

## **Violence in the NBA: A Change is Needed**

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### ■ INTRODUCTION

Violence in sports is not a new issue. All sports fans, have at some point in their lives, seen violence in a sport that is not a part of the game. The National Basketball Association (NBA) is no exception to this scenario. The most recent and well known "promotion" of violence in a team sense in the NBA has been provided, since 1987, by the Detroit Pistons. Since 1987, Detroit has labeled themselves the "Bad Boys" of the NBA. In a sport that is defined as non-contact, Detroit promotes a rough style of play that, by their own admission, includes physical violence that goes beyond the rules of the game. It is apparent that the current measures used to deter violence in the NBA are failing if one of the premiere teams in the league can openly advocate the use of violence. The question then becomes, how can players be deterred from engaging in behavior that is a detriment to both other players' health and the game itself? This article will suggest an answer to this question.

### ■ THE NBA'S CURRENT POLICIES

The relationship of the players to the NBA league office could be viewed as a parent/child relationship. The function of the league office is to govern the conduct of the teams, players, and officials in accordance with the rules that it sets forth. But the current rules are not sufficient to deter violence in the NBA while giving the injured player and team an equitable remedy. A look at the rules and remedies supports this statement.

According to the *National Basketball Association's Administrative Manual*, Section 330, pp. 2 - 3: *Position of NBA and Its Teams Regarding Violence on the Basketball Court*:

Violence has no place in the game of basketball and violent behavior cannot be tolerated under any circumstances.

\*\*\* Violence can and often does result in serious physical injury.

\*\*\* As a player in the NBA, you are hereby advised that violent conduct will not be tolerated under any circumstances.

\*\*\* You must comply.

These are disturbing statements since no measurable standard exists that would tend to indicate what constitutes violence. Instead, all that is said is that violence will not be tolerated. How can players comply to a statement that gives no guidance? Does violence entail only fighting? Or could violence include a forearm or elbow that is thrown in the course of the game with the intent to injure a player? The NBA issued the following statement in June of 1982 concerning fighting and flagrant fouls:

“Any player who engages in fighting, whether or not he is ejected from the game, may be subject to a fine not exceeding \$10,000 and/or suspension, at the sole discretion of the Commissioner (Rule No. 12, A., Section VII).

Any player who engages in a flagrant foul is automatically ejected, and a fine not exceeding \$10,000 and/or suspension may be imposed upon such player(s) by the Commissioner at his sole discretion (Comments on the Rules, Section II., C.)”

The league attempted in later years to clarify and include definitive situations that are considered violent. For example, the current NBA Rules provide for elbowing fouls above the shoulder level as a violent act punishable by ejection, fine, and suspension (Exception: Rule 12A, Section VI - Conduct, part 1(3), p. 38). Also, anyone who throws a punch will be immediately ejected and fined, whether or not the punch connects (Section IX - Punching fouls, part b, p. 44). Finally, the NBA raised the maximum fines to \$20,000 (Section VIII - Fines, part b, p. 39).

A noticeable problem with the NBA's current policies on violence is that punishing the offending player is the only concern. The offender will be fined and/or suspended but the team and player who are the victims of the violence are not remedied in any way. What happens if the victimized player is unable to play for the remainder of the season? The team still must pay the victimized player's salary, but they have lost his services and the team will most likely suffer from his absence.

The victimized player does have available to him an action against the offending player, and should have an action against the offending player's team if the team condones such conduct. The uniform player's contract eliminates liability for teams in the NBA in regards to injuries caused through fighting through. Section 2(c) states:

The Player hereby releases and waives every claim he may have against the Association and every member of the Association ... employee of the Association and/or any member of the Association (excluding persons employed as players by any such member) arising out of ... fighting or other form of violent conduct ...

In other words, since all players sign the NBA's uniform player's contract, the only possible recourse the victimized player has is against the offending player because the uniform contract relieves members of the NBA (i.e., teams) from liability.

The victimized player then could sue only the offending player for damages under the tort theory of battery or the like. This would allow the victimized player the possibility of recovering damages that are both punitive and compensatory in nature. Two well known cases have been brought by NBA players for injuries they suffered when they were punched in the face.

The most famous case is that of *Tomjanovich v. California Sports Inc.*, (1979). In this case, Rudy Tomjanovich sued the Los Angeles Lakers (California Sports Inc.) under a theory of respondeat superior (which no longer is valid due to the provision in the Uniform Player's Contract) for injuries that he suffered while he was trying to break up a fight between one of his teammates and one of the Lakers' players. Tomjanovich was punched in the face and suffered fractures of the face and skull and other injuries to the head and face. Tomjanovich was awarded 3.2 million dollars in a jury trial. The case was appealed by the Lakers, but an unreported settlement was reached in April of 1981 before the appeal took place.

Another suit brought by an NBA player was filed by Richard Rhodes against the Kansas City Kings and Lucius Allen, after Allen punched Rhodes in the face and broke his jaw. Rhodes was awarded \$125,000 damages because of the injuries he suffered. (National Law Journal, 1981)

These cases are exceptions to the rule. Players just do not view the judicial system as an avenue to recover for their injuries. The most likely reason for this reluctance is that players probably feel an immense amount of peer pressure not to file suit. Another may be that they just feel that going through the rigors of a public trial is not worth the trouble. So instead of being outcast amongst his teammates, opposing players, and possibly fans or go through rigors of a trial, the victim of a violent act in the NBA will usually just lick his wounds and suffer without recourse.

## ■ HOW SHOULD VIOLENCE BE DEFINED?

An avenue that the NBA may want to pursue in defining violence is the definition of the tort of battery. The Restatement 2nd of Torts in section 50b has set out a test regulating acts committed during sporting events. This section provides that the rules of the game should determine whether conduct could be considered violent and out of line with what players would consent to. So, the basic definition of a violent act in the NBA could be as follows: In order to have an act defined as violent there must be some physical contact that was harmful or offensive, including but not limited to elbowing above shoulder level and punching, to a reasonable NBA player and the offender must have intended to make contact with the victim .

The above definition does several things. First, it will allow all contact that is within the scope of the game including so-called "hard fouls." This is because the standard by which an offending player would be judged is a reasonable NBA player. In other words, a reasonable NBA player would expect some hard fouls, elbowing, and pushing throughout the course of a game and would consent to this type of contact. Therefore, aggressive play that is not meant to injure an opposing player would be allowed.

While this definition of violence allows aggressive play, it also will control actions that fall outside the scope of a player's consent. In other words, players would definitely not consent to intentional act of violence during the course of the game. A norm of conduct would be established under a reasonable NBA player standard. Players would not give their consent to physical contact that falls outside of the standard of aggressive play and into the area of intentional harmful conduct. This would create a division of conduct that would allow the governing body within the NBA to punish the offending player. This would also relieve the NBA of the

continuing process of adding to the list of violent acts which currently are limited to punching and elbowing above shoulder level. With this division in place it would be much easier to determine what conduct falls into the normal aggressive play category and what conduct falls into the intentionally harmful category.

In conclusion, if a standard for violence is adopted that defines violence as intentional harmful or offensive contact, including but not limited to elbowing above shoulder level and punching, by an offending player that falls outside of the norms established by a reasonable NBA player standard, then the integrity of the game will be sustained while a viable standard exists to determine when conduct is deemed violent. This definition is not a cure for the problem but if exact standards are present more objectivity can be instituted which hopefully will lead to fewer violent incidents.

## ■ DAMAGE AWARDS

Even if a workable definition is developed for violence, the violence in the NBA will not be deterred unless players are fearful of the repercussions that will arise if they violate the standard of conduct. Also, along with a policy of punishment and deterrence, the NBA should look to compensate the victims of the violence as they usually receive no compensation for their injuries and pain and suffering from the player who caused the injury. The following is a discussion of a possible damage award system that could remedy these problems.

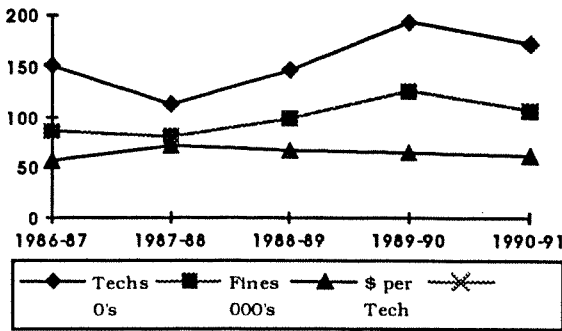
In 1987, Rick Mahorn, a forward for the Detroit Pistons, threw a flagrant elbow to the head of Mark Price of the Cleveland Cavaliers. Mahorn was not ejected for his actions but he was later fined for his actions, although not the maximum amount of \$10,000. More recently, during the 1991-92 season, Karl Malone of the Utah Jazz was suspended one game without pay and fined \$10,000 for a flagrant elbow to the head of Isiah Thomas of the Detroit Pistons that required Thomas to get 40 stitches and miss three games. Price missed two games for Cleveland due to this action by Mahorn and he really never played quite the same after suffering the blow to the head. Thomas seemed to recover and his game was back to form. The fine imposed on Mahorn did nothing to deter him from fighting and committing flagrant fouls in the future as he was again fined later in that season and in subsequent seasons due to his violent conduct. Karl Malone protested his treatment and claims that he was only trying to block the shot. Since the incident, Malone announced that he is contemplating retirement and points to his treatment by the NBA as one of the reasons.

These examples provide illustrations of the ineffectiveness of the NBA's current policy on punishing players for their violent conduct and remedying the victims. Mahorn continued his violent conduct and the Cavaliers were forced to pay Price's salary, and he was of no service to them for those two games that he missed. Malone missed one game, chastised the league for trying to cut down on violence, and was back on the court helping his team while Detroit was without Thomas's services for three games

More evidence that the NBA's system is just not working was shown in an article by Steve Buckley in the February 1992 issue of *Sport* magazine. The following is a table showing the number of technical fouls in the league and the amount of fines since the 1986-87 season that appeared in this article.

SEASON	TECHNICAL FOULS	FINES
1986-87	1,515	\$87,050
1987-88	1,133	\$81,100
1988-89	1,471	\$98,700
1989-90	1,944	\$127,150
1990-91	1,735	\$108,050

These figures may look impressive in terms of the amount of money that players and coaches were required to pay but the average fine per technical foul was only \$62 in the 1990-91 season. It is true that not all technical fouls are imposed on players for flagrant fouls but \$62 is not a lot of money to fine an individual when the purpose of a technical foul is to settle a player down so he does not engage in conduct that destroys the integrity of the league. Then to make matters worse, the trend of dollar fines to technicals has been decreasing as exhibited in the following graph.



A possible solution to the problem of violent conduct may exist in allowing damage awards to injured players and increasing the penalty to the players who engage in violent conduct. Plus, requiring the player who commits the injuries to be suspended without pay for the number of games that he caused the player he injured to miss. The reasoning behind this proposal is simple; if the penalty severely cuts into the income of the offending player, he will try to avoid conduct that causes him severe financial loss.

The current average salary for an NBA player is about \$1.2 million (NOTE: the top eight players usually get most of the playing time, their salaries are higher, and they are exposed to the possibility of violence most often). This means that these players earn about \$14,634 per game.

Is a fine really a deterrent if the maximum fine of \$20,000 is only \$5,366 more than the average per game salary of the players? Probably not. There is little deterrence because the players can play one and a third games (or about 50 minutes worth of work if you look at playing time!!) and the fine is paid. If, however, the fine required that the player forfeit the number of games' earnings that the injured player must miss as well as requiring the offending player to pay the salary for the games missed by the injured player and awarding compensatory damages (for injuries and

pain and suffering, etc.) to the injured player as part of the fine, then players may think twice before engaging in some type of violent conduct. This type of damage award would cut deeper into the financial well-being of the players, and this would most likely lead to a drop in the number of violent acts that occur in the NBA during the season.

### ■ WHAT SHOULD THE NBA DO?

The NBA may want to consider the following suggestions in order to deter the violence in the NBA. First, the NBA should define what constitutes violent conduct (one possibility could be to use the battery standard mentioned above). This would allow players to have an objective standard of conduct that they could adhere to in order to avoid any fines and suspensions. Second, the offending player should be suspended without pay for the number of games that the injured player must miss instead of having a maximum fixed fine and fixed suspension. This would punish the offending player more severely than imposing a fine based on the severity of the violence with a maximum of \$20,000. (Ira Berkow of the New York Times, agrees with this point in a recent article he wrote entitled *On-court violence is growing menace in the NBA*, but he felt this penalty would be enough deterrence.) Third, the offending player should be required to pay the salary of the injured player for the games he misses. The reasoning is that the offending player caused the injury to the victim and has thereby caused a loss to the team of that player. Finally, the NBA should set up damage awards that will be awarded to the injured player as compensation for the injuries he suffered. These fines can be based on the severity of the conduct and the extent of the injuries suffered by the player.

If the NBA restructures its rules to incorporate this type of control and regulation over violent conduct, players will suffer greater financial impact if they engage in violent conduct. This system is not a cure-all, but it would cost the NBA nothing to institute this plan except the reprinting of the administrative manuals, and this cost is surely outweighed by the potential reduction of violent acts the elimination of any further "Bad Boys" in the NBA.

### References

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