ON PRO FOOTBALL

Colin Kaepernick Is Not Going Away

By Ken Belson

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Proving that a team or a league colluded to keep a player off the field has been difficult over the years.

“Smoking gun” documents that show owners acted in a coordinated way are rare. Aggrieved players have a hard time proving teams deliberately passed them over in favor of less talented alternatives because teams hire and fire players for subjective reasons all the time, and are well within their rights to do so.

Then there is the case against the N.F.L. brought by Colin Kaepernick, the former San Francisco 49ers quarterback who has accused the league’s owners of snubbing him because of his decision to protest by kneeling during the national anthem.

A case that was originally about Kaepernick’s skills has turned into something much larger: a referendum on his politics, free speech and even his legacy. N.F.L. teams have signed players who have beaten their spouses and run operations that killed dogs for sport, but protesting during the national anthem may prove to be the unforgivable sin, it seems.

On Thursday, the arbitrator hearing Kaepernick’s grievance dismissed the N.F.L.’s bid to throw out the case. He determined that Kaepernick’s lawyers had unearthed enough credible evidence during the first stages of discovery to allow the case to go forward.

This sets the stage for owners and league executives to be questioned in a trial-like setting. Kaepernick faces an uphill legal battle, but even proceeding to a full hearing amounts to a victory because it allows his lawyers to continue to search for evidence of collusion, while keeping Kaepernick’s name in the news during the N.F.L. season, when attention on football is at its peak.
There is a sensible and common solution to get out of this jam: a settlement.

The league has been desperately trying to extinguish the continuing protests — which are an attempt to raise awareness about police brutality and economic inequality — and the fiery debate they have sparked. But the case is expected to drag on for months, so the league could reach a deal to pay Kaepernick damages equal to twice what he might have made if he were still playing.

In a normal case, Kaepernick, who hasn’t played since 2016, might decide he has won enough already, agree to a settlement, walk away with millions of dollars and move on with his life. Or some team in a progressive city could just put Kaepernick on a roster for the season, which could take a lot of steam out of his complaints.

This, however, is not a normal case. Both sides appear to be fighting about something larger than dollars.

“Everyone should be motivated to settle,” said Michael LeRoy, who teaches sports labor at the University of Illinois at Urbana-Champaign. “That said, neither Kaepernick nor some of the owners are the type to settle. They are putting principle above money.”
Kaepernick appears interested in continuing to raise awareness about police brutality and other forms of social injustice, not about winning monetary restitution. While he has not spoken to the media since he filed his grievance in October, he has sent messages about his agenda through social media and a handful of planned public appearances.

He has used Twitter to cheer players who continue to protest during the national anthem. Pictures have also surfaced of Kaepernick teaching young people about their rights when approached by police officers. After he received an award from Amnesty International, Kaepernick spoke about his goals of addressing police brutality.

Kaepernick has not shied away from taunting the N.F.L. He showed up to the deposition of an N.F.L. owner wearing a black T-shirt with the name Kunta Kinte on it, a reference to the slave at the center of the book and television drama, “Roots.”

Many owners, meanwhile, have spoken about wanting the players to stop protesting. In May, they tightened a league policy that now obligates players to stand for the anthem when they are on the field, but it allows players to remain in the locker room if they choose.

Some owners said they would not penalize players if they continued to protest on the field, but the owner of the Dallas Cowboys, Jerry Jones, broke ranks in July when he said that all of his players must stand on the field for the anthem. Jones said he would not even abide by players remaining in the locker room. His son Stephen, the team’s chief operating officer and director of player personnel, suggested that Cowboys players who protested might not be long for the team.

Jones is the most outspoken owner to oppose the protests, but he speaks for more than a few of his colleagues. He has also donated to President Trump, who has frequently attacked the owners for not firing players who protest and who publicly praised Jones for his hard-line stance.

Jones and the owners who stand with him do not seem willing to settle with Kaepernick, lest they appear to be backtracking, to say nothing of possibly giving him a job. They fear they would alienate the sizable subset of fans upset with the protesting players.

A settlement might also spark more attacks from the president, who has shown a proclivity to bludgeon companies he does not like, like technology corporations and news organizations. In theory, the president could lend support to a bill that surfaced in Congress that would prohibit public financing of sports stadiums.

“All of a sudden, the arms of politics could have a far longer reach, where the president can put his finger on the scale and influence how the N.F.L. and players resolve their conflicts,” said Charles Grantham, a former executive with the National Basketball Players Association who now teaches at the Center for Sport Management at Seton Hall University.
It is possible, Grantham said, that the arbitrator, in allowing the case to go forward, is in fact nudging the N.F.L. to settle. Like most judges, arbitrators prefer that the two sides come to their own conclusion. At the very least, “it does put pressure on the N.F.L. because it does allow Kaepernick to do more discovery, question witnesses and present this full case in front of the arbitrator,” said Gabe Feldman, who teaches sports law at Tulane University.

Then again, the N.F.L. could have settled the case months ago, but chose not to. Kaepernick, too, has shown no interest in that, and for now, at least, he appears to have won the right to continue his crusade.

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