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ARTICLE

LIGHTS, CAMERA, . . . INJURY! THE NBA NEEDS TO BAN COURTSIDE CAMERAMEN

JOSHUA D. WINNEKER,* PHILIP SCHULTZE** & SAM C. EHRLICH***

When thinking about sports and photography what typically comes to mind is the iconic photo of Muhammed Ali standing over a knocked-out Sonny Liston in the first round of their heavyweight title re-match.¹ This photograph is widely considered the greatest sports photograph of all time.² For fans and sports memorabilia collectors, these types of photographs represent sports history frozen in time. The boxers, however, are elevated from the fans and cameramen and there is no risk of the boxers ever running into or being harmed by the cameramen. The same is true in hockey, baseball, tennis, soccer and countless other sports. But in basketball, that simply is not the case. The cameramen in a National Basketball Association (NBA) game are located courtside directly below the baskets and inches from all of the players.

In the NBA then, the risk of injury far outweighs the possibility of an iconic photograph—and the threat of injury is all too real. In the most recent 2015 NBA Finals, four-time NBA league MVP LeBron James of the Cleveland Cavaliers was injured when falling into a cameraman who was inches from the court at the time.³ James received a nasty cut to his head, the game was stopped for a while, and James had to receive stitches.⁴ Because of James' stature and his global celebrity, this issue has finally received the attention it deserved. Indeed, this is far from the first time an NBA player

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1. Jai Bednall, *The Story behind the Greatest Photograph in Sports History*, NEWS.COM.AU (May 25, 2015, 2:16 PM), <http://www.news.com.au/sport/sports-life/the-story-behind-the-greatest-photograph-in-sports-history/story-fno61i58-1227368315956>.

2. *Id.*

3. Lucy McCalmont, *LeBron James Injured with Cut on His Head After Colliding with Courtside Cameraman*, HUFFINGTON POST (June 12, 2015, 1:59 AM), http://www.huffingtonpost.com/2015/06/11/lebron-james-head-injury_n_7566504.html.

4. *See id.*

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was injured by a cameraman.⁵ Following James' injury though, many players both inside and outside of the sport spoke out publicly on the dangers of courtside cameramen.⁶

Despite these constant injuries, the NBA still allows courtside cameramen at all NBA games.⁷ The cameramen-related injuries affect the working conditions of the players and therefore should be considered a mandatory subject of bargaining to be included in either an amendment to the current Collective Bargaining Agreement (CBA) between the players and the NBA owners or be included in the next CBA if either side exercises its opt-out clause in 2017.⁸ This article argues that a new CBA provision is needed banning cameramen from their current courtside locations under the baskets and teams who violate this proposed policy and continue to put their players at risk of serious injury should be fined and docked salary cap space for repeated transgressions.

Accordingly, Part I of this article details the numerous injuries to NBA players caused by courtside cameramen. Part II explains that this issue is a mandatory subject of bargaining and should be included in either the current CBA as an amendment or in the next CBA negotiations. Part III argues that the NBA should have a duty to protect the players just as it has a duty to protect the fans who attend the games, and Part IV outlines the new proposed policy dealing with banning courtside cameramen.

I. NBA PLAYERS INJURED BY CAMERAMEN

LeBron James' injury in the 2015 NBA Finals was not an isolated incident.⁹ In fact, there is a long history of injured NBA players due to the close proximity of cameramen to the basketball court.¹⁰ James' injury breathed new life into an old complaint that has been voiced in the NBA for years.¹¹ Players continue to get injured by the courtside cameramen and they continue to call for

5. *See infra* Part I.

6. *See infra* notes 75–86.

7. *See* Brian Mahoney, *NBA unveils new rules to make baselines safer*, NBA.COM (Aug. 26, 2014, 4:50 PM), <http://www.nba.com/2014/news/08/26/nba-new-base-line-rules-082614/>.

8. *Silver: Premature to say union will opt out of CBA*, NBA (Apr. 24, 2014, 9:14 PM), <http://www.nba.com/2014/news/04/24/adam-silver-union-cba.ap/>.

9. *See infra* Part I.

10. *See infra* Part I, Sections A–B.

11. *See infra* Part I, Section C.

change, only to have no real effective change implemented by the Commissioner and the league.¹²

A. The 1990s and Dennis Rodman

There have been countless injuries to NBA players as a result of the courtside cameras, but some stand out more than others.¹³ Perhaps the most famous incident of recent memory (until the injury to James) involved an NBA player who was no stranger to controversy: Dennis Rodman.¹⁴ Rodman was known as one of the NBA's most tenacious rebounders and fiercest competitors, and on January 15, 1997, he was battling for a rebound under the basket during a game against the Minnesota Timberwolves.¹⁵ As the ball was tipped in the air and headed towards the baseline and out of bounds, Rodman veered into the out of bounds area underneath the basket in pursuit of the basketball, and tripped over a row of cameramen.¹⁶ Rodman twisted his ankle in the fall and actually kicked the cameraman in his frustration over the injury.¹⁷ After the incident, Rodman was unapologetic about his retaliatory kick when he stated:

In the first place, the camera people are too close along the baseline. All of a sudden, boom, I step on his camera. Any athlete will re-act the same. I stepped and twisted my ankle, and then I kicked the guy. I don't care who it was. *He doesn't need to be that close.*¹⁸

12. See *infra* notes Part I, Section C.

13. See *infra* notes, Part I, Section A.

14. See Jason Diamos, *League Takes Notice of Rodman's Kick*, N.Y. TIMES (Jan. 17, 1997), <http://www.nytimes.com/1997/01/17/sports/league-takes-notice-of-rodman-s-kick.html>; Gr3atness23, *Dennis Rodman kicks cameraman*, YOUTUBE (Apr. 23, 2009), <https://www.youtube.com/watch?v=L-NDZGtU7So>.

15. See *supra* note 14.

16. See Gr3atness23, *supra* note 14.

17. See *supra* note 14.

18. Diamos, *supra* note 14 (emphasis added). The cameraman injured in this incident was taken off the court in a stretcher and taken to the hospital, delaying the game for seven minutes. The cameraman brought a lawsuit against Dennis Rodman for kicking him in the groin, which resulted in a settlement where Rodman agreed to pay the cameraman \$200,000. See *Rodman to Pay Cameraman*, N.Y. TIMES (Jan. 21, 1997), <http://www.nytimes.com/1997/01/21/sports/rodman-to-pay-cameraman.html>.

B. Recent Cameramen-related injuries

Since Rodman's run-in, the sideline cameramen have consistently injured NBA players.¹⁹ On January 29, 2010, star point guard Chris Paul of the New Orleans Pelicans struck his already injured knee against a camera during a game against the Chicago Bulls while trying to save an errant inbounds pass.²⁰ As a result of the cameraman, Paul ended up missing close to two months of action²¹ due to a partially torn meniscus.²²

The Denver Nuggets had two players injured by cameramen within a month during the 2011–2012 season, when starting point guard Ty Lawson and center Timofey Mozgov both twisted their ankles as a result of stepping on cameramen.²³ On February 20, 2012, Ty Lawson went up for a fast break lay-up and came down onto a sideline cameraman.²⁴ With fast breaks and high tempo offenses being such an integral part of today's NBA, players are sure to enter the cameraman's domain more and more as the game progresses in this direction. But even something as old fashioned as an inbound pass can be made precarious by nearby cameramen.²⁵

On March 2, 2012, the Denver Nuggets' center at the time, Timofey Mozgov, stepped on a cameraman's foot while getting ready to inbound the basketball.²⁶ Mozgov left the game immediately and was unable to return.²⁷ The two injuries in such a short time left many Denver Nuggets fans wondering why cameramen were still so close to the court, especially with technological advances that would seem to make such close proximity unnecessary.²⁸ Shortly after the injury, a poll on the website, SB Nation

19. See *infra* Part I, Sections B-C.

20. See Paul Augustin, *Cameraman Injury: Chris Paul to Miss up to Two Months with Knee*, BLEACHER REPORT (Feb. 1, 2010), <http://bleacherreport.com/articles/337210-cameraman-injury-chris-paul-to-miss-up-two-months-with-knee>. See *Billups replaces Paul on West roster*, ESPN (Feb. 4, 2010), <http://sports.espn.go.com/nba/news/story?id=4883277>.

21. *Chris Paul Game-by-Game Stats, Season: 2009–2010*, ESPN, http://espn.go.com/nba/player/gamelog/_/id/2779/year/2010/chris-paul (last visited Aug. 25, 2015).

22. *Billups*, *supra* note 20.

23. Nate Timmons, *Photographers Should Take a Hike during NBA Games*, SB NATION (Mar. 3, 2012, 12:38 PM), <http://www.denverstiffs.com/2012/3/3/2842202/photographers-should-take-a-hike-during-nba-games>.

24. See *id.*

25. See *Lawson, Afflalo Lead Nuggets past Rockets*, NEWSOK (Mar. 2, 2012), <http://newsok.com/article/feed/355141>.

26. See *id.*

27. *Id.* See also Timmons, *supra* note 23.

28. See Timmons, *supra* note 23.

Denver Stiffs, showed that of the 352 people polled, 71% thought that the NBA should clear out the areas underneath the basket enough to make safe landing zones.²⁹

Jason Richardson, a long time NBA veteran, had some strong words for the placement of courtside cameraman after he too was injured on November 4, 2012, after stepping on a cameraman's foot and rolling his ankle.³⁰ Richardson stated: "They really don't belong down there—you see what happens.' . . . 'It creates all kinds of problems for players. There's got to be a better way.'" ³¹ Richardson hurt himself during a game against the New York Knicks, when he went up for a contested lay-up, took a few steps back underneath the basket to regain his balance, and was met by a protruding foot of a cameraman.³²

Gregg Popovich, head coach of the San Antonio Spurs, had a prophetic take on this issue after the Spurs' starting point guard, Tony Parker, suffered a minor injury after hitting his finger on a camera situated along the baseline during a preseason game before the 2013–2014 NBA regular season.³³ Popovich remarked:

"It's a danger waiting to happen." . . . "It's kind of like when you're in your neighborhood. You keep telling people you need a stop sign, and they don't change it until a kid gets killed and then they put up a stop sign." . . . "Somebody of stature is going to get seriously hurt by one of those guys, and then all hell will break loose."³⁴

Popovich might have still been riled up from the previous season, when Spurs' wingman, Steven Jackson, sustained an injury after colliding with a waitress who was taking an order for a courtside fan.³⁵

29. *See id.*

30. *See* NBAVid1, *Jason Richardson Left Ankle Injury [11.4.12]*, YOUTUBE (Nov. 4, 2012), <https://www.youtube.com/watch?v=0WbYEBbp4xw>. *See also* Ashley Burns, *NBA Camera Men Are a Danger to Us All*, UPROXX SPORTS (Nov. 5, 2012), <http://uproxx.com/sports/2012/11/jason-richardson-injured-camera-man/>.

31. Burns, *supra* note 30.

32. *See* NBAVid1, *supra* note 30.

33. Brett Pollakoff, *Spurs Coach Popovich Speaks Out Against Baseline Photographers*, NBC SPORTS (Oct. 20, 2013, 9:30 AM), <http://probasketballtalk.nbcsports.com/2013/10/20/spurs-coach-popovich-speaks-out-against-baseline-photographers/>.

34. *Id.*

35. *See id.*

It was not long after Popovich's comments that another injury to an NBA player came at the hands of a cameraman.³⁶ On December 2, 2013, Nikola Vucevic of the Orlando Magic stepped on the foot of a courtside cameraman and sprained his ankle while playing a game against the Philadelphia 76ers.³⁷ Vucevic left the game³⁸ and missed the next four contests.³⁹ Vucevic attributed the injury to bad luck, but also added that the positioning of the cameraman makes for a high probability of injury.⁴⁰ Vucevic stated:

"I think, a little bit, (it's dangerous). They're kind of close to the basket behind the line. A lot of times when you go for a basket at full speed you are going to end up behind the basket. And when you try to go back, you step on somebody's foot or just fall and then there are injuries for both players and (cameramen) as well. I think, in a way, they could make it safer."⁴¹

Both coaches for the Magic and 76ers agreed that the close proximity of the cameraman to the players creates a potentially dangerous situation.⁴² Indeed, NBA coaches have made an effort to get the league to eradicate this harm for years.⁴³

"These guys are strong, athletic and they play with force. And they're trying to finish plays and a lot of times their focus is on the rim and where the ball is going and not where you are landing," said former Magic coach Jacque Vaughn. "It's a tough environment in each arena."⁴⁴

By the end of the 2013–2014 Season, even NBA commentators agreed with Popovich's earlier comments.⁴⁵ During Game 1 of the Eastern Conference Semifinals between the Indiana Pacers and the

36. See John Denton, *Denton: Vucevic Misses Game in Philadelphia with Ankle Sprain*, NBA.COM (Dec. 3, 2013), <http://www.nba.com/magic/news/denton-vucevic-misses-game-philadelphia-ankle-sprain>.

37. See *id.*

38. See *id.*

39. See generally Nikola Vucevic Game-by-Game Stats, Season: 2013–2014, ESPN, http://espn.go.com/nba/player/gamelog/_/id/6478/year/2014/nikola-vucevic (last visited Aug. 25, 2015).

40. Denton, *supra* note 36.

41. *Id.*

42. See *id.*

43. See *id.*

44. *Id.*

45. See Josh Gold-Smith, *Chris Webber Goes On a Rant Against Courtside Cameramen*, AWFUL ANNOUNCING (May 6, 2014, 8:30 AM), <http://awfulannouncing.com/2014/chris-webber-goes-on-a-rant-against-courtside-cameramen.html>.

Washington Wizards, two Wizards players, Trevor Ariza and Martin Gortat took a tumble into the courtside cameramen.⁴⁶ Neither injury was too serious, but it was enough to get the blood boiling for former NBA All Star and current TNT commentator, Chris Webber, who was doing the color commentary for the game.⁴⁷ While Gortat got ready to take his free throws, Webber did not hold back his feelings on the intruding cameramen.⁴⁸

The NBA needs to move these cameramen off of the baseline. We have a great partnership with the media. They don't mind if they have to move back 10 feet. The NBA has enough money where we can build courts 20 feet longer, just to give them more room. But personally, from playing in it, and personally watching it, I'm tired of seeing players run into the baseline, stepping on people. Didn't we have enough of Dennis Rodman kicking a guy? Wasn't that 50 years ago it seems? Something really has to be done because if I'm a Wizards fan, and my guys are getting hurt, on the court, by non-players, there's something else that needs to happen. I really hope the NBA reviews it. I really do.⁴⁹

When asked if this type of injury happened often to Chris Webber as a player, he responded, "It happened too much. It happened too much. And if it didn't happen to me, it happened to teammates, it happened to friends, it happened to comrades, it just—it's just not necessary. It's just not necessary."⁵⁰

C. The NBA's Hollow Response and Continued Player Injuries

In response to the rash of injuries over the years, and after more than twenty years since Dennis Rodman's run-in with a sideline cameraman, the NBA, on August 26, 2014, finally implemented new regulations that called for an extra foot of space on both sides of the basket stanchion.⁵¹ While these regulations followed closely behind a gruesome injury to Indiana Pacers' star forward, Paul George, after he broke his leg when he landed on the basket stanchion during a summer game on August 1, 2014, the NBA claimed that these changes were being discussed even before George's in-

46. *See id.*

47. *See id.*

48. *See id.*

49. *Id.*

50. *Id.* (quoting recorded live-broadcast on TNT of NBA game).

51. Mahoney, *supra* note 7. *See supra* Part I, Sections A–B.

jury.⁵² The regulations reduced the amount of baseline cameramen to twenty, ten on each baseline.⁵³ This is a reduction from the 24 cameramen allowed on the baselines the season before and the 40 that were allowed during the 2010–2011 season.⁵⁴ Rod Thorn, league president of operations, said the following on the August 26, 2014, changes:

“We have been studying this issue consistently over the last four years and these are just the latest adjustments to make the baselines an even safer area for our players, our team attendants and the photographers[.]” . . . “Many of the incidents of contact between players and photographers are around the basket area, so we felt it made sense to increase the open area between the baskets and the first photographer to four feet.”

. . .

We will continue to examine this to ensure the safety of our players while at the same time allowing for the networks and media to properly capture images from our games.” . . . “We feel we have balanced those needs very well but will continue to review our processes throughout the season.”⁵⁵

It is clear that more examining needs to be done and that the NBA’s snail-like response was simply inadequate. Despite these new regulations, on November 15, 2014, Toronto Raptors’ forward James Johnson tried to save a loose ball while playing a game against the Utah Jazz, when he stepped on a camerawoman’s foot and twisted his ankle.⁵⁶ Johnson was seen after the game wielding crutches and sporting a walking boot.⁵⁷ Johnson was forced to miss the next three games because of the injury.⁵⁸ Johnson did not apportion any blame to the camerawoman, but did voice concern at

52. See Candace Buckner, *One Year Later: Paul George’s Injury*, INDYSTAR (July 31, 2015, 11:13 PM), <http://www.indystar.com/story/sports/nba/pacers/2015/07/31/one-year-later-paul-georges-injury/30976663/>; Mahoney, *supra* note 7.

53. Mahoney, *supra* note 7.

54. *Id.*

55. *Id.*

56. See Michael Grange, *Johnson’s Injury the Result of an Old NBA Problem*, SPORTSNET (Nov. 16, 2014, 12:14 AM), <http://www.sportsnet.ca/basketball/nba/johnsons-injury-the-result-of-an-old-nba-problem/>.

57. See *id.*

58. *James Johnson Game-by-Game Stats, Season: 2014–2015*, ESPN, http://espn.go.com/nba/player/gamelog/_/id/3999/year/2015/james-johnson (last visited Mar. 28, 2016).

the positioning of these cameramen in general.⁵⁹ “The [camerawoman] was doing her job. I’m doing my job, trying to make a hustle play,” he said.⁶⁰ “You wish there was a little more room there, just to prevent anyone else from getting hurt.”⁶¹ Johnson’s teammate DeMar DeRozan echoed his comrade’s sentiments.⁶² “It’s an issue because you hate to see people get hurt,” said DeRozan.⁶³ “Everything under the basket is kind of scary, hopefully with James [Johnson] it’s nothing serious.”⁶⁴

On November 22, 2014, Rodney Stuckey hurt his wrist by tripping over a cameraman, shortly after Johnson, during a contest against the Phoenix Suns.⁶⁵ Stuckey was lucky enough to get back onto the court for the next game⁶⁶, but Mike Conley was not so lucky after his bout with a courtside cameraman.⁶⁷ The Memphis Grizzlies’ point guard missed two games⁶⁸ after inadvertently stepping on a cameraman’s foot during a game against the Brooklyn Nets on January 14, 2015.⁶⁹

Undoubtedly though, the most famous injury to come at the hands of a cameraman during this past NBA season happened during Game 4 of the NBA Finals.⁷⁰ NBA superstar LeBron James’ lay-up attempt was blocked by Warriors’ center, Andrew Bogut, sending the 11-time All Star into the vanguard of spectators, where he cut his head on a camera lens.⁷¹ This was not even the first time LeBron had a run in with a cameraman during the 2015 NBA Playoffs.⁷² In Game 2 of the Eastern Conference Finals, LeBron

59. Grange, *supra* note 56.

60. *Id.* (quoting Johnson’s recorded post-game interview).

61. *Id.* (quoting Johnson’s recorded post-game interview).

62. *Id.* (quoting DeRozan’s recorded post-game interview).

63. *Id.* (quoting DeRozan’s recorded post-game interview).

64. *Id.* (quoting DeRozan’s recorded post-game interview).

65. See Candace Buckner, *Hibbert, Stuckey hurt in Pacers’ blowout loss to Suns*, INDYSTAR (Nov. 23, 2014, 2:08 PM), <http://www.indystar.com/story/sports/nba/pacers/2014/11/22/pacers-fall-home-phoenix/19428231/>.

66. *Rodney Stuckey Game-by-Game Stats, Season: 2014–2015*, ESPN, http://espn.go.com/nba/player/gamelog/_/id/3235/rodney-stuckey (last visited Aug. 25, 2015).

67. See *Grizzlies’ Mike Conley Sidelined by Ankle Injuries*, YAHOO! SPORTS (Jan. 16, 2015, 6:34 PM), <http://sports.yahoo.com/news/grizzlies-mike-conley-sidelined-ankle-injuries-233238916—nba.html>.

68. *Mike Conley Game-by-Game Stats, Season: 2014–2015*, ESPN, http://espn.go.com/nba/player/gamelog/_/id/3195/mike-conley (last visited Aug. 25, 2015).

69. See YAHOO! SPORTS, *supra* note 68.

70. See McCalmont, *supra* note 3.

71. See *id.*

72. See *id.*

jumped in the air to contest a three point shot and landed on a cameraman's foot.⁷³ Of that injury LeBron said:

"I went to contest DeMarre Carroll's 3-point attempt. The cameraman, I guess his foot was out further than it should be. I stepped on his foot, turned my ankle. But I'm happy that it didn't cost me the rest of the game. I was able to go out there and make a few plays."⁷⁴

D. Outraged Athletes Against Sideline Cameramen

James' run-in with the cameraman during the Finals created a lot of anger and concern among athletes both inside and outside of the league.⁷⁵ Spencer Hawes, center for the New Orleans Hornets, tweeted, "'Finally, now maybe they will do something about the camera people under the hoop.'"⁷⁶ Meyers Leonard, center for the Portland Trailblazers also took to twitter to voice his displeasure.⁷⁷ Meyers tweeted:

"Such a huge problem that people don't realize. Size and strength of NBA players is off the charts. Media cameras are too close to the court."

...

"No knock to them at all. It just needs to be changed somehow. Bad for players crashing into each other around the baseline/under the basket."⁷⁸

Jarrett Jack, point guard for the Brooklyn Nets demanded: "'Get those damn camera men out the way.'"⁷⁹ Finally Lou Williams, shooting guard for the Los Angeles Lakers tweeted, "'Players been complaining about that for years.'"⁸⁰

73. See Tim Bielik, *What LeBron James, JR Smith said after Cleveland Cavaliers' 97-98 Eastern Conference Finals Game 1 Win vs. Atlanta Hawks*, CLEVELAND.COM (May 21, 2015, 12:26 PM), http://www.cleveland.com/cavs/index.ssf/2015/05/what_lebron_james_jr_smith_sai.html.

74. *Id.*

75. See *infra* notes 76–88 and accompanying text.

76. Ananth Pandian, *NBA Players React to LeBron Cutting His Head on Courtside Camera*, CBS SPORTS (June 11, 2015, 10:30 PM), <http://www.cbssports.com/nba/eye-on-basketball/25212247/nba-players-react-to-lebron-cutting-his-head-on-courtside-camera>.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

Athletes outside of the NBA have also voiced their opinions to remove the cameramen from such a close proximity to the action.⁸¹ Most notably, Aaron Rodgers, quarterback for the Green Bay Packers tweeted after James' recent injury, "The camera guy couldn't move his camera? The on-field and on-court cameras are unnecessary [in my opinion]."⁸² Rodgers went on to say, "The under the basket camera has always been dangerous. The camera following players into the huddle is just unnecessary, [in my opinion]."⁸³ St. Louis Rams' defensive end Chris Long agreed, "Cameramen. Let's risk the health of the life blood of the industry to get a good shot without cameras that can zoom to Columbus anyway."⁸⁴ Golden Tate, wide receiver for the Detroit Lions joined in with his football comrades in supporting the movement to ban cameramen from the sidelines.⁸⁵ Tate even took it a step further saying that cameramen who get in the way of players should be fined.⁸⁶ Tate stated:

"When it comes to a safety hazard, they don't need to be on the field or the court and if they are, they ought to be, if something happens like that, they should be fined," Tate said. "Us athletes get fined for just about everything so they should have repercussions for when they are at fault for injuring a player, especially in that magnitude of a game."⁸⁷

Based on the constant string of injuries and continual complaints by NBA players and other athletes, this is a serious issue that creates a foreseeable risk of harm to the players.⁸⁸ Obviously the steps taken by the NBA last summer⁸⁹ have not been sufficient to protect the players.⁹⁰ Therefore, the players should demand negotiation of this issue so that the current CBA can be amended or it should be included in the next CBA negotiations.

81. Nina Mandell, *Aaron Rodgers Wants to Ban On-Court and On-Field Cameras after LeBron James' Fall*, USA TODAY (June 12, 2015, 8:54 AM), <http://ftw.usatoday.com/2015/06/aaron-rodgers-lebron-james>; Michael Rothstein, *Golden Tate: TV Cameramen Should Be Fined for Injury-causing Collisions*, ESPN (June 17, 2015), http://espn.go.com/nfl/story/_/id/13100329/golden-tate-says-tv-camera-men-fined-collisions-cause-injuries.

82. Mandell, *supra* note 81.

83. *Id.*

84. *Id.*

85. Rothstein, *supra* note 81.

86. *See id.*

87. *Id.*

88. *See supra* Part I.

89. *See Mahoney, supra* note 7.

90. *See supra* Part I.

II. MANDATORY SUBJECT OF BARGAINING

In the collective bargaining agreement process, there are many subjects that could possibly be included in the negotiations between management (the team owners) and the employees (the players). Not all issues, however, must be negotiated over.

There are three types of bargaining subjects: illegal, permissive, and mandatory.⁹¹ An illegal subject of bargaining would concern anything that violates a law and therefore may not be negotiated over as a term in a CBA.⁹² If a provision negotiated into a CBA were to be found illegal, it would be rendered unenforceable and could result in an unfair labor practice lawsuit.⁹³ An illegal issue would include, for example, if the NBA wanted to include gambling provisions in their new CBA when sports gambling is illegal in all but four states in our country.⁹⁴

A permissive subject of bargaining is a subject that if one side, either the players or the owners, wanted to bargain over, the other side can bargain if they chose to but they are not compelled to.⁹⁵ An example of a permissive subject of bargaining in professional sports would be to give a batter four strikes instead of three in baseball.⁹⁶

Mandatory subjects of bargaining are particular issues that the courts have deemed important enough to require the employer and employee to discuss, in order to “promote the peaceful settlement of . . . disputes by subjecting labor-management controversies to the mediatory influence of negotiation.”⁹⁷ According to the Su-

91. *Collective Bargaining: What subjects are to be considered during collective bargaining?*, SOC'Y FOR HUMAN RES. MGMT. (June 1, 2012) [hereinafter *Collective Bargaining*], <https://www.shrm.org/templatestools/hrqa/pages/collectivebargainingsubjects.aspx>. See *The Application of the Mandatory-Permissive Dictionary to the Duty to Bargain and Unilateral Action: A Review and Reevaluation*, 15 WM. & MARY L. REV. 918 (1974), available at <http://scholarship.law.wm.edu/wmlr/vol15/iss4/7>.

92. DAVID E. STRECKER, LABOR LAW: A BASIC GUIDE TO THE NATIONAL LABOR RELATIONS ACT 83 (2011)

93. *Id.*

94. The Professional and Amateur Sports Protection Act (PASPA) was enacted in 1992 and banned all state-sponsored gambling on professional and amateur sports except for those states that had a form of sports gambling prior to the passing of the law. Only Nevada, Montana, Oregon, and Delaware currently are allowed to have some form of sports gambling and, of those, only Nevada allows gambling on individual games. See Joshua D. Winneker, et al., *Sports Gambling and the Expanded Sovereignty Doctrine*, 13 VA. SPORTS & ENT. L.J. 38 (2013). The NBA does not have a team in Nevada, Montana or Delaware.

95. See *Collective Bargaining*, *supra* note 91.

96. ROGER I. ABRAMS, LEGAL BASES: BASEBALL AND THE LAW 192 (1998).

97. *Fibreboard Paper Products Corp. v. National Labor Relations Board*, 379 U.S. 203, 211 (1964).

preme Court, a mandatory subject of bargaining is a subject that deals with the employee's wages, hours or terms and conditions of employment.⁹⁸ These are broad terms, but in professional sports, issues like players' salary, the entry draft, and free agency all fall under this category.⁹⁹

For example, in *Mackey v. NFL*,¹⁰⁰ the 8th Circuit Court of Appeals found that draft-pick compensation for a club when their former player signed with another club constituted a mandatory subject of bargaining because it "operate[d] to restrict a player's ability to move from one team to another and deprese[d] player salaries."¹⁰¹ Similarly, in *Brown v. Pro Football, Inc.*,¹⁰² the Supreme Court found that the NFL's offer of a uniform \$1,000 weekly salary for developmental players, with draft pick fines for non-complying teams, also constituted a mandatory subject of bargaining.¹⁰³ Therefore, the NFL's attempt to unilaterally implement this policy during an impasse constituted an unfair labor practice.¹⁰⁴ In the NBA, courts have found that the salary cap and college draft provisions are mandatory subjects of bargaining as they are "intimately related to 'wages, hours, and other terms and conditions of employment.'"¹⁰⁵

Here, the issue of injuries to players on court caused by cameramen would clearly affect the players' terms and conditions of employment and could also affect their wages if they could no longer play anymore because of the injury. As a workplace safety concern that has negatively affected dozens of players, the proposed banning of courtside cameraman should absolutely be considered a mandatory subject of bargaining on the same level of batting helmets and football pads in other sports.¹⁰⁶ Courts have recognized

98. *NLRB v. Wooster Div. of Borg-Warner Corp.*, 356 U.S. 342, 350 (1958).

99. *See* *Clarett v. NFL*, 369 F.3d 124, 141 (2d Cir. 2004) (holding that NFL eligibility rules are mandatory subjects of bargaining); *Wood v. Nat'l Basketball Ass'n*, 809 F.2d 954, 961-62 (2d Cir. 1987) (holding that NBA entry draft and free agency are mandatory subjects of bargaining). *See generally* Cym H. Lowell, *Collective Bargaining and the Professional Team Sport Industry*, 38 *LAW AND CONTEMPORARY PROBLEMS* 3, 41 (1973).

100. 543 F.2d 606, (8th Cir. 1976).

101. *Mackey*, 543 F.2d at 615.

102. 518 U.S. 231 (1996).

103. *See Brown*, 518 US at 238-39.

104. *See id.*

105. *See Wood v. Nat'l Basketball Ass'n*, 809 F. 2d 954, 962 (2d Cir. 1987).

106. *See generally* Brief for Major League Baseball Players' Association, et al. as Amicus Curiae Supporting Petitioner, College Athlete Players Ass'n (CAPA), (2014) (No. 13-RC-121359), available at http://learn.uvm.edu/wordpress_3_4b/wp-content/uploads/Exhibit-14.pdf (supporting proposed union for college athletes that discusses different subjects of bargaining in sports, including, on page

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workplace health and safety as a mandatory subject of bargaining.¹⁰⁷ The only issue left to be decided is whether the placement of cameramen at NBA games is a workplace health and safety concern. With the amount of injuries that occur due to the courtside cameramen, it seems clear that their close proximity to the court effects player's workplace health and safety.¹⁰⁸

Should the owners disagree that the courtside cameramen issue was not a mandatory subject of bargaining then the issue would go to the National Labor Relations Board (Board) and the Board would make the ultimate determination whether the parties must bargain over the issue.¹⁰⁹ It seems that if the owners fought the labelling of this issue though, the players would likely prevail given the clear effect on their terms and conditions of employment.¹¹⁰

The NBA's prior willingness to look into this issue¹¹¹, however, demonstrates a likelihood that should the players seek negotiation on the cameramen issue, the owners would likely be agreeable to discussing it. The issue would then become whether the owners will agree to an outright ban on courtside cameramen.

III. THE NBA SHOULD PROTECT THE PLAYERS JUST AS IT PROTECTS THE FANS

It is well settled that the stadium owners in professional sports (typically the team owners) have a duty to protect the fans that enter their stadium.¹¹² This duty is to protect the fans from foreseeable injuries.¹¹³ Fans do, however, assume the risk that comes with issues that are inherent to the particular game.¹¹⁴ For example, when a fan enters a baseball stadium they assume the risk of a foul ball or bat flying into the stands.¹¹⁵ Because of this, most jurisdic-

12, health and safety provisions and committees that have been collectively bargaining with unions' respective leagues).

107. *NLRB v. Am. Nat'l Can Co.*, 924 F.2d 518, 524 (4th Cir. 1991) (citing *Holyoke Water Power Co.*, 778 F.2d 49, 51 (1st Cir. 1985), *cert. denied*, 477 U.S. 905, 91 L. Ed. 2d 565, 106 S. Ct. 3274 (1986)).

108. *See supra* Part I.

109. 29 U.S.C. § 153(d) (1935).

110. *See supra* Part I.

111. *See Mahoney, supra* note 7.

112. *See, e.g., Crane v. Kan. City Baseball & Exhibition Co.*, 153 S.W. 1076 (Mo. Ct. App. 1913); *Edling v. Kan. City Baseball & Exhibition Co.*, 168 S.W. 908 (Mo. Ct. App. 1914).

113. *See, e.g., Crane*, 153 S.W. at 1076; *Edling*, 168 S.W. at 908.

114. *See Joshua D. Winneker et al., Who let the Dogs Out: Should a Stadium Owner be Held Liable for Injuries Sustained from a Mascot's Errant Hot Dog Toss?*, 21 MOORAD SPORTS L.J. 369, 369-76 (2014).

115. *See id.*

tions follow the “baseball rule” or “limited duty rule” when evaluating injured fan lawsuits against the stadium owners.¹¹⁶ This rule shields the stadium owner from liability after certain safety precautions are put into place to protect the fans.¹¹⁷ This is not the case in basketball.¹¹⁸

In basketball, due to the limited possibility of dangerous projectiles leaving the seating area, courts have held that there is no limited duty rule for the stadium owners, leaving the stadium owner to simply protect the fans from all foreseeable injuries.¹¹⁹ In one of the few basketball limited duty cases that have been brought before the court, a fan at a Harlem Globetrotters game in Tucuman, New Mexico, was hit in the face with a basketball that a Globe Trotter “intentionally or negligently” threw into the stands as part of the act.¹²⁰ There, the New Mexico Supreme Court distinguished basketball from baseball games, where the danger of being struck by foul balls or home runs “would be known to fans of the game,” giving rise to a “custom to protect the areas of the greatest danger.”¹²¹ But in basketball, the court found that there is no “similar danger” and found that the baseball limited duty rule is inapplicable to basketball, making basketball arena operators liable for all foreseeable injuries to fans.¹²²

The stadium owners are charged with protecting the fans from all foreseeable injuries¹²³ and that same protection should be ex-

116. See *Turner v. Mandalay Sports Entm’t, LLC*, 180 P.3d 1172, 1175 (Nev. 2008). The limited duty rule requires the stadium owner to provide protected seating and protective netting around the danger zones of the stadium like behind home plate. Compare *Crane*, 153 S.W. 1076 (accepting baseball limited duty rule) with *Rountree v. Boise Baseball*, 96 P.3d 373 (2013) (rejecting baseball limited duty rule in favor of comparative negligence approach). In July 2015 a group of fans filed a lawsuit in an effort to compel MLB to extend this fan netting around the entirety of fan seating after a fan was hit in the head with a broken bat at Fenway Park, placing her in critical condition. Richard Sandomir, *Lawsuit Seeks Better Protection for Fans from Foul Balls and Broken Bats*, N.Y. TIMES (July 13, 2015), http://www.nytimes.com/2015/07/14/sports/baseball/lawsuit-seeks-better-protection-for-fans-from-foul-balls-and-broken-bats.html?_r=0.

117. See *Turner*, 180 P.3d at 1172.

118. See *McFatridge v. Harlem Globe Trotters*, 365 P.2d 918, 921-22 (N.M. 1961).

119. See *id.* See generally Christopher T. Yamaguchi, *The Price of Admission: Liability in Professional Baseball and Hockey for Spectator Injuries Sustained During the Course of the Game*, SETON HALL L. eREPOSITORY, 21 (2013). *Student Scholarship*. Paper 400, available at http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1400&context=student_scholarship (academic paper analyzing limited history of limited duty rule in basketball, as opposed to baseball and hockey).

120. *McFatridge*, 365 P.2d at 919.

121. See *id.* at 922.

122. See *id.*

123. See *id.*

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tended to the players, the lifeblood of the league. It is highly unlikely though that a player who is injured by a cameraman would ever sue his own team owner (his boss) or the opposing team's owner. Instead, the more measured solution is to have the team owners agree to a policy that removes the courtside cameramen, thus removing the threat of injury to the players. This way, both the fans and the players will be protected from known, foreseeable injuries.

IV. PROPOSED POLICY

With the rash of injuries and nothing of value being done to correct this problem, the players should propose the following policy to be included as an amendment in the current CBA or in the next CBA:

All cameramen¹²⁴ shall be removed from the courtside under the baskets at all NBA games during the pre-season, regular season, and play-offs. The cameramen shall be moved either to behind the press table or depending on the particular team, to a designated area elevated in other parts of the stadium. Each team is free to re-locate the cameramen to a place of their choosing given each stadium's uniqueness. If a team violates this provision, they will be fined \$50,000 for a first offense, \$100,000 for a second offense and for a third offense they will instead be deducted salary cap space. The amount of salary cap deduction will be determined by the Commissioner at his discretion and will increase with each subsequent offense. If a cameraman is found to have violated the provision on his/her own, then that cameraman will be banned from the NBA for a period of one year for the first offense and a permanent ban for any subsequent offense.

This proposed policy would give the players the necessary protection from courtside cameramen while providing a strong financial and basketball-related disincentive to ensure that all teams follow this rule. Including a provision allowing for a deduction of salary cap space for a third offense (and beyond) discourages clubs from simply allowing the media to "buy out" floor space by just offering to pay the fine, or from allowing rogue owners to just pay the

124. An argument can also be made for prohibiting courtside waiters as well, given that injuries have also been inflicted by these servers. *See supra* note 34. However, this risk is less prevalent and therefore less pressing at this time.

fine. Money is fungible, but as soon as the rule begins to hit the team on the court, teams will quickly fall into place.

It may be difficult, however, to convince teams and the league to give up their current cameraman location. The ability to have cameras courtside provides a level of access unattainable to the fans who do not have the means to purchase seating so close to the court, either because of prohibitive costs, location or because the best seats are simply sold out. The NBA and new media visionaries have explored new ways of activating this level of access; for example, the NBA, Samsung and virtual reality company Milk VR have been experimenting with using virtual reality technology to broadcast new virtual reality perspectives on a global scale.¹²⁵

But at the same time, camera lenses have also evolved with the times, begging the question as to why sports photographers need courtside access during games anyway. In football—a sport with a similar amount of action as basketball—photographers have been prohibited to stand within 15 feet of the sideline (six feet near the end-zone) since 1998, which would essentially place photographers into the seats at a basketball court.¹²⁶ Even so, no layperson would say that the level of sports photography has suffered due to the increased distance between the photographer and the action. Furthermore, the 4,700 square foot NBA court is twelve-times smaller than an NFL field (57,600 square feet—not including the end zones) providing a much larger radius of potential shots from even the worst vantage point.¹²⁷

Some photographers, including G.J. McCarthy of the *Dallas Morning News*, have stated that players running into cameramen is a “fairly rare occurrence” and is simply too rare to justify harsh measures to solve this problem.¹²⁸ According to McCarthy, in his decade of experience he has only had a “handful” of players run into him, with no injuries resulting, which pales in comparison to the

125. Jason Feifer, *Inside the NBA's Plan to Give Every Fan a (Virtual Reality) Courtside Seat*, FAST COMPANY (January 5, 2015), <http://www.fastcompany.com/3040435/inside-the-nbas-plan-to-give-every-fan-a-virtual-reality-courtside-seat>.

126. David Noack, *New NFL Sideline Rules Irk News Photographers*, EDITOR & PUBLISHER (July 4, 1998), available at <http://www.editorandpublisher.com/news/new-nfl-sideline-rules-irk-news-photographers-p-14/>.

127. *Compare Basketball Court Dimensions*, NBA.COM, <http://www.nba.com/magic/basketball-court-dimensions> (last visited Mar. 28, 2016), with *Digest of Rules: Field*, NFL.COM, <http://www.nfl.com/rulebook/field> (last visited Mar. 28, 2016).

128. See G.J. McCarthy, *Let's talk about cameras on the sidelines*, THE DALLAS MORNING NEWS (June 12, 2015), <http://photographyblog.dallasnews.com/2015/06/lets-talk-about-cameras-on-the-sidelines.html/>.

number of injuries in sports even without contact of any sort.¹²⁹ But just because a serious injury as a result of sideline cameramen does not happen in every game to every cameraman, does not mean that sports organizations should evade efforts to protect the players. Besides the fact that this argument is coming from a cameraman, if one torn ACL, concussion or even just a scratch from camera equipment can be avoided, measures should be taken to avoid them. The potential harm of these injuries simply does not outweigh the negligible benefit of having photographers on the court instead of farther back in the arena.

Finding new locales for displaced photographers may turn out to be an expensive and potentially controversial proposition. But, NBA owners must ask themselves whether the health and safety of their players (and star players) is worth the one-time expense of creating a new camera well for photographers somewhere out of the range of potential harm. Given the NBA's new multi-billion-dollar television deal, a lack of finances simply cannot be the reason why the clubs cannot implement this important provision for player safety.¹³⁰ Hopefully, owners will realize this before a concussion or severe knee injury costs a player his career due to the unsafe conditions caused by courtside cameramen.

V. CONCLUSION

In what is already a short shelf-life of a career for most NBA basketball players, why increase the risk of injury and allow the continuation of sideline cameramen? This is not a situation where the players are being unreasonable. These injuries are real and the world witnessed it first-hand during the Cavaliers loss to the Golden State Warriors in this past NBA Finals.¹³¹ The solution is actually quite simple but getting the owners to agree to an outright ban of cameramen during a CBA negotiation may be difficult. Franchise players are not immune from these types of injuries and the owners should weigh the risk both financially and socially of losing your best player or losing a cameraman? In the end, the owners should

129. *See id.*

130. The NBA recently extended their television contracts with Disney (ABC and ESPN) and Turner (TNT) through 2025 for the extravagant sum of \$24 billion—nearly \$2.6 billion per year. *See* Matt Moore, *Report: NBA Set to Announce New Television Deal Worth \$24 billion*, CBS SPORTS (Oct. 5, 2014), <http://www.cbssports.com/nba/eye-on-basketball/24739554/report-nba-set-to-announce-new-television-deal-worth-24-billion>. The per-year sum nearly triples the amount it had received from Disney (\$485 million) and Turner (\$445 million) in its prior deal. *See id.*

131. *See supra* note 70 and accompanying text.

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do what is best for the health and safety of their players (and ultimately their franchise as well) and adopt the proposed policy detailed herein as an amendment to the current CBA or in the next CBA.