

# The Increased Opportunity for Minorities in the National Football League Coaching Ranks: The Initial Success of the NFL's Rooney Rule

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## INTRODUCTION

In 2002, there were two African American coaches in the National Football League (NFL, the League).<sup>1</sup> In 2006, that number rose to seven.<sup>2</sup> What was the cause of such a rapid increase? Many have pointed to the Rooney Rule as the catalyst for the interviewing and subsequent hiring of minority candidates in the NFL.<sup>3</sup>

The Rooney Rule, adopted following the 2002 season, has had a great impact on the hiring of minority candidates in the NFL,<sup>4</sup> and has proven to be quite effective in its early years.<sup>5</sup> At the beginning of the 2008 season, there were six black head coaches in the NFL.<sup>6</sup> During the season, the League added a seventh black head coach when the San Francisco 49ers fired Mike Nolan and promoted Mike Singletary to interim head coach.<sup>7</sup> In nine games at the helm, Singletary led the 49ers to five victories, four of which came in the team's final five games.<sup>8</sup> At the conclusion of the regular season, the 49ers removed the interim label from Singletary's title and rewarded him with a four-year contract.<sup>9</sup>

While Singletary's hiring certainly merits attention, Mike Tomlin, another African American head coach, reached the summit of his profession a couple of months later, leading the

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<sup>1</sup> Richard Lapchick, *The 2006 Racial and Gender Report Card: National Football League*, (Sept. 26, 2007), available at [http://www.bus.ucf.edu/sport/public/downloads/2006\\_RGRC\\_NFL%5B1%5D.pdf](http://www.bus.ucf.edu/sport/public/downloads/2006_RGRC_NFL%5B1%5D.pdf); (last visited Nov. 15, 2007).

<sup>2</sup> *Id.* When Art Shell was hired by the Oakland Raiders in 1989, he became the first African American coach in the NFL's modern era. His record with the Raiders was a stellar 56 – 41 from 1989 – 1994. Prior to Shell, the NFL only had one African American coach, Fritz Pollard.

<sup>3</sup> *Id.*

<sup>4</sup> Greg Garber, *Thanks to Rooney Rule, doors opened*, ESPN.com, at <http://sports.espn.go.com/nfl/playoffs06/news/story?id=2750645> (last updated Feb. 9, 2007). See also Kenneth L. Shropshire, *Minority Issues in Contemporary Sports*, 15 STAN. L. & POL'Y REV. 189, 204 (2004) (noting that NFL's Committee on Workplace Diversity was "inspired by Cochran and Mehri's Fair Competition Resolution proposal" and "transformed [the] proposal into the 'Rooney Rule'").

<sup>5</sup> Lapchick, *supra* note 1.

<sup>6</sup> Associated Press, *Study: Slight increase in Asian, Latino players in NFL*, ESPN.com, available at <http://sports.espn.go.com/nfl/news/story?id=3555896> (last updated Aug. 27, 2008).

<sup>7</sup> John Clayton, *49ers fire coach Nolan, give job to assistant Singletary*, ESPN.com, at <http://sports.espn.go.com/nfl/news/story?id=3654528> (last updated Oct. 21, 2008).

<sup>8</sup> ESPN.com news services, *49ers make Singletary coach heading into 2009*, ESPN.com, at <http://sports.espn.go.com/nfl/news/story?id=3796761> (last updated Dec. 29, 2008).

<sup>9</sup> *Id.*

Pittsburgh Steelers to victory in Super Bowl XLIII.<sup>10</sup> In so doing, Tomlin became just the second African American head coach to win a Super Bowl.<sup>11</sup> Tony Dungy was the first, guiding the Indianapolis Colts past the Chicago Bears in Super Bowl XLI two seasons earlier.<sup>12</sup>

The University of Central Florida's Institute of Diversity and Ethics in Sports gave credit to the Rooney Rule for the increase in the NFL of hiring minority candidates for head coaching positions.<sup>13</sup> The 2006 report gave the NFL a "solid B+" for race and gender, "approaching an A-."<sup>14</sup> The grade for head coaches in the NFL was an A-.<sup>15</sup> The grade for the NFL for assistant coaches was an A+.<sup>16</sup> Highlights of the report included:

- The increase of African Americans at the head coaching position from two to seven (giving an assist to the Rooney Rule).<sup>17</sup>
- An African American coach winning the Super Bowl for the first time.<sup>18</sup>
- Five African American general managers at the start of the 2007 season.<sup>19</sup>
- A record percentage of people of color in the assistant coaching position for the 2006 season.<sup>20</sup>

In comparison, the 2008 Racial and Gender Report Card gave the NFL a B+ for "head coaches" and a B+ for race.<sup>21</sup>

The 2006 report displays significant progress made in the NFL, especially in the key positions of head coach (seven in 2006, six in 2007), general manager (four in 2006, five in 2007), and assistant coach, where the NFL reached all-time highs.<sup>22</sup> Clearly, the Rooney Rule has created opportunities that were not present before the rule was instituted.<sup>23</sup> Chicago Bears head coach Lovie Smith noted that the Rooney Rule provided him a coaching opportunity:

I would like to think owners would hire the best coach, but I'm here because of the Rooney [R]ule. It's good that guys like Mike Tomlin have gotten an opportunity to be a head football coach. I think Mike would have gotten an opportunity still, but I think it may speed up the process a little bit. Whenever you can get in front of someone is

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<sup>10</sup> Les Carpenter, *This Time, There is Little Question*, Washington Post, (Feb. 3, 2009), at E05.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* Super Bowl XLI featured two black head coaches, Dungy and Lovie Smith of the Chicago Bears.

<sup>13</sup> Associated Press, *Report Card gives NFL B+ for racial diversity*, ESPN.com, available at <http://sports.espn.go.com/nfl/news/story?id=2552438> (last updated Aug. 17, 2006).

<sup>14</sup> Lapchick, *supra* note 1.

<sup>15</sup> *Id.* at 6.

<sup>16</sup> *Id.* at 7.

<sup>17</sup> *Id.* at 3

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> The 2008 Racial and Gender Report Card: National Football League, (2008), available at [http://web.bus.ucf.edu/documents/sport/2008\\_racial\\_and\\_gender\\_report\\_card\\_national\\_football\\_league.pdf](http://web.bus.ucf.edu/documents/sport/2008_racial_and_gender_report_card_national_football_league.pdf)

<sup>22</sup> *Id.* at 1.

<sup>23</sup> Garber, *supra* note 4.

good, and of course the Rooney [R]ule allows you that opportunity.<sup>24</sup>

### HISTORY OF THE ROONEY RULE

In 2002, Johnnie Cochran, Jr., along with civil rights attorney Cyrus Mehri and Dr. Janice Madden, decided to take on the NFL and its lack of hiring minority coaches. Cochran succinctly stated his goal: “Now it is time for the NFL to step up and make change. We want a fundamentally fair opportunity.”<sup>25</sup> Cochran and Mehri were two of the most powerful and skillful attorneys in the country. Cochran was a high-profile attorney and successful litigator, and Mehri served as class counsel in the two biggest class-actions race discrimination lawsuits in American history.<sup>26</sup>

Cochran and Mehri prepared a report, based on Dr. Madden’s analysis of statistical data, showing that black coaches in the NFL were the subject of discrimination.<sup>27</sup> In their report, Cochran and Mehri noted that the NFL’s progress towards equal opportunity “remains dismal.”<sup>28</sup> The report called upon the NFL to “increase hiring opportunities for minorit[ies] among the final slate of coaching candidates for each open [coaching] position.”<sup>29</sup> Cochran and Mehri prepared the report because of their love of the game and a belief that “America’s game” should “represent America’s diversity and the best values in society.”<sup>30</sup> The powerful attorneys noted that they relied upon their experience battling discrimination, which existed in corporations such as Texaco, Coca-Cola, Johnson and Johnson, and Bell-South, in completing the report.<sup>31</sup> They further noted that African American coaches in the NFL faced the same hurdles that all African Americans faced in corporate America.<sup>32</sup>

Cochran and Mehri stated in the report that it had been their experience that minority professionals were required to “significantly out perform their white counterparts to advance half as far.”<sup>33</sup> Even if a minority employee does rise through the ranks, they are given less leeway for error.<sup>34</sup> According to the Cochran and Mehri Report, the same situation existed in the NFL head

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<sup>24</sup> Clifton Brown, *Bears Hope Takeaways Lead Them to a Title*, N.Y. Times, (Jan. 30, 2007), at D2.

<sup>25</sup> Jarrett Bell, *Group comes to defense of black NFL coaches*, USA TODAY, (Sept. 30, 2002), available at [http://www.usatoday.com/sports/football/nfl/2002-09-30-black-coaches\\_x.htm](http://www.usatoday.com/sports/football/nfl/2002-09-30-black-coaches_x.htm).

<sup>26</sup> Mehri was the lead counsel in *Ingram v. The Coca-Cola Company*, which settled in 2001 for \$192.5 million, and *Roberts v. Texaco, Inc.*, settling in 1997 for \$176 million. Dr. Madden is a professor at the University of Pennsylvania and holds a PhD in Economics from Duke University. For further information concerning Dr. Madden, see <http://www.ssc.upenn.edu/soc/People/maddenjanice.html> (last visited Nov. 15, 2007).

<sup>27</sup> Cochran, along with attorney Cyrus Mehri, prepared a report, “Black Coaches in the National Football League: Superior Performance, Inferior Opportunities,” and delivered it to the NFL, requesting the NFL adopt its “Fair Competition Resolution.” Johnnie L. Cochran & Cyrus Mehri, *Black Coaches in the NFL: Superior Performance, Inferior Opportunities*, September 30, 2002, available at [http://www.findjustice.com/files/Report\\_-\\_Superior\\_Performance\\_Inferior\\_Opportunities.pdf](http://www.findjustice.com/files/Report_-_Superior_Performance_Inferior_Opportunities.pdf); (last visited Nov. 15, 2007).

<sup>28</sup> *Id.* at 10.

<sup>29</sup> *Id.* at iii.

<sup>30</sup> *Id.* at i.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

coaching ranks for minorities; they had less room for error and were fired faster than their white counterparts.<sup>35</sup>

The attorneys created a database, which they attached to their report, showing the win-loss records for all NFL head coaches from 1986 – 2002.<sup>36</sup> They then retained noted labor economist Dr. Janice Madden of the University of Pennsylvania to summarize and analyze the data.<sup>37</sup> She compared the data of the five African American coaches to all other head coaches during that time period.<sup>38</sup> Dr. Madden came to several conclusions after evaluating the data, including the following:

1. Between 1986 – 2001, black coaches averaged 9.1 wins per season and white coaches averaged 8.1.
2. Teams with black head coaches made the playoffs 67% of the time, while white coaches made it 39%.
3. In the fifteen seasons, black coaches averaged 2.7 more wins than white coaches.
4. In the fifteen seasons, 66% of black coaches made the playoffs, to 20% of white coaches.
5. In the fifteen seasons, black coaches who were fired averaged 6.8 wins per season, while white coaches who were fired averaged 5.5.
6. 20% of black coaches who were fired made the playoffs that year, and 8% of white coaches who made the playoffs were fired.<sup>39</sup>

The Cochran and Mehri report argued that, by every objective criteria, black head coaches outperformed white head coaches.<sup>40</sup> The report further noted that “black coaches are the last hired and the first fired.”<sup>41</sup> Statistics showed that even though black coaches were outperforming their white counterparts, NFL owners tended to give more leeway to white coaches who failed to win than black coaches who failed to win.<sup>42</sup>

Cochran and Mehri had “a game plan for change.”<sup>43</sup> They noted that NFL commissioner Paul Tagliabue had made some efforts to remedy this unjust situation, but his efforts were inadequate.<sup>44</sup> The report stated, while the National Basketball Association (NBA) had made great strides in giving African Americans greater opportunities within the coaching ranks, the “NFL franchises continue to disappoint.”<sup>45</sup> Cochran and Mehri thought it was the right time to push the issue so they included in their report a proposal they called the Fair Competition Resolution.<sup>46</sup> They requested that the commissioner require a vote by team owners on the

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at ii and Exhibit A, NFL Coaches and Win-Loss Records 1986 – 2001.

<sup>37</sup> Janice Fanning Madden, *Differences in the Success of NFL Coaches by Race, 1990 – 2002, Evidence of Last Hire, First Fire*, Journal of Sports Economics, Vol. 5 No. 1, Feb. 2004.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Cochran & Mehri Report, at ii, *supra* note 27.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at iii, Section C.

<sup>44</sup> *Id.* at iii.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

resolution before the next hiring cycle.<sup>47</sup> The executive summary of the report stated: “The foundation of any fair competition is a level playing field. It is high time America’s game was played on one.”<sup>48</sup>

The report noted that recent hiring trends showed no signs of progress with regard to the hiring of African Americans.<sup>49</sup> Cochran and Mehri examined the hiring cycle for NFL coaches for a three-year period.<sup>50</sup> During that period, twenty-one head coaches were hired and only two were black coaches.<sup>51</sup> Only Herman Edwards, hired to coach the New York Jets, counted as a new hire since Dungy, the other African American hired during the three-year period, had previously served as head coach of the Tampa Bay Buccaneers when the Indianapolis Colts hired him in 2002.<sup>52</sup>

In 2000, nine NFL coaches were hired, all white.<sup>53</sup> In 2001, six NFL coaches were hired and only one was African American: Edwards (Jets).<sup>54</sup> Marvin Lewis, who had established a reputation as an elite assistant coach<sup>55</sup>, was interviewed by the Buffalo Bills for their head coaching vacancy, but was not hired.<sup>56</sup> In 2002, there were seven openings and only one black coach was hired (Dungy).<sup>57</sup> The hiring of Dungy failed to increase the number of African American coaches in the League since he was moving from Tampa Bay to Indianapolis.<sup>58</sup> When the 2002 season started, the number of black coaches in the NFL had actually decreased from three to two.<sup>59</sup>

Cochran and Mehri explained that, based on their experience in corporate America, “the complexion of the decision makers often creates a barrier to equal opportunity.”<sup>60</sup> They noted that the team owner is the final decision maker for a new head coach, and all NFL owners are white.<sup>61</sup> According to Cochran and Mehri, the general manager of the team is the second most important person in the decision-making process.<sup>62</sup> At the time Cochran and Mehri prepared the report, there was only one black general manager: Ozzie Newsome of the Baltimore Ravens.<sup>63</sup> At the beginning of the 2008 regular season, there were five,<sup>64</sup> including Jerry Reese of the New York Giants, the

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<sup>47</sup> *Id.* at iii.

<sup>48</sup> *Id.* at iv.

<sup>49</sup> *Id.* at 10.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 10 n.12.

<sup>53</sup> *Id.* at 10.

<sup>54</sup> *Id.* at 11.

<sup>55</sup> See Cincinnati Bengals, Marvin Lewis biography, at [http://www.bengals.com/team/coach.asp?coach\\_id=7](http://www.bengals.com/team/coach.asp?coach_id=7) (last visited March 22, 2009). On Jan. 14, 2003, the Cincinnati Bengals hired Lewis to be their head coach. As of the publication of this article, he remains in that position.

<sup>56</sup> Cochran & Mehri Report, at 11, *supra* note 27.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 13.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> Associated Press, *supra* note 6.

first African American general manager of a Super Bowl team.<sup>65</sup> While the League has certainly made strides in hiring African Americans for front office positions, there has never been a person of color as a President or CEO of an NFL team.<sup>66</sup>

Cochran and Mehri argued that the failure to hire minority candidates “is not always a case of overt or conscious racism; more often, it is about people being most comfortable with those who are most familiar to them.”<sup>67</sup> The report also argued that when a black coach is repeatedly passed over for a head coaching position, he loses credibility.<sup>68</sup> Cochran and Mehri did not want the NFL to require teams to hire minority coaches, they merely wanted certain procedures implemented to ensure the process was fair.<sup>69</sup> In the report, they also encouraged fans, sportswriters, commentators, players, and coaches to write to the NFL to support their proposed resolution.<sup>70</sup> In their concluding remarks in the report, Cochran and Mehri noted that “discrimination always damages society,” but discrimination in the NFL is “more devastating because the league operates at the epicenter of national consciousness.”<sup>71</sup> By engaging in this type of discrimination, the message passed on to children is one of racial exclusion.<sup>72</sup> When Cochran released the report, he threatened to sue the NFL unless they made substantial progress in hiring African American head coaches.<sup>73</sup>

Cochran and Mehri had stated their case. The NFL was facing a potential public relations nightmare. Would they choose to square off with two of American’s most powerful lawyers over its bleak record of hiring minority head coaches? It was a face-off between two high-powered, highly visible attorneys and a large corporate giant, the NFL. The League was facing credible data that clearly showed African American coaches were the product of discrimination.<sup>74</sup>

In response to Cochran and Mehri, the NFL chose to form a committee on workplace diversity.<sup>75</sup> The committee’s chairperson was Dan Rooney, owner of the Pittsburgh Steelers.<sup>76</sup> By December 2002, the committee had drafted several recommendations which had the support

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<sup>65</sup> George Vecsey, *A Dream is Achieved, a Legacy is Established*, N.Y. Times, (Jan. 1, 2008), at D1.

<sup>66</sup> Lapchick, *supra* note 1

<sup>67</sup> Cochran & Mehri Report, at 13, *supra* note 27

<sup>68</sup> *Id.* at 14.

<sup>69</sup> *Id.* at 11.

<sup>70</sup> *Id.* at 16.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Associated Press, *Cochran says black coaches held to different standard*, ESPN.com, available at <http://assets.espn.go.com/nfl/news/2002/0930/1439447.html> (last updated Oct. 2, 2002).

<sup>74</sup> See generally Cochran & Mehri Report, *supra* note 27. One legal defense the league may have been contemplated was lack of standing. However, Cochran and Mehri were once again a step ahead of the NFL. They had formed the Fritz Pollard Alliance which was comprised of former African American athletes who were also interested in ensuring equal opportunities existed for minorities in the hiring process in the NFL. See Fritz Pollard Alliance Mission Statement, <http://www.fpal.org/mission.php> (last visited 11/30/07). The Alliance could serve as the plaintiff in any class action that may have been filed.

<sup>75</sup> Dave Goldberg, *NFL Forms Minority Hiring Committee*, Associated Press, (Oct. 31, 2002), available at <http://www.findjustice.com/sub/nfl-forms-hiring.jsp>.

<sup>76</sup> *Id.*

of every NFL owner, including a proposal deemed the “Rooney Rule.”<sup>77</sup> The rule required each NFL team to interview at least one minority candidate when interviewing candidates to fill a head coaching vacancy.<sup>78</sup> One year later, in December 2003, the NFL Committee on Workplace Diversity issued a set of guidelines for teams to follow during the interviewing process.<sup>79</sup> These guidelines had ten components.

First, before beginning the interviewing process, the interviewing team should prepare a job description setting forth the qualities they were looking for in a head coach and defining the role of the head coach. Second, the interviewing team should put a search timeline in place indicating when key decisions must be made.<sup>80</sup> Third, the team should also ensure that they identify a “deep and diverse” pool of head coaching candidates.<sup>81</sup> Fourth, the committee urged team owners to personally contact each candidate about the interview.<sup>82</sup> Fifth, the committee informed teams that a request for an interview should comply with NFL anti-tampering rules.<sup>83</sup> Sixth, invitations to interview for the position should be sent via letter from the club to the candidate.<sup>84</sup> Seventh, the committee stated that interviews by telephone were inadequate and were discouraged.<sup>85</sup> Eighth, the same individual was not required to interview each applicant.<sup>86</sup> Ninth, if candidates refused to interview for the position, that information should be sent to the Commissioner.<sup>87</sup> Finally, the committee recommended no head coaching changes should occur during the NFL season. However, if a club chose to fire its coach during the season, it could hire from within the organization without engaging in the formal interview process.<sup>88</sup>

The rule was now firmly in place. In 2003, the Detroit Lions were looking for a new head coach.<sup>89</sup> Well aware of the Rooney Rule, Matt Millen, the Lions’ general manager, contacted five minority prospects concerning the Lions’ head coaching vacancy.<sup>90</sup> All five refused because they believed the Lions wanted to hire Steve Mariucci, the former coach of the San Francisco 49ers.<sup>91</sup> Millen eventually hired Mariucci, the only candidate he interviewed for the job.<sup>92</sup> The

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<sup>77</sup> Mark Maske, *Diversity Committee Rejects Rule Change*, Washington Post, Sec. D03, April 9, 2004. For a detailed history of the Rooney Rule, see Bram Maravent, *Is the Rooney Rule Affirmative Action? Analyzing the NFL’s Mandate to Its Clubs Regarding Coaching and Front Office Hires*, 13 Sports Law. J. 233 (2006).

<sup>78</sup> *Id.*

<sup>79</sup> Press Release, NFL, *NFL Issues Guidelines for Interviewing of Head Coaching Candidates*, Dec. 9, 2003. See also Dave Anderson, *Minority Candidates Should Get Fairer Shake*, N.Y. Times, (Dec. 16, 2003), at D3.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* The NFL’s Committee on Workplace Diversity also began a pilot program for coaching preparation. Press Release, NFL, *NFL Clubs To Implement Comprehensive Program To Promote Diversity in Hiring*, Dec. 20, 2002.

<sup>89</sup> The Lions finished 3 – 13 in 2002 under the guidance of Marty Mornhiweg and were seeking a coach who could bring them back to their glory days. See <http://www.pro-football-reference.com/teams/det2002.htm> (last visited Nov. 15, 2007).

<sup>90</sup> Associated Press, *Millen fined for not interviewing minority candidates*, ESPN.com, available at <http://assets.espn.go.com/nfl/news/2003/0725/1585560.html> (last updated July 25, 2003).

<sup>91</sup> Associated Press, *Lions’ Millen fined \$200K for not interviewing minority candidates*, CBS Sportsline, available at <http://cbs.sportsline.com/nfl/story/6498949> (last updated July 25, 2003).

NFL fined Millen \$200,000.00 for his actions.<sup>93</sup> The fine did not sit well with Lions owner William Clay Ford, who fired back at the League:

This is deliberately singling out the Lions, putting a focus on us for violating a policy that -- as we talk right now -- has not been formalized or approved by the membership. I think it is a shame and totally unwarranted. I've lost a lot of respect for the commissioner because of the way he has handled this. He has made a scapegoat out of the Detroit Lions, and I think the timing showed that. He waited six months, then nailed us on the eve of camp opening when attention would be on us."<sup>94</sup>

After the fine was administered, Kellen Winslow, the then-Executive Director of The Fritz Pollard Alliance (FPA)<sup>95</sup>, stated:

With today's announcement, the Rooney Rule ... has finally arrived. When the Rooney Rule was first announced in December, our attorneys, Johnnie L. Cochran Jr. and Cyrus Mehri, applauded the NFL's intent, but stated that the key was the implementation and enforceability of the Rule...Now, on behalf of FPA's members, I am happy to applaud the League for making the Rooney Rule enforceable, which is a major step in leveling the playing field in the NFL. We are pleased that the Rule now has teeth and hope today's announcement sends a strong message to owners to embrace inclusive hiring practices going forward. Ultimately, we hope that the Rooney Rule will be expanded to all coaching, scouting and front office positions.<sup>96</sup>

Al Davis of the Oakland Raiders, the first owner to hire an African American coach (Art Shell) in the modern era,<sup>97</sup> openly criticized the Rooney Rule.

I'd say that the Raiders have done more against class consciousness and more for diversity than any person or group in sports, other than Jackie Robinson. That said, I find fault with the NFL program because it only addresses the process, not the reality. What good is putting a process in place if the results are still going to be unsatisfactory? The league means well. They

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<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> Associated Press, *Ford says he has lost respect for Tagliabue*, ESPN.com, available at <http://assets.espn.go.com/nfl/news/2003/0727/1586270.html> (last updated July 29, 2003).

<sup>95</sup> The Fritz Pollard Alliance "was organized for the purposes of promoting diversity and equality of job opportunity in the coaching, front office and scouting staffs of National Football League" see, <http://www.fpal.org/mission.php> (last accessed March 25, 2008). The current director of the FPA is former NFL great John Wooten.

<sup>96</sup> Press Release, The Fritz Pollard Alliance, *Statement of Kellen Winslow, Executive Director of The Fritz Pollard Alliance*, July 25, 2003, available at <http://www.fpal.org/news-kw-Jul252003.php>; (last visited Sept. 28, 2007).

<sup>97</sup> Madden, *supra* note 37.



want to do something. But it's easier to talk about this than to solve it.<sup>98</sup>

Some have argued minority candidates will just serve as "token" candidates to be in compliance with the rule.<sup>99</sup>

There have been some issues with teams who merely engage in alleged sham interviews to comply with the rule because they already have their sights set on a candidate. Dallas Cowboys owner Jerry Jones wanted to hire Bill Parcells, a Caucasian, for the Cowboys vacant head coach position, yet spent thirty minutes on the phone with Dennis Green, an African American, thereby complying with the Rooney Rule.<sup>100</sup> The same circumstances occurred when the Miami Dolphins sought to hire a new head coach after the 2004 season. To comply with the Rooney Rule, the Dolphins interviewed Art Shell,<sup>101</sup> who became the first African American coach in the NFL's modern era when Al Davis hired him to replace Mike Shanahan as head coach of the Oakland Raiders in 1989.<sup>102</sup> The Dolphins also wanted to interview Randy Shannon, then an assistant coach at the University of Miami, but he believed there was no possibility of being hired for the position.<sup>103</sup> African American John Hackney, a Cornell MBA student and former Holy Cross football player, offered his services as an interviewee solely to help teams comply with the rule.<sup>104</sup> In the end, the Dolphins ended up hiring Nick Saban,<sup>105</sup> a Caucasian who coached the team just one season before returning to the college game.<sup>106</sup>

Although some teams appear to have paid mere lip service to the Rooney Rule, the rule, as evidenced by the increase of African American head coaches in the last six years, has clearly opened doors for those minority candidates seeking coaching positions in the NFL.<sup>107</sup>

### THE ROONEY RULE IN OTHER SPORTS

The Rooney Rule or a version of the rule has begun to appear in other sports. There has been some discussion about proposing a rule similar to that of the Rooney Rule at the collegiate

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<sup>98</sup> Paul Zimmerman, *Pride or Prejudice? Minority hiring in the NFL isn't a clear-cut topic*, SI.com, at [http://sportsillustrated.cnn.com/inside\\_game/dr\\_z/news/2003/03/27/drz\\_insider/](http://sportsillustrated.cnn.com/inside_game/dr_z/news/2003/03/27/drz_insider/) (last updated March 27, 2003).

<sup>99</sup> Shaun Powell, *Souled Out?, How Blacks Are Winning and Losing in Sports*, p. 217, Human Kinetics, 2008.

<sup>100</sup> See Jay Nordlinger, *Of the Rooney Rule, Classically Black, and Other Distinctively American Outrages*, NAT'L REV. ONLINE, Sept. 2, 2003, <http://www.nationalreview.com/impromptus/impromptus090203.asp>.

<sup>101</sup> Joe Schad, *Shell Says He Wants Shot With Dolphins*, The Palm Beach Post, (Dec. 19, 2004), at 1B.

<sup>102</sup> Michael Janofsky, *Shell Is First Black Coach in N.F.L. Since 20s*, N.Y. Times, (Oct. 4, 1989), at D25.

<sup>103</sup> Alex Marvez and Omar Kelly, *UM's Shannon Rejects Interview*, Orlando Sentinel, (Dec. 19, 2004), at C11.

Shannon is now the head coach at the University of Miami.

<sup>104</sup> Marianne M. Jennings, Rush Limbaugh: Part I, Jewish World Rev., (Oct. 5, 2003), at

<http://www.jewishworldreview.com/cols/jennings1011503.asp>.

<sup>105</sup> Len Pasquarelli, LSU coach decides NFL can't wait, ESPN.com, at

[http://sports.espn.go.com/nfl/columns/story?columnist=pasquarelli\\_len&id=1953234](http://sports.espn.go.com/nfl/columns/story?columnist=pasquarelli_len&id=1953234) (last updated Dec. 26, 2004).

<sup>106</sup> Mark Maske, *Saban Leaves Dolphins to Coach Alabama*, Washington Post, Jan. 4, 2007, at E05.

<sup>107</sup> Garber, *supra* note 4. See also Scott Brown, *Rooney Rule helping minority coaching candidates*, Pittsburgh Tribune-Review, (Jan. 11, 2007), available at

[http://www.pittsburghlive.com/x/pittsburghtrib/sports/steelers/s\\_488048.html](http://www.pittsburghlive.com/x/pittsburghtrib/sports/steelers/s_488048.html).

level.<sup>108</sup> At the beginning of the 2007 college football season, there were only twelve minority coaches at the 220 schools in the Football Bowl Subdivision (formerly NCAA Division I-A) and Football Championship Subdivision (formerly NCAA Division I-AA).<sup>109</sup> Richard Lapchick has called college football the most segregated sport and called upon the NCAA to adopt its own version of the Rooney Rule, named the “Eddie Robinson Rule.”<sup>110</sup> Lapchick stated, “The report card has been a start but has not been sufficient. We have called on the NCAA and president Myles Brand to adopt an ‘Eddie Robinson Rule,’ a college version of the NFL’s Rooney Rule mandating that people of color be interviewed for all head coaching positions with sanctions for those who do not”.<sup>111</sup> Richard Lapchick believes Brand is an “honest broker” but does not possess the necessary tools to make real change.<sup>112</sup> Before the House Subcommittee on Commerce, Trade, and Consumer Protection, Brand testified:

Some observers of intercollegiate athletics have promoted a collegiate version of the Rooney Rule that has diversified the interview pool for the National Football League (NFL). Such a rule will not work for higher education as a whole, nor can a specific sport be singled out to operate apart from the institution. More importantly, such a rule is not necessary. I began working with the Black Coaches Association (BCA) four years ago to address the under-representation of African-Americans among head football coaches and helped that organization design the Minority Hiring Report Card that grades and publicizes the results of interview and hiring efforts in Division I. The idea was that a more open and inclusive search would allow talent, regardless of race to rise to the top and be hired.<sup>113</sup>

The Black Coaches and Administrators (BCA) stated that it would consider a lawsuit because of the lack of progress for minorities at some of the college coaching ranks.<sup>114</sup> When Texas A&M University was looking for a replacement for departed head coach Dennis Franchione, the school quickly replaced him with a Caucasian, former Green Bay Packers head coach Mike Sherman,<sup>115</sup> the only candidate interviewed for the job.<sup>116</sup> Floyd was understandably upset:

I’m disappointed in that process. I’m disappointed in him [Bill Byrne, Director of Athletics at Texas A&M] because it’s not like he doesn’t

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<sup>108</sup> Bob Hohler, *Rooney rule cited for its effectiveness*, Boston Globe, (Sept. 21, 2006), at E9. See also Richard Lapchick, *History Making Black History Month: Can Our Colleges do as Well?*, Sports Bus. J., Feb. 26, 2007.

<sup>109</sup> *Id.* The 220 schools do not include non-historically black colleges and universities. The Football Bowl Subdivision and Football Championship Subdivision were formally known as Division I-A and I-AA, respectively.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> News Services, *Report Rebukes College Football for Lack of Diversity Hires*, Washington Post, (Oct. 25, 2007), at E02.

<sup>113</sup> NCAA News Release, *Statement of Myles Brand, NCAA President, Before The House Subcommittee on Commerce, Trade And Consumer Protection*, NCAA.org, Feb. 28, 2007, at <http://www.ncaa.org/wps/ncaa?ContentID=3303>.

<sup>114</sup> News Services, *supra* note 112.

<sup>115</sup> Jack Carey & Steve Wieberg, *Texas A&M draws criticism for interviewing only Sherman*, USA Today, (Nov. 26, 2007), available at [http://www.usatoday.com/sports/college/football/big12/2007-11-26-bca-aggies\\_N.htm](http://www.usatoday.com/sports/college/football/big12/2007-11-26-bca-aggies_N.htm).

<sup>116</sup> *Id.*

know. It's a blatant disregard for ... doing it the right way. I hope student-athletes and other coaches and people of color take notice of that. I would like to think that, based upon what we saw last year with (two black coaches in) the Super Bowl and other things, that we'd never have to deal with a process like that. ... Maybe we're wrong.<sup>117</sup>

The executive director of the BCA does not care which vehicle is used (Rooney Rule, Eddie Robinson Rule or Title VII), "but something is needed."<sup>118</sup> In response to continued criticism, athletic directors of the nation's major colleges have begun to draw some guidelines that should improve the poor minority hiring record for colleges and universities.<sup>119</sup> There have been some who have indicated that the alumni and boosters of the universities have prevented programs in the hiring of minorities in college football.<sup>120</sup>

In 1999, Major League Baseball (MLB) commissioner Bud Selig issued a memorandum to clubs directing them to provide the Commissioner's Office with the names of all minority candidates they planned to interview for field manager and front-office vacancies.<sup>121</sup> However, Selig exempted the Los Angeles Dodgers from complying with the directive when they searched for a new manager following the 2007 season because of the team's minority-friendly hiring history.<sup>122</sup> The Dodgers ended up hiring Joe Torre, formerly of the New York Yankees.<sup>123</sup> The Florida Marlins, by contrast, did not enjoy the same treatment as the Dodgers. In 2003, Selig fined the Marlins for failing to follow hiring guidelines when they hired Jack McKeon.<sup>124</sup> The commissioner has the authority to fine a club \$2 million but the fine was reported to be \$100,000.<sup>125</sup>

In 2007, the Houston Astros hired African American Cecil Cooper as their manager after they fired Phil Garner, a Caucasian.<sup>126</sup> Selig indicated that Cooper deserved the job on a full-time basis, and Cooper was named the permanent manager in August 2007.<sup>127</sup> The 2006 Racial and Gender Report Card for Major League Baseball gave baseball a B+ for race. They received an A+ in the race category for the league central offices.<sup>128</sup> MLB received a B/B+ for managers and an A+ for coaches.<sup>129</sup>

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<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> Steve Wieberg, *Major-college ADs tackle minority hiring*, USA Today, (Oct. 3, 2007), available at [http://www.usatoday.com/sports/college/football/2007-10-02-minority\\_N.htm](http://www.usatoday.com/sports/college/football/2007-10-02-minority_N.htm).

<sup>120</sup> Selena Roberts, *College Booster Bias Is Delaying Minority Hiring*, N.Y. Times, (Jan. 28, 2007), at 81.

<sup>121</sup> Jeff Baker, *MLB: Minorities Must Be Considered; Commissioner's 1999 Directive Applies To Hiring of Managers, Front-Office Executives*, Baltimore Sun, (June 21, 2007), at 4E.

<sup>122</sup> Murray Chass, *Selig Allows Dodgers to Bypass Hiring Rules*, N.Y. Times, (Nov. 1, 2007), at D3. At the time Selig exempted the Dodgers from the directive, African Americans, women, Latinos, and Asians made up thirty-eight percent of the team's staff.

<sup>123</sup> Jack Curry, *Journey From Brooklyn: The Dodgers Hire Torre*, New York Times, (Nov. 2, 2007), at D4.

<sup>124</sup> *Club fined for not following minority-hiring guidelines*, ESPN.com news services, available at <http://sports.espn.go.com/espn/print?id=1560686&type=news> (last updated June 6, 2003).

<sup>125</sup> *Id.*

<sup>126</sup> Chris Duncan, *Cecil Cooper Named Permanent Astros Manager*, USA Today, (Sept. 28, 2007), available at [http://www.usatoday.com/sports/baseball/nl/astros/2007-09-28-cooper-manager\\_N.htm](http://www.usatoday.com/sports/baseball/nl/astros/2007-09-28-cooper-manager_N.htm).

<sup>127</sup> News Services, *Selig: Cooper Deserves the Astros' Job*, Washington Post, (Aug. 31, 2007), at E09.

<sup>128</sup> Lapchick, *supra* note 1, at 5.

<sup>129</sup> *Id.* at 6.

## CONCLUSION

It is now clear the NFL's implementation of the Rooney Rule has created more opportunities in the hiring marketplace. In 2002, there were only two African American coaches in the NFL. Since the League instituted the Rooney Rule, eleven African American coaches have been hired. It goes a little further than the MLB policy that requires a team to interview a minority candidate, and that has paid dividends.

The Rooney Rule will continue to have its effect on the sports world, and possibly the corporate world as well. The rule has accomplished its initial purpose, to bring to light the issue of the lack of minority hiring in the coaching ranks of the NFL. The rule has now become the subject of much discussion amongst owners, players, and media. It was necessary to provide an opportunity to many who would have never received an opportunity to show they could be successful head coaches in the NFL. It is clear the Rooney Rule has opened the door of opportunity for many who never would have had a chance. Hopefully, the door will now stay open and the NFL and other sports will see the necessity of continuing to provide opportunities for everyone.