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## Unsportsmanlike Conduct: Curbing the Trend of Domestic Violence in the National Football League and Major League Baseball

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# UNSPORTSMANLIKE CONDUCT: CURBING THE TREND OF DOMESTIC VIOLENCE IN THE NATIONAL FOOTBALL LEAGUE AND MAJOR LEAGUE BASEBALL

BRANT WEBB\*

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INTRODUCTION

“I just beat the hell out of my wife and kick the dog,”<sup>1</sup> once said Dallas Green, then manager of the New York Mets, about his method of coping with losing baseball games.<sup>2</sup> Domestic violence is a “significant problem” in American society.<sup>3</sup> While both males and females may be victims of domestic violence, national statistics indicate that over ninety percent are women.<sup>4</sup> According to the American Medical Association, nearly twenty-five percent of women in the United States will suffer physical abuse at the hands of their current or former husbands or boyfriends during their lifetimes.<sup>5</sup> Domestic violence is the single major cause of injury to women, and up to one-half of all female homicide victims are murdered by their partners.<sup>6</sup> Domestic violence injuries are more common than injuries resulting from auto accidents, muggings, and rapes combined.<sup>7</sup> Since most domestic violence incidents occur in the privacy of the home, only one in ten incidents are actually reported.<sup>8</sup>

Some have argued that athletes are more inclined to commit domestic violence than the rest of society.<sup>9</sup> In fact, between January 1989 and November 1994, police reported that fifty-six current and former

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1. Carrie A. Moser, *Penalties, Fouls, and Errors: Professional Athletes and Violence Against Women*, 11 *SPORTS LAW. J.* 69, 69 (2004) (quoting William Oscar Johnson, *A National Scourge*, *SPORTS ILLUSTRATED*, June 27, 1994, at 92).

2. *Id.*

3. Ellen E. Dabbs, *Intentional Fouls: Athletes and Violence Against Women*, 31 *COLUM. J.L. & SOC. PROBS.* 167, 167 (1998).

4. 17 S.C. JUR. *Criminal Domestic Violence* § 8 (2011) (citing AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, *THE ABUSED WOMAN* (1988)).

5. Dabbs, *supra* note 3, at 167.

6. 17 S.C. JUR. *Criminal Domestic Violence* § 8 (citing INTERNATIONAL PERSPECTIVES ON FAMILY VIOLENCE (R.J. Gelles & Claire Predrick Cornell eds., 1983)).

7. *Id.*

8. *Id.* (citing AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, *THE BATTERED WOMAN* (1989)).

9. Note, *Out of Bounds: Professional Sports Leagues and Domestic Violence*, 109 *HARV. L. REV.* 1048, 1050 (1996) [hereinafter *Out of Bounds*].

professional football players were accused of violent behavior toward women.<sup>10</sup> Both the National Football League (NFL) and Major League Baseball (MLB) have a set of rules that athletes must follow while on the field, but what about rules regarding off-the-field conduct? These professional sports leagues have disciplinary procedures addressing athletes' off-the-field conduct, including use of performance-enhancing drugs, but existing league policies and procedures do not thoroughly address the problem of domestic violence.<sup>11</sup> What penalties, if any, do these athletes face if they commit acts of domestic violence? This Article examines the existing disciplinary policies and procedures of the NFL and MLB, and their strengths and weaknesses when applied to situations involving all forms of domestic violence, including sexual assault. Part II provides an overview of current disciplinary authority in the NFL and MLB and explores the absence of adequate punishments for incidents of domestic violence. Part III analyzes why the NFL and MLB have been slow to address the problem of domestic violence, and Part IV illustrates why drafting and implementing a uniform policy to combat domestic violence makes sense.

#### I. CURRENT DISCIPLINARY AUTHORITY IN THE NFL AND MLB

Disciplinary authority in the NFL and MLB is vested in two primary sources: the leagues and the individual teams.<sup>12</sup> Commissioners of both the NFL and MLB “notoriously possess dominant powers in governing league matters.”<sup>13</sup> Constitutions, bylaws, and collective bargaining agreements grant authority to league commissioners to discipline players for acts deemed not in the “best interest” of the sport.<sup>14</sup> Discipline may be imposed

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10. *Id.*

11. See MAJOR LEAGUE BASEBALL, MAJOR LEAGUE CONSTITUTION 1 (2005), <http://bizofbaseball.com/docs/MLCconstitutionJune2005Update.pdf> [hereinafter MLB CONSTITUTION] (granting the MLB Commissioner authority to discipline athletes who act in a manner “not in the best interests of . . . [b]aseball”); NAT’L FOOTBALL LEAGUE, CONSTITUTION AND BYLAWS OF THE NATIONAL FOOTBALL LEAGUE 30-31 (2006), [http://static.nfl.com/static/content/public/static/html/careers/pdf/co\\_.pdf](http://static.nfl.com/static/content/public/static/html/careers/pdf/co_.pdf) [hereinafter NFL CONSTITUTION AND BYLAWS] (granting commissioner complete disciplinary authority over a player who exhibits conduct “detrimental to the welfare of the League or professional football”); NATIONAL FOOTBALL LEAGUE, PERSONAL CONDUCT POLICY 1 (2008), <http://images.nflplayers.com/mediaResources/images/oldImages/fck/NFL%20Personal%20Conduct%20Policy%202008.pdf> [hereinafter NFL PERSONAL CONDUCT POLICY] (stating that discipline may be imposed on a player in situations involving domestic violence and “other forms of partner abuse”).

12. Kimberly M. Trebon, Note, *There is No “I” in Team: The Commission of Group Sexual Assault by Collegiate and Professional Athletes*, 4 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 65, 91 (2007).

13. Janine Young Kim & Matthew J. Parlow, *Off-Court Misbehavior: Sports Leagues and Private Punishment*, 99 J. CRIM. L. & CRIMINOLOGY 573, 575 (2009) (quoting RAY YASSER ET AL., SPORTS LAW CASES AND MATERIALS 379 (2006)).

14. See *id.*; see also MLB CONSTITUTION, *supra* note 11, at 1 (granting the

in situations such as where a player carries a gun into the workplace, illegally possesses a gun outside of the workplace, or uses or possesses illegal or performance-enhancing drugs.<sup>15</sup>

Commissioner-initiated discipline follows the same basic structure in both the NFL and MLB.<sup>16</sup> The respective leagues, however, invoke their disciplinary powers in divergent ways.<sup>17</sup> In recent years, both MLB and NFL league commissioners have introduced and adopted more stringent policies in an effort to reduce off-the-field misconduct.<sup>18</sup> For example, NFL commissioner Roger Goodell introduced a strengthened personal conduct policy in 2007.<sup>19</sup> These new policy provisions allow the commissioner to invoke his authority in specific instances where a player violates the rules.<sup>20</sup> In contrast, MLB allows the commissioner to discipline players whenever the “best interests” of the game are at risk.<sup>21</sup>

Additionally, both leagues have the power to discipline players according to terms found in individual player contracts.<sup>22</sup> Each league has a standard player contract mandating that the player agree to numerous provisions, including disciplinary provisions related to both on and off-field conduct.<sup>23</sup> A typical provision in the agreement contains a promise to refrain from “conduct detrimental to the best interests of the sport.”<sup>24</sup> If this provision is violated, the league has the power to terminate the contract and release the player.<sup>25</sup> League teams may terminate a player contract for a number of reasons, including, but not limited to: (1) possessing a firearm in a league facility or venue, (2) failing to stay in “first-class” physical

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commissioner the authority to investigate any act suspected not to be in the best interests of Baseball).

15. See NFL PERSONAL CONDUCT POLICY, *supra* note 11, at 1. See generally MAJOR LEAGUE BASEBALL, JOINT DRUG PREVENTION AND TREATMENT PROGRAM (2006), <http://mlb.mlb.com/pa/padf.jda.pdf> [hereinafter MLB JOINT DRUG PREVENTION] (outlining Major League Baseball’s policies for dealing with drug use and disciplinary procedures for multiple offences).

16. See Sean Bukowski, *Flag on the Play: 25 to Life for the Offense of Murder*, 3 VAND. J. ENT. L. & PRAC. 106, 109 (2001) (“[T]he basic structure of commissioner-initiated discipline is the same in all of the other major sports leagues.”).

17. *Id.*

18. See Trebon, *supra* note 12, at 91 (noting that as off-the-field misconduct has increased, more stringent policies have been adopted).

19. *Goodell Strengthens NFL Personal Conduct Policy*, USA TODAY, Apr. 11, 2007, [http://www.usatoday.com/sports/football/nfl/2007-04-10-new-conduct-policy\\_N.htm](http://www.usatoday.com/sports/football/nfl/2007-04-10-new-conduct-policy_N.htm).

20. See Bukowski, *supra* note 16, at 109-10.

21. *Id.* at 110.

22. Trebon, *supra* note 12, at 92.

23. See *id.*

24. *Id.*

25. *Id.*

condition, or (3) engaging in personal conduct that adversely affects or reflects on the team.<sup>26</sup> NFL and MLB league disciplinary powers are also found in their respective collective bargaining agreements (CBAs).<sup>27</sup> Both leagues have provisions in their CBAs allowing their commissioners to discipline an athlete for violation of league rules.<sup>28</sup> These provisions help to guide league commissioners in their role as guardians of the “best interests of the sport.”<sup>29</sup>

#### *A. Disciplinary Authority in Major League Baseball*

The Major League Constitution, originally adopted as the Major League Agreement on January 12, 1921, sets out the functions of the Office of the Commissioner of Baseball.<sup>30</sup> A primary function of the Office of the Commissioner is to “investigate, either upon complaint or upon the Commissioner’s own initiative, any act, transaction or practice charged, alleged or suspected to be not in the ‘best interests of the national game of [b]aseball.’”<sup>31</sup> The commissioner is also granted authority to summon persons, order the production of documents, and, in case of refusal to appear or produce, “to impose such penalties as are hereinafter provided.”<sup>32</sup> These penalties, which may be imposed in the case of player conduct deemed by the commissioner not to be in the best interests of baseball, may include a reprimand, temporary or permanent ineligibility, a fine, or “such other actions” that the commissioner “may deem appropriate.”<sup>33</sup> Additionally, after investigation, the commissioner has the power to determine “what preventive, remedial, or punitive action is appropriate” and take such action either against Major League teams or individuals.<sup>34</sup>

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26. See MAJOR LEAGUE BASEBALL, 2007-2011 BASIC AGREEMENT BETWEEN THE MAJOR LEAGUE CLUBS AND THE MAJOR LEAGUE BASEBALL PLAYERS’ ASSOCIATION 217, sch. A, § 7(b) (2007), [http://mlb.mlb.com/pa/pdf/cba\\_english.pdf](http://mlb.mlb.com/pa/pdf/cba_english.pdf) [hereinafter MLB CBA] (granting the Club the power to terminate a player if he does not stay in “first-class” physical condition or obey training rules); see also NFL PERSONAL CONDUCT POLICY, *supra* note 11, at 1-2 (noting that possession of a firearm in the workplace is against the conduct policy as well as any conduct that undermines the integrity of the NFL).

27. See Trebon, *supra* note 12, at 92 (noting that a source of power for professional sports leagues is the collective bargaining agreements).

28. See Bukowski, *supra* note 16, at 109 (“All of the major sports leagues have provisions in their collective bargaining agreements that allow their commissioners to discipline an athlete if that athlete violates any league rules.”).

29. *Id.*

30. See MLB CONSTITUTION, *supra* note 11, at 1-2 (describing the functions of the commissioner in art. II § 2, as amended in June 2005).

31. *Id.* at 1.

32. *Id.*

33. *Id.* at 2.

34. *Id.* at 1.

Under MLB's current CBA, the player's Club, the Vice-President of MLB On-Field Operations, or the commissioner may take disciplinary action against a player for "just cause."<sup>35</sup> A player subject to disciplinary action must be given written notice of the penalties imposed, which may include a fine, suspension, or both, and a reason for the discipline is given to the player and the MLB Players' Association (MLBPA).<sup>36</sup> Where the Vice-President of MLB On-Field Operations or the commissioner imposes player discipline, the MLBPA must be immediately notified by mail of fines and given facsimile notice of both a suspension and an appeal for a hearing.<sup>37</sup> A player subject to discipline has "the right to discover, in timely fashion, all documents and evidence adduced during any investigation of the charges involved."<sup>38</sup> If an investigatory interview with a player is necessary, the player and the MLBPA must receive "reasonable advance notice" and the player may be represented by both the MLBPA and "counsel of his choice."<sup>39</sup>

Major League teams are given authority to terminate a player's contract under Section 7(b) of the Major League Uniform Player's Contract, located under the CBA Schedule A.<sup>40</sup> A team retains this authority upon written notice to the player, but only after requesting and obtaining waivers of his contract from all other teams.<sup>41</sup> Section 7(b)(1) gives the team a right to terminate the contract at any time if a player fails, refuses or neglects to "conform his personal conduct to the standards of good citizenship or good sportsmanship."<sup>42</sup> A player contract may also be terminated if he breaches the contract "in any other manner."<sup>43</sup>

### *1. Joint Drug Agreement and Subsequent Changes*

In 1998, St. Louis Cardinals' first baseman Mark McGwire admitted to using androstenedione, a precursor to steroids.<sup>44</sup> Three years later, MLB implemented its first random drug-testing program in the minor leagues,

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35. MLB CBA, *supra* note 26, at 43, art. XII(A) (setting out the "just cause" provision).

36. *Id.* at 44 (stating that the player must receive written notice of discipline).

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.* at 217, sch. A, § 7 (describing the standard contract terms by which a club may terminate a player).

41. *Id.* at 218, sch. A, § 7(d) (setting out the procedure a Club must follow in order to terminate a player).

42. *Id.* at 217, sch. A, § 7(b)(1)

43. *Id.*

44. See Major League Baseball, *Special Report: Drug Policy in Baseball Event Timeline*, MLB, [http://mlb.mlb.com/mlb/news/drug\\_policy.jsp?content=timeline](http://mlb.mlb.com/mlb/news/drug_policy.jsp?content=timeline) (last visited Oct. 1, 2011) [hereinafter *Drug Policy in Baseball*].

subjecting all players outside the forty-man roster of each Major League team to random testing for steroid-based performance-enhancing drugs and illegal drugs such as marijuana and cocaine.<sup>45</sup> Penalties included fifteen game suspensions for a first positive test, thirty games for a second, sixty games for a third, and a one-year suspension for a fourth.<sup>46</sup> In 2002, during a Senate Commerce Committee hearing investigating the use of steroids in MLB, several U.S. Senators argued for a strict drug-testing program at the Major League level.<sup>47</sup> In response, on August 30, 2002, MLB and the MLBPA introduced the Joint Drug Prevention and Treatment Program (Joint Drug Agreement).<sup>48</sup> Implemented as a separate amendment to its CBA, MLB intended the Joint Drug Agreement to educate players on the risks associated with use of illegal and performance-enhancing drugs (collectively known as “prohibited substances”), deter and end player use of prohibited substances, and provide treatment programs to those players in need of assistance.<sup>49</sup> In 2005, drug testing began at Spring Training camps under the provisions of the revised program, even though it was not yet ratified by the MLBPA.<sup>50</sup> While the original terms of the Joint Drug Agreement called for anonymous testing and no punishment for a first positive test, the revisions called for year-round testing and stricter penalties, such as a ten-day suspension without pay and public revelation of the player’s name for a first positive test.<sup>51</sup>

On August 1, 2005, MLB suspended Baltimore Orioles first baseman Rafael Palmeiro ten days without pay for violating the Joint Drug Agreement.<sup>52</sup> The following day, Seattle Mariners pitcher Ryan Franklin also received a ten-day suspension without pay for violation of the Agreement.<sup>53</sup> In response to the suspensions, MLB Commissioner Allan H. (Bud) Selig said that “[MLB] must create an understanding everywhere that when we say we need to rid the game of steroids, we mean it.”<sup>54</sup> On

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45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. Robert F. Moore, *The Interaction Between the Americans with Disabilities Act and Drug and Alcohol Addictions in Sports*, 16 *SPORTS LAW. J.* 231, 240 (2009); see *MLB JOINT DRUG PREVENTION*, *supra* note 15, at 1 (setting forth the goals of the Joint Drug Agreement).

50. See Barry Bloom, *Drug Testing to Begin Thursday*, *MLB* (Mar. 2, 2005, 7:14 PM), [http://mlb.mlb.com/news/article.jsp?ymd=20050302&content\\_id=954967](http://mlb.mlb.com/news/article.jsp?ymd=20050302&content_id=954967) (noting that the new agreement calls for “stricter penalties for those who initially test positive”).

51. *Id.*

52. *Drug Policy in Baseball*, *supra* note 44.

53. *Id.*

54. Press Release, Major League Baseball, Commissioner’s Statement (Aug. 4, 2005), [http://mlb.mlb.com/news/press\\_releases/press\\_release.jsp?ymd=20050804&](http://mlb.mlb.com/news/press_releases/press_release.jsp?ymd=20050804&)

November 15, 2005, MLB and the MLBPA reached an agreement to strengthen penalties for steroid and other illegal drug use.<sup>55</sup> Under the strengthened Joint Drug Agreement, a player who tests positive for a performance-enhancing substance will be suspended for fifty games.<sup>56</sup> A second positive test results in a one hundred game suspension, while a third results in a lifetime ban from Major League Baseball.<sup>57</sup> These penalties are still in place today.<sup>58</sup> As Bud Selig put it, “baseball currently has the most aggressive drug program in professional sports, banning steroids, amphetamines, and human growth hormone, and imposing the stiffest penalties for use.”<sup>59</sup> Less than a month after Selig made these comments, MLB further strengthened its policies and procedures.<sup>60</sup> Based on Senator George J. Mitchell’s recommendations, the new policies include background checks and random drug tests on all existing and new clubhouse personnel, mandatory logging of packages sent to clubhouses at all Major League ballparks, and mandatory distribution of MLB drug policies in team clubhouses.<sup>61</sup>

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55. *Drug Policy in Baseball*, *supra* note 44.

56. See Barry Bloom & Jim Molony, *MLB, Union Agree to Stricter Drug Policy*, *MLB* (Nov. 16, 2005, 3:13 AM), [http://mlb.mlb.com/news/article.jsp?ymd=20051115&content\\_id=1268529&vkey=news\\_mlb&fext=.jsp](http://mlb.mlb.com/news/article.jsp?ymd=20051115&content_id=1268529&vkey=news_mlb&fext=.jsp); *Drug Policy in Baseball*, *supra* note 44; see also *MLB JOINT DRUG PREVENTION*, *supra* note 15, at 17 (mandating that when a player tests positive for performance enhancing substances for the first time the result is an automatic fifty game suspension).

57. See Bloom & Molony, *supra* note 56; *Drug Policy in Baseball*, *supra* note 44; see also *MLB JOINT DRUG PREVENTION*, *supra* note 15, at 17 (mandating that when a player tests positive for performance enhancing substances for the second time the result is an automatic one hundred game suspension and if they test positive for a third time the result is permanent suspension from both Major and Minor League Baseball).

58. See *Drug Policy in Baseball*, *supra* note 44 (noting that there is no date after November 15, 2005 in which the timeline denotes a change in penalties).

59. *Selig Comments on MLB and Steroids*, *COOKEVILLE TIMES* (Dec. 14, 2007, 1:12 PM), <http://www.ucdailynews.com/sports/12509901.html>.

60. Robert D. Manfred, Jr., *Federal Labor Law Obstacles to Achieving a Completely Independent Drug Program in Major League Baseball*, 19 *MARQ. SPORTS L. REV.* 1, 2 (2008); see Press Release, Major League Baseball, Major League Baseball Acts on Mitchell Recommendations (Jan. 7, 2008), [http://mlb.mlb.com/news/press\\_releases/press\\_release.jsp?ymd=20080107&content\\_id=2341094&vkey=pr\\_mlb&fext=.jsp](http://mlb.mlb.com/news/press_releases/press_release.jsp?ymd=20080107&content_id=2341094&vkey=pr_mlb&fext=.jsp) [hereinafter Press Release, Mitchell Recommendations] (implementing the recommendations of Senator George J. Mitchell).

61. GEORGE J. MITCHELL, REPORT TO THE COMMISSIONER OF BASEBALL OF AN INDEPENDENT INVESTIGATION INTO THE ILLEGAL USE OF STEROIDS AND OTHER PERFORMANCE ENHANCING SUBSTANCES BY PLAYERS IN MAJOR LEAGUE BASEBALL (2007), available at <http://mlb.mlb.com/mlb/news/mothcell/index.jsp>; see also Press Release, Mitchell Recommendations, *supra* note 60.

## 2. *No Policies Regarding Domestic Violence*

MLB has amended its drug policy at least three separate times in the last five years, and twice in 2005 alone.<sup>62</sup> The league has no policy requiring suspension of players charged or convicted in domestic violence cases, however.<sup>63</sup> Although the commissioner has the authority under the Major League Constitution to investigate situations not in the best interest of baseball, impose penalties that he may deem appropriate, and take preventive, remedial or punitive actions when necessary, neither the CBA nor the Constitution addresses the disciplinary measures to be taken when a player is involved in an altercation involving domestic violence.<sup>64</sup>

Thus, the commissioner may discipline a player if he engages in a domestic dispute that is deemed by the commissioner not to be in the best interests of baseball.<sup>65</sup> If the commissioner does not discipline the player, he may be subject to discipline by his team or MLB's Vice President of On-Field Operations, but only if the conduct amounts to "just cause," a term left undefined in the CBA.<sup>66</sup>

## 3. *Incidents of Domestic Violence in Major League Baseball*

### *i. Brett Myers*

According to Kim Myers, her husband Brett punched her twice in the face.<sup>67</sup> In June 2006, Philadelphia Phillies pitcher Brett Myers and his wife were walking to their hotel when an argument broke out.<sup>68</sup> Brett, who was "a foot taller than [his wife] and twice as heavy," slapped Kim while she was on the ground and attempted to drag her to her feet by her shirt and

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62. See Bloom & Molony, *supra* note 56 (announcing that major League Baseball and the players association recently reached an agreement on a stricter drug policy having last strengthened the drug policy eight months prior); Press Release, Mitchell Recommendations, *supra* note 60 (announcing that the changers recommended by Senator Mitchell would be implemented).

63. Suzanne Smalley, *Visiting Player Hits Wife, Police Charge*, BOS. GLOBE, June 24, 2006, [http://www.boston.com/sports/baseball/redsox/articles/2006/06/24/visiting\\_player\\_hit\\_wife\\_police\\_charge/](http://www.boston.com/sports/baseball/redsox/articles/2006/06/24/visiting_player_hit_wife_police_charge/) (noting that an MLB spokesman said, "[T]he league has no policy requiring suspension of players charged or convicted in domestic violence cases").

64. See MLB CONSTITUTION, *supra* note 11, at 1 (setting out the functions of the commissioner); MLB CBA, *supra* note 26, at 43 (noting that a player may be disciplined for "just cause").

65. See MLB CONSTITUTION, *supra* note 11, at 1 (granting the commissioner the authority to take any preventative, remedial, or punitive action that is appropriate).

66. See MLB CBA, *supra* note 26, at 43 (failing to provide a definition for "just cause").

67. Brian R. Decker, *Violence and the Private: A Girardian Model of Domestic Violence in Society*, 11 U. PA. J.L. & SOC. CHANGE 105, 105 (2008) (citing Smalley, *supra* note 63).

68. *Id.*

hair.<sup>69</sup> “She cried out, ‘I’m not going to let you do this to me anymore.’”<sup>70</sup> When police arrived, they found Kim crying and her face swollen.<sup>71</sup> Shortly after his arrest, however, she posted her husband’s \$200 bail.<sup>72</sup> The district attorney arraigned Brett on assault and battery charges, but he was released and pitched in a scheduled start against the Boston Red Sox the next day.<sup>73</sup> Neither MLB nor the Philadelphia Phillies took action against Brett Myers.<sup>74</sup> The league said although it was regrettable, it was an off-the-field matter.<sup>75</sup> Mike Teevan, a MLB spokesman, said the League has no policy mandating the suspension of a player charged or convicted in domestic violence cases.<sup>76</sup> “We’re obviously very concerned about it,” Teevan said.<sup>77</sup> “But it was an off-the-field incident and it’s the player’s private life. We’re going to let the legal system run its course.”<sup>78</sup> Additionally, “[o]ne MLB executive told *USA Today* there was nothing that could be done while the case meanders through the legal system.”<sup>79</sup> Phillies’ General Manager Pat Gillick attempted to explain why he allowed Myers to pitch.<sup>80</sup> “He’s been our best pitcher. I think it’s in the best interests of the club that he pitches.”<sup>81</sup>

Three months later, Kim Myers asked the charges to be dropped and the case was dismissed.<sup>82</sup> “Judge Raymond Dougan acknowledged that Brett Myers struck his wife, but dismissed the charge over the objection of prosecutors because Kim Myers signed an affidavit stating she did not want the charge pursued.”<sup>83</sup> As Judge Dougan observed, “domestic violence allegations are difficult for prosecutors to prove because they involve

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69. *Id.*

70. *Id.*

71. *Id.*

72. Smalley, *supra* note 63.

73. See Decker, *supra* note 67, at 105 (citing Richard Justice, *Caveman Era Never Ends in Baseball*, HOUS. CHRON., June 27, 2006, <http://www.chron.com/disp/story.mpl/sports/justice/4004868.html>).

74. Richard Justice, *Caveman Era Never Ends in Baseball*, HOUS. CHRON., June 27, 2006, <http://www.chron.com/disp/story.mpl/sports/justice/4004868.html>.

75. *Id.*

76. Smalley, *supra* note 63.

77. *Id.*

78. *Id.*

79. Justice, *supra* note 74.

80. *Id.*

81. *Id.*

82. Decker, *supra* note 67, at 105; *After Wife’s Request, Charge Dropped vs. Phil’s Myers*, ESPN.COM (Oct. 5, 2006, 6:13 PM), <http://sports.espn.go.com/mlb/news/story?id=2614037> [hereinafter *After Wife’s Request*].

83. *After Wife’s Request*, *supra* note 82.

private relationships.”<sup>84</sup> On the contrary, District Attorney Daniel Conley said “the judge ‘sent a message that abusers can use a statute intended for minor altercations to avoid being held responsible for serious domestic violence charges.’”<sup>85</sup> Myers disputed the accusations but later admitted his behavior was “inappropriate and for that I apologize.”<sup>86</sup> Myers added that he was “sorry it had to get public.”<sup>87</sup> Myers “was treated as a celebrity by court officers, who shook his hand and patted him on the back.”<sup>88</sup> One wished him good luck and said, “It will be all right,” while another said, “Nice seeing you again.”<sup>89</sup>

### *B. Disciplinary Authority in the NFL*

The NFL’s approach to policing off-the-field conduct, including domestic violence and sexual assault, could be considered the most effective of all the professional sports leagues.<sup>90</sup> The NFL Commissioner is the “principal executive officer” of the League and has “general supervision of its business and affairs.”<sup>91</sup> The commissioner also has the authority to interpret, establish, and enforce policies and procedures.<sup>92</sup> If the commissioner decides that an employee of the NFL has either violated the League constitution and bylaws or has been or is guilty of “conduct detrimental to the welfare” of the NFL or professional football, he has complete disciplinary authority over the matter.<sup>93</sup> Punishment may include suspension and fines not in excess of \$500,000 and cancellation of any contract or agreement a person may have with the NFL.<sup>94</sup> If the

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84. Decker, *supra* note 67, at 105.

85. *After Wife’s Request*, *supra* note 82.

86. *Id.*

87. Decker, *supra* note 67, at 105; Justice, *supra* note 74.

88. *After Wife’s Request*, *supra* note 82.

89. *Id.*

90. See, e.g., NFL PERSONAL CONDUCT POLICY, *supra* note 11, at 1 (noting that discipline may be imposed for criminal offenses including “domestic violence and other forms of partner abuse”); NFL CONSTITUTION AND BYLAWS, *supra* note 11, at 29-30 (granting the commissioner the authority to take action against any member of the League who “is guilty of any conduct detrimental either to the League, its member clubs or employees, or to professional football”); NFL PLAYERS ASS’N, NFL CBA, 279 (2011), <https://images.nflplayers.com/mediaResources/files/2011CBA.pdf> [hereinafter NFL CBA] (providing in the “Notice of Termination” that a player may be terminated for engaging in personal conduct that adversely affects or reflects on the Club).

91. See NFL CONSTITUTION AND BYLAWS, *supra* note 11, at art. VIII, § 8.4 (granting the commissioner supervisory powers over the business and affairs off the League).

92. See *id.* at art. VIII, § 8.5 (granting the commissioner the authority to interpret and establish policy and procedure).

93. See *id.* at art. VIII, § 8.13(A) (granting the commissioner disciplinary powers over owners, shareholders, players, coaches, officers, directors, and employees).

94. See *id.* at art. VIII, § 8.13(A)(1)-(2) (including awarding selection choices to

commissioner determines that any punishment is inadequate or insufficient after considering the nature and gravity of the offense involved, however, he may refer the matter to the Executive Committee and recommend that additional discipline be imposed.<sup>95</sup> Additional discipline may include any other recommendation the commissioner “deems appropriate.”<sup>96</sup>

Additionally, each NFL player contract contains an integrity clause that gives the commissioner the power to fine or suspend the player or terminate the contract for any form of conduct “reasonably judged . . . to be detrimental to the League . . . .”<sup>97</sup> This clause further requires a player to recognize the “detriment to the League and professional football that would result from impairment of public confidence in the . . . integrity and good character of NFL players.”<sup>98</sup> An NFL team may also terminate a player’s contract for engaging in personal conduct that “adversely affects or reflects” on the team.<sup>99</sup>

### *1. The NFL’s Initial Steps to Resolve Conduct Issues*

“It’s going to be a lot harder for us to get out of trouble now. Three years ago, you smacked a girl around and people maybe said she asked for it. Now whether she asked for it or not, they’re going to haul you off.”<sup>100</sup> That was the opinion of then Detroit Lions’ safety Benny Blades regarding the consequences of domestic violence.<sup>101</sup> Prior to the 1997 season, many NFL players were increasingly becoming associated with domestic violence, including then Minnesota Vikings quarterback Warren Moon.<sup>102</sup> In response to this problematic trend, former NFL Commissioner Paul Tagliabue adopted the NFL Violent Crime Policy (VCP), the first in the NFL and only one of its kind among major U.S. sports.<sup>103</sup> The VCP allowed the commissioner to suspend and/or fine a player charged with “any crime of violence” and required the offender to undergo counseling

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another club as well).

95. *Id.* at art. VIII, § 8.13(B).

96. *Id.* at art. VIII, § 8.13(B)(7).

97. NFL CBA, *supra* note 90, at 261.

98. *Id.*

99. *Id.* at 279.

100. *Out of Bounds*, *supra* note 9, at 1048 (quoting player for the Detroit Lions in Geoff Calkins, *Athletes and Domestic Violence*, SUN-SENTINEL, Oct. 17, 1995, at 1C, 10C).

101. *Id.*

102. *See id.* at 1048-49 (describing domestic incident involving Moon and his wife, after which he continued but play but led him to seek counseling).

103. Robert Ambrose, Note, *The NFL Makes it Rain: Through Strict Enforcement of its Conduct Policy, the NFL Protects its Integrity, Wealth, and Popularity*, 34 WM. MITCHELL L. REV. 1069, 1086-87 (2008).

and clinical evaluations.<sup>104</sup> After a revision and expansion of the VCP to cover other criminal conduct, it was renamed the Personal Conduct Policy (PCP).<sup>105</sup> In 2001, the NFL fined Baltimore Ravens' linebacker Ray Lewis \$250,000 after he pleaded guilty to a misdemeanor crime of obstructing law enforcement; at the time, the fine was the largest ever in the NFL not accompanied by a suspension.<sup>106</sup>

In August 2006, Roger Goodell replaced Tagliabue as NFL commissioner.<sup>107</sup> On April 10, 2007, Goodell introduced the NFL's updated PCP, which strengthened the existing conduct guidelines.<sup>108</sup> Although the policy language was not drastically changed, Goodell warned that violators would face longer suspensions and larger fines.<sup>109</sup> The same day that Goodell introduced the strengthened PCP, he handed down two of the longest suspensions for off-the-field misconduct in NFL history, suspending Tennessee Titans' defensive back Adam "Pacman" Jones for the entire 2007 season and Cincinnati Bengals' receiver Chris Henry for eight games.<sup>110</sup>

## 2. Overview of the Personal Conduct Policy

All NFL-related employees must not engage in "conduct detrimental to the integrity of and public confidence in the League."<sup>111</sup> The requirement applies not only to players, but coaches, other team employees, owners, and all others that work in the NFL as well.<sup>112</sup> These people are expected to conduct themselves in a responsible, lawful way that promotes the values upon which the NFL is based.<sup>113</sup>

Players who fail to live up to the standard are subject to discipline, even

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104. *Id.* at 1087.

105. *See Changes Approved on Player Conduct*, N.Y. TIMES, May 24, 2000, at D7 (explaining that NFL owners met and approved changes to the Violent Crime Policy including changing its name).

106. Ambrose, *supra* note 103, at 1087.

107. *Id.*

108. *Goodell Strengthens NFL Personal Conduct Policy*, *supra* note 19.

109. Ambrose, *supra* note 103, at 1076.

110. *Id.* at 1077; *see* Dave Goldberg, *NFL Comes Down Hard on Pacman Jones, Chris Henry*, WBKO.COM, <http://www.wbko.com/sports/headlines/6964077.html> (last visited Jan. 31, 2012) (opining that Goodell did this to send a warning to other players). *See generally* Greg Garber, *Pacman Jones Incidents*, ESPN.COM (Apr. 10, 2007, 1:49 PM), <http://sports.espn.go.com/nfl/news/story?id=2790090> (detailing incidents of Adam "Pacman" Jones' off-the-field misconduct since July 2005); *Henry, 26, Dies Day After Dispute*, ESPN.COM (Dec. 17, 2009, 10:10 PM), <http://sports.espn.go.com/nfl/news/story?id=4750615> (explaining that Henry's repeated off-the-field troubles led to the strengthened NFL Personal Conduct Policy).

111. NFL PERSONAL CONDUCT POLICY, *supra* note 11, at 1.

112. *Id.*

113. *Id.*

if the conduct does not result in a conviction of a crime.<sup>114</sup> Discipline may be imposed in many circumstances, including “domestic violence and other forms of partner abuse” or “sex offenses.”<sup>115</sup> Apart from any disciplinary action, any player arrested, charged, or “otherwise appearing to have engaged in” conduct prohibited under the PCP is subject to a mandatory clinical evaluation.<sup>116</sup> Based on the evaluation results, the player may be encouraged or required to participate in an education program, counseling, or “other treatment deemed appropriate by health professionals.”<sup>117</sup> While the evaluation and resulting treatment are not considered discipline, failure to comply with this portion of the PCP “shall itself constitute a separate and independent basis for discipline.”<sup>118</sup>

Upon learning of conduct that may give rise to discipline, the NFL conducts an investigation that may include interviews and information gathering from medical, law enforcement, or other relevant professionals.<sup>119</sup> The NFL must notify the NFL Players’ Association (NFLPA) of any player investigations and the subsequent results.<sup>120</sup> A player, represented by counsel and/or a union official, may also have the opportunity to address the conduct at issue.<sup>121</sup> Upon conclusion of the investigation, the commissioner has “full authority to impose discipline as warranted.”<sup>122</sup> Disciplinary forms include fines, suspensions, or even banishment from the NFL; probationary periods or mandatory conditions for reinstatement may be included.<sup>123</sup> Penalties are based on the nature of the incident, the actual or threatened risk to the participant and others, any prior or additional misconduct (regardless of whether criminal charges are filed), and other relevant factors.<sup>124</sup>

If a player is a first-time offender, the NFL will not discipline the player until the final disposition of any proceedings.<sup>125</sup> If a player is a repeat offender, however, the commissioner may expedite discipline, and the

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114. *Id.*

115. *See id.* (including criminal offenses involving, including but not limited to, the use or threat of violence, steroids and prohibited substances, or substances of abuse as well). Criminal offenses involving “domestic violence and other forms of partner abuse” and “sex offenses” are the focus of this Article.

116. *Id.* at 2.

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *See id.*

timing and nature of the discipline will be determined based on several factors, including: the severity of the initial and later charges, the underlying facts surrounding the later charge, the time elapsed between the initial offense and later charge, and the player's compliance with counseling and other programs.<sup>126</sup> "When appropriate, conduct occurring prior to a player's association with the NFL will be considered."<sup>127</sup> The commissioner may review the matter and make "appropriate adjustments" following the conclusion of a League investigation and/or resolution of any proceedings.<sup>128</sup>

Players have the right to appeal disciplinary decisions, including penalties imposed during the NFL season, but the players must appeal decisions made within the season within ten days.<sup>129</sup> Any player who files an appeal is entitled to a "prompt" hearing in which the NFLPA is entitled to participate.<sup>130</sup> A player suspended for at least one year may seek reinstatement beginning one month prior to the one-year anniversary of the suspension.<sup>131</sup> When considering the player's application for reinstatement, the commissioner must consult the NFLPA and the Player Advisory Council, and may consult medical, law enforcement, or other relevant professionals.<sup>132</sup>

### 3. *The NFL & Domestic Violence before the 2007 Amendments*

#### *i. Steve Muhammad*

On November 7, 1999, Indianapolis Colts' defensive back Steve Muhammad received word that his wife had passed away from complications during childbirth and his infant son had been delivered stillborn.<sup>133</sup> The following day the headlines read that the police arrested Muhammad and charged him with misdemeanor battery on his wife only ten days before her death.<sup>134</sup> Nichole Muhammad told police that her husband grabbed her wrist, twisted her arm behind her back, and pushed

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126. *Id.* at 3; *see id.* at 4 (defining "Repeat Offenders" as people who have previously violated the law or the Personal Conduct Policy).

127. *Id.* at 4.

128. *Id.* at 3.

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Mustafah Muhammad: Indianapolis Colts Player Convicted of Domestic Battery*, INDIANAPOLIS STAR, Oct. 3, 2000, <http://www2.indystar.com/library/factfiles/sports/athletes/conduct/muhammad.html>.

134. *Id.*

her up against a bedroom wall before throwing her to the floor.<sup>135</sup> She also said that Muhammad hit her six-year old son, Eric, who reportedly tried to protect her by hitting his stepfather with a plastic baseball bat.<sup>136</sup> The Marion County coroner's office concluded that Nichole likely died from injuries suffered in a traffic accident three days before her death, not her injuries suffered in the alleged beating.<sup>137</sup> Muhammad received a mandatory evaluation from mental health professionals but the commissioner allowed him to return to the Colts, subject to ongoing counseling.<sup>138</sup> After a conviction on one count of domestic battery, the court sentenced Muhammad to one year of probation, thirty-two hours of community service, and twelve weeks of domestic violence counseling.<sup>139</sup>

Although many advocates for victims of domestic violence accused Colts officials of inaction, team president Bill Polian felt it was the League's responsibility to discipline a player convicted of a crime.<sup>140</sup> Polian confirmed that Muhammad entered into an employee-assistance program established by both the Colts and the NFL shortly before his arrest.<sup>141</sup> In September 2000, the Domestic Violence Network of Greater Indianapolis and the Indiana Coalition Against Domestic Violence sent a list of recommended actions to both the NFL and the Colts.<sup>142</sup> Although the team agreed to promote and support domestic violence related programs, the Colts felt that the proposed three-game suspension of Muhammad was a decision better left to the League.<sup>143</sup> On September 20, 1999, the NFL suspended Muhammad for two games for violating the PCP, costing him \$32,352 in lost salary.<sup>144</sup>

#### *4. The NFL & Domestic Violence after the 2007 Amendments*

##### *i. Ben Roethlisberger*

Ben Roethlisberger, the two-time Super Bowl champion quarterback of

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135. *Id.*

136. *Id.*; Gwen Knapp, *NFL Did What it Had to Do with New Conduct Policy*, S.F. CHRON., Apr. 12, 2007, [http://articles.sfgate.com/2007-04-12/sports/17238645\\_1\\_steve-muhammad-charges-convicted](http://articles.sfgate.com/2007-04-12/sports/17238645_1_steve-muhammad-charges-convicted).

137. *Indianapolis Colts Player Convicted of Domestic Battery*, *supra* note 133.

138. *Id.* In 1999, the NFL was still operating under the Violent Crime Policy established by then commissioner Paul Tagliabue.

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

the Pittsburgh Steelers, was served with a civil lawsuit in July 2009.<sup>145</sup> In that case, Andrea McNulty, a 31-year old V.I.P. casino hostess at Harrah's Lake Tahoe, alleged that Roethlisberger raped her in his hotel room after he called to report a problem with the television; the alleged incident took place in July 2008.<sup>146</sup> Later, on March 5, 2009, Roethlisberger and some friends celebrated his birthday at the Capital City Pub in Milledgeville, Georgia.<sup>147</sup> Roethlisberger invited a twenty-year-old female and her friends into a V.I.P. area of the bar and bought them a round of shots.<sup>148</sup> Later in the evening, Roethlisberger followed the woman into a bathroom and allegedly sexually assaulted her.<sup>149</sup> An emergency room doctor who examined the accuser discovered a cut, bruises and vaginal bleeding but could not say if someone had raped her.<sup>150</sup> But she did not want to go forward with the charges, as trial would be "a very intrusive personal experience."<sup>151</sup> A week later, the commissioner suspended Roethlisberger for the first six games of the 2010 season for violating the NFL's PCP and ordered him to undergo a comprehensive behavioral evaluation.<sup>152</sup> Roethlisberger was the first player suspended under the revamped PCP who had not been arrested or charged with a crime.<sup>153</sup> Before taking action, Goodell interviewed Roethlisberger, reviewed information gathered by law enforcement, and even talked privately with Georgia's district attorney, Fred Bright.<sup>154</sup> Goodell explained to Roethlisberger that, under the PCP, discipline is appropriate when conduct "undermines or puts at risk the integrity and reputation of the NFL, NFL clubs, or NFL players."<sup>155</sup> According to Goodell, Roethlisberger's conduct satisfied that standard "by any measure."<sup>156</sup> Further, Goodell stated that there was nothing about that night in Milledgeville that could "remotely be described as admirable,

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145. *Roethlisberger: Allegations 'False'*, ESPN.COM (July 24, 2009, 12:37 AM), <http://sports.espn.go.com/nfl/news/story?id=4350996>.

146. *Id.*

147. *No Charges against Roethlisberger*, ESPN.COM (Apr. 12, 2010, 9:51 PM), <http://sports.espn.go.com/nfl/news/story?id=5078589>.

148. *Id.*

149. *Id.*

150. *Id.*

151. *See id.* (explaining the difficulty of proving sexual assault in Georgia because the state requires proof of force and lack of consent from the victim).

152. *Roethlisberger Suspended by NFL*, ESPN.COM (Apr. 22, 2010, 12:48 PM), <http://sports.espn.go.com/nfl/news/story?id=5121614>.

153. *Id.*

154. *Id.*

155. *See id.* (explaining that by purchasing or facilitating the purchase of alcoholic beverages for underage college students, Roethlisberger put both the students and himself at risk).

156. *Id.*

responsible, or consistent with either the values of the league or the expectations of our fans.”<sup>157</sup> Goodell reviewed Roethlisberger’s behavior in the months after the incident and reduced the suspension to four games, as he was satisfied that Roethlisberger had followed League guidelines and kept himself out of trouble.<sup>158</sup>

## II. WHY THE NFL AND MLB HAVE BEEN SLOW TO REACT TO DOMESTIC VIOLENCE

League commissioners have the power to impose discipline for off-the-field conduct through provisions contained in league constitutions, bylaws, and CBAs.<sup>159</sup> Even so, there may be several possible reasons why the leagues have been hesitant to address the problem of domestic violence in professional sports.

### A. Possible Economic Impact of Player Suspension

The most likely reason for this hesitation is the leagues’ concern about lost revenue due to player suspensions.<sup>160</sup> It is well known that “the most valuable asset of a sports league is its players. The quality of the league fluctuates according to the quality of its players . . . .”<sup>161</sup> By showcasing competition between its best athletes, the league creates attractive and popular games for the fans to watch.<sup>162</sup> The NFL has grown into the most popular and richest sport in the world by following this simple logic.<sup>163</sup> The economic success of the NFL is largely attributed to the more than twelve billion dollars it receives from television contracts.<sup>164</sup> Each team receives an equal share of the television revenues, which pay the vast majority of player salaries.<sup>165</sup> If a high-profile player in any league is

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157. *Id.*

158. *Goodell Reduces Roethlisberger’s Suspension to Four Games*, NFL.COM (Sept. 3, 2010, 6:30 PM), <http://www.nfl.com/news/story/09000d5d81a3eb23/article/goodell-reduces-roethlisbergers-suspension-to-four-games>.

159. *See, e.g.*, MLB CONSTITUTION, *supra* note 11, at art. II, § 2(c) (authorizing commissioner to determine what action is appropriate); *see* Kim & Parlow, *supra* note 13, at 575 (stating that provisions in these agreements grant commissioners the right to discipline players for acts deemed not to be in the “best interest” of the sport).

160. *See* Ambrose, *supra* note 103, at 1106-07 (describing the NFL’s high revenues that are dependent on high quality players both on and off the playing field).

161. *Id.* at 1106.

162. *Id.* at 1106-07.

163. *Id.* at 1106.

164. *Id.* As of 2008, the NFL had a \$3.7 billion dollar deal with CBS, a \$4.3 billion dollar deal with Fox, a \$3.6 billion dollar deal with NBC, and a \$1.1 billion dollar deal with ESPN giving each network exclusive rights to televise NFL games.

165. *Id.*

suspended for an act of domestic violence, it may create a domino effect.<sup>166</sup> Fewer star players means fewer quality teams competing in less exciting games to watch.<sup>167</sup> Less fan interest equals less lucrative television and sponsorship contracts for the league, which translates to “less economic success and decrease[s] the money available for players’ salaries.”<sup>168</sup>

### *B. Innocent Until Proven Guilty*

Many people assume that those undergoing a criminal trial are guilty.<sup>169</sup> However, a situation involving former Green Bay Packers receiver James Lofton forced the NFL to think twice about suspending players prior to legal adjudication.<sup>170</sup> The League suspended Lofton, who was facing rape charges, for the last game of the 1986 regular season without pay.<sup>171</sup> After the court acquitted Lofton in the off-season, the NFL acknowledged the mistake and paid Lofton his salary for the missed game.<sup>172</sup> Situations similar to Lofton’s could pose serious problems to leagues, as the player may bring suit for lost wages, bonuses, or even lost sponsorship money.<sup>173</sup>

## III. WHY A DOMESTIC VIOLENCE POLICY MAKES SENSE

### *A. The Link Between Athletes and Domestic Abuse*

Domestic violence experts, sports sociologists, and even former players have all speculated as to why athletes may be more likely to commit acts of domestic abuse.<sup>174</sup> First, players trained to use violence or intimidation on the field may have difficulty preventing these tendencies from carrying over into their personal relationships.<sup>175</sup> Second, sports may cultivate a “macho sub-culture” that equates violence with masculinity and vilifies anything considered feminine, setting the stage for violence against women.<sup>176</sup> Although evidence is inconclusive regarding whether athletes are more likely than non-athletes to batter their domestic partners, players should be disciplined for domestic abuse in order to maintain a league’s public image of sport, set a positive example for children and the

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166. *Id.* at 1107.

167. *Id.*

168. *Id.*

169. *Id.* at 1105.

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.* at 1106.

174. *Id.*

175. *Id.*

176. *Id.*

community, and most importantly, promote nonviolent relationships.<sup>177</sup>

*B. Protecting the Public Image of the Game*

Adoption of a domestic violence policy may be a matter of self-interest for the leagues.<sup>178</sup> Both the owners and players have a stake in maintaining the public image of their leagues and acknowledge in their collective bargaining agreements that off-the-field misconduct may be detrimental to their league's success.<sup>179</sup> Although it is uncertain whether any negative publicity regarding domestic violence results in financial losses, the conduct clearly tarnishes a league's image in the eyes of the general public.<sup>180</sup>

*C. Desirable as a Matter of Public Policy*

Professional sports leagues have a more compelling need to combat domestic violence than many other social institutions.<sup>181</sup> Author Mariah Burton Nelson argues that because "manly" sports shape the dominant culture in America, violent attitudes against women can be formed simply by watching these games on television.<sup>182</sup> In sports such as football and hockey, where assaults that would be illegal off the field have become an accepted and even celebrated part of the game, the leagues must send a message that this behavior is inappropriate outside the game.<sup>183</sup> Even if the role of sports leagues in creating a culture where violence against women is tolerated is minimal, action by the leagues to discipline abusers could still have a positive impact and set an example for other social institutions.<sup>184</sup> Furthermore, many incidents of domestic abuse continue to be marginalized as "family disputes" and treated as if they are less serious than other crimes.<sup>185</sup> Some theorists argue that because the "meaning of violent acts towards women is generated in a sociocultural context that fosters, shapes, and justifies the use of violence to maintain a male-dominated status quo," leaders of all social institutions that contribute to the development and maintenance of male violence against women,

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177. *Id.* at 1050-52.

178. *Id.* at 1051.

179. *Id.*

180. *Id.*

181. *See id.* (arguing that disciplining athletes may be necessary to protect the public image of the game and is desirable as a matter of public policy).

182. *Id.* at 1052 (quoting MARIAH BURTON NELSON, *THE STRONGER WOMEN GET, THE MORE MEN LOVE FOOTBALL* 6-8 (1994)).

183. *Id.*

184. *Id.* at 1052-53.

185. *Id.* at 1052.

including sports figures, must participate in the effort to combat domestic violence.<sup>186</sup> As role models for children, athletes must act to “increase the social costs of gender violence, create social norms that define violence against women as unacceptable, promote concepts of male self-control, responsibility, and accountability, and foster equitable, nonviolent relationships.”<sup>187</sup>

#### IV. THE SOLUTION: A LEAGUE-WIDE DOMESTIC VIOLENCE POLICY

Although the NFL and MLB have taken steps to address and deter incidents of off-the field conduct that may be detrimental to the “best interests” of the sport, many of the existing policies and procedures do not do enough to combat league-wide issues of domestic violence.<sup>188</sup> Further, MLB has practically ignored the problem.<sup>189</sup> Implementation of a standalone domestic violence policy across the NFL and MLB will help strengthen existing league policies regarding domestic violence and thoroughly address the problems associated with domestic violence in these professional sports.

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186. *See id.* (quoting MARY P. KOSS, ET AL., NO SAFE HAVEN: MALE VIOLENCE AGAINST WOMEN AT HOME, AT WORK, AND IN THE COMMUNITY 104 (1994)).

187. *Id.*

188. Kim & Parlow, *supra* note 13; *see* MLB CONSTITUTION, *supra* note 11, at art. II, § 2(b) (authorizing commissioner to investigate any act suspected to not be in the best interest of the game).

189. *See generally* Smalley, *supra* note 63 (discussing a domestic violence incident between a Major League Baseball player and his wife and the lack of Major League Baseball policies addressing suspension for charges or convictions of domestic violence).