 (2023).

² *The Arc of Race in Professional & Collegiate Sports*, UMKC SPORTS L. SYMPOSIUM (Sept. 9-10, 2022), <https://sportslawsymposium.org/>.

³ *Id.*; Symposium Panel: UMKC Law School, *Race Norming and Sports Concussion Litigation Including NFL* (Sept. 9, 2022); Tracie Canada & Chelsey R. Carter, *The NFL's Racist 'Race Norming' Is an Afterlife of Slavery*, SCI. AM. (July 8, 2021), <https://www.scientificamerican.com/article/the-nfls-racist-race-norming-is-an-afterlife-of-slavery/>; Fabiola Cineas, *"Race Norming" and the Long Legacy of Medical Racism, Explained*, VOX (July 9, 2021, 9:00 AM), <https://www.vox.com/22528334/race-norming-medical-racism>.

culture,⁴ ethnicity,⁵ and gender⁶ affect a wide range of phenomena in scientific fields such as neuropsychological testing, medical health and clinical diagnostic testing, and health delivery.⁷ The *Arc of Race* Symposium also addressed how race and gender impact hiring in professional sports⁸ and of collegiate head coaches and Athletic Directors.⁹ The other subjects considered by the Sports Law Symposium included Name, Image, and Likeness (NIL)¹⁰ and also how the NFL addressed the serious medical condition that NFL players are highly likely to contract chronic traumatic encephalopathy (CTE).¹¹

The *Arc of Race* Symposium would not have been possible without the dedication of the members of the Symposium Planning Committee,¹² and the unshakable support of Dean Barbara Glesner Fines.¹³ Special thanks are also extended to the keynote luncheon speaker, Deron Cherry, the Kansas City Chiefs Hall of Famer,¹⁴ who has graciously supported projects I have been involved in over the years.

⁴ ADAM FOGEL ET AL., CULTURAL ASSESSMENT AND TREATMENT OF PSYCHIATRIC PATIENTS (2022), <https://www.ncbi.nlm.nih.gov/books/NBK482311/?report=reader>.

Cultural sensitivity remains a crucial aspect of the diagnosis and treatment of psychiatric patients. There are many culture-specific syndromes as well as pharmacologic considerations that the diligent physician or provider should be aware of when encountering patients from different backgrounds. Not addressing cultural concerns when assessing patients may lead to unnecessary or even incorrect treatment modalities. Educating patients and their families regarding mental health diagnoses and treatments is vital, as it ensures proper management of the patient's symptoms. Patients and families from different cultures may never have been exposed to mental health treatment or may not believe in such treatment. Open discussions need to be held to cultivate an understanding of the patient's mental health concerns to ensure the development of good rapport with patients and families.

⁵ *Id.* (admonishing clinicians of the need to “develop awareness and knowledge about different attitudes and beliefs that can influence their [patient’s] psychological thought processes” particularly as multicultural and ethnic diversity continues to proliferate in sectors of our society).

⁶ Cineas, *supra* note 3 (identifying a race and gender based medical diagnostic norm, the Vaginal Birth After Cesarean (VBAC) calculator. This calculator forecasts a higher risk of medical complication with vaginal births for Black and Hispanic women whose first childbirth delivery was by C-section. This was not the case for White women. In fact, there is less risk with vaginal birth than C-section. The VBAC’s race-based norm actually increases the risk for Black and Hispanic women (whose mortality rate during childbirth is significantly higher than White women during childbirth) by subjected them to greater associated with C-section deliveries).

⁷ *See infra* Section I.C.

⁸ *See infra* Section I.D.

⁹ *See infra* Section I.E.

¹⁰ *See infra* Section I.F.

¹¹ *See infra* Section I.G.

¹² *Symposium Planning Committee*, UMKC SPORTS L. SYMPOSIUM, <https://sportslawssymposium.org/index.php/committee-2022> (last visited May 5, 2022).

¹³ *Biographies*, UMKC SPORTS L. SYMPOSIUM, <https://sportslawssymposium.org/index.php/biographies-2022#day1session1> (last visited May 5, 2022).

¹⁴ *Id.*

A. Race Norming and Sports Concussion Litigation Including NFL Concussion Settlement and Claims Process

Professor Kenneth D. Ferguson, the moderator for this panel,¹⁵ was joined by panelists Professor Tracie Canada, Ph.D.,¹⁶ Sandi Isaacson, Ph.D.,¹⁷ and attorneys J.R. Wyatt¹⁸ and Cy Smith.¹⁹ The panelists discussed the lawsuits filed against the NFL by J.R. Wyatt and Cy Smith on behalf of Kevin Henry and Najeh Davenport.²⁰ The lawsuit contended that race norming of Black NFL players' neuropsychological test scores deprived them of equal rights under the law in conflict with 42 U.S.C. § 1981.²¹ The panelists discussed the NFL Concussion Settlement which, although hailed as historic, was tarnished because the settlement employed race norming to deny awarding Black players settlement claims.²² Retired Black players were deemed to exhibit worse cognitive functioning than White players.²³ As a result, if a Black player and a White player received the exact same score on a battery of neurocognitive tests, the Black player is automatically assumed to have suffered less impairment, and therefore often did not qualify for monetary compensation.²⁴

The attack launched against the NFL by Cy Smith and J.R. Wyatt resulted in removal of race-norming from the Claims Settlement process and the NFL,

¹⁵ I am indebted to Paul A. Anderson who was instrumental in securing the panelists for this panel and was scheduled to moderate the panel; however, a major lawsuit at his firm, Humphrey, Farrington & McClain, went to trial during the symposium. Paul Anderson "is an accomplished litigator that helped pioneer the NFL and NCAA Concussion Litigation." *Paul D. Anderson*, HUMPHREY, FARRINGTON, MCCLAIN, <https://hfmlegal.com/personnel/paul-d-anderson/> (last visited Apr. 13, 2023). Paul is also an Adjunct Law Professor at UMKC School of Law.

¹⁶ Professor Tracie Canada, Ph.D., is "an assistant professor in the Department of Cultural Anthropology and affiliated with the Sports & Race Project at Duke University." *Tracie Canada*, TRACIECANADA.COM, <https://www.traciecanada.com/> (last visited Apr. 13, 2023).

¹⁷ Sandi Isaacson, Ph.D., ABPdN, Midwest Neuroeducational Services, is a Board-certified neuropsychologist who specializes in assessing children, adolescents, and adults with brain impairments.

¹⁸ J.R. Wyatt, J.D. "is a battle-tested attorney who regularly handles high-stakes litigation, involving everything from Civil Rights actions to complex Bankruptcy matters." *J.R. Wyatt, Esq.*, JRWYATTLAW.COM, <https://jrwatlaw.com/j-r-wyatt-esq/> (last visited Apr. 13, 2023).

¹⁹ Cy Smith, J.D., "has three decades of trial experience and is a Fellow of the American College of Trial Lawyers." *Cy Smith*, ZUCKERMAN, <https://www.zuckerman.com/people/cy-smith> (last visited Apr. 13, 2023).

²⁰ *Henry v. Nat'l Football League*, 2:20-cv-04165 (E.D. Pa. Aug. 25, 2020).

²¹ *See* Settlement Agreement, *Henry v. Nat'l Football League*, 2:20-cv-04165 (E.D. Pa. Oct. 20, 2021) ("alleging that the Settlement Program is racially discriminatory and deprives them of equal rights on the basis of race, and purporting to assert a claim under 42 U.S.C. § 1981 for deprivation of equal rights under the law against the NFL Parties").

²² Alicia Jessop, 'An Atomic Bomb': Former NFL Players Allege Racism in Concussion Settlement, ATHLETIC (Aug. 31, 2020), <https://theathletic.com/2033375/2020/08/31/an-atomic-bomb-former-nfl-players-allege-racism-in-concussion-settlement/> (describing the discrimination lawsuit filed by panelists Cy Smith and J.R. Wyatt, as "alleging that the NFL engages in intentional discrimination in how players are diagnosed to receive benefits under the settlement").

²³ *Id.*

²⁴ *Id.*

Class Counsel, or other parties accepting no responsibility for race norming.²⁵ Will Hobson, writer for *The Washington Post*, criticized those who willfully took advantage of race norming to the detriment of Black NFL players and those who knew what was going on but failed to complain.²⁶

The pioneering research of Professor Tracie Canada, Ph.D., a sports anthropologist, demonstrates that the premise upon which race norming depends is “the belief that race is a binary, biological concept, and therefore that differences in Black bodies and minds are not only existent but quantifiable. But they’re wrong on all accounts: race norming is an inherently anti-Black form of scientific racism that is evidence of slavery’s afterlife.”²⁷

Neuropsychologist Sandi Isaacson, Ph.D., provided a brief overview of the complex role that demographic “norms” perform in psychological testing and expanded her discussion to address the use of race norming in equalizing access to educational opportunities for populations affected by institutional racism.²⁸ As discussed in the following section, race norming is more prevalent than we all realized.

²⁵ See Settlement Agreement, *supra* note 21.

The NFL Parties and Class Counsel expressly deny that they have violated any duty to, breached any obligation to, committed any discrimination or inequitable treatment as to, or otherwise engaged in any wrongdoing with respect to the Settlement Class or any Settlement Class Member, including without limitation the Intervenor, and expressly deny the allegations advanced in the Motion for Relief, Complaint, or Objection, and any appeals or motions for reconsideration related to the foregoing, including the Motion for Relief Appeal and Complaint Appeal, and deny any and all liability related thereto.

²⁶ Will Hobson, *How ‘Race-Norming’ Was Built into the NFL Concussion Settlement*, WASH. POST (Aug. 2, 2021, 11:00 AM), <https://www.washingtonpost.com/sports/2021/08/02/race-norming-nfl-concussion-settlement/>.

²⁷ Canada & Carter, *supra* note 3.

²⁸ Liz Mineo, *Racial Wealth Gap May Be a Key to Other Inequities*, HARV. GAZETTE (June 3, 2021), <https://news.harvard.edu/gazette/story/2021/06/racial-wealth-gap-may-be-a-key-to-other-inequities/> (According to Professor Khalil Muhammad, “If we want to undo the cultural infrastructure that is hand in glove with the economic and political racism and domination of people, we have to start very young Anti-bias education is a social vaccine to vaccinate our children against the disease of racism. Imagine what the world would look like in a generation.”).

B. The Intersection of Race and Gender in the Mental Health of Professionals & Collegiate Athletes

The Moderator of this symposium panel, Dr. U. Diane Buckingham,²⁹ was joined by panelists Melissa Lewis, Ph.D.,³⁰ Dr. Meg Gibson, M.D.,³¹ and Dr. Jannette Berkley-Patton, Ph.D.³² The panel discussed the intersection of race, gender, and cultural issues in diagnosing and treating patients experiencing mental health conditions. The panel also discussed the role of racism and misogyny in sports.³³ In sports, vulnerable and targeted populations have a very different experience in these environments than those who come from a privileged population.³⁴ It may be important to note this history and the increased work that has been done recently concerning equity in some sports and how this will lead to improved mental health and accessibility to some sports that were/are not always welcoming to ethnic and racial minorities.³⁵ Mental health professionals who consider issues surrounding culture, race, and gender will be crucial to delivering

²⁹ Diane Buckingham, M.D., has a “private practice focus on children and adolescents with ADHD, Tourette's syndrome, and obsessive-compulsive disorder. She is a nationally recognized expert in providing psychiatric care to African Americans and multicultural children” *Dr. U. Diane Buckingham*, CHANGING THE FACE OF MED., https://cfmedicine.nlm.nih.gov/physicians/biography_47.html (last visited Apr. 14, 2023).

³⁰ Dr. Melissa Lewis, Ph.D., Associate Research Professor, University of Missouri School of Medicine. *Melissa Lewis, PHD*, UNIV. MO. SCH. OF MED., <https://medicine.missouri.edu/faculty/melissa-lewis-phd> (last visited Apr. 14, 2023).

³¹ Dr. Meg Gibson, M.D., is the Head Team Physician for UMKC Kansas City Athletics and Associate Professor of Community & Family Medicine. *Meg Gibson, MD, FAMSSM*, KAN. CITY ROOS, <https://kcroos.com/staff-directory/meg-gibson-md-famssm/170> (last visited Apr. 14, 2023); *Margaret E Gibson, MD*, CHILDREN'S MERCY, <https://www.childrensmc.org/profiles/margaret-gibson/> (last visited Apr. 14, 2023).

³² Dr. Berkley-Patton, Ph.D., is a professor in the UMKC School of Medicine's Department of Biomedical and Health informatics. *Jannette Berkley-Patton, M.A., Ph.D.*, UMKC SCH. OF MED., <https://med.umkc.edu/dir/berkley-patton-jannette/> (last visited Apr. 14, 2023).

³³ In response to the U.S. Women's National Soccer team's announcement of their equal-pay deal with FIFA, one fan made this misogynistic comment:

While feminists and other USWNT fans celebrated the decision, not unexpectedly, misogynists came roaring back with cries of “Unfair!” “Wokeness!” “Biology!” The comments on the New York Times and Washington Post articles announcing the agreement and on Twitter are enlightening. According to these misogynists, women soccer players (and other athletes, particularly in the WNBA and tennis) do not deserve equal pay because:

1. they are biologically inferior, and therefore their games are not as good as the men's; and
2. the men, who are biologically better athletes, generate more revenue because they are more exciting to watch and therefore that revenue should stay with them.

Susan Shaw, *The U.S. Women's Soccer Team Just Won Equal Pay—Cue the Misogynist Backlash*, MS. MAG. (June 7, 2022), <https://msmagazine.com/2022/06/07/us-womens-soccer-team-equal-pay-sexism-social-media/>.

³⁴ Joseph John Gurgis et al., *'Safe Sport Is Not for Everyone': Equity-Deserving Athletes' Perspectives of, Experiences and Recommendations for Safe Sport*, FRONTIER PSYCH. (Mar. 7, 2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8934877/#fn0004>.

³⁵ Greg Johnson, *Mental Health Issues Remain on Minds of Student-Athletes*, NAT'L COLLEGIATE ATHLETIC ASS'N (May 24, 2022, 12:00 PM), <https://www.ncaa.org/news/2022/5/24/media-center-mental-health-issues-remain-on-minds-of-student-athletes.aspx>.

effective mental health services to professional and collegiate athletes enabling them to improve their adaptative responses to stressors and in educating professional and collegiate coaches and their professional staff on meeting the needs of their athletes.³⁶ While therapy is important, dismantling the oppressive organizations and systems that cause mental health stress for diverse athletes is also a critical first step.³⁷

C. Race Norming in Medical Treatment and Clinical Diagnostics and Its Impacts

Dr. Valerie E. Chow,³⁸ the panel moderator of this symposium panel, along with Kristin Kaplan, J.D.³⁹ and Dr. Bridgette Jones,⁴⁰ discussed race norming in medical treatment and clinical diagnostics. The panelists examined whether the neuropsychological field (relied on by the NFL) is the only discipline applying different standards to Black and Brown persons, women, and other cultural groups. The panelists explored the prevalence of race norming in other fields, including clinical research, medicine, and medical clinical diagnostics and treatment, and how this impacts the availability of medical treatments and the differing standards of care provided for Blacks and other people of color.⁴¹

³⁶ Marcel Lopes Dos Santos et al., *Academic and Athletic Performance in Collegiate Athletes: A Narrative Review of Sources and Monitoring Strategies*, FRONTIERS IN SPORTS & ACTIVE LIVING (May 8, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7739829/>.

³⁷ Paula A. Braveman et al., *Systemic and Structural Racism: Definitions, Examples, Health Damages, and Approaches to Dismantling*, 41 HEALTH AFFS. 171 (Feb. 2022), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2021.01394>.

³⁸ Valerie E. Chow, M.D., after thirty-four years of practice, eighteen years as the head of Anesthesiology at TMC Lakewood campus and President of Lakewood Anesthesiology, P.C., is presently retired, yet continues as a selfless volunteer dispensing COVID-19 vaccines and serves on the board of trustees of the Nelson-Atkins Museum of Art. *Dr. Valerie Chow Retired Local Physician, Finds Joy, Satisfaction Administering COVID-19 Vaccine*, KAN. CITY GLOBE (Mar. 26, 2021), <https://www.thekansascityglobe.com/news/dr-valerie-chow-retired-local-physician-finds-joy-satisfaction-administering-covid-19-vaccine>; NELSON-ATKINS.ORG, <https://www.nelson-atkins.org/about/> (last visited Apr. 14, 2023).

³⁹ Kristin Kaplan, J.D., is an expert in FDA regulatory law and formerly a member of Shook, Hardy & Bacon. *Former FDA Legal Counsel Moves to Shook, SHOOK, HARDY, & BACON* (Mar. 2, 2021), <https://www.shb.com/news/2021/03/kristin-kaplan-joins-shook>.

⁴⁰ Dr. Bridgette Jones, M.D., is an Associate Professor of Pediatrics, University of Missouri-Kansas City School of Medicine; Education Associate Professor of Pediatrics, University of Kansas School of Medicine. *Bridgette L. Jones, MD, MSCR*, CHILDREN'S MERCY KAN. CITY RSCH. INST., <https://researchers.childrensmc.org/display/210218> (last visited Apr. 14, 2023).

⁴¹ Cineas, *supra* note 3 (“Last year, Jones and residents Darshali Vyas and Leo G. Eisenstein identified a partial list of 13 tools across a variety of medical specialties (cardiology, nephrology, obstetrics, urology, oncology, endocrinology, and pulmonology) that use race correction. They concluded that race correction perpetuates race-based inequity, as it relies on stereotypes about people of color, often Black people, and can prevent these patients from receiving adequate care.”).

D. The Intersection of Race and Gender in Professional Sports Hiring

Panel moderator Dean Mikah Thompson,⁴² along with panelists Professor Jeremi Duru,⁴³ Jennifer Hunter, Esq.,⁴⁴ Dr. C. Keith Harrison, Ed.D.,⁴⁵ and Dr. Vincent Key⁴⁶ discussed issues surrounding the panel, *Intersection of Race and Gender in Professional Sports Hiring*.⁴⁷ Panelists examined whether women, Blacks, and other minorities are losing ground in professional sports employment, whether the current status quo reflects trends toward greater diversity or a process of reversal.

Professor Jeremi Duru's discussion focused on the lawsuit filed by Brian Flores, former Miami Dolphins' head coach against the NFL and three other NFL clubs. After his termination by the Dolphins, Brian Flores was subjected to a sham interview with the New York Giants.⁴⁸ Over twenty years earlier, threatened litigation prompted the NFL to institute several equal opportunity initiatives—including the controversial Rooney Rule⁴⁹—and these initiatives seemed to promote diversity in head coach and general manager hiring. Flores's lawsuit, however, indicates legal scrutiny may be necessary to push the NFL toward true equal opportunity.

Senior Director of DEI for the Portland Trail Blazers, Jennifer Hunter, J.D., enlightened attendees on NBA's history of and continued leadership in hiring of minorities and women in professional sports and what other organizations may learn from the NBA's success.⁵⁰

⁴² Professor and Associate Dean for Diversity, Equity, and Inclusion. *Mikah Thompson*, UMKC SCH. OF L., <https://law.umkc.edu/profiles/faculty-directory/mikah-thompson.html> (last visited Apr. 14, 2023).

⁴³ Professor Duru is a national sports law scholar, textbook author, and member of the NCAA's Committees on Competitive Safeguards and Medical Aspects of Sport. *N. Jeremi Duru*, AM. UNIV., <https://www.wcl.american.edu/community/faculty/profile/duru/bio> (last visited Apr. 14, 2023).

⁴⁴ Jennifer Hunter, J.D., who formerly served as the Senior Director of Diversity, Equity, and Inclusion (DEI) for the Portland Trail Blazers, is now the Big XII's Chief Diversity, Equity, and Inclusion Officer. *Jenn Hunter Named Chief Diversity, Equity, & Inclusion Officer*, BIG 12 SPORTS (Oct. 24, 2022, 11:00 AM), <https://big12sports.com/news/2022/10/24/conference-big-12-selects-jenn-hunter-as-chief-diversity-equity-inclusion-officer.aspx>.

⁴⁵ Dr. C. Keith Harrison, Ed.D., is the DeVos Associate Unit Head/Chief Academic Officer and Professor for the DeVos Sport Business Management Graduate Program and founding director (2006-2014) of The Minor that's Major™ Sport Business Management Undergraduate Program. *Faculty and Research: C. Keith Harrison Ed.D.*, UNIV. CENT. FLA., <https://business.ucf.edu/person/keith-harrison-2/> (last visited Apr. 14, 2023).

⁴⁶ Dr. Vincent H. Key is Medical Director and Head Team Physician for the Kansas City Royals (MLB) and is also Associate Professor, Orthopedic Surgery and Sports Medicine. *Dr. Vincent Key*, KAN. CITY ROYALS, <https://www.mlb.com/royals/team/front-office/vincent-key> (last visited Apr. 14, 2023).

⁴⁷ Symposium Panel: *The Intersection of Race and Gender in Professional Sports Hiring* (Sept. 9, 2022).

⁴⁸ Tyler Lauletta, *Brian Flores Says He Was Humiliated by 'Sham Interview' with New York Giants in First Public Comments Since Filing Blockbuster Lawsuit Against the NFL*, INSIDER (Feb. 2, 2022, 12:37 AM), <https://www.insider.com/brian-flores-humiliated-sham-interview-with-giants-2022-2>.

⁴⁹ See Grenardo, *supra* note 1.

⁵⁰ Aaron Beard, *Diversity Study: NBA Has Racial-Hiring Gains in GMs, Coaches*, ASSOCIATED PRESS (Aug. 25, 2021), <https://apnews.com/article/sports-nba-business-race-and-ethnicity->

Dr. Harrison expounded on his work as the principal investigator of the NFL's annual good business, occupational mobility report on the hiring process and best practices for inclusive hires in terms of race and gender intersections. Harrison has coauthored these empirical studies with Scott Bukstein from 2012 to the present. Dr. Harrison's expansion of his discussion, *The Arc of Hiring, Firing, and Rehiring: Trends, Patterns and the Future of Occupational Mobility Opportunities in College and Pro Sport*, appears in this volume of the *UMKC Law Review* publication.⁵¹

Dr. Key, M.D.,⁵² did his orthopedics surgery residency under Frank Jobe, M.D., who pioneered the Tommy John surgery and was mentored by Clarence L. Shields, Jr., M.D.—the first African American team physician in professional sports.⁵³ In 2010, Dr. Key became the head team physician for the Kansas City Royals, the only Black head team physician in the MLB, and the first African American President “of the Major League Baseball Team Physicians Association for 2022.”⁵⁴ Dr. Key also expounded upon the Kansas City Royals' progressive leadership within the MLB teams regarding its commitment to diversity.

E. The Intersection of Race and Gender in Collegiate Sports Hiring

The panel, *Intersection of Race and Gender in Collegiate Sports Hiring*,⁵⁵ was moderated by Dr. Raymond Doswell, Ph.D.⁵⁶ Included on the panel were Dr. Brandon Martin, Ed.D., Vice Chancellor and UMKC Athletics Director,⁵⁷ Jeffri Chadiha,⁵⁸ and Dr. C. Keith Harrison, Ed.D., Head/Chief Academic Officer, and

84707a9e344aa68f6064453c2d426d42 (“In the broadest possible sweep, the NBA is the model men’s league in terms of racial- and gender-hiring practices, as well as I think social-justice initiatives.”).

⁵¹ Harrison, *supra* note 1.

⁵² Dr. Vincent Key, Panel at UMKC School of Law Sports Law Symposium (Sept. 9, 2022), <https://umsystem.hosted.panopto.com/Panopto/Pages/Viewer.aspx?id=e073822b-d2d3-4556-833a-af510143fb69>.

⁵³ *Id.*

⁵⁴ Dr. Vincent Key, *supra* note 46.

⁵⁵ Symposium Panel, *supra* note 47.

⁵⁶ Dr. Doswell was the curator of the Negro Leagues Baseball Museum in Kansas City. Dr. Doswell is currently The Executive Director of Greenwood Rising Black Wall Street History Center, an organization dedicated to “educat[ing] Oklahomans and Americans about the Race Massacre and its impact on the state and Nation; remember its victims and survivors, and create an environment conducive to fostering sustainable entrepreneurship and heritage tourism within the Greenwood District specifically, and North Tulsa generally.” GREENWOOD RISING, <https://www.greenwoodrising.org/about> (last visited Apr. 14, 2023).

⁵⁷ Dr. Brandon Martin, Ed.D., became the Athletic Director for Kansas City Athletics on December 3, 2018. His responsibilities were broadened when he was promoted to Vice Chancellor, and he has vitalized Kansas City Athletics and has made the Roos Kansas City's one and only Division I athletic program. Dr. Brandon Martin, KAN. CITY ROOS, <https://kcroos.com/staff-directory/dr.-brandon-martin/225> (last visited Apr. 14, 2023).

⁵⁸ Jeffri Chadiha is an Adjunct Professor in UMKC's Humanities and Social Sciences Department and Senior Columnist and an on-air personality for the NFL Network and NFL.com. Jeffri Chadiha, UMKC, <https://shss.umkc.edu/profiles/communication-and-journalism/chadiha-jeffri.html> (last visited Apr. 14, 2023); Jeffri Chadiha, NAT'L FOOTBALL LEAGUE, <https://www.nfl.com/network/on-air-talent/jeffri-chadiha-talent> (last visited Apr. 14, 2023).

Professor for the DeVos Sport Business Management Graduate Program and founding director (2006-2014) of The Minor that's Major™ Sport Business Management Undergraduate Program.⁵⁹

Dr. Harrison discussed his nearly three decades of researching and writing about the intersectionality of race and gender and the hiring processes and practices for collegiate head football coaches and related leadership positions. From 2003 to 2009, Harrison was the first principal investigator of the BCA (Black Coaches Association) Hiring Report Cards supported by the NCAA—grading over eighty-five percent of American higher education institutions with athletic departments at the Power 5, Group of 5, FBS, and FCS levels.⁶⁰

According to Jeffri Chadiha, the lack of diversity among football coaches and athletic directors remains a huge issue as we move into an era where players can be compensated, and schools can move so freely from conference to conference in the pursuit of bigger paydays. As much as we focus on the money, Chadiha continued, he was concerned that we are also paying less attention to how these young people fit into this new world and all the hazards that can come with being your own brand.

Dr. Brandon E. Martin's "leadership has helped change the culture within Kansas City Athletics as his positive energy, passion, and strategic vision has helped elevate the Roos' momentum on and off the field."⁶¹ Brandon is at UMKC because of Chancellor Agrawal's vision of fostering a community of excellence at UMKC,⁶² embracing diversity and elevating Black and other underrepresented minorities to leadership positions within the faculty in each academic unit, throughout our community of excellence.⁶³

According to Dr. Martin,

The intercollegiate sport enterprise has historically failed at increasing opportunities for women and ethnic minorities. Excluding HBCU institutions, the representation of women and people of color in key decision-making roles within collegiate athletics has been dismal. This reality is in sharp contrast to the representation of ethnic minority student-athletes participating in college athletics, particularly those actively involved in revenue-generating sports. To this end, there remains a challenge with implementing a sustainable system and infrastructure that produces authentic diversity, equity, and inclusion in their hiring practices, positions of leadership, and coaching.⁶⁴

⁵⁹ See *supra* note 45.

⁶⁰ Harrison, *supra* note 1.

⁶¹ KAN. CITY ATHLETICS, <https://bloch.umkc.edu/wp-content/uploads/2020/01/Dr.-Martin-Bio-August-2019.pdf> (last visited Apr. 16, 2023).

⁶² C. Mauli Agrawal, Ph.D. *Meet Chancellor Agrawal*, UMKC OFF. OF THE CHANCELLOR, <https://www.umkc.edu/chancellor/about/index.html> (last visited Apr. 16, 2023).

⁶³ Symposium Panel, *supra* note 47.

⁶⁴ Dr. Brandon Martin's personal statement.

Dr. Martin also discussed how his work as Co-Chair for the Black AD Alliance promotes the growth, development, and elevation of Black athletics administrators at the Division I level.⁶⁵

F. Will Race and Gender Affect Which Student Athletes Profit from Their Name, Image, and Likeness?

The panel moderator of the symposium panel, “*Will Race and Gender Effect Which Student Athletes Profit from Their Name, Image and Likeness?*,” Greg Cotton, J.D.,⁶⁶ along with panelists Professor Kenneth L. Lewis, Jr.,⁶⁷ Marc Edelman,⁶⁸ and Professor David Grenardo,⁶⁹ discussed the extent to which race and gender will affect which student-athletes profit from their NIL. Panelists examined the effect of both the pre- and post-NIL era on ethnic minority athletes and what Professor Edelman called the “Reverse Robinhood” arrangement where the NCAA takes fruits from the labor of generally low-income/minority sports and devotes them toward country club sports.⁷⁰

According to Professor Edelman, oftentimes, there is a perception that the conservative interest in free markets and the liberal interest in social justice conflict with one another.⁷¹ However, in the case of the college athletes’ rights movement, recent efforts to increase free markets for college-athlete labor have yielded meaningful social justice benefits for society.⁷² His talk explained how the

⁶⁵ *Inaugural Black Ad Alliance Announced*, KAN. CITY ROOS (July 24, 2020, 12:30 PM), <https://kcroos.com/news/2020/7/24/general-kansas-city-ad-dr-brandon-martin-co-chairs-black-ad-alliance.aspx>.

⁶⁶ Moderator: Greg Cotton, J.D., formerly a sports law and commercial litigation specialist with Shughart Thomson (now Polsinelli), General Counsel and COO of Sporting Kansas City, where he and his fellow associates developed and built Children’s Mercy Park, the Swope Soccer Village, Compass Minerals Sporting Fields, and Pinnacle National Development Center. *Sports Law Symposium: The Arc of Race in Professional & Collegiate Sports*, SPORTSLAWSYMPIOSIUM.ORG, <https://sportslawssymposium.org/index.php/biographies-2022#day2session2> (last visited Apr. 14, 2023). Greg is President of XO Sport & Development. XO SPORTS CO., <https://www.xosportco.com/> (last visited Apr. 14, 2023).

⁶⁷ Professor Kenneth L. Lewis Jr., J.D., is a tenured Professor of Law. Professor Lewis joined the Shepard Broad College of Law Faculty in 2009. He teaches Property Law, Professional Responsibility, Sports Law, Legal Research and Writing I and II, Wills, Sports Law and Health Issues, Sports Law and Education, and Sports Law and Employment. Prof. Lewis has also taught Administrative Law, Employment Law, and Criminal Law. *Kenneth L. Lewis Jr.*, NSU FLA., <https://www.law.nova.edu/faculty/full-time-faculty/lewis-kenneth.html> (last visited Apr. 14, 2023).

⁶⁸ Prof. Marc Edelman, J.D., is a tenured Professor of Law at the Zicklin School of Business, Baruch College, City University of New York, where he teaches in the areas of sports law, antitrust law, contract law, intellectual property law, and gaming law. *Marc Edelman*, BARUCH COLL., <https://zicklin.baruch.cuny.edu/faculty-profile/marc-edelman/> (last visited Apr. 14, 2023).

⁶⁹ Professor David A. Grenardo, J.D., is currently at the University of St. Thomas School of Law (Minneapolis). He teaches Professional Responsibility, Contracts, Sports Law, Business Associations, Civil Procedure, and International Sports Law. Carrie Hilger, *Law Professor Publishes Paper on Lack of Black Owners in Sports*, ST. THOMAS (Oct. 20, 2022), <https://news.stthomas.edu/law-professor-publishes-paper-on-lack-of-black-owners-in-sports/>.

⁷⁰ Edelman, *supra* note 1.

⁷¹ *Id.*

⁷² *Id.*

eradication of certain restraints on college-athlete labor markets has led to more just outcomes for low-income, minority, and female college athletes.⁷³ As such, the Article suggests that conservative and liberal interests should go hand-in-hand in promoting the free market for college athlete labor.⁷⁴

According to Professor David Grenardo, based on available data, males are ahead of females in NIL deals.⁷⁵ NIL deals for females appear to be based on the further objectification of women.⁷⁶ Black female athletes may not get their due because of America's perception of them as less marketable than the White girl next door.⁷⁷

Male athletes, including Blacks, are reaping the rewards of NIL deals, particularly in football and basketball. America is okay with Black male athletes as spokespeople, which we have seen with professional athletes. Athletes in non-revenue generating sports are getting NIL deals, but the NIL deals may not be providing substantial equity for athletes who help generate substantial revenue in college football and men's basketball. Those revenue-generating sports are comprised of a majority of Black athletes, some of whom come from abject poverty. Professor Grenardo believes pay-for-play by schools or conferences is coming soon based on NIL's acceptance. Collectives may help usher in pay-for-play by schools or conferences.

According to Professor Kenneth L. Lewis, Jr., in light of the social media presence of many female students entering universities, it is important that colleges and universities consciously implement NIL programs that ensure gender and racial equity because where female student athletes choose to complete will depend on their ability to take advantage of the commercial market space to which NIL opportunities provide access.⁷⁸ Furthermore, Professor Lewis discussed the impact of NIL rules on the recruiting process, particularly at HBCUs, providing them recruiting opportunities previously unavailable to those institutions.⁷⁹ Finally, he discussed how NIL deals may cause international student athletes recruited to attend college in the United States challenges with their immigration status.⁸⁰

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Professor David A. Grenardo, Panel at UMKC School of Law Sports Law Symposium (Sept. 9, 2022), <https://umsystem.hosted.panopto.com/Panopto/Pages/Viewer.aspx?id=e073822b-d2d3-4556-833a-af510143fb69>.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Professor Kenneth L. Lewis Jr., Panel at UMKC School of Law Sports Law Symposium (Sept. 9, 2022), <https://umsystem.hosted.panopto.com/Panopto/Pages/Viewer.aspx?id=e073822b-d2d3-4556-833a-af510143fb69>.

⁷⁹ *Id.*

⁸⁰ *Id.*

G. The NFL Concussion Settlement: Settlement Agreement Unfairly Ignoring Families of Players Who Died with Chronic Traumatic Encephalopathy (CTE), Affecting Players of All Races

Professor Ferguson, the panel moderator, was joined by the world-renowned neuropathologist Dr. Ann McKee, M.D., the “William Fairfield Warren Distinguished Professor of Neurology and Pathology at Boston University, Director of Neuropathology for VA Boston, and Director of the BU Chronic Traumatic Encephalopathy (CTE) Center.”⁸¹ According to Dr. McKee, CTE “is a neurodegenerative disease associated with exposure to repetitive head impacts (RHI), including symptomatic concussions and asymptomatic sub-concussive impacts, often incurred during contact sports.”⁸² Diagnosis of the disease can only be done postmortem (after death).⁸³ The behavioral symptoms that the families of the two former NFL players’ brains she examined and diagnosed who died with CTE, Tom McHale and John Grimsley, matched the symptoms Cyndy Childs (the wife of former NFL player Henry Childs)⁸⁴ and their son Henri Childs witnessed as the disease progressed in Henry Childs.

Dr. Ann McKee also emphasized the moral and ethical responsibility of sports league stakeholders to do more to help the young men and women (and their families) while living, as they are often unwitting victims of this potentially devastating brain disease.⁸⁵ As Dr. McKee has said in recent public interviews, sports league operators must, at a minimum, begin to institutionalize early detection, counseling, and pharmacologic treatment for athletes manifesting behaviors that correlate with progressive degrees of CTE.⁸⁶

⁸¹ Dr. Ann McKee’s “groundbreaking work on the long-term effects of repetitive head impacts, concussion, and blast injury in contact sports athletes and military veterans shifted scientific thought regarding head trauma; she demonstrated that repetitive “mild” head trauma can provoke CTE, a devastating neurodegenerative disease.” *Ann McKee, MD*, BOS. UNIV., <https://www.bu.edu/cte/about/leadership/ann-mckee-md/> (last visited Apr. 14, 2023).

⁸² Dr. Ann McKee, Panel at UMKC School of Law Sports Law Symposium (Sept. 9, 2022), <https://umsystem.hosted.panopto.com/Panopto/Pages/Viewer.aspx?id=e073822b-d2d3-4556-833a-af510143fb69>.

⁸³ *Id.*; see also Ann C. McKee et al., *Chronic Traumatic Encephalopathy (CTE): Criteria for Neuropathological Diagnosis and Relationship to Repetitive Head Impacts*, 145 ACTA NEUROPATHOLOGICA 371 (2023) (“Over 97% of CTE cases published have been reported in individuals with known exposure to repetitive head impacts (RHI), including concussions and nonconcussive impacts, most often experienced through participation in contact sports. While some suggest there is uncertainty whether a causal relationship exists between RHI and CTE, the preponderance of the evidence suggests a high likelihood of a causal relationship, a conclusion that is strengthened by the absence of any evidence for plausible alternative hypotheses. There is a robust dose–response relationship between CTE and years of American football play, a relationship that remains consistent even when rigorously accounting for selection bias.”).

⁸⁴ Mike Chiari, *Henry Childs, Former Saints TE, Dies at Age 65*, BLEACHER REP. (June 4, 2016), <https://bleacherreport.com/articles/2644250-henry-childs-former-saints-te-dies-at-age-65>.

⁸⁵ *Id.*

⁸⁶ *Id.*

Cyndy Childs⁸⁷ was the wife of former NFL player Henry Childs,⁸⁸ who was inducted in the New Orleans Saints Hall of Fame⁸⁹ and died of a sudden heart attack and was confirmed to have had CTE through a postmortem autopsy conducted by Dr. McKee. Cyndy was joined on the panel by her and Henry's son, Henri Childs.⁹⁰ Both Cyndy and Henri watched Henry's progressive decline before he died. They talked about their personal and family experiences as Henry underwent personality changes from Henry's functional impairment resulting from repeated blows to the head during his NFL career, yet no compensation in part because the Claims Administrator refused to accept documentation of severe dementia.⁹¹

David Langfitt, J.D.,⁹² is no stranger to the NFL Concussion Settlement litigation and functional impairments suffered by former NFL players. Mr. Langfitt currently spends a substantial amount of his time focusing on large-scale catastrophic personal injury litigation involving both the NFL and NCAA as defendants. He served on the court-appointed Plaintiffs' Executive Committee in the NFL Concussion Litigation and Settlement, which has become increasingly troublesome for claimant/players based on the resistance of the NFL to pay claims.

H. Articles in Current Law Review Issue

As we had hoped during the planning stages of the inaugural Sports Law Symposium, the following Articles were a response to the *UMKC Law Review* call for papers.

⁸⁷ Cyndy Childs graduated from Kansas State University with a bachelor's degree in Social Work and was an Owner/Operator for twenty-three years of two Cyndy's Hallmark Shops in Mission, Kansas, and Kansas City, Kansas. She worked in administration for the U.S. Commerce Department and the U.S. Social Security Administration. She retired from the federal government in December 2017. She was married to Henry Childs for thirty-nine years and is a proud mother to Henri Childs and Miya Childs who reside in Olathe, Kansas, and Lenexa, Kansas. Cyndy currently spends time volunteering, working part time in a garden center, and maintaining her own gardens. *Biographies*, *supra* note 13.

⁸⁸ Chiari, *supra* note 84.

⁸⁹ *Henry Childs*, SAINTS HALL OF FAME, <https://www.saintshalloffame.com/inductees/henry-childs/> (last visited Apr. 14, 2023).

⁹⁰ Henri Childs was born in Kansas City, Missouri, and raised in Lenexa, Kansas. "He attended Shawnee Mission West High School where he excelled in Football, Basketball, and Track. Henri was an all-state football player and earned a scholarship to play football at Kansas University and then transferring to Colorado State University." *Biographies*, *supra* note 13.

⁹¹ William T. Session, Letter to NFL Concussion Settlement Claims Administrator (on file with author).

⁹² David Langfitt, J.D., "has practiced complex commercial litigation and mass personal injury litigation for more than 29 years and focuses on litigation and trials involving numerous parties, claims, and courts, both state and federal. He has litigated a wide variety of complex cases involving mass tort claims, claims under the federal securities laws, professional liability, legal malpractice, Pennsylvania's Dragonetti Act (an analog to the F.R. Civ. P. 11), merger agreements, pre-packaged bankruptcy plans, fraud, breach of fiduciary duty, and infringement of patents and copyrights." *David Langfitt*, LANGFITT PLLC, <https://www.langfittpllc.com/david-langfitt> (last visited Apr. 14, 2023).

1. Marc Edelman, “*Promoting College Athletes’ Rights Through Economic Reform: A Healthy Confluence of Free Market Capitalism and Social Justice*”⁹³

In this Article, Marc Edelman explains how the deregulation of college-athlete labor has benefited both college athletes in general and our society as a whole. Edelman explores this topic by laying out the structure of the college-athlete labor market prior to deregulation, illustrating the driving forces and overall results of the college sports economic reform movement, and examining how the deregulation of the college-athlete labor market is improving opportunities for college athletes as well as increasing consumer wealth and social justice for athletes that belong to historically marginalized groups.

2. David A. Grenardo, “*Getting to the Root of the Problem: Where Are All the Black Owners in Sports?*”⁹⁴

This Article, written by David A. Grenardo, seeks to help provide a remedy for the lack of Black ownership and coaching in professional sports. Grenardo looks into the shocking racial disparity among professional sports team owners and coaches through multiple lenses by explaining critical race theory and different theories of racism and applying them to formulate an answer for why the racial status quo in professional sports ownership stands as it does. Grenardo also examines why the current standard meant to remedy this issue, the Rooney Rule, is not producing effective results, and proposes his own ideas on how sports organizations can institutionally change to increase Black ownership in professional sports.

3. Dr. C. Keith Harrison, “*The Arc of Hiring, Firing, and Rehiring: Trends, Patterns and the Future of Occupational Mobility Opportunities in College and Pro Sport*”⁹⁵

In this Article, Dr. C. Keith Harrison examines the hiring arcs of college and professional sports coaches to identify the issues causing the lack of diverse racial representation among the highest levels of coaching, and to improve occupational mobility for minorities in coaching. Harrison also seeks to answer why most head coaches at the collegiate and professional levels over time have stayed consistently White, drawing on his own work conducting research to increase diversity in sports hiring and proposing whether this issue will exist into the future.

⁹³ Edelman, *supra* note 1.

⁹⁴ Grenardo, *supra* note 1.

⁹⁵ Harrison, *supra* note 1.

4. Alicia Jessop, “*Winning Incentives: Proposed Amendments to Title VII of the Civil Rights Act and Equal Employment Opportunity Act to Foster Diverse Workplace Hiring and Promotion*”⁹⁶

Alicia Jessop asserts that while the racial imbalance among professional sports ownership and athlete rosters demonstrates a major issue, the professional sports industry possesses rare factors that put it in a unique position to eradicating workplace discrimination. Jessop reviews the impact of Title VII of the Civil Rights Act and the Equal Employment Opportunity Act on diverse hiring, proposes measures for Congress and state legislatures to adopt to help current statutory provisions breed diversity in the workplace, and puts the onus on sports organizations to lead the way by implementing internal measures now to increase transparency by mandating disclosure among teams regarding hiring practices and pay scale data.

5. Amanda Siegrist and Justin Lovich, “*Racing for Equity in Professional and Collegiate Sport*”⁹⁷

Amanda Siegrist and Justin Lovich examine the percentages of athletes of color, coaches, and administration that comprise of each sport. They look at both the “core” and “fringe” sports to determine the accessibility of each sport, particularly when it comes to barriers such as cost or a lack of facilities in urban areas. The authors seek answers to the disparities in racial representation in sports by looking at the racial composition of collegiate sports, youth sports, and amateur sports—when there is a small pool of diverse athletes at the lower levels of sports, then that pool becomes even smaller as one looks at the next level. They argue for more policies and programs to be implemented, such as a grassroots focus on making sports more accessible to diverse athletes in their youth, funding more social justice initiatives, enforcing anti-racism training, setting benchmarks to assess progress in the hiring of minorities, and changing current rules to be more inclusive.

⁹⁶ Jessop, *supra* note 1.

⁹⁷ Siegrist & Lovich, *supra* note 1.