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Matt Stankiewicz
Seton Hall Law

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Pryor Transgressions: An analysis of whether the NFL's Personal Conduct Policy can be used to enforce NCAA sanctions

Matt Stankiewicz

I. INTRODUCTION

Roger Goodell, the Commissioner of the National Football League (NFL), has broad disciplinary powers under both the NFL's Collective Bargaining Agreement (CBA) and the NFL's Constitution. Goodell recently exercised these powers in a controversial decision. After the NCAA suspended quarterback Terrelle Pryor for selling memorabilia and receiving gifts in violation of NCAA rules, Pryor attempted to circumvent the suspension by choosing to enter the NFL instead of playing out his final season at Ohio State University (OSU). In order to prevent Pryor from exploiting this loophole, Goodell stepped in and required Pryor to serve a suspension of the same length upon employment in the NFL.

This comment will explore the breadth of the commissioner's disciplinary powers: it will analyze whether Pryor is subject to those powers, consider whether applying them to Pryor was the proper move for the NFL, and explore the potential impact of that move. In particular, Section II will give background information on Terrelle Pryor summarizing his college career, detailing his path in to the NFL, and highlighting the punishment he received upon entry into the Supplemental Draft. It will sort through the correspondences between Pryor and his school, as well as between Pryor and the NFL offices. It will also briefly discuss his coach, Jim Tressel, and his move to the NFL. Section III will outline the powers that the Commissioner possesses. It will

breakdown how the NFL's CBA and Constitution grant the Commissioner the ability to discipline players as he deems fit. It will also analyze a number of precedents in an attempt to conceptualize how far his powers may extend. Section IV will analyze whether the NFL made the proper decision and determine its ultimate impact. It will first look at the immediate impact upon Pryor. It will then outline ethical concerns over the decision and the message it sends to the public. Next, it will consider whether retroactive punishments should now be implemented throughout the league. Finally, it will also conceptualize the impact upon competing leagues.

II. FACTUAL BACKGROUND

A. Terrelle Pryor

1. Pryor's College Career

Terrelle Pryor was a star quarterback for OSU.¹ At 6' 5" and 232 pounds, Pryor was a highly recruited prospect coming out of high school.² As a freshman during the 2008-2009 season, Pryor had an 8-1 record as a starter, led the team to a Big Ten Conference Championship, and was voted Big Ten Freshman of the Year.³ The following season, Pryor led the team to another Big Ten Conference Championship, as well as a win in the Rose Bowl where he was named MVP of the game.⁴ During the 2010-2011 season, allegations against Pryor began to surface. Notably, Pryor was accused of receiving cash and discounted tattoos in exchange for memorabilia.⁵ On

¹ Steve Helwagen, *Terrelle Pryor: Definitive Timeline* (June 2011), <http://247sports.com/Article/Terrelle-Pryor-Definitive-Timeline-27953>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

Thursday, December 23, 2010, the NCAA, after a lengthy investigation, released a statement declaring that Pryor would be suspended for the first five games of the 2011 season for selling a number of his awards in 2009 in violation of NCAA bylaws.⁶ Pryor sold his 2008 Big Ten Championship ring, his 2009 Fiesta Bowl Sportsmanship Award, and his 2009 Gold Pants, an award from the university for beating the University of Michigan during the season.⁷ A four game suspension is the standard for these types of transgressions; however, a fifth game was added since Pryor failed to disclose the violations when presented with the opportunity.⁸ Pryor was also required to pay \$2,500 – the money that he earned from the sale of these goods – to a charity of his choice.⁹

Despite the violations and the looming suspension, the NCAA allowed Pryor to play in the Sugar Bowl that year.¹⁰ The NCAA’s statement cited the fact that the “student-athletes did not receive adequate rules education during the time period the violations occurred.”¹¹ In addition, the NCAA also “recognize[d] the unique opportunity” that a championship bowl game presents to the student-athlete and did not want to take that away.¹² The university also consented to having Pryor play, as OSU Athletic Director Gene Smith conceded that the school’s rules education was less than adequate.¹³ Furthermore, Jim Tressel, OSU head coach, stated before the bowl game that he would not have allowed Pryor to play in it had he not agreed to come back and play in

⁶ NCAA Requires Loss of Contests for Six Ohio State Football Student-Athletes (Dec. 23, 2010), *available at* <http://www.ncaa.org/wps/wcm/connect/ncaa/ncaa/media+and+events/press+room/news+release+archive/2010/infractions/20101223+osu+fb+rls?pageDesign=old%20news%20releases%20template>. [hereinafter NCAA Press Release].

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ See NCAA Press Release, *supra* note 6.

¹² *Id.*

¹³ *Id.*

2011 and serve the NCAA's suspension.¹⁴ Later, in a post-game interview, Pryor stated, "I don't think I'm ready for the NFL," affirming his commitment to OSU for the following season.¹⁵

OSU went on to win the Sugar Bowl, and Pryor was named the game's most outstanding player.¹⁶ During the off-season, more allegations against the OSU football program came to light, and the NCAA issued additional suspensions.¹⁷ This time the culprit was Tressel. In April 2010, Tressel had received an email from an unidentified source revealing that two of his players were selling memorabilia and were involved in a federal drug trafficking case.¹⁸ Tressel responded that he would handle it, yet he failed to report the violations to the university for over nine months, a clear violation of NCAA rules.¹⁹ OSU stepped in before the NCAA could, and suspended Tressel for the first two games of the 2011 season and fined him \$250,000.²⁰ On May 30, 2011, due to the infractions and further allegations in an upcoming Sports Illustrated report, Tressel resigned from his position.²¹ Pryor reached out to Tressel's replacement, Luke Fickell, before the season, yet Fickell never returned his calls.²² There was clearly a chasm opening between the player and the school.

2. Pryor's Transition to the NFL

¹⁴ See Helwagen, *supra* note 1.

¹⁵ *Id.* [Pryor's commitment to play for OSU in 2011 is an important factor later in this Comment.]

¹⁶ *Id.*

¹⁷ *Jim Tressel suspended 2 games, fined* (Mar. 9, 2011), <http://sports.espn.go.com/ncf/news/story?id=6194162>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Jim Tressel tenders resignation* (May 31, 2011), <http://sports.espn.go.com/ncf/news/story?id=6606999>.

²² Mike Florio, *NFL still hasn't given Pryor an answer* (Aug. 16, 2011), <http://profootballtalk.nbcsports.com/2011/08/16/nfl-still-hasnt-given-pryor-an-answer/>.

Due to these events, Pryor decided to move on from OSU and pursue his professional career in the NFL. Pryor committed to this path by hiring Drew Rosenhaus as his agent.²³ By hiring an agent, Pryor nullified his amateur status, thus making him ineligible to play college football under NCAA regulations.²⁴ Therefore, playing another season at OSU was no longer an option for him. By this point, the NFL's college draft had already passed; Pryor's only option for employment in the league for the upcoming season was through the NFL's supplemental draft.

i. Gaining Access to the Supplemental Draft

The supplemental draft runs every year following April's college draft.²⁵ Prospects become eligible for this draft only if their college playing status had changed after the January registration deadline for the standard draft had passed.²⁶ The most common examples of a status change are when an athlete is declared academically ineligible or when a player is kicked off the team for violating school rules.²⁷ A player with any remaining college eligibility will usually not be eligible for the supplemental draft; one can forego remaining college seasons to enter the primary draft early, but not the supplemental one.²⁸ These guidelines were created to grant college players access to

²³ *OSU: Pryor ineligible, banned five years* (July 26, 2011), http://espn.go.com/blog/bigten/post/_id/29651/osu-pryor-ineligible-banned-five-years.

²⁴ 2010-2011 NCAA Division I Manual, *available at* <http://www.ncaapublications.com/DownloadPublication.aspx?download=D111.pdf>. [Bylaw 12.3 states "An individual shall be ineligible for participation in an intercollegiate sport if he or she ever has agreed (orally or in writing) to be represented by an agent"].

²⁵ Joel Thorman, *How Does The NFL Supplemental Draft Work?* (Aug. 22, 2011), <http://www.sbnation.com/2011/8/22/2377080/how-does-the-nfl-supplemental-draft-work-rules>.

²⁶ Constitution and Bylaws of the National Football League at 52, *available at* http://static.nfl.com/static/content/public/static/html/careers/pdf/co_.pdf.

²⁷ Josh Alper, *Terrelle Pryor might not be eligible for supplemental draft* (July 24, 2011), <http://profootballtalk.nbcsports.com/2011/07/24/terrelle-pryor-might-not-be-eligible-for-supplemental-draft/>. [Ironically, the Supplemental Draft was originally created as a conduit for troubled college athletes.].

²⁸ *Id.*

the NFL should something unexpected happen to them, yet prevent others from manipulating the system and having control over their own destiny.²⁹ The NFL does not want potential draft choices to wait for the supplemental draft in order to avoid being drafted by certain teams picking at the top of the standard draft.³⁰ Clearly, the NFL has a legitimate concern over players abusing the supplemental draft system.

Therefore, Pryor had to prove that he no longer had any eligibility remaining in order to participate in the supplemental draft. He sought proof that he was ineligible by having his attorney write to the university to request, in writing, a letter from OSU stating that Pryor would be ineligible for the upcoming season.³¹ The university responded as requested.³² On July 26, 2011, Ohio State instituted a five-year ban for Pryor.³³ In his letter to Pryor, Ohio State Athletic Director Gene Smith wrote:

I have appreciated your willingness in the past to consent to lengthy interviews by the institution and the NCAA, and to provide certain financial records. I was disappointed to learn from your attorney that as of June 7, 2011, you have chosen not to interview with the representatives of the NCAA and the Ohio State University. In light of that decision the university must declare you ineligible for intercollegiate competition because you failed to cooperate with the university in violation of NCAA Bylaw 10.1 [which requires, among other things, cooperation and forthright, honest answers]. In addition, due to that failure to cooperate, the university must disassociate you from its athletic program for a period of five years.³⁴

²⁹ *Id.* [NFL spokesman Greg Aiello stated that the supplemental draft “is for players whose circumstances have changed in an unforeseen way after the regular draft. It is not a mechanism for simply bypassing the regular [draft].”].

³⁰ The problem would arise when an undesirable team selecting at the very top of the draft needs a player at a certain position. The best player at that position could choose to not declare for the college draft, thus forcing that team to take someone else at that position. That player could then enter the supplemental draft, where the undesirable team will be very unlikely to spend another high pick on the same position.

³¹ Adam Rittenberg, *OSU: Pryor ineligible, banned five years* (July 26, 2011), http://espn.go.com/blog/bigten/post/_id/29651/osu-pryor-ineligible-banned-five-years.

³² *Id.*

³³ Scoop Jackson, *Terrelle Pryor's football limbo* (July 30, 2011), http://espn.go.com/espn/commentary/story/_/page/jackson-110729/terrelle-pryor-ohio-state-ineligibility-nfl-supplemental-draft-limbo.

³⁴ *Id.*

This disassociation includes a number of consequences. First, Pryor can have absolutely no contact with potential recruits or enrolled students.³⁵ Second, Pryor cannot accept any complimentary tickets to OSU home games.³⁶ Finally, Pryor cannot make use of the team's athletic facilities.³⁷ The university did note that Pryor would be allowed to resume classes on campus if he desired to finish his education.³⁸ At this point, Pryor had no choice but to go to the NFL in order to continue his football-playing career.

This was a savvy move by Ohio State. The declaration of ineligibility allowed one of its preeminent players access to the NFL, allowing him to fulfill his dream. Allowing Pryor to return to finish classes, if he chose to take that route, showed that the university supported the NCAA's stance that education takes precedence over athletics.³⁹ It also allowed the Ohio State football program to save face by distancing itself from a miscreant player. Yet, it would also prevent the NCAA from disciplining a player who violated its rules. Ohio State was surely upset that the NCAA was becoming involved in the affairs of the university and its players; allowing its most high-profile athlete to avoid suspension would show just how weak the enforcement arm of the NCAA was. It was like a slap in the face to the NCAA. Regardless of the motive behind the move, Ohio State had essentially cleared Pryor's path into the NFL.

ii. Goodell Imposes a Conditional Suspension

³⁵ *Ohio State: QB couldn't play in '11* (July 26, 2011), http://espn.go.com/college-football/story/_/id/6805747/ohio-state-bans-terrelle-pryor-five-years-says-play-11-season.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Walter Harrison, *Why NCAA Is Raising The Bar: Academics Comes First* (Oct. 30, 2011), <http://www.chicagotribune.com/news/opinion/hc-op-harrison-ncaa-uconn-1030-20111030,0,7659562.story>. [Chairman of the NCAA Committee on Academic Performance states that the first principle of the NCAA is that "the academic success of student athletes must come first."].

Roger Goodell, Commissioner of the NFL, followed these events and was not pleased with Pryor moving on to the NFL in lieu of his suspension. The supplemental draft – originally scheduled for August 17 – was postponed indefinitely in order to allow Goodell to evaluate the situation.⁴⁰ Pryor, along with all the other registered prospects, was kept in limbo while Goodell determined his fate. Goodell wrote a letter to Pryor on August 18 laying out his thoughts.⁴¹ The letter read:

I do not believe that a player who has affirmatively acted contrary to NCAA rules should automatically and immediately be deemed eligible to pursue a potentially lucrative career in the NFL. Doing so would be inconsistent with common-sense notions of accountability and personal responsibility, and distorts our own eligibility principles. Accordingly, I believe that it would be entirely appropriate to find you ineligible for the Supplemental Draft, and to require you to defer entry into the NFL until the regular April 2012 College Draft.⁴²

The Commissioner eventually softened his stance and allowed Pryor to enter the Supplemental Draft on the condition that he serve a five-game suspension, matching the suspension administered by the NCAA.⁴³ The NFL – through both Goodell and its public relations arm – gave a number of reasons for this decision. The primary one revolved around the notion that Pryor’s actions would undermine the integrity of the eligibility rules.⁴⁴ The NFL further went on to declare that a player cannot “choose to violate NCAA rules, obtain a declaration that he is ineligible . . . and then be rewarded by

⁴⁰ Mike Florio, *League postpones supplemental draft* (Aug. 16, 2011), <http://profootballtalk.nbcsports.com/2011/08/16/league-postpones-supplemental-draft/>.

⁴¹ Mike Florio, *Letter to Pryor makes clear Goodell’s desire to assist enforcement of NCAA rules* (Aug. 21, 2011), <http://profootballtalk.nbcsports.com/2011/08/21/goodells-letter-to-pryor-makes-clear-leagues-desire-to-aid-enforcement-of-ncaa-rules/>.

⁴² *Id.*

⁴³ Mike Florio, *In suspending Pryor, league relied on general provisions regarding “detrimental conduct”* (Aug. 18, 2011), <http://profootballtalk.nbcsports.com/2011/08/18/in-suspending-pryor-league-relied-on-general-provisions-regarding-detrimental-conduct/>.

⁴⁴ *Id.*

entering the NFL draft.”⁴⁵ The most interesting explanation came in Goodell’s letter to Pryor outlining his final decision. In that letter, Goodell refers to “the NFL’s historic support for college football” when explaining his reasoning.⁴⁶ That language made it very clear that the violation of NCAA rules and the suspension administered for those violations weighed on the final decision.

The National Football League Players Association (NFLPA)⁴⁷ consulted with Goodell on the suspension and, at the time, decided to sign off on it at the urging of Pryor and his agent.⁴⁸ Pryor would likely be barred from the Supplemental Draft completely were he, or the NFLPA, to refuse to accept the suspension. Missing the Supplemental Draft would have forced Pryor to sit out from football for an entire year, severely crippling his chances of ever playing in the NFL. Therefore, Pryor decided to accept his punishment voluntarily and made it known that he was unlikely to appeal.⁴⁹ In the draft, the Oakland Raiders ultimately selected Pryor in the third round.⁵⁰

iii. Pryor’s Appeal of the Suspension

After the draft, Pryor’s advisors sent out mixed signals regarding a potential appeal. On one hand, his agent stated that he would “accept [it] voluntarily” and would

⁴⁵ Alex Marvez, *NFL: Ruling on Pryor not based on NCAA* (Aug. 18, 2011), <http://msn.foxsports.com/nfl/story/Terrelle-Pryor-suspension-not-based-on-NCAA-violation-081811>.

⁴⁶ See Florio, *supra* note 41.

⁴⁷ The Preamble of the NFL’s CBA recognizes the NFLPA as the “sole and exclusive bargaining representative of present and future employee players in the NFL.” NFL Collective Bargaining Agreement at xiv, *available at* https://images.nflplayers.com/mediaResources/files/PDFs/General/2011_Final_CBA.pdf. [hereinafter NFL CBA].

⁴⁸ See Marvez *supra* note 45.

⁴⁹ *Agent: Terrelle Pryor won't appeal ban* (Aug. 24, 2011), http://espn.go.com/nfl/trainingcamp11/story/_/id/6889661/drew-rosenhaus-says-terrelle-pryor-appeal-5-game-ban.

⁵⁰ Gregg Rosenthal, *Terrelle Pryor goes to the Raiders* (Aug. 22, 2011), <http://profootballtalk.nbcsports.com/2011/08/22/terrelle-pryor-goes-to-raiders-in-round-three/>.

not appeal.⁵¹ On the other hand, his attorney stated that they would “likely” seek an appeal once Pryor signed his contract.⁵² Upon urging from the NFLPA and some of its senior members, Pryor eventually did proceed with an appeal.⁵³

The first issue in the appeal process was whether it was timely.⁵⁴ Once a player receives notice of a disciplinary action, he must file a written appeal to the Commissioner within three business days of receipt.⁵⁵ The letter to Pryor detailing his suspension even contained the proviso that he appeal it within three days of signing his first contract.⁵⁶ In fact, the appeal came almost a month after he signed with the Raiders.⁵⁷ The Commissioner did not throw out the appeal on this issue.⁵⁸ He obviously recognized the gravity of the overarching situation; throwing out the appeal on this ground would have left a number of questions unanswered and would have caused dissonance to rise from the players and the union. Therefore, the Commissioner evaluated the appeal based upon the most pressing issue: whether the CBA permits him to allow a player’s collegiate suspension to carry over into the NFL upon employment.

The gravity of the issue was further exemplified by the members in attendance at the appeal hearing. Present at the meeting were Rosenhaus; Pryor’s legal team; Jeff Pash, NFL general counsel; Adolpho Birch, NFL executive; Jeffrey Kessler, NFLPA outside

⁵¹ See Agent: Terrelle Pryor won't appeal ban, *supra* note 49.

⁵² *Terrelle Pryor Considering Appeal Of Suspension After Draft* (Aug. 20, 2011), http://www.huffingtonpost.com/2011/08/20/terrlle-pryor-considering-appeal-suspension_n_932154.html.

⁵³ Mike Florio, *Pryor appeals his suspension* (Sept. 4, 2011), <http://profootballtalk.nbcsports.com/2011/09/04/pryor-appeals-his-suspension/>.

⁵⁴ *Id.*

⁵⁵ See NFL CBA *supra* note 47 at 205. [Art. 46 §1(a) states that “[w]ithin three (3) business days following [written notification from the Commissioner regarding disciplinary actions], the player affected thereby, or the NFLPA with the player’s approval, may appeal in writing to the Commissioner.”].

⁵⁶ See Florio, *supra* note 53.

⁵⁷ *Id.*

⁵⁸ *Id.*

counsel; Richard Berthelsen, NFLPA counsel; and a number of others.⁵⁹ Notably, Pryor himself was not in attendance, choosing to work out at the Raiders facilities instead.⁶⁰

The hearing lasted 80 minutes, which was rather lengthy considering the facts of the case were not in dispute.⁶¹ The NFLPA pushed along the appeal as they viewed the issue on a much broader level.⁶² It did not just concern Pryor; it could set a dangerous precedent to drastically extend the scope of the Commissioner's powers over the players, something many players already find to be far too broad.⁶³ Furthermore, the NFLPA was "concerned about collegiate violations carrying over from the NCAA into the NFL and Goodell having the authority to make unilateral punishments."⁶⁴

Fifteen days after the hearing, Goodell released his decision to uphold the suspension.⁶⁵ In his statement, Goodell said:

This smacks of a calculated effort to manipulate our eligibility rules in a way that undermines the integrity of, and public confidence in, those rules. Mr. Pryor made an affirmative decision to remain in college and play for Ohio State in 2011. He later reconsidered and decided that he wanted to enter the NFL. In order to do so, he needed to forfeit his remaining college eligibility and took steps to ensure that would happen. Based on the specific facts presented here, I conclude that Mr. Pryor's actions warranted imposition of conditions on his entry into the NFL, namely, that he serve the same five-game suspension that he had previously agreed to while at Ohio State.⁶⁶

⁵⁹ Mike Florio, *Goodell spends 80 minutes hearing Pryor appeal* (Sept. 15, 2011), <http://profootballtalk.nbcsports.com/2011/09/15/goodell-spends-80-minutes-hearing-pryor-appeal/>.

⁶⁰ *Terrelle Pryor's appeal heard by NFL* (Sept. 15, 2011), http://espn.go.com/nfl/story/_id/6973431/roger-goodell-hears-oakland-raiders-qb-terrelle-pryor-appeal-five-game-ban.

⁶¹ See Florio, *supra* note 59.

⁶² See Terrelle Pryor's appeal heard by the NFL, *supra* note 60.

⁶³ *Id.* [Charlie Batch of the Pittsburgh Steelers and Scott Fujita of the Cleveland Browns – both members of the NFLPA Executive Committee – enunciated their concerns that this punishment would set a bad precedent.].

⁶⁴ *Id.*

⁶⁵ Michael David Smith, *NFL affirms Terrelle Pryor's five-game suspension* (Sept. 30, 2011), <http://profootballtalk.nbcsports.com/2011/09/30/nfl-affirms-terrelle-pryors-five-game-suspension/>.

⁶⁶ *Id.*

Goodell reached this conclusion by declaring that Pryor left OSU “in order to avoid the consequences of his conduct while in college . . . to hasten the day when he could pursue a potentially lucrative professional career in the NFL.”⁶⁷ This final decision reflects the intention of Goodell to base the discipline on Pryor’s transgressions at OSU and to enforce the suspension the NCAA handed down to him. This was not simply about draft eligibility rules.

B. Jim Tressel and His Move to the NFL

Jim Tressel, Pryor’s head coach at OSU, resigned from his position after an NCAA investigation discovered a number of violations on his watch.⁶⁸ The primary violation was his failure to notify OSU administrators about players – including Pryor – trading memorabilia for cash and discounted tattoos at a Columbus, Ohio tattoo parlor.⁶⁹ Prior to the NCAA’s discovery of these events, Tressel had signed a compliance form in September 2010 stating that he had no knowledge of any wrongdoing by his players.⁷⁰ However, a chain of emails between Tressel and an Ohio attorney showed that Tressel knew of the alleged violations as early as April 2010 but failed to inform either the school or the NCAA for several months.⁷¹ Upon discovery of these violations, OSU imposed a two-game suspension and a \$250,000 fine on Tressel.⁷² Then, after the NCAA upheld Pryor’s suspension, Tressel requested – and was granted – that his suspension be

⁶⁷ *NFL upholds Terrelle Pryor's ban* (Sept. 30, 2011), http://espn.go.com/nfl/story/_/id/7040047/nfl-upholds-terrelle-pryor-5-game-ban-cites-integrity.

⁶⁸ *Jim Tressel tenders resignation* (May 31, 2011), <http://sports.espn.go.com/nfl/news/story?id=6606999>.

⁶⁹ *Jim Tressel suspended 2 games, fined* (March 9, 2011), <http://sports.espn.go.com/nfl/news/story?id=6194162>.

⁷⁰ See *Jim Tressel tenders resignation*, *supra* note 68.

⁷¹ *Id.*

⁷² See *Jim Tressel suspended 2 games, fined*, *supra* note 69.

increased to match Pryor's.⁷³ A month later, on May 30, after the NFL Draft had passed, Tressel tendered his resignation from the school.⁷⁴

In September, the Indianapolis Colts hired Tressel as a game-day consultant.⁷⁵ His job would be to review replays and help determine whether to challenge the play call.⁷⁶ Before the NFL could even get involved, the Colts and Tressel voluntarily agreed to delay employment until the seventh game of the season.⁷⁷ The team released a statement signaling as much: "At Coach Tressel's suggestion, and with [team owner Jim] Irsay's concurrence and support, we have decided to begin Coach Tressel's employment effective with our seventh regular season game."⁷⁸ This effectively gave Tressel a six game suspension, one game greater than what the NFL handed to Pryor. Roger Goodell made it known that he would have stepped in and taken similar action had the two sides not done so themselves.⁷⁹ On an ESPN Radio interview, Goodell stated, "it was clear that if they did not take an appropriate action then I would have taken action."⁸⁰ The fact that Goodell would have disciplined Tressel further exemplifies his support of the NCAA. Tressel's situation had nothing to do with draft eligibility rules, the primary factor that Goodell cited when suspending Pryor.

⁷³ Doug Lesmerises, *Ohio State football coach Jim Tressel asks for his suspension to be increased to five games* (Mar. 18, 2011),

http://www.cleveland.com/osu/index.ssf/2011/03/jim_tressel_suspension_ncaa_five_games.html.

⁷⁴ Adam Rittenberg, *Jim Tressel resigns as Ohio State coach*, (May 30, 2011),

http://espn.go.com/blog/nfnation/post/_id/42584/jim-tressel-resigns-as-ohio-state-coach.

⁷⁵ *Colts hire Jim Tressel as consultant* (Sept. 2, 2011),

http://espn.go.com/nfl/story/_id/6922766/indianapolis-colts-hire-jim-tressel-replay-review-consultant.

⁷⁶ *Id.*

⁷⁷ Mike Florio, *Tressel gets six-game suspension from Colts* (Sept. 5, 2010),

<http://profootballtalk.nbcsports.com/2011/09/05/tressel-gets-six-game-suspension-from-colts/>.

⁷⁸ *Id.*

⁷⁹ Michael David Smith, *Goodell: If Colts hadn't suspended Tressel, I would have* (Sept. 6, 2011),

<http://profootballtalk.nbcsports.com/2011/09/06/goodell-if-colts-hadnt-suspended-tressel-i-would-have/>.

⁸⁰ *Id.*

III. CAN PRYOR BE SUSPENDED FOR CONDUCT THAT OCURRED BEFORE HE BECAME AN EMPLOYEE OF THE NFL?

A. The Power Held by the Commissioner

The answer to this question requires an analysis of the Commissioner's powers. In 2007, Goodell announced his new Personal Conduct Policy (PCP).⁸¹ The PCP requires that all persons associated with the NFL – this includes players, coaches, employees, and owners – avoid “conduct detrimental to the integrity of and public confidence in the National Football League.”⁸² Section 8.6 of the NFL's Constitution and Bylaws also authorizes the Commissioner to take any action he deems necessary “whenever any party or organization not a member of, employed by, or connected with the League or any member thereof is guilty of any conduct detrimental either to the League, its member clubs or employees, or to professional football.”⁸³

In short, an athlete can be punished for any sort of conduct deemed detrimental to the league.⁸⁴ The PCP spells out certain areas of conduct that will meet that standard; however, punishment is not limited to these categories.⁸⁵ Examples of proscribed conduct include domestic violence, theft, sex offenses, fraud, weapon possession, hate

⁸¹ Kelly M. Vaughan, *First and Goal: How the NFL's Personal Conduct Policy Complies with Federal Antitrust Law*, 96 Cornell L. Rev. 609, 609 (2011).

⁸² *Id.* at 614; NFL Personal Conduct Policy, available at <http://sports.espn.go.com/nfl/news/story?id=2798214> [hereinafter NFL PCP].

⁸³ Constitution and Bylaws of the National Football League, available at static.nfl.com/static/content/public/static/html/careers/pdf/co_.pdf [hereinafter NFL Bylaws].

⁸⁴ It must be noted that anti-trust regulations will not prevent the NFL's employment rules from applying to non-employees. Previously, the NFL's age-requirement draft eligibility rule was challenged in Federal Court. *Clarett v. Nat'l Football League*, 369 F.3d 124 (2d Cir. 2004). The plaintiff asserted that the rule violated anti-trust regulations by affecting parties (in this case, college athletes) who were not represented in the collective bargaining discussions. *Id.* at 126. The 2nd Circuit held that the NFL and the NFLPA have full right to determine the conditions under which a prospective player may be considered for employment. *Id.* at 141. Rules that work a hardship on prospective players, rather than current, will not render them impermissible, so long as the NFL and NFLPA have bargained for them. *Id.* at 140. Pulling Pryor into the draft allowed Goodell to exercise his powers under the umbrella of the PCP. The PCP has been collectively bargained for, thus an anti-trust challenge would be quickly extinguished.

⁸⁵ See NFL PCP, *supra* note 82.

crimes, and violent or threatening conduct.⁸⁶ In addition to the guidelines of the CBA and PCP, player contracts include language to the same effect. In every contract, the player agrees to conduct himself in a manner that recognizes “that the success of professional football depends largely on public respect for and approval of those associated with the game.”⁸⁷

The NFL’s PCP also gives Goodell the authority to impose a number of choice penalties for players that engage in such detrimental conduct.⁸⁸ These penalties include “monetary fines, suspensions, and even banishment from the league.”⁸⁹ Once disciplined, Article 46 of the CBA allows a player the right to appeal any of these measures.⁹⁰ At the appeal hearing, the Commissioner has the authority to appoint a designee to serve as a hearing officer for appeals, though he also has the right to serve in that capacity at his own discretion.⁹¹ As one player put it, Goodell plays the role of the “judge, jury and appeals system.”⁹² The most recent CBA, ratified August 2011, kept these disciplinary powers unchanged.⁹³ In the end, several players were unhappy that the system remained in the same form.⁹⁴ After the two sides finally agreed to a new CBA, there were rumors that some teams would refuse to ratify.⁹⁵ Ultimately, it was ratified and the powers remain.⁹⁶

⁸⁶ *Id.* [Pryor’s actions fit none of the specifically defined offenses. Rather, the Commissioner reached into the reservoir of a catchall standard.]

⁸⁷ *See* NFL CBA, *supra* note 55 at 256.

⁸⁸ *See* NFL PCP, *supra* note 85.

⁸⁹ *Id.*

⁹⁰ *See* NFL CBA, *supra* note 55 at 204.

⁹¹ *Id.* at 204-205.

⁹² *Sources: Discipline power unchanged* (Aug. 4, 2011), http://espn.go.com/nfl/story/_/id/6832575/roger-goodell-retain-conduct-policy-power-cba-sources-say.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* [Ryan Clark, union representative for the Pittsburgh Steelers, predicted that his team could choose not to ratify it, citing dissatisfaction over Goodell’s unchecked power.]

⁹⁶ *See* NFL CBA, *supra* note 55.

B. Precedents that Provide a Clearer Picture of the Commissioner's Power

Goodell has exercised his powers on a number of occasions. One of the more high-profile cases involved Cleveland Browns wide receiver Donte Stallworth.⁹⁷ On March 14 2009, Stallworth was driving home from a Miami club when he struck and killed a man crossing the street.⁹⁸ Stallworth's blood alcohol level was .126 at time of the accident, well above Florida's .08 limit.⁹⁹ On June 16, 2009, Stallworth plead guilty to DUI manslaughter; he was sentenced to thirty days in jail, two years house arrest, and eight years probation.¹⁰⁰ He also reached a monetary settlement with the family of the man.¹⁰¹ Goodell suspended Stallworth indefinitely, ultimately keeping him out of the NFL for an entire year.¹⁰² Goodell used strong language in condemning Stallworth's actions, citing the "stain" he left upon the reputations of the league and its players.¹⁰³ In his statement, Goodell declared, "while the criminal justice system has determined the legal consequences . . . it is my responsibility as NFL Commissioner to determine the appropriate league discipline."¹⁰⁴ This language makes clear that criminal penalties will not always suffice; rather, when necessary, the league will also take its own steps to protect the integrity of the league.

Another prolific suspension was the one Goodell bestowed upon Atlanta Falcons quarterback Michael Vick. In July 2007, Vick was indicted by a federal grand jury for

⁹⁷ *Stallworth suspended indefinitely* (June 19, 2009), <http://sports.espn.go.com/nfl/news/story?id=4270311>.

⁹⁸ *Goodell: Stallworth suspended for season, placed 'stain' on NFL, players* (June 19, 2009), <http://www.nfl.com/news/story?id=09000d5d811db22&template=without-video-with-comments&confirm=true>.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *See* Stallworth suspended indefinitely, *supra* note 97.

¹⁰³ *See* Goodell: Stallworth suspended for season, placed 'stain' on NFL, players, *supra* note 98.

¹⁰⁴ *Id.*

his role in running the Bad Newz Kennels dog-fighting operation.¹⁰⁵ Ultimately, Vick accepted a plea agreement where he would acknowledge guilt to a single charge of “Conspiracy to Travel in Interstate Commerce in Aid of Unlawful Activities and to Sponsor a Dog in an Animal Fighting Venture.”¹⁰⁶ He admitted not only to participation in the torture and murder of dogs, but also to being the primary source of funding for both the operation and the illegal gambling ring.¹⁰⁷ On December 10, 2007, a judge sentenced Vick to a 23-month federal prison term, a \$5,000 fine, and three years probation.¹⁰⁸ Vick received the longest sentence of all defendants; the judge noted he was less than honest during his interrogation and that he also tested positive for marijuana while awaiting sentencing.¹⁰⁹

In August 2007, before sentencing, Goodell suspended Vick indefinitely for his role in the dog-fighting ring.¹¹⁰ In his letter to Vick, Goodell wrote:

Your admitted conduct is not only illegal, but also cruel and reprehensible. . . . Your team, fans, and the NFL have all been hurt by your actions. . . . Quite apart from whatever sentence is ultimately imposed upon you by the federal court in Virginia, your conduct plainly merits a significant sanction by the NFL.¹¹¹

Vick’s suspension ran concurrently with his jail sentence. Upon release, Goodell conditionally reinstated Vick, allowing him to practice immediately and take part in two preseason games, but would require him to await clearance from the league office before

¹⁰⁵ *Falcons' Vick indicted by grand jury in dogfighting probe* (July 18, 2007), <http://sports.espn.go.com/nfl/news/story?id=2940065>.

¹⁰⁶ *NFL suspends Vick indefinitely* (Aug. 24, 2007), http://articles.cnn.com/2007-08-24/us/michael.vick_1_phillips-and-vick-bad-newz-kennels-animal-fighting-venture?_s=PM:US.

¹⁰⁷ *Apologetic Vick gets 23-month sentence on dogfighting charges* (Dec. 11, 2007), <http://sports.espn.go.com/nfl/news/story?id=3148549>.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ See NFL suspends Vick indefinitely, *supra* note 106.

¹¹¹ Goodell’s letter to Michael Vick, *available at* <http://assets.espn.go.com/media/pdf/070824/michaelvickletter.pdf> [hereinafter Letter to Vick].

playing in a regular season game.¹¹² Goodell chose to condition the reinstatement based upon feedback from outside professionals, Vick's probation officer, former coaches, friends, players, counselors, and mentors.¹¹³ Goodell noted that this should not be viewed as a suspension per se, but rather a way to help Vick ease his transition back in to the league.¹¹⁴ Vick was ultimately reinstated for the third week of the 2009 season.¹¹⁵ This entire sequence of events shows that league mandated suspensions can be served concurrently with incarceration. Furthermore, it also showed that the Commissioner does not need to wait for the justice system to issue judgment before acting.

A few years later, in 2010, Roger Goodell suspended Pittsburgh Steeler's quarterback Ben Roethlisberger for the start of the season.¹¹⁶ Roethlisberger's suspension was predicated on two allegations: one stemming from a 2008 celebrity golf tournament at Lake Tahoe, Nevada and another from a night in Milledgeville, Georgia on March 3, 2010.¹¹⁷ First, Roethlisberger was accused, in a civil suit, of raping a Harrah's hotel hostess during his stay for the Lake Tahoe tournament.¹¹⁸ The victim alleged that she was called up to Roethlisberger's room to fix his television.¹¹⁹ Once in the room –

¹¹² Aaron Kuriloff, *Michael Vick Is Conditionally Reinstated After NFL Suspension* (July 27, 2009), <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=alxaZOXVtM14>.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Ryan Christopher DeVault, *Michael Vick Suspended Until Week Three in NFL* (Sept. 3, 2009), <http://voices.yahoo.com/michael-vick-suspended-until-week-three-nfl-4193747.html>.

¹¹⁶ *Roethlisberger suspended by NFL* (Apr. 22, 2010),

<http://sports.espn.go.com/nfl/news/story?id=5121614>.

¹¹⁷ D. Orlando Ledbetter, *Roethlisberger suspended in unprecedented NFL case* (April 21, 2010), <http://www.ajc.com/sports/atlanta-falcons/roethlisberger-suspended-in-unprecedented-481033.html>; *See* Roethlisberger suspended by NFL, *supra* note 116.

¹¹⁸ Martha Bellisle, *Lawsuit alleging Lake Tahoe rape against Steelers QB Ben Roethlisberger settled* (Jan. 20, 2012), <http://www.rgj.com/apps/pbcs.dll/article?AID=/201201201439/SPORTS12/301200019>.

¹¹⁹ *Id.*

again, according to the victim – he forced her on to the bed and then had intercourse with her.¹²⁰

Next, in Milledgeville, Roethlisberger met a twenty-year old student at a college-area bar.¹²¹ The following events are from the police report filed by the victim. Throughout the night, Roethlisberger encouraged her and her friends to consume shots of alcohol.¹²² After a number of shots, he allegedly had his bodyguard lead this student to a secluded bathroom where Roethlisberger approached her and exposed himself.¹²³ He then proceeded to have intercourse with her over her objections.¹²⁴ During this time, Roethlisberger's bodyguard sat outside the door and refused to let the student's friends into the bathroom.¹²⁵ Georgia detectives investigated the allegations and ultimately decided not to make an arrest or press any charges.¹²⁶

Despite not being charged, arrested or convicted of any crimes relating to either of these allegations, Goodell exercised his powers under the PCP by suspending Roethlisberger for six games and ordering him to undergo behavioral evaluation.¹²⁷ In his letter to Roethlisberger, Goodell wrote:

I recognize that the allegations in Georgia were disputed and that they did not result in criminal charges being filed against you. My decision today is not based on a finding that you violated Georgia law, or on a conclusion that differs from that of the local prosecutor. That said, you are *held to a higher standard as an NFL player*, and there is nothing about your conduct in Milledgeville that can remotely be described as admirable, responsible, or

¹²⁰ *Id.*

¹²¹ *See* Roethlisberger suspended by NFL, *supra* note 116.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *See* Roethlisberger suspended by NFL, *supra* note 116.

¹²⁷ *See* Ledbetter, *supra* note 117.

consistent with either the values of the league or the expectations of our fans.¹²⁸

Roethlisberger's suspension registers the PCP as a wholly independent system. The suspension reveals that discipline can be triggered under the PCP despite the absence of any criminal charges and/or convictions; rather, breaking the commissioner's moral views will suffice.

These cases show a broad interpretation of the PCP, and further parameters of the Commissioner's powers are still being carved out. The PCP contains very broad language, as the documents granting these powers fail to provide a tangible boundary. Ordinarily, the best way to determine the limit is by the precedents set by prior decisions. However, Pryor's case is one of first impression as the conduct at issue occurred before he became an employee of the league and relates to breaking the rules of a prior employer. Thus, whereas other cases involved players who could have challenged the *extent* of the Commissioner's power over them, Pryor may additionally argue that the Commissioner did not, at the time of the misconduct, have power over him *at all*. All the prior suspensions and fines doled out by Goodell have been for conduct committed by employees of the NFL. While the CBA does not specifically disallow this type of punishment, the question then arises: should the Commissioner possess the power to punish players for conduct that occurs prior to employment by the league?

IV. IMPACT OF GOODELL'S DECISION TO UPHOLD PRYOR'S SUSPENSION

A. Immediate Impact Upon Pryor

¹²⁸ See Roethlisberger suspended by NFL, *supra* note 116. [emphasis added].

First and foremost, the suspension has an immediate financial impact on Pryor. After being drafted by the Raiders, Pryor signed a four-year contract with the team.¹²⁹ The first year of the contract called for Pryor to earn \$375,000 in base salary with no incentives.¹³⁰ The subsequent three years include annual pay raises in base salary, along with incentives to be earned based on specific playing-time stipulations.¹³¹ By serving a five game suspension, Pryor will not be able to collect his paychecks for those games.¹³² In sum, Pryor will lose roughly \$110,000, almost a third of his first-year salary, due to Goodell's decision¹³³

Furthermore, Pryor was also barred from practicing with the team for those five weeks.¹³⁴ For a young, developmental prospect such as Pryor, practices are just as crucial as games as these early practices help a player adjust to the speed of the professional level. Moreover, these practices help a player become familiar with the complexities and nuances of the team's playbook, areas especially important for a quarterback. While the impact that the late start in Pryor's professional development will have on his future career is speculative at best, it may still have a moderate financial impact. As previously mentioned, the subsequent years in Pryor's player contract have monetary incentives that require Pryor to meet specific amounts of playing time.¹³⁵ The late start to Pryor's career could affect his chances of reaching those milestones. In the

¹²⁹ Mike Florio, *Terrelle Pryor officially joins the Raiders* (Aug. 25, 2011), <http://profootballtalk.nbcsports.com/2011/08/25/terrelle-pryor-officially-joins-the-raiders/>.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Eric Macramalla, *Q & A: Legal Primer On Terrelle Pryor (With Some Tressel)* (Sep. 6, 2011), <http://offsidesportsblog.blogspot.com/2011/09/primer-on-terrelle-pryor-with-some.html?m=1>.

¹³³ *Id.* [NFL player salaries are paid weekly throughout the seventeen-week season. *See* NFL CBA, *supra* note 55 at 146. For Pryor and his \$375,000 contract, each check is \$22,058.82. Five of those checks total \$110,294.12.].

¹³⁴ Sam Werner, *Pryor goes to Oakland Raiders in supplemental draft* (Aug. 22, 2011), <http://www.post-gazette.com/pg/11234/1169084-100.stm>.

¹³⁵ *See* Florio, *supra* note 129.

2011 season, for example, due to his lack of preparation, Pryor's only game-action was a single snap where he was flagged for a false-start penalty.¹³⁶

B. Ethical Concerns

The NFL is sending a message by suspending Pryor for his actions and not taking any stance against the numerous players that come in to the league with other, more serious, character concerns. Some of these issues are very severe, ranging from sexual assault to armed robbery. There were a number of players in the most recent draft that had some major red flags on their résumés. For example, in the third round of this year's college draft, the New York Jets selected defensive lineman Kenrick Ellis out of Hampton University.¹³⁷ Ellis is currently facing up to twenty years in prison on malicious wounding charges, a felony assault under Virginia law.¹³⁸ While on Hampton's campus, Ellis allegedly broke the jaw and nose of a man during an altercation.¹³⁹ Meanwhile, Ellis was attending Hampton only because he was dismissed from the South Carolina football team for repeated failed drug tests.¹⁴⁰ On top of all this, Ellis now potentially faces deportation since he is a Jamaica native and not yet a U.S. citizen.¹⁴¹ Currently, he is classified as a "permanent resident" for having lived in the

¹³⁶ Carson Palmer, Kyle Boller combine for 6 INTs as D picks up Chiefs (Oct. 23, 2011), <http://scores.espn.go.com/nfl/recap?gameId=311023013>

¹³⁷ Mike Florio, *Jets take Kenrick Ellis despite pending criminal trial* (Apr. 30, 2011), <http://profootballtalk.nbcsports.com/2011/04/30/jets-take-kenrick-ellis-despite-pending-criminal-trial/>.

¹³⁸ Rich Cimini, *Kenrick Ellis gets trial rescheduled* (July 8, 2011), <http://sports.espn.go.com/new-york/nfl/news/story?id=6750441>.

¹³⁹ See Florio, *supra* note 137.

¹⁴⁰ See Cimini, *supra* note 102.

¹⁴¹ Evan Silva, *Report: Jets third-round pick not a U.S. citizen, could be deported* (July 8, 2011), <http://profootballtalk.nbcsports.com/2011/07/08/report-jets-third-round-pick-not-a-u-s-citizen-could-be-deported/>.

U.S. for at least five years.¹⁴² Under this classification, he is deportable should he be convicted of this aggravated felony.¹⁴³ The trial for these charges has been repeatedly pushed back and is currently scheduled for May 2012.¹⁴⁴

Meanwhile, earlier in the draft, the Baltimore Ravens selected cornerback Jimmy Smith, who has a laundry list of his own character issues.¹⁴⁵ In 2007, Smith failed a drug test and had two arrests for possession of alcohol as a minor.¹⁴⁶ At the NFL Scouting Combine, Smith revealed that he flunked a total of three drug tests while attending Colorado.¹⁴⁷ During the interview process, Smith revealed to at least one organization that one of the failed tests was for misusing codeine syrup.¹⁴⁸ Smith also revealed to teams that he had “a pair of abortions . . . paid for by the parents of the women he impregnated and an arrest for third-degree assault in a restaurant.”¹⁴⁹

Ultimately, the NFL may be sending the wrong message to its fans and supporters. It could be viewed as hypocritical to suspend an incoming player for violating a bylaw of the NCAA and not suspend a player that has committed a violent crime, all while preaching integrity and public confidence. Kenrick Ellis has allegedly

¹⁴² See Cimini, *supra* note 138.

¹⁴³ *Id.*

¹⁴⁴ Manish Mehta, *Jets' DL Kenrick Ellis' trial postponed until May* (Feb. 6, 2012), <http://www.nydailynews.com/blogs/jets/2012/02/jets-dl-kenrick-ellis-trial-postponed-until-may>.

¹⁴⁵ Jamison Hensley, *Ravens draft Colorado cornerback Jimmy Smith* (Apr. 28, 2011), http://articles.baltimoresun.com/2011-04-28/sports/bal-ravens-draft-jimmy-smith-0428_1_draft-lardarius-webb-domonique-foxworth.

¹⁴⁶ Jeff Legwold, *Questionable past follows CU's Jimmy Smith to NFL scouting combine* (Mar. 1, 2011), http://www.denverpost.com/broncos/ci_17506387#ixzz1FMjFG9rO.

¹⁴⁷ Michael David Smith, *Report: Jimmy Smith failed three drug tests, admitted abusing codeine* (Apr. 28, 2011), <http://profootballtalk.nbcsports.com/2011/04/28/report-jimmy-smith-failed-three-drug-tests-admitted-abusing-codeine/>.

¹⁴⁸ *Id.*

¹⁴⁹ Bob McGinn, *Character flaws cast pall on Colorado's Smith* (Apr. 26, 2011), <http://www.jsonline.com/sports/packers/120747104.html>.

committed a heinous crime against another human.¹⁵⁰ Yet he was still drafted in the third round and avoids a suspension. Jimmy Smith has a criminal record and a past history of abusing drugs. And yet he was still a first round selection and does not face any suspension time. Meanwhile, the NFL, in suspending Pryor and not any of the aforementioned, sent a message to the public that selling a piece of personal property for cash is worse than the violent crimes of Ellis and the hard drug abuse of Smith. If the league's true desire were to take a stand to promote integrity, this would be the prominent place to start.

C. Should the NFL Now Punish Retroactively Based on this Precedent?

Despite the NFLPA and the NFL stating to the contrary,¹⁵¹ this ruling will establish a major precedent for the Commissioner to use for future disciplinary actions against incoming players. The NCAA has always had trouble enforcing its rules on players since they lack a significant bite, something necessary to deter future violators. This lack of power can be attributed to the fact that the athletes are already out of college by the time their transgressions come to light. Thus, the problem has always been, how can the NCAA punish an athlete who no longer plays in its league? Now, any prospective employee of the NFL, who violated NCAA rules while in college, may be subject to a potential suspension upon employment. Will this open up a Pandora's Box of retroactive discipline for current NFL employees that have broken NCAA rules?

¹⁵⁰ While these events are merely allegations, as seen in the Roethlisberger incident, allegations may be enough to warrant a suspension should they break the Commissioner's moral views. It seems that these facts would likely trigger that.

¹⁵¹ See Marvez, *supra* note 45.

The NCAA has tried to enforce its rules on athletes that have left school by taking back trophies, vacating wins and records, and punishing the universities.¹⁵² These punishments have little effect on the players themselves, however. For example, in June 2010, the NCAA declared that then New Orleans Saints running back Reggie Bush was not eligible to play college football during the 2005 season – the season he won the Heisman Trophy – because he had improperly accepted cash and benefits from a potential marketing agent.¹⁵³ Bush eventually relinquished the prestigious award and the Heisman Trophy Trust declared the 2005 title vacant.¹⁵⁴ To this date, the Trust have not requested that Bush’s award be surrendered; however, the University of Southern California (USC), Bush’s alma mater, has surrendered its copy of the trophy.¹⁵⁵ So then what are the consequences for Bush for violating NCAA rules? He keeps the money he accepted in college, holds on to his trophy – albeit erased from the record books – and continues to earn millions of dollars under the shelter the NFL. This is exactly what the Commissioner wanted to avoid when doling out his punishment to Pryor. If the commissioner was serious about enforcing this view, then he should immediately turn around and apply punishment retroactively to all current NFL players that were found to have violated NCAA regulations in the past.

The retroactive punishments shouldn’t stop with players, though. Just as Jim Tressel was punished for the actions of Pryor, so should Pete Carroll – the head of the

¹⁵² Greg Bishop, *N.C.A.A. Penalties Erase Wins but Not Memories* (Aug. 1, 2011), <http://www.nytimes.com/2011/08/02/sports/ncaa-penalties-erase-the-wins-but-not-the-memories.html>.

¹⁵³ Gregg Rosenthal, *Reggie Bush loses his Heisman, sort of* (July 20, 2010), <http://profootballtalk.nbcsports.com/2010/07/20/reggie-bush-loses-his-heisman-sort-of/>.

¹⁵⁴ *Reggie Bush's Heisman to stay vacated* (Sept. 15, 2010), <http://sports.espn.go.com/los-angeles/ncf/news/story?id=5576729>.

¹⁵⁵ See Rosenthal, *supra* note 153.

USC football program for the period in question – for the actions of Bush.¹⁵⁶ However, the NCAA can't touch Carroll now. He left USC to pursue a career as the coach and general manager of the NFL's Seattle Seahawks just months before the NCAA revealed the results of its four-year long investigation of the USC football program.¹⁵⁷ Rather, the NCAA imposed damning sanctions upon the school itself: a two-year bowl ban and the loss of twenty football scholarships.¹⁵⁸

Now, Carroll's situation is reminiscent of Pryor's. Harkening back to one of Goodell's letters to Pryor, he stated that a player who acts contrary to NCAA regulations should not be immediately eligible to pursue a potentially lucrative career in the NFL.¹⁵⁹ That "[d]oing so would be inconsistent with common-sense notions of accountability and personal responsibility," according to Goodell.¹⁶⁰ However, it seems that a blind eye is turned when the guilty party is someone other than a player, something inconsistent with these very same common-sense notions.

D. What About the UFL?

The United Football League (UFL) is a fledgling football league attempting to "complement" the NFL.¹⁶¹ Run by commissioner Michael Huyghue and funded by private investors, the league's business model is "to provide quality football at affordable

¹⁵⁶ Carroll maintains he knew nothing of Bush's situation. However, he was still found to have lied to the NCAA about other violations. Furthermore, the NCAA concluded that the entire USC program exhibited at "lack of institutional control" over its athletic program, specifically the football team under Carroll's watch. Regardless of his role in Bush's transgressions, Carroll is still guilty of violating NCAA rules. Paul Pringle, *Carroll's rules violations could hurt USC* (July 14, 2010), <http://articles.latimes.com/2010/jul/14/local/la-me-pete-carroll-20100714>.

¹⁵⁷ *Sources: Seattle, Carroll agree on deal* (Jan. 11, 2010), <http://sports.espn.go.com/nfl/news/story?id=4810861>.

¹⁵⁸ Gary Klein, *NCAA hands USC two-year bowl game ban, major scholarship reduction in football* (June 9, 2010), <http://articles.latimes.com/2010/jun/09/sports/la-sp-usc-20100610>.

¹⁵⁹ See Florio, *supra* note 41.

¹⁶⁰ *Id.*

¹⁶¹ UFL Mission Statement, available at <http://www.ufl-football.com/about-us>.

prices in underserved markets.”¹⁶² Currently, the league fields four teams located in Las Vegas, Omaha, Sacramento, and Virginia.¹⁶³ Within these teams, a number of players and coaches have formerly worked in the ranks of the NFL.¹⁶⁴ The Pryor decision impacts the UFL’s business in a potentially substantial way.

By supporting the NCAA’s rules in Pryor’s case, the NFL appears to be in collusion with the NCAA. The two organizations stay in good graces with each other, the NCAA adds some bite to its rules, and the NFL continues to use the NCAA as a sort of farm system to develop talent. An anti-trust situation then arises because owners of the UFL want the NFL to invest in their league in order to serve that purpose.¹⁶⁵ The UFL has been actively working to persuade the NFL to invest in the league with the most recent proposal made in March 2010.¹⁶⁶ The UFL had proposed that the NFL would obtain a 30 percent stake, at least one seat on the UFL’s board, and a role in football operations.¹⁶⁷ The month prior to that offer, the NFL proposed purchasing a 51 percent controlling share.¹⁶⁸ The UFL countered with a 49 percent share, which the NFL adamantly refused.¹⁶⁹ A “wink-and-nod” partnership with the NCAA ruins the UFL’s chances of ever being brought on as a developmental league for the NFL. This illusory partnership gives the NFL all the leverage over the UFL at the negotiating table. If the UFL does not cede majority control to the NFL, then the NFL has no incentive to even acknowledge them.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Mike Florio, *Report: UFL wants NFL to invest* (March 19, 2010),

<http://profootballtalk.nbcsports.com/2010/03/19/report-ufl-wants-nfl-to-invest/>.

¹⁶⁶ Chris Mortensen, *UFL puts 30 percent offer on NFL's table* (March 19, 2010),

<http://sports.espn.go.com/nfl/news/story?id=5009619>.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

While the UFL is attempting to remain strong, waiting for the NFL to cave, the league is floundering at best.¹⁷⁰ The league is expecting its league owners to shoulder a \$40 million operating debt this year.¹⁷¹ The start of the season was delayed and the league hoped to use the extra time to negotiate some kind of TV-rights deal to inject some sorely needed revenue.¹⁷² As of this date, no deal had been signed; however, the league is planning on starting regardless.¹⁷³ These plans may be nothing more than wishful thinking, though, as an outside source close to the league believes it to be dead.¹⁷⁴ So, while difficult to tangibly prove collusion, the UFL could consider an anti-trust challenge.

V. CONCLUSION

Pryor's actions, while morally wrong, occurred in college and should be left there. The NCAA had its chance to punish Pryor by suspending him for the Sugar Bowl at the end of the 2010 season. The organization cited the "unique opportunity" Pryor possessed, but, in actuality, the NCAA chose to cash in on its own "unique opportunity" to use Pryor's marketability in one of its biggest bowl games. The NCAA decided to delay discipline to a time when their sponsors and ratings wouldn't be affected, knowing full well Pryor could leave for the NFL during the offseason. While Pryor had committed to playing for OSU in 2011, unforeseen circumstances arose that caused Pryor to change

¹⁷⁰ Mike Florio, *Debts and unpaid bills haven't derailed UFL, yet* (Feb. 15, 2010), <http://profootballtalk.nbcsports.com/2011/02/15/debts-and-unpaid-bills-havent-derailed-ufl-ye/>. [The league lost between \$45 and \$50 million in 2010 and several employees have yet to be paid.].

¹⁷¹ Mike Florio, *Agent declares UFL to be dead* (July 19, 2011), <http://profootballtalk.nbcsports.com/2011/07/19/agent-declares-ufl-to-be-dead/>.

¹⁷² *UFL delays start of 2011 season* (July 19, 2011), <http://sports.espn.go.com/extra/ufl/news/story?id=6783547>.

¹⁷³ *Id.*

¹⁷⁴ *See* Florio *supra* note 171.

his mind and pursue employment in the NFL. He should not be penalized for taking the necessary steps to travel down this path.

Ultimately, the Commissioner's actions were allowable under the umbrella of the CBA and the PCP. The language of these documents bestows a very broad, albeit ambiguous, power upon the Commissioner to be exercised at his discretion. Yet Goodell provided contradictory reasoning in reaching his decision. He continuously referenced his support for the NCAA and his disdain for Pryor violating their rules, despite claiming the suspension was based around draft-eligibility rules. Further, Goodell demanded punishment for Jim Tressel and his role in the transgressions, yet Tressel never violated any "draft eligibility rules." So then the reason for Tressel's punishment must clearly be his NCAA violations.

This reasoning – and this suspension in general – sends a poor public relations message. The NFL claims to be concerned about the "integrity" and the "public confidence in the league" and yet it allows one player with violent assault allegations against him and another with a criminal record and history of drug abuse to pass through the college draft without any ramifications. Yet, here one player violates an NCAA regulation and gets his employment conditioned on serving a five game suspension. Furthermore, there are a number of players and coaches within the ranks of the NFL that have similar, if not worse, NCAA violations of their own. Yet, these employees all escape punishment. In exercising his dominion over Pryor, Goodell has confused integrity with hypocrisy.