

GENDER DIVERSITY IN THE NFL: THE IMPORTANCE OF FEMALE  
LEADERSHIP IN A HISTORICALLY MALE-DOMINATED ORGANIZATION

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## INTRODUCTION

The National Football League (“NFL”) is commonly known for its open display of masculinity, brute physicality, and controlled violence.<sup>2</sup> The domestic violence and gender bias issues that occur within the League, however, are not openly displayed.<sup>3</sup> Although women are the subjects of these prominent issues within the League, a strong disconnect exists between the NFL and women.<sup>4</sup> The disconnect is evidenced by the NFL’s failure to properly address domestic violence against women and the inadequate number of women holding executive positions within the League.<sup>5</sup>

After a domestic violence scandal involving a coveted League player made national headlines, male NFL executives faced public pressure to “end their policy of neglect toward female victims of NFL player’s abuse.”<sup>6</sup> The scandal revealed dozens of other League players implicated in domestic violence against women.<sup>7</sup> After suspending the player for two games NFL Commissioner, Roger Goodell, and his colleagues were scrutinized for failing to adequately address the issue of public concern.<sup>8</sup> Goodell had the authority to impose a greater penalty, but declined to do so in an effort to protect the “values and integrity” of the League.<sup>9</sup>

Under public pressure, the scandal caused the League to examine its record of hiring women.<sup>10</sup> The NFL acknowledged that the League has done a poor job of hiring women, especially in executive positions.<sup>11</sup> After a graphic video of the incident was released to the public, NFL executives once again

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<sup>2</sup> Garrett FitzGerald, *NFL: Could Female Leadership Be on Its Way in Wake of Ray Rice Incident?*, BLEACHER REPORT, Sept. 11, 2014, <http://bleacherreport.com/articles/2195586-nfl-female-leadership-could-be-on-its-way-in-wake-of-ray-rice-incident>.

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

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

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

<sup>7</sup> Michael Martinez & Priscilla Riojas, *NFL's Past Penalties for Domestic Violence "A Different Story,"* CNN, Sept. 16, 2014, 10:37 AM, [www.cnn.com/2014/09/09/us/nfl-players-domestic-violence-accusations/](http://www.cnn.com/2014/09/09/us/nfl-players-domestic-violence-accusations/).

<sup>8</sup> Chris Greenberg, *Roger Goodell Admits NFL's Failure "Starts with Me," But Won't Resign,* THE HUFFINGTON POST, Sept. 19, 2014 4:17 PM, [www.huffingtonpost.com/2014/09/19/roger-goodell-nfl-press-conference\\_n\\_5851924.html](http://www.huffingtonpost.com/2014/09/19/roger-goodell-nfl-press-conference_n_5851924.html).

<sup>9</sup> *Id.*; See also Brant Webb, *Unsportsmanlike Conduct: Curbing the Trend of Domestic Violence in the National Football League and Major League Baseball*, 20 AM. U. J. GENDER SOC. POLICY & L. 741, 753 (2012).

<sup>10</sup> See Greenberg, *supra* note 8.

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

began to seriously consider diversifying the League's management with women as an attempt to end the historic alignment of NFL sports solely with masculinity and the corresponding violence.<sup>12</sup> The National Football League, a historically male-dominated organization, needs to diversify its administration with the inclusion of women to better address its culture minimizing domestic violence and sexual assaults instigated by NFL players.

This Comment will review the NFL's male-dominated executive board's neglect of the issue of domestic violence and will recommend that the League hire women to diversify its managerial leadership of an organization typically and historically dominated by men. Part I of this Comment will describe domestic violence associated with the NFL, the Ray Rice scandal, and similar instances of player misconduct involving violent acts against women that gained national publicity. Additionally, Part I will explain the League Commissioner, Roger Goodell's, failure to adequately address the issue of domestic violence as a lead representative for the NFL. Part II will explore the NFL's personal conduct policies that were in place during the scandals, how the executive board minimally penalized players for violence against women, and organizational responses to the NFL's mishandling of domestic violence issues in the League. Part III will discuss NFL's past hiring practices under the Rooney Rule, hiring minority males into leadership positions to resolve racial discrimination issues without addressing hiring policies that disparately impacted the hiring of women. Part III will also analyze the importance of the employment of women, including women of color, as future leaders in the NFL.

## **I. HISTORY OF DOMESTIC VIOLENCE IN NFL**

The history of the NFL is littered with reports of its players getting involved in domestic violence disputes.<sup>13</sup> NFL representatives have recognized that domestic violence is a recurring issue of concern

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<sup>12</sup> *Id.*

<sup>13</sup> Bethany P. Withers, *The Integrity of the Game: Professional Athletes and Domestic Violence*, 1 HARV. J. SPORTS & ENT. L. 145 (2010); see Syda Kosofsky, *Toward Gender Equality in Professional Sports*, 4 HASTINGS WOMEN'S L.J. 209 (1993); see also ESPN News Services, *Jerry Angelo: "We Knew It Was Wrong,"* ESPN.COM, Oct. 10, 2014, 10:22 AM, [espn.go.com/nfl/story/\\_/id/11672631/ex-bears-gm-jerry-angelo-hundreds-domestic-violence-cases-ignored](http://espn.go.com/nfl/story/_/id/11672631/ex-bears-gm-jerry-angelo-hundreds-domestic-violence-cases-ignored).

deeply ingrained in the fabric of the League.<sup>14</sup> Following reported incidents, “the NFL frequently makes a public statement expressing regret, insisting such conduct will not be tolerated in the future, and emphasizing that most players in the League are upstanding citizens.”<sup>15</sup> Despite these protestations, the NFL has failed to take appropriate steps within its broad discretion to address the recurrent issue of domestic violence against women.<sup>16</sup>

On February 15, 2014, Baltimore Ravens star running back Ray Rice struck and knocked out his then-fiancée, Janay Palmer, in a hotel elevator.<sup>17</sup> The hotel surveillance footage later showed both parties involved in the physical altercation, striking each other with their hands.<sup>18</sup> The footage additionally revealed Rice dragging his fiancé out of the elevator, as she remained unconscious.<sup>19</sup> After the incident, both Rice and Palmer were arrested and charged with simple assault domestic violence.<sup>20</sup>

Although “Rice was initially charged with simple assault, a misdemeanor offense, a grand jury indicted Rice for third-degree aggravated assault, a felony offense.”<sup>21</sup> Rice initially pleaded not guilty to the charges and applied for candidacy in a pretrial intervention program.<sup>22</sup> He was given approval to enter into a pretrial intervention (“PTI”) program by the local prosecutor after consideration of all relevant

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<sup>14</sup> Joel Michael Ugolini, *Even A Violent Game Has Its Limits: A Look at the NFL's Responsibility for the Behavior of Its Players*, 39 U. Toledo L. Rev. 41 (2007).

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

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

<sup>17</sup> *NFL Arrest Database*, U-T SAN DIEGO, [www.utsandiego.com/nfl/arrests-database/?appSession=929126280573607&RecordID=&PageID=2&PrevPageID=&cpipage=2&CPISortType=&CPorderBy=](http://www.utsandiego.com/nfl/arrests-database/?appSession=929126280573607&RecordID=&PageID=2&PrevPageID=&cpipage=2&CPISortType=&CPorderBy=).

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

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

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

<sup>21</sup> Rebecca Elliott, *Everything You Need to Know About the Ray Rice Case*, TIME, Sept. 11, 2014, [time.com/3329351/ray-rice-timeline/](http://time.com/3329351/ray-rice-timeline/). If convicted under the third degree aggravated assault, Rice would face up to five years in jail rather than a fine, which is the typical punishment for simple assault. *Id.*

<sup>22</sup> A.J. Perez, *Ray Rice Accepted into Diversion Program*, NJ ADVANCE MEDIA, May 20, 2014 9:57 PM, [www.nj.com/rutgersfootball/index.ssf/2014/05/ravens\\_rb\\_ray\\_rice\\_accepted\\_into\\_diversion\\_program\\_report\\_says.html](http://www.nj.com/rutgersfootball/index.ssf/2014/05/ravens_rb_ray_rice_accepted_into_diversion_program_report_says.html).

information in light of applicable law.<sup>23</sup> By being accepted into the diversion program, Rice avoided prosecution<sup>24</sup> and possible jail time for the domestic assault.<sup>25</sup>

Prior to the surveillance footage being released to the public, League Commissioner, Goodell, suspended Rice for two games for the domestic violence incident. Goodell had the authoritative power to enforce a stricter penalty at the outset, but at that time declined to do so.<sup>26</sup> He later used a stricter measure of discipline after video footage of the assault went viral.<sup>27</sup> The Ravens cut Rice from the team and the Goodell made the decision to ban Rice from the League indefinitely.<sup>28</sup>

Prior to the Ray Rice incident involving domestic violence, the NFL has failed to use its broad disciplinary authority against players that have committed acts of domestic violence against women.<sup>29</sup> Similar to the Rice incident, the NFL's leadership imposed light penalties, if any, in prior incidents involving other League players.<sup>30</sup> The lack of discipline used to punish the players involved, "points out the [double standard] of a league that makes very public appeals to women, but hands down such a light punishment for a domestic violence offense."<sup>31</sup>

In July 2012, Dez Bryant of the Dallas Cowboys was arrested on a misdemeanor domestic violence charge after allegedly assaulting his mother.<sup>32</sup> The charge was dismissed in November 2012 on the condition that Bryant undergo anger counseling and serve a one year probation sentence.<sup>33</sup> League

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<sup>23</sup>*Id.*

<sup>24</sup> If the intervention program is completed successfully, which would take at least a year, the third-degree aggravated assault charge would be dismissed. Although the arrest would remain on his record, there would be no conviction. *Id.* The simple assault charge against Palmer was dropped. *Id.*

<sup>25</sup> Ray Wilson, *Ray Rice to Enter Pretrial Intervention Program*, CBSSPORTS.COM, May 20, 2014, 4:57 PM, [www.cbssports.com/nfl/eye-on-football/24568125/ray-rice-to-enter-pretrial-intervention-program-avoid-jail-time](http://www.cbssports.com/nfl/eye-on-football/24568125/ray-rice-to-enter-pretrial-intervention-program-avoid-jail-time).

<sup>26</sup> Brant Webb, *Unsportsmanlike Conduct: Curbing the Trend of Domestic Violence in the National Football League and Major League Baseball*, 20 AM. U. J. GENDER SOC. POLICY & L. 741, 741 (2012).

<sup>27</sup> Sam Mellinger, *Goodell, NFL Have Fumbled Dealing with Domestic Abuse*, THE KANSAS CITY STAR, Sept. 29, 2014, 12:42 PM, [www.kansascity.com/sports/spt-columns-blogs/sam-mellinger/article2101428.html](http://www.kansascity.com/sports/spt-columns-blogs/sam-mellinger/article2101428.html).

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

<sup>29</sup> ESPN News Services, *Jerry Angelo: 'We Knew It Was Wrong'*, ESPN.COM (Oct. 10, 2014, 10:22 AM) [espn.go.com/nfl/story/\\_/id/11672631/ex-bears-gm-jerry-angelo-hundreds-domestic-violence-cases-ignored](http://espn.go.com/nfl/story/_/id/11672631/ex-bears-gm-jerry-angelo-hundreds-domestic-violence-cases-ignored).

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

<sup>31</sup> Mike Durkin, *Comparing Ray Rice's 2-Game Suspension for Punching Fiancée*, FOX9.COM, July 24, 2014, 11:17 PM, [www.myfoxtwincities.com/story/26104180/comparing-ray-rices-2-game-suspension-for-punching-fiancee](http://www.myfoxtwincities.com/story/26104180/comparing-ray-rices-2-game-suspension-for-punching-fiancee).

<sup>32</sup> See Martinez, *supra* note 7.

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

Commissioner Goodell did not suspend Bryant for violating NFL's personal conduct policy.<sup>34</sup> Instead, Goodell imposed a strict set of conduct guidelines, which included a curfew, counseling twice a week, and no alcohol.<sup>35</sup> Dez Bryant remained with the team.<sup>36</sup>

In November 2010, Will Smith of the New Orleans Saints was arrested and charged with domestic abuse battery after allegedly grabbing his wife by the hair and dragging her down the street.<sup>37</sup> The local prosecutor dropped criminal charges when Smith completed community service and counseling.<sup>38</sup> League Commissioner Goodell did not suspend Smith for violating NFL's personal conduct policy.<sup>39</sup> Smith remained with the team.<sup>40</sup>

In December 2003, Larry Johnson of the Kansas City Chiefs was charged with aggravated assault and domestic battery for allegedly brandishing a gun at his home during an argument with his ex-girlfriend.<sup>41</sup> Johnson accepted a plea agreement for a diversion program, served 120 hours of community service, and anger management counseling.<sup>42</sup> Two years later, in 2005, Larry Johnson was cited for domestic abuse assault after an altercation with his girlfriend at a bar.<sup>43</sup> Those charges were dropped and he remained with the team.<sup>44</sup> In 2008, Johnson was charged with simple assault and charged with disturbing the peace in two separate incidents.<sup>45</sup> League Commissioner Goodell suspended Johnson for one game.<sup>46</sup> In 2009, Johnson was indefinitely suspended from the Kansas City Chiefs after writing an inappropriate tweet.<sup>47</sup> Johnson went on to play for other teams in the League until year 2011.<sup>48</sup>

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

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

<sup>36</sup> *Id.*

<sup>37</sup> See NFL Arrest Database, *supra* note 17.

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

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

<sup>40</sup> *Id.*

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

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

<sup>43</sup> See NFL Arrest Database, *supra* note 17.

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

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

<sup>46</sup> Dick Whipple, *NFL Suspends Larry Johnson for Week 10*, USA TODAY, Oct. 31, 2008, 8:21 PM, [usatoday30.usatoday.com/sports/football/nfl/chiefs/2008-10-31-larry-johnson-suspension\\_N.htm](http://usatoday30.usatoday.com/sports/football/nfl/chiefs/2008-10-31-larry-johnson-suspension_N.htm).

<sup>47</sup> NFL.com Staff, *Chiefs Ban Johnson from Practice, Team Activities*, NFL.COM, Oct. 27, 2009, <http://www.blogs.nfl.com/2009/10/27/chiefs-ban-johnson-from-practice-team-activities/>.

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

The male-dominated League's leadership consistently failed to consider their personal conduct violations as rising to a level worthy of harsher punishment even though all of the aforementioned professional football players and numerous others committed acts of domestic violence against women. The NFL's executives, without any significant input from women, preserved the "values and integrity" of the League by imposing minor sanctions on players for acts of domestic violence, while concurrently imposing harsher punishments on players for non-gender related things such as writing inappropriate comments on social media or drug offenses.<sup>49</sup> After receiving pressure from the public, the NFL realized that women compose the large majority of domestic violence victims and NFL's leadership should develop and implement a personal conduct policy to address and impose appropriate punishment for future domestic violence incidents.<sup>50</sup>

## II. PLAYER CONDUCT POLICY

The NFL's Personal Conduct Policy is the League's latest attempt to control players' off-the-field conduct.<sup>51</sup> This policy covers a broad array of off-the-field activities that are deemed "detrimental to the values and integrity of the League."<sup>52</sup>

Prior to the implementation of the Personal Conduct Policy, the NFL instituted a Violent Crime Policy in 1988, which allowed the Commissioner to suspend and fine any athlete charged with a violent crime.<sup>32</sup> In 2000, "prompted by negative publicity resulting from several crimes that involved NFL players, the NFL superseded the Violent Crime Policy with a new Personal Conduct Policy that prohibited a wide variety of violent behavior and allowed punishment at the Commissioner's discretion."<sup>53</sup> In 2008, League Commissioner Goodell announced an updated Personal Conduct Policy aimed at addressing persistent

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

<sup>50</sup> Steve Syre, *Roger Goodell Won't Survive NFL's Ray Rice Fiasco*, BOSTON GLOBE, Sept. 16, 2014, [www.bostonglobe.com/business/2014/09/15/nfl-needs-new-commissioner-domestic-abuse-scandal/txqJEE4NPe9E370svUnyLJ/story.html](http://www.bostonglobe.com/business/2014/09/15/nfl-needs-new-commissioner-domestic-abuse-scandal/txqJEE4NPe9E370svUnyLJ/story.html).

<sup>51</sup> National Football League, *2013 Personal Conduct Policy*, NFL.COM, <https://nflabor.files.wordpress.com/2013/06/personal-conduct-policy.pdf>.

<sup>52</sup>*Id.*

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

criminal behavior among NFL players.<sup>54</sup> The new policy strengthened the earlier conduct policy by allowing longer suspensions and the possibility of banishment, giving the Commissioner the ability to suspend a player for behavior that does not result in a criminal conviction or criminal charges.<sup>55</sup> The updated policy “ma[de] clear that violations will be grounds for terminating a business relationship.”<sup>56</sup>

The current Personal Conduct Policy reads:

**Standard of Conduct:** While criminal activity is clearly outside the scope of permissible conduct, and persons who engage in criminal activity will be subject to discipline, the standard of conduct for persons employed in the NFL is considerably higher. It is not enough simply to avoid being found guilty of a crime. Instead, as an employee of the NFL or a member club, you are held to a higher standard and expected to conduct yourself in a way that is responsible, promotes the values upon which the League is based, and is lawful. *Persons who fail to live up to this standard of conduct are guilty of conduct detrimental and subject to discipline, even where the conduct itself does not result in conviction of a crime . . . .* If the league finds that you have engaged in any of the following conduct, you will be subject to discipline. Prohibited conduct includes but is not limited to the following: *Actual or threatened physical violence against another person, including dating violence, domestic violence, child abuse, and other forms of family violence; Assault and/or battery, including sexual assault or other sex offenses; ... Conduct that imposes inherent danger to the safety and well being of another person; and Conduct that undermines or puts at risk the integrity and reputation of the NFL, NFL clubs, or NFL players . . . .*

**Discipline:** Upon learning of conduct that may give rise to discipline, the League may initiate an investigation to include interviews and information gathering from medical, law enforcement, and other relevant professionals. On matters involving NFL players, the League will timely advise the NFLPA (“National Football League Players Association”) of the investigation and outcome. As appropriate, the employee will also have the opportunity, represented by counsel and/or a union official, to address the conduct at issue. Upon conclusion of the investigation, *the Commissioner will have full authority to impose discipline as warranted. Discipline may take the form of fines, suspension, or banishment from the League and may include a probationary period and conditions that must be satisfied prior to or following reinstatement.* The specifics of the disciplinary response will be based on the nature of the incident, the actual or threatened risk to the participant and others, any prior or additional misconduct (whether or not criminal charges were filed), and other relevant factors.

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<sup>54</sup> Kelly M. Vaughan, *First and Goal: How the NFL’s Personal Conduct Complies with Federal Antitrust Law*, 96 CORNELL L. REV., <http://scholarship.law.cornell.edu/clr/vol96/iss3/11> (2011).

<sup>55</sup> National Football League, *2014 Personal Conduct Policy*, NFL.COM (Dec. 2014) <http://static.nfl.com/static/content/public/photo/2014/12/10/0ap3000000441637.pdf>.

<sup>56</sup> *Id.*; see also National Football League, *The New NFL Personal Conduct Policy*, NFL.COM (Dec. 2014) <http://static.nfl.com/static/content/public/photo/2014/12/10/0ap3000000441677.pdf>.



Unless the *available facts clearly indicate egregious circumstances*, significant *bodily harm or risk to third parties*, or an *immediate and substantial risk to the integrity and reputation of the NFL*, a first offense generally will not result in discipline until there has been a disposition of the proceeding (or until the investigation is complete in the case of noncriminal misconduct).

With respect to repeat offenders, the Commissioner may impose discipline on an enhanced and/or expedited basis. In such cases, the timing and nature of the discipline will be determined by the Commissioner based on several factors including but not limited to: the severity of the initial charge and later charge; the facts underlying the later charge; the length of time between the initial offense and later charge; and the player or employee's compliance with counseling and other programs. Following a full investigation and/or resolution of the proceedings, the Commissioner will review the matter and make any appropriate adjustments."<sup>57</sup>

Over the years, the NFL has seen numerous incidents of domestic violence involving League players that have been "detrimental to the values an integrity of the League."<sup>58</sup> The Personal Conduct Policy gives NFL's Commissioner broad authority to discipline players for adversely affecting the League's image.<sup>59</sup> The Personal Conduct Policy has been more widely discussed than actually utilized. For example, Ray Rice was suspended for two games under the League's Personal Conduct Policy for a domestic violence incident involving his fiancée.<sup>60</sup> Dez Bryant was not disciplined for the domestic battery incident against his mother in 2012.<sup>61</sup> He was, however, required to follow mandatory conduct guidelines.<sup>62</sup> Will Smith was not disciplined for the domestic battery incident against his girlfriend in 2010.<sup>63</sup> Larry Johnson received a one game suspension after multiple incidents of domestic violence against different women ranging from 2003-2009.<sup>64</sup>

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<sup>57</sup> See National Football League, *supra* note 55 (emphasis added).

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

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

<sup>60</sup> See NFL Arrest Database, *supra* note 17.

<sup>61</sup> See Martinez, *supra* note 7.

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

<sup>63</sup> See NFL Arrest Database *supra* note 17.

<sup>64</sup> *Id.*

During the 1990s, the League Commissioner had limited authority to discipline players involved in domestic violence.<sup>65</sup> Under the updated policy, the Commissioner has full authority to impose a variety of penalties on players for bad conduct, including domestic violence offenses.<sup>66</sup> The integrity clause contained within the policy gives the Commissioner the power to fine, suspend, or terminate a player's contract for any form of conduct "reasonably judged . . . to be detrimental to the League . . ."<sup>67</sup> The goal of the Personal Conduct Policy is to ensure athletes act responsibly on and off the field.<sup>68</sup> Commentators question, however, whether the League Commissioner and individual NFL teams efficiently address disciplinary problems dealing with domestic violence under the Policy's terms.<sup>69</sup>

Goodell's initial mismanagement of the Ray Rice incident—by only suspending Rice for two games—caused the NFL to suddenly change its enforcement policy and increase Rice's punishment to an indefinite suspension after the public disclosure of the surveillance video.<sup>70</sup> The League later stated that Commissioner Goodell was justified in imposing the second discipline because Rice misled him and the surveillance video demonstrated a level of violence that Goodell did not originally understand.<sup>71</sup> However, after Rice appealed his indefinite suspension, a judge found the suspension to be arbitrary and unfair and vacated the NFL's sanction.<sup>72</sup> In her arbitration decision, Judge Barbara Jones wrote, "[b]ecause Rice did not mislead the commissioner and because there were no new facts on which the commissioner could base his increased suspension, I find that the imposition of the indefinite suspension was arbitrary . . . I therefore vacate the second penalty imposed on Rice."<sup>73</sup> She further explained her reasoning in overturning Rice's

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<sup>65</sup> Anna L. Jefferson, *The NFL and Domestic Violence: The Commissioner's Power to Punish Domestic Abusers*, 7 SETON HALL J. SPORT L. 353, 369 (1997).

<sup>66</sup> See Webb, *supra* note 26, at 744; see also Vaughan, *supra* note 54.

<sup>67</sup> *Id.*; see also National Football League, *supra* note 55.

<sup>68</sup> See Vaughan, *supra* note 54.

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

<sup>70</sup> Jeffrey Tomik, *An Overdue Ruling: Outcry Forces NFL to Ban Ray Rice, Again*, THE WASHINGTON POST, <http://www.washingtonpost.com/express/wp/2014/09/08/an-overdue-ruling-outcry-forces-nfl-to-ban-ray-rice-again/>.

<sup>71</sup> The Associated Press, *Ray Rice Gets Another Chance to Play in NFL After Judge Overturns Suspension*, MASHABLE.COM, Nov. 28, 2014, [www.mashable.com/2014/11/28/ray-rice-gets-another-chance-to-play-in-nfl-after-judge-overturns-suspension/](http://www.mashable.com/2014/11/28/ray-rice-gets-another-chance-to-play-in-nfl-after-judge-overturns-suspension/).

<sup>72</sup> Jill Martin & Steve Almasy, *Ray Rice Wins Suspension Appeal*, CNN.COM, Nov. 30, 2014, 12:59 AM, <http://www.cnn.com/2014/11/28/us/ray-rice-reinstated/>.

<sup>73</sup> See The Associated Press, *supra* note 71.

suspension that the case “wasn't about the number of games that Rice was suspended but the need for Goodell to be "fair and consistent" in its discipline.”<sup>74</sup> The judge also stated, “the League did not realize the severity of the conduct without a visual record also speaks to their admitted failure in the past to sanction this type of conduct more severely.”<sup>75</sup> After the decision was handed down, Rice was immediately eligible to return to the NFL.<sup>76</sup>

The NFL needs to modify the enforcement of its Personal Conduct Policy to curb the trend of domestic violence in the NFL.<sup>77</sup> Judge Jones’ opinion indicated that the NFL did not properly follow its own procedural guidelines in its Personal Conduct Policy when initially sanctioning Rice.<sup>78</sup> Additionally, in a letter to Commissioner Goodell, sixteen female senators stated that they were shocked and disgusted in seeing the video of Rice’s domestic violence and wanted the NFL to adopt Zero Tolerance Domestic Violence Policy instead of having the current Personal Conduct Policy, which allows players involved in domestic violence to continue playing football.<sup>79</sup>

The latest revision of the Personal Conduct Policy emphasizes that domestic violence is outside the scope of permissible conduct and that players who violate this policy are subject to discipline.<sup>80</sup> Under the revised Policy, the NFL will establish a conduct committee to examine and revamp the League’s Personal Conduct Policy for players involved with domestic violence.<sup>81</sup> In response to a letter by sixteen senators, Commissioner Goodell stated, “[T]he NFL will be changing and improving its current conduct policy by hiring nationally recognized experts developing a mandatory comprehensive educational program related

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<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

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

<sup>77</sup> See Webb, *supra* note 26, at 741.

<sup>78</sup> See The Associated Press, *supra* note 71.

<sup>79</sup> Arit John, *Sixteen Female Senators Pressure NFL to Adopt Zero-Tolerance Domestic Violence Policy*, THEWIRE.COM, Sept. 11, 2014, 2:36 PM, [www.thewire.com/politics/2014/09/sixteen-female-senators-pressure-nfl-to-adopt-zero-tolerance-domestic-violence-policy/380064/](http://www.thewire.com/politics/2014/09/sixteen-female-senators-pressure-nfl-to-adopt-zero-tolerance-domestic-violence-policy/380064/).

<sup>80</sup> See National Football League, *supra* note 55.

<sup>81</sup> Will Brinson, *Roger Goodell: NFL Overhauling Personal Conduct Policy*, CBSSPORTS.COM, Sept. 19, 2014, 4:11 PM, [www.cbssports.com/nfl/eye-on-football/24716413/roger-goodell-nfl-overhauling-personal-conduct-policy](http://www.cbssports.com/nfl/eye-on-football/24716413/roger-goodell-nfl-overhauling-personal-conduct-policy).

to domestic violence, implementation of enhanced disciplinary consequences, and establishing a new committee that will review and update all NFL conduct policies.”<sup>82</sup>

### III. NFL GENDER EMPLOYMENT PRACTICES

Professional sports leagues, including the NFL, historically have unequal employment opportunities and a lack of respect for women.<sup>83</sup> Men holding non-athlete professional positions often have the power to influence the structure of sports and related social issues.<sup>84</sup> Since women rarely occupy these positions, however, they have little potential to make the changes that would bring gender equality and help address related issues of public concern, such as domestic violence.<sup>85</sup>

Goodell stated that the NFL had no women in decision-making roles when it initially suspending Ray Rice for two games for domestic violence, and acknowledged that the NFL has done a poor job in hiring women.<sup>86</sup> In general, the NFL has poor ratings for hiring women and even poorer ratings of hiring women of color.<sup>87</sup> Goodell appointed four Caucasian women to shape new policies on domestic violence and sexual assault after receiving public criticism for having no female leadership to help curb the issue of domestic violence within the League.<sup>88</sup> This is the first step of many to be taken.

The NFL’s historical employment practice in not hiring women in managerial or decision-making positions may have a disparate impact on women and may be in violation of federal law. Under Title VII of the Civil Rights Act of 1964 (“Title VII”), disparate impact<sup>89</sup> may occur where an employer has what

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<sup>82</sup> Tom Pelissero, *NFL Toughens Its Stance on Domestic Violence*, USA TODAY SPORTS, Aug. 28, 2014, 4:06 PM, [www.usatoday.com/story/sports/nfl/2014/08/28/nfl-toughens-its-stance-on-domestic-violence/14746187/](http://www.usatoday.com/story/sports/nfl/2014/08/28/nfl-toughens-its-stance-on-domestic-violence/14746187/).

<sup>83</sup> Syda Kosofsky, *Toward Gender Equality in Professional Sports*, 4 HASTINGS WOMEN’S L.J. 209 (1993); see 42 A § 2000(e) Equal Employment Opportunities and Unlawful Employment Practices; see also Title VII, “disparate impact” does not require intentional discrimination, but occurs where specified employment practice, although neutral on its face, has disproportionately negative effect on members of legally protected class, i.e., gender and females in a male dominated organization.

<sup>84</sup> Kosofsky, *supra* note 83.

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

<sup>86</sup> See Pelissero, *supra* note 82.

<sup>87</sup> The Associated Press, *NFL Gets C-minus for Gender Hiring*, ESPN, Sept. 17, 2014 5:58 PM, [espn.go.com/nfl/story/\\_/id/11544035/nfl-racial-hiring-women-hires-lagging-according-report](http://espn.go.com/nfl/story/_/id/11544035/nfl-racial-hiring-women-hires-lagging-according-report).

<sup>88</sup> Sam Farmer & Nathan Fenno, *Roger Goodell Names Four Women to Guide NFL Domestic Violence Policy*, LA TIMES, [www.latimes.com/sports/nfl/la-sp-nfl-violence-goodell-20140916-story.html](http://www.latimes.com/sports/nfl/la-sp-nfl-violence-goodell-20140916-story.html).

<sup>89</sup> For example, an employer may give a test to all candidates for employment but the results eliminate all African American or women candidates.

appears to be a facially neutral policy, practice, or rule that results in an adversely disproportionate impact on a protected class, such as minorities or women.<sup>90</sup> Appellate courts have not decided many “gender” specific cases involving disparate impact. Generally, disparate impact involves issues of race, color, religion, sex, and national origin, notably, this list includes gender discrimination.<sup>91</sup>

An important United States Supreme Court case involving disparate impact is *Ricci v. DeStefano*.<sup>92</sup> In *Ricci*, white firefighters and one Hispanic firefighter sued a city and city officials, alleging that the city violated Title VII by refusing to certify results of promotional test, based on the city’s belief that its use of results could have disparate impact on minority firefighters.<sup>93</sup> The United States District Court for the District of Connecticut entered summary judgment for the city and city officials and the firefighters appealed.<sup>94</sup>

On appeal, the city allegedly attempted to provide a fair test for promotions in the fire department to minority and non-minority candidates.<sup>95</sup> The test consisted of a written examination and an oral examination where the testing panel was required to include an African American firefighter and a Hispanic firefighter.<sup>96</sup> However, after the tests were administered and calculated, only Caucasians were eligible to be promoted to the rank of lieutenant and seven Caucasians and two Hispanic firefighters were eligible to be promoted to the rank of captain.<sup>97</sup> Although several African Americans passed the tests, none were eligible for promotion.<sup>98</sup> The City of New Haven, Connecticut decided to discard the tests because it feared that the African American firefighters would sue the city for disparate impact.<sup>99</sup> The Caucasian firefighters eligible for promotions then sued the city for reverse discrimination when they were denied the promotions identified in the discarded testing procedure.<sup>100</sup>

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<sup>90</sup> *Griggs v. Duke Power Co.*, 401 U.S. 424, 429 (1971).

<sup>91</sup> *Ricci v. DeStefano*, 129 S. Ct. 2658, 2661 (2009).

<sup>92</sup> *Id.* at 2658.

<sup>93</sup> *Id.* at 2661.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Ricci*, 129 S. Ct. at 2664.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 2665.

<sup>100</sup> *Id.* at 2684.

The United States Supreme Court ruled that an employer, such as the City of New Haven, “cannot commit intentional discrimination against the Caucasian and Hispanic firefighters to avoid unintentionally discriminating against the African American firefighters unless the employer has an “objective, strong basis in evidence” to believe that it will be subject to liability for disparate impact, which constitutes something more than a “fear.”<sup>101</sup> The Court held that the city failed to show that the tests were not job-related or that other less discriminatory tests were available, and that the city therefore discriminated against the Caucasian and Hispanic firefighters.<sup>102</sup>

Similar to the *Ricci* case, the NFL may have a facially neutral, historical employment practice that has traditionally resulted in predominantly male hires and has disproportionately and adversely impacted female employment. The NFL appears to now understand the importance of employing women in decision-making roles in the League, since the NFL reversed its position in punishing Ray Rice. The absence of female management personnel may have complicated the NFL’s response when punishing Rice. The NFL needs to establish or change its hiring program to include more women, including women of color.

Title VII additionally prohibits employment discrimination on the basis of sex.<sup>103</sup> This prohibition is often read as “making sex impermissible criteria that employers can never take into account when making employment decisions.”<sup>104</sup> This suggests that “the resulting anti-discrimination principle governs all of the following stages of the employment relationship: hiring, employing, promoting, and firing.”<sup>105</sup> However, the purpose of Title VII was not merely to encourage the appearance of neutrality, but to also create equal employment opportunities for all.<sup>106</sup> A prohibition of discriminatory practices might render an organization, such as the NFL, incapable of achieving the goals leading to a substantial improvement of female

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<sup>101</sup> *Id.* at 2681.

<sup>102</sup> *Ricci*, 129 S. Ct. at 2697.

<sup>103</sup> Civil Rights Act of 1964, 42 U.S.C. §§ 2000e - 2000e-17 (1982).

<sup>104</sup> Chris Engels, *Voluntary Affirmative Action in Employment for Women and Minorities Under Title VII of the Civil Rights Act: Extending Possibilities for Employers to Engage in Preferential Treatment to Achieve Equal Employment Opportunities*, 24 J. MARSHALL L. REV. 731 (1991)

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

participation at all levels of employment.<sup>107</sup> Title VII allows a private employer, such as the NFL, to institute affirmative action plans to redress the effects of its own prior discriminatory employment practices, remedy the result of prior societal discrimination, and also diversify its leadership with the inclusion of women.<sup>108</sup> The United States Supreme Court has previously upheld gender related affirmative action plans that remedied underrepresentation of women in traditionally segregated job categories.<sup>109</sup>

The NFL may use one of its prior employment practices to encourage the employment of women as a business-related purpose in remedying the past disparate impact.<sup>110</sup> In fairness, the NFL has previously sought to diversify its leadership, specifically for minorities. In 2001, the NFL took a closer look at its teams' hiring practices with respect to minority coaches.<sup>111</sup> It was anomalous that in a league where “more than sixty percent of players were of color, only six percent of the head coaches were of color.”<sup>112</sup> In 2003, the NFL adopted the “Rooney Rule” to encourage greater diversity among NFL coaches.<sup>113</sup> The Rooney Rule required each NFL team to interview at least one racial minority candidate when interviewing to fill a head coaching vacancy.<sup>114</sup> Under the Rooney Rule, any team searching for a head coach faced a large fine if it did not interview at least one minority candidate for an open position.<sup>115</sup> After the Rooney Rule went into effect, the NFL’s hiring of African American coaches saw a considerable increase.<sup>116</sup> In 2003, the same year the Rooney Rule went into effect, 22% of head coach positions in the NFL were occupied by minorities.<sup>117</sup> This immediate progress was in response to public pressure, similar to the pressure surrounding the issue of domestic violence and the need for more female leaders in the NFL.

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<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *See Johnson v. Transportation Agency*, 107 S. Ct. 1442 (1987).

<sup>110</sup> *See Ricci*, 129 S. Ct. 2658 (2009).

<sup>111</sup> Jeremy Corapi, *Red Card: Using the National Football League's "Rooney Rule" to Eject Race Discrimination from English Professional Soccer's Managerial and Executive Hiring Practices*, 23 *FORDHAM INTELL. PROP. MEDIA & ENT. L.J.* 341, 352 (2012).

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

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

<sup>117</sup> Corapi, *supra* note 111.

If the NFL created a program for women that is similar to the Rooney Rule, the organization would likely make similar progress on hiring more women, which may impact the League's decisions relating to domestic violence, where women comprise the largest portion of victims. This would constitute a business-related purpose in remedying the past disparate impact of not hiring women.

The NFL's hiring of women is an important step in obtaining gender diversity in the League. However, the decision to hire "women" fails to recognize an important factor, in achieving fully inclusive gender diversity. Although the NFL is making a step in the right direction, hiring women to address the issues of domestic violence within the League, the organization still lacks African American women.

The Black Woman's Roundtable's penned an open letter to League Commissioner Goddell amid the Rice controversy stating:

Black women . . . are disproportionately impacted by domestic violence and sexual assault. Over 66% of the NFL players are made up of African Americans and black women are . . . three times as likely to die as a result of domestic violence than white women. Black women make up 8% of the population, the minority group accounts for 22% of the homicides that result from domestic violence, and 29% of all women who are victimized. Domestic violence is the leading causes of death for black women between the ages of 15 to 35. However, [Black women] are less likely than others to seek help when [they] are abused. As a result of the specific circumstances of Black women and the fact that the majority of the players in the NFL are African American, addressing this issue in a culturally competent way requires the inclusion of black women . . . as part of the solution.<sup>118</sup>

In an effort to demonstrate that it is an organization that understands and appreciates all members of society, especially those that are mostly impacted from domestic violence, the NFL should also prioritize hiring African American women in managerial and executive positions.<sup>119</sup>

Hiring women would have social benefit of improving the structure of the League and society in general by providing female perspectives on issues, including domestic violence.<sup>120</sup> Inclusion of women in

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<sup>118</sup> Mary C. Curtis, *Black Women's Groups Challenge Lack of Diversity in NFL Domestic Advisory Panel*, THE WASHINGTON POST, Sept. 17, 2014, [www.washingtonpost.com/blogs/she-the-people/wp/2014/09/17/message-in-letter-to-roger-goodell-nfl-womens-advisory-panel-needs-diversity/](http://www.washingtonpost.com/blogs/she-the-people/wp/2014/09/17/message-in-letter-to-roger-goodell-nfl-womens-advisory-panel-needs-diversity/).

<sup>119</sup> *Id.*

<sup>120</sup> See Kosofsky, *supra* note 83.



NFL's upper management will confer respect upon women in other social situations, i.e., domestic violence in the male-dominated field.<sup>121</sup> Including women in decision-making executive roles will enlighten and strengthen the League because, with their input, the NFL may be able to make appropriate decisions on gender-related issues. Moreover, in a marketing-business sense, inclusion of women in decision-making roles will satisfy the public's concerns, specifically the NFL fans, which include many women. Taking a significant role in addressing the issue of domestic violence is responsible stewardship and also good business for the NFL.

### CONCLUSION

An Article discussing hiring practices within professional sports organizations stated, "People appoint people like themselves. White chairmen appoint white, male managers. The cycle is not easily broken."<sup>122</sup> The cycle that has continuously occurred in the NFL's hiring practices resembles this "institutional [sexism]." Although the NFL, a male-dominated organization, does not consciously employ discriminatory hiring practices against women on the basis of their gender, their failure to challenge old assumptions and stereotypes is a discriminatory practice in its affect. In the NFL, the pattern of male-dominated operations continues and the controversial handling of domestic violence against women maintains a relaxed and socially irresponsible position.<sup>123</sup> As the public becomes more aware and vocal about this issue, the NFL can no longer dismiss or ignore the idea that women, especially women of color, ought to hold executives leadership and decision-making roles in this traditionally male-dominated organization. The continual and historical presence of numerous NFL players in domestic violence incidents crystalizes the NFL's need to diversify its leadership with women in order to address the issue and eliminate the male-dominated group-think that has prevailed since the founding of the League.

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<sup>121</sup> *Id.*

<sup>122</sup> *Lucy Tobin, Why Aren't There More Black Football Managers?, THE GUARDIAN, Mar. 28, 2011, 10:45AM, <http://www.theguardian.com/education/2011/mar/28/black-football-managers-institutional-racism>*

<sup>123</sup> *Id.*