

Meet the Cohen Milstein Lawyer Behind The #InclusionRider

Frances McDormand endorsed the contractual provisions during the Oscars Sunday night.

BY COGAN SCHNEIER

At the Oscars Sunday night, Best Actress winner Frances McDormand made the “inclusion rider” go viral, but a Cohen Milstein Sellers & Toll lawyer has been working for months to write the language for such provisions.

Cohen Milstein partner Kalpana Kotagal has been developing legal language for contract provisions that Hollywood’s elite can use to require studios and other partners to employ diverse workers on set. Kotagal said Monday she stopped watching the Oscars right before McDormand won, so she was shocked to learn about the mention Monday morning.

She said that while she has not personally spoken with McDormand, she and colleagues from the Media, Diversity and Social Change Initiative at the University of Southern California’s Annenberg School for Communication and Journalism have been discussing inclusion riders with Hollywood agents and lawyers for months.

“What we hope is that this kind of change, driven by those with power in the industry, will help to make this the normative practice industry wide,” Kotagal said.

The NLJ sat down with Kotagal late last year to talk about her work, including the genesis of the “inclusion rider.”

Here’s the interview:

The wave of sexual harassment and assault allegations that have surfaced in the past few weeks may seem



Kalpana Kotagal, a partner with Cohen Milstein Sellers & Toll.

never-ending, but Cohen Milstein Sellers & Toll partner Kalpana Kotagal is optimistic the systemic problems that lead to such gross misconduct can be fixed.

Kotagal recently joined the advisory board of an effort seeking to accomplish exactly that. The Media, Diversity and Social Change Initiative at the University of Southern California’s Annenberg School for Communication and Journalism relaunched last week as the Annenberg Inclusion Initiative. The initiative, founded and directed by professor Stacy Smith, will now include the music industry in its groundbreaking research on diversity and inclusion.

As a civil rights and employment litigator, Kotagal spends her days fighting systemic discrimination

and harassment. She said projects such as the Inclusion Initiative provide real tools to address those issues.

The National Law Journal sat down with Kotagal this week to discuss her role with the initiative, and how lawyers can help eradicate these problems. The following interview was edited for length and clarity.

Q: To start off, how did you get involved in this initiative, and why?

Kotagal: I originally got connected to Stacy Smith through my colleague Anita Hill, who is of counsel at Cohen Milstein, and knows Stacy as a fellow academic working on issues of diversity, inclusion and inequity. They approached me about working on a version of the “Rooney Rule” that addresses issues of inclusion and hiring in the film and television industry.

So I’ve been working with Stacy for the past year to develop legal language for a contract provision that A-listers can take into studio negotiations to foster a more fair and inclusive hiring process. That’s how I got connected to Stacy originally.

What’s quite clear when you look at what’s obviously a bubbling-up crisis of diversity in Hollywood, that has spawned men like Harvey Weinstein, Brett Ratner and others in this wave of sexual harassment allegations, is the industry is lacking genuine diversity in so many dimensions. The work Stacy is doing in the now-rebranded Annenberg Inclusion Initiative puts hard numbers on that lack of diversity, measures it, analyzes it, and also—to Stacy’s credit—really is searching out solutions to the problems.

So that’s why I wanted to get more involved. And, I really think we’ve wrung our hands a lot—we being folks who work on civil rights issues, on issues of inclusion and hiring best practices. I think what’s compelling to me as a litigator here is there often are solutions to these problems, and we have to be willing to ask hard questions and push to see those solutions realized. That is why I am eager to be working with this board.

Q: What will your duties be as an advisory board member?

Kotagal: As you can see from this remarkable advisory board, there is a real cross-pollination and they are folks who are committed to deeper change. They are also folks who work on various dimensions of diversity.

There are people who work on mental health issues, people who work on gender issues, people who work in film or in television. So the board is intended to help provide the initiative with insight and advice from our particular areas of expertise and also to help amplify the work the initiative is doing.

Q: Why is it important to have legal voices on this board?

Kotagal: There is clearly a legal dimension of Hollywood’s failure thus far to be, both on-screen and off-screen, more representative of the world we live in. That can arise in a variety of ways.

From my standpoint, I’m an employment lawyer, a civil rights lawyer and a litigator. That’s given me real insight into what it looks like when companies get it right and what it looks like when companies get it wrong, and how it is that an industry can build and advocate for best practices on the employment side. So I expect that my experience will help to advise the kinds of solutions to problems in the industry related to employment.

Q: As someone who does work on cases that involve widespread and systemic discrimination, what still needs to be addressed? Why is this still a problem?

Kotagal: I think it’s quite apparent that issues of sexual harassment and sexual assault in the workplace are not one-off issues in many industries. They are a reflection of a systemic problem where women, people of color and other underrepresented minorities are not represented in the highest rank of the industries, in the highest ranks of the companies.

So they are more vulnerable to that kind of harassment, which the literature is pretty clear is about power. For me, one of the crucial components here to addressing the deep flaws in the entertainment industry is how we get groups that have been

historically underrepresented into more positions of power in the industry. And that's going to take time. That's a process. It doesn't just happen overnight. But I think that is key to solving the problems that we're seeing now.

Q: So how do industries and companies tackle fixing these problems?

Kotagal: At its core, you have to look for and hire folks from those underrepresented groups. You have to seek out the women directors. You have to seek out the women producers. You have to seek out the on-screen talent that represents more diverse backgrounds. That's one piece of it.

The other piece is those people who select the stories that get told also need to look for greater diversity. There is a narrative problem in addition to a hiring and casting problem. So if I were in the C-suite in a big industry player, I'd be looking at two things. I'd be looking at how I can tap into the existing pipeline—because it exists—of women directors, of people of color directors, folks in the LGBT community, on screen and off screen. And the second is that I'd be reaching out for stories and content that reflects the diversity of the American experience.

Q: Stacy Smith said in an interview that this effort is called an initiative, as opposed to a think tank or institute, because the hope is that it's temporary, and that these problems can be fixed. Do you think that's possible?

Kotagal: I would not do the work I do if I did not think this problem could be solved. I actually think the solutions are pretty clear, and in that way it's easier than other problems we battle in American society, like how to fully insure our population of 350 million people or how to address problems of aging. Those are intellectually harder problems to solve.

This industry could apply best practices to its hiring and casting process and to its process for selecting what content gets made, and applying those practices could start a radical shift in what comes out of the industry and what product it makes.

And there is an appetite for that product. We haven't been able to study it on a wide scale because there isn't enough yet. But we know from examples—everyone's seen "Hidden Figures"—that these are stories people will go see.

So yes, I think these are solvable problems. They require creativity and they require focus and they require a willingness to sometimes make hard choices, but there's no question that it can be done.

Cogan Schneier is a Washington, D.C.-based litigation reporter covering D.C. courts, national litigation trends, the Justice Department and the federal judiciary. She is the author of Trump Watch, an email briefing that covers the Trump administration and its imprint on the law.

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