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"YOU CANNOT CHOKE YOUR BOSS & HOLD YOUR JOB UNLESS YOU PLAY IN THE NBA":
THE LATRELL SPREWELL INCIDENT UNDERMINES DISCIPLINARY AUTHORITY IN THE NBA

ROGER A. JAVIER*

I. INTRODUCTION

"You cannot choke your boss and hold your job unless you play in the NBA," David Stern, the Commissioner of the National Basketball Association ("NBA"), remarked after the decision in the Latrell Sprewell incident was handed down by arbitrator John Feerick.¹ Although violence in the NBA has existed both on and off the court for many years, a physical assault coupled with death threats by a player against a coach is unprecedented; the Latrell Sprewell incident is the first of its kind. Moreover, disciplinary action by the Golden State Warriors ("Warriors") and the NBA required careful thought and deliberation in order to exact just punishment.

The purpose of this Article is to outline and discuss briefly the legal issues concerning and the ramifications of arbitration disputes in disciplinary matters in the NBA through an analysis of basketball’s most current, publicized and talked about incident, the assault on Coach P.J. Carlesimo ("Carlesimo") by player Latrell Sprewell ("Sprewell"). This Article will discuss the arbitration process in disciplinary resolution, the Uniform Player Contract, particularly the "Conduct Clause" provision, the Commissioner's power to discipline players and the 1995 Collective Bargaining Agreement ("CBA") between the National Basketball Players Association ("NBPA") and the NBA.²

Specifically, this Article will discuss the factual scenario that led to Sprewell's assault on Carlesimo and the punishments imposed on Sprewell by the Warriors and the NBA. After discussing the fact-

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² See NBA-Collective Bargaining Agreement, art. XXXI, § 1(a) (1995) [hereinafter NBA-CBA] (defining scope of grievance as including that pertaining to validity of player contract).
tual setting of the grievance proceeding, the focus will shift to a
general discussion of the arbitration process. Following this discus-
sion will be an analysis of the legal issues involved in the arbitration.
The issues that will be addressed include: (1) the applicable stan-
dard of review; (2) the ability of the Warriors to terminate
Sprewell's contract based on moral turpitude and conduct viola-
tions; and (3) the ability of the Commissioner to suspend Sprewell
because of his actions.

II. FACTUAL BACKGROUND

The Latrell Sprewell incident consists of two factual scenarios:
first, the incident that occurred on December 1, 1997; and second,
the arbitration process that began on December 5, 1997 with the
filing of the grievance by the NBPA on behalf of Latrell Sprewell
against the Warriors and the NBA.3

A. The Assault on P.J. Carlesimo

December 1, 1997 began as an ordinary practice session for the
Golden State Warriors. However, unlike other NBA teams that en-
joy amicable player-coach relationships like the one between
Michael Jordan and Phil Jackson, the relationship between Sprewell
and Carlesimo could be described as anything but amicable. 4 In
fact, it was on this day that professional basketball saw the most out-
rageous conduct displayed by a "professional" athlete.

During practice, Coach Carlesimo, who was in his first season
with the Warriors,5 instructed Sprewell to sharpen his passes, and
Sprewell allegedly responded with, "I don’t want to hear it today."6
Carlesimo then instructed Sprewell to leave practice, but Sprewell

3. See Stephen Nidetz, Union Files Grievances for Sprewell, CHI. TRIB., Dec. 6,
1997, § 3, at 2 (stating NBPA executive director Billy Hunter outlined grievances in
brief letter to league requesting that remainder of Sprewell’s $7.7 million salary for
1997-1998 season be placed in escrow pending resolution of grievances).
4. See Teddy Greenstein, Jordan “Tees Off” on Bulls: Laments Way Jackson’s Negoti-
atations Were Handled, CHI. TRIB., June 22, 1996, § 3, at 1 (noting affinity Jordan has
for Jackson in statement made during contract negotiation with Bulls in 1996, “I’ve
always said that as long as Phil is here, I’m here. I don’t think that’s going to
change. If after one year, Phil’s still here, then I’ll still be here.”).
users/s/spree15/articles/980305.htm (last modified Mar. 30, 1998) (stating that
Head Coach Peter Carlesimo joined Warriors in June 1997, after several successful
seasons with Portland Trailblazers and successful college coaching career at Seton
Hall).
6. Phil Taylor, Center of the Storm, SPORTS ILLUSTRATED, Dec. 15, 1997, at 62
(quotting Sprewell’s response to Coach Carlesimo during practice drills).
did not. As Carlesimo started to walk towards him, Sprewell stated, "Don’t come up on me, don’t come up on me." As Carlesimo approached him, "Sprewell threatened to kill Carlesimo and grabbed the coach by the throat, dragging him to the ground and choking him for ten to fifteen seconds before other players tore Sprewell away." Afterwards, Sprewell left practice.

Approximately twenty minutes later, Sprewell returned to the practice, again to attack Carlesimo. After throwing several punches at Carlesimo, he successfully made contact. After the incident, Sprewell publicly apologized to his fans and his family but not to Coach Carlesimo. As a result of the encounter, Carlesimo received cuts and abrasions on his neck. On the following day, Golden State took disciplinary action by suspending Sprewell without pay for at least ten games. Sprewell also received a letter from the team stipulating that the Warriors reserved the right to terminate Sprewell’s contract under section sixteen of the Uniform Player Contract. Two days later, Golden State fired Sprewell, terminating his contract with the Warriors.

In addition to his termination, David Stern ("Stern"), Commissioner of the NBA, suspended Sprewell on December 4, 1997, from playing in the NBA for one year, "during which he could not

7. See Around the NBA: Warriors Suspend Sprewell, L.A. TIMES, Dec. 2, 1997, at C5 [hereinafter Around the NBA] (quoting Carlesimo, "I asked Spre to leave practice. He didn’t, and words kind of escalated to some physical contact.").

8. Taylor, supra note 6, at 62 (quoting Sprewell’s warnings to Carlesimo).

9. Id.

10. See id.

11. See id.

12. See Feerick, supra note 5 (holding that Sprewell directed overhand punch, which landed near Carlesimo’s right shoulder but testimony did not establish whether it was direct result of flailing motion).

13. See Taylor, supra note 6, at 62 (discussing aftermath of Sprewell incident).


15. See Around the NBA, supra note 7, at C5 ("We consider this an extremely serious matter and want to make it clear this sort of behavior will not be tolerated.") (quoting General Manager Garry St. Jean on his decision).


17. See Taylor, supra note 6, at 62 (noting that Sprewell’s $32 million contract had nearly three years and about $25 million remaining).

18. See Cynthia Cotts, Proskauer, Weil Gotshal: They Love This Game, NAT’L L.J., Feb. 2, 1998, at A7 (stating that Stern has been Commissioner of NBA since 1984). Prior to becoming the NBA Commissioner, Stern served as counsel at Proskauer Rose, where he was appointed NBA’s in-house counsel in 1978. See id.
be paid by an NBA team.” Stern stated, “A sports league does not have to accept or condone behavior that would not be tolerated in any other segment of society.” In addition, Sprewell lost an endorsement deal with Converse due to his conduct.

At the time of his termination from the Warriors, Sprewell had played for the team for approximately one year and signed a four-year, $32 million contract. The Warriors cited to the “Conduct Clause” of Sprewell’s contract as justification for his termination. This incident is the first of its kind to occur in the NBA. At the time of the incident, Sprewell was the Warrior’s leading scorer, averaging 21.4 points per game.

B. The Arbitration Hearing

The 1995 Collective Bargaining Agreement (“CBA”) between the NBPA and the NBA member teams provides for an arbitration hearing to resolve injury and non-injury grievances. John Feerick (“Feerick”) is the NBA’s grievance arbitrator who decided both the fairness of the Warriors’ termination of Sprewell and the NBA’s suspension of him. Feerick is the Dean of Fordham University Law School in New York, where he teaches Labor Law. He is a sixty-one year old scholar who his former law partners have nicknamed, “John the Just.” He has also been nicknamed “St. John” and “John the Good.” Before becoming Dean of Fordham University Law School, Feerick worked for twenty-one years at Skadden, Arps, Slate, Meagher & Flom, the same firm assisting the NBA in its de-

19. Taylor, supra note 6, at 62 (noting Stern’s intent to enforce team’s termination).
20. NBA Suspends Sprewell One Year, CHI. TRIB., Dec. 4, 1997, § 1, at 1 (commenting that Sprewell’s suspension was longest in NBA history).
21. See Taylor, supra note 6, at 62 (noting that Converse endorsement contract was valued at $300,000 to $600,000 annually).
22. See id.
23. See id. (noting that clause requires players to “conform to standards of good citizenship”).
25. See NBA-CBA, supra note 2, art. XXXI, § 1(a) (stating that “Grievance Arbitrator” would resolve provisions of agreement).
28. Mitch Lawrence, NBA’s in his Court to John Feerick, Fairness is no Choking Matter, N.Y. DAILY NEWS, Jan. 25, 1998, at 87 (emphasizing that “Feerick is highly regarded for his fairness”).
He was also nominated for the Pulitzer Prize for his 1976 book, *The Twenty-Fifth Amendment.*

Feerick has taught mediation techniques to community leaders from Northern Ireland and the Republic of Ireland. From 1993 to 1995, Feerick was the arbitrator in the dispute resolution over the National Football League ("NFL") salary cap. He has also served in high profile cases, including the 1994 New York City transit negotiations. Feerick has decided only one other major decision in the NBA since he became the league’s grievance arbitrator last year.

Lead counsel for the NBA in the Sprewell arbitration proceedings was Howard Ganz, of Proskauer Rose. Other attorneys for the NBA included Jeffrey Mishkin, the NBA’s Executive Vice President and chief legal officer, Rick Buchanan, deputy general counsel, and Frank Rothman, outside counsel. Jeffrey Kessler of Weil Gotshal represented Sprewell and the NBPA. In this melee of attorneys, Ganz and Kessler were quite familiar with each other, as both have represented opposing sides in past NBA negotiations. The two lawyers, who consider themselves worthy adversaries, have been basketball’s premiere attorneys for the past ten years.

The NBA took the position that Sprewell’s ban should be upheld, while the NBPA and Sprewell asserted that he should be reinstated with his contractual rights. If Sprewell’s suspension were upheld, it would have been the longest non-drug suspension in

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29. See Wise, *supra* note 27, at C8 (noting that Feerick’s career has been dedicated to non-profit justice).
30. See *The AALS Directory of Law Teachers,* *supra* note 26, at 434.
31. See Wise, *supra* note 27, at C8 (emphasizing Feerick’s experience in mediation).
32. See *id.*
33. See *id.*
34. See *id.* (explaining Feerick’s other significant decision, which ordered Los Angeles Clippers to return $107,000 of $167,000 fine levied against Stanley Roberts for failing to participate in summer workouts and physical therapy sessions and for cursing at Coach Bill Fitch).
38. See *id.* (commenting that both attorneys have “premier” status in league).
39. See *id.* (noting “cordial professional relationship” between attorneys who are both “aggressive when it comes to lawyering”).
40. See David DuPree, *Arbitrator Heats Sprewell’s Defense,* *USA Today,* Jan. 30, 1998, at 4C (stating that players union and Sprewell think “penalty was too severe and Sprewell did not get due process”).
NBA history. 41 At the termination of the grievance hearing, both sides had ten days to file briefs and Feerick's decision was due thirty days after the filing of the briefs. 42

Before the grievance hearing commenced, general sentiments were that the likely outcome would be the reinstatement of Sprewell into the NBA at the beginning of the next season. Sprewell asserted, inter alia, that no justification or precedent existed for his suspension. 43 Moreover, NBA players sympathized with Sprewell's plight. In fact, Scottie Pippen, of the Chicago Bulls, stated that,

You're talking about a lot of money [and] a player's career [which] I'm sure he's been banking on and looking forward to. And then you snatch it all away. I think it was unfair punishment, and I think somebody will have to answer questions about why the punishment was so stiff. 44

Chicago Bulls coach Phil Jackson noted that the Warriors had every right to fire Sprewell but believed that the penalty imposed by the NBA might have been too severe. 45 Jackson stated, "I think there's some reason to say that might be a little bit long . . . . To take away his opportunity to earn money for that amount of time, I think there's [sic] some ways to bend around that so that everyone can be happy." 46 Former NBA star Michael Jordan commented that Sprewell "deserved to be punished, but canceling his contract was too much." 47 Jordan suggested the league impose counseling, simi-
lar to the counseling required of Dennis Rodman upon his suspension for kicking a courtside cameraman.48

The arbitration hearing began on Tuesday, January 27, 1998, in Portland, Oregon.49 The opening session lasted ten hours and included testimony from Warrior Assistant Coach Bob Staak, Warrior Director of Athletic Development Mark Grabow, and Warrior player Muggsy Bogues.50 On Wednesday, January 28, 1998, NBA players Joe Smith, Felton Spencer, Bimbo Coles and assistant coaches Paul Westhead and Rod Higgins gave over eleven hours of testimony.51 Sprewell took the stand on Thursday, January 29, 1998, beginning at 9:00 a.m., intending to convince Feerick to reduce the sentence imposed on him by the NBA.52

Although Sprewell testified for more than six hours, the substance of Sprewell’s testimony, as well as that of other witnesses, is unknown due to the gag order imposed on the parties by Feerick.53 On Friday, January 30, 1998, Arn Tellem, Sprewell’s agent, testified.54 Friday marked the last day of hearings held in Portland, as the meeting place shifted to New York City on February 2, 1998.55

In New York, Garry St. Jean (“St. Jean”) was the first to take the stand, followed by Warriors’ Deputy Counsel Robin Baggett.56 Although the substance of all testimonies is unknown due to the gag order, St. Jean’s testimony most likely discussed the events occurring on the day of the incident, as well as the events occurring on subsequent days, including St. Jean’s attempts to trade Sprewell and his announcement of Sprewell’s termination.57

The next day, the Associate General Counsel for the Major League Baseball Players Association, Eugene Orza (“Orza”), testi-

48. See id. (quoting Michael Jordan’s opinion on Sprewell’s punishment, “A suspension and psychiatric help might have made a big impact on him, but to penalize him for $25 million and a year’s suspension - that’s quite a bit.”).
49. See Thompson, supra note 41, at 2. Arbitration was held in Portland because the Warriors were playing the Portland Trail Blazers that night. See Armour, supra note 47, at 7.
50. See Thompson, supra note 41, at 2 (discussing order of testimony).
51. See DuPree, supra note 40, at 4C.
52. See id. (maintaining coaching style as contributor to attack).
53. See Thompson, supra note 41, at 2 (commenting on Feerick’s gag order barring those involved from disclosing information).
56. See id.
57. See id.
fied on Sprewell’s behalf. Orza most likely argued that the penalty imposed on Sprewell was unprecedented in basketball and in any sport. Using Eugene Orza was an obvious tactical decision by Sprewell and the NBPA, as Orza is baseball’s lead union lawyer in disciplinary matters and has been successful in reducing sentences imposed by league presidents. After Orza’s testimony, Ron Klempner, one of the players’ union lawyers, testified. Testimony ended on Thursday, February 5, 1998, with Commissioner Stern testifying for over four hours.

As a result of the highly publicized arbitration hearings, on March 4, 1998, arbitrator John Feerick reinstated Sprewell’s contract with the Warriors and also ruled that the NBA’s suspension of Sprewell would end on July 1, 1998. Feerick rendered his 106 page decision only sixteen days after closing arguments ended. His decision was based on testimony from twenty-one witnesses during the hearings that began on January 27, 1998 and ended on February 16, 1998.

A key issue during the arbitration was whether Sprewell acted with premeditation, as evident from his second alleged assault on coach Carlesimo. Feerick, however, ruled that Sprewell did not act with premeditation and deliberation, even though Sprewell returned twenty minutes after the first assault, after having showered and changed clothing. Feerick characterized the two assaults as one transaction.

58. See DuPree, supra note 41, at 4C.
59. See id. (noting that Gene Orza, who testified for two hours, handles disciplinary matters between baseball management and its players). Orza was most likely summoned by Sprewell to show a lack of precedence for the one year suspension.
60. See id.
61. See id. (noting expectation of testimony to include recounting of efforts made to arrange meeting between Sprewell and Commissioner David Stern before NBA’s suspension was announced).
62. See Mark Shapiro, Nuggets Pull Plug on Bristow, Sprewell Hearing Wraps Up, CHI. TRIB., Feb. 6, 1998, § 3, at 2 (commenting that testimony in arbitration hearing ended after eight days and twenty-one witnesses).
64. See id. (noting that Feerick had thirty days to make decision).
65. See id.
66. See Berkow, supra note 1, at Cl (stating that arbitrator used odd logic in deciding Sprewell’s assault was not premeditated).
67. See Wise, supra note 63, at Cl (quoting Feerick’s ruling, “The record establishes that the anger, if not rage, that erupted in the first incident fed on itself during the period he spent alone in the locker room between incidents, continu-
Regarding the issue of fairness, Feerick stated, "The evidence indicates that there is no history of both the league and a team imposing discipline for the same violent conduct, on or off the court. . . . This speaks to the issue of fairness, as I see it." He also indicated that a greater penalty, given the circumstances, would be "unreasonable and disproportionate." Feerick opined that a suspension of practically the whole season (sixty-eight games out of eighty-two), is appropriate "given the fact that physical altercations with a head coach strike at the very core of a structure that provides stability for a team and an organized sport."

The decision ultimately resulted in a sixty-eight game suspension and a loss of $6.4 million for Latrell Sprewell. Commissioner Stern, although not surprised with the decision, was not very pleased by it. He stated, "You cannot choke your boss and hold your job unless you play in the NBA." He further added that "[t]he arbitrator was a very charitable man, and he made a very charitable decision." Others alarmed by the result included the Warriors' General Manager, Garry St. Jean, who stated that, "I was kind of speechless . . . I sat there and just looked out the window."

III. THE ARBITRATION PROCESS

Once a player is disciplined by the NBA or a team, the CBA provides for a review of the decisions in the form of a grievance. Before a grievance may be initiated, the player or party filing the grievance must first discuss the matter with all the parties against whom the grievance is initiated, in attempts to arrive at a settlement. A grievance may be initiated by a player, a team, the NBA,
or the Players Association with the player’s approval. The grievance must be initiated,

[W]ithin twenty (20) days from the date of the occurrence upon which the grievance is based, or within twenty (20) days from the date upon which the facts of the matter became known or reasonably should have become known to the party initiating the grievance, whichever is later.

The grievance arbitrator must render an award as soon as practicable but nevertheless, must render an award no later than thirty days following the conclusion of the hearing or submission of post-hearing briefs.

As a result of this procedure, the parties involved in the grievance hearing agree to be bound by the decision. In pertinent part, the grievance arbitrator shall have exclusive jurisdiction and authority to,

(i) interpret, apply, or determine compliance with the provisions of this Agreement; (ii) interpret, apply or determine compliance with the provisions of Player Contracts; (iii) determine the validity of Player Contracts pursuant to Section 1 of this Article.

The grievance arbitrator, John Feerick in this instance, is appointed by the NBA and the NBPA. The arbitrator serves for the duration of the CBA. In this case, the CBA is effective through June 30, 2001. Moreover, New York state law binds the grievance arbitrator.

78. See id. § 2(a).
79. Id. § 2(a).
80. See id. § 5(a).
81. See NBA-CBA, supra note 2, art. XXXI, § 5(a).
82. Id. § 5(b).
83. See id. § 6.
84. See id.
85. See NBA-CBA, supra note 2, art. XXXVIII, § 1. David DuPree, Owners Vote to Reopen Labor Talks with Players, USA TODAY, Mar. 24, 1998, at 7C (noting that this vote was direct result of economic condition affecting NBA). Currently, the Collective Bargaining Agreement ("CBA") guarantees the players 48.04% of all basketball-related income. See id. The NBA had the option to reopen negotiation if the percentage increased above 51.8%. See id. The crisis facing the NBA concerns the forecast that the players will receive 57.2% of the income this season. See id. It is speculated that other topics for discussion will include the rookie salary cap, the drug policy (which does not include marijuana testing) and the free agent system. See id.
86. See NBA-CBA, supra note 2, art. XXXVII, § 2.
IV. Sprewell’s Termination From the Warriors Based on the Uniform Player Contract

The issue of race initially became a factor in the analysis of Sprewell’s termination. However, that issue quickly subsided. And behind all of the glamour and publicity surrounding the Sprewell incident, the Warriors’ authority to terminate Sprewell’s contract arose out of basic principles of contract law concerning the NBA’s Uniform Player Contract (“UPC”).

The UPC is the standard player/team contract in the NBA. It contains provisions regarding compensation, injury, and, specifically, conduct. The justification behind the Warriors’ termination of Sprewell resides in paragraph 20(b), and, specifically, 20(b)(1) of the UPC. This paragraph states that,

The Club may terminate this contract upon written notice to the Player (but only after complying with the waiver procedure provided for in subparagraph (f) of this paragraph (20)) if the Player shall do any of the following: (1) at any time, fail, refuse or neglect to conform his personal conduct to standards of good citizenship, good moral character and good sportsmanship, to keep himself in first class physical condition or to obey the Club’s training rules . . . .

This is the sole provision applicable to termination in the context of conduct violations. Although absent from Sprewell’s contract, some players’ contracts contained clauses preventing them from loss of pay in case they acted in violation of the Conduct Clause. There are other provisions within the UPC that affect player discipline. In particular, paragraph five of the UPC states that,

The Player agrees (a) to report at the time and place fixed by the Club in good physical condition; (b) to keep himself throughout each season in good physical condition; (c) to give his best services, as well as his loyalty to the

87. See Maria La Ganga, NBA Choking Incident Hits Public Nerve, L.A. TIMES, Dec. 6, 1997, at Al (quoting San Francisco Mayor Willie Brown who suggested that Carlesimo may have deserved choking). Id.

88. See Mark Shapiro, Pro Basketball: Race Issue Examined in Sprewell Case, CHI. TRIB., Dec. 8, 1997, § 3, at 2 (contrasting Billy Hunter’s statement that, in his opinion, race was not issue, with Sprewell’s agent’s opinion that race was issue).

89. 2 MARTIN J. GREENBERG, SPORTS LAW PRACTICE 229-30 (1st ed. 1993).

90. See Roberts, supra note 75, at C1 (quoting New Jersey Nets General Manager John Nash’s concern that conduct can no longer be guaranteed even if contract contains conduct clause).
Club; and to play basketball only for the Club and its assignees; (d) to be neatly and fully attired in public and always to conduct himself on and off the court according to the highest standards of honesty, morality, fair play and sportsmanship; and (e) not to do anything which is detrimental to the best interests of the Club or the Association.91

In essence, this paragraph mandates player compliance with the team's requirement concerning conduct and avoidance of anything detrimental and adverse to the interest of the team.92 If a player violates this paragraph, UPC paragraph four authorizes a team to fine or suspend the player for violating the rules established by the Uniform Player Contract.93 It reads, in pertinent part,

For any violation of such rules or for any conduct impairing the faithful and thorough discharge of the duties incumbent upon the Player, the Club may impose reasonable fines upon the Player . . . . The Club may also suspend the Player for violation of any rules so established.94

Paragraph four enumerates the punishment in the form of fines and suspensions, not termination. While Sprewell's actions could have been disciplined under this provision, the ability of the Warriors to terminate Sprewell originates in paragraph 20(b). Therefore, Sprewell must have been terminated under this provision.95 Once the applicable conduct provisions were determined, Feerick had to determine the appropriate standard of review applicable to the termination of Sprewell by the Warriors.96

The Collective Bargaining Agreement contains two provisions that cite to different standards of review.97 First, Article XXXI, section 14(c) states,

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91. DONALD FARBER, ENTERTAINMENT INDUSTRY CONTRACTS: NEGOTIATING & DRAFTING GUIDE 210-10 (1997).
93. See id. at 246 (explaining that paragraph four allows teams to create reasonable rules for player conduct).
94. See FARBER, supra note 91, at 210-9 to 210-10.
95. Obvious support for this conclusion resides in Feerick's acknowledgment that the right to terminate is identified in the UPC and uses the term "citizenship." See Feerick, supra note 5, at 12.
96. See id. at 9 (deciding to apply just cause standard).
97. See NBA-CBA, supra note 2, art. XXXI, § 14(c), § 5(c).
The parties recognize that a player may be subjected to disciplinary action for just cause by his Team or by the Commissioner (or his designee). Therefore, in Grievances regarding discipline, the issue to be resolved shall be whether there has been just cause for the penalty imposed.98

While the foregoing article notes a “just cause” standard of review, Article XXXI, section 5(c) provides,

In any Grievance that involves an action taken by the Commissioner (or his designee) concerning (i) the preservation of the integrity of, or the maintenance of public confidence in, the game of basketball, and (ii) a fine and/or suspension that results in a financial impact to the player of more than $25,000, the Grievance Arbitrator shall apply an “arbitrary and capricious” standard of review.99

Feerick decided to apply a “just cause” standard, “[s]ince the disciplinary nature of this action is plain.”100 Pertaining to this standard, Feerick cited to another arbitrator when concluding that his analysis would involve the determination of whether the Warrior’s actions were “just and equitable and such as would appeal to reasonable and fair-minded persons as warranting discharge.”101 Further, Feerick noted the CBA included references to the “clear and convincing” and “clear preponderance” standards.102

In an arbitration between the NBA and the NBPA,103 arbitrator Peter Seitz had to decide whether a $500 fine for the public statement, “The coach continues not to play me for no reason” was justified.104 After Willoughby’s statement, coach Hubie Brown informed his players that any player would be fined similarly for

98. Id. § 14(c).
99. Id. § 5(c).
100. Feerick, supra note 5, at 9 (finding just cause to be appropriate standard).
102. See id. (noting that CBA does not refer to preferred standard Grievance Arbitrator should employ, but clear and convincing standard is mentioned elsewhere in CBA).
103. See 1 Greenberg, supra note 92, at 246-47 (noting that arbitration was between Atlanta Hawks and Bill Willoughby and explaining that arbitrator held that clubs were limited in their enforcement of paragraph four of UPC).
104. See id. at 246 (noting that Willoughby’s comment was quoted in March 1977 issue of “TV Guide” Magazine).
speaking publicly against the coach or the team.\textsuperscript{105} Seitz looked at several factors when determining that coach Brown's actions were not justified. First, Seitz looked at whether the fine had a rational relation to the punishment.\textsuperscript{106} Second, he looked to the nature of the statement, and the player's background.\textsuperscript{107} Third, Seitz looked to other mitigating factors that tended to unravel the motivation behind the statement.\textsuperscript{108}

Unlike Willoughby's situation, the punishment in the Sprewell case was reasonable. First, the nature of Sprewell's actions involved violence in its purest form. In particular, Sprewell's second assault succinctly illustrated that his attack on coach Carlesimo was premeditated and deliberate, contrary to Feerick's determination. Although a second assault in and of itself does not necessarily connote deliberation and premeditation, under the circumstances of this case, the likelihood of premeditation and deliberation was heightened considering the fact that Sprewell returned twenty minutes after the first assault and had even showered and changed clothing prior to assaulting coach Carlesimo a second time.

Moreover, Sprewell's background is saturated with this type of conduct. During one practice, Sprewell punched teammate Byron Houston three times.\textsuperscript{109} Sprewell also had an altercation with teammate Jerome Kersey, in which Sprewell left practice and reportedly returned with a two-by-four.\textsuperscript{110} Outside of basketball, Sprewell was arrested for having an outstanding warrant for driving with a suspended license and reportedly told the arresting officer that, "You can be shot real easy, and people get shot out here."\textsuperscript{111} Therefore, the second factor in the Seitz analysis, which examines the player's background, would not benefit Sprewell due to the numerous incidents of aggression and violence in Sprewell's background.

\footnotesize{
\begin{itemize}
  \item \textsuperscript{105} See id. at 246-47 (noting basis for Willoughby's fine).
  \item \textsuperscript{106} See id. at 247 (emphasis added).
  \item \textsuperscript{107} See id. (emphasis added).
  \item \textsuperscript{108} See 1 Greenberg, supra note 92, at 247 (emphasis added) (stating that Seitz concluded rule was unreasonable because it did not consider mitigating circumstances).
  \item \textsuperscript{109} See Taylor, supra note 6, at 62 (quoting former Warriors head coach Don Nelson saying that Sprewell "snapped" when he attacked Houston).
  \item \textsuperscript{110} See id. (noting that this behavior was very similar to Carlesimo attack).
  \item \textsuperscript{111} See id. (reporting that traffic charges were dropped and no charges were filed for threatening police officer because comments "lacked credibility and immediacy as a righteous threat").
\end{itemize}
}
Regarding mitigating factors, Sprewell attempted to justify his actions by suggesting that he had been provoked.\textsuperscript{112} He admitted that he was not getting along with Carlesimo and stated, "I just couldn’t take the verbal abuse that he’s been, I guess, just giving all of the guys over the past month or so."\textsuperscript{113} Although Carlesimo’s method of coaching may not be generally accepted by other NBA coaches, reasonable minds would not justify a physical assault in response to verbal abuse. Moreover, Sprewell admitted to making the two attacks and even a death threat against Carlesimo.\textsuperscript{114} Therefore, the last element considered by arbitrator Seitz in the Willoughby arbitration also would be of no benefit to Sprewell.

Under the analysis adopted by arbitrator Seitz, the punishment in this instance was reasonable. Taking into account the punishment in relation to the incident and Sprewell’s background, the Warriors were justified in terminating Sprewell’s contract. His situation, in essence, boiled down to an individual who was unable to tolerate harsh verbal criticism. This inability does not justify a violent assault. Although a certain degree of violent behavior has been tolerated in the NBA, violent behavior against coaches, for the most part, has not been tolerated. In the 1996-1997 season, Phoenix Suns guard Robert Horry threw a towel at Coach Danny Ainge after Ainge removed him from the game.\textsuperscript{115} As a result of his actions, Horry was suspended for two games and was traded to the Los Angeles Lakers three days later.\textsuperscript{116}

The termination of Utah Jazz player Bart Kofoed for punching a fellow teammate is strikingly similar to the Sprewell incident.\textsuperscript{117} Yet, this incident remained absent from Feerick’s decision. Kofoed was terminated from the Utah Jazz for punching another teammate. Explaining the incident that resulted in his termination from the Utah Jazz, Kofoed stated that at a New Year’s Eve party, he and teammate Bobby Hansen were,

\begin{itemize}
  \item \textsuperscript{112} See Mark Heisler, \textit{Warriors Terminate Sprewell: He’s the First to Have NBA Contract Voided for Insubordination}, \textit{L.A. Times}, Dec. 4, 1997, at C8 (quoting unnamed Warrior player who said Carlesimo provoked Sprewell).
  \item \textsuperscript{113} \textit{Id.} (making statement in interview with KPIX-TV).
  \item \textsuperscript{114} See \textit{Sports Stars Aren’t Immune}, \textit{L.A. Times}, Dec. 5, 1997, at B8 (commenting that athletes should be held accountable for their actions).
  \item \textsuperscript{115} See Teddy Greenstein, \textit{Finally, a League Draws a Line; NBA Star Banned From Play for a Year After Attack on Coach}, \textit{Chi. Trib.}, Dec. 5, 1997, \S\ 1, at 1.
  \item \textsuperscript{116} See \textit{id.} (noting general toleration of misconduct in professional sports).
  \item \textsuperscript{117} See \textit{NBA Notebook: Midwest}, \textit{Sporting News}, Jan. 16, 1989, at 31 [hereinafter Midwest] (reporting firing due to incident between Kofoed and teammate Bobby Hansen).
\end{itemize}
[W]restling around with each other, and he thought I was getting a little too physical with him. He basically kind of snapped, and pushed me, and that got us going into an argument. Then he kind of reached over and smacked me, so I hit him back. It was only a one-punch thing — it wasn’t like a melee or anything — but he ended up getting injured.118

The problem was that Kofoed’s “one-punch” resulted in surgery for Bobby Hansen.119 Further, Hansen was unable to play for six weeks.120 As a result of his actions, Kofoed was released from the Utah Jazz on January 4, 1989, pursuant to paragraph 20(b)(1) of the UPC.121 Utah Jazz General Manager, Dave Checketts, stated that,

There is a clause in his contract that requires him to act in good citizenship and good sportsmanship. For violation of that clause, we’re going to terminate his contract because he struck one of his teammates and caused significant damage and damaged the team.122

At the time, Kofoed was the twelfth man on the team and the Jazz acquiesced that his termination would not have occurred if the incident involved a star player like Karl Malone.123 Checketts did not view this discrepancy and unequal treatment as relevant, and stated, “I think that’s life . . . . If the president of a company gets a DUI (driving under the influence of alcohol), I think it’s probably handled differently than a guy in the mailroom.”124 Although the NBPA filed a grievance on behalf of Kofoed, the issue at arbitration concerned the Jazz’s refusal to pay the remainder of Kofoed’s

119. See Midwest, supra note 117, at 31 (reporting that Kofoed broke Hansen’s cheek bone).
120. See 1 GREENBERG, supra note 92, at 268 (quoting paragraph 20(b) of UPC).
121. See Midwest, supra note 117, at 31 (quoting Jazz General Manager Dave Checketts, who mentioned conduct clause in Kofoed’s contract).
122. Id. (stating that Checketts could not see how things could be patched up).
123. See Jan Hubbard, NBA Beat: Questionable Firings and All that Jazz, SPORTING NEWS, Jan. 30, 1989, at 32 (reporting that Checketts said Malone would have faced substantial fine).
124. Id.
$125,000 salary and did not involve the ability of the Utah Jazz to terminate Kofoed on the basis of a conduct violation.\textsuperscript{125} Although similar to the Kofoed incident in that it, too, involved a physical assault, Sprewell's incident is arguably more severe than the Kofoed incident because Sprewell attacked a superior, his coach. Moreover, the disparate treatment between star players and players of Kofoed's caliber, as stated by Checketts after the Kofoed incident, is non-existent in Sprewell's situation because the Sprewell incident involved the Warriors' star player – Sprewell himself.

Feerick's failure to discuss the Kofoed incident in his decision was a clear oversight because he incorrectly stated that, "There has never been a case of contract termination in the history of the NBA for a physical assault or a one-year suspension for such conduct . . . ."\textsuperscript{126} Feerick stands mistaken, as a case of contract termination does exist in NBA history: the case of Bart Kofoed. Under either a "Willoughby" analysis or a "Kofoed" analysis, the Warriors should have been able to terminate Sprewell. However, these incidents remained absent in Feerick's decision. Instead, Feerick conducted an independent analysis and dismantled the Warriors' actions by determining that the Sprewell incident did not involve an act of moral turpitude\textsuperscript{127} and that Sprewell's actions were not premeditated or deliberated. In this analysis, Feerick determined that the termination by the Warriors was without just cause.\textsuperscript{128}

In support of his decision, Feerick discussed several cases when determining that Sprewell's actions did not constitute moral turpitude, inferring that Sprewell's actions were born of "natural passion."\textsuperscript{129} In \textit{Toutounjian v. Ins},\textsuperscript{130} the petitioner was denied admittance into the United States because he was convicted in Canada for sexual assault.\textsuperscript{131} In particular, the petitioner grabbed a woman on the buttocks in a Montreal street while he was intoxicated.

\textsuperscript{125} See id. (criticizing Kofoed's firing and suggesting that Jazz pay remainder of his salary).
\textsuperscript{126} Feerick, supra note 5, at 12.
\textsuperscript{127} See id. at 12-13 (noting that moral turpitude is something more than simple assault).
\textsuperscript{128} See id. at 12 (noting that UPC is regulated by CBA and is subject to its terms).
\textsuperscript{129} See id. (citing Jordan v. DeGeorge, 341 U.S. 223 (1951)).
\textsuperscript{130} 959 F. Supp. 598 (W.D.N.Y. 1997).
\textsuperscript{131} See id. at 599 (noting that petitioner's visa was granted, but upon arrival in United States he was denied admittance).
The issue in *Toutounjian* was whether the petitioner’s actions involved an act of moral turpitude. When determining that the petitioner’s actions did not constitute an act of moral turpitude, the court stated, “To find moral turpitude, the element of a reckless state of mind must be coupled with an offense involving the infliction of serious bodily injury.” In *Goldman v. Kautz*, the petitioner was charged with simple assault and battery. As a result, he requested a trial by jury, arguing that he was charged with a crime that involved moral turpitude. In dismissing his petition, the Supreme Court of Arizona was not convinced that simple battery “involves any appreciable degree of moral turpitude in American society today.” Applying the latter cases, Feerick determined that Sprewell’s actions did not involve moral turpitude and that moral turpitude “is something more than simple assault and something more than the outcome of temper or natural passion.”

In this determination, Feerick cited to a leading California case, *People v. Anderson*. In *Anderson*, the defendant was tried and convicted for first degree murder of a ten year-old girl. As a result, he was sentenced to death, and an automatic appeal was granted. The Supreme Court of California returned a lesser verdict of second degree murder. In its analysis, the court noted that the defendant’s actions were not premeditated. Moreover, the court determined that, in order for the murder to be premeditated, there must have been “actual deliberation or forethought.”

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132. See id. (noting that petitioner faced convictions for sexual assault and willful commission of indecent act).

133. See id. at 600 (noting that Board of Immigration Appeals failed to discuss issue of moral turpitude).

134. Id. at 606.


136. See id. at 1139 (stating that petitioner was charged with “willfully and unlawfully using force and violence on the person of another”).

137. See id. at 1140 (finding that crime did not involve moral turpitude).

138. Id.


140. See id. (noting that Sprewell’s actions were “grievous in nature”).

141. See id. (citing *People v. Anderson*, 447 P.2d 942 (Cal. 1968)).

142. See *Anderson*, 447 P.2d at 943-44.

143. See id.

144. See id. at 946 (noting that respondent lacked evidence to support first degree murder verdict).

145. See id. at 947-54 (explaining court’s reasons for this finding).

146. Id. at 948 (quoting *People v. Thomas*, 25 156 P.2d 7, 18-19 (Cal. 1945)).
The court also determined that premeditated first degree murder "is proper only if the slayer killed 'as a result of careful thought and weighing of considerations; as a deliberate judgment or plan; carried on coolly and steadily . . . according to a preconceived design.'"\textsuperscript{147}

In this case, although Sprewell took a shower and even changed clothing in between the two incidents, Feerick opined that Sprewell did not "cool down" during that period.\textsuperscript{148} He stated that, 

\begin{quote}
[A]nger, if not rage, that erupted in the first incident fed on itself during the period he spent alone in the locker room between the incidents, continuing the fury of the first and connecting the two incidents and making them actually one.\textsuperscript{149}
\end{quote}

Therefore, Feerick concluded that the two assaults on Carlesimo were actually one whole assault arising out of anger and passion and not premeditation.\textsuperscript{150} Feerick also noted that, with the exception of "earlier acts of defiance by him with respect to his coach," Sprewell has had an "honorable" career in the NBA.\textsuperscript{151} He also acknowledged that Sprewell maintained his composure during the arbitration hearing. While Sprewell's statistics in the NBA have been impressive, his myriad acts of violent behavior surely cannot be honorable.\textsuperscript{152} Further, the fact that Sprewell maintained composure during the arbitration is irrelevant to an analysis of premeditation and moral turpitude.

Sprewell crossed the line with his assault on Carlesimo. His actions were unwarranted, premeditated and deliberate. He breached his contract with the Warriors by violating the Conduct

\begin{itemize}
\item \textsuperscript{147} Anderson, 447 P.2d at 948 (citation omitted).
\item \textsuperscript{148} Feerick, \textit{supra} note 5 (explaining that Sprewell's actions did not occur as result of premeditation and deliberation).
\item \textsuperscript{149} Id.
\item \textsuperscript{150} See id. (interpreting Sprewell's actions to determine if judgment rendered was fair).
\item \textsuperscript{151} Id. (enumerating reasons why sixty eight game suspension was sufficient).
\item \textsuperscript{152} See Taylor, \textit{supra} note 6, at 63-64 (listing various incidents where Sprewell behaved improperly). Sprewell had previous altercations with teammates. See id. In 1993 he was involved in a fistfight with two different teammates on different occasions. See id. Two years later Sprewell had another altercation with teammate Jerome Kersey, and after the scuffle, Sprewell returned with a two-by-four threatening Kersey. See id.
\item Sprewell has also been in trouble off the basketball court. See id. In 1995 Sprewell was stopped for speeding and was subsequently arrested because he was driving with a suspended license. See id. He was also taken into custody for making threatening comments to a police officer. See id.
\end{itemize}
Clause provision. The Warriors had every legal right to terminate his contract because there was just cause to terminate Sprewell, and the Warriors’ actions were fair and reasonable.

Feerick’s background in labor law and his affinity for arbitration may have improperly focused his analysis on assault and termination in a union environment.\textsuperscript{153} If this incident were viewed under the lens of a union environment, the outcome would most likely resemble that of Feerick’s decision. Professional sports, like unions, enjoy self-promulgated rules and regulations, and decisions regarding breach of contract may be subject to independent review by an arbitrator.\textsuperscript{154} In other words, unlike “employment at will” contracts, the industry of professional basketball, along with any industry that maintains strong union presence and representation, allows for an aggrieved party to contest easily and often obtain favorable decisions involving adverse disciplinary decisions.\textsuperscript{155} The following arbitration decisions illustrate the difficulty of terminating an employee because of a physical assault upon another in the context of union settings.

In \textit{Triumph Industries, Inc. v. Teamsters Local Union No. 714},\textsuperscript{156} the grievant had been suspended and later terminated for spitting in his supervisor’s face.\textsuperscript{157} He had been taken off his regular job assignment as a machine operator and was assigned to clean up water that had overflowed and spilled onto the plant floor.\textsuperscript{158} Another employee aggravated the problem by causing more water to accumulate on the floor and, as a result of the incident, mildly acidic water landed on the employee’s clothes.\textsuperscript{159} The supervisor thereafter instructed the employee to change clothes while the grievant was left alone to clean the area.\textsuperscript{160}

The grievant was distraught because the employee did not continue to assist him.\textsuperscript{161} After the grievant refused to clean, the super-

\textsuperscript{153} See Feerick, \textit{supra} note 5 (analyzing case using principles of labor law).
\textsuperscript{154} For a discussion of the arbitration procedure and establishing a grievance arbitrator, see \textit{supra} notes 26-75 and accompanying text.
\textsuperscript{155} See id.
\textsuperscript{156} 1996 WL 870705 (1996) (Wolff, Arb.).
\textsuperscript{157} See id.
\textsuperscript{158} See id. (noting that grievant was taken off his regular job in which he was operator of Pollution Machine and assigned to work as laborer). The supervisor then told the grievant to get a mop and squeeze the water up from the floor. See id.
\textsuperscript{159} See id.
\textsuperscript{160} See id.
\textsuperscript{161} See \textit{Triumph Indus., Inc.}, 1996 WL 870705 (stating that employee came back minutes later without changing his clothes and did not help grievant clean floor).
visor told him to “punch out and go home.”162 Shortly thereafter, the two were engaged in a face-to-face confrontation during which the supervisor unintentionally spat in the grievant’s face.163 After the grievant told him to stop, his supervisor was still speaking loudly, which caused more saliva to land on the grievant’s face.164 It was at this time that the grievant “filled his mouth with spit” and spat on his supervisor.165 The arbitrator noted that absent mitigating factors, spitting on a supervisor’s face is a ground for termination.166 Arbitrator Aaron Wolff determined that prior to the incident, the grievant started to work as requested but was called back by his supervisor.167 Wolff also recognized that the grievant had a good work record.168 Considering the above, the arbitrator concluded that just cause was lacking for termination.169

In *Hughes Aircraft Co. v. Electronic & Space Technicians Local 1553*,170 the grievant was called into his supervisor’s office and was given a verbal warning for wasting time on the job.171 He disagreed with the supervisor and became argumentative.172 At this time, the union representative spoke privately with the grievant and advised him to file a grievance if he felt that the warning was unwarranted.173 The grievant chose not to take this advice and, instead, left the office, approached his supervisor and threw a punch at him, making contact with the supervisor’s left forearm, which was raised to prevent injury.174 The grievant was suspended immediately and subsequently discharged from employment.175 Arbitrator Donald Prayzich listed several mitigating factors that helped him conclude that the termination was without just cause.176

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162. *See id.*
163. *See id.*
164. *See id.*
165. *Id.*
166. *See Triumph Indus., Inc., 1996 WL 870705* (noting presence of mitigating factors in this case does not support discharge of employee).
167. *See id.* (enumerating mitigating factors in this case).
168. *See id.*
169. *See id.* (noting several mitigating factors that favored grievant).
171. *See id.*
172. *See id.*
173. *See id.*
174. *See id.*
176. *Id.* The arbitrator noted that the grievant had over seventeen years of employment with the company that was almost entirely “discipline free.” *Id.* He also noted that grievant attempted to stop his punch and admitted to his wrongdoing. *Id.*
In *City of Muskegon Heights Police Department v. Teamsters Local 214*, arbitrator Joseph Girolamo stated that, in order to discharge an employee, the employee’s misconduct must have a nexus to his job activities. Girolamo concluded that the grievant’s actions were not “associated with his status as a police officer – his actions were entirely personal,” and therefore discharge was inappropriate. Although there is arbitral support to justify discharge on a first offense when assault is involved, there is an obvious difficulty to terminate in a situation involving a union employee. Perhaps Feerick viewed Sprewell’s situation under the lens of a union setting.

Outside the sports arena, if Sprewell were a regular employee in the business world who had just assaulted his superior, he would not only be subject to termination, but he could also be subject to criminal battery. The elements of battery are: (1) having a state of mind or intent to injure; (2) an act by the defendant; (3) physical touching or harming of another; and (4) causation whereby the defendant’s act caused the touching or harm. Because the latter elements of battery have been met, Sprewell could have been subject to criminal charges. Sprewell’s actions would not be tolerated in today’s working society and should not be tolerated in the sports arena. The problem facing the sports industry is the frequency of violent acts and the often infantile actions of professional athletes.

For instance, baseball’s Roberto Alomar was suspended for five games because he spat in an umpire’s face. Basketball’s Dennis Rodman was suspended for thirteen games because he kicked a courtside cameraman. There are also other NBA players who are not themselves involved in violent altercations, but who draw unfavorable media attention to the NBA due to their individual circum-

178. See id. at 675.  
179. See id. at 679 (clarifying events that constitute proper termination of employee).  
180. Id. at 679-80.  
181. See Westinghouse Elec. Corp. v. Joiners of Am., Carpenters Local 1615, 1992 WL 726240 (1992) (Borland, Arb.) (noting that such discharge was appropriate when act committed was grave violation of employment relationship or danger to co-worker, such as dishonesty, theft, lying, insubordination, assault or criminal acts).  
183. See Milton Kent, Action Against Sprewell Unfair; NBA Commissioner Did Popular Thing, Not What Was Right, BALT. SUN, Dec. 14, 1997, at 6F.  
184. See id.
stances. For example, Scottie Pippen of the Chicago Bulls and Shawn Kemp of the Cleveland Cavaliers publicly display their dissatisfaction with their multi-million dollar contracts, while Mookie Blaylock, of the Atlanta Hawks, has been in the limelight because of narcotics possession. 185

Perhaps with their exorbitant salaries and endorsements, NBA players feel a sense of superiority and that they are "god-like." Proper discipline and accountability for their actions may bring these players down from their pedestals. Until they are disciplined and forced to understand that the game of basketball encompasses much more than ninety-four feet of parquet floor, the game of basketball will continue to suffer negative stigmas and will abound with these acts of violence.

Feerick's decision raises the issue about the extent to which an NBA team can terminate a player's contract based on the Conduct Clause provision of the UPC. Buck Williams, former President of the Basketball Players Association stated that Feerick's decision "showed that if the league has any ideas of using that good citizen-ship termination clause collective bargaining agreement, they can forget it. It set a precedent in that teams cannot use that termination clause." 186

V. SPREWELL'S SUSPENSION FROM THE NBA

Commissioner Stern's power to suspend Sprewell, or any other NBA player, is predicated on the voluntary assent by basketball players to subject themselves to discipline by the Commissioner in accordance with Rule 35 of the NBA Constitution and By-Laws. 187 In addition to authorizing dismissal and lifetime bans for fixing basketball games, Rule 35 allows the Commissioner to suspend or fine a player for conduct that is detrimental to the NBA. 188

Commissioner Stern suspended Sprewell from playing in the NBA until December 4, 1998. Although Sprewell is the first player in the NBA to be suspended for insubordination, he is the sixth

185. See Sam Smith, NBA Finally Gets in Touch With Out-of-Bounds Players, Chi. TRIB., Dec. 5, 1997, § 3, at 1 (revealing improper acts and attitudes of key NBA players). The article also noted that Kevin Garnett of the Minnesota Timberwolves was dissatisfied and insulted by a $103 million contract offer and that Vernon Maxwell went into the stands to attack a basketball fan. See id.
186. Roberts, supra note 75, at C1.
187. See Jan Stiglitz, Player Discipline in Team Sports, 5 MARQ. SPORTS L.J. 167, 185 (1995) (discussing power of Commissioner and Board of Directors to discipline NBA players); see also 2 UBERSTINE, supra note 182, § 10.04(3)(c) (describing procedural posture for disciplinary action in NBA).
188. See 2 UBERSTINE, supra note 182, § 10.04(3)(c).
person to be suspended by the NBA in its fifty-two year history. The first suspension of a player by the NBA occurred in 1954, when Jack Molinas of the Fort Wayne Pistons was suspended for life for gambling.

Jack Molinas was a well-known basketball player who, upon his graduation from Columbia University, was drafted by the Fort Wayne Pistons. In 1954, Molinas admitted to placing several bets on basketball games involving his team, the Pistons. Mr. Podoloff, the president of the league at the time, suspended Molinas indefinitely pursuant to a clause in Molinas’ contract, which prohibited gambling. Podoloff even professed that “he [would] never allow plaintiff to re-enter the league.” In response to Molinas’ many requests for reinstatement, Podoloff refused and characterized Molinas as a “cancer on the league.” Alleging violation of antitrust laws, Molinas sued the NBA. The court, in ruling against Molinas, stated that,

A rule, and a corresponding contract clause, providing for the suspension of those who place wagers on games in which they are participating seems not only reasonable, but necessary for the survival of the league. Every league or association must have some reasonable governing rules, and these rules must necessarily include disciplinary provisions . . . in order to effectuate its important and legitimate policies against gambling, and to restore and maintain the confidence of the public vital to its existence, it was necessary to enforce its rules strictly, and to apply the most stringent sanctions.

The second NBA player suspended was Micheal Ray Richardson of the New Jersey Nets. He was suspended in 1986 by the NBA

189. Mark Heisler, Sprewell is Suspended by the NBA Pro Basketball: Player Receives One-Year League Ban After Warriors Terminate Contract for Insubordination, L.A. TIMES, Dec. 5, 1997, at C1. Also, these suspensions concern indefinite suspensions and not just ordinary disciplinary suspensions as in situations involving Vernon Maxwell and Dennis Rodman.
191. See id.
192. See id. (noting that Molinas placed bets that Pistons would win games).
193. See id. (indicating that clause and league rule prohibited gambling).
194. Id.
196. See id. (identifying plaintiff’s complaint that NBA entered into conspiracy with its member teams in restraint of trade).
197. Id.; see also Kent, supra note 188, at 6F.
for drug abuse and was reinstated approximately two years later. Mitchell Wiggins of the Houston Rockets was the third player suspended by the NBA, and he was suspended in 1987 for drug abuse. Wiggins was reinstated on July 27, 1989. Fellow teammate Lewis Lloyd was also suspended at the same time as Wiggins for substance abuse. Lloyd was reinstated on September 8, 1989. In 1991, Roy Tarpley was banned from the NBA for alcohol abuse, was reinstated in 1994, and then banned again in 1995. In the situation involving Jack Molinas, the court upheld the suspension because maintaining confidence in the game is vital to its existence. Also, Molinas, who was involved in gambling, was the only player who was not reinstated into the NBA, as gambling is taken very seriously in the NBA. Paragraph sixteen of the UPC provides that when gambling is concerned, decisions by the Commissioner are unreviewable. This section provides, in pertinent part,

The Commissioner shall have the power in his sole discretion to suspend the player indefinitely or to expel him as a player for any member of the Association and the Commissioner’s finding and decision shall be final, binding, conclusive, and unappealable.

Obviously, gambling has a stronger impact on the game of basketball than drug offenses, and courts will likely uphold a Commissioner’s decision to suspend a player indefinitely for gambling.

The foregoing suspensions do not concern the conduct germane to the Sprewell incident. This is one obstacle that Feerick faced in his review of the Commissioner’s suspension of Sprewell. Another obstacle concerned the appropriate standard of review. In his decision, Feerick recognized that the parties disagreed on whether a standard of “just cause” or “arbitrary and capricious” would apply to this incident. Feerick determined that the “arbitrary and capricious” standard should be read together with “just cause,” and he recognized that some arbitrators have treated the two accordingly. Feerick, who was armed with no guidelines and

199. See id.
200. See id.
201. See id.
203. See id.
204. See 2 Greenberg, supra note 89, at 228.
205. Id.
206. See Feerick, supra note 5.
207. See id.
little precedent regarding player suspension by the NBA Commissioner, was forced to surmise a decision as to whether the actions taken by the NBA were arbitrary and capricious.

"Arbitrary" is defined as that which "arises from unrestrained exercise of the will, caprice, or personal preference."208 "Capricious" is defined as that which is "lacking a standard or norm," or that which is "marked by variation or irregularity."209 In this case, the one-year suspension imposed by Stern was the largest and most drastic suspension the NBA had ever seen, and therefore, there is an obvious presumption that the punishment rendered by Stern arose out of the "unrestrained exercise of will," lacking any "standard or norm." In other words, there is support that Stern's actions were arbitrary and capricious.

Prior to this incident, the longest suspension for violence was the twenty-six game suspension of player Kermit Washington by the Los Angeles Lakers.210 Feerick started his analysis by determining that the investigation conducted by the NBA was in "good faith and was fair and adequate under the exigencies of the well-publicized situation with which it was then confronted."211 Feerick understood that certain inaccuracies may exist in the preparation of reports and in the conducting of interviews.212 After listening to all the tapes and reading all transcripts, Feerick nonetheless determined that the abbreviated version (which was given to Stern) of the incident and its aftermath afforded Sprewell due process.213

Next, due to the lack of precedence and the oversight of the Kofoed termination, Feerick attempted to analyze the NBA actions by looking to other sports for situations similar to this; however, he found no other incident like the one facing him.214 He referred back to the major disciplinary actions taken by the NBA and noted that those situations did not involve dual discipline by both the NBA and the team.215 With the lack of precedent, "John the Just" was left with the issue of fairness. He decided that justice and fairness required him to limit the suspension to the 1997-1998 season.

209. Id. at 333.
211. Feerick, supra note 5.
212. See id. (indicating inaccuracies did not prejudice grievant).
213. See id. (finding NBA complied overall with standard of industrial due process).
214. See id.
215. See id. (noting cases involved discipline by NBA only).
only. In this determination, he noted that Sprewell's suspension exceeded


With the lack of precedent and oversight of the Kofoed incident, it is virtually impossible to analyze this situation under anything else but a fairness approach. Also, unlike the analysis of the Warriors' actions regarding termination where Feerick, at the very least, applied several cases, Feerick did not use one case to support his "fairness" conclusions regarding the NBA's suspension of Sprewell.

Feerick's decision regarding suspension will inevitably serve as precedent for future incidents of this kind. The ability of the Commissioner to render punishment on a player for violent acts is no longer absolute.

As it pertains to the perception of the future powers of the Commissioner, the league has mixed reactions. John Nash, General Manager of the New Jersey Nets stated that, "If I were a player, I would not want to test the authority of the [C]ommissioner . . . . But I also think [the decision] will cause all of us to think long and hard about guarantees we might put into contracts relating to misconduct. You may not guarantee someone's conduct now." 217 Herb Williams, the center for the New York Knicks, stated that, "I think to take $7 million from a guy is a lot . . . I think it worked out pretty good." 218

All professional sports have adopted a system for maintaining order and controlling violence. 219 Regarding basketball, the Commissioner has the best knowledge and capability to determine which acts are considered excessive and should be punished accordingly. 220 By failing to abide by Stern's decision, Feerick has tested and ultimately weakened this ability and power given to the Commissioner.

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216. Feerick, supra note 5.
217. Roberts, supra note 75, at Cl.
218. Id.
219. See 2 Uberstine, supra note 182, § 16.04.
220. See id.
VI. Conclusion

Feerick's decision results in several obvious conclusions. The "just cause" standard of review is applicable in analyzing disciplinary actions taken by a team, while "arbitrary and capricious" is read jointly with "just cause" in an analysis of the NBA's actions. Next, the ability of a team to terminate a player on the basis of the Conduct Clause is now more limited than ever. Physical assault and battery in a union environment, without more, is not sufficient to terminate a player. Also, the Commissioner's powers are no longer viewed as absolute. The most obvious conclusion is that this decision will inevitably serve as precedent for future incidents that are similar to this one.

It is interesting to note that the only justifiable way a team or the NBA may terminate a player's contract is when the player has engaged in gambling. Perhaps this is due to the perception that gambling undermines the integrity of the game because the game no longer functions as a viable form of pure competitive sports entertainment and, instead, is tainted with the scent of money and the loss of public confidence. As a result, the game as a whole may lose revenue.

Unlike gambling, assault and battery do not hinder the integrity of the game in the same manner.221 Player temperament along with skill should be considered when organizing players. Further, the NBA should impose fines and suspensions with more frequency to send the signal that violence in the NBA will not be tolerated. The bottom line is that if such fines and suspensions were imposed with more frequency and severity, violence in basketball would be lessened because players would be forced to balance their actions against these harsh penalties. Until this situation is addressed and remedied, the game of professional basketball will continue to amass unnecessary incidents of violence.

221. The author is vexed by this inference because incidents similar to that of Latrell Sprewell inevitably focus the public's and players' perceptions on these violent acts and away from the game itself.