SHOWING ON-FIELD RACISM THE RED CARD: HOW THE USE OF TORT LAW AND VICARIOUS LIABILIY CAN SAVE THE MLS FROM JOINING THE ENGLISH PREMIER LEAGUE ON RACISM ROW

I. Introduction

There has never been a more exciting time to be a fan of soccer, better known throughout the world as the beautiful game.[1] Professional players are faster, more talented with the ball, and score more goals than ever before.[2] The tournaments, cups, and leagues are followed by hundreds of millions of avid fans.[3] Games

1. *See* Rob Hughes, *A Fitting Match for the Beautiful Game*, N.Y. Times (May 27, 2011), http://www.nytimes.com/2011/05/28/sports/soccer/28iht-SOCCER28.html?pagewanted=all (emphasizing that soccer is commonly referred to as "[t]he Beautiful Game" and stating that UEFA's Champions League tournament has "come to mean as much, perhaps more, than the World Cup . . . ."); Jere Longman, *Boy Genius*, N.Y. Times, May 22, 2011, at SP1, *available at* http://query.nytimes.com/gst/fullpage.html?res=9A03E0D6173CF931A15756C0A9679D8B63&pagewanted=all (describing Messi as "one of the best [soccer players] ever" and that everybody "who watches Messi knows he is pushing the highest level of the sport ever").

2. *See* Longman, *supra* note 1 (stating that modern soccer "increasingly relies on size and muscle and speed"); Rob Hughes, *Genius Has Company in Messi and Ronaldo*, N.Y. Times, Nov. 16, 2010, at B17, *available at* http://www.nytimes.com/2010/11/17/sports/soccer/17iht-SOCCER.html (stating Lionel Messi and Cristiano Ronaldo are "modern gods of a game played in every land on the planet" and both are "scoring with even greater consistency" than any player before them); Jack Bell, *Sawa and Messi Are FIFA's Players of Year*, N.Y. Times (Jan. 9, 2012), http://goal.blogs.nytimes.com/2012/01/09/sawa-and-messi-are-fifas-players-of-year/ (noting "Messi joined Michel Platini as the only players to win the Ballon d'Or in three consecutive years"); *Barcelona's Lionel Messi Awarded His Third Ballon d'Or*, BBC Sport (Jan. 9, 2012), http://www.bbc.co.uk/sport/0/football/16031662 (reporting that Sir Alex Ferguson, one of soccer's most successful managers, believes Messi "could play in any generation" and be as successful); Roy Keane, *Chelsea Players' Show of Unity Looks So False*, The Sun (London) (Mar. 11, 2012), http://www.thesun.co.uk/sol/homepage/sport/football/4185393/Roy-Keane-column-Chelsea-players-show-of-unity-looks-so-false.html ("I was a big fan of Maradona growing up and of the current crop Cristiano Ronaldo is good but Messi is the best I've ever seen.").

3. *See* Steve Michaels, *World Cup Viewing Figures Prove That This Really Is The World's Game*, GOAL.com (Mar. 29, 2010), http://www.goal.com/en/news/1863/world-cup-2010/2010/05/29/1947801/world-cup-viewing-figures-prove-that-this-really-is-the- (reporting that 715.1 million people, which was approximately "one in ten people alive at the time", watched FIFA's World Cup final between Netherlands and Spain); John Haydon, *Massive TV Ratings for 2011 Champion's League Final*, Wash. Times (June 2, 2011), http://communities.washingtontimes.com/neighborhood/haydons-soccer-pitch/2011/jun/2/massive-tv-ratings-2011-champions-league-final/ (reporting that "[t]he UEFA Champions League game between FC Barcelona-Manchester United last Saturday dwarfed the 2010 match in the rat-

from any of the major leagues around the world can be viewed by anyone with a television and a cable or satellite subscription.[4] Star players are idolized by youths who hope to grow up and proudly represent their club and country at tournaments such as the FIFA World Cup and the UEFA Champions League.[5]

In America, soccer is quickly becoming one of the country's most popular sports.[6] Despite mediocre turnout and enthusiasm when Major League Soccer ("MLS") was founded in 1993, soccer is now at the forefront of American sports discussion.[7] During the 2010 season, the MLS boasted an average attendance rate of 17,872 fans per game, surpassing both the National Basketball Association and the National Hockey League.[8] The viewership of the 2010 FIFA World Cup was record-breaking in the United States, with an estimated 111.6 million viewers and fifty percent of households tuning in to catch a glimpse of the action.[9] When the United States National Team was playing, United States stock trading dropped by

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ings, drawing an audience of 4.2 million viewers nationally. . . . [T]he game had a 91 percent increase in viewers from last year.").

4. *See, e.g.*, *DirecTV Soccer*, DIRECTV, http://www.directv.com/DTVAPP/content/sports/soccer (last visited Mar. 13, 2012) (outlining various soccer packages available on DirecTV, asking viewers if they "[w]ant to see every game?").

5. *See* David Mercer, *Young Soccer Players Chasing Pro Dreams at New Academies*, USA TODAY (April 17, 2008), http://www.usatoday.com/sports/soccer/2008-04-17-2323903469_x.htm ("Kids growing up in Europe, their main goal is to play professional. They take a lot of chances to make that happen.").

6. For a further discussion and examples of soccer's growing popularity, see *infra* notes 7-12 and accompanying text.

7. *See* Stefan Szymanski, *David Beckham and the Rise of the MLS*, FORBES (Nov. 11, 2011), http://www.forbes.com/sites/stefanszymanski/2011/11/22/david-beckham-and-the-rise-of-mls/ (stating that there is "no question that awareness of the game continues to grow in the US" and "in five years support for the [MLS] league has risen from a level akin to the Scottish Premier League or South Korea's K-League to that of Holland's Eredivisie or Japan's J.League1" and increased popularity means that "MLS may be ready to go to the next level"); Bill Saporito, *Yes, Soccer Is America's Game*, TIME (June 03, 2010), http://www.time.com/time/specials/packages/article/0,28804,1991933_1991952_1993757,00.html ("Supporters of the Major League Soccer (MLS) team the Seattle Sounders have turned game day into an event, marching 35,000 strong into Qwest Field in their green and blue colors, standing and singing during the whole match. Seattle is part of a second wave of MLS franchises that are transforming the fan experience.").

8. *See* Fred Dreier, *MLS Passes NBA as Third Best-Attended American Sport*, AOL SPORTING NEWS (Nov. 7, 2011), http://aol.sportingnews.com/soccer/story/2011-11-07/mls-passes-nba-as-third-best-attended-american-sport (reporting MLS surpassed NBA and NHL in attendance during 2010-11 season).

9. *See 2010 World Cup Reaches Nearly 112 Million U.S. Viewers*, NIELSENWIRE (July 13, 2010), http://blog.nielsen.com/nielsenwire/media_entertainment/2010-world-cup-reaches-nearly-112-million-u-s-viewers/ ("An estimated 111.6 million U.S. viewers watched at least six minutes of the 2010 World Cup on English or Spanish language networks . . . . [T]he figure is a 22% increase from the reach of 91.4 million U.S. viewers during the 2006 World Cup.").

forty-two perfect, and dropped twenty-four percent during games involving other countries.[10] Many former European superstars, such as Thierry Henry and David Beckham, are now playing in the MLS because of soccer's growing popularity and high salaries.[11] These developments caught the attention of the National Broadcast Company ("NBC"), who announced that forty-six MLS games were going to be broadcasted live on NBC during the 2012 season.[12] Soccer is gaining momentum in the United States, but is there something that could stop this positive momentum right in its tracks?[13]

Across the pond, English soccer is trying to combat and solve racism issues between professional players on the field.[14] Two incidents have forced the issue of on-field racism back into the spotlight during the 2011-2012 season.[15] The first occurred on October 15, 2011, when Luis Suarez, a Uruguayan national who plays for Liverpool FC, told Patrice Evra, a Senegal-born French player who plays for Manchester United, that he did not want to speak with

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10. *See* Michael Ehrmann & David-Jan Jansen, *The Pitch Rather Than the Pit: Investor Inattention During FIFA World Cup Matches*, EUROPEAN CENTRAL BANK, Paper No. 1424, 28-29 (Feb. 2012), *available at* http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2004234_code485639.pdf?abstractid=2004234&mirid=1 (reporting declines in stock trading for countries during 2010 World Cup).

11. *See* Nick Valencia, *David Beckham Signs for 2 More Years with LA Galaxy*, CNN (Jan. 18, 2012), http://articles.cnn.com/2012-01-18/worldsport/sport_california-david-beckham_1_galaxy-uniform-galaxy-general-manager-mls?_s=PM:WORLDSPORT (stating Beckham signed with LA Galaxy again because of soccer's growing popularity and his commitment to continue growing soccer in United States); *Henry and Marquez Trail Beckham on M.L.S. Pay List*, N.Y. TIMES (Aug. 19, 2010), http://www.nytimes.com/2010/08/20/sports/20sportsbriefs-mls.html (reporting Thierry Henry earns $5,600,000 in yearly compensation at New York Red Bulls).

12. *See* Jack Bell, *M.L.S. Moves to NBC*, N.Y. TIMES, Aug. 10, 2011, at B18, *available at* http://www.nytimes.com/2011/08/11/sports/soccer/mls-moves-to-nbc.html ("Major League Soccer and NBC Sports on Wednesday announced a three-year agreement to televise 45 league matches and four United States national team games on NBC and the NBC Sports Network.").

13. For a discussion of the on-field racism currently harming English soccer, see *infra* notes 78-168 and accompanying text.

14. *See* Rob Harris, *British PM Cameron Wants Soccer Anti-Racism Plan*, SPORTS ILLUSTRATED (Feb. 22, 2012), http://sportsillustrated.cnn.com/2012/soccer/wires/02/22/2050.ap.soc.england.racism.4th.ld.writethru.0782/index.html (reporting British Prime Minister David Cameron solicited "England's soccer leaders . . . to provide a plan to deal with racism in the sport after a series of high-profile cases involving the Premier League").

15. *See* Edward Platt, *How Two Incidents of Alleged Racism in English Soccer Have Shocked the Sport*, THE DAILY BEAST (Dec. 23, 2011), http://www.thedailybeast.com/articles/2011/12/23/how-two-incidents-of-alleged-racism-in-english-soccer-have-shocked-the-sport.html (reporting that "both of the instances of alleged racial abuse that have been hanging over English soccer have been found to have substance suggests that one of its long-banished specters is making a return").

Evra because of the color of his skin.[16] The second occurred on October 23, 2011, when John Terry, an English national who plays for Chelsea FC, allegedly called Anton Ferdinand, a dark-skinned English player of Queens Park Rangers, a "fucking black cunt."[17] Racism on the soccer field in England, as well as European soccer generally, has been a persistent problem for decades.[18] The above two incidents have prompted the British Prime Minister to step in to help find a solution.[19]

Following these incidents, the President of FIFA, Josep Blatter, stated that he believed there was no on-field racism during soccer games.[20] He also stated that even if a player was subject to racial abuse on the field, he should just shake hands with the abusive player because soccer is just a game.[21] These statements have

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16. *See Report Says Suarez Called Evra 'Negro' Several Times*, USA TODAY (Jan. 1, 2012), http://www.usatoday.com/sports/soccer/story/2011-12-31/suarez-judgment-on-racist-comments/52308374/1 (reporting Suarez kicked Evra because of his dark skin color); Daniel Taylor, *Race Row: Luis Suárez and Patrice Evra to Hear FA Decision on Friday*, THE GUARDIAN (Dec. 14, 2011), http://www.guardian.co.uk/football/2011/dec/14/luis-suarez-patrice-evra-race-row (reporting details of Evra's claim against Suarez as both players waited for English FA to announce their ruling).

17. *See* Dominic Fifield, *John Terry to learn fate after alleged racial slur of Anton Ferdinand*, THE GUARDIAN, Oct. 24, 2011, at Guardian Sport Pages 1, *available at* http://www.guardian.co.uk/football/2011/oct/24/john-terry-anton-ferdinand-chelsea-qpr (reporting "footage circulated on the internet of an incident toward the end of QPR's 1-0 victory in which it has been suggested Terry calls the home defender 'a fucking black cunt'").

18. *See, e.g.*, *Baros in Racism Row Over Mbia*, BBC (Apr. 20, 2007), http://news.bbc.co.uk/sport2/hi/football/africa/6573067.stm (reporting Olympique Lyon striker Milan Baros racially abused Cameroon's Stephane Mbia by pinching his nose "as if he was repelling an offensive odour" during French Ligue One game); Chris Wheeler, *Viv Anderson Exclusive: Racists Were Raining Down Fruit. Brian Clough Just Said 'Get Me Two Pears and a Banana'*, DAILY MAIL (Apr. 28, 2010), http://www.dailymail.co.uk/sport/football/article-1269285/Viv-Anderson-Exclusive-Racists-raining-fruit-Brian-Clough-just-said-pears-banana.html (reporting racism aimed at black English player Viv Anderson, when he was pelted with apples and pears while warming up and his coach told him, in response to abuse, to fetch him "two pears and a banana").

19. *See* Harris, *supra* note 14 (reporting English Prime Minister David Cameron has begun investigating possible solutions to racism issues in English soccer).

20. *See* Chris Murphy, *FIFA Chief Blatter: There is No On-Field Racism in Football*, CNN (Nov. 18, 2011), http://www.cnn.com/2011/11/16/sport/football/football-blatter-fifa-racism/index.html?iref=allsearch (reporting Sepp Blatter's belief that "[t]here is no racism" between soccer players).

21. *See Sepp Blatter Downplays Racism*, ESPN (Nov. 17, 2011), http://espn.go.com/sports/soccer/news/_/id/7243649/fifa-president-sepp-blatter-downplays-soccer-racism (recounting Blatter's statement that "normally, at the end of the match, you apologize to your opponent if you had a confrontation during the match, you shake hands, and when the game is over, it is over").

caused outrage across Europe and many have called for Blatter's resignation.[22]

In the meantime, the MLS should observe and critically evaluate the failings of the English Premier League's efforts to remedy on-field racism.[23] While there have been relatively few incidents of on-field racism in the MLS, the warning signs are beginning to show.[24] Thus, the MLS is presented with the unique opportunity to preemptively mitigate any racism issues as the league continues to grow financially and attract diverse and talented athletes.[25] With all of the progress that the MLS and soccer have made in America over the past fifteen years, a flare up of ill-handled racism issues could easily destroy the sport's growing popularity.[26] This all asks the question: how should the MLS handle on-field racism?[27]

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22. *See* Chris Murphy, *Leading Figures in Soccer Call on Blatter to Step Down*, CNN (Nov. 18, 2011), http://edition.cnn.com/2011/11/17/sport/football/football-blatter-racism-reaction-nov17/index.html (reporting soccer players', such as David Beckham and Rio Ferdinand, reactions to Blatter's comments); Matt Lawton & Ian Ladyman, *Fresh Calls for Blatter to Resign After Claiming Players Should Forget Racism with Handshake*, DAILY MAIL (Nov. 17, 2011), http://www.dailymail.co.uk/sport/football/article-2062489/Sepp-Blatter-resign-claiming-players-forget-racism-handshake.html (reporting high-profile soccer organizations' reactions to Sepp Blatter's comments). Gordon Taylor, the chief of the Professional Footballers' Association, a trade union for professional players in England and Wales, condemned Blatter's comments as "insensitive" and "inappropriate." *Id.*

23. For a discussion of how the MLS can avoid the failings of the English Premier League, see *infra* notes 78-168 and accompanying text.

24. *See* Jack Bell, *Liverpool's Suárez Suspended and Fined*, N.Y. TIMES (Dec. 20, 2011), http://goal.blogs.nytimes.com/2011/12/20/liverpools-suarez-suspended-and-fined/ (reporting New York Red Bulls goalkeeper Bouna Coundoul believed he was treated unfairly and humiliated by New York Red Bulls staff because of his African descent); Zac Wassink, *RBNY Fan: Time for Rafa Marquez & NY Red Bulls Fans to Make Up*, YAHOO! SPORTS (Jan. 21, 2012), http://sports.yahoo.com/mls/news?slug=ycn-10866095 (revealing New York Red Bull's goalkeeper Bouna Coundoul thought his race influenced his departure from team). Commentators have compared Suarez's situation to Coundoul's and fear that the Red Bulls team and management may have "racist tendencies" and a lack of diverse players. *See id.*

25. For a discussion of how the MLS can avoid or mitigate racism issues in the future, see *infra* notes 193-317 and accompanying text.

26. *See, e.g.*, Mike Collett & Clare Fallon, *Soccer-Britain Can Crush Racism in Sport, Cameron Says*, REUTERS (Feb. 22, 2012), http://uk.reuters.com/article/2012/02/22/soccer-england-racism-idUKL4E8DM7DV20120222 (reporting David Cameron is afraid if racism in English soccer is not solved, parents may stop bringing their children to games, and children that do attend games may begin imitating racist conduct they see during games); Gary Morley, *Racism in Football: 'It's Not Black and White'*, CNN (Feb. 23, 2012), http://edition.cnn.com/2012/02/23/sport/football/football-racism-england/index.html (recounting Clyde Best's experiences dealing with racial abuse, hate, and physical threats while trying to play soccer in England's top division).

27. For a discussion of how the MLS can address on-field racism issues, see *infra* notes 193-316 and accompanying text.

A key difference between the U.S. and England is the availability of the court system to aggrieved professional athletes.[28] Specifically, the English High Court ruled that the English Football Association's decisions are not subject to judicial review.[29] The United States, however, allows a professional player to utilize the court system.[30] In the context of on-field racism, this allows the courts to apply tort law and hold a soccer team vicariously liable for the torts of its players under the doctrine of respondeat superior.[31] By using respondeat superior, the MLS and American courts can place the fault and liability of on-field racism onto the team itself.[32] In England, only the player is held liable for his conduct on the field.[33] By holding the team liable instead of just the player, the clubs have a strong incentive to discipline their players following racist conduct on the field and actively promote racism awareness programs to avoid future incidents that could harm the club's reputation and financials.[34]

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28. For a discussion of the key differences between English and American sports law in the context of soccer, see *infra* notes 169-192 and accompanying text.

29. *See* Reg. v. Football Association Ltd., Ex parte Football League Ltd., The Times, Aug. 22, 1991, available at http://oxcheps.new.ox.ac.uk/new/casebook/cases/Cases%20Chapter%209//R%20v%20Disciplinary%20Committee%20of%20the%20Jockey%20Club,%20ex%20p%20HH%20Aga%20Khan.doc ("I have crossed a great deal of ground in order to reach what, on the authorities, is the clear and inescapable conclusion for me that the F.A. is not a body susceptible to judicial review . . . .").

30. *See Bylaws of the United States Soccer Federation*, U.S. SOCCER FEDERATION, Sept. 1, 2011, *available at* http://www.ussoccer.com/about/governance/~/media/BAC1E90B7E7B4F11ACED37950159E0EA.ashx ("No Organization Member, official, league, club, team, player, coach, administrator or referee may invoke the aid of the courts in the United States or of a State without first exhausting all available remedies within the appropriate soccer organization, and as provided within the Federation.").

31. For a discussion of the tort of intentional infliction of emotional distress and the doctrine of respondeat superior, see *infra* notes 193-316 and accompanying text.

32. *See* Daryll M. Halcomb Lewis, *An Analysis of Brown v. National Football League*, 9 VILL. SPORTS & ENT. L.J. 263, 278 (2002) (citing DAN B. DOBBS, THE LAW OF TORTS § 333, at 905 (2000)) (stating that respondeat superior puts liability for tortious actions on employers).

33. *See generally* INDEP. REGULATORY COMM'N, THE FOOTBALL ASSOCIATION AND LUIS SUAREZ: REASONS OF THE REGULATORY COMMISSION 5 (2011), *available at* http://www.bakchich.info/sites/bakchich.info/files/article_files/fa_v_suarez_written_reasons_of_regulatory_commission_0.pdf (punishing Suarez for his conduct, but not punishing Liverpool Football Club); *Powar Urges FA to Charge Liverpool*, ESPN (Jan. 5, 2012), http://soccernet.espn.go.com/news/story/_/id/1004658/anti-racism-chief-urges-fa-to-charge-liverpool?cc=5901 (highlighting that Liverpool was never charged by English FA for events surrounding Suarez incident).

34. *See, e.g.*, *News and Events*, SHOW RACISM THE RED CARD, http://www.srtrc.org/news/news-and-events (last visited Mar. 22, 2012) (outlining up-

This comment begins by laying out the structure of European soccer and describing how FIFA handles the issue of on-field racism.[35] Part III of this comment analyzes why England's efforts to combat on-field racism have been ineffective.[36] This section will focus on the aforementioned dispute between Patrice Evra and Luis Suarez.[37] Part IV of this comment describes the key differences in sports law between England and the United States.[38] Part V of this comment explains why tort law and vicarious liability will help the MLS avoid, or at least substantially mitigate, on-field racism issues.[39] Finally, Part VI concludes with the recommendation that the MLS adopt the vicarious liability doctrine into its rules to cover racist comments made by players during games.[40]

II. BACKGROUND: HOW THE CONTROVERSIAL PRESIDENT OF FIFA PUT THE SPOTLIGHT ON THE ISSUE OF RACISM BETWEEN PLAYERS

A. Josep ("Sepp") Blatter

Sepp Blatter, the President of FIFA, is one of the most controversial figures in modern-day sports.[41] After over a decade as the figurehead for the beautiful game, his presidency has been plagued by allegations of corruption and he has often been found at the

coming educational events aimed to promote racial integration in soccer, including events involving players from English Premier League clubs).

35. For a discussion of the structure of European soccer and how FIFA deals with racism on the field, see *infra* notes 41-77 and accompanying text.

36. For a discussion of the ineffectiveness of England's attempts to fight racism on the field, see *infra* notes 78-168 and accompanying text.

37. For a discussion of the dispute between Patrice Evra and Luis Suarez, see *infra* notes 88-168 and accompanying text.

38. For a discussion of the important differences between England and the United States when dealing with sports law issues, see *infra* notes 169-192 and accompanying text.

39. For a discussion of how the MLS can use tort law and vicarious liability to reduce or eliminate racism on the field, see *infra* notes 193-342 and accompanying text.

40. For a discussion of how the MLS can incorporate vicarious liability into their rules, see *infra* notes 343-358 and accompanying text.

41. *See Sepp Blatter: A Controversial Leader*, CNN (Nov. 17, 2011), http://edition.cnn.com/2011/11/17/sport/football/football-sepp-blatter-controversies/index.html (describing various controversial matters Blatter has been privy to, including accusations of financial mismanagement, gay jokes, jokes about female soccer players wearing tighter shorts, applauding infidelity, and equating soccer transfers with slavery). *See generally About the President*, FIFA, http://www.fifa.com/aboutfifa/organisation/president/aboutpresident.html (last visited Jan. 28, 2012) (providing biography of Sepp Blatter). FIFA is the international governing body of association football ("soccer") and is responsible for the organization and governance of soccer tournaments such as the World Cup. *See id.*

center of the largest controversies in soccer.[42] Yet none of his prior statements or actions sparked as much of an outcry amongst players, coaches, and fans as his statement that there is no racism on the soccer field.[43] In an interview with CNN on November 18, 2011, Blatter stated:

> There is no racism [on the field], there is maybe one of the players towards the others, he has a word or a gesture which is not the correct one, but also the one who is affected by that, he should say it's a game, we are in a game. At the end of the game, we shake hands.[44]

Some of the most influential names in the world called for Blatter's resignation after the interview footage circled around the world.[45] In the aftermath of the resignation demands, Blatter made numerous apologies to those who were offended by his comments.[46] In his apology, Blatter also stated that he has personally been leading the battle against racism in soccer during his time in charge of FIFA.[47] Despite Blatter's belated acknowledgment of the racism problem, he has refused to resign.[48]

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42. *See Sepp Blatter: A Controversial Leader*, *supra* note 41 (outlining numerous allegations of corruption and controversial comments by Blatter).

43. *See* Murphy, *supra* note 22 (detailing reactions of soccer players and soccer organizations to Blatter's comments about on-field racism in soccer).

44. *See* Chris Murphy, *FIFA Chief Blatter: There is No On-Field Racism in Football*, CNN (Nov. 18, 2011), http://www.cnn.com/2011/11/16/sport/football/football-blatter-fifa-racism/index.html?iref=allsearch (reporting Sepp Blatter's controversial comments about racism in soccer).

45. *See Blatter Faces Calls to Resign*, FOX SPORTS (Nov. 17, 2011), http://msn.foxsports.com/foxsoccer/world/story/sepp-blatter-resignation-fifa-presidenct-racism-comments-111711 (reporting how British Prime Minister David Cameron requested Blatter's resignation, along with EU spokesman Dennis Abbott and various professional soccer players).

46. *See* Ravi Somaiya, *Blatter Apologizes for Remarks on Racism*, N.Y. TIMES (Nov. 18, 2011), http://thelede.blogs.nytimes.com/2011/11/18/blatter-apologizes-for-remarks-on-racism/ (reporting Blatter's apology for racism remarks that aired on BBC); *Blatter: 'Racism Controversy Closed'*, CNN (Nov. 23, 2011), http://articles.cnn.com/2011-11-23/football/sport_football_football-blatter-fifa-racism_1_zero-tolerance-racism-fifa-president-sepp-blatter?_s=PM:FOOTBALL (reporting Blatter claimed "he has apologized enough" for his remarks about on-field racism in soccer).

47. *See* Joseph F. Blatter, *Blatter Committed to Fight Against Racism*, FIFA (Nov. 16, 2011), http://www.fifa.com/aboutfifa/organisation/president/news/newsid=1544067/index.html (last visited Mar. 18, 2012) ("I have been personally leading this battle against racism in football, which FIFA has been fighting against throughout the past years through campaigns in all of our competitions such as the 'Say no to racism' campaign.").

48. *See Blatter Says Sorry But Will Not Resign*, FOX SPORTS (Nov. 17, 2011), http://msn.foxsports.com/foxsoccer/world/story/sepp-blatter-fifa-president-apologizes-but-will-not-resign-racism-row-111811 (reporting "FIFA president Sepp Blatter on

During Blatter's time as president of FIFA, there have been major incidents of racism in all of the top domestic leagues in Europe.[49] This is common knowledge to many, as incidents of racism occur every season.[50] Rio Ferdinand, a Manchester United player, posted on his Twitter account following Blatter's comments: "Tell me I have just read Sepp Blatter's comments on racism in football wrong . . . . [I]f not then I am astonished."[51] Rio's brother Anton, a player for Queens Park Rangers, allegedly suffered racial abuse directed at him by John Terry, of Chelsea, during a game this year.[52] David Beckham, a former Manchester United player and a current player for the L.A. Galaxy, called Blatter's comments "appalling" and stated that a simple handshake is not an appropriate way to remedy one of soccer's biggest problems.[53] Piers Morgan, a British journalist and commentator, stated that "Sepp Blatter just gave

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Friday said he 'deeply regretted' his comments about racism in football and issued an apology - but was adamant he would not resign.").

49. *See U.S.' Onyewu Sues Over Alleged Racist Slur*, SPORTS ILLUSTRATED (June 2, 2009), http://sportsillustrated.cnn.com/2009/soccer/06/02/onyewu.slur.ap/index.html (reporting Oguchi Onyewu's lawsuit against Jelle Van Damme over Van Damme's racist remarks toward Onyewu during Belgium league game); *Baros Banned for Mbia Incident*, BBC (May 4, 2007), http://news.bbc.co.uk/sport2/hi/football/africa/6623671.stm (reporting dispute between Milan Baros and Stephane Mbia over racist gesture during French league game); *German Player Banned for Racism*, BBC (Oct. 28, 2008), http://news.bbc.co.uk/sport2/hi/football/africa/7695544.stm (reporting German Football Association's ban of Torsten Ziegner for racial abuse of Kingsley Onuegbu); *Juve Punished Over Racial Abuse*, BBC (Apr. 20, 2009), http://news.bbc.co.uk/sport2/hi/football/europe/8008928.stm (reporting Italian FA ordered Juventus to ban home fans for one game due to fans' abuse of Mario Balotelli during Italian league game); *Uefa Charges Sergio Busquets Over Racism Claim*, BBC (May 12, 2011), http://news.bbc.co.uk/sport2/hi/football/13381508.stm ("Uefa has launched a disciplinary case against Barcelona's Sergio Busquets over alleged racism in the Champion's League semi-final with Real Madrid."); *The FA Will Look Into Claims Luis Suarez Racially Abused Patrice Evra*, BBC (Oct. 16, 2011), http://news.bbc.co.uk/sport2/hi/football/15324927.stm (reporting English FA's investigation of Luis Suarez's alleged racial abuse of Patrice Evra).

50. See generally *supra* note 49 (discussing racism issues in various professional leagues in Europe).

51. *See* Murphy, *supra* note 20 (reporting Rio Ferdinand's comments on Twitter: "I feel stupid for thinking that football was taking a leading role against racism . . . . [I]t seems it was just on mute for a while.").

52. *See* Rob Hughes, *What Chelsea Player Said May Be a Crime*, N.Y. TIMES (Dec. 22, 2011), http://www.nytimes.com/2011/12/22/sports/soccer/22iht-terry22.html (reporting events surrounding John Terry's alleged racist remark toward Anton Ferdinand and detailing English police's ongoing criminal investigation).

53. *See David Beckham Calls Sepp Blatter's Racism Remarks 'Appalling'*, BBC (Nov. 18, 2011), http://news.bbc.co.uk/sport2/hi/football/15787488.stm (reporting David Beckham's reaction to Sepp Blatter's comments about racism in soccer).

every racist in football a license to abuse" and that "even by [Blatter's] standards this is utterly outrageous."[54]

B. The Structure of FIFA and its Role as a Governing Body

For readers unfamiliar with the hierarchy of soccer, FIFA, known more formally as the Fédération Internationale de Football Association, is considered the "world's soccer governing body."[55] FIFA is responsible for organizing, officiating, and regulating the largest sporting event on the planet, the World Cup.[56] Each country appoints a representative to the FIFA Congress.[57] The members of the FIFA Congress then vote to elect the President of FIFA.[58] Further, each continent is designated as a "federation," which is delegated power from FIFA to oversee games that occur within their federation.[59] For example, North America and Central America are known as the "CONCACAF" region, which governs in-

54. *See Twitter Reacts Angrily to Sepp Blatter's Comments on Racism*, CNN (Nov. 16, 2011), http://articles.cnn.com/2011-11-16/football/sport_football_football-blatter-twitter-reaction_1_racism-sepp-blatter-racial-slur?_s=PM:FOOTBALL (reporting Piers Morgan condemnation of Sepp Blatter's comments about racism in soccer).

55. *See* FIFA, *Mission & Statutes*: *FIFA Brand – Our Commitment*, http://www.fifa.com/aboutfifa/organisation/mission.html (last visited Mar. 18, 2012) (stating FIFA's "responsibility does not end with organising [sic] the FIFA World Cup™ and the various other world cup competitions; it extends to safeguarding the Laws of the Game, developing the game around the world and to bringing hope to those less privileged."); Matthew Futterman & John Revill, *President of Soccer Body is Re-Elected*, WALL ST. J. (June 2, 2011), http://online.wsj.com/article/SB10001424052702303745304576359052240167140.html (calling FIFA "[s]occer's world governing body").

56. *See About FIFA, FIFA World Cup*, FIFA, http://www.fifa.com/aboutfifa/worldcup/index.html (last visited Mar. 18, 2012) (stating FIFA is responsible for organizing World Cup).

57. *See About FIFA, FIFA Associations*, FIFA, http://www.fifa.com/aboutfifa/organisation/associations.html (last visited Mar. 18, 2012) (detailing each country's membership in FIFA); *About FIFA, FIFA Congress*, FIFA, http://www.fifa.com/aboutfifa/organisation/bodies/congress/index.html (last visited Mar. 18, 2012) (stating FIFA Congress is FIFA's legislative body that meets once per year).

58. *See About FIFA, FIFA Congress, FIFA Presidential Elections*, FIFA, http://www.fifa.com/aboutfifa/organisation/bodies/congress/presidentelections.html (last visited Mar. 18, 2012) (recounting previous presidents of FIFA that were elected by FIFA Congresses, starting with first FIFA Congress in Paris, 1904).

59. *See About FIFA, The Organization, Confederations*, FIFA, http://www.fifa.com/aboutfifa/organisation/confederations/index.html (last visited Mar. 18, 2012) (stating FIFA "Confederations are the umbrella organisations of the national football associations on each continent. The AFC in Asia, CAF in Africa, the Football Confederation (CONCACAF) in North and Central America and the Caribbean, CONMEBOL in South America, UEFA in Europe and the OFC in Oceania all provide support to FIFA without encroaching on the rights of the national associations.").

ternational games occurring between members of CONCACAF.[60] Due to the representative nature of FIFA, many players, coaches, and fans consider FIFA the informal central governing body of soccer.[61]

In order to combat racism, FIFA established an anti-racism campaign known as "Say no to Racism."[62] The campaign has been active since 2006 and has a general mission to take measures necessary to eliminate racism from soccer.[63] Every year, it selects a high profile game that is designated a "FIFA Anti-Discrimination Day" which aims to promote awareness of the racism problem, and includes media briefings, a short film, and a special pre-match protocol where the teams and referees stand at midfield displaying a banner that reflects FIFA's, and all of its members', commitment to fighting racism.[64] The events have been considered successful and the "Say No to Racism" slogan has been displayed during numerous games and even in the FIFA video game series.[65] Many players, coaches, and fans thought FIFA was moving in the right direction until Blatter's comments went viral.[66]

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60. *See id.* (noting Confederation of North, Central American, and Caribbean Association Football is "the umbrella organization[ ] of the national football association[ ]" in North America).

61. *See, e.g.*, *Executive Pushes for Approval of Headscarf*, ASSOCIATED PRESS, Jan. 30, 2012, *available at* http://www.nytimes.com/2012/01/31/sports/soccer/31iht-soccer31.html (noting "FIFA is soccer's world governing body" but that FIFA does not possess direct authority over every issue in soccer).

62. *See About FIFA, Social Responsibility, FIFA Against Racism: A Decade of Milestones*, FIFA (Mar. 2, 2012), http://www.fifa.com/aboutfifa/socialresponsibility/news/newsid=1384919/index.html (last visited Mar. 18, 2012) (indicating FIFA launched its "Say no to Racism" campaign during April 2006).

63. *See id.* (stating FIFA's anti-racism responsibilities have increased with increases in "footballers leaving their homeland for foreign shores, which subsequently created potential for the problem [of racism] to enhance, FIFA elected to act more aggressively against racism").

64. *See, e.g.*, *Tenth FIFA Anti-Discrimination Day on 13 July 2011*, FIFA (Jul. 12, 2011), http://www.fifa.com/tournaments/archive/womensworldcup/germany2011/releases/newsid=1473742.html (stating July 13, 2011 would be FIFA's tenth anti-discrimination day held during FIFA Women's World Cup's semi-final matches in Germany).

65. *See, e.g.*, *About FIFA, Anti-Racism, FIFA Against Discrimination*, FIFA, http://www.fifa.com/aboutfifa/socialresponsibility/antiracism/index.html (last visited Aug. 28, 2012) (providing details regarding all eleven FIFA Anti-Discrimination Days). The "Say no to Racism" banner was also displayed in the FIFA 2010 video game. *See id.*

66. *See, e.g.*, Kevin Baxter, *FIFA's Sepp Blatter is Out of Touch on Racism*, L.A. TIMES (Nov. 26, 2011), http://articles.latimes.com/2011/nov/26/sports/la-sp-baxter-soccer-20111127 (describing FIFA's Anti-Discrimination Day and its strong impact during 2010 World Cup and asking "[h]ow sincere can Blatter's stand against racism be when he clearly doesn't understand the topic?").

FIFA Disciplinary Code part 58 outlines punishments for discrimination.[67] Section 1(a) requires a suspension for at least five games and a fine of at least CHF (Swiss Franc) 20,000, roughly $22,000 in U.S. dollars, for any player who "offends the dignity of a person or group of persons through contemptuous, discriminatory or denigratory words or actions concerning race, colour, language, religion or origin."[68] Section 1(b) imposes a harsher punishment when "several persons (officials and/or players) from the same club or association simultaneously breach par. 1 (a) or there are other aggravating circumstances, the team concerned may be deducted three points for a first offence and six points for a second offence."[69] If there are further offenses, the team may be relegated to a lower division.[70] If the offenses happen in a competition where points are not awarded, the team may be disqualified from the competition.[71] The Disciplinary Code also contains provisions to punish racist conduct committed by fans who attend the games.[72]

Despite the existence of these provisions, they have rarely been invoked.[73] FIFA only possesses jurisdiction over international games and many leagues adopt their own rules and regulations tailored to address the specific problems that occur in their leagues.[74]

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67. FIFA, *FIFA Disciplinary Code: 2011 Edition*, art. 58 (2011), *available at* http://www.fifa.com/mm/document/affederation/administration/50/02/75/discoinhalte.pdf (outlining punishments for discrimination).

68. *Id.* (detailing punishment for section 1(a) and listing fines in CHF rather than U.S. dollars).

69. *Id.* (detailing punishment for section 1(b), which applies when there is more than one perpetrator).

70. *See id.* (stating repeated offenses by several persons may result in relegation to lower division).

71. *See id.* (stating alternative punishment for matches that do not award points).

72. *See id.* art. 58(2) (stating punishment to be imposed on clubs and associations for discriminatory conduct by club supporters which applies regardless of club or association culpability or involvement in discriminatory conduct).

73. *See, e.g.*, Jack Bell, *Maradona Suspended for 2 Months*, N.Y. TIMES SOCCER BLOG (Nov. 15, 2009, 6:35 PM), http://goal.blogs.nytimes.com/2009/11/15/maradona-suspended-2-months/ (reporting FIFA Disciplinary Committee considered charging Maradona for his "lewd outburst" under article 58 but ultimately chose article 57 instead); *FIFA Fines Croatian FA*, FIFA (Sept. 25, 2008), http://www.fifa.com/aboutfifa/organisation/news/newsid=889971/index.html, (reporting FIFA Disciplinary Committee fined Croatia Football Federation CHF 30,000 under article 58(2) for racist behavior of their fans during September 2008 game between Croatia and England); David Conn, *Sepp Blatter Out of Touch with Fifa's Anti-Racism Work in His Name*, THE GUARDIAN SPORT BLOG (Nov. 17, 2011, 15:22 EST), http://www.guardian.co.uk/football/blog/2011/nov/17/sepp-blatter-anti-racism-fifa (highlighting Blatter's weak stance against racism despite his instrumental role in passing article 58).

74. *See* Paul Kelso, *Global Interest Means That Premier League is Vulnerable to Match-Fixing, Says Fifa's Head of Security Chris Eaton*, THE TELEGRAPH (Jan. 11, 2012,

Further, the vast majority of soccer games and racism issues occur at the domestic level.[75] With FIFA's president publically denying the existence of the racism problem, it is unlikely FIFA will help find a solution to on-field racism.[76] Therefore, examining the controversial situation in England will provide examples of the failings of domestic leagues trying to combat the racism issue, and help the MLS understand and resolve any future issues that may occur.[77]

III. ENGLAND ON RACISM ROW: THE PATRICE EVRA V. LUIS SUAREZ DISPUTE AS AN EXAMPLE OF THE ENGLISH PREMIER LEAGUE'S FAILURE TO ELIMINATE ON-FIELD RACISM

Fans of the beautiful game largely consider the Barclay's Premier League ("English Premier League" or "EPL") the most exciting soccer league in the world.[78] Many of the world's top players try to prove themselves as one of soccer's best by playing for a team in the EPL.[79] EPL viewership has even begun permeating the Ameri-

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7:15 AM GMT), http://www.telegraph.co.uk/sport/football/competitions/premier-league/9005850/Global-interest-means-that-Premier-League-is-vulnerable-to-match-fixing-says-Fifas-head-of-security-Chris-Eaton.html (recognizing FIFA "strictly only has jurisdiction over its international tournaments and friendly games"); Dan King, *FIFA to Probe 15 Transfers: Premier League Furious After FA Send On Dossiers for New Inquiry*, DAILY MAIL (Sept. 20, 2009, 12:12 EST), http://www.dailymail.co.uk/sport/football/article-1214738/FIFA-probe-15-transfers-Premier-League-furious-FA-send-dossiers-new-inquiry.html (reporting English FA's outrage when FIFA unilaterally instigated investigation into deals that likely only included domestic clubs in Barclay's Premier League in England).

75. *Compare supra* note 49 (noting incidents of racism across various domestic leagues in Europe), *with supra* note 73 (describing FIFA investigations under FIFA's Disciplinary Code article 58, which covers discriminatory conduct by players, coaches, and club supporters).

76. *See* Marina Hyde, *Comment: For Once, English Football is on the Ball. Unlike Mr Blatter: The England Team's Play May Be Outdated, But Its Fans' Attitudes to Racism are Positively Progressive in This Blighted Game*, THE GUARDIAN, Nov. 19, 2011, at Guardian Comment and Debate Pages 48, *available at http://www.guardian.co.uk/commentisfree/2011/nov/18/sepp-blatter-racism-football* (arguing that both Blatter and FIFA are corrupt and that England's FA is capable of handling on-field racism because of positive shifts in England's attitude toward racism). The author noted a situation where FIFA fined the Spanish FA 44,750 pounds for racist chants against England during a friendly, but fined Cameroon 86,000 pounds for wearing the wrong jerseys during the African Cup of Nations tournament. *See id.*

77. See *infra* notes 79-168 and accompanying text.

78. *See* Martin Rogers, *Ranking the World's Best Soccer Leagues*, YAHOO! (Sept. 19, 2007), http://sports.yahoo.com/soccer/news?slug=RO-topleagues091907 ("Only the tough-minded survive in a league that is played at a ferocious pace and is packed with passion.").

79. *See id.* (reporting EPL's "television viewing figures around the globe are massive and foreign investors are falling over themselves to get a piece of the financial action").

can airways.[80] This season, the EPL has been nicknamed "racism row" due to the controversy surrounding two players' conduct towards opposing players during league games.[81] The first was a dispute between Luis Suarez and Patrice Evra, described below.[82] The second was a dispute between John Terry and Anton Ferdinand.[83] A discussion of Terry's conduct is not included as he is currently awaiting trial following this summer's European Championship tournament.[84] However, his alleged actions have contributed to the call for reform of racism law in the EPL.[85] The EPL, like the MLS, is a league made up of significant numbers of ethnically diverse players.[86] Therefore, understanding the failings of the EPL

80. *See* George Vecsey, *For Fans, a New Focus on the Best Soccer in the World*, N.Y. TIMES SOCCER BLOG (Jan. 20, 2012, 11:58 AM), http://goal.blogs.nytimes.com/2012/01/20/for-fans-a-new-focus-on-the-best-soccer-in-the-world/ (stating Fox airing Manchester United versus Arsenal game was "no charitable gesture by the friendly folks at Fox. They have figured out there is a whole (younger, demographically vital) generation that has learned to love the English Premier League, Italian Serie A and Spanish La Liga because of the growing exposure on television.").

81. *See* Jere Longman, *Racism Charges Put a Sport on Edge*, N.Y. TIMES, Dec. 21, 2011, at B12, *available at* http://www.nytimes.com/2011/12/22/sports/soccer/in-england-star-players-accused-of-racist-comments.html (reporting that allegations against Luis Suarez and John Terry have drawn attention to on-field racism issues in soccer); *Racism Row: Does Suarez Need Educating?*, CNN, http://edition.cnn.com/2011/12/21/sport/football/football-suarez-racism-england/index.html (last updated Dec. 21, 2011, 21:29 GMT) (referring to on-field racism issues in English soccer as "Racism row").

82. *See* Rob Hughes, *From One Word, a Whole Lot of Controversy*, INT'L HERALD TRIB. (Dec. 22, 2011), *available at* http://www.nytimes.com/2011/12/22/sports/soccer/22iht-soccer22.html?pagewanted=all (reporting Suarez was banned by England's FA for eight matches and fined 40,000 pounds, "or nearly $63,000," for racial abuse directed at Manchester United player Patrice Evra). *See also infra* notes 88-168 and accompanying notes for an in-depth analysis of Suarez's conduct and Evra's reaction.

83. *See* Rob Hughes, *What Chelsea Player Said May Be a Crime*, INT'L HERALD TRIB. (Dec. 22, 2011), *available at* http://www.nytimes.com/2011/12/22/sports/soccer/22iht-terry22.html (reporting John Terry was ordered to appear in criminal court by English government following his alleged racial abuse of Anton Ferdinand during match between Chelsea and Queens Park Rangers).

84. *See Terry Out as Captain*, N.Y. TIMES, Feb. 4, 2012, at D6, *available at* http://www.nytimes.com/2012/02/04/sports/soccer/terry-out-as-captain.html (noting John Terry's criminal trial was delayed until after European Championships conclude this summer).

85. *See British PM Cameron Wants Soccer Anti-Racism Plan*, FOX NEWS (Feb. 22, 2012), http://www.foxnews.com/sports/2012/02/22/british-pm-cameron-issues-soccer-racism-warning/ ("British Prime Minister David Cameron asked England's soccer leaders Wednesday to provide a plan against racism in the sport after a series of high-profile cases involving the Premier League.").

86. *Compare* Richard Lapchick, INST. FOR DIVERSITY & ETHICS IN SPORT, THE 2011 RACIAL AND GENDER REPORT CARD: MAJOR LEAGUE SOCCER 1, 4 (2011) *available at* http://www.tidesport.org/RGRC/2011/MLS_RGRC_FINAL.pdf (stating that forty-eight percent of MLS players are minorities which is "a greater proportion of

will help the MLS anticipate and avoid similar racism issues that may occur in America.[87]

A. Luis Suarez, Patrice Evra, and the Word "Negro"

On January 31, 2011, Liverpool purchased Uruguayan footballer Luis Suarez from AFC Ajax, a football club in the Netherlands, for 26.5 million euros.[88] Suarez, considered a rising talent, was purchased to help reinforce the team after news spread that Liverpool was going to sell Fernando Torres.[89] Liverpool knew, however, that purchasing Suarez could lead to some controversy.[90] During the 2010 World Cup in South Africa, Suarez infamously used his hands to block a header from Ghana's Dominic Adiyiah in the quarter-final round.[91] Suarez was ejected from the game, Ghana missed the subsequent penalty kick, and Uruguay advanced to the semi-finals.[92] Suarez was vilified by a majority of the soccer community because the handball was considered to be extremely unsporting behavior.[93] Despite knowing of Suarez's past controversial behav-

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the players than in any other year" and percentage of international players increased to a record-high of thirty-eight percent in 2011), *with* Ollie Williams, *Where the Premier League's Players Come From*, BBC SPORT, http://news.bbc.co.uk/sport2/hi/football/eng_prem/8182090.stm (last updated Aug. 1, 2009, 15:36 GMT) (showing what nation each English Premier League player comes from for 2009-10 season as well as 1989-90 season).

87. For a discussion of these underlying issues, see *infra* notes 88-168 and accompanying text.

88. *See Reds Agree Suarez Deal*, LIVERPOOL FOOTBALL CLUB (Jan. 30, 2011), ttp://www.liverpoolfc.tv/news/latest-news/reds-agree-suarez-deal (stating Liverpool FC and Ajax agreed to transfer of Luis Suarez).

89. *See* Andy Hunter, *Liverpool Agree £22.8m Fee with Ajax for Luis Suárez*, THE GUARDIAN (Jan. 28, 2011, 13:07 EST), http://www.guardian.co.uk/football/2011/jan/28/liverpool-luis-suarez-ajax-agree-fee (stating Suarez purchase helped Liverpool "offset the possible departure of Fernando Torres" and noting Suarez scored 81 goals in 108 league games for his former club Ajax).

90. *See* Matt Lawton, *Luis Suarez – I Want to Be Known for Great Goals Not Biting or That Handball*, DAILY MAIL (Mar. 24, 2011 15:25 EST), http://www.dailymail.co.uk/sport/football/article-1367750/Luis-Suarez-Liverpool-No-7-shirt-biting-handball.html (reporting Suarez's controversial behavior that occurred before he signed with Liverpool).

91. *See id.* (describing events surrounding Suarez's infamous handball during 2010 World Cup quarter-final match between Uruguay and Ghana).

92. *See id.* (reporting Suarez was ejected from World Cup quarter-final after illegally stopping ball with his hands).

93. *See* Darren Everson & Jonathan Clegg, *Blatant Hand Ball Saves Uruguay, Crushes Ghana*, WALL ST. J., July 3, 2010, at W7, *available at* http://online.wsj.com/article/SB10001424052748703518404575343170784103184.html (recognizing that Suarez's handball was blatant cheating and describing public opinion regarding his conduct).

ior, Liverpool was unprepared for the ensuing drama Suarez would bring to the historic club.[94]

On October 15, 2011, an EPL game between Liverpool and Manchester United took place at Liverpool's Anfield Stadium in Liverpool, England.[95] Patrice Evra, a left defender for United, was assigned to man-mark Suarez on free kicks in United's half of the field.[96] During the second half, Evra and Suarez began arguing during a corner kick, and the referee was forced to step in and separate them.[97] After the final whistle, Evra filed a complaint with the referee regarding what Suarez said to him during the game.[98]

The English Football Association ("FA") investigated Evra's complaint and officially charged Suarez with misconduct contrary to FA Rule E3(1) on November 16, 2011.[99] In addition, the charge included a breach of FA Rule E3(2) because Suarez had allegedly made reference to Evra's "ethnic origin and/or colour and/or race."[100] The FA assembled an Independent Regulatory Commission (the "Commission") to consider the charges in Evra's complaint.[101] During the Commission's hearing, evidence was received

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94. For a discussion of the incident, see *infra* notes 95-147 and accompanying text.

95. *See* Phil McNulty, *Substitute Javier Hernandez Earned Manchester United a Point After England Striker Wayne Rooney Was Left Out of the Starting Line-Up at Anfield*, BBC SPORT (Oct. 15, 2011, 13:45 GMT), http://www.bbc.co.uk/sport/0/football/15225853 (recounting match between Liverpool and Manchester United at Liverpool's stadium).

96. *See* INDEP. REGULATORY COMM'N, *supra* note 33, at 85 (stating Evra's job during Liverpool match was to mark Suarez during Liverpool corner kicks). Man-marking in soccer is a situation where one player continually marks an opposing player. *See* Stewart Coggin, *Man-To-Man Marking*, ABOUT.COM, http://worldsoccer.about.com/od/glossary/g/Man-To-Man-Marking.htm (last visited Aug. 24, 2011) (defining concept of man-marking). The alternative to man-marking is zonal marking, where players only defend against opposing players in their immediate vicinity.

97. *See id.* at 4 (stating referee called Suarez and Evra over to him while they were arguing with each other); McNulty, *supra* note 95 (reporting Evra was given yellow card after "a prolonged bout of bickering which also involved Suarez").

98. *See* INDEP. REGULATORY COMM'N, *supra* note 33, at 35-36 (recalling Evra's and Sir Alex Ferguson's, Manchester United's coach, conversation with referee Andre Marriner and Fourth Official Phil Dowd).

99. *See Suarez Banned for Eight Games*, ESPN SOCCERNET (Dec. 20, 2011), http://soccernet.espn.go.com/news/story/_/id/999477/luis-suarez-banned-for-eight-games-by-fa?cc=5901 (reporting English FA charged Suarez with misconduct).

100. *See id.* (reporting Suarez's misconduct charge also included reference to Evra's "ethnic origin and/or color and/or race").

101. *See* Andrew Das, *Does the F.A.'s Report Change Your Opinion on Suárez?*, N.Y. TIMES SOCCER BLOG (Jan. 1, 2012, 12:15 AM), http://goal.blogs.nytimes.com/2012/01/01/does-the-f-a-s-report-change-your-opinion-on-suarez/ ("England's Football Association on Saturday released the 1150 page report compiled by an

from match officials, players, managers, and experts.[102] Suarez and the FA, who prosecuted the charge, were both represented by counsel during the proceedings.[103]

1. *The Investigation and Ruling of the Regulatory Commission*

The primary issue before the Commission was whether Evra's account of what happened at Anfield was "true and reliable."[104] The incident in question happened during the sixty-second minute of the game, while Suarez and Evra were standing in Manchester United's goal area awaiting a corner kick.[105] The conversation occurred entirely in Spanish.[106]

Evra began the conversation by saying "Concha de tu hermana" to Suarez, which is equivalent to the phrase "fucking hell" in English, despite having a different translation.[107] Evra used this phrase in reference to a tackle Suarez made on Evra during the fifty-eight minute of the game.[108] Suarez did not hear Evra, so he asked him to repeat what he said.[109] Evra instead asked Suarez why he had fouled him, to which Suarez replied "porque tu eres negro."[110] The literal translation of this phrase is "because you are

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independent commission that suspended Liverpool striker Luis Suárez for eight games.").

102. *See* INDEP. REGULATORY COMM'N, *supra* note 33, at 5 (stating Commission "received evidence from match officials, players, managers and others").

103. *See id.* at 4-5 (naming lawyers assigned to represent FA in bringing their charge against Suarez as well as lawyers assigned to represent Suarez).

104. *See id.* at 13 (stating primary factual issue before Commission was whether Evra's story was true and reliable).

105. *See id.* at 26 (stating on "62 minutes and 37 seconds, Mr Suarez won a corner for Liverpool with a shot that was deflected past the post" and that "Mr Evra moved close to Mr Suarez so that he could mark him when the corner was taken"); *Luis Suárez Race Row with Patrice Evra: Timeline*, THE TELEGRAPH (Feb. 12, 2012 4:30 PM GMT), http://www.telegraph.co.uk/sport/football/teams/liverpool/8987656/Luis-Suarez-race-row-with-Patrice-Evra-timeline.html (stating Suarez and Evra conversation began during sixty-second minute of game).

106. *See* INDEP. REGULATORY COMM'N, *supra* note 33, at 26 (stating Suarez and Evra stipulated that their conversation occurred entirely in Spanish).

107. *See id.* (stating Evra told Commission that he initiated conservation by saying "concha de tu hermana" to Suarez). The literal translation of "concha de tu hermana" is "your sister's pussy." *Id.* at 26-27.

108. *See id.* at 25, 27 (indicating Evra's intention was to ascertain why Suarez had fouled him earlier).

109. *See id.* at 27 (stating Suarez did not hear Evra's comment and thought Evra was whispering something to him, so Suarez asked Evra what he had said to him).

110. *See id.* (stating Evra asked Suarez why he had kicked him earlier).

black."[111] Much of the factual dispute during the hearing was focused on whether "negro" in Spanish was (a) used in a way that was equivalent the English word "nigger"; (b) a racial insult; or (c) an inoffensive reference to those with dark skin or dark hair.[112]

The Commission, with the aid of expert reports and testimony, concluded that "negro" was used by Suarez to mean "black," an offensive reference to Evra's skin color.[113] At the time, Evra thought "negro" meant "nigger" and responded to Suarez by stating he was going punch him.[114] Suarez responded by saying he did not talk to "blacks."[115] Evra then stated that he was going to punch Suarez, to which Suarez responded "dale, negro, negro, negro," translated as "okay, blackie, blackie, blackie."[116] Although Suarez attempted to argue he only said "negro" twice, the Commission officially ruled that he said it five times during the exchange.[117]

Following the verbal altercation, Suarez pinched Evra's left arm.[118] Suarez claimed it was a playful attempt to diffuse the situation.[119] Evra believed Suarez pinched him to point out his dark skin, and thus constituted another racial insult.[120] The Commission found that Suarez's pinch was intended only to aggravate Evra and was not a reference to his color or race.[121]

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111. *See id.* (stating Evra conceded during trial that "porque tu eres negro" translates to "because you are black"). During the game, Evra thought Suarez's use of "negro" meant "nigger." *See id.*

112. *See id.* at 44-52 (recounting expert testimony and evidence received during trial about cultural and linguistic use of "negro").

113. *See id.* at 69 ("However, we do not believe that Mr Suarez used the Spanish word 'negro' in the sense that can reasonably be understood, in English, as 'nigger.' Rather, he used it to mean black, both as an adjective and as a noun.").

114. *See id.* at 27 (stating Evra thought Suarez said "nigger" instead of "black" and that Evra threatened to punch Suarez).

115. *See id.* at 27-28 (stating Suarez said "[n]o hablo con los negros" in response to Evra's threat). At this point in the exchange, Evra still believed that Suarez's use of the word "negro" meant "nigger." *See id.*

116. *See id.* at 28 (recounting Evra's second threat toward Suarez and Suarez's response to Evra's threat).

117. *See id.* at 96 (stating Commission's decision that Evra's belief that Suarez said "negro" five times during the confrontation was correct).

118. *See id.* at 28 (describing Suarez's pinching Evra during their confrontation).

119. *See id.* at 28-29 (recounting Suarez's testimony that he reached out to pinch Evra's arm in order to "defuse the situation").

120. *See id.* at 48 (stating Evra believed Suarez pinched his arm in order to highlight Evra's skin color).

121. *See id.* at 61 ("This was an unpleasant and petty gesture which appeared designed to aggravate Mr Evra, and was likely to have that effect.").

The Commission found Suarez guilty of violating both FA Rule E3(1) and Rule E3(2).[122] The Commission noted that references to another player's skin color are "wholly unacceptable" because "footballers . . . are looked up to and admired by a great many football fans, especially young fans" and because professional footballers should not have to fear racial insults while playing.[123] The Commission fined Suarez 40,000 pounds and banned him for eight matches.[124] Typically, players are only banned for two matches when they insult other players, but Suarez's behavior included racial insults, so the Commission quadrupled the standard punishment.[125] The Commission based the 40,000 pound fine on Suarez's weekly salary of 80,000 pounds.[126]

2. *Liverpool and the Aftermath of the Suarez Punishment*

Much of the soccer community believed Suarez's punishment was the beginning of a new FA policy strongly condemning on-field racism.[127] Many commentators agreed that Suarez's punishment was the correct decision.[128] Some of the community questioned the

122. *See id.* at 97-101 (delivering Commission's conclusions on proprietary of Rule E3(1) and E3(2)).

123. *See id.* at 109 (stating policy reasons for Commission's ruling).

124. *See id.* at 110 (stating Suarez was fined 40,000 pounds).

125. *See id.* at 107 ("Rule E3(2) then directs us to consider, as an entry point, a sanction that is double the automatic two match suspension for insulting behavior on account of the presence of the aggravating factor of a reference to colour.").

126. *See id.* at 110 (stating Commission "took account of the information that was placed before [them] about his weekly salary"); Dan Hodges, *Luis Suarez is Ruining Liverpool's Reputation – And Kenny Dalglish is Letting Him*, THE TELEGRAPH (Feb. 12, 2012), http://blogs.telegraph.co.uk/news/danhodges/100136841/luis-suarez-is-ruining-liverpools-reputation-and-kenny-dalglish-is-letting-him/ (reporting that Suarez's weekly salary is 80,000 pounds).

127. *See* Martin Rogers, *Suarez's Punishment Shows FA Finally Taking a Strong Stance Against Racism*, YAHOO! SPORTS (Dec. 20, 2011), http://sports.yahoo.com/soccer/news?slug=ro-rogers_suarez_banned_slur_against_evra_122011 (reporting "English soccer's governing body has sent the strongest message yet that racism will not be tolerated by slapping Liverpool striker Luis Suarez with an eight-game ban for comments made to Manchester United's Patrice Evra"); Stuart James, *Football: FA Takes Chance to Send Out Powerful Racism Message*, THE GUARDIAN, Dec. 21, 2011, at Guardian Sport Pages 3, *available at* http://www.guardian.co.uk/football/2011/dec/20/fa-statement-luis-suarez (reporting Lord Herman Ouseley, chairman of Kick It Out, stated England's FA "has shown leadership and intent through what has clearly been a difficult and complex complaint to deal with, and invested time and expertise to ensure this outcome. It has demonstrated that it will not stand for discrimination, something organisations such as Fifa and Uefa should take heed of.").

128. *See Liverpool Striker Luis Suarez Handed Eight-Match FA Ban*, BBC SPORT (Dec. 20, 2011), http://www.bbc.co.uk/sport/0/football/16186556 ("Professional Footballers' Association chairman Clarke Carlisle thinks the decision is '100% correct.'"); Gregg Roughley, *Luis Suárez's Racism Ban: Media Reaction*, THE GUARDIAN

punishment on evidentiary grounds, but still agreed that the FA should take a strong stance against on-field racism.[129] It finally seemed as if soccer was taking the necessary steps to eliminate racism from the game.[130]

Liverpool, however, immediately rushed to Suarez's defense.[131] Liverpool's coach Kenny Dalglish adamantly asserted that Suarez did not intend to racially insult Evra.[132] Liverpool fans all sided with Suarez, and vilified Evra and Manchester United for unfairly charging Suarez.[133] While Suarez was serving his eight match suspension, Liverpool and Manchester United faced off again.[134] Every time Evra touched the ball, the Liverpool stadium echoed

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(Dec. 21, 2011), http://www.guardian.co.uk/football/2011/dec/21/luis-suarez-racism-ban-media-reaction (noting columnists in England "have largely backed the FA's hardline stance and pointed the finger of blame at Suárez and Liverpool").

129. *See* Chris Bascombe, *Luis Suarez's Club Liverpool Angry That Striker's Evidence Counted for So Little*, THE TELEGRAPH (Dec. 20, 2011), http://www.telegraph.co.uk/sport/football/teams/liverpool/8969307/Luis-Suarezs-club-Liverpool-angry-that-strikers-evidence-counted-for-so-little.html (arguing Suarez's cooperation may have harmed his case, despite case being one player's word against another's); *Suarez Ban 'Ridiculously Harsh' – Ian Wright*, ESPN (Dec. 22, 2011), http://www.espn.co.uk/football/sport/story/127402.html (arguing FA provided weak evidence but also admitting FA should take strong stance against racism when evidence is clear).

130. For a discussion of the actions taken, see *supra* notes 122-126 and accompanying text.

131. *See* Daniel Taylor, *Football: Liverpool Rule Out Appeal Over Suarez Ban: Anfield Club Accuses FA of Damaging Player's Reputation and Says Accusation Was 'Unsubstantiated'*, THE GUARDIAN, Jan. 4, 2012, at Guardian Sport Pages 1, *available at* http://www.guardian.co.uk/football/2012/jan/03/luis-suarez-liverpool ("Rejecting the findings of the independent commission and questioning in forcible terms why Evra was "'deemed to be credible', Liverpool made it clear they believe Suárez has become the highest-profile player to be banned for race-related insults because of 'an accusation that was ultimately unsubstantiated.'").

132. *See Kenny Dalglish: It's Rubbish to Say Liverpool Are Not Fighting Racism*, THE GUARDIAN (Jan. 9, 2012), http://www.guardian.co.uk/football/2012/jan/09/kenny-dalglish-liverpool-racism (reporting "Kenny Dalglish has said that it is 'utterly rubbish' to suggest that defending Luis Suárez against racism accusations showed Liverpool are not interested in fighting racism").

133. *See* Paul Hayward, *Liverpool Fans' Raging at Anyone Daring to Criticise Luis Suarez or the Club is Typical of Angry Times We Live In*, THE TELEGRAPH (Jan. 6, 2012), http://www.telegraph.co.uk/sport/football/teams/liverpool/8995515/Liverpool-fans-raging-at-anyone-daring-to-criticise-Luis-Suarez-or-the-club-is-typical-of-angry-times-we-live-in.html (reporting Liverpool's fans feel Suarez was unfairly vilified by those accusing him of racist conduct).

134. *See* Myles Hodgson, *Nothing Wrong with Booing Evra, Days Liverpool Boss Dalglish*, DAILY MAIL (Jan. 28, 2012), http://www.dailymail.co.uk/sport/football/article-2093230/Kenny-Dalglish-says-wrong-booing-Patrice-Evra.html (reporting Liverpool and Manchester United played each other during FA cup after Suarez decision).

with boos and taunts.[135] One Liverpool fan was caught on video making monkey gestures toward Evra during the game.[136]

Tensions peaked when Liverpool and Manchester United played again on February 11, 2012, after Suarez had served his eight match suspension.[137] It is customary for teams to shake hands right before the game starts.[138] Shaking hands symbolizes a friendly, welcoming environment and reinforces the idea that soccer is about unifying people, not dividing them.[139] As the Liverpool players began shaking hands with the United players, Suarez intentionally skipped shaking hands with Evra.[140] Evra grabbed at him, but Suarez kept walking.[141] Throughout the game, the Manchester United fans booed Suarez any time he touched the ball.[142] The game ended with a 2-1 win for United, but that was not the end of the Suarez-Evra matter.[143]

After the game, Dalglish claimed he did not see Suarez refuse to shake Evra's hand and once again called for an end to the media's unfair vilification of Suarez.[144] Suarez initially apologized to

135. *See id.* ("The French left-back was jeered from the moment he stepped off the team coach until he left the pitch, at which point he tore off his captain's armband and threw it to one side.").

136. *See* Rob Cooper, *Father-of-Four 'Who Made Monkey Gesture' During Liverpool Match is a Facebook Supporter of Race Row Striker Luis Suarez*, DAILY MAIL (Jan. 30, 2012), http://www.dailymail.co.uk/news/article-2093789/Phil-Gannon-Liverpool-fan-monkey-gesture-Facebook-supporter-Luis-Suarez.html (reporting Liverpool fan has been accused of making "monkey" gestures aimed at Patrice Evra during Liverpool's match against Manchester United).

137. *See* John Ley, *Man United v Liverpool: Match Preview*, THE TELEGRAPH (Feb. 10, 2012), http://www.telegraph.co.uk/sport/football/competitions/premier-league/9069263/Man-United-v-Liverpool-match-preview.html (stating that although both sides want to focus on soccer "grievance will linger on Merseyside").

138. *See Soccer-More Handshakes Needed, Says Beckenbauer*, REUTERS (Feb. 22, 2012), http://uk.reuters.com/article/2012/02/22/soccer-fifa-beckenbauer-idUKB71026420120222 (stating pre-match handshakes in soccer are tradition).

139. *See id.* (stating players shake hands before games because players and coaches are role models and should behave as such).

140. *See* Jack Bell, *Evra and Suárez: No Love, No Handshake*, N.Y. TIMES (Feb. 11, 2012), http://goal.blogs.nytimes.com/2012/02/11/evra-and-suarez-no-love-no-handshake/ ("During the conga-line handshake gig, where the visiting team walks down the line of the opposition and shakes hands, Suárez lifted his right arm away from Evra, who grabbed at air trying to force the issue. Evra threw up his left arm in disgust.").

141. *See id.* (reporting that Evra attempted to grab Suarez to stop him but Suarez kept walking).

142. *See id.* ("During the match, United fans booed Suárez each time he touched the ball, just as Evra was jeered during an F.A. Cup match between the teams at Anfield two weeks ago.").

143. *See id.* (reporting that Manchester United won 2-1).

144. *See Dalglish Defends Suarez*, ESPN SOCCERNET (Feb. 11, 2012), http://soccernet.espn.go.com/news/story/_/id/1020634/liverpool's-kenny-dalglish-defends-luis-suarez-over-handshake-snub?cc=5901 (reporting Dalglish told reporters

Dalglish, but did not apologize to Evra or Manchester United.[145] Twenty-four hours after the handshake incident, Suarez finally acknowledged he should have shook hands with Evra.[146] The Liverpool owners were furious at how the incident was handled, and the club's managing director issued a statement saying Suarez was "wrong not to offer his hand to Patrice Evra."[147]

B. What the EPL, FA, and Liverpool All Got Wrong

From the start of the controversy, the attention was focused on Suarez as an individual actor.[148] The punishment issued by the FA only concerned Suarez.[149] He was fined and banned for eight matches.[150] The FA never reprimanded Liverpool for any of Suarez's conduct.[151] When Suarez refused to shake Evra's hand, it became obvious that Suarez did not believe his prior conduct was wrong.[152] While there is no evidence supporting Suarez skipping Evra in the pre-game handshakes for racial reasons, the soccer com-

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they were "out of order to blame Luis Suarez for anything that happened here today. Both sets of fans behaved really well, there was banter between each other, no problem").

145. *See* Dan Roan, *Handshake: Suarez and Dalglish Apologise After Owners Intervene*, BBC SPORT (Feb. 13, 2012), http://www.bbc.co.uk/sport/0/football/17004667 (reporting Suarez stated, "I have spoken with the manager since the game at Old Trafford and I realise I got things wrong"). Suarez added, "I should have shaken Patrice Evra's hand before the game and I want to apologise for my actions." *Id.*

146. *See id.* (acknowledging he should have shaken hands with Evra).

147. *See id.* ("He was wrong to mislead us and wrong not to offer his hand to Patrice Evra. He has not only let himself down but also Kenny Dalglish, his teammates and the club.").

148. *See, e.g.*, Mark Townsend, *Football Racism Row Flares Up As Luis Suárez Snubs Patrice Evra Handshake*, THE GUARDIAN (Feb. 11, 2012), http://www.guardian.co.uk/world/2012/feb/12/luis-suarez-snubs-handshake (reporting opinions on Luis Suarez after racism controversy).

149. For a discussion of FA's punishment of Suarez, which consisted of eight-match ban and 40,000 euro fine, while not punishing Liverpool, see *supra* notes 122-126.

150. *See* Jack Bell, *Liverpool's Suárez Suspended and Fined*, N.Y. TIMES GOAL BLOG (Dec. 20, 2012), http://goal.blogs.nytimes.com/2011/12/20/liverpools-suarez-suspended-and-fined/ (reporting Suarez was banned eight games and fined $62,000 by English FA).

151. *See generally* INDEP. REGULATORY COMM'N, *supra* note 33, at 5 (outlining case against Suarez but including no reference to Liverpool's actions or inactions).

152. *See Can Liverpool Salvage the Suarez Saga?*, CNN WORLD SPORT BLOG (Feb. 15, 2012), http://worldsport.blogs.cnn.com/2012/02/15/can-liverpool-salvage-the-suarez-saga/ (stating that Liverpool should have forced Suarez to apologize, despite Suarez's refusal to do so).

munity perceived it as a message from Liverpool and Suarez that they are not committed to helping end racism in soccer.[153]

Piara Powar, the executive director of Football Against Racism in Europe, suggested that Liverpool was largely at fault throughout the controversy for not properly managing Suarez.[154] Liverpool never apologized directly to Evra, Manchester United, or anyone offended by Suarez's action, nor did the club acknowledge fault in failing to prevent or mitigate the effects of Suarez's conduct.[155] Powar stated that "clubs need to stop paying lip service and really take some of these social issues seriously."[156] Powar also accused Liverpool of defending Suarez's innocence in order to keep their star player happy, instead of properly punishing him for his offensive conduct.[157] Throughout the Suarez controversy, Liverpool's reputation suffered severe damage.[158] Many commentators denounced Liverpool for the way the situation was handled.[159]

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153. *See Kenny Dalglish: It's Rubbish to Say Liverpool Are Not Fighting Racism*, *supra* note 132 (reporting Liverpool received criticism for defending Suarez because it allegedly showed Liverpool is not committed to fighting racism).

154. *See Anti-Racism Chief Wants Liverpool Action*, CNN (Jan. 6, 2012), http://edition.cnn.com/2012/01/05/sport/football/football-racism-suarez-liverpool/index.html (reporting Powar believed Liverpool's lack of respect and "keen" support of Suarez should result in Liverpool and Kenny Dalglish being charged by England's FA).

155. *See id.* (reporting "Suarez pointedly did not apologize to Evra, or mention the Manchester United defender in his statement, prompting Lord Ouseley, the chairman of British football's anti-racism group Kick It Out, to call the apology 'lamentable'"). After refusing to shake Evra's hand, Suarez publically apologized for his conduct but did not apologize directly to Evra or Manchester United. *See* Roan, *supra* note 145 (reporting Suarez never apologized to Evra or United). Liverpool's apology only stated Suarez was wrong for not offering his hand to Evra and did not apologize directly to Evra for the incident. *See id.*

156. *See Anti-Racism Chief Wants Liverpool Action, supra* note 154 (reporting Powar's comments).

157. *See id.* (reporting Powar's criticism of Liverpool's support of Suarez and effects their support has had on their fan's perception of Suarez's conduct).

158. *See* Hodges, *supra* note 126 (reporting that Liverpool's "handling of the Suarez affair has been staggering. So incompetent, so inept, so tawdry as to defy rationalisation. On every single occasion the club has had the opportunity to make the situation worse they have seized it with the same hunger Emlyn Hughes used to seize the European cup"); *see also* Simon Austin, *Luis Suarez Defence Damages Liverpool Reputation - Jason Roberts*, BBC SPORT (Jan. 4, 2012), http://www.bbc.co.uk/sport/0/football/16406960 (reporting Blackburn striker Jason Roberts believes Liverpool's continued defense of Suarez harms their reputation); *Anti-Racism Chief Wants Liverpool Action*, *supra* note 154 (noting Powar's discontent at how Liverpool handled Suarez throughout racism controversy).

159. *See Liverpool's Handling of Luis Suarez Row Criticised*, BBC NEWS (Feb. 15, 2012), http://www.bbc.co.uk/news/uk-england-merseyside-17042317 (reporting Leona Vaughn, chief executive of Anthony Walker Foundation, stated, "Everybody has been concerned about the way it has been handled and the way the city has been represented"); *see also Wahl: Suarez Saga is Harming Liverpool's Global Brand*, CNN (Feb. 15, 2012), http://edition.cnn.com/2012/02/14/sport/football/liver-

In contrast to Blatter's comments and Liverpool's actions, soccer clubs should accept responsibility for the actions of their players and respond with programs designed to educate players about racial integration.[160] The FA, during its proceedings, only focused on Suarez's malfeasances.[161] What the FA overlooked, however, were the acts and omissions of Liverpool.[162] Leaders of anti-racism organizations have asked why the FA and Liverpool have not taken actions to educate Suarez, and the rest of their players, so incidents like Suarez's do not happen again.[163]

The unrest resulting from foregoing events have caused the British Prime Minister, David Cameron, to step in and address the issue.[164] Specifically referencing the Suarez controversy, Cameron feared that young children watching the game would observe Suarez's actions and imitate them.[165] Cameron stated that the English Premier League needed more ethnic minority coaches in order to help combat racism, and announced the British government would donate almost five million dollars to the FA's coaching center to encourage more ethnic minorities to become coaches.[166] Many in England believe the Prime Minister should stay out of the matter and let the FA handle it.[167] It is clear, however, that the FA was unable to administer a proper punishment to Suarez, raising

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pool-suarez-pr-disaster/index.html (stating Sports Illustrated's Grant Wahl believed "Liverpool should have just accepted the penalty and moved on").

160. *See, e.g.*, *Racism Row: Does Suarez Need Educating?*, *supra* note 81 (reporting Suarez needs to be educated and that FA's punishment alone is not enough).

161. *See generally* INDEP. REGULATORY COMM'N, *supra* note 33, at 5 (revealing FA's decision and punishment was confined to Suarez's acts toward Evra).

162. *See id.* (revealing FA decision against Luis Suarez was devoid of any criticism of Liverpool's acts or omissions).

163. *See* Longman, *supra* note 81 (reporting Paul Mortimer, who works with "Show Racism the Red Card," believes "[t]he most important thing now, after the punishment, is education. He has highlighted when talking about the cultural differences that he needs some education, he needs to be able to understand that when you come to another country you have to respect the laws and the rules.").

164. *See* Harris, *supra* note 14 (reporting British Prime Minister David Cameron has requested English soccer leaders provide plan to deal with on-field racism issues in English Premier League).

165. *See id.* (reporting Cameron's fear that children who follow Suarez and Liverpool may begin imitating their conduct).

166. *See id.* (reporting English government's plan to donate $4.7 million to English Football Association's new coaching center to attract more ethnic minorities to coaching soccer).

167. *See* Lee Robson, *Summit For Nothing: Why David Cameron Should Stay Out of Football*, HUFFINGTON POST (Feb. 15, 2012), http://www.huffingtonpost.co.uk/lee-robson/david-cameron-football-summit-for-nothing_b_1272054.html (arguing Cameron should stay out of soccer's racism issues in order to avoid politicizing an issue that does not need any more controversy).

the question of whether the FA is capable of handling the issue, and whether the issue is truly solvable.[168]

IV. THE MLS AND THE EPL: KEY DIFFERENCES IN SPORTS LAW

The MLS and the English Premier League ("EPL") are similar in many respects.[169] Both leagues are governed by a set of rules that delineate acceptable and unacceptable conduct during official games.[170] The MLS is governed by a comprehensive set of rules called the "Laws of the Game" which contain seventeen laws and also include interpretative notes that elaborate on the requirements and rationales for each of the laws.[171] The EPL is governed by a set of rules titled "Rules of the Football Association," which set forth the league constitution and the various rules that govern conduct relating to soccer.[172] Many of the laws in the MLS are mirrored in the EPL and vice-versa.[173]

A key difference between the MLS and the EPL, however, lies in the way disputes are handled.[174] In the EPL, the FA assembles a regulatory commission that investigates the claim, hears evidence, and issues a ruling, as exemplified in the Suarez case.[175] A player can then appeal the decision of the regulatory commission.[176] Af-

168. For a discussion of the pitfalls of the English FA's punishment, see *supra* notes 148-167 and accompanying text.

169. For a discussion of the organizations, see *infra* notes 170-173 and accompanying text.

170. *See Laws of the Game*, U.S. SOCCER, http://www.ussoccer.com/Referees/~/media/747B6FAC3E2D449782C1C30CA6C8DC9A.ashx (last visited Dec. 1, 2012) (stating laws of game, amendments to laws of game, and interpretations of laws of game); *see also Football Rules*, THE FA, http://www.thefa.com/thefa/rulesandregulations.aspx (last visited Sept. 18, 2012) (listing constitution, rules relating to players, disciplinary power of FA over EPL, and laws of game).

171. *See id.* (listing seventeen laws of game and interpretations thereof).

172. *See The Rules of the Football Association*, THE FA, May 25, 2011, *available at* http://www.thefa.com/thefa/~/media/Files/PDF/TheFA/Rules_Regs/RulesOfTheAssociation201112.ashx/RulesOfTheAssociation201112.pdf (listing constitution and various provisions relating to governance of soccer in England).

173. *Compare Laws of the Game*, *supra* note 170, at 39 (providing Law 12 states violent conduct or using offensive and abusive language warrants sending player off field), *with The Rules of the Football Association*, *supra* note 172, at 119 (providing Rule E3(1) states players shall not use violent conduct, serious foul play, or use abusive or insulting words or behavior).

174. For a discussion of this difference, see *infra* notes 175-186 and accompanying text.

175. For an example of a situation in which the FA assembled a regulatory commission to consider the merits of a claim of racial abuse from Luis Suarez directed at Patrice Evra, see *supra* notes 99-126 and accompanying text.

176. *See The Rules of the Football Association*, *supra* note 172 (quoting Schedule C Rule (f): "The Participant will have a right of appeal in respect of the decision of the Regulatory Commission (against the decision and/or penalty ordered). Infor-

ter the appeal, there are two options left for a disgruntled player.[177] First, the player can initiate arbitration proceedings under Section K of the Rules of the Association.[178] Second, the player can petition for judicial review of the proceedings in the High Court of Justice ("High Court").[179] In 1991, however, the High Court explicitly decided that FA decisions are not subject to judicial review.[180] Therefore, absent an arbitrator overturning the decision of the FA, there is little hope of a disgruntled player overturning an adverse decision.[181]

In contrast, athletes in America can file civil claims against players in certain instances.[182] Most notably, United States courts have allowed athletes to maintain causes of action against other athletes for intentional tortious conduct that occurs on the field.[183] The Bylaws of the United States Soccer Federation specifically state that players may take their cases to federal or state court after all applicable remedies have been pursued outside of the court system.[184] For the MLS, this means a player must file a grievance, the

mation regarding the appeals process is set out in the Standard Directions for Appeals against decisions of Regulatory Commissions (see Schedule D).").

177. *See* Steven Friel, *Luis Suárez and Liverpool Have Limited Appeal Options to FA and Courts*, THE GUARDIAN, Dec. 21, 2011, at Guardian Sport Pages 4, *available at* http://www.guardian.co.uk/football/2011/dec/21/luis-suarez-liverpool-appeal-options (stating players can invoke arbitration proceedings or judicial review proceedings in high court). The procedures governing arbitration proceedings are found in Section K of FA's Rules. *See The Rules of the Football Association*, *supra* note 172 (listing FA rules regarding arbitration proceedings in Section K).

178. *See The Rules of the Football Association*, *supra* note 172 (listing procedures for instituting arbitration in Section K).

179. *See* Friel, *supra* note 177 (stating players can petition High Court for judicial review of regulatory commission's decision).

180. Reg. v. Football Association Ltd., Ex parte Football League Ltd., The Times, Aug. 22, 1991, *supra* note 29 (excerpting: "I have crossed a great deal of ground in order to reach what, on the authorities, is the clear and inescapable conclusion for me that the F.A. is not a body susceptible to judicial review . . . .").

181. *See* Friel, *supra* note 177 (stating FA will "take great care in the drafting of its written decision" to avoid overturning on appeal). If a player used arbitration to challenge a decision, it is likely the suspension and fine would go into effect anyway and the arbitration process would likely take months. *See id.*

182. *See, e.g.*, Tomjanovich v. Cal. Sports, Inc., No. H-78-243, 1979 U.S. Dist. LEXIS 9282 (S.D. Tex. Oct. 10, 1979) (holding Los Angeles Lakers liable for tortious action committed by player Kermit Washington); Hackbart v. Cincinnati Bengals, Inc., 601 F.2d 516 (10th Cir. 1979) (holding that professional athletes can be held liable for torts committed during games).

183. *See Tomjanovich*, 1979 U.S. Dist. LEXIS 9282 (holding Kermit Washington liable for intentionally punching Rudy Tomjanovich during basketball game).

184. *See Bylaws of the United States Soccer Federation*, *supra* note 30 (quoting Bylaw 707: "No Organization [m]ember, official, league, club, team, player, coach, administrator or referee may invoke the aid of the courts in the United States or of a State without first exhausting all available remedies within the appropriate soccer organization, and as provided within the Federation.").

grievance must be ruled on after a hearing, and then the decision may be appealed.[185] After this relatively short process is completed, the Bylaws permit disgruntled players to turn to the courts.[186]

The difference between the MLS and EPL appeals process is important in a case like Suarez's.[187] In England, if Evra is unsatisfied with the FA's decision, his options are very limited.[188] In the United States, however, the judicial system is available.[189] This allows not only the chance of reversal, but also makes additional laws available to the parties.[190] In Suarez's case, it could open the issue of tort law applicability.[191] This allows the courts to address issues and fashion remedies that the governing bodies of soccer cannot or will not give out.[192]

V. HOLDING THE CLUB LIABLE: THE TORT OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AND RESPONDEAT SUPERIOR

In the United States, it is possible to hold sports teams liable for the torts of their players under the doctrine of respondeat superior.[193] In order for the courts to apply respondeat superior, the player must have first committed a tort.[194] The following section argues that Suarez's conduct falls within the scope of intentional infliction of emotional distress under the Restatement (Second) of Torts.[195] After establishing that Suarez's conduct constituted a tort,

185. *See generally id.* (indicating procedures in Bylaws 701-707 for grievance hearings, appeals, litigation, and special procedures relating to opportunities to participate).

186. *See id.* (providing that Bylaw 707 allows players to invoke aid of United States courts after exhausting appeals process).

187. *See infra* notes 193-316 and accompanying text.

188. *See supra* notes 175-181 and accompanying text.

189. *See Bylaws of the United States Soccer Federation*, *supra* note 30 (indicating that Bylaw 707 permits players to seek redress in U.S. court system).

190. *See, e.g.*, *infra* notes 193-316 and accompanying text.

191. *See infra* notes 193-316 and accompanying text.

192. *See, e.g.*, *Piara Powar Urges the FA to Level Disrepute Charge Against Liverpool*, THE GUARDIAN (Jan. 5, 2012), http://www.guardian.co.uk/football/2012/jan/05/piara-powar-fa-disrepute-liverpool (reporting Powar asked FA to charge Liverpool for their conduct in supporting Suarez and not respecting FA's adverse decision against Suarez). As of the article's publication date, the FA still had not brought charges against Liverpool. *See id.*

193. *See, e.g.*, Tomjanovich v. California Sports, Inc., No. H-78-243, 1979 U.S. Dist. LEXIS 9282 (S.D. Texas Oct. 10, 1979) (holding Los Angeles Lakers liable for tortious action committed by player Kermit Washington).

194. *See* DAN B. DOBBS, THE LAW OF TORTS § 305, at 830 (2000) (assigning liability to employer for employee's torts).

195. *See infra* notes 199-264 and accompanying text.

this section then argues that his club could be held liable under respondeat superior.[196] This section then identifies the advantages of holding soccer clubs liable for the on-field racism of their players.[197] This section concludes by recommending that the MLS adopt respondeat superior directly into its regulations for on-field racism in order to avoid unnecessary litigation and evidentiary issues.[198]

A. Intentional Infliction of Emotional Distress

According to the Restatement (Second) of Torts, intentional infliction of emotional distress ("IIED") requires four elements.[199] First, the defendant's conduct must have been extreme and outrageous.[200] Second, the defendant's conduct must intentionally or recklessly cause the plaintiff's distress.[201] Third, the defendant must have caused the plaintiff's emotional distress.[202] Fourth, the plaintiff's distress must be severe.[203] For analytical purposes, it will be presumed that Suarez's conduct occurred in America during an official MLS match while playing for an MLS club.[204] This will allow the reader to observe how on-field racism could be handled in the United States.[205] Using the facts from the Commission's report, the

196. *See infra* notes 262-316 and accompanying text.

197. *See infra* notes 317-329 and accompanying text.

198. *See infra* notes 330-342 and accompanying text.

199. *See* RESTATEMENT (SECOND) OF TORTS § 46(1) (1965) (stating elements of intentional infliction of emotional distress are as follows: (1) "one who by extreme and outrageous conduct"; (2) "intentionally or recklessly" (3) "causes" (4) "severe emotional distress"). If all four elements are met, then the defendant is "subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm." *Id.*

200. *See id.*

201. *See id.* Because of similarities between the intentional and reckless inquiry and the causation inquiry, both will be treated in the same subsection.

202. *See id.*

203. *See id.* The proposed Restatement (Third) of Torts § 45 has renamed "emotional distress" to "emotional disturbance." RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL AND EMOTIONAL HARM § 45 (Tentative Draft No. 5, 2007). Scholars believe that the proposed change merely simplifies the language and "preserves the essence and nature of the Restatement (Second)'s version of IIED." *See* Geoffrey Christopher Rapp, *Defense Against Outrage and the Perils of Parasitic Torts*, 45 GA. L. REV. 107, 137 (2010) (describing author's interpretation of Restatement's (Third) Intentional (or Reckless) Infliction of Emotional Disturbance language).

204. For analytical purposes, the Suarez case will be used because the Commission's ruling included all the factual allegations and testimony from the party, allowing concrete facts to be applied to an intentional infliction of emotional distress claim.

205. There are no documented cases of on-field racism issues, such as Suarez's, in the United States courts; therefore, it will be helpful to use concrete

following subsections will present the strongest case for an IIED claim by Evra against Suarez.[206]

1. *Defendant's Conduct Must be Extreme and Outrageous*

The first element of an IIED claim requires the defendant's conduct to be "extreme and outrageous."[207] Comment (d) of the Restatement indicates that, in order to satisfy this element, the defendant's conduct must "go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community."[208] Comment (d) further states that a proper case "is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!' "[209]

Since the inclusion of the tort in the Restatement of Torts in 1934, courts have gradually embraced a more flexible standard for IIED claims.[210] Scholars consider this standard to be malleable, with courts varying in their application of what constitutes extreme and outrageous conduct.[211] As a result, the "extreme and outrageous" inquiry is very fact sensitive.[212] Isolated slurs have tradition-

facts when applying the elements of an intentional infliction of emotional distress claim.

206. *See infra* notes 207-264 and accompanying text.

207. *See* RESTATEMENT (SECOND) OF TORTS § 46(1) (1965) (stating that defendant's conduct must be both "extreme and outrageous" to constitute the intentional infliction of emotional distress).

208. *See id.* § 46 cmt. d (expanding on element of "extreme and outrageous" conduct and basing comment on cases decided under Restatement's standard).

209. *See id.* (emphasizing nature and degree of defendant's conduct required for it to rise to "extreme and outrageous").

210. *See* Nancy Levit, *Etheral Torts*, 61 GEO. WASH. L. REV. 136, 142-43 (1992) (footnotes omitted) ("The 1934 Restatement of Torts provided that intentional conduct 'likely to cause only a mental or emotional disturbance to another does not subject the actor to liability' for the resulting emotional distress or accompanying physical injury. Later authors of the Restatement came to precisely the opposite conclusion in 1948 and determined that 'one who, without a privilege to do so, intentionally causes severe emotional distress to another is liable (a) for such emotional distress, and (b) for bodily harm resulting from it.' ").

211. *See* John J. Kircher, *The Four Faces of Tort Law: Liability for Emotional Harm*, 90 MARQ. L. REV. 789, 802-03 (2007) (stating that extreme and outrageous conduct is "primarily a subjective question that has led the tort to be applied inconsistently among jurisdictions" and "danger lies in the arbitrary enforcement of this tort"); Catherine E. Smith, *Intentional Infliction of Emotional Distress: An Old Arrow Targets the New Head of the Hate Hydra*, 80 DENV. U. L. REV. 1, 33 (2002) (noting that "the central component of the tort, determining whether the defendant's conduct is extreme and outrageous, requires a contextual analysis" which "empowers courts with . . . flexibility").

212. *See, e.g.*, Matthew M. Munderloh, *Nebraska's (More or Less) Stable Approach to "Extreme and Outrageous Conduct" and Intentional Infliction of Emotional Distress: Brandon Ex Rel. Estate of Brandon v. County of Richardson, 261 Neb. 636, 624 N.W.2d*

ally failed to be "extreme and outrageous" without aggravating circumstances.[213] The courts, however, have been supportive of IIED claims that arise from conduct that creates a discriminatory or hostile work environment.[214]

There is an extensive body of scholarship that has developed around the use of racial slurs in an IIED claim.[215] Some scholars believe that discriminatory speech alone should satisfy the "extreme and outrageous" inquiry.[216] One scholar has suggested there should be a rebuttable presumption that certain types of discriminatory speech are extreme and outrageous.[217] The presumption would cover those who are members "of a group protected by existing antidiscrimination statutes" and would apply when "the plaintiff has been harassed or abused on the basis of membership in that group."[218] Another scholar has pointed out that courts should dis-

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604 (2001), 81 NEB. L. REV. 1287, 1296 (2003) (quoting Skidmore v. Precision Printing and Pkg., Inc., 188 F.3d 606 (5th Cir. 1999)) ("There is no litmus test for outrageousness; whether conduct was outrages and extreme must be analyzed on a case-by-case basis.").

213. *See* DOBBS, *supra* note 194, § 305, at 830 (stating that courts are "clearly reluctant to impose liability for epithets, racial or otherwise, in the absence of repetition or aggravating factors").

214. *See id.* § 305, at 831 (citing Alcorn v. Anbro Eng'g Inc., 468 P.2d 216 (1970); Gomez v. Hug, 645 P.2d 916 (1982); Taylor v. Metzger, 706 A.2d 685 (1998)) (stating "racial slurs or epithets uttered by an employer or supervisor . . . may create a hostile and discriminatory work environment that . . . may also warrant submission . . . to the jury").

215. *See, e.g.*, Jean C. Love, *Discriminatory Speech and the Tort of Intentional Infliction of Emotional Distress*, 47 WASH. & LEE L. REV. 123 (1990) (examining discriminatory speech and its relationship to IIED claims and arguing for more inclusive standard as to what constitutes "extreme and outrageous" conduct); Aaron Goldstein, *Intentional Infliction of Emotional Distress: Another Attempt at Eliminating Native American Mascots*, 3 J. GENDER RACE & JUST. 689, 690 (2000) (arguing for "policy reasons, IIED must lower the bar in its standard of 'extreme and outrageous' conduct to include racist imagery and harassment"); David C. Yamada, *The Phenomenon of 'Workplace Bullying' and the Need for Status-Blind Hostile Work Environment Protection*, 88 GEO. L.J. 475, 502 (2000) (noting how New Jersey Supreme Court handled claim involving racial slur under "extreme and outrageous" conduct standard); Smith, *supra* note 211, at 39-40 (analyzing online racial slurs and threats of offline violence as conduct sufficient to meet "extreme and outrageous" standard).

216. *See, e.g.*, Love, *supra* note 215, at 149-50 (arguing discriminatory speech should create rebuttable presumptions of "extreme and outrageous" conduct when: (a) plaintiff is member of group protected by anti-discrimination statutes, and (b) is harassed based on membership in that group); Goldstein, *supra* note 215, at 690 (arguing "extreme and outrageous" standard should be lowered for racist imagery and harassment).

217. *See* Love, *supra* note 215, at 149-50 (arguing presumption of "extreme and outrageous" conduct would serve to "preclude a court from dismissing a claim, entering a summary judgment, or directing a verdict" so cases can make it to trial).

218. *See id.* (explaining specific details of two instances and how presumption of "extreme and outrageous" conduct applies).

tinguish between public insults and private insults.[219] Under this reasoning, individuals should be able to "emotionally repel" private insults.[220] Public insults, however, involve a greater degree of humiliation because of the presence of additional parties, and plaintiffs should succeed in court on theories of public insults.[221]

Both of these scholars' theories are persuasive in light of Suarez's actions toward Evra.[222] First, Evra suffered a public insult from Suarez.[223] The insult was uttered in the presence of third parties.[224] Furthermore, because sports are publicized events, by filing a complaint, millions of additional people learned of Suarez's statements.[225] This made it impossible for Evra to "emotionally repel" what Suarez had said to him.[226] Second, Evra is a Senegal-born

219. *See* Reynolds C. Seitz, *Insults-Practical Jokes-Threats of Future Harm-How New as Torts?*, 28 KY. L.J. 411, 417-18 (1940) (arguing there is legitimate basis for distinguishing between insults that occur privately and insults that occur in presence of third parties).

220. *See id.* ("In the face of the many and varied everyday contacts of life, we must presume that individuals will cultivate a minimum defense mechanism. They should be relied upon to emotionally repel and forget private insults which reach no other ear but their own.").

221. *See id.* ("Plaintiffs should succeed when they can prove insults that are analogous to the kind which . . . might give rise to an action for libel. This would require that heed be given to mental disturbance when it is the outgrowth of humiliation over insult delivered *in the presence of a third party.*")

222. For a discussion of the racial abuse Suarez doled out to Evra, see *infra* notes 223-231 and accompanying text.

223. *See* Jeremy Gordon, *A Liverpool Star Doubles Down on Dumb*, WALL ST. J. BLOG (Feb. 13, 2012), http://blogs.wsj.com/dailyfix/2012/02/13/luis-suarez-patrice-evra-premier-league-a-liverpool-star-doubles-down-on-dumb/ (reporting Luis Suarez was found guilty of racial abuse towards Patrice Evra during their October match); INDEP. REGULATORY COMM'N, *supra* note 33, at 26-28 (stating Suarez's racist abuse began during corner kick). For readers unfamiliar with soccer, during a corner kick both teams are concentrated in one eighteen-yard box.

224. *See* INDEP. REGULATORY COMM'N, *supra* note 33, at 29 (noting when Suarez racially abused Evra, "there were other players in the six-yard box" such as "David De Gea, the Manchester United goalkeeper, Johnny Evans, the Manchester United defender who was marking Dirk Kuyt, and Mr. Kuyt himself").

225. Media coverage of Luis Suarez's racial abuse of Patrice Evra has been featured on websites such as CNN, BBC, the New York Times, the Wall Street Journal and many others. There has also been TV coverage on channels such as Sky Sports, Fox Sports, and ESPN. *See, e.g.*, *Liverpool's Luis Suarez Banned*, ESPN (Dec. 20, 2011, 10:31 PM), http://espn.go.com/sports/soccer/news/_/id/7373381/liverpool-luis-suarez-banned-8-matches-racial-insult-patrice-evra (publicizing Suarez's suspension after Evra incident); *Luis Suarez Charged with Racially Abusing Patrice Evra*, BBC SPORT FOOTBALL (Nov. 17, 2011, 12:05 PM), http://www.bbc.co.uk/sport/0/football/15764900 (discussing charges against Suarez); Jack Bell, *Liverpool's Suarez Suspended and Fined*, N.Y. TIMES (Dec. 20, 2011, 4:58 PM), http://goal.blogs.nytimes.com/2011/12/20/liverpools-suarez-suspended-and-fined/ (analyzing Suarez's suspension and his statements following the incident).

226. *See* Rob Cooper, *Father-of-Four 'Who Made Monkey Gesture' During Liverpool Match is a Facebook Supporter of Race Row Striker Luis Suarez*, DAILY MAIL (Jan. 30, 2012), http://www.dailymail.co.uk/news/article-2093789/Phil-Gannon-Liverpool-

French player.[227] In America, therefore, Evra would be part of a protected minority group as a player of African descent.[228] Thus, a court could find that Suarez's conduct satisfies the "extreme and outrageous" standard under these theories.[229] American courts have not addressed an issue similar to Suarez's conduct because, unlike American sports leagues, the EPL is a diverse league with players from around the world.[230] With the recent internationalization of the MLS, courts may be forced to address the issue, and the above scholarly theories support why on-field racism should be treated differently than a typical IIED claim.[231]

2. *Intention and Causation*

The second and third elements of an IIED claim require the defendant to act "intentionally or recklessly" when causing severe emotional distress.[232] Under IIED, intent is satisfied if the defendant acted purposefully to cause severe emotional distress or instead knew that severe emotional distress was substantially certain to result from defendant's conduct.[233] Courts addressing the issue

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fan-monkey-gesture-Facebook-supporter-Luis-Suarez.html (reporting racial abuse aimed at Patrice Evra from Liverpool fan who made monkey gestures after Evra filed his complaint against Suarez).

227. *See Manchester United First Team Player Profile, Patrice Evra*, http://www.manutd.com/en/Players-And-Staff/First-Team/Patrice-Evra.aspx (last visited Mar. 18, 2012) (stating Patrice Evra was born in Dakar, Senegal on May 15, 1981 and represents France in international games).

228. *Compare id.* (noting Patrice Evra is of African descent), *with* Love, *supra* note 215, at 149-50 (stating "if a member of a group protected by existing antidiscrimination laws" files IIED claim then "the court will presume that the defendant's conduct was extreme and outrageous").

229. *See supra* notes 222-228 and accompanying text.

230. *See Where the Premier League's Players Come From*, BBC SPORT, http://news.bbc.co.uk/sport2/hi/football/eng_prem/8182090.stm (last visited Mar. 18, 2012) (showing what nation each English Premier League player comes from for 2009-10 season as well as 1989-90 season). Comparing the number of international players from 1989-90 with the 2009-10 season reveals how diverse the English Premier League is in regard to fielding international players. *See id.*

231. *See* Richard Lapchick, *The 2011 Racial and Gender Report Card: Major League Soccer*, THE INST. FOR DIVERSITY & ETHICS IN SPORT, Oct. 5, 2011, *available at* http://www.tidesport.org/RGRC/2011/MLS_RGRC_FINAL.pdf (stating forty-eight percent of MLS are minorities which is "a greater proportion of the players than in any other year since The Institute began studying MLS in 1998" and that MLS "earned an A+ for its outstanding diversity initiatives"). In 2011, the percentage of international players increased to a record-high of thirty-eight percent in 2011. *See id.*

232. *See* RESTATEMENT (SECOND) OF TORTS § 46(1) (1965) (stating defendants must act "intentionally or recklessly" in order for plaintiffs to maintain successful intentional infliction of emotional distress claims).

233. *See* DOBBS, *supra* note 194, § 303, at 826 (stating for IIED claims "[i]ntent, as elsewhere in the law of torts, can be shown either by evidence that the

of intent have highlighted that the defendant must have intended the severe emotional distress.[234]

Soccer games, like many sporting events, are particularly emotional events for the athletes involved.[235] Players are heavily invested in winning a game and "trash talking" is a common feature of many sporting events.[236] Courts have recognized that some plaintiffs may be in especially vulnerable positions when evaluating the merits of an IIED claim.[237] This type of situation is recognized in the Restatement itself.[238]

Although courts have not addressed IIED claims with facts similar to Suarez's case, racial insults directed at opposing players during games undoubtedly cause distress.[239] In the Commission's decision, it was explicitly noted that the rapport of both Suarez and Evra was one of "animosity."[240] The Commission noted that, after hearing evidence, Suarez's reference to Evra's skin color was intended to "wind [Evra] up."[241] Therefore, it seems likely that Suarez intended his conduct to cause emotional distress to Evra.[242]

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defendant acted with a desire or purpose to accomplish the harm, or by evidence that such harm was substantially certain to occur").

234. *See* Jackson v. Sun Oil Co. of Pennsylvania, 521 A.2d 469, 471 (Pa. Super. 1987) (quoting Hoffman v. Memorial Osteopathic Hospital, 492 A.2d 1382, 1386 (1985)) ("The requisite 'intention' which one must display for liability to be imposed under the tort of outrage is 'knowledge on the part of the actor *that severe emotional distress is substantially certain to be produced by his conduct.*'") (emphasis added).

235. *See* Jim Taylor, *Sports: Become an Emotional Master Athlete*, PSYCHOLOGY TODAY (May 26, 2011), http://www.psychologytoday.com/blog/the-power-prime/201105/sports-become-emotional-master-athlete (stating "[s]ports can evoke a wide range of emotions, from inspiration, pride, exhilaration, and satisfaction, to fear, frustration, anger, and panic, often in a very short time span during training or competition").

236. *See, e.g.*, Adrian Wojnarowski, *Garnett's Bully Act Goes Too Far*, YAHOO! SPORTS (Nov. 3, 2010), http://sports.yahoo.com/nba/news?slugaw-garnettvillanueve110310 (reporting Kevin Garnett incident of trash talk and stating "[s]o much is said on the floor" during professional sports games).

237. *See* DOBBS, *supra* note 194, § 304, at 827 (stating plaintiffs that are especially vulnerable tend to support findings of outrage if defendant has reason to know of circumstances that make plaintiff especially vulnerable).

238. *See* RESTATEMENT (SECOND) OF TORTS § 46 cmt. f (1965) ("The extreme and outrageous character of the conduct may arise from the actor's knowledge that the other is peculiarly susceptible to emotional distress, by reason of some physical or mental condition or peculiarity.").

239. See *infra* notes 251-256 and accompanying text for a discussion of Evra's distress caused by Suarez's racial abuse.

240. *See* INDEP. REGULATORY COMM'N, *supra* note 33, at 68-69 (describing video footage of Suarez and Evra during Suarez's racial abuse that reflected clear animosity and hostility between them).

241. *See id.* at 114 (stating Suarez selected his words because he knew they would wind Evra up).

242. *See supra* notes 240-241 and accompanying text.

Further, the fact that Suarez referenced Evra's skin color supports the conclusion that he intended his comments to go outside the normal scope of trash talk.[243] By stating he kicked Evra because he was black and that he did not want to speak with Evra because he was black, Suarez was doing more than just "wind[ing] up" Evra.[244] Finally, but for Suarez's conduct, Evra would not have suffered severe distress; therefore, Suarez's conduct was the direct cause of Evra's distress.[245]

3. *Severe Emotional Distress*

The final element of an IIED claim is that severe emotional distress must result from the defendant's conduct.[246] For this element, courts require that "the distress must be so severe that no reasonable person should be expected to endure it."[247] An important aspect of this element is that the Restatement does not require actual physical harm.[248] Courts typically treat severity and "extreme and outrageous" as a sliding scale test.[249] The less extreme the defendant's conduct is, the more evidence the plaintiff may need to demonstrate severe distress.[250]

In Suarez's case, the Commission repeatedly referenced Evra's distress in their ruling, despite its irrelevance to Evra's claim of ra-

243. *See* INDEP. REGULATORY COMM'N, *supra* note 33, at 42 (describing Evra's post-match interview with Canal+ which indicated Suarez racially abused Evra to "make [him] lose it"). In his interview with Canal+, Evra also stated: "It shows that it was really to make me lose it, but at the start, well, we will see. It still hurts . . . when it's a player who is playing the same game as you, it's even harder to accept." *Id.*

244. *See id.* (reporting Evra thought Suarez was attempting to provoke an abnormal response from Evra).

245. *See generally id.*

246. *See* RESTATEMENT (SECOND) OF TORTS § 46(1) (1965) (stating emotional distress suffered by plaintiff must be "severe").

247. *See* DOBBS, *supra* note 194, at 832 (citing McQuay v. Guntharp, 963 S.W.2d 583 (1998)) (footnote omitted) ("The point is often put emphatically by saying that the distress must be so severe that no reasonable person should be expected to endure it.").

248. *See* RESTATEMENT (SECOND) OF TORTS § 46(1) cmt. k (1965) ("The rule stated is not, however, limited to cases where there has been bodily harm; and if the conduct is sufficiently extreme and outrageous there may be liability for the emotional distress alone, without such harm.")

249. *See* DOBBS, *supra* note 194 (citing Stump v. Ashland, Inc., 499 S.E.2d 41 (1997)) (recognizing evidentiary relationship between outrageous conduct and severe distress); *cf.* Millington v. Kuba, 532 N.W.2d 787 (Iowa 1995) (noting court's doubt about outrageousness and holding distress not sufficiently severe and stating plaintiff's burden of proof may vary with extremeness of defendant's conduct).

250. *See id.* (noting interrelationship between two separate elements of IIED claims).

cial abuse.[251] First, an interviewer from Canal+ saw Evra after the game ended and asked for an interview.[252] Not only did the interviewer noticed Evra was "very distressed" but the rest of the Canal+ staff could tell Evra was upset as well.[253] The Commission accepted that "Evra was angry and upset during the remainder of the game and at the end of it as a result of Mr Suarez using the insulting words."[254] Perhaps the most convincing evidence of Evra's distress from Suarez's conduct was his response to Suarez's abuse.[255] Evra threatened to punch Suarez twice after he referenced Evra's skin color in their confrontation.[256]

One scholar has noted the irony in recognizing that emotional harms can be as painful as physical harms but self-defense cannot be used as a legitimate defense in IIED claims.[257] After reading both the Restatement and case law, the author acknowledged that there is no privilege to use force in defense against IIED.[258] In Evra's case, he felt the urge to respond violently to Suarez's racial insults.[259] Had Evra actually followed through on his threat, any future self-defense actions brought by him would have failed.[260] What Evra's response to Suarez does reveal, however, is that Evra

251. *See* INDEP. REGULATORY COMM'N, *supra* note 33, at 43 (stating Canal+ interviewer observed Evra looked distressed); *id.* at 108 (noting Evra was angry and upset after Suarez's racial abuse); *id.* at 34 (noting Evra was angry and upset when entering Manchester United's dressing room); *id.* at 36 (noting Manchester United's coach Sir Alex Ferguson could tell Evra was angry and upset after game).

252. *See id.* at 42 (reporting "Evra gave an interview to the French TV channel Canal+ after the game" and transcripts of Evra's interview were given to Commission).

253. *See id.* at 43 (stating Canal+ interviewer Stephane Guy described Evra as "very distressed coming out of the changing room").

254. *See id.* at 108 (stating Commission's assessment of game in question).

255. *See id.* at 97-98 (detailing Evra's verbal responses to Suarez's racial abuse).

256. *See id.* ("[S]ay it to me again, I'm going to punch you.").

257. *See* Rapp, *supra* note 203, at 113 (noting tension between self-defense law and IIED law). The author poses the following question: "If force cannot be used to defend against IIED, what does that say about the growing recognition of emotional harm as a legitimate basis for tort claim and about the expanded privilege to use force in self-defense?" *Id.*

258. *See id.* at 112-13 ("Would a battery or a false imprisonment be a privileged action against conduct amounting to IIED? A close reading of the doctrinal articulation in the Restatement's discussion of self-defense and a consideration of how the doctrine has been applied in the case law suggest that the answer is 'no.'").

259. *See* INDEP. REGULATORY COMM'N, *supra* note 33, at 97 (stating Evra's response to Suarez's racial abuse were violent urges).

260. *See* Rapp, *supra* note 203, at 157 (stating that in order to justify use of force, persons must be threatened with violence and that current tort law regarding IIED does not consider "emotional assaults" threats of violence).

was so distressed that he could only respond to Suarez in a violent, aggressive manner.[261] Further, even though physical manifestations are not required, the Canal+ interviewer noticed Evra was "very distressed" after exiting the dressing room, well over 30 minutes after the incident occurred.[262] In the locker room following the game, Evra's teammates described Evra as uncharacteristically angry and upset.[263] The Commission's finding on the matter paints a persuasive image of Evra as a shaken, distressed individual after his confrontation with Suarez.[264]

4. *Evidentiary Issues in Evra's Potential IIED Claim*

There are steep evidentiary requirements needed to satisfy an IIED claim.[265] Although IIED is a difficult tort to plead and prove, it is a tort largely created by professors and scholars.[266] Therefore, the academic arguments above should be persuasive and aid the courts in finding a plausible IIED claim against Suarez.[267] The Commission's report, however, does not analyze the impact of Suarez's conduct from an IIED lens.[268] Formal findings about the extent of Evra's distress are in the report, but are largely undeveloped.[269] If the case were brought in the United States' court system, discovery would elicit more facts relevant to the IIED claim.[270]

261. *See* INDEP. REGULATORY COMM'N, *supra* note 33, at 97 (stating Evra's response to Suarez's racial abuse was violent urges). The Commission also repeatedly referenced Evra's demeanor as angry and upset, supporting Evra's violent response to Suarez. *See, e.g.*, *id.* at 34.

262. *See id.* at 43 (explaining Canal+ interviewer could see Evra's distress before he spoke to Evra).

263. *See id.* at 33-35 (describing reactions of Evra's teammates to Evra's demeanor, noting Evra was "really angry and upset" and that physical manifestations of Evra's anger were plainly visible).

264. *See supra* notes 259-263 and accompanying text.

265. *See* Russell Fraker, Note, *Reformulating Outrage: A Critical Analysis of the Problematic Tort of IIED*, 61 VAND. L. REV. 983, 983-84 (2008) (recognizing disfavored nature of IIED in court system and inconsistent application of IIED).

266. *See* Rapp, *supra* note 203, at 114 (explaining IIED "is a tort largely created by law professors" and author's article "aims to help fill an important gap in the literature on tort law").

267. See *supra* notes 207-264 and accompanying text for a discussion of the legal standards and scholarly arguments regarding IIED.

268. *See generally* INDEP. REGULATORY COMM'N, *supra* note 33, at 97 (stating facts and applicable law surrounding Suarez's breach of FA's misconduct rules).

269. *See supra* notes 251-264 for a discussion of Evra's distress included in the Commission's decision.

270. *See, e.g.*, Scott Dodson, *New Pleading, New Discovery*, 109 MICH. L. REV. 53 (2010) (outlining discovery issues in federal courts that have arisen because of recent changes in pleading standards).

The ultimate solution to these evidentiary issues, however, is for the MLS to adopt vicarious liability directly into their regulations.[271]

B. Respondeat Superior

1. *Legal Standard*

Respondeat superior is a form of vicarious liability.[272] Vicarious liability creates "liability for the tort of another person."[273] This is an exception to the legal principle that individuals should be held liable for their own legal faults.[274] Under the doctrine of respondeat superior, employers can be held liable for the torts committed by their employees.[275] Importantly, the employer does not need to be at fault in order for the proper application of respondeat superior.[276]

The key legal issue in respondeat superior cases is whether the employee was acting within the "scope of their employment" when the tort was committed.[277] If courts find the employee committed the tortious action while acting within the scope of their employ-

271. For a discussion of why the MLS should include the vicarious liability of clubs for their players on-field racism and why it would be beneficial to hold the clubs liable, see *infra* notes 317-342 and accompanying text.

272. *See* DOBBS, *supra* note 194, § 333, at 905 (noting respondeat superior is "[t]he most common kind of vicarious liability); *see also* Michelle D. McGirt, *Do Universities Have a Special Duty of Care to Protect Student-Athletes from Injury?* 6 VILL. SPORTS & ENT. L.J. 219, 239 (1999) (acknowledging that respondeat superior imposes vicarious liability on third parties for tortious conduct of their employees).

273. *See* DOBBS, *supra* note 194, § 333, at 905 (observing vicarious liability creates liability on third parties for torts committed by other persons).

274. *See id.* (recognizing that vicarious liability is one important exception to legal principle of holding everyone responsible for their own legal faults).

275. *See id.* (noting under respondeat superior "private and public employers are generally jointly and severally liable along with the tortfeasor employee for the torts of employees committed within the scope of employment") (footnote omitted); State v. Hoshijo ex rel. White, 76 P.3d 550, 561 (2003) ("Thus, as an owner, UH is liable for the discriminatory acts of its agents and employees under the doctrine of respondeat superior. Under that doctrine UH is liable for Wallace's actions if Wallace was an agent or an employee of UH acting within the scope of his authority."); Steven I. Rubin, Note, *The Vicarious Liability of Professional Sports Teams for On-The-Field Assaults Committed by Their Players*, 1 VA. SPORTS & L. 266, 276 (1999) ("For centuries, Anglo-American common law has recognized the doctrine of 'respondeat superior,' which holds that an employer may be vicariously liable for a tort committed by one of his employees.") (footnote omitted).

276. *See* DOBBS, *supra* note 194, § 333, at 906 ("Vicarious liability is not based upon the defendant's own fault. Rather, it is based upon the principle that he must stand good for the wrong of another person. From the employer-defendant's point of view, vicarious liability is strict liability, since he is liable without personal fault.").

277. *See id.* § 335, at 910 (noting that respondeat superior liability is only imposed on employer when employee commits tortious conduct within scope of his or her employment).

ment, the employer will be held jointly and severally liable.[278] One of the many rationales behind respondeat superior is that it encourages employers to take measures to discourage employees' tortious conduct.[279] By shifting liability onto the party who is benefited by the employee's work, it properly places the risk of such work on the employer as well.[280]

In the past, courts have applied a variety of tests to determine whether an employee's conduct is within the scope of their employment.[281] Modern courts have settled on asking whether the employee had the "purpose" or "intent" to serve the employer at the time of the tortious conduct.[282] Compared to past tests, the purpose or intent inquiry has made it more difficult for intentional tort claims to impose respondeat superior liability.[283] However, the courts have been willing to extend employer liability in professions that carry inherently high risks of employees committing certain

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278. *See id.* § 333, at 906 (noting employers are generally jointly and severally liable for torts of their employees); *id.* § 335, at 910 (stating respondeat superior liability arises when employee's conduct occurs within scope of his or her employment).

279. *See id.* § 334, at 908 (citing Clarence Morris, *The Torts of an Independent Contractor*, 29 ILL. L. REV. 339 (1935)) ("The best deterrence is to impose liability upon the employer, who will then seek to avoid his own liability by exercising his considerable control over employees to discourage their torts.").

280. *See id.* § 303, at 909 ("When an enterprise, individual or corporation, engages in systematic or repeated activity, however, some risks are more or less typical or characteristic of the activity even when no negligence can be shown.").

281. *See, e.g.*, W. PAGE KEETON ET AL., PROSSER AND KEETON ON TORTS, § 69, at 500 (5th ed. 1984) (noting that English law in sixteenth century held that employers were not liable for employees torts unless employer commanded employee to commit specific tort). The courts recognized this rule was too strict and then embraced the "implied command doctrine" which held employers liable if they impliedly told their employees to commit the tort. *See id.* Eventually, the courts abandoned the legal "fiction" of a command. American courts now use the scope of the employment test. *See* DOBBS, *supra* note 194, § 335, at 910 (citing *Porter v. Harshfield*, 948 S.W.2d 83 (1997)) (noting "respondeat superior liability is imposed only for acts of the servant committed within the scope of his employment").

282. *See, e.g.*, Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 756 (1998) ("An employer may be liable for both negligent and intentional torts committed by an employee within the scope of his or her employment."); Faragher v. City of Boca Raton, 524 U.S. 775, 793-94 (1998) (explaining test for scope of employment and explaining Court of Appeals' interpretations); Hintergardt v. Operators, Inc., 940 F.2d 1386, 1388 (10th Cir.1991) (stating district court's jury instruction explaining scope of employment in regard to employee's using company cars to drive to and from work); Snodgrass v. Jones, 957 F.2d 482, 485-86 (7th Cir. 1992) (explaining conditions in which employees can enter and leave their scope of employment).

283. *See, e.g.*, S. Birch & Sons v. Martin, 244 F.2d 556, 559 (9th Cir. 1957) (explaining intent "is an important consideration in ascertaining if the specific acts charged occurred while the servant was acting within the scope of his employment").

tortious conduct.[284] For example, a court found that bar owners are liable for bartenders who lose their temper and intentionally harm patrons.[285] The court's reasoning focused on the bartending profession as one that carries an inherent risk of intentional violence, and thus the bar owners should be subject to both the benefits and burdens of owning a bar.[286]

A recent trend in respondeat superior scholarship examines the liability of sports teams for the torts of their employees.[287] In a landmark California case, a court held the Los Angeles Lakers vicariously liable for an intentional assault committed by Kermit Washington, one of their players.[288] The case was decided under a unique California vicarious liability law, but the decision has prompted persuasive arguments for an extension of vicarious liability to teams for a variety of tortious conduct committed by their players.[289] In a case like Suarez's, however, the threshold is much lower for holding a soccer club liable for non-violent torts committed by their players.[290] Much of the reasoning in the scholarship regarding intentional assaults and batteries serves to strengthen the

284. *See* Rapp, *supra* note 203, at 280 (citing RESTATEMENT (SECOND) OF AGENCY § 245 (1957)) (highlighting that "the duties of the servant" is a factor to consider in cases involving intentional use of force by employees).

285. *See* Sage Club v. Hunt, 638 P.2d 161, 163 (Wyo. 1981) ("Appellant evidently allowed [employee] to use force at his discretion, and he was performing work of the kind he was employed to perform.").

286. *See id.* ("The assault occurred within the authorized limits of time and space and was motivated, at least partially, by a desire to serve the Sage Club. Appellant is consequently vicariously liable to [victim] under the doctrine of respondeat superior.").

287. *See, e.g.*, Rapp, *supra* note 203, at 282-88 (arguing courts should apply respondeat superior to player's violent, on-field assaults on opposing players); Joel Michael Ugolini, *Even a Violent Game has its Limits: A Look at the NFL's Responsibility for the Behavior of its Players*, 39 U. TOL. L. REV. 41, 46-47 (2007) (noting potential liability of NFL teams for on-field torts of players committed on opposing players and examining high profile football cases in which NFL players were disciplined by their team for tortious conduct); Timothy Davis, *Tort Liability of Coaches for Injuries to Professional Athletes: Overcoming Policy and Doctrinal Barriers*, 76 UMKC L. REV. 571 (2008) (examining coach liability for their players tortious conduct that causes injury to opposing players).

288. *See* Tomjanovich v. California Sports, Inc., 1979 U.S. Dist. LEXIS 9282 (S.D. Tex. 1979) (holding Los Angeles Lakers liable for tortious action committed by player Kermit Washington).

289. *See* Rapp, *supra* note 203, at 282 (citing Terry Griffith, *Respondeat Superior and the Intentional Tort: A Short Discourse on How to Make Assault and Battery a Part of the Job*, 45 U. CIN. L. REV. 235, 244-47 (1976)) (stating Tomjanovich case was decided pursuant to California's vicarious liability law which only required injury from disputes "arising out of the employment" for employer liability).

290. *See* RESTATEMENT (SECOND) OF AGENCY § 219 (1958) ("A master is subject to liability for the torts of his servants committed while acting in the scope of their employment."). Section 245 only applies to cases in which the "use of force" is at issue. *See id.* § 245 (titling section "Use of Force").

argument for holding a soccer club liable for non-violent torts committed by their players, despite the differing legal standards.[291]

2. *Suarez's Case Under "Scope of the Employment"*

Under the "scope of the employment" test, a court will look to whether Suarez's conduct had the purpose or intent of serving his employer, the soccer club.[292] Plainly stated, the purpose of a soccer club, like any sports team, is to win games.[293] In pursuit of winning games, unnerving opponents is not only common, but encouraged.[294] Trash talk has become such a commonplace in NFL games that the league has begun monitoring games in order to crack down on it by imposing fines and penalties.[295] Soccer, like football, contains a lot of trash talk between players on the field.[296] Successful trash talking will unnerve an opponent, which increases the likelihood of winning a game.[297]

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291. *See infra* notes 292-316 and accompanying text.

292. *See* DOBBS, *supra* note 194, § 335, at 910 (noting that respondeat superior liability only imposed on employer when employee commits tortious conduct within scope of his or her employment).

293. *See, e.g.*, David Maddock, *Kenny Urges Calm as Liverpool Seek to Continue Resurgence*, MIRROR FOOTBALL (Apr. 12, 2011), http://www.mirrorfootball.co.uk/news/Liverpool-manager-Kenny-Dalglish-urges-calm-as-Reds-seek-Fulham-win-to-continue-resurgence-article838968.html (discussing Liverpool's impressive away record in EPL and coach Kenny Dalglish trying to manage fans' expectations of Liverpool returning to their former powerhouse status).

294. *See* Sid Lowe, *Pepe's Red Card, Mind Games and More Notes From Barcelona-Madrid*, SPORTS ILLUSTRATED (Apr. 28, 2011), http://sportsillustrated.cnn.com/2011/writers/sid_lowe/04/28/barcelona.real.madrid/index.html (recounting mind games surrounding recent Real Madrid versus Barcelona games).

295. *See* Doug Farra, *NFL Now Cracking Down on Trash Talk . . . in the Playoffs?*, YAHOO! SPORTS (Jan. 15, 2012), http://sports.yahoo.com/nfl/blog/shutdown_corner/post/NFL-now-cracking-down-on-trash-talk-in-the-p?urn=nfl-308041 (stating NFL spokesman Greg Aiello said "Ray Anderson (recently) reminded players that comments of a physically threatening nature are always taken into account in evaluating discipline for any illegal physical contact on the field").

296. *See, e.g.*, Paul Hayward, *Football: Toxic Feud with Barca Goes Digital After Real Accuse Busquets of Racism*, THE GUARDIAN, May. 2, 2011, at Guardian Sport Pages 4, *available at* http://www.guardian.co.uk/football/blog/2011/may/02/real-madrid-busquets-barcelona ("The alleged Busquets insult is delivered slyly, from behind a hand raised to his mouth to reduce the risk of detection: more bad acting by the most inept thespian in the competition. Of all the accusations flying around, this is the most serious, and shows both the depths to which this semi-final has descended."); Peter Wilkinson, *England Football Captain Terry Enters Not Guilty Plea in Racism Case*, CNN (Feb. 1, 2012), http://edition.cnn.com/2012/02/01/sport/football/uk-football-racism/index.html (reporting John Terry's alleged racial abuse of Anton Ferdinand during EPL game). Although Terry denies the charge, the prosecution believes they have "sufficient evidence" of the trash talking both players engaged in during the game. *See id.*

297. *See* Wojnarowski, *supra* note 236 (discussing Kevin Garnett's trash talking and its effect on opposing players).

In the Commission's decision it was specifically noted that Suarez's conduct was an attempt to "wind up" Evra.[298] The exchange was described as "confrontational and hostile."[299] Video evidence confirmed that the two players were clearly upset with each other during the confrontation.[300] Although Liverpool would deny that they sanctioned or encouraged Suarez's racial abuse, both factors are irrelevant when applying respondeat superior.[301] Suarez had the intent of unnerving Evra, which would help Liverpool beat Manchester United.[302] Suarez's conduct can therefore be said to have the purpose of furthering Liverpool's goal of winning games.[303]

An additional inquiry under the Restatement of Agency § 245, which applies to the tortious use of force, focuses on "the customs of the enterprise."[304] When the customs of the enterprise, meaning the customs of the particular profession, increase the foreseeability of tortious conduct by employees, courts are willing to hold employers liable for the intentional use of force by their employees.[305] Examining whether Suarez's conduct was a foreseeable custom of soccer will strengthen the argument that Liverpool should be held

298. *See* INDEP. REGULATORY COMM'N, *supra* note 33, at 90 (noting Suarez's conduct "was not conciliatory and friendly. It was unfriendly and was used as part of Mr Suarez's attempt to wind up Mr Evra.").

299. *See id.* ("The whole tenor of the exchanges was confrontational and argumentative. Adopting the words used by the Spanish language experts, Mr Suarez did not use 'negro' with any sense of rapport or in an attempt to create such rapport.").

300. *See id.* at 61-62 (describing Evra's and Suarez's demeanor during their verbal exchange on field).

301. *See* DOBBS, *supra* note 194, § 333, at 906 ("Vicarious liability is not based upon the defendant's own fault. Rather, it is based upon the principle that he must stand good for the wrong of another person. From the employer-defendant's point of view, vicarious liability is strict liability, since he is liable without personal fault.").

302. *See* INDEP. REGULATORY COMM'N, *supra* note 33, at 90 (noting Suarez's intent was to wind up Evra during their confrontation and that Suarez's body language showed hostility).

303. *See generally id.* (stating that Suarez's conduct was intended to anger and upset Evra, and Suarez's conduct had such effect).

304. *See* RESTATEMENT (SECOND) OF AGENCY § 245 cmt. a (1958) (stating "the customs of the enterprise and the nature of persons normally employed for doing the work" are relevant inquiries under § 245).

305. *See* Kirlin v. Halverson, 758 N.W.2d 436, 447 (S.D. 2008) ("If the act was for a dual purpose, the fact finder must then consider the case presented and the factors relevant to the act's foreseeability in order to determine whether a nexus of foreseeability existed between the agent's employment and the activity which actually caused the injury.").

vicariously liable for his tortious conduct, despite the absence of the use of force.[306]

In furtherance of both the employee's and employer's goal of winning games, players who will do whatever it takes to win are purchased.[307] In sports such as football and hockey, violence is not only a common trait in players, but it is desired by coaches.[308] When players go too far and exceed the customary violence in football and hockey, the additional tortious violence is foreseeable conduct.[309] Employers are benefited by the violence that stays within the acceptable limits of the game, and scholars argue that, similar to the bartender case above, the teams should be responsible for the pitfalls of excessive violence as well.[310]

In the same way football and hockey demand violent players, soccer demands players who can intimidate and unnerve opponents on the field.[311] The phenomenon of on-field intimidation is so common in Real Madrid versus FC Barcelona games that the once thrilling rivalry has become a strategic mind game between the coaches and players.[312] The games typically push the players and coaches to the brink, with both lashing out violently in the dying minutes of the game.[313] It is foreseeable that a player like

306. *See infra* notes 307-316 and accompanying text.

307. *See supra* notes 88-94 and accompanying text for a discussion of the controversial situations Suarez involved himself in prior to Liverpool purchasing him.

308. *See* Rapp, *supra* note 203, at 285 (quoting Roy MacGregor, *A Sportswriter's View: All Fighting Does is Ruin Hockey*, THE OTTAWA CITIZEN, Mar. 24, 1997, at A9) (noting "[t]he great majority of owners believe that fighting is a necessary marketing tool for the sport").

309. *See id.* ("This customary and non-tortious violence, when mixed with the rage and intensity with which many professional athletes play their sports, often proves to be the direct cause of and link to more violent tortious assaults.") (footnote omitted).

310. *See id.* (arguing that because financially beneficial violence attracts more violent players, tortious assaults which go outside laws of sports are also foreseeable and thus teams should be held liable for them).

311. *See Barcelona Have Won Psychological Battle Over Rivals Real Madrid, Says Barca Midfielder Xavi*, THE TELEGRAPH (Jan. 19, 2012), http://www.telegraph.co.uk/sport/football/competitions/la-liga/9024629/Barcelona-have-won-psychological-battle-over-rivals-Real-Madrid-says-Barca-midfielder-Xavi.html (reporting Xavi's, of FC Barcelona, comments about Real Madrid that highlight flaws in their formation and Barcelona's psychological advantage over Real Madrid before their next match).

312. *See* Lowe, *supra* note 294 (highlighting mind games Real Madrid coach Jose Mourinho employed against FC Barcelona and how "Pep Guardiola finally broke" and lashed out verbally against Mourinho's mind games in press room).

313. *See* Ben Hayward, *Starting a Riot - Real Madrid's Jose Mourinho Must Stop Inciting Violence in Barcelona Games Before Someone Really Gets Hurt*, GOAL (Aug. 18, 2011), http://www.goal.com/en/news/1717/editorial/2011/08/18/2625427/starting-a-riot-real-madrids-jose-mourinho-must-stop (arguing Jose Mourinho's mind games have encouraged Real Madrid players to act with intentional violence

Suarez would take the on-field trash talking too far.[314] When the conduct is foreseeable, courts are willing to hold the employer liable.[315] In Suarez's case, it would make Liverpool liable for his intentional infliction of emotional distress on Evra.[316]

C. Why Should the Clubs be Held Liable?

Following Suarez's conduct, anti-racism organizations pointed their finger at Liverpool.[317] As Suarez's employer, these organizations believed that Liverpool should have accepted responsibility for the incident.[318] Now that Suarez's conduct has thrust on-field racism into the spotlight, many are calling for educational programs for international players in order to avoid the issue in the future.[319]

The benefit of holding a soccer club liable for the on-field racism of their players is it helps alert the club's owners of the problem and allows them to intervene.[320] Upon hearing of Suarez's

toward Barcelona games and that repeated violence at end of games is slowly ruining one of soccer's once great rivalries).

314. *Compare* Rapp, *supra* note 203 at 285 ("This customary and non-tortious violence, when mixed with the rage and intensity with which many professional athletes play their sports, often proves to be the direct cause of and link to more violent tortious assaults."), *with* Everson, *supra* note 93 (reporting about Suarez's past controversial behavior).

315. *See, e.g.*, Kirlin v. Halverson, 758 N.W.2d 436, 447 (S.D. 2008) ("If the act was for a dual purpose, the fact finder must then consider the case presented and the factors relevant to the act's foreseeability in order to determine whether a nexus of foreseeability existed between the agent's employment and the activity which actually caused the injury.").

316. *See supra* notes 272-315 and accompanying text for the application of Suarez's conduct to the requirements of respondeat superior.

317. *See Powar Urges FA to Charge Liverpool*, ESPN (Jan. 5, 2012), http://soccernet.espn.go.com/news/story/_/id/1004658/anti-racism-chief-urges-fa-to-charge-liverpool?cc=5901 (arguing that Liverpool should be charged by FA for how poorly they handled Suarez controversy).

318. *See Luis Suarez Case: Powar Fears Bad Example Set to Supporters*, BBC SPORT (Jan. 8, 2012), http://www.bbc.co.uk/sport/0/football/16460881 (arguing that Liverpool's refusal to accept responsibility has undermined English FA).

319. *See Racism Row: Does Suarez Need Educating?*, *supra* note 81 (reporting Paul Mortimer, who works with "Show Racism The Red Card," believes "[t]he most important thing now, after the punishment, is education. He has highlighted when talking about the cultural differences that he needs some education, he needs to be able to understand that when you come to another country you have to respect the laws and the rules").

320. *See* Rob Hughes, *Another Ugly Incident Mars Liverpool's Good Name*, N.Y. TIMES (Feb. 11, 2012), http://www.nytimes.com/2012/02/12/sports/soccer/liverpools-luis-suarez-refuses-to-shake-the-hand-of-uniteds-patrice-evra.html (calling for Fenway Sports Group, owners of Liverpool, to take action now that it is clear there is a problem with Suarez); *Luis Suarez: Liverpool's Owners Should Step In, Says Gordon Taylor*, BBC SPORT (Feb. 12, 2012), http://www.bbc.co.uk/sport/0/football/17000125 (urging Liverpool to step in and help save their reputation).

conduct, the owners of Liverpool immediately flew to England in order to begin rebuilding the club's reputation.[321] By legally shifting the liability of on-field racism to the club, it provides an incentive for the club to undertake preventative educational programs in order to avoid monetary liability and bad press from on-field racism.[322]

Monetary judgments collected from the club could be donated to fund educational programs for anti-racism organizations, such as Kick it Out or Show Racism the Red Card.[323] Similar to situations where office employees misbehave and professionals are brought in to run educational classes, clubs could donate money to organizations dedicated to solving the on-field racism issue.[324] Players

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321. *See* Dominic King, *We'll Sort Out Suarez Mess! Liverpool Owners Set to Jet in as Sponsors Get Tough Over Race Row*, DAILY MAIL (Feb. 13, 2012), http://www.dailymail.co.uk/sport/football/article-2100725/Liverpool-owners-jet-sort-Luis-Suarez-mess.html (reporting American owners of Liverpool decided to fly out to Liverpool, England to solve reputational problems that Suarez's conduct had brought to club); Dan Roan, *Handshake: Suarez and Dalglish Apologise After Owners Intervene*, BBC SPORT (Feb. 13, 2012), http://www.bbc.co.uk/sport/0/football/17004667 (reporting Suarez and Dalglish both immediately apologized after Liverpool's owners intervened).

322. *See, e.g.*, Steve Slater & Keith Weir, *Liverpool Owner and Sponsor Raised Suarez Concerns*, REUTERS (Feb. 13, 2012), http://uk.reuters.com/article/2012/02/13/uk-soccer-liverpool-suarez-idUKTRE81C0V020120213 (reporting Liverpool owners and Standard Chartered, sponsor that pays around 20 million pounds per season to Liverpool, intervened to prevent further damage to Liverpool's reputation and financials). Standard Chartered also went public with their criticism of the Suarez controversy by releasing a statement expressing their disappointment "with the club." *See id.*

323. *See generally About Our* Campaign, SHOW RACISM THE RED CARD, http://www.srtrc.org/about/about-show-racism-the-red-card (last visited Aug. 26, 2012) (stating "Show Racism the Red Card is an anti-racism charity, which was established in January 1996. The aim of our organisation is to produce anti-racist educational resources, which harness the high profile of professional footballers to combat racism"); *About Kick it Out*, KICK IT OUT, http://www.kickitout.org/2.php (last visited Mar. 23, 2012) ("Kick It Out works throughout the football, educational and community sectors to challenge discrimination, encourage inclusive practices and work for positive change."). Kick it Out is financed through the English FA, the EPL, and the Professional Footballers Association. *See id.*

324. *See* Gloria Hyatt, *Liverpool Football Club Must Engage with the Anti-Racism Cause*, THE GUARDIAN (Feb. 13, 2012), http://www.guardian.co.uk/commentisfree/2012/feb/24/liverpool-football-club-anti-racism ("Racism in football is in the national spotlight. Clubs have to be fully supportive of the FA's campaign to stamp out racism: anything less is a dereliction of duty."); Marc Padgett, *Liverpool Must Take a Stand Over Abuse*, THE INDEPENDENT, Jan. 08, 2012, at Sport 1, http://www.independent.co.uk/sport/football/premier-league/liverpool-must-take-a-stand-over-abuse-6286797.html ("The head of European football's anti-racism group, Piara Powar, believes Liverpool should have been more proactive over the latest issue to affect the club.").

would then attend educational programs before and after incidents in order to avoid future problems.[325]

Shifting liability to the clubs would also send a strong signal to fans, players and coaches that soccer is finally ready to fight on-field racism.[326] Despite Sepp Blatter's opinion that the problem does not exist, it has become a huge issue in England.[327] Blatter made FIFA's ambivalence clear, thus placing the onus on the individual leagues to combat the problem.[328] In America, vicarious liability provides the opportunity for an inclusive and systematic solution to on-field racism.[329]

D. Pros and Cons of Tort Law and Recommendations

The foregoing analysis provides ample evidence for holding a soccer club vicariously liable when their players' on-field racism satisfies the elements of IIED.[330] The question remains, however, whether there is a better way for the issue to be handled.[331] A hot topic in sports law scholarship is the role of the courts in shaping

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325. *See Racism Row: Does Suarez Need Educating?*, *supra* note 81 (stating spokesman for "Show Racism The Red Card" believed "[t]he most important thing now, after the punishment, is education. He has highlighted when talking about the cultural differences that he needs some education, he needs to be able to understand that when you come to another country you have to respect the laws and the rules.").

326. *See* Andy Hunter, *Liverpool and Luis Suárez 'Critically Undermined' Anti-Racism Efforts*, THE GUARDIAN (Feb. 20, 2012 14:13 EST), http://www.guardian.co.uk/football/2012/feb/20/liverpool-luis-suarez-anti-racism (stating that, as result of their poor handling of Suarez controversy, "Liverpool have been accused of critically undermining 'efforts to combat racism in football and the wider society in general' with their handling of the Luis Suárez controversy and asked to issue an unreserved apology to Patrice Evra by a prominent group of black leaders.").

327. *See, e.g.*, Longman, *supra* note 81 ("Antiracism officials said they were encouraged by the actions taken against Terry and Suárez. But they cautioned that international soccer had lately sent mixed messages about discrimination despite a campaign over the past five years to reduce racial smears made on the field and in the stands.").

328. *See id.* ("Sepp Blatter, the embattled president of FIFA, soccer's world governing body, was widely criticized last month after trying to minimize the extent of racism on the field and suggesting that any player who felt affronted should settle the matter with a postgame handshake.").

329. *See supra* notes 272-316 and accompanying text for a discussion of respondeat superior liability and an application of Suarez's facts to the legal standard.

330. *See supra* notes 199-316 and accompanying text.

331. *See, e.g.*, Michael K. Zitelli, *Unnecessary Roughness: When On-Field Conduct Leads to Civil Liability in Professional Sports*, 8 WILLAMETTE SPORTS L.J. 1, 9-10 (2010) (analyzing current recklessness standard for on-field sports violence and arguing recklessness creates "too much potential for hindering pure athletic competition" because "the professional athlete competing in sport cannot be required to endorse this mindset").

sports law.[332] Some scholars fear that unnecessary judicial involvement in sports law will "chill" the sport.[333] Other scholars believe a special sport court should be established to handle sports law cases in the United States.[334] Although the courts are the ultimate arbitrators in our society, there are persuasive reasons for keeping their involvement in sports law limited.[335]

Those involved in the soccer leagues themselves are in the best position to craft solutions for the unique problems professional sports pose.[336] Sometimes, however, those who govern the league are slow or unwilling to respond to new problems in the sport.[337] When this occurs, the use of the court system is ideal to help force those governing the league into action.[338]

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332. *See, e.g.*, Chris J. Carlsen & Mathew Shane Walker, Note, *The Sports Court: A Private System to Deter Violence in Professional Sports*, 55 S. CAL. L. REV. 399, 399 (1982) (arguing for creation of "Sports Court" that could impose punishments on players and clubs that "engage in or encourage unnecessary violent conduct"); Jeffrey M. Schalley, *Eliminate Violence from Sports through Arbitration, not the Civil Courts*, 8 SPORTS LAW. J. 181, 195-97 (2001) (arguing arbitration is preferable to litigation because involving courts in sports law "could have serious implications on the level of intensity during competitive play"); Kevin A. Fritz, *Going to the Bullpen: Using Uncle Sam to Strike Out Professional Sports Violence*, 20 CARDOZO ARTS & ENT. L.J. 189, 222-27 (2002) (arguing for creation of National Sports Policy Commission to adjudicate sports law disputes in place of courts because courts are not experts in sports law, hand down unpredictable judgments, and offers aggrieved athletes monetary judgments in similar ways to civil tort system).

333. *See* Timothy B. Fitzgerald, Comment, *The "Inherent Risk" Doctrine, Amateur Coaching, Negligence, and the Goal of Loss Avoidance*, 99 NW. U.L. REV. 889, 909-10 (2005) (citing Knight v. Jewett, 834 P.2d 696, 710 (Cal. 1992)) (discussing California Supreme Court decision that warned of chilling effects that imposing liability on co-participants for "normal physical contact of athletic competition").

334. *See* Carlsen & Walker, *supra* note 332, at 414 (arguing for creation of "Sports Court" because "existing sanctions – league discipline and criminal and civil liability—inadequately deter sports violence").

335. *See* Schalley, *supra* note 332, at 197 (arguing courts' involvement in sports law issue could harm level of intense play in sports); Fritz, *supra* note 332, at 226-27 (listing advantages of National Sports Policy Commission over criminal and civil proceedings that courts use).

336. *See, e.g.*, Harris, *supra* note 14 (noting British Prime Minister David Cameron has called for leading soccer figures to prepare anti-racism plan for him to review in order to develop solutions to on-field racism).

337. *See, e.g.*, *Powar – Questions for Reds*, SKY SPORTS (Feb. 14, 2012 9:29 AM), http://www1.skysports.com/football/news/11669/7519454/Powar-Questions-for-Reds (stating Piara Powar believes "British football has a lot to do" in order to solve on-field racism issues); *Powar Urges FA to Charge Reds*, YAHOO! SPORTS (Jan. 5, 2012 21:33 GMT), http://uk.eurosport.yahoo.com/05012012/63/powar-urges-fa-charge-reds.html (stating Powar urged English FA to charge Liverpool for Suarez incident).

338. *Compare Suarez Banned Eight Matches for Racial Slur*, USA TODAY (Dec. 21, 2011), http://www.usatoday.com/sports/soccer/europe/story/2011-12-20/Suarez-banned-eight-matches-for-racial-slur/52132316/1 (reporting English FA fined Suarez and banned him for eight games), *with* Harris, *supra* note 14 (noting British Prime Minister David Cameron has called for leading soccer figures to pre-

In order to avoid unnecessary litigation and increased docket loads on the already strained court system, the MLS should make clubs vicariously liable by modifying their misconduct rules.[339] This would allow the MLS to use their expertise to fashion a punishment for clubs when their players egregiously violate the misconduct rules, as Suarez did, by using discriminatory language toward another player.[340] If the MLS is unwilling or slow to act, then the court system is available to any aggrieved athlete.[341] While the courts are not experts in the customs and fine-points of the game, their prior involvement in sports law has sparked scholarship advocating for further reform of sports law issues, signaling their involvement could be beneficial.[342]

VI. CONCLUSION

The resurgence of on-field racism in England has once again shown that soccer's current efforts to provide a discrimination-free environment are inadequate.[343] The controversy involving Luis Suarez reflected the English FA's renewed commitment to tackling on-field racism, but many fear the FA punished the wrong culprit.[344] The head of soccer's anti-racism organizations believe Liv-

pare anti-racism plan for him to review in order to develop solutions to on-field racism). The judgment against Suarez by the FA prompted public support for Cameron to step in and consider possible solutions to the issue. *See id.*

339. *See Law 12 – Fouls and Misconduct*, USSOCCER.COM, http://www.ussoccer.com/Referees/Laws-of-the-Game/Law-12.aspx (last visited Mar. 23, 2012) (detailing current misconduct laws and penalties for violations).

340. *See* Carlsen & Walker, *supra* note 332, at 414 (arguing for creation of "Sports Court" because it would be both "less expensive and more flexible . . . and would be more responsive to the needs of the professional sports industries concerned. Information costs would be lower because decisions would be made by an entity already familiar with that conduct necessary for effective play, and with better access to necessary facts.").

341. For a discussion of the civil liability of sports teams and professional athletes for on-field racism, see *supra* notes 193-316 and accompanying text.

342. *See, e.g.*, Rapp, *supra* note 203 (arguing that professional sports teams should be held civilly liable for on-field assaults committed by their players); Ugolini, *supra* note 287, at 45-48 (stating respondeat superior remains applicable for NFL players who engage in conduct beyond scope of game); Davis, *supra* note 287 (commenting that sports law has shaped jurisprudential trends and tort law).

343. *See, e.g.*, Harris, *supra* note 15 (reporting British Prime Minister David Cameron's thoughts that "[w]e need to act quickly to make sure those problems do not creep back in . . . if everyone plays their role, then we can easily crush and deal with this problem"); *Anti-Racism Chief Wants Liverpool Action*, *supra* note 154 (reporting Piara Powar's, of Football Against Racism in Europe, discontent with FA's handling of Suarez incident).

344. *See* Hunter, *supra* note 326 ("Liverpool have been accused of critically undermining 'efforts to combat racism in football and the wider society in general' with their handling of the Luis Suárez controversy and asked to issue an unreserved apology to Patrice Evra by a prominent group of black leaders."); *supra* note

erpool should also be held responsible.[345] Without educating players about racial integration in an international game, a brief ban and fine of half a week's salary has a weak deterrent effect.[346] Suarez, and Liverpool, have still not recognized that his conduct was fundamentally wrong.[347]

Due to differences in sports law between America and England, the court system is available to aggrieved athletes in America.[348] Tort law can hold employers vicariously liable for the torts of their employees in certain instances.[349] Suarez's conduct would likely satisfy the requirements for the intentional infliction of emotional distress and his conduct was likely within the scope of his employment as a player for Liverpool.[350] Therefore, in America, Evra could take the case to court and hold Liverpool vicariously liable for Suarez's conduct.[351] Holding the club liable for the on-field racism of their player creates numerous incentives for club owners to take preventive measures so incidents like Suarez do not harm the club's reputation or financials.[352] It also provides the opportunity to fund anti-racism educational programs for international players who may not be used to societal norms that differ from their home country.[353]

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154 (reporting Powar's opinion that Liverpool should have been charged by FA too).

345. *See Anti-Racism Chief Wants Liverpool Action*, *supra* note 154 (reporting Powar's belief that Liverpool were also culpable in mishandling Suarez controversy).

346. *See Racism Row: Does Suarez Need Educating?*, *supra* note 81 (stating Paul Mortimer, representative for "Show Racism The Red Card," believes that educating players like Suarez will lead to reduced incidents of on-field racism). Mortimer stated: "The most important thing now, after the punishment, is education. He has highlighted when talking about the cultural differences that he needs some education, he needs to be able to understand that when you come to another country you have to respect the laws and the rules." *Id.*

347. *See* Hunter, *supra* note 344 (stating letter from "local and national black leaders plus several anti-racism organisations" have called for Liverpool and Suarez to directly apologize to Evra).

348. For a discussion of the key differences between England and America in sports law disputes, see *supra* notes 169-192 and accompanying text.

349. For a discussion of the legal standard for respondeat superior, see *infra* notes 272-291 and accompanying text.

350. For the application of Suarez's on-field conduct toward Evra to intentional infliction of emotional distress and respondeat superior, see *supra* notes 193-316 and accompanying text.

351. *See supra* notes 193-307 and accompanying text.

352. For a discussion of the possible benefits of holding a club liable for their players' on-field racism, see *supra* notes 317-329 and accompanying text.

353. *See Racism Row: Does Suarez Need Educating?*, *supra* note 81 (stating beliefs of Paul Mortimer, who works with "Show Racism The Red Card," that education in cultural differences is important).

Although the court system is available to aggrieved athletes in America, there are reasons that the issue can and should be handled by the league itself.[354] Armed with expertise and authority to modify the laws of the game, the MLS can alter their regulations to include vicarious liability for on-field racism.[355] While it may not be the ultimate solution, it is certainly a step in the right direction.[356] On-field racism is one of the few blemishes left harming the otherwise beautiful game.[357] The good news is that America can preemptively show racism the red card before it harms the growing popularity of the MLS.[358]

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354. For a discussion of the pros and cons of using tort law to solve on-field racism issues, see *supra* notes 331-342 and accompanying text.

355. Carlsen & Walker, *supra* note 332, at 414 (arguing for creation of "Sports Court" because it would be both "less expensive and more flexible . . . and would be more responsive to the needs of the professional sports industries concerned. Information costs would be lower because decisions would be made by an entity already familiar with that conduct necessary for effective play, and with better access to necessary facts.").

356. *See Anti-Racism Chief Wants Liverpool Action*, *supra* note 154 (reporting head of anti-racism organization believes clubs should be responsible for on-field racism of their players); Hunter, *supra* note 344 (stating Lee Jasper, human rights and race equality campaigner, believes Liverpool's "reluctance" and "abysmal lack of leadership on this issue has given a green light to racism").

357. *See Football Racism Rows Damage Brand of the 'Beautiful Game'*, CNN BUSINESS 360 (Dec. 22, 2011), http://business.blogs.cnn.com/2011/12/22/football-racism-rows-damages-brand-of-the-beautiful-game/ (explaining on-field racism and its effects on soccer).

358. *See supra* notes 193-342 and accompanying text.

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