

CLE Materials

Rooney Rule Revisited: Considerations For Today's Companies

February 11, 2022

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An Open Letter From the 4.0 Firms' Chairs & Managing Partners



We, the Chairpersons and Managing Partners of 118 major law firms, want to increase and sustain a diverse and inclusive workforce in our firms and beyond in the legal profession. One of the proactive ways we are doing this is through our participation in the Mansfield Rule.

The Mansfield Rule, in just a few years, has made a major impact on diversifying law firm leadership. Some of the overall measurable results thus far, and our individual experiences with it since its inception are detailed below.

As part of this open letter, in addition to encouraging others in the legal industry to join us, we want to congratulate the trailblazing legal departments and midsize law firms that are taking part in a pilot version of this effort customized for their varying sizes and needs.

We believe that the Mansfield Rule's goal of embedding change in the culture provides one avenue for us to collectively work towards a fairer and more just legal workplace. This is particularly important in light of the recent and long history of devastating instances of racial injustices faced by Black Americans, including our lawyer colleagues and friends. Together, as the Mansfield Rule motto states, we are boosting diversity in leadership, which will help create the systemic changes necessary to foster long-term inclusion and equity in our workplaces.

The Mansfield Rule's Evolution

The Mansfield Rule, inspired by a winning idea at the 2016 [Women in Law Hackathon](#), measures whether law firms have affirmatively considered at least 30 percent women, lawyers of color, LGBTQ+ lawyers, and lawyers with disabilities for leadership and governance roles, equity partner promotions, formal client pitch opportunities, and senior lateral positions.

The goal of the Mansfield Rule is to boost the representation of diverse lawyers in law firm leadership by broadening the pool of candidates considered for these opportunities. The Rule's elements and

operations are grounded in behavioral science research, including the 30 percent requirement, which [researchers have found](#) is the critical mass necessary to disrupt biases.

Since the Mansfield Rule's launch three years ago with 42 firms to now with 117 firms, Diversity Lab has worked with the participating firms to annually measure the outcomes and iterate the program based on those outcomes to ensure we are moving toward our goal of diversifying firm leadership as inclusively and impactfully as possible.

The structural elements of Diversity Lab's certification process – including the accountability through frequent firm-specific check-ins and data collection, the ongoing collaboration through monthly group knowledge sharing meetings, and the transparency of publicly certifying – are key to this effort.

Through the Mansfield Rule, we are making progress collectively, rather than working in isolation.

Our Measurable Outcomes as a Group and Individually Thus Far

As part of two comprehensive check-ins with participating firms at the six-month and one-year mark during the year-long certification process, Diversity Lab collects and analyzes data on the firms' diversity progress in relation to the certification requirements. Some of the collective outcomes from the 3.0 certification process follow.

Also, individually, we've experienced many small and large "wins" as a result of our focused and intentional efforts related to the Mansfield Rule. A few statements from the firms that have participated since the Rule's inception are listed below. [A link to more of the renewing firms' individual statements can be accessed here.](#)

Collective Outcomes –

- 94% of participating firms reported that their candidate pool for pitch teams was more diverse following the adoption of the Mansfield Rule;
- 79% of firms reported that their lateral partner hiring pool was more diverse, and 76% said their equity partner promotions pool was more diverse;
- 92% of firms reported an increase in formal diversity discussions regarding succession planning for leadership and governance roles, and 85% increased formal discussions for lateral partner hiring;
- 57% of participating firms elected or appointed a higher percentage of diverse lawyers into Office Managing Partner roles; and
- Prior to participating in the Mansfield Rule, only 12% of firms tracked their candidates for leadership roles and 25% tracked their candidates for lateral partner hiring; now, 100% are tracking these candidate pools.

Highlighted Individual Firm Results –

“Akerman has increased the diversity of firm leadership by adding two seats to the firm’s Board of Directors held by the Chairs of our Equality & Inclusion Committee and Women’s Initiative Network, has increased Executive Committee diversity from 14% to 42%, and 50% of the firm’s equity partner promotions have been women and attorneys of color since implementing the Mansfield Rule.” **Scott A. Meyers, Chairman & CEO, Akerman LLP**

“Building on our firm’s track record of leadership on diversity and inclusion, our participation in the Mansfield Rule initiative has helped us develop new processes and more thoroughly document our progress. Among the results: diverse lawyers comprise 66% of our firmwide management committee, 48% of practice area leaders, and 46% of participants in new business proposals.” **Kathy Szmuszkovicz, Managing Principal, Beveridge & Diamond**

“In the past three years, more than half of the partners we’ve promoted in the US are diverse and, had we been eligible to be ranked as an Am Law firm, we would have had the second highest percentage of Hispanic lawyers and the third highest percentage of Asian-American lawyers in the US.” **Evan Cohen, Regional Managing Partner (Americas), Clifford Chance**

“Among Dentons US’ actions since implementing the Mansfield Rule, we are proud to have appointed our first female US managing partner; increased our Board diversity to 41%; and welcomed a newly elected partner class that is 54% diverse.” **Mike McNamara, CEO, Dentons US**

“57% of Littler’s lawyers promoted to equity partner and 36.5% of our equity partners in the US were women, LBGTQ+ and/or lawyers of color in the second year after implementing the Mansfield Rule.” **Tom Bender and Jeremy Roth, Co-Presidents and Managing Directors, Littler Mendelson**

“Morgan Lewis has long aggressively cultivated a diverse and inclusive organization. Implementing the Mansfield Rule’s principles has provided a valuable framework to focus and drive our efforts even further. We are proud that some of our results thus far, as one of the world’s largest law firms chaired by a woman, include: 57% of our 2019 lateral partner hires are diverse; 41% of our Advisory Board members are diverse; 33% of our practice leaders are diverse; and, from 2017 to 2019, the number of diverse partners who serve as client team leads for the firm’s top 100 clients grew 19%.” **Jami McKeon, Chair, Morgan, Lewis & Bockius**

“Munger, Tolles & Olson has experienced double-digit growth in the diversity of our firm’s governing bodies since signing on as one of the founding firms of the Mansfield Rule. Since May 2018, we’ve seen the numbers of diverse lawyers taking leadership of our firm through the management and compensation

committees increase from 50% to 64% and from 33% to 56%, respectively, and diverse attorneys now represent 42% of our equity partnership and at least 50% of our partner promotions over the past 3 years.” [Hailyn Chen, Co-Managing Partner, Munger, Tolles & Olson](#)

“The Mansfield Rule is a leading example of the kind of concrete action our profession needs right now. With the heightened focus it brings, Orrick has achieved 50% diversity in: our Board and Management Committee; our internally promoted partner class; and our lateral partner hires. No doubt, we have seen the concrete benefits of these diverse perspectives as we navigate an unprecedented year.” [Mitch Zuklie, Chairman, Orrick](#)

Why We’ve Chosen to Continue with This Effort in Both Good and Tough Times

Knowing from legal [industry data](#) that past recessions have had a disproportionate impact on diverse lawyers, we are focused on ensuring history doesn’t repeat itself. In addition to the 95% of our firms that participated in the 3.0 version and have renewed for 4.0, we welcome 24 new law firms that have thoughtfully joined this collaborative effort in one of the most uncertain and difficult times in recent memory.

The statements from the new firms’ Chairs on why they chose to join now are detailed [here](#).

Our Call-To-Action for Legal Departments and Other Law Firms

We invite legal departments and other law firms to engage in this collaborative initiative with us. Details on the legal department and the midsize law firm versions as well as the soon-to-be launched UK Mansfield Rule can be found [here](#).

We also invite legal departments to join us at the Client Forums for certified firms where they will get to meet and build relationships with hundreds of our newly promoted, talented diverse partners who can service their legal needs. This is truly a collaborative effort, and one that is helping to make our profession – and our firms – more inclusive and diverse.

Signed,

Law Firm Chairs & Managing Partners

On Behalf of the Mansfield Rule 4.0 Participating Firms

Akerman
Akin Gump Strauss Hauer & Feld
Allen & Overy
Archer & Greiner
Arent Fox
Arnold & Porter
Baker Botts
Baker McKenzie
Baker, Donelson, Bearman, Caldwell &
Berkowitz
Ballard Spahr
Beveridge & Diamond
Blank Rome
Boies Schiller Flexner
Bricker & Eckler
Brown Rudnick
Brownstein Hyatt Farber Schreck
Bryan Cave Leighton Paisner
Buchanan Ingersoll & Rooney
Buckley LLP
Chapman and Cutler
Clifford Chance US
Clyde & Co
Cooley
Covington & Burling
Cozen O'Connor
Crowell & Moring
Davis Wright Tremaine
Day Pitney
Dechert
Dentons Canada
Dentons US
Dinsmore & Shohl
DLA Piper
Dorsey & Whitney
Duane Morris
Eversheds Sutherland (US)
Faegre Drinker
Fasken
Fenwick & West

Katten Muchin Rosenman
Kaufman Dolowich & Voluck
Kean Miller
Lane Powell
Latham & Watkins
Littler Mendelson
Locke Lord
Lowenstein Sandler
Mayer Brown
McDermott Will & Emery
McGuireWoods
MG+M Law Firm
Miller Canfield
Miller Nash Graham & Dunn
Morgan, Lewis & Bockius
Morris, Manning & Martin
Morrison & Foerster
Munger, Tolles & Olson
Neal, Gerber & Eisenberg
Nixon Peabody
Norton Rose Fulbright
Nutter McClennen & Fish
O'Melveny & Myers
Orrick
Patterson Belknap Webb & Tyler
Paul Hastings LLP
Perkins Coie
Pillsbury Winthrop Shaw Pittman
Polsinelli
Porter Wright Morris & Arthur
Procopio, Cory, Hargreaves &
Savitch
Reed Smith
Robins Kaplan
Robinson & Cole
Saul Ewing Arnstein & Lehr
Schiff Hardin
Seyfarth Shaw
Shearman & Sterling
Sheppard Mullin Richter &

**Finnegan, Henderson, Farabow, Garrett &
Dunner
Fish & Richardson
Fisher & Phillips
Foley Hoag LLP
Fredrikson & Byron
Freshfields Bruckhaus Deringer
Frost Brown Todd
Goodwin Procter
Goulston & Storrs
Greenberg Traurig
Hanson Bridgett
Haynes and Boone
Hogan Lovells
Holland & Hart
Holland & Knight
Hunton Andrews Kurth
Husch Blackwell
Ice Miller
Jackson Lewis
Jenner & Block
K&L Gates**

**Hampton
Shipman & Goodwin
Skadden, Arps, Slate, Meagher &
Flom
Stinson
Stoel Rives
Stoll Keenon Ogden
Stradley Ronon Stevens & Young
Taft Stettinius & Hollister
Thompson Coburn
Thompson Hine
Troutman Pepper Hamilton
Sanders
Tucker Ellis
Vinson & Elkins
Vorys, Sater, Seymour and Pease
White & Case
Williams & Connolly
WilmerHale
Wilson Sonsini Goodrich & Rosati
Winston & Strawn
Womble Bond Dickinson (US)**

The Mansfield Rule: History, Evolution & Progress

History of the
Mansfield
Rule

Mansfield
Rule in
Action

Outcomes
and
Progress



**MansfieldTM
Rule** Boosting Diversity
In Leadership

Mansfield Rule Origins

- Originated as an award winning idea at 2016 Women in Law Hackathon
- Teams of Partners and law school students "hacked" solutions for DEI issues, which included leadership pipeline diversity
- Inspired by NFL's Rooney Rule and named after Arabella Mansfield, the first woman admitted in the US to practice law
- Asks firms to consider at least 30% underrepresented candidates for significant governance roles, lateral openings, promotions, and client pitch opportunities

Mansfield
Rule Goals

Evolution of
the Mansfield
Rule



M
Ru

Diversify Law Firm leadership by...

1	Establishing new tracking and documentation norms
2	Expanding mindsets about who can be a leader
3	Bringing transparency to traditionally opaque processes
4	Working together as a community to share knowledge and lessons learned



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R

The Evolution of the Rule

MR 1.0: Focus on women and underrepresented racial/ethnic groups

MR 2.0: Include LGBTQ+ lawyers, add formal pitch opportunities to 30 %consideration requirement, and require transparent job descriptions and election/appointment guidelines

MR 3.0: Include lawyers with disabilities

MR 4.0: Add 30% consideration requirement for staffing of matters (for Plus certification)

MR 5.0: Add 30% consideration requirement to C-level staff positions and Chambers USA nominations and ask firms to provide transparent compensation processes (for Plus Certification)



MR
Ru

Mansfield Rule Certification

1

Meet 30% consideration threshold in significant percentage of decisions related to hiring, promotions, leadership appointments and client pitch opportunities

2

Complete check-ins with Diversity Lab and provide data to ensure accountability

3

Participate in knowledge sharing with the Mansfield Cohort



Man Rule

Early Adopter Results

For firms that have participated in the Mansfield Rule since its first iteration:

- For underrepresented **racial and ethnic lawyers**, Mansfield 1.0 firms have diversified their **Management Committees** at more than 30 times the rate of non-Mansfield firms during the 2017-2019 time frame — from 8.2% to 12.6%.
- **Underrepresented racial and ethnic lawyers** at early adopter Mansfield firms are progressing into the **partnership** at a statistically higher percentage than they were pre-Mansfield.
- **Women lawyers** at early adopter Mansfield firms are progressing into leadership — as part of **Management Committees, Partner Review Committees, and the partnership** as a whole — at a statistically higher percentage than they were pre-Mansfield.



Mc Ru

**Mansfield
Rule Recent
Results**

Mansfield Rule Results



Mc Ru

Mansfield Rule 2019-2020 Outcomes For Firms Participating in All Iterations



Promoted a higher percentage of diverse lawyers into equity partnership.



Reported a higher percentage of diverse attorneys elected or appointed to the Management/ Executive Committee.



Reported a higher percentage of diverse attorneys participating in formal pitches.



Reported that their lateral partner hiring pool was more diverse following the adoption of Mansfield.

The Mansfield Rule: History, Evolution & Progress

History of the
Mansfield
Rule

Mansfield
Rule in
Action

Outcomes
and
Progress



**MansfieldTM
Rule** Boosting Diversity
In Leadership

A DIFFERENT **WAY TO WIN**

DAN ROONEY'S STORY

FROM THE SUPER BOWL TO THE ROONEY RULE

JIM ROONEY

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TWELVE

CHANGING THE CULTURE

DAN ROONEY HAD SPENT A LIFETIME STEPPING INTO CHALLENGING SITUATIONS and trying to create a sense of belonging for others. Building consensus among the team owners—while also developing a diverse hiring policy that would have credence among coaches and fans—was critical to establishing the Rooney Rule. Giving it the best chance for success, he knew, would require giving owners and others in the league the tools they needed to broaden the candidate pools.

Once the NFL's diversity committee was established, Rooney worked to ensure support for the rule it would craft and the resources needed to make the policy meaningful.

A series of meetings at Heinz Field and conference calls through November and December were an indication of Rooney's urgency to get something done. NFL owners and general managers almost never meet so often during the football season. In these meetings, my father did little talking initially, just as he had in labor negotiations and in Ireland. He rarely took a strong position unless he could build consensus around it.

Dan focused on the nuts and bolts of the hiring process. He knew that owners could not simply be handed a mandate to interview minority candidates. They needed to be given the means to find those candidates. He concentrated, Pash

remembers, on doing a lot of work on things that, under any set of circumstances, would be useful, that would be consistent with the goals of diversity but were also entirely unobjectionable. For instance, he wanted to have a book of top candidates—not just minority candidates—for coaching and eventually general manager jobs which would be put together from broad input. That way, when an owner asked, “Who is out there?” there would be a tool to help him find people with whom he might otherwise be unfamiliar, to expand the universe of candidates beyond those he might have already heard of from his inner circle.

He assumed owners would accept practical tools. He thought they wanted to make good hiring decisions. But he was not as sure that owners would accept a rule that had a mandatory element to it, and he absolutely knew that could not be the solution with which they were presented.

Dan was greatly concerned about the possibility that any mandate to interview minority candidates would lead some teams to conduct sham interviews, bringing in minority candidates who never had a real chance at getting the job, just to check the box and satisfy the league’s requirement. It was a fear he shared with other members of the committee. It would be humiliating for the candidates and it would reveal an owner who engaged in such behavior to be cynical and not truly committed to diversity.

Williamson played a big role in explaining to the committee members that sham interviews were a theoretical concern. While he could not assure it would never happen, he did not consider it a real roadblock. Williamson told the committee that when people sit down to conduct interviews, they do them in a serious-minded way. Whatever the risk that some owners would be less than sincere in their openness, it was worth it to get more people from diverse backgrounds in the door and into the process. Williamson said that he, in turn, would tell any coach who was invited to interview to go through with it, even if that coach thought he had almost no chance of landing the job. First, he would tell them, you never know what will happen. And second, there was something to be learned from every interview and, if nothing else, practice was good. As optimistic as Williamson’s arguments were, my father’s own concerns about sham interviews were never completely allayed.

That sham interviews remain an issue to this day is a reflection of one of the frailties of the rule. It relies on owners and executives to be open to new people and ideas when hiring. Given the range of backgrounds of some owners—and, in some cases, the aggressive business practices they used in their other lines of work—that is probably too much to hope for from all of them.

There was a faction in the league that was concerned that creating any kind of rule would open a Pandora's box of attendant problems. Someone would surely be offended and there was the reality that in a business, the goal is to offend as few people as possible. Perhaps, some thought, the NFL would be better off not coming up with a rule at all.

That was an idea Dan Rooney and Paul Tagliabue flatly rejected. Bill Polian, the Colts' president who had hired Dungy and was a member of the working group under the diversity committee, remembers Tagliabue telling owners that the time had passed for inch-by-inch movement, that it was time to take a firm stand and a big step.

The Madden report proposed some potential remedies that Mehri highlighted. The concept of requiring a team to interview a diverse slate of candidates was one of those. Williamson had worked with other corporations to expand opportunities within senior level management and he, too, favored the diverse slate concept.

Dan's history with creating a meritocracy with Noll for the Steelers in the 1970s dovetailed with Mehri's and Williamson's ideas and he embraced the diverse slate idea immediately. It appealed to his sense that there were multiple high-quality candidates who just needed to be given the chance to compete on a level playing field, while still not intruding on the team's right to make individual hiring decisions.

During the committee meetings, there was still considerable back and forth about what would work. My father would later tell Mehri what the dynamics of those meetings were like. Williamson would present part of Mehri's proposal and go through the good and bad of it. And members of the committee would inevitably try to shoot holes in it. "What about this? What about the token interviews?" And Williamson would reply, "OK, we have to do something. Does anyone have a better idea?"

The “diverse slate” was to cover candidates of all ethnicities—including white candidates. But the committees wanted to go a step further, to make it clear they wanted at least one minority candidate interviewed.

Dan had conversations, often one-on-one, with his fellow owners, in which they voiced their concerns. Dallas Cowboys owner Jerry Jones, a powerful voice among owners then as he is now, was resistant to the league office telling owners what to do at all, a philosophy he maintains to this day.

My father told Jones and others that the diverse slate idea would enhance their teams and the entire league because it would ensure that at least one minority coach was on every team’s interview list, thus exposing owners to more quality candidates. It would, of course, also expand opportunities for minority coaches, too. Rooney told the owners it was a win-win-win if at least one minority candidate would be considered for a head coaching position. He pointed to the Steelers’ success and their history of inclusive hiring as one of the primary examples of the merits of considering a broader range of candidates.

“Remember, this wasn’t 50 or 100 years ago,” Arthur Blank said. “People understood what was right. They were more interested in how the process would work and interested in, ‘Could it be effective?’ There was no point passing a rule that couldn’t work. We needed to make sure that whatever they came up with was practical and you could do it.”

By December, in a memo signed by each committee member and sent to all owners, the committee proposed the interview policy that came to be known as the Rooney Rule. It recommended that teams make a commitment to interview minority candidates for every head coach job and establish a databank of coordinators and assistant coaches to help teams learn about qualified candidates. The committee framed their policy proposal as affirmative outreach. The goal was to identify and hire coaches through a competitive process, not to give any group a leg up on another. Essentially the rule told owners: You just have to interview someone who doesn’t look like you.

“It’s not asking that much,” Mehri said. “We’re fighting so hard for something that is so little.” That, my mother remembers, is how my father thought, too. This should not be that hard. He simply expected people to do the right thing.

Tagliabue thinks that one of the reasons my father was so good at getting consensus was that he was so often ambiguous about what he was talking about. During labor negotiations, when the league would have 30 pages of issues that represented its opinion, Dan would come back from talking to the union leaders and give Tagliabue a scrap of paper on which four vague negotiating points were scribbled. Rooney would tell Tagliabue that was the deal and Tagliabue, incredulous, would ask how that could be the deal when the league had many more points to negotiate and there was no detail about what had been agreed to. No, Dan would tell him, that's what we are negotiating right now. Then he would go back to the union leaders and do the same thing with them, slowly bringing them along, too. Then, when the other owners were apprised of negotiations and were given only the most general information, Dan would tell the other owners that he and the commissioner knew what the details were but they couldn't tell all the owners because they didn't want the details to leak to the media.

“He had a way of just slowly but surely getting people to say, ‘Yeah, I can agree to that if ...’ ” Tagliabue remembers. And then Dan would say, “If, well, don't give me too many ifs, you know. I don't want to talk about ifs today. That's tomorrow.”

“Leadership is risks,” Tagliabue continued. “Getting the CBA, or the Rooney Rule, nobody knew if the thing could work. People used to say, well, how do we know this can work? And Dan would say, ‘I don't know if it can work, but if you've got a better alternative, tell me what it is.’ ”

There was a consensus about the policy proposed, but Tagliabue, Rooney and the diversity committee strongly believed there had to be unanimity to convey the league's commitment.

Al Davis of the Oakland Raiders and Mike Brown of the Cincinnati Bengals were the two owners who offered resistance. There was some arm-twisting to get them aboard.

Davis never intended to vote no, said Amy Trask, the Raiders' former chief executive officer. Davis was not opposed to the intent of the rule. He was frustrated and angered that anybody needed such a rule.

Davis had long been well ahead of most other owners on diversity. In addition to hiring the first African-American coach of the modern era in Shell, he employed Tom Flores, the first minority coach to win a Super Bowl when the Raiders won in 1981, and he made Trask the highest-ranking woman at an NFL franchise.

Because so many others considered him a pariah, Davis was not involved in negotiating the rule. He told Trask to get on one of the conference calls with the other owners on his behalf.

Trask stated the Raiders' position, that there should not need to be a rule mandating doing what is right. The Raiders, though, would not object to it, Trask told the others. "So the way we took that was, 'Al, you're already doing it and certainly you don't oppose having other people do it the Raider way, so we'll take you as in favor,'" Pash said.

Mike Brown of the Bengals was a little bit different. He, too, is a frequent contrarian. His objection was rooted in the feeling that the league office expected to face all along—that team owners have the right to hire whom they want.

Brown essentially said that while the league could send him the list of minority candidates and the book with their backgrounds, it was his franchise, his payroll, and he was going to make the decision without interference. Brown was certainly not the only owner who felt that way, but the others, including Jones, had already decided to go along with the group on a yes vote. Brown was, until almost the end, the only one who felt so strongly that the league not have a say in whom he hires that he would be the only one to vote against the new rule.

My father appealed to the Brown family history. Mike Brown's father—the famed coach Paul Brown, who had founded the Cleveland Browns and later the Cincinnati Bengals—did not get enough recognition for the work he had done for diversity in the NFL at a time when there was still real resistance from some owners to desegregating their teams.

In the earliest days of the various professional football leagues, there had been a handful of African-American players. A year before Jackie Robinson integrated Major League Baseball in 1947, Kenny Washington, a halfback and defensive back from UCLA, signed with the Rams, becoming the first African-American

player in the modern NFL. The Rams had just moved to Los Angeles from Cleveland and had been told by the Los Angeles Coliseum Commission that they would have to integrate their team with at least one black player in order to lease the Coliseum.

That same year, the Cleveland Browns led by Paul Brown—who were then playing in the rival All-America Football Conference before it merged with the NFL—signed Marion Motley and Bill Willis, both of whom were black.

Wooten joined Rooney in talking about all that Paul Brown had done to promote diversity and fairness. My father explained to Mike Brown that the new rule was not an attack on him or his team. Rooney knew that neither Brown nor Davis would be able to convince other owners to join them in opposition, but having that unanimous vote was an important bit of symbolism. Dan chose to use his persuasive skills to bring them along.

The irony is that while Mike Brown might have been the last person to agree to vote for the rule, he actually did the best job of implementing it. In 2003, he hired Marvin Lewis to be the Bengals' head coach, the first African-American coach hired after the rule was put in place. Lewis transformed the Bengals in his 16 years on the job from a league laughingstock. They went to the playoffs in his third season and six more times after that.

INTRODUCTION

ON FEBRUARY 2, 2007, two days before the National Football League's Super Bowl XLI, the game's opposing head coaches, Tony Dungy and Lovie Smith, posed together with the trophy the winning coach would hoist after the contest. The event should not have been particularly notable, but it was. Both coaches were African American, and that fact was as much a story as the game itself. Head coaching in the NFL had long been a whites-only business, and just a few years earlier such a matchup had been unthinkable. In 2002, however, two lawyers, Cyrus Mehri and Johnnie L. Cochran Jr., together with a few grizzled NFL veterans, launched a movement to expand head coaching opportunities that would profoundly change the League and, arguably, the nation.

Neither Mehri nor Cochran was involved in the NFL or its operations when they decided to challenge the League's employment practices. They knew as much about the League's inner workings as everyday fans, which is essentially what they were. Both loved the sport, and each spent his fair share of Sunday afternoons and Monday

nights enjoying the NFL's product. But each also had grown to view that product as unacceptably flawed from an equal employment opportunity perspective. Opportunities generally abounded for African American players, but not for African Americans interested in leading them as head coaches. Indeed, in the League's eighty-plus-year history, African American head coaches numbered a mere six.

AMAZINGLY, DURING SOME OF AMERICA'S most racially inflamed days, Frederick Douglass "Fritz" Pollard became the first. When Pollard made his playing debut with the Akron Pros Football Club, the nation was just narrowly removed from the infamous "Red Summer" of 1919, during which a frenzy of lynchings and other racial attacks left the African American community battered and shaken and American race relations at their most raw. A year later, the Pros joined the American Professional Football Association—later renamed the NFL—and somehow, a year after that, in spite of the racism overwhelming the nation, the Pros appointed Pollard as a co-head coach.

More than sixty years would pass before another African American held an NFL head coaching job. For several of those years, from 1934 to 1946, the League segregated, banning African Americans from its ranks altogether. But following desegregation in 1946, team owners increasingly hired African American players to stock their previously all-white rosters, and within a few decades African American players had grown to numerically dominate the League. Nevertheless, African Americans were virtually nonexistent among those who wielded power within the teams' structures and over their players.

In this respect the NFL was not entirely unlike America's other premier professional sports leagues. Major League Baseball owners and National Basketball Association owners, like NFL owners, seemed comfortable fielding scores of African American (and, in the case of Major League Baseball, Latino) players but were far less willing to hire a person of color to lead them.

Those other leagues, however, had shown signs of progress. The NBA featured its first head coach of color in 1966, and Major League Baseball saw its first manager of color in 1975; in both leagues, more

would follow. In contrast, as of the 1989 NFL season's inception, although over 60 percent of the NFL's players were of color, all thirty-two NFL head coaches were white.

Debate as to why, precisely, the NFL's head coaching ranks were so uniquely colorless birthed multiple theories, the most damning of which attributed the League's long-standing head coaching homogeneity to a combination of centuries-old suppositions and the game's nature. Football is without question America's most complex sport. A football team's playbook can be up to several inches thick and generally contains seemingly innumerable formations and plays. But the playbook tells only part of the story. The game's complexity is most clearly evident as opposing teams prepare for any given play.

Having received instructions from their coaches and huddled up to discuss strategy, the players from both teams get into position. The defensive players array themselves in response to the offense's alignment, while the quarterback barks coded instructions. The instructions sometimes trigger movement from one of his teammates, and in the event of such movement, and even in its absence, the defense often adjusts its positioning. Based on the defense's repositioning, the quarterback sometimes gives new instructions, sparking another round of movement. All the while, a defensive player—often the middle linebacker—is issuing instructions of his own. Once the quarterback calls for the ball, all eleven offensive players execute carefully choreographed maneuvers, each reliant on the precision of his ten teammates. Their defensive counterparts, meanwhile, must respond with their own well-rehearsed schemes to thwart the particular play unfolding before them. When the play ends, each team gathers, regroup, and strategizes anew. Athleticism and instinct are, of course, fundamental to success on both sides of the ball, but without intense study and preparation of a scope unmatched in American sport, failure is certain.

The head coach is responsible for coordinating that study and ensuring that the players are prepared to execute; he must therefore be a master strategist and motivator. In addition, because football rosters are extremely large, featuring twice as many players as baseball

rosters and four times as many as basketball rosters, a head football coach must be an adept personnel manager. Stereotypes of African American intellectual inferiority dating to slavery presupposed African Americans insufficiently cerebral to succeed in such roles. Some theorists held that NFL team owners, all of whom were white, shunned African American head coaching candidates because of conscious or subconscious reliance on those stereotypes.

Other theorists laid blame on a perhaps less malignant but no less damaging phenomenon: the old-boy network, which seemed to thrive in the NFL's generally conservative culture, and which resulted in friends hiring friends and friends of friends, all of whom happened to be white.

Despite the obstacles facing African Americans aspiring to NFL careers beyond the playing field, and whatever those obstacles' roots, a small number of African Americans had over the years secured positions in teams' front offices and on teams' coaching staffs, and they toiled to open off-field opportunities for others. Their agitation was professionally risky, of course. To some in the NFL, the racial status quo was just fine, and the concept of increased diversity was unsettling. But the League's few African American coaches and front office personnel were children of the civil rights movement and had seen people risk far more than professional security and advancement in pursuit of racial equality. They were undaunted, and they eventually made headway in the coaching realm, as during the late 1970s and the 1980s, teams seemed increasingly willing to appoint African Americans to their coaching staffs. Even so, the color barrier at the top of the coaching hierarchy—the barrier Pollard had surmounted sixty years earlier—remained intact.

Four games into the 1989 season, the Los Angeles Raiders' offensive line coach, Art Shell, broke through. The Raiders' storied franchise was struggling, and team owner Al Davis, knowing the organization needed a change, named Shell his head coach. Suddenly Shell symbolized the possibility of a new era in the NFL, one in which African Americans might just as reasonably dream of coaching a Super Bowl team as playing for one. But the new era's promise proved

illusory, and by early 2002 frustration among the League's off-field African Americans was boiling. Shell, despite his success with the Raiders, had long since been terminated. And after the 2001 season, two of the four African Americans who had managed to land head coaching positions in the years after Shell did so were fired as well, despite substantial successes of their own.

Still other African Americans had compiled impeccable credentials as NFL assistant coaches over many years without ever receiving a head coaching opportunity. Sherman Lewis, for instance, had been an assistant coach in the League for fourteen years, during ten of which he served just under the head coach as offensive coordinator. He spent most of that time with the Green Bay Packers and was largely responsible for directing Brett Favre and the Packers' offense to two Super Bowl appearances and one Super Bowl victory. Yet he had generally been a head coaching afterthought. The same was true of Emmitt Thomas, who had been one of the NFL's most successful defensive backs during his playing days and who had proven himself as talented a defensive coach as Lewis was an offensive coach. Although Thomas was an NFL assistant coach for twenty-one years and although he spent seven of those years as a defensive coordinator producing consistently dominant defensive units, he too had been largely ignored for head coaching positions. Each year team officials from around the League praised Lewis and Thomas as exceptional coaches well suited for head coaching duties, but no head coaching offers ever attached.

In 2002 both men, having worked as assistants for years with little hope of advancement, were nearing sixty. It appeared unlikely that either would ever be an NFL head coach. And the younger generation, it seemed, would fare no better. After all, if the Baltimore Ravens' young and dynamic defensive coordinator, Marvin Lewis (no relation to Sherman), had not secured a head coaching job, prospects looked relatively bleak for the League's other African American assistant coaches.

Marvin Lewis had been a standout coach since entering the League in 1992, and upon joining the Ravens' coaching staff in 1996

he began systematically molding the team's defensive unit into a juggernaut. By 2000 he had crafted it into perhaps the best defense in NFL history. Overall, the Ravens were not a great team that year. Their offense was barely mediocre, and at one point during the season it went an astonishing five games without scoring a touchdown. Despite this, Lewis' defense was relentless, obliterating the NFL record for fewest points allowed in a season and leading the Ravens into the playoffs and ultimately to a Super Bowl Championship. As spectacular as Lewis' coaching career was, he, like Sherman Lewis, Emmitt Thomas, and so many other successful African American assistant coaches in the NFL, had never received a head coaching offer.

The inequity, and the "last hired, first fired" pattern it had produced, was glaring to every African American involved in the League, including those who decades earlier had initiated the push to diversify the League's coaching ranks. While some of those early activists had since left the League and others had passed away, a few were still active in NFL affairs, and they continued to carry the mantle, organizing and mentoring those who had entered the League after them and persisting with the campaign they had begun a quarter century earlier. John Wooten, a former Cleveland Browns offensive lineman, by then in his late sixties, led the effort.

Mehri and Cochran, at the time, knew nothing of Wooten and his work, but they were fed up with the NFL and vowed to change it. They set out to convince anyone who would listen that NFL teams were discriminating against African American head coaches and head coaching aspirants. Wooten and his closest allies, sensing the leverage Mehri and Cochran's efforts represented, offered their assistance, and the new coalition demanded that the NFL reform. By 2007, as Dungy and Smith prepared for their historic Super Bowl confrontation, the NFL had done just that. The League had implemented detailed regulations designed to thwart discrimination and myopia in its teams' head coach hiring processes, resulting in a dramatic increase in the number of African American head coaches. The NFL's transformation was unprecedented, and Dungy, Smith, and

the League's other African American head coaches stood proudly as equal opportunity's yield.

More interesting even than the NFL's ultimate transformation is the struggle that propelled it—a struggle I had the good fortune to observe, and in small part aid, first as an attorney in Cyrus Mehri's law office and then as an activist academic. By way of unlikely alliances, legal brinksmanship, and grassroots organizing, a few committed individuals initiated a sea change in America's most popular and profitable sports league. Moreover, through successfully engaging one of America's most vexing societal problems in the country's most public forum, they opened a window into both the benefits of equal employment opportunity and the tools with which to secure it, thus providing fair-minded corporate CEOs, executives in other sports leagues, and organization heads of all sorts the raw materials to pursue equity-inducing personnel practices. The ultimate impact of their movement on sports as well as the broader society remains unknown. What is clear, however, is that in challenging the mighty NFL, this small group shook presumptions long informing head coach hiring and pioneered an extraordinary, and heretofore untold, civil rights story.

2

AN IDEA'S ORIGIN

WERE HE STILL LIVING, Martin Luther King Jr. would have been seventy-three years old on January 15, 2002. But he was, of course, gunned down nearly thirty-four years earlier as he pursued his dream of nationwide racial justice and equality.

Whether America had achieved the dream King articulated so gracefully from the Lincoln Memorial's steps several years before his 1968 assassination was debatable, and every year on his birthday commentators of all stripes explored the question. To Mehri, the answer was obvious: racial bias was alive and thriving. He'd built an entire legal practice on trying to defeat it.

Mehri acknowledged that the overt racial discrimination of King's day had largely receded, but he believed it had given way to a more subtle, often covert, sometimes subconscious form of discrimination that infected America more deeply than most people knew or were willing to admit. Mehri targeted this "second-generation" discrimination in the workplace, where he believed it ran rampant,

through representing employees in racial discrimination suits against their employers.

Mehri respected King not only for his courage and his message but also for the legal developments his work spurred. Over the span of just a few years during America's turbulent civil rights era, in response to King's and others' enduring insistence that America embody its promise as a free democracy, the United States Congress revolutionized the nation's legal landscape with the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968. Each of the three statutes augmented the nation's body of laws with prohibitions against discrimination, but Mehri was partial to the Civil Rights Act, and particularly to the seventh of the statute's eleven titles. After all, Title VII, which prohibits employers from terminating, refusing to hire, or otherwise discriminating based on a person's race, color, religion, sex, or national origin, made his employment discrimination practice possible. Mehri litigated with the tools King helped create, and he felt deeply indebted.

On this particular anniversary of King's birth, however, Mehri had no celebratory plans. He began the morning as he began every morning, sorting through the *Washington Post*, pulling out the sports section, and scouring it for NFL news. He would return to the other sections later, eventually reading the business news, and then turning to the latest developments in national politics. But the NFL was always first. It was his refuge.

Family and work aside, nothing mattered more to Mehri than football. One would not suspect that, though, by looking at him. Mehri was of average height, slightly built, and bespectacled. He impressed neither as an athlete nor as having the capacity to so enjoy such an aggressive and sometimes brutal sport. Yet he loved the game with a passion and had since childhood.

How precisely that love developed is a bit of a mystery, even to Mehri. He certainly did not inherit it from his parents, both of whom immigrated to the United States from Iran before Mehri's birth, and neither of whom, to Mehri's knowledge, ever exhibited interest in football or any other sport.

To them, education was paramount. The Iranian government had terminated Bahijeh Mehri's university education and barred her from leaving the country when her roommate reported she was speaking critically of the shah, but Parviz Mehri's medical education provided him the status necessary to persuade Iranian officials to permit his young wife's passage out of Iran and the financial means to effectuate it. Mehri's parents knew there was nothing more important they could bestow on their firstborn child than education, and they believed sports were unavoidably a distraction. By any measure, the single-minded educational focus worked. After attending Hartwick College in Oneonta, New York, Mehri attended and graduated from Cornell Law School.

Athletically, Mehri was far less accomplished. Although he played as much pickup touch football as possible as a child, he competed in only one season of organized play during his formative years—Pop Warner football as a thirteen-year-old. He signed up to play against his parents' wishes, played the season with their grudging support, and never signed up again. Still, Mehri's brief gridiron experience invigorated his love for football, and he channeled that love into fandom. He became a devoted and knowledgeable football fan and most enjoyed watching the game played at its highest level, in the NFL.

Although Mehri lived in Connecticut, he adopted the Dallas Cowboys as his favorite team. The Cowboys, dubbed "America's Team," were the League's glamour franchise. The large blue five-pointed star adorning the players' silver helmets had become iconic, as had the Cowboys' cheerleaders—the first in the League to don revealing uniforms and dance as much as cheer. The team's mystique, together with its winning ways, attracted countless football fans who otherwise would have supported their respective local teams, and Mehri was among them. But the Cowboys appealed to Mehri for an additional reason. He admired their head coach, Tom Landry, for his approach to his job and the results it bore. During the twenty-nine years Landry stalked the Cowboys' sidelines and evolved into one of the game's great coaches, he rarely screamed or gesticulated

aggressively; rather, he spoke quietly and maintained his composure. Landry's sideline manner impressed Mehri, and when Mehri later practiced law, a profession given to histrionics and grandstanding in some quarters, he tried to do so with poise. He sometimes failed in that regard, and when he did, he quickly scrambled to gather himself. Angry rants, he'd learned, generally yielded poor outcomes.

Tony Dungy reminded Mehri of Landry and, to some extent, of himself. Dungy too approached his job with calm determination and achieved success. Although Mehri would never abandon the Cowboys, he appreciated what Dungy had done with the Buccaneers and the way in which he had done it.

So when Mehri turned to the *Post's* sports page that January morning and read the succinct headline "Dungy Out," he was floored. Mehri found the termination incomprehensible. Dungy had led the Buccaneers to more success than the franchise had ever experienced, and the team was still winning. As Mehri read the article under the headline, sadness gave way to anger. He'd felt the same way two weeks earlier when the Minnesota Vikings fired their head coach, Dennis Green.

Green, an African American, sparkled during his ten years with the Vikings. Under his leadership, the team won a remarkable 63 percent of its games and, in one year, won fifteen of its sixteen regular-season games. More impressive still, Green led his team to eight playoff appearances and two conference championship games. Nevertheless, after Green's first losing season—a season doomed from the start by the tragic death of one of the team's best offensive linemen—the Vikings fired him.

Mehri viewed both firings as patently unjust, and in light of his familiarity with workplace discrimination and the instincts he had developed through fighting it day after day, he deemed them racially driven. Having followed the NFL since the early 1970s, Mehri was well familiar with the long-standing racial homogeneity in the League's head coaching ranks. For years commentators had lamented the lack of diversity among NFL head coaches and called for change. And to the

NFL's credit, it had attempted to improve on that front through various programs over the years.

Still, the League's teams rarely hired African American head coaches, and it seemed to Mehri that the inequitable treatment prevailed not only at the hiring stage but, for those few who attained head coaching positions, also at the firing stage.

First, there was Shell's experience. In Shell's first full season as the Raiders' head coach, he transformed the struggling team's fortunes, leading the Raiders to twelve regular-season wins and then to a berth in the AFC championship game. All told, over the course of his five-plus years in charge, Shell won fifty-four games while losing only thirty-eight, and he posted winning records in all but one season. In 1994, however, on the heels of two consecutive winning seasons, Raiders owner Al Davis fired him. Although it would take Davis twelve years to finally admit Shell's firing was undeserved, Mehri recognized the injustice immediately. Green's firing seemed even more preposterous, in light of both his sustained success over a decade's course and his team's preseason tragedy in his terminal year.

In Mehri's view, Dungy's firing surpassed the other two in sheer absurdity, particularly when viewed in the context of the Buccaneers' previous head coach firings. As Mehri would later explain, "Before Dungy, Sam Wyche coached the Buccaneers for four losing seasons before being fired. Before Wyche, Richard Williamson coached the Buccaneers for two losing seasons before being fired. Before Williamson, Ray Perkins coached the Buccaneers for four losing seasons before being fired." Dungy, in contrast, coached the Buccaneers for five straight nonlosing seasons, established a tradition of excellence, and was fired.

The double standard Dungy faced could not have been more glaring. The Buccaneers fired Dungy's predecessors, all white, for losing. They fired Dungy even though he won. Although Dungy had not captured the League's ultimate prize, a Super Bowl championship, surely he merited more time at the helm.

After reading of Green's dismissal, Mehri had stewed for a few hours, then put the matter behind him and returned to his work. But

Dungy's termination was the last straw, and at his kitchen table, on King's seventy-third birthday, with the *Post's* sports page lying in front of him, he decided the NFL had to change.

To effectuate change, Mehri knew, he had to convincingly prove, even to skeptics, that the competition for NFL head coaching positions was fundamentally unfair and that African American coaches were judged against more exacting standards than their white colleagues. Mehri believed the trend of head coach hirings and firings throughout the League over the preceding several years supported his hypothesis, but he knew anecdotes could propel his argument only so far. Cynics would trot out counteranecdotes and attribute seeming disparities to coincidence.

They might, for example, point to the Buccaneers' early playoff exits in 2000 and 2001 as just cause for terminating Dungy or argue that Dungy's seemingly mellow demeanor was inadequate to motivate football players for their most intense games. Others might challenge accounts of African American head coaching success generally with an account of Ray Rhodes' NFL head coaching career. They would grant that Rhodes excelled in his first two seasons with the Philadelphia Eagles in 1995 and 1996, but note that he followed those years with two years in which the Eagles lost a combined twenty-two games, won only nine, and went winless in the team's sixteen matches on the road. Despite Rhodes' struggles, they would point out, the Green Bay Packers gave him a head coaching job the following year.

So that morning, aware that a war of anecdotes would do little more than provide momentary fodder for sports talk radio debates and then quietly recede from the public consciousness, Mehri resolved to engage the issue on a different ground, a ground on which equal opportunity battles in professional sports had not previously been waged. He would seek to prove racial discrimination by way of statistical analysis.

Although not a statistician, Mehri felt comfortable with statistics, and he had been wielding them on his clients' behalf for years. As an employment discrimination class action lawyer, he had no other choice. Without statistical support, plaintiffs who band together as a

class to sue their employers are generally doomed. Whatever the facts of their cases, to achieve success they must make a statistically significant discrimination showing. That is to say, they must, using statistics, show that discrimination rather than coincidence explains the adverse employment actions they suffered.

Here, though, there was no class and no suit. But Mehri believed if the statistics revealed what he hoped they would, both were possible. And because both would be possible, he believed neither would be necessary. He believed if he confronted the NFL with proof that some of its member clubs treated head coaches differently based on color, the NFL would have little choice but to address the situation.

The prospect excited Mehri, but he knew the project would have to wait. Just two months earlier he had filed suit against Johnson & Johnson on behalf of African American and Latino employees alleging various forms of employment discrimination, and the new case had stretched his firm of seven lawyers to capacity. In any event, Mehri was not sure he wanted to tackle America's most profitable and popular professional sports league alone. Before moving forward, he wanted to get Johnnie Cochran on board.

MEHRI AND COCHRAN could just as easily have become enemies as friends when their paths first crossed in 2000. In fact, were Mehri a more reactionary lawyer, he might have viewed Cochran as attempting to steal his clients and torpedo what was then the most important case of his career, his class action lawsuit against the Coca-Cola Company.

When Mehri filed suit against Coke, he risked everything. Several months before filing, he had turned down a partnership offer from the Washington, D.C., law firm of Cohen, Milstein, Hausfeld & Toll, where he'd litigated for more than eight years. Cohen Milstein had given Mehri his start and had introduced him to class action work, for which he was grateful, but the firm was large and diversified, with a hand in various practice areas ranging from anti-trust to securities. Cohen Milstein offered breadth, but Mehri sought to focus his talents on civil rights lawyering and did not

believe he would be able to do that as a Cohen Milstein junior partner.

So Mehri walked away from partnership and decided instead to branch out on his own. Despite having no clients and little capital, he knew that if he wanted to found his own firm, he had to do it then. He was young yet, only thirty-five years old, and thus had time to recover if his new venture flopped.

In addition, he was riding a publicity wave of the sort attorneys rarely enjoy. He had just led a team of Cohen Milstein lawyers in a three-year-long class action employment discrimination lawsuit against Texaco that yielded an unprecedented settlement for the African American employees the firm represented. Texaco, knowing it was outmatched and unable to refute claims of rampant organization-wide racial discrimination, agreed to institute an array of systematic initiatives designed to thwart future discrimination, and to pay plaintiffs \$176 million in damages. Mehri was merely an associate at the firm, but he brought the case in the door, nurtured client relationships, and determined the strategy that ultimately spawned victory. Whomever the firm's internal case management files named as the partner in charge, everyone knew it was Mehri's case, and when it was over, everyone knew it was Mehri's win.

The Texaco case made Mehri a star in the class action litigation world, which meant grudging respect from defense lawyers and referrals from other plaintiffs' lawyers and friends. Mehri didn't know if he would ever again be as well situated to launch his own practice, and he seized the moment.

The timing was perfect. Before Mehri was able to furnish his modest new office space and hire a suitable staff, Linda Ingram, an employee at Coke in Atlanta, called him for help, complaining that she was being discriminatorily compensated. Ingram's story intrigued Mehri, but he needed more information, and once he was able to hire an associate and a paralegal, he traveled to Atlanta to meet Ingram in person. Ingram had by then organized dozens of other African Americans who told similar stories. Mehri decided to take the case, and he began to accrue a formidable collection of damning affidavits.

Mehri did not know the true strength of his clients' claims until a mysterious package materialized on his office doorstep shortly after he returned from Atlanta. The package was small, just a few inches thick, and bore no identifying marks. Mehri tore away the outer packaging to reveal a stack of documents, which, like the envelope in which they'd come, betrayed no trace of authorship. Their origin, however, was clear. They came from someone at Coke who wanted him to win. Mehri had before him page after page of Coca-Cola employee salary information, which under analysis revealed massive racially driven disparities.

Mehri was certain the documents proved that Coke was violating Title VII, but even with such evidence he knew that successfully suing Coke in Atlanta would be extremely difficult, because Coke essentially owned the city. As the world's largest beverage company and one of the city's premier economic engines, the soft drink giant wielded untold power throughout Atlanta. Coke executives had served as city officials and civic leaders in Atlanta for generations, and it seemed every Atlantan had ties of some sort to the Coca-Cola empire.

Mehri knew he would need more resources than he and his skeletal staff could muster, but securing co-counsel to assist them proved challenging. Firm after firm, citing the case's likely futility, rejected his invitation. The refrain was simple and consistent: "Suing Coke in Atlanta is like suing the Pope in the Vatican. You can't win."

At long last Mehri convinced a respected Atlanta-based law firm, Bondurant, Mixson & Elmore, to sign on to the case with him. And for two grueling years, with Bondurant Mixson's assistance, Mehri fought Coke with a singular focus and a fair measure of desperation. He had funneled all of his firm's resources into the case, and if he failed, the firm would implode. But by June 2000, failure was the furthest thing from Mehri's mind. The litigation had overcome numerous obstacles, and Mehri and his co-counsel were on the verge of brokering a historic settlement with Coke.

Then Johnnie Cochran appeared.

Just as the parties were preparing to settle, Mehri learned that several of his clients, on whose behalf he had toiled for two years,

wanted to sue Coke separately, and Cochran, it seemed, was one of their lawyers. The other was Willie Gary, a talented and flamboyant Florida-based trial attorney who had amassed a fortune litigating suits of all sorts and whose promotional materials featured him shadowboxing to the *Rocky* theme song.

Since the case's inception, Gary had been trying to involve himself. Initially, not long after Mehri filed the suit, Gary approached Coke in hopes of representing the company as defense counsel. Later, once Coke opted against retaining him, he turned his attention to the plaintiffs' side, reportedly promising class members "he would get them more money than Mehri ever could." Although Coke spent \$5 million a year advertising on a cable station in which Gary held an ownership stake, creating a seeming conflict of interest, four of Mehri's eight class representatives defected.

At that point, Gary contacted Mehri and Bondurant Mixson and requested to be co-counsel. When they refused, Gary filed a separate suit, which, at least according to the defectors' complaint, Cochran co-signed.

Everything looked to be unraveling. Mehri had no way of knowing whether other class members would abandon him for Gary and the world-renowned Cochran or if the new action would frighten Coke away from the settlement he had worked so hard to broker. Mehri and his co-counsel were furious. They viewed the developments as wildly unethical and quickly resolved to file a motion with the court protesting the conduct. The only question was whom they would implicate in the motion, and the answer was clear to everyone but Mehri. Gary and Cochran were listed together on the new complaint as counsel of record, so it made sense to aim fire at both. Still, Mehri urged caution. They didn't trust Gary, but this was the first they had heard from Cochran. Mehri argued that since Cochran had not yet shown himself to be a bad actor in the context of the case, they should limit their allegations of wrongdoing to Gary and simply send Cochran a copy of the motion. After some convincing, the team agreed. It would prove to be among the best decisions of Mehri's career.

Cochran was at a retreat in Jamaica when his office received the copy of the motion, and as soon as he learned of it, he called Mehri. Cochran acknowledged that he had worked with Gary on previous matters, but he told Mehri he had never agreed to represent plaintiffs against Coke and was not sure how his name had materialized on the complaint. Pleased that Mehri had not implicated him in the developing Coke controversy, Cochran, upon returning from his retreat, invited Mehri to his New York offices so the two could meet in person. Mehri and Cochran thereafter became fast friends and soon began exploring collaborative possibilities. Mehri was ultimately able to settle with Coke for \$192.5 million, and when he moved on to other cases he often solicited Cochran's assistance.

When Mehri experienced his Martin Luther King Jr. Day brainstorm, therefore, turning to Cochran was natural. Although Mehri knew that the fear Cochran inspired among opponents might come in handy if the project evolved into a battle with the NFL, that is not what compelled Mehri to seek Cochran's involvement. Mehri approached Cochran with the project because the time the two had been spending together convinced Mehri that Cochran was not the slick-lawyering celebrity hound most of America seemingly perceived him to be but rather was at base a civil rights lawyer. And Mehri was right. Cochran was a product of the African American struggle, and although few in the public space seemed to acknowledge it, he had decades earlier committed himself to ensuring a less onerous struggle for black America's future generations.

4

ENTER THE GODFATHER

ALTHOUGH WOOTEN WAS AN OUTSTANDING PLAYER during his ten seasons in the NFL, all but one of which he spent with the Cleveland Browns, few people outside of the League knew anything about him. He was an offensive lineman and was therefore anonymous to all but the most knowledgeable and attentive team supporters.

Other than the center, who passes the ball through his legs to the quarterback at the start of each play, an offensive lineman generally does not touch the ball unless one of his teammates fumbles and he is quick and proximate enough to recover it. The offensive lineman's job, the most thankless on the football field, is to block would-be tacklers for those who do handle the ball. While the quarterbacks and running backs for whom he blocks enjoy public adoration and vie for individual achievement awards, the offensive lineman accrues cuts and contusions while going largely unnoticed by fans. Indeed, going unnoticed usually means an offensive lineman has done his job well; it means he has not committed penalties or missed important blocks.

Wooten did not mind the anonymity that came with doing his job well. He enjoyed hard work and was uninterested in the public limelight, and he remained that way after his playing career ended.

So when Lee told Mehri a guy named John Wooten had called about the football project, Mehri could be forgiven for not knowing that the man who'd left the message was the most connected and influential African American in the NFL—the “godfather,” as many called him, of the community. Mehri had no reason to know Wooten had held upper-level front office positions with the Dallas Cowboys, Philadelphia Eagles, and Baltimore Ravens, as well as at the NFL's central office at 280 Park Avenue in New York City, and that in those capacities he had developed a veritable army of friends and allies. And Mehri certainly could not have known that the semiretired Wooten wanted nothing more than to use his experience and clout to expand opportunities for African American coaches, scouts, and front office personnel in the League. Indeed, not even some of Wooten's friends fully understood the extent of his yearning to create equal opportunity—a passion that could exist only in those who once had no opportunities at all.

As a young boy in Carlsbad, New Mexico, Wooten was certain he would spend his adult years doing one of two things: collecting garbage or digging potassium sulfide in the city's potash mines. Those seemed to be his options. Nobody in Wooten's family had ever progressed beyond high school, and it seemed inconceivable that he would be the first to do so. He was a good student, but his school, Carver School, which served African Americans in grades one through twelve, was severely underresourced, and though his teachers did their best with what they had, they did not have much.

Even assuming satisfactory academic preparation, however, Wooten and his family were poor, and for them, any college would be wildly unaffordable. They had a hard enough time acquiring life's bare necessities. Wooten's mother, a single parent, labored tirelessly as a domestic worker to provide for her six children. She cleaned as many houses as she could during the week and then cleaned three churches every weekend. The work was tedious and punishing, and to

help their mother, the Wooten kids transformed the church cleanings into family affairs, working alongside her until the sanctuaries were presentable for the Sunday services. Unfortunately, her earnings were insufficient to adequately support them all, so each of the Wooten children had additional jobs as well. In September and October they picked cotton in the searing New Mexico heat. When there was no cotton to pick, they shined shoes. When shoe shining dried up, they took whatever menial jobs they could to supplement the family income. Still, after pooling their money, they barely had enough to survive.

Although Wooten's future seemed preordained, he observed that opportunity existed for others. Carlsbad High School, which was not far from Wooten's home, was filled with it. Carlsbad had modern facilities—far superior to those at Carver—and a strong academic reputation. In addition, Carlsbad had a legendary athletic program. The Carlsbad Cavemen perennially challenged for state championships in basketball, football, and track and field. Carver's athletic program, on the other hand, consisted of a poorly funded basketball team and little else. Opportunity gleamed at Carlsbad High School, but Wooten could not access it. Carlsbad High and all of its opportunity were reserved for whites. The closest he could get was pretending with his friends that they were Carlsbad Cavemen as they played pickup football in the grass lot adjacent to Carlsbad's stadium while the real team competed inside. Occasionally the gate attendants allowed the youngsters in at halftime to see the remainder of the game, giving Wooten the most intimate glimpse he imagined he would ever have of the promise Carlsbad High School offered its own.

Then, for the first time in Wooten's life, after he completed the ninth grade at Carver, genuine opportunity bloomed. That autumn, when the 1952–53 academic year commenced, Carlsbad High began admitting African Americans. Wooten had done nothing to create the opportunity, and he did not know those who did. Somewhere far away, civil rights activists and lawyers had made sufficiently powerful arguments to begin unraveling segregation, and although *Brown v.*

Board of Education was yet to be decided, the Carlsbad school board and Carlsbad High School opted for integration.

Suddenly trash trucks and potash mines did not loom as ominously on the horizon. There was a chance Wooten could have something more, and he seized the opportunity with his entire being. He poured himself into his academics, absorbing everything he could, and although he had never played organized football, he tried out for the team. Almost immediately he dominated on both the offensive and defensive lines, and at the end of his sophomore season he earned all-state honors. During his junior and senior years, Wooten remained an all-state performer, all the while continuing his excellence in the classroom.

Wooten crafted himself into such a good player and such a good student that many of the nation's best football schools, such as the University of Colorado and UCLA, as well as some of its most selective academic institutions, such as Dartmouth College, fervently recruited him. In the end, Wooten chose proximity to home and enrolled at Colorado with plans to eventually attend medical school and become a physician. Wooten harbored no NFL aspirations, but after a successful academic and athletic career at Colorado, the Cleveland Browns selected him in the 1959 NFL draft's fifth round, and he entered the League as a rookie. From then until he called Mehri's office, more than forty years later, Wooten had worked in and around the NFL. Along the way, he built himself and his family a comfortable life and earned respect as a great player and then as an exceptional scout.

By any objective measure Wooten's existence bore no resemblance to what he had imagined for himself while he cleaned churches, picked cotton, and shined shoes in Carlsbad. To Wooten, however, it was only one opportunity removed. He did not enjoy contemplating what life would have been like had Carlsbad High School not integrated in 1952 and had he not received the benefits the area's teenage whites had long enjoyed. Nonetheless, when issues of racial inequity arose Wooten dutifully told his story and then flatly explained what equal opportunity meant for him: "If they don't make that integration decision, I'm dead."

But they had integrated, and Wooten was not dead. Instead, he was compulsively committed to opening opportunities for other African Americans as they were once opened for him, and in four decades with the League he had never seen the potential for change that Mehri and Cochran's report portended. He hoped the two lawyers were as serious about reforming the NFL as they appeared to be on television, and if so, he hoped Mehri would return his call.

Within days Mehri was dialing Wooten's number.

"Hello?"

Wooten's voice was deep and commanding. He sounded every bit the offensive lineman.

"Hello," Mehri responded. "This is Cyrus Mehri."

With that, the two began their first conversation, and as it turned out, they would talk nearly every day for months. With such a convergence of interests it seemed impossible not to be in close communication. Mehri was desperate to succeed with his project, and Wooten was desperate to finally catalyze the change of which he'd dreamt for decades. During their conversations, as Wooten told his story, Mehri grew to appreciate the depth of Wooten's passion for equal opportunity in the NFL and the strides he and many others had taken to further that goal.

Almost immediately after ending his playing career in 1969, Wooten explained, he entered the agent business, and worked as a players' agent for six years. The whole time, however—indeed, even during his playing days—he knew he wanted to work in an NFL team's front office. In that capacity he believed he would be able to focus on the personnel decisions that mold football franchises and, at the same time, do his best to ensure equal opportunity for African Americans hoping to work in the organization. In 1975 he got his chance. Tex Schramm, the Dallas Cowboys' president and general manager, who knew Wooten during his playing career, called and invited Wooten to assist with team operations. Wooten enthusiastically accepted, and before long he was learning the football business from Schramm. The two became good friends, but they argued mightily over issues of race in the League. Wooten, with the old

Carlsbad days forever fresh in his consciousness, steadily toiled to organize the League's off-field African American employees to push for expanded opportunities; Schramm, who believed NFL decision makers were essentially uninfluenced by race, did not view such organization as necessary.

Schramm was, it seemed, unburdened by stringent notions of formality or hierarchy, and he often walked down to Wooten's office to engage his friend in conversations, which invariably played out in the same manner. His feet propped up on Wooten's desk, leaning back in Wooten's guest chair, Schramm would query Wooten's purpose in trying to organize.

"I just don't understand what you're doing, Wooten," Schramm would say, truly perplexed.

"I'm trying to make the League better," Wooten would respond. "I'm trying to make it what it should be."

"Okay. But I don't know why you have to go to all of these meetings. It's like you're saying you want to have an all-black franchise."

"I never said that. I love the NFL. I love the NFL as much as you love it, but I don't understand why we don't have any black head coaches or general managers."

Wooten would then talk about the need to expand the pool of candidates for such positions to ensure equal opportunity and, ultimately, the best selection, and Schramm would respond that it wasn't fair for anybody to tell him or any other team executive whom to hire.

"When I'm hiring, I know who I want," Schramm would insist.

"Well, of course, but we're not arguing whether you know who you want or not, we're arguing whether you got the best guy. How can you tell me you got the best guy when you haven't interviewed all these guys?"

And on and on it would go.

But whenever Wooten told Schramm he had to attend a meeting to work toward diversifying the NFL, Schramm would authorize and fund the travel. If it meant so much to Wooten, he'd concluded, he was willing to support it.

Because there were few African Americans with any real power in the NFL, the meetings were generally small and were held in whatever city and at whatever time was convenient for the greatest number of participants. Wooten was always in attendance, as were Paul "Tank" Younger and Frank Gilliam, and together they spearheaded a campaign to increase equal employment opportunity for off-field African Americans in the League.

Younger, who played football at Grambling State University and then played in the NFL from 1949 to 1958, was the oldest of the group and its unofficial dean. Although Younger starred as both a running back and a linebacker at Grambling, NFL teams at the time did not scout at historically black colleges and universities (HBCUs). Indeed, no HBCU product had ever played in the League. Needless to say, despite his ability, Younger went undrafted.

Undeterred, he managed to arrange a tryout with the Los Angeles Rams, and as he prepared for it, Grambling's longtime head coach, Eddie Robinson, flatly told him, "If you fail, there's no telling when another black athlete from a black college will get a chance to play pro football." Despite having to endure Jim Crow segregation when the Rams played games in the South early in his career, Younger did not fail, earning Pro Bowl status five times during the course of his career. After retiring, Younger joined the Rams' front office and ultimately became the first African American executive in NFL history. Among African Americans in the game, Younger was a legend.

Gilliam was not the player Wooten or Younger was, having competed in only five exhibition games with the NFL's Green Bay Packers before being cut from the team, never to play in the League again. Like Wooten and Younger, however, Gilliam had a sharp football mind, and after playing for six years in the Canadian Football League, he began coaching in Canada and then at the University of Iowa, where he had played college ball. A few years later the Minnesota Vikings hired Gilliam as a scout, and over the years he had marched up the organization's hierarchy.

As talented and accomplished as Younger, Wooten, and Gilliam were, they doubted that any of their teams would ever seriously

consider promoting them to the position of general manager. Worse yet, countless equally talented African Americans seemed entirely frozen out of the League's power positions. The troika committed to do something about it, and together with the League's few other African American coaches and front office personnel, they pushed in myriad ways for change.

They did so fully aware of the hazards involved. The NFL community was small and run entirely by whites, many of whom were not as willing as Schramm to openly discuss the League's racial dynamics or accept the possibility of them shifting. Nevertheless, Younger, Wooten, Gilliam, and their comrades refused to countenance the status quo, so they accepted whatever risks their efforts posed to their long-term NFL futures. Through leveraging their relationships with friends and associates in the League, they were occasionally able to create opportunities for aspiring African American coaches on teams' coaching staffs, but their victories were isolated and their progress was slow. They wanted to make a bigger difference—to systematize change in some way—and after much discussion over the course of many meetings, they hatched an idea.

What if, they wondered, the NFL encouraged its teams' coaching staffs to work with and mentor African American college coaches during the pro teams' training camps? Such a program would have dual benefits. It would introduce NFL teams to coaching talent with which they were likely unfamiliar and it would familiarize the college coaches, many of whom harbored NFL ambitions, with the professional game, thereby improving those coaches' chances of competing for NFL jobs. Inspired by the idea's promise, Younger, Wooten, and Gilliam, together with the Washington Redskins' assistant general manager, Bobby Mitchell, and a few others, traveled to New York and proposed the idea to NFL Commissioner Pete Rozelle.

Rozelle had been observing the group's efforts and had grown increasingly attentive to their cause and sympathetic to the resistance they faced, but there was no indication when they convened at the NFL's headquarters that he was prepared to support such an ambitious project. And absent Younger's involvement, he might well not

have. Before becoming commissioner, however, Rozelle had worked in the Rams' front office, first as a publicist and then eventually as the general manager, and while there he and Younger had forged a friendship. For much of the meeting in New York, while Wooten, Gilliam, Mitchell, and the others talked among themselves at one of the NFL's large conference room tables, Younger and Rozelle, both smokers, huddled out of earshot across the room puffing on their cigarettes and discussing the proposal. In the end, trusting Younger's judgment, Rozelle decided to implement the group's idea, initiating what became the Black Coaches Visitation Program.

Under the program, the League paid for numerous HBCUs' entire coaching staffs to spend portions of the summer at NFL off-season camps. They sat in on coaching meetings, assisted with drills, and discussed the merits of various on-field strategies. Few African American coaches had ever had such access to the NFL's inner workings.

Not everyone in the NFL community cared for the program, but many applauded it and expressed their support both to Rozelle and to the African American front office pioneers who originated it. Among the impressed was San Francisco 49ers head coach Bill Walsh. Walsh was close friends with Dr. Harry Edwards, the University of California academic who had dedicated his career to forwarding equal opportunity through sports and who had inspired Tommie Smith and John Carlos' 1968 Olympic medal stand protest. Through conversations with Edwards, Walsh had grown increasingly disconcerted with the dearth of African American coaches in the NFL, and when he learned of Wooten's efforts, he committed to assisting in any way he could. As such, in 1987 he created his own personal minority internship program, soliciting from Wooten the names of promising young African American coaches and then hiring them as quality control assistants with the goal of preparing them for higher-level positions on his staff or elsewhere in the League.

The Black Coaches Visitation Program and Walsh's internship program, which the League ultimately adopted and expanded, served to markedly increase the number of minority coaches in the NFL.

Once in the League, though, the coaches for the most part stagnated as position coaches or occasionally as coordinators, with just a few attaining head coaching positions. Persuading NFL franchise owners to accept interns and low-level African American coaches was one thing, but convincing them to consider hiring African American coaches to lead their teams was quite another.

Wooten, Younger, and Gilliam continued to convene meetings, sometimes attracting fifty or more people, but they were, as Wooten told Mehri, largely "screaming and hollering" sessions. The group took no concerted action, as many attendees feared reprisals, and aside from anecdotes, they had no objective evidence to prove they were suffering systemic discrimination. In short, they felt they had no leverage. As Wooten explained over the course of his many conversations with Mehri, however, Mehri and Cochran's report appeared to provide just the leverage he and his allies had long sought. Humble as always, Wooten expressed his pleasure to be joining Mehri and Cochran's movement. By then, however, Mehri had learned enough about Wooten to know it was the other way around. Mehri and Cochran were joining Wooten's movement, and they were happy to do so.

As connected as Wooten was in the NFL community, however, and despite the numerous friendships he enjoyed with high-level executives in the League's central office, he had no idea how the League would respond to the report. Nobody did, not even the League executives, who, as Mehri and Wooten were getting acquainted, were working through the report and trying to plot their course of action.

In the days since Mehri and Cochran sent the NFL their report, however, their fledging movement had grown, with Wooten recruiting several of his closest allies to assist the effort. Wooten's troops constituted a who's who of NFL greats, including former Green Bay Packers defensive lineman Willie Davis, former Kansas City Chiefs linebacker Willie Lanier, and former San Diego Chargers tight end Kellen Winslow, all of whom were in the Pro Football Hall of Fame.

As eager as each was to press the NFL for reform, Winslow was exceptionally so and was thoroughly uninterested in working through Williamson or any other intermediary. Those who knew Winslow best were not surprised. Even friends described him as headstrong, and he rarely shied away from confrontation. When there was a battle to fight he engaged it directly, on the front lines, refusing to lose. His personality struck some as abrasive and others as endearing in its sincerity, but whatever one's view, it undoubtedly served him well on the field. Winslow showed as much spirit—as much “heart,” as they say in sports—as anybody in professional football, and if anyone doubted it, the Chargers-Dolphins playoff game in Miami on January 2, 1982, was exhibit A.

In that game, which the Chargers won in overtime, Winslow delivered one of the greatest individual performances in NFL history. Despite being treated throughout the game for severe cramps, dehydration, a pinched nerve in his shoulder, and a gash in his lower lip requiring stitches, Winslow caught thirteen passes for 166 yards, scored a touchdown, and blocked a last-second Dolphin field goal attempt that would have given Miami the victory.

Even after Winslow retired, that spirit continued to drive him. He noticed almost immediately what he believed to be a disparity in the off-field football opportunities former players of different races received. Whites he knew had made the transition to post-playing careers with relative ease, but in his assessment it was substantially

more difficult for him and other African Americans. To Winslow, racial discrimination was the clear culprit, and after nearly a decade of seemingly race-blind adulation from legions of fans, he found its harsh reality crushing. As he later explained:

As long as I was on the field of play I was treated and viewed differently than most African-American men in this country. Because of my physical abilities, society accepted and even catered to me. Race was not an issue. Then reality came calling. After a nine-year career in the National Football League, I stepped into the real world and realized . . . I was just another nigger . . . the images and stereotypes that applied to African-American men in this country attached to me.

Winslow's revelation led him to channel his talents toward exposing inequity in sports, and he became relentless in that pursuit. People unfamiliar with Winslow's mission got an earful on July 29, 1995, when he delivered his Hall of Fame induction speech. The Hall allots each inductee seven minutes for remarks. Winslow took more than twenty. He knew his induction provided a singular opportunity to share his views with the thousands assembled in Canton, Ohio, for the ceremony as well as the many more watching on television, and he utilized it to highlight the discrimination the League's players of color faced when seeking to transition from the football field into the sport's power positions. Some observers, even some who supported Winslow's arguments, found the speech inappropriate for the occasion. Others applauded his principled stand and the courage it required. But nobody who watched the induction ceremonies was left wondering where Winslow stood on the issue of equal opportunity in the NFL. He wanted justice, he wanted it immediately, and he had little patience for protocol or delay.

EPILOGUE

IN EARLY 2002, BEFORE CRAFTING AN ACTION PLAN, commissioning a statistical study, or threatening the NFL, Cyrus Mehri and Johnnie Cochran feared what a few dozen white men leading thousands of mostly African American men into weekly physical competition meant to America. They cringed at the subtle notions they imagined it prompted among the football-watching populace—suppositions about intelligence, poise, and leadership ability that had long undergirded American racial discrimination.

On February 4, 2007, as Tony Dungy and Lovie Smith led their respective teams onto the field for Super Bowl XLI, Mehri, and perhaps Cochran looking down on it all, pondered a different, vastly more enjoyable question: what did two African Americans coaching against each other in the nation's premier athletic contest mean?

It certainly meant that when Tony Dungy signed a football for an African American child, adding the words "Follow your dream!" after his signature, the child knew Dungy had achieved his dream, and that, whatever the obstacles, the child could do the same. And it

certainly further validated the NFL's Rooney Rule, which by Smith's admission had helped propel him into his head coaching position with the Bears. In addition, it was a testament to collective action. The NFL's off-field African Americans had accomplished more together than they could have as individuals. They prevailed over fear to become the Fritz Pollard Alliance, and as members of the FPA, they protected and empowered each other.

Above all else, Super Bowl XLI spoke to the importance of opportunity and the danger of myopia, not just as a matter of equity but as a matter of business. For the Colts and the Bears, success meant marching toward the 2007 Super Bowl. Dungy and Smith molded their teams in their own image—calm, composed, indomitable—and led those teams to conference championships, outpacing and defeating their competitors. Had the Colts and Bears clung to old stereotypes long pervading their industry, they would have deprived themselves of Dungy's and Smith's services and the success they spawned. Instead, those clubs transcended the stereotypes, and they profited.

Organizations unrelated to the NFL had begun taking notice of the League's changing complexion before the historic Dungy-Smith Super Bowl, but that game proved a watershed moment.

The Association of Art Museum Directors, for instance, knowing that Richard Lapchick had been involved in the NFL's equal opportunity movement, approached him with questions about the Rooney Rule in hopes that a similar rule might assist in diversifying the leadership ranks of the nation's art museums. And the National Urban League, inspired by the Rooney Rule's success, approached the NFL directly to learn more about diverse candidate slates so as to recommend them as a means of increasing equal employment opportunity throughout the business community.

Even the NCAA, in which aspiring football head coaches of color continued to flounder even more helplessly than aspiring head coaches of color in the NFL once had, seemed moved by the Dungy-Smith Super Bowl. For years the FPA had pressed the NCAA to urge its member institutions to implement diverse candidate slates in

conducting head football coach searches, but the NCAA had been resistant. Finally, in 2007 the Division I-A Athletic Directors' Association began seriously contemplating the benefits diverse candidate slates might hold for college football. And in early 2008 it issued guidelines strongly encouraging the nation's Football Bowl Subdivision programs (known until 2006 as Division I-A football programs) to utilize such slates in hiring head football coaches. Believing that neither it nor the NCAA had the authority to mandate implementation, the Athletic Directors' Association attached no penalties for noncompliance. Nevertheless, Dutch Baughman, the association's executive director, implored his membership to comply, and athletic directors began utilizing diverse candidate slates during their football head coach searches. In short order, the number of Football Bowl Subdivision head coaches of color began to rise, and after the 2009 season it doubled from seven to fourteen.

Earlier that year, citing the Rooney Rule as its inspiration, the Oregon legislature took the efforts of the Athletic Directors' Association a step further, requiring that its seven public universities implement diverse candidate slates when searching for athletic directors as well as head coaches for all of their athletic programs. By the time the Oregon bill became law, Alabama state representative John Rogers had begun drafting a similar bill, which he planned to introduce in his state, one of the nation's football hotbeds. Whether Rogers would succeed was unknown, but the prospect of the University of Alabama, Auburn University, and the historically repressive state's other public institutions of higher education implementing diverse candidate slates as a matter of course was a delicious prospect for equal rights activists the nation over.

Just as the Rooney Rule's influence spread across the nation, its impact in the NFL continued to expand. In the midst of the Dungy-Smith Super Bowl run-up and surrounding fanfare, the Pittsburgh Steelers quietly worked toward hiring a new head coach. If not for what Dungy and Smith were accomplishing, the search would have been a far more substantial story than it was. The Steelers were arguably the most renowned franchise in League history and, along with

the Dallas Cowboys, had won more Super Bowls than any other NFL team. Unlike the Cowboys under Jones, however, the Steelers rarely changed head coaches. Indeed, the most recent two, Chuck Noll and Bill Cowher, had led the team for a combined thirty-eight years.

So, whatever the surrounding circumstances, a Steelers head coach search was newsworthy. The circumstances in early 2007 made it far more so. The search represented the Rooney Rule coming full circle. Bill Cowher's January 5 resignation positioned Dan Rooney to effectuate the rule that bore his name. For the first time since the rule's enactment he had to walk his talk, and he did so. Rooney and his Steelers organization interviewed four candidates, two of whom were white and two of whom were of color.

The least heralded of the four was a young man named Mike Tomlin, who by all outside accounts stood absolutely no chance at the job. Consider the competition:

Ron Rivera, the Chicago Bears' defensive coordinator, had played nine seasons in the NFL with the Bears, winning one Super Bowl. A few years after retiring in 1992, he joined the Bears' coaching staff as a quality control assistant. From there he became the linebackers coach for the Philadelphia Eagles before returning to Chicago as the defensive coordinator in 2004.

Russ Grimm, a four-time Pro Bowl offensive guard who had won three Super Bowls with the Washington Redskins, coached the Redskins' tight ends from 1992 to 1996 and its offensive line from 1997 to 2000, after which he joined the Steelers as an offensive line coach. In 2004 the Steelers promoted Grimm to assistant head coach.

Ken Whisenhunt, like Grimm, was a Steelers coach. In 2001 he began coaching the team's tight ends and in 2004 became the Steelers' offensive coordinator. He too had enjoyed a long NFL career, playing for three different teams over the course of nine seasons.

Tomlin, by contrast, had never played in the NFL, and while he had played wide receiver on the collegiate level, he did so at lightly regarded William and Mary in the since disbanded Yankee Conference. Although he entered the NFL as a coach at the same time as Whisenhunt, in 2001, he had served as a coordinator with the

Minnesota Vikings for just one year when the Steelers' head coaching position opened up.

While NFL owners occasionally hired young, relatively inexperienced coaches to lead their teams, those hired had always been white. The League's head coaches of color tended to have long resumes and at least a few gray hairs, and Tomlin had neither. Indeed, while with Minnesota the previous year, Tomlin, born in 1972, was younger than two of his players and had played alongside one in college. Despite his youth, Tomlin commanded respect with the Vikings and had performed well, just as he had in his previous coaching stints. Still, particularly considering the Steelers' two internal candidates, Tomlin seemed a long shot at best.

Rooney, though, had fully internalized the philosophy and spirit in which the diverse candidate slate concept was rooted, and he had injected it into his organization's lifeblood. It did not matter that Rooney knew Grimm and Whisenhunt personally or that the press had portrayed his search as a two-person race. Rooney would not move forward without carefully and honestly considering all options, which meant meaningfully interviewing each candidate. He interviewed Rivera first, then Grimm, then Whisenhunt, all of whom performed admirably.

Finally he interviewed Tomlin, and he immediately learned what those closest to the young coach well knew: Tomlin was a fifty-year-old statesman in the body of a thirty-four-year-old football coach. His presence was overwhelming, engulfing the room. Straight-backed and square-shouldered, with a sincere smile and a firm handshake, Tomlin inspired confidence without saying a word. Tomlin did not have the experience his competitors boasted, and he had much to learn, but his inexperience did not impact his confidence as he outlined his plan for the Steelers' future. Tomlin's vision and enthusiasm intrigued Rooney, and after a few days of reflection and consultation with close confidants, Rooney hired Tomlin.

From the start, Tomlin imposed a no-nonsense culture in Pittsburgh. He demanded that every one of his players, even the stars, could and must improve, and he ran a notoriously rigorous training

camp to ensure that it happened. Some of his players complained that the camp was, as one journalist phrased it, "intentionally savage." Others simply doubted the efficacy of Tomlin's methods. As Tomlin's first season progressed, however, his players increasingly bought in to his vision, and although the Steelers did not win a playoff game that year, Tomlin had constructed a solid foundation. In his second year, having built on that foundation, Tomlin delivered Rooney the ultimate thank-you: the Steelers' sixth Super Bowl victory.

The NFL's culture of equal opportunity, which had steadily burgeoned since 2002 and which Dan Rooney championed and ultimately embodied, afforded Mike Tomlin an interview he likely would not have secured otherwise. With the interview he got the job, and with the job he reached the mountaintop, becoming the third African American head coach in three years to lead his team to the Super Bowl and earning NFL Coach of the Year honors along the way.

According to most estimates, Tomlin's accomplishments set a high-water mark for the NFL's diversity efforts, but enthusiasm about those efforts would soon wane. By the end of the following head coach hiring cycle, many who had for years celebrated the League's equal opportunity commitment had grown disillusioned. Although the Buffalo Bills, in searching for a new head coach after a disappointing season, indisputably discharged their duties under the rule, the two other clubs in the head coach market, the Washington Redskins and Seattle Seahawks, sparked substantial controversy with their interviewing processes. The two searches were quite different, but critics believed they shared a common characteristic: they both flouted the Rooney Rule.

In the Redskins' case, owner Dan Snyder interviewed a candidate of color, the team's defensive backs coach, Jerry Gray, but he did so well before he fired his then-head coach Jim Zorn, and speculation reigned as to whether Snyder viewed Gray as a genuine candidate or as an employee he could manipulate into sitting for an ostensibly Rooney Rule-satisfying interview. The Seahawks handled their search differently. They did not interview a candidate of color before firing head coach Jim Mora Jr., but as soon as they fired him, they

expressed intense interest in replacing him with Pete Carroll, the University of Southern California's head football coach. Amid media reports of an agreement in principle having been reached with Carroll, the Seahawks interviewed the Minnesota Vikings' African American defensive coordinator Leslie Frazier, then a few days later offered Carroll the job.

The FPA leadership, having spoken with Gray and Frazier as well as with the Redskins' and Seahawks' decision makers, concluded that both interviews, while perhaps suboptimal in form, were substantively meaningful and therefore satisfied both the letter and the spirit of the Rooney Rule. Still, many Rooney Rule supporters were unconvinced and called on the League to penalize both teams. Commissioner Goodell, however, insisted no penalty was warranted, disgruntling large segments of a community that had for the previous several years steadfastly supported the League's diversity efforts.

Fans who viewed the rule as unfair affirmative action, meanwhile, were up in arms for different reasons. Several months earlier, the NFL, pleased about the Rooney Rule's impact in the head coaching ranks, expanded the rule to cover a team's search for a general manager (or, in the case of the few teams that did not use the general manager title, the front office executive responsible for the team's football operations). Even many fans who had grudgingly accepted and in some cases supported the rule began to question both its expansion and its continued necessity. They noted that Jim Caldwell, who had replaced Tony Dungy in Indianapolis after the 2008 season, became in February 2010 the fourth African American in four years to lead his team to the Super Bowl. Moreover, they pointed out, the Arizona Cardinals, who lost to Tomlin's Steelers in the 2009 Super Bowl, and the New York Giants, who won the 2008 Super Bowl, both had African American general managers.

Indeed, some such fans pulled the Supreme Court's *Grutter v. Bollinger* affirmative action decision into the argument, noting that Justice Sandra Day O'Connor, who authored the majority opinion in that case, had suggested that the University of Michigan's plus-factor admissions policy, while reasonable at the time of the decision, might

eventually grow unnecessary. Although O'Connor's time horizon in the *Grutter* case was twenty-five years, these fans wanted the Rooney Rule abandoned much sooner, and they expressed their displeasure.

The Rooney Rule and the manner in which the NFL was administering it were under attack from supporters and opponents alike. And although the League's precise path forward was unclear, Commissioner Goodell expressed no interest in scrapping the rule or otherwise pulling back on the League's diversity efforts. While the head coaches and general managers of color had generally been quite successful, their proportion of all NFL head coaches and general managers remained quite low (among the League's thirty-two teams, there were only six and five, respectively) and continued to lag far behind the proportion of the League's players of color.

How best to catalyze further change—whether through refining the Rooney Rule, as some of the rule's supporters were demanding, or through exploring other equity-inducing initiatives—was debatable, but there was no debating the track record the League had established over the course of the previous eight years. It had moved from having virtually no head coaching or front office diversity to being an industry leader in equal employment opportunity matters, and its efforts had begun to influence workplace diversity debates in other contexts. For better or for worse, depending on the perspective, the League had become a major player in the racial politics of the new millennium.