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Where Rocker's Rights End (The New York Times, Op-Ed)

Lewis M. Steel '63

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By Lewis M. Steel

When John Rocker arrived in New York this week to appeal his suspension from Major League Baseball, he was greeted by catcalls and angry demonstrators, exactly the sort of indignant response he should have expected to get, given the slurs he has directed at blacks and other people. But Rocker also has his defenders — and not only the white supremacists who have taken up his cause on the Internet.

Ever since the accusation of "political correctness" became a cudgel for battering liberals who opposed the use of racial or sexual slurs, a "free speech" battle cry has gone up to protect those who verbally degrade our public spaces. Rocker is being defended by those who think people should never be penalized for what they say.

As a lawyer who has represented minorities and women in scores of employment discrimination suits, I am convinced this brand of reverence for free speech is not only misguided, but contrary to established legal principles.

John Rocker is an employee of the Atlanta Braves. His employer has not only the right but the duty to see to it that his conduct comports with federal civil rights laws prohibiting discrimination in employment on the basis of race and national origin. The Supreme Court has ruled that an employer cannot allow any of its workers to create "a hostile work environment" based on bias. If, for example, an employer learns that one of its employees is using racially

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fight bias.

insulting language toward another, it must take effective steps to stop that conduct.

The reason for this interpretation of the employment discrimination laws is obvious. Unless minority and female employees are protected against insults, as well as physical threats, they may become discouraged and be driven from their jobs. Or they may fight back with antisocial behavior of their own or give in to the pressure from their tormentors by staying away from work, hurting their careers. In my law practice, I am constantly counseling clients: "Don't let them get to you. Hang on until I can get the court to put a stop to what you're going through."

An advocate for John Rocker might argue that baseball is different, that players always engage in horseplay and insult each other. But ethnic insults aren't just good fun. What Jackie Robinson endured when he broke into baseball should not be allowed again. Nor are players today likely to be passive victims. One of Rocker's foreign-born teammates, according to press reports, was ready to fight about a remark directed at him.

Besides making remarks insulting to his fellow employees, Rocker insulted his employer's customers — the fans of Major League Baseball. Not only is letting an employee behave this way to customers likely to be bad for business, but it may well violate the public accommodations provisions of the federal civil rights laws. Permitting players to trumpet their racism publicly is just another way of telling certain fans they are not welcome in major league ballparks.

Free speech has always had its limits: no one has a right to cry "fire" falsely in a crowded theater, to take the classic example of speech as illegal behavior. Even if Rocker were a public employee and entitled to protection under the Constitution, there would be constraints on the speech he could engage in without being subjected to sanctions. Think of the outcry, for example, if a public school teacher were quoted in a newspaper calling African-Americans "monkeys" — a taunt that Rocker used against another player.

No matter how big a star John Rocker is, he should not be free to engage in bigotry toward his fellow employees or toward baseball fans whose skin color or national origin may offend him.

To the contrary, the more he is in the public eye, the more the public must see that the rules are no different for him than they are for everyone else. □

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