

2024

## Symposium Transcript: Claret v. NFL: 20 Years Later and the Future of Age Limits in Pro Sports

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### Recommended Citation

Dube, Michael; Milstein, Alan; Claret, Michelle; Claret, Maurice; Block, Benjamin; McCann, Michael; and Scheindlin, The Honorable Schira (2024) "Symposium Transcript: Claret v. NFL: 20 Years Later and the Future of Age Limits in Pro Sports," *UNH Sports Law Review*. Vol. 3: Iss. 1, Article 16.

Available at: <https://scholars.unh.edu/unhslr/vol3/iss1/16>

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## Symposium Transcript: Clarett v. NFL: 20 Years Later and the Future of Age Limits in Pro Sports

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The University of New Hampshire Sports Law Review

Volume 3 | Number 1 | Article 8

3-15-24

*CLARETT V. NFL: 20 YEARS LATER AND THE  
FUTURE OF AGE LIMITS IN PRO SPORTS*

Michael Dube, Alan Milstein, Michelle Claret, Maurice Claret,  
Ben Block, Michael McCann, and The Honorable Shira  
Scheindlin



## **CLARETT V. NFL: 20 YEARS LATER AND THE FUTURE OF AGE LIMITS IN PRO SPORTS**

3 U.N.H. Sports L. Rev. 348 (2024)

**ABSTRACT.** As a freshman running back at The Ohio State University, Maurice Claret led the Buckeyes to a Bowl Championship Series (BCS) national championship in the 2003 Fiesta Bowl. After the National Football League (NFL) blocked his attempt to declare for the 2004 NFL draft, he sued the league, thereby attempting to invalidate its age-related restriction on draft eligibility on antitrust grounds. While he was successful in U.S. District Court, the NFL prevailed on appeal to the U.S. Court of Appeals for the Second Circuit.

On March 15, 2024, a group of panelists, comprised of individuals involved on all sides of the legal conflict between Mr. Claret and the NFL, spoke at the University of New Hampshire Franklin Pierce School of Law. The panelists discussed the factors that led to the lawsuit, the case itself, its immediate aftermath, shifts seen in college sports over the subsequent two decades, the current state of age restrictions in professional sports, and possible changes to these restrictions in the future.

The following transcript has been edited for clarity.

**Michael Dube:** Good afternoon, everybody I'm Michael Dube, a professor here at the law school.

Maurice Claret, who's here with us today, grew up facing difficult times in a difficult neighborhood in Youngstown, Ohio. If Alexander Hamilton wrote his way out,<sup>1</sup> then Maurice Claret carried his way out. In the words of Alan Milstein, he “carried an odd-shaped ball at blazing speed around, and sometimes through, others trying to stop him.”<sup>2</sup>

During his senior year of high school, Maurice was the USA Today Offensive Player of the Year and was named Mr. Football by the Associated Press.<sup>3</sup> In the fall of 2002, Maurice became the first true freshman to start a football game at tailback for the Ohio State Buckeyes since.<sup>4</sup> In his Ohio State debut, he rushed for 175 yards and scored three touchdowns, and he went on to rush for over 1,200 yards and 18 touchdowns during his freshman year despite not playing two games due to injuries.<sup>5</sup> Ohio State enjoyed an undefeated regular season.<sup>6</sup> On January 3, 2003, it met the formidable Miami Hurricanes at the Fiesta Bowl in search of its first national championship since 1968.<sup>7</sup> Maurice scored the winning touchdown for Ohio State, and, in one of the great instinctual plays in the history of the game, he stripped the ball from Sean Taylor of the Hurricanes following an interception that would

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<sup>1</sup> See MIRANDA, LIN-MANUEL, *Hurricane*, on HAMILTON: AN AMERICAN MUSICAL, (Atlantic Records 2015).

<sup>2</sup> Alan C. Milstein, *The Maurice Claret Story: A Justice System Failure*, 20 Roger Williams U. L. Rev. 216, 217 (2015).

<sup>3</sup> Associated Press, *Timeline: The rise and fall of Maurice Claret*, ESPN (Aug. 9, 2006, 10:54 P.M.), <https://www.espn.com/nfl/news/story?id=2545204> [<https://perma.cc/U4LT-LQXA>] (last accessed May 20, 2024).

<sup>4</sup> *Id.*

<sup>5</sup> *Maurice Claret*, SPORTS REFERENCE, <https://www.sports-reference.com/cfb/players/maurice-claret-1.html> [<https://perma.cc/JYJ6-3LU3>] (last accessed May 20, 2024).

<sup>6</sup> *2002 Ohio State Buckeyes Schedule and Results*, SPORTS REFERENCE, <https://www.sports-reference.com/cfb/schools/ohio-state/2002-schedule.html> [<https://perma.cc/H5XN-92A3>] (last accessed May 20, 2024).

<sup>7</sup> *Id.*

otherwise have likely sealed the win for Miami.<sup>8</sup> In other words, he made the key defensive play too.

Just like Maurice instinctually knew that there was more to playing tailback than offense, he instinctually knew that there was more to life than football. Just prior to the Fiesta Bowl, a close friend of his from back home died in a shooting.<sup>9</sup> After Ohio State allegedly reneged on a promise to fly him back to Youngstown for the funeral, Maurice spoke at a press availability and dared to suggest that there were some things in life more important than football.<sup>10</sup> And then, after Ohio State won the national championship, Maurice was accused of wrongdoing, ranging from receiving preferential treatment in a course, to filing an improper police report.<sup>11</sup> Subsequently, he was investigated by Ohio State, grilled by its personnel,<sup>12</sup> and not even the protestations of Cleveland Browns legend Jim Brown could save him from what was about to come:<sup>13</sup> on September 9, 2003, Ohio State's Athletic Director Andy Geiger announced that Maurice Claret was suspended for at least the upcoming season.<sup>14</sup>

Word was that if he entered the 2004 NFL draft, he would be picked in the first round with the resulting professional and financial security. But he couldn't be picked in the first or any other round due to the NFL's eligibility rule,<sup>15</sup> a rule that, according to the league, meant that he was not eligible to be drafted until 2005. A player without a game, Maurice turned to the court system.

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<sup>8</sup> MattBuckeyeGuy, *Maurice Claret strips Sean Taylor 2003 Fiesta Bowl*, YOUTUBE (Sep. 22, 2013), <https://www.youtube.com/watch?v=TpHVJ6Cakbc> [<https://perma.cc/C6SS-R6GG>] (last accessed May 20, 2024).

<sup>9</sup> Tom Friend, *Maurice Claret tells his side*, ESPN (Nov. 10, 2004, 3:00 AM), <https://www.espn.com/college-football/news/story?id=1919246> [<https://perma.cc/5JJD-8BAY>] (last accessed May 26, 2024).

<sup>10</sup> *Id.*

<sup>11</sup> *Timeline: The rise and fall of Maurice Claret*, *supra* note 3.

<sup>12</sup> *Id.*

<sup>13</sup> Tom Farrey, *Brown says Claret can be 'pioneer'*, ESPN (Sep. 23, 2003, 3:11 PM), [https://www.espn.com/college-football/columns/story?columnist=farrey\\_tom&id=1621965](https://www.espn.com/college-football/columns/story?columnist=farrey_tom&id=1621965) [<https://perma.cc/YGD9-G6PV>] (last accessed May 27, 2024).

<sup>14</sup> *Timeline: The rise and fall of Maurice Claret*, *supra* note 3.

<sup>15</sup> *The Rules of the NFL Draft*, NFL, <https://operations.nfl.com/journey-to-the-nfl/the-nfl-draft/the-rules-of-the-draft/> [<https://perma.cc/NF77-HAER>] (last accessed May 29, 2024)

On September 23, 2003, with Alan Milstein serving as his lead counsel, the late Daniel Allanoff his close collaborator, and a team of other attorneys, including a younger Michael McCann and Michael Dube, Maurice filed suit in the U.S. District Court for the Southern District of New York.<sup>16</sup>

The complaint alleged that the NFL's eligibility rule violated antitrust law because it was a boycott of any and all players who hadn't been out of high school long enough and lacked any legal justification.<sup>17</sup> The NFL, through its long-time law firm, took the position that its eligibility rule was immune from antitrust scrutiny under what has come to be known as the non-statutory labor exemption.<sup>18</sup> This exemption shields from antitrust scrutiny certain agreements that are reached via collective bargaining.<sup>19</sup> The NFL further argued that even if it was somehow not immune from antitrust scrutiny, its rule was reasonable and therefore not a violation of antitrust law.<sup>20</sup>

On February 5, 2004, 79 days before the 2004 NFL draft, the judge assigned to the case, the Honorable Shira Scheindlin, concluded that the non-statutory labor exemption did not apply<sup>21</sup>. Writing from a courthouse located about three miles from Madison Square Garden, the site of the 2004 NFL draft, she concluded that this was a situation where antitrust law trumped labor law.<sup>22</sup> And she further determined that the NFL's rule flunked antitrust scrutiny and “must be sacked.”<sup>23</sup> The NFL immediately appealed.

The Second Circuit first stayed Judge Scheindlin's order holding that Maurice Clarett was eligible to participate in the 2004 NFL draft, and then reversed it, in an opinion written by future U.S. Supreme Court Justice Sonia Sotomayor. As the Second Circuit saw things, this was a situation where labor law's protection of the products of collective bargaining trumped the antitrust law's scrutiny of anti-

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<sup>16</sup> *Timeline: The rise and fall of Maurice Clarett*, *supra* note 3.

<sup>17</sup> *Clarett v. NFL*, 306 F. Supp. 2d 379, 390 (S.D.N.Y. 2004), *rev'd*, 369 F.3d 124 (2nd Cir. 2004).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 391.

<sup>20</sup> *Id.* at 405.

<sup>21</sup> *Id.* at 396.

<sup>22</sup> *Id.* at 410-11.

<sup>23</sup> *Id.* at 382.

competitive behavior. It reversed the order of the district court. The Supreme Court denied emergency request for relief and ultimately denied certiorari.

Maurice Clarett was ultimately drafted by the Denver Broncos in the 2005 NFL draft, but never played a down in the NFL. On February 10, 2006, following an indictment, he entered into a plea bargain that saw him spend over three years in prison. His remarkable second act began with his compelling blog, *The Mind of Maurice Clarett*,<sup>24</sup> which I read religiously for many years, and has continued through his career as an entrepreneur, consultant, and in-demand speaker. We're so lucky to have with us this evening a number of the principals who were involved in the Clarett case as well as the representation of the NFL.

First and foremost, we're honored, and we're tremendously lucky to have Maurice Clarett with us here. I've told you a little bit about him, and we're about to hear a little bit more, really a lot more in a moment. We're equally honored and lucky to have Michelle Clarett here.

In preparation for this evening's event. I rewatched ESPN's 30 for 30 on this case—yes, there's a 30 for 30 on this case—and was struck by every word Michelle had to say. She is currently the Chief Deputy Clerk at the Youngstown Municipal Court, and we'll hear more about her too in a moment.

And it's truly tremendous that we have with us here as well the Honorable Shira Scheindlin. Judge Scheindlin was appointed to the federal bench by former President Bill Clinton. And for two decades, Judge Scheindlin served as a U.S. District Judge in the Southern District of New York. In that capacity, she presided over a number of significant matters, among them *Maurice Clarett v. National Football League*.<sup>25</sup>

As a Civil Procedure professor here at the law school, I would be remiss if I failed to note Judge Scheindlin's pathbreaking opinions in *Zubulake v. UBS Warburg*,<sup>26</sup> opinions that 1L's around the country read in their Civil Procedure class every fall. Those opinions have greatly influenced the way that courts think about issues arising out of the discovery of electronically stored information. Judge

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<sup>24</sup> Maurice Clarett, *THE MIND OF MAURICE CLARETT*, <http://mauriceclarett.wordpress.com> (blog no longer available online).

<sup>25</sup> *Clarett v. NFL*, 306 F. Supp. 2d 379, 390 (S.D.N.Y. 2004), rev'd, 369 F.3d 124 (2nd Cir. 2004).

<sup>26</sup> See generally *Zubulake v. UBS Warburg LLC*, 229 F.R.D. 422 (S.D.N.Y. 2004) (*Zubulake V*).



Scheindlin, who is also a prolific legal scholar, is currently of counsel at Boies Schiller, where she's an in-demand mediator and arbitrator.

We're also so honored to have with us this evening Benjamin Block, who is a partner at the law firm of Covington and Burling. He's a nationally recognized commercial litigator and sports attorney. Among many other high-stakes and high-profile matters, he represented the National Football League in its negotiation of the CBA with the NFL Players Association; he successfully defended the National Football League in *Brady v. NFL*, an antitrust challenge to the 2011 lockout; and he represented the Big East and American Athletic Conference in multiple litigations related to conference realignment. His firm has a long history of representing the NFL and other professional sports leagues in litigation matters.

Alan Milstein, my former boss, is a shareholder of, and chairman of, the litigation department at, the law firm of Sherman Silverstein in Moorestown, New Jersey. Alan is widely acknowledged as a pioneer in establishing the rights of research subjects, and in that capacity has been featured on the front cover of the *Washington Post Magazine*. In addition to Maurice Claret, he has litigated on behalf of such sports figures as Alan Iverson, Carmelo Anthony, Eddy Curry and others. He is an adjunct professor at Temple Law and other law schools and has taught bioethics and sports law courses. My favorite credential of Alan's, though, relates to Deflategate. Alan, unlike so many other prognosticators, steadfastly insisted to the media that Tom Brady was going to prevail in his appeal before the Southern District of New York, and indeed, he did. The *Washington Post* then published an extensive article on the winners and losers of Deflategate.<sup>27</sup> According to the *Washington Post*, the three winners were the NFLPA, Tom Brady... and Alan Milstein. It's a privilege and honor to have Alan here.

In 2002, as a young attorney and scholar, Michael McCann's Law Review article on age, eligibility, and pro sports<sup>28</sup> earned him a key place on the team of attorneys representing Maurice Claret. Fast forwarding a bit, Professor McCann is the Founding Director of the Sports and Entertainment Law Institute at UNH Law, and one of the nation's foremost sports law experts. He currently serves as a legal

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<sup>27</sup> Mike Hume, *Tom Brady's DeflateGate court victory produces notable number of winners, losers*, WASHINGTON POST, <https://www.washingtonpost.com/news/sports/wp/2015/09/03/the-biggest-winners-and-losers-in-tom-bradys-deflategate-court-victory/> [https://perma.cc/4YBU-BUFZ] (last accessed May 30, 2024).

<sup>28</sup> Michael McCann & Joseph S. Rosen, *Legality of Age Restrictions in the NBA and NFL*, 56 CASE W. RES. L. REV. 731, (2006).

analyst for *Sportico*. Chances are, if an athlete is involved in a legal matter, Professor McCann will be on the news that evening, and chances are, if Congress is considering name, image, and likeness legislation, Professor McCann will be testifying on the panel that day. He's a prolific scholar, a bestselling author, and one of the best teachers I've ever witnessed in the classroom.

I'm told to introduce myself so forgive the awkwardness. My career began with this case too. I began working at Alan's firm and working with him on this case in September 2003. I then spent a little under two decades focused on complex commercial litigation, bioethics and clinical trials litigation, and sports law, mostly practicing alongside Alan before joining the full-time faculty here at UNH Law in the fall of 2022. I teach Civil Procedure, Drug Law, and Amateur Sports Law. And I have a law review article at the Intersection of civil procedure and professional sports law forthcoming in the *Dickinson Law Review*.<sup>29</sup>

With that, I believe that we're going to turn things over to Alan, who's going to do a Q and A.

**Alan Milstein:** Michelle, why don't you tell us all a little bit about Maurice pre-college in his school days.

**Michelle Clarett:** That's a lot to tell. I will try to sum it up a little bit.

Hello, everybody. Maurice was the youngest of three. He had two older brothers, and he had a plethora of cousins and many of those were male also. There was always comradery in football and basketball and rough housing.

**Alan Milstein:** When did you know that he had something special as an athlete?

**Michelle Clarett:** Actually, I knew that Maurice had something special as an athlete when he played Little League ball. He always wanted to go to Little League practice with his brothers. And of course, he was the youngest. He would always struggle and say, "I want to play, I want to play." But he was too young to play, but he had the size and the weight. So, the coaches would let him go in on drills and would let him play, and he would hold his own. This went on until he was eligible to play. He picked up sports easily growing up. Once he got to junior high school, he became a man-child. Imagine a large young person playing with little junior high kids. And as he's running down the field to score, he's dragging these kids along with his ankles, they

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<sup>29</sup> Michael Dube, *The LIV Golf v. PGA Tour Antitrust Case as a Case Study in Federal Civil Procedure*, 129 Dickinson L. Rev (2024) (forthcoming publication).

were trying to tackle him because he was so big. And the coaches are saying, "okay, you have to wrap his legs, wrap his legs," and the more they tried to wrap his legs, the more he dragged them down the field. It became an entertainment, so to speak. As he moved on through junior high school and onto high school, he began playing at that level and he wanted to play varsity. He worked hard at trying to get in, and he did achieve to get in, and he started as a freshman in high school. He got in the first game and of course he did a phenomenal job scoring. They ended up winning the game. And so, it began as he unfolded with his athletic abilities. It wasn't that he was fully trained, he just had talent that he just kept exuding.

**Alan Milstein:** What was your greatest fear with respect to Maurice's future?

**Michelle Clarett:** My greatest fear, and I think it's probably shared with a lot of parents or siblings, is that he would go down the wrong path. We lived in the inner city and there were a lot of friends, there was a lot of temptations, and my biggest fear was that he would go down the wrong road and just dismantle. And as time progressed, football became his way to keep him focused, establish his goals, and to work at what he wanted to see at the end of the road. Football didn't start out as being the peak of it all his education was what he really wanted to do was to attend college and football was a mechanism that he sought to get there.

**Alan Milstein:** Now Maurice, the one error in Mr. Dube's presentation, he said that you started in the fall. You actually graduated your high school in December of your senior year. Is that right?

**Maurice Clarett:** Yes.

**Alan Milstein:** And you started at Ohio State in the spring?

**Maurice Clarett:** January, yes.

**Alan Milstein:** And why did you do that? What was your motivation for doing that?

**Maurice Clarett:** Well, the year before, I tried to graduate as a junior, my junior year.

**Alan Milstein:** So, you've always been challenging age eligibility.

[laughter]

**Maurice Clarett:** Yeah. My junior year I had, well, I don't know, I put a lot of time into my junior year playing football. I broke my ankle and, when I came back, I had five games from about 1,000 yards or 1,100 yards. And I just felt like I had figured

high school out, I was like, "it's not really tough anymore" and you know, I was squatting about 700 pounds and benching about 400 pounds. And I just was like, you know, wanting to be done and move on to college. And then, you know, coupled that with - you're in the inner city and, you know, just, you know, it's the late '90s, early part of the 2000's, you know, murder is a normal thing, crime is a normal thing. And I was just really trying to get outside of the neighborhood and so I went to Notre Dame and she [Michelle Clarett] was correct. You know, like now you can hear about guys making \$20, \$30, \$40 million playing sports. But you know, I came up in an era where I was like, man, if I just get an education from Notre Dame, then I'll get a job. I don't know what type of job, I just knew that if you graduated from Notre Dame that, you'll land somewhere. I mean, that was the intention at first. And then there was a guy named by the name of Rex Hogan who was a graduate assistant. And I initially committed to Notre Dame, but then I found out that I didn't have enough English credits, so they made me go to a summer school course to take an English class. And then that following January, I said, "man, if I can just play a football season, I know I won't sort of get into nonsense" because I'm going to football practice, coming back and then if I play, go play for the football season and then go in January, that I would have a chance to compete, going [into the] fall. And so, I always understood timelines with football, I knew that it would be hard for me to get on the field if I had come to school in the fall, like a normal freshman. And so, I was just trying to leverage my time on campus to play as a freshman.

**Alan Milstein:** Now, the Ohio State University has a spring football program. So you actually were on the football team in the spring of what would have been your senior year of high school, is that right?

**Maurice Clarett:** Yes. I went there in January to play spring ball, and ultimately, I think that's what positioned me to play or start going into my freshman year.

**Alan Milstein:** So, you play that freshman year and Mr. Dube, Professor Dube, regaled us all with your good fortune. Just an incredible year. But let's talk about what happened there at the end when the team was supposed to go to the national championship game. What happened back home?

**Maurice Clarett:** Yeah. What happened was, he alluded to it, so a guy I grew up with, he basically got killed in a drug deal gone bad. And so, when you're 18, 19 years old, and you know, people come and get you out of the inner city, the coaches sit on your couch and they talk about [how] they love you and [about] his team, and camaraderie and all the other nonsense. They come with some of the best

messaging, and I'm just saying "hey, you know, I want to go to my friend's funeral," and if it was like your grandmother who died from cancer or somebody who died from a natural cause, I think that would have been more acceptable and they would have figured that out. But I don't think that they wanted their star football player to be going away from practice and then have the media ask "what are you going for?," and then you have to explain that a guy that got killed over a kilo of cocaine, Maurice is at his funeral. And this is just, I'm 40 years old now, I get it as I get older. And just for context, everybody sees Ohio State now and they're used to winning, but Ohio State hadn't experienced this stage since 1968. And so, it's tough because I know that they wish that they didn't even have to sit here and experience this, but I think there's just things where you're sitting in any leadership role. You know, when you go to get all these kids out of these neighborhoods, these kids come from the same place I come from, some of the roughest and craziest of situations, and instead of going to the media and saying, "hey, you know, we have kids who we get who come from crazy circumstances," it was easier just to try to suppress me. And, so, I went to a press conference on Tuesday. Well, this happened Monday, I'm just hypothetically naming dates. So it happened --

**Alan Milstein:** Wait, before you say that, the Athletic Director was this guy Geiger, right?

**Maurice Clarett:** Andy Geiger, yes.

**Alan Milstein:** Did you ask Mr. Geiger whether *The Ohio State* would fly you back for the funeral?

**Maurice Clarett:** Yes, to the funeral. To go to the funeral and come back to practice. And it was him and the lady from compliance, whoever the head of compliance was, I talked with her on the phone. It was my understanding that I was getting on that plane to go back the next day.

**Alan Milstein:** And Michelle, you listened to the conversation as well, didn't you?

**Michele Clarett:** Yes.

**Alan Milstein:** And did you hear Mr. Geiger say that Ohio State committed to sending Maurice back?

**Michele Clarett:** Yes.

**Alan Milstein:** And then you were told you couldn't go. So, what happened?

**Maurice Claret**: No. So there was the conversation kept on, “we’ll follow back up with you,” so we’re in Arizona at this time. And then as I wake up, there was never a knock on the door, there was never an arrangement for somebody to say, “hey, let’s go to the airport, you have to get on this flight and you’ll return then.” So the day I wake up, and it’s time for me to go to practice, like we go to practice or whatever, and then it happens to be a Media Day. I don’t know the series of events, it was 20 years ago, but I end up landing at Media Day that day, right? And so, I’m 18 years old, 19 years old at this time, and I just wasn’t in the mood to be at Media Day. So they stick me in front of a camera and they were asking me why am I in the mood that I’m in. And that’s basically when we started everything and I was like, you know, “I don’t want to be here, I’d rather be at the funeral.” And then they’re asking me questions, but everything is within context.

I come from an environment where if somebody is a liar, you can just say, “man you a liar,” right? I come from a neighborhood and it’s like if you’re a grown man and you’re a liar, somebody can just say, man you lied to me. I didn’t even know the hierarchy, I didn’t even know that the athletic director was more important than a head coach, so I’m just like “the administration, they lied to me.” I’m not realizing that they ‘bout to blast this stuff all over TV. But I come from an environment where it’s normal to call somebody a liar. I still think you should call people liars even at 40. You know what I’m saying? Just being serious, this is probably like an American thing, but we become cool with bending the truth or talking in circles. But it was the same thing, true then as I believe it is now, you should just be able to tell people how it is. Just be honest about what’s going on. I think if you just deal with reality - I don’t know. Just something to live by.

**Alan Milstein**: But here’s this 18-year-old kid, and he’s calling the Athletic Director of The Ohio State University a liar. And after that was the game, right?

**Maurice Claret**: Yes.

**Alan Milstein**: So how did you play that day?

**Maurice Claret**: We won.

**Alan Milstein**: It was one of the great performances really.

**Maurice Claret**: We won. Yeah.

**Alan Milstein**: Like ever. So, did you understand whether Mr. Geiger and you had any kind of positive or negative relationship after that?

**Maurice Clarett:** No. It's two things. I was proud to win the game for the State of Ohio just from a pride standpoint. I was proud because like, you know, everybody wants to go off from a team standpoint. But there was still, there wasn't any - there wasn't a figure on the other side who I was mad at. I was mad at like this- this force that didn't allow me to go back. And whether I labeled it the athletic department or whether I labeled it whatever, I was just mad that I wasn't able to go. But you're still proud that you accomplished what you set out for. But I didn't realize that there was any sort of rift between both parties, because you figure if you win a championship, you think like, all is well. You know what I'm saying? So I didn't understand that piece.

**Alan Milstein:** And the religious zealots - that is the religion of football in Ohio - you've said to them, "there's some things more important than football." So let's go to the next thing that happened with you. Suddenly in the middle of the semester, there's this front-page article in *The New York Times*.<sup>30</sup> The *Times* has this terrible exposé about this Maurice Clarett who was allowed to take a midterm exam twice. This was your African American history teacher. What was special about her compared to the other teachers you had at Ohio State?

**Maurice Clarett:** There was nothing special. I was just struggling with the course and literally, you know, just this is the bluntness about it. I was struggling to pass the class, and two things happened. The lady who they were writing the article about, she was getting into an argument with the university about something totally different. All right. The graduate assistant, if that's what you call her, the teacher's assistant, professors assistant, whatever the technical label is. The assistant had been arguing with the university and that was like its own deal. I was allowed to take the second course twice, and she knew it. And as a way of her arguing with the university and trying to badmouth the university, they end up leveraging my name inside of the article to basically say, "hey, the university shouldn't be allowed to be doing this. They allowed Maurice Clarett to take this course twice," so on and so forth. But they were trying to help me stay eligible for spring ball and into the summer. That's the crux of it - does that make sense? I know I said a whole lot, it sounds a little bit weird, but it was really somebody else's deal and their beef that I just basically became a casualty of war, you know what I'm saying?

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<sup>30</sup> Mike Freeman, *COLLEGES; When Values Collide: Clarett Got Unusual Aid in Ohio State Class*, N.Y. TIMES, (July 13, 2003), <https://www.nytimes.com/2003/07/13/sports/colleges-when-values-collide-clarett-got-unusual-aid-in-ohio-state-class.html> [<https://perma.cc/6FCP-M84Z>] (last accessed May 22, 2024).

**Alan Milstein:** - And that article which really, I mean big, big deal, really. I mean, this kid who spends all this time playing football is allowed to essentially take another course twice.

**Maurice Clarett:** Yeah.

**Alan Milstein:** That article started the NCAA investigation, which I happened to be present at - and as to Jim Brown, how did Jim Brown get involved with you?

**Maurice Clarett:** Uh, interesting story. These are four unlikely people. We were all at a Greater Cleveland [Sports Awards banquet]<sup>31</sup> and in the waiting room to go do some awards. Do you remember the Olympic gymnast, Dominique Moceanu? Y'all remember her? So it's Dominique Moceanu, Don King, LeBron [James], and myself. So we were all kind of waiting and hanging out and I was like, I was amazed because this was Jim Brown, obviously I knew who Jim Brown was, we were all just hanging out in the back. And man, the irony of this. He said, "if you ever need me for anything, here's my number," and he gave me his contact information. Literally when I start going through all of this stuff, I was like, man, I don't know who to call. If you're in an NCAA investigation, you just don't know how to navigate this because you've never been a part of it, but I knew his history and his activism. I just said, "hey man, can you kind of help me with figuring this out?"

**Alan Milstein:** And at the end of the investigation - this is sort of a famous story, forgive my French - but if you know who Jim Brown is, you know, the greatest football player ever - and also a very, very intimidating guy. And Jim and I are inside this room and the NCAA has just finished asking Maurice questions, and then basically telling us that they're going to suspend him. Jim Brown, in a raised voice, says "this is bullshit!" Now, you can imagine these NCAA people when Jim Brown says that, you know two things: one, that it's bullshit, and two, you better not say anything in response. So, we left that day, and the lawsuit followed. One other question: Maurice, everybody's making so much money on NIL. How much money did you make on NIL?

**Maurice Clarett:** Nothing man. You know, I'm happy that we've gotten to a place where we are accepting and a-okay with young kids getting paid. But I didn't make anything at that point in my career.

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<sup>31</sup> See GREATER CLEVELAND SPORTS AWARDS, <https://www.clevelandsports.org/events/2024/01/23/greater-cleveland-sports-awards/awards-history> (last visited May 23, 2024) [<https://perma.cc/UW7Y-K5XJ>].



**Michael McCann:** Thank you. That was a great discussion, and thanks to everyone for coming tonight. For everyone watching online, it's been really interesting. Now we're going to turn to a discussion of some of the legal issues and other aspects of the case, including how it relates to ongoing issues with the NCAA, whether it be name, image, and likeness, or college athletes as employees. With that, I want to begin with thinking about the purpose of an eligibility rule for not only the NFL, but more broadly.

The NBA has an eligibility rule, the WNBA has an eligibility rule. [For] The WNBA, you have to be a college graduate or four years out of high school if you're a US player; if you're international, you have to be 20 years old. In the NBA, you have to be 19 years old plus one year out of high school. Or if you're an international player, there's no educational component because some international players in basketball turn pro as young as 13. In the United States, eligibility rules are a little bit different. They are a key part of our sports system, particularly in the NFL and in the NBA. My former law school classmate Ben Block is here, he is an NFL attorney who, as Professor Dube noted, has represented the NFL quite well and he's defended them successfully in many cases. Maybe Ben, if you could talk about sort of the purpose of the NFL's eligibility rule.

**Ben Block:** Sure. Before I do, let me say that any opinions expressed are solely mine, and not those of the National Football League or Covington and Burling. At the time of this case, your freshman year at the Ohio State University was basically my freshman year at Covington, so by the time this case rolled around, I was - I guess I clerked for a year - so I was like a third-year associate at Covington. The purpose of the eligibility rule - when I heard you might ask me that, I went back and found our briefs:

The purposes of the eligibility rule include [1] protecting younger and/or less experienced players -- that is, players who are less mature physically and psychologically -- from heightened risks of injury in NFL games; [2] protecting the NFL's entertainment product from the adverse consequences associated with such injuries; [3] protecting the NFL clubs from the costs and potential liability entailed by such injuries; and [4] protecting from injury and self-abuse other adolescents who would over-train -- and use steroids -- in the misguided hope of developing prematurely the strength and speed required to play in the NFL.<sup>32</sup>

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<sup>32</sup> *Clarett v. NFL*, 306 F.Supp.2d 379, 408 (N.Y.S.D. 2004) (internal citation omitted), rev'd, 369 F.3d 124 (2nd Cir. 2004).

That was the stated purpose of the eligibility rule in the court papers.

I think part of where, where the story ends legally is that the onion got sliced very thinly here on the eligibility rule as divorced from the context in which it exists. It is part and parcel of the rules associated with the NFL draft. The draft, of course, is the gating mechanism by which players can eventually become part of an NFL team. You can't get signed by a team until you've been eligible for a draft and you've either been selected for the draft or the draft finishes, nobody picked you, and then you are a free agent, and you can go sign with any team.

And the draft, of course, has the purposes of competitive balance, right? The team that picks first in the draft is the one that did the worst in the prior year, so hopefully they're going to get a better player and be better on the field the next time around, and frankly, I think that today, the draft also helps keep interest in the entertainment product. Well, I'll tell that story another time. But you can't divorce the eligibility rule - I don't think - from the draft and the process by which players enter, in this case, the NFL.

**Michael McCann:** Thank you. Let's talk about what were Maurice's probably strongest legal arguments. Maybe Alan -

**Alan Milstein:** Before you get to this, the purpose of the eligibility rule is to keep people like Maurice Claret on the plantation that is college football. That's the purpose. The NFL wants a training ground for their players, so that when they select - we all know that sometimes the NBA has selected somebody out of high school and it doesn't work out. The NFL didn't want to do that. They wanted to make sure they had a three year look at their players before they drafted. And that's the purpose of the eligibility rule, and it is connected to the draft. And the purpose of the draft is not even playing fields - the purpose of the draft is to decrease prices. It's a monopsony. It's a monopoly. It's a monopoly by the people who are hiring the players. And they want to control the salaries of the players who come into the NFL before really anybody can see how good they are. Right?

**Ben Block:** Respectfully disagree. I do remember, in the argument at the Second Circuit for the stay, we had a Bobby Layne concern.<sup>33</sup> We weren't going to lose the game, but we were going to run out of time if we didn't get the Court of Appeals to review the decision before the draft happened. One of the members of the panel

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<sup>33</sup> Former NFL quarterback Bobby Layne is quoted as having said, "I never lost a game. I just ran out of time." See, e.g., Michael J. Pellowski, *THE LITTLE GIANT BOOK OF FOOTBALL FACTS* 209 (2005).

asked, “[w]hy don't you just move the draft later?” And the answer was, “well, Your Honor, the date is collectively bargained, and it's televised, and there's a contract, and Radio City Music Hall has been rented out,” and the member of the panel could not believe that anyone would watch on television on NFL. I do remember that. Right.

**Alan Milstein:** And I said to the panel that was so concerned about staying this decision that allowed this young man to play football [that] he wasn't going to play football if he wasn't ready. The only reason anybody drafts somebody in the first round is because they're ready to be drafted, and the only reason they play is because they're ready to play. And I said to the Second Circuit, “you're the Second Circuit of the United States. Don't you have something better to do? Aren't you concerned about things more important than whether Maurice Clarett plays football?” Apparently they didn't.

**Michael McCann:** Professor Dube, can you discuss the strategy of the Southern District of New York, and also maybe some of what you think Maurice's best argument was?

**Michael Dube:** I'll let Alan speak to most of that. I think that there's obviously venue there. The NFL at the time was structured a little bit differently, but there was really no dispute that venue was proper, and, as I think back, time is of the essence, right? And so, if the case is filed in the Southern District of New York, there's no possible motion to change venue or transfer venue that might delay the case. And so, I imagine that that's consistent with the exigency of the matter.

**Alan Milstein:** And the Southern District has a lot of very good judges, and we happened to pull my favorite judge in all of the United States, Judge Sheindlin. This was a very interesting case. We filed the complaint, and normally if you've never filed a complaint, you know, you wait 30 days, and the other side asks for an extension, and then the Court one day will say, “come on in for a conference.”

We filed a complaint. In two days I get a call from the Judge's clerk, who says, “we want you to come in for a conference.” We hadn't asked for an expedited hearing, we hadn't asked for an emergency injunction. Her clerk calls us up, “we want you to come in. By the way, tell the NFL - I don't know if you served it yet.” I said, “believe me, they know we filed the complaint.” And she calls us in and immediately says, “all right, this is an important case. Mr. Milstein, what do you need as far as discovery? Let's get a schedule because this is going to be a summary

judgment case, one way or the other.” And so it actually - we had the perfect judge. We just didn't have the perfect circuit.

**Michael McCann:** Let's bring in the perfect judge, Judge Scheindlin. Thank you so much, Your Honor, for joining us. We really appreciate you being part of this discussion. When you were assigned to preside over the case, what were your initial thoughts? How closely did you follow the NFL? And did you know this would be a high-profile matter?

**Judge Scheindlin:** Okay. Well counselor, that was three questions at once, but I'll try to remember all of them. I knew that this was going to be a very interesting case because it is a case that was at the intersection of labor law and antitrust law. That's not a run-of-the-mill case. A federal district judge gets many kinds of cases, some more interesting than others, some more routine than others, but this is one of those that's very special. And you know that as a judge, you say “this one is really important.” I also knew it was high profile. I knew it involved the draft. I quickly, just in reading the papers, knew what the issue was. I didn't follow football at all. I've never watched a Super Bowl, ever, so I don't care. I don't care at all about football, but I do care about people. I care about their rights. I care about doing what I believe is justice. So, I knew this was going to be an interesting case. I think I answered the first three questions you have, and I'm sure you have more of them.

**Michael McCann:** I do. When you got when you started reviewing the case, what was the evidence or arguments that you thought were the most persuasive on behalf of Maurice?

**Judge Scheindlin:** Well, the first thing I was going to say is, I listened to Mr. Milstein say just now why he chose the Southern District of New York. But I wonder if in retrospect he's saying to himself, “I should have gone to a court in the Eighth Circuit,” because this case turned on a circuit split, which is getting a little ahead of where you want to get, but it turned on a circuit split. And if he looked at what the decisions in the Second Circuit had been, and what the decisions in the Eighth Circuit had been on, the key issue in the case, we might have today made a different decision. I don't want to get you in trouble with your client but who knows. In any event, what do I think the big issues were? The big issue is really what you touched on in the introduction, and that is what is the scope of this non-statutory labor exemption. [See Cite?] Was this a subject of collective bargaining? And of course, I feel it was not. There was not proof that it was ever bargained. And this young player was not an employee. He was not in the bargaining unit. He was an outsider,

a stranger to the unit. I thought that was important. So, I thought that was important because it was a bar to his entering a labor market entirely. He couldn't even go into that market because of this bar.

And I understand Mr. Block's point of view, absolutely. I understand that he believes that the draft and the eligibility is all part of how the players negotiate with the league, but the evidence really wasn't there, in my opinion, to support that. And again, it depends what test was used. And if you looked at the very simple Eighth Circuit test, I have no doubt I would have been affirmed.

I enjoyed this past week in my life. I enjoyed rereading my opinion<sup>34</sup> and the circuit opinion.<sup>35</sup> I did take the trouble to read them both thoroughly. And there's no question that the Circuit felt bound by its own previous decisions and that it rejected the Eighth Circuit test for the application of this non-statutory labor exemption. My biggest disappointment in the case was that the Supreme Court didn't resolve the circuit split. I had hoped this would be high profile enough that they would take it, since there was such a clear split. Three circuits, I think, went one way. Three circuits went another way, and these facts were perfect to squarely present the issue to the Supreme Court. Maybe they would have, if there had been more time; maybe they felt here that there was no way they could brief this and argue this and decide this in time for the [NFL] draft. And maybe some of them, some of those Justices knew that, that it really couldn't be done. And they'd have to wait for the next time, which I gather has not yet come. So that was too bad. But anyway, it was a nice trip down memory lane to reread this. And I have to say, don't take this wrong, I'm really a very modest, non-arrogant person, but to this day, I think my decision was right.

**Michael McCann:** Thank you, your Honor. Maurice, when you brought the case, did you know that this was going to be what it became? Did Alan talk to you about that?

**Maurice Clarett:** No, I was 19 years old. You don't have a clue. I think when you're young, you're naive to believe that people will just do the right thing and you don't understand all the politics, the business, the nuance, the differing opinions, you don't understand circuits and courts, you don't understand it at 19. But, I really believed when I talked to Jim Brown at first and then meeting Alan, you think that it's going to be a simple process and that you'll be able to play football; in a worldly sense, you don't think it's that important that somebody would reject it or defend it. It goes

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<sup>34</sup> Clarett v. NFL, 306 F.Supp.2d 379 (S.D.N.Y. 2004), rev'd, 369 F.3d 124 (2nd Cir. 2004).

<sup>35</sup> Clarett v. NFL, 369 F.3d 124 (2nd Cir. 2004).

back to what Allen said. It's like a very practical and simple way. If somebody doesn't want you, they won't pick you. You know what I'm saying? You can let toddlers in the NFL right now; if nobody would want them, nobody would pick them. Sometimes we get caught up in technicalities and nuance to protect - all this stuff is protecting money. That's all it is. We can respectfully have different opinions, but it's really to protect moneys and systems of free labor, and that's what it is. And I'm not the smartest guy in the world, but I'm not dumb either. I just call it how it is.

**Michael McCann:** Ben, you know, one of the interesting things about this case is that Maurice is not in the NFL, right? So he's not a member of the NFLPA. How did that weigh into these things? The judge noted, he's outside of what would be the labor unit. How was that a concern going into the case? How did you resolve it if it was a concern?

**Ben Block:** Well, I think it was not a concern because that's true of, you know, hiring halls and other analogous situations where labor and management can agree collectively on who can be eligible to work in the workplace, and that, by necessity, is going to exclude those who are not eligible.

If I could just as an aside, Maurice, you were not the only Columbus connection to the case. Three of the four attorneys representing the NFL were all from Columbus. So we were, we were all big, believe it or not, we were all very big fans of yours. And I agree with Professor Dube that the greatest, or perhaps second-greatest play in Ohio State history was you chasing down Sean Taylor and taking the ball from him. If you all have not seen that on YouTube, you've got to go watch it.

**[30 for 30 clip played]**

**Michael McCann:** Maurice, can you talk about that play, then we'll go back to Ben.

**Maurice Clarett:** I mean just uh, it's a little bit more elaborate when he played it [from the 30 for 30 episode], but I wouldn't lie to anybody. Just like anything else, you, you're in the spirit of competition and it goes back to just fundamentals and training. So if anybody ever played football before, if you've ever played running back, first drill I've done since junior high is ball security, and I'm pretty sure just legally if there's something that you fundamentally do that if you see somebody else not do, you're going to recognize that bad habit. In football, they always tell you to carry the ball high, tight, and when he was running down the field, I just know from being a running back that he had just too much space between the body, body and the ball, which caused turnovers. And you know, I just knew he had got an interception. And they always tell you, don't stop until the whistle was blown.

Football is just a bunch of habits. When you see a good player, it's just a bunch of good habits stacked that you just repeat all the time. And I think that's true with any profession. And literally just went to go compete and get the ball back, but more people find it more amusing and entertaining than I did at the time. I was just like, you know, just fight to get the ball back. That was pretty much it.

**Ben Block:** So you know, three of the four attorneys representing the NFL, we were very big fans of yours as a player, not of the legal arguments being made, but for you as a player. The fourth member of the team [Joshua D. Wolson] is now a federal judge in Philadelphia, by the way, just as an aside. But one of the reasons we weren't a fan of the legal case is sort of - we saw it differently from Your Honor, and we didn't really think this was an antitrust case in multiple respects. At a macro, macro level, it was challenging restraints in the labor market under the Clayton Act. The Clayton Act says that "[t]he labor of a human being is not a commodity or article of commerce."<sup>36</sup> So, you got a threshold question, like, is it even supposed to be applying to the labor market? We had had an argument that I'm sorry that the courts never ruled on, because I thought it was really interesting. Was there actually harm to competition as opposed to a potential competitor? There was obviously a harm to you, Mr. Clarett, in that you wanted to be in the draft and you weren't allowed to. But how was that harming the market for labor in the NFL? Where, as you said, Mr. Milstein, there was already a collectively bargained salary cap, and on top of that, there was a collectively bargained number rounds of a draft and a pool of salary that could go to rookie players. So whether you were or weren't in the draft, the argument went, wasn't going to impact the price or the output in the market that was being challenged. It was just going to impact, you know - perhaps one different person would go in than somebody else. And we thought that was a very strong argument that it's not antitrust injury. Judge Scheindlin addressed it, [but] the Second Circuit did not need to, because they went the NFL's way on the non-statutory labor exemption.

**Judge Scheindlin:** I don't know whether Mr. Milstein is going to give the rebuttal to that argument, but I will say, I will say that after the opinions came down, I received a number of unsolicited letters, some of which - I can't remember the names - were from antitrust law professors from around the country, saying they absolutely thought this was an antitrust violation. They very much liked my opinion and did not like the circuit opinion, and these were experts in antitrust law, so I think there

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<sup>36</sup> 15 U.S.C. § 17.

are grounds for reasonable people to differ on these issues, without a doubt. I also wanted to do a little rebuttal on the hiring hall analogy. I think it is absolutely non-analogous. This is the way that labor market works. Everybody stands in the hall, some are picked, some aren't picked. It's not a complete bar to entering the field in which you want to provide your labor. So I don't want to steal Mr. Milstein's job because he's better at it than I am. He's an expert in the field, I am not. All I did was review my old opinions from now - I can't believe this - 20 years ago, we're here for the 20th anniversary. But Mr. Milstein, if I didn't do a good job, help me out.

**Alan Milstein:** You did a great job, and everybody that I've spoken to thinks your opinion is brilliant in the Second Circuit's is nonsense. And the reason it's nonsense is, is because the issue was, was this a bargained-for position? That was what the NFL said. They said, "this was something we bargained with the labor union about." So we said to the NFL, the only thing that I asked the judge at the conference, the only thing I needed was, "judge, I need to know where the rule is, because the rule is not in the collective bargaining agreement." You would think if it was something that was argued and negotiated, it would be there, but it wasn't there. I said to the NFL, "show me where the rule is." The NFL then produced a bunch of letters between the commissioner and the owners of the teams saying, "this is our eligibility rule." And the letters so far predated even the union.

This eligibility rule was in place before there was even an NFLPA, and it wasn't bargained for. The owners of the league, and the commissioner said, "this is the rule." Now, the other interesting thing about it, and the reason, I started with Mr. Clarett about the fact that he started at Ohio State University on the football team in the spring, not the fall, because the rule itself was poorly written. [Cite: can we find this prior rule for a cite? Maybe in court filings from the original case, or within the District or Circuit opinions?] . And what it said was that in order to be eligible for the draft, three NFL seasons needed to be elapsed.<sup>37</sup> When Maurice joined the Ohio State football team, the Super Bowl hadn't taken place yet, the season hadn't elapsed.

Michelle and I went down to Washington to the great Covington and Burling. They're interesting, they're wonderful. They're important lawyers, they understand the practicalities. And we sat there and we were a little surprised that,

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<sup>37</sup> *Clarett v. NFL*, 369 F.3d 124, 127 (2nd Cir. 2004), explaining that a player could enter the draft after obtaining 'Special Eligibility' from the league commissioner provided that "at least three NFL seasons [had] elapsed since the player graduated from high school," and further explaining that "[t]he Commissioner's practice apparently was, and still is, to grant such an application so long as three full football seasons have passed since a player's high school graduation" (citation omitted).



that the NFL was inside, you see Covington and Burling? And it's inside. Inside Covington and Burling is the NFL. And we say, "look, you know, there's another guy out there-"

**Ben Block:** Sorry. But just to be clear, the NFL's headquarters is in New York. They had a small office in the building in which our law firm was in DC.

**Alan Milstein:** So there was another guy, there was another football player by the name of Larry Fitzgerald. And he had an extra year of high school. The NFL had agreed to let Mr. Fitzgerald join the draft, even though he was not three NFL seasons elapsed from his last high school because he had an extra year. They said, "you can come in." So I said to Covington and Burling and to Jeff Pash, who was the guy I had to speak to at the NFL, I said, look, "I know you love your rule, keep your rule. Let Maurice in with Fitzgerald. There's a good exception to why Maurice should be allowed to join the draft and then you can keep your silly rule." And I said, "what do you think about that?" And Jeff Pash looked at us and he said, "we'll think about it." And I said, "what do you mean you'll think about it? We need to know what you're going to do." He said, "we'll think about it," and then he also said, "but we know you're going to file a complaint tomorrow anyway or Monday anyway," which is what we did.

**Michael McCann:** Ben, do you want to respond?

**Ben Block:** Not on that point, but to the judge's point and for the law students in the room about how this case raised interesting questions at the intersection of antitrust and labor law, I was the perfect junior associate to work on that case because I hadn't taken antitrust law and I hadn't taken labor law.

But you learn the stuff on the job, so I mean, look, I was clearly the lowest rung on the totem pole on this case. But, [I] worked hard on it, it was a wonderful experience, we had a great team at the firm. When we were researching - the Second Circuit, [it] had dealt with this issue quite a bit in several different opinions, all involving the NBA on the non-statutory labor exemption piece. And we felt very good that we were right on the law on this.

**Judge Scheindlin:** And you were right in the Second Circuit, that's the problem. And I know one of the questions coming up is what should the Supreme Court have done? And we can certainly turn to that whenever you're ready.

**Michael McCann:** We could turn to it right now, Your Honor, I'm curious what you think about it.

**Judge Scheindlin:** I already gave my views that maybe one reason they didn't take it is that realistically they couldn't solve this case on time, and maybe they thought it would come back in a more-timely fashion. That's possible, but I have no way of knowing what the votes were.

**Michael McCann:** Any thoughts on the panel, on the Supreme Court?

**Ben Block:** Well, at the risk of continuing to disagree with Her Honor, I don't think it was a circuit split. I don't think...

**Judge Scheindlin:** Oh, I have to interrupt you, I have to interrupt you, I must interrupt you. The Second Circuit said so in its opinion! It says there's a deep circuit split here. We and two others go this way, and the eighth circuit, which we disagree with, and two other circuits go that way. So I don't - I'm glad you said "respectfully" because I want to be respectful of that, but the second circuit said there was a circuit split.

**Ben Block:** I don't think that the Second Circuit was correct. I don't think they were correct about that. The Eighth Circuit's opinion in *Mackey*<sup>38</sup> was not even the law of the non-statutory exemption or the full extent of the non-statutory exemption in the Eighth Circuit, as of the time we got here. *Powell*<sup>39</sup> had happened since then. And then there had been the Supreme Court's decision in *Brown v. Pro Football*.<sup>40</sup> And so we think that anyway, so I think that's why they didn't take it.

**Michael McCann:** I have a question for Michelle. You can tell this case generates pretty intense legal views. You worked in the legal system. What did you think when the prospect of this litigation began, your son being the plaintiff in what would become a historic case? Did you think it was a good idea, did you have reservations? I'm just curious about your thinking.

**Michelle Clarett:** there's reservations whenever you step into a case situation, and I just knew that the case would be high profile. We we're embarking on doing something that had not been done before, and as Maurice has eloquently pointed out, it was not always about the right thing, it was about the dollars. And when you look at Maurice's ability to play, which is some pieces and parts was danced around within the lawsuit itself, there was no question of his ability to play. And as was said,

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<sup>38</sup> *Mackey v. NFL*, 543 F.2d 606 (8th Cir. 1976).

<sup>39</sup> *Powell v. NFL*, 930 F.2d 1293 (8th Cir. 1989).

<sup>40</sup> *Brown v. Pro Football*, 518 U.S. 231 (1996).

that if you know you're in the first round for a draft pick, you're not going to pick the four-year-old to run the ball. So you have to also give your team organization some kind of credit that they know how they're selecting as well. It was a hit or miss, and I felt that the case was strong, I felt that we had excellent counsel. Of course, the judge, felt we had excellent counsel in the case.

**Alan Milstein:** And remember, this isn't a situation where you have somebody who's on a college football team and could be on a college football team and just wait it out. Maurice was railroaded by Ohio State and Mr. Geiger, who had it in for after he called him a liar. Maurice couldn't play his sophomore year. We didn't know if he could even play his junior year. Here's a football player; this is what Maurice Claret does. He carries a football and he does it better than anybody else. He can't play at Ohio State, he can't play at any NCAA school. The Dallas Cowboys and the New York Giants would hire him. Why keep him out? You know, that that was the practical aspect of what was going on. He had no other place to go. I think at one point the NFL said, "well, why doesn't he go play up in Canada?" Well, he wasn't going to risk getting hurt on play in Canada.

**Michael McCann:** In this case, it goes to the Second Circuit. You win at the trial court, [then] goes to the Second Circuit. How are you feeling at that point?

**Maurice Claret:** Just great. You know, I was preparing, I spoke to Coach Montgomery for the - he was running backs coach at the St. Louis Rams at that time. And he was like, "hey man, we'll pick you in the first round. We have like the 15th, 16th pick."

You're assuming that this is going to happen. I went down in New Orleans, I was training. I was assuming that, you know, I was going to be able to play football. And for me, for the most part, it was it was a very just normal - I left my football season and got suspended for a year. In my mind I just said, "hey, it's just like you got injured for that year." But you know, you go down to New Orleans, you train, and then you'll be able to play football coming into the next season.

**Michael McCann:** And for others on the panel, especially Alan and Ben, what were you thinking going into the appellate court? And I'm curious about the role of Judge Ralph Winter, who was a prominent member of the Second Circuit, had written an influential article in the Yale Law Journal called Antitrust Principles and Collective

Bargaining by Athletes of Superstars,<sup>41</sup> and he was not on the panel. Alan, what are your thoughts going up to the Second Circuit? Are you feeling good or are you feeling worried?

**Alan Milstein:** Well, once the Second Circuit granted the expedited review, I certainly was worried. I'm curious to ask the judge if she thinks - I always suspected that Judge Winter was manipulating the court from outside.

**Judge Scheindlin:** No, I don't I don't agree with that at all. It is true that as a former Dean of the Yale Law School, he would have been a strong influence on now-Justice Sotomayor who went to Yale Law School. I don't know where Bob Sack<sup>42</sup> or Lew Kaplan<sup>43</sup> went. I don't think Lew went to Yale. Bob Sack might have, but definitely Justice Sotomayor did. And she would have had a great respect for Judge Winter and assuming his article was cited, I'm sure she read it. She's a very thorough and careful judge and justice, and I do love her work right now on the Supreme Court, there's no doubt about that, and I was a friend, we were on the District Court together for many years, and we were good personal friends. So, I respect that this really was her view, but she may have been influenced by the arguments in his article. I don't think he in any way manipulated the panel from the outside. I reject that idea.

**Ben Block:** But if I recall correctly, Judge Winter had been on the panel in one or more of *Williams*,<sup>44</sup> *Caldwell*,<sup>45</sup> and *[Wood]*,<sup>46</sup> [the] Second Circuit non-statutory labor exemption cases.<sup>47</sup> So, to the extent that there was an influence from Judge

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<sup>41</sup> Michael S. Jacobs & Ralph K. Winter, *Antitrust Principles and Collective Bargaining By Athletes: Of Superstars in Peonage*, 81 Yale L.J. 1 (1971).

<sup>42</sup> Robert D. Sack served as an active Second Circuit judge from August 6, 1998 until August 6, 2009, at which time he transitioned to senior status. See UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT: JUDGES: ROBERT D. SACK, <https://www.ca2.uscourts.gov/judges/bios/rds.html> [<https://perma.cc/85WU-3WVS>] (last accessed May 27, 2024).

<sup>43</sup> Lewis D. Kaplan served as an active judge in the Southern District of New York from August 10, 1994 until February 1, 2011, at which time he transitioned to senior status. See *Biographical Directory of Federal Judges: Lewis A. Kaplan*, <https://www.fjc.gov/history/judges/kaplan-lewis> [<https://perma.cc/HS7Z-YCL2>] (last accessed May 27, 2024).

<sup>44</sup> *National Basketball Ass'n v. Williams*, 45 F.3d 684 (2nd Cir. 1995)

<sup>45</sup> *Caldwell v. American Basketball Ass'n*, 66 F.3d 523 (2nd Cir. 1995).

<sup>46</sup> *Wood v. National Basketball Ass'n*, 809 F.2d 954 (2nd Cir. 1987).

<sup>47</sup> Judge Winter wrote the opinions in all three cases mentioned by Block.

Winter, I think it was on the law on the non-statutory labor exemption, which I think that the Supreme Court's decision in *Brown v. Pro Football*<sup>48</sup> was consistent with the way that Judge Winter had articulated it. I do remember I said earlier that we were confident we were right on the merits on the appeal. The concern was whether we were going to get that appeal heard.

The Second Circuit hear[d] arguments on motions for stay. That's a day I will remember vividly; we were talking about it beforehand. We went in that argument that day. The Second Circuit had somewhere six and eight cases on its docket, seven of which were literally matters of life and death. They were, you know, appeals of removal proceedings and deportations. When the order came out for argument, those each got 2 minutes per side. And then there was *Clarett v. NFL* and it had 30 minutes per side. And we were last, and the litigants arguing before, every time the red light went on, the panel cut them off and you know, it gets to *Clarett v. NFL*, and my mentor-friend Greg Levy is up there arguing, and 30 minutes in, the red light goes on and he stops, of course, because, "I'm sorry, Your Honor. I see my time is up." "No, that's okay. Keep going." That argument went for a very long time.

**Alan Milstein:** I was sitting there for an hour.

**Ben Block:** Yeah. Yeah. And it wasn't getting better!

**Alan Milstein:** It wasn't getting better, but if you're ever at the Circuit court, you know, you make the argument and, you know, if you're lucky you get an opinion [in] 30 days, maybe 60 days, maybe 90 days. So, as we're leaving the court, I tell one of the clerks, I give him my cell phone number, I said, "let me know as soon as you hear." And I live in Philadelphia, I'm driving my car from New York to Philadelphia. Half an hour after the argument - I'm going to tell you, this thing was pre-decided. Half hour after the argument, I get two calls. One, I get a call from the clerk, he says, "Alan, you lost." I said, "that was quick." And then I got a call from my mother, you know, this Jewish mother and she says, "Alan, are you all right?" I said, "what's the matter?" She says, "I heard you were pummeled at the Second Circuit!"

**Judge Scheindlin:** Here is what the Second Circuit said about *Brown v. Pro Football*. It says, "similar reasoning led the Supreme Court in *Brown...* to hold," and I'm reading from the opinion, that "the non-statutory exemption protected the NFL's unilateral implementation of new salary caps for developmental squad players after

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<sup>48</sup> 518 U.S. 231 (1996).

its collective bargaining agreement with the NFL players union had expired and negotiations with the union over that proposal reached an impasse.”<sup>49</sup>

I have learned in my long career that facts matter. Those are not the facts that were presented in the *Clarett* case. The *Brown* case had negotiations, had an impasse. It made sense to rule as they did. The problem here, Mr. Milstein touched on it, is that you can't find a history of negotiations between the NFL and the players union over this rule. The best I remember from rereading this and refreshing my recollection is it seems to be somewhere, maybe in the constitution and bylaws which may be, are referred to somewhere in the CBA. But there's no clear history of bargaining or impasse. Of course, judges learn to distinguish cases. That's what lawyers do. And for all the law students in the room, please look at facts. Lawyers are, to this day, always citing cases to me for the legal principle. And then I say, “let me read that case.” And I read the case, and the facts are so distinct that the principle they draw out of it just doesn't apply to the facts that are now in front of me. And the only reason I keep saying it's true to this day is because I do arbitration. I still have these issues all the time. Facts matter.

**Michael McCann:** Ben, do you want to respond?

**Ben Block:** Well, just as to the facts, the only facts in evidence in the case, and they were not refuted by the other side, was that the rule had been the subject of bargaining. But the way you can tell that is because there are many parts of the CBA that cut back or change what was otherwise in the constitution and bylaws. For example, the constitution and bylaws says that there's a draft, but it would be, I think, 17 rounds, and the collective bargaining agreement cut that down to six, but otherwise left intact other aspects of the collective bargaining agreement.<sup>50</sup> And we were unable to convince Your Honor that it had been collectively bargained, but it had.

**Judge Scheindlin:** Well, I guess you may get the last word, or Mr. Milstein might rebut that, but there really, really was a lack of proof in my opinion, and the circuit, I think, was just determined to stick with their trio of cases and the way they cited

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<sup>49</sup> *Clarett v. NFL*, 369 F.3d 124, 135 (2nd Cir. 2004).

<sup>50</sup> See e.g. CONSTITUTION AND BYLAWS OF THE NATIONAL FOOTBALL LEAGUE, ARTICLE XII, § 12.1(H) (2004), which provides for a 12-round annual draft but notes that the CBA overrides the document and limits the draft to seven rounds.

*Brown*, they really did have a predetermined view on the big issue. But I think the facts were different.

**Alan Milstein:** Of course, it wasn't bargained for, and we said it wasn't bargained for, and the proof that it wasn't bargained for is that the next CBA after the *Clarett* case, they bargained over eligibility. They put that in the CBA, but it wasn't in there before. And you'd have to agree with me that the rule predated the NFLPA. How could it have been bargained if there wasn't even a union at the time the rule came into play?

**Ben Block:** Sure. For the reasons I just said, there was also a draft before the union came into play, And it used to have 17 rounds,<sup>51</sup> and the union bargained and cut it back. As the Second Circuit said, in its opinion, there was no indication that the union had a problem with the eligibility rules, such that it wanted to trade that for some of the other things that it got in collective bargaining negotiations, like pensions, benefits, you know, higher minimum salaries. It's kind of a "what is your perspective on what it means to bargain over it." I think one level is there had to be a specific quid pro quo, this for that, and the Second Circuit rejected that test.

**Alan Milstein:** The problem with the Second Circuit opinion, the real problem is that the Second Circuit essentially said, "whatever the union and the owners want to do is fine, and in particular, whatever the NFL wants to do is fine. We don't have to look at any of this stuff." And that just wasn't, it just wasn't the way to go about this. And as to the Supreme Court, you know, the interesting thing is if it does get to the Supreme Court, I mean, you would think Sotomayor and the liberals actually would be on the side of the union. And actually, and would still rule against Mr. Clarett, and I would be arguing and trying to get the conservative justices with whom I don't agree about anything, to essentially take their position. I think ultimately the conservative justices would take our position and the liberals would be -

**Judge Scheindlin:** I think that's probably right, because that's the whole point of the players who are in the union already - [they] are players. The whole point is that somebody like Mr. Clarett was outside of that. And it's those people who are interesting - that to me, was a very important part of the argument, being a stranger to the bargaining unit entirely, and that's why I think you're probably right in your prediction. If they were to think about it today, the conservative group would be less

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<sup>51</sup> *Id.*

concerned about the union's feelings because those people are already players, are retired players, but they already had their shot at the NFL.

**Michael McCann:** Your Honor, in the 30 for 30, you memorably stated, “the justice system failed Maurice Claret.” I’m wondering if you could sort of elaborate on that.

**Judge Scheindlin:** Well, that’s a big question. What I meant by that in a way... this was a young man who, as you pointed out in the introduction, came up in a hard way, in a hard-scrabble town, in a hard-scrabble environment, and was making something of himself that could have been a wonderful, wonderful, big career. And he was precluded from that, and he fell onto worse times. It’s no secret, because you use it in the introduction. And he did get into criminal trouble, ended up in prison. So you sort of had a personally-ruined life.

I’m not saying he’s not responsible for his actions - even if you’re 19 or 20, you’re responsible. But had the justice system been able to see the need to give him the opportunity to practice his chosen profession, the course of his life would have been different. What is amazing about Mr. Claret, and we’ve been on a panel once before together, so it’s nice to see you again. But what’s amazing about him is despite all the hard things that have happened to him, his criminal record, his time in prison, it didn’t break him. His failure to get into the NFL when he should have, in my opinion, it didn’t break him. He fought back. He’s an amazing man. He managed to make a career. He inspires, I think, thousands of young people. He’s coached young people. He’s encouraged them to play sports and how they can make it - all the things that he didn’t get, maybe they will get.

I really admire someone who was able to overcome all the things that happened to him, some of which he’s responsible for, but some of which he’s just a victim of the system that, for its own rules, couldn’t accommodate his desire to practice his own profession when he was absolutely able to. There was no question that he had the skill, the weight, the height, all those things. I remember writing in the opinion, comparing him to the great running backs.<sup>52</sup> And he was as big and tall and strong as all of them. Of course, maybe he was lucky because at that time we didn’t know a whole lot about CTE. And that’s a lot of people nowadays are very aware of the risks of being in such a combative sport, but that’s getting a little bit off

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<sup>52</sup> *Clarett v. NFL*, 306 F.Supp.2d 379, 388 (S.D.N.Y. 2004), rev’d, 369 F.3d 124 (2nd Cir. 2004) (noting that Claret was taller and heavier than Walter Payton, Barry Sanders, and Emmitt Smith during their respective playing careers).



subject. I just wanted to express my admiration for how he pulled himself up and back and has made a wonderful life. That's my view.

**Michael McCann:** Michelle, what are your thoughts on what the judge just said?<sup>53</sup>

**Michelle Clarett:** I like everything she said. Thank you.

**Judge Scheindlin:** He's lucky, you must have been a great mom.

**Michael McCann:** Maurice, what are your thoughts on this?

**Maurice Clarett:** I appreciate her remarks. Just see me sitting here, I'm sitting here like kind of looking at this from the outside looking in, it gets very technical and then you can be, everybody can be so much of a professional that you forget that you're actually talking about a real person. You know what I'm saying? And we all start off as real people before we get into any profession, and then sometimes we can get lost into what we do and who we represent and all this other BS. But the judge literally - her point of view or her perspective is more human. Like "hey, there's somebody here chasing a profession." And for me, when you're 19, you don't know what's going on, you don't understand technicalities and who's jockeying for position. But sometimes I think you just, well, you just live in a capitalistic society and I don't think that you [gesturing toward Block] hate me. I think that you represent a client. You know what I'm saying? You have to represent their viewpoints and that's just the nature of it. But you wish more people, when you were dealing with people, that [they would] look at things through a humanistic eye.

Was I able to play? Yes, I was able to play, but I don't get things like in a simple fashion. In any profession, any company, if it's Mattel, if it's Google, if it's Apple, whatever you want to send to whatever position you want to take, if you're not prepared to do it, nobody would choose you. If you're an attorney, you want to go work at Covington and Whatever. If you're not prepared, nobody's going to take you. And so I ask myself, "why does this, why does this thing even exist anyway?" You know what I'm saying, I say like why - just simple questions. But sometimes we get into just how to - everybody becomes too smart.

If nobody wants you or if you're not eligible to, or if you're not good enough, somebody won't take you. And I think it's from living it personally, that's the thing

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<sup>53</sup> CTE is the abbreviation for chronic traumatic encephalopathy, and is associated with repeated head trauma, including that experienced by NFL players. See, e.g., Daniel H. Daneshvar, *Leveraging football accelerometer data to quantify associations between repetitive head impacts and chronic traumatic encephalopathy in males*, 14 *Nature Comm's*, 3470 (2023).

that affected me. Right? And so then there's a flip side to it where, everybody goes home after that and some of the troubles you get into after that, the judge was a hundred percent correct. I'm responsible for them but you're left loss. Like I was telling my mother on the plane coming up here, I was just lost after it was all said and done. I was like, "why can't I play football?" You're outside of Ohio State, your outside of - Alan's gone, Jim Brown is gone, everybody's gone. You still have to go on to live your life. And I think that piece is kind of a loss where I think in America that's some of the stuff that we lose where - I don't know - you deal with me transactionally and not from a human standpoint. I don't know if that's just life in general.

I guess when you come up in a small town, people deal with people. People are human beings and the decisions you make affect other people. And so - I don't know, I'm probably speaking more to you all [gesturing toward students], you know. I'm saying more than anything. That just no matter, I don't know what type of law everybody will get into, but just try to remember that whatever decision you make, there's consequences somebody on the other side of that decision. You know, just try to live with that.

Not to say that you [gesturing toward Block] intended to do anything wrong with me. [To students] But take that into consideration, you know what I'm saying? - that there are just people who have to live with the decisions you make. And I was always asking myself, even at 40 years old, I still ask myself, "why does this - why do you have this - this barrier to exist?" And then I actually draw another question, I say, "I know why it exists, it's because there's a free system of labor in place." Then I just keep on reasoning back, and then you say to yourself, "this is the sole reason why it exists and it shouldn't be that way." You know, not in 2024, 2023, 2002, none of that should have never been in place. This is my personal opinion.

**Michael McCann:** Maurice, following on that, you were speaking to the students; they're studying Name, Image, and Likeness. I have a two-part question. One, how much would you have made in NIL as a superstar at a super high-profile school? And obviously, we don't know, it's hard to go back in time, but if you had been able to make endorsement deals and money influencing, would that have affected your interest in challenging the NFL's eligibility?

**Maurice Clarett:** Oh, I mean, I don't think any kid would be in a rush to go get paid.

Sometimes we look at sports and we think everybody is good at something different, you know what I'm saying? Like some people happen to be very good at

sports and you can monetize that and I think that you should be able to monetize it when you have your top earning capacity. I know I would have made millions of dollars, but the one thing you all don't know is that the core of my issues came from a transmission gone bad.

So I'm driving a car, a transmission goes bad. This whole thing, this whole thing right here that we're talking about, starts over a transmission. I didn't have \$2,000, My mother didn't have \$2,000 to give me for a transmission, to fix the transmission. And that sort of started me like, "hey, can I use a car? Can I get a car?" And these are like basic necessities that any other college kid would have or any, any American situation that anybody would have. Had I had the money or had I had the resources to pay for a car or to go purchase a new car, and you ask yourself like, "why shouldn't you be able to do that?" You know, I just helped the school to make \$84,000,000 in four months. Is it unreasonable to say, "hey, can I get a vehicle?" or "can I get something proportionate to the value that I add toward a program?" These are not unreasonable requests. You know what I'm saying?

If an attorney takes a case and they win some sort of litigation, I think, like with the attorney, takes a third of the thing. But I hope to get that judgment, so I could get part of it, right? And every other place we understand this, but for some reason or not, when it comes to college athletics, there's a bunch of rules and barriers and restrictions on allowing players to earn. I would have never been in a rush to go do that, but I'll always say this, they started off paying players nothing. Oftentimes, if you do something long enough, you'll think that anything that they negotiate over that point, it's too much. You know what I'm saying, or, you feel like that you have a right to say what people should and could earn, because you've never given them nothing, when we should have never been in a place of players not having the ability to earn anything.

This is how I look at it, this is just my views, like I represent myself in saying this. And I just think that that's been the fight, and even name, image, and likeness. This still isn't the school or the institution participating. The people who make all of the money off the kid, the people who sell the tickets, sell the merchandise, the people who make all of these resources from the kid, they're still saying "no, we don't want anything to leave out of our pocket. We're going to go to the fans and say, 'hey man, you all give or let us be the gate keeper to allow other people to come and pay you money.'" And I think that is still silly, and we're having arguments about another thing that's silly, that there's nowhere in America in any other industry - nowhere, I don't care how smart you are as lawyers, I don't care as

judges - there's no other industry where you can take your employees - other than slavery - and say, "hey, we don't want to pay for Black people or Black players."

I'll tell you, just to be blunt, Black players all feel like this is like slavery. All right? It's the same concept where you don't get paid, we give you rations, and we control what you get. And that's how it feels. I didn't want to take it that way, but I'm probably speaking more on behalf of other guys who feel this way but who probably can't articulate it. But after going through like - I went through hell with all this stuff - I tell you this, I tell my mother this; Alan went through his thing, [Block] represented the NFL, and I'll tell you, fuck, I went through hell with this.

**Michael McCann:** Alan, you raised a similar point earlier about the NCAA sort of being a minor league system. Maurice talked about name, image, and likeness; that's one reform. Do you see others coming? Do you see the system as - maybe not equitable, but getting better? Curious about your thoughts.

**Alan Milstein:** Well, some have said if student athletes were allowed to earn money, college sports would collapse, the world would no longer exist.

**Michael Dube:** The NCAA represented as much to the U.S. Supreme Court.

**Alan Milstein:** Right. So what's happened? Now, players, some of these kids are making millions of dollars. Caitlin Clark, she's making millions of dollars.<sup>54</sup> And she's, she's in NCAA women's basketball, and you know what? The world didn't end. So ultimately, the players are going to get what they deserve, because certainly everybody, and Bob Dylan has got a song where he says, you know, the sheriff, the police officer, the Governor, the deputy, everybody gets paid.<sup>55</sup> All right, except for the lowest of the low. Well, the lowest of the low are, one of these days, are going to get what they deserve.

**Michael McCann:** Ben or Michael, do have any thoughts on the current reforms going on in college sports? Where do you see the trajectory going, either of you?

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<sup>54</sup> See Dan Treacy, *Caitlin Clark's NIL deals, explained: How much money Iowa star makes from Nike, other sponsors in 2024*, THE SPORTING NEWS (March 30, 2024), <https://www.sportingnews.com/us/ncaa-basketball/news/caitlin-clark-nil-deals-money-iowa-nike-sponsors-2024/e58534cad3b2960663a36cb> [<https://perma.cc/R2LY-UR8L>] (last accessed May 29, 2024).

<sup>55</sup> BOB DYLAN, *Only a Pawn in Their Game*, on THE TIMES THEY ARE A-CHANGIN', (Columbia Records 1964).

**Ben Block:** Well, the NCAA is in a really tough spot, now that student-athletes are maybe employees.<sup>56</sup> The antitrust cases against the NCAA have not been going well for the NCAA. The antitrust laws are very stiff medicine and they're very blunt instruments, and there's absolutely a human component to every case, and there's a question about what the laws are intended to do and are the right laws being applied to address the right problems. I personally am not sure that any of this is supposed to get solved through the use of the antitrust laws, but I think you are going to see continuing challenges to the NCAA from both fronts because it's kind of neither fish nor fowl and it's caught right in the middle.

**Michael Dube:** To run with what Ben was saying, it's very interesting, the first time I taught Amateur Sports Law here at the law school, *O'Bannon*<sup>57</sup> had just been decided and I was able to tell my very reform-minded students, "There is some hope in terms of your viewpoint finally being a little bit vindicated." We took a look at a lot of historical efforts on the part of individuals who were competing for NCAA member institutions. They had largely been unsuccessful even in terms of antitrust challenges, and that continued in some circuits and some contexts even until just a few years ago. But just as Ben says, the antitrust laws are a blunt instrument, are a sharp scalpel. And at this point, conceptually, when I teach the course, I tell my students that it's a given that the antitrust laws have caused the NCAA's current regime to crumble, and now there are additional modalities of challenging that regime, such as the employment laws, for example, right? Labor law being a big driver of change. Dartmouth Men's basketball team unionizing; the certification of the union here in the state of New Hampshire just a few days ago.<sup>58</sup>

The notion has been alluded to perhaps of the Third Circuit imminently holding that athletes are employees, or at least holding that there's a plausible allegation within those athletes' complaint that they indeed were subject to the type of control and the other factors were present so as to justify a determination that they were employees.<sup>59</sup> So I almost think that antitrust as a means of crumbling the

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<sup>56</sup> See Trustees of Dartmouth College, Case No. 01-RC-325633, 8 (NLRB Feb. 5, 2024) (finding that the members of the Dartmouth men's basketball team are employees of the school); See also Trustees of Dartmouth College, Case No. 01-RC-323633, 8 (NLRB March 14, 2024) (certifying the union's election results and selection of a bargaining unit).

<sup>57</sup> *O'Bannon v. NCAA*, 802 F.3d 1049 (9th Cir. 2015).

<sup>58</sup> Trustees of Dartmouth College, Case No. 01-RC-323633, 8 (NLRB March 14, 2024).

<sup>59</sup> Subsequently, on July 11, 2024, the Third Circuit issued its opinion in *Johnson v. NCAA*. See *Johnson v. NCAA*, 108 F.4th 163 (3d Cir. 2024) (holding that "college athletes may be employees under the

NCAA's regime is almost a given at this point, and now we're looking at new frontiers in terms of reform. But again, who knows whether there might be a non-legal solution, whether it's a legislative solution or a solution involving, you know, if not collective bargaining [then] bargaining so as to help the parties achieve their goals.

**Alan Milstein:** And it's not just the NCAA. I mean, there's no other profession other than sports, where employees cannot go to work for the company they want to work for, or live in the city where they want to live. The myth of the NFL draft is that if there was no draft, everybody would play for the New York Yankees, and the New York Giants -

**Michael McCann:** They'd play for the Patriots!

**Alan Milstein:** - And believe me, there's a lot of people who come down and play for the great football franchise in Philadelphia. That is just a myth - if there was no NFL draft, the players would, they would interview at the teams, and if they don't like the coach they won't play for him, and they'll go to the city, and they'll live where they want to live, their coach will be the coach they want to be coached by and the world will not end!

**Judge Scheindlin:** All right and I wanted to, I know it's one of your questions coming up, but I did want to cite the 2021 decision out of Oregon, which involved a 15-year-old woman soccer player who was challenging an age restriction.<sup>60</sup> And the district court there granted a temporary injunction,<sup>61</sup> and then they settled the case and she's playing. So, I think the age eligibility rule may someday be -- may go away, whether it's, as you said, by bargaining, by legislation, by a court decision. I don't know which of the three, but you can sort of see maybe that the world is beginning to turn, so, I just wanted to make sure that we got that case noted.

**Michael McCann:** Right, *Moultrie v. National Women's Soccer League*. As the judge noted, Olivia Moultrie was a 15-year-old player who challenged the NWSL's age

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FLSA when they (a) perform services for another party, (b) necessarily and primarily for the other party's benefit, (c) under that party's control or right of control, and (d) in return for express or implied compensation of in-kind benefits," and further holding that "the touchstone remains whether the cumulative circumstances of the relationship between the athlete and college or NCAA reveal an economic reality that is that of an employee-employer").

<sup>60</sup> O.M. v. Nat'l Women's Soccer League, 541 F.Supp.3d 1171 (D. Or. 2021).

<sup>61</sup> *Id.* at 1177.

eligibility rule, which had been unilaterally imposed. It was not bargained, there was no debate about that. And the judge said, this is clearly a violation of antitrust law. She was practicing with the team and her own teammates professional teammates on the Portland Thorns wrote sworn statements saying she is as good as anyone, and she should be on the team. The market should dictate whether someone is eligible to play, and yes different facts in terms of what had been -- I know there's a debate over whether the age eligibility restriction was bargained in Maurice's case, but there was no debate in Moultrie's case. So as the judge noted, maybe that's the world we should be in, you could argue.

**Judge Scheindlin:** It may come to pass.

**Michael McCann:** Yeah, and it may come to pass. And other sports of course, have [much] lower age limits. Soccer, none. You enter when you're good enough. There have been very young players in professional soccer;<sup>62</sup> hockey, right out of high school.<sup>63</sup> In fact, they're now in litigation over whether junior hockey is a violation of antitrust law because of some of the employment practices. So we're now attacking the concept of the draft. I want to give you, Ben, the chance to rebut if you want.

**Ben Block:** Well, I mean, I think the short answer on the draft and again, I think it's the answer on the, on the eligibility rules is that yeah, maybe life would go on if there weren't one. But at least in the case of the, I think all the major sports drafts, the players have agreed that the cost/benefits of the draft or other things they could get in exchange for agreeing to the draft favor keeping the draft.

**Michael McCann:** Can I ask you a follow-up?

**Ben Block:** Yeah, please.

**Michael McCann:** Does it bother you at all that that the players in the union say okay, they'll agree to that, but the rule is going to affect those not yet in the league? The victims of the rule - maybe 'victim' is a strong word, but maybe not - that they're not going to be able to enter, because they have no direct suasion in the rules?

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<sup>62</sup> See Chris Wright, *The youngest players in Premier League, Europe, MLS, more*, ESPN, (Oct. 2, 2023, 5:33 A.M.), [https://www.espn.com/soccer/story/\\_/id/37631953/youngest-ever-players-premier-league-europe-mls-more](https://www.espn.com/soccer/story/_/id/37631953/youngest-ever-players-premier-league-europe-mls-more), [<https://perma.cc/7QRW-RTWU>] (last visited May 29, 2024).

<sup>63</sup> See e.g. NHL HOCKEY OPERATIONS GUIDELINES, Entry Draft Eligibility, <https://www.nhl.com/ice/page.htm?id=26377> [<https://perma.cc/7QY5-S6AB>] (last accessed May 29, 2024).

**Ben Block:** Well, I mean a reason to have it may be because the current members of the union or the workforce think, "I don't want my job to get taken by a 13-year-old or a 14-year-old." I'll posit two hypotheticals, since we are in a law school. If women's soccer had a collectively-bargained fixed-wage scale for entry level players, would an age limit be antitrust injury? And then the related hypothetical: what about a man saying, "I want to play in the NWSL," - is that an antitrust violation? That you must be a woman to play? I don't know if that's even a written rule.

**Judge Scheindlin:** We used to talk about BFOQ - bona fide occupational qualification. So, I think those are not, again, fair comparisons because those are always exceptions for BFOQ. But you told us you didn't start out in labor laws, so if you don't remember the BFOQ cases.

**Alan Milstein:** But those of you who are law students, suppose at the end of your career in law school, the law firms around the country could draft the law students from all law schools. So, Covington and Burling could get the top students.

**Ben Block:** Well, we are the best, so we'd be picking last.

**Michael McCann:** [Laughs] That was good, that was pretty good.

**Alan Milstein:** For Sherman Silverstein, we would have to force you to come down to Moorestown, New Jersey, and be an Eagles fan. There's no other profession where the employee goes to work for somebody with no say and - look at how many rude and obnoxious coaches there are. I do not want to play for Bill Belichick.

I would rather play for Andy Reid, but why can't I go play for Andy Reid and have Travis Kelce as my teammate and not play for the New England Patriots? Why not? What's the real reason why not? Why shouldn't the players get to choose who their employers are and teammates are and where they live? Everybody else gets to do it.

**Michael McCann:** Anyone want to weigh in on that? I'll let -- okay. Why don't we now turn to questions if we have a little bit of time? Yes?

**Audience #1:** Yes. I have many....

So the first question I want to ask, if you don't grant me the privilege to ask more than one, Your Honor, my first question is, why do you think your decision was correct while conceding that the appellate court was bound by precedence, knowing that you share the same mandatory authority as the Second Circuit.

**Judge Scheindlin:** That's a fair question, and I think the answer has already been discussed during this panel, this very excellent panel. And that's because of the facts



in the case. And primarily, I think our difference of opinion on whether this was part of collective bargaining. They reached the conclusion it was, I don't know how they got there. I think they pulled a rabbit out of a hat. I understand the constitution and bylaws argument that Mr. Block so eloquently described here that it was there, and since nobody made a change to it, that must mean they were satisfied with it. I don't buy all that. I don't think it was ever subject to bargaining. And that may be where I part company from the circuit.

I understand that, yes, every District Court is bound by the circuit law in which they sit. But as I said, we are careful to look at the facts of each case. And I thought the facts of this case were different. Obviously, the Circuit disagreed with me. Look, every judge, every District Judge has every trial judge, I should say, across the nation has been reversed by an appellate court. And you take your reversals as they come. And you love your affirmances and I get that. But this one, this one was harder to take, because I really did believe in what I wrote. And as I said, I got a tremendous amount of feedback from academia in the area of antitrust and labor law. So, people differ, good legal minds differ. There are lawyers in the room and law students. That's what makes case law so interesting, and how it develops. It goes up and down the system, and we end up where we end up. But things change over time.

Look, cases that we thought were settled precedent like *Roe v. Wade*<sup>64</sup> - sorry to get on platform - but suddenly it is overruled. Okay? That didn't make me happy, but they do it. So things change. And so, when you're a judge, yes, you know about the Circuit cases, but you distinguish them and you say, I think this is right, and either you succeed or you don't. So that's the answer to your question about how I can think that I was right then and still think so, and yet the Circuit disagreed. That happens, and sometimes courts change their position 30 years later, or 50 years later, unfortunately.

**Audience #1:** Thank you, Your Honor.

**Judge Scheindlin:** You're welcome.

**Audience #1:** My second question goes to Ben; I do not know your last name, sorry. Attorney Ben --

**Ben Block:** You call me Ben.

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<sup>64</sup> *Roe v. Wade*, 410 U.S. 113 (S.Ct 1973).

**Audience #1:** Are you making the argument that because there are rules that predated the NFLPA which survived the initial CBA, like the draft, that it stands to reason that the age limit rules were also bargained for and that the rule was not amended at that time?

**Ben Block:** Well, I think the answer to that question is yes. The fact that the rule predates the existence of a CBA, as I think the Second Circuit said in its opinion, is not the test as to whether it was the subject of collective bargaining. Certainly, in every industry there will be background circumstances that exist when labor and management get together to hash out terms and conditions of employment, and labor waives its right to bargain over everything that it doesn't get in the CBA, that's, in my view, the equivalent of bargaining over what rules are changing and which ones are staying.

**Audience #1:** And how did the other opposing attorneys disagree with that notion?

**Alan Milstein:** Well, one, the eligibility rule is not a term and condition of employment. So that was the other argument we had. It's not something to be bargained over. It's not a condition of employment. But those are things like, you know --

**Ben Block:** well, no, but it is because the Second Circuit said it was. Well, I mean, it makes it so for purposes of this case. But that was and then, Federal Judge Sotomayor relied in part on her prior opinion in the *Silverman Baseball* case,<sup>65</sup> which was sort of, again, like we're not going to slice the onion super thin and say that the draft is a mandatory subject of bargaining but the eligibility rules to get into the draft or not. Sorry, I cut you off.

**Alan Milstein:** That is all right.

**Ben Block:** I was a junior associate. I just sat there and had to watch all this stuff. I didn't get to pop up at the hearings.

**Michael Dube:** [Jokingly] I had to research twenty-six definitions of 'elapsed'.

**Alan Milstein:** Anybody else?

**Michael McCann:** Yeah.

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<sup>65</sup> See generally *Silverman v. Major League Baseball Player Relation Comm.*, 880 F.Supp 246 (S.D.N.Y. 1995).

**Audience #2:** I just had a question for Maurice, you mentioned to put a human face on this too. So, I'm a hybrid student; I've come to law school from another career. I feel like that's one of the things I tried to bring into this as a perspective as a non-lawyer [for] most of my life. What are some things that you would have us know as students to keep the human face on what we deal with?

**Maurice Claret:** I do not know. I do not know. I do not. I guess the first thing that comes to my mind, you know what, I can just give you this analogy. I own medical practices, right? And we have a guy who is a CFO for Nationwide. He was a CFO for 20 years of property and casualty. And sometimes when he comes into our meetings, our discussion, he always and every time just spits out numbers and thinks everything is a number. And I say look, everything is not a number. Like, we hire people, people have different sets of circumstances. There is a human story behind why somebody is not performing or why somebody is not coming to work, or there is just - there is a human on the other side of this, everything. You just cannot look at a spreadsheet and determine one thing, right?

As I hear these gentlemen talk or if I hear just like, you can almost take that same sort of mind frame and go from a legal standpoint, what you read on paper and arguments that are prepared by both attorneys or whoever it may be. That is what things say on paper, but there is still a human element. I do not know how you stay connected to that. I do not know, maybe my experience is different because I come from sports and it's more community-based and action-driven. And I guess when you're an attorney, you spend a lot of time alone, you spend a lot of time studying, you spend a lot of time on how to argue against opposing sides and laws that are in place, and everything becomes... not human. It is like the stuff read in books; I don't know.

**Judge Scheindlin:** I would like to respond to the question too because I thought it was a great question, and it is a question that I think is particularly well-answered by judges, and I will give you an example. Judges do the sentencing in criminal cases; I must have sentenced two thousand people over twenty-seven years. Each of those people were a human face to me, and when we had sentencing guidelines that bound us to give a certain sentence without considering the attributes of the human being in front of us many judges were so troubled and constantly wrote opinions that said, "if it were not for these guidelines that are mandatory, I would never have

given the sentence,” and finally, the Congress revisited those mandatory guidelines and got rid of them,<sup>66</sup> because law cannot just be cold legal principles.

For those of you who are aspiring lawyers, about to be lawyers, please keep that in mind. Every case, big or small, involves a real person. And you can’t close your eyes to the human element of the case and say, “well, I’m so detached, I’m just going to look at some principles that come out of Blackstone, and I’m not going to look at the facts of the case and the person in front of me.” It is really very important to do that. So, before we wrap up, I am going to make two reading recommendations, but not yet. Only when he says, “does anybody have any final words,” then I will.

**Audience #3:** I had a question about collective bargaining and draft eligibility. I understand that baseball has a draft, but it also seems to be very different than how the NFL does it on the eligibility side. Because they get guys straight out of high school, they pull people from an international pool who are 16 years old. What makes the way the NFL does it better or worse in this case, or is it just different and that’s all?

**Ben Block:** I think it’s just different. All sports do it differently. I guess not all of them have drafts, but the ones that do, do them differently.

**Audience #4:** I’m a hybrid student as well. I spent part of my previous career working with athletes and also representing a team that was part of the shield. So I can very much see both sides of this argument, and I think we get to a point of material on the draft, and I’m interested, Mr. Clarett, if your failure to corroborate, as we’re seeing NIL move in a different direction, and the NFL draft has also evolved to a point now where many people are taken later in the draft are actually having their agents say, “don’t draft me, I want to come into your team as a free agent.” How do you feel about the draft at this point in your life looking back into that?

**Maurice Clarett:** In what contexts?

**Audience #4:** How would that have perhaps altered if, if this [were] in a different time, if you were coming into the system now? How would you perhaps feel differently about the draft experience or not?

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<sup>66</sup> See generally United States Sentencing Commission, “Official Text Amendments,” [https://www.ussc.gov/sites/default/files/pdf/amendment-process/official-text-amendments/202305\\_Amendments.pdf](https://www.ussc.gov/sites/default/files/pdf/amendment-process/official-text-amendments/202305_Amendments.pdf) [<https://perma.cc/54MT-A2JU>] (Accessed Apr. 26, 2024).

**Maurice Clarett:** I don't know. I just, I don't if I get your question. I don't know if this answers your question, but I probably wouldn't... had I been eligible for the draft, I probably would have went where I expected to go. If I looked at the history from anybody who's won, you know, National Player of the Year<sup>67</sup> in high school and from anybody who dominated on the football field, I think had I been able to be drafted in any era at any time I would have been drafted.

But I want to address the gentleman's question from before. I believe that the draft differs with football from baseball because collegiate baseball doesn't generate the revenue that collegiate football does. And it's the same thing with basketball. And the things that generate the most revenue for the collegiate system, they have the greater strongholds on them. All right? And you see when they broke through with basketball and they started all these independent leagues, you see the NBA quickly put back the NBA G League and all this other stuff to stop all of these other competitors from popping up and being able to distribute money to these players. Right? You say Lavar Ball, when they had the Ball brothers, and they started their league and they were generating money from Facebook. But the NBA quickly changed their rules again and said, "hey, we'll allow 19-year-olds to come to us, so they will be within our ecosystem." But it's the same thing. And I don't think that they have any problem with these other systems, just because you don't have a collegiate sport or something underneath the professional level that generates the amount of money. So that to me, that's the real reason. But to answer your question, I think that if I was able to go in the draft, that next year, you go to the combine just like everybody else, you perform just like everybody else. So I don't know if I'm answering your question, but I don't, like I just wasn't a middle-of-the-road player; I thought that I would have a lot of earning potential when I was able to play football.

**Audience #5:** American major league sports have a somewhat unique barrier to entry, in most ways, in that most of the players will come through the NCAA or maybe in the case of hockey, the junior leagues. Do you think that, and this is probably a broad question, that having that barrier to entry or ring fencing is actually harmful to the sport as a whole? Because if you look at soccer, for example, on a global level, people who are talented, they get recruited, they join a club, they work their way up, they become superstars. And it seems like in American sports, it's ring fenced very early on, and it feels like that might prohibit people from entering

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<sup>67</sup> See Ivan Maisel, *Inside College Football*, SPORTS ILLUSTRATED, (Sept. 23, 2002), <https://vault.si.com/vault/2002/09/23/inside-college-football> [<https://perma.cc/XML3-AVXD>] (last accessed May 29, 2024); see also *Timeline: The rise and fall of Maurice Clarett*, *supra* note 3.

sport or also prohibit it in some fashion internationally. And do you think that that's ultimately harmful?

**Maurice Clarett:** I'll be happy to answer this.

This comes down to the way this started out, and this is nothing more than owners who are protecting the business position. So, I make enough money to go hire whatever law firm I want to protect my position in business. I'm in business the same way as these NFL owners; I just don't have as much money. But these people are just arguing to protect the position that it's, it's existed this way, so let me go, pay some lobbyists, let me go have them argue my position, and that's it. And this is no offense to anybody up here, this is just the way it is. Like I told you, I started off this thing just calling it out as it is. This is how I see that. It doesn't mean it's right or wrong, but I just try to deal with the facts. You know, we've had the system that we've not had to pay anybody. We've had the system that we've sort of orchestrated and put together. And now whatever I have to do, by hell or high water, I'm going to pay as many people as I can to do it. If you look at the NCAA right now, the amount of money that they've spent on lobbying to try to keep things in the same position that they are, they've tripled their spending.<sup>68</sup> You only triple your spending and hire more attorneys and go trying to lobby more people if you're satisfied with the way things are and how they're protecting your interests.

But it's only now that you have, be it social media, be it people being more educated, being people being able to talk about it, with NIL, you now have the NCAA... This isn't on the point, but it's all the same thing, when you had Virginia and Tennessee take the NCAA to court. I'm pretty sure you all [gesturing to other panelists] can flesh it out a whole lot better than I can, but they basically took the NCAA to court and I don't know if there's an injunction that happened or something happened, but Tennessee and Virginia basically won.<sup>69</sup> [The NCAA was] trying to stop collectives from recruiting players in the way that they wanted to.

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<sup>68</sup> See Daniel Libit, *ACC, SEC Powered Congressional Lobbying Arms Race in 2023*, SPORTICO, (Feb. 13, 2024, 12:01 A.M), <https://www.sportico.com/leagues/college-sports/2024/acc-sec-congressional-lobbying-1234766470/> [<https://perma.cc/AQ2T-XSFN>] (last accessed May 29, 2024) (noting that the Atlantic Coast Conference spent nearly three times as much on lobbying Congress in 2023 as it had the previous year, the Southeastern Conference more than doubled its spending, and the Big 12 increased its spending 70% year-over-year).

<sup>69</sup> *Tennessee v. NCAA*, 2024 U.S. Dist. LEXIS 32050 (E.D. Tenn. Feb. 23, 2024) (order granting states' motion for preliminary injunction).

I don't know how to explain this in the most professional way. Let me explain this part, and you can clean it up for me later. I'm just explaining stuff like I'm talking to the barbershop in the ways like this. These collectives have pulled money together to recruit players to incentivize these players to come to their schools. The NCAA got mad and said, "hey man, we don't want you seducing and soliciting these players." And the people from Tennessee and the people from Virginia, said "to hell with it," right? And what they did is they took them to court or whatever they had to do, filed a motion to fight for that position. And in so many regards, they won, right?

And [the NCAA] can bully kids who have no representation, but you're not about to bully the state institutions who have legal representatives. They have senators and congressmen, right? And they're saying, "hey man, look at what just happened to Deion Sanders," Deion Sanders is a high-profile person. They bring more tuition into these schools. They bring enrollment. They bring in more money for merchandise, hotels, new student enrollment, alumni bases go up, and it's all driven from the sport of football, you follow me?<sup>70</sup> To me, once Tennessee and Virginia took that position, once they won, it's hard for me not to believe that Texas and West Virginia, and every other person who feels that they can raise hell against the NCAA, that they're not about to raise hell because they've seen somebody else win. The NCAA doesn't have resources, or they don't have the resources to fight all these people. So now they're saying, "okay, let us choose different positions on how we're going to deal with this and let us act like we're for athletes now." No, you're not for athletes now. You just can't fight all these people legally.

You don't have the money to fight every state who's going to petition for or who's going to sic their senator or congressman on you, you know what I'm saying? And these are just the things that are going on that'll improve condition I guess - I don't say "improve conditions" like they're not already good for college athletes, but you have to restructure the arrangement. I know I said a whole lot, but these are like articles. I'm a nerd, I like to read every single article on all of this stuff, but this is the stuff that doesn't make the headlines. This isn't like, Russell Wilson got traded, but to me, this is the stuff that governs the sport. This is stuff that affects people. But these will be the articles that are put on page seven of ESPN. Very important, but there's a

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<sup>70</sup> See e.g. RJ Young, *The Prime Effect: Unpacking the impact Deion Sanders has on applicants at Colorado*, FOX SPORTS, <https://www.foxsports.com/stories/college-football/the-prime-effect-unpacking-impact-deion-sanders-has-on-applicants-at-colorado> [<https://perma.cc/TW7Z-SHNJ>], (last accessed May 30, 2024).

reason that's stuffed in the back. You know what I'm saying? I'm the one who reads all the TV contracts, and what deal did ESPN make, or where are the streaming rights going to? Who's suing who? That's the stuff that governs this space. It isn't, you know, your favorite player getting traded.

Y'all know it, lawyers run the world, accountants run the world. You know, it just, it is what it is. If you don't follow that, you don't really understand what's going on. It's lawyers and accountants that basically run the world. And if you don't follow that and reason from that perspective, then I don't know, you'll just be a dumb athlete or just a spectator.

**Michael McCann:** That's an excellent answer and it's a good way to close as well. I know there are other questions. After the event, please come up. But I'm mindful of everyone's time. I want to close with every panelist able to give a quick thought as we end. And I will begin with Judge Scheindlin.

**Judge Scheindlin:** So I'm not going to add anything that I've already covered tonight in this very fine seminar with respect to this case, on this issue, but listening to this made me want to recommend two things to read. One, I recently read a biography of Muhammad Ali.<sup>71</sup> It was so moving, and in many ways there were parallels here. It's by Jonathan Eig. It's riveting, you can put it down. But he went through a lot of things. He was banned from his sport because he wouldn't go to the draft and fight in Vietnam. He said, "no Vietnam person ever" - I don't want to say the bad word, "but called me a" you-know-what. He just refused to fight there. He thought it was wrong and he stood by his principles. And he didn't fight for several years and then he did a comeback that was very dramatic. He was a man of principle, and he paid for that principle. I recommend that book.

I also, this is a little bit of self-promotion, but I think you should read my opinion if you haven't, in *Floyd v. City of New York*.<sup>72</sup> That was really the most important decision I ever wrote, and that stopped New York City's stop-and-frisk policy. It was a terrible policy. Hundreds of thousands of young black males were stopped for no reason. When it ended, crime did not go up. It was a misconceived policy in the first place. It had to end. It did end. Now there are forces that want to

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<sup>71</sup> JONATHAN EIG, *Ali: A Life* (2006).

<sup>72</sup> *Floyd v. City of New York*, 739 F.Supp.2d 376 (2010).



talk about crime and want to reinstitute bad policies. I think it's an important case that you all should read, and I'll leave it at that. Two recommendations.

**Michael McCann:** Thank you, Your Honor. We appreciate you joining us tonight. I'm going to go down the panel. Professor Dube?

**Michael Dube:** Sure. Absolutely. I worked on this case, and participated with Alan and Professor McCann when I was a very young attorney. And just as Maurice Clarett has said tonight, it's really important not to lose sight of who your clients are. Many years after the case, I spent a few years in Pittsburgh practicing law at a little outpost of a big firm, and *The Mind of Maurice Clarett*<sup>73</sup> came out, his blog. And I started reading it and was instantly reminded as I interfaced with his resilience from afar, that our client was a human being. And it was really an honor to be a part of the case. And certainly, Ben had talked about different things he had learned as a young attorney on the case. Certainly, one I learned that I wanted to share with the students that I haven't gotten to mention yet, is the importance of confidentiality. When something is going on in your firm, when you know that the Maurice Clarett case might be filed in a few weeks, it's obviously something you might love to tell your friends about. But it is integral to the decorum that is attendant upon our profession, it's integral to who we are as attorneys, that you've just got to keep that stuff under your hat and you've got to act with the utmost professionalism at all times. So, it was an honor to work on the case and certainly an honor to be here tonight.

**Michael McCann:** Thank you. I now turn to Attorney Block.

**Ben Block:** Well, first Mike, thanks very much for inviting me here. Great, great to be with you all, and it was terrific to meet you in person, Maurice. As, I think, the only member of this panel who does not appear in the 30 for 30, I would encourage everybody to watch the 30 for 30. It really is good. I don't understand why they didn't want some in-depth discussion of the non-statutory labor exemption or the antitrust-injury doctrine. And at least for the former, you can read the Second Circuit's opinion.

**Michael McCann:** Thank you, Ben. Alan?

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<sup>73</sup> Clarett, *supra* note 24.

**Alan Milstein:** I just think this was a fantastic event and we appreciate everybody being here. And I'm particularly just thrilled to hear Judge Scheindlin talk. I haven't seen her since this case, and it's just been wonderful to have you here.

**Michael McCann:** Michelle?

**Michelle Clarett:** I'd just like to thank you for the opportunity to share with you today and with my son, Maurice, and to actually experience the judge as well. I just hope going forward, all of you that are striving to be great and wonderful attorneys will remember that there is a client on both ends of it. Being in the judicial system, it's real, and I see it daily and this one hit home and we're still living it.

**Michael McCann:** Thank you. Maurice, you get the last word.

**Maurice Clarett:** I get passionate about this stuff. You know, you don't realize how much your stuff will affect your life, you know what I mean? So, when I'm talking about it, it is even emotional now. When Alan called probably 1,000 times for this, and he didn't realize that on the other end of the phone when he was calling, I was like, "man, it's like re-living some old stuff." And then when I see him, I was like, man, I'm grateful for him, even coming years ago to come and see me; I'm grateful for my mother to reconnect with him and his wife, and that was 20 years ago, I was a kid, you know what I mean?

You just don't realize that something so young can alter, move, and affect your life. And I mean this in the most-sincere way: I don't have any hard feelings for anyone in the NFL or whoever was deciding, because I understand everybody has a job and everybody has a role, right? But I could just only talk about the things that went through my life and what I went on with, and all that stuff. Just like the judge said, some of my wounds were more self-inflicted. Some, you know, I wish things worked out a different way, but all in all, I'm happy. I'm successful. I've got a family. I've learned more through adverse times than anything. I'm even happy to come here and say that I didn't give up on myself.

There's a lot of people, man, who get affected by this stuff. I mean, there's a lot of people who, they put a lot of hours into basketball and football, and they don't make it to the NFL. And sometimes the skill that you have, you wish somebody could have resources to help change their life or help change their family's life. Just like you all go to law school and read and study, there's people that, just because they don't do it intellectually, they do it athletically, and some lose money because they're misinformed.

But there's a lot of other people who do things right. Not all athletes end up broken and dead and on drugs and stuff like that. That's, that's a strong narrative, but being able to have resources a little bit earlier, being able to have people around you who will educate you - I'm only here because I did a bunch of self-educating in prison, so I can go on and on, but thank you again for inviting me. Thank you to the Judge. Thank you to everybody here. Sorry, and excuse my language, but if you ever see me on Twitter or anything like this, the majority of the time I'm talking about this because I'm very passionate about it. And my language gets a little vulgar online, but at the end of the day I thank everybody and we will be hanging out after if anybody wants to chat.

**Judge Scheindlin:** And I just thank Professor McCann for all the hard work he did in putting this together. I can't tell you the number of emails and arrangements that I'm sure you made with all of us. So thank you for all your hard work.

**Michael McCann:** Thank you. There are a lot of people at the law school - and Professor Dube can validate this - that were involved in planning this. I appreciate everyone's time and all of you joining us. Thank you very much. I hope you all have a good evening.