



PLAYING IT SAFE

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Concerns about football players' long-term health is at an all-time high, and both the NFL and its players are rethinking what it means to get their head in the game. So what is a team's legal obligation when it comes to protecting its players? And how can athletes (and their reps) advocate for their futures? A Northwestern Law student and recent grad—both former pros—weigh in.



It doesn't take a math whiz to know that the chances of playing a sport in high school, then going on to play that same sport in college, and ultimately going pro, are incredibly slim. In fact, according to the NCAA, only about 6.8 percent of more than 1 million U.S. high school football players compete in college, and just 1.5 percent of those players go on to play in the NFL, which had 253 slots available in the 2016 draft.

So what are the chances of playing professional football, retiring, then sitting in Professor Jules Crystal's Labor Law class next to another retired player who once grabbed you by the face mask in a regular-season game?

"Talk about the odds," says Tony Pashos, a 6'7", 320-pound former offensive tackle, who completed his first year at Northwestern Pritzker School of Law this spring. The 6'2", 240-pound Quincy Black (JD '17), has a photo of that play, in which he has the gigantic Pashos by the mask, framed in his Tampa home. (It was Week 8 of the 2007 season, and Pashos's visiting Jacksonville Jaguars beat Black's Tampa Bay Buccaneers 24-23.)

Drafted by Tampa Bay in 2007, Black played six seasons with the Buccaneers until a neck injury ended his career. Pashos, who lives in far south suburban Chicago, played an astounding 11 seasons after being drafted by the Baltimore Ravens in 2003.

With the enormous number of pressing legal issues facing the NFL surrounding player safety (see sidebar), both Black and Pashos, who served as a player's representative from 2009 to 2011, say their legal education has provided them with a more informed take on the NFL's attempts to better protect its athletes. But it's a tricky issue, and one that plenty in the football community – including NFL authorities, players' representatives, and legal experts – have been grappling with for more than a decade. For starters, the game is both inherently violent and wildly popular in its current form. According to the most recent data available from The Harris Poll, football has been the most popular U.S. sport for three decades, leading number two-ranked baseball by 18 percentage

points. And, from a financial perspective, it ain't broke: according to the Sports Business Journal, the NFL expects to generate \$14 billion in revenue in 2017.

But football is a rough long-term deal for players, whose careers average about three years, mainly due to injury. (After Black's second NFL season, the Chicago native started looking at law school programs to prepare for life after football). A 2016 study, one of the largest to date on living NFL players, found that more than 40 percent of 40 retired pro football athletes, with an average age of 36, had signs of traumatic brain injury. And the 2016 NFL injury report, which was released by the league prior to the February 2017 Super Bowl, found that players suffered 244 concussions, 56 ACL tears and 143 MCL tears over pre- and regular-season practices and games.

"The sport will be forever intertwined with pain and injury," says Pashos. "You see the blood and noise and the hard hits and you celebrate the guy who gets back up." The players, adds Black, "are so skilled and so fast and so strong, that the game has become much more violent and as a result, more demanding physically." Like the rest of America, NFL players have gotten bigger. In 1950, the median weight was 240 pounds for offensive tackles and 220 pounds for guards; in 2010, the median weight of both positions hit 310 pounds.

But it's the long-term effects of concussions that are a particular concern for the league, players, and their



Tony Pashos (JD '19) and Quincy Black (JD '17) face off during the 2007 NFL season.

return to school full-time to pursue his mathematics PhD at M.I.T. (The fourth-year pro had been taking classes there in the off-season). Three days later, rookie Jadar Johnson's agent announced that Johnson was retiring from football, saying that he "has new ventures that he wants to pursue and he values his health."

The clear link between hard hits and brain damage has led to a class action lawsuit and numerous NFL rule changes focused on reducing unprotected hits, especially to the head, and other violent collisions between players.

families. According to a study published in July, 177 of the 202 brains of former football players donated to and studied at Boston University's brain bank were diagnosed with CTE, or chronic traumatic encephalopathy, a degenerative brain disease caused by repeated blows to the head. (The study, published in the *Journal of the American Medical Association*, found that 110 of the 111 former NFL players studied had CTE. So too did 7 of 8 Canadian Football League players, 9 of 14 semipro players, 48 of 53 college football players, and 3 of 14 high schoolers.) Within days after that study was released, several pros retired, including the Baltimore Ravens John Urschel, who announced he wanted to

These changes gained traction after Dr. Bennett Omalu, who in 2002 worked at the Allegheny County Coroner's Office in Pittsburgh, autopsied the brain of 50-year-old former Steeler Mike Webster and found tau protein clumps similar to those of an elderly person with Alzheimer's disease. Omalu came up with the CTE diagnosis, his findings were published in 2005 in the journal *Neurosurgery*, and the discussion of what should be done about CTE exploded.

Rule changes soon followed. "A player can no longer lead with the helmet," Pashos explains. "We've removed it as a weapon." There's an emphasis on zero tolerance for helmet-to-helmet hits, and the quarterback, kickers and punters, among

other positions, have been granted much more protection. “Once that ball comes out of the quarterback’s hand, you can’t touch him or take him down.”

Many of the protections for players came at the behest of the players union. During his time as a rep leading up to and through the 2011 NFL lockout, Pashos went through what he calls a crash course on labor law and collective bargaining. “The bargaining gets so detailed, so to go from the weight rooms and the field to being decision-makers was hard,” he says. “It’s interesting now to look back and have time to really learn the origin of those laws.”

At the time Pashos’s approach was this: Football players don’t know how long their careers will be. “So the player reps said, ‘let’s see if we can prolong careers and limit post-career issues by not exposing ourselves to unnecessary risks.’ The league wasn’t consistent; some coaches were too demanding and too physical, and they ended up burning through a lot of players.”

The highlights of the 2011 Collective Bargaining Agreement that Pashos and others supported included a longer off season (leaving time for rest and recovery,

and limiting pre-season practices), eliminating two-a-day practices, limiting full-on contact practices, and other efforts to eliminate, limit, or penalize more damaging and vicious hits.

George Atallah, assistant executive director of external affairs for the National Football League Players Association, together with the union’s staff of 10 attorneys, worked closely with the player representatives. “Tony understands how important it is to be an advocate for improvement of working conditions in the NFL today,” Atallah says. “He was a part of that transformation of the game that included not just rules changes, but overall improvement to health and safety of players. He was part of our collective bargaining unit and privy to legal strategy. It’s not an easy job for a non-lawyer.”

While some fans aren’t happy about cutting down on football’s violence, others feel it’s necessary. “As a society, do we want to have it where our predominant sport involves this many players getting this severely injured?” asks Daniel Gandert (JD ’07), professor of Dispute Resolution in Sports and an avid, but troubled, football fan. “Or are we willing to allow the rules to change?”

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Even with the improved protections for players, the nature of the sport makes injury hard to avoid — recall that 2017 injury report for proof. “I think the NFL is getting close to doing everything they can, but it’s still a physical sport and the probability of concussion is almost impossible to completely take away,” says Rick Smith (JD ’86) president of Chicago-based Priority Sports, and Pashos’s former agent.

For his part, says Black, who suffered a neck injury and subsequently underwent surgery after a helmet-to-helmet hit, “I do believe the game has gotten much safer since my retirement in 2013. I think the NFLPA and the Rules Committee have both done a great job in trying to prolong the careers of players. And I think there’s a grass roots movement within the coaching ranks as well. Coaches don’t want to see their players stretched out on the field.”

Smart coaching is key to player longevity — like any boss, coaches have a huge effect on workplace health and safety. Playing for Baltimore Ravens coach Brian Billick was revolutionary, Pashos says. “We did things smarter — when we hit it was very physical and demanding, but the schedule catered to the player. All [Billick] cared about was how fresh our minds and bodies were. You heard about other teams like Baltimore that were smart and player-health minded, and those were the teams that won.”

On the Ravens, Pashos explains, players went through carefully structured walk-throughs to learn game plans, giving them time to mentally and physically prepare, rather than immediately going full-speed. There were no wasted repetitions. Some practices the players went without pads, so there were no full-tackling takedowns. “The entire practice schedule is made for you to be at the top of your game and the best in the league,” he says. But it’s up to the

teams to hire the Billicks of the football world; they can’t be completely written into a CBA.

So if a player has better protection written into the rules and a coach who emphasizes player health, why would he still play hurt? Those reasons could range from a player’s own attitude toward the sport, to contract incentives, to the contracts themselves, which usually aren’t guaranteed, to the injured reserve system, which allows players to remain on the team but not take up a roster spot.

Once an athlete is on the injured reserve list, in most instances he cannot play for the rest of the year. (An exception allows teams to bring back one injured reserve player each year after eight games, and for 2017 the rules add a second player to the list.) It can be a significant setback for a player, particularly if he has a strong chance of recovery before the end of the season, Gandert says. Missing an entire season can hurt bonus payouts and negatively affect future earnings, since players don’t have the opportunity to prove that they’re healthy. Plus, there’s a stigma on these athletes, who are often labeled “injury-prone” or considered a risky prospect for signing.

The incentives in players’ contracts also encourage playing hurt. “Some contracts have incentives that will escalate a guy’s upcoming salary if they hit a certain percentage of team plays,” Black says, “or have a certain number of catches or tackles or rushing yards or return yards, or All-NFL team or Pro Bowl. The only limit to what incentives are put in a player’s contract is the imagination of the drafters.”

And that’s a problem, says Gandert. “Players have a ‘tough man’ type of mentality — they want to think they are Superman, and this mentality helps them succeed,” he explains. “One of the things I teach is that this mentality leads players to believe that they will earn unguaranteed performance bonuses. However, you know that the player isn’t likely to earn this bonus, both because of the likelihood of injuries and because athletes generally believe they will perform at a higher level than what’s likely. It’s difficult to convince the player of this fact when

Left: Tony Pashos played for the Baltimore Ravens for 4 of his 10 NFL seasons. Right: Caption



representing him because this mentality helps him succeed as an athlete. If an athlete is worried about getting injured, he's not going to succeed in his sport."

And with football's non-guaranteed contracts, there's always the fear that if you go out hurt and your replacement does well, you won't get back in and you'll lose money, explains Smith. Of the four major professional sports leagues, NFL players have the least amount of their salaries guaranteed. In baseball, contracts are fully guaranteed so if a player gets injured, he'll be paid for his contract's duration. "An injured player in the NFL, however, is often only guaranteed payment for the time he is injured," Gandert says. "Players who aren't at the top of the roster have a higher risk of being cut from their teams

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in response to an injury, thus losing out on non-guaranteed salaries for all subsequent time in their contract."

"It's cutthroat," Pashos says. "You can lose your job whether you are healthy or unhealthy, you can get cut, fired in front of your teammates, a lot of bad things can happen, but that's a motivator to stay at the top of your game."

Another contributing factor to the high injury rate is that the ability to withstand pain is not only admired in football, it's expected. "All guys play hurt," Black says. "I had the honor of playing with several players who were

considered Iron Men. These guys never missed a game in 14 grueling NFL seasons and while I'm sure they had the incentive to play based on something in their contracts, the respect they'd garner from their peers is the overwhelming factor for them playing through injury." When Pashos partially tore his hip flexor, he was "gung ho" to play until a trainer insisted he shouldn't step foot on the field. But not every team, players say, will stop you in those situations; some will insist on protecting their players' health, while others want and need you to play.

The NFL's concussion protocol is one response to the demand to better protect players. Independently certified doctors and athletic trainers who are unaffiliated with the team (and therefore have no incentive to encourage an injured player back into the game), are now stationed around the field. Players exhibiting concussion symptoms are supposed to be pulled from the game and evaluated with a series of questions and tests. And while players have admitted that they've fooled the tests because they want to get back on the field, it's an improvement over the past, when players who insisted they could go back in after a hard hit were routinely encouraged to play.

In the meantime, Atallah says, the player's union is working toward other safety improvements over the coming year, including turf quality. "Field conditions aren't standardized in the NFL and there's a statistically significant injury difference between turf and grass." The NFLPA is also tackling the issue of pain and prescription medication. "How players deal with chronic pain is a massive problem that we're looking at closely, and particularly how it impacts players' lives when they're done playing. We're looking at quality of life issues."

Pain and injuries aside, Pashos and Black both say that the years of blood, sweat and tears were worth every drop. "As a former player, I've been better able to handle law school," Pashos says. "The commitment and professionalism is the same, and there are challenges and competition in both, even though you're one team and one family."

Still, law school has one great advantage, he says. "It's fulfilling and refreshing —especially since it doesn't take as many cold tubs to get on the field." ■



Left: Quincy Black was a linebacker for the Tampa Bay Buccaneers from 2007-2012. Right: Quincy Black and his son at graduation.

The NFL's Concussion Settlement

In mid-June, the first two claims of the NFL's concussion settlement were approved after a long battle between retired players, their families and the NFL over damages from concussions. (In January 2017, the *In re: National Football League Players' Concussion Injury Litigation* class action settlement became final.) "Plaintiffs accused the NFL Parties of being aware of the evidence and the risks associated with repetitive traumatic brain injuries, but failing to warn and protect players against the long-term risks, and ignoring and concealing this information from players," according to official website of the Concussion Settlement Program. "The NFL Parties denied the claims in the litigation."

Here's what you need to know:

- For the first payout, \$5 million was awarded to a retired player suffering from ALS.
- Additionally, \$4 million went to the family of a deceased player diagnosed with CTE.
- The settlement covers NFL players who retired from pro football before July 7, 2014, and received a qualified diagnosis from an approved physician. It covers ALS, dementia, Parkinson's and Alzheimer's diseases.
- Players diagnosed with CTE between January 1, 2006

and April 22, 2015 (with an extension of 270 days to players who died between July 7, 2014 and April 22, 2015) can receive compensation, but since CTE is diagnosed after death, only families of deceased players can earn from the settlement.

- Current players and those who retired after July 2014 don't receive settlement benefits. "There are some new health benefits for retired players that were added to the league's 2011 Collective Bargaining Agreement that could potentially apply," says Gandert. "Or, these players could file their own suits, but it may be hard because of some of the rule changes and research regarding the contributions of college and youth football to neurological ailments. Additionally, with information that is currently out about head injuries, the league will have a better argument that future players have assumed the risk."

"Everything is a process and a learning experience for all parties involved right now," says Pashos. "We don't have a test for CTE and it's the industry disease. If a new test comes online, the settlement will have to be readjusted. Some of our teammates have these issues and it's a costly burden upon everyone in the family." ■