Emily Colleen Lay
Bachelor of Arts

We Were Labor: The Fight for Freedom and Power in the NFL in the 1970s

Emily Lay

Senior Honors Project

In 1970, John Mackey was elected President of the National Football League Player's Association (NFLPA). His first round of negotiating with the team owners over a new labor contract set the stage for events that would alter the history of professional football. Mackey approached the meetings with an air of conviction yet he was willing to negotiate. The owners had previously stipulated that there were to be no lawyers present for either side and the players followed this directive. This move was designed to encourage what everyone had previously considered a familial atmosphere. However, when Mackey got to the meeting, Ted Kheel was present as labor counsel for the owners. The owners then pushed a contract in Mackey's face and demanded he sign it. Mackey did the smart thing and read the contract before he signed it. It included a clause stating that they relinquished the right to negotiate preseason pay for the players in perpetuity. Mackey disagreed with this clause and sought labor counsel from a firm in Minneapolis. Eventually, Ed Garvey would represent the players and give legal advice to Mackey throughout the course of the negotiations.[1] This was the context in which John Mackey and several other players filed *Mackey v. NFL* in 1972.

The attitude displayed by the owners in these initial bargaining sessions was typical of their attitude toward the union. Carroll Rosenbloom, owner of the Baltimore Colts, told Mackey that the owners "don't need football, but you do." Mackey responded by saying that if Rosenbloom "didn't have tickets to give away, you wouldn't have any friends."[2] This mindset typified the relationship between the union and the owners in the

[1] John Mackey, and Thom Loverro, *Blazing Trails: Coming of Age in Football's Golden Era* (Chicago: Triumph Books, 2003), 172-4.

[2] David Harris, *The League: The Rise and Decline of the NFL* (New York: Bantam, 1986), 163.

early 1970s. The owners believed they could push the players to agree to anything they wanted, but the players were beginning to resist.

In *Mackey v. NFL*, the players argued the Rozelle Rule was illegal under antitrust laws. The Rozelle Rule dealt with free agency and the ability of a player to sign with another team. The standard player contract of the period included an option clause in which the player could play an additional year with a 10% cut in pay. Once the player played out this option year, he could sign with another team. That team was then obligated to compensate the player's former team. If the two teams were unable to come to an agreement on compensation, Pete Rozelle would decide sufficient compensation for the player. The teams would then be obligated to abide by this decision no matter how fair or unfair it might be. Rozelle was responsible for this as he was Commissioner of the NFL.[3] Elimination of this Rule would allow for greater free agency and would give players the opportunity to pursue higher salaries with whatever team they wanted. The players filed suit to eliminate this Rule and won their fight against the NFL in the courtroom. The Rozelle Rule was found to be a violation of antitrust legislation. However, a version of the Rozelle Rule remained in collective bargaining agreements and a better version of free agency did not exist until many years later. The players used this case to show the owners they were serious in negotiating and that the owners did indeed have to bargain in good faith. No longer could the owners stick a contract in their faces and demand they sign it.

Much has been written about both sports labor history and sports history in general. David Harris' book *The League: The Rise and Decline of the NFL* details the

[3] John Fortunato, *Commissioner: The Legacy of Pete Rozelle* (Lanham, MD: Taylor Trade Publishing, 2006), 151-2.

history of the NFL along with the various challenges it faced from its inception to the mid-1980s.[4] This includes the period relevant for *Mackey v. NFL*. The book provides a historical account of the league within the social context of the day but contains little analysis or examination of the legal issues surrounding the NFL. There are books that provide this legal background on the battles that have been fought over labor and other sports issues. Paul Weiler and Gary Roberts' exhaustive text, entitled *Sports and the Law,* goes over major sports cases affecting every major professional and amateur sport.[5] This provides some legal knowledge as well as analysis of the issues surrounding this case and free agency in general. More broadly, *Labor Relations in Professional Sports* covers the relationship between unions and owners in football, baseball, basketball and hockey.[6] This book gives an account of how labor relations have developed over time throughout the major professional sports.

These books provide a solid body of evidence about the history of the NFL as well as the major issues in sports labor. However, they do not analyze legal issues in the social context of the day. The 1970s were a time of change in all the major sports. Many battles were fought over labor. These issues were both social and legal and there is no scholarship that combines these two aspects in regards to football and free agency. *Mackey v. NFL* was a landmark case that had both social and legal ramifications.

John Mackey sacrificed his football career for the good of the NFLPA. By the time he was done with his duties as president, his playing days were over. However, he

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[4] David Harris, *The League*.

[5] Paul C. Weiler, and Gary R. Roberts, *Sports and the Law: Text, Cases and Problems* (St. Paul, MN: West, 2004).

[6] Robert C. Berry, William B. Gould, and Paul D. Staudohar, *Labor Relations in Professional Sports* (Dover, MA: Auburn House, 1986).

did leave a lasting legacy. As a result of his actions as president of the NFLPA, the players gained a meaningful seat at the bargaining table. When Mackey gained a leadership position, the owners assumed he would roll over and accept all their demands. They did not take the union seriously. His first task was to get the owners to realize that the players were no longer going to passively accept the demands of the owners and league authorities. As a union, they had legitimate power to negotiate and Mackey intended to exercise that power.

The players fought long and hard to gain greater freedom and power in the 1970s. The courts gave the players power over the owners; however, the apparent victory won by the players did not translate into the gains that would be expected at the bargaining table. Many battles were fought along the way. This included the strike of 1974 and the ensuing battle between the players and owners. Both parties tried to gain the support of the public, and the success of the owners in so doing limited the ability of the players to make significant gains at the bargaining table. The actions of the new union president combined with the lack of support among the public doomed the efforts of the players to failure.

Brief History of the NFL and NFLPA

The NFL was originally founded in 1920 as the American Professional Football Association.[7] The APFA changed their name to the NFL in 1922. This new league fielded 18 teams.[8] However, this did not end the challenges to professional football in the United

[7] National Football League. "NFL History 1911-1920." http://www.nfl.com/history/chronology/1911-1920

[8] National Football League. "NFL History 1921-1930."< http://www.nfl.com/history/chronology/1921-1930>

States. The NFL had to deal with several challenges to its power by rival leagues, with the most serious coming from the American Football League (AFL) in the 1960s. The AFL was conceived by Lamar Hunt in 1959. He gathered support and the eight-team AFL began play in 1960 with Joe Foss, a South Dakota war hero, as the league's first commissioner.[9] In April 1966, Foss resigned as commissioner and Al Davis was selected to replace him.

The NFL and AFL were in constant competition over draft picks and television rights. Secret merger talks began shortly after Davis became AFL Commissioner between Hunt of the AFL and Tex Schramm, president of the NFL's Dallas Cowboys, as a way to bring peace to the situation. The plans for a merger were announced publicly by Pete Rozelle, commissioner of the NFL, on June 8, 1966.[10] The merger would be implemented gradually over the course of several years. First, the leagues agreed to an AFL-NFL World Championship Game that would begin play in 1967. Also in 1967, the leagues began conducting a combined draft as well as playing inter-league preseason games. The merger became official in 1970 when the two leagues would begin playing full-time against each other. Pete Rozelle would continue as the commissioner of this new league, which would be known as the NFL.[11] This merger could have run into some antitrust issues, but Congress passed legislation on October 21, 1966 that exempted the agreement between the two leagues from any antitrust legislation or action.[12]

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[9] "American Football League Chronology – 1959" http://aflfootball.tripod.com/chronology/1959.html

[10] Harris, *The League*, 17, 29-30.

[11] National Football League, "NFL History, 1961-1970," http://www.nfl.com/history/chronology/1961-1970

[12] Fortunato, *Commissioner*, 74-6.

With the merger of the two leagues, two labor unions also merged. During the beginning stages of the merger, the maintenance of separate unions actually hurt the players. The owners used this to their advantage as they were only required by law to bargain with one party. The first example of this came during the 1968 negotiations. The NFLPA represented only 16 of the 26 teams in the league. Players on the other ten teams agreed to the owners' proposal without telling the NFLPA. Therefore, the NFLPA was forced to approve this agreement and they were only able to achieve modest gains.[13]

The two unions merged in 1970 when it was again time to negotiate with the owners on a new labor agreement. The merger met with problems when it became apparent that the AFL teams were worried their concerns might be overrun by the larger NFLPA. The NFLPA promoted Ed Meador of the LA Rams for president while the AFLPA promoted their current president, Jack Kemp. John Mackey was a compromise candidate agreed upon by both parties. As the union had a small staff and large debts to cover, it was still in a weak position after the merger of 1970.[14]

The union's weak position was exacerbated by actions of the owners, who attempted to break up the union during this pivotal time. Without the union to represent the players, the owners would be able to have complete control over every action within the league. The players fought against this tactic and survived as a union, albeit a weak

[13] NFL Players Association, "1960s – AFL/NFL Competition," http://www.nflpa.com/AboutUs/NFLPA_History.aspx#5

[14] NFL Players Association, "AFL and NFL Players Associations Merge," http://www.nflpa.com/AboutUs/NFLPA_History.aspx#5

one. As a result, the players determined to never again be bullied by the owners and to renew their fight to gain the freedom necessary to determine their own actions.[15]

The Battle Between the Players and Owners

John Mackey was a tight end for the Baltimore Colts when he was elected President of the NFLPA. He was first approached about the job by Carroll Rosenbloom, owner of the Baltimore Colts, and Sig Hyman, one of Rosenbloom's associates. Mackey took this pressure as recognition of his skills and his ability to do the job well. However, he did not know at the time that he was being approached because the owners believed he would be an easy person to control. In effect, he was being recruited to be a pawn of the owners.[16] The owners believed they could control the union because they had complete control over the players. They were able to cut or trade any player, including a player that might also happen to be the head of the union. Without a head, the union would cease to function according to the logic of the owners and they would be free to run the league in the manner they wished without interference from the players. Mackey himself was cut by the Baltimore Colts in 1972 as was the common practice of the time. This also resulted in the owners believing they did not have to abide by specific laws, including antitrust legislation.[17] The owners used the system they had built to their advantage to run the NFL in the manner that they wished.

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[15] John Mackey, "Athletes: Freedom Placed Above Economic Desires," *New York Times*, 26 May 1974, p. 176.

[16] Mackey, *Blazing Trails*, 170-1.

[17] Edward R. Garvey, "From Chattel to Employee: The Athlete's Quest for Freedom and Dignity," *Annals of the American Academy of Political and Social Science* 445 (1979): 96.

Mackey brought the same tough, hard-nosed attitude to the bargaining table that he displayed on the football field. He was determined to carry out the desires of the players and not let the owners attempt to break up the union again.[18] As a result, he had a specific plan for the players in the upcoming bargaining session with the owners. He outlined goals that dealt with revenue sharing and the standard contract. Mackey felt the players deserved a larger share of the revenue gained by the NFL from licensing. In the contract, he sought a better pension plan, improved preseason and severance pay, and the reworking of the option clause in the standard player contract. This option clause gave the team the option of retaining a player for a year after the contract expired with a 10% reduction in pay. Mackey went into the initial bargaining sessions with these goals in mind.

However, once he got to the meetings, he realized these goals would not be accomplished as easily as he had hoped. The owners treated him as though he did not understand the process and that their goal was to make bargaining a short process in order to make it a so-called family affair.[19] Mackey realized the owners were trying to force him to agree to things he did not want so he called a lawyer. He got in touch with a labor firm in Minneapolis and requested to switch to a younger lawyer that would be able to better work with the players. Ed Garvey was then assigned to the NFLPA, and he went on to become the Executive Director of the NFLPA for a number of years and was very influential in its development.[20]

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[18] Dave Anderson, "John Mackey's Week," *New York Times*, 19 September 1972, p. 67.

[19] Mackey, *Blazing Trails*, 171.

[20] Mackey, *Blazing Trails*, 174.

One of the players' chief complaints with the current labor situation was the presence of the so-called Rozelle Rule, instituted by Pete Rozelle, which was an early limitation on free agency.[21] It was designed to help create a stable market for the owners and to maintain the competitive balance in the league. There was a fear among the owners and Rozelle that if free agency were allowed with no restrictions, the teams in bigger markets would overrun the smaller market teams. The competitive balance of the league would then be thrown off. The Rozelle Rule also grew out of an unspoken agreement among owners at the time that they would not sign away a player from a fellow owner's team. It was the gentlemanly thing to do in the 1960s and 1970s.[22] This agreement was viewed as a cornerstone of the league's policies by the owners.[23] Without this rule, the owners believed the rich teams would run rampant over the other teams in the league and simply buy up all the talent. The weather could even affect the ability of teams to sign the talent. The teams in colder locales might be unable to get enough talent to be competitive or to even field a team if there were not restriction. Lamar Hunt, owner of the Kansas City Chiefs, described the situation that could result from eliminating the system as "complete bedlam."[24]

Additionally, the Rozelle Rule developed as a response to the option clause in baseball and their lifetime reserve system.[25] In baseball, the reserve clause provided for

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[21] Mackey, *Blazing Trails*, 179-80.

[22] Paul C. Weiler, *Sports and the Law*, 206.

[23] Michael Maccambridge, *America's Game: The Epic Story of How Pro Football Captured a Nation* (New York: Random House, 2004), 317.

[24] "Farewell to Feudalism." *Time*, 12 January 1976.

[25] Weiler, *Sports and the Law*, 206.

the ownership rights of a certain player. When a player signed a contract, he became the property of that particular team. If a player was traded, his ownership rights transferred to his new team. If a player retired and then tried to re-enter the league, the last team he had a contract with would still own his property rights. This reserve clause became important when considering the fact that most contracts were only for one year. Players had little option but to re-sign with the club they played for the previous year which resulted in lower pay and little job security. Football's version of this system was the Rozelle Rule.[26] It was incorporated into collective bargaining agreements beginning in the 1960s. As a result, the movement by players due to free agency was depressed within the league. The Rozelle Rule had accomplished its purpose in maintaining the competitive balance within the league and helping the smaller-market teams to avoid being swallowed up by the larger-market teams.

The players did not like the Rozelle Rule and its effect on free agency within the league, for the same reasons that the owners liked it: it limited their movement and led to lower salaries. Ed Garvey, claimed that the reserve system helped the owners exploit the players in order to maximize profits. It gave the owners the power to control every action of players, including which team they would play for. The players were forced to play for the team they were assigned to, with little choice even after their contract expired and they were a free agent. Because of this inferior position, the players had an uphill battle to even gain a voice. The owners had control over their jobs, so they were at a severe disadvantage in the bargaining process.[27]

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[26] Paul D. Staudohar, *Playing for Dollars Labor Relations and the Sports Business* (Ithaca, NY: Cornell University Press, 1996), 80.

[27] Garvey, "From Chattel to Employee," 92.

John Mackey was not the first player to challenge the legality of the Rozelle Rule in court. Joe Kapp, a quarterback for the New England Patriots, brought suit against the NFL. He contended the Rozelle Rule was a conspiracy that restrained trade and resulted in an illegal monopoly. Therefore, the standard player contract that enforced this policy was in violation of antitrust laws. *Kapp v. NFL* was decided in 1974 and sought $12 million damages as the standard NFL contract violated the Sherman Antitrust Act. He argued he was due these damages because the NFL was the cause of his football career ending. His career ended because he refused to sign the contract and was not allowed to play until he signed the contract. The court rejected his claim and awarded no damages. However, the court did find that the present enforcement of the Rozelle Rule created an undue hardship on the players.[28]

Mackey v. NFL was filed in October 1972 in the District Court of Minnesota challenging the validity of the Rozelle Rule under antitrust legislation. Mackey and fourteen other players sought either damages or injunctive relief against the NFL. The case has gone by the name of *Mackey* because he was president of the union at the time and responsible to filing the suit.[29] *Kapp* was decided before *Mackey* went to trial in 1975. Therefore, this was the second challenge to the legality of the Rozelle Rule under the spectrum of a violation of antitrust legislation, specifically the Sherman Antitrust Act. Mackey had already encountered problems in his dealings with the owners as President of the NFLPA. While all players encountered the same problems in dealing with free agency issues, he took the step to file the suit on behalf of several other players. They felt

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[28] Staudohar, *Playing for Dollars*, 80.

[29] *Mackey v. National Football League,* 407 F.Supp. 1000.

that the Rozelle Rule effectively took away the free agent option they were supposed to have once their contract expired. They felt it was similar to the effect of the reserve clause in baseball.[30]

Mackey approached the issue from a different angle. While Kapp attacked the legality of the standard player contract, Mackey questioned whether or not the restrictions on free agency were in fact a violation of antitrust legislation. Additionally, the suit questioned whether or not the agreement between the players and owners qualified for a nonstatutory labor exemption that would exempt any bargaining between the players and owners from antitrust examination.[31]

Two different legal standards come into play with this case. Antitrust issues can be determined to be *per se* illegal or they can be found to violate the Rule of Reason standard. A restraint on trade can be declared *per se* illegal by the courts if it is found that the restraint is manifestly contrary to competition. In this case it is not necessary to prove that harm resulted from this law and any inquiry into the purpose of the statute is not necessary for it to be declared invalid. The Rule of Reason standard also deals with unfair restraints on trade. This standard involves determining that the practice restricts competition in the affected market.[32]

The players sought damages resulting from a violation of antitrust laws on the part of the owners through their continued enforcement of the Rozelle Rule. They claimed that the Rule constituted a *per se* violation of antitrust laws. However, if the

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[30] Weiler, *Sports and the Law*, 206.

[31] *Mackey v. NFL*, 407 F.Supp. 1000.

[32] *Mackey v. NFL*, 407 F.Supp. 1000.

court found that it did not violate the *per se* standard, they contended that it also violated the Rule of Reason standard for evaluating antitrust legislation. In addition to damages, the players sought injunctive relief against the owners.[33]

The NFL responded to these claims to defend their actions and the Rozelle Rule. First, they disputed whether or not the *per se* standard could be applied in this case. They held the applicable standard was the Rule of Reason standard and that the Rozelle Rule did not violate this standard. Additionally, the NFL claimed that its actions were immune from antitrust action under the nonstatutory labor exemption. The NFL contended that a courtroom was not the proper place to fight this battle. The fight over the Rozelle Rule should be decided by the National Labor Relations Board as this was a labor issue, not an antitrust issue.[34]

In court, the NFL argued that the Rozelle Rule was both reasonable and necessary to maintain the competitive balance of the league. This competitive balance was crucial to the success of the league. Without the Rozelle Rule ensuring this, the league would have ceased to function in its present form. They also presented evidence that argued that the Rule served the interests of the teams as well as the players through its enforcement.[35] Without the Rozelle Rule, the NFL argued that professional football itself would cease to exist. The president of the Dallas Cowboys, Tex Schramm, supported this view which was widely reported by the *New York Times.* He believed the court could do nothing that would affect the NFL in the short-term, but that it could affect the long-term viability of

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[33] *Mackey v. NFL*, 407 F.Supp. 1000.

[34] *Mackey v. NFL*, 407 F.Supp. 1000.

[35] *Mackey v. NFL*, 407 F.Supp. 1000.

not only the NFL but all professional sports.[36] It was this attitude of the owners that the players were facing in their suit. The owners thought their system was inviolable and even the courts could not prevent them from running the league the way they wanted. While the courts might eventually affect the management of professional football, they could only do so in such a way that would affect all professional sports. This seemed to suggest that the owners believed that the only way change could be effected would be for something so drastic to happen, it would destroy all professional sports. In this way, football would not be singled out by the courts. The owners believed they were sheltered in their league and their power by the structure they had built for themselves.

The players faced not only the owners but the media at this point. Commentators of the time viewed their attempt to change the rules as an attack on the NFL. The language used by sportswriters at the time was very negative when referring to the actions of the owners. William Wallace characterized the suit as an attack on the NFL from one of their own.[37] Even after they filed the suit, the players continued to take action to get their voice heard in the media. In 1974, Mackey wrote an editorial in the *New York Times*. He was attempting to explain the position of the players to make up for the bias displayed by the media so far. They were simply trying to gain the freedom that everyone deserves. The media at the time was very influential in using negative language when describing the players' actions. Mackey sought to try to start changing public opinion prior to the strike of the players in 1974.[38]

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[36] William N. Wallace, "NFL is Attacked on 'Rozelle Rule,'" *New York Times*, 25 May 1972, p. 59.

[37] Wallace, "NFL is Attacked on 'Rozelle Rule,'" p. 59.

[38] Mackey, "Athletes: Freedom Placed Above Economic Desire," p. 176.

The Court's opinion was written by Judge Earl Larson, the presiding judge of the trial, and rendered on December 30, 1975. Due to a pre-trial agreement between both parties, the trial was heard in front of a judge rather than a jury. This agreement of a trial was an important aspect in the case as both sides wanted an actual trial. The trial lasted for fifty-five days and involved testimony by players, owners and experts. The first part of Judge Larson's ruling confirmed that the NFL was in fact subject to antitrust laws, citing the precedent established by *Radovich v. National Football League* in 1957.[39]

Larson found that the Rozelle Rule substantially restricted player movement and resulted in lower salaries than would otherwise be achieved. He also found that the Rule substantially interfered with interstate commerce in that it restricted the ability of the players to negotiate for an increased salary. This has resulted in the players not being able to adequately market their services to other teams in an open market. Without the Rozelle Rule, there would be increased player movement and increased bargaining power for the players.[40]

Therefore, Judge Larson held that the Rozelle Rule was a *per se* violation of the Sherman Antitrust Act. The NFL was not engaging in a bargaining relationship with the players and was in effect boycotting as a group. Based on precedent, this constituted a *per se* violation of the Sherman Antitrust Act as it unreasonably restrained trade and interstate commerce. Judge Larson also held that the Rozelle Rule was invalid under the Rule of Reason standard. The Rule was unreasonable in many respects. It was unreasonable in its broad application to all players regardless of their talent or ability to

[39] *Mackey v. NFL*, 407 F.Supp. 1000.

[40] *Mackey v. NFL*, 407 F.Supp. 1000.

earn a higher, more competitive salary. The Rule did not allow for the player to know if any other teams were even interested in signing him. The free agent was effectively excluded from the bargaining process under the Rozelle Rule. Additionally, it was unreasonable in that its duration was unlimited. The restriction applied to every player throughout his career and he was never truly a free agent, able to negotiate with other teams for his services.[41]

Judge Larson also denied the NFL's claim to a labor exemption. He held that the exemption only applied to the activities of employees or unions, not to the actions of employers such as the NFL. The Rozelle Rule was not a bargained aspect of any agreement. The owners had simply refused to negotiate on that aspect of any collective bargaining agreement. He also found that the Court was in fact within its jurisdiction to decide a case such as this and that it was not the responsibility of the NLRB as the NFL had claimed. The Rozelle Rule was found to be in violation of antitrust laws and therefore illegal.[42]

The NFLPA was happy with this outcome. It was a vindication of everything they had fought for in the past three years. This case was significant to the players in that it was the first case to go to trial testing policies of the NFL. Therefore, it could only be overturned on points of legality. Ed Garvey expressed the union's opinion on the case. He pointed out the significance of the case in light of past struggles of the players. As the *Chicago Tribune* reported, "in 1974, the NFL players struck for freedom. Today, the federal courts said they deserve the right guaranteed other citizens in our country.

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[41] *Mackey v. NFL*, 407 F.Supp. 1000.

[42] *Mackey v. NFL*, 407 F.Supp. 1000.

Professional football will flourish under this ruling."[43] Many also believed this ruling was important in the bargaining relationship. The players had won a position of greater power when bargaining with the owners and with the teams.[44]

The league had a different view of the outcome. An appeal was planned immediately upon hearing Larson's decision. This move would also give the owners time before they had to implement any forced changes. Rozelle, as Commissioner, made a statement regarding the opinion on the league following the ruling. The owners "had hoped that the court would find the antitrust laws sufficiently flexible to accommodate the unique and special needs of a professional football league." Commentators such as Red Smith believed that the owners simply wanted special treatment and the ability to bend the laws to their liking without necessarily outright breaking them.[45]

At this point, the tide of media opinion appeared to switch to the side of the players. Commentators of the time viewed the actions of the owners in a very negative light. They were described as having an almost feudal mentality with the way they ran the league. Red Smith even went so far in the *New York Times* to suggest that the owners might eventually have to start obeying the law.[46] This attitude was a complete reversal from the attitude displayed only a few years prior. The media was now moving against the owners and on the side of the players. Once the District Court made this ruling, the opinion of commentators seemed to change to side with the players.

[43] "U.S. Judge Sacks Rozelle Rule," *Chicago Tribune*, 31 December 1975, Sec. B, p. 1.

[44] Wallace, "Rozelle Rule Found in Antitrust Violation," *New York Times,* 31 December 1975, p. 27.

[45] Red Smith, "We Hoped the Laws Were Flexible," *New York Times*, 2 January 1976, p. 39.

[46] Smith, "We Hoped the Law were Flexible," p. 39.

The NFL disagreed with this ruling and appealed to the Court of Appeals for the Eighth Circuit on June 17, 1976. The players sought for the decision of the District Court to be upheld. They made the same argument before the Appeals Court that the Rozelle Rule violated antitrust law in that it was an illegal restraint on trade and denied the players the ability to negotiate freely with other teams. The appeal of the NFL centered around two main issues with the ruling of the District Court. The NFL challenged the ruling that the NFL did not qualify for a labor exemption that would make it immune to an antitrust suit. Additionally, the NFL challenged the finding that the Rozelle Rule violated antitrust legislation.[47]

The opinion was handed down on October 18, 1976 and written by Judge Lay. The Court upheld the decision of the District Court, though the reasoning was somewhat different. Judge Lay held that while the NFL could possibly invoke the nonstatutory labor exemption in regards to antitrust policy, it could not be invoked in this case. Since the Rozelle Rule was not achieved as a result of good-faith bargaining on both sides, the exemption did not apply. In contrast to the opinion of Judge Larson, the Appeals Court held that the Rozelle Rule was not a *per se* violation of antitrust policy. However, it did not meet the Rule of Reason Standard as currently enforced. Therefore, the Rozelle Rule was again struck down by the Appeals Court.[48] The NFL eventually appealed to the Supreme Court, but the writ of certiorari was denied and the decision of the Appeals Court stood.[49]

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[47] *Mackey v. National Football League*, 543 F.2d 606.

[48] *Mackey v. National Football League*, 543 F.2d 606.

[49] *National Football League v. Mackey*, 434 U.S. 801.

Throughout this ordeal in the courts, the players and owners were again at the bargaining table attempting to hammer out a new collective bargaining agreement. The agreement from 1970 had expired and it was again time to negotiate. The experience of the players was similar to other attempts at bargaining with the owners. The owners were still refusing to discuss the Rozelle Rule and other issues that dealt with the freedom of players. Mackey reiterated several times that the players were not interested in economic issues as much as issues of freedom. He took this argument to the public in an editorial in the *New York Times* where he expressed his opinion that economic concerns were secondary to those of freedom. The players believed that the freedom they sought would result in a better league. This bargaining process was not about salary, but about the ability of the players to negotiate freely with teams and to not have their every move scrutinized by the league office. The players, as expressed by Mackey, would stop at nothing this time to gain the freedom they so desperately wanted and believed they deserved.[50] At this point, the players were simply waiting on the decision of the courts. They were sure that the courts would find the Rozelle Rule illegal and therefore it would no longer be necessary to fight with the owners on including it in various bargaining agreements.[51] The players were simply playing a waiting game at this point. They believed if they waited long enough to negotiate, the courts would vindicate their position.

As a result of the impasse in negotiations in 1974, the players went on strike to have their demands heard. The dispute got so bad that the two sides could not agree on

[50] Mackey, "Athletes: Freedom Placed Above Economic Desires," 176.

[51] Bob Logan, "NFL Pact Rejected by Players," *Chicago Tribune,* 11 September 1975, Sec. C, p. 4.

what they were arguing about in the negotiations. The players went on strike and used the media to have their voice heard. *Sports Illustrated* reported that while the two sides could not agree on the dispute, the players could take their side to the public to gain public support. One of the first steps in this campaign was picketing outside training camp. The camp was still going on with only rookies participating. In San Diego, several players stood outside in the heat holding signs, picketing for freedom. While they could not enter the training camp, they still ensured television coverage of their actions and their position.[52] This was part of the plan of the players to force the owners to agree to their position. The show of the picket lines was designed to entice public support to their side. They did not have the courts on their side as of yet as the case had not been decided, but the players hoped the tide of public support against the owners because of the strike would help their cause. It was part of a campaign by the players to discredit the owners in the eyes of the public, especially the ticket-buying public. But during this strike, the players forgot one crucial element: money.

Their position continued to be that the Rozelle Rule was inherently unfair because of its structure. The Rule was to be enforced by Rozelle himself. The players saw him as a pawn of the owners as well. Therefore, any action taken by Rozelle in enforcing this policy would be to the advantage of the owners and not the players.[53] The players were content to let the courts decide the issue as they believed they had little other recourse to fight the owners. They could not go to the league and they could not bargain on the issue in good faith, so they waited on the decision.

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[52] Joe Marshall, "Solidarity with Solidity," *Sports Illustrated* 41, no. 3 (1974): 57.

[53] Red Smith, "Football's Long Hot Summer II," *New York Times*, 25 April 1975, p. 54.

The players were fighting to gain the freedom and power to negotiate their own salaries with the team they wanted. This would obviously be to their benefit to have this power. Simply because it made sense to them, they forgot the importance of the opinion of the fans. They were picketing to gain the attention of the public to attempt to get them on their side. However, their argument was one based on emotion and freedom. The fans were interested in how it would affect their own pocket and bank account. While the players appealed to the emotion of the fans, they forgot to explain how their demands would not have an impact on the wallets of the fans.

The media was beginning to get fed up with the situation between the players and the owners at this point. Both sides were attempting to court the opinion of the fans and the public, but the media was beginning to view neither side favorably. Red Smith of the *New York Times* argued that the fight between the players and the owners was just picking back up again. The fight was continuing on and it was getting old quickly. The players and the owners were just as unwilling to compromise at this point as they had been in the past. He saw no end in sight to the conflict. The media was beginning to turn on both sides.[54]

The owners, again, did not take the demands of the players seriously. They believed that every demand came down to money and that the demands for freedom were not to be taken seriously. Therefore, they refused to bargain unless the issues that dealt with freedom, namely the Rozelle Rule, were taken off the table. Now, the owners are trying to reverse course and force the union to bargain on the Rozelle Rule. This would legitimize the Rule because it would then be a result of a legitimate bargaining session.

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[54] Smith, "Football's Long Hot Summer II," p. 54.

This was the standard that had to be met under the ruling of the Appeals Court.[55] The owners believed they could force the players to agree to a revised version of the Rozelle Rule.[56]

They also conducted a public relations campaign to get the public on their side. The players continued their strike at the first exhibition game of the 1974 season, the Hall of Fame game. The players planned to block the entrance of the players to the stadium and prevent the game from being played. A massive logistical plan was put in place by the owners to allow the game to continue. Through a monumental effort, the game was a success. Since the veterans were on strike, the teams were made up of rookies. Therefore, the games were played by rookies. Since this was not as desirable a product, the owners offered refunds to any ticket holders for games played by the rookies. As *Sports Illustrated* noted this was the most successful measure undertaken by the owners during the strike.[57] The owners had more resources at their disposal and used them well during the strike. Their public relations campaign was much more successful than that of the players.

The success of the owners was evident in the attitude of the fans. By the time of the Hall of Fame game in August of 1974, many fans had already had enough. They were frustrated with the lack of progress and the incessant fighting between the players and the owners. This frustration did not end just as the internal conflict did not end.[58] The displeasure of the fans took many forms. They were disgusted with the constant bickering

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[55] Red Smith, "Football and Union-Busters," *New York Times*, 14 September 1975, p. 191.

[56] Logan, "NFL Pact Rejected by Players," p. 4.

[57] Ray Kennedy, "Star-Struck Canton," *Sports Illustrated* 41, no. 6 (1974): 10-3.

[58] Ray Kennedy, "A Strike Forces the Issue," *Sports Illustrated* 43 no. 13 (1975): 56.

with no real progress. They did not think the athletes deserved more money as they already made more than the average blue-collar worker. The fans did not buy into the argument that the players needed more freedom. To them, this increased freedom would only result in higher ticket prices and more expense to them as fans. Fans even went so far as to form a club to represent their interests. United Sports Fans was supposed to represent the interests of the fans as they were the ones who paid the bills. They did not support the argument of the owners that it cost them money to pay the players more. Fans of the 1970s viewed any increase in salary for the players as coming directly out of their pocket. Support for the owners during this period was high. Surveys had the support of the owners at 80% and it was higher in certain cities.[59] The opinion of the fans was perhaps stated best by the owners' labor counsel, Ted Kheel, when he told a reporter from *Sports Illustrated*, "Let's face it, the fans are primarily interested in having this damn thing over with, not in the arbitrability of the issues."[60] The fans were clearly on the side of the owners in this debate. Their public relations campaign was much more effective than that of the players.

The owners recognized the importance of money in this debate. They did not want to have to shell out additional money to pay the players the higher salaries that would result from decreased restrictions on free agency. They also knew that the issue of money would be important to the fans. In their campaign for public support, the owners used the appeal of money to win the opinion of the fans. They made moves to lessen the impact of any strike or other action by the players on the wallet of the fans. This appeal was

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[59] Kennedy, "Star-Struck," 10-3.

[60] Kennedy, "Star-Struck," 13.

effective. While the players made a good emotional argument, the campaign to positively affect the wallet of the fans was a success.

Unlike the media who became fed up with both parties in the argument, the fans took a side in the argument. They were won over by the owners and their argument about saving the fans money. The media did not dissuade the fans from siding with the owners; however, they might have had an impact on the perception of the players. The demands of the players were always portrayed in a negative light by commentators and sportswriters, while the demands of the owners were portrayed in both a positive and negative light. This combined with the campaign by the owners to win public opinion was successful. The last straw for the fans appears to have been the strike of 1974. They were fed up with the situation and the demands of the players. These demands were not taken seriously by the fans. The media was against both the players and the owners at this point, so the fans were won over by the actions of the owners to save them money.

While the owners won the battle of public opinion, the players won the battle in the courts. The immediate result of this victory should have been the elimination of the Rozelle Rule from future collective bargaining agreements. However, the collective bargaining agreement signed in 1977 still included the Rozelle Rule.[61] The players had agreed to essentially a watered-down version of the Rule. The NFLPA simply agreed to a different method of free agent compensation. The present team of the free agent now had the right to refuse the offer or be compensated by future draft picks rather than current players. This method actually proved to be more restrictive than the system under the

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[61] Staudohar, *Playing for Dollars*, 80.

Rozelle Rule. The cost to the team could be higher than before.[62] The 1982 agreement lessened the restrictions on free agency, but they were still there.[63] The players had yet to achieve the free agency they sought when they filed suit against the NFL. They did gain benefits from the collective bargaining agreements in 1977 and 1982 even though they were not free agency. In 1977, the players negotiated for the restoration of union security and improvements in the disability and pension plans for players. In 1982, the players gained a better foothold in revenue sharing and in establishing a scale of minimum salaries.[64]

In the negotiations following this ruling, the players announced they were willing to bargain. By this time, Mackey was no longer President of the NFLPA. The new president was Dick Anderson. Despite the victory won in courts, Anderson went into these sessions with the stated goal of bargaining on the Rozelle Rule. The negotiations had reached a standstill and this was seen as a conciliatory gesture. It was the most contentious issue yet to be addressed in the sessions and was preventing much of the progress from occurring. Anderson believed football could reach a compromise because other major professional sports had been able to reach a compromise on similar issues. This was his response to the actions of the Appeals Court in throwing out the Rozelle Rule. He was willing to bargain with the owners in return for possibly reaching an

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[62] Weiler, *Sports and the Law*, 231.

[63] Staudohar, *Playing for Dollars*, 80.

[64] Weiler, *Sports and the Law*, 231, 238.

agreement.[65] To Anderson, reaching a new agreement was more important than sustaining the recent gains the players had been able to achieve in court.

In addition to the new union chief, the players had to contend with the opinion of the public and the media. They were facing an uphill battle in gaining the support of the media and the fans for their contract demands. They had just fought a long and costly battle in the courts and could not afford another battle against the media and fans. The loss of public support for their demands was a significant factor in their decision to negotiate and give away some of the gains they had just won in court. They did not win the battle in the court of public opinion.

The players rejected the subsequent agreements reached by Anderson and the owners. They were still trying to find a way to keep the gains they had fought so hard for in court. A new collective bargaining agreement was finally reached in 1977 in which the players made significant gains in areas other than the Rozelle Rule. As a result of their rejection of the initial offer, the owners were forced to make extra concessions to the players. The union also made gains in their relative power. After the strikes and failed bargaining of previous years, the union was finally on solid footing. The treasury had been emptied by the long court fights and the owners were content to let them spend their money and go bankrupt. Their strategy was to wait out the union and let it disappear. Again, they were unsuccessful. The union was now in a much better position both financially and at the bargaining table. This resulted from the determination of the union to never be bullied by the owners after they were forced to accept a contract they did not

[65] Cooper Rollow, "We'll Bargain on Rozelle Rule: New Union Chief," *Chicago Tribune*, 19 March 1976, Sec. C, p. 3.

want in 1970.[66] While Anderson was content to agree to other conditions, the players as a whole held out for better options from the owners. As a result, they gained a better labor contract. The Rozelle Rule was still in effect, but the players had succeeded in making significant gains at the bargaining table and forcing the owners to give in to some of their demands. The gains were not the ones initially fought for, but they were important nonetheless.

Conclusion

The gains the players made in subsequent negotiations with the owners seem on the surface to be contradictory to the reasons they filed *Mackey v. NFL*. They also seem to show the players ignoring the victory they won in the decision. They had won the case and millions of dollars in damages from the NFL. They also succeeded in having the Rozelle Rule declared illegal under antitrust laws. Therefore, it would make sense that their first move upon winning this case would be to abolish it forever from further collective bargaining agreements. However, this did not happen. The rule remained as did strong restrictions on free agency. This case is widely considered to be a landmark case in sports labor and more specifically in the history of labor in the NFL, yet the players bargained away the rights and ground they gained the very next year at the bargaining table.

While the players did not take advantage of the most obvious gain from *Mackey v. NFL*, they certainly did not ignore the decision. The decision and its effects proved to be vital to the union and the interests of the players over the years. The decision solidified

[66] Kenneth Delinger, "Garvey, Union Can Be Proud of their Stand; NFL Players Move From Surviving to Shopping," *The Washington Post*, 27 February 1977, Sec. D, p. 1.

their position at the bargaining table.[67] The NFLPA now had a legitimate answer to the owners when they tried to say the union was not valid or it was not important to recognize them at the bargaining table. The appeals decision held that the players must be given a seat at the bargaining table. The owners had to bargain with them in good faith to achieve the nonstatutory labor exemption.[68] This was not done with the Rozelle Rule and this failure, in part, led to it being declared invalid. John Mackey had trouble when he became President of the NFLPA getting the owners to listen to his demands and take him seriously. He was elected in part because the owners thought they could bully him into agreeing into whatever they wanted. Now the players had legal ground to gain standing at the bargaining table. No longer could the owners take their wishes for granted. They had to negotiate with the players and recognize the legitimacy and power of the union. The decision and the recognition of the NFLPA as a bargaining power helped to create the labor relationship between the owners and players to this day. The league has not had to deal with as many strikes or threats of lockouts as have other professional sports. The good bargaining relationship that led to this had its beginning in *Mackey v. NFL.*

While the players did gain a better seat at the bargaining table, this power had a caveat. According to the ruling of the Appeals Court, the reserve system and the Rozelle Rule had to be a result of good faith bargaining. If this bargaining took place, any type of rule or procedure would be legally valid. It was this bargaining that made it legal. Therefore, if the players bargained on the Rozelle Rule or any other provision, that provision would not be subject to antitrust laws. The courts had passed responsibility for antitrust laws to the unions. They would now be in charge of ensuring the NFL did not

[67] Robert C. Berry, *Labor Relations in Professional Sports*, 107.

[68] Mackey, *Blazing Trails*, 186.

violate the law. The owners also had their provision that could allow their policies to continue. This was why it was so important to the players to be successful in their bargaining and why they went on strike in 1974. If they relented and compromised with the owners at that point, this ruling would not have had the same effect. The position of the players would have been weakened.[69] This caveat in the ruling gave the owners the position they needed to force bargaining issues with the players. They did not achieve all the gains they wanted to when they filed the suit.

The erosion of fan support, if it even existed, for the position of the players also played into their actions in bargaining with the owners. The fans had made it clear during the strike and the year after that they were growing sick of the endless bickering over labor issues. They did not view the freedom issues the same way the players did. Mackey's effort to persuade them with an editorial and the dramatic portrayal of the strike did not work. The owners succeeded in courting the opinion of the public. This played a part in the efforts of the players to bargain after the case was decided. Many factors played into it, but the failure to persuade the public to their position played a part in their actions.

The players used many tactics to fight the owners and to gain freedom and power throughout the 1970s. They fought through negotiations, the courts, the media and the fans. What began as a move to gain greater freedom through free agency became something different as the court case progressed. The players wanted the Rozelle Rule to be eliminated to allow for greater freedom to negotiate and sign with other teams. This led to them filing a court case. They were not getting anywhere through negotiations with the owners due to the owners' attitude toward the players and their demands. They took

[69] Kennedy, "Star-Struck," 12-3.

their fight to the courts. In the midst of this court battle, the players tried to win over the opinion of the fans and the media. At first, the media was firmly against the players and their demands. However, this changed once the attitude of the owners became more apparent. The media recognized the owners were willing to bend the laws and treat the players with less respect and dignity then they deserved. However, they did not win the affections of the fans. They sided with the owners and their wallets. The owners offered better financial incentives to the fans. The players could only counter with ideological arguments and the fans did not want this. They wanted to see tangible benefits to them. The one area the players did win in was the courts. *Mackey v. NFL* was decided in their favor and the Rozelle Rule was found to be illegal.

While the players won this victory in the courts, the battles they lost in the public arena led to them being unable to completely eliminate the Rozelle Rule. In combination with the new union chief who was willing to negotiate, the players could not push through vast reform of the bargaining agreements of the day. The fans and the media were against them and the players had expended too much energy fighting in the courts to continue the battle. This ultimately led to the bargaining agreements of 1977 and 1982 that still included the Rozelle Rule. While the players fought for freedom and power in the 1970s, they were ultimately unable to achieve the gains they wanted due to the new union chief and the loss of public support.

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