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Despite His Antics, T.O. Has a Valid Point: Why NFL Players Deserve a Bigger Piece of the Pie

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DESPITE HIS ANTICS, T.O. HAS A VALID POINT: WHY NFL PLAYERS DESERVE A BIGGER PIECE OF THE PIE

I. INTRODUCTION

By now the image is familiar: the old, out-of-shape so-called sports analyst ("purist") criticizing the modern professional athlete for turning sports into business.1 Over the past twenty years, as salaries sky-rocketed in the wake of free agency, the press has scorched players for their greediness, disloyalty, and backward sense of perception.2 Purists, however, do not realize that professional sports have always been businesses to team owners and league officials.3 National Football League ("NFL") players, on the other hand, came

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1. See, e.g., CNN Saturday Morning (CNN television broadcast Dec. 31, 2005) ("With numbers like that, the cries of football purists become the sounds of silence.") (quoting CNN sports business analyst in reference to financial success of 2003 Tostitos Fiesta Bowl).

2. See, e.g., Justin Cohn, Cancellation Proves Even Good Guys Get Greedy, J. – GAZETTE (Fort Wayne), Feb. 17, 2005, at 1B (criticizing "the world of modern professional athletics, where all too many of the headlines are dominated by arrogance, selfishness, criminality and, most of all, greed"); Bill Conlin, Now, They’re Royalty: Saberhagen Shuts Door on Cardinals in Game 7 Romp, PHILA. DAILY NEWS, Oct. 28, 1985, at 104 ("[A]rrogance, greed and self-serving peevishness is woven deeply into the fabric of the game."); Mark Gee, Mailbag: Hooray for Standing Up to McCardell, Greed, TAMPA TRIB., Oct. 24, 2004, at 5 (opining National Football League ("NFL") wide receiver Keenen McCardell’s challenge against owners’ greed is rare); William Gildea, 80s, 90s: The Way It Was, SEATTLE TIMES, Dec. 31, 1989, at Cl ("Sports in the 1980s brought a grief and greed that nothing in our experience had prepared us for.").

3. See Michael MacCambridge, America’s Game: The Epic Story of How Pro Football Captured a Nation 316 (Random House 2004) (indicating that after nearly losing their franchises during World War II, NFL owners were reluctant to share their newly found wealth with players); Stefan Szymbanski & Andrew Zimbalist, National Pastime: How Americans Play Baseball and the Rest of the World Plays Soccer 20-21 (Brookings Institution Press 2005) (explaining existence of baseball business as early as 1860s); Scott E. Backman, NFL Players Fight for Their Freedom: The History of Free Agency in the NFL, 9 SPORTS LAW. J. 1, 2 (2002) ("From the outset, owners and players operated under a typical employer/employee relationship in which the owners set the rules, salaries, and working conditions . . ."); David J. Sipusic, Comment, Instant Repay: Upon Further Review, the National Football League’s Misguided Approach to the Signing Bonus Should be Overturned, 8 SPORTS LAW. J. 207, 210 (2001) (explaining owners first treated professional football as organized business in 1920); Murray Chass, Murray Chass on Baseball: Insiders Recall Birth of Free Agency 10 Years Ago, N.Y. TIMES, Dec. 22, 1985, at S3 ("[Management] held all the guns, and they basically could do whatever they wanted to do, including infringing on your personal life to get their way." (quoting player who won arbitration case which officially began free agency in Major League Baseball ("MLB"))). Owners, like the sports themselves, evolved over time: In the early years of every professional sport, the owners were men of great dedication and expertise . . .
late to the party and are only recently beginning to understand their rights to a bigger piece of an enormous pie.4

Now we have the “T.O. Situation” - Philadelphians’ coin-name for Terrell Owens’s5 (“T.O.”) threatened holdout and the accompa-

Their type was soon superseded, however, by the business tycoon who made his fortune in trade, then dabbled in sports ownership both as a means of advertising his product and finding community approval . . . . Then came the third echelon of owner, the corporate manager who bought a club not only to publicize his business enterprises but also to take advantage of . . . federal tax laws.

JAMES A. MICHENER, SPORTS IN AMERICA 357 (Random House 1976) (recounting how owners came to treat sports franchises as parts of their overall business portfolios).

4. See Bill Saporito, The Money Machine: Sure, It’s Got Fat TV Contracts. But There’s Far More to the NFL’s Success Than the Nation’s Passion for Football, TIME, Jan. 2005, at A7 (arguing NFL, more so than other sports, capitalized on sports industry’s rising value during 1990s); Aron Kahn, Vikings Rank Last Among NFL’s Incredibly Rich, PIONEER PRESS, Sept. 2, 2005, http://www.twincities.com/mlt/twincities/2005/09/02/sports/12538358.htm (explaining how Minnesota Vikings dropped to poorest NFL franchise over past year yet still increased its worth by more than $54 million). As of 2004, the average NFL franchise was worth $531 million and in 2003 the NFL saw $5 billion in revenues, up over 500% since 1989. See Saporito, supra, at A8-10 (adding that NFL’s twenty new or renovated stadiums in past ten years are League’s fastest growing revenue source); Michael K. Ozanian, Football Fiefdoms, Sept. 3, 2004, http://www.forbes.com/business/2004/09/02/cz_kb_0902nflintro.html (asserting average 2004 NFL franchise was worth $733 million and had operating income (earnings before depreciation, taxes, interest, and amortization) of $851 million). In addition, the NFL’s new television deal beginning in 2006 will pay the league $3.7 billion annually, a 53% increase from its current contract. See Kurt Badenhausen et al., The Business of Football, Sept. 1, 2005, http://www.forbes.com/lists/2005/09/01/sports-football-gambling-cz_05nfland.html (detailing NFL’s new television contract); Andy Bernstein, Exit Interview: Shapiro on Sports, STREET & SMITH’S SPORTS Bus. J., Oct. 3-9, 2005, at 1, 34 (“To the NFL’s credit, they had a lot of buyers [for its most recent television deals]. And they got somebody that was willing to pay [the] money [that ABC offered] and more.” (quoting ESPN’s former vice-president of programming and production, Mark Shapiro)). Further, since the summer of 2005 alone, the NFL has made many substantial endorsement deals. See, e.g., Daniel Kaplan & Terry Lefton, Molson Coors Renewing with NFL, STREET & SMITH’S SPORTS Bus. J., Sept. 5-11, 2005, at 1 (noting NFL’s five-year sponsorship deal with Molson Coors worth $500 million); Terry Lefton & Daniel Kaplan, Sprint, NFL near $200M Deal, STREET & SMITH’S SPORTS Bus. J., June 20-26, 2005, at 1 (describing deal’s potential worth of $600 million over five years); Terry Lefton, Samsung Fills Open Category for the NFL, STREET & SMITH’S SPORTS Bus. J., Oct. 3-9, 2005, at 1 (reporting NFL’s deal with Samsung was “well into eight figures per year”).

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nying media frenzy that began shortly after T.O.’s heroic effort in Super Bowl XXXIX. T.O. is the poster-child for the purists’ gripe. Under his current seven-year contract, he is slated to make $49 million; yet he recently quipped amid tears that his family’s financial welfare was somehow in jeopardy. T.O. followed suit throughout the summer and fall of 2005 by creating locker-room problems and appearing on national media outlets. His all-out media blitz took

receiver! . . . A receiver is only as good as his quarterback.” (ellipsis in original) (quoting T.O.).


7. See Michael Bradley, Business Weak: Owens’ Approach to Renegotiating is All Wrong, Apr. 14, 2005, http://sportsillustrated.cnn.com/2005/writers/michael_bradley/04/14/el.hombre/index.html (noting T.O.’s seven-year contract); David Whitley, T.O. Could Learn A Lot From High School Athletes, CENTRE DAILY TIMES (State College, PA), Apr. 19, 2005, at B6 (“No matter what anybody else says about me, my family comes first.” (quoting MSNBC interview with T.O.)). This quote sparked an immediate, prolonged attack on T.O. by the media and the public. See, e.g., Shelly Anderson, Hey, Hines Thanks for Being All Business, PITTSBURGH POST GAZETTE, Sept. 9, 2005, at D2 (“‘I have to take care of my family.’ That’s the load of horse hair Terrell Owens and others have been dishing up when they decide that $1 million a year or $5 million or $10 million isn’t enough and begin barking for more.”); Mike Gross, Show T.O. the Money? Not Likely, SUNDAY NEWS (Lancaster, PA), Apr. 24, 2005, at 1 (recounting how Philadelphia radio talk show offered to help T.O.’s family by starting food drive); T.O. and I Have Lots in Common, BUCKS COUNTY COURIER TIMES, Aug. 19, 2005, at 2D (stating sarcastically: “So Terrell, I understand completely where you are coming from. Keep ignoring the hypocrite and the portly head coach. Remember that you have to feed that family of yours.”). For a discussion of how signing bonuses artificially inflate NFL salaries and how T.O. is most likely to see only a fraction of his $49 million contract, see infra notes 152-70 and accompanying text. For a discussion of how the NFL should more handsomely compensate its players, see infra notes 211-16 and accompanying text.

8. See Whitley, supra note 7 (noting T.O. publicly questioned Eagles’ quarterback Donavan McNabb’s effort during Super Bowl). Further, the Eagles suspended T.O. for a week after a heated argument with Eagles’ head coach Andy Reid only a few days into training camp. See Paul Domowitch, Reese: T.O. Feud a Passing Situation, PHILA. DAILY NEWS, Aug. 30, 2005, at 72 (describing T.O.’s return after his suspension during early August 2005). Soon after this suspension, T.O., with agent Drew Rosenhaus by his side, spoke to a national audience on ESPN’s heavily watched television show Pardon The Interruption. See id. (“[T.O.] warned the Eagles that kicking him out of training camp for a week wasn’t going to make him any easier to live with.”). In this same television appearance, T.O. stated he was no longer speaking with his quarterback. See Bob Brookover, T.O. is Talking Silent Treatment: He Says He Doesn’t Want to Speak to McNabb, PHILA. INQUIRER, Aug. 12, 2005, at D1 (“My attitude is not going to change . . . . I have no desire to talk to [Eagles quarterback] Donovan [McNabb].” (quoting T.O.)). Later, T.O. appeared on The Late Show with David Letterman on Oct. 4, 2005. See Shannon Ryan, T.O. Gets Laughs with Letterman, PHILA. INQUIRER, Oct. 5, 2005, at D6 (“Donovan and I . . . we’ve come to grips with all the things that have happened during the course of the off-season and during training camp . . . .” (quoting T.O.)).
full form on April 14, 2005, when T.O.'s agent Drew Rosenhaus argued T.O.'s case on Dan Patrick's national ESPN radio show:

This was not a normal negotiation [referring to Owens’s contract settlement with the Eagles] . . . . He had to take a substandard deal because he had no leverage . . . It sounds great on paper, but in the first two years of the deal he is not even in the top 10 highest-paid receivers in the NFL . . . He absolutely outperformed his deal. I've had many players that have been cut when they underperformed despite having just done a multiyear deal the year before, like Hugh Douglas with the Jaguars. Why can't we say that he outperformed this deal, which was done under poor circumstances? 9

With this statement, Rosenhaus soundly conveyed his player's message and launched a national debate. 10 While many discarded their appeal as vacuous, partly because of T.O. and Rosenhaus's crassness, the dynamic duo has a valid point: NFL contracts, like


10. See, e.g., Bob Brookover, Scoring Well: Next to His Rivals' Deals, T.O.'s Contract Doesn't Look Bad, PHILA. INQUIRER, June 16, 2005, at D1 [hereinafter Brookover, Rivals] (“Unless you've been abducted by aliens, . . . you've heard that Terrell Owens isn't happy with the seven-year contract he signed with the Eagles before [the 2005 season].”). For a further discussion of the public's reaction to T.O.'s televised appeal for a new contract, see supra note 7 and accompanying text. For a further discussion detailing Rosenhaus's attempts to publicize T.O.'s plot, see supra note 9 and accompanying text. Rosenhaus, known as the toughest NFL agent for his relentless contract negotiation tactics, represents over ninety of the NFL's elite players, including: Javon Walker, Edgerrin James, Chad Johnson, Clinton Portis, Hugh Douglas, Willis McGahee, and Jeremy Shockey. See Dave Scheiber, Feeding Frenzy, ST. PETERSBURG TIMES, Sept. 4, 2005, at 1C (describing Rosenhaus as "sleepless shark" and listing many other players he represents). He is infamous for using the media to increase his and his players' salaries. See id. (characterizing Rosenhaus as savvy publicist); see also SZYMANSKI & ZIMBALIST, supra note 3, at 146 (explaining how media exposure is critical part of sports because people like “watching the money”). Recently, Rosenhaus's publicity tactics backfired when Pro-Bowl wide receiver Javon Walker fired Rosenhaus. See Liz Mullen, Walker's New Agent to Talk to Pack, NOT PRESS, STREET & SMITH'S SPORTS BUS. J., Dec. 19-25, 2005, at 16 (citing Rosenhaus's media stunts as cause for his firing).
those in Major League Baseball ("MLB"), should have more guaranteed money.\textsuperscript{11}

This Comment, drawing primarily on comparisons to MLB, explores why NFL teams do not guarantee contracts and argues that they should. Section II develops and compares the histories of the NFL, MLB, and the concurrent labor movement.\textsuperscript{12} It also explains the effects of MLB's antitrust exemption and describes the NFL's current holdout situation. Section III sorts through the supporting case law, asserts the NFL Players Association ("NFLPA")\textsuperscript{13} needed the courts to achieve its goals, looks at the NFL's and MLB's collective bargaining agreements ("CBA"), and details why NFL salaries are typically smaller than MLB salaries.\textsuperscript{14} Finally, Section IV sets forth a different perspective of U.S. professional sports leagues with a comparison to soccer's global stage, revisits the "T.O. Situation," and considers the possible impact of implementing T.O. and Rosenhaus's proposal.\textsuperscript{15}

II. RELEVANT NFL & MLB HISTORY

According to Neil D. Harris, University of Maryland English professor and sports historian, "[S]alaries in professional sports

\textsuperscript{11} See, e.g., MacCambridge, supra note 3, at 317 (explaining how NFL players began seeking more guaranteed money during their first strike in 1974); see also Lawrence M. Kahn, The Effects of Race on Professional Football Players' Compensation, 45 INDUS. & LAB. REL. REV. 295, 299 (1992) [hereinafter Kahn, Effects] ("Unlike long-term baseball player contracts, . . . multi-year football player contracts are almost never guaranteed." (citations omitted)); Sipusic, supra note 3, at 219 (noting NFL franchises guaranteed only twelve percent of teams' total payrolls in 1989 and forty-eight percent in 1999). For further evidence of the media's attack on T.O., see supra note 7 and accompanying text.

\textsuperscript{12} For a discussion outlining the relevant background material on the NFL's and MLB's business operations, see infra notes 16-70 and accompanying text.

\textsuperscript{13} Despite players' efforts to unionize as early as 1956, the NFLPA became an official union in 1968 when the National Labor Relations Board ("NLRB") recognized it as an official labor organization. See Backman, supra note 3, at 11 (summarizing NFLPA's history); Sipusic, supra note 3, at 216 (noting 1956 discussions eventually led to NFLPA's formation). According to John Mackey, former NFL player and first president of the combined NFL and AFL Players Associations, this 1970 merger marked the beginning of the modern NFLPA. See John Mackey & Thom Loverro, Blazing Trails: Coming of Age in Football's Golden Era 186 (Triumph Books 2003) (adding that NLRB recognition empowered NFLPA "to force the owners to the bargaining table"). For a description of the case John Mackey brought against the NFL, see infra notes 102-09 and accompanying text.

\textsuperscript{14} For a further discussion summarizing the NFLPA's inability to capitalize on court decisions and the lack of guaranteed contracts in the NFL, see infra notes 71-206 and accompanying text.

\textsuperscript{15} For a discussion concluding that guaranteeing contracts would not significantly hinder the NFL's financial success, see infra notes 207-21. For a description of the "T.O. Situation," see supra notes 6-10 and accompanying text.
[are] just a reflection of what is going on in society." Therefore, understanding the histories of the NFL, MLB, and the United States labor movement is critical to comprehending current player salaries and the NFL's financial success. In addition, an examination of MLB’s antitrust exemption and both the NFL’s and MLB’s CBAs is necessary to understand how and why NFL teams refuse to grant guaranteed contracts.

A. NFL History

The NFL is the richest and most popular sports league in the United States. Its exponential growth occurred during the late 1950s and early 1960s, a time when "[b]aseball towered above the sporting landscape like a colossus . . . [as] the only game that mattered." Football’s television success began in 1958 and was crucial to the NFL’s development. 20 But NFL Commissioner Pete Rozelle’s "perfect, egalitarian vision" of the NFL brought the game to unparalleled heights.

16. Gildea, supra note 2 (quoting Professor Harris, who argues sports cannot be separated from rest of society).
17. For a further discussion of MLB’s antitrust exemption, see infra notes 34-37 and accompanying text. For a comparison of the NFL’s and MLB’s CBA, see infra notes 174-78 and accompanying text.
18. See, e.g., Clay Latimer, American Evolution: The NFL Has Become ‘America’s Game,’ A Title It Is Not About to Give Up, ROCKY MOUNTAIN NEWS, Sept. 8, 2005, at 10C (“The NFL seems to have it all these days: $1 billion franchises, $100 million players, $10 billion in TV contracts, its own satellite/cable-TV network, [and] a 2-to-1 edge over baseball in public popularity.”).
19. MACCAMBRIDGE, supra note 3, at xiv, xv (noting by 1972, thirty-six percent of Americans considered football their favorite sport while twenty-one percent considered baseball their favorite).
20. See id. at ix-xiv (describing how epic 1958 NFL championship game between Baltimore Colts and New York Giants played at Yankee Stadium and broadcast nationally on NBC jump-started NFL’s successful partnership with television media outlets).
21. See id. at xv (acknowledging that though NFL surgically exploited television, “the medium alone cannot explain the rise of the message.”). Rozelle’s influence, beginning in the early 1960s, was widespread:
   Rozelle understood that leagues were most likely to succeed financially when they lived up to the ideals of a higher cause – fair play.

   His mastery in tailoring the NFL’s image for a broad middle-class audience helped make the game more appealing . . . . Rozelle sold sports as they’d never been sold before – as a sophisticated passion, rather than a trivial juvenile pastime.

The self-evident truth that Rozelle stressed repeatedly was that the business of sports would be most successful if the competition was as equitable as possible. So the business model that emerged through the ’50s, ’60s, and ’70s viewed the league’s teams not as a number of restaurants
The American Football League ("AFL") was equally important to the NFL's development because it combined Rozelle's vision with AFL-founder Lamar Hunt's vision "of widespread and wide-open opportunity." Motivated by the NFL's refusal to expand, Hunt formed the AFL in 1959. Interestingly, antitrust laws were simultaneously crucial to the NFL's success and the source of its nearly failed merger with the AFL. The AFL, formed in the wake of the Supreme Court's decision in Toolson v. New York Yankees, Inc. and with "antitrust questions from Congress [having] been muted . . ." proved critical to the NFL's success because the competition between the two leagues inherently manufactured a better combined product. Meanwhile, the U.S. House Judiciary Committee balked at approving the AFL-NFL merger because it violated antitrust laws.

... each dependent on the survival of the whole to truly prosper. Id. at xv-xvi (explaining NFL's decision in 1961 to equally share television revenues would prove critical once television became NFL's largest source of revenue). For a further discussion of the NFL's current television contracts, see supra note 4. For a further discussion of MLB's television contracts, see infra notes 38-40 and accompanying text.

22. MACCAMBRIDGE, supra note 3, at xvii ("[T]he feuding leagues unwittingly accelerated the growth of the sport as a whole."). For details on how the AFL and NFL secretly implemented their merger, see id. at 216-30.

23. See id. at 120-24 (noting NFL tried to use news of new league to gain antitrust protection during 1959 Senate hearing before Subcommittee on Anti-Trust Monopoly).

24. For a further discussion of antitrust laws' paradoxical effect on NFL, see infra notes 26-27 and accompanying text.

25. 346 U.S. 356, 357 (1953) (limiting MLB's antitrust exemption to baseball because "Congress had no intention of including the business of baseball within the scope of the federal antitrust laws").

26. MACCAMBRIDGE, supra note 3, at xvi, 106 (explaining that AFL-NFL struggle brought intrigue, publicity, creativity, and eventual merger); see also Sipusic, supra note 3, at 214 (noting World Football League in 1970s and United States Football League (USFL) in 1980s were temporary competitors of NFL). Professional football player salaries increased from $90,000 to $190,000 during the USFL-NFL war in the mid-1980s. See KENNETH L. SHROPSHIRE & TIMOTHY DAVIS, THE BUSINESS OF SPORTS AGENTS 11 (University of Pennsylvania Press 2003) (noting Stanford University economist Roger Knoll argues that competition between leagues helps to increase player salaries).

27. See MACCAMBRIDGE, supra note 3, at 229 (explaining how Rozelle had to promise then-House Majority Leader Hale Boggs that NFL would bring franchise to New Orleans in exchange for antitrust exemption); Professional Football League Merger: Hearings on S. 3817 Before H. Comm. on Judiciary, 89th Cong. 2 (1966) ("The Antitrust Subcommittee intends to explore thoroughly the extent of the antitrust immunity requested . . .") (quoting Chairman Immanuel Celler)). Interestingly, Chairman Celler needed no such persuasion only fifteen years earlier when he affirmed MLB's antitrust exemption. See SZYMANSKI & ZIMBALIST, supra note 3, at 176-77 (citing Study of Monopoly Power Part 6: Organized Baseball: Before H. Subcomm.
Both Rozelle’s commitment to competitive balance and the NFL’s relationship with the AFL set the foundation for an extremely profitable business model.\textsuperscript{28} In contrast with baseball, these factors help explain why NFL franchises are now significantly more valuable than MLB franchises.\textsuperscript{29}

B. MLB History

Formed in 1876 and the first league to resemble present professional sports leagues, the National League (“NL”) foreshadowed MLB’s emergence.\textsuperscript{30} Three years later and eleven years before the enactment of the Sherman Antitrust Act,\textsuperscript{31} the NL introduced the reserve clause, essentially giving teams a permanent right to players without having to worry about other teams competing for their players’ services.\textsuperscript{32} The reserve clause demonstrated the NL’s stronghold on the marketplace, which a team challenged in 1922 before the Supreme Court in \textit{Federal Base Ball [sic] Club of Baltimore v. National League of Professional Base Ball [sic] Clubs.}\textsuperscript{33}

\textit{Federal Base Ball [sic] Club of Baltimore v. National League of Professional Base Ball [sic] Clubs.}\textsuperscript{33}
1. **MLB’s Antitrust Exemption**

In *Federal Base Ball* [sic], the Supreme Court skirted around MLB’s alleged antitrust violation by holding that interstate travel accompanying the sport was merely incidental to “the exhibition, [which] although made for money would not be called trade or commerce in the commonly accepted use of those words.” The reserve clause evaded scrutiny until 1972 when the Supreme Court affirmed its earlier decisions in *Flood v. Kuhn* and held the reserve clause, particular to MLB, did not violate antitrust laws. Because no other competitors could enter the market, MLB owners, unlike their NFL counterparts, conducted their businesses without checks from outside leagues to ensure fairness and progress.

34. *Id.* at 209 (“[P]ersonal effort, not related to production, is not a subject of commerce.”). Thirty years later, the Supreme Court affirmed this holding in *Toolson v. New York Yankees, Inc.*, where the Court held “if there are evils in this field which now warrant application to it of the antitrust laws it should be by legislation.” 346 U.S. 356, 357 (1953) (noting federal antitrust laws did not affect baseball over past thirty years). But see *Toolson*, 346 U.S. at 357-58 (Burton, J., dissenting) (arguing majority’s holding, which effectively held MLB did not engage in interstate commerce, drastically changed state of professional baseball since *Federal Base Ball* [sic]); Radovich v. NFL, 352 U.S. 445, 456 (1957) (Harlan, J., dissenting) (“Since I am unable to distinguish football from baseball under the rationale of *Federal Base Ball* and *Toolson*, and can find no basis for attributing to Congress a purpose to put baseball in a class by itself, I would adhere to the rule of *stare decisis* . . . .”).

35. 407 U.S. 258 (1972) (bringing free agency to professional sports). Curt Flood, an African-American embittered after years of playing baseball throughout the South, was an all-star centerfielder for the St. Louis Cardinals who fought the reserve system. See Dave Zirin, *What’s My Name, Fool? Sports and Resistance in the United States* 103-04 (Haymarket Books 2005) (detailing influential letter Flood wrote to then-Baseball Commissioner Bowie Kuhn). Though he lost his case before the Supreme Court, Curt Flood initiated the player movement toward free agency, first introduced to professional team sports in the 1976 MLB CBA. See Szymbanski & Zimbalist, *supra* note 3, at 95-96, 230 (adding that Congress passed Curt Flood Act in 1998, effectively declaring reserve system violates antitrust laws); see also Curt Flood Act, 15 U.S.C.A. § 26b(a) (2002) (stating MLB’s business “directly relating to or affecting employment of major league baseball players . . . [is] subject to the antitrust laws . . . .”).


37. *See Szymbanski & Zimbalist, supra* note 3, at 213 (describing negative effects of MLB’s antitrust exemption). Some argue the commissioner’s office appropriately oversees the MLB; however, the MLB commissioner is an employee of the owners whose responsibility is MLB’s welfare (i.e., ensuring franchises remain viable). See *id.* at 126-28 (explaining how MLB commissioner governs owners). The commissioner’s role is not to protect the welfare of baseball but, rather, is to guarantee MLB’s profitability. See *id.* For a further discussion comparing the NFL to
2. **MLB’s Television Contracts**

In 1965, MLB followed the NFL’s lead and signed a national television contract distributing revenues equally among all teams.\(^3\) MLB’s equal revenue sharing, however, significantly decreased in 1994 when teams began to sign large, local, undistributed television contracts.\(^3\) Thus began the NFL’s emergence as the nation’s richest sports league, evidenced by its recent record-breaking television contract worth over $3.6 billion annually.\(^4\)

C. **Players’ Unions**

Paving the way for enormous revenue increases, television’s popularity rose rapidly during the 1950s.\(^4\) The NFL and MLB reaped these benefits throughout the 1960s and onward.\(^4\) Significantly higher revenues, combined with the labor movement occurring outside the sports world, convinced NFL players that forming a union was their best chance to increase their salaries.\(^4\) Yet despite their unionization efforts and collective strikes, the nature of foot-

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\(^3\) See SzYMANski & ZIMBALIST, supra note 3, at 149 (noting in 1964, when CBS bought New York Yankees and MLB unevenly distributed television agreement with CBS, “CBS [effectively] paid itself two-thirds of MLB’s rights fee”). This contract would be expanded over the next four decades, during which time MLB produced a competitively balanced product which resembled the NFL’s current even distribution of talent. See id. (noting baseball’s competitive balance increased between mid-1960s and early-1990s).

\(^3\) See id. at 150 (noting New York Yankees’ local television contract, for example, brought Yankees over $40 million annually).

\(^4\) For a further discussion of the NFL’s lucrative television contracts, see supra note 4.

\(^4\) See SzYMANski & ZIMBALIST, supra note 3, at 148 (indicating 45.8 million households had television by 1960, up from 10.5 million households in 1950); see also MACCAMBRIDGE, supra note 3, at 103-04 (noting there were 172,000 televisions in the United States in 1948, and 25 million by 1954).

\(^4\) See ROBERT C. BERRY, WILLIAM B. GOULD IV & PAUL D. STAUDOHR, LABOR RELATIONS IN PROFESSIONAL SPORTS 128 (Auburn House Publ’g Co. 1986) (recognizing NFL’s television contract expiring in 1981 paid each team $5.8 million annually and 1982 contract paid each team $14.2 million annually); SzYMANSKI & ZIMBALIST, supra note 3, at 149 (charting MLB’s average annual television network revenues: $1.195 million in 1956, $3.25 million in 1960, $16.6 million in 1970, $47.5 million in 1980, and $365 million in 1990). In 1967 the average NFL player salary was $8,000, while MLB’s was $19,000. See ZIRIN, supra note 35, at 102 (noting typical professional athlete during 1960s had another job during off-season).

\(^4\) See MACCAMBRIDGE, supra note 3, at 316 (explaining by 1970 players knew of league’s rising value and realized salaries remained static during exponential growth of 1960s).
ball and the NFL's relatively weaker union limit players' salaries to this day.\footnote{For a further discussion characterizing the nature of football, see infra notes 186-93 and accompanying text. For a further discussion of the weakness of the NFL's players' union, see infra notes 50-59 and accompanying text. For a further discussion on how the NFLPA needed the courts to affect change, see infra notes 81-133 and accompanying text.}

1. **Effect of the Labor Movement**

The labor movement, which began after the Depression in the 1930s, reformed the professional sports landscape by galvanizing athletes and forcing them to realize that they were laborers in the truest sense of the word.\footnote{See Berry \textit{et al.}, supra note 42, at 31 (indicating by mid-1970s labor relations began changing future of pro sports); Zirin, supra note 35, at 106 (noting prior to professional athletes' effective unionizing efforts, media outlets would boast "that athletes are 'not real workers' and they don't have 'real strikes.' George Meany, the first president of the AFL-CIO, . . . [once] said, 'I have no use for ballplayers as union men. You'd never see the day when one of those high-priced bozos would honor a picket line . . . .'"); see also Mackey & Loverro, supra note 13, at 186 (stating that owners resisted recognizing NFL players as legitimate labor until early 1970s).} In addition, the tumultuous 1960s left many athletes with greater awareness of surrounding societal trends and a penchant for resistance.\footnote{See Zirin, supra note 35, at 112 ("You now had at least some people who were able to think in terms of what was wrong with the society, what was wrong with the conditions, people much more accustomed to think about these things." (quoting Marvin Miller)). David Meggyesy, NFLPA's current West Coast Director, acknowledges the civil rights movement significantly influenced his union-oriented politics. See id. at 114-23 (interviewing Meggyesy and noting his father's fight for workers' rights also shaped Meggyesy's attitude toward management).}

Marvin Miller embodied the labor movement's effect on the unionization of professional athletes.\footnote{See id. at 102-03 (crediting Miller as "pioneer" who brought solidarity and subsequently free agency to sports world). Soon after Miller took over the MLB Players Association ("MLBPA"), Curt Flood, inspired by Miller, brought his challenge to the reserve clause which would eventually mark the beginning of free agency. See id. at 103-05 (illustrating Flood's fight for free agency and resulting mistreatment by MLB and anti-union players). Under Miller's reign, the average player salary rose from $19,000 to over $240,000 per year. See id. at 107 (describing Miller's significant role in reshaping sports' landscape). For a summary of Flood's case, see supra notes 35-36 and accompanying text.} As the executive director of the MLB Players Association ("MLBPA") from 1966-82 and the man credited with bringing effective unionization to professional sports, Miller worked for the War Labor Board and helped head the steel-workers union before joining the sports world.\footnote{See Zirin, supra note 35, at 108-10 (conveying that Miller also worked for International Association of Machinists and United Auto Workers). In an interview Miller explained:} Miller established the MLBPA as one of the strongest labor unions in the country, but
yet the NFLPA still has not heeded his lessons or adopted his hard-lined positions.49

2. NFLPA versus MLBPA

Unlike the MLBPA’s experience, poor bargaining strategies, a lack of cohesiveness, and the nature of football plagues the NFLPA.50 These factors led to unsuccessful strikes and, consequently, lower wages and less guaranteed money for NFL players.51

My father . . . . was a member in the wholesale clothing workers union . . . . [M]y mother . . . . became one of the early members of the city’s teachers union. As the thirties progressed and the CIO [Congress of Industrial Organizations] and industrialized unions formed, everybody was aware of the ferment of the labor movement. All of these were influences.

. . . [Working for] the War Labor Board, I dealt with arbitrating steel, auto, women in the workplace . . . . and then the steelworkers union starting in 1950, and I became chief economist and assistant to the president . . . . until 1966.

Id. at 108, 110.

49. See MacCambridge, supra note 3, at 317 ("[T]he NFLPA was never as radical as the [MLBPA]."); Zrin, supra note 35, at 105 ("The way baseball players think about it is guys before us have sacrificed to enable us to have a healthy game. We’re a strong union because we’re all on the same page. We need to keep it that way.” (quoting MLB player)); see also Jeffrey D. Schneider, Comment, Unsportsmanlike Conduct: The Lack of Free Agency in the NFL, 64 S. Cal. L. Rev. 797, 815 (1991) (asserting NFLPA is only professional player union unable to improve its labor market during last twenty years). There are, however, recent indications that the NFLPA is ridding itself of its soft reputation. See The 50 Most Influential People in Sports Business: #17. Gene Upshaw, Street & Smith’s Sports Bus. J., Dec. 19-25, 2005, at 29 (noting most recent labor negotiations between NFL and NFLPA represent distinct diversion from past dealings and NFLPA executive director Upshaw “proved he is no pushover”); The 50 Most Influential People in Sports Business: #2. Paul Tagliabue, Street & Smith’s Sports Bus. J., Dec. 19-25, 2005, at 22 (characterizing NFLPA as “a suddenly belligerent union”).

50. See MacCambridge, supra note 3, at 317-72 (describing NFLPA’s problems during 1974 and 1982 strikes); Berry et al., supra note 42, at 123 (indicating some observers thought NFLPA “was relatively weak and lacked solidarity”); Powell v. NFL (Powell I), 888 F.2d 559, 561 (8th Cir. 1989) (noting NFL players’ strike only lasted for one month during 1987 and players subsequently resorted to courts for aid), superseded by, 930 F.2d 1293 (8th Cir. 1989); see also Schneider, supra note 49, at 814-15. The article explains:

Football differs from [other sports] in that a single player is less likely to affect a game’s outcome . . . . Moreover, there may not be an adequate economic incentive to sign free agents in football. Unlike baseball and perhaps basketball, it is doubtful that free agency boosts a football club’s ticket sales.

Schneider, supra note 49, at 814-15 (alterations in original) (quoting Berry et al., supra note 42)). Additionally, an average football player’s career lasts approximately three years, meaning any strike significantly limits a player’s earning potential. See Zrin, supra note 35, at 105 (detailing NFL player strikes). For a further discussion of football’s violent nature, see infra notes 186-88 and accompanying text.

51. See MacCambridge, supra note 3, at 367 (observing NFL players “had no leverage” during 1987 strike); Schneider, supra note 49, at 815 (indicating NFL
The MLBPA, on the other hand, witnessed much greater success under Miller’s direction.\(^\text{52}\)

*Powell v. NFL (Powell II)*\(^\text{53}\) demonstrates how the NFLPA ineffectively unionized professional football players.\(^\text{54}\) The Eighth Circuit determined that NFL players could not bring an antitrust action challenging agreements made during the collective bargaining process.\(^\text{55}\) Bringing this action after again failing to mount an effective strike, NFL players relied upon the historically management-friendly courts to attack the owners’ refusal to negotiate outside of the 1982 CBA’s terms.\(^\text{56}\) Not surprisingly, their attempt was unsuccessful.\(^\text{57}\)

The MLBPA, as one of the strongest labor unions in the country, is a major reason why MLB players currently have a more developed free agency system than NFL players have.\(^\text{58}\) The prolonged absence of an NFL free labor market is the source of NFL player

\(^\text{52}\) See ZIRIN, supra note 35, at 111 (“They had an organization – a fake union – called the Players Association that had been formed by the owners. This was a company union in every sense of the word . . . .” (quoting Miller’s description of MLB player’s union before he took it over)). For a further explanation how MLB player salaries increased significantly under Miller’s reign, see supra notes 47-49 and accompanying text.

\(^\text{53}\) 930 F.2d 1293 (8th Cir. 1989). For a further discussion of the *Powell* cases, see infra notes 111-22 and accompanying text.

\(^\text{54}\) For a further discussion of the NFLPA’s failures and its subsequent reliance on the courts, see infra notes 81-133 and accompanying text.

\(^\text{55}\) See *Powell II*, 950 F.2d at 1301-02 (“[T]he League and the Players have not yet reached the point in negotiations where it would be appropriate to permit an action under the Sherman Act.”).

\(^\text{56}\) See *Powell I*, 888 F.2d 559, 561 (8th Cir. 1989) (explaining NFL players were trying to get rid of First Refusal/Compensation System, which they originally agreed to in 1977 CBA). *But see id.* at 570 (Heaney, J., dissenting) (citing Mackey v. NFL (Mackey II), 543 F.2d 606 (8th Cir. 1976)) (“The labor exemption will not immunize restraints which are unilaterally continued after impasse because such restraints are not agreed to during good faith bargaining.”).

\(^\text{57}\) See *id.* at 568 (holding antitrust laws inapplicable); Schneider, supra note 49, at 812 (arguing NFLPA, in both 1977 and 1982 collective bargaining agreements, agreed to draft system closely resembling one declared anticompetitive in *Smith v. Pro Football*, 593 F.2d 1173 (D.C. Cir. 1978)).

\(^\text{58}\) See SHIRLEY POVICH, ALL THOSE MORNINGS . . . AT THE POST 342 (Public Affairs 2005) (“[H]ave noted [the salary cap’s] curse on football payrolls . . . . In the baseball players’ view, the football players were stupid to accept a salary cap and they want none of it.” (quoting column written on Sept. 15, 1994, [MLB players]); Kahn, *Effects*, supra note 11, at 296 (asserting free agency brought substantial profits to player unions in basketball and baseball, while “NFL owners have effectively blocked attempts by players to institute similar arrangements in football”). For further discussion on how the NFLPA needed the courts to effect change, see infra notes 81-133 and accompanying text.
holdouts and why T.O. and his colleagues should receive more guaranteed money.\textsuperscript{59}

3. NFL Holdouts

The lack of guaranteed contracts in the NFL is the true source of player holdouts.\textsuperscript{60} Although holdout players renegotiate on signed agreements, standard contract provisions permit NFL owners to prematurely cut an underperforming or injured player.\textsuperscript{61} Further, the recent media hysteria surrounding NFL player holdouts over-

\textsuperscript{59} See Schneider, supra note 49, at 798 (explaining origin of NFL player holdouts). Schneider describes the impact of the free labor market as follows:

Lately, many restrictions on the ability of athletes to move from employer to employer as "free agents" have been eliminated by court decisions, arbitration decisions, and the combined efforts of players and team owners to fashion mutually agreeable [CBAs]. As a result, athlete salaries in most professional sports leagues have skyrocketed in recent years. This trend, however, has not been as prevalent in the NFL. One result of this increased free agency in the NBA and MLB has been a rash of player "holdouts" in the NFL.

\textsuperscript{60} For further discussion on why non-guaranteed contracts cause player holdouts and how T.O.'s current contract epitomizes this problem, see infra notes 160-73 and accompanying text. The vast majority of NFL holdouts happen in two different situations: 1) recently drafted rookies, especially first-round draft picks, wait to ensure they get the full market value of their draft "slot"; 2) elite players in the prime of their careers try to renegotiate their current deals to reflect their true market value (this Comment's focus). See Basil M. Loeb, Comment, Deterring Player Holdouts: Who Should Do It, How to Do It, and Why It Should be Done, 11 Marq. Sports L. Rev. 275, 276 (2001) (explaining only premier players can effectively holdout); Liz Mullen, What's the Holdup?, STREET & SMITH'S SPORTS BUS. J., Aug. 1-7, 2005, at 1 ("There is an almost institutionalized negotiation schedule that almost ensures that most first rounders will be a day or two late [to training camp]." (quoting NFL agent Leigh Steinberg)).

\textsuperscript{61} For further discussion on the relevant CBA provisions allowing owners to sign non-guaranteed contracts, see infra notes 176-78 and accompanying text. Nonetheless, some commentators only see the issue as one-sided, that "[n]o one, including superstar athletes, should be above the law." Loeb, supra note 60, at 278 ("Society would be outraged, for instance, if owners released a player and refused to honor their existing obligations under a current and valid contract just because the player happened to be performing poorly."). Interestingly, NFL franchise owners can do just that. For further discussion on the relevant provisions from the NFL's CBA allowing owners to cut players for underperformance, see infra note 178. Another commentator suggests, "Surely, it would not be fair for an architect, who contracted to build a four-story building for $4 million, to threaten to walk off the job after completing the first two floors unless the owner promised to pay an additional $2 million." Daniel M. Walanka, Comment, An Alternative Approach to the Problem of Midterm Demands for Contract Renegotiation in the National Football League: The Incentive-Based Contract, 17 Loy. L.A. Ent. L.J. 771, 771 (1997) (suggesting NFL players violate contract law with their mid-term demands for contract renegotiations). Again, this analogy falls short because the building owner, unlike NFL owners, cannot stop payment after the architect has built the second floor. For a further discussion of non-guaranteed contracts in the NFL, see infra notes 134-81 and accompanying text.
looks the league’s extensive holdout history and the effect of a currently un-renewed CBA terminating in 2008.62

In light of these concerns, this year’s increased number of holdouts does not pose a great threat to the NFL’s viability.63 Rookie and even veteran holdouts should decline with the signing of a new CBA that brings a larger share of team revenue to players.64 Regardless, threatened holdouts like T.O.’s will continue until guaranteed contracts become more prevalent.65 Non-guaranteed contracts leave too much at risk for some of the world’s most talented athletes.66

Professional football players play in the world’s wealthiest sports league — a product of many favorable historical factors, court rulings, savvy leaders, and a format prime for television consumption.67 Yet NFL players, due to a history of poor unionization and ineffective bargaining strategies, never dealt at arm’s length with


63. See Clayton, Lack of New CBA, supra note 62 (“Though it’s hard to believe based on this [2005] summer’s negotiating panic, the current system usually minimizes holdouts.”).

64. See id. (asserting owners should extend current CBA to prevent rookie holdouts); see also Daniel Kaplan, NFL Open to Sharing All Local Revenue: League and NFLPA to Meet This Week, STREET & SMITH’S SPORTS Bus. J., Feb. 14-20, 2005, at 1 (stating for new CBA “[t]he NFL is willing to share all local and national revenue with its players, . . . marking a seismic shift in how America’s top sport operates”).

65. For a further discussion of how contracts like T.O.’s mislead fans, see infra notes 160-73 and accompanying text. For a further discussion identifying the serious injury risk for NFL players, see infra notes 186-88 and accompanying text.


67. For a further discussion of important historical NFL developments, see supra notes 18-29 and accompanying text.
the owners, a group of razor-sharp business people who carefully crafted their labor relationship with their employees. These factors attributed to the current CBA, which depresses players' guaranteed incomes and allows teams to freely cut unwanted players. Considering this history, especially when compared to the MLB's past, NFL players face a steep uphill battle against accumulating forces and could possibly look to legal means to guarantee their contracts. Court decisions, however, suggest that the NFL's antitrust and contractual frameworks would not provide much assistance.

III. THE LEGAL LANDSCAPE

The lack of guaranteed contracts in the NFL stems from practice, not precedent. Beginning with the Supreme Court in *Radovich v. NFL*, courts have consistently found "the volume of interstate business involved in organized professional football places it within the provisions of the [Sherman Antitrust] Act." While the NFL benefits from courts' interpretations of antitrust laws, NFL players have not reaped their fair share. This stems, in part, from the Fourth Circuit's holding in *Tillman v. New Orleans Saints Football Club*, which permitted teams to unilaterally cut injured or un-

68. For a further discussion comparing the NFLPA to the MLBPA, see *supra* notes 50-59 and accompanying text. For a further discussion describing sports franchise owners as acute business people, see *supra* note 3 and accompanying text.

69. For a further discussion of the relevant provisions of the NFL's CBA, see *infra* notes 176-78 and accompanying text. For a further discussion of the possible positive impact of teams' ability to cut underperforming or injured athletes, see *infra* notes 194-99 and accompanying text. For a list of unwanted star players recently cut by their teams, see *infra* note 170.

70. For a further discussion of the relevant antitrust law, see *infra* notes 81-133 and accompanying text. For a further discussion demonstrating that the courts permitted non-guaranteed contracts in the NFL, see *infra* notes 138-51 and accompanying text.

71. For a further discussion demonstrating how precedent does not account for the lack of guaranteed contracts in the NFL, see *infra* notes 174-78 and accompanying text.

72. *Radovich v. NFL*, 352 U.S. 445, 451-52 (1957) (holding professional baseball's antitrust exemption was unique to baseball); *see also* *Kapp v. NFL*, 390 F. Supp. 73, 79 (N.D. Cal. 1974) ("[P]rofessional football league activity, unlike similar baseball activity, is subject to the antitrust laws."); *vacated in part*, 1975 WL 959 (N.D. Cal. 1975) (citing *Radovich*).

73. For a further discussion of how competition from outside leagues helped improve and shape the NFL's product, see *supra* notes 22-27 and accompanying text.

derperforming players.\textsuperscript{75} Once teams were allowed this leeway, the league ensured that its CBA with the players would not restrict this freedom.\textsuperscript{76}

Nonetheless, MLB’s CBA does not require teams to sign guaranteed contracts.\textsuperscript{77} Guaranteed contracts in professional baseball resulted from the nature of the sport; a baseball player’s athletic prowess is not subject to the intense physical wear and tear that a football player suffers throughout his career.\textsuperscript{78} Regardless of the NFL’s high injury risk, its players still generate revenues and profits for team owners that far exceed any other sport.\textsuperscript{79} Therefore, despite some limiting factors, NFL players should receive more guaranteed money.\textsuperscript{80}

A. Antitrust Laws & the NFL

As discussed earlier, the NFL benefited from the Supreme Court’s initial holding in \textit{Toolson} limiting the antitrust exemption to MLB.\textsuperscript{81} Courts reinforced this ruling throughout the following four decades and seemed to give NFL players a legitimate chance at receiving their fair market value.\textsuperscript{82} Nevertheless, after the Eighth Circuit invalidated the Rozelle Rule in \textit{Mackey v. NFL (Mackey II)},\textsuperscript{83} “[o]nce again, the NFLPA bargained away another hard-fought le-

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\textsuperscript{75}. See \textit{id.} at 285-87 (upholding validity of NFL Standard Player’s Contract, which allowed teams to cut ineffective players). For a copy of the current NFL Player’s Contract, see Collective Bargaining Agreement Between the NFL Management Council and the NFL Player’s Association (as amended Feb. 25, 1998), App. C, at 229, \texttt{http://www.nflpa.org/members/main.asp?subPage=CBA+Complete} [hereinafter NFL CBA] (demonstrating NFL standard contract has not significantly changed over last thirty years).
\textsuperscript{76}. For a discussion of relevant CBA provisions, see \textit{infra} notes 176-78 and accompanying text.
\textsuperscript{77}. For a further discussion comparing the MLB’s CBA with the NFL’s CBA, see \textit{infra} note 176.
\textsuperscript{78}. For a further discussion of the NFL’s violent nature and high injury rate, see \textit{infra} notes 186-88 and accompanying text.
\textsuperscript{79}. For a further discussion of the NFL’s revenues and television deals, see \textit{supra} note 4.
\textsuperscript{80}. For a further discussion identifying the factors which would still limit individual NFL player salaries, regardless of the league’s financial success, see \textit{infra} notes 182-92 and accompanying text.
\textsuperscript{81}. For a further discussion of how courts’ interpretations of antitrust laws have financially benefited the NFL, see \textit{supra} notes 22-27 and accompanying text.
\textsuperscript{82}. For a summary of the relevant major cases and their effects, see \textit{infra} notes 85-133 and accompanying text.
\textsuperscript{83}. 543 F.2d 606, 622 (8th Cir. 1976) (“[T]he Rozelle Rule, as enforced, unreasonably restrains trade in violation of . . . the Sherman Act.”).
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gal victory" by agreeing to a modified reserve system under the 1977 CBA.84

1. Radovich v. NFL (1957)

Plaintiff William Radovich played for the Detroit Lions, a National League team, until 1945 when he broke his contract with the Lions to play for the Los Angeles Dons of the All-American Conference from 1946-47.85 The San Francisco Clippers, a member of a league affiliated with the National League, offered Radovich a contract in 1948.86 But the Clippers rescinded the offer after the National League blacklisted Radovich and threatened penalties for "any affiliated club signing him . . . ."87

The Supreme Court held that it should test Radovich's claim "under the Sherman Act's general prohibition on unreasonable restraints of trade" and that Radovich's case met the Act's injury requirement.88 Though leaving the final decision to the trial court, the Supreme Court accepted the argument that the National League's blacklisting policy attempted to monopolize the business of professional football and thus illegally restrained trade.89

This early legal victory could have severely debilitated the owners' power to control the NFL's labor market because antitrust law would now check any league action.90 Nonetheless, NFL players

84. Schneider, supra note 49, at 814 (noting NFLPA lost 1980 arbitration case challenging reserve system under 1977 CBA). The court in Mackey II defined the Rozelle Rule as follows:

The Rozelle Rule essentially provides that when a player's contractual obligation to a team expires and he signs with a different club, the signing club must provide compensation to the player's former team. If the two clubs are unable to conclude mutually satisfactory arrangements, the Commissioner may award compensation in the form of one or more players and/or draft choices as he deems fair and equitable.

543 F.2d at 609 n.1; see also Mitch Truelock, Free Agency in the NFL: Evolution or Revolution?, 47 SMU L. REV. 1917, 1925-26 (1994) (explaining Rozelle Rule).

85. See id. at 452 U.S. 445, 448 (1957) (noting Radovich sought transfer to Los Angeles because his father was ill).

86. See id. (recounting Radovich's complaint).

87. Id. ("This black-listing effectively prevented [Radovich's] employment in organized professional football in the United States.").

88. Id. at 453 (quoting Times-Picayune Pub'l Co. v. United States, 345 U.S. 594, 614 (1953)) (adding that private party could bring action alleging violation of antitrust laws). But see id. at 455 (Frankfurter, J., dissenting) (expressing concern over majority's adherence to stare decisis).

89. See id. at 448-49, 454 ("[S]tandard player contract[s] . . . are enforced by agreement of the clubs to black-list any player violating them and to visit severe penalties on recalcitrant member clubs.").

90. See Radovich, 352 U.S. at 453-54 (concluding private litigant only needs to meet minimum requirements of Sherman Act and section five of Clayton Act). Radovich was the first case where a plaintiff brought an antitrust action directly
did not capitalize on Radovich's potential implications because owners used their leveraged bargaining position throughout the 1960s and 1970s to effectively restrain trade and minimize player compensation.91

2. **Kapp v. NFL (1974)**

Plaintiff Joe Kapp played quarterback in the Canadian Football League from 1959-66 after the Washington Redskins drafted but refused to sign him.92 In 1967, Kapp signed a three-year contract with the Minnesota Vikings only after the Vikings, pursuant to the Draft Rule, satisfied the Washington Redskins' demands.93 After leading the Vikings to the NFL Championship in 1969, Kapp became a hot commodity.94 The Rozelle Rule, however, limited his options, and Kapp eventually signed with the New England Patriots only after the Vikings and Patriots reached a transfer agreement.95 Finally, Kapp refused to sign the Standard Player Contract ("SPC") following the 1971 season and brought an action alleging certain rules in the NFL Constitution and Bylaws amounted to a per se violation of federal antitrust laws.96

against the NFL. Until Radovich, Toolson's holding in dictum that baseball's antitrust exemption was unique to baseball was merely instructive. See Toolson v. New York Yankees, Inc., 346 U.S. 356, 357 (1953) (declining to apply federal antitrust laws to baseball). For a further discussion summarizing Toolson's holding, see *supra* note 25.

91. For a further discussion of the NFLPA's relative weakness, see *supra* notes 50-59 and accompanying text.

92. See *Kapp v. NFL*, 390 F. Supp. 73, 75-76 (N.D. Cal. 1974) (noting Kapp could not sign with other NFL team pursuant to Draft Rule, which provided that selecting club did not even have to make offer while still denying player's right to negotiate with other teams). The court also identified the Tampering Rule, which states "that if a member club shall tamper, negotiate with or make an offer to a player on the active, reserve or selection list of another club, then the offending club" would suffer significant penalties. *Id.* at 76.

93. See *id.* (observing Vikings had to pay Kapp's Canadian Football League team $50,000 for his release). For an explanation of the Draft Rule, see *supra* note 92.

94. See *Kapp*, 390 F. Supp. at 76 (acknowledging other teams sought Kapp's talents but did not offer contract to Kapp).

95. See *id.* at 76-77 (explaining Rozelle Rule and noting Patriots, in return for Kapp, gave Vikings their first round draft choices from 1972 draft and their first draft selection from 1967 draft). For a definition of the Rozelle Rule, see *supra* note 84.

96. See *Kapp*, 390 F. Supp. at 77 (acknowledging Option Rule, "which gives the employing club an [sic] unilateral option to renew the contract for a further term of one year at a reduced rate of compensation," and SPC Rule, which requires player to sign SPC before playing or practicing with team). Kapp also argued "the combination is illegal even under the 'rule of reason' because the restraint obviously goes far beyond what would be reasonably necessary to achieve the business goals involved . . . ." *Id.* at 78 (citing, for example, Int'l Salt v. United States, 332
Acknowledging that the challenged league rules were probably a per se violation of antitrust laws, the court in *Kapp* held the challenged rules violated the Sherman Act under the reasonableness test as well. The court held, for example, the Rozelle Rule would "*perpetually* restrain a player from pursuing his occupation among the clubs of a league that holds a virtual monopoly of professional football employment in the United States." Nonetheless, Rozelle's case became a stepping-stone for players to bring further legal action against team owners.

NFL players' fight for contracting freedom started with Joe Kapp. The Ninth Circuit, however, rendered the district court's ruling moot when it found Kapp could not prove any damages. Nonetheless, Kapp's case became a stepping-stone for players to bring further legal action against team owners.

U.S. 392, 397-98 (1947); Denver Rockets v. All-Pro Mgmt., 325 F. Supp. 1049, 1066 (C.D. Cal. 1971)) (indicating Kapp challenged Draft Rule, Tampering Rule, Rozelle Rule, SPC Rule, and One-Man Rule, which vested "the power to make final interpretations and decisions in the Commissioner"). For a current version of the NFL's SPC, see NFL CBA, *supra* note 75, at 229.

97. See *Kapp*, 390 F. Supp. at 81-82 (illustrating why reasonableness test was more appropriate and granting summary judgment because "the challenged rules [are] so patently unreasonable that there is no genuine issue for trial"). The court concluded:

> [The challenged rules] imposing restraint virtually unlimited in time and extent, [go] far beyond any possible need for fair protection of the interests of the club-employers of the purposes of the NFL and that [the rules impose] upon the player-employees such undue hardship as to be an unreasonable restraint and such [rules are] not susceptible of different inferences concerning [their] reasonableness ....

*Id.* at 82 (explaining why Rozelle Rule, Draft Rule, One-Man Rule and Tampering Rule violated antitrust laws). The court held the Option Rule did not violate antitrust laws because teams and players could freely negotiate a contract's length and salary. See *id.* at 82-83 ("[O]ption provision cannot be said to so extend the original term and salary as to render it patently unreasonable."); see also Mackey v. NFL, 543 F.2d 606, 619-21 (8th Cir. 1976) (characterizing differences between per se test and Rule of Reason test); John R. Gerba, Comment, *Instant Replay: A Review of the Case of Maurice Clarett, the Application of the Non-Statutory Labor Exemption, and Its Protection of the NFL Draft Eligibility Rule*, 73 FORDHAM L. REV. 2383, 2390-94 (2005) (discussing how Rule of Reason, which is identical to reasonableness test, and per se analysis have been applied in sports-related cases).


100. See *id.* at 12 n.63 (noting Ninth Circuit's "holding also serves to eliminate any harm the NFL may have suffered by virtue of the summary judgment and to deprive the NFL of its standing as grievant" (quoting Kapp v. NFL, 586 F.2d 644, 650 (9th Cir. 1978))).

101. See *id.* at 12 (portraying *Kapp* as precursor to *Mackey*). Backman argues "the players would advance to the next round of their fight—this time with the NFLPA solidly behind them." *Id.* (transitioning to discussion of *Mackey*). This assertion, however, is misleading because the NFLPA failed to capitalize on *Mackey*'s holding in the two subsequent CBAs signed in 1977 and 1982. See *id.* at 17-19 (recognizing NFLPA gave up free agency for increased financial benefits).
3. *Mackey v. NFL (Mackey I)*

John Mackey and thirty-five other NFL players originally filed suit in Minnesota District Court claiming that the Rozelle Rule violated the Sherman Act by unreasonably restraining trade. 102 In response, owners argued the Rozelle Rule received immunity from antitrust analysis under the nonstatutory labor exemption ("NLE") because players mutually agreed to the Rozelle Rule through the 1968 and 1970 CBAs. 103

The district court disagreed with the owners and held the Rozelle Rule violated the Sherman Act under both the per se analysis and the Rule of Reason test. 104 On appeal, the Eighth Circuit affirmed the district court's holding, but it determined the Rozelle Rule was invalid only under the Rule of Reason test because "the unique nature of the business of professional football renders it inappropriate to mechanically apply per se illegality rules . . . ." 105 Furthermore, before concluding that the Rozelle Rule violated antitrust laws, the Eighth Circuit affirmed the lower court's holding

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103. See id. at 1002-03 (describing NFL's defenses); Backman, supra note 3, at 13 n.67 ("Labor policy clashes with antitrust policy when the two parties to a collective bargaining agreement negotiate in good faith over a mandatory subject of collective bargaining, and the negotiation results in a restraint on employee movement that would normally be a violation of section 1 of the Sherman Act." (quoting Bradley S. Albert & Brian K. Albert, *Fourth and Goal: It's Time for Congress to Tackle the Nonstatutory Labor Exemption*, 2 Sports Law. J. 185, 195 (1995))).

104. See *Mackey I*, 407 F. Supp. at 1007-08 (holding Rozelle Rule was "per se violation of the antitrust laws" and "invalid under the Rule of Reason standard"). The Rule of Reason test used in *Mackey I* is identical to the reasonableness test used in *Kapp*. Compare id. at 1006-07 (explaining why Rozelle Rule unreasonably restrained trade), with *Kapp*, 390 F. Supp. at 81 (listing several factors to consider when determining reasonableness of restraint on trade).

105. *Mackey II*, 543 F.2d at 619 (adding that per se test is particularly inappropriate here because "the alleged restraint does not completely eliminate competition for players' services"). The Rule of Reason test determines "whether the restraint imposed is justified by legitimate business purposes, and is no more restrictive than necessary." Id. at 620; see also Backman, supra note 3, at 15 n.78 (observing Eighth Circuit held NFL cannot circumvent antitrust laws by characterizing league as joint venture but is entitled to examination under Rule of Reason analysis).
that the NLE did not apply because the Rozelle Rule was not the result of "bona fide arm's-length bargaining."106

As previously noted, the Mackey II decision did not immediately lead to greater labor freedom for NFL players.107 But when the players went on strike at the beginning of the 1987 season, they vowed to sit out the entire season if unrestricted free agency was not included in the new CBA.108 Not surprisingly, the players caved only twenty-four days later, returned to the playing field without making any progress toward unrestricted free agency, and turned to the courts once again for assistance.109

4. Powell v. NFL (Powell I)

On October 15, 1987, the NFLPA filed suit in Powell v. NFL (Powell I), attempting to enjoin the NFL from enforcing the alleged antitrust violations contained in the 1982 CBA.110 It would take two more decisions, Powell II and Powell III, before the courts ruled on this matter.111

a. Powell I & Powell II

The central issue before the district court in Powell I was "whether the nonstatutory labor exemption to the antitrust laws continues to protect the allegedly unlawful system of player restraints following expiration of the collective bargaining agreement, and if so, for how long."112 Holding antitrust policy demands expired CBAs "survive" for NLE purposes, the court in Powell I con-

106. Mackey II, 543 F.2d at 616 ("[W]e find substantial evidence to support the finding that there was no bona fide arm's-length bargaining over the Rozelle Rule preceding the execution of the 1968 and 1970 [CBAs]. . . . [I]ts form has remained unchanged since it was unilaterally promulgated by the clubs in 1963.").

107. For a further discussion of the NFLPA's inability to capitalize on Mackey II's holding, see supra note 84.

108. See Backman, supra note 3, at 20 (noting players had new strategy when 1982 CBA ended in 1987).

109. See id. (describing 1987 strike: "Unable to resolve matters on their own, the players filed suit and NLRB actions against League owners on the last day of the strike . . . ").

110. See Powell v. NFL (Powell I), 678 F. Supp. 777, 781 (D. Minn. 1988) (noting plaintiffs' motive for bringing action was unrestricted free agency), rev'd, Powell III, 930 F.2d 1293 (8th Cir. 1989).

111. See Backman, supra note 3, at 21 (observing Powell required three proceedings to fully settle claims).

cluded expired CBAs terminate when parties reach a bargaining impasse.\footnote{113}{See Powell I, 678 F. Supp. at 788 (citing Taft Broad. Co., 163 NLRB 475, 478 (1967)) (holding test for determining impasse is “whether, following intense, good faith negotiations, the parties have exhausted the prospects of concluding an agreement”).}

In Powell II, the court found the NFLPA and NFL reached a bargaining impasse, and therefore, the NLE no longer shielded the expired 1982 CBA from antitrust scrutiny.\footnote{114}{See Powell v. NFL (Powell II), 690 F. Supp. 812, 814 (D. Minn. 1988) (concluding parties bargained to impasse over free agency).} This decision, combined with Powell I’s holding, laid the foundation for a trial on whether the 1982 CBA violated antitrust laws.\footnote{115}{See Backman, \textit{supra} note 3, at 24 (describing events and holdings that led to Powell III).}

b. \textit{Powell III}

The Eighth Circuit in \textit{Powell III} addressed two critical issues.\footnote{116}{See id. at 25 (observing Eighth Circuit disagreed with players’ assertion, which argued decision in favor of League would overrule court’s earlier Mackey decision).} First, the court considered if the NFL could use the NLE after the 1982 CBA expired and held the NLE could be invoked in particular circumstances after a CBA ended.\footnote{117}{See Powell v. NFL (Powell III), 930 F.2d 1293, 1300-01 (8th Cir. 1989) (“[O]nce an impasse in bargaining is established, employers become entitled to implement new or different employment terms that are reasonably contemplated within the scope of their pre-impasse proposals.” (citing Laborers Health & Welfare Trust Fund v. Advanced Lightweight Concrete Co., 484 U.S. 539, 543 n.5 (1988))).} Second, the court concluded the NLE still protected the NFL in this case, and the NLE would insulate the league until a CBA no longer existed.\footnote{118}{See id. at 1303-04 (suggesting players have three alternative options: further bargaining, striking, or bringing claim to NLRB).}

\textit{Powell III} left the NFLPA back at the bargaining table, the owners’ domain over the last thirty years.\footnote{119}{For a further discussion of Radovich, Kapp, and Mackey and how the NFLPA failed to capitalize on each decision, see \textit{supra} notes 83-109 and accompanying text.} Following suit, the owners forced NFL players to agree to one of two proposals regarding free agency.\footnote{120}{See Backman, \textit{supra} note 3, at 27 (describing \textit{Powell III}’s aftermath).} Regardless, \textit{Powell III} still represented a critical step to
ward free agency. Judge Gerald Heaney's dissent suggested a key strategic move that soon became the lynchpin in the players' struggle for an open labor market - decertification of the union to avoid the league's NLE.


NFL players believed that decertifying the NFLPA would allow them to attack Plan B's antitrust violations without owners relying on the NLE. When the 1990 season concluded, eight individual players brought suit claiming Plan B restricted player movement and prevented competitive renegotiating of expired contracts. Following some influential pretrial rulings, the jury trial began with plaintiff-players additionally alleging Plan B financially injured them by decreasing possible compensation. The jury found that although Plan B reinforced competitive balance, it also significantly

Id. (alteration in original) (citation omitted). Plan B severely restricted player movement while offering essentially no incentives. See *id*.; Truelock, *supra* note 84, at 1938 (noting Plan B allowed NFL teams to protect thirty-seven roster players at conclusion of each season, making other players unrestricted free agents).

121. For a further discussion explaining how the NFLPA advantageously used *Powell III* 's dissent, see *infra* note 122 and accompanying text.

122. See *Powell III*, 930 F.2d at 1306 (Heaney, J., dissenting) ("It follows that the end result of the majority opinion is that once a union agrees to a package of player restraints, it will be bound to that package forever unless the union forfeits its bargaining rights."); see also Truelock, *supra* note 84, at 1939 (observing players' only remaining strategic move was decertification).

123. See *Backman*, *supra* note 3, at 29 n.178 ("If the players chose to continue to bargain in hopes of removing Plan B in a new CBA, the League would continue to be protected by the nonstatutory labor exemption."); *Powell v. NFL* (McNeil I), 764 F. Supp. 1351, 1354 (D. Minn. 1991) (explaining NFLPA's decertification efforts and noting players re-characterized union as "a voluntary professional association"). In *McNeil I*, the court held the balance of interests prevented the parties from consolidating the lawsuit. See 764 F. Supp. at 1359-60 (ordering defendants could not consolidate *Powell* and *McNeil*). For a further description of Plan B, see *supra* note 120.

124. See *McNeil I*, 764 F. Supp. at 1354 ("Plaintiffs claim that the NFL players have chosen to end their union representation in order to clear the way for antitrust claims by individual players.").


decreased competition for player services and economically injured players.\textsuperscript{127}

\textit{McNeil v. NFL} was “the most important decision ever to affect professional football” because it significantly leveled the playing field.\textsuperscript{128} Additionally, the decision appeased both sides and soon led to the 1993 CBA, which included the first form of unrestricted free agency in the NFL.\textsuperscript{129} Two weeks after \textit{McNeil}, five new NFL players filed a similar class action suit that the parties settled and eventually incorporated into the 1993 CBA, ending the tumultuous period between 1987-92.\textsuperscript{130}

Ironically, the NFLPA’s decertification was its most effective strategy during its struggle for free agency.\textsuperscript{131} Considering the NFLPA’s earlier feeble bargaining position and its inability to mount an effective strike, this comes as no surprise.\textsuperscript{132} The courts saved NFL players from a permanently restrained labor market; however, the courts would not be similar safe-havens during players’ attempts to achieve guaranteed contracts.\textsuperscript{133}

\begin{itemize}
  \item \textsuperscript{127} See Backman, supra note 3, at 39 (citing \textit{McNeil III}) (adding that Plan B was unreasonably restrictive). Interestingly, owners argued the eight female jurors unfairly disadvantaged the NFL’s case in \textit{McNeil III}. See id. 37-38 (noting team owner Pat Bowlen stated: “I do not want eight women who are basically domestic housewives to decide the future of the National Football League.”).
  \item \textsuperscript{128} Truelock, supra note 84, at 1939 (characterizing \textit{McNeil} as watershed decision in NFL’s labor relationship).
  \item \textsuperscript{129} See Backman, supra note 3, at 40 (asserting court in \textit{McNeil} satisfied players by declaring Plan B restriction of free trade and appeased owners by denying players unrestricted free agency). The key points in the 1993 CBA include: 1) players with at least five years of experience become unrestricted free agents, 2) teams could restrict the movement of one “franchise player” by paying him the average salary of the five top players at that position or 120% of his previous-year salary, 3) teams could restrict the movement of “transition players” by paying him the average salary of the top ten players or 120% of his previous-year salary, 4) teams were afforded “restricted free agency” and “exclusive rights free agency” in certain situations, and 5) teams enforced a strict salary cap. See id. at 43-48 (citing 1993 CBA between NFL Management Council and NFLPA).
  \item \textsuperscript{130} See White v. NFL, 822 F. Supp. 1389, 1395 (D. Minn. 1993) (“The settlement [of Plan B challenges] is the critical step toward the final resolution of the longstanding dispute between the NFL clubs and their player-employees.”); see also Truelock, supra note 84, at 1945 (describing how court settled \textit{White} and how players agreed to new seven-year CBA).
  \item \textsuperscript{131} For a further discussion of the significance of decertifying, see supra note 122 and accompanying text.
  \item \textsuperscript{132} For a further discussion indicating that the NFLPA was a weak union, see supra notes 50-59 and accompanying text. On March 29, 1993, the NFL voluntarily recognized the NFLPA after a majority of players signed authorization cards and the American Arbitration Association acknowledged the NFLPA. See White, 822 F. Supp. at 1435 (summarizing NFLPA’s recertification process).
  \item \textsuperscript{133} For a further discussion of two cases epitomizing how courts handle guaranteed contracts in the NFL, see infra notes 138-48 and accompanying text. NFL players began fighting for guaranteed contracts during the early 1970s. See
\end{itemize}
B. Guaranteed Contracts & the NFL

Guaranteed contracts were never part of the NFL's landscape; courts have not forced them upon the league and owners have remained steadfast in their refusal to offer them. The CBA provides little in regards to guaranteed compensation and permits teams to cut players almost at will. Nonetheless, the CBA basically encourages signing bonuses, which guarantee money while detracting criticism from the pressing issue. NFL players deserve better contracts so that teams cannot freely recycle some of the world's most sought after athletes.

1. The Courts

*Tillman v. New Orleans Saints Football Club* epitomizes how courts handle NFL contract cases. Plaintiff Tillman, a professional football player, tore a knee ligament during a preseason practice and underwent surgery and a rigorous rehabilitation program. Three months after the injury, a team physician deemed Tillman ready to play football. One week later, defendant New Orleans Saints Football Club ("Saints") terminated Tillman's contract pursuant to contractual provisions that allowed a team to do so if the player failed to maintain his physical condition or did not

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134. For a discussion of the relevant court decisions, see *infra* notes 138-48 and accompanying text. For a further discussion explaining why NFL owners refuse to offer guaranteed contracts, see *infra* notes 193-99 and accompanying text. The owners' recent efforts to keep guaranteed contracts out of the NFL is reminiscent of MLB owners in 1926. See Povitch, *supra* note 58, at 16-18 (referencing article written on December 22, 1926) (noting how MLB owners conspired to rid league of long-term contracts).

135. For a further discussion of the NFL's CBA and comparisons to the MLB's CBA and the National Basketball Association's ("NBA") CBA, see *infra* notes 175-81 and accompanying text.

136. For a further discussion of signing bonuses in the NFL, see *infra* notes 152-73 and accompanying text.

137. For arguments supporting guaranteed contracts in the NFL, see *infra* notes 152-206 and accompanying text. For further discussion on the incredibly high demand for NFL players, see *infra* notes 211-12 and accompanying text.

138. 265 So. 2d 284, 287 (4th Cir. 1972) (setting precedent for NFL contract cases).


140. See *Tillman*, 265 So. 2d at 285-86 (establishing plaintiff's case).

141. See *id.* at 286 (determining if Tillman was physically ready to play when team terminated contract).
perform to the team's satisfaction.\textsuperscript{142} Finding Tillman was healthy when the Saints terminated his contract, the Fourth Circuit upheld the team's dismissal because it was in accordance with the contract's terms.\textsuperscript{143}

\textit{Gambrell v. Kansas City Chiefs Football Club}\textsuperscript{144} is similarly instructive.\textsuperscript{145} The defendant's team physician announced plaintiff-player Gambrell could resume playing football, at which point Gambrell claimed he still suffered from the back injury that occurred two months earlier.\textsuperscript{146} Subsequently, the team released Gambrell pursuant to the contractual provisions cited in \textit{Tillman}.\textsuperscript{147} Gambrell stands for the principle "that there exists in an employment contract an implied condition that the employee is physically able to perform his obligations thereunder, and that consequently an employer is justified in terminating an employee who is physically incapable of performing his contractual obligations."\textsuperscript{148}

Though the courts had little direct impact on ensuring any type of guaranteed salaries for NFL players, the courts did play an

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\item \textsuperscript{142} See \textit{id.} at 285 (noting Tillman alleged Saints could not waive him because his injury persisted when team terminated his contract). The contract's relevant provision stated:

If in the opinion of the Head Coach the Player does not maintain himself in excellent physical condition . . . or if in the opinion of the Head Coach the Player's work or conduct in the performance of this contract is unsatisfactory . . . the Club shall have the right to terminate this contract . . . .

\textit{Id.} at 285 n.1 (quoting paragraph six of NFL Standard Player's Contract). For a further discussion of how other professional sports leagues' standard contracts have similar language yet teams still guarantee contracts, see \textit{infra} notes 176-78 and accompanying text.

\item \textsuperscript{143} See \textit{Tillman}, 265 So. 2d at 287 (finding one of Tillman's doctors based his evaluation on misinformed facts when the doctor claimed Tillman still endured injuries when Saints terminated contract); see also \textit{Brazener}, \textit{supra} note 139, at 263-64 (summarizing \textit{Tillman}'s facts and holdings).

\item \textsuperscript{144} 621 S.W.2d 382, 386 (W.D. Mo. 1981) (upholding team's termination of injured player's contract).

\item \textsuperscript{145} See \textit{Brazener}, \textit{supra} note 139, at 17 (Supp. 2005) (acknowledging that court in \textit{Gambrell} appropriately dismissed player's suit because team terminated employment in accordance with contract's terms).

\item \textsuperscript{146} See \textit{Gambrell}, 621 S.W.2d at 383-84 (summarizing facts of case).

\item \textsuperscript{147} See \textit{id.} at 384 (describing team's release as "an option for unilateral termination available to the [team] under the contract whenever the coach determines that the player no longer has sufficient skill and capacity to perform the required caliber of football"). For a further discussion of the contract's relevant provision, see \textit{supra} notes 176-78.

\item \textsuperscript{148} \textit{Brazener}, \textit{supra} note 139, at 265 (describing underlying principle behind \textit{Gambrell}'s holding).
\end{itemize}
\end{footnotesize}
indirect role.\textsuperscript{149} Competition between leagues during the late 1950s, a result of the Supreme Court's refusal to grant the NFL an antitrust exemption, led to competitive bidding for player services and forced teams to offer guaranteed compensation.\textsuperscript{150} The NFL signing bonus first arrived in 1959 when Pete Rozelle tried to lure a collegiate all-star running back away from the AFL and offered the superstar a $10,000 signing bonus.\textsuperscript{151}

2. **NFL Signing Bonuses**

"In a league in which annual salaries aren't guaranteed, and in which one injury or one coach's decision can force a player to forfeit millions of dollars in salary, signing bonuses are key."\textsuperscript{152} Signing bonuses stem from the CBA, which governs how players and teams can contract and allows for bonus provisions to function as guaranteed compensation.\textsuperscript{153} Signing bonuses, nevertheless, allow the NFL to continue under the false pretense that its players receive guaranteed yearly salaries like those in other professional sports leagues.\textsuperscript{154}

\textsuperscript{149} For an explanation of the courts' indirect role in bringing at least some form of guaranteed contracts to the NFL, see infra notes 150-51 and accompanying text.

\textsuperscript{150} See Sipusic, supra note 3, at 212-13 ("[C]ompetition among teams and between leagues for the services of talented players has made the structure of player compensation packages an important element of professional football." (citing Vic Carucci, The NFL Century 184 (1999))). For a description of the NFL's antitrust exemption, see supra notes 85-91 and accompanying text.

\textsuperscript{151} See Sipusic, supra note 3, at 213 (noting despite Rozelle's efforts, AFL's Houston Oilers offered $100,000 guaranteed contract to all-star running back). For a further discussion characterizing Rozelle as an important part of the NFL's development, see supra notes 21-22 and accompanying text.


\textsuperscript{153} See NFL CBA, supra note 75, at 9 ("The provisions of this Agreement supersede any conflicting provisions in the NFL Player Contract, the NFL Constitution and Bylaws, or any other document affecting terms and conditions of employment of NFL players . . . ."). The NFL's CBA later states "[a] player will be entitled to receive a signing or reporting bonus, additional salary payments, incentive bonuses and such other provisions . . . ." Id. at 174 (indicating player bonuses are permissible).

\textsuperscript{154} See, e.g., Sean Jensen, Spotlight NFL Contracts: Dissatisfaction Guaranteed, St. Paul Pioneer Press, Sept. 4, 2005, at C1 (observing MLB, NBA, and National Hockey League ("NHL") normally guarantee contracts, while NFL does not). For a further description of how MLB and the NBA guarantee most of their contracts, see infra notes 176-79 and accompanying text.
2006] DESPITE HIS ANTICS, T.O. HAS A VALID POINT 453

a. Signing Bonuses, the CBA, and the Courts

Signing bonuses are popular among NFL owners because the CBA has loopholes allowing teams to use the signing bonus as a means to stay within the salary cap.\(^{155}\) Put simply, teams can pro-rate a signing bonus over the life of a contract, meaning a $10 million signing bonus, which a team guarantees a player up front, becomes only $1 million annually under the salary cap once pro-rated over ten years.\(^{156}\) Further, the CBA’s expansive definition of “signing bonus” allows teams to give players bonuses for working out during off-seasons, promptly reporting to training camp, and simply making the team.\(^{157}\) Therefore, signing bonuses, at face value, favor NFL players because they create numerous ways to guarantee more up-front money.\(^{158}\) This logic, however, ignores the underlying problem: signing bonuses are only attractive to players because guaranteed multi-year salaries are essentially non-existent in the NFL.\(^{159}\)

155. See Sipusic, supra note 3, at 217 (clarifying NFL CBA’s salary cap provisions and explaining how Dallas Cowboys’ owner Jerry Jones uses loopholes to his advantage). For a definition of the NFL salary cap, see NFL CBA, supra note 75, at 95-96.

156. See NFL CBA, supra note 75, at 99 (“The total amount of any signing bonus shall be prorated over the term of the Player Contract in determining Team and Player Salary . . . .”).

157. See Sipusic, supra note 3, at 218 (“The creation of multiple signing bonus categories (NFL teams are allowed to prorate almost any type of bonus) in effect creates extra room under the salary cap.”). The CBA defines signing bonus, in part, as “any amount specifically described in a Player Contract as a signing bonus. . . .” NFL CBA, supra note 75, at 103 (describing “Amounts Treated as Signing Bonuses”). Courts, however, have defined a signing bonus as an “independent (i.e., extra-contractual) obligation paid for the mere act of signing a contract with the potential employer . . . . It can be considered an inducement to sign, not compensation for work performed or to be performed for the Employer.” Station v. Workmen’s Comp. Appeal Bd., 608 A.2d 625, 629 n.3 (Pa. Commw. Ct. 1992) (citing McGlasson v. Workmen’s Comp. Bd., 557 A.2d 841 (Pa. Commw. Ct. 1989)) (holding signing bonus is entirely separate from yearly salary and weekly wages). This definition differs from the NFL’s CBA because it defines the signing bonus as a unilateral, separate contractual agreement which only requires the physical act of signing the contract to guarantee the bonus. See Sipusic, supra note 3, at 226, 231-38 (characterizing NFL’s definition as common law, summarizing court decisions addressing definition of signing bonus, and discussing how NFL’s CBA definition of signing bonus creates problems).

158. See Jensen, supra note 154 (“It is a one-way street . . . . But that’s why you want to go out there and get as much as you can up front.” (quoting Pro-Bowler Darren Sharper)); Sipusic, supra note 3, at 218 (“It is the threat of these events that motivate a player and his agent to seek large signing bonus amounts as opposed to large annual salary totals.”).

159. For a further discussion asserting that the NFL does not regularly guarantee contracts, see supra notes 154, 158. See also Sipusic, supra note 3, at 238 (describing problems with NFL’s signing bonus and arguing “[i]n choosing to ig-
b. T.O.'s Current Contract

Terrell Owens's current contract demonstrates how signing bonuses mask the absence of guaranteed contracts. T.O.'s current deal with the Philadelphia Eagles is for seven years and is worth $49 million. T.O.'s contract includes a $9.2 million signing bonus and is worth approximately $7 million annually over the first three years. According to some NFL agents, the signing bonus and the average yearly salary during a contract's first three years are the two measuring sticks for veteran player contracts. Analyzing T.O.'s contract using these numbers, his salary seems comparable to the NFL's other top wide receivers.

Only focusing on these numbers, however, ignores a contractual provision and the situation surrounding T.O.'s career. First, T.O.'s base salary was $3.5 million in 2005, $770,000 in 2006 (plus a potential $7.5 million bonus check), $5.5 million in 2007, $6.5 million in 2008, $7.5 million in 2009, and $8.5 million in 2010. Second, he will be thirty-three years old in 2006, the average age when wide receivers hit "the wall that all great players hit at some point in their careers, the one [that] will diminish his abilities, and along with them his bargaining power." Third, the Eagles, T.O.'s em-
employer, rarely dole out big money for players past their prime. An inflated signing bonus conceals these facts and leaves the fans with the mistaken perception that T.O.'s gripping only concerns the total $49 million. But according to NFL agent Leigh Steinberg, "The total value of the deal is just an illusion because the numbers are so inflated on the back end that the player will either have to renegotiate or he'll be cut."

T.O.'s contract epitomizes how the NFL takes advantage of signing bonuses and capitalizes on teams' collective efforts to keep guaranteed contracts out of professional football. The absence of guaranteed contracts explains why signing bonuses play such a

168. See Bonnette, supra note 167 (claiming Eagles will terminate T.O.'s contract before 2006 season, when his current contract calls for sharp, annual salary increases); Bradley, supra note 7 (maintaining T.O.'s contract should trouble him because Eagles do not normally pay premium dollar for thirty-three year-old wide receivers). In fact, the Eagles recently cut T.O. the day before he was due a $5 million roster bonus. See Bob Brookover, Birds Have Little to Say as They Set Owens Free, PHILA. INQUIRER, Mar. 15, 2006, at D1 (adding that Eagles pithily announced move with fourteen-word statement: "The Philadelphia Eagles today announced they have terminated the contract of WR Terrell Owens."). Thus, the T.O. saga in Philadelphia officially ends.

169. For a further discussion of T.O.'s contract, see supra and infra notes 160-70 and accompanying text. The actual dollar amounts involved are staggering – just T.O.'s 2005 salary, a cool $3.5 million, is significantly more money than most people see in a lifetime. See, e.g., Anderson, supra note 7 (citing U.S. census) (indicating Pennsylvania's median income for family of four is $66,569 and $9 million guarantee contract ensures player $180,000 per year for fifty years); Tu-Uyen Tran, Grand Forks Wages Get Closer to National Average, Still Lag Fargo, Bismarck, GRAND FORKS HERALD, Apr. 28, 2005 (noting average U.S. worker earned approximately $31,500 in 2003, meaning they would have to work more than 100 years to equal T.O.'s 2005 income). While the astronomical numbers should not be trivialized, the players should also not be faulted. See, e.g., Michener, supra note 3, at 373 ("If one is able to accept the gross imbalance existing in all American salaries, there should be no complaint against those paid to athletes."). For a further discussion arguing T.O. should be thought of as a businessman, not just an athlete, and briefly explaining why NFL salaries are so lucrative, see infra notes 211-16 and accompanying text. Professional sport is strictly a business, so players, as a critical component of this economic model, have every right to fight for their market value. For a further discussion of how team owners have always treated professional sports as businesses, see supra note 3 and accompanying text.

170. Brookover, Rivals, supra note 10 (quoting Leigh Steinberg). Recently, NFL teams cut many marquee players to make room under their salary caps. See, e.g., Chris Harry, NFL Set for Free-Agent Bonanza, ORLANDO SENTINEL, Mar. 10, 2006 (noting Brian Griese, Kerry Collins, LaVar Arrington, Willie McGinest, Ty Law, Mike Anderson, and Kevin Mawae were "veteran cap casualties").

171. See, e.g., Jensen, supra note 154 (describing Matt Birk's contract situation with Minnesota Vikings). Birk, a Harvard economics major and four-time Pro-Bowler for the Minnesota Vikings, offered to play the 2005 season while seriously injured if the team would guarantee his 2006 salary. See id. ("I didn't want to assume 100 percent of the risk." (quoting Birk)). Afraid to set precedent, the Vikings' owner refused. See id. (characterizing issue of guaranteed contracts as one that "divides players, the players association and ownership").
large role in the NFL's compensation system. In other major professional sports leagues, however, signing bonuses have minimal impact because teams guarantee the vast majority of players' salaries.

3. Comparison to Other Major Sport Leagues

Guaranteed contracts in other sports are prevalent due to precedent. This demonstrates that the CBAs are surprisingly not the determinative factor in bringing guaranteed contracts to professional athletes. A comparison of the NFL and MLB CBA's illustrates this point.

The MLB CBA's language, for example, is similar to comparable provisions of the NFL's CBA. The MLB CBA stipulates that the "Club may terminate [a] contract upon written notice to the Player . . . if the Player shall at any time . . . fail, in the opinion of the Club's management, to exhibit sufficient skill or competitive ability to qualify or continue as a member of the Club's team; . . . ." This language essentially mirrors that of the NFL's CBA; yet MLB teams do not cut players for failing "to exhibit sufficient

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172. For a further discussion demonstrating that signing bonuses allow NFL teams to offer non-guaranteed contracts, see supra notes 152-59 and accompanying text.

173. See Jensen, supra note 154 (observing that "nearly every dollar is guaranteed" in other professional sports); see also Daniel M. Faber, The Evolution of Techniques for Negotiation of Sports Employment Contracts in the Era of the Agent, 10 U. MIAMI ENT. & SPORTS L. REV. 165, 182 (1993) ("[The agents] are still trying to negotiate guaranteed contracts, which, in our business, there are very few of, unlike baseball and basketball." (alteration in original) (quoting NFL team official)). For a further discussion acknowledging that MLB and NBA teams guarantee almost every contract, see supra note 154.

174. For a discussion comparing NFL and MLB contracts, see infra notes 176-78 and accompanying text.

175. See Jensen, supra note 154 ("[T]he CBA in each sport does not say one way or another that contracts are guaranteed." (quoting Richard Berthelsen, NFLPA's general counsel)). The NBA's CBA, however, does guarantee some money. See Howard J. Soifer & Kevin J. Roragen, No Play, No Pay: The 1998-99 NBA Lockout, The Effect of Arbitrator Feerick's October 19, 1998, Opinion Regarding the NBA Players Association Grievance, and the Limitations of Guaranteed Contracts, 3 T.M. GOOLEY J. PRACT. & CLINICAL L. 115, 120 n.22 (2000) (citing NBA Collective Bargaining Agreement, art. II § 3(e)(i)-(iv)) (noting NBA teams cannot terminate player for "lack of skill").


177. MLB CBA, supra note 176, at 212 (defining terms of Major League Uniform Player's Contract).
skill or competitive ability" because MLB franchises guarantee contracts.178

NFL offensive lineman Matt Birk compared the NBA to the NFL:

It's just ironic. Football is the most popular sport. The TV deal is worth unprecedented money. There's worldwide appeal. And you're going to tell me guaranteed contracts can't work for us, but they'll work for basketball, where more people watch CSI [a popular CBS television show] than the seventh game of the NBA Finals? Give me a break.179

Birk, like T.O., has a valid point. NFL players generate more money than their professional counterparts, yet receive the most ephemeral contracts.180 Despite the soundness of their arguments, limiting factors depress NFL player salaries regardless of the league's popularity and abundant cash flow.181

C. Some Limiting Factors

NFL players make their pleas for guaranteed contracts in the face of a daunting fact: football is a brutal sport with a high injury risk.182 Owners and team officials, therefore, argue the nature of football demands the current compensation system because teams

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178. See NFL CBA, supra note 75, at 233 (establishing team may terminate contract if “[p]layer’s skill or performance has been unsatisfactory as compared with that of other players competing for positions on Club’s roster . . .”). Some argue, therefore, a weak NFLPA is unrelated to the lack of guaranteed contracts in the NFL since CBAs do not address this issue in other leagues. See Jensen, supra note 154 (“The common misunderstanding out there . . . is that the NFL doesn’t have guaranteed contracts, so basketball and baseball unions do a better job.” (ellipsis in original) (quoting NFLPA’s general counsel)). This conclusion misleads for two reasons: it ignores 1) that the NBA CBA does have some guaranteed money and 2) that MLB and NBA players never needed to fight for guaranteed contracts because owners succumbed years ago. For a further discussion detailing the relevant provisions of NBA’s CBA, see supra note 175. For a further discussion explaining that guaranteed contracts are the norm in the NBA and MLB, see supra note 154 and infra note 179.

179. Jensen, supra note 154 (quoting Birk and stating NFLPA should demand guaranteed contracts during renegotiation of current CBA). For a further discussion of Birk’s struggle for a guaranteed contract, see supra note 171.

180. For a further discussion of the NFL’s financial successes, see supra note 3 and accompanying text. For a further discussion comparing NFL contracts with MLB and NBA contracts, see supra notes 176-79 and accompanying text.

181. For a further discussion of these limiting factors, see infra notes 182-206 and accompanying text.

182. See Jerry Sullivan, Though Spikes is Gone, His Desire Can’t be Forgotten, BUFFALO NEWS, Oct. 2, 2005, at C4 (“Pro football is a brutal, unsentimental sport.”). For a further discussion noting the average NFL player’s career lasts less than three
would otherwise be unable to freely adjust their rosters and sport competitively balanced on-field products. Owners are only partially correct: the nature of football will inevitably curtail players' salaries. Guaranteed contracts, however, will probably not hurt the competitively balanced product the NFL currently produces.

1. Nature of Football

Football is frighteningly violent; a hard tackle can generate more force than a serious car accident. Football's violent nature translates into short careers for NFL players, with an average career lasting three seasons. This helps explain why NFL player contracts will never be as lucrative as those in the MLB or NBA, where the injury risks are relatively minimal.

Additional factors will continue to suppress NFL players' salaries: 1) NFL teams play only eight home games per season, while MLB plays eighty-one and the NBA forty-one; 2) NFL football seasons, see supra note 50. For a further discussion of football's violent nature, see infra notes 186-88 and accompanying text.

83. See Berry et al., supra note 42, at 125 (indicating Rozelle believed greater contract freedom would diminish on-field equality, fan interest, and team revenue); Truelock, supra note 84, at 1948 (citing Mackey v. NFL, 543 F.2d 606, 611 (8th Cir. 1976)) (noting since Mackey, NFL argues competitive balance is essential for "a successful entertainment product"); Jensen, supra note 154 (noting Philadelphia Eagles President Joe Banner insists "[t]eams could be decimated for several years if a high-paid player were to suffer a season- or career-ending injury"). Further, Minnesota Vikings' Vice President of Football Operations argues: "I don't know [with guaranteed contracts] that we'd have the competitive balance, which is what makes the NFL so unique right now." Jensen, supra note 154 (quoting Rob Brzezinski).

84. For a further discussion acknowledging that the injury rate, high number of players, and low number of home games necessarily curtail NFL player salaries, see infra notes 186-93 and accompanying text.

85. For further discussion on the competitive balance issue, see infra notes 200-06 and accompanying text.

86. See Josh Kendall, Study Measures Strength of Hits: Study to Use Airbag Technology to Study Hard Hits, COLUMBUS LEDGER-INQUIRER (Ga.), Oct. 2, 2005 (describing how hardest tackles during college football team's practice created more force than serious car accident); see also Heidi M. Hurd, Was the Frog Prince Sexually Molested?: A Review of Peter Westen's The Logic of Consent, 103 MICH. L. REV. 1329, 1329 (2005) ("[W]e do not know what we think we know about a capacity that on a daily basis turns ... brutal batteries into football games . . . .")

87. See, e.g., Jensen, supra note 154 (quoting NFL wide receiver). For a further discussion noting the average NFL player's career lasts three seasons, see supra note 50.

88. See Jensen, supra note 154 ("You wouldn't see the gaudy 10-year, $102 million contracts [in the NFL]. In basketball, it's a 10-year, $102 million contract. But in football, it's a year-to-year thing." (quoting NFL linebacker)).

89. See NFL CBA, supra note 75, at 175 (setting limit for regular season games); MLB CBA, supra note 176, at 3 (determining 162-game regular season); National Basketball Players Association Collective Bargaining Agreement, art. XX,
teams have forty-five-men active rosters, compared to MLB's twenty-five and NBA's twelve;\textsuperscript{190} and 3) NFL players must wear heavy padding and helmets, which significantly decreases their recognizability amongst fans and, consequently, lessens their celebrity-like demand that drives up salaries in the NBA and MLB.\textsuperscript{191} Nevertheless, these factors are not the root of the problem.\textsuperscript{192} The high injury rate is the ultimate source of non-guaranteed contracts in the NFL because one costly injury to a top-pay player, owners argue, could ruin a team for years.\textsuperscript{193}

2. Counterarguments

For example, if Indianapolis Colts quarterback Peyton Manning suffered a career-ending injury in 2005, then Manning’s contract alone would account for twenty-five percent of his team's salary in 2006 due to an acceleration clause.\textsuperscript{194} This example, however, does not consider that quarterbacks, typically the highest paid players, have notably longer average careers than other NFL play-

\textsuperscript{190} See NFL CBA, \textit{supra} note 75, at 163 (defining permissible active “squad size” limit); MLB CBA, \textit{supra} note 176, at 49 (limiting active roster to twenty-five players); NBA CBA, \textit{supra} note 189, at 206 (limiting active roster to twelve players).

\textsuperscript{191} See, e.g., MACKEY & LOVERRO, \textit{supra} note 13, at 180 (“[O]n game day, the fans would ask, ‘Hey, who is that?’ And I still remember the vendors calling, ‘You can’t tell the players without a program.’” (quoting 1987 speech Mackey gave at players’ conference)); William B. Gould IV, \textit{Labor Issues in Professional Sports: Reflecting on Baseball, Labor, and Antitrust Law}, 15 STAN. L. \\ & POL’Y REV. 61, 79 (2004) (arguing public identifies professional baseball players as individuals more so than professional football players); Tim Tucker, \textit{Vick's Playoff Mark[et]: QB Faces Ad Windfall From Any Postseason Success}, ATLANTA J. CONST., Jan. 12, 2005, at D1 (“Generally, football is not as conducive to lucrative ad deals for individual players as other sports, like basketball and golf, because its players are less visible, wearing helmets and sharing the field with 21 others.”); see also \textsc{szymanski \\ \\ & zimbalist}, \textit{supra} note 3, at 147 (comparing movie stars Cameron Diaz's and Tom Cruise's celebrity status to baseball player Alex Rodriguez's).

\textsuperscript{192} For an example of teams' serious concerns with the injury problem, see \textit{infra} note 197.

\textsuperscript{193} For a further discussion of how injuries could decimate an NFL team's salary cap, see \textit{infra} note 194 and accompanying text.

\textsuperscript{194} See Jensen, \textit{supra} note 154 (characterizing argument of Philadelphia Eagles President Joe Banner). Peyton Manning still has $23,000,000 remaining from his record $34,500,000 signing bonus. \textit{See id.} (explaining Manning's contract).
Additionally, huge signing bonuses would not exist in an NFL with guaranteed contracts.

Owners and some veteran players alternatively argue against guaranteed contracts by asserting the system currently rewards players who make a difference. Some veteran players argue guaranteed contracts would only bring "dead money" to teams' salary caps, meaning that teams would opt for younger players because of their relative durability and inexpensiveness. Nevertheless, this argument ignores the critical fact that despite the lucrative salaries, owners cannot forsake workers' rights by forcing players to tolerate unthinkable pain.

3. Competitive Balance?

The owners additionally insist that guaranteed contracts would ruin the NFL's inter-team equality. The competitive balance question, however, is complicated because there is no agreed upon definition and its financial impact on sports leagues is debatable.

195. Compare Ray Buck, Pass/Fail: Most NFL Quarterbacks Are No Longer Ready for Prime Time, FORT WORTH STAR-TELEGRAM, Nov. 11, 2005, at C13 (noting years 5-10 of NFL quarterback's career are typically his most productive), with Jensen, supra note 154 (acknowledging average professional football player career lasts three seasons); see also BERRY ET AL., supra note 42, at 134 (indicating teams pay quarterbacks more than any other position).

196. For a further discussion of how NFL owners use signing bonuses in lieu of multi-year guaranteed contracts, see supra notes 152-59 and accompanying text.

197. See, e.g., Jensen, supra note 154 ("Right now, the system is set up so everyone works hard and is motivated to perform. If money went to players who were not playing or injured, that means much less money for the other players who are making a difference." (quoting Eagles Team President)). Similarly, NBA coach and ex-player Byron Scott suggests "[b]asketball should be just like the NFL, with no guaranteed contracts. In the NFL, you see guys with broken arms trying to get in there because they know they can get cut tomorrow." Id. (indicating sentiments against guaranteed contracts exist outside NFL).

198. See id. (noting NFL linebacker argues veterans would suffer because "dead money" under salary cap would force teams to seek younger, cheaper players).

199. See id. ("It seems like the public and ownership thinks that because these guys get paid so much that they should have to tolerate more pain . . . Just because they're getting paid a lot doesn't mean they should throw out the rules as it relates to workers' rights." (quoting NFL agent Joe Linta)).


201. See BERRY ET AL., supra note 42, at 103-04 (noting district court's ruling in Smith v. Pro-Football, 420 F. Supp. 738 (D.D.C. 1976), modified, 593 F.2d 1173 (D.C. Cir. 1978), where court concludes owners presented "equivocal" evidence to support their claim that free agency would destroy competitive balance); Szyman-
Regardless, the NFL clings to the notion that its popularity stems from the league’s level playing field. That is arguable, but guaranteed contracts and greater labor freedom will probably not destroy the NFL’s competitive balance because 1) all teams in the long run will suffer equally from injuries and 2) lessons from MLB suggest otherwise.

Even if guaranteed contracts create a shift toward greater imbalance, this will unlikely affect the NFL’s popularity when considering soccer’s experience - unmatched worldwide appeal trumping severe on-field inequality due to the sport’s inherent characteristics. Likewise, America’s love affair with the NFL stems from football’s intrinsic qualities: “Pro football. The game for the ear and the eye. A 2½ hour carnival of color, sound, and action.” Further, though operating differently from U.S. pro sports leagues, European and international professional soccer leagues help explain the underlying argument – the NFL is strictly a business and its product is football.

IV. Conclusion

Contrasting the NFL Commissioner’s office with the Football Association (“FA”), England’s governing body for its soccer leagues, paints an important picture. Since the FA’s inception in 1863, its

ski & zimbalist, supra note 3, at 172-74 (explaining why competitive balance in sports is difficult to define and why its impact is questionable).

202. For a further discussion acknowledging the NFL’s contention that competitive balance is a critical part of the league’s success, see supra note 201.

203. See szymanski & zimbalist, supra note 3, at 177 (illustrating competitive balance in MLB did not deteriorate after free agency began in 1976).

204. See id. at 191-92 (noting soccer, despite its history of competitive imbalance, is world’s dominant sport because of fans’ national and local allegiances and diversified levels of competition).

205. DirecTV Television Commercial (ESPN television broadcast Oct. 2, 2005) (promoting “NFL Sunday Ticket” and adding that “[f]or the player, victory makes the game glorious. For the fan the glory is the game’’); see also macCambridge, supra note 3, at 100 (describing how baseball “was never quite the ordeal that football – with the frequent exhortations, concerted clapping, chants, and stomping, attempting to sway both sides – had become’’); Leigh Montville, The Age of Audacity, in the best of sports illustrated 48, 49 (Sports Illustrated 1996) (purporting football’s popularity stems from its high-speed action and propensity for violence).

206. See, e.g., franklin foer, how soccer explains the world 116 (Harper Perennial 2005) (“Americans call their sporting teams ‘franchises.’ Brazilians would never tolerate that use of the term. It has too many commercial associations with chains of McDonald’s and dry cleaners. Instead, Brazilians call their teams ‘clubs,’ because . . . [t]hey have swimming pools, restaurants, tennis courts, palm-covered gardens, and dues-paying members . . . .’’). For a further discussion of how NFL owners treat the league as a business, see supra note 3 and accompanying text.
purpose has been two-fold: maintain a common set of rules and promote the game of soccer. The NFL, on the other hand, functions exclusively as a business entity and does not consider the welfare of football unless it serves the dual function of increasing profits. The FA, a separate entity from the leagues it regulates, seeks to spread soccer to the masses; the NFL uses football primarily as a means to financially profit team owners.

Understanding this distinction changes one's perception of professional sports in America: the NFL is a product created by those who have financial stakes in the league’s success (i.e., team owners). Therefore, players, like team presidents, general managers, coaches, public relation directors, and water-boys, are the NFL’s employees. Consequently, players should not feel guilty or be chastised for pursuing their market values, which are understandably very high. The top twenty NFL wide receivers, for example, are the world’s best and employed by the richest, most popular sports league in the world’s richest country.

207. See SzYMANski & ZIMBALiST, supra note 3, at 34-47 (noting one commentator in 1899 argued “the Football Association had turned from its original object of promoting sport and had adopted the care of the business of [soccer]”).

208. For a further discussion of how NFL owners always treated football as business, see supra note 3 and accompanying text. A comparison of William McGregor, an early architect of England’s professional soccer league, and William Hulbert, an early influential baseball team owner, symbolizes the differences between European and American professional sport leagues:

Hulbert had risen to be a man of significant financial and political standing, while McGregor remained to the end of his life a small shopkeeper. Hulbert was a business leader first and baseball promoter second. McGregor was first and foremost a soccer lover . . . . Hulbert was a leader who demanded control and, in the case of his club, a significant ownership stake. McGregor went out of his way to state that he had no interest in challenging the supremacy of the FA and always argued that the Football League [England’s professional soccer league] should be subordinate.

SzYMANski & ZIMBALiST, supra note 3, at 44 (explaining differences between origins of professional soccer in Europe and professional baseball in U.S.). For a further discussion of Hulbert’s influence, see supra notes 30, 32.

209. See SzYMANski & ZIMBALiST, supra note 3, at 47 (arguing coexistence of FA and England’s professional soccer league symbolized compromise enabling soccer to spread across globe).

210. For a further discussion characterizing professional sports leagues as businesses, see supra note 3.

211. For a further discussion justifying the high price-tag for NFL talent, see infra notes 212-16 and accompanying text.

212. For a further discussion characterizing the NFL as America’s most popular and wealthiest sports league, see supra notes 4 and 18 and accompanying texts. Consider, for example, if every lawyer wanted to work at the same law firm – the relatively low supply of jobs and incredibly high demand for them would lead to astronomical salaries. See generally Henry HAZLITT, ECONOMICS IN ONE LESSON: THE SHORTEST AND SUREST WAY TO UNDERSTAND BASIC ECONOMICS (Three Rivers
So T.O., with a $9 million signing bonus and $3.5 million 2005 salary, may make our stomachs turn when he complains about the lack of guaranteed contracts. But NFL owners’ refusal to grant more guaranteed compensation is equally reprehensible considering the league’s ground-breaking financial success. Fans and the media criticized T.O. over the past several months, but his tumultuous tenure in San Francisco, attempts to land in Philadelphia, and embarrassing media campaign for a new contract justify the criticism. Yet beneath the ballyhoo and Rosenhaus-esque media blitz lies a valid argument: NFL players should receive more guaranteed contracts, their means to a bigger piece of the All-American-style pie which the NFL gratuitously feeds to us all. Press 1979) (explaining concept of supply and demand). The NFL’s demand continues to sky-rocket while its supply remains steady. For further discussion on the NFL’s popularity, see supra note 18 and accompanying text.

213. For a further discussion characterizing T.O.’s recent complaints and reactions thereto, see supra note 7 and infra note 215 and accompanying texts.

214. See Rodney Fort, Market Power in Pro Sports: Problems and Solutions, in THE ECONOMICS OF SPORTS 7, 9 (2000) (“Some fans might begrudge players their huge salaries, but the money that fans spend on sports will not go away. If players don’t get the money, then owners will keep it. In no small way, salaries are large because leagues earn more than the normal rate of return.”); ZIRIN, supra note 35, at 107 (arguing professional athletes should fight for every dollar because, otherwise, owners simply keep money for themselves). For a further discussion of the NFL’s new television contracts and team revenues, see supra note 4. T.O. is both a businessman and an athlete, evidenced by his antics in both arenas. For a further discussion depicting T.O.’s actions as brash and unreasonable, see supra notes 7-8 and accompanying text. For a further discussion of the neutral arbitrator’s conclusion that T.O.’s actions over the last several months were intolerable, see infra note 215.

215. See Bradley, supra note 7 (asserting T.O.’s public pleas and media stunts prove his selfishness and problematic character). For a further discussion of T.O.’s and Rosenhaus’s antics, see supra notes 7-9 and accompanying text. On November 5, 2005, the Eagles suspended T.O. for four games and deactivated him for the rest of the 2005 season. See T.O.’s Season Effectively Over, supra note 166 (adding that Eagles’ suspension came after T.O. again insulted quarterback McNabb, called his employer “classless,” and fought with former teammate). After T.O. filed a formal grievance with the League, arbitrator Richard Bloch sided with the Eagles “due to the nature of [T.O.’s] conduct and its destructive and continuing threat to the team.” Id. (concluding Eagles’ action did not violate labor agreement). But see Senator Says Eagles Unfair in Punishment of Owens, Nov. 29, 2005, http://www.sportsline.com/nfl/story/9068353 (noting Pennsylvania Senator Arlen Specter felt Eagles’ actions possibly violated antitrust laws because team acted vindictively by forcing T.O. to miss rest of season). Senator Specter added, however, “I think he’s in flagrant breach of his contract and I believe the Eagles would be within their rights in not paying him another dime . . . .” Id. (emphasizing Specter did not support T.O.’s antics).

216. See Fort, supra note 214, at 11 (indicating owners have rights to “1) gate, stadium, and local TV revenues; 2) any revenues that can be extracted from players; 3) special tax treatment; 4) a share of league-wide, national TV contract revenues; 5) a share of league earnings from expansion fees; and 6) spill-over benefits
This will not ruin sports, as purists emphatically contend. \(^{217}\) Sports will remain a genuinely important part of the fabric of our society – why sports consume so many of us during childhood, this will remain untouched. \(^{218}\) The product, however, at the professional level will continue its consistent evolution as labor relations shift, antitrust laws change, and players develop new skills. \(^{219}\) Regardless of these changes and/or guaranteed contracts, the NFL, flirting with those capitalistically-contrasting ideas of community and competition, will remain a profitable business because Americans naturally and heavily consume its product, football. \(^{220}\)

**Postscript**

Terry O’Neill, a “die-hard” Pittsburgh Steelers fan, suffered a heart-attack during his team’s 2006 divisional playoff game after watching Steeler Jerome Bettis fumble with one minute left in regulation while the Steelers led. \(^{221}\) Apparently, America’s love affair with football is heart-attack-serious.

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to other business enterprises of the team owner”). For a further discussion of the NFL’s financial success, see supra note 4.

217. For a further discussion asserting purists have inappropriately criticized professional athletes over the last twenty years, see supra notes 2-4 and accompanying text.

218. See, e.g., Montville, supra note 205, at 48 (describing how sport captures children’s imaginations).

219. For further discussion on how labor relations evolved in the NFL, see supra notes 45-49 and accompanying text. For a further discussion demonstrating how antitrust laws shape the NFL, see supra notes 24-27 and 81-133 and accompanying texts.

220. See MacCambridge, supra note 3, at 458 (“Pro football has become the perfect symbol for the country’s budsting, modernistic urgency, a splendid entertainment, a taxing and transforming profession, and a meaningful metaphor for the most American pursuit of all, those seemingly mismatched but inextricably bound ideas of competition and community.”); see also Berry et al., supra note 42, at 132 (describing NFL’s revenue sharing as “a kind of corporate socialism created by the NFL’s economic cartel”). Additionally, no NFL franchise has failed during the last fifty years. See Berry et al., supra note 42, at 91 (indicating Dallas Texans failed in 1952). Further, the NFL’s popularity stretched beyond America’s borders on October 2, 2005 when the NFL’s first regular season game was played on foreign soil in Mexico City. See Daniel Kaplan, Important Days for NFL’s Global Efforts, STREET & SMITH’s SPORTS BUS. J., Sept. 26 – Oct. 2, 2005, at 3 (noting other international cities may want to host NFL regular season game); see also Terry Lepton, Sponsors Eager to Spend for NFL’s Mexico Trip, STREET & SMITH’s SPORTS BUS. J., Sept. 26 – Oct. 2, 2005, at 3 (acknowledging NFL game in Mexico City generated many interested corporate sponsors).

221. See Sean Gregory, 10 Questions for Jerome Bettis, TIME, Feb. 6, 2006, at 8 (interviewing Bettis and recounting his conversation with O’Neill after episode).