DROPPING THE BALL: HOW THE COMMISSIONER'S EXERCISE OF HIS “BEST INTERESTS” AUTHORITY IS FAILING THE NFL AND WHAT CAN BE DONE ABOUT IT

The NFL Commissioner has had the authority to punish players for “conduct detrimental to the integrity of, or public confidence in, the game of football” since 1960. Yet, he first exercised this “best interests” disciplinary authority to punish a player for a non-gambling-related off-the-field offense in 2002. Since then, the NFL Commissioner has issued over fifty separate disciplinary decisions for players' off-the-field conduct. In the process, the NFL Commissioner's implementation of this broad power has come under fire, with critics claiming that the NFL Commissioner's decisions are inconsistent, unpredictable, and unfair to the players. In response to these criticisms, the current NFL Commissioner, Roger Goodell, passed a series of Personal Conduct Policies. This Article details the history of the NFL Commissioner's “best interests” power, including the recent Personal Conduct Policies. It then describes the NFL's three high-profile scandals of the 2014-15 season--Ray Rice's domestic violence case, Adrian Peterson's excessive child discipline, and the New England Patriots' DeflateGate controversy--in order to explore the problems with how the NFL Commissioner exercises his “best interests” power. This Article then offers a solution: the “Independent Adjudicatory Committee” system. Under this proposal, the NFL Commissioner would take on a prosecutorial role and leave disciplinary decision-making authority to an independent committee of former judges. These judges would adjudicate charges brought by the NFL Commissioner in the form of written opinions, determining the appropriate punishments for various violations and offering much-needed clarity with respect to what constitutes conduct detrimental to the game. This proposal would fix many of the issues with the current system by distancing the NFL Commissioner from the decision-makers and by creating a reliable common law for NFL discipline.

INTRODUCTION

The Collective Bargaining Agreement (“CBA”) between the National Football League (“NFL’) and the NFL Players Association (“NFLPA”) grants the NFL Commissioner unusually broad authority to discipline players for “conduct detrimental to the integrity of, or public confidence in, the game of professional football.” This is colloquially called the NFL Commissioner's “best interests” authority, named after the first clause to grant a sports commissioner that power. The NFL Commissioner's “best interests” power is considerable--he is not only the prosecutor, but, if he so chooses, the judge and jury too. In fact, the CBA includes a separate appeals process specifically designed for “conduct detrimental to the game” disciplinary decisions that grants the Commissioner the sole authority to appoint hearing officers. The Commissioner frequently appoints himself or a party partial to the NFL.

The Commissioner has exercised this power at an increasing rate. The NFL has issued 263 separate suspensions since its inception in 1947, with all but two coming after the NFL adopted its “best interests” clause in 1960. Sixty of those
instances are categorized as “personal conduct,” meaning off-the-field conduct. Aside from gambling-related offenses, the first of these occurred in 2002, during which only one suspension was issued. By comparison, in 2013, six players were suspended for personal conduct, with ten players similarly suspended the prior year. As the NFL Commissioner exercises this power with increasing frequency, his ability to do so fairly and swiftly has come into question. Recently, three disciplinary decisions—Ray Rice’s, Adrian Peterson’s, and Tom Brady’s for his involvement in the DeflateGate scandal—have been partially or entirely overturned, and the NFLPA, the media, and even the fans criticized the NFL Commissioner for those decisions. Some have called for his resignation, and the Commissioner himself even acknowledged that he mishandled the Ray Rice case.

In the wake of the Ray Rice and Adrian Peterson scandals, the NFL unveiled a new domestic violence policy and a new personal conduct policy. Although these policies may help to bring some uniformity to the NFL Commissioner’s exercise of his disciplinary authority, more is needed. In Part I of this Article, I discuss the history of the NFL Commissioner’s “best interests” disciplinary authority, which is codified in the NFL’s Constitution and Bylaws, the CBA, and the NFL’s Personal Conduct Policies. In Part II, I describe three scandals that rattled the NFL in 2014—Ray Rice, Adrian Peterson, and DeflateGate—to frame the problems with the NFL Commissioner’s recent exercise of his “best interests” authority. In Part III, I offer a possible solution: the creation of an Independent Adjudicatory Committee responsible for determining player discipline, and the subordination of the NFL Commissioner to prosecutor in that process. In Part IV, I analyze how this solution will best solve the problems with the NFL Commissioner’s current system. I conclude with some parting words on how and why the parties should adopt this approach.

I. COMMISSIONER POWER: PAST AND PRESENT

A. THE ORIGINS OF THE NFL COMMISSIONER’S “BEST INTERESTS” AUTHORITY

The position of omnipotent sports commissioner that we see in the NFL today has its roots in Major League Baseball (“MLB”). In 1919, the Chicago White Sox and Cincinnati Reds were set to face off in the World Series. Despite the Chicago White Sox being favored, the Cincinnati Reds won the series five games to three. Soon after, it was discovered that eight Chicago White Sox players took bribes from gamblers to throw the World Series. Although many at that time thought gambling infractions occurred in the MLB, no one believed they could reach the sport’s biggest stage. This scandal, which eventually became known as the Black Sox Scandal, rattled the MLB and prompted swift, decisive action from the owners to save their sport. The owners realized they needed a strong individual who had the confidence and respect of the public to oversee their league. They settled on Judge Kenesaw Mountain Landis, who accepted the commissioner position under the condition that he wield absolute power. The owners agreed, and granted Landis the authority to punish anyone for conduct that he determined was “detrimental to the ‘best interests’ of baseball.”

The “best interests” clause was born. However, the NFL would not adopt a similar clause right away. In fact, the NFL’s first two commissioners operated without this expansive authority. The NFL finally granted “best interests” power to Commissioner Pete Rozelle in 1960, largely as a result of his financial successes with the league. Specifically, the NFL’s owners granted Rozelle “full, complete, and final jurisdiction and authority over any dispute involving a member or members in the League” and the power to punish a player for conduct that he deemed was “detrimental to the integrity of, or public confidence in, the game of professional football.” While the NFL’s clause never explicitly mentioned “best interests,” it granted the NFL Commissioner substantially the same power as the MLB’s “best interests” clause and, therefore, is referred to as such.
B. CURRENT NFL COMMISSIONER POWER

The NFL's “best interests” clause adopted in 1960 survives substantially in the same form today. The NFL Commissioner derives his “best interests” authority from the NFL's Constitution and Bylaws and the NFL's CBA with the NFLPA. The NFL's Constitution and Bylaws grant the NFL Commissioner the complete authority to punish individuals whenever the Commissioner, after notice and hearing, decides that an owner, shareholder, partner or holder of an interest in a member club, or any player, coach, officer, director, or employee thereof, or an officer, employee or official of the League has either violated the Constitution and Bylaws of the League or has been or is guilty of conduct detrimental to the welfare of the League or professional football . . . .

Although the NFL and NFLPA's current CBA provides additional language for this authority, it offers little clarity. The CBA allows the NFL Commissioner to punish a player “for conduct detrimental to the integrity of, or public confidence in, the game of professional football.” Further, the CBA includes a form player contract in Appendix A, which states:

Player recognizes the detriment to the League and professional football that would result from impairment of public confidence in the honest and orderly conduct of NFL games or the integrity and good character of NFL players. Player therefore acknowledges his awareness that if he . . . is guilty of any other form of conduct reasonably judged by the League Commissioner to be detrimental to the League or professional football, the Commissioner will have the right, but only after giving Player the opportunity for a hearing at which he may be represented by counsel of his choice, to fine Player in a reasonable amount; to suspend Player for a period certain or indefinitely; and/or to terminate this contract.

Thus, the NFL Commissioner is granted substantially the same authority-- to punish players for conduct detrimental to the game of football--three distinct times.

C. THE NFL'S PERSONAL CONDUCT POLICIES

While most of the major professional sports teams have agreed to limit (or eliminate) their commissioners' “best interests authority” in collective bargaining agreements or similar documents, the NFL has not done so. Rather, the NFL Commissioner, with ownership approval, has sought to clarify his authority by passing a series of his Personal Conduct Policies. The NFL's first stab at such a policy was created entirely by the owners. In 1998, the owners instituted the Violent Crime Policy, which expressly allowed the NFL Commissioner to punish players who were charged with any violent crime. In 2000, the owners, in response to public outrage over the Ray Lewis murder trial, replaced the Violent Crime Policy with the NFL's first true Personal Conduct Policy. This policy granted then-NFL Commissioner Paul Tagliabue virtually unlimited power to suspend, fine, and even banish players who had been convicted of a crime or admitted to engaging in any wrongdoing. However, in Paul Tagliabue's eight-year reign following the Violent Crime Policy, he suspended only nine players, with most of those suspensions being for only one game.

Current NFL Commissioner Roger Goodell succeeded Paul Tagliabue in 2006. The following year, three NFL players--Chris Henry, Tank Johnson, and Adam “Pacman” Jones--had serious, repeated run-ins with the law. Commissioner Goodell acted quickly because he felt that it was his, and the NFL's, responsibility to crack down on this sort of behavior. Commissioner Goodell suspended Henry, Johnson, and Jones for eight, eight, and sixteen
games, respectively, and announced a new Personal Conduct Policy,\textsuperscript{40} which would be modified the following year after Commissioner Goodell consulted with NFLPA Executive Director Gene Upshaw.\textsuperscript{41} These Policies significantly strengthened the NFL Commissioner’s \textsuperscript{*48} “best interests” authority. First, they clarified what constituted conduct detrimental to the league. The 2007 Policy included “engage[ment] in (or to aid, abet, or conspire to engage in or to incite) violent and/or criminal activity” and offered a list of examples.\textsuperscript{42} The 2008 Policy went even further. It listed the following bullet points for which discipline may be imposed:

- Criminal offenses including, but not limited to, those involving: the use or threat of violence; domestic violence and other forms of partner abuse; theft and other property crimes; sex offenses; obstruction or resisting arrest; disorderly conduct; fraud; racketeering; and money laundering;

- Criminal offenses relating to steroids and prohibited substances, or substances of abuse;

- Violent or threatening behavior among employees, whether in or outside the workplace;

- Possession of a gun or other weapon in any workplace setting, including but not limited to stadiums, team facilities, . . . etc., or unlawful possession of a weapon outside of the workplace;

- Conduct that imposes inherent danger to the safety and well being of another person; and

- Conduct that undermines or puts at risk the integrity and reputation of the NFL, NFL clubs, or NFL players.\textsuperscript{43}

The Policy also established that players need not be actually convicted of a crime for discipline to be imposed: “the standard of conduct for persons employed in the NFL is considerably higher.”\textsuperscript{44} Additionally, it provided that “[d]iscipline may take the form of fines, suspension, or banishment from the League” and granted the NFL Commissioner “full authority to impose discipline as warranted.”\textsuperscript{45} Further, both Policies reiterated the appeals procedure for “best interests” discipline. The 2007 Policy stated that “[a]ny person disciplined under this policy shall have a right of appeal, including a hearing, before the Commissioner or his designee.”\textsuperscript{46} The 2008 Policy confirmed the players’ right to appeal their punishments at a hearing, but that the hearing would “be conducted by the [NFL] Commissioner or his designee.”\textsuperscript{47}

D. CURRENT NFL PERSONAL CONDUCT POLICIES

The 2008 Policy survived in its current form for six years.\textsuperscript{48} In 2014, in the midst of attempting to resolve the Ray Rice\textsuperscript{49} and Adrian Peterson\textsuperscript{50} scandals, the NFL replaced the \textsuperscript{*49} 2008 Policy with two new policies. First, facing considerable public outcry for his admitted mishandling of Ray Rice's discipline after Rice struck his then-fiancé, Commissioner...
Goodell announced the NFL's new Domestic Violence Policy in a letter to team owners. Commissioner Goodell reiterated his Policy in a Memorandum to all NFL Personnel, in which he stated:

Violations of the Personal Conduct Policy regarding assault, battery, domestic violence and sexual assault that involve physical force will be subject to enhanced discipline. A first offense will be subject to a suspension of six weeks without pay. Mitigating circumstances will be considered, and more severe discipline will be imposed if there are aggravating circumstances such as the presence or use of a weapon, choking, repeated striking, or when the act is committed against a pregnant woman or in the presence of a child. A second offense will result in banishment from the league; an offender may petition for reinstatement after one year but there is no assurance that the petition will be granted.

This Policy merely created a punishment floor by mandating a six-game suspension for the listed offenses, which is much longer than previous NFL punishments for domestic violence. The consideration of “mitigating circumstances” allows the NFL Commissioner to hand down more severe punishments if he wishes. Furthermore, because the NFL Commissioner unilaterally adopted this Policy, he likely can repeal it whenever he chooses.

On December 10, 2014, Commissioner Goodell, with the owners' approval, unveiled his new eight-page Personal Conduct Policy. The NFL also released a one-page flowchart that highlights the most important new features of the 2014 Policy. Similar to the NFL's past Personal Conduct Policies, this Policy evokes “the Commissioner's authority under the [[NFL] *50 Constitution and Bylaws to address and sanction conduct detrimental to the league and professional football.” The Policy further explains:

If you are convicted of a crime or subject to a disposition of a criminal proceeding (as defined in this Policy), you are subject to discipline. But even if your conduct does not result in a criminal conviction, if the league finds that you have engaged in any of the following conduct, you will be subject to discipline.

The Policy then offers a bulleted list of potentially-disciplinary conduct, ranging from “[a]ctual or threatened physical violence against another person” to possession of illegal substances or weapons. The list culminates in a catchall provision prohibiting “[c]onduct that undermines or puts at risk the integrity of the NFL, NFL clubs, or NFL personnel.” This list undoubtedly adds some additional clarity to what constitutes conduct detrimental to the game, but this clarity is tempered by the inclusion of the final catchall provision.

The new Policy does change the 2008 Policy's procedure in important ways, at least facially. Probably the biggest change is the NFL Commissioner ceding initial disciplinary decision-making authority to a disciplinary officer, who is described as “a member of the league staff who will be a highly-qualified individual with a criminal justice background.” Notably, the NFL's flowchart depicting this Policy does not mention the creation of this new position. It is important to note that the initial decision maker is still an employee of the NFL Commissioner and that the NFL Commissioner retains control over the appeals process. The second noteworthy new feature of the 2014 Policy is that the NFL Commissioner expressly codified his apparent right to place players on paid leave during investigation. The Policy allows the NFL Commissioner to do this when a player is “formally charged with a crime of violence,” “if an investigation leads the Commissioner [but not the disciplinary officer] to believe that [the player] may have violated this Policy . . . .”
player placed on paid leave will generally remain as such until the final disposition of his case, including his appeal. The NFL's flowchart summarizes the paid leave aspects of the Policy as follows:

An individual may be put on paid leave if formally charged with a violent crime or sexual assault, or if the NFL investigation finds sufficient credible evidence that it appears a violation of the policy has occurred. Paid leave will **last until the completion of the NFL investigation or disposition of a criminal charge.**

Last, if the player decides to exercise his right to appeal the disciplinary officer's decision, the appeal is first heard by the NFL's newly-created Expert Panel. As the flowchart explains, “[t]he appeal process will include a review panel of three outside experts to make recommendations to the Commissioner or his designee on an appeal ruling that will be decided by the Commissioner or his designee.” However, the NFL Commissioner or his designee retains final decision-making authority on appeal. Thus, the NFL Commissioner remains integral to the disciplinary process and may have even expanded his power by expressly codifying his paid-leave authority. Needless to say, the NFLPA denounced this new Policy, decrying that Commissioner Goodell did not let them review the Policy before it was unveiled and did not grant their demand for neutral arbitration of appeals. The NFLPA went so far as to claim that the Policy is invalid because it is inconsistent with the parties' 2011 CBA and was not bargained-for and mutually agreed to.

In summary, the 2014 Personal Conduct Policy offered some clarity to what constitutes conduct detrimental to the league. More importantly, the Policy made substantial changes to the disciplinary process. The Policy delegates initial disciplinary authority to a disciplinary officer, rather than the NFL Commissioner. The Policy further institutes an appellate review by an Expert Panel, which makes recommendations to the NFL Commissioner or his designee. However, the NFL Commissioner retains ultimate control over the resolution of the appeal.

**II. THE NFL'S 2014-15 SCANDALS**

This past year, the NFL has been the subject to two scandals involving off-the-field conduct--those of Ray Rice and Adrian Peterson--and one involving on-the-field conduct: DeflateGate. Commissioner Goodell invoked his “best interests” disciplinary authority to investigate each of these matters and dole out punishments. The processes by which these scandals have, or have not, been adjudicated exemplify the issues the NFL currently faces as a result of Commissioner Goodell's exercise of his exceptionally broad disciplinary authority. In this Part, I will first describe these three scandals, and then use them to explain the problems with the NFL current disciplinary system.

**A. RAY RICE**

On February 15, 2014, Baltimore Ravens' star running back Ray Rice was arrested and charged with assault after an incident in which he allegedly struck his then-fiancé (now-wife), Janay Palmer (now-Janay Rice). Rice resolved this arrest in a courtroom on May 20, 2014. On June 16, 2014, Commissioner Goodell suspended Rice for the first two weeks of the 2014-15 NFL season. On September 8, just after the first week of the 2014-15 NFL season, TMZ released a second video of the assault, which graphically showed Ray Rice punching his wife in the face. As a result, the Ravens terminated Rice's contract, and the NFL suspended him indefinitely.

Ray Rice appealed his indefinite suspension. In the face of significant pressure from the public, NFLPA, and women's rights organizations, Commissioner Goodell agreed to work with the NFLPA to appoint a neutral arbitrator to hear Ray Rice's appeal. The parties settled on Judge Barbara Jones, who, on November 28, overturned Rice's indefinite
suspension and ordered the NFL to reinstate him. Judge Jones concluded that Rice had not lied to Commissioner Goodell at their June 16 meeting, and as a result, ruled that his second punishment was arbitrary, and thus, must be vacated. However, by this point, the NFL had already begun week thirteen of its seventeen-week regular season. Given Judge Jones's ruling that Rice's second punishment was improper, Rice should have been eligible to return after week two. But, because Rice was improperly ineligible for the first nine weeks of the NFL season, he ultimately never played a snap during the 2014-15 season.

B. ADRIAN PETERSON

Meanwhile, on September 12, 2014, Minnesota Vikings' star running back Adrian Peterson was indicted for reckless or negligent injury of a child. Specifically, Peterson allegedly whipped his child with a switch, which resulted in cuts and bruises on the child's back, legs, arms, and buttocks. Initially, the Minnesota Vikings deactivated Peterson for one game. On September 15, 2014, another allegation of child abuse against Peterson came to light, and the Vikings placed him on the exempt/commissioner's permission list, which operated as an indefinite suspension with pay. Peterson's sponsors also suspended their contracts with him. On November 4, 2014, Peterson resolved his criminal charges by entering a no contest plea to a misdemeanor child injury charge. However, on November 18, 2014, Commissioner Goodell suspended Peterson for the remainder of the 2014-15 NFL season. Despite the fact that the underlying incident occurred before the NFL’s Domestic Violence Policy became effective, Commissioner Goodell punished Peterson pursuant to it. Similarly to Rice, Peterson appealed his suspension, and the NFLPA requested Commissioner Goodell appoint an independent arbitrator to hear Peterson's appeal. This time, Commissioner Goodell ignored the NFLPA's request and appointed Harold Henderson, a former NFL executive who regularly handles appeals for the NFL, to handle Peterson's appeal. The NFLPA believed that Henderson, given his strong ties to the NFL and Commissioner Goodell, could not be neutral. On December 12, 2014, Henderson denied Peterson's appeal of his suspension, concluding that Commissioner Goodell's broad authority allowed him to retroactively apply the NFL's new Domestic Violence Policy against Peterson, and that Commissioner Goodell's disciplinary decision was consistent with the previous Policy.

The NFLPA, on Peterson's behalf, challenged Henderson's arbitration award in the United States District Court of Minnesota. On February 26, 2015, Judge David Doty, in a sixteen-page opinion, vacated Henderson's arbitration decision. Judy Doty concluded that Henderson's decision to uphold Commissioner Goodell's retroactive application of the NFL's new Domestic Violence Policy violated the “established law of the shop,” that is, the “industrial common law,” and that Henderson exceeded his authority by considering the issue of whether Commissioner Goodell's disciplinary decision was consistent with the NFL's previous Personal Conduct Policy despite the NFLPA not asking Henderson to do so. Notably, Judge Doty explicitly refused to determine “whether Henderson was evidently partial or whether the award violates fundamental fairness.” The NFL appealed to United States Court of Appeals for the Eighth Circuit, but, Peterson's suspension ended and he was reinstated before they could hear the appeal, effectively rendering it moot.

C. DEFLATEGATE

On January 18, 2015, the New England Patriots defeated the Indianapolis Colts 45-7 in the AFC Championship Game, thereby advancing to Super Bowl XLIX. Shortly after the game, reports surfaced accusing the Patriots of deflating some of the footballs that they used in the game against the Colts. Although most agree that the Patriots would have
won the game regardless of how much air was in their footballs, 105 the NFL responded by hiring Ted Wells of the New York law firm Paul Weiss 106 to lead a full investigation alongside NFL Executive Vice President Jeff Pash. 107 Notably, both the NFL, in its press release announcing the investigation, and Commissioner Goodell, in statements regarding the investigation, repeatedly invoked the CBA Art. 46, §1(a) language that endows the NFL Commissioner with the power to protect the “integrity of the game” to justify the investigation. 108

Ted Wells announced his findings on May 6, 2015, almost four months after the scandal broke, in a 243-page report. 109 Wells concluded that “it [was] more probable than not” that the New England Patriots personnel released air from game balls prior to the AFC Championship game in violation of NFL playing rules and “that Tom Brady was at least generally aware of the inappropriate activities of [the Patriots personnel] involving the release of air from Patriots game balls.” 110 Based on Wells's findings, Commissioner Goodell fined the New England Patriots one million dollars, took away their 2016 first round draft pick and 2017 fourth round draft pick, and suspended Tom Brady for four games. 111

The Patriots decided to accept their punishment and not appeal. 112 Tom Brady, on the other hand, had the NFLPA appeal his punishment. 113 Once again, the NFLPA requested Commissioner Goodell appoint a neutral arbitrator. 114 Similarly to Peterson's case, Commissioner Goodell rejected this request and appointed himself as arbitrator. 115 Acting as arbitrator, Commissioner Goodell upheld Brady's four-game suspension, relying in part on Brady having instructed his assistant to destroy the cell phone Brady had used during the AFC Championship game and shortly thereafter. 116

Interestingly, shortly after Commissioner Goodell announced his decision to uphold Brady's suspension, the NFL preemptively filed a lawsuit demanding a declaratory judgment upholding Commissioner Goodell's decision in New York federal court. 117 This allowed the NFL to ensure this case would be heard by a New York judge, rather than a judge in Minnesota or Massachusetts who may be more favorable to Brady. 118 This ultimately backfired. Judge Richard Berman, who presided over this case, initially urged the parties to settle, which the parties failed to do. 119 On September 3, 2015, just one week before the New England Patriots' season opener, Judge Berman issued his 40-page opinion vacating not only Brady's arbitration award, but Brady's punishment as well. 120 Notably, Judge Berman's decision did not turn on whether Brady was actually involved in the scandal, or whether Roger Goodell was a fair arbiter. 121 Rather, Judge Berman based his decision on:

(A) inadequate notice to Brady of both his potential discipline (four-game suspension) and his alleged misconduct; (B) denial of the opportunity for Brady to examine one of two lead investigators, namely NFL Executive Vice President and General Counsel Jeff Pash; and (C) denial of equal access to investigative files, including witness notes. 122

The NFL appealed on that very day, 123 with the Second Circuit set to hear the case in February, 2016. 124

III. PROBLEMS WITH THE NFL COMMISSIONER'S CURRENT EXERCISE OF HIS “BEST INTERESTS” AUTHORITY

These three scandals, which Commissioner Goodell publicly acknowledged made for a “tough year” and humbled him, 125 exemplify the myriad of problems with the NFL's current disciplinary system for conduct detrimental to the game. These issues are explained in detail below.
A. THE NFL COMMISSIONER'S PUBLIC PERCEPTION AND HIS CONTROL OVER THE DISCIPLINARY PROCESS ARE SUFFERING

Public confidence in the NFL Commissioner is at an all-time low. The public perceives the process by which the NFL Commissioner punishes NFL players as political or social pandering and unjust. Commissioner Goodell has been harshly criticized for his recent punishment decisions and for his arbitrator decisions.

The NFL Commissioner's primary problem is his “arbitrator dilemma.” When a player appeals a “best interests” disciplinary suspension, the NFL Commissioner must decide whether to appoint a neutral or partial arbitrator. In making that decision, the NFL Commissioner ostensibly weighs two main goals: (1) maintaining the integrity of the NFL Commissioner and NFL, and (2) preserving his power over disciplinary decisions. Unfortunately, either choice has proven to be harmful. When the NFL Commissioner chooses a neutral arbitrator, he presumably values fairness and integrity over his control over the process. As the Ray Rice scandal demonstrated, the neutral arbitrator is the politically popular choice, the choice that the public views as fairer and better. However, because a neutral arbitrator is more likely to overturn the NFL Commissioner's initial decision, the NFL Commissioner's public perception still suffers as a result.

Consequently, the NFL Commissioner has generally chosen a partial arbitrator. Although such a decision harms the NFL Commissioner's public perception, it protected his control over the disciplinary process because, as evidenced by the Adrian Peterson scandal, a partial arbitrator is more likely to rule in the NFL Commissioner's favor. However, the NFLPA's recent successes in federal court, coupled with the likelihood that, if challenged, the NFL Commissioner's appointment of a partial arbitrator would be overturned by a judge because of the arbiter's partiality, complicates the NFL Commissioner's calculus.

Courts have never directly ruled on whether an NFL Commissioner's choice of a partial arbitrator for a “best interests” disciplinary appeal proceeding violates the Federal Arbitration Act (“FAA”). In Morris v. New York Football Giants, Inc., the court removed the NFL Commissioner as arbitrator in an individual contract dispute between two players and their team after finding that the NFL Commissioner could not be neutral. The court reasoned that the NFL Commissioner could not be a neutral arbitrator because he was a named defendant to the ensuing litigation and had advocated against the players' position in the past. However, this was in the context of a contract issue, not a disciplinary proceeding. Further, although Judge Doty did vacate Adrian Peterson's arbitration award, he declined to rule on whether the choice of arbitrator justified vacatur.

The NFLPA has challenged Commissioner Goodell on this practice in the past. Specifically, the NFLPA challenged Commissioner Goodell's practice of appointing partial arbitrators to overhear disciplinary appeals when it filed suit against Commissioner Goodell for appointing himself as arbitrator in the Bounty Scandal punishment appeal hearing. Although Commissioner Goodell ceded to the NFLPA's demands before the case was adjudicated, the NFLPA's complaint is instructive. In its complaint, the NFLPA claimed that Commissioner Goodell's appointment of himself as arbitrator violated the FAA's “evident partiality” requirement. Such a violation allows the judge to vacate an arbitrator's award. As the NFLPA noted, the Fifth Circuit, the jurisdiction that presided over the NFLPA's claim in the Bounty Scandal proceedings, would find an arbitrator evidently partial “if 'a reasonable person would have to conclude that the arbitrator was partial to one party . . . ’.” The NFLPA argued that Commissioner Goodell's repeated attacks on the players and presumption of their guilt in the media defeated his neutrality, even though it explicitly stopped short of arguing that the NFL Commissioner is a per se partial arbitrator in violation of the FAA. Nevertheless, the NFL Commissioner frequently holds press conferences about disciplinary decisions, especially for high-
profile cases. His unique position of making disciplinary decisions and arbitrator appointments casts doubt on his partiality as the arbitrator. This is equally true when the NFL Commissioner appoints one of his employees (e.g., Harold Henderson in Adrian Peterson's case) as the arbitrator. Thus, the NFL Commissioner is at significant risk of having his hand-picked arbitrator's award vacated.

Prior to the Bounty Scandal, the NFL Commissioner generally appointed himself or an associate to hear appeals. In the last few years, specifically in response to the filing of litigation during the Bounty Scandal appeal and to public pressure in the Ray Rice case, the NFL Commissioner tried appointing neutral arbitrators. When he did not, as in the Adrian Peterson and DeflateGate cases, he ultimately lost in federal court, albeit on other grounds. As a result, the NFL Commissioner, who had already suffered a loss of public confidence by choosing a partial arbitrator, also saw his power over the disciplinary process diminish. Worse, this perhaps confirmed the public's opinion that his choice of partial arbitrators is unfair and harmful to the players. Worst of all, it indicated to future players that they may be able to find success in disciplinary proceedings in court. This likely contributed to the NFL pre-emptively filing for a declaratory judgment in regards to Brady's DeflateGate punishment.

This places the NFL Commissioner between the proverbial rock and a hard place. Either decision will likely lead to a loss in both public confidence and power over the disciplinary process. The NFL Commissioner seemingly experimented with both options last year in the Ray Rice and Adrian Peterson scandals; he came out on the losing end of both. Critics may argue that the NFL Commissioner can salvage both interests by getting the initial disciplinary decision correct in the eyes of the public, and the arbitrator. However, the NFL Commissioner has consistently been unable to do so, and likely cannot do so, given the general public's wide range of viewpoints on most topics. A better process, by which the NFL Commissioner relinquishes some of his or her power, is warranted.

B. THE NFL COMMISSIONER'S DISCIPLINARY PROCESS HURTS THE NFL AS A BUSINESS

The NFL Commissioner's disciplinary process hurts the NFL by undermining its product. The NFL's two main products are its games and its players. The fact that the NFL sells football games is self-evident, but the NFL is also involved in the business of marketing and promoting the stars of the games, namely, the players. The NFL intentionally cultivates within its fans loyalty to, and admiration and respect for, its players. It accomplishes this by requiring widespread media availability of its star players, popularizing the Pro Bowl, the NFL Combine, the NFL Draft, and the Super Bowl, as well as selling player-specific merchandise, bargaining for protections for teams to retain specific players (e.g., the franchise tag), and airing NFL Films specials about specific players. As a result, the NFL bolsters its fans' loyalty and game-day experience, and profits considerably.

By removing its players from the field for any reason, the NFL suffers a loss. When the NFL suspends a player for a disciplinary reason, the NFL effectively loses part of its product. As a result, the NFL loses a calculable amount of revenue because both the quality of the game that player's team plays and the popularity of the player into which the NFL has already invested suffer. As a rational business actor, the NFL knows this and has concluded that the benefits from disciplining a player for certain conduct-- which likely include avoidance of bad press and ill will from its fans-- outweigh the lost revenue. As a result, the NFL has decided to punish its players for their off-the-field misconduct. When the NFL handles its discipline properly, the NFL likely minimizes its losses as it anticipated. The problem for the NFL, though, is that this backfires when it mismanages its discipline process. Thus, from a business/financial perspective, the NFL has a stake in maintaining accuracy and fairness in its disciplinary process. As evidenced by the significant backlash Commissioner Goodell faced as a result of his handling of the Ray Rice, Adrian Peterson, and DeflateGate scandals, the current process is not achieving those intended goals.
Further, when the NFL Commissioner mismanages his discipline, the NFL's integrity—which is exactly what the NFL Commissioner tries to protect when he doles out punishments for off-the-field misconduct—suffers. The NFL has determined that the integrity of its game and brand are valuable and that it has an interest in protecting them. It has entrusted the NFL Commissioner with the responsibility to do so. When the NFL Commissioner imposes discipline that the public views as incorrect, as Commissioner Goodell did in the Ray Rice scandal, the NFL Commissioner loses the trust and faith of the fans. As a result, the NFL's integrity is undermined.

Commissioner Goodell attempted to solve some of these issues by passing the 2014 Domestic Violence and Personal Conduct Policies. While some have heralded these Policies as a step in the right direction, most have argued that they only serve to embolden the NFL Commissioner's already extraordinary power. These Policies will likely do little to alleviate the NFL's current problems. Most crucially, the appointment of a disciplinary officer to make the initial disciplinary decision changes little when the NFL Commissioner has unbridled power to place players on paid leave, and the NFL Commissioner still retains final authority over choice of arbitrator and, therefore, final disposition of disciplinary decisions. The Expert Panel, with the mere purpose of making recommendations to the NFL Commissioner, adds little fairness to the process. Worse, both the disciplinary officer and the Expert Panel are chosen and paid by the NFL. Thus, similarly to how in baseball disciplinary arbitrations each party's chosen arbitrator is partial to its side, the disciplinary officer and Expert Panel members are likely to be biased to the wishes of their boss, the NFL Commissioner.

*61 C. THE NFL COMMISSIONER'S DISCIPLINARY PROCESS IS UNFAIR TO THE NFL'S PLAYERS

The NFL Commissioner's disciplinary process takes significant time, is inconsistent and unpredictable, and often results in litigation; all of these attributes are detrimental to the players. First, the process is a lengthy one, as exemplified by Ray Rice's and Adrian Peterson's cases as well as DeflateGate. Rice's punishable misconduct occurred in February, 2014. Rice was not initially punished until June of 2014, received his second punishment three months later, and had to wait another two-and-a-half months for his arbitration hearing. Admittedly, Rice's case was unique due to his double-punishment. Nevertheless, Rice still had to wait two-and-a-half months for his arbitration hearing. Similarly, Adrian Peterson experienced a one-month delay between his appeal of his suspension and his hearing. DeflateGate lasted even longer, with Tom Brady's conduct occurring four months before his initial punishment and final resolution not expected until over a year after his alleged wrongdoing. The NFL's 2014 Personal Conduct Policy will only drag out disciplinary proceedings. The 2014 Policy requires a player appealing his suspension to first have a hearing in front of the NFL's new Expert Panel, which then makes recommendations to the NFL Commissioner or his designee. Presumably, the player then must endure a second hearing in front of the NFL Commissioner or his designee and then also wait for deliberation and a decision. Thus, under the 2014 Policy's process, the player is required to prepare for, have, and wait for the outcome of two hearings before a decision is finally made. This will undoubtedly extend the time it takes for the player's appeal to finally be resolved. These delays, for which the players have no recourse beyond mere back pay, unduly harm the players.

Being an NFL player is a unique occupation. The average NFL player's career is only 3.3 years, and the season only lasts seventeen weeks, with sixteen games played per team. There are always younger or amateur football players seeking to replace current NFL players. Forcing a player to miss four to ten games while he waits for his appeal to be resolved harms that player's ability to practice his inevitably short career. Ray Rice never stepped foot on the
game-day gridiron during the 2014 season, and Adrian Peterson only played in the season opener. Both players lost considerable time practicing their trade as football players.

*62 This delay also affects the players financially. Despite back pay for weeks unfairly missed, NFL players have little recourse for missing out on other pay-based incentives. Many NFL player contracts include performance-based escalator clauses, most of which are reached near the end of the season, if at all. Missing four to ten games or more due to an unfair suspension essentially precludes them from attaining the on-field performance necessary to earn those incentives. NFL players are also paid for playoff, Super Bowl, and Pro Bowl games. A player being forced to miss regular-season games hinders his ability to make the Pro Bowl and his team's ability to compete for the playoffs and Super Bowl. However, if that player's suspension is proven to be unfair, there is no way for that player to prove that he would have been elected for the Pro Bowl, or that his team would have made the playoffs or Super Bowl with him active. Thus, that player misses out on that potential income. Furthermore, NFL players frequently supplement their incomes with endorsement deals. The players who get the most lucrative endorsement deals are the most successful and popular players. However, players cannot be successful and popular if they are prohibited from the gridiron on game-day. Players who are wrongly punished lose endorsement opportunities, but the value of those opportunities is likely too uncertain to calculate for back pay awards. These problems are exacerbated when the NFL Commissioner exercises his newly-codified authority to place players on paid leave while the disciplinary officer conducts his investigation because the players miss out on more playing time, potentially unfairly if they turn out to not deserve any punishment.
The NFL Commissioner's current disciplinary process also leads to repeated and unnecessary litigation. Adrian Peterson and Tom Brady successfully sued the NFL, and the players in the Bounty Scandal were able to use the filing of a lawsuit to persuade Commissioner Goodell to recuse himself and appoint former commissioner Paul Tagliabue as third-party arbitrator. The NFL is apparently fearful enough of players taking unfavorable “best interests” arbitration awards to court that it preemptively filed against Tom Brady, and lost. In each of these cases, Commissioner Goodell initially appointed a non-neutral arbitrator—for Peterson, a former NFL executive, and for the Bounty Scandal players and Tom Brady in DeflateGate, Commissioner Goodell himself—and ultimately saw his decisions overturned after litigation was filed. Given the success of these lawsuits, NFL players who receive what they view to be an unfair punishment and arbitration award are incentivized to sue. This litigation is expensive, usually takes several months, and, at best, should result in more arbitration proceedings, thus further delaying the resolution that the suing players seek.

IV. PROPOSED SOLUTION: THE INDEPENDENT ADJUDICATORY COMMITTEE SYSTEM

A. OTHER PROPOSALS AND CRITIQUES

Given the institutional problems with the NFL Commissioner's current disciplinary process, the process must be updated. This is not a novel idea, as several scholars have addressed revamping the NFL Commissioner's discipline process. The current debate in this field has centered around how much power the NFL Commissioner should retain. At one end of the spectrum are those who argue that the NFL Commissioner's disciplinary decision should be final and binding and not subject to appeal. Proponents of this theory contend that the NFL Commissioner is best situated to determine what is best for the sport as compared to arbitrators or judges. However, this proposal would likely do more harm than good. Players who feel they have been unfairly treated would have only one avenue to challenge the disciplinary decision: litigation. The likely uptick in litigation, even if it provides a “fairly objective answer,” is still less efficient than arbitration. Moreover, NFL players would still be subject to unfair treatment and lengthy delays, and the NFL Commissioner would still receive the brunt of public outrage over disciplinary decisions that the public feels are unfair.

On the other end of the spectrum, some have called for the NFL Commissioner to relinquish all authority to punish players for off-the-field conduct. Some argue that such discipline should be left to players' teams, as their employers. Others argue that the NFL and the country as a whole functioned well for decades without the NFL policing its players' off-the-field conduct and that, as an entertainment company rather than a policing agency, it should return to that policy. Even accepting that the NFL is no more than an entertainment company, the NFL has a vested financial interest in policing its players' off-the-field activities. When Commissioner Goodell first punished Ray Rice, he encountered significant hostility from fans and members of the public for punishing Rice too lightly. This undoubtedly cost the NFL revenue. More importantly, Ray Rice and Adrian Peterson lost sponsorship deals as a result of their off-the-field misconduct. If the NFL had not taken action against these players, the NFL presumably would have risked losing its sponsorship deals as well. In fact, in the aftermath of the Ray Rice and Adrian Peterson scandals, multiple NFL sponsors requested their ads not be shown at games involving the Baltimore Ravens or Minnesota Vikings. Further, leaving punishment to the players' teams is insufficient. Teams are incentivized more so than the NFL to discipline players lightly or not at all because the teams have the most to lose (that player's services) and the least to gain (sponsorships and such are generally league business). The public understands this and expects the NFL to take on the role of disciplinarian. This is evidenced by fan outrage in response to Commissioner Goodell's initial punishment of Ray Rice not meeting their standards. The NFL has much to lose by not conforming to this expectation. Finally, given the recent uptick in off-the-field misconduct discipline and the adoption of the new Personal Conduct Policy, the NFL has made it very clear that it plans to continue punishing players for off-the-field misconduct. Thus, it should strive to do so in the fairest, most efficient way possible.
The most promising proposal commentators have offered thus far is the hybrid system, explained by Adriano Pacifici. The hybrid approach allows the NFL Commissioner to retain initial disciplinary authority but places appeals decisions in the hands of a tripartite panel of independent arbitrators to determine the “reasonableness” of the discipline. Pacifici specifies that the arbitrators should come from the American Arbitration Association and be bound by its procedural rules. For each appeal, nine arbitrators would be presented to the parties, who would then choose three, similar to voir dire in jury trials. Pacifici believes that this arbitrator selection process would avoid problems of arbitrator bias.

Pacifici's hybrid system deserves considerable praise as it creates a much fairer process for NFL players to appeal their suspensions, eliminates potential abuses by the NFL Commissioner, and greatly reduces the likelihood that players would challenge the arbitration decisions in court (thereby protecting the NFL Commissioner's credibility and saving both parties money). However, this system is not without its flaws, the worst of which being how long these arbitrations would take. Because the NFL Commissioner retains initial disciplinary authority, his punishment decision remains in effect until the arbitrators rule to overturn it, if they choose to do so. By having what amounts to a full-blown jury trial, presumably requiring considerable preparation and trial time and likely additional time for motions and oral argument, the length of time between the NFL Commissioner punishing the player and the player's arbitral resolution will be long—likely much longer than the one-and-a-half to two months that it already takes. Given that the NFL regular season is only seventeen weeks long and the unique harms to NFL players who miss games, any new system for the NFL must have as a goal concluding disciplinary disputes as quickly as possible. Pacifici's hybrid system fails to further that goal.

B. PROPOSED INDEPENDENT ADJUDICATORY COMMITTEE SYSTEM TO IMPROVE THE NFL'S OFF-THE-FIELD DISCIPLINEEE

The NFL and NFLPA should mutually agree to implement a system that roughly mirrors the United States criminal court system, minus juries. Under this “Independent Adjudicatory Committee” approach, the NFL Commissioner (or his designee, such as the disciplinary officer) would relinquish disciplinary authority and act as a prosecutor. He would retain complete authority to investigate, including meeting with players, with their lawyers present if they wish (although there would be no criminal procedure protections such as Miranda warnings or Fifth Amendment self-incrimination protections unless the parties mutually decided to adopt them), and compiling evidence against the players. If the NFL Commissioner believes that a player engaged in punishable misconduct, he would file a charge with the Independent Adjudicatory Committee, stating, with specificity, the misconduct in which the player allegedly engaged, the evidence against the player, and the recommended punishment. The Committee would then conduct a hearing, bound by the evidentiary, procedural, and substantive rules the NFL and NFLPA include in their amended CBA, and it would release a written opinion explaining its ruling and reasoning. As more and more cases are adjudicated, the resulting opinions will form an NFL disciplinary common law. The Committee would have the authority to stray from its past rulings, but will be encouraged in the CBA to follow stare decisis principles. Of course, the NFL and NFLPA could always mutually agree to overturn Committee precedent by amending their CBA, similarly to how Congress occasionally overturns Supreme Court interpretations of its legislation.

*67 The Committee would consist of three independent former judges, each of which the parties mutually agree to in order to ensure independence. To further this goal, the Committee members would receive a fixed annual salary, determined by the NFL and NFLPA together, so that the Committee members would not feel obligated to one party because of their pay structure. The NFL and NFLPA would determine the specifics of the members' terms during
collective bargaining. For instance, the parties could agree that committee members serve staggered six-year terms (one replaced every two years), and each member would be eligible to serve up to two terms.

The Committee would also be bound by the evidentiary, procedural, and substantive rules to which the NFL and NFLPA agree. To this point, the parties would want to determine the broad evidentiary and procedural rules--for instance, the admissibility of hearsay, statute of limitations and other time constraints, the standard of proof, and the types of pre-hearing motions available and how they could be resolved--but leave specific details to the Committee members. The benefit of choosing former judges as members of the Committee is that they are experienced in and comfortable with filling gaps in evidentiary and procedural rules. Thus, the NFL and NFLPA would simply include a provision allowing the Committee members to create such rules so long as they are not inconsistent with the CBA. The NFL and NFLPA could also always overturn a Committee rule through mutual agreement and CBA amendment.

The thorniest question regarding this proposal is how to define the substantive rules to which the Committee is bound. As it stands, NFL players are disciplined for off-the-field conduct that is “detrimental to the integrity of, or public confidence in, the game of professional football.” This vague standard is supplemented by the NFL's Personal Conduct Policy, which the owners imposed without any input from the NFLPA, and which offers little additional guidance as to what constitutes misconduct. The NFL and NFLPA have three possible avenues to resolve this issue: (1) they could leave it entirely up to the Committee to define “conduct detrimental to the game;” (2) they could allow either party to unilaterally define the term; or (3) they could do so together through collective bargaining. Ideally, the NFL and NFLPA would successfully pursue the third option. However, this is unrealistic as drafting a comprehensive NFL player disciplinary policy would be an onerous undertaking. Drafting such a policy to which the NFL and NFLPA would then agree is near impossible. The parties have met at the bargaining table on numerous occasions and have presumably discussed player discipline without reaching an agreement. Otherwise, they would have implemented one. Thus, the parties would be best served by choosing the first option: allowing the Committee, after hearing NFL Commissioner recommendations and player responses at individual hearings, to craft the policy through its written opinions. The parties could then collectively bargain over specific decisions that the Committee makes and mutually agree to change them as they see fit.

Last, it is important to keep in mind that the Committee would essentially be a highly specialized arbitration framework. Thus, the Committee would remain subject to the Federal Arbitration Act and other similar laws. This affords both parties additional protection. If the Committee truly fails in its duties to fairly and impartially adjudicate disputes, the wronged party could still challenge the result in federal court, similarly to how Adrian Peterson and Tom Brady successfully litigated their discipline. However, given the structure of the Committee, litigation similar to Peterson's and Brady's will be reduced.

Admittedly, by calling on the NFL to relinquish significantly more power, this proposal is more radical than Pacifici's hybrid system. However, the NFL would ultimately benefit from doing so. The NFL's face, its Commissioner, would be much better protected and insulated from unpopular disciplinary decisions. The NFL would also repair its relationship with arguably its most valuable product, its players. Last, it may ultimately help to deter future misconduct. Currently, players do not know for what or how severely they may be punished for specific conduct. The creation of a predictable common law will remedy that issue. As a result, players may begin to consider the punishment before doing the crime.

V. THE INDEPENDENT ADJUDICATORY COMMITTEE SYSTEM SOLVES THE ISSUES FROM WHICH THE NFL'S CURRENT DISCIPLINARY SYSTEM SUFFERS

A. IMPROVING THE COMMISSIONER'S PUBLIC IMAGE AND SOLVING HIS “ARBITRATOR'S DILEMMA”
As a result of the NFL's response to the scandals that recently rattled it, the NFL Commissioner's public perception and control over his disciplinary process has suffered. The public perceives the NFL Commissioner's application of his “best interests” disciplinary authority as unfair, and the NFL Commissioner is trapped in the “arbitrator's dilemma.”

Relinquishing some of his authority is the best way for the NFL Commissioner to solve his arbitrator's decision. Right now, the NFL Commissioner risks losing control over the disciplinary process and public confidence every time he chooses an arbitrator to hear player appeals of disciplinary decisions, whether or not that arbitrator is impartial. The Independent Adjudicatory Committee proposal solves this problem. As prosecutor, the NFL Commissioner would retain considerable control over the process, and that control would remain constant regardless of the final outcome of the disciplinary proceedings. Further, the NFL Commissioner would not have to worry about having his disciplinary decision overturned (and losing the public's confidence) as he would not make a binding decision nor would he be concerned that his arbitrator choice fails the “evident partiality” test because he would not choose the arbitrator. In fact, as described in more detail infra, eventually the Committee would create a reliable common law. Thus, the NFL Commissioner could predict with more certainty what charges and punishments would be successful and choose to either bring those or suggest that the Committee revisit its precedent. The player would also have the opportunity to challenge precedent in front of the Committee. In essence, this proposal allows the NFL Commissioner to retain the most authority possible without subjecting him to repeated reversals, thereby protecting the integrity and respect of his office, without harming the NFL's brand.

B. PROTECTING THE NFL AS A BUSINESS

The NFL Commissioner's recent exercise of his “best interests” disciplinary authority has harmed the NFL's bottom line by undermining its product. The NFL is financially incentivized to keep its players on the field, unless they have done something so egregious that the NFL believes it will be better off by removing them. The current disciplinary system sometimes fails to do this by suspending players who do not deserve it or not suspending players who do. This costs the NFL money and alienates its fans.

The Independent Adjudicatory Committee system will ameliorate these problems. By adjudicating cases quickly, efficiently, and accurately, and creating reliable common law as a result, this system protects the NFL in two important ways. First, it reaches what more people will view as the objectively correct result. Because neutral former judges will be making the decisions, and the NFL and NFLPA can choose to change principles established by the Committee's opinions, it is more likely that only players that deserve to be suspended will be suspended. The NFL will no longer lose revenue from erroneously prohibiting players from playing. Equally importantly, the NFL will no longer alienate its fans by disciplining players in ways the fans feel are unjust. Second, even if the Committee reaches a conclusion that fans feel is unfair, the NFL will be distanced from that decision. The Committee would take the brunt of the public's backlash, not the NFL. Although the NFL would undoubtedly still face some fan outrage as the result of a bad decision by the Committee, that harm will be assuaged by the independent decision-making and predictability the Committee will inject into the disciplinary proceedings.

C. CREATING A FAIRER PROCESS FOR THE NFL'S PLAYERS

The NFL Commissioner's current disciplinary process takes significant time, which often unfairly costs the players playing time and money, is inconsistent and unpredictable, and often results in litigation, all to the players' detriment. The Independent Adjudicatory Committee system will alleviate these problems. The main reason why the current process takes so long is because of the many steps it requires. After investigation, the NFL's disciplinary officer imposes discipline. The player then has to formally appeal, wait and prepare for two hearings (one with the Expert Panel, one with the NFL Commissioner or his designee), take the case through the hearings, and then wait for the NFL Commissioner or
his designee's decision. Throughout this process, the NFL Commissioner's punishment remains in effect. Worse, in the 2014 Personal Conduct Policy, the NFL Commissioner assumed the power to place players on paid leave during the initial investigation. Thus, even if the arbitrator ultimately rules in favor of the player, the player will have already been unfairly punished while awaiting the arbitrator's decision. This problem similarly exists with Pacifici's hybrid system. Under the Independent Adjudicatory Committee system, the player will not serve a sentence until his case is heard by the Committee. Therefore, the player is not at risk of serving a sentence that is ultimately revoked and suffering the unrecoverable losses that come with unfair punishment. Further, if the NFL Commissioner wishes to expedite a player's punishment, he can hurry his investigation and bring charges quickly. In fact, the Committee, or the NFL and NFLPA through collective bargaining, could establish a process similar to temporary restraining orders or preliminary injunctions for the most egregious cases. Because the Committee is a stable body of individuals tasked solely with adjudicating NFL “best interests” discipline, hearings should operate swiftly and efficiently. In all, the Independent Adjudicatory Committee system is designed to operate as efficiently as possible, while still maintaining accuracy.

The NFL Commissioner's current disciplinary track record is inconsistent at best. As a result, players do not know for what conduct they will be punished, nor the severity of those punishments. Former NFL Commissioner Paul Tagliabue stressed these concerns in his arbitration award overturning Commissioner Goodell's Bounty Scandal discipline decision. Judge Doty touched on the importance of this concept when he discussed the NFL's “law of the shop,” and Judge Berman found this to be a dispositive issue in overturning Tom Brady's arbitration award when he concluded that Brady did not have adequate notice that he would be punished as severely as he was because the NFL had never previously punished players so harshly for similar offenses. My proposed system would help to ensure consistency and predictability in punishment. By creating a common law, protected by the basic principles of stare decisis, NFL players will have a much better understanding of what to expect when it comes to discipline for their off-the-field conduct.

Infusing the NFL “best interests” disciplinary system with common law principles will ultimately limit how often the players will file suit against the NFL. The NFL is visibly fearful of player litigation, as evidenced by its pre-emptive filing against Tom Brady. Labor law disfavors litigation regarding collective bargaining agreements, and courts' ability to overturn arbitration awards is limited. Yet, the NFLPA frequently challenges arbitration awards in court. This generally occurs either because the NFL Commissioner chooses an arbitrator who the NFLPA believes fails the evident partiality test, or because the NFLPA feels the outcome is facially unfair. Surprisingly, the NFLPA often wins, and the limited remedies generally available could extend an already lengthy process. By creating a system that implements truly independent adjudicators who create a consistent and known body of law, both of these litigious issues are mitigated.

The obvious consequence of a fair, consistent common law is that many cases will never even make it to the hearing stage, let alone a courtroom. Similar to a prosecutor and a defendant entering into a plea bargain, the NFL Commissioner and NFL player may reach a disciplinary agreement if they so choose. Right now, given the uncertainty in what constitutes “conduct detrimental to the game,” what a fair punishment for misconduct is, and how vast the NFL Commissioner's extraordinary disciplinary authority actually is, NFL players and the NFL Commissioner alike have little incentive to settle. This is exceptionally relevant today, given the NFL and the NFLPA/Brady's failure to reach a settlement regarding Brady's DeflateGate punishment despite Judge Berman's insistence that they do. Once common law principles are established, the likelihood of settlement will naturally increase. For the players, this further promotes efficient, fair outcomes that will not need to be litigated. For the NFL Commissioner, this bolsters his public image, rids him of the shame and embarrassment of having his decisions overturned, and allows him to focus his time on improving the NFL.
VI. CONCLUSION

The NFL Commissioner’s current exercise of his “best interests” disciplinary authority is plagued with problems. Commissioner Goodell’s recent exercise of this authority has damaged his credibility in the eyes of the public and has ultimately hurt the NFL’s bottom line. Worse, the execution of his authority has been unnecessarily detrimental to the players and has, on increasing occasion, necessitated court action. However, the Independent Adjudicatory Committee system, under which the NFL Commissioner takes a prosecutorial role and leaves disciplinary decision-making authority in the hands of a neutral panel of three former judges, would solve many of these problems.

Still, neither party can unilaterally adopt the system, because doing so runs contrary to the parties’ CBA. Thus, the parties would have to amend their CBA. 250 Because the parties currently have a CBA in place that discusses this subject, neither party is required to collectively bargain about this topic during the life of the agreement. 251 Moreover, the parties executed a “zipper” clause in their current CBA, meaning they waived all rights to bargain about any subjects covered or not covered in the CBA. 252 Nevertheless, if both parties agree to bargain, they can overcome their “zipper” clause. However, the parties will only agree to implement this system if it is truly in their best interests. Because this approach best solves the many issues with the current system, it is in both parties’ best interests to do so. The ball is now in the NFL and NFLPA’s field; it is their turn to act.

Footnotes

a1 Staff Attorney, Grant & Eisenhofer, P.A.; William & Mary Law School (J.D.); University of Pennsylvania (B.A.). The views expressed herein are those of the author and do not necessarily reflect the views of Grant & Eisenhofer, P.A. I would like to thank my family, friends, and fiancé for their support and encouragement throughout this process. I would also like to thank Gregory Giordano, who served as my mentor while writing this Article, and Andrew Larsen for his valuable review and assistance with this Article. Last, I would like to thank the staff members of the Texas Review of Entertainment and Sports Law for their help in bringing this Article to publication.

1 The NFLPA is the union elected by the NFL players to represent them in collective negotiations with the NFL. See About the NFLPA, NFLPA.COM, https://www.nflpa.com/about (last visited Jan. 3, 2016).


3 See infra Part I.A.

4 NFL CBA, supra note 2, Art. 46, §1(b).


7 Id.

8 Id.

9 Id.
See infra Part II.


Id. (citing Jonathan M. Reinsdorf, The Powers of the Commissioner in Baseball, 7 MARQ. SPORTS L.J. 211, 219 (1996)).

Id. (citing Robert I. Lockwood, Note, The Best Interests of the League: Referee betting Scandal Brings Commissioner Authority and Collective Bargaining Back to the Forefront in the NBA, 15 SPORTS L.J. 137, 141-44 (2008)).

Id. at 183-84 (citing Reinsdorf, supra note 16, at 219-20).

Id. at 184 (citing Reinsdorf, supra note 16, at 220).

Id. (citing Peter G. Neiman, “Root, Root, Root for the Home Team”: Peter Rose, Nominal Parties, and Diversity Jurisdiction, 66 N. Y. U. L. REV. 148, 148 n.7 (1991)).

Id. (citing Craig F. Arcella, Major League Baseball's Disempowered Commissioner: Judicial Ramifications of the 1994 Restructuring, 97 COLUM. L. REV. 2420, 2430 (1997)).

Id. (citing Shayna M. Sigman, The Jurisprudence of Judge Kenesaw Mountain Landis, 15 MARQ. SPORTS L. REV. 277, 304 (2005)).

Id. at 184-85 (citing Reinsdorf, supra note 16, at 221).

Id. at 187 (citing Lockwood, supra note 17, at 146).

See id.; see also Lockwood, supra note 17, at 146.

Parlow, supra note 15, at 187 (citing Lockwood, supra note 17, at 146 (citing NFL CONST. & BYLAWS, Art. VIII, § 8.3(a) (Feb. 1, 1970) (revised 1988))).

Id. (citing Lockwood, supra note 17, at 146 (citing NFL COLLECTIVE BARGAINING AGREEMENT, Art. XI, § 1(a) (1993))).

NFL CONST. & BYLAWS, supra note 2, Art. VIII, § 8.13(A) (emphasis added).

NFL CBA, supra note 2, Art. 46, § 1(a).

Id. at Appendix A, P 15.
Adriano Pacifici, Scope and Authority of Sports League Commissioner Disciplinary Power: Bounty and Beyond, 3 BERKELEY J. ENT. & SPORTS L. 93, 105 (2014).


Id. at 637.

Id. All of Paul Tagliabue's suspensions were for one game, except for one two-game suspension, and one three-game suspension. See McCann, supra note 6.

Jim Corbett, Tagliabue Hands Off to Goodell as NFL Commissioner, USA TODAY (Aug. 9, 2006, 6:00 PM), http://usatoday30.usatoday.com/sports/football/nfl/2006-08-08-goodell-commissioner_x.htm.


Goodell Strengthens NFL Personal Conduct Policy, supra note 38. As Commissioner Goodell explained when announcing the suspensions and subsequent new Personal Conduct Policy:
It is important that the NFL be represented consistently by outstanding people as well as great football players, coaches, and staff. We hold ourselves to higher standards of responsible conduct because of what it means to be part of the National Football League. We have long had policies and programs designed to encourage responsible behavior, and this policy is a further step in ensuring that everyone who is part of the NFL meets that standard.

Id.

2008 NFL PERSONAL CONDUCT POLICY (2008), available at http://www.prostaronline.com/draftee/personal_conduct_policy.pdf. Executive Director Upshaw took considerable flack for allowing the NFL to implement a Personal Conduct Policy that gave the NFL Commissioner virtually unlimited power, with one commentator even exclaiming that President Upshaw “failed” the NFLPA’s members. See Adam Marks, Note, Personnel Foul on the National Football League Player’s Association: How Union Executive Director Gene Upshaw Failed the Union’s Members By Not Fighting the Enactment of the Personal Conduct Policy, 40 CONN. L. REV. 1581 (2008).


2008 NFL PERSONAL CONDUCT POLICY, supra note 41, at 1-2.

Id. at 1.

Id. at 2.
Interestingly, the 2008 Personal Conduct Policy continued after the NFL and NFLPA negotiated a new CBA. The CBA was silent on the matter. Some question whether the 2008 Personal Conduct Policy, and its predecessors and successors for that matter, are valid. See Edelman, supra note 34; Doug Farrar, NFLPA Executive: New Player Conduct Policy Could be A Violation of CBA, SPORTS ILLUSTRATED (Dec. 11, 2014), http://www.si.com/nfl/2014/12/11/nfl-personal-conduct-policy-nflpa-george-atallah-cba-violation. Cf. Kelly M. Vaughan, Note, First and Goal: How The NFL's Personal Conduct Policy Complies with Federal Antitrust Law, 96 CORNELL L. REV. 609 (2011). Because the NFL treats them as valid and follows them as such, this Article assumes their validity for purposes of its argument.

For a detailed explanation of the Ray Rice scandal, see infra Part II.A.

For a detailed account of the Adrian Peterson scandal, see infra Part II.B.

Almasy & Nichols, supra note 14.


Before the Domestic Violence Policy, the NFL’s punishment for player off-the-field conduct violations was, on average, a three game suspension, while, for domestic violence specifically, was only 1.5 games. McCann, supra note 6.

Although the “mitigating circumstances” language may allow the NFL Commissioner to grant less severe punishments, this does not appear to be consistent with the Policy's spirit to establish a floor for domestic violence suspensions. See Pelissero, supra note 52. Yet, Commissioner Goodell showed his willingness to suspend players accused or convicted of domestic violence for more than six games when he suspended Greg Hardy for ten games. See Jane McManus, How NFL's Roger Goodell Got It Right with Greg Hardy, ESPN (Apr. 23, 2015), http://espnn.go.com/espnn/news-commentary/article/12745022/how-nfl-roger-goodell-got-right-greg-hardy-suspension. However, Commissioner Goodell personally heard Hardy's appeal and reduced his suspension to four games. Josh Apler, Greg Hardy Suspension Reduced to Four Games, NBC SPORTS PRO FOOTBALL TALK (JULY 10, 2015, 2:31 PM), http://profootballtalk.nbcnews.com/2015/07/10/greg-hardy-suspension-reduced-to-four-games/.


2014 NFL PERSONAL CONDUCT POLICY, supra note 56, at 1.

Id. at 2.

Id.

Id.

Id. at 5. The NFL appointed Todd Jones, the former director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, to “apply and administer the personal conduct policy that applies to NFL employees,” and Lisa Friel, a former New York District Attorney's office sex crimes prosecutor, who “will professionalize the investigations process.” Adam Schefter, NFL to Hire ex-ATF Boss Todd Jones, ESPN (updated Mar. 23, 2015, 1:47 PM), http://espn.go.com/nfl/story/_/id/12544015/todd-jones-former-atf-director-join-nfl-conduct-czar.
2014 NFL PERSONAL CONDUCT POLICY FLOWCHART, supra note 57.

2014 NFL PERSONAL CONDUCT POLICY, supra note 56, at 7 (“Appeals of any disciplinary decision will be processed pursuant to Article 46 of the Collective Bargaining Agreement for players or pursuant to the applicable league procedures for nonplayers.”).

Id. at 4-5.

Id. at 5.

2014 NFL PERSONAL CONDUCT POLICY FLOWCHART, supra note 57.

Id.

2014 NFL PERSONAL CONDUCT POLICY, supra note 56, at 7; 2014 NFL PERSONAL CONDUCT POLICY FLOWCHART, supra note 57.


See id.; Farrar, supra note 48.


Louis Bien, A Complete Timeline of the Ray Rice Assault Case, SB NATION (Nov. 28, 2014, 2:08 PM), http://www.sbnation.com/nfl/2014/5/23/5744964/ray-rice-arrest-assault-statement-apology-ravens. Rice was accepted into a pretrial intervention program, in which his charge will be expunged if he completes a twelve-month program.

Id.


Id.

Id.

O'Keeffe, supra note 5.

Bein, supra note 73.


Id.
Id.
Id.


DiMatteo, supra note 83. Radisson, Nike and Castrol all suspended their sponsorships. Id.


Mike Florio, Union Questions Harold Henderson's Neutrality, NBC SPORTS PRO FOOTBALL TALK (Nov. 21, 2014, 4:03 PM), http://profootballtalk.nbcsporst.com/2014/11/21/union-questions-harold-hendersons-neutrality/. Some suggested that Commissioner Goodell's decision to choose Henderson was influenced by Judge Jones forcing Commissioner Goodell to testify at Ray Rice's hearing earlier that year.


Id. at 16.

Id. at 11-14 (citing Bureau of Engraving, Inc. v. Graphic Commc'ns Int'l Union, Local 1B, 164 F.3d 427, 429 (8th Cir. 1999); United Steelworkers of Am. V. Warrior & Gulf Navigation Co., 363 U.S. 574, 581-82 (1960)).

Id. at 14-16. (citing Local 238 Int'l Bhd. of Teamsters v. Cargill, Inc., 66 F.3d 988, 990-91 (8th Cir. 1995); John Morrell & Co. v. Local Union 304A of the United Food & Commercial Workers, 913 F.2d 544, 561 (8th Cir. 1990)).

Id. at 16.


Patriots Advance to Super Bowl in AFC Championship Rout, NFL.COM (2014), http://www.nfl.com/gamecenter/2015011801/2014/POST20/cols@patriots#menu=gameinfo%7CcontentId%3A0ap300000460458&tab=recap.


110 TED WELLS REPORT, supra note 110, at 121-22.


112 Lindsay H. Jones, Owner Robert Kraft Won't Appeal Patriots' Deflategate Penalties, USA TODAY (May 19, 2015, 3:44 PM), http://www.usatoday.com/story/sports/nfl/patriots/2015/05/19/robert-kraft-deflategate-no-appeal-roger-goodell-fine-draft-picks-new-england/27583829/.


115 Around The NFL Staff, supra note 113; Lisk, supra note 114.

116 Around The NFL Staff, supra note 113.


122 Id.


128 See supra Part II.A.


130 Id. at 1016-17.

131 Id.


133 The Bounty Scandal involved the NFL finding that defensive coaches and players of the New Orleans Saints engaged in a program by which they pooled money and awarded payments to defensive players who injured opposing offensive players. For a discussion of the scandal, see Pacifi ci, supra note 31, at 105-12.


135 Pacifi ci, supra note 31, at 110.


139 Id. at 40-47.

140 Id. at 47.

See O'Keeffe, supra note 5.

Pacifici, supra note 31, at 110.

See supra Part II.A.

See supra Part II.B-C.

This is also codified in the NFL's Constitution, which explains, “the purpose and objects for which the League is organized are... [t]o promote and foster the primary business of League members, each member being an owner of a professional football club located in the United States.” NFL CONST. & BYLAWS, supra note 2, Art. II, § 2.1(A). Given that each NFL team, as a football team, must have the purpose of having football games, the NFL's purpose is to “promote and foster” those games.


The NFL has dedicated an entire section of its site to the NFL Combine. See NFL COMBINE, http://www.nfl.com/combine (last visited Jan. 3, 2016).

The NFL has changed its draft from a simple, one-day event held in a hotel, to a three-day, nationally-televised affair held in a major concert venue, such as Radio City Music Hall in New York City. See NFL Draft Locations, FOOTBALL GEOGRAPHY, http://www.footballgeography.com/nfl-draft-sites/, (last visited Jan. 3, 2016).


Although the economic value of NFL players has not been studied rigorously, player value in terms of wins has. In one study, the value of each position to a team's ability to win was calculated by determining “positional wins above replacement,” which “measures the value of players in the NFL, by position, in terms of generating wins.” See Andrew Hughes, Cory Koedel & Joshua A. Price, *Positional WAR in the National Football League*, Department of Economics, University of Missouri-Columbia Working Paper Series 14, 10 (June 2014), available at http://economics.missouri.edu/working-papers/2014/WP1410_koedel.pdf. Websites, such as ProFootballFocus.com, purport to calculate the value of each player in comparison to others in his position. See PRO FOOTBALL FOCUS ABOUT, https://www.profootballfocus.com/about/ (last visited Jan. 3, 2016). The value a player adds in terms of wins sheds some light on the economic value that player adds to the NFL. The NFL's own marketing analytics would likely shed more light. Given that the data exists to calculate the value of each player to the NFL, and that the NFL likely has it, the NFL must have an estimate of what it gains to make or
lose from each suspension. Commissioner Goodell may have taken this under consideration when he waited to punish anyone as a result of DeflateGate. Some have argued that Commissioner Goodell did not want DeflateGate punishments to tarnish one of the NFL's most profitable games, the Super Bowl. See Rosenberg, supra note 11.

This is further evidenced by the fact that, historically, the NFL strengthened its disciplinary process only after the public condemned the NFL for its disciplinary response to a player's conduct. See supra Part I.C-D.

This economics argument has also been presented by Matthew Parlow, supra note 15, at 182 (citing Bukowski, supra note 32, at 106-08).

For instance, there appears to be some consensus that Commissioner Goodell suspending Donte Stallworth for one year after he pled guilty to DUI manslaughter was warranted. As a result, Commissioner Goodell and the NFL were actually praised for Commissioner Goodell's handling of that tragedy. See, e.g., Erin McLaughlin, Donte Stallworth's Sentence Was No Slap on The Wrist, BLEACHER REPORT (Jun. 16, 2009), http://bleacherreport.com/articles/200684-donte-stallworths-sentence-was-no-slap-on-the-wrist.

See supra Part II.

See NFL CBA, supra note 2, Art. 46, §1(a).


2014 NFL PERSONAL CONDUCT POLICY FLOWCHART, supra note 57.

Id.

See Id.; Schechter, supra note 62.

See Pacifi, supra note 31, at 114 (citing Jason M. Pollack, Take My Arbitrator, Please: Commissioner “Best Interests” Disciplinary Authority in Professional Sports, 47 FORDHAM L. REV. 1645, 1706 (1999)).

See supra Part II.A.

Id.

Id.

See supra Part II.B.

See supra Part II.C.

2014 NFL PERSONAL CONDUCT POLICY FLOWCHART, supra note 57.

This is required under the CBA. See NFL CBA, supra note 2, Art. 46.

The Back Pay Act allows for the recovery of back pay if an employee is found to “have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee.” 5 U.S.C.A. § 5596(b)(1) (West 2014).


See NFL CBA, supra note 2, Art. 31.

178  See supra Part II.A-B.

179  See accompanying text, supra note 174.


183  Badenhausen, supra note 182.

184  2014 NFL PERSONAL CONDUCT POLICY FLOWCHART, supra note 57.

185  Id.

186  See supra Part II.A.

187  See supra Part II.B.

188  See supra Part II.C.


190  NFL CBA, supra note 2, at Art. 46. For a discussion regarding whether the NFL should not discipline its players at all, see Josh Levin, You're Fired, Roger Goodell, SLATE (Sept. 23, 2014, 7:27 PM), http://www.slate.com/articles/sports/sports_nut/2014/09/nfl_personal_conduct_policy_the_commissioner_has_no_business_punishing_anyone.html.

191  One of the suggested reasons for a sports commissioner's exercise of his “best interests” disciplinary authority is to deter other players from engaging in similar conduct. See Parlow, supra note 15, at 182 (citing Bukowski, supra note 32, at 106-08).

192  See supra I.C.


194  See supra Part II.B-C.

195  Pacifi, supra note 31, at 110.

196  See supra Part II.C.
197  See supra Part II.B.

198  Pacifici, supra note 31, at 105-12; supra Part II.C.

199  For example, in Adrian Peterson's case, approximately two-and-a-half months passed between his initial arbitration ruling and Judge Doty's vacatur of his arbitration award. See supra Part II.B. Judge Doty's ruling merely vacated the award and remanded for further proceedings consistent with the CBA and the law, and the NFL plans to appeal. Id. Thus, Peterson will necessarily experience additional delays before his case is decided. Considering that his suspension was initially to be lifted on April 15, 2015, these delays may ultimately prove Peterson's long court battle to be of little value.

200  See Pollack, supra note 166.

201  Id. at 1649.

202  Id. at 1707.


204  See, e.g., Levin, supra note 190.


206  See supra Part II.A.


210  Cf. David Berri, America's Socialist Sports League: The NFL, THE ATLANTIC (Mar. 26, 2015), http://www.theatlantic.com/business/archive/2015/03/americas-socialist-sports-league-the-nfl/388330/ (reporting on a paper that found that NFL owners share revenues than the National Basketball Association or Major League Baseball). Even so, NFL owners remain committed to fielding the most competitive team possible. Id.

211  See supra Part II.A.

212  Pacifici, supra note 31, at 113-14.

213  See Bell, supra note 70.

214  Id. at 114.

215  Id. at 114-15.

216  Id. at 115.

217  For instance, the American Arbitration Association's Consumer Arbitration Rules, which Pacifici explicitly states the NFL should use, allow for the filing and resolution of written motions only after the parties and arbitrator have held a conference call, which could considerable lengthen an arbitration. Consumer Arbitration Rules, AM.
ARBITRATION ASS’N, at R-24 (Sept. 1, 2014), available at, https://www.adr.org/aaa/faces/rules/searchrules/rulesdetail?_afrWindowId=12ua96wc7a_1&_afrLoop=2022891065107770&doc=ADRSTAGE2021424&_afrWindowMode=0&_adf.ctrl-state=hf27f5iia_4#%40%3F_afrWindowId%3D12ua96wc7a_1%26_afrLoop%3D2022891065107770%26doc%3DADRSTAGE2021424%26_afrWindowMode%3D0%26adf.ctrl-state%3D12ua96wc7a_79.

218 See Part III.C.

219 See id.

220 The only way to implement this approach would be for the NFL and NFLPA to mutually agree to amend their CBA to include it. See infra Conclusion.

221 Stare decisis is the principle that courts will generally abide to their precedents. See LEGAL INFORMATION INSTITUTE STARE DECISIS, https://www.law.cornell.edu/wex/stare_decisis (last visited Jan. 3, 2016). The United States Supreme Court follows this principle unless the prior precedent has been found unworkable due to serious inequity, instability, or societal change that renders the precedent irrelevant. See Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 855 (1992).


223 The NFL and NFLPA proved capable of doing this in the past when they mutually elected Judge Barbara Jones to hear Ray Rice’s appeal. See supra Part II.A.


225 NFL CBA, supra note 2, Art. 46, §1(a).

226 See supra Part I.C. (explaining that the new NFL Personal Conduct Policy merely addresses the procedure by which the NFL Commissioner disciplines players; it does not clarify what constitutes a violation of the “detrimental to the game” standard).

227 This party would likely be the NFL because the NFL already believes it has the power to do so. See Bell, supra note 70 (explaining that one of the NFLPA’s primary challenges to the NFL’s new Personal Conduct Policy is that the NFL could only adopt it through collective bargaining and amending the CBA, with which the NFL disagrees).


230 See supra Part II.B-C.

231 See supra Part III.A.

232 See id.

233 See id.

234 For a more in-depth discussion of these issues, see supra Part III.C.

235 See supra Part I; NFL CBA, supra note 2, Art. 46.
Critics may argue that the Committee could get the player’s sentence wrong. Accuracy in punishment is a concern in any system. Further, it is almost impossible to objectively determine if punishment is “accurate.” However, by appointing a panel of former judges, and allowing the parties to overturn their decisions, the Independent Adjudicatory Committee System will better uphold the goal of accuracy than the other possibilities. See infra Part IV.B.

The NFLPA won its lawsuit on behalf of Adrian Peterson, and coaxed Commissioner Goodell into the result it wanted in the Bounty Scandal. See supra Part II.A; Pacifici, supra note 31, at 105-12.

Alternatively, the parties could wait until the current CBA expires and then collectively bargain for the system in the new CBA. However, the new CBA does not expire until 2020. See NFL CBA, supra note 2, Art. 69, § 1. Thus, the parties would be much better off amending their CBA.
