

It Wasn't a Revolution, but it was Televised: The Crafting of the Sports Broadcasting Act

by

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## ABSTRACT

This thesis aims to provide historical context for the Sports Broadcasting Act of 1961 which allowed professional sports teams to collectively negotiate television contracts and equally share in the revenues. According to Immanuel Wallerstein, the state crafting legislation to allow an anticompetitive business practice is an example of a basic contradiction of capitalism being reconciled. Researching the development of the SBA unveils two historically significant narratives. The first is the fact that antitrust legislator Emanuel Celler crafted the act with the intent of providing the National Football League competition although the act unintentionally aided the formation of a professional football monopoly. The other is that the act legalized a collectivist business practice in a time of anticommunist fervor and was written by a legislator with well-documented anticommunist credentials. This project utilized primary sources including the papers of Emanuel Celler, business meeting minutes from both the American and National Football Leagues, Congressional testimony and contemporary newspapers. These primary sources were supported by secondary sources detailing the culture of the 1950s, Cold War America and the history of other sports-related legislation.

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## INTRODUCTION

In 1961 NFL owners agreed to sell their television rights as a single unit and split the revenue equally regardless of market size and ratings. This agreement required a specific exemption from federal antitrust laws be inserted into the United States Code. On September 30, 1961, President John F. Kennedy signed into law the Sports Broadcasting Act (SBA) making just such an arrangement legal for all professional sports leagues. The SBA led to an increase in profitability for professional sports that had never been seen before. The NFL's bid to pool revenue and the subsequent act of Congress has been viewed as an example of egalitarianism in which large market teams prioritized the needs of their less fortunate small-town partners in order to keep the games competitive. A more accurate description of the SBA is that it is a unique sports-based example of the elementary contradictions of capitalism being reconciled.

An even more intriguing aspect of the SBA is the era in which it was crafted. At the height of the Cold War any action perceived by politicians or business leaders as containing a hint of communism or socialism was condemned. Despite such a culture of strident anticommunism, the SBA was crafted as a collectivist split of revenues which was directed from "each according to his ability, to each according to his needs." Navigating through these contradictions and myths was an anti-trust stalwart who opposed communism but still wrote the act for the benefit of gridiron oligarchs. This thesis will detail the cultural and political climate which necessitated such a balance of economic and ideological contradictions.

## CHAPTER ONE

Emanuel Celler's legislative endorsement of a collectivist practice decried by many in the Cold War-era as either socialistic or communistic to insure gridiron competition is a noteworthy feat. Celler's legislation has been overlooked as a case study of reconciling the contradictions of capitalism in sports, however. In a larger context, the Sports Broadcasting Act is also indicative of the reconciliations necessary to perpetuate what Immanuel Wallerstein refers to as a capitalist world system. Wallerstein has spent a career studying global economics and politics. During his years of study, Wallerstein theorized that capitalism has been the only true world system since it evolved out of feudalism. He defines capitalism not as a mere economic system, but an historical world system in which states have placed an emphasis on accumulation of capital over any other concern.<sup>1</sup> While this system may be unchallenged, Wallerstein argues that it is underpinned by an ideology that is not self-sustaining and is therefore replete with contradictions that must be reconciled in order for it to continue.

Wallerstein defined several contradictions of capitalism in his book *Historical Capitalism*. Three of those contradictions in need of reconciliation guide the analysis of the SBA for this thesis due to their relevance to professional sports leagues such as the NFL. The first contradiction of capitalism is that while all the participants are aligned in their interests to reduce costs in order to accumulate capital, the reductions will invariably favor one over the other, ultimately resulting in just one survivor.<sup>2</sup> In a sports league, in which on-field competition is the product, and which requires an equality of financial strength among its member teams to sustain, this contradiction is rectified by such anti-

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<sup>1</sup> Immanuel Wallerstein. *Historical Capitalism* (London: Verso, 1983), 14.

<sup>2</sup> Wallerstein, 17.

capitalistic practices as player drafts, salary caps and reserve clauses. The second Wallerstein contradiction of capitalism is that entrepreneurs want to be free of government interference but depend upon state machinery to be exercised to their advantage.<sup>3</sup> He writes of utilizing military forces to quell rebellions but this can also be viewed quite easily as using government resources to guarantee publicly financed stadiums. The concept can also be found in revenue-friendly legislation such as the SBA, which put operating capital, and profit, in the pocket of franchise owners, a practice Wallerstein refers to as “the principle of the individualization of profits but the socialization of risk.”<sup>4</sup> Finally, Wallerstein’s third contradiction is that when there are contradictions in a capitalist system, there will be a “historically uneasy compromise” necessary to reconcile them.<sup>5</sup> A historiography of sports legislation provides many examples of such uneasy compromises. The twentieth century saw a litany of state-sponsored directives which freed professional sports from the burdens of competition in the public realm under the rubric of protecting on-field competition. There is numerous literature devoted to the precedents and ramifications of these directives although they don’t make a connection to Wallerstein’s world system.

Eldon Ham’s study of the 1922 *Federal Baseball v National League* Supreme Court decision, which granted baseball a total exemption from antitrust laws, chronicles the impact the ruling had on the future of baseball. The ruling allowed baseball to engage in such monopolistic practices as the reserve clause and limiting expansion.<sup>6</sup> Kathleen Ingram points out that the NFL was granted only partial exemptions on a case-by-case

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<sup>3</sup> Wallerstein, 56.

<sup>4</sup> Wallerstein, 54.

<sup>5</sup> Wallerstein, 22.

<sup>6</sup> Eldon Ham, “Pretext: The Dark Side of Baseball,” *Berkeley Journal of Entertainment and Sports Law* (May 2014), 8.

basis allowing television blackouts, sanctioning the annual player draft, and the SBA.<sup>7</sup> Mitten and Hernandez argue that while a partial exemption, the SBA is seminal for being “one of the few sports-specific federal laws.”<sup>8</sup> The two researchers also point out the SBA did in fact, increase on-field competition. The works of Ham, Ingram, and Mitten and Hernandez merely view the law as a means to an end, however, and not an example of the capitalist world system being reconciled. Stephen Lowe looked at all sports laws in the twentieth century to discover why only baseball won an unlimited exemption. Lowe’s review of legislative sessions and correspondence leads him to the conclusion that baseball received a total exemption as opposed to partial exemptions because for most of the early twentieth century “football has not benefitted from the patriotic nostalgia that has blessed organized baseball” and “that a sports public image affects Congressional behavior.”<sup>9</sup> Michael Oriard’s lengthy history of football validates Lowe’s reasoning, pointing out that in the pre-World War II era, professional football was a game long derided for its brutality and association with undesirables.<sup>10</sup> These works suggest a political and social mindset but don’t acknowledge the overriding systemic calibrations being performed through the SBA. Those calibrations were necessitated by the recognition of the importance of football in the sociopolitical climate of the time.

Sociologist David Riesman studied American society in the early years of the Cold War and concluded that Americans sought validation outside the home as the nation

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<sup>7</sup> Kathleen Ingram, “Hats, Bats, and Antitrust,” *Mississippi Sports Law Review* 1 (2012), 154.

<sup>8</sup> Matthew J. Mitten and Aaron Hernandez. “The Sports Broadcasting Act of 1961: A Comparative Analysis of its Effects on Competitive Balance in the NFL and NCAA Division I FBS Football,” *Ohio Northern University Law Review* 39 (2013), 750.

<sup>9</sup> Stephen Lowe, *The Kid on the Sandlot: Congress and Professional Sports 1910 – 1992* (Bowling Green, OH: Bowling Green State University Popular Press, 1995), 2, 12.

<sup>10</sup> Michael Oriard, *King Football: Sport & Spectacle in the Golden Age of Radio & Newsreels, Movies & Magazines, The Weekly & Daily Press* (Chapel Hill, NC: The University of North Carolina Press, 2001), 210.



transitioned from an industrial to post-industrial society.<sup>11</sup> William Whyte posited that Americans, particularly adult males, were slowly losing their self-identity in deference to becoming a cog in the American machine.<sup>12</sup> William Leuchtenburg's history of post-World War II America showed that as the nation transitioned, Americans confronted the uncomfortable realization that the nation's newest international rival, the Soviet Union, was equal to or superior than the United States in military, technological and athletic endeavors.<sup>13</sup> According to Kurt Edward Kemper, football became one of the methods by which Americans chose to counter Soviet accomplishments. Kemper's history on the use of football argues that, "Americans crafted and embraced a culture during the Cold War aimed at convincing themselves of their own distinctiveness based on values and characteristics associated with football."<sup>14</sup> Among the characteristics he notes are physical supremacy, efficiency, teamwork and Christianity.<sup>15</sup> This use of sport for political purposes was common in the twentieth century. Arnd Kruger's work on the nationalization of sports pointed out that numerous regimes, including the totalitarian Nazis and Fascists, equated their form of government with their nations' success at Olympic sports and World Cup soccer.<sup>16</sup> What is ironic is that the SBA utilized a collectivist business practice -- what Rodney Fort refers to as a joint venture -- in which

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<sup>11</sup> David Riesman, Nathan Glazer and Revel Denney, *The Lonely Crowd: A Study of the Changing American Character* (New Haven, CT: Yale University Press, 1961), 22.

<sup>12</sup> William H. Whyte, Jr. *The Organization Man* (New York: Doubleday, 1956), 7-8.

<sup>13</sup> William Leuchtenburg, *A Troubled Feast: American Society Since 1945* (Boston: Little, Brown, and Company, 1983), 28.

<sup>14</sup> Kurt Edward Kemper, *College Football and American Culture in the Cold War Era* (Urbana, IL: University of Illinois Press, 2009), 6.

<sup>15</sup> Kemper, 21.

<sup>16</sup> Arnd Kruger, "Strength Through Joy: The Culture of Consent Under Fascism, Nazism and Francoism," in *The International Politics of Sport in the 20<sup>th</sup> Century*, ed. Jim Riordan and Arnd Kruger (London: E & FN Spon, 1999), 67.

“owners surrender part of their autonomy to allow the league to act on their behalf,”<sup>17</sup> during the height of Cold War hysteria in which previous attempts to bring revenue sharing to professional sports was decried as “socialism” or “communism.”<sup>18</sup>

The SBA brought an unprecedented amount of money to professional football. David George Surdam chronicled the finances of the NFL in the 1950s and found that many teams were profitable from television alone before the SBA and saw the values of their franchises more than double after its passage.<sup>19</sup> Despite the ramifications of this legislation, the SBA is a footnote in the larger history of the NFL. David Harris and Michael MacCambridge mention the SBA in their very thorough histories, but overlook the contribution of Congressman Emanuel Celler (D-NY), whose conception of sports as a bulwark against communism and reputation as an anti-trust stalwart had a decisive impact on the passage of the SBA. Harris accepts Pete Rozelle’s view of the SBA as an example of NFL egalitarianism, big markets benevolently looking out for their small town partners.<sup>20</sup> MacCambridge is more suspect, referring to the SBA as the beginning of the NFL’s “self-mythologizing,”<sup>21</sup> but still overlooks Celler. William Anderson’s history of Pete Rozelle’s stewardship doesn’t mention the SBA at all, focusing instead on Rozelle’s “mastery of television.”<sup>22</sup>

The SBA should be viewed as a Cold War-era Congressional act which reconciled the myths and contradictions of capitalism needed to perpetuate a sport that was viewed

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<sup>17</sup> Rodney Fort, *Sports Economics* (Upper Saddle River, NJ: Prentice Hall, 2003), 132.

<sup>18</sup> John Helyar, *Lords of the Realm: The Real History of Baseball* (New York: Ballantine Books, 1994), 557.

<sup>19</sup> David George Surdam, *Run to Glory and Profits: The Economic Rise of the NFL During the 1950s* (Lincoln, NE: University of Nebraska Press, 2013), 140.

<sup>20</sup> David Harris, *The League: The Rise and Decline of the NFL* (New York: Bantam Books, 1986), 13-14.

<sup>21</sup> Michael MacCambridge *America’s Game: The Epic Story of How Pro Football Captured a Nation* (New York: Anchor Books, 2004), 183.

<sup>22</sup> William Anderson, “Pete Rozelle: A Historical Review of How the NFL Commissioner Used Public Relations,” *Public Relations Review* 34 (2008), 153.

as an ideal capitalist image in the face of communism. The irony that a collectivist approach to revenue which many of the era viewed as communism plays a significant role in the capitalist NFL has not been completely lost on all scholars. Sports economist John Vrooman credits collectivism with being the underlying source of the NFL's economic strength and its status as "the most economically powerful sports league in the world."<sup>23</sup> The relationship between the NFL and television was described in Ron Powers' history of sports television *Supertube*, as "the perfect Socialist System."<sup>24</sup> Powers' description of the collectivist practice of revenue-sharing as socialist mirrors the viewpoint of many politicians and industrialists of the Cold War-era. Wallerstein, whose model of capitalistic contradictions being reconciled is illustrated by the SBA, would argue such distinctions are unnecessary as he believes that both socialist and capitalist economic models are identical world systems in their goals of accumulating capital.<sup>25</sup>

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<sup>23</sup> John Vrooman, "The Economic Structure of the NFL," in *The Economics of the National Football League: The State of the Art*, ed. Kevin G. Quinn, (New York: Springer, 2012), 10.

<sup>24</sup> Ron Powers, *Supertube: The Rise of Television Sports* (New York: Coward-McCann, Inc., 1984), 157.

<sup>25</sup> Immanuel Wallerstein, *The Modern World System: Capitalist Agriculture and the Origins of the European World Economy in the Sixteenth Century* (New York: Academic Press, 1974), 355.

## CHAPTER TWO

Immanuel Wallerstein posits that there is no discernible difference in the implementation of what people view as a capitalist or socialist business practice, which is sometimes termed communist by those quoted in this thesis. The motive behind the implementation of either or both is to maximize revenue and protect on-field competition. An example can be seen in the equal distribution of television revenue to all National Football League teams regardless of football acumen, as codified by the U.S Congress in the Sports Broadcasting Act of 1961. The great irony is that the SBA was passed in an era when tangible Soviet advances unnerved many Americans. Certain American political leaders took advantage of this unease by championing a vague sense of Americanism and branding any communist ideal or practice as anathema to the ideals of the United States. A symbolic representation of this ideological tactic was the sport of football, which benefitted immensely from the political climate and the advancement of television. It was this very technological advancement which made visible the contradictions of capitalism inherent in professional football. These contradictions were then reconciled by implementing an economic policy representative of America's fiercest ideological rival of the time.

### **National Crisis of Confidence**

The United States suffered through a national crisis of confidence during the first decade of the Cold War. The view of the country internally and externally as a military superpower and economic force predominated in the wake of the Second World War. Despite American hegemony, numerous contradictions beset the nation, spurring feelings of insecurity and aimlessness among its citizens. The fundamental character of the

American citizen was being reshaped as the nation transitioned from an industrial to post-industrial society. The uncertainty created by the transformation of the national character was compounded by the unsettling belief that the Soviet Union was equal or superior to the United States in military, technological and athletic endeavors.

Sociologist David Riesman thoroughly researched the transformation of America's national character during the early Cold War and chronicled his findings in his seminal work *The Lonely Crowd*. Riesman generalized three epochs of American history and three corresponding types of social character. The tradition-directed character dominated pre-industrial America. A time of relatively little societal or technological change, the tradition-directed character "understood and appreciated patterns which have endured for centuries and are modified but slightly as generations succeed each other."<sup>26</sup> An inner-directed character replaced tradition-directed character during America's industrial and imperial triumphs in the late nineteenth and early twentieth centuries. Inner-directed characters turn from tradition and rely on themselves and members of their immediate family as arbiters of right and wrong in a society of constant change. The inner-directed individual prospers due to the "greater choices given and greater initiative demanded" by expansionism and innovation.<sup>27</sup> The other-directed character supplanted inner-directed as America transitioned to a corporate culture in the 1950s. The other-directed character is more inter-connected and interdependent on fellow citizens to accomplish goals and therefore "seeks approval and direction from contemporary others both seen and unseen."<sup>28</sup> Among the contemporary others Riesman discusses are the

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<sup>26</sup> David Riesman, Nathan Glazer and Revel Denney, *The Lonely Crowd: A Study of the Changing American Character* (New Haven, CT: Yale University Press), 11.

<sup>27</sup> Riesman, Glazer and Denney, 14.

<sup>28</sup> Riesman, Glazer and Denney, 22.

purveyors of mass media. It is the difference in uses of mass media between inner and other-directed individuals that explains the feelings of unease permeating the United States at this time.

According to Riesman, inner-directed individuals used media merely as a form of escapism and nothing more. Other-directed individuals consumed media for training and character development. Other-directed individuals watched news and other programs to verify that their political beliefs fit in with those of the peer group.<sup>29</sup> This need to have outside validation by unknown contemporaries led to the phenomenon of an individual's character being formed by people and entities far removed from the other-directed individual's personal sphere.

Throughout the 1950s, Riesman's other-directed majority was subjected to messages of successful Soviet exploits which contradicted American perceptions of the nation's superiority promulgated by its political leaders. The United States was engaged in a fierce military engagement only five years after the conclusion of the Second World War. The Korean War cost the United States close to 40,000 lives and was a harsh lesson on the military strength of Communist China and North Korea. This lesson came on the heels of the news in 1949 that the Soviet Union had detonated their own atomic bomb. Around the time of the Korean War armistice in 1953 came news of the Soviet detonation of a hydrogen bomb. In addition, the means of conventional war tipped in the Soviet's favor as it became known that the USSR possessed thirty tank divisions for every single US unit and four times as many active duty soldiers.<sup>30</sup> There was also concern that the consumer culture prevalent in America had softened our soldiers as Selective Service

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<sup>29</sup> Riesman, Glazer and Denney, 186.

<sup>30</sup> William E. Leuchtenburg, *A Troubled Feast: American Society Since 1945* (Boston: Little, Brown and Company), 28.

statistics from 1950-1957 showed nearly one-third of draftees were found physically unfit for duty.<sup>31</sup>

Americans also believed Soviet technology was surpassing that of the United States. In 1957 the Soviets launched Sputnik, an artificial satellite, into Earth's orbit. Every time the small metallic orb completed its low trajectory over the globe, Americans looking into the night sky were reminded that their rivals were hovering over them. Soviet premier Nikita Khrushchev trumpeted this advance in his meeting with Vice-President Richard Nixon at the 1959 American National Exhibition at Moscow. The future American president could only offer his country's advances in home entertainment in reply. "There are some advances where you may be ahead of us," Nixon conceded. "For example, the thrust of your rockets for the investigation of outer space; there may be some instances in which we are ahead of you – in color television, for instance."<sup>32</sup>

### **A Gridiron Solution**

It was in the field of athletics where Soviet success at the expense of United States athletes caused a reexamination of the impact of the consumer culture on basic fitness. The Soviets nationalized sports, employing games for what historian James Riordan referred to as "utilitarian purposes to promote health and hygiene, defense, labor productivity, integration, international recognition and prestige; what we might call 'nation-building.'"<sup>33</sup> Interestingly, the Soviets followed in the footsteps of the totalitarian regimes of Fascist Italy and Nazi Germany. Arnd Kruger's history of sports in totalitarian

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<sup>31</sup> Jeffrey Montez De Oca, *Discipline and Indulgence: College Football, Media and the American Way of Life During the Cold War* (New Brunswick, NJ: Princeton University Press, 2013), 34.

<sup>32</sup> Elaine Tyler May, *Homeward Bound: American Families in the Cold War Era* (New York: Basic Books, 1988), 164.

<sup>33</sup> James Riordan, "The Impact of Communism on Sport," in *The International Politics of Sport in the 20<sup>th</sup> Century*, ed. Jim Riordan and Arnd Kruger (London: E & FN Spon, 1999), 48.

states credits the Fascists and Nazis as the first governments to realize that sports could be used as a method of indoctrination in the establishment of a totalitarian regime.<sup>34</sup>

Nationalization had a profound effect on the success of Soviet athletes as their early Cold War Olympic teams attest. The Soviets fielded their first teams in the 1952 Summer Olympics and 1956 Winter Olympics, and the USSR earned more overall medals than any other country in four of the five games between 1952 and 1960.<sup>35</sup>

Dominating international sports was a stated goal of the Soviets. A 1949 resolution inferred the need for success in sports. “The increasing number of successes achieved by Soviet athletes is a victory for the Soviet form of society and the socialist sports system,” the resolution read. “It provides irrefutable proof of the superiority of socialist culture over the moribund culture of capitalist states.”<sup>36</sup> Avery Brundage, President of the International Olympic Committee, was impressed by the Soviet system and summarized the differences between the USSR approach to fitness and that of the United States:

No country applies more intensively the theory of Baron de Coubertin that a national program of physical training and competitive sport will build stronger and healthier boys and girls and make better citizens. Better (the U.S.) worry about national complacency and the softness of life, brought on by too much prosperity.<sup>37</sup>

The statements of the Soviets and Brundage weren’t just hyperbole. In 1955, a study conducted by Drs. Hans Kraus and Sonja Weber of Columbia-Presbyterian Hospital tested American and European children in six categories of fitness. The results were

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<sup>34</sup> Arnd Kruger, “Strength Through Joy: The Culture of Consent Under Fascism, Nazism and Francoism,” in *The International Politics of Sports in the 20<sup>th</sup> Century*.” ed. Jim Riordan and Arnd Kruger (London: E & FN Spon, 1999), 67.

<sup>35</sup> James Riordan, 58.

<sup>36</sup> James Riordan, 57.

<sup>37</sup> Alfred Erich Seen, *Power, Politics, and the Olympic Games* (Champaign, IL: Human Kinetics, 1999), 95.



disheartening: 58% of American children failed one or more of the tests while only 8% of Europeans did.<sup>38</sup> Results of the Kraus-Weber tests spurred concerns of a muscle gap with the Soviet Union. Senator Hubert H. Humphrey warned of the dangers of not taking the fitness of Americans seriously. “One thing is certain,” Humphrey cautioned. “Each day, each week, each year – the Soviet Union and its captive nations are increasing their efforts for the physical fitness of their populations.”<sup>39</sup> President-elect John F. Kennedy equated physical fitness with the ability of the American way of life to continue:

We face in the Soviet Union a powerful and implacable adversary determined to show the world that only the communist system possesses the vigor and determination necessary to satisfy awakening aspirations for progress and the elimination of poverty and want. If our bodies grow soft and inactive, if we fail to encourage physical development and prowess, we will undermine our capacity for thought, for work and for the use of those skills vital to an expanding and complex nation.<sup>40</sup>

The sport of football, particularly professional football, benefitted from the national obsession with improving fitness to keep pace with the Soviets. Professional football was uniquely positioned to take advantage of the fitness craze for many reasons, including the popularity of the sport with key political leaders, its perception as a uniquely American sport which countered Soviet claims of technical or physical superiority, and its growing national reputation assisted by its relationship with the new mass medium of television.

The sport of professional football was far from a national phenomenon in the 1950s. The NFL was made up of twelve franchises, ten located primarily in the industrial north and two outliers in Los Angeles and San Francisco. College football was played in every state and had been a staple of radio for years, but as Jeffrey Montez De Oca

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<sup>38</sup> John F. Kennedy, “The Soft American,” *Sports Illustrated*, 26 December 1960, 16.

<sup>39</sup> Kurt Edward Kemper. *College Football and American Culture in the Cold War Era* (Urbana, IL: University of Illinois Press, 2009), 19.

<sup>40</sup> Kennedy, 16.

explained, the college game was regionalized rather than nationalized.<sup>41</sup> Those who lived in the south, followed southern schools, those on the Pacific coast, stuck to western schools. This lack of a national following didn't preclude very powerful individuals from becoming passionate fans of the game including back-to-back American presidents during the height of the Cold War. Dwight D. Eisenhower briefly played college football as a cadet at West Point, an institution where the athletic facility bears an inscription of Douglas MacArthur's famous quote, "On the fields of friendly strife are sown the seeds that on other days and other fields will bear the fruits of victory."<sup>42</sup> While not a successful player, Eisenhower was enamored with the game and spent the early part of his military career coaching the sport at various Army posts in the 1910s and 1920s.<sup>43</sup> While Supreme Allied Commander during World War II, Eisenhower credited the game for instilling certain traits necessary for soldiers:

I noted with real satisfaction, how well ex-footballers seemed to have leadership qualifications. I think this was more than a coincidence. I believe that football, almost more than any other sport, tends to instill in men the feeling that victory comes through hard work – almost slavish – work, team play, self-confidence, and an enthusiasm that amounts to dedication.<sup>44</sup>

Eisenhower's successor as President, John F. Kennedy, was also a former college football player. Kennedy played football at Choate and was a member of Harvard's freshmen football team before being injured. Such was Kennedy's devotion to the game that he snuck away from his new bride on their honeymoon to attend a San Francisco 49ers game at Kezar Stadium.<sup>45</sup> In addition to publicizing touch-football games against his brothers

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<sup>41</sup> Montez De Oca, 100.

<sup>42</sup> Kurt Edward Kemper, 8.

<sup>43</sup> Jean Edward Smith, *Eisenhower in War and Peace* (New York: Random House, 2012), 31.

<sup>44</sup> Jean Edward Smith, 25.

<sup>45</sup> Michael Connelly, *The President's Team: The 1963 Army-Navy Game and the Assassination of JFK* (Minneapolis: MVP Books, 2009), 44.

Bobby and Teddy, Kennedy often included football anecdotes in his speeches. On September 22, 1962, he announced his intention to send a man to the moon, and made the speech on the 50-yard line of Rice University's football stadium, Kennedy equated the quixotic nature of the lunar mission with the host university's doggedness in playing football. "But, why, some say, the moon?" Kennedy asked. "Why choose this as our goal? And they may well ask, why climb the highest mountain? Why, thirty-five years ago, fly the Atlantic? Why does Rice play Texas?"<sup>46</sup>

With two Presidents championing the merits of the game and its emphasis on national physical fitness, football received the equivalent of a Roman Catholic imprimatur. The game quickly became a counter to Soviet superiority in Olympic Games. The Soviets had utilized the Olympics to, in the words of James Riordan, "Ensure that as many people as possible were physically fit, mentally alert, and possessed the qualities (patriotism, will-power, stamina, ingenuity) regarded as being of particular value for military service."<sup>47</sup>

### **Football as Americanism**

Football also became a valuable propaganda tool for those insistent on promoting capitalism over communism. The game fulfilled the dual role required of a cultural device in defining what cultural scholar Sut Jhally refers to as a nationalist ideology. Jhally's theory on how nationalism operates as an ideology shows why a sport such as football would be useful to Cold War proponents of capitalism, which blended into Americanism:

Nationalism as an ideology works in two directions. One is to mark us off from the "others" – foreigners, strangers, aliens – it identifies and values what is unique

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<sup>46</sup> Michael Connelly, 22.

<sup>47</sup> James Riordan, 52.

to us. The other is to draw us together, to unite us in the celebration, maintenance and furtherance of “our” way of life.<sup>48</sup>

Following in the footsteps of the American branch of the YMCA and the American Legion, football became an athletic emblem of Americanism. The YMCA championed the new games of basketball and volleyball to promote Muscular Christianity as “Christian bastions against the moral decline of youth.”<sup>49</sup> The American Legion, formed in 1920 by World War I veterans, followed suit by establishing a baseball league to “counter the threat of Bolshevism, labor unions, pacifists and others who they felt undermined American strength.”<sup>50</sup>

Those actively employed in the sport were vociferous in their beliefs that football was the athletic endeavor best equipped to combat softness and communism. Army head football coach Earl “Red” Blaik opined that “football is the antithesis of communism.”<sup>51</sup> These beliefs were seconded and championed by the news media who, in the words of Michael Oriard, “rediscovered physical toughness as football’s primary contribution to America” during the Cold War.<sup>52</sup> This was a transformation from the time in the 1910s when the violence of football was decried as brutality. During the Cold War, this violence was seen as “an antidote to the soulless, anonymous lives forced on us by prosperity.”<sup>53</sup> The general-interest magazines *Look* and *Time* devoted cover articles to the topic of football, championing the game’s political and masculine appeal. Joseph Kaplan argued

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<sup>48</sup> Sut Jhally, “Cultural Studies and the Sports/Media Complex,” in *Media, Sports & Society*. ed. Lawrence Wenner (Newbury Park, CA: Sage Publications, 1989), 85.

<sup>49</sup> Swantje Scharenberg, “Religion and Sport,” in *The International Politics of Sports in the 20<sup>th</sup> Century*,” ed. Jim Riordan and Arnd Kruger (London: E & FN Spon, 1999), 93.

<sup>50</sup> Kent M. Krause, “Changing the Pitch: Americanism, Athleticism, and the Development of Legion Baseball in Nebraska,” *Great Plains Quarterly*, (Winter 2000), 20.

<sup>51</sup> Kemper, 27.

<sup>52</sup> Michael Oriard, *King Football: Sport & Spectacle in the Golden Age of Radio & Newsreels, Movies & Magazines, The Weekly & Daily Press* (Chapel Hill, NC: The University of North Carolina Press, 2001), 155.

<sup>53</sup> Oriard, 220.

in *Look* that “football represented the characteristics that differentiated the United States from the Soviet Union: military supremacy, capitalism, Christianity, and democracy.”<sup>54</sup> *Time* magazine placed a football player on the cover of their magazine for the first time in 1959 with an accompanying article titled “A Man’s Game,” which touted the violent nature of the sport as a positive.<sup>55</sup>

In 1960, CBS aired a primetime special titled “The Violent World of Sam Huff,” a half-hour documentary on a week in the life of New York Giants linebacker Sam Huff. Newscaster Walter Cronkite narrated scenes of violent game action, speaking in serious tones about the traits of football which separated it from other worldly athletic endeavors. “It’s a rough game for rough men,” Cronkite intoned seriously. “A football player must be big, strong. A rookie must have the hide of a battleship, the sheer guts of a wounded water buffalo, and the playfulness of an Army tank on a three-day pass.”<sup>56</sup>

A series of *Sports Illustrated* articles on “US Football” in the autumn of 1954 sought to tie the different regions of college football, North, South, Midwest and West, together in one rubric of nationalism that cultural historian Jeffrey Montez De Oca believes served the dual purpose of creating a national audience but also painted a picture of football as “a uniquely American game which requires the same virtues that will make America great.”<sup>57</sup> Henry Luce was the publisher of *Time* who launched *Sports Illustrated* in the 1950s. Luce was an ardent anticommunist and the coverage of American sport in general in *Sports Illustrated* was meant to differentiate American culture from that of the Soviets. For example, Luce’s political views may have influenced the coverage of the

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<sup>54</sup> Kemper, 21.

<sup>55</sup> Oriard, 217.

<sup>56</sup> Walter Cronkite and Earle Luby, “The Violent World of Sam Huff,” *The Twentieth Century*, directed by Nicholas Webster (October 31, 1960; New York).

<sup>57</sup> Montez De Oca, 104 – 107.

Olympic Games during the Cold War. A survey of the coverage of *Sports Illustrated* at the 1952 and 1956 Games showed a decidedly pro-American, anti-Soviet bias that transcended sports. The articles included passages devoted to how Russian athletes were joyless and rigid due to the political constraints incumbent upon a Soviet athlete; male Russians were not interested in women and Russia as a whole was not interested in peace.<sup>58</sup>

It didn't take long for politicians who rose to national prominence on anticommunism planks to take advantage of the sudden political appeal of football. Joseph McCarthy hosted multiple hearings in the early 1950s in his quest to root out communist infiltrators. On March 4, 1953, at a hearing of the Senate Permanent Subcommittee on Investigations, McCarthy queried Reed Harris, a writer whose book *King Football* had questioned the merits of collegiate football. McCarthy's questioning of Harris followed his typical modus operandi of badgering. There was one statement from the infamous Senator which exhibited the level at which football became equated with anticommunism: "Russia has barred football from her new athletic program because it appeals to the least desirable emotion," McCarthy stated, implying with McCarthyite logic that those in America who opposed football did so out of a value system tainted by communist sympathies.<sup>59</sup>

The strawman of equating opposition to football with being a communist became a popular rhetorical device in the 1950s. With colleges and universities facing budgetary shortfalls, many faculty members began a movement to deemphasize the game. This led to multiple examples of opponents of the sport being branded as communist. In 1958

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<sup>58</sup> John Massaro, "Press Box Propaganda? The Cold War and *Sports Illustrated*, 1956," *The Journal of American Culture*, (September 2003), 364-366.

<sup>59</sup> Kemper, 36.

following the decisions of City College of New York, New York University and the University of Chicago to drop football, and members of the Ivy League to deemphasize it, Mutual Broadcasting's football analyst took advantage of a lull in the action of a game to brand the academic leaders of those institutions as communists and the institutions themselves as "hotbeds of communism".<sup>60</sup> In 1962, Ohio State's faculty voted against accepting an invitation to play in the Rose Bowl, believing it would be a misalignment of financial priorities in light of severe budgetary cutbacks imposed on various academic departments. Columbus area sportswriters, letters to the editors and faculty meeting minutes reveal that the professors opposed to the Rose Bowl were branded as communists, traitors and un-American by journalists, fans and pro-football faculty.<sup>61</sup> An experiment at Brown University by Wade Thompson placed an advertisement in the student newspaper asking for signatures on a petition to ban college football. Thompson received many threatening responses questioning his sexuality and calling him a communist.<sup>62</sup> Charges of communism over football even popped up during some of America's most daunting social advancements of the 1950s. When Arkansas governor Orville Faubus threatened to close all schools in the capital city to prevent the integration of Little Rock Central High School in 1957, he was advised by the school board that his action would mean no high school football games could be played. An irritated Faubus said, "The school board is obviously infiltrated by communists."<sup>63</sup>

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<sup>60</sup> Kemper, 28.

<sup>61</sup> Kemper, 71.

<sup>62</sup> Russ Crawford, *The Use of American Sports to Promote the American Way of Life During the Cold War: Cultural Propaganda, 1945-1963* (Lewiston, NY: The Edwin Mellen Press, 2008), 181.

<sup>63</sup> Crawford, 188.

## Football's Collectivistic Infrastructure

What is ironic is that football, particularly professional football, was far from a bastion of pure capitalism. If anything, a review of the business practices of the NFL and AFL in the 1950s and 1960s shows them to be cooperative operations with elements of both collectivism and capitalism. This is particularly true when analyzing the relationship between the NFL and television, an innovation which helped popularize football as well as brand it as a staple of Americanism.

The NFL, along with all other professional sports leagues, is what sports economist Rodney Fort refers to as a single-entity cooperative. Fort defines the league's structure and relationship to its franchises thusly: "(The league) defines the action that owners (of franchises) must take in order to make league play happen in the first place – setting schedules, rules of play, and the structures of championships."<sup>64</sup>

The franchises are independently run, for-profit corporations but the product they are selling is on-field competition with other franchises. Ironically, this product would not be available if the NFL was a pure capitalistic organization. Typically, the rate of accumulation among capitalists is a function of competition with higher rewards for better judgment, work force control and access to favorable market operations.<sup>65</sup>

In the 1920s and 1930s the NFL was a true capitalist system as teams were left to their own devices to procure talent, budget for personnel expenses and attempt to leverage the resources of their home market to provide the capital necessary to compete on the field with rival clubs. Not surprisingly, this was also a time when several teams folded their operations for lack of a revenue stream which would have made them

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<sup>64</sup> Rodney Fort, *Sports Economics*, (Upper Saddle River, NJ: Prentice Hall, 2003), 129.

<sup>65</sup> Immanuel Wallerstein. *Historical Capitalism*, (London: Verso, 1983), 16-17.



competitive. The Pro Football Hall of Fame website lists 49 teams which operated and ultimately failed in the 1920s and 1930s. The vast majority of them represented smaller markets such as Canton, Ohio, Duluth, Minnesota, and Hammond, Indiana. By 1939 the NFL had ten surviving teams placed in the large markets of New York City, Washington D.C., Chicago, Philadelphia, Pittsburgh, Detroit and Cleveland. The one rare exception was Green Bay, Wisconsin, a small town in the northern fringes of the state whose Packers are a community-owned, non-profit.

The 1930s was a seminal time for the NFL as they instituted the first of what would become a litany of policies which were both collectivistic and anticompetitive. In 1936 the NFL held the first player draft which guaranteed equal access to players. Later, the standard NFL player contract was amended to include a reserve clause, a system by which a player whose contract expired was bound to play one year, an option year, at a reduced rate for the team who employed him if he wished to test his value on the open market. This clause effectively bound players to the franchise for life, as few were willing to accept a pay cut in exchange for an uncertain future. NFL owners deemed these practices necessary to reconcile the capitalistic contradiction of the system eventually favoring only one survivor when it came to the procurement of quality talent.

The reserve clause was an uneasy compromise which required judicial approval; and a bitter pill for the players who had their freedom of movement taken away. When William Radovich, an offensive lineman for Detroit, played out his option and joined the Los Angeles Dons of the All-American Football Conference (AAFC) in 1946, he was blacklisted from the NFL. When he attempted to rejoin the NFL after the demise of the AAFC in 1949, he was blocked out for not playing his option year in Detroit. Radovich

filed suit against the NFL alleging the reserve clause was a violation of antitrust laws but the Supreme Court in the 1957 case *Radovich v NFL* refused to set any precedent that might lead to Major League Baseball losing the antitrust exemption it won in 1922. This refusal to grant players freedom of movement and to market themselves was a non-television revenue sharing example of the power of the state to protect the owner's individual profits at the cost of diluting salaries for players.

### **Television Becomes a Factor**

The dichotomy of using antitrust practices to ensure competition between franchises was not lost on NFL Players Association (NFLPA) lawyer Creighton Miller: “(The player) either plays with the club drafting him or he does not play professional football,” Miller said. “Depriving a professional entertainer of his right to choose his employer is an unusual exception to allow in the framework of the American economy.”<sup>66</sup>

Equalizing the procurement of talent did nothing to offset the disparity of the effects of market size on providing equitable revenue for each of the teams when television money became a factor, however. The first NFL game telecast was in 1939. The contest between the Brooklyn Dodgers and Philadelphia Eagles was carried on an experimental basis and sent to the handful of consumers who had purchased Dumont's early sets.<sup>67</sup> World War II slowed the development of television but the number of stations boomed in 1951 when AT&T completed a system of cables and microwave

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<sup>66</sup> David George Surdam, *Run to Glory and Profits: The Economic Rise of the NFL During the 1950s* (Lincoln, NE: University of Nebraska Press, 2013), 170.

<sup>67</sup> Sydney W. Head, *Broadcasting in America: A Survey of Television and Radio* (Boston: Houghton Mifflin Company, 1956), 155.

relays spanning the continent which made coast-to-coast broadcasting possible.<sup>68</sup> The number of television stations and television sets increased exponentially: in 1948 there were 108 stations and 17,000 sets, in 1957 there were 467 stations and 40 million sets, and those sets required programming, particularly on the weekends when a significant numbers of Americans were not in the office or on the factory floor.<sup>69</sup> Television historian Ron Powers described the unique content required for weekends. “Television needed something to eat, something live, something conspicuous and established as a field of human interest; something that could be transmitted from a relatively small, highly defined field of activity.”<sup>70</sup>

In the early 1950s Sunday afternoons had been the province of political shows such as *Face the Nation*, *Meet the Press* and *See it Now*, or prestige programs like *Omnibus*, what Thomas Doherty referred to as “Egghead Sunday.”<sup>71</sup> In 1950 the NFL signed a deal with the American Broadcasting Company (ABC) and Sun Oil to nationally televise one game a week. NFL Commissioner Bert Bell sold the package for \$150,000 and all owners voted unanimously to accept.<sup>72</sup> Ratings for the games outpaced public programming and networks began to offer the NFL greater sums, growing from \$150,000 for all games in 1950 to \$450,000 in 1955 just to carry the season-ending NFL Title Game.<sup>73</sup> The NFL grew steadily in the 1950s thanks to television. At a 1954 owner’s meeting, Commissioner Bell crowed: “This was the finest year (1953) the league and

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<sup>68</sup> Erik Barnouw. *The Image Empire: A History of Broadcasting in the United States* (New York: Oxford University Press, 1970), 5.

<sup>69</sup> William E. Leuchtenburg. *A Troubled Feast: American Society Since 1945* (Boston: Little, Brown and Company, 1983), 67.

<sup>70</sup> Ron Powers, *Supertube: The Rise of Television Sports* (New York: Coward-McCann, Inc. 1984), 46.

<sup>71</sup> Thomas Doherty, *Cold War, Cool Medium: Television, McCarthyism, and American Culture* (New York: Columbia University Press, 2003), 83.

<sup>72</sup> National Football League Annual Meeting Minutes, 2-3 June 1950, NFL Meeting Minutes, Professional Football Hall of Fame, Canton, OH.

<sup>73</sup> Powers, 81.

member clubs ever enjoyed. The television shows from Boston to Seattle, each weekend, were the greatest live television shows of sporting events that have ever been known in this country.”<sup>74</sup>

But a closer look at NFL meeting minutes shows a pure capitalist approach to television in the 1950s. The continuance of this system was leading to a population of haves and have-nots. While proceeds from championship games were shared, NFL teams negotiated their own individual television deals with networks and kept all the proceeds to themselves. By 1960, eleven of the NFL’s fourteen franchises had deals with the Columbia Broadcasting System (CBS), two with the National Broadcasting Company (NBC), and one, the Cleveland Browns, had their own television network.<sup>75</sup> These were local deals and the amount a team got in exchange for televising games depended on media market size and team success on the field. The disparity in income was severe: in 1960 the New York Giants collected \$350,000 in broadcast revenues while the Green Bay Packers collected only \$35,000.<sup>76</sup>

Forward thinking owners saw this disparity coming and tried to head off the inevitability of a league composed of television haves and have-nots in 1951. At the NFL Annual Meeting in 1950, Paul Lewis of the Philadelphia Eagles and Art Rooney of the Pittsburgh Steelers put forth a resolution to split television revenue between the teams participating in a given televised game:

The sums received by any club under a television contract for the actual live playing of a championship or non-championship contest between National

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<sup>74</sup> National Football League Annual Meeting Minutes, 27-30 January 1954, NFL Meeting Minutes, Professional Football Hall of Fame, Canton, OH.

<sup>75</sup> Surdam, 246.

<sup>76</sup> Denninger, 25.

Football League members shall be paid 60% to the home club and 40% to the visiting club. All of this article is effective for the year 1951 only.<sup>77</sup>

The resolution required ten of the twelve owners to vote in favor to pass but it failed 6-6 with the large market New York Giants voting against it. According to David George Surdam, the logic behind the big market club to not accept a split in television revenue had to do with the league policy which forced home clubs to give 35% of gate receipts to the visitors: “If televising a home game reduced gate receipts by \$10,000, but the owner received \$7,500 for telecasting and didn’t have to share the telecast fee, he would end up ahead. The television revenue was not subject to the 35% league and visitors share.”<sup>78</sup>

Protection of ticket sales was the initial priority of the early television contracts. Bert Bell and the individual owners believed ticket sales would always be their main revenue stream. In 1947 the NFL adopted a television policy, known as Article 10, Section 4, which governed the rights of participating teams in regards to having their game broadcast:

Each Club shall be permitted to sell television rights for its home games of the season 1947 only. All contracts entered into by clubs for the televising of their home games shall provide that the visiting team shall have the right to televise the game directly to the home city of the visiting Club.<sup>79</sup>

The NFL only allowed year-by-year television contracts in 1947, 1948 and 1949 to allow for a chance to gauge the impact of television on attendance. The early figures were not good. A case study is the Los Angeles Rams. In 1949 the Rams did not televise home games and drew a total of 269,000 to their home games during a season in which they played for the NFL title. In 1950 the Rams televised all home games and saw their

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<sup>77</sup> National Football League Annual Meeting, 17-22 January 1951, NFL Meeting Minutes, Professional Football Hall of Fame, Canton, OH.

<sup>78</sup> Surdam, 245.

<sup>79</sup> National Football League Annual Meeting, 16 January 1947, NFL Meeting Minutes, Professional Football Hall of Fame, Canton, OH.

attendance drop to 158,000 during a season in which they again played for a NFL title.<sup>80</sup> George Halas, owner of the large market Chicago Bears, sold out a late season game and then sold the broadcast rights for the contest to be shown in Chicago. A severe storm came in on Sunday and Halas found that his capacity crowd was reduced to a near empty stadium as they chose to watch from the comfort of their home. This spurred Halas to create a 75-mile blackout zone around the franchise's home territory. The blackout policy stipulated that if a club was hosting an NFL game, no other broadcast of any NFL game could be shown in that city without the authorization of the home club's owner. Also, when the team was on the road, no other games could be broadcast into its home market in competition with their away game. In a vote of the owners in 1951, this resolution passed 11-1.<sup>81</sup>

The implementation of a television blackout policy to protect the ticket revenue of the owners was the league's first uneasy compromise of a capitalistic contradiction brought about by the televising of football games. By trying to balance their need to protect the gate revenue they shared to ensure on-field competition, the owners agreed to an anticompetitive practice preventing teams and broadcasters from competing fairly on the open market. This was the crux of the case brought against the NFL by the U.S. Department of Justice (DOJ), which believed the NFL was violating the Sherman Antitrust Act. The Truman Administration thus filed a lawsuit against the NFL in 1951, *United States v NFL*.

The first man to reconcile the gridiron capitalist conundrum was Judge Alan K. Grim, United States District Court Judge in Philadelphia. Grim faced the daunting

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<sup>80</sup> Surdam, 234.

<sup>81</sup> Surdam, 236.

decision of determining if a television blackout was a “reasonable” restraint of trade, one that was necessary for an industry to operate. If Grim ruled in favor of the NFL, he would condone a business practice that precluded competition in the market place. Conversely, if Grim sided with the DOJ, he would cost NFL franchises a significant amount of their share of gate receipts, which testimony in the trial showed had decreased during the early years of television. Grim knew the ramifications his decision would have. “Any finding I make on reasonableness may be awfully important,” the jurist told the *New York Times*.<sup>82</sup>

The case continued for months and testimony showed that while the NFL suffered at the gate from television, the league -- and particularly Bert Bell -- were more than fairly compensated by the broadcasters, and sometimes used strong-arm tactics to earn even more. When the Cleveland Browns made the 1950 NFL Championship Game, Erie, Pennsylvania broadcaster Herbert Stewart of WICU was notified by the NFL that he could not televise the game due to blackout rules. When Stewart informed Bert Bell that Erie was ninety miles from Cleveland and well outside any blackout zone, he said Bell told him the distance was incidental. “There are many Cleveland fans in Erie who will travel by train to the game,” Bell told Stewart.<sup>83</sup> When Stewart offered to pay \$2,500 to the NFL to broadcast the game, Bell informed him that “\$10,000 would be more feasible.”<sup>84</sup>

Fortunately for the NFL, Bell’s less-than-upstanding business practices did not outweigh the evidence that the league lost gate-revenue when out of market game telecasts competed with the local team’s home game. Grim granted the NFL a partial

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<sup>82</sup> “Anti-Trust Action Against National Football League Starts at Philadelphia,” *New York Times* 27 January 1953, 30.

<sup>83</sup> “TV Official Cites Pro Football Ban,” *New York Times* 29 January 1953, 32.

<sup>84</sup> “TV Station Head Witness at Trial,” *New York Times* 30 January 1953, 18.

exemption for blackouts: when a team is playing at home, no other telecasts may be broadcast into its market, but when the team is playing on the road, other games may be broadcast into their home market. In rendering his decision in favor of the NFL, Grim pointed out that while football and television were interstate commerce, he felt the blackout policy was a reasonable restraint of trade necessary for the NFL to field competitive teams and was backed by the reasonable vs. unreasonable restraint test found in the Sherman Antitrust Act:

The greatest part of the defendant club's income is derived from the sale of tickets to games. Reasonable protection of home game attendance is essential to the very existence of the individual clubs, without which there can be no League and no professional football as we know it today.... This particular restriction promotes competition more than it restrains it in that its immediate effect is to protect the weak teams and its ultimate effect is to preserve the League itself. By thus preserving professional football, this restriction makes possible competition in the sale and purchase of television rights in situations in which the restriction does not apply.<sup>85</sup>

Bert Bell was ecstatic with the result. "Professional football won the most important part of the case because the League's most vital need is protection of our home gate if we are to continue our existence."<sup>86</sup>

### **Unequal Television**

Unsaid in the case was whether the league could satisfy both the need to protect their gate receipts and reap television rewards by crafting a similar system on television revenue sharing such as was proposed in 1951 and voted down. The NFL was not alone in refusing to share television revenue. While NFL meeting minutes do not provide direct quotes about communism in regard to television revenue sharing, a fear of communism

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<sup>85</sup> U.S. Congress, House of Representatives, Antitrust Subcommittee (#5) of the Committee on the Judiciary, 87<sup>th</sup> Congress, *Congressional Record*, 28 August 1961,

<sup>86</sup> "Court Limits Pro Football's Control of Television to the Area of Home Games," *New York Times* 13 November 1953, 30.



played a significant role in the decision of Major League Baseball to not share revenue derived from broadcasts.

In 1952 St. Louis Browns owner Bill Veeck proposed that Major League Baseball would benefit if visiting clubs were given a share of the television contracts that home teams had crafted. In Veeck's opinion, the visiting team provided fifty percent of the telecast, so they were entitled to an equal share of the broadcast revenue. Veeck shared his proposal in his autobiography, along with the red-baiting response he received. Veeck's opinions on revenue sharing are spelled out in a passage which highlighted the conundrum of running a business based on on-field competition:

My proposal was to cut the visiting team in on television receipts. Now, this may not sound quite so inflammatory as, say, the *Communist Manifesto*, but to the (New York) Yankees it was revolutionary and un-American. Whenever I offered any plan that would give the other team a fighting chance against them, the Yankees always cried socialism, the first refuge of scoundrels. I say it is not socialism to tighten competition; I say it is capitalism at its best. The essence of capitalism is competition, and there is no competition when you are playing with a stacked deck. We are in a strange business; we are in competition and yet we are partners.<sup>87</sup>

Veeck's proposal was roundly rejected and cries of "comrade" were heard in the hall as he walked by.<sup>88</sup> When he argued again that the Browns were half the show and entitled to half the money, Brooklyn Dodgers owner Walter O'Malley said, "That's socialism."<sup>89</sup> When Veeck threatened to withhold the telecast rights of Browns home games back to the market of the visiting team he was called a "God-damn socialist," by Boston Red Sox owner Tom Yawkey.<sup>90</sup>

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<sup>87</sup> Bill Veeck and Ed Linn, *Veeck as in Wreck: The Autobiography of Bill Veeck* (Chicago: University of Chicago Press, 1962), 275, 278.

<sup>88</sup> John Helyar, *Lords of the Realm: The Real History of Baseball* (New York: Ballantine Books, 1994), 557.

<sup>89</sup> Ibid.

<sup>90</sup> Paul Dickson, *Bill Veeck: Baseball's Greatest Maverick* (New York: Walker & Company, 2012), 207.

In the end, Veeck's proposal was denied and baseball, like football, did not share television revenue equally among their parent clubs. Both sports were growing in revenue and exposure and there seemed little concern for the disparity. At a 1959 NFL owners meeting, Dominic Olejniczak, chairman of the non-profit, small-market Green Bay Packers, expressed his desire to end the policy of balkanized television contracts. "It would be nice if we could have a uniform contract for television," Olejniczak told his fellow owners."<sup>91</sup> Bert Bell responded, "Different teams are going to agree on different things."<sup>92</sup> This would be the policy of the NFL until an upstart league forced a shift in that system.

In 1959 the NFL was faced with a competitor for the first time in almost a decade. The American Football League (AFL) was formed by Lamar Hunt and a group of wealthy businessmen who proudly named themselves "The Foolish Club" for attempting to take on the larger and more established NFL from small media markets such as Denver, Houston, Oakland, and Buffalo.<sup>93</sup> The AFL's relationship with television proved visionary rather than foolish, however. On November 23, 1959, during an AFL organizational meeting at the Hotel Nicollet in Minneapolis, the club owners voted to accept the following television policy envisioned by Lamar Hunt and explained by AFL general counsel Gregory R. Dillon:

All television will be handled on a cooperative basis in the name of the American Football League, but for the benefit of the individual franchise holders. All income from television derived by the League and/or any and all individual clubs shall be paid directly to the American Football League and thereafter held on deposit by the League's Treasurer. Each year at the annual meeting the total

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<sup>91</sup> National Football League Special Meeting, 23-24 April 1959, NFL Meeting Minutes, Professional Football Hall of Fame, Canton, OH.

<sup>92</sup> Ibid.

<sup>93</sup> Ken Rappoport. *The Little League That Could: A History of the American Football League* (New York: Taylor Trade, 2010), 1.

accumulated funds accrued during the previous calendar year shall be distributed equally to each of the member clubs.<sup>94</sup>

On June 9, 1960, the AFL reached an agreement with the American Broadcasting Company (ABC). ABC paid \$8.5 million over 5 years to televise AFL games, guaranteeing each of the eight teams \$212,500 per year in revenue before they needed to sell a single ticket.<sup>95</sup> According to media writer Ron Powers, the ABC-AFL relationship constituted “the first utterly self-contained professional sports league that had been formed with the expectation of surviving on television revenue.”<sup>96</sup> Between September and December 1960 the AFL completed its first season of play. On January 12, 1961, Jay Michaels of Music Corporation of America (MCA), who had negotiated with ABC on the AFL’s behalf, gave an overview of the AFL’s television performance at the league’s second annual meeting. Michaels announced that ratings for the AFL had grown during the regular season to a high of 7.9 and the AFL Championship Game drew a Nielsen rating of 17.1, or 17.1% of the entire American television-viewing audience during that date and time.<sup>97</sup> Another significant factor was that 80% of those who watched a NFL game at 1:00 pm EST turned the dial to watch the AFL games that aired at 4:00 pm EST.<sup>98</sup> Many teams in the AFL struggled to attract fans to the stadium, particularly in Los Angeles, Dallas and New York where there was direct NFL competition.<sup>99</sup> The \$212,500 each team received from ABC provided a bulwark against gate losses that

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<sup>94</sup> Fifth Organizational Meeting of the American Football League Minutes, 23 November 1959. AFL Meeting Minutes, Professional Football Hall of Fame, Canton, OH.

<sup>95</sup> Deninger, 25.

<sup>96</sup> Powers, 153.

<sup>97</sup> Second Annual Meeting of the American Football League Minutes, 12 January 1961, AFL Meeting Minutes, Professional Football Hall of Fame, Canton, OH.

<sup>98</sup> Ibid.

<sup>99</sup> Rappoport, 13-14.

allowed all eight franchises to return for the 1961 season. In the words of AFL Commissioner Joe Foss: “AFL teams are doing business solely on television money.”<sup>100</sup>

Norma Hunt, Lamar Hunt’s widow, gave an intriguing explanation of her husband’s thought process. She recalled that Lamar Hunt echoed Bill Veeck in acknowledging that sports leagues must reconcile a basic contradiction: A pure capitalist system would leave only the largest media markets capable of fielding competitive teams:

Lamar often said to me, ‘Any league is only as strong as its weakest link.’ You need everybody to succeed. Everybody can’t be New York. Therefore, you’ve got to address that in very positive ways. Revenue sharing obviously was the way to do it. It’s one of the most important decisions ever. It’s still the key to the success of the NFL fifty years later.<sup>101</sup>

The NFL was caught off-guard by the cooperative approach of its rival. The NFL was an uncontested monopoly at the time, having been free from the rival of a competitive league since the AAFC folded in 1950. With no competition, the NFL engaged in what Italian business scholar Silvio Brondoni refers to as a “closed innovation policy,” in which the corporation doesn’t prioritize innovating or expanding.<sup>102</sup> This was certainly the case with the NFL, which maintained an unfulfilled relationship with television and saw no need to expand beyond its current twelve teams. Once the AFL was able to compete head-to-head with the NFL thanks to a cooperative approach to television, the NFL rapidly change gears. Not only did the NFL expand to fourteen teams quickly, they also became enlightened on the concept of sharing television revenue. On April 26, 1961, the NFL copied the AFL by agreeing to a two-year, \$9.3 million contract with CBS to be the exclusive broadcaster of games with the fourteen owners splitting the proceeds, which

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<sup>100</sup> Surdam, 244.

<sup>101</sup> Jonathan Rand, *The Year That Changed the Game: The Memorable Months That Shaped Pro Football* (Washington, DC: Potomac Books, 2008), 63.

<sup>102</sup> Silvio Brondoni, “Innovation and Imitation: Corporate Strategies for Global Competition,” *Emerging Issues in Management*. no 1 (2012), 10-11.

amounted to \$332,000 per team per year.<sup>103</sup> This coopting of the AFL television plan was a textbook example of what business management researchers Casadesus-Masanell and Zhu call competitive imitation. “Incumbents often learn about new business models from entrants and respond by incorporating these innovations into their own business.”<sup>104</sup>

So, the NFL was engaging in a standard capitalistic response to the innovation of an upstart competitor. However, the very innovation they were imitating was deemed a socialistic business practice by many of the era. Unfortunately for the NFL, this innovation drew the attention of the antitrust experts of the DOJ just as their blackout policy had done almost a decade before. The DOJ believed the exclusive contract with CBS and the policy which precluded teams from signing their own individual television contracts violated antitrust law.

The same U.S. District Court Judge heard the case but this time denied the NFL an antitrust exemption. Judge Alan K. Grim stated that he had granted the NFL an earlier exemption because the league argued it needed to protect their gate from television and the new television contract took the telecasting of games out of league owner’s hands:

By this agreement the member clubs have eliminated competition among themselves in the sale of television rights to their games. Clearly, this restricts the individual clubs from determining which areas the telecasts of their games may be made, since defendants (the NFL) have by their contract given to CBS the power to determine which games shall be telecast and where.<sup>105</sup>

The Grim decision muddied the waters for both the NFL and AFL. The NFL was forced to void its contract with CBS and entered the 1961 season with the same fourteen individual television contracts from the 1960 season. The AFL, which was slowly

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<sup>103</sup> National Football League Press Release. “NFL and CBS Sign Two-Year Contract.” 10 January 1962.

<sup>104</sup> Ramon Casadesus-Masanell and Feng Zhu, “Business Model Innovation and Competitive Imitation: The Case of Sponsor-Based Business Models,” *Strategic Management Journal*, no 34 (2013), 465.

<sup>105</sup> Val Adams. “TV Football Pact Voided by Court.” *New York Times*. 21 July 1961, 47.

improving its gate receipts and creating a unique brand on network television, was concerned that its contract would also be void which many felt would consign the league to the same fate as the AAFC. Professional football faced the prospect of losing eight teams, and possibly more in the future, to the sole survivor aspect of capitalism. It needed a way to reconcile this conundrum. Ironically, an antitrust and anticommunist stalwart of the House of Representatives would provide such reconciliation.

### CHAPTER THREE

Congressman Emanuel Celler represented Brooklyn and Queens from 1923 to 1973. A Brooklyn-born grandson of immigrants and a graduate of Columbia Law School, he came to Congress well-versed in lower-class struggles, the experience of immigration and the legal process. Celler's father ran a whisky business that failed and he turned to selling wine door-to-door. Celler had to put himself through law school by selling wine door-to-door following the death of his merchant father. The struggles of his father to make a go of his own company and his experience meeting a wide variety of Brooklyn personalities left an impact on Celler. He became a Congressman at the age of 34 and would serve for almost 50 years.

Celler defined his legislative passions in his autobiography as independence for India, a Jewish homeland in Palestine, immigration reform and "economic freedom for the people of the United States against the growth of monopoly power."<sup>106</sup> In the latter category, Celler's efforts can be summarized as attempting to save a capitalistic society from its self-destructive contradictions by prioritizing the presence of competition in all industries.

Celler and Senator Estes Kefauver wrote the Anti-Merger Act which passed in 1950. The act closed a loophole in the Clayton Antitrust Act. The Clayton Act prevented the acquisition of a competing company through a stock purchase, but many companies got around this by buying up their competitor's assets, creating what are known as vertical mergers, in which companies have a buyer-seller relationship.<sup>107</sup> The language of

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<sup>106</sup> Emanuel Celler, *You Never Leave Brooklyn: The Autobiography of Emanuel Celler*, (New York: The John Day Company, 1953), 22.

<sup>107</sup> Lawrence G. Goldberg, "The Effects of Conglomerate Mergers on Business," *The Journal of Law and Economics*, 16 (April 1973): 137.

the act encapsulates Celler's self-defined guiding principle in his efforts to curb monopolies (italics added): "Prohibits the acquisition of the whole or any part of the assets of another corporation engaged also in commerce where in any line of commerce in any section of the country, *the effect of such acquisition may be substantially to lessen competition.*"<sup>108</sup> Celler believed the opportunity to provide competition was the true strength of capitalism. In an anecdote perhaps influenced by his father's business failure Celler explained his belief in the need for government to monitor, investigate, and if needed, intervene in a company's business practices to avoid monopolistic leviathans. "If the vegetable man closes up his little shop because he has failed, it is the tragedy of an individual, but if an empire topples, it carries thousands down with its fall," Celler wrote.<sup>109</sup>

In 1949 Celler was chair of the House Judiciary Committee and convened the House Subcommittee on Anti-Trust and Monopoly, which he also chaired.<sup>110</sup> He used the authority of his chairmanship to call the heads of several American corporations before Congress to testify about their operations. He intended to determine if these corporations engaged in monopolistic practices and then to act accordingly in lessening their power to dominate the market. In his autobiography Celler stated that he was caught off-guard at the level of anger his inquiries produced in the leaders of these large concerns.

"They were indignant men, angry that a question had been raised against their empires," Celler wrote. "It was not that they feared too close a look; it was indignation as

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<sup>108</sup> Goldberg, 138.

<sup>109</sup> Celler, *Brooklyn*, 158.

<sup>110</sup> Lowe, 15.



to why anybody would want to look at all, when such a profusion of goods and material was pouring forth in the public lap.”<sup>111</sup>

Among the business leaders Celler called to testify were those in charge of Major League Baseball. In 1951 he asked MLB to provide him information on their use of the reserve clause after receiving complaints from players over a lack of job opportunities and chances for movement.<sup>112</sup> Celler also wanted to know about baseball’s plans for expansion. The Congressman felt the sport’s ossification in regards to expansion was a behavior typical of a monopoly, the closed innovation policy Italian business scholar Silvio Brondoni wrote of in 2012:

We pointedly draw attention to the public of the geopolitical unbalance of major league teams. I’m referring not only to their lack on the Pacific Coast but in other sections deserving of big-league caliber baseball. Baseball must be kept in tune with changing conditions. Despite tremendous population shifts, there have been no changes in over 50 years. It is high time such changes were affected.<sup>113</sup>

Celler was blunt when he told baseball witnesses that if MLB did not expand its number of franchises, then perhaps it was time for competing enterprises to spur such growth.

“There should come a day when there will be four major leagues, not two,” he warned.<sup>114</sup>

Celler deemed MLB a monopoly but chose not to propose legislation making the reserve clause illegal. In its 1922 *Federal Baseball* decision, the Supreme Court granted baseball a complete antitrust exemption and Celler believed it was the Court’s job to overturn that verdict.<sup>115</sup> The Supreme Court has rarely reversed the decisions of previous courts out of concern for the precedent which would be set. The rare instances of such

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<sup>111</sup> Celler, *Brooklyn*, 156.

<sup>112</sup> Lowe, 16.

<sup>113</sup> Comments of Emanuel Celler to Jack Walsh of the *Washington Post*, 1951, Box 1, Baseball Clippings Folder, Emanuel Celler Papers, Manuscript Division, Library of Congress, Washington D.C.

<sup>114</sup> Stephen R. Lowe, 20.

<sup>115</sup> Celler, *Brooklyn*, 167.

action being taken in *Plessy v Ferguson* and *Brown v Board of Education* became famous for their departure from the norm. This pattern of deferring to past decisions repeated when the Supreme Court refused to reverse the precedent of *Federal Baseball* when confronted with the *Toolson v Yankees* case in 1953 which challenged the legality of the reserve clause. Instead, in a carefully worded opinion, the Supreme Court put the ball back in Celler's glove to determine the legality of the reserve clause:

We conclude that the orderly way to eliminate error or discrimination, if any there be, is by legislation and not by court decision. Congressional processes are more accommodative, affording the whole industry hearings and an opportunity to assist in the formulation of new legislation. The resulting product is therefore more likely to protect the industry and the public alike.<sup>116</sup>

Not content to just focus on the reserve clause, Celler reconvened his Anti-Trust and Monopoly Subcommittee in 1957 and began an investigation into all major sports with the motive of crafting a piece of legislation which would revoke the complete exemption for baseball and replace it with a one-size-fits-all bill that would make all sports accountable under antitrust laws. Celler laid out his reasoning in a letter to a *Pittsburgh Press* sportswriter:

There is no doubt that baseball, basketball, and football, as organized by professionals, should come within the purview of the antitrust laws. They should not be immunized from those laws because they are "business." For example, in organized baseball, there is involved a business of \$100 million a year. The concessions certainly constitute business and they yield more than gate receipts. The radio and television rights are of considerable magnitude in monetary value. Baseball has countless restrictive covenants. The same holds true for organized football. It is difficult however, to understand the distinction made by the Supreme Court as between baseball and football. You cannot make fish of one and fowl of the other.<sup>117</sup>

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<sup>116</sup> Opening Statement of Chairman Celler, Hearings on Organized Professional Team Sports Bill, 2 September 1959, Box 259, General Office File, Sports 1959-1960, Emanuel Celler Papers, Manuscript Division, Library of Congress, Washington D.C.

<sup>117</sup> Emanuel Celler, personal letter to Pat Livingston, 14 March 1957, Box 249, Folder 2, Emanuel Celler Papers, Manuscript Division, Library of Congress, Washington D.C.

Celler faced an uphill climb as public opinion and the opinion of sportswriters around the country were in favor of baseball continuing to operate as a monopoly. A 1957 Trendex public opinion poll found that 54.6% of respondents did not want baseball to be brought under antitrust laws.<sup>118</sup> Celler received letters from fans extolling the virtues of the reserve clause. “There is nothing wrong with the reserve clause in baseball,” wrote one fan from Erie, PA. “In fact they need it in the game or there would be nothing but high bids for the best players and naturally richer clubs would get the better players and fans would suffer.”<sup>119</sup> Another wrote a scathing indictment of the Congressman to the *Sporting News* that Celler saved in his files:

I don't see how a “little” man like this could ever be elected to Congress. Instead of paying attention to his job, he meddles in affairs that have been very well handled, and tries to ruin them. There are people like him, who can't stand to see things running smoothly, and try to wreck the basic structure.<sup>120</sup>

Celler wasn't swayed by public opinion and conducted almost two years of hearings and questioned the leaders of all the major team sports. Most of the press focused on his crusade against baseball, especially as it took a personal turn when the Brooklyn Dodgers relocated from his hometown to Los Angeles in 1957, Celler also called Commissioner Bert Bell and several NFL owners before his subcommittee to explain their business dealings. What he learned would inform his 1961 SBA legislation. Celler asked about the NFL's plans to expand, noting that the NFL, like MLB, could put profitable teams in many markets which could support professional football. Bert Bell's provincial response

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<sup>118</sup> Jack Boyle, “Most Fans Want Congress to Stay Out of Baseball,” *Long Island Daily Press*, 13 July 1957: 2.

<sup>119</sup> Jack Polancy, personal letter to Emanuel Celler, 11 March 1957, Box 249, Folder 2, Emanuel Celler Papers, Manuscript Division, Library of Congress, Washington D.C.

<sup>120</sup> Harry J. Owens, personal letter to J.G. Taylor Spink, 15 July 1957, Box 249, Folder 2, Emanuel Celler Papers, Manuscript Division, Library of Congress, Washington D.C.

was that “adding new teams may create serious scheduling problems.”<sup>121</sup> When the subcommittee brought up the 123% increase in broadcast revenues between 1952 and 1956 as evidence the NFL benefitted from its monopolistic position, Bell showed his shortsightedness during his testimony.

“I don’t believe television revenue will increase very much, for the simple reason that today the prices of cables and pickups and the price of line charges and the price of time at the stations have increased so much that the sponsor will not be able to pay more in rights fees than they do today,” Bell testified.<sup>122</sup>

A particularly iconic moment occurred when Chicago Bears owner George Halas testified. Halas claimed disallowing the common player draft, reserve clause, and television blackouts would hurt the game. Halas then opined that antitrust laws were un-American. The Chicago owner was adamant that football shouldn’t be subject to antitrust laws because “this threatens the American way of life.”<sup>123</sup> Halas’ testimony gave credence to the carefully constructed link between professional football and American exceptionalism put forth by NFL executives and many practitioners of the print and electronic media. To illustrate his point, Halas presented the subcommittee a brochure showing two stark images in juxtaposition. On one side was a barren, drab stadium where mass calisthenics were being performed under the symbol of a hammer and sickle, inferring the national flag of the Soviet Union. On the other was a full color photo of a sold-out Soldier Field during a Bears game with an American flag prominently blowing

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<sup>121</sup> Congressional Record, 24 July 1957; HR 5319-85, Antitrust Subcommittee of the House Judiciary Committee, Include Baseball in Antitrust Laws. Box 377, Baseball and Anti-Trust, Emanuel Celler Papers, Manuscript Division, Library of Congress, Washington D.C.

<sup>122</sup> David George Surdam, 240.

<sup>123</sup> Crawford, 180.

in the breeze.<sup>124</sup> Halas' point was clear: making the NFL accountable to antitrust laws would kill the league and usher in an age of Soviet-style sports. The fact that the collectivist practices of limited revenue sharing, reverse order drafting, and a reserve clause made the NFL so profitable seemed lost on Halas.

The invocation of communism or socialism as a pejorative during Celler's hearings was de rigueur. According to Celler, those who believed the Federal Government had the fullest share of responsibilities for the general welfare were viewed as "guilty of the heinous crime of socialism."<sup>125</sup> Many viewed him as soft on communism when he addressed the 1952 Democratic National Convention and excoriated Joseph McCarthy and his methods. Celler continued his offensive throughout 1953 and 1954, branding McCarthy as "the best public relations agent" communism had.<sup>126</sup> Celler also voted against outlawing the American Communist Party, fearing "the bill will give Communists a claim to martyrdom."<sup>127</sup> Letters from across the country poured into his office denouncing his speech, castigating him as a "venomous, ignorant person,"<sup>128</sup> and calling on him to leave the country and "go to his homeland in Israel"<sup>129</sup> Celler didn't back down when his mail ran three to one in favor of McCarthy. Celler responded to his

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<sup>124</sup> Ibid.

<sup>125</sup> Celler, *Brooklyn*, 69.

<sup>126</sup> Helen Federico, personal letter to Emanuel Celler, May 1954, Box 21, Internal Security – McCarthy Correspondence Folder 3/53 – 5/54, Emanuel Celler Papers, Manuscript Division, Library of Congress, Washington D.C.

<sup>127</sup> Statement by Emanuel Celler Outlawing the Communist Party Would Help the Communists, 21 July 1954, Box 22, Internal Security – Outlaw Communism, Emanuel Celler Papers, Manuscript Division, Library of Congress, Washington D.C.

<sup>128</sup> Mrs. M. Douglas, telegram to Emanuel Celler, 23 March 1953, Box 21, Internal Security – McCarthy Correspondence Folder 3/53 – 5/54, Emanuel Celler Papers, Manuscript Division, Library of Congress, Washington D.C.

<sup>129</sup> Anonymous Letter to Emanuel Celler, 14 March 1954, Box 21, Internal Security – McCarthy Correspondence Folder 3/53 – 5/54, Emanuel Celler Papers, Manuscript Division, Library of Congress, Washington D.C.

local paper, “I myself am disloyal to McCarthy’s ideas of loyalty. Why? Because the word ‘honor’ in his mouth is like the word ‘love’ in the mouth of a lewd woman.”<sup>130</sup>

In practice, Emanuel Celler was a staunch anticommunist and a review of his record shows he was not above using the specter of fighting communism for his own political benefit, stating that “bills are not considered on their merits, but as good or bad for communism.”<sup>131</sup> In 1952 he urged liberalizing immigration requirements as a means to improve national defense, pragmatically laying out an argument based on mathematics:

The population growth rate in the United States is slightly below that required to reproduce itself. The American rate is 0.96. Compare that with Russia alone, 1.70. The population forecast of the United States in 1970 is 170 million people. The population forecast for Russia alone in 1970 is 251 million. The implications are clear... Our supply of unskilled and semi-skilled labor is rapidly narrowing as production for defense needs increase.<sup>132</sup>

Celler also argued that monopolies were an impediment to winning the Cold War. When Canadian manufacturers of newsprint set price controls and increased their prices, he countered that the Federal Government should act to break up those monopolistic practices as a war measure. “During the Cold War no more vital weapon exists than a free and independent press,” Celler wrote. “For democracies a newsprint shortage is as disastrous as defective ammunition.”<sup>133</sup> He even angered many of his liberal constituents when he voted in favor of Universal Military Training in 1951 to counter Soviet military build-ups.<sup>134</sup>

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<sup>130</sup> “His Mail Running 3 – 1 for Mac, Celler Blasts Public for Apathy,” *Brooklyn Eagle*, 18 June 1954, 7.

<sup>131</sup> Celler, *Brooklyn*, 197.

<sup>132</sup> Celler, *Brooklyn*, 104.

<sup>133</sup> Celler, *Brooklyn*, 163.

<sup>134</sup> Celler, *Brooklyn*, 261.

Celler's record of anticommunism was clouded only because of his denunciation of McCarthy. In a letter to an unhappy constituent, he thoughtfully laid out his views on communism and McCarthy:

I sincerely believe that safeguarding our country against Communist infiltration is the duty of all, but I cannot believe that it is best done by methods which are basically unfair, which are an attack against the orderly process of government, and which disregard the rights of individuals, by bullying and by noise...I cannot believe that such safeguarding can be done by a man who set himself up as the only patriot in the land, who set himself up above the law, and who labels all who disagree with his method pro-Communist. We need the composure born out of the conviction of the strength of our government and traditions...I believe it would be a great tragedy to equate opposition to Senator McCarthy with pro-Communism.<sup>135</sup>

Regardless of his opposition to communism, Celler was willing to allow some aspects of collectivist business practices in sports as long as they were "reasonably necessary."

Those two words were the key to his proposed legislation.

### **The Professional Team Sports Bill**

HR 10378, known as the Celler Professional Team Sports Bill, provided that "the antitrust laws would apply except in those cases where restrictive agreements among the owners would be reasonable and necessary for the preservation and integrity of the sport."<sup>136</sup> In Celler's view, the player draft, television blackouts and reserve clause, while anticompetitive in a general sense, were necessary for competition in an athletic sense. Celler viewed other aspects of baseball and football dimly. Celler called both entities' refusal to expand and the NFL's ejection of journalists from the press box for writing

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<sup>135</sup> Emanuel Celler Letter to Thomas O.Ditges, 12 July 1954, Box 21, Internal Security – McCarthy Correspondence Folder 3/53 – 5/54, Emanuel Celler Papers, Manuscript Division, Library of Congress, Washington D.C.

<sup>136</sup> Emanuel Celler, letter to Robert F. Campbell, 9 July 1958, Box 379, HR 10378, Emanuel Celler Papers, Manuscript Division, Library of Congress, Washington D.C.

stories critical of the league “outrageous.”<sup>137</sup> Interestingly, Celler had an ally in NFL Commissioner Bert Bell. Bell, who worried that Major League Baseball’s attempts to hold onto its complete exemption would cost the NFL its partial exemptions, sent a telegram to Celler expressing his support for the term “reasonably necessary:”

We believe that the words “Reasonably Necessary,” as used in this bill, are fair and necessary to protect the public and the players from abuses... We do not understand how anyone could object to the use of the standard of “Reasonableness.”... We consider it most unfair and tragic that any sport, merely because it is now exempt from the antitrust laws, should oppose this bill to the detriment of professional football and other team sports. Professional football can live with this bill; indeed cannot live without it. If we can live with this bill, all other team sports should be able to live with it too.<sup>138</sup>

In addition to Bell’s telegram to Celler, the Commissioner also went on record at a NFL meeting convened to discuss the pending legislation. At Philadelphia’s Warwick Hotel, Bell told his owners that Celler’s past understanding of a need to allow the NFL certain exemptions made the Congressman “wonderful to the National Football League.”<sup>139</sup>

Bell’s support notwithstanding, Major League Baseball lobbied against Celler’s legislation and Senator Kenneth Keating (R-NY) put forth a Senate resolution which struck the words “reasonably necessary” from the bill. The changed version passed the house to Celler’s chagrin. Celler’s Senate ally, Estes Kefauver, fought the bill, preventing it from being voted on before Congress adjourned, effectively killing the legislation. Celler was furious, lashing out to the press that baseball had lobbied for Keating’s amended version for one vile reason.

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<sup>137</sup> Ibid.

<sup>138</sup> Bert Bell, Telegram to Emanuel Celler, 16 April 1958, Box 240, Sports Folder 1, Emanuel Celler Papers, Manuscript Division, Library of Congress, Washington D.C.

<sup>139</sup> National Football League Special Meeting, Meeting Minutes, 18 May 1958, NFL Meeting Minutes, Professional Football Hall of Fame, Canton, OH.



“This amendment is characterized by one paramount consideration,” Celler said. “A zeal to protect any unreasonable conspiracy among baseball magnates, and at the same time to disregard the overriding public interest, the well-being of the sport and the rights of the players.”<sup>140</sup>

With his attempts to reign in baseball legislatively thwarted, Celler advocated on behalf of the Continental Baseball League, a rival formed by former Brooklyn Dodger president Branch Rickey in 1959. His support of the Continental League was in keeping with his belief that direct competition was the purest way to prevent monopolies. Arguing that the New York Yankees possessed “a baseball monopoly in the metropolitan area,”<sup>141</sup> Celler offered assistance to ensure the new baseball league could compete directly with the American and National Leagues. One of those areas of competition would be New York City as the Continental League planned a team in Brooklyn to make up for the loss of the Dodgers.<sup>142</sup> The other Continental League cities would be Houston, Denver and Minneapolis.

Lamar Hunt announced the formation of the American Football League at the same time as the introduction of the Continental League. At first the NFL greeted the news of the AFL positively. Bert Bell, trying to prove the NFL was not a monopoly during the Celler sports antitrust hearings, stated the NFL was “in favor of the new league.”<sup>143</sup> Washington Redskins owner George Preston Marshall was quoted as saying, “If they (the AFL) are great, they will help us and if they are not great they will only hurt

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<sup>140</sup> Emanuel Celler Statement on HR 10378, 30 January 1958, Box 240, Sports Folder 1, Emanuel Celler Papers, Manuscript Division, Library of Congress, Washington D.C.

<sup>141</sup> Emanuel Celler Statement, New York Victim of Baseball Monopolies, 12 April 1958, Box 377, HR 5319, Baseball and Antitrust, Emanuel Celler Papers, Manuscript Division, Library of Congress, Washington D.C.

<sup>142</sup> “Continental League Counts on Congressional Push for Status,” *Ocala Star-Banner*, 6 January 1960, 11.

<sup>143</sup> Joe Foss, letter to Frank L. McNamee, 6 January 1960, AFL Meeting Minutes, Professional Football Hall of Fame, Canton, OH.

themselves.”<sup>144</sup> Once the pending legislation was defeated the NFL changed its view rapidly, however, following in the footsteps of Major League Baseball’s tactics. MLB and NFL reacted to their rivals by granting expansion franchises or relocating current ones to counter advances by a new league. Baseball granted an expansion franchise in Queens, close to Brooklyn. The New York Mets, along with the Houston Colt 45’s (later Astros), were strategically placed in Continental League cities. Additionally, the moribund Washington Senators were allowed to move to the Continental League city Minneapolis and rechristened the Twins. These franchises were intentionally installed to kill off the Continental League.<sup>145</sup> The plan worked and the upstart league folded in August 1960.

In 1960 Pete Rozelle succeeded Bert Bell as the NFL’s Commissioner following Bell’s death from a heart attack in 1959. Rozelle and his top lieutenant George Halas engaged in several duplicitous actions, including expansion, in an attempt to cripple the AFL. When Lamar Hunt attempted to purchase the Chicago Cardinals from Walter Wolfner in 1958 and relocate them to Dallas, Wolfner told him that the NFL did not think Dallas was a town that could support professional football. In 1952 the NFL granted a franchise to Dallas, called the Texans, which went bankrupt before the end of the season due to lack of support. The Texans franchise has the distinction of being the last NFL team to fold. Players and management were transferred to Baltimore and became known as the Colts. Wolfner stated that it would be years before the NFL returned to Texas. The Cardinals owner also added he did not want to leave his team’s fan base on the south side

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<sup>144</sup> Ibid.

<sup>145</sup> Fran Zimniuch, *Baseball’s New Frontier: A History of Expansion, 1961-1998*, (Lincoln, NE: University of Nebraska Press, 2013), 55.

of Chicago.<sup>146</sup> Later, Hunt met with Chicago Bears owner George Halas, who oversaw expansion for the NFL, and inquired about the league's plans to expand. Halas told Hunt that the NFL had no plans to expand in the immediate future.<sup>147</sup> This decision mirrored the testimony of Bell before Congress that the NFL would not expand until the level of on-field competition improved to the point where its current crop of teams could win at least four games a season.

The words of Wolfner and Halas in their conversations with Hunt proved to be situationally flexible. Soon after Hunt announced his intention to start the AFL, Wolfner, Halas and the NFL quickly abandoned their stated principles. Wolfner forgot his love for the South Side and moved his team from Chicago to St. Louis in 1960, taking over a town that had expressed interest in joining the AFL.<sup>148</sup> Within weeks of Hunt announcing the formation of his Dallas Texans, Halas reversed years of expansion policy and forgot the NFL's ambivalence in returning to Texas by announcing the expansion Dallas Cowboys would begin NFL play in 1960. In the words of Lamar Hunt's son Clark, "The Cowboys of the NFL had come into the market for the express purpose of putting the Texans out of business. This group (NFL) worked deceitfully for a number of years to put him (Lamar Hunt) out of business."<sup>149</sup>

The most brazen NFL move came in late 1959. In November, the owners of the Minneapolis entry in the AFL announced that they were accepting an NFL expansion

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<sup>146</sup> Michael MacCambridge, *Lamar Hunt: A Life in Sports*, (Kansas City, MO: Andrews McMeel Publishing, 2012), 84.

<sup>147</sup> MacCambridge, *Lamar Hunt*, 91.

<sup>148</sup> Gruver, 34.

<sup>149</sup> Clark Hunt, interview by NFL Films, *The Merger*, NFL Network and NFL Films, 24 December 2015.

team set to begin play in 1961.<sup>150</sup> The team to be known as the Minnesota Vikings knocked the AFL from eight teams to seven and the league quickly scrambled to put a franchise in Oakland, California before the 1960 season began. Interestingly, the Minneapolis announcement occurred shortly before the AFL owners voted unanimously to pool their television revenue. The NFL also offered the two richest AFL owners, Lamar Hunt and Houston's Bud Adams, with franchises if they would give up on the AFL. Hunt and Adams refused out of loyalty to their fellow owners. In explaining his decision, Hunt spelled out very clearly the differences between the AFL approach to sporting business and the NFL's:

We'd conditioned everything in the AFL on the fact that everyone was a partner. I'd gone out and solicited these people to become part of the new league. Anything we did would have to take them all into consideration. That wasn't in the NFL's thinking. The NFL didn't want individuals, necessarily. They wanted cities.<sup>151</sup>

Additionally, NFL teams attempted to convince ABC to broadcast their games instead of AFL games. AFL Commissioner Joe Foss wrote a strong letter to Philadelphia Eagles owner Frank L. McNamee in late 1959 documenting the NFL's efforts to harm the AFL (bullet points are Foss's):

- During the last two years, several owners of American Football League franchises made bona fide efforts to secure expansion of the National Football League into their respective cities. They contacted owners of National League teams and also your highly esteemed commissioner, the late Bert Bell. They were dogmatically informed that your constitution required unanimous approval for expansion and such approval could never be obtained. Mr. George Halas of your expansion committee stated that expansion of the National Football League would be many years away.
- Bert Bell said there would be no expansion until the bottom teams of each division won at least four games each season. In 1958 the Cardinals won two

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<sup>150</sup> Jeff Miller, *Going Long: The Wild 10-Year Saga of the Renegade American Football League in the Words of Those Who Lived it*, (New York: McGraw Hill, 2003), 11-12.

<sup>151</sup> Gruver, 26.

games and Green Bay one. In 1959 the Cardinals and Rams each won only two games.

- Now the NFL expands to Dallas, convincing an AFL team to switch allegiance to the NFL in Minneapolis and promising our franchise holders NFL teams should they desert our league.<sup>152</sup>

Foss threatened legal action if the NFL did not cease and desist in their tactics and informed McNamee he would report the NFL to the Department of Justice. Sports economist Rodney Fort explains the tactics employed by the NFL were legal but could cross into monopolistic practices if unchecked or abetted by the government.<sup>153</sup>

Emanuel Celler noticed the NFL's actions and he wrote a letter to Attorney General William P. Rogers in April, 1960 to verify the DOJ was also watching the NFL's actions closely (the letter was written four months before the shut-down of the Continental League):

In its investigations of the applicability of the antitrust laws to organized professional team sports, the House antitrust Subcommittee has been interested in efforts to establish new leagues in both baseball and football. As you know, for a number of years the Subcommittee has advocated the establishment of new leagues in the sports of football and baseball as a means to reduce the monopoly power of the established operators.

In this connection I have been advised by representatives of the American Football League that the Antitrust Division of the Department of Justice has completed an extensive investigation of the methods used by the National Football League in an alleged campaign against the creation of new competition and that the Antitrust Division, on the basis of this investigation has recommended unanimously that an antitrust proceeding be instituted. This recommendation, I understand, has been pending in the Department for a number of weeks.

In the meantime, however, and in view of the Department's failure to act, the National Football League allegedly has intensified its opposition to the American Football League. These new tactics are claimed to involve interference with the American Football League's arrangements for television broadcasting rights with both the National Broadcasting Company and the American Broadcasting Company.

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<sup>152</sup> Joe Foss, letter to Frank L. McNamee, 6 January 1960.

<sup>153</sup> Fort, *Sports Economics*, 132

It will be appreciated if you would advise our Antitrust Subcommittee as promptly as possible of the Justice Department's disposition of the Antitrust Division's recommendation in this matter.<sup>154</sup>

The Department of Justice was quite interested in the NFL's actions although the 1960 season would be played by both leagues without any government interaction. When the NFL announced in April, 1961 that it would copy the AFL's cooperative approach to television, the DOJ filed its lawsuit alleging antitrust violations and Judge Grim agreed, voiding the NFL's contract with CBS in July 1961. After watching baseball kill off a rival league, Emanuel Celler had no intention of seeing the AFL follow in the steps of the Continental League. He told the trade publication *Broadcasting* that "the AFL will not survive without a package deal."<sup>155</sup>

### **Hearings on the Sports Broadcasting Act**

One month after Judge Grim voided the NFL-CBS contract, Emanuel Celler convened a hearing to propose House Resolution 9096, titled the Sports Broadcasting Act, which would codify sporting collectivism to ensure that an upstart sports league could provide competition to prevent a monopoly in a sport that had come to define Americanism. The language of the act mentioned all professional team sports generically and referenced the Clayton Act of 1914, which the SBA would amend:

The antitrust laws, as defined in section 1 of the Act of October 15, 1914, as amended, or in the Federal Trade Commission Act, as amended, shall not apply to any joint agreement by or among persons engaging in or conducting the organized professional team sports of football, baseball, basketball, or hockey, by which any league of clubs participating in professional football, baseball, basketball, or hockey contests or sells or otherwise transfers all or any part of the rights of such league's member clubs in the sponsored telecasting of the games of football, baseball, basketball, or hockey, as the case may be, engaged in or conducted by such clubs.

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<sup>154</sup> Emanuel Celler, letter to William P. Rogers, 23 April 1960, Box 259, Sports 1959 -60, Emanuel Celler Papers, Manuscript Division, Library of Congress, Washington D.C.

<sup>155</sup> "Bills Back NFL-CBS Pact," *Broadcasting*, 21 August 1962, 52.

Nothing contained in this Act shall be deemed to change, determine, or otherwise affect the applicability or nonapplicability of the antitrust laws to any act, contract, agreement, rule, course of conduct, or other activity, by, between, or among persons engaging in, conducting, or participating in the organized professional team sports of football, baseball, basketball, or hockey, except the agreements to which Section 1 of this act shall apply.<sup>156</sup>

Celler matter-of-factly explained what was at stake during his opening statement upon introduction of the bill to committee on August 28, 1961:

The sole purpose of the bill is to enable the member teams of a league to pool their separate television rights and to sell the resulting package of pooled rights to a customer, such as a television network. It is stated such arrangements are needed to enable a league to assure a significant share of television revenue to its weaker teams, whose economic survival is essential to the continued operation of the league itself.<sup>157</sup>

Commissioners Pete Rozelle and Joe Foss, owners from the AFL and NFL, television executives, and legal experts attended the hearings. Celler contacted all of them to get their opinions on the proposed legislation.

The first to testify was Pete Rozelle. The NFL commissioner mentioned that the league had opted to change its opinion on the pooling of television revenue as a practical matter. Rozelle testified that in 1960, eleven of the thirteen NFL franchises made less from television than the \$212,500 the AFL teams made. By agreeing to the CBS deal, all NFL teams would make significantly more than the AFL teams.<sup>158</sup> Rozelle's claim that all NFL teams would benefit from the deal did not go unchallenged. The subcommittee entered into the record a letter from the Assistant Attorney General, Antitrust Division, Lee Loevinger. Loevinger found Rozelle's argument that pooling resources was the only

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<sup>156</sup> US Congress, House of Representatives, Sports Broadcasting Act of 1961, 87th Cong., 1st Sess., 1961, Public Law 87-331. <http://uscode.house.gov/statviewer.htm?volume=75&page=732>, "Sports Broadcasting Act of 1961," *The American Century*, accessed October 3, 2016, <http://americancentury.omeka.wlu.edu/items/show/135>.

<sup>157</sup> U.S. Congress, House of Representatives, Antitrust Subcommittee (#5) of the Committee on the Judiciary, 87<sup>th</sup> Congress, *Congressional Record*, 28 August 1961, 1.

<sup>158</sup> U.S. Congress, *Congressional Record*, 28 August 1961, 73.

way for the NFL to compete with the AFL to be specious. Loevinger argued that if individual NFL teams wanted better television deals, they should improve their negotiating position by insisting on yearly contracts instead of multi-year pacts and by being more successful on the field:

The illegal contract (NFL with CBS) provided that the 14 teams would share equally in the proceeds from television. In 1960 the teams negotiated individually and received varying prices. There does not appear to be any deficiency in negotiating talent on the part of any of the clubs which propose to give up their rights. Even a team which lost all of its games, the Dallas Cowboys, sold its television rights for \$150,000, a large sum of money. At the Philadelphia hearing in July, the vice president and general manager of the Dallas team stated that this amount failed “by a longshot” to enable his company to make a profit on its overall operations in 1960.

The claim that TV contracts are not made on a year-to-year basis but on a five-year basis or somewhat similar period and that a weaker team would be forced to sign a contract at a very low price to get television coverage and thus be prevented from capitalizing on a successful comeback indicates a low opinion of the negotiating ability of the football team officials, vis-à-vis the television officials. No reason appears why a contract cannot provide an adjusted scale of payments related to performance improvement.<sup>159</sup>

An exchange between Rozelle and Subcommittee Chief Counsel Herbert Maletz showed the elder leagues’ claims of egalitarianism were exaggerated. The New York Giants alone may have earned \$450,000 from television compared to the \$332,000 they would receive in the package deal, but the recent decision by CBS to not broadcast a team’s road game back to their home market made their local radio deals more valuable.<sup>160</sup> Rozelle also admitted that the NFL had been perfectly content for many years with their separate television deals and the blackout policy approved by Judge Grim. Maletz asked Rozelle when the NFL ceased to be content with the Grim-approved television system. Rozelle

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<sup>159</sup> U.S. Congress, *Congressional Record*, 28 August 1961, 70.

<sup>160</sup> U.S. Congress, *Congressional Record*, 28 August 1961, 5.



responded with the year of the AFL's debut, stating, "It had been operating satisfactorily, I would say, up to 1960."<sup>161</sup>

AFL Commissioner Joe Foss and the rest of the "Foolish Club" may have been quite pleased to know their television deal had so unnerved the NFL. There was a very real possibility the victory could prove pyrrhic, however. With the NFL contract found to be illegal, the AFL needed the SBA to pass in order to guarantee its future. Foss also wanted to differentiate between the use of television by the upstart league from that of the established league in the minds of the politicians present. Foss set to work on this in his opening statement:

I must state that one of the major factors in our being able to bring a second major football league into being was the kind of television arrangements which we set up. Television revenues have been an extremely important portion of the income of each of the teams in our league. Essentially, these arrangements provided for a pooling of TV rights and an equal division of income among the teams. The interest of the AFL in the passage of this bill stems from the doubt cast by the recent order of the district court of Philadelphia on all joint agreements by members of a sports league for the sale of the right to televise their games. At the outset I wish to make quite clear that there are some very significant differences between the American Football League television arrangements and those proposed for this year by the National Football League.<sup>162</sup>

Among the differences Foss pointed out were opportunity and utilization. The AFL had not only entered into an original agreement as far as revenue sharing was concerned, the journalistic freedom granted to ABC was also revolutionary.

Foss testified that when the AFL shopped around for television contracts they found only one possible suitor, the American Broadcasting Company (ABC). "At the time that our contract was drawn up last year, 1960, there was only one network to deal with," Foss said. "CBS and NBC were already committed to the NFL, so we dealt with

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<sup>161</sup> U.S. Congress, *Congressional Record*, 28 August 1961, 28.

<sup>162</sup> U.S. Congress, *Congressional Record*, 28 August 1961, 43.

the American Broadcasting Company.”<sup>163</sup> Foss’ testimony mirrored a quote from AFL founder Lamar Hunt, who had told an interviewer earlier in the year that the NFL’s monopoly on television limited the new league’s broadcasting alternatives. Interestingly, Hunt was optimistic that it would be the NFL’s monopoly which would allow the AFL to keep its anticompetitive contract in place. “The big thing in our favor is we had no choice of networks when we signed the contract,” Hunt told *The Washington Post*. “Both of the other networks were already committed and that left us no choice but to go with the American Broadcasting Company.”<sup>164</sup> The AFL-ABC relationship proved to be mutually beneficial in the end despite its being forged due to a lack of options. The AFL needed a television outlet to provide exposure and enough revenue to be viable. ABC needed an entry into the lucrative world of televised football to close the sporting gap with its rivals.

### **Impact of AFL Deal on ABC**

There is an irony in the role ABC played in the sanctioning of a collectivist business practice to prevent a monopoly. The network itself had been formed by breaking up a monopoly in the 1940s when NBC was required to divest itself of its NBC Blue network on radio. NBC kept the more powerful stations of its NBC Red network and when television became prominent, ABC was forced to deal with a series of underpowered UHF stations which required a special adapter to allow viewers to access these non VHF signals.<sup>165</sup> In 1953, ABC affiliates only covered 34% of the nation, a number that grew to 86% by 1959.<sup>166</sup> By 1960, ABC had grown in prestige on

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<sup>163</sup> U.S. Congress, *Congressional Record*, 28 August 1961, 44.

<sup>164</sup> “AFL Says Contract is Different,” *Washington Post*, 22 July 1961, C1.

<sup>165</sup> Sydney W. Head, *Broadcasting in America: A Survey of Television and Radio*. (Boston: Houghton Mifflin Company, 1956), 153.

<sup>166</sup> Fred Silverman, “An Analysis of ABC Television Programming from February 1953 to October 1959,” (master’s thesis, Ohio State University, 1959), 8, 21.

weeknights after an infusion of capital by Paramount allowed popular programs such as *The Rifleman*, *Maverick* and *Walt Disney Presents* to be pillars of the broadcast week.<sup>167</sup>

In sports ABC still lagged far behind the other networks and Leonard Goldenson, the network's president, mandated that ABC become aggressive in its pursuit of sports.<sup>168</sup>

Former ABC analyst Julius Barnathan recounted to Ron Powers the reasoning behind Goldenson's mission:

We knew a lot of audience was loyal to NBC or CBS. But we also found out that there was a big part of the audience that wasn't loyal. That was young people. Young people were fickle. We decided to go after them. We decided to become the network of the young. And the way to do that, in the beginning at least, was through sports.<sup>169</sup>

The first major ABC sports acquisition was a 1959 deal with Gillette to move its advertising account, including the sports program *Cavalcade of Sports*, from NBC.

Gillette paid ABC \$8 million a year to broadcast *Cavalcade*, the latest in a string of multi-million-dollar sporting investments the shaver company had made since the 1930s.<sup>170</sup> That infusion of money helped ABC create a sports department from scratch in 1959.<sup>171</sup> According to ABC head of programming Tom Moore, Gillette's largesse meant no idea was too radical to be considered. "All of a sudden we had more money to spend than we'd ever imagined," Moore said in an interview. "They'd given us what amounted to an unlimited bankroll to spend on what we pleased."<sup>172</sup> Very quickly Gillette's money went to ABC's purchasing of the rights to AFL games. When the AFL and ABC reached

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<sup>167</sup> Silverman, 353.

<sup>168</sup> Silverman, 331.

<sup>169</sup> Ron Powers, *Supertube: The Rise of Television Sports*, (New York: Coward-McCann, Inc., 1984), 118.

<sup>170</sup> Russell Adams, *King Gillette: The Man and his Wonderful Shaving Device*, (Boston: Little, Brown and Company, 1978), 214.

<sup>171</sup> Jonathan Rand, *The Year that Changed the Game*, (Washington, D.C., Potomac Books, 2008), 145

<sup>172</sup> Powers, 109-110.

the deal, Joe Foss had said, “The relationship between professional football and television is about to change for all time.”<sup>173</sup>

The AFL Commissioner’s words were prophetic. The utilization of television by the AFL and ABC would highlight the glaring difference between the AFL and NFL contracts. It would also add another dimension to the question of allowing the AFL contract to stand. If collective revenue sharing were barred, then ABC would suffer at the hands of the NFL monopoly just as the AFL would.

Television historian Ron Powers commented that because of ABC’s historic competitive disadvantage to its older, more established rivals, the network was forced into a series of long-shot gambles in sports programming. “ABC Sports created a freewheeling, almost piratical approach to sports programming,” Powers wrote.<sup>174</sup> The man behind that plan was Edgar Scherick, ABC’s Vice President of Programming. “It is not the game, it is the packaging of the game,” was Scherick’s mantra.<sup>175</sup> Powers characterized Scherick’s production style as “the tendency to disregard the past, to act as though tradition did not exist and television was thus free to radically assault all kinds of rules and conventions.”<sup>176</sup> Scherick made news and enemies when he encouraged former MLB pitcher Dizzy Dean to openly criticize umpiring and managerial decisions during broadcasts when he oversaw the Game of the Week. This type of critical analysis had not been done before and during negotiations with the AFL, ABC made it clear they would employ Scherick’s tactics.

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<sup>173</sup> Rand, 146.

<sup>174</sup> Powers, 17.

<sup>175</sup> Powers, 70.

<sup>176</sup> Powers, 68.

At the AFL's first annual meeting in January 1960, Jay Michaels, head of the Music Corporation of America (MCA), the AFL's television negotiator, presented the ideas ABC had to help sell the new league to the American sporting public. The choice of MCA as negotiator was itself a sign the AFL was approaching television in a revolutionary way as "it was the first time a show business agent had an entire professional sports league as a client."<sup>177</sup> Rather than going head-to-head with the NFL, ABC would broadcast an AFL Game of the Week on Friday nights and offer regional telecasts on Sundays at 4 pm EST after the NFL contests had concluded. ABC also planned to glamorize halftimes, bringing in celebrities from ABC shows to promote the network and make audience members view the interlude as something they couldn't miss.<sup>178</sup> This ran counter to the CBS and NBC halftime standards of "putting radio on tv with announcers standing in front of curtains."<sup>179</sup> The AFL agreed and also provided ABC the opportunity to promote its shows during increased advertising time, granting the network two separate minute-and-a-half television timeouts per quarter.<sup>180</sup> The AFL also agreed to an alteration to their standard football uniforms, adding a patch to the back of the uniform above the numerals spelling out in three-inch high letters the surname of the player for easier identification on television.<sup>181</sup>

Once broadcasts began, football fans that tuned into AFL games saw a completely different style of football and revolutionary broadcasts. The AFL instituted two-point conversions as an option after a touchdown, making end-of-the-game strategy more

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<sup>177</sup> Richard Shephard, "ABC TV May Sign Football League," *New York Times* 23 April 1960, 47.

<sup>178</sup> American Football League Annual Meeting, Meeting Minutes, 26-30 January 1960, AFL Meeting Minutes, Professional Football Hall of Fame, Canton, OH.

<sup>179</sup> Powers, 77.

<sup>180</sup> American Football League Executive Committee Meeting, Meeting Minutes, 25/26 August 1960, AFL Meeting Minutes, Professional Football Hall of Fame, Canton, OH.

<sup>181</sup> *Ibid.*

exciting. The AFL also employed a slimmer football than the NFL which encouraged more passing by making it easier. To cover such a wide-open game, ABC employed roving cameras that moved up and down the sidelines and even entered the field close to the huddle during timeouts.<sup>182</sup> This was in contrast to the stationary cameras of CBS and NBC. ABC also put microphones on players and coaches so fans could hear the grunts, strategy sessions, and, at times, profanity, inherent in a violent contact sport.<sup>183</sup> The AFL also encouraged ABC to show the fistfights that sometimes broke out during games. This was anathema to the NFL, which for years instructed directors to cut away from fights and other actions that could be construed as dirty play. Bert Bell had gone so far as to ban announcers from telecasting NFL games if he found their comments detracting from the brand he was attempting to sell. In an interview Bell defended his actions:

I don't believe for the best interests of football or the best interests of women and children who watch football it (fighting) should be shown. We're selling a product just like, say, Atlantic Refining is selling one. You don't see them putting out a story about a bad situation or a bad month, do you? The people who want to watch fights, let them tune in on Wednesday night (to boxing matches).<sup>184</sup>

ABC also instructed its announcers to question referee's and coach's decisions freely, another departure from past football broadcasts. Joe Foss didn't mind the controversy such second-guessing generated, arguing that "the public has a right to know what is happening even if it proves referees wrong."<sup>185</sup> The network also chose to individualize players as personalities instead of faceless cogs in a machine as was common in NFL broadcasts. In addition to occasionally putting on a microphone, all players were

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<sup>182</sup> Dennis Deninger, *Sports on Television: The How and Why Behind What You See*, (New York: Routledge, 2012), 27.

<sup>183</sup> "AFL Regards Video Pact Boon to Game," *Los Angeles Herald & Express*, 19 December 1961, Television Folder, Professional Football Hall of Fame, Canton, OH.

<sup>184</sup> Rand, 99-100.

<sup>185</sup> "AFL Regards Video Pact Boon to Game," *Los Angeles Herald & Express*, 19 December 1961, Television Folder, Professional Football Hall of Fame, Canton, OH.

photographed for “hero graphic shots” which superimposed a player’s height, weight, college and pertinent stats over their photo for use in the broadcast.<sup>186</sup> ABC also wasn’t above using studio production techniques in the arena. On more than one occasion an ABC technician convinced referees to have the team repeat the kickoff if the network did not get back from commercial in time.<sup>187</sup> The network even had a liaison work with teams to get the fans to sit on one side of the stadium to provide the visual effect of a sell-out even if the stadium was only filled to half-capacity. This would be accomplished by directing camera operators to never shoot the action with the empty sections of the stadium in view.<sup>188</sup>

With only eight teams in the league, there were a total of four games a week. The AFL and ABC opted for a mix of Friday and Saturday night Game of the Week national telecasts and on Sunday provided a game for the eastern part of the United States and a separate telecast for the west coast at 4:00 PM EST and PST respectively.<sup>189</sup> The AFL required ABC to black out home games in a team’s home territory, just as the NFL did. The AFL blackout policy differed by allowing ABC to broadcast road games back to the club’s home market and allowed the network to televise another AFL game to the city hosting an AFL game.<sup>190</sup> The strategy ensured that there would be an AFL game on television every week in both AFL and NFL cities and allowed the AFL to use the NFL blackout policy against the elder league. With the NFL blacking out home game telecasts, ABC would beam an AFL game into an NFL city. This meant that when the New York

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<sup>186</sup> Deninger, 27.

<sup>187</sup> Powers, 154.

<sup>188</sup> Powers, 158.

<sup>189</sup> U.S. Congress, *Congressional Record*, 28 August 1961, 44.

<sup>190</sup> Ken Rappoport, *The Little League That Could: A History of the American Football League*, (Lanham, MD: Taylor Trade Publishing, 2010), 78.

Giants were playing at Yankee Stadium, ABC made sure a Boston Patriots, Buffalo Bills or New York Titans game was telecast in the nation's largest media market. This rule also meant that when the Los Angeles Rams or Chicago Bears played in their home stadiums, an AFL game featuring the Denver Broncos, Dallas Texans or Los Angeles Chargers were shown in the other two largest media markets.

In 1960 ABC also acquired the rights to NCAA college football and promoted AFL broadcasts during this popular programming. By the end of the year the AFL had become a firmly established television program with ratings climbing throughout the season. The growth culminated in a virtual tie with the elder league for championship game telecasts. Ratings for the respective 1960 title games were entered into the Congressional Record and they were eye-popping. On December 26, 1960, the Philadelphia Eagles defeated the Green Bay Packers 17-13 in the NFL Championship Game. The broadcast from Franklin Field drew a rating of 33.8.<sup>191</sup> On New Year's Day 1961, the Houston Oilers defeated the Los Angeles Chargers 24-16 for the AFL Title. The telecast out of Jeppesen Stadium drew a rating of 32.8.<sup>192</sup>

### **The Sports Broadcasting Act Passes**

The testimony of Foss regarding a lack of broadcast alternatives, the evidence that the AFL and ABC had created a viable product and the apparent demand by the public for the new football league were all compelling factors in favor of allowing the Sports Broadcasting Act to pass. Another important detail was Foss's contention that the AFL had written the league's constitution around the concept of revenue sharing and that deeming such a practice illegal under antitrust laws would spell the death of the AFL:

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<sup>191</sup> U.S. Congress, *Congressional Record*, 28 August 1961, 59.

<sup>192</sup> *Ibid.*



Many of the provisions of the constitution and bylaws of our league are designed to maintain a reasonably equalized strength among the member clubs. At the present time, where television revenues are a very significant element in the overall financial success of a football team, it is essential that there be no great disparity between the television income of the different clubs. In our mind this requires a pooling of revenues and a package TV contract.<sup>193</sup>

While witnesses never mentioned the words collectivism or communism, the gist of the daylong hearing was clear. A cooperative approach to sharing television revenue did more than just make the franchise of the AFL competitive with each other; it was a system that made the AFL a viable competitor to the NFL. Without the AFL, the NFL would have a monopoly on the business of professional football. Emanuel Celler, who believed opportunity and competition to be the fundamental underpinnings of the American economy, certainly did not want to see this. The Department of Justice, which had filed suit against the NFL over its contract with CBS, did not want to see this. ABC, which had seen its prestige and ratings rise thanks to its association with the AFL, did not want to see this. Finally, the American football-viewing public, which had increasingly tuned into AFL telecasts during the 1960 season, did not want to see this.

Fortunately, none of the interested parties had to deal with the revocation of the AFL arrangement. On September 30, 1961, just a little over a month after the hearings, President John F. Kennedy signed into law the Sports Broadcasting Act of 1961. The SBA codified the collective approach for both the AFL, which originated the concept, and the NFL, which copied it in its contract with CBS. It is interesting to note that the SBA became law at the same time Kennedy was coping with the Berlin Crisis and the construction of the Berlin Wall. Despite a change in administrations, the Cold War continued to roll on, with American and Soviet tanks dangerously close to one another.

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<sup>193</sup> U.S. Congress, *Congressional Record*, 28 August 1961, 45.

With tensions at an all-time high, the use of professional football as a symbol of Americanism now had eight new strong messengers from the AFL thanks to a collectivist practice.

Emanuel Celler had successfully midwived the American Football League through a legal crisis so it could continue to provide the NFL competition. Celler had recognized the need for nuance in his dealings, balancing his anticommunist and antitrust values with his belief in avoiding the monopolizing of an industry. While the AFL television bylaw was technically monopolistic, as well as collectivist, Celler always saw the greater benefit for the industry of football overall. In doing so, he followed the nuanced approach Judge Grim had so eloquently explained eight years earlier when he granted a partial antitrust exemption for NFL blackouts:

Professional teams in a league, however, must not compete too well with each other in a business way. On the playing field, of course, they must compete as hard as they can all the time. But it is not necessary and indeed it is unwise for all the teams to compete as hard as they can against each other in a business way. If all the teams should compete as hard as they can in a business way, the stronger teams would be likely to drive the weaker ones into financial failure. If this should happen not only would the weaker teams fail, but eventually the whole league, both the weaker and the stronger teams, would fail, because without a league no team can operate profitably....

The winning teams usually are the wealthier ones and unless restricted by artificial rules the rich get richer and the poor get poorer.... Thus, the net effects of allowing unrestricted business competition among the clubs are likely to be, first, the creation of greater and greater inequalities in the strength of the teams; second, the weaker teams being driven out of business; and, third, the destruction of the entire league.<sup>194</sup>

Economic scholars may not have been able to describe the dangerous impact of pure capitalism in professional sports any better than Judge Grim.

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<sup>194</sup> Matthew J. Mitten and Aaron Hernandez, "The Sports Broadcasting Act of 1961: A Comparative Analysis of its Effects on Competitive Balance in the NFL and NCAA Division I FBS Football," *Ohio Northern University Law Review*, 39 (2013), 748.

Celler's past attempts to pass a blanket policy of antitrust exemptions for sports as deemed reasonably necessary explains his willingness to tolerate certain monopolistic practices for the preservation of sports competition. Celler's stated position that one could deplore the totalitarian and nationalistic impulses of Soviet Communism without blindly ignoring the benefits of some of its practices in a capitalistic system also showed an enlightened approach to a competing ideology. Perhaps the best rationale for Celler's advocacy in favor of a collectivist business practice on behalf of capitalism can be found in a law journal article Celler penned at the time the SBA was nearing passage. Celler wrote an article on Congress' prerogative to alter compacts it entered into with individual states. Celler argued that such compacts are not set in stone and should be revisited from time to time as circumstances change (*italics added*):

Conditions change. As the Nation grows, the needs of one day are no longer the needs of another. *Plans which do not adversely affect interstate commerce or the interests of other states at one time may, because of economic, political and social changes, have harmful results at a later time.*<sup>195</sup>

Celler's willingness not to be myopic on the issue of antitrust was the overriding factor in the passage of the SBA. In the eight years since the Grim decision, the landscape of professional football had changed. Football was now a television sport and the money that could be made in exchange for television rights dwarfed any other revenue source available. The disparity of individual contracts due to market size would lead to franchise failures in a purely capitalistic system. There needed to be reconciliation for this contradiction and Celler was able to help champion one. In an ironic twist of fate, however, Emanuel Celler would be forced to watch helplessly as the very collectivist

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<sup>195</sup> Emanuel Celler, "Congress, Compacts, and Interstate Authorities," *Law and Contemporary Problems*, (Fall, 1962), 685.

practice he championed aided the establishment of a monopoly unparalleled in the American economy.

## CHAPTER FOUR

The Sports Broadcasting Act of 1961 codified a collectivist approach to network television by professional sport leagues that media historian Ron Powers referred to as “the perfect Socialist System” in his book *Supertube*.<sup>196</sup> With the approval of Congress, the AFL’s five-year, \$8.5 million contract with ABC continued and the eight new franchises evenly split \$212,500 per season. The elder NFL’s two-year, \$9.3 million contract with CBS was validated and began in 1962 with all fourteen franchises equally receiving \$332,000 per season. Celler’s legislation paid off as the neophyte AFL grew steadily year-by-year into the NFL’s staunchest rival in the history of professional football.

At the AFL Annual Meeting held in January 1962 in San Diego, Jay Michaels of Music Corporation of America (MCA) announced that the ratings for AFL games increased in the league’s second season in 1961. Included in those numbers was the finding that ratings for AFL games were higher than NFL games broadcast on NBC when the two networks went head-to-head.<sup>197</sup> CBS’ ratings were higher for NFL games than ABC’s ratings for AFL contests, but Michaels could still say that as far as television executives were concerned the AFL was now “on the map as a legitimate sports league on television.”<sup>198</sup>

The news was even better following the AFL’s third season in 1962. The season culminated with a double-overtime championship game in which the Dallas Texans defeated the Houston Oilers 20-17 in what was then the longest game in professional

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<sup>196</sup> Powers, 157.

<sup>197</sup> American Football League Annual Meeting Minutes, 8-10 January 1962, AFL Meeting Minutes, Pro Football Hall of Fame, Canton, OH.

<sup>198</sup> *Ibid.*

football history. Even before the December 23 national telecast of the title game, the AFL had seen its third consecutive year of ratings growth, averaging 18.2 for the season.<sup>199</sup> The AFL's ratings rise was assisted by the concomitant growth of ABC, which was catching up to CBS and NBC as far as number of affiliates. In 1962 ABC gained 36 new affiliates, for a total of 155, each of them carrying AFL games on Sunday afternoons.<sup>200</sup> Many of these stations had come on board as part of Julius Barnathan's "Southern Strategy." Barnathan, ABC's supervisor of ratings, used the network's ownership of the rights to NCAA college football as a carrot to convince many southern stations to defect to ABC in order to carry games involving Southeastern Conference schools.<sup>201</sup> Stations in Columbus, Georgia, Biloxi, Mississippi, Lafayette, Louisiana and Shreveport, Louisiana came to ABC in the early sixties as did western markets such as Beaumont, Texas, Salt Lake City, Utah and Colorado Springs, Colorado. Although the impetus may have been NCAA football, the impact on AFL ratings from the new stations was evident. The Washington Redskins had a long-established television network in the southeast and now faced competition on the dial from AFL games. The new western stations near the AFL's Dallas Texans and Denver Broncos gave the AFL regional outlets for these franchises.

The AFL's steady growth convinced Jay Michael's boss at MCA to enter the league as an owner.<sup>202</sup> MCA President David Abraham "Sonny" Werblin purchased the New York Titans in 1963 and promptly changed the name to the Jets. The name switch wasn't the only thing Werblin changed. The Jets began to increase their player budget and Werblin encouraged other owners to do the same. This act enticed college graduates

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<sup>199</sup> American Football League Annual Meeting Minutes, 10-12 January 1963, AFL Meeting Minutes, Pro Football Hall of Fame, Canton, OH.

<sup>200</sup> Ibid.

<sup>201</sup> Powers, 118-119.

<sup>202</sup> Powers, 159.

to begin signing more frequently with the AFL team that drafted them rather than automatically signing with the NFL teams, as had been the norm from 1960-1963. This increase in player salaries was a direct result of free market competition enhanced by Celler's approval of collectivized television negotiations. Ironically, the rising cost of player procurement led to a business agreement which created the very capitalist monolith Celler's legislation was supposed to prevent.

### **A Socialist Sport?**

The NFL monopoly of the 1950s that the SBA was meant to end had been noticed by opponents of capitalism as well as its proponents. While not known for its sports coverage, the *Daily Worker*, a newspaper published by the American Communist Party, recognized the mass appeal and symbolic use of football as Americanism. *Daily Worker* columnists such as Lester Rodney argued that the strategy of football was a socialistic endeavor masking itself as Americanism. Rodney wrote that football depended on a collective of workers sacrificing on behalf of their comrades for the betterment of the whole.<sup>203</sup> The sacrifice required on the field to advance a team goal may have been viewed as socialistic by some, but other *Daily Worker* contributors pointed out that as a sporting monopoly, the NFL was rife with the worker abuse they felt was prevalent under the capitalist system.

Columnists at the *Daily Worker* had been arguing for years that the NFL needed competition to increase the wages of players and coaches it believed were being exploited. When the All American Football Conference folded in 1949, *Daily Worker* columnist Dan Parker mourned for what the demise would mean for the players:

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<sup>203</sup> Oriard, 249.

The bull market for players and customers is now over. With no competition, the magnates can resume their sly tricks with tickets and will get together as soon as possible to lower the ceiling on player salaries. It was a foolish war while it lasted but for years it gave fans and the players a break they won't get again for a long time.<sup>204</sup>

With passage of the SBA by Celler, the AFL could afford to raise the salaries of these collective workers for the first time since 1950, and when the time came to negotiate a new television deal, the AFL was granted even more ammunition.

### **An Increase in Television Money**

In January 1964 the NFL announced a blockbuster deal with CBS. The television network agreed to pay the league \$28.2 million over two years for the rights to televise games. This broke down to each of the fourteen teams receiving a little over \$1 million annually. The AFL stole some of the NFL's thunder when it announced later that month it had agreed to a five-year, \$36 million contract with NBC to become the exclusive home of their games. The AFL-NBC contract guaranteed each of the AFL's eight teams \$900,000 a season. The AFL-NBC pact sent shockwaves through the NFL, which thought they had scored a decisive blow in their battle with the upstarts.

Cleveland Browns owner Art Modell, who had negotiated the NFL-CBS deal, recounted that he and his fellow owners knew the AFL was not going to go away once they got a similar mega-deal. "When that contract came out I said, 'This is the beginning of the end,'" Modell was recorded as saying. "I knew they were for real when NBC signed them. It gave them credibility. Money is one thing, but credibility is more important."<sup>205</sup>

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<sup>204</sup> Oriard, 252.

<sup>205</sup> Joe Zucco, et al, "Timeline: The Merger," directed by Joe Zucco, Mt. Laurel, NJ: NFL Films, 24 December 2015.



AFL Commissioner Joe Foss also admitted that the television deal with NBC eliminated any concerns about the new league's viability. "After I signed that contract, people stopped asking me if we were going to make it," Foss told a reporter. "Everyone knew we were."<sup>206</sup> The AFL-NBC contract temporarily locked ABC out of professional football. The network continued to broadcast NCAA football games and continued to refine a weekly sports program called *Wide World of Sports* which gained in popularity and revenue throughout the 1960s to the point that ABC Sports eventually surpassed the profits of the sporting departments of CBS and NBC.

The AFL was not only going to make it financially, they were going to make competing for talent much more difficult for the NFL. With television revenue virtually equalized, the AFL convinced more and more college graduates to join their league. In 1966, the AFL signed eight of the seventeen collegiate All-Americans the league drafted and seven of nine number one draft choices.<sup>207</sup> This meant a growing number of collegiate stars were opting for the AFL, reversing the trend favoring the NFL earlier in the decade. The biggest coup occurred in 1965 when Sonny Werblin convinced Alabama quarterback Joe Namath to accept his offer to play for the New York Jets. The four-year, \$427,000 contract Namath signed was the largest in football history and dwarfed the offer from the St. Louis Cardinals, who held Namath's NFL rights.<sup>208</sup> Namath's contract forced NFL franchises to up the ante in attracting collegians. In 1966, Texas linebacker Tommy Nobis went back-and-forth between the AFL Houston Oilers and NFL Atlanta Falcons as each sweetened their offer. Nobis eventually signed a \$600,000 deal with

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<sup>206</sup> Ed Gruver, *The American Football League: A Year-by-Year History, 1960-1969*, (Jefferson, NC: McFarland & Company, 1997), 125.

<sup>207</sup> William B. Anderson, "American v National Football League: Using Public Relations to Win a 'War' Against a Monopoly," *Public Relations Review*, 32 (2006), 56.

<sup>208</sup> Gruver, 160.

Atlanta.<sup>209</sup> Green Bay Packer coach and general manager Vince Lombardi was forced to spend \$1 million on just two running backs that same year to keep them away from the rival league. Texas Tech's Donny Anderson signed for \$711,000 and Illinois' Jim Grabowski signed for \$355,000. The duo was dubbed the "Million Dollar Backfield."<sup>210</sup>

The income for upper echelon players was eye-catching but the true impact of the television money was that it allowed the AFL to provide work for men that the elder NFL cast aside. Hall of Fame New York Jets receiver Don Maynard stated in a history of the AFL that the new league competing with the NFL meant jobs for those who had been left out. "We had a lot of former NFL players in the AFL at that time," Maynard said. "We had a lot of quality ballplayers...But I'll tell you what the AFL did. It gave 400 jobs to players, it gave 50 jobs to coaches, it gave 50 or 60 jobs to personnel people in the front office."<sup>211</sup>

With hundreds of roster spots to fill and an underdog image, those 50 – 60 personnel people utilized their scouting dollars to comb every corner of America searching for talent the NFL overlooked. This led to the AFL providing a better opportunity for African-American players. While the NFL didn't fully integrate until the Washington Redskins signed Bobby Mitchell in 1962, the AFL, from its inception, sent scouts and executives to the campuses of historically black colleges such as Grambling, Morgan State and Howard in a search for talent. "It was an untapped market," Los Angeles Charger scout Don Klosterman said in an interview for Ed Gruver's history of the AFL. "The AFL could give those players a chance to play right away. They hadn't

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<sup>209</sup> Jeff Miller, *Going Long: The Wild 10-Year Saga of the American Football League in the Words of Those Who Lived It*, (New York: McGraw-Hill, 2003), 189.

<sup>210</sup> Dan Jenkins, "Locks vs. Boom-Boom," *Sports Illustrated*, August 22, 1966, 21.

<sup>211</sup> Gruver, 201.

had exposure, and we could give that too.”<sup>212</sup> Hank Stram, Hall of Fame coach of the Dallas Texans/Kansas City Chiefs, seconded that view in a separate interview for the same work, pointing out that African-American players and the AFL as a whole needed each other. “The desire to prove they were worthy of playing in the NFL was always very impressive,” Stram said. “We were the underdog and they were too. It was a good mix.”<sup>213</sup> By 1966 the AFL had more African-American players than the NFL with the Kansas City Chiefs leading the way with eight out of twenty-two starters being African-American.<sup>214</sup> The Chiefs furthered the racially progressive attitude of the AFL when they made Grambling defensive lineman Buck Buchanan the first African-American drafted in the first round and appointed Willie Lanier the first African-American starting middle linebacker.<sup>215</sup> In addition to the leadership role of middle linebacker, the AFL employed African-Americans in other positions of authority such as quarterback and center.

It wasn’t just rookies and minorities who benefitted from the extra money derived from television. The AFL and NFL began tendering contracts to active players in the opposite league, violating a gentleman’s agreement from 1960 in which both leagues agreed not to raid each other’s rosters. The NFL struck first when the New York Giants signed Buffalo Bills placekicker Pete Gogolak to a contract in 1966. The AFL retaliated by signing a slew of NFL superstars to “futures contracts,” deals that bound an NFL player to the AFL once their current contract expired. Some of these future deals were astronomical. San Francisco 49ers quarterback John Brodie signed an AFL deal worth

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<sup>212</sup> Gruver, 49.

<sup>213</sup> Ibid.

<sup>214</sup> Ken Rappoport, *The Little League That Could: A History of the American Football League*, (New York: Taylor Trade, 2010), 120.

<sup>215</sup> Rappoport, 121.

\$750,000, Los Angeles Rams quarterback Roman Gabriel inked a \$400,000 deal and Chicago Bears tight end Mike Ditka agreed to a \$183,000 deal.<sup>216</sup>

Even with the guaranteed television money, the spending war of 1966 put a severe strain on multiple AFL and NFL franchises. The high wages led San Diego Chargers coach and general manager Sid Gillman to admit that his team's draft strategy was based on financial considerations rather than on players who could help the team on the field:

We were ready to go broke. We were running out of money. I remember when we would get ready for the draft; we would have two boards with names on them. One of the boards had the names of players we wanted; the other had the names of players we could afford to sign.<sup>217</sup>

NFL Commissioner Pete Rozelle heard from his owners about their financial burdens and decided to send out an emissary on a peace mission. Rozelle dispatched Dallas Cowboys executive Tex Schramm to meet with Lamar Hunt to determine if the AFL would accept a merger. The AFL founder also heard complaints about player costs from his cohorts and admitted he and his league would be agreeable to joining forces with the NFL.

### **A Merger Changes the Tone of the SBA**

The AFL-NFL merger was announced on June 8, 1966 by Pete Rozelle and Lamar Hunt. The agreement held many provisions; key among them was a cessation of competing player drafts. Beginning in 1967, the two leagues would hold a common player draft which meant there would no longer be competing offers for college players. The merged leagues would also enforce the option clause of each other's standard player's contract, meaning those players who signed future contracts with the AFL would still be obligated to return to their original NFL team. Lamar Hunt trumpeted the merger

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<sup>216</sup> Miller, 200.

<sup>217</sup> Gruver, 163.

as being for the greater good, stating, “It is the intelligent thing to do. We were heading for financial ruin.”<sup>218</sup>

*Sports Illustrated* viewed the merger as the result of owners on both sides beholding the financial carnage and realizing they were their own worst enemies: “Ostensibly, what dictated the peace were the terrific bonuses that certain college seniors commanded and the prospect of established pro stars jumping from one league to the other for immoderate sums.”<sup>219</sup>

The merger also conformed to what sports economist Rodney Fort coined “The Single Dominant League Outcome.” Fort described his theory:

If there are two leagues, the one that spends the most will be perceived as major league. The only logical choice is to spend equally... Economic competition has not been self-sustaining in professional sports historically. Owners in rival leagues ultimately see the value in reforming into a single entity.<sup>220</sup>

Rozelle and Hunt were both savvy enough to know that their agreement was a violation of antitrust laws; they also knew it ran afoul of the reasoning behind Emanuel Celler’s granting of the Sports Broadcasting Act exemption. Both men attempted to lessen the anger of politicians who might not view the merger favorably by offering the football equivalent of bread and circuses.

Lamar Hunt championed an end-of-season championship game between the respective winners of the AFL and NFL. Hunt envisioned a game held at a neutral site two weeks after the football season and he coined the term “Super Bowl” as the name of the contest. When asked about the furor the merger had stirred up, Hunt answered by pointing out the financial incentive for both leagues and the excitement for football fans

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<sup>218</sup> Gruver, 162.

<sup>219</sup> Gruver, 163.

<sup>220</sup> Fort, 169, 402.

that the enlarged NFL would generate. “I think it’s beneficial to both frankly and very beneficial to the fans,” Hunt told the press at the merger announcement. “I don’t want to sound too corny on that, but when you look at all aspects including the championship game, personally I think it will be the biggest sporting event of the year, every year.”<sup>221</sup>

Pete Rozelle met with Emanuel Celler to explain why the AFL-NFL merger should be allowed an antitrust exemption. The congressman was not convinced, telling Rozelle he would advocate against such a merger because it meant the loss of competition and would grant the merged NFL a monopoly in the business of professional football.<sup>222</sup> Rozelle was certain of Celler’s opposition and searched for congressional allies. He found them in Louisiana Representative Hale Boggs and Louisiana Senator Russell Long. Boggs and Long wished for an NFL expansion franchise in New Orleans and they agreed to get the merger through Congress in exchange for a franchise.<sup>223</sup> Interestingly, New Orleans had also attempted to get an AFL franchise but the effort suffered a fatal blow when the AFL All-Star Game was pulled out of New Orleans in 1965 due to African-American players being denied service in taxi cabs, stores, restaurants and suffering the indignity of being housed in “Blacks Only” hotels.<sup>224</sup> Despite the horrendous racial situation in the Jim Crow South, Rozelle agreed to the quid pro quo. Long, in his position as Senate Majority Whip, placed the following rider on the Investment Tax Credit Bill, a popular bipartisan bill:

Section 1 of the Act of September 30, 1961 (the Sports Broadcasting Act), is amended by adding at the end thereof: “In addition, such laws shall not apply to a joint agreement by which the member clubs of two or more professional football

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<sup>221</sup> “Timeline: The Merger.”

<sup>222</sup> Lowe, 114-115.

<sup>223</sup> Larry Felser, *Birth of the New NFL: How the 1966 AFL/NFL Merger Transformed Pro Football*, (Guilford, CT: The Lyons Press, 2008), 97.

<sup>224</sup> Ron Mix, “Was This Their Freedom Ride?” *Sports Illustrated*, January 18, 1965, 24-25.

leagues, which are exempt from income tax under section 501 (c)(6) of the Internal Revenue Code of 1954, combine their operations in expanded single league so exempt from income tax, if such agreement increases rather than decreases the number of professional football clubs so operating, and the provisions of which are directly relevant thereto.”<sup>225</sup>

Celler objected to the insertion which dramatically altered his Sports Broadcasting Act. He attempted to delay the House vote and requested that leaders of the AFL and NFL testify before Congress about the needs for such legislation. Celler, however, was unable to garner enough support to prevent Boggs from pushing the bill through. The House voted in favor of the Senate approved bill on October 21, 1966 and it became law on November 8, 1966. Celler grudgingly voted for the bill as he felt the overall legislation reforming the tax code was more important than his personal pique.<sup>226</sup>

Football historian Michael MacCambridge recounted a conversation between Pete Rozelle and Hale Boggs in a hallway outside the House chamber shortly before the vote. The Congressman made it known in no uncertain terms that he now expected quick action on a New Orleans NFL franchise:

Rozelle:       Congressman Boggs, I don't know how I can ever thank you enough for this. This is a terrific thing you've done.  
Boggs:         What do you mean you don't know how to thank me? New Orleans gets an immediate franchise in the NFL.  
Rozelle:       I'm going to do everything I can to make that happen.  
Boggs:         Well, we can always call off the vote while you –  
Rozelle:       It's a deal Congressman. You'll get the franchise.  
Boggs:         If this doesn't work out, you will regret this for the rest of your f---  
                  --g life.<sup>227</sup>

The NFL franchise that became the New Orleans Saints was granted just one week later.<sup>228</sup>

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<sup>225</sup>US Congress, House of Representatives, Investment Tax Credit Act, 89th Cong., 2nd Sess., 1966, Public Law 89-800.

<sup>226</sup> Lowe, 114-115.

<sup>227</sup> MacCambridge, 229-230.

The penultimate phrase of the rider, “if such agreement increases rather than decreases the number of professional football clubs so operating,” guaranteed that such mergers could not result in a loss of teams even if they overlapped in a single market, like the Jets and Giants or the 49ers and Raiders. This was meant as an olive branch to Emanuel Celler, who could only watch helplessly as a piece of legislation he wrote to prevent a football monopoly gave birth to one. Celler took his anger to the press, stating that American taxpayers were being asked to go along with the monopolization of an industry so that millionaire owners who spent more than they could afford could get a government approved do-over:

There may be rejoicing in some quarters that an end run was made around me. But the end run was made around the public, who now have no way of knowing the whys and wherefores and the results which may flow from this merger. They have made improvident contracts and they want and need Congress to bail them out.<sup>229</sup>

Celler’s outrage couldn’t be heard over the din of football executives, fans, players and television broadcasters preparing for the new professional football landscape.

On January 15, 1967, the Green Bay Packers defeated the Kansas City Chiefs 35-10 in the first Super Bowl. The Packers also won Super Bowl II in 1968. In January 1969, Joe Namath led the New York Jets to a 16-7 upset of the Baltimore Colts in Super Bowl III and the following year the Kansas City Chiefs defeated the Minnesota Vikings in Super Bowl IV. The series of games proved the equality of the two competing leagues and the popularity of the games led to an astounding announcement in 1970.

ABC, which had lost out on the AFL to NBC in 1964, entered into a three-year, \$24 million contract with the NFL to broadcast *Monday Night Football*. The ABC

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<sup>228</sup> Ibid.

<sup>229</sup> Felser, 98.



contract ran concurrently with a joint NBC/CBS contract that paid the NFL a total of \$156 million to broadcast the newly renamed American and National Football Conferences of the merged league.<sup>230</sup> The NFL did not just have a monopoly on professional football; with the three broadcast networks in the fold, the NFL had a monopoly on televised professional football. Shortly after Emanuel Celler left office in January 1973, the NFL agreed to a renewal with their television partners for a combined \$200 million.

The parity of television revenue led to an era of tight on-field competition that has extended into modern day. With the advent of the NFL championship game in 1933 through 1950 when the AAFC merged with the elder league, the title game was almost exclusively the domain of the large market Chicago Bears, New York Giants and Washington Redskins. The Green Bay Packers made four appearances and Philadelphia three. The Detroit Lions and Pittsburgh Steelers made one title game appearance between them. The Cincinnati Reds, Brooklyn Dodgers, St. Louis Gunners, Boston Yanks and New York Bulldogs never reached a title game and only posted a combined three winning seasons out of twenty-four. These unsuccessful franchises combined for a total of 147 losses in 200 games, or 75% of the scheduled contests before they all ultimately folded. The final NFL team to fold was the 1952 Dallas Texans which subsequently became the Baltimore Colts. After the passage of the SBA and subsequent merger, not a single franchise has folded despite some historically uncompetitive teams such as the 1960-1964 Dallas Cowboys, which lost 46 of their first 60 games, and the 1976-1977 Tampa Bay Buccaneers, which lost their first 26 consecutive games. In addition to the

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<sup>230</sup> Marc Gunther and Bill Carter, *Monday Night Mayhem: The Inside Story of ABC's Monday Night Football*, (New York: Quill, 1988), 30.

financial cushion against a poor gate during losing seasons, the millions of dollars in shared television revenue helped every NFL franchise to afford to compete on the field. Since 1970, every NFL franchise has experienced a winning season, a division championship, a playoff berth and at least one playoff victory. Only three of the NFL's current 32 teams have never advanced to a Super Bowl. Legal scholars Mitten and Hernandez credit the SBA with changing the NFL landscape from one in which only a small handful of teams made the playoffs in a given decade to one in which almost all 32 teams did between 2000 and 2010.<sup>231</sup>

### **Challenges from the WFL and USFL**

Only two other football leagues have mounted a serious effort to provide the NFL with competition since the AFL-NFL merger. Both leagues failed primarily because of the NFL's monopoly on television. Interestingly, in both cases, the courts agreed with the upstarts that the NFL was a monopoly but refused to reconcile the contradiction in the same manner Celler dared.

The World Football League (WFL) was established in 1974 with teams in several NFL and non-NFL cities. The WFL limped through its first season with several teams declaring bankruptcy before the inaugural season finished. The 1975 season was halted three-quarters of the way through and the league folded. A primary reason ascribed for the failure of the WFL was its lack of a national television contract with a broadcast network. The WFL went head-to-head with the NFL, which had the three American networks committed, with their games televised on a meager syndication package with TVS, an independent network which provided programming for independent UHF stations. Eddie Einhorn, president of TVS, told *Sports Illustrated* that during the course

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<sup>231</sup> Mitten and Hernandez, 756.

of the first season advertisers bolted WFL telecasts because of low ratings. “We never got another nickel’s worth of business,” Einhorn said. “At the end of the year no one is getting paid....By the time we got to the World Bowl, we went from an eight rating to a two. We couldn’t sell a thing.”<sup>232</sup>

An exception to the rule of financially struggling WFL franchises was Johnny Bassett’s Memphis Southmen. Bassett’s team was able to put together a dynamic franchise while the football nation looked to the NFL. Bassett convinced NFL stars Larry Csonka, Paul Warfield and Jim Kiick to leave the Super Bowl champion Miami Dolphins and join Memphis. He signed collegiate stars Danny White and Lucious Selmon, and generated sold out stadiums, a rarity in the WFL. Bassett was the only WFL owner to create a franchise considered on par with the NFL. In 1975 Bassett met with Oakland Raiders owner Al Davis and requested assistance in having Memphis absorbed into the NFL. Bassett agreed to pay a \$12 million entrance fee to join the NFL and Davis agreed to present his plan at a league meeting.<sup>233</sup> When Davis presented Bassett’s proposal, he was promptly laughed out of the room.<sup>234</sup>

Denied entry, Bassett sued the NFL in district court, citing the Sherman Antitrust Act. During the case *Mid-South Grizzlies* (Bassett’s holding company) *v* *NFL*, Bassett claimed the NFL was a monopoly which had unjustly denied him entry despite the fact his franchise had several qualifications. Included in Bassett’s self-determined list of qualifications were a season ticket waiting list of 40,000, an expanded stadium and a

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<sup>232</sup> William Oscar Johnson, “When the Money Ran Out,” *Sports Illustrated*, December 1, 1975, 88.

<sup>233</sup> Gene Klein and David Fisher, *First Down and a Billion: The Funny Business of Pro Football*, (New York: William Morrow & Company, 1987), 82.

<sup>234</sup> David Harris, *The League: The Rise and Decline of the NFL*, (New York: Bantam, 1986), 206.

roster of NFL caliber players, including key parts of a former Super Bowl champion.<sup>235</sup> Bassett also entered into the record quotes from Lamar Hunt in the early 1970s when Memphis had been in the running for an NFL expansion team. Hunt had said an expansion franchise for Memphis had a “high level of interest from a majority of owners of 14 or more.”<sup>236</sup> The district court dismissed the case and the decision was upheld several times on appeal into the 1980s. At each turn the NFL was exonerated, but with a caveat. The original judge stated the NFL was indeed a monopoly with extensive advantages in television, but it was not an unlawful monopoly. The judge further stated that the NFL’s refusal to admit the Memphis Southmen was actually “pro-competitive since it left Memphis available as a site for a future franchise for another league.”<sup>237</sup>

That other league was the United States Football League (USFL) which was founded in 1982 and began play in 1983. Interestingly, Johnny Bassett was also involved in that venture with a franchise in Tampa, Florida. The USFL realized the NFL had a monopoly on televised football in the fall and crafted its constitution and bylaws accordingly. The USFL was originally organized to take advantage of the American obsession for professional football by offering the game in the NFL offseason between March and July. This decision helped the USFL gain a two-year, \$22 million national television contract with ABC, which provided the new teams \$1 million a season in revenue.<sup>238</sup> The USFL also adhered to what was referred to as the “Dixon Plan.” Named after league founder David Dixon, the “Dixon Plan” called for each team to cap their expenditures at \$6 million a season with each team putting up a \$1.5 million line of credit

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<sup>235</sup> Milt Dunnell, “Stadium Sold-Out if There’s a Game,” *Toronto Star*, February 3, 1976, C1.

<sup>236</sup> “Memphis in Two,” *The Evening Independent*, June 3, 1974, 1C.

<sup>237</sup> “NFL Freezes Out John Bassett,” *Toronto Star*, March 17, 1976, C1.

<sup>238</sup> Jerry Kirshenbaum, “Tube Coup,” *Sports Illustrated*, June 7, 1982: 23.

which was overseen by the league office and which any team could tap into if they had unforeseen losses.<sup>239</sup>

For two years the USFL followed the “Dixon Plan” for the most part. Some franchises went overboard on salaries as the USFL signed three consecutive Heisman Trophy winners to lucrative contracts. The New Jersey Generals, owned by J. Walter Duncan and later Donald Trump, signed Herschel Walker and Doug Flutie to multi-million contracts as did the Pittsburgh Maulers, owned by Edward DeBartolo, Sr., when they signed Mike Rozier. Despite some financial losses, the USFL and ABC enjoyed solid ratings and were seeking to negotiate an extension when a volatile owner threw a spanner in the works. When Donald Trump purchased the New Jersey Generals in 1984, he quickly set about convincing the majority of his fellow owners to move to a fall schedule to compete head-to-head with the NFL. Trump eventually succeeded and the “Dixon Plan” was ignored. Player salaries continued to rise, with the most amazing example being a \$40 million contract given to Brigham Young quarterback Steve Young by the USFL’s Los Angeles Express. As players gladly cashed these checks, the USFL discovered it could not get a national television contract for the same reason the WFL could not a decade before. The three networks were in the midst of a five-year, \$2 billion contract with the NFL. To compound matters further, the cable network ESPN, which had carried USFL games, was also seeking to bring the NFL to cable.

Following the conclusion of the 1985 USFL season, the new league sued the NFL in district court alleging antitrust practices and sought \$1.69 billion in damages. In *USFL v NFL*, the USFL contended that the NFL had deliberately set up its television contracts

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<sup>239</sup> Jim Byrne, *The \$1 League: The Rise and Fall of the USFL*, (New York: Prentice-Hall, 1987), 109.

to exclude competitors.<sup>240</sup> As evidence, they cited a 1973 memo from NFL counsel Jay Moyer which stated “an open network may well be an open invitation to formation of a new league.”<sup>241</sup> The jury agreed the NFL had a monopoly on television, but like the *Mid-South Grizzlies v NFL* verdict, they stated it was not an unlawful monopoly and that the USFL had been its own worst enemy in jumping from a spring-summer schedule to a fall schedule. A popular side note to the case was the jury’s decision that because the NFL was a monopoly, the USFL was entitled to damages but rather than \$1.69 billion, the USFL was awarded \$1 in damages, which was trebled to \$3 on appeal. The jurors felt the USFL business plan was simply to sue the NFL, as opposed to providing the networks with a reason to broadcast the league in the fall.<sup>242</sup> For the second time in a decade the NFL escaped a judgement against it because it was not an unlawful monopoly, but one that had been created legally with the tacit approval of the United States Government.

### **Conclusion**

When Emanuel Celler crafted the Sports Broadcasting Act it was done with the intention of ensuring competition in the industry of professional football. The collectivist aspect of sharing television revenue allowed AFL teams to compete both on the field and in the battle for television rights. Celler’s legislation also leveled the playing field in the NFL, which became more competitive than ever before. When Celler died in January 1981, the NFL had fully integrated the AFL and NFL franchises and parity was evident in the fact that every franchise in the combined league, with the exception of the politically

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<sup>240</sup> Boris Kogan, “USFL v NFL: The Challenge Beyond the Courtroom,” *Sports Stories*, Berkeley Law, University of California, [https://www.law.berkeley.edu/sugarman/Sports\\_Stories\\_USFL\\_v\\_NFL\\_-\\_Boris\\_Kogan.pdf](https://www.law.berkeley.edu/sugarman/Sports_Stories_USFL_v_NFL_-_Boris_Kogan.pdf), 15.

<sup>241</sup> *Ibid.*

<sup>242</sup> *Ibid.*

expedient New Orleans Saints, enjoyed at least one winning season. This type of competition was the focus of Celler's life and in this regard his legislation succeeded.

Despite Celler's intentions, the SBA, rewritten in 1966 to allow a merger of the two leagues, has led to a monopoly generating annual revenues in excess of \$12 billion. In the past forty years the NFL's contracts with all four major broadcast networks, ESPN and DirecTV precluded any viable professional football league from entering into September-December scheduling. Celler's warning that the AFL-NFL merger would lower player salaries did come to fruition. Except for the eras of the WFL and USFL, NFL players had to endure artificially lowered salaries due to the option clause. The option clause was eventually eliminated but it required two work stoppages and a series of findings against the NFL by the courts, including *Mackey v NFL*. The end of the option clause provided players the opportunity to offer their services to the highest bidder once their rookie contract expired although the contracts are not guaranteed like those in the NBA, NHL, and MLB. This means a player in the NFL makes less money on average than those in the other professional sports despite the staggering amount of revenues generated.

While the court has ameliorated significantly the impact of monopoly on salaries, they have not been able to protect the consumer from the economic impact of the NFL's dominance. Ticket prices for the Super Bowl, a supposed boon for the fans of the AFL-NFL merger, has increased from \$12.00 for a seat at the first game in 1967 to \$1,200 for the same seat at the 2012 game.<sup>243</sup> The amount charged for broadcast rights has increased from the combined \$17.8 million in 1961, which led to the SBA, to a combined

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<sup>243</sup> Stephen Smith, "Super Bowl Ticket Prices: A Historical Look," CBS News, February 3, 2012, <http://www.cbsnews.com/news/super-bowl-ticket-prices-a-historical-look/>, accessed 18 October 2016.

\$27 billion with CBS, FOX, NBC, ESPN, and DirecTV. The increased rights fees have led broadcasters to sell more and more commercials in order to pay for the broadcasts. The original AFL contract allowed ABC two ninety-second television timeouts per quarter. In 2010 the average NFL game contained ten television timeouts per half ranging from 60 to 120 seconds.<sup>244</sup> ESPN and Direct TV have also raised their monthly subscription costs exponentially over the years to afford the rights fees they continue to provide the NFL. Cable operators have seen the cost of carrying NFL broadcast partners rise 91% since 2008.<sup>245</sup>

Such increases led sports economist Rodney Fort to write that Congress should repeal the part of the Sports Broadcasting Act which allowed the AFL-NFL merger to occur. Fort argues that from 1961-1966 there was economic stability for fans as the two separate leagues were forced to compete for fan affection and dollars. By separating them again, Fort argues that broadcast and ticket costs would begin to go back down as they did when the WFL and USFL briefly entered the industry.<sup>246</sup>

Politically, there is an irony in the fact that professional football, a symbolic representation of the uniqueness of America since the height of the Cold War, has become a monopoly through the use of a collectivist business practice. Economically, such inconsistent applications of antitrust exemptions are merely examples of a state reconciling the contradictions of capitalism and no irony is present. The past half-century has seen the NFL become a national economic driver verging on the precipice of

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<sup>244</sup> Samuel Abt, "ESPN Positions Itself to Take on Europe," *New York Times*, January 24, 2010, [http://www.nytimes.com/2010/01/25/business/media/25iht-espn.html?\\_r=0](http://www.nytimes.com/2010/01/25/business/media/25iht-espn.html?_r=0) accessed 18 October 2016.

<sup>245</sup> Cecilia Kang, "Bidding War Between Networks, Sports Leagues Will Increase Price of Cable TV," *Washington Post*, January 23, 2015, [https://www.washingtonpost.com/business/economy/bidding-war-between-networks-sports-leagues-will-increase-price-of-cable-tv/2015/01/23/d0cb19f4-9db8-11e4-a7ee-526210d665b4\\_story.html](https://www.washingtonpost.com/business/economy/bidding-war-between-networks-sports-leagues-will-increase-price-of-cable-tv/2015/01/23/d0cb19f4-9db8-11e4-a7ee-526210d665b4_story.html), accessed 18 October 2016.

<sup>246</sup> Fort, 402.



attaining too-big-to-fail status. America's history shows such large corporations requiring a system-wide reconciliation to insure competition in the face of such behemoths. In 1961 it was Emanuel Celler crafting the SBA. Only time will tell who the twenty-first century's Emanuel Celler will be.

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