The Fritz Pollard Alliance, the Rooney Rule, and the Quest to "Level the Playing Field" in the National Football League, in Reversing Field: Examining Commercialization, Labor, Gender and Race in 21st Century Sports Law

N. Jeremi Duru
Article

The Fritz Pollard Alliance, the Rooney Rule, and the Quest to "Level the Playing Field" in the National Football League

N. Jeremi Duru*

Introduction ................................................................. 179
I. A History of Racial Exclusion ....................................... 181
   A. Fritz Pollard and the NFL's Initial Racial Expulsion ...... 181
   B. The NFL's Re-integration ......................................... 182
II. The Plight of the Black NFL Head Coach ...................... 184
III. The Campaign to Change the NFL .............................. 187
    A. Crafting the Rooney Rule ..................................... 189
    B. The Birth of an Alliance ...................................... 190
IV. The Rooney Rule: Applied ........................................ 193
Conclusion ..................................................................... 197

INTRODUCTION

The National Football League (the "NFL" or the "League"), like the National Basketball Association (the "NBA") and Major League Baseball ("MLB"), has a long history of racial exclusion. And like these other long-
standing American professional sports leagues, desegregation among players preceded desegregation among coaches.\(^2\) As slowly increasing numbers of minorities assumed NBA head coaching positions and MLB managing positions toward the end of the twentieth century, however, minority NFL coaches were less likely to receive head coaching opportunities than their basketball and baseball counterparts.\(^3\) Indeed, as of 2002, only two of the NFL’s thirty-two head coaches were minorities, and only five, including those two, had held head coaching positions during the League’s modern era.\(^4\) Four years later, however, the NFL had more than tripled its number of minority head coaches and shone as a model for other athletic institutions seeking to provide head coaching candidates equal employment opportunities.\(^5\)

This article seeks to explore the history of racial exclusion in the NFL, the particular barriers minority coaches seeking NFL head coaching positions have faced, and the effort to level the playing field for such coaches. Part I of this article traces the NFL’s initial expulsion of African Americans, its eventual reintegration, and the patterns accompanying that reintegration. Part II explores the travails of the NFL’s first three post-reintegration coaches of color as well as statistical evidence revealing that, as of 2002, NFL coaches of color generally suffered inferior opportunities despite exhibiting outstanding performance. Part III examines the campaign launched by attorneys Cyrus Mehri and Johnnie L. Cochran, Jr. to alter NFL teams’ hiring practices, the creation of the Rooney


\(^4\) Tony Dungy and Herman Edwards were the NFL’s only head coaches of color in 2002. Gary Myers, Sunday Morning QB: Black Coaches Try to Get in the Game, N.Y. Daily News, Oct. 6, 2002, at 70. As of 2002, Art Shell, Dennis Green, and Ray Rhodes were the only other people of color to have held NFL head coaching positions in the League’s modern era. Id.

Rule (the "Rule"), and the birth of the Fritz Pollard Alliance of minority coaches, scouts, and front office personnel in the NFL. Finally, Part IV traces the Rooney Rule's success in creating equal opportunity for coaches of color in the NFL.

I. A HISTORY OF RACIAL EXCLUSION

A. Fritz Pollard and the NFL's Initial Racial Expulsion

During the mid-1920's, the American Professional Football Association ("APFA"), now known as the NFL, began homogenizing, and by 1934, it had succeeded in expurgating all African Americans.\(^6\) In doing so, it ended the APFA career of Frederick Douglas "Fritz" Pollard.\(^7\)

Pollard entered the APFA in 1919 as a running back with the Akron Pros and was, by any estimate, a remarkable talent.\(^8\) As elusive as he was fast, Pollard earned All-American Honors as a half-back at Brown University and led the Bruins to their first and only Rose' Bowl appearance before graduating and pursing a professional football career.\(^9\) For Pollard, often the only black player on the field, playing football was equal parts sport and survival, as opposing players, after he was tackled, routinely piled on him with intent to injure.\(^10\) Still, Pollard was as effective with Akron as he was at Brown, and, in his second professional season, he led the Pros to the league championship title.\(^11\)

Pollard's legacy, however, lies not on the actual playing field but on the sidelines: He became the APFA's first black coach, an extraordinary accomplishment considering the racial preconceptions of the day. Those preconceptions, which still endure to some degree, presupposed his physical fortitude just as they presupposed his intellectual frailty.\(^12\) So while the accomplishments of the era's black players unsettled the American sporting community because blacks, despite their presumed brawn, were believed


\(^8\) See Official Site of the Pro Football Hall of Fame, supra note 7 (describing Fritz Pollard as one of the most feared running backs in the APFA).

\(^9\) Official Site of the Pro Football Hall of Fame, supra note 7.

\(^10\) See Joe Burris, Forgotten Pioneer: Fritz Pollard was the NFL's First Black Coach (and the QB on a Champion Team) but Almost No One Knows His Name, Boston Globe, Feb. 18, 2004, at F1 (interviewing Fritz Pollard's grandson about his grandfather's football stories). Pollard met with such consistent brutality that he developed a mechanism of punishing those who sought to punish him after a tackle. Id. Upon hitting the ground, Pollard rolled on to his back, raised his feet into the air and waved them as if riding a bicycle while simultaneously propelling himself to an upright position. Id.

\(^11\) Id.

insufficiently sophisticated to excel in team sport, Pollard’s ascension to the coaching ranks shook sport to its core. Despite Pollard’s accomplishments—or, perhaps, because of them and what they portended—the NFL teams’ owners mutually agreed to force blacks out of the League, ending Pollard’s APFA coaching career soon after it began.

B. The NFL’s Re-integration

Two decades later, the League began to re-integrate, but the stereotype of the physically superior yet intellectually inferior black would endure and impact opportunities for blacks in the League through the end of the twentieth century and beyond.

In 1946, the Los Angeles Rams became the first NFL team in twelve years to employ black players. Interestingly, the Rams’ decision to integrate its squad was not a bold repudiation of segregation, but rather a necessary consequence of the team’s move from Cleveland to Los Angeles. The commissioners of the Los Angeles Coliseum, in which the team would play, insisted as part of the stadium agreement that the Rams desegregate. The Rams agreed to do so, and UCLA alums Kenny Washington and Woody Strode joined the Rams as the team’s—and League’s—only black players. Notably, the positions Washington and Strode played, wide receiver and running back, are the paradigmatic football “workhorse positions”—positions viewed as demanding more physical ability than intellectual ability. That a running back and a wide receiver were the first black players permitted to enter the league in twelve years is no coincidence. Indeed, as blacks slowly trickled into the League during the succeeding years, they trickled disproportionately into workhorse positions.

“[F]ootball’s thinking and control position,” quarterback, on the other hand, remained reserved for whites. As of the 1968 season’s inception, twenty-two years after Washington’s and Strode’s debut, the NFL featured no black

---

15 Id.
17 Id.
18 Shropshire, In Black and White: Race and Sports in America, supra note 1, at 30. Bill Willis and Marion Motley joined the NFL’s Cleveland Browns later that season. Id.
20 See id. (suggesting African Americans have historically occupied brawny positions requiring less intelligence).
21 Id.
quarterbacks.22 And during those twenty-two years, the League’s only black quarterbacking presence was Willie Thrower, who, in 1953, entered just two games as a backup, completed three of eight pass attempts, and never played in the League again.23 In 1969, James “Shack” Harris became the first black player to open an NFL regular season as a starting quarterback,24 and he proceeded to have a productive twelve-year career, during which he was, in 1975, selected for the NFL Pro Bowl team and named the Pro Bowl game’s Most Valuable Player.25 Harris’ success, however, did little to alter NFL teams’ approaches to staffing the quarterback position, and black NFL quarterbacks remained a rarity. Doug Williams’ extraordinary career, during which he quarterbacked the Washington Redskins to a 1987 Super Bowl victory and garnered Super Bowl Most Valuable Player honors,26 did little more than Harris’ to eradicate the myth that blacks are not well-suited for the position.

In fact, as of 1998, in the history of the NFL’s annual college draft, only three black quarterbacks had been selected in the draft’s first round.27 The


Notably, generations of black college quarterbacks would suffer Briscoe’s fate as they entered an NFL largely inhospitable to black quarterbacks. See Lapchick, supra note 19, at 228 (noting that as of 1998, 91% of all quarterbacks in the NFL were white). The trend continues even today. Indeed, two of the 2006 Super Bowl champion Pittsburgh Steelers’ best wide receivers—Antwaan Randle-El and Hines Ward—played the quarterback position in college. About Antwaan, http://www.antwaanrandlee.com/about/ (last visited Mar. 30, 2008) [hereinafter Randle-El]; About Hines, http://hinesward.fsmgsports.com/main.html (last visited Mar. 30, 2008) [hereinafter Ward]. While Ward played quarterback, running back and wide receiver at the University of Georgia, Randel-El was strictly a quarterback at Indiana University and was one of the nation’s best, placing sixth in balloting for the Heisman Trophy, an annual award given to college football’s best player. Andrew Bagnato, Huskers’ Crouch Proves Best Option; Nebraska QB Edges Grossman; Randle El 6th, Chi. Trib., Dec. 9, 2001, at C1; Randle-El, supra; Ward, supra.

25 James Harris, supra note 24.
26 See Shropshire, In Black and White: Race and Sports in America, supra note 1, at 45 (noting Doug Williams’s Super Bowl MVP accomplishment).
27 Lapchick, supra note 19, at 228.
following year seemed to portend a breakthrough, as the 1999 draft alone featured three teams selecting black quarterbacks with first round picks.\textsuperscript{28} Nearly a decade later, however, black quarterbacks remain disproportionately rare. According to Dr. Richard Lapchick, Director of the University of Central Florida’s DeVos Sport Business Management Program, sixty-seven percent (67\%) of the NFL’s players are black.\textsuperscript{29} Of the thirty-two starting quarterbacks on NFL rosters at the beginning of the 2007 season, however, only six were black—just under twenty percent (20\%).\textsuperscript{30}

As daunting as the barriers facing black quarterbacks have been, the barriers facing black coaches have been far more burdensome. The presumption of intellectual inferiority but physical superiority obviously hampers the black candidate seeking a quarterback position, for which both physical and intellectual ability are deemed necessary. The presumption, however, completely handicaps the black candidate pursuing a coaching position, a position for which physical ability is irrelevant and intellectual ability—the candidate’s presumed weakness—is paramount. Saddled with a presumption of intellectual inferiority, therefore, blacks have struggled to find head coaching positions in the NFL.\textsuperscript{31} Indeed, between 1946, when Strode and Washington re-integrated the NFL, and the beginning of the 1989 season, every head coach in the League was white,\textsuperscript{32} despite an increase in the proportion of black NFL players during that period from zero to sixty-seven percent (67\%).\textsuperscript{33}

II. THE PLIGHT OF THE BLACK NFL HEAD COACH

During the 1989 season, the NFL’s Los Angeles Raiders bucked a sixty-year tradition of maintaining Caucasian homogeneity among the League’s head coaches by hiring Art Shell to lead the team.\textsuperscript{34} Unfortunately, Shell’s emergence would do little to increase equal employment opportunity for black coaches in the NFL. A survey of Shell’s experience and the experiences of the black head

\textsuperscript{28} Id. The three black quarterbacks selected in the 1999 draft’s first round were Daunte Culpepper, Akili Smith, and Donovan McNabb. Id.


\textsuperscript{31} See Cochran, Jr. & Mehri, supra note 2, at 1 (documenting under-representation of African Americans among the NFL’s coaching ranks).

\textsuperscript{32} Shropshire, In Black and White: Race and Sports in America, supra note 1, at 79.

\textsuperscript{33} Cochran, Jr. & Mehri, supra note 2, at 1.

\textsuperscript{34} Shropshire, In Black and White: Race and Sports in America, supra note 1, at 79.
coaches who followed him is revealing.

Shell took control of the Raiders midseason, when the team had a record of one win and three losses, following the organization’s first two consecutive losing seasons in twenty-five years. In his first full season as head coach, however, Shell transformed the team’s fortunes, leading the Raiders to twelve wins and only four loses in route to the NFL’s American Football Conference Championship game. Despite amassing an impressive fifty-six wins against forty-one loses over the following four years and posting winning records during three of those four seasons, including the final two, Shell was fired after the 1994 season. His firing was undeserved, as the Raiders’ owner Al Davis would apologetically admit twelve years later.

In 1992, two years before Shell’s termination, Dennis Green became the second black coach in the NFL’s modern era when he accepted the Minnesota Vikings’ head coaching position. Green sparkled. During his ten years with the Vikings, the team won a remarkable sixty-three percent (63%) of its games, and in one year, 1998, won fifteen of its sixteen regular season games. More impressive still, Green led his team to eight playoff appearances—a feat surpassed by only one NFL coach during the fifteen years between 1986 and 2001—and two Conference championship games. After the first losing season of his NFL career—a season doomed from the start by the tragic death of one of the team's best and most beloved players—Green was fired, despite being the most successful coach in the team’s history.

In 1996, the Tampa Bay Buccaneers, historically one of the worst teams in the NFL, hired Tony Dungy as its head coach. During his six-year tenure, Dungy transformed the Buccaneers, a team that had enjoyed a mere two winning seasons in its twenty-two years of existence, into a powerhouse. Dungy led the team to four playoff appearances and one conference championship appearance during those six years and lost more games than he won only once—in his first

35 African-American Sports Greats, supra note 24, at 305.
36 Id.; Cochran, Jr. & Mehri, supra note 2, at 11.
37 Id. at 7.
39 Id. at 2, at 6-7.
40 Id. at 7.
41 During that time period, Marty Schottenheimer led his team to nine playoff appearances and Mary Levy, like Green, led his team to eight. Id. at 7 & n.9.
42 Id. at 7.
43 Id. at 2, at 12.
44 Id. at 7.
45 See id. at 7-8 (describing team’s transformation under Dungy).
season. Yet, after the 2001 season, he was fired. The absurdity of his firing on the heels of such success is best understood in the context of the organization's previous head coach firings:

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 coached the Buccaneers for five straight non-losing seasons, established a tradition of excellence, and was fired.

While these anecdotal accounts certainly suggest inequitable employment opportunities for black head coaches in the NFL, statistical analysis offers confirmation. In 2002, civil rights attorneys Johnnie L. Cochran, Jr. and Cyrus Mehri commissioned University of Pennsylvania economist Dr. Janice Madden to analyze the performance of NFL head coaches during the fifteen years between 1986 and 2001 and to compare the success of the five black head coaches who coached during that period against the success of the eighty-six white head coaches who coached during the same period. Dr. Madden concluded that, by any standard, the black head coaches outperformed the white head coaches: "No matter how we look at success, black coaches are performing better. These data are consistent with blacks having to be better coaches than the whites in order to get a job as head coach in the NFL."

Indeed, in every category Dr. Madden studied, black coaches outperformed white coaches. In terms of total wins per season—the primary category upon which a head coach's performance is assessed—black coaches averaged over

---

47 Id. at 12.
48 Id.
49 Id. at 12, Exhibit C at 7-8.
52 Cochran, Jr. & Mehri, supra note 2, at ii, 2.
53 Id. at Exhibit B at 3.
54 See id. at Exhibit B at 1-3 ("In each and every one of these comparisons, black coaches have a stronger record than white coaches.").
55 See id. at ii (noting that wins and losses are "the currency of football and all team sports").
nine wins, while white coaches averaged eight wins.\(^{56}\) While the 1.1 win differential might, at first blush, seem a minor matter, considering that NFL teams play only sixteen games during each regular season, one additional win is extremely significant.\(^{57}\) Further, no win is more significant than the ninth, as, during the fifteen years studied, sixty percent (60\%) of teams winning nine games advanced to the playoffs while only ten percent (10\%) of teams winning eight games advanced to the playoffs.\(^{58}\)

The disparity in success is even more pronounced when considering coaches' success in their first seasons with a team.\(^{59}\) In their first seasons, black coaches averaged 2.7 more wins than did white coaches in their first seasons and, accordingly, were far more likely to advance their teams to the playoffs than were white coaches.\(^{60}\)

In addition, in their last seasons before being fired, black coaches outperformed their white counterparts.\(^{61}\) Black coaches won an average of 1.3 more games in their terminal years than white coaches, and while twenty percent (20\%) of the black coaches who were fired led their teams to the playoffs in the year of their firing, only eight percent (8\%) of white coaches did the same.\(^{62}\)

III. THE CAMPAIGN TO CHANGE THE NFL

Based on Dr. Madden's results, Cochran and Mehri authored a report entitled *Black Coaches in the National Football League: Superior Performances, Inferior Opportunities*. They concluded that black head coaches faced more exacting standards than white head coaches and were often dismissed under circumstances that would not have resulted in white head coaches' dismissals.\(^{63}\) As stark as Madden's results were, Mehri and Cochran did not conclude that black head coaches were somehow inherently better than white head coaches. Rather, they concluded that because barriers to entry were more formidable for black coaches seeking head coaching positions than for white coaches, the black coaches able to surmount those barriers were exceedingly well equipped to succeed as head coaches. Additionally, as a consequence of those exceedingly high barriers, they argued that many black assistant coaches never received

\(^{56}\) Id. at 2.
\(^{57}\) See id. (recognizing a one-win difference often determines whether a team is successful in reaching the playoffs).
\(^{58}\) Id.
\(^{59}\) Id. at 3.
\(^{60}\) Id.
\(^{61}\) Id. at 4.
\(^{62}\) Id.
\(^{63}\) See id. at i-ii.
serious consideration for head coaching jobs. Cochran and Mehri's report ultimately concluded that despite statistically "superior performance," black coaches have received "inferior opportunities": "In case after case, NFL owners have shown more interest in—and patience with—white coaches who don't win than black coaches who do." Armed with this conclusion and statistically significant analyses to support it, Cochran and Mehri possessed critical information in confronting employment discrimination: persuasive evidence that the discrimination actually exists. Over forty years after Congress issued broad-based anti-discriminatory legislative edicts, Americans are reluctant to acknowledge the discrimination still existing in their organizations. Racial bias and discrimination in America are now more subtle than overt, and, according to some scholars, often subconscious. Consequently, the suggestion that racial discrimination exists may, and often does, strike institutions' executives as inaccurate and offensive, prompting fierce denials and dampening the possibility of sincere and meaningful settlement negotiations.

Statistically significant evidence of systemic discrimination buttressed by anecdotal evidence of that discrimination's impact—as opposed to anecdotal evidence alone—is often crucial in prompting institutions to honestly confront the existence of discrimination. Equipped with such statistical evidence, Cochran and Mehri were able to convince the NFL, which to its credit had previously expressed concern about the lack of diversity among its head coaches, that some level of cooperation, as opposed to confrontation, was in order. Indeed, shortly after the report's publication, the League created a committee dedicated to increasing equal employment opportunities for coaching candidates. Consisting of the owners of several teams and chaired by Pittsburgh Steelers' owner Dan Rooney, the Workplace Diversity Committee set out to consider the

64 See id. at 8-10.
65 Id. at ii.
66 See Shropshire, In Black and White: Race and Sports in America, supra note 1, at 10 (discussing various methods individuals use to underplay their discriminatory hiring practices).
69 See Collins, supra note 3, at 884 (noting ex-NFL commissioner Paul Tagliabue's efforts to increase minority hiring before the Rooney Rule's inception).
70 Id. at 886.
remedial recommendations Cochran and Mehri proffered. 71

A. Crafting the Rooney Rule

The most notable of Cochran and Mehri's recommendations was the mandatory interview rule. Arguing that racial bias, whether conscious or unconscious, was steering teams away from minority head coaching candidates, Cochran and Mehri contended that NFL teams should be made to do what few had theretofore done—grant minority candidates meaningful head coach job interviews. 72 They believed that minority candidates would exhibit preparedness for head coaching jobs, and simply needed the opportunities to compete for the positions. 73 Cochran and Mehri, therefore, suggested that each NFL team searching for a head coach be required to interview at least one minority candidate before making its hire. 74 Crucial to the suggestion was that the interview actually be meaningful—that it be an in-person interview and that the interviewers be among the team's primary decision-makers. 75

After some deliberation, the Workplace Diversity Committee recommended the rule to the broader group of NFL team owners, and the owners agreed by acclimation to implement it. 76 All parties agreed the rule should require nothing beyond a meaningful interview, and if after the interview the interviewing team chose to hire a non-minority coach, the choice was its to make. 77 In December of 2002, the NFL announced its mandatory interview rule, which would come to be known as the Rooney Rule (the "Rule") in honor of the Workplace Diversity Committee's chairman, Dan Rooney, 78 and which would prove to fundamentally change the NFL. 79

From the start, the Rooney Rule was met with significant skepticism. 80 Indeed, criticism rained down from all quarters. NFL insiders questioned the

71 Id.
72 See Cochran & Mehri, supra note 65, at 15.
73 See id. at 14.
74 See id. at 15.
75 See Collins, supra note 3, at 901-04 (discussing problem of "sham" interviews with the Rooney Rule and difficulty of measuring franchises' good faith efforts in interviewing minority candidates during hiring processes).
76 See id. at 886 (noting that the NFL Committee on Workplace Diversity's suggestions were adopted by all thirty-two NFL owners).
77 Id.
79 See id. (discussing the effects of the Rooney Rule on the NFL).
League's decision to take its lead in pursuing diversity from two lawyers previously unaffiliated with the League and its internal mechanisms. If anyone should guide the League on these issues, they argued, he or she should be from the football community—from a group of NFL alums or from the League's, or one of its teams', front offices. Others, recognizing the Rule contained no accompanying penalty mechanism, wondered whether teams would bother to heed the Rule, and if they didn't, whether the League would do anything about their failures to do so.\footnote{Still others argued that even assuming teams followed the Rule, because the interviewing team had no obligation to hire a minority coach, the interview would prove merely ornamental.} Burdened with these criticisms, the Rooney Rule's early life was shaky.

B. The Birth of an Alliance

Those questioning the propriety of the NFL's reliance on outsiders to guide its equal employment opportunity efforts would soon be silenced.

Shortly after Cochran and Mehri issued their report, Floyd Keith, the Executive Director of the Black Coaches Association ("BCA"), an advocacy organization of black collegiate coaches,\footnote{In 2007, the Black Coaches Association changed its name to the Black Coaches and Administrators, and now encompasses black collegiate sports administrators as well. Erika P. Thompson, Black Coaches Association Announces Name Change, Black Coaches & Administrators, Jul. 6, 2007, \url{http://bcasports.cstv.com/genrel/072007aaa.html} (last visited Mar. 30, 2008).} suggested the lawyers consult with John Wooten, a former NFL All-Pro offensive lineman well-known throughout the League for his tenacity and intellectual acuity both on and off the field.\footnote{See John Wooten Bio, \url{http://www.fpal.org/wooten.php} (last visited Mar. 30, 2008) (noting Wooten's various work as a football player and front office executive).} While Wooten was a remarkable player, he made his most lasting impact in NFL front offices, where he worked in various high-level capacities with the Dallas Cowboys, the Philadelphia Eagles, and the Baltimore Ravens over the course of almost thirty years.\footnote{Id.} More impressive than Wooten's success as a player or front office executive, however, was his unwavering and expressed commitment to racial equality in the NFL. For years, Wooten decried the homogenous composition of the NFL's head coaching ranks. Having played with and against scores of fellow black players who he knew would, if given the opportunity, excel as NFL head coaches, Wooten was incensed at their exclusion.

Cochran and Mehri's report offered quantitative support for what Wooten

\footnote{See Collins supra note 3, at 871 (noting that the Rooney Rule appeared "vague and inefficient" at first).}
knew: with a fair chance to take the reigns of an NFL team, black head coaches would perform as well, if not better than, white head coaches. Wooten also knew that many black coaches in the League who had consistently been passed over for head coaching positions were anxious to meaningfully compete for those positions and would support the lawyers' efforts. Wooten committed to assisting Cochran and Mehri's work in any way he could and suggested they travel to Indianapolis, Indiana, in February of 2003 to meet with the NFL's black coaches during the NFL Scouting Combine (the "Combine"). The Combine, which serves as a nearly week-long tryout for collegiate players seeking NFL jobs, is the one occasion when all of the League's teams and their staffs can be counted on to be in one place, and therefore presented the perfect opportunity for Cochran and Mehri to meet and share ideas with those they were hoping to help. The lawyers recognized that in order to initiate true reform in the NFL, the primary stakeholders would have to engage in the battle, and they hoped a meeting at the Combine would galvanize their interest in organizing as a unit.

Although Cochran was unable to attend, Mehri represented them both at the Combine. What Mehri imagined would be a gathering of a few dozen black coaches turned out to be a meeting of over one hundred black coaches, scouts, and front office personnel, all deeply concerned about equity in the NFL. The group, though, was not a monolith. Some in the room expressed reluctance to push the NFL and its teams too vociferously for fear of backlash. Others, exceedingly frustrated with lack of opportunity, felt no push could be hard enough. Still others staked out middle positions. Overwhelmingly, however, those in the room supported increased organization. They wanted to maintain a connection in order that there be a forum in which to engage issues that they shared. And they did so, forming an organization and naming it in honor of the individual who preceded and inspired them all. They became the Fritz Pollard Alliance (the "FPA"), an affinity group dedicated to equal opportunity of employment in the coaching, scouting, and front office ranks of the NFL.

There was little doubt Wooten would serve as the fledging organization's chairman, guiding its vision and maintaining a strong relationship with the NFL, where he had over the years developed many close contacts and personal friendships. And when Wooten considered who might effectively manage the organization's affairs and serve as its public face, a few individuals came to mind, but none more compelling than Kellen Winslow, Sr.

Winslow, one of the NFL's all time great players, was a tight end with the League's San Diego Chargers from 1979 - 1987, during which time he set

---

87 Collins, supra note 3, at 887.
numerous League records and revolutionized the position.\(^8\) Whereas tight ends before Winslow were primarily utilized as blockers and rarely called upon to catch anything other than short passes, Winslow combined superior blocking skill with speed and pass-catch ability to rival even the best wide receivers.\(^9\) Along with his physical abilities, Winslow mixed intelligence, dogged persistence, and compelling leadership ability to become a Hall of Fame player,\(^9\) the type of player capable of willing his team to win.\(^9\) Because of these characteristics and his tremendous success as a player, Winslow naturally presumed he would, upon retirement, have opportunities to work in the NFL or in major conference collegiate football.\(^9\) Retirement, however, brought with it a crushing realization when the opportunities he envisioned did not materialize. As Winslow described in his forward to *In Black and White: Race and Sports in America*, Kenneth Shropshire’s incisive investigation of the intersection of race and sport:

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 filled with honors and praises, I stepped into the real world and realized... I was just another nigger... the images and stereotypes that applied to African-American men in


\(^9\) Kellen Winslow, Foreword to Shropshire, In Black and White: Race and Sports in America, supra note 1, at xii.
this country attached to me.93

Winslow’s revelation led him to channel his talents toward exposing inequity in the sports industry, and when he agreed to serve as the FPA’s Executive Director, he carried that passion with him.

As a consequence of the FPA’s support, the Rule, which was just a few months earlier decried as the brainchild of outside agitators, suddenly enjoyed endorsement from a body representing coaches, scouts, and front office personnel of color throughout the League. The Rooney Rule had gained instant credibility.

IV. THE ROONEY RULE: APPLIED

Credibility, however, offered no guarantee of efficacy, and if the Rule were to be effective, it would need teeth. Detroit Lions’ General Manager Matt Millen’s approach to hiring a new head coach in 2003 would ensure that it had them. In January of that year, the Lions fired their head coach Marty Mornhinweg, after the team suffered through a lackluster season during which they lost thirteen games and won only three.94 Three weeks earlier, the San Francisco 49ers had fired their longtime head coach, Steve Mariucci.95 Millen wanted Mariucci to lead the Lions, and he expressed little interest in maintaining an open mind to other potential candidates. In his single-minded pursuit of Mariucci, Millen hired Mariucci without interviewing any candidates of color.96 While such a hiring process would have been unobjectionable just a few months earlier, under the Rooney Rule it was facially non-compliant.

The NFL’s then-Commissioner, Paul Tagliabue, had his test case, and his response would determine the Rule’s fate. If Tagliabue responded with inaction or an empty condemnation, the Rule would be rendered useless as a change agent. It would exist as little more than a symbolic gesture, creating the

93 Id. at xi.
96 Collins, supra note 3, at 900-01. Ironically, Mariucci, the coach Millen pursued with such myopia, performed quite poorly as the Lions head coach. During his two-plus seasons with the team, Mariucci amassed a record of fifteen wins and twenty-eight losses and was ultimately terminated in the middle of the 2005 season. Skip Wood, After Digesting Turkey Day Debacle, Lions Fire Mariucci, USA Today, Nov. 28, 2005, available at http://www.usatoday.com/sports/football/nfl/lions/2005-11-28-mariucci_x.htm (last visited Mar. 30, 2008).
impression of a League dedicated to equal employment opportunity for coaches of color in the NFL but having no actual impact. If, on the other hand, Tagliabue substantially punished the Lions, he would signal the NFL’s commitment to the Rooney Rule and to the equity Cochran, Mehri, and the FPA sought to achieve.

Tagliabue’s decision shocked even those hoping for a stout punishment. Explaining that Millen “did not take sufficient steps to satisfy the commitment that [the Lions] made” regarding the Rooney Rule, Tagliabue fined Millen $200,000, and explicated that Millen, not the team for which he worked, would have to pay the fine.97 With the fine, Tagliabue made clear that as the Lions’ principle decision-maker, Millen was responsible for following the League’s mandatory interview guidelines, and he would have to pay account.

Notably, Tagliabue did not stop at issuing the fine. He went further still, moving away from the facts of the Lions’ non-adherence and issuing broad-based notice as to the League’s unwavering commitment to the Rule. The next principle decision-maker to flout the Rule would, Tagliabue promised, suffer a $500,000 fine.98

While the FPA celebrated Tagliabue’s response to the Lions’ head coach hiring process as revealing that the “‘Rooney Rule’ ha[d] finally arrived,”99 Tagliabue’s actions sparked outrage among Rooney Rule opponents and others who felt it was excessive.100 After all, it did not appear Millen was seeking to exclude from consideration minority candidates to the benefit of a group of Caucasian candidates. He was, rather, committed to hiring a particular person—Steve Mariucci—and was uninterested in considering any other candidate, regardless of race.101 If the Rule applied in this circumstance, they argued, future decision-makers interested in a particular candidate would offer an interview to a minority candidate simply to fulfill the Rule and for no other reason.102 This criticism exposed an obvious potential weakness in the Rule. While the Rule requires a team to grant a minority candidate a meaningful

101 It merits noting that Millen did invite candidates of color to interview for the Lions’ head coaching position, but recognizing that Millen had already decided to hire Mariucci and that the interviews to which they were being invited would be pro forma, and thus not meaningful, none of the invitees accepted. Collins, supra note 3, at 901.
102 See id. at 902 (discussing the possibility of “sham” interviews for minority coaching candidates).
interview, it is incapable of directing state of mind. The Rule, therefore, cannot require that a team grant a candidate meaningful consideration. Thus, the Rule is powerless to prevent the inconsequential interview—the interview with all the trappings of meaningfulness but whose outcome is predetermined.

The Rule’s critics cited this reality as evidence the Rule would be ultimately ineffectual. However, many commentators believe that, more often than one might initially intuit, a face-to-face, in-person, interview with an organization’s primary decision-makers begets meaningful consideration—that sitting down together and discussing at length a common interest potentially melts away conscious or subconscious preconceptions and stereotypes that might otherwise color decision-makers’ judgments. As such, the Rule’s supporters argued that despite being a process-oriented rule with no hiring mandate, the Rule carried the power to markedly increase diversity among NFL head coaches.

The proponents’ belief was borne out. Indeed, over the course of the several years following its implementation, the Rule has markedly increased diversity among NFL head coaches. At the time of the Rule’s implementation in 2002, two minorities held NFL head coaching positions. Four years later, minority head coaches led seven of the NFL’s thirty-two teams. While this progress may not be entirely attributable to the Rule, the Rule has undoubtedly played a role despite critics’ claims that a “meaningful” interview would not spark truly meaningful consideration.

Consider the Cincinnati Bengals’ 2003 search for a head coach. Prior to that year, the Bengals had never, in franchise history, hired a person of color for its head coach position. In fact, the Bengals had never even interviewed a person of color for one of its top three coaching positions (head coach, offensive coordinator, and defensive coordinator). Under the Rooney Rule, the Bengals had to do something they had never done nor indicated desire in doing—they had to interview a minority candidate for their head coaching vacancy. With the opportunity to convince the Bengals of his merit, Marvin Lewis, a renowned

103 Nordlinger, supra note 80.
104 See Shropshire, In Black and White: Race and Sports in America, supra note 1, at 37-38 (discussing positive effect of Carol Moseley Braun’s election to the United States Senate on the sensitivity to issues affecting minorities).
105 See Cochran, Jr. & Mehri, supra note 2, at 17 (noting that their proposal for changes in NFL’s hiring process had the capability to promote “meaningful change”).
107 Maravent, supra note 97, at 245.
108 Collins, supra note 3, at 907.
110 Mark Cumutte, Coughlin, Lewis Come to Town, Cincinnati Enquirer, Jan. 10, 2003, at 1C.
defensive strategist and then the Washington Redskins defensive coordinator, interviewed for the position and became the Bengals’ head coach.\textsuperscript{111} In the year after his hire, Lewis transformed the Bengals, who were for years one of the NFL’s worst teams, into a playoff contender,\textsuperscript{112} a feat for which he narrowly missed receiving the NFL’s Coach of the Year Award.\textsuperscript{113}

Although Lewis has not yet guided his team to the Super Bowl, another Rooney Rule beneficiary has. In 2004, the Chicago Bears hired Lovie Smith, formerly the St. Louis Rams’ defensive coordinator, as their new head coach.\textsuperscript{114} Smith inherited a mediocre team, which had in the previous year gone 7-9.\textsuperscript{115} In two seasons, however, Smith transformed the Bears’ defense into, arguably, the best in the NFL, and in January 2007, Smith led his team to a victory in the National Football Conference championship game and to a consequent Super Bowl berth.\textsuperscript{116} The 2007 Super Bowl would prove historic, as Smith would join Tony Dungy, coach of the Indianapolis Colts, as the first African-American head coaches in Super Bowl history.\textsuperscript{117}

By his own admission, without the opportunity the Rooney Rule produced, Smith may not have ascended to the NFL’s head coaching ranks.\textsuperscript{118} Given an equal opportunity, however, he did so ascend, and he proceeded to establish himself among the NFL’s head coaching elite.

CONCLUSION

Five years after the Rooney Rule’s emergence, the Rule is an established feature of NFL’s teams’ hiring processes. Indeed, although the NFL has stopped short of requiring such interviews, it has strongly encouraged its member teams to interview candidates of color for their highest-level front office positions.\textsuperscript{119}

\textsuperscript{114} Bears Hire Smith to be Head Coach, USA Today, Jan. 14, 2004.
\textsuperscript{117} Jarrett Bell, Coaches Chasing Super Bowl--And History, USA Today, Jan. 17, 2007.
\textsuperscript{118} Clifton Brown, NFL Roundup: Bears Hope Takeaways Lead Them to Title, N.Y. Times, Jan. 30, 2007, at D2.
\textsuperscript{119} Mark Maske, Expansion of ‘Rooney Rule’ Meets Resistance, Wash. Post, Apr. 13, 2006, at D1. Indeed, the League’s commitment to the Rooney Rule and its underlying principles is so complete that
And, just as diversity has increased among the League’s head coaches, it has increased in the League’s teams’ front offices.\(^\text{120}\)

In short, the Rooney Rule has succeeded. No team has flouted the Rule since Millen did so in 2003, it has increased diversity throughout the League, and its beneficiaries have met with substantial success. As such, the Rule is enjoying greater popularity than ever before—both among those affiliated with the NFL and among outsiders committed to ensuring equal employment opportunity in other contexts. Most notably, in October 2007, the NCAA’s Division I Athletic Directors’ Association, concerned that minorities are disproportionately scarce among the nation’s Division I head football coaching positions, turned to a form of the Rooney Rule in hopes of increasing equal employment opportunities among minority head coaching candidates.\(^\text{121}\) The organization’s members have committed to including candidates of color among the interviewees for their universities’ head football coaching vacancies.\(^\text{122}\) Whether the athletic directors’ commitment will translate into greater diversity among Division I head coaches is untold, but if the NFL’s experience with the Rooney Rule is any indicator, prospects are bright.

As Cyrus Mehri and Johnnie L. Cochran, Jr. pressed the NFL to adopt the Rooney Rule, they insisted they had “provided the basis for meaningful change” and that it was the “obligation of the National Football League to see that change happen[ed].”\(^\text{123}\) They were correct, and the League has, indeed, changed. Once an embarrassment among its peer leagues regarding equal employment opportunity for minority coaches, the NFL now stands as a model for other organizations seeking the change it has enjoyed.


\(^\text{120}\) See Brown, supra note 119 (“[T]he Rooney Rule, or the spirit of it, has led to more opportunities for minorities in NFL front offices.”).

\(^\text{121}\) Steve Wieberg, Major-College ADs Tackle Minority Hiring, USA Today, Oct. 2, 2007.

\(^\text{122}\) Id.

\(^\text{123}\) Cochran, Jr. & Mehri, supra note 2, at 17.