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# Leading the Pack: How the Politics of Colin Kaepernick is Changing the Ethical Landscape of the NFL

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Leading the Pack:  
How the Politics of Colin Kaepernick is Changing the Ethical Landscape of the NFL

Senior Thesis

Presented to the Faculty of the Department of Politics, Philosophy and Legal Studies

Elizabethtown College

In partial fulfillment of the requirement for the degree of the Bachelor of Arts

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## I. Introduction

The National Football League (NFL) is a cultural staple in the United States. Every Sunday, fans gather at their local bar and homes to cheer and support the teams they love. It is often a time for fans to gather and forget their workweeks while watching the game. However, the athletes that play in the NFL are going through their workweeks as well. Some players take this time to make statements or show support for causes that they are passionate about. But do they have a right to do this? The NFL began in 1920 as the American Professional Football Association and was later renamed to the National Football League in 1922.<sup>1</sup> It has grown to become one of the largest businesses in America, generating over 10 billion in revenue each season.<sup>2</sup> It may seem counter-intuitive to refer to such a culturally significant national sports organization as the NFL as a “business,” since it is a source of entertainment, comradery and the dream of many young men playing football all across the United States, but it truly is a financial institution. While many might prefer to think of the NFL as a sports organization, it is a business, which means that there is often a conflict between the ethics of playing sports, the personal and political lives of the players, and having a “good game” as compared to what is good for the profit margin and bottom line of the industry. This leads to a very clear ethical dilemma between the priorities that the NFL sets for its business needs vs. what is “good for the sport” as a cultural phenomenon. In this paper I will be analyzing the ethical landscape of the NFL in relation to some of its more controversial players and their relationship to the organization, following key moments.

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<sup>1</sup> Seymour Siwoff, Jon Zimmer, and Matt Marini, *Official 2013 National Football League Record & Fact Book* (New York, NY: Time Home Entertainment, 2013). 353-372

<sup>2</sup> "NFL Revenue 2001-2017 | Statistic," Statista, <https://www.statista.com/statistics/193457/total-league-revenue-of-the-nfl-since-2005/>

Exploring the ethical tensions and rights that players have within the relationship between the players as citizens and cultural symbols and the role players have as employees is important because there is a need to protect the players rights as American citizens, and as employees as well. Some argue the players have to listen to the rules of the league as employees, but they are entertainers as well. A counter example we consider for instance, is who tells actors and musicians whether or not to make political statements? While the argument exists to say that entertainers may not be qualified to make political statements, not many argue that entertainers cannot say these things due to them being at work. However, this is an argument that exists for the players that take a knee or make other protests during a game. Why shouldn't they be allowed to make a statement when they are on center stage? Actors and musicians are given this right during their performances. Is this a right owed to the players? Or does the league get to decide how players converse while on the field? The league certainly does not try to silence players in interviews, but they will hear from the league office if something improper is said. Is this allowed? Should the players be allowed to express their personality in their own way? This is something that must be decided.

The NFL has many decisions to make and needs to ensure that they are generating revenue yearly. The 2019 commissioner, Roger Goodell, has been heavily scrutinized for his decisions by fans of the league because of the way he has controlled the decision-making process regarding player discipline, player rights, substance abuse issues, and punishment for players who have committed crimes. Many argue that the NFL's control over the players has been inconsistent and violating player rights such as freedom of expression and decision-making during the league offseason. Many issues are currently plaguing the league. These include inconsistent suspension policies, referee interference, player safety concern, players with sexual assault and domestic violence accusations, a strict anti-marijuana policy and many more. One of the more notorious and

divisive issues that arose during the 2016 season the political statement made by Colin Kaepernick, on a knee, at the front. This paper will follow the Kaepernick's case and discuss the ethical tensions that surround his role as a player, national hero, political activist, and employee. Further, I will explore the ethical tensions that arise between the NFL, fans, and players, and offer recommendations or potential future directions of the NFL and its implications for the political statements made by its players.

## **II. Anthem Protests and the Politics of Player Freedom of Speech**

The fourth week of the 2017 NFL season brought for the most active protests in NFL history. Nearly every NFL player and team protested the anthem to show support for their fellow player, Colin Kaepernick. At this point Kaepernick had been out of the league for the entire offseason and had received no calls from teams. The buildup, media handling, and repercussions of the protest for Kaepernick created a perfect case study to display the ethics of the NFL. We have to ask the question of what exactly the ethical standing of the NFL is, if the league allows for its players to make political statements, and the ethical implications of barring a player for his political viewpoints. To do this, we need to start at the beginning of the protests, and even the beginning of Kaepernick's time in the spotlight.

At the University of Nevada in 2007 Kaepernick displayed the ability to lead on and off the field. In his first game as the Wolf Pack quarterback, Kaepernick stepped in for the injured starter and threw for four touchdowns in a losing effort and never relinquished the starting spot till he graduated in 2010.<sup>3</sup> He was then drafted by the San Francisco 49ers in the second round of the 2011 NFL draft. Kaepernick was the backup for all of 2011 and most of 2012, before taking over the starting spot in the middle of the 2012 season. He would then help lead the team to the

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<sup>3</sup> "Colin Kaepernick," Biography.com, September 04, 2018, <https://www.biography.com/people/colin-kaepernick-21132801>

Superbowl in 2012, but ultimately lose in the final minutes to the Baltimore Ravens.<sup>4</sup> In the years 2013 and 2014, he started all 16 games and had the two best statistical years of his career. He was then hurt for some games during both the 2015 and 2016 seasons and the team's overall performance suffered. However, during the 2014 offseason, Jim Harbaugh, coach of the 49ers stepped down and was replaced by Jim Tomsula, who was then fired immediately after the season. Tomsula was then replaced by Chip Kelly. Neither of these two coaches have had more success as a coach than Jim Harbaugh. The significance of this meant that while Kaepernick's statistical performance dropped, the talent surrounding him dropped as well. Kaepernick took center stage during September of 2016 when protesting the national anthem during his final preseason game.

Kaepernick did not stand during the playing of the national anthem, as he had done the first three games of the preseason. What changed this time is that he took a knee on the sideline, rather than sitting on the bench. Kaepernick had transitioned to taking a knee, after a conversation he had with fellow professional football player and ex- United States Army Special Force servicemen, Green Beret, Nate Boyer.<sup>5</sup> Boyer had written Kaepernick an open letter which addressed his concerns over Kaepernick potentially disrespecting U.S. service members by not standing for the National Anthem. The song has heavily symbolism to the military and has always had an association of honoring service members during its playing before games. Kaepernick however was protesting the national anthem to show solidarity for those affected by police brutality.

In the open letter Boyer wrote,

“Even though my initial reaction to your protest was one of anger, I'm trying to listen to what you're saying and why you're doing it. When I told my mom about this article, she cautioned me that "the last thing our country needed right now was more hate." As usual, she's right.

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<sup>4</sup> Ibid.

<sup>5</sup> Sam Farmer and Chuck Schilken, "The Ex-Green Beret Who Inspired Colin Kaepernick to Kneel Instead of Sit during the Anthem Would like to Clear a Few Things up," Los Angeles Times, September 17, 2018, <https://www.latimes.com/sports/nfl/la-sp-kaepernick-kneel-boyer-20180916-story.html>

There are already plenty people fighting fire with fire, and it's just not helping anyone or anything. So, I'm just going to keep listening, with an open mind. I look forward to the day you're inspired to once again stand during our national anthem. I'll be standing right there next to you. Keep on trying ... De Oppresso Liber.”<sup>6</sup>

The meaning behind this letter was that Boyer felt disrespected initially by Kaepernick not standing for the anthem. This was because of the symbolism behind the national anthem and its ties to the military. Some people agree with the initial stance of Boyer, that not standing for the anthem disrespects those who have fought and died for the country. He however decided to listen to what Kaepernick felt.

Kaepernick's initial statement as to the reason he is protesting is as follows. "I am not going to stand up to show pride in a flag for a country that oppresses black people and people of color," Kaepernick told NFL Media in an exclusive interview after the game. "To me, this is bigger than football and it would be selfish on my part to look the other way. There are bodies in the street and people getting paid leave and getting away with murder."<sup>7</sup> His stance on this has always stayed the same. Kaepernick believes more that the anthem is a representation of the country, rather than a symbol of acknowledgement for those who have fought and died for the country. Until the message of the country changes, Kaepernick will continue to sit for the anthem. He wants to have pride for what the nation represents and is currently not pleased with direction of the country.

Following this open letter, Boyer and Kaepernick had a private meeting, wherein after Kaepernick explained that they had discussed that it would be more respectful to kneel as it would

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<sup>6</sup> Will Brinson, "A Green Beret Who Played in the NFL Writes Colin Kaepernick a Letter," CBSSports.com, September 01, 2016, <https://www.cbssports.com/nfl/news/a-green-beret-who-played-in-the-nfl-writes-colin-kaepernick-a-letter/>.

<sup>7</sup> Steve Wyche, "Colin Kaepernick Explains Why He Sat during National Anthem," NFL.com, August 28, 2016, , <http://www.nfl.com/news/story/0ap3000000691077/article/colin-kaepernick-explains-why-he-sat-during-national-anthem>.

allow Kaepernick to still be with his teammates rather than by himself on a bench. It showed a message of unity as well as an acknowledgement for the anthem being played. Sitting on the bench seemed to show a disregard of the anthem, rather than acknowledging its playing. The first time that Kaepernick kneeled, Boyer showed solidarity as he stood alongside Kaepernick, and fellow 49er Eric Reid kneeled with Kaepernick.<sup>8</sup> Whether it was kneeling, raising a fist, or locking arms with kneeled teammates, the NFL players slowly joined together on this issue and supported Colin Kaepernick.

On August 22nd, 2017 Seth DeValve of the Cleveland Browns became the first Caucasian player to take a knee.<sup>9</sup> This is an important marker in the issue, because it was the first time a player that was not African-American protested the anthem. Kaepernick's protest is rooted in the belief that the police are mistreating people of African-American or another minority descent. Do players that are not at risk of experiencing the issue still have a right to protest it? Certainly, they may not be able to relate to the issue, but they can see that the problem exists and that it should be fixed. It is also important to note that Kaepernick is of mixed ethnicity as well. His father is African-American, and his birth mother is Caucasian, and he was ultimately raised by Caucasian parents that had adopted him.<sup>10</sup> This gave him a unique insight into life of both those in the African-American community and Caucasian as well. The issue heated up for the remainder of the 2017 season culminating in a week where nearly every team had players participating in a protest of the anthem.

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<sup>8</sup> Ibid.

<sup>9</sup> Nina Mandell, "Read Seth DeValve's Powerful Reasons for Kneeling during the National Anthem," USA Today, August 22, 2017, <https://ftw.usatoday.com/2017/08/seth-devalve-national-anthem-browns>

<sup>10</sup> "Colin Kaepernick," Biography.com, September 04, 2018, <https://www.biography.com/people/colin-kaepernick-21132801>



Week four of the 2017 regular season was a turning point in the discussion of the politics of kneeling. News coverage of what players were and were not protesting was covered weekly. Week four can be considered a kind of turning point, as the media shifted its coverage from being about the players supporting each other, to a focus on the divide between the league and the players stance on the anthem issues. This happened as a result of a mistake made by Alejandro Villanueva and his team.

A key moment that represent how heightened the controversy of players protesting is exemplified when there was a miscommunication among the players of the Pittsburgh Steelers, leading to a commotion as the media interpreted what the actions signified. Alejandro Villanueva is the star left tackle of the Pittsburgh Steelers. Before he was lineman playing professional football, he was an Army Ranger serving in Afghanistan.<sup>11</sup> The Pittsburgh Steelers had agreed that the entire team would not go onto the field until after the national anthem played, so as to not put players in the controversial and potentially divisive roles of some kneeling and some not kneeling. However, due to a miscommunication on the timing of when to go to the field, Villanueva ended up ahead of his teammates and found himself on the field when the anthem played. Not knowing what to do, he placed his hand over his heart, standing for the national anthem.

Without a public statement on the intentions of this act, some members of the media were quick to assume that Villanueva was protesting his team and the other players, showing pride for the country he served over showing support for the message of Kaepernick, but he made a statement detailing his stance on the situation. Over the weekend, his jersey sales rose to the top of the league. Many came in support of him and lauded him for taking a stance on the issue that

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<sup>11</sup> Chris Korman, "In the End, Alejandro Villanueva's Beliefs Were More Complicated than Many Wanted to Hear," USA Today, October 02, 2017, , <https://ftw.usatoday.com/2017/09/alejandro-villanueva-national-anthem-first-amendment-nfl-protests-army-ranger>

was seemingly opposite of what Kaepernick was doing. News outlets covered the story and attempted to paint Villanueva as the face of a conservative movement in the league. This became apparent to be a false story after a press conference Villanueva had the following Monday. Villanueva explained “I can’t tell you that I know what my teammates have gone through, so I’m not going to pretend like I have the righteous sort of voice to tell you that you should stand up for the national anthem. It is protected by our constitution and by our country. It’s freedom of speech.”<sup>12</sup> This was his only interview on the subject. The media quickly shifted the narrative onto the next subject and left Villanueva alone. His sales fell back down to usual numbers and questions were raised about what the league would do about the growing issue dividing their league.

Following these events, during the 2017 offseason, the NFL and their owners discussed a national anthem policy. After an initial rumor surfaced that the league would allow teams to punish players who protested the anthem, there was significant reaction in the press and general public. Despite these rumors, it was decided that no official ruling would be made on this issue. Teams around the league issued statements in support of everyone’s right to debate this issue but stated that it would be best left for off the field.<sup>13</sup> No further statements or decisions have been made during the 2018 season. Some players remain kneeling or fist raised, but not much has been discussed on this.

If we backtrack to the 2016 NFL offseason, it is important to note that Kaepernick opted out of his contract with the 49ers after a disappointing season, just four years after a last-minute Super Bowl loss. He would not be signed to an NFL team and has still not been on a roster since leaving the 49ers. However, players such as Laremy Tunsil were drafted onto NFL rosters, even

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<sup>12</sup> Ibid.

<sup>13</sup> Around the NFL Staff, "NFL Owners Issue Statements on Anthem Policy," NFL Network, May 23, 2018, <http://www.nfl.com/news/story/0ap3000000934036/article/nfl-owners-issue-statements-on-anthem-policy>

though owners had concerns over his drug use. Laremy Tunsil had a video release of him smoking marijuana through a gas mask during the week of the 2016 draft.<sup>14</sup> Tunsil also admitted to taking illegal income from a coach at his college, never facing repercussions from the league for this. Another player, Tyreek Hill was drafted after pleading guilty to domestic abuse charges in his freshman year of college. He was kicked off of his division one team and sent to play at a division two school.<sup>15</sup> He still found himself on an NFL roster and is considered a star player of the Kansas City Chiefs. Joe Mixon was drafted in 2017 was caught on tape punching a female student at Oklahoma.<sup>16</sup> Mixon found a home in Cincinnati and has earned a starting spot, despite being convicted of a violent crime. These three players all have ethically questionable histories and while some have changed, the one not on an NFL roster is Colin Kaepernick. It is not as if Kaepernick had no experience in the league as well, these three were all college stars and could have fizzled out in the league, but teams still took a chance. What caused owners to not take a chance on a quarterback who had nearly won a Super Bowl? The cases above are not the only examples as well. But why is this all relevant? What is the importance? I will argue in this paper that player identity is held to a higher level of scrutiny when it involved political stances, as opposed to questionable behaviors in their personal lives. This has important ramifications for understanding the rights of players in the NFL as it reveals that they are more willing to work with players who have

### **III. The history of Player Activism and Player Rights**

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<sup>14</sup> Lindsay H. Jones, "Laremy Tunsil Slides after Bong Video Surfaces, OL Says He Took Money from Ole Miss Coach," USA Today, April 29, 2016, <https://www.usatoday.com/story/sports/nfl/draft/2016/04/28/laremy-tunsil-video-marijuana-twitter-nfl-draft/83678590/>

<sup>15</sup> Greg A. Bedard and Chris Burke, "How Hard Should We Cheer for Tyreek Hill?" SI.com, January 10, 2017, <https://www.si.com/nfl/2017/01/10/tyreek-hill-kansas-city-chiefs-domestic-violence>

<sup>16</sup> Adrienne Lawrence, "When It Comes to Joe Mixon, Don't Confuse Domestic Violence with Assault," ESPN, March 9, 2017, <http://www.espn.com/espnw/voices/article/18836719/when-comes-joe-mixon-confuse-domestic-violence-assault>

In order to contextualize the Anthem protests, it is important to understand the history of protest by NFL players and previous responses by the NFL to these protests. I will next detail some key moments in this history to clarify the precedents set in this industry so that they can serve as a baseline for comparison for the situation that Kaepernick is in. Has there been a history of players taking stand for their political/ethical belief? What is the result of this for the on-field career of the player? Have we ever seen players blacklisted? Finally, has a player ever put legal action against the league and still seen success after?

One critical piece of understanding the situation that the NFL faces with Kaepernick's protest is to look back at the history of the collective bargaining agreement (CBA) and protesting in the NFL. Is this something the league has had to deal with in the past, and if they have, how was it handled then? Has the current commissioner, Roger Goodell, ever had to deal with protests as a commissioner, and under the CBA's determined with Goodell at the helm what has been the treatment of the players protesting? This section will discuss what the NFL has done about protesting in the past, and we can compare this assessment to the treatment of Kaepernick's protest. It is critical to our determination of whether Kaepernick is really changing the ethical landscape of the league, as well as if the NFL is acting ethically in the handling of these situations.

It seems reasonable to assume that the NFL has dealt with ethical issues and political activism in the past. The league began in 1920, which means it was in existence during World War II, the Vietnam War, the civil rights movement of the 60's, and the Cold war as well. A major example of an ethical issue that affected the NFL came in 1965 during the American Football League (AFL) All-Star game. The AFL was a league that coincided with the NFL and would later merge with them after this season. The AFL was planning on hosting their all-star game in the city of New Orleans. Players were met with immediate racism from the citizens of New Orleans. The

African-American players were being refused cab services, left at the airport on arrival, and even had a gun pulled on a player outside a nightclub.<sup>17</sup> The players decided to meet and concluded that playing in the game would not be safe. With this they informed the league that they would boycott the game if it was not moved. The owners sided with the players and would move the game to Houston a day later. The athletes stood together and were able to get the owners to make a change. It marked the first-time players were able to make a change due to the players decision.

Players have advocated for business rights as well. During the 1992 and 1993 seasons, the players were finally able to achieve a modern free agency system. This was done after five players sued the NFL in a landmark case known as *McNeil v. National Football League* over the previous system of restricted free agency.<sup>18</sup> Two weeks later *White v. NFL* was ruled upon by the Minnesota district court. The players, which were headlined by NFL Hall of Famer Reggie White and four others suing the league for antitrust damages and relief from the current system of the NFL draft and free agency system.<sup>19</sup> The court ruled in White and company's favor and allowed the players and their agency to create the early workings of the free agency system. It also defended the rights of the NFL Player Association (NFLPA) and its ability to protect their representatives.

Free Agency is the ability for players, once their contract is expired with a team, to then go out and field offers from any team in the league. It allows them to choose the team they would like to play for and take what they decide is the best offer. It also raises the value of a player, because they can have leverage over the team, they are currently with, in contract years. This right came to them nearly two decades after professional baseball established a system of free agency. This is a

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<sup>17</sup> Michael MacCambridge, "This Wasn't the First Time Football, Protest and Politics Have Mixed," History.com, September 25, 2017, , <https://www.history.com/news/how-football-protest-and-politics-have-always-mixed>.

<sup>18</sup> "White v. National Football League, 836 F. Supp. 1458 (D. Minn. 1993)," Justia Law, 1993,, <https://law.justia.com/cases/federal/district-courts/FSupp/836/1458/1949361/>.

<sup>19</sup> Ibid.

case of the players standing up for themselves and holding power over the league through litigation. We must now shift to players rights under Roger Goodell, and how the NFL has acted in these situations.

#### **IV. Player Activism and Rights under Commissioner Roger Goodell**

One example of protesting under Goodell are the protests that occurred during the 2014 season by St. Louis Rams players. This protest arose from five players before a game against the Oakland Raiders. The five players, who were all African-American, walked out during the pregame introductions with the “Hands up. Don’t Shoot!” gesture being made. This came after the protests in Ferguson occurred as a result of the August 9<sup>th</sup> shooting of Michael Brown, and the announcement that the officer who had shot Brown would not be indicted. Jared Cook, one of the protesting players gave a statement after the game explaining why the five decided to walk out with the gesture being made, “We kind of came collectively together and decided we wanted to do something. We haven't been able to go down to Ferguson to do anything because we have been busy... So, we wanted to come out and show our respect to the protests and the people who have been doing a heck of a job around the world.”<sup>20</sup> Cook would further explain that he and other team members had plans to go to Ferguson and assist the community and stressed that they were not taking sides by saying “We wanted to show that we are organized for a great cause and something positive comes out of it. That's what we hope we can make happen. That's our community. We wanted to let the community know that we support the community.”<sup>21</sup>

Despite the statement that the players were not attempting to take sides in the situation the St. Louis Police Officers Association felt differently. They released a statement in which their

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<sup>20</sup> "No Fines for Rams Players' Salute." ESPN. December 02, 2014.  
[http://www.espn.com/nfl/story/\\_/id/11963218/the-five-st-louis-rams-players-saluted-slain-teenager-michael-brown-sunday-game-not-fined](http://www.espn.com/nfl/story/_/id/11963218/the-five-st-louis-rams-players-saluted-slain-teenager-michael-brown-sunday-game-not-fined).

<sup>21</sup> Ibid.

business manager, Jeff Roorda, stated “Cops have First Amendment rights too, and we plan to exercise ours. I'd remind the NFL and their players that it is not the violent thugs burning down buildings that buy their advertiser's products. It's cops and the good people of St. Louis and other NFL towns that do. Somebody needs to throw a flag on this play. If it's not the NFL and the Rams, then it'll be cops and their supporters.”<sup>22</sup> The NFL, Rams coach and the Rams chief operating officer all stood by the players protest. The NFL announced it would not issue fines to any of the players for the actions taken, and that they respect and understand both sides and called the situation “tragic”.<sup>23</sup> The head coach of the Rams, Jeff Fisher expressed that he respects the players statements, but would prefer to keep sports and politics separate.<sup>24</sup> Further controversy arose of the statement made by Rams COO Kevin Deimoff, who was accused by the St. Louis police department of apologizing for the players protests. Deimoff denies ever making a statement of apology to the department but did state “I expressed regret for any perceived disrespect of law enforcement.”<sup>25</sup> Roorda explained that he and the chief of police interpreted this as an apology and claimed “[Deimoff] clearly regretted that any members of the Rams organization would act in a way that minimized the outstanding work that police officers carry out each and every day.”<sup>26</sup> The reason why this debate over whether or not an apology was given or not because the police department originally demanded a statement of apology from the team or the NFL. Neither the team, nor the NFL ever gave an explicit apology to the department and the players continued to play in the NFL with no issue or punishment coming from this.

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<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> CBS/ap, "Did Rams Apologize to Police for Hands-up Gesture?" CBS News, December 02, 2014,, <https://www.cbsnews.com/news/st-louis-rams-apologize-for-players-ferguson-hands-up-dont-shoot/>.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

This situation is rich with comparisons to that of Kaepernick's. Kaepernick has stated on multiple occasions that one of his reasons for protesting is the unfair treatment of minorities by law enforcement officials. Both protests also came before the game started. However, Kaepernick remains unemployed while four of the five Rams players remain active in the NFL or other professional football leagues. Stedman Bailey is currently off an NFL roster because of injury complications from a gunshot wound to the head. This protest occurred two years before Kaepernick began to kneel, and it may be that Kaepernick is not the first to sit out the national anthem.

Marshawn Lynch has been an NFL running back since 2007. Lynch gained attention in his college football days at the University of California Berkley after celebrating a win by driving around on one of the team's injury carts.<sup>27</sup> He remains quiet to the national media, only addressing them when needed. Lynch shows his personality through his minimal words, including his quote during the 2015 Super Bowl press day "I'm just here so I won't get fined."<sup>28</sup> He has also shown his personality on the sideline during games, where he can be seen eating skittles on multiple occasions.<sup>29</sup> Lynch draws attention from the other things he does on the sideline as well. This includes remaining on the bench during the National Anthem. Lynch was noticed doing this during the 2017 season, a year after Kaepernick began his protesting. Lynch initially was retired from the NFL when Kaepernick began protesting during the 2016 season, so it is unclear as to when he began sitting on the bench. However, Lynch claimed to his coach when he was noticed doing this,

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<sup>27</sup> "Watch: Marshawn Lynch Relives His Injury Cart Joy Ride," SI.com, July 24, 2018,, <https://www.si.com/college-football/2018/07/24/marshawn-lynch-tells-story-about-stealing-injury-cart-cal>.

<sup>28</sup> Stav Ziv, "Marshawn Lynch Trademarks 'I'm Just Here so I Won't Get Fined'," Newsweek, May 11, 2016,, <https://www.newsweek.com/marshawn-lynch-gets-trademark-approved-im-just-here-so-i-wont-get-fined-410657>.

<sup>29</sup> Jeff Gray, "Why Marshawn Lynch Loves Skittles so Damn Much," SBNation.com, January 31, 2015,, <https://www.sbnation.com/nfl/2014/2/2/5362026/skittles-super-bowl-2014-marshawn-lynch>.



that he had done it for the last 11 years.<sup>30</sup> It has been determined that this statement may not be fully true, as Lynch has been seen standing for the anthem during a game in 2013, but it is also entirely possible that he has sat out of anthems and gone unnoticed since it was not something that was necessarily tracked until Kaepernick began doing so in 2016.<sup>31</sup> Regardless, Lynch has stated multiple times that he supports Kaepernick and the message of his protest. Lynch echoed the same sentiment of Kaepernick that it was not about the anthem itself, as much as it is about the injustices going on in America.

This became evident after Lynch's current team, the Oakland Raiders, played a game in Mexico. During the pregame anthem playing, Lynch sat during the American anthem, but then stood for the Mexican anthem.<sup>32</sup> President Donald Trump took notice of this and tweeted out on the following Monday, "Marshawn Lynch of the NFL's Oakland Raiders stands for the Mexican Anthem and sits down to boos for our national anthem. Great disrespect! Next time NFL should suspend him for remainder of season. Attendance and ratings way down."<sup>33</sup> These are similar to tweets and statements that Trump has made towards Kaepernick and the NFL in general. Other players have done this practice as well. Some players on the Jacksonville Jaguars have taken knees during the American anthem but have risen for the playing of God Save the Queen during games in London.<sup>34</sup> The players appear to be unified on the message Kaepernick is trying to say with the Anthem. The feeling that it is about the country itself, and not the song. As shown earlier, the NFL

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<sup>30</sup> Timothy Rapp, "Marshawn Lynch Told Jack Del Rio He's Been Sitting During Anthem for 11 Years," Bleacher Report, October 03, 2017., <https://bleacherreport.com/articles/2727176-marshawn-lynch-told-jack-del-rio-hes-been-sitting-during-anthem-for-11-years>.

<sup>31</sup> Ibid.

<sup>32</sup> Des Bieler and Cindy Boren, "Trump Calls out Marshawn Lynch, Who Sat for the U.S. National Anthem but Stood for Mexico's Anthem," The Washington Post, November 20, 2017., [https://www.washingtonpost.com/news/early-lead/wp/2017/11/20/marshawn-lynch-sits-for-u-s-national-anthem-but-stands-for-mexican-version/?utm\\_term=.7e6028fdd458](https://www.washingtonpost.com/news/early-lead/wp/2017/11/20/marshawn-lynch-sits-for-u-s-national-anthem-but-stands-for-mexican-version/?utm_term=.7e6028fdd458).

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

has not taken a stance on the anthem policy. But, has the NFL made rulings on protesting in general, lawsuits or even collusion between owners?

#### **V. What are the rules and standards for NFL Players?**

Now that we have seen the NFL has had a history of protesting and player activism, we must look towards the current rules of the league. This is an important area to determine because we will be able to translate the rules into a sense of ethics for the league. It will also outline whether or not there were set rules for protesting the anthem or making political statements while in uniform. This will determine if the NFL has been acting ethically. They do have standards outlined, and these standards can be determined to be the ethics of the NFL. These guidelines are listed out in the CBA established by the NFL, the NFLPA, and the owners of the league. The NFL holds yearly meetings between these groups to discuss rule changes, grievances by any side, and the next CBA. The NFLPA is a worker's union group that represents the players in these meetings and others throughout the year. Coaches and active players have a say as well, with meetings through the year and a rules overview meeting during the Pro Bowl. The NFL publishes the CBA, which contains the rules and standards of the league and the operating policies for both the on and off season. The critical pieces of that must be taken away from this agreement are the policy on speaking to the media, rules during the games, and rules on the disciplinary powers of the commissioner. Policy on substance abuse and legal violations are key as well for the cases of other players, who may have violated these rights. We can also look to contracts to see how the owners can structure the contracts and add incentives or how they can terminate contacts. The first thing that needs determination is the definition of collusion, this is relevant because of the lawsuit that Kaepernick and Reid filed on the NFL.

It is critical to define collusion and the rules on player lawsuits outlined in the CBA. One part of the Colin Kaepernick saga of the NFL is his lawsuit of the NFL for alleged collusion between the owners and the league to keep him and Eric Reid off of NFL teams. Eric Reid was signed to a roster during the 2018 league year by the Carolina Panthers, and was given a 3 year, \$22-million-dollar contract extension by the team. This makes him the third highest paid safety in the league. Colin Kaepernick remains unsigned as of the writing of this paper. However, on February 15<sup>th</sup>, 2019 a major development occurred in the case against the NFL. It was announced by Kaepernick's lawyer Mark Geragos that the league and Kaepernick have settled the case.<sup>35</sup> The settlement also contained a confidentiality agreement; however it would be revealed on March 21<sup>st</sup>, 2019 that Kaepernick and Reid had settled the case for under \$10 million dollars.<sup>36</sup> This amount was much less than the expected amount received by the players during the month of speculation over the details of the settlement. We are still unsure as to why either side decided to settle, but potentially more details will be disclosed in the future. Rumors came out shortly after the settlement that two teams were interested in signing Kaepernick to a contract over the offseason. Nothing has resulted of the rumors, and Kaepernick has neither confirmed nor denied them. He has also not stated his intentions on returning to the league. What does the settlement mean for the case though? How has the NFL defined collusion under their CBA?

Section One of Article 17 in the CBA defines collusion as “no club, employee or agents shall enter into any agreement with the NFL, another club, other employees or agents, to restrict club decision making when negotiating with any player, offers to free agents, exercising contract

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<sup>35</sup> Nick Schwartz, "Colin Kaepernick Case: NFL Players React to Settlement," USA Today, February 16, 2019, <https://ftw.usatoday.com/2019/02/colin-kaepernick-settlement-reaction>.

<sup>36</sup> Ken Belson, "N.F.L. Settlement with Kaepernick and Reid Is Said to Be Much Less Than \$10 Million," The New York Times, March 22, 2019, <https://www.nytimes.com/2019/03/21/sports/colin-kaepernick-nfl-settlement.html>.

refusal, and anything concerning terms of employment offered to players.”<sup>37</sup> This simply means that no team is allowed to collude with other teams or agents to manipulate the contract of players in the league. Section Two then states “No Club may have a policy not to negotiate with, or enter into a Player Contract with, any player who is free to negotiate and sign a Player Contract with any Club”<sup>38</sup> This would mean that if two clubs were to agree to not sign Kaepernick to their teams, then collusion would occur and the club would be fined and Kaepernick would be compensated. The NFL has their own system arbitrator that will determine this and rule on the situation. This is the avenue Kaepernick and Reid pursued. The arbitrator decided to allow the case to proceed to the second level of arbitration, before the settlement occurred. If the player would win the arbitration it would clear them of their current contract, fine the team(s) involved and allow them to recover the income lost resulting from the termination of the contract. There is also a clause that would cancel out the entire CBA if collusion was proven between 14 teams or more, or collusion occurring to 20 players through one NFL season.<sup>39</sup> The CBA covers many other topics that outlines what players, teams and the commissioner can do. The CBA has been complained about heavily, with the 2011 agreement leading to a slight lockout, and a longer lockout predicted in 2020. The free agency case in the 1990’s showed a case of the NFL trying to hold supreme power over the players, but what does the current CBA give to the players? Has the league made ethical progress and allowed sovereignty for the players and their agents?

The first section to look towards to determine the power dynamic between the league and the players is the section on Commissioner discipline. How much of the punishment is delegated

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<sup>37</sup> NFL and NFLPA, Collective Bargaining Agreement, PDF, New York: NFL, 2011.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

to the choice of Roger Goodell, if any? How much choice does the league give the players in various situations, and to question Goodell's leadership? Article 46 is the section that details the commissioner's rights in discipline. The commissioner is allowed to issue fines for on-field conduct or appoint a representative to do so. Players can appeal the fines, and for any fine over \$50,000 the commissioner must consult with a representative from the NFLPA. The conduct that would result from an on-field fine is an unnecessary roughness penalty, fights, or unsportsmanlike conduct.<sup>40</sup> If a player would like to appeal the suspension, the commissioner appoints someone to hear the appeal. The process is not exactly controlled by the commissioner, but he has the ultimate right to hand out, and decide who will hear the appeal of a suspension. But why is this relevant? Who appoints the commissioner?

That responsibility falls to the owners of the league. All 32 teams are allowed to vote to elect the new commissioner from a pool of suggested candidates. They sign the commissioner to a contract, that could be extended. However, typically 6 of the 32 NFL teams have a say in the renewal of the contract. Over the last few years the number has shifted as low as 4, but currently sits at 5.<sup>41</sup> The committee with the right to do this is known as the Compensation Committee. Their name implies their responsibility, as they set the pay of the commissioner. The owners are placed onto this committee by the commissioner.<sup>42</sup> Which makes the election and retention process circular in nature. The owners select the commissioner, who then selects the owners that will determine his salary. The process is not without trouble as well, owners leave from time to time, as well as opposing the re-signing of a commissioner. Dallas Cowboys owner, Jerry Jones

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<sup>40</sup> Ibid.

<sup>41</sup> Mike Florio, "NFL Adds Jimmy Haslam to Compensation Committee," ProFootballTalk, October 17, 2018, <https://profootballtalk.nbcsports.com/2018/10/17/nfl-adds-jimmy-haslam-to-compensation-committee/>

<sup>42</sup> Ibid.

was willing to sue the NFL over the extension that would be given to Roger Goodell.<sup>43</sup> At no point are players consulted about this as well. However, this does make sense in the regard of not being able to hire your own boss. The power dynamic in the NFL is triangular though. The NFL has power over the teams and the players, the owners have power over the players and some power over the league, and the player don't have much besides bargaining power in trades and free agency. Can players speak out about the power dynamic in the NFL? To determine this, we must look at Article 51 in the CBA.

Article 51 is the section on miscellaneous items and rules that do not need an entire article dedicated to them. Section 6 outlines public statement guidelines for a player or team personnel, "The NFLPA and the Management Council agree that each will use reasonable efforts to curtail public comments by Club personnel or players which express criticism of any club, its coach, or its operation and policy, or which tend to cast discredit upon a Club, a player, or any other person involved in the operation of a Club, the NFL, the Management Council, or the NFLPA"<sup>44</sup> The NFLPA does agree to this and is able to negotiate with the league but it again falls down to overall bargaining power. The players need to work for the NFL to get their income, and for most players that aren't starting, this income is their only livelihood. Players on practice squads make an average salary of \$129,000. This is a lot of money for most, but you certainly could not live off of that salary after a multi-year career. Players want more rights and have been trying to negotiate for this. The NFLPA and NFL see a chance of a lockout coming into the 2021 season. The league finds itself at a tipping point, should it give up rights to the players and allow them to take more control, or should the league office retain the power? The debate over the CBA shows how the NFL is a business first, and entertainment second. The

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<sup>43</sup> Ibid.

<sup>44</sup> NFL and NFLPA, Collective Bargaining Agreement, PDF, New York: NFL, 2011.

league needs to maintain control over the players since they are employees, but they are entitled to rights as workers. How the NFL allows them to act, and the control the league has over them is their ethics. The next step in this paper is to go in depth to the current ethics the NFL displays, especially under Roger Goodell and the philosophical consequences of their ethics.

## **VI. What are the Ethics of the NFL?**

While the CBA certainly displays some of the ethical beliefs of the NFL, it raises the questions of whether the NFL has an actual code of ethics or a code of conduct, or rather, whether or not their code of conduct matches what they state explicitly. The league does in fact have a code of conduct, which they refer to as a “Compliance Plan”. It originated sometime in the early 2000’s as the code of conduct for the league but has since developed into a longer form compliance plan. The most recent plan was published in January of 2018 and covered over 28 pages of policy information. It also includes a preface from Commissioner Goodell, that overviews the goals and objectives of the compliance plan and the responsibilities of the Compliance officers. The chief compliance officer of the NFL is Sabrina Perel. The current compliance committee is composed of Sabrina Perel, Brook Gardiner, and Christine Vicari.<sup>45</sup> These three are all top executives in the league and have education and experience in the field of law. It is also something to note that two of the three members of this committee are female, which is rare in the league that is driven by a mostly male workforce. The league uses the plan mainly for executives and agents, so essentially all of the people involved in the league that are not coaches or players. The coaches, owners, and players are all subject to the CBA rather than the compliance plan. With this we are able to determine what the ethics are for the league, as well as the arguably more important question of are these ethics sound?

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<sup>45</sup> NFL, and NFL Compliance Committee. Compliance Plan. PDF. New York: NFL, 2018

The first determination to make is what ethics do the NFL follow? We have seen from the rules the league, as well as the free agency suits in the 90's that the league has dealt with issues regarding player rights over the league. What does this mean for their ethics? It shows that the league prioritizes the needs of the owners and the league over that of the player. The player is an employee of the league, and the owners are the managers and shareholders, while the commissioner plays the role of the CEO. However, the league is in a unique position because the players are also the product, and they need the talent to be satisfied and able to perform. We have seen some issues of lockout in the past before. A lockout is when the league is unable to carryout the league year because an agreement has not been reached between the NFL and the NFLPA. Last CBA, we saw a week long lockout. Again, the league has shown the want for control over the talent. This cannot happen fully though. In a sport where the long-term health risks potentially outweigh the financial complementation given the players should be allowed certain rights to let them play the sport. This is where the issue of painkillers, and even medical marijuana enter the discussion. Should players be allowed to use these substances in moderation to control their pain? Is it ethical for the league to prohibit players in states where marijuana is legal to consume the product? The issue of substance use can then be related to the issue of player rights and player expression. Should the league allow players to express themselves in any way, as long as the conduct is not harmful to other players, coaches or teams?

It is in this arena of player expression that we see the Kaepernick issue at the forefront. Is Kaepernick allowed to express his political opinion on the playing field? No rule in the book officially states that he cannot, yet we see his absence from the league. While there is a lot more to discuss with this issue, it is certainly not the only issue we see in player expression.



Week 13 is a special week for the players. It is now a week known as My Cause My Cleats week, which allows players to wear custom made cleats to express themselves and raise awareness for issues and charities that they deem important.<sup>46</sup> The NFL rulebook prevents this from occurring on other weeks because the players must match their attire with the team's colors. Players have taken well to this week and nearly every player participates in the program. There have even been special provisions for players to wear those cleats in the following week if their team does not play during Week 13. After the week, the cleats are then auctioned off and then the proceeds are donated to the charity that the player chooses. This whole process is a fantastic example of allowing the players to express themselves, and the league showing some corporate social responsibility by donating to important causes. However, the week was not created purely out of the league wanting to do good. The league had been fining players for years, for wearing cleats that were meant to represent awareness for charities. William Gay, Brandon Marshall, Desean Jackson and various other superstars have all seen fines for wearing improper cleats during games. While some have worn the cleats just to make a fashion statement, Gay wore cleats to promote domestic abuse awareness in honor of his mother<sup>47</sup>, Marshall wore green cleats to promote mental health awareness; as he has been treated for borderline personality disorder<sup>48</sup>, and Desean Jackson wore cleats to protest police brutality<sup>49</sup>. All three of these players, and more have been fined for actions similar to this. While these players are breaking the official rules, it is

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<sup>46</sup> "My Cause My Cleats," NFL Football Operations, <https://operations.nfl.com/football-ops/economic-social-impact/my-cause-my-cleats/>.

<sup>47</sup> Aditi Kinkhabwala, "William Gay's Purple Cleats Part of Anti-domestic Violence Efforts," NFL.com, October 31, 2014, <http://www.nfl.com/news/story/0ap3000000420245/article/william-gays-purple-cleats-part-of-antidomestic-violence-efforts>.

<sup>48</sup> AP, "Bears' Brandon Marshall Fined \$10,500 for Wearing Green Cleats," USA Today, October 16, 2013, <https://www.usatoday.com/story/sports/nfl/bears/2013/10/16/brandon-marshall-fined-green-cleats-mental-health-awareness/2995043/>.

<sup>49</sup> Brandon Richard, "The NFL's Most Expensive Cleat Fines This Season - DeSean Jackson," Sole Collector, June 01, 2018, <https://solecollector.com/news/2017/02/nfl-cleats-fines-2016/desean-jackson-police-brutality>.

an infraction that causes no harm. The color of your cleats and even the brand do not really affect the player and their ability to perform. Wearing team-matching cleats only promotes the team and a sense of unity, but overall has no bearing on the performance of the players. It is a step in the right direction that the league allows the players to promote their causes during a specific week, but should they bar players from wearing these cleats year-round. The value of the donations and cleats won't drop, the NFL could actually do this year-round and raise even more money for the charity. However, the matching uniform rule remains. In most cases this has little bearing on the myriad of other issues the league faces, but in this way, they bar players from expressing themselves and making social statements with their attire. Is this a right players should have? The NBA allows their players to wear any shoe of their choice, and the custom designs by the players are often talked about in sports media, the NFL could see the same if they change their rules. Overall though, My Cause My Cleats has been a positive charity event for the league, but this cannot be said for all charity efforts of the league.

Starting in 2009 the NFL launched a charity program during breast cancer awareness month. It is known as the Crucial Catch campaign, and permits players, coaches and officials to wear pink during games played in October. Not only the players donned the pink as well, footballs, tees and even playing fields were given pink accents to raise awareness for breast cancer. The event works in a similar fashion to the My Cause My Cleats where the game attire and branded items are sold by the NFL and then donated to the American Cancer Society. The NFL had originally stated that the donations were being given in full to the charity, and it was supposed to be used for research. However, it became public in 2014, that the donations were not exactly as advertised by the league.<sup>50</sup> The money being donated was mainly targeted towards screenings and

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<sup>50</sup> Smriti Sinha, "The NFL's Pink October Does Not Raise Money for Cancer Research," Sports, October 08, 2014, [https://sports.vice.com/en\\_us/article/53vadq/the-nfls-pink-october-does-not-raise-money-for-cancer-research](https://sports.vice.com/en_us/article/53vadq/the-nfls-pink-october-does-not-raise-money-for-cancer-research).

awareness, not research or anything that would work towards a cure for breast cancer. The league was not transparent about this and ultimately only gave a small portion of its breast cancer items to the ACS.<sup>51</sup> Once this became public the league started to transition away from having a Crucial Catch be aimed towards raising awareness for breast cancer, and in 2017 rebranded the month to being for all types of cancer. Players were then permitted to wear gear in the color of the cancer of their choice, and branding shifted towards donations going towards the ACS for all cancers. This change allowed for players to raise awareness for all cancers, and for the NFL to have the donations not be specific to one area. The league never addressed the issue of their earlier donations to the ACS and since changing the goal of the Crucial Catch program have seen no negative feedback. The change to all cancer awareness is certainly good for the players, and a nice ethical shift to allow player expression. However, how ethical is it for the league to donate to a charity in a different manner than which it had initially stated, and once they get called out for it expand the language to ensure that what they do will no longer be a misstatement. Is this better than actually fixing the issue? Overall, the money still goes towards the ACS and is being used for cancer awareness and prevention. We also still have the issue of if the NFL is truly giving as much money as the sales say they should be. However, the ACS has never complained about not being paid or not receiving what they think they are obligated too. This issue though shows that the league is not fully transparent, and occasionally attempts to sweep issues under the rug. It is precisely this reason why Kaepernick may have changed the ethical landscape of the league. Kaepernick brought national attention to a plethora of issues that the NFL faces, and did not let them drop from national attention. He attempts to change the narrative on the player, owner and league relationship, and has opened the door for players to make “business” decisions. I will expand more upon this in the

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<sup>51</sup> Ibid.

conclusion of the paper, but before I get into a discussion of how Kaepernick is effecting the NFL ethical and political landscape, it is imperative that I bring attention to the ethical philosophy behind players protesting and whether or not the response by the NFL is considered ethical.

## **VII. Ethical Considerations on the National Anthem Protest**

Now that the background has been set and I have shown a history of protesting in the league, I can apply these historical cases, as well as the similar issues to discuss the ethical standing of the league and the National Anthem protest. The field of sports ethics is relatively new, and especially with the how current the Kaepernick situation is, there is not much philosophical debate about this issue. But ethics is something that can be applied to anything, we just simply have to take a one of the ethical approaches and analyze the findings. This has been done by a few ethical philosophers and for use in this paper I have read the works of Giannina Ong, as well as the joint paper between Daniel Kane and Dr. Bonnie Tiell. Ong and Kane are both doctoral candidates in the field of philosophy. While Tiell, has officially earned her doctorate degree, teaching and assisting Daniel Kane with his paper. These two papers focus on applying ethical standards to the Kaepernick protest and laid wonderful philosophical groundwork for ethics behind the protests. I will discuss their findings as well as attempt to expand them to the scope of my paper, which focuses on how it has affected the league, and what it means for the league from the standpoint of the NFL as a business.

Ong's paper "*Is it Moral to Take a Knee?*" is focused on taking three different ethical approaches to the kneeling protest and finding out how this would apply to the situation. The three ethical approaches used in her paper are the Utilitarian approach, the Common Good approach, and the Rights approach. The utilitarian approaches focuses on creating the greatest good for the greatest amount of people. The common good approach focuses on how the decision will impact

the community at large, and what decision will be best for the community. Finally, the rights approach is centered around determining which decision respects the rights of all who have a stake in the action.

The utilitarian approach was taken from the perspective of students' athletes on Santa Clara University's campus. The conclusion drawn was that it would produce more harm than good. One main reason for this is because "Certain students at Santa Clara have financial obligations that an athletics scholarship fulfills; losing that funding for their education in their eyes would create more harm than good."<sup>52</sup> Expanding this to the professional athlete, if they would like to retain a contract within the league, it may be easiest for them to not protest. Some students on the campus raised the counterpoint that they can find another way to voice their concerns.<sup>53</sup> I would agree overall that from the perspective of the athlete, it would be best to simply abstain from the protest. Bringing this idea to the national forefront is important and could result in some change. While a player may lose out on a contract, they will ultimately gain benefit from helping others if the issue is being resolved. If we turn this towards the league, it would be beneficial for the league to not blacklist the players who have protested. Banning players from protesting could cause some athletes to abstain from the league or play another sport. One side of the issue though that could make it utilitarian for the league to bar protesting is if it causes the league to lose revenue. Sponsors may not support the player activism and pull the advertisements that make up a large portion of the league's revenue. Fans may also lose interest if the game becomes more about the social commentary rather than the sport. However, what good outweighs the other? Will the league really fail if they allow protesting before games? This is all something that can only be determined by

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<sup>52</sup> Giannina Ong, "Is It Moral to Take a Knee?" Markkula Center for Applied Ethics, September 13, 2018, <https://www.scu.edu/ethics/all-about-ethics/is-it-moral-to-take-a-knee/>.

<sup>53</sup> Ibid.

experiencing it. Viewership has not gone down over recent years, and revenues are climbing each year, so it certainly doesn't seem as though Kaepernick's protest has affected the league. Ultimately, the utilitarian approach seems to produce an unclear result, because it determines on what you think the greatest good will be. Is it for the greater good to allow athletes to express themselves, or is it best to allow the league to not have any distractions from the game?

The common rights approach concludes that the best decision for the community is to make others aware of your stance on the issue. It is not really about whether or not a protest should or should not occur, it is about the impact that not knowing has on others in the community. Their feelings on the issue are certainly a key factor, but at the common rights stance it is best for players, coaches and other team members to not be surprised about the other feelings on the anthem issue. The common rights approach has no concern over whether the protest is moral or even ethical. Your team has a right to know what you are going to do so that they can prepare for it. This allows for their team members to either participate or abstain, and potentially give reasoning if asked about why the player is protesting.

The media asks team members about other players all the time, and while they can always provide their own thoughts, or even dodge the question, if the player knows about their team members decision to protest before it happens it allows them to discuss the issue. The community in this sense is then the team and its officials. If we expand the community to the league as a whole, the same beneficial principle applies. If the commissioner and officials know who will be protesting, they can prepare in whatever way they need to. Again, passing judgement on this is not what the common rights approach is concerned about, it is concerned about the health of the community and what the community needs to take measures to protect and support each other. We have seen this during the regular season with week four of the 2017 season, when the league came

together about the protest it was a strong and unified message. Overall, the common rights approach makes sense with its concern, but does not really state whether or not the league would be acting ethically given the knowledge of who will be protesting.

Finally, the rights approach deals with determining which option respects the right of all who have stake in the issue? Ong determined with this approach that players have the right to kneel if they so choose, but also raises an important ethical question. Kaepernick's protest is aimed towards police brutality and the treatment of African-Americans specifically, so under the rights approach do people of other nationalities have a right to participate in this protest? It is easy to say that other minority groups should be allowed to step into this protest, because they face similar issues to African-American and are treated unequally. But, do Caucasian people, or even non-Americans have a real stance and important perspective to give on this. Certainly, they do, since the constitution applies to all and having more people supporting one issue will advance basic human rights as a whole. While Caucasians do not experience police brutality as often, it is still something that they can experience and should be something that does not occur.

On the professional level we have seen white players protest and support their teammates and have faced little to no backlash at all. Is this a deeper part of the issue though? If white players can protest this issue freely, without fear of facing a blacklisting from the league, is their protest helpful? It would seem not, since they are raising awareness, but not exactly first-hand experiencing the struggles of who they protest for. Under the rights approach though, I would say all professional athletes would have a right, since it is protected under the constitution and would show unity between team members. The rights approach would staunchly oppose the possibility that the league blacklist or prevent players from protesting. It goes against their right as a citizen to protest. Under this approach it would be easy to say the NFL acts unethically. Ong concludes in

her paper that athletes are aware of this issue and thinking about it critically, since it is directly relevant to their playing career. No hard conclusions are made, but she states that having these thoughts and politically centered opinions are critical to the athletic experience. Daniel Kane and Dr. Tiell then expand this in their paper, by taking a normative ethics approach to the anthem protests.

The paper written by Kane and Tiell focuses on applying normative ethics to Kaepernick's protest to determine whether the protest is right or wrong. This is beneficial to my paper because once we can determine the ethical nature of the protest, we can then expand this to determine if it would be acceptable for the league to exclude Kaepernick or any player for protesting or even prevent anthem protests as a whole. Certainly, if the message behind the protest itself is not ethical, then the league should not have to support it. The goal of normative ethics is to determine whether or not the silent protest of Kaepernick is good or bad according to certain standards.<sup>54</sup> This is not the first time normative ethics has been applied to the NFL as well, other papers have discussed the implications concussion treatment and litigation, the application of the "Rooney" Rule, discipline actions for cases of domestic violence, drug testing, and more.<sup>55</sup> The basis of normative ethics includes the school of deontology, and the consideration of what is considered good or bad by a society, it interweaves multiple schools of philosophy and tries to apply principles to make the determination. This is critical to the discussion because it allows multiple schools of thought to be compiled into one conclusion. Its strengths what the findings of the paper are and allows for theories to be expanded upon it.

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<sup>54</sup> Daniel Kane and Bonnie Tiell, "Application of Normative Ethics to Explain Colin Kaepernick's Silent Protest in the NFL," *The Sport Journal*, June 22, 2017., <http://thesportjournal.org/article/application-of-normative-ethics-to-explain-colin-kaepernicks-silent-protest-in-the-nfl/>

<sup>55</sup> Ibid.



The use of virtue ethics allows us to conclude Kaepernick's protest would be acceptable. He does charity work and has donated some of his profit to those who he has stated his protest was for, and this allows us to state that in some regard, his protest should be accepted. Some may argue that the photo of Kaepernick wearing socks that depict officers as pigs could lead to a conclusion of his protest being unethical, although he has defended his use of this and stated it was to not attack all cops. It opens the door to neglecting his protest, however more instances of Kaepernick doing something positive exist. Deontology also allows for both decisions to be made, based on what you believe. One can conclude that the protest is unethical based on the stance of it being unpatriotic, however we can also defend it based on the belief that he has violated no specific rules of the NFL and the US Constitution with his protest. Again, it leaves it up to the interpreter. However, if we look towards the perspective of the NFL as a business, it would allow Kaepernick's protest to be ethical because the league has created no rule against it. If they would not like players to do this then a rule would need to be created, none such exists though, so we can use this to strengthen the conclusion that his protest would be considered ethical. The use of consequentialism leads us again to a conclusion of Kaepernick being allowed to protest. This is because his protest is not the first silent protest by a player, it has spread to other athletes and sports, and has brought more good than harm to the league. This conclusion lends itself towards the league as well, because viewership and jersey sale are up as a result of Kaepernick's protest. The nine principles of normative ethics being applied, are mostly able to support the right of Kaepernick's protest. The only principle that does not support this is no harm, because we are unsure as to if his protest did not cause harm overall. This does not necessarily mean that the harm principle invalidates the silent protest. The paper concludes that it is more likely than not that the protest would be supported by normative ethics.

There is a moral grey area that always exists, and it is up to the interpreter to decide what they believe to be okay. This then leads to the discussion on what the league should feel about this issue. Using the principles applied by the work of Tiell, we can still conclude that it is acceptable for Kaepernick to protest, and no real ethical rationale allows for the league to blacklist Kaepernick from playing. While some grey area exists into the benefit of his protest, nothing can specifically be concluded to bar him from attempting to make the statement. This would then lead to the conclusion that Kaepernick was wrongfully pushed out of the league, if he was in fact colluded to not be allowed to play on a team. Regardless of how he left the league, he has still not done anything ethically wrong by protesting the anthem.

### **VIII. Conclusion**

Determining whether or not Kaepernick has truly affected the ethical and political landscape of the NFL is an immense decision to make. It includes taking an extensive look at the history of the league, its officials, rules, players and even popular ethical theory. There are many moving parts to the silent protest of Colin Kaepernick and determining what his rights are as a player. There is also a determination to be made of whether or not the league has blacklisted Kaepernick from the league. If they have it certainly means they have acted unethically from a business standpoint. We have not fully discussed the bottom-line impact of the protest, however no research brought forward in this paper leads to a belief that the NFL has suffered in any way from the protest. If anything, it has brought them more national attention, and a potential for increased revenue. The charity and player awareness month have also benefitted the league monetarily so there is a potential from the league to support this issue and bring it to the forefront. While this may not be necessary, it could be done, however the league would not be acting ethically if it attempts to monetize the struggles of African-Americans.

The previous protests have shown that the league will stand by their players when necessary. It also showed that players can take legal action against the league if they feel as though their rights have been violated against and still see playing time, as well as positive receptions post-retirement. In the case of the 2014 Rams protest, we also see that players have been supported by the league against law enforcement officials. This is one of the key tenants of Kaepernick's protest, however we have seen no league official make a statement that gives direct support to his right to protest. In fact, the league has even attempted to bar their players from protesting. After the 2017 season the league attempted to bar players from protesting, but after backlash from both players and fans, the league ultimately dropped the issue.<sup>56</sup> This only makes the league look worse, since they have attempted to not fully address the issue. We have seen this happen in the past with the Crucial Catch campaign and the unclear nature of donations given to the American Cancer Society. The league is private and does not have to make any statements on the inner working of their league, however it would be best to be transparent in important social issues that affect the league.

Shifting focus to specific rules that bar players from protesting, or even permit them we do not see any statement by the NFL. However, we do find a circular sense of power from the commissioner, and a bar on the players from making negative comments towards the league, and officials. We have seen coaches, and players fined for making statements about the state of the game, and how they feel about the league office. We have also seen players fined for making statements with their on the field attire. This, however, is specifically barred, except for during my cause my cleats week. The new compliance plan is up for interpretation but appears to be a step in a positive direction to ensure the league is acting ethically and that officials are

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<sup>56</sup> Around the NFL Staff, "NFL Owners Issue Statements on Anthem Policy," NFL Network, May 23, 2018, <http://www.nfl.com/news/story/0ap3000000934036/article/nfl-owners-issue-statements-on-anthem-policy>

complying with the rules set by the league office. An entire office and position have been dedicated to complying with HR and ethical issues. It leads towards the need to apply ethical philosophy to the case of Kaepernick to make a full determination on the ethical standing of the NFL.

When discussing applied ethical philosophy, most schools of thought side with Kaepernick's right to protest. While it is entirely possible that through some lenses Kaepernick has acted unethically, at no point has he cause any harm to others or done anything opposite of what his stance has always been. The image of Kaepernick wearing socks that depict officers as pigs, is certainly troubling, but he ultimately defended this decision by stating that he does not see all cops as this and supports good officers. He stated that the socks were directed towards the rouge cops that his initial protest was intended to raise awareness against. This is also only one instance of an issue, or something that would not be considered acceptable to promote his message. On most other occasions we have seen Kaepernick give back to the community that he kneels for and has donated his earnings towards helping others. Even when he was a backup, he still continues to give support.

Since exiting the league in 2016, he has been doing charity work full time and donating a portion of his revenue from Nike and other advertisers to continue his work. Most schools would then say that this outweighs his negative action and would allow for his protest to at least be acceptable. As stated earlier there will always be moral gray area, but the evidence that we have points towards the acceptance of his right to protest and would bar the NFL from blacklisting him from the league. We cannot also certainly conclude that teams colluded to bar Kaepernick from the league, especially with his lawsuit being settled out of court. However, we do have statements from league officials and owners that outwardly oppose kneeling during the anthem.

The league's initial stance on it supports this as well. So, while the league may not have directly barred Kaepernick, little support has been shown for him. What is the reason for this? Is it because some people gave the league backlash for this? Or perhaps because the president of the United States has said negative things about the league and its compliance in players kneeling for the anthem? We also must consider the possibility that league advertisers oppose this issue. No matter what though, if people are to oppose it, with no official rule or statement barring players from doing this Kaepernick should not be off of an NFL roster.

The introduction spoke a bit on his playing career and has supported that he has had enough talent to play in the league. Reaching the Superbowl and setting playoff records is certainly an indicator of talent, and even if he was past his prime, talent still exists. He was 2<sup>nd</sup> in the league among all quarterbacks in rushing in his final year, where he missed a few games due to injury. The team may have only won two games that year, but it is a team sport, and Kaepernick cannot constantly make the team find ways to win games.

Ultimately, the league has acted unethically, and continues to do so in a multitude of areas. The issue of whether Kaepernick is allowed to protest has been determined to be in his favor, most philosophical beliefs would support Kaepernick's right to protest. What does this mean for the NFL though? The league still sees increased revenue and viewership, so their unethical actions have not hurt their profit? Although we cannot say this for sure, because the new CBA is upcoming, and many believe this will be the tipping point for the league. If the players and owners cannot close the gap in thought, then a lockout of the league will most likely occur. This means the games will not be played and we could miss out on an NFL season. While the league is not in danger of a permanent close, any long-term lockout will hurt the bottom line of the business. The ethics of the NFL need to shift, and Kaepernick's protest has certainly

brought forth these into the spotlight. In this way, Kaepernick has led the pack in changing the ethical landscape of the NFL.

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