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Bountygate and the NFL Commissioner: a legal analysis

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Four National Football League (NFL) players who played for the New Orleans Saints between 2009 and 2011 were suspended by NFL Commissioner Roger Goodell for their alleged participation in a pay-for-injury program, in a saga that became known as "Bountygate." The ensuing appeals process and legal battles recently came to an end on December 11 with a ruling by former NFL Commissioner Paul Tagliabue that the punishment for the players should be vacated.



The Bountygate scandal played out on a public stage some of the complex legal issues that can arise out of the system of self-governance of sports leagues in the United States. The process under which the suspensions were handed down

and the appeals were pursued were outlined in the Collective Bargaining Agreement that the players' union, the National Football League Players Association (NFLPA) and the league agreed to before the 2011 season. The process allowed the league commissioner, subject to appeal, to serve as prosecutor and judge, but it is the process that the union agreed to in the deal.

The NFL began investigating the Saints in 2010 in response to allegations of deliberate attempts by players on that team to injure opposing players during the 2009-10 playoffs. The allegations were that Gregg Williams, the Saints Defensive Coordinator and the players would contribute to a pool of money and that payouts were administered by Williams based on key plays and for inflicting injuries on opposing players. The league alleged that *"between 22 and 27 Saints players"* were involved in the program.

At the conclusion of the investigation, the league announced that four Saints players were suspended including Jonathan Vilma for the entire 2012 season, Anthony Hargrove for eight games, Will Smith for four games, and Scott Fujita for three games. Additionally, Williams was suspended indefinitely, head coach Sean Payton was suspended for the 2012 season, general manager Mickey Loomis was suspended eight games, and assistant head coach Joe Vitt was suspended for six games. Additionally, the Saints were fined \$500,000, the maximum fine permitted under the league constitution, and forced to forfeit their second round picks in the 2012 and 2013 NFL drafts.

Whether or not it was the result of these suspensions, including the suspensions of their popular coaches, the fact is that the Saints finished the 2012 season with a disappointing 7-9 record. This was a team that had won the Super Bowl, the league championship, just three years before.

After the suspensions were announced, the NFL Players' Association filed a formal challenge, questioning whether Commissioner Goodell had the authority to punish the players. The arbitrator

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ruled that Goodell did have the authority to punish the players. The NFLPA appealed, claiming that salary-cap violations were involved in the payment and that therefore an arbitrator, and not Goodell, would be responsible for determining the appropriate discipline.

There are two ways that a player could be penalized under NFL rules for his role in a pay for play bounty scheme. The Commissioner has the power to punish players for on the field conduct that is outside the bounds of the rules and the Commissioner can assess fines for such conduct. The money from a bounty scheme could also be considered a salary cap violation. The NFL has a rule prohibiting *"Non-Contract Bonuses,"* and clubs are advised every year of the rule in a memo from the commissioner. The 2011 memo from the commissioner stated:

"No bonus or award may directly or indirectly be offered, promised, announced, or paid to a player for his or his team's performance against a particular team or opposing player or a particular group thereof. No bonuses or awards may be offered or paid for on field misconduct (for example personal fouls or injuries inflicted on opposing players)."

In June, the four players sued the NFL in federal court, claiming that Commissioner Goodell failed to make a timely appeal ruling regarding Vilma's suspension. The problem in the federal lawsuit from the players' perspective, however, was that the NFL's Collective Bargaining Agreement (CBA) governs the scope of the commissioner's authority and the right to challenge his authority.

The system of commissioner authority and the appeals process was agreed to by the NFLPA in the last round of negotiations between the union and the league. The CBA, which is in effect until 2021, gives very broad power to the commissioner and very limited opportunity to challenge his rulings. The players had to meet a very high bar in the suit because they needed to prove in the suit either that Goodell had not been specifically granted the powers that he used over the players to exert the discipline or that he had exceeded the powers granted to him.

The federal judge questioned the fairness of the investigation of the Saints, but refrained from making any rulings. The judge urged the two sides to settle the matter on their own out of court.

Under the CBA, review of discipline handed down by the commissioner for *"conduct detrimental"* to the league is only permissible in very limited circumstances. Vilma argued that those limited circumstances were applicable in this case because Goodell exceeded the scope of his authority, was biased, and prejudged the outcome without giving the players due process. The league did offer Vilma the opportunity to speak with the commissioner before any penalty was imposed, but Vilma elected not to. The NFL essentially argued that the terms of the CBA do not permit a judge to interfere with the commissioner's decision to discipline the players.

The players filed three rounds of appeals challenging their punishments. The first appeal was upheld by Commissioner Goodell himself, who was given the power to hear the appeal under the CBA. In the appeal, counsel for the players challenged Goodell's authority to hear the case, which had been previously challenged by the NFLPA and upheld, and questioned the due process of the appeal.

The second appeal, heard by two retired federal judges and a law professor, vacated the punishments for the players, and the players were all immediately reinstated and allowed to play in their season-opening games of the 2012 season.

The appeals panel held that Commissioner Goodell retained the power to discipline the players for conduct detrimental to the league, but vacated the punishments because it was not clear on the record whether Goodell punished the players based on participation in a bounty scheme or for salary cap violations.

The appeals panel, while it did not address the merits of the matter, found that Goodell went too far in his ruling, because Stephen Burbank, a University of Pennsylvania law professor named years ago by a federal judge as a *"special master"* to adjudicate disputes under the CBA, had exclusive authority over the monetary aspect of the allegations. Only Burbank, the appeals panel ruled, could discipline the players for receiving extra cash. Goodell's role had to be limited to *"conduct detrimental to the game,"* which would include only the allegations of intent to injure opponents.

The panel instructed Goodell to adjust the punishment accordingly if any part of it was intended to punish players for salary cap violations. Commissioner Goodell responded by reducing Hargrove's suspension by one game and Fujita's by three games. The suspensions handed out to Vilma and Smith remained the same.

The players then filed a third appeal. While Goodell still retained the power to hear the appeal, at this point, he appointed former NFL Commissioner Paul Tagliabue to hear the appeal. On December 11, 2012, Tagliabue affirmed the factual findings regarding the players' role in the bounty scheme, with the exception of the allegations against Fujita, but said that the cases against the players had been *"contaminated by the coaches and others in the Saints organization."* Tagliabue essentially held that the players participated in conduct detrimental to the league, but should not be punished for their actions.

Interestingly, the players had initially opposed the appointment of Tagliabue as the arbitrator because of an alleged conflict of interest and asked for a neutral arbitrator to be appointed. Tagliabue's appointment to hear the appeals came after Goodell agreed to recuse himself in response to a request from the players because the players felt that he could not fairly rule on the case. Tagliabue was commissioner of the NFL for nearly 16 years and for part of that time, Goodell was a Vice President and Chief Operating Officer for the league. Additionally, Tagliabue's law firm has handled bounty-related matters for the league.



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By fully affirming the factual findings of Goodell's decision, Tagliabue affirmed the authority of the commissioner under the CBA to impose discipline on players for conduct detrimental to the league. Goodell has established a reputation with players for being very stern with punishments for conduct both on and off the field, and this ruling will do very little to limit it, at least formally. However, the very public battle that played out may force Goodell and the NFL to be more forthcoming and transparent in the process of player discipline in the future, which is a huge win for the players.

The federal lawsuit brought by the players challenging their suspensions was voluntarily dismissed after the Tagliabue decision that vacated the discipline.

The Bountygate case publicly played out the very interesting conflicts involving due process rights of individuals, collective bargaining agreements, and private disciplinary procedures against the highly visible tapestry of professional sports. The federal judge who heard the case questioned the fairness of the process, but chose not to rule in part because it was unclear if she had the power to do so. The process that governed Bountygate was bargained for as one part of a very large agreement between the league and the NFLPA as part of very extensive negotiations covering a wide spectrum of issues. The CBA gave Commissioner Goodell the power to act in many ways as the prosecutor, judge, and jury, but this case shows that it may not be in the leagues' best interest for the commissioner to have that kind of power.

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Griffin Finan is an associate at Ifrah Law, and he has worked on a variety of cases related to the Internet and igaming. Recent cases on which he has worked include a domain name seizure case involving 141 Internet gambling sites, representation of an igaming company in a complaint alleging civil RICO and violations of the Florida Anti-Trust Act and the Cartwright Act, and representation of an online gambling company programmer in a criminal indictment.

Griffin recently published an article in the World Online Gambling Report titled, "US: Is the New Jersey Sports Gambling Law out of bounds?"

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