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By Mark A. Flores
The legal community takes a page out of the league's playbook to promote more women and minorities into leadership roles within their firms and organizations.

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Head coach Mike Tomlin has led the Pittsburgh Steelers to a Super Bowl championship, two AFC conference championships, and five AFC North Division championships. He has also won NFL Coach of the Year during his distinguished tenure as the head coach of one of the NFL’s most legendary franchises. He is also African American and considered an example of a success story arising out of the now well-known “Rooney Rule” championed by the former chairman of the Pittsburgh Steelers and one-time head of the NFL’s diversity committee, Dan Rooney. The Rooney Rule requires NFL franchises to interview at least one racially diverse candidate for all head coaching jobs, general manager jobs and other equivalent front-office positions.

Almost twenty years after the NFL first instituted a variation of the Rooney Rule, the law firm of Buchanan Ingersoll & Rooney—yes that same Rooney family—has agreed to take part in a similar pilot program called the Mansfield Rule, which is named after the first woman admitted to practice law in the United States—Arabella Mansfield—and is designed to promote more women and monitories into leadership positions within their firms or companies.

Art Rooney II, named partner of Buchanan Ingersoll & Rooney and President of the Pittsburgh Steelers, has reportedly stated, “My father would be proud to know that we are working together as a community to transition the Rooney Rule into the legal profession.” His firm and 43 other law firms have adopted the Mansfield Rule as part of a pilot project aimed at increasing the promotion of diverse lawyers across all areas of US law firms. The program, hosted by Diversity Lab in collaboration with Bloomberg Law and Stanford Law School, measures whether law firms affirmatively consider women lawyers and lawyers of color for promotions, senior-level hiring, and significant leadership roles in the firm.

Under the Mansfield Rule, participating firms must consider 30 percent women and racially diverse attorneys for 70 percent or more of the firms’ openings in their various leadership committees and roles during a yearlong review period. Diversity Lab will conduct a review of the participating firms’ progress over the course of the year, determine whether the firms have met these goals, and qualify as “Mansfield-certified.”

“We are trying something new because some of the previous efforts, though well-intentioned, have not had as much impact as we would like,” said Lisa Kirby, director of research and knowledge sharing at Diversity Lab. She believes this effort will gain traction. As Kirby stated, “This approach has been tested in the NFL, as the Rooney Rule, and it has seen a lot of success in the NFL.”

Firms that become Mansfield-certified will receive a substantial award, namely an outstanding networking opportunity in late 2017. These firms will have the chance to send their recently promoted diverse partners to a two-day client forum to meet with more than 55 legal departments.
that have agreed to participate in the program. These potential clients range from Toyota to Google to Walmart and other large corporations. Tony West, then-executive vice president, general counsel, and corporate secretary of PepsiCo Inc., reportedly stated “We support the Mansfield Rule Client Forum because it reinforces our efforts to work with our outside counsel to advance diversity in the profession.”

Kirby confirmed that some firms are still working to establish the Mansfield Rule within their various management frameworks. “Firms have such individualized operations and they all function slightly differently,” explained Kirby. “At some firms, one challenge has been to coordinate effectively on lateral and partner hiring, because people at various offices and practice groups are used to having autonomy in their hiring.”

She explained that at those same firms, however, many of the lawyers—not just management—have expressed enthusiasm for the Mansfield Rule and its desired outcome of increasing diversity. She also said that many of the participating firms have noticed a push from their clients on this effort and an expectation to make diversity a priority.

“Some firms have signed on partly because of client encouragement,” said Kirby. “In-house legal department seem pretty enthusiastic.”

Patricia O’Prey, executive counsel with General Electric, certainly shares that enthusiasm. She believes the legal community has many qualified diverse attorneys to fill the roles targeted by the Mansfield Rule and that the Mansfield Rule could change the dynamic within law firms with respect to promoting diverse attorneys to leadership.

“There are qualified and talented diverse lawyers out there in every specialty and every area of the practice,” said O’Prey. “Lawyers have a tendency to just call the friend they know in the field and I think the benefit of the Mansfield Rule is that this will not be enough anymore.”

O’Prey described the Mansfield Rule as a discipline that requires everyone from in-house counsel to law firms to consider people outside their normal circle of friends and attorneys upon whom they typically rely. O’Prey also recognized that the success of efforts like this will, in the long run, necessarily depend not only on in-house counsel recognizing law firms that institute practices like the Mansfield Rule but also on in-house counsel instituting the Mansfield Rule in their corporations’ hiring of outside counsel.

Diversity Lab has already checked in with firms at the three-month mark and plans to check-in with the forty-four firms participating at the six-month mark and to conduct a formal certification process at the one-year mark. Diversity Lab stated that it could not yet gauge the success of the program as law firms have only begun implementing the Mansfield Rule during this last summer. This has not tempered the enthusiasm of Diversity Lab.
“I think there is a lot of momentum and excitement in this program,” said Kirby. “Firms have told us that they are already making changes to their policies to implement the rules.” The clients who will hire these law firms also expect the legal services they receive will benefit as a result of these efforts.

“It’s been proven that having a diverse group gets you better results and we all want quality representation,” explained O’Prey. “We want the best representation and you get that through diversity.”

Mark A. Flores is an associate with Haynes and Boone, LLP, in Fort Worth, Texas.
Why Stop at Confederate Monuments? Remove the Codification of Supremacy and Oppression by Abandoning the Use of Non-Unanimous Juries in Criminal Cases

By Angela A. Allen-Bell

Recently, our collective focus has been upon the existence of Confederate-era monuments in public spaces. Some contend these monuments are divisive, offensive, and antithetical to the promise of justice and equality under the law. Others see the need to memorialize history through these public displays. As these competing views vie center stage, the collateral issue of supremacist and oppressive laws has largely gone unnoticed.

Louisiana and Oregon are not often thought of in the same vein. However, on the issue of non-unanimous juries, they are kindred spirits. In criminal cases in these states, a unanimous vote of all twelve jurors is not needed to convict. Instead, the prosecutor needs to persuade only 83 percent of the jurors (10 of 12) for a felony conviction. All other states as well as federal courts require unanimous jury decisions in criminal cases, including Louisiana and Oregon federal courts. It is time to end the use of non-unanimous juries in criminal cases.

The historical reasons why Louisiana and Oregon parted company with the rest of the nation offend our democratic values. In 1803, when Louisiana became a territory, unanimous verdicts were required. Louisiana required unanimous verdicts from 1803 until the end of Reconstruction and the withdrawal of federal troops. Non-unanimous verdicts were introduced in Louisiana in 1880, after slavery ended. Non-unanimous verdicts made their way to the Constitution of 1898 through Article 116, where the officials announced: “We need a system better adapted to the peculiar conditions existing in our State” and then declared that their “mission was to establish the supremacy of the white race.” At the same convention, Louisiana also adopted literacy tests for voting and one of the South’s first grandfather clauses.

The change from unanimity was to (1) obtain quick convictions that would facilitate the use of free prisoner labor (vis-à-vis Louisiana’s convict-leasing system) as a replacement for the recent loss of free slave labor; and (2) ensure African-American jurors would not use their voting power to block convictions of other African Americans. An 1870 editorial in the New Orleans Daily Picayune posited that the recently emancipated were “wholly ignorant of the responsibilities of jurors, unable to discriminate between truth and falsehood in testimony, and capable only of being corrupted by bribes.”

In Oregon, the 1934 change from a unanimous to a non-unanimous jury system was aimed primarily at ethnic and religious minorities rather than racial minorities. By the 1930s, the Ku Klux Klan found widespread acceptance in Oregon and it was home to approximately 200,000 members, or nearly one in four Oregonians. Anti-immigrant and anti-Semitic sentiments peaked in 1934 when a jury failed to convict a Jewish man of murdering a Protestant man, causing a
verdict of manslaughter (and not murder). The *Morning Oregonian* blamed the verdict on “the vast immigration into America from southern and eastern Europe, of people untrained in the jury system,” and then it accused them of making “the jury of twelve increasingly unwieldy and unsatisfactory.” The following year, Oregon swiftly passed a ballot measure to allow felony convictions based on a less than unanimous vote.

Included in the protections offered by the Sixth Amendment is an impartial jury. James Madison, who introduced the Sixth Amendment, included the requisite of unanimity for conviction in the draft he proposed. When the Framers adopted the trial guarantee, they did so with a unanimous jury in mind. In 1797, John Adams explained, “It is the unanimity of the jury that preserves the rights of mankind.”

The problems associated with non-unanimous jury laws in criminal cases are extensive. For example:

- On their face, they suggest that a prosecutor did not prove the absence of reasonable doubt (since one or two jurors did not cast a vote to convict).
- They create an arbitrary system whereby defendants of 48 states are afforded greater Sixth Amendment protections than defendants in Louisiana and Oregon.
- They establish an illogical disparity in Sixth Amendment protections between state courts and federal courts, because all federal courts require unanimous juries.
- They contribute to wrongful convictions.
- They ignore guidance from the American Bar Association, which opposes the use on non-unanimous juries in criminal cases.
- They ignore the credible research on groupthink, which suggests that unanimous verdicts are more reliable, more careful and more thorough.
- They undermine public trust in the judicial system.

Accordingly, state officials should act in the interests of justice and remove this written relic of supremacy and oppression and, simultaneously, reinstate the traditional meaning of the Sixth Amendment (made applicable to the states through the Fourteenth Amendment). Until this is done, we must confront the fact that oppression and supremacy are as fixed in our legal system as those monuments are into the ground where they stand; addressing one while preserving the other undermines efforts to achieve equality under the law, societal healing, and social progress. The Confederate-era monuments and these supremacist laws both speak to the larger issue of systemic oppression and that is, in all honesty, what it is that we must collectively fight to remove.

*Angela A. Allen-Bell* is the B.K. Agnihotri Endowed associate professor of legal analysis and writing at the Southern University Law Center in Baton Rouge, Louisiana.
Law Firms Employ Fewer Black Lawyers than Other Minorities, Survey Reports
By Debra Cassens Weiss

Minority law school enrollment recently topped 30 percent, but law firms are not making substantial progress in hiring and promoting minority lawyers, according to a Law360 survey. Nearly 85 percent of lawyers at more than 300 firms surveyed are white, “a number that has not meaningfully budged over the past three years,” according to a summary of the findings. The Law360 story on the findings is here (sub. req.).

The survey found that only 15.3 percent of lawyers and 8.8 percent of partners identify as a lawyer of color. Among equity partners, 7.9 percent identified as minorities. At every level, minority representation grew by less than a percentage point over the previous year.

Black lawyers are the least represented at every level. Overall, only 3 percent identified as black, while 3.6 percent identified as Hispanic and 6.8 percent identified as Asian-American.

Though Asian-Americans have the largest representation at law firms, they are the least likely minority to be partners. Twenty percent of Asian-American lawyers are partners compared to 28 percent of black lawyers, 33 percent of Hispanic lawyers, and 48 percent of white lawyers.

In a separate story (sub. req.), Law 360 identified the best firms for minorities, based on their percentage of minority lawyers. Above the Law summarized the findings on the best law firms for minority equity partners.

Among law firms with more than 600 lawyers, the best for minority lawyers are Lewis Brisbois and White & Case (tied for first); Wilson Sonsini; Morrison & Foerster; and Paul Hastings.

For firms with 300 to 599 lawyers, the best are: Fenwick & West and Fragomen Del Rey (tied for first); Finnegan; Debevoise & Plimpton; Fish & Richardson; and Shearman & Sterling.

Among firms with 150 to 299 lawyers, the best are: Atkinson Andelson; Procopio Cory; Curtis Mallet-Prevost; Knobbe Martens; and Shutts & Bowen.

For firms with 20 to 149 lawyers, the best are: Bookoff McAndrews; Berry Appleman; Russ August; Linebarger; and Roig Lawyers.

Debra Cassens Weiss is a senior writer for the ABA Journal in Chicago, Illinois. This article first appeared in the ABA Journal on August 23, 2017.
With Law Firms Lagging in Diversity, How Can GCs Be a Force for Change?

By Lee Rawles

Despite decades of lip service to the importance of diversity in the legal community, the upper ranks of most law firms still fail to accurately reflect the gender and ethnic makeup of practitioners or the population at large.

What accounts for this lack of progress, and what methods can be used to change it?

This was the issue at hand for the panelists at “The Business Case for Diversity: Is It Still Viable?” hosted by the ABA Journal and Working Mother Media on Friday at the ABA Annual Meeting in New York City.

Composed of partners at major law firms, general counsel for large corporations and journalists who have studied the issue of diversity in the legal profession, the panel was in general agreement that law firms lag behind the corporate world in improving diversity. They also agreed that without pressure from their clients—and consequences for failing to increase diversity in their upper levels—law firms are unlikely to change at the pace needed. But there was some disagreement on who owned the majority of the responsibility to effect the needed changes.

Panelist Vivia Chen of The American Lawyer’s Careerist blog says she felt part of the issue was a flawed premise that everyone is on the same page regarding the importance of diversity. Chen says that for the past 20 years, she’s heard that clients are pressuring firms to provide legal teams that are not just white and male, but she is not persuaded that is actually happening.

Chen cited figures from a recent trend report by the Association of Corporate Counsel which found that out of more than 1,800 in-house lawyers surveyed, only 6 percent reported that their departments collect data on the diversity of the law firms they hired, and only 3 percent say that they tracked how many women hold management positions in the firms they hired.

“If that’s the case, where’s the pressure?” Chen asked.

Jeff Smith, deputy general counsel and senior vice president at Comcast Cable, says he has seen a shift in the way in-house counsel approach diversity in the firms they hire. In the past, he says, the standard line was one of neutrality, in which the companies would tell the firms that they did not care who represented them, just that they be qualified. Although the intention was to signal that the companies would be open to being represented by women and minorities instead of exclusively white men, this was not forceful enough to move the needle.

Lynn R. Charytan, executive vice president and general counsel at Comcast Cable, agreed with her colleague and says that in-house counsel must be willing to be more direct and demanding.
“I have called law firms and say: ‘Look at who you’re bringing me—surely you can find me diverse lawyers or women lawyers or both!’” Charytan said. “When I ask, they bring me that team.”

Charytan acknowledged the conversation can be difficult, but said if a firm is not providing diverse representation, then they deserve to be made “incredibly and exquisitely uncomfortable.”

Rick Palmore, who is senior counsel at Dentons and has previously served as general counsel at Sara Lee Corp. and General Motors, says he has seen increasing momentum at corporations to speak up and demand to see diversity in the legal teams that serve them. “The hue and cry is getting much greater, but the question is, what are the consequences?” he said.

Palmore says many firms had “a script of platitudes” when he asked about diversity in their firms, but that he was met with blank looks when he asked how the firms tracked their data.

With human resources departments being much larger and more influential at corporations than at law firms, diversity efforts have been easier to put into place in the corporate world, the panel said. It’s often hard to determine who at law firms should have the responsibility to gather diversity data, and diversity officers are often overwhelmed by their other duties, like providing advancement opportunities and mentoring support to young associates. But it is still necessary.

“You have to track the data,” agreed Hilary Preston, a partner at Vinson & Elkins. Preston says that the idea of data collection often provokes pushback and a fear of quotas being imposed on hiring. But it’s absolutely vital to evaluating how a firm is doing—not only at the entry level but also in the upper ranks of the firm.

One option for in-house counsel is to start factoring in a firm’s diversity during the pitch process, says Heidi Levine, a partner at Sidley Austin. She brought up a corporation that made 10 percent of each firm’s evaluation dependent on the firm’s diversity levels, so that it would be weighed along with cost and other factors. When firms are battling for business, tiny fractions can make a real difference, she says.

“Don’t underestimate the power of taking work away from firms,” Smith said. On the flip side, the panelists agreed that when firms were doing a good job of providing diverse legal teams for their clients, positive reinforcement should be used via praise passed on to the upper management at firms.

In closing, Palmore said that when the task of achieving parity for minority groups and women seems overwhelming, he is reminded of the song “I’m Not Tired Yet,” by the Mississippi Mass Choir.

“We can’t afford to be tired,” he said. “We haven’t solved the problem yet.”
Lee Rawles is an associate editor for the ABA Journal in Chicago, Illinois. This article first appeared in the ABA Journal on August 11, 2017.
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