

The National Football League: Action Versus Activism

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Following gossip website TMZ’s September 8, 2014, release of a video showing Baltimore Ravens running back Ray Rice striking his then fiancée unconscious in a New Jersey casino elevator, the NFL prominently declared “No More” to domestic violence. In a highly publicized Super Bowl commercial, the NFL announced the launch of a new corporate social responsibility program, No More, which suggested that the NFL would no longer tolerate within its ranks those who commit domestic violence. The No More program preceded a newer, stricter punishment system for players accused of committing domestic violence: a six-game suspension for first-time offenders, followed by a one-year expulsion for second-time offenders, who also would require reinstatement by the Commissioner to play again. Although the NFL has talked tough on domestic violence, this Article’s

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investigation and resulting study yield little support for the finding that the NFL has truly sought to turn over a new leaf. Instead, the NFL has created a system where players rarely receive a six-game suspension and teams carry the burden of punishing player misconduct. The purpose of this study is to compare the league's response to players' arrests for domestic violence against the league's domestic violence policy and activism. As opposed to standing up and saying No More, the league has latched on to nonviolent crimes as a justification for punishment, has not adhered to its suspension guidelines, and has deferred to teams the responsibility for handling these incidences. Although the NFL has quite prominently engaged in activism, condemning the evil acts of those who commit domestic violence, it has taken few actions to eliminate domestic abusers from its player ranks.

INTRODUCTION

The National Football League (NFL) has faced public scrutiny in recent years for the way it has handled domestic violence incidents involving players. After Ray Rice, a star running back, was caught on camera striking his then fiancée, player domestic violence in the NFL was thrust into the spotlight. Public backlash ensued, and the NFL handled that backlash by introducing and publicizing a new Personal Conduct Policy, which outlined stricter penalties for players involved in domestic violence. The NFL also became an activist against domestic violence. Through a content analysis, this Article compares the NFL's activism to its action against players who are involved in domestic violence.

Part I of this Article provides a brief background on how the NFL handled Rice's assault and then details the NFL's policy and governance structures with respect to the player punishment process. Part II discusses how the NFL's Commissioner gained broad power to issue and enforce this process. Part III explains how the NFL has attempted to address player misconduct both through implementing policy and through purporting itself to be an activist against domestic violence. Part IV discusses how the NFL's policy implementation and public stance against domestic violence, otherwise referred to as its activism, fall under the broad banner of "corporate social responsibility." Part V turns to the study at the heart of this Article; specifically, it discusses the empirical method used in this study to analyze whether the NFL actually takes action against players who commit domestic violence. Based on the study's results, Parts VI and VII conclude that teams—not the NFL—are disciplining players who

commit domestic violence. Part VIII further explains that when the NFL does decide to take action, it does not do so in accordance with its most recent policy. Finally, this Article concludes that the NFL's activism against domestic violence has not been accompanied by proportionate action.

I BACKGROUND

On February 15, 2014, Ray Rice was released from custody after being arrested for assaulting his fiancée the night before.¹ Days after his release, the gossip website TMZ posted a grainy video that showed Rice dragging his fiancée's limp body out of a New Jersey casino elevator.² On March 24, Steve Bisciotti—the owner of the Baltimore Ravens and Rice's employer—announced that the team would not cut Rice.³ On March 27, Rice was indicted on aggravated assault charges but was allowed to clear the charges against him if he completed an anger management program.⁴ On May 21, he was accepted into a diversionary program.⁵ In June 2014, Rice met with the NFL Commissioner, Roger Goodell, to discuss the incident.⁶ Goodell suspended Rice on July 24 for two games.⁷ The two-game suspension was criticized widely by both the media and former NFL players who—given the league's prior discipline in cases involving infractions such as recreational drug use or driving under the influence—saw the lenient punishment as offensive.⁸ The criticism of the NFL stemmed from the light punishment for a violent crime.⁹ On August 28, however, Goodell

¹ Childs Walker, *Timeline of Events in the Ray Rice Case*, BALTIMORE SUN (Feb. 13, 2015, 7:39 AM), <http://www.baltimoresun.com/sports/bal-ray-rice-timeline-of-events-20141113-story.html> (noting that Rice's then fiancée, now wife, was also arrested and charged following the events at the New Jersey casino).

² *Id.*

³ *Id.* Bisciotti stated, that "He'll be back with the team. He'll definitely be back." John Breech, *Ravens Owner Steve Bisciotti: Ray Rice Will "Definitely Be Back."* CBS SPORTS (Mar. 24, 2014), <https://www.cbssports.com/nfl/news/ravens-owner-steve-bisciotti-ray-rice-will-definitely-be-back/>.

⁴ Walker, *supra* note 1.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Jon Meoli, *What They're Saying About Ray Rice's Two-Game Suspension*, BALTIMORE SUN (July 24, 2014, 2:15 PM), <http://www.baltimoresun.com/sports/baltimore-sports-blog/bal-ravens-ray-rice-suspension-reaction-20140724-story.html>.

⁹ *Id.*

announced that the NFL would implement tougher penalties for players involved in domestic violence after the NFL “didn’t get it right” with Rice’s suspension.¹⁰ Eleven days later, TMZ posted extended footage of Rice striking his fiancée in the elevator.¹¹ After the extended video was posted, the Ravens cut Rice, and the NFL announced his indefinite suspension.¹² Rice never rushed for another yard in the NFL,¹³ and the NFL received severe scrutiny for how it handled players who are arrested for domestic violence.¹⁴

This was not the first time the NFL received scrutiny for how it handles its players: during the late 1990s, NFL owners became concerned with the organization’s reputation among fans.¹⁵ As a result, the owners implemented a Violent Crime Policy granting the Commissioner the authority to discipline any player charged with a violent felony.¹⁶ In 2000, the Violent Crime Policy became the Personal Conduct Policy.¹⁷ This policy granted the Commissioner near “unlimited power to suspend, fine, and even banish players who had been convicted of a crime or admitted to engaging in any wrongdoing.”¹⁸ Since then, the NFL has routinely strengthened its Personal Conduct Policy.¹⁹ Following the very public domestic

¹⁰ Walker, *supra* note 1.

¹¹ *Id.*

¹² *Id.*

¹³ See Ray Rice: Career Stats, NFL, <http://www.nfl.com/player/rayrice/941/careerstats> (last visited Sep. 27, 2018).

¹⁴ Nancy Armour, *NFL Draft Shows Teams Still Don’t Care About Domestic Abuse*, USA TODAY (May 1, 2017, 7:34 PM), <https://www.usatoday.com/story/sports/columnist/nancy-armour/2017/05/01/nfl-draft-domestic-violence-joe-mixon/101176656/> (last updated May 2, 2017, 10:31 AM).

¹⁵ Jeremy Cole, *Dropping the Ball: How the Commissioner’s Exercise of His “Best Interests” Authority is Failing the NFL and What Can Be Done About It*, 17 TEX. REV. ENT. & SPORTS L. 43, 46–47 (2015).

¹⁶ *Id.*

¹⁷ *Id.* Additionally, this was the first year a professional sports league implemented a Personal Conduct Policy. See 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, 1072 (2008).

¹⁸ Cole, *supra* note 15, at 47.

¹⁹ *Id.* In 2007, Commissioner Roger Goodell announced a strengthened Personal Conduct Policy after several players were repeatedly arrested. *Id.* The following year, after consulting the National Football League Players Association (NFLPA), Goodell once again strengthened these policies. *Id.* In 2008, the NFL listed a variety of criminal behaviors that could be considered as conduct detrimental to the NFL. *Id.* at 48. Under the latest evolution, the position of the NFL is that a conviction is not necessary for the imposition of punishment. *Id.* at 48.

violence scandals involving stars like Ray Rice and Adrian Peterson,²⁰ the NFL once again modified its Personal Conduct Policy.²¹

Courts have historically allowed private associations like the NFL to craft their own regulations—even if those regulations dictate procedures different from those of public organizations—“as long as those regulations follow basic due process rights and administrative standards.”²² To enforce its Personal Conduct Policy, the NFL first requires the player to report his specific policy violation to his team or to NFL Security.²³ Then, the Commissioner investigates whether the reported violation merits discipline and, if so, disciplines the player.²⁴ Specifically, the Commissioner can discipline a player “for conduct detrimental to the integrity of, or public confidence in, the game of professional football.”²⁵ If a player does not agree with the punishment, he can appeal the Commissioner’s decision and go to arbitration. Although the collective bargaining agreement (CBA) between the NFL and the National Football League Players Association (NFLPA) provides for an impartial arbitration panel to adjudicate these disputes, the CBA also provides an exception where the Commissioner can act as the arbitrator for “disputes involving a fine or suspension.”²⁶ Accordingly, the Commissioner can oversee appeals involving the

²⁰ Adrian Peterson, a star former running back for the Minnesota Vikings, pleaded guilty to misdemeanor reckless assault over an incident in which he disciplined his four-year-old son by striking him with a small tree branch. See Tom Pelissero, *Adrian Peterson: “I Won’t Ever Use a Switch Again,”* USA TODAY (Nov. 20, 2014, 10:26 PM), <https://www.usatoday.com/story/sports/nfl/vikings/2014/11/20/adrian-peterson-roger-goodell-child-abuse-switch-minnesota-vikings/70025476/> (last updated Nov. 21, 2014, 7:41 AM).

²¹ Cole, *supra* note 15, at 48–49.

²² Ambrose, *supra* note 17, at 1091.

²³ *Id.* at 1075. Although there are provisions under both federal and state law that could potentially create an obligation for a criminal to self-report to law enforcement, these obligations are not common provisions in criminal statutes. See, e.g., CAL. PENAL CODE § 11165.7 (West 2018).

²⁴ Ambrose, *supra* note 17, at 1075.

²⁵ Cole, *supra* note 15, at 43 (internal quotation omitted). The NFL is not unique in having an integrity of the game provision. Major League Baseball also has a “best interests” of the game clause that allows the Commissioner to act unilaterally. See Richard Justice, “Best Interests of Baseball” a Wide-Ranging Power, MLB (Aug. 1, 2013), <http://m.mlb.com/news/article/55523182/>. The NFL Commissioner’s power is the product of negotiations between the NFL and the NFLPA collective bargaining agreement (CBA).

²⁶ David Sirotkin, *Disciplining the Disciplinary Systems in Professional Sports: An Attempt to Fix the Arbitrary and Overreaching Disciplinary Powers of Sports Commissioners*, 11 CARDOZO J. CONFLICT RESOL. 289, 293 (2009) (internal quotation omitted) (quoting NFL COLLECTIVE BARGAINING AGREEMENT (2006), <http://static.nfl.com/static/content/public/image/cba/nfl-cba-2006-2012.pdf>).

decisions he made regarding punishment and suspension²⁷—which is controversial and contrary to most common law perceptions of procedural fairness and due process.²⁸ The Commissioner’s power to act almost unilaterally when issuing punishments most likely derives from the NFL’s deeply established policies.

II

THE COMMISSIONER’S POWER

Three legal documents govern how the NFL can impose discipline, and they provide the Commissioner with broad disciplinary power: the CBA, the uniform player contract, and the NFL’s constitution and bylaws.²⁹ First, the CBA, agreed upon by the NFLPA and the NFL owners, deputizes the Commissioner and teams with authority to discipline players.³⁰ Second, the NFL players’ contracts reinforce many of the CBA’s provisions and document a player’s obligation to uphold and maintain the integrity of the game both on and off the field.³¹ Finally, the NFL’s constitution enables the Commissioner to ban anyone from football whose conduct is considered “detrimental to the best interest of the League.”³² The Commissioner’s power to ban players from the NFL has historically been the most powerful tool at the NFL’s disposal to keep undesirable players away from, or from returning to, professional football.³³

The Commissioner’s power to discipline players has not, however, gone untested: the NFLPA was founded in 1956 but did not gain meaningful bargaining power until the 1970s, following the first labor disruption and a series of court victories, including the famous *Mackey v. National Football League* decision.³⁴ In *Mackey*, the court overruled

²⁷ See Cole, *supra* note 15, at 44.

²⁸ See Ambrose, *supra* note 17, at 1091.

²⁹ Anna L. Jefferson, *The NFL and Domestic Violence: The Commissioner’s Power to Punish Domestic Abusers*, 7 SETON HALL J. SPORT L. 353, 355–58 (1997).

³⁰ *Id.* at 355–56 (citing NFL COLLECTIVE BARGAINING AGREEMENT (1993–2000)).

³¹ *Id.* at 357.

³² *Id.* at 357–58.

³³ *Id.* at 361 (observing that former Commissioner Paul Tagliabue refused to permit Philadelphia Eagles lineman Kevin Allen to reenter the NFL after serving time in prison for a sexual assault conviction).

³⁴ GLENN M. WONG, ESSENTIALS OF SPORTS LAW 451 (3d ed. 2002). In *Mackey v. NFL*, the Eighth Circuit invalidated the Rozelle Rule under the Sherman Act section 1. 543 F.2d 606 (8th Cir. 1976). Instead of analyzing the Rozelle Rule under a per se approach, the court analyzed the rule under the rule of reason and concluded that the Rozelle Rule was more restrictive than necessary to serve the legitimate business purpose of competitive balance. *Id.* at 621–22.

the “Rozelle Rule,” which allowed the Commissioner to compensate any team who lost a player to another team by requiring the player’s new team to pay the player’s former team.³⁵ Although *Mackey* limited the Commissioner’s power—and, as a result, the NFLPA gained more bargaining leverage—the extent of the Commissioner’s power has remained an enduring subject of debate between the NFL and the NFLPA.³⁶

Additionally, the Commissioner’s power has recently been interpreted by several different judicial circuits, including the Second Circuit Court of Appeals.³⁷ The Second Circuit reviewed the Commissioner’s disciplinary power after Tom Brady, one of the NFL’s most popular players, challenged Commissioner Goodell’s power.³⁸ Goodell suspended Brady for four games because of Brady’s role in the Deflategate scandal.³⁹ Brady then appealed Goodell’s decision, and Goodell appointed himself as the arbitrator of Brady’s appeal.⁴⁰ As a result, Brady moved to dismiss Goodell’s ability to act as arbitrator.⁴¹ Goodell denied Brady’s motion and proceeded to hear the arbitration.⁴² After Goodell affirmed his decision to suspend Brady, Brady and the

³⁵ *Mackey*, 543 F.2d at 623.

³⁶ Marc Edelman, *Are Commissioner Suspensions Really Any Different from Illegal Group Boycotts? Analyzing Whether the NFL Personal Conduct Policy Illegally Restrains Trade*, 58 CATH. U. L. REV. 631, 638 (2009) (referencing the “remote” relationship between the NFL personal conduct policy and the CBA); *see generally* Jefferson, *supra* note 29.

³⁷ *See NFL Mgmt. Council v. NFL Players Ass’n*, 820 F.3d 527 (2d Cir. 2016).

³⁸ *Id.* at 531.

³⁹ Michael Mondelli, Note, *The Roger Goodell Standard: Is Commissioner Authority Good for Sports?*, 42 SETON HALL LEGIS. J. 191, 204 (2017). The Deflategate scandal involved allegations that members of the New England Patriots equipment staff had deflated footballs below the NFL’s required 12.5–13.5 pounds per square inch. *See Deflategate Timeline: After 544 Days, Tom Brady Gives In*, ESPN: NFL NATION (July 15, 2016), http://www.espn.com/blog/new-england-patriots/post/_id/4782561/timeline-of-events-for-deflategate-tom-brady. The allegations surfaced after an opponent gave the ball, following an interception, to a member of his team’s equipment staff, who noticed that the ball seemed underinflated. *Id.* Following a commissioned report, the NFL declared that it was more probable than not that the New England Patriots’ staff had deliberately deflated footballs and that Tom Brady was likely at least aware of the rule’s violations. *Id.*; *see also* Michael Z. Green & Kyle T. Carney, *Can NFL Players Obtain Judicial Review of Arbitration Decisions on the Merits When a Typical Hourly Union Worker Cannot Obtain This Unusual Court Access?*, 20 N.Y.U. J. LEGIS. & PUB. POL’Y 403, 422 (2017) (providing a similar timeline).

⁴⁰ Green & Carney, *supra* note 39.

⁴¹ *Id.*

⁴² *Id.*

NFLPA appealed to the District Court.⁴³ The District Court held that the NFL failed to provide Brady with specific notice that deflating the footballs violated the Federal Arbitration Act's fundamental fairness provisions.⁴⁴

Ultimately, Brady's reprieve from the four-game suspension would end at the Second Circuit. The Second Circuit held that there was nothing unfair about requiring parties to abide by the conditions for which they collectively bargained.⁴⁵ The court stated the following:

Here, that authority was especially broad. The Commissioner was authorized to impose discipline for, among other things, "conduct detrimental to the integrity of, or public confidence, in the game of professional football." In their collective bargaining agreement, the players and the League mutually decided many years ago that the Commissioner should investigate possible rule violations, should impose appropriate sanctions, and may preside at arbitrations challenging his discipline. Although this tripartite regime may appear somewhat unorthodox, it is the regime bargained for and agreed upon by the parties, which we can only presume they determined was mutually satisfactory.⁴⁶

The Second Circuit emphasized that courts must show deference to arbitrators when the procedure and subject matter of the arbitrators' rulings are the result of collective bargaining.⁴⁷ The job of the court in these situations, according to the Second Circuit, is to provide the parties with what has been collectively bargained for.⁴⁸ This can leave the Commissioner with broad authority to conjure a conceivably wide range of allowable processes for appeal.⁴⁹ Like Brady, others have tried to challenge the seemingly dictatorial powers of the Commissioner.⁵⁰

⁴³ *Id.*

⁴⁴ NFL Mgmt. Council v. NFL Players Ass'n, 125 F. Supp. 3d 449, 463–64 (S.D.N.Y. 2015).

⁴⁵ Green & Carney, *supra* note 39, at 430.

⁴⁶ NFL Mgmt. Council v. NFL Players Ass'n, 820 F.3d 527 (2d Cir. 2016).

⁴⁷ Green & Carney, *supra* note 39, at 431.

⁴⁸ *Id.* at 432.

⁴⁹ *Id.* at 424.

⁵⁰ The NFLPA and others have often critiqued Goodell as a dictator who frequently exceeds his authority and wields his power in uneven and unfair ways; however, criticism can also be equally at the NFLPA's failure in collective bargaining to secure a more just system. The leadership of the Players' Association has been questioned, but to date changes at the top of the organization have not been made. See Patrick Hruby, *Who Ruined the NFL Players Union?*, VICE SPORTS (Mar. 13, 2015, 7:15 AM), https://sports.vice.com/en_us/article/gv7737/who-ruined-the-nfl-players-union; Mike Florio, *NFLPA Addresses Its Failure to be Mentioned in League of Denial*, NBC SPORTS (Oct. 13, 2013, 8:59 AM), <http://profootballtalk.nbcsports.com/2013/10/13/nflpa-addresses-its-failure-to-be-mentioned-in-league-of-denial/>.

In 2016, an Eighth Circuit Court of Appeals panel also ruled in favor of Commissioner Goodell's authority to suspend Adrian Peterson, the then Minnesota Vikings running back, after he allegedly beat his son with a tree branch.⁵¹ Peterson was placed on the Commissioner's Exempt List, meaning he was ineligible to play but would still be paid.⁵² Following Peterson's plea agreement with Texas prosecutors, Goodell suspended the star running back through April 15, 2015.⁵³ Peterson appealed, arguing that arbitrator Harold Henderson had applied incorrect policies to Peterson's case.⁵⁴ However, Harold Henderson, an NFL executive, upheld the suspension.⁵⁵ Peterson then brought suit in the United States District Court for the District of Minnesota, alleging Goodell's appointment of Henderson had overstepped the Commissioner's authority.⁵⁶ Like Brady, Peterson received a favorable ruling from a district court.⁵⁷ Judge David Doty's ruling focused on Goodell using a new policy to punish Peterson retroactively, a matter that, Doty observed, Henderson never directly addressed.⁵⁸

The NFL appealed to the Eighth Circuit, the same circuit that thirty-nine years earlier gave the NFLPA its judicial victory in *Mackey*. The Eighth Circuit, in an opinion authored by Judge Colloton, ruled similarly to the Second Circuit, noting the following:

The arbitrator relied on the Collective Bargaining Agreement and the law of the shop to reach this conclusion. The Agreement gives the Commissioner discretion to impose fines and suspensions for conduct detrimental to the game. The Personal Conduct Policy allows for fines and suspensions based on the nature of the incident and other relevant factors; it does not establish maximum punishments.⁵⁹

The Eighth Circuit—like the Second Circuit—found that the Commissioner and the NFL were insulated from challenges brought to

⁵¹ See Michael McCann, *Roger Goodell's Power to Discipline Stronger than Ever After Win vs. Adrian Peterson*, SPORTS ILLUSTRATED (Aug. 4, 2016), <https://www.si.com/nfl/2016/08/04/adrian-peterson-appeals-court-suspension-roger-goodell-wins>.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ NFL Players Ass'n v. NFL, 88 F. Supp. 3d 1084, 1089 (D. Minn. 2015).

⁵⁹ NFL Players Ass'n v. NFL, 831 F.3d 985, 994 (8th Cir. 2016).

their disciplinary rulings.⁶⁰ Despite the appearance of bias in the arbitration process, the court reasoned that the NFLPA acquiesced to the procedure.⁶¹

Although the NFL prevailed in both the Peterson and Brady cases, the subject matter of the appeals could not be more disparate. Brady's case involved on-the-field cheating, which resulted in his team receiving a competitive advantage,⁶² whereas Peterson's case involved an off-field incident that concerned a child.⁶³ The NFL has long struggled with publicly balancing the paradox of its message of promoting a violent game while not tolerating violence off the field.

III

A TROUBLING RESPONSE

NFL players' arrests have been captured by the media and brought before the American conscious, leading some in the public to speculate that NFL players are arrested at rates far surpassing the general population.⁶⁴ However, when framed with comparable samples, numerous researchers have found that arrest rates among the general population are higher than among NFL players.⁶⁵ But because NFL player arrests generally attract media attention, there is a heightened degree of criticism directed at how the NFL handles players accused of, arrested for, or convicted of domestic violence.⁶⁶ Nonetheless, over

⁶⁰ See *id.* at 996.

⁶¹ *Id.* at 998.

⁶² See generally Zachary J. LaFleur, Comment, National Football League Management Council v. National Football League Players Association: *Deflategate Reviewed*, 66 CASE W. RES. L. REV. 639 (2015).

⁶³ See generally Greg Bishop, *Adrian Peterson Sorts Out His Feelings on Fatherhood, Forgiveness, Loss*, SPORTS ILLUSTRATED (Jan. 4, 2016), <https://www.si.com/nfl/2016/01/05/adrian-peterson-vikings-parenting-child-abuse-case>.

⁶⁴ See, e.g., Tadd Haislop, *End of 2017 Offseason Eases Fear of NFL Player Arrests*, SPORTING NEWS (July 17, 2017), <http://www.sportingnews.com/nfl/news/nfl-arrests-2017-domestic-violence-marijuana-weed-assault-charges/1axpb44wef1efltum5qmkyeo8l> (last updated July 18, 2017).

⁶⁵ See Wanda Leal, Marc Gertz & Alex R. Piquero, *The National Felon League?: A Comparison of NFL Arrests to General Population Arrests*, 43 J. CRIM. JUST. 397 (2015); Benjamin Morris, *The Rate of Domestic Violence Arrests Among NFL Players*, FIVETHIRTYEIGHT (July 31, 2014, 12:50 PM), <https://fivethirtyeight.com/features/the-rate-of-domestic-violence-arrests-among-nfl-players/>; Reuben Fischer-Baum, *What Do Arrests Data Really Say About NFL Players and Crime?*, DEADSPIN (July 11, 2013, 3:57 PM), <https://deadspin.com/what-do-arrests-data-really-say-about-nfl-players-and-c-733301399>.

⁶⁶ See generally Juliet Macur, *N.F.L. Shows It Doesn't Really Care About Domestic Violence*, N.Y. TIMES (Oct. 21, 2016), <https://www.nytimes.com/2016/10/22/sports/football/nfl-domestic-violence-josh-brown-new-york-giants.html>; Travis Waldron, *The*

the past few decades, some of the NFL's biggest stars have been charged with or accused of domestic violence, and the NFL has struggled to adopt an effective discipline policy.⁶⁷

Just as the NFL and other sports leagues have historically struggled to implement an effective, uniform policy, the justice system has also struggled to proportionally discipline professional athletes. Specifically, the justice system has been criticized for either treating professional athletes favorably or allowing overzealous prosecutors to target athletes to advance their own careers.⁶⁸ A study from 1997 found that, between 1986 and 1995, 172 athletes had been arrested for sex-related felonies, but only thirty-one percent of those arrests resulted in conviction.⁶⁹ Between 1990 and 1996, 150 athletes were arrested for domestic violence, and only twenty-eight arrests resulted in conviction, but a majority never even reached a courtroom.⁷⁰

The NFL first attempted to address violent off-field conduct in 1997.⁷¹ Then Commissioner Paul Tagliabue implemented the Violent Crime Policy, an early predecessor to the NFL's current Personal Conduct Policy.⁷² The NFL's Violent Crime Policy, like the amendments following the Ray Rice controversy, was an effort to reform its public image, inspired by similar high-profile domestic

NFL's Domestic Violence Policy Isn't Working Because It Wasn't Designed To, HUFFPOST (Oct. 21, 2016, 2:47 PM), https://www.huffingtonpost.com/entry/nfl-josh-brown-domestic-violence-giants_us_580a1b0be4b02444efa2c5ca. In fact, there was even a congressional hearing on how the NFL and its compatriot sports leagues handle domestic violence: *Addressing Domestic Violence in Professional Sports: Hearing before the S. Comm. on Commerce, Sci., & Transp.*, 113th Cong. (2014); see also Laura Bassett, *NFL Executive Cries Through Testimony at Senate Domestic Violence Hearing*, HUFFPOST (Dec. 2, 2014, 5:55 PM), https://www.huffingtonpost.com/2014/12/02/nfl-domestic-violence-senate_n_6257448.html.

⁶⁷ See Jefferson, *supra* note 29, at 353 (stating that NFL stars including O.J. Simpson, Warren Moon, and Lawrence Phillips were all accused of domestic violence in the decades that preceded Ray Rice's February 2014 assault).

⁶⁸ Carrie A. Moser, *Penalties, Fouls, and Errors: Professional Athletes and Violence Against Women*, 11 SPORTS L.J. 69, 85 (2004). In the case of Warren Moon, it was alleged by the media that prosecutors had pursued a domestic violence case against him to further their own careers.

⁶⁹ Bethany P. Withers, *The Integrity of the Game: Professional Athletes and Domestic Violence*, 1 HARV. J. SPORT & ENT. L. 145, 147 (2010) (citing JEFF BENEDICT, PUBLIC HEROES, PRIVATE FELONS: ATHLETES AND CRIMES AGAINST WOMEN 80 (1997)).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

violence incidents.⁷³ The Violent Crime Policy appeared to have a deterrent effect on conduct because NFL players were arrested at a much lower rate from 1997 to 1999.⁷⁴

In 2007, as Roger Goodell sought to strengthen the Personal Conduct Policy, he notified players that violating the policy would result in longer suspensions with steeper fines and that teams would also be subject to discipline for individual player conduct.⁷⁵ The 2007 policy was the result of player and league collaboration: Goodell sought input from the NFLPA before adopting the new policy.⁷⁶ The first year after this policy came into effect, the number of arrests declined by twenty percent.⁷⁷

The NFL faced one of its first major challenges to the policy in 2007, after the Pittsburgh Steelers' star quarterback Ben Roethlisberger was accused of assaulting two women on separate occasions.⁷⁸ Both women filed civil lawsuits, and before Roethlisberger was charged with a single crime, Commissioner Goodell suspended Roethlisberger for the first six games of the 2010 season.⁷⁹ However, once the season began, Goodell reduced Roethlisberger's suspension for "follow[ing] the league's guidelines and stay[ing] out of trouble."⁸⁰ Goodell's decision to do so illustrates one of the challenges the NFL has faced since implementing its Personal Conduct Policy: the NFL may wish to discipline players for abhorrent off-field conduct, yet the economic reality is that high-profile players drive revenue to the NFL, and those players' suspensions negatively affect the NFL's business.⁸¹

The Ben Roethlisberger incident illustrates how fungible the NFL's Personal Conduct Policy is. The Commissioner can issue, modify, or reduce a punishment when he or she sees fit. As a result, star players, whose absence financially affects the NFL, may not expect to be fully

⁷³ See *id.* at 168. The Commissioner explained that the issue was not the league's image, despite the fact that the purpose of the policy was to address "the increasingly visible crimes of domestic violence committed by football players." *Id.*

⁷⁴ *Id.* at 169.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* at 170.

⁷⁸ Brant Webb, *Unsportsmanlike Conduct: Curbing the Trend of Domestic Violence in the National Football League and Major League Baseball*, 20 AM. U. J. GENDER SOC. POL'Y & L. 741, 756–57 (2012).

⁷⁹ *Id.* at 757.

⁸⁰ *Ben Roethlisberger's Ban at 4 Games*, ESPN (Sept. 3, 2010), <http://www.espn.com/nfl/news/story?id=5527564> (last updated Sept. 4, 2010, 8:58 AM).

⁸¹ See Webb, *supra* note 78, at 758–59.

punished for violating the NFL's policy.⁸² The Ben Roethlisberger incident also illustrates how the policy is possibly unfair: the NFL can punish a player who has not been convicted or charged with a crime.⁸³ If a situation arises that leads merely to allegations against a player, then the NFL suffers reputational harm, regardless of a player's guilt.⁸⁴ Following the widespread criticism of Ray Rice's two-game suspension, Goodell unilaterally revised the NFL's Personal Conduct Policy.⁸⁵

Under the revised policy, "any NFL employee found to have engaged in assault, battery, domestic violence or sexual assault that involved physical force would be suspended without pay for six games for a first offense."⁸⁶ Additionally, if a second incident occurs, then an employee would be banned for at least one year.⁸⁷

Almost immediately after Goodell implemented the revised policy, San Francisco 49ers player Ray McDonald was arrested for domestic violence.⁸⁸ The 49ers challenged Goodell and declined to suspend McDonald until "due process had played out."⁸⁹ That decision exposed a problem with the NFL's newest policy: the NFL's system relies on the teams and owners supporting the Commissioner's authority. Breakdowns in this relationship can undermine the Commissioner's power. And unlike the NFL, which is more concerned with protecting its global reputation, teams are more concerned with pleasing the local fan base. Accordingly, teams may be less likely to suspend a player in order to avoid upsetting their local fan base.

The transition from the Violent Crime Policy era to the post-Ray Rice era was supposed to represent the end of a period where (1) the NFL issued inconsistent penalties for players accused of domestic violence and related crimes,⁹⁰ and (2) many players went without being

⁸² See Suzanne Janusz, Comment, *The NFL's Strict Enforcement of Its Personal Conduct Policy for Crimes Against Women: A Useful Tool for Combating Violence or an Attempt to Punish Morality?*, 22 SETON HALL J. SPORTS & ENT. L. 93, 111 (2012).

⁸³ *Id.* at 116.

⁸⁴ *Id.*

⁸⁵ Jerri Kay-Phillips, *Unnecessary Roughness: The NFL's History of Domestic Violence and the Need for Immediate Change*, 5 BERKELEY J. ENT. & SPORTS L. 65, 67 (2016).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* at 86.

⁸⁹ *Id.*

⁹⁰ Jane McManus, *The NFL Is Finding Out Just How Complicated Domestic Violence Punishments Can Be*, ESPN W (Aug. 28, 2016), <http://www.espn.com/espnw/voices/>

punished.⁹¹ The current era—which features a six-game suspension followed by a one-year banishment—is, on paper, a meaningful improvement over the ad hoc discipline delivered under previous NFL regimes.⁹² From 2010 to the end of 2014 (when Goodell implemented the revised domestic violence policy), twenty-five NFL players were arrested for domestic violence.⁹³ In the period between Goodell implementing the Ray Rice–inspired policy and the end of 2017, sixteen NFL players were arrested for domestic violence, including Ray McDonald, who was arrested twice.⁹⁴ Although it appears that the NFL has provided a system with a more predictable range of outcomes, there has been little noticeable difference in the number of arrests per year.

In addition to the NFL’s introduction and public promotion of its new policies, the NFL became a public activist against domestic violence.⁹⁵ In a February 2015 Super Bowl commercial, the NFL issued a public service announcement and promoted their ties to the No More campaign.⁹⁶ The advertisement was delivered in partnership with No More, a coalition among groups combating domestic violence.⁹⁷ Current and former NFL players appeared in the commercial stating “No More” in reference to various excuses that may be used to ignore or dismiss incidents of domestic violence.⁹⁸ The NFL’s No More advertisement was described as “a branding campaign co-founded by

article/17398140/the-nfl-finding-just-how-complicated-domestic-violence-punishments-be.

⁹¹ Maleaha L. Brown, *When Pros Become Cons: Ending the NFL’s History of Domestic Violence Leniency*, 50 FAM. L.Q. 193, 198 (2016) (“[B]etween 2000 and 2014, the NFL only suspended players for one game or not at all in eighty-eight percent of the cases.”).

⁹² *Id.* at 200.

⁹³ *NFL Player Arrests*, USA TODAY: SPORTS, <https://www.usatoday.com/sports/nfl/arrests/> (last visited Sept. 27, 2018).

⁹⁴ *Id.*

⁹⁵ Lindsay H. Jones, *NFL Players Use PSAs to Speak Out Against Domestic Abuse*, USA TODAY (Oct. 14, 2014, 6:20 PM), <https://www.usatoday.com/story/sports/nfl/players/2014/10/14/nfl-players-use-psas-to-speak-out-against-domestic-violence/17270403/> (last updated Oct. 14, 2014, 7:26 PM).

⁹⁶ Lara O’Reilly, *This Domestic-Violence Super Bowl Ad Will Stop a Lot of People in Their Tracks on Game Day*, BUSINESS INSIDER (Feb. 5, 2016, 4:57 AM), <https://www.businessinsider.com/no-more-super-bowl-ad-2016-2>.

⁹⁷ John Koblin, *The Team Behind the N.F.L.’s “No More” Campaign*, N.Y. TIMES (Jan. 2, 2015), <https://www.nytimes.com/2015/01/04/style/the-team-behind-the-nfls-no-more-campaign.html>.

⁹⁸ *NFL Players Say No More to Domestic Violence & Sexual Assault in New PSA*, NO MORE, <https://nomore.org/campaigns/public-service-announcements/nflplayerspsa/> (last visited Oct. 20, 2018) [hereinafter No More PSA].

one of [the NFL's] crisis-management consultants," seeking to end domestic violence.⁹⁹ After the NFL's No More campaign announcement, the NFL Network and the NFL's official website aired announcements from the National Domestic Violence Hotline and the One Love Foundation.¹⁰⁰ The NFL's annual reports on Corporate Social Responsibility now include a section dedicated to domestic violence, concerning both the players and the public.¹⁰¹

IV

CORPORATE SOCIAL RESPONSIBILITY

The NFL's aforementioned charitable endeavors and policies can be classified under the broad blanket of Corporate Social Responsibility (CSR). CSR concerns the way in which organizations manage their relationships with society.¹⁰² The broad concept can be defined as an organization's commitment to its societal or stakeholder obligations through "company activities—voluntary by definition—demonstrating the inclusion of social and environmental concerns in business operations and in interactions with stakeholders."¹⁰³ However, CSR can also be critiqued as a fig leaf for unsociability.¹⁰⁴

Critics have questioned the NFL's charitable motives for many years. In order to build its brand and generate money for the NFL's

⁹⁹ Diana Moskovitz, *No More, The NFL's Domestic Violence Partner, Is a Sham*, DEADSPIN (Feb. 5, 2015, 1:53 PM), <https://deadspin.com/no-more-the-nfls-domestic-violence-partner-is-a-sham-1683348576>. Domestic violence is not a problem unique to the NFL: twenty percent of the female population and ten percent of the male population are affected by domestic violence. Deseriee A. Kennedy, *Using the NFL as a Model? Considering Zero Tolerance in the Workplace for Batterers*, 45 U. BALT. L. REV. 293, 295 (2016).

¹⁰⁰ See BEYOND THE GAME: THE NFL SOCIAL RESPONSIBILITY REPORT – 2016 SEASON 36–38 (2017), <http://www.nfl.com/static/content/public/photo/2017/03/24/0ap3000000795087.pdf>.

¹⁰¹ See *id.*; BEYOND THE GAME: THE 2015 NFL SOCIAL RESPONSIBILITY REPORT 28–31 (2016), <http://www.nfl.com/static/content/public/photo/2016/03/21/0ap3000000646121.pdf>.

¹⁰² JEREMY MOON, CORPORATE SOCIAL RESPONSIBILITY: A VERY SHORT INTRODUCTION 3 (2014).

¹⁰³ Marcel van Marrewijk, *Concepts and Definitions of CSR and Sustainability: Between Agency and Communion*, 44 J. BUS. ETHICS 95, 102 (2003); see also Michael E. Porter & Mark R. Kramer, *Strategy and Society: The Link Between Competitive Advantage and Corporate Social Responsibility*, 84 HARV. BUS. REV. 78, 79 (2006).

¹⁰⁴ Koblin, *supra* note 97; see also MOON, *supra* note 102, at 112; Kathy Babiak & Richard Wolfe, *Determinants of Corporate Social Responsibility in Professional Sport: Internal and External Factors*, 23 J. SPORT MGMT. 717, 731–72 (2009).

owners, the NFL has founded programs that target children (such as Play 60) and adults (such as Salute to Service).¹⁰⁵ Like other mentioned CSR programs, Salute to Service seems compelled by an ulterior, self-serving motive. Although Salute to Service donates money to military charities for every point scored, the NFL nonetheless charges the Department of Defense millions of dollars to honor service members for displays such as flyovers, flag ceremonies, and national anthem performances.¹⁰⁶ Perhaps unsurprisingly, the NFL's partnership with the No More campaign was also criticized as a deliberate attempt to distract from the NFL's troubling responses to player domestic violence allegations.

Although some CSR initiatives warrant academic and public criticism, academics widely accept that CSR is designed to benefit both society and the organization.¹⁰⁷ Academic literature has demonstrated that CSR is associated with many positive organizational outcomes,¹⁰⁸ including financial and reputational benefits.¹⁰⁹ CSR is also associated with positive public outcomes, including positive social and behavioral

¹⁰⁵ Patrick Hruby, "The Cigarette Model": How the NFL Brands Itself in America's Classrooms, VICE SPORTS (Mar. 2015), <http://www.patrickhruby.net/2015/03/its-cigarette-model-it-really-is.html> (explaining that the NFL Rush Zone taught math and statistics skills through a fantasy sports gambling-type game); Krysten De Quesada, *Reaching Nearly 5,000 Youths, NFL PLAY 60 Character Camps Double 2017 National Presence*, BUSINESS WIRE (June 15, 2017, 9:00 AM), <https://www.businesswire.com/news/home/20170615005398/en/Reaching-5000-Youths-NFL-PLAY-60-Character>; Drew Magary, *The NFL's Salute to Service is Horseshit*, DEADSPIN (Nov. 14, 2013, 3:45 PM), <https://deadspin.com/the-nfls-salute-to-service-is-horseshit-1464308797/>; Evan Grossman, *NFL Launches "Let's Listen Together" Committee for Social Justice Initiatives*, N.Y. DAILY NEWS (Jan. 24, 2018, 1:13 AM), <http://www.nydailynews.com/sports/football/nfl-launches-listen-social-justice-campaign-article-1.3774265>. For an overview of Colin Kaepernick's employment law situation, see Bobby Bramhall, *An Employment Stance on Taking a Knee*, 27 J. LEGAL ASPECTS SPORT 109 (2017).

¹⁰⁶ Magary, *supra* note 105; Melanie Schmitz, *How the NFL Sold Patriotism to the U.S. Military for Millions*, THINKPROGRESS (Sep. 25, 2017, 2:19 PM), <https://thinkprogress.org/nfl-dod-national-anthem-6f682cebc7cd/>.

¹⁰⁷ Archie B. Carroll, *A Three-Dimensional Conceptual Model of Corporate Performance*, 4 ACAD. MGMT. REV. 497 (1979); see also Porter & Kramer, *supra* note 103.

¹⁰⁸ Porter & Kramer, *supra* note 103.

¹⁰⁹ See Herman Aguinis & Ante Glavas, *What We Know and Don't Know About Corporate Social Responsibility: A Review and Research Agenda*, 38 J. MGMT. 932 (2012); Joshua D. Margolis & James P. Walsh, *Misery Loves Companies: Rethinking Social Initiatives by Business*, 48 ADMIN. SCI. Q. 268 (2003); Paul C. Godfrey & Nile W. Hatch, *Researching Corporate Social Responsibility: An Agenda for the 21st Century*, 70 J. BUS. ETHICS 87 (2007); Douglas A. Schuler & Margaret Cording, *A Corporate Social Performance-Corporate Financial Performance Behavioral Model for Consumers*, 31 ACAD. MGMT. REV. 540 (2006).

responses from consumers.¹¹⁰ It follows that CSR has become increasingly important for organizations across industries. Twenty years ago, Nike was synonymous with sweatshop labor.¹¹¹ Now, however, the sporting apparel giant has shifted toward firmer policies on factory conditions and ambitious sustainability targets. To demonstrate this increased social responsibility, Nike has released annual CSR reports.¹¹² Other companies have socially oriented practices as an explicit part of the business. TOMS Shoes, for example, donates a pair of shoes to a member of a disadvantaged community for every product purchased.¹¹³ As society's expectations of businesses continue to change, businesses are now expected to demonstrate CSR in a manner beyond mere marketing rhetoric.

Compared to other industries, professional sports are considered uniquely situated for CSR initiatives.¹¹⁴ After all, professional sport organizations have youth appeal, positive health associations like physical fitness, and large-scale communication platforms.¹¹⁵ As a result, CSR initiatives focused on health and social engagement can be particularly powerful.¹¹⁶ Accordingly, professional sport organizations, like the NFL, can be a megaphone for social issues.¹¹⁷

¹¹⁰ See, e.g., Pam Scholder Ellen, Lois A. Mohr & Deborah J. Webb, *Charitable Programs and the Retailer: Do They Mix?*, 76 J. RETAILING 393 (2000); Mette Morsing & Majken Schultz, *Corporate Social Responsibility Communication: Stakeholder Information, Response and Involvement Strategies*, 15 BUS. ETHICS 323 (2006); Keith B. Murray & Christine M. Vogel, *Using a Hierarchy-of-Effects Approach to Gauge the Effectiveness of Corporate Social Responsibility to Generate Goodwill Toward the Firm: Financial Versus Nonfinancial Impacts*, 38 J. BUS. RES. 141 (1997).

¹¹¹ See Max Nisen, *How Nike Solved Its Sweatshop Problem*, BUS. INSIDER (May 9, 2013, 10:00 PM), <http://www.businessinsider.com/how-nike-solved-its-sweatshop-problem-2013-5>; Nike, Inc. v. Kasky, 539 U.S. 654 (2003).

¹¹² Reports, NIKE, <https://sustainability.nike.com/reports> (last visited Oct. 25, 2018); see also James Epstein-Reeves, *The Parents of CSR: Nike and Kathie Lee Gifford*, FORBES (June 8, 2010, 10:26 AM), <https://www.forbes.com/sites/csr/2010/06/08/the-parents-of-csr-nike-and-kathie-lee-gifford/#d0ffb2af416f>.

¹¹³ See TOMS, <https://www.toms.com/improving-lives> (last visited Oct. 20, 2018).

¹¹⁴ Aaron C.T. Smith & Hans M. Westerbeek, *Sport as a Vehicle for Deploying Corporate Social Responsibility*, 25 J. CORP. CITIZENSHIP 43, 48 (2007); see also Babiak & Wolfe, *supra* note 104.

¹¹⁵ Smith & Westerbeek, *supra* note 114, at 50; see also Babiak & Wolfe, *supra* note 104; Kathryn L. Heinze, Sara Soderstrom & Jennifer Zdroik, *Toward Strategic and Authentic Corporate Social Responsibility in Professional Sport: A Case Study of the Detroit Lions*, 28 J. SPORT MGMT. 672, 685 (2014).

¹¹⁶ Babiak & Wolfe, *supra* note 104, at 731.

¹¹⁷ See generally Peter Kaufman & Eli A. Wolfe, *Playing and Protesting: Sport as a Vehicle for Social Change*, 34 J. SPORT & SOC. ISSUES 154 (2010). See also DAVE ZIRIN, *WHAT'S MY NAME, FOOL?: SPORTS AND RESISTANCE IN THE UNITED STATES* (2005).

In the wake of the NFL's policies and promotions seeking to combat domestic violence, this Article, through content analysis, compares the NFL's domestic violence CSR initiatives (activism) with the NFL's responses to incidents of player domestic violence (action). The subsequent section describes a brief content analysis focused on twenty recent cases involving domestic violence arrests of eighteen NFL players.

V

CONTENT ANALYSIS

Our study's objective was to measure the NFL's response to domestic violence arrests in comparison to the NFL's high-profile CSR initiatives. To accomplish its objective, our study employed a "content analysis" research method.¹¹⁸ Social scientists use content analysis to examine patterns in communication (which includes documents) in a systematic and replicable method.¹¹⁹ Essentially, content analysis measures qualitative data quantitatively,¹²⁰ and using this method helps identify themes or patterns related to the twenty recent domestic violence cases in the NFL.¹²¹ Accordingly, this study can address one of the central criticisms of CSR: that CSR programs lack objective measurements or accountability following program implementation.¹²²

Our study's sample is purposive and composed of NFL players who were arrested on charges related to domestic violence after Ray Rice's arrest on February 15, 2014, through December 31, 2017. The sample obtained for this study was from a publicly available database, compiled by USA Today, delineating NFL players' arrests, charges, and citations that are more serious than traffic violations.¹²³ Importantly, the database does not include all domestic violence incidents involving NFL players.¹²⁴ All players included in this study belonged to an NFL roster at the time of the incident.

¹¹⁸ See UWE FLICK, AN INTRODUCTION TO QUALITATIVE RESEARCH 429–36 (5th ed. 2014) (1998) (summarizing qualitative content analysis).

¹¹⁹ MARGRIT SCHREIER, QUALITATIVE CONTENT ANALYSIS IN PRACTICE 3–4 (2012).

¹²⁰ Harold H. Kassirjian, *Content Analysis in Consumer Research*, 4 J. CONSUMER RES. 8, 9–10 (1977).

¹²¹ Michael Quinn Patton, *Two Decades of Developments in Qualitative Inquiry: A Personal, Experiential Perspective*, 1 QUALITATIVE SOC. WORK 261, 261–62 (2002).

¹²² See MOON, *supra* note 102, at 43.

¹²³ See *NFL Player Arrests*, *supra* note 93.

¹²⁴ See *id.*; Mary Pilon, *Inside the NFL's Domestic Violence Punishment Problem*, BLEACHER REPORT (Jan. 31, 2017), <http://mag.bleacherreport.com/nfl-domestic-violence-policy-suspensions/>. USA Today acknowledges that the arrest database is not all-

Our study analyzed the NFL and team responses to a player's arrest by searching the arrested player's name and "domestic violence" in both mainstream media and on the NFL's website.¹²⁵ The search results identified clear categories for coding the reports to ensure the findings were systematic, reproducible, and easily interpretable.¹²⁶ Specifically, the coded criteria concerned league and team responses to conduct that violated the NFL's Personal Conduct Policy, which suited the narrow scope of the study and provided a platform for discussing how the NFL acts in response to domestic violence. In addition to searching mainstream media, the study also considered articles highlighting league and team responses and outcomes to players' domestic violence cases. This inductive analysis ensured relevant content was represented and also identified emerging themes.¹²⁷ Additionally, these analyses revealed that a number of the arrested players had multiple arrests. In fact, ten of the eighteen arrested players (56%) were arrested on multiple charges or on an additional occasion for another offense.¹²⁸ This finding may indicate that domestic violence arrests are not isolated incidents, but often are part of a pattern of conduct.¹²⁹ Based on the clear categories that emerged, the units of analysis are context-responsive.¹³⁰

See Table 1 for a summary of the results of the study.

encompassing but believes it captures a clear majority of NFL players arrested. *See NFL Player Arrests, supra* note 93. A purposive sample is a type of nonprobability sample assumed to be representative of a population based on logical observation. A purposive sample was used in order to analyze the occurrence, outcomes, and team and league responses to domestic violence incidents involving NFL players.

¹²⁵ Searches were conducted on NFL.com during February 2018.

¹²⁶ *See* Kassarian, *supra* note 120, at 9.

¹²⁷ *See* Patton, *supra* note 121, at 274.

¹²⁸ Some players were arrested while in college or as a free agent for their other arrest and therefore do not appear in the USA Today database. *See, e.g.,* Paul Myerberg, *Johnny Manziel Pleads Guilty to Misdemeanor Charge in 2012 Arrest*, USA TODAY (July 15, 2013, 12:46 PM), <https://www.usatoday.com/story/sports/ncaaf/2013/07/15/manziel-pleaded-guilty-misdemeanor-charges-2012-arrest/2518037/> (last updated July 15, 2013, 4:05 PM) (Manziel was arrested for mutual combat while in college); *See also* Mike Coppinger, *Ex-Cowboys, Panthers DE Greg Hardy Arrested on Felony Drug Charge*, USA TODAY (Sept. 26, 2016, 7:16 PM), <https://www.usatoday.com/story/sports/nfl/2016/09/26/greg-hardy-arrested-drug-charge/91138412/> (last updated Sept. 26, 2016, 11:28 PM) (Hardy was arrested while a free agent and charged with felony possession of a controlled substance).

¹²⁹ *See* Leal, Gertz & Piquero, *supra* note 65, at 461 (creating a study variable for arrests that result from multiple charges). *See generally* *NFL Player Arrests, supra* note 93.

¹³⁰ *See* Patton, *supra* note 121, at 274.

Table 1. *Domestic Violence Arrests Content Analysis*

Date	Player	Team	Arrest Outcome	Team Action	League Action	Suspension	Career Impact	Other Crimes
11/11/17	Roy Miller	KC	Undetermined	Cut (immediate)	No statement	No	End	No
8/18/17	Michael Bowie	NYG	Undetermined	Cut (immediate)	No statement	No	End	No
4/06/17	Tramaine Brock	SF	Dropped/dismis- sed	Cut (immediate)	Investigation (cleared 1/5/18)	No	New team	No
3/31/17	Will Parks	DEN	Undetermined	Statement	No statement	No	No change	No
3/05/17	Ethan Westbrooks	LAR	Dropped/dismis- sed	None	No statement	No	No change	Yes
2/05/16	Montee Ball	NE	Guilty (plea deal)	Cut (immediate)	No statement	No	End	Yes
1/30/16	Johnny Manziel	CLE	Guilty (plea deal); DV dis- missed after 12 months	Cut (preseason)	Investigation	No (DV) 4 games (other)	Signed with CFL	Yes
7/20/15	Justin Cox	KC	Undetermined	Cut (immediate)	No statement	No	Signed with CFL**	Yes
5/25/15	Ray McDonald*	CHI	Dropped/dismis- sed	Cut (immediate)	No statement	No	End	Yes
5/22/15	Josh Brown	NYG	Dropped/dismis- sed	Statement Cut (10/25/16)	Investigation Exempt list & new investiga- tion (10/25/16)	1 week (08/17/16) 6 weeks (09/08/17)	Free agent	Yes
4/17/15	Rodney Austin	DET	Guilty	Cut	Investigation	6 weeks (9/8/15)	No change	Yes
3/05/15	Bruce Miller	SF	Guilty; battery dis- missed; DV counseling	Statement	Investigation	No	No change	Yes
1/14/15	Josh McNary	IND	Acquitted (9/3/15)	Statement	Exempt list (until 9/6/15)	No	No change	No
1/05/15	Junior Galette	NO	Dropped/dismis- sed	Statement	Suspension	2 weeks	No change	Yes
9/17/14	Jonathan Dwyer	ARI	Guilty	Reserve/illness list (no return)	Investigation; suspension	3 weeks (9/8/15)	End	No
9/11/14	Adrian Peterson	MIN	Guilty	Deactivated (immediate)	Suspension; reinstated (04/16/15)	Season remain	No change	No
9/04/14	Quincy Enunwa	NYJ	Dropped/dismis- sed	Statement	Suspension	4 weeks (10/20/15)	No change	No
8/30/14	Ray McDonald*	SF	Dropped/dismis- sed	No response (continued to play)**	Investigation (cleared)	No	New team	Yes
5/13/14	Greg Hardy	CAR	Guilty; dismissed on appeal	Deactivated (did not resign)	Exempt list; suspension	10 weeks (NFL) 4 weeks (arbitrator)	New team	Yes

*Same player. **Cut after separate incident.

VI TEAMS RESPOND AND CUT PLAYERS

Based on this study, the individual teams, rather than the NFL, often decide to take action following an NFL player's arrest. More than half of the arrests resulted in a team's decision to cut the player. And in eight of these eleven cases, the team did so immediately. Perhaps these decisive responses are deliberate attempts to contrast how the New York Giants handled Josh Brown's highly criticized case in 2015.¹³¹

Josh Brown was arrested for an incident that occurred on May 22, 2015, and charged with fourth-degree domestic violence.¹³² The arrest stemmed from a physical altercation with his then wife Molly Brown, who later obtained a restraining order against him.¹³³ The charges were dropped, and the NFL issued a one-week suspension.¹³⁴ Two months later, however, police reports surfaced that included "a signed document in which [Brown] admitted to physically, verbally, and emotionally abusing . . . Molly Brown."¹³⁵ As a result of the public outcry, the New York Giants terminated Brown.¹³⁶ Additionally, Giants owner John Mara stated the team was aware of Brown's domestic violence history but not the "extent" of the abuse.¹³⁷ This sparked immense criticism and may have prompted other teams to deal with domestic violence arrests swiftly and with severe punishments.

Although teams are disciplining players for off-field conduct, fans, players, and NFL employees all seem to desire a league-wide policy that delivers fair and predictable outcomes.¹³⁸ Fair and predictable

¹³¹ See Amara Grautski, *Former Giants Kicker Josh Brown Suspended Additional 6 Games After NFL's Domestic Violence Investigation*, N.Y. DAILY NEWS (Sept. 9, 2017, 1:50 AM), <http://www.nydailynews.com/sports/football/giants/nfl-suspends-giants-kicker-josh-brown-additional-6-games-article-1.3480052>.

¹³² James Kratch, *Giants Kicker Josh Brown Arrested in 2015 on Domestic Violence Charge*, NJ (Aug. 17, 2016), https://www.nj.com/giants/index.ssf/2016/08/giants_kicker_josh_brown_arrested_in_2015_on_domes.html (last updated Aug. 18, 2016); see also *NFL Player Arrests*, *supra* note 93; Around the NFL Staff, *Josh Brown Placed on Commissioner Exempt List*, NFL (Oct. 21, 2016, 3:20 PM), <http://www.nfl.com/news/story/0ap3000000725116/article/josh-brown-placed-on-commissioner-exempt-list>.

¹³³ See Around the NFL Staff, *supra* note 132.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Pilon, *supra* note 124.

¹³⁷ *Id.*

¹³⁸ Logan O'Shaughnessy, *After Review: An Open Letter to NFL Commissioner Roger Goodell Suggesting that Limiting the League's Disciplinary Power Under the Personal*

outcomes cannot occur when the discretion falls to thirty-two teams' administrators. Further, allowing teams to decide player punishment is inconsistent with the NFL's communicated goal to have a unified league-level response to domestic violence.¹³⁹ To gain the unified level of response and the fair and predictable outcomes that fans, players, and NFL employees desire, the NFL—not the teams—should discipline players for off-field conduct.

VII THE NFL'S SILENCE

This study also found that the NFL's public response to domestic violence has been minimal. The NFL offered no statement on, or response to, seven of the nine most recent domestic violence arrests (see Table 1). Although the NFL may have disciplined these players in private, there were no reports in the media of an NFL response.¹⁴⁰ In contrast, the media reported the NFL's actions for the eleven arrests that followed the Ray Rice arrest. Such a contrast suggests that the NFL now defers to teams to handle domestic violence issues and is not taking action itself. For example, in Johnny Manziel's case, which concerned an assault and substance abuse charge, the NFL suspended Manziel for four games for substance abuse but made no announcement regarding the assault.¹⁴¹ The Cleveland Browns, on the other hand, terminated Manziel following allegations of the alleged assault surfacing.¹⁴²

The argument could be made that after a player has been cut by his team, the NFL's response to the domestic violence incident is unnecessary. However, such an approach is inconsistent with the NFL's Personal Conduct Policy and its public stance on domestic violence. The NFL's CSR report includes (1) descriptions of

Conduct Policy May Be in the League's Best Interests, 88 U. DET. MERCY L. REV. 527, 543 (2011).

¹³⁹ See generally Steve Ginsburg, *NFL Admits It "Failed" in Handling of Ray Rice Case*, REUTERS (Dec. 2, 2014, 3:00 PM), <https://www.reuters.com/article/us-usa-sports-abuse/nfl-admits-it-failed-in-handling-of-ray-rice-case-idUSKCN0JG2J120141202>.

¹⁴⁰ In fact, the eight most recent arrests did not result in a league-administered punishment.

¹⁴¹ Lindsay H. Jones, *Johnny Manziel Suspended Four Games for Substance Abuse*, USA TODAY (June 30, 2016, 1:15 PM), <https://www.usatoday.com/story/sports/nfl/2016/06/30/johnny-manziel-suspended-4-games-substance-abuse/86555946/> (last updated June 30, 2016, 6:03 PM).

¹⁴² Jill Martin, *Cleveland Browns Cut Johnny Manziel*, CNN (Mar. 11, 2016, 6:42 PM), <https://www.cnn.com/2016/03/11/us/johnny-manziel-cut-by-cleveland-browns/index.html>.

partnership programs that are aimed at raising awareness about domestic violence, and (2) information about mandatory education sessions on “active bystanders” in domestic violence.¹⁴³ Moreover, the NFL partnered with the No More campaign to bring “hidden issues into the public eye in a way that has never been done before.”¹⁴⁴ And in a No More public service announcement, NFL players made statements including “No More, not our problem,” and “No More we don’t talk about that.”¹⁴⁵ If the NFL is going to be consistent with its own CSR messages and Personal Conduct Policy, then communicating publicly about player domestic violence is a necessary minimum. Moreover, under the Personal Conduct Policy, teams and players must report domestic violence matters to the NFL.¹⁴⁶ Ultimately, because the NFL is more concerned with protecting its global reputation—and not the local fan base—it is positioned to be more objective and to respond more consistently than teams. The NFL should be responsible for disciplining players for off-field conduct.¹⁴⁷ If the onus is on the NFL to discipline players, then the NFL’s reputation will potentially improve.¹⁴⁸ After all, a more predictable, consistent process would promote a sense of fairness between the players and the NFL.

VIII SIX-WEEK SUSPENSION?

The NFL promoted its Personal Conduct Policy as “action” against assault, battery, domestic violence, and sexual assault. The 2014 version of the policy was accompanied by a letter from Roger Goodell:

Effective immediately, violations of the Personal Conduct Policy regarding assault, battery, domestic violence or sexual assault that involve physical force will be subject to a suspension without pay of six games for a first offense, with consideration given to mitigating factors, as well as a longer suspension when circumstances warrant.¹⁴⁹

¹⁴³ See BEYOND THE GAME, *supra* note 100, at 28–31.

¹⁴⁴ No More PSA, *supra* note 98.

¹⁴⁵ *Id.* (The statements were made in a video on the No More website.)

¹⁴⁶ NFL, PERSONAL CONDUCT POLICY 7 (2016), <http://static.nfl.com/static/content/public/photo/2017/08/11/0ap3000000828506.pdf>.

¹⁴⁷ Kay-Phillips, *supra* note 85, at 68.

¹⁴⁸ O’Shaughnessy, *supra* note 138.

¹⁴⁹ Letter from Roger Goodell, Comm’r, NFL, to NFL Owners 3 (Aug. 28, 2014), <http://www.nfl.com/static/content/public/photo/2014/08/28/0ap3000000384873.pdf>.

Yet, contrary to the NFL's policy, the content analysis shows that few players received suspensions consistent with the "six-week baseline." In fact, the NFL suspended only one player, Rodney Austin, for the baseline of six weeks. The NFL suspended all other players for less than six weeks: Junior Gallette (two weeks), Jonathan Dwyer (three weeks), and Quincy Enunwa (four weeks). Greg Hardy was initially placed on the Commissioner's Exempt List and suspended for ten games by the NFL,¹⁵⁰ although this was prior to the Personal Conduct Policy amendments. In Hardy's case, the investigator found "sufficient credible evidence" that Hardy had committed "a significant act of violence in violation of the Personal Conduct Policy."¹⁵¹ On appeal, however, the NFL arbitrator reduced the suspension to four games:

[T]en games is simply too much, in my view, of an increase over prior cases without notice such as was done last year, when the "baseline" for discipline in domestic violence or sexual assault cases was announced as a six-game suspension.¹⁵²

Overall, the results suggest that despite the NFL's policy outlining a six-week baseline suspension for players implicated in domestic violence, the standard has rarely been applied in practice and appears open to wide interpretation.

Overall, these observable patterns yield a meaningful interpretation. However, a content analysis provides results that have analytical, but not statistical, generalizability. Therefore, the results of this study recognize that inherent statistical limitation. Moreover, this study pertains to domestic violence arrests within a limited timeframe; therefore, it is not positioned as a comprehensive account of domestic violence within the NFL. Finally, the purposive sample is consistent with this study's purpose: to examine the NFL's responses to domestic violence compared to the NFL's high-profile CSR initiatives.

CONCLUSION

Overall, the NFL has not demonstrated a clear and consistent policy on domestic violence. In 2014, President Barack Obama was asked to

¹⁵⁰ Bob Glauber, *Greg Hardy Suspended 10 Games by NFL for Violating Personal Conduct Policy*, NEWSDAY (Apr. 22, 2015, 8:34 PM), <https://www.newsday.com/sports/football/greg-hardy-suspended-10-games-by-nfl-for-violating-personal-conduct-policy-1.10315285>.

¹⁵¹ *Id.*; see also Dan Hanzus, *Greg Hardy Suspension Reduced to Four Games*, NFL (July 10, 2015, 2:28 PM), <http://www.nfl.com/news/story/0ap3000000500985/article/greg-hardy-suspension-reduced-to-four-games> (last updated July 11, 2015, 11:07 AM).

¹⁵² Hanzus, *supra* note 150 (internal quotation omitted).

comment on the NFL's response to Ray Rice's domestic violence; he stated that

the NFL was behind the curve, as a lot of institutions have been behind the curve, in sending a clear message. You don't want to be winging it when something like this happens. You want to have clear policies in place. . . . Hopefully this has been a wakeup call and people start thinking about this a little more systematically.¹⁵³

The results of the study, of course, demonstrate that the NFL has not made the level of progress President Obama called for.

In the current climate, marked by antisexism campaigns, the NFL cannot afford to be silent or inconsistent. The #MeToo and #TimesUp movements have brought about America's very public reckoning with sexual harassment and assault.¹⁵⁴ The message of these campaigns has been centered on inviting conversation, demanding accountability, and "disrupting all systems that allow sexual violence to flourish."¹⁵⁵ And this movement has carried great force—*Time* magazine named the #MeToo "Silence Breakers" its 2017 person of the year.¹⁵⁶

The NFL's initial involvement in activism, including the No More campaign, was not in itself a misstep. After all, the separate #MeToo movement's mission to raise awareness can be deemed successful. However, the activism-oriented #MeToo movement has now had to transition into the more action-oriented #TimesUp movement.¹⁵⁷ Like the #MeToo movement, the NFL needs to find a way to move from activism to action. Accordingly, the NFL may improve its domestic violence protocol by implementing a uniform, active response to domestic violence allegations. To do so, the league, rather than the teams, should be responsible for disciplining off-field conduct. Doing

¹⁵³ Steve Ginsburg, *Obama Says NFL Was "Winging It" in Rice Domestic Violence Case*, REUTERS (Dec. 12, 2014, 1:15 PM), <https://www.reuters.com/article/us-usa-obama-nfl/obama-says-nfl-was-winging-it-in-rice-domestic-violence-case-idUSKBN0JQ25Q20141212>.

¹⁵⁴ See The Editorial Board, *Me Too, Time's Up Slowly Spread from Hollywood to Protect Low-Wage Workers*, USA TODAY (Sept. 16, 2018, 6:11 PM), <https://www.usatoday.com/story/opinion/2018/09/16/metoo-times-up-slowly-spread-low-wage-workers-editorials-debates/1327034002/> (last updated Sept. 16, 2018, 6:27 PM).

¹⁵⁵ ME TOO, <https://metoomvmt.org> (last visited Oct. 16, 2018).

¹⁵⁶ Stephanie Zacharek, Eliana Dockterman & Haley Sweetland Edwards, *Time Person of the Year 2017: The Silence Breakers*, TIME (Dec. 18, 2017), <http://time.com/time-person-of-the-year-2017-silence-breakers/>.

¹⁵⁷ Gillian B. White, *The Glaring Blind Spot of the "Me Too" Movement*, ATLANTIC (Nov. 22, 2017), <https://www.theatlantic.com/entertainment/archive/2017/11/the-glaring-blind-spot-of-the-me-too-movement/546458/>.

so would ensure that the players are disciplined consistently, thereby promoting fairness between the players, teams, and the NFL.¹⁵⁸ Further, players and ownership need to address a more agreeable system of discipline in the next collective bargaining session.

This study also demonstrated that the NFL has not suspended players consistently, despite the NFL's purported six-game baseline policy. The NFL could, however, enforce an automatic six-week suspension when a player is arrested for domestic violence, in order to ensure consistent penalties. This response would send a clear message about the seriousness of the allegations.¹⁵⁹ After a player's arrest, the NFL should conduct its own investigation. Players could return to the team following the suspension; however, they should be subject to future discipline in accordance with a negative investigation outcome.¹⁶⁰

Domestic violence is not a problem unique to the NFL: twenty percent of the female population and ten percent of the male population are affected by domestic violence.¹⁶¹ Accordingly, these suggestions are made with full appreciation that there are no simple solutions to dealing with domestic violence. NFL administrators likely want to implement effective policies. NFL employees, players, and fans all seem to want policies that result in fair and predictable outcomes for all parties, especially for victims.¹⁶² The purpose of this study is to compare the NFL's public stance against domestic violence with the NFL's response to player arrests for domestic incidents—unfortunately, to date, the NFL's activism against domestic violence has not been accompanied by proportionate action.

If there is going to be a driving force of change in the NFL, it will need to originate from the Commissioner's office.¹⁶³ Roger Goodell is the public face of the league, and he is often viewed as solely responsible for turning the league into a financial juggernaut.¹⁶⁴ The

¹⁵⁸ O'Shaughnessy, *supra* note 138.

¹⁵⁹ Kay-Phillips, *supra* note 85, at 90.

¹⁶⁰ *See id.*

¹⁶¹ Kennedy, *supra* note 99.

¹⁶² O'Shaughnessy, *supra* note 138.

¹⁶³ *See generally NFL Reorganizes Exec Structure, Promotes Rolapp to Chief Media & Business Officer*, SPORTS BUS. J. (Mar. 27, 2017), <https://www.sportsbusinessdaily.com/Daily/Issues/2017/03/27/People-and-Pop-Culture/NFL-Execs.aspx>.

¹⁶⁴ The owners of the thirty-two NFL teams elect the Commissioner of the league, and despite some tumultuous incidents including those involving domestic violence in December 2017, the NFL owners gave Roger Goodell a five-year contract extension. *Roger Goodell's 5-Year Extension Is Now Official, Despite Jerry Jones' Efforts to Fight It*, SB

exceptional power granted to the NFL Commissioner would enable him to facilitate a meaningful change to the NFL's policy on domestic violence—a policy that is firm and applies uniformly across the league.¹⁶⁵ The NFL, however, does not exist in a vacuum, and recent history indicates that perhaps the only catalyst for change will be the appalled public, following another lenient punishment dispensed to one of the league's stars.

NATION (Dec. 6, 2017, 4:37 PM), <https://www.sbnation.com/2017/12/6/16179112/roger-goodell-extension-nfl-commissioner>.

¹⁶⁵ See generally Adam Kilgore, *NFL Players Should Let Roger Goodell Keep His Sweeping Disciplinary Powers*, WASH. POST (Dec. 7, 2017), https://www.washingtonpost.com/news/sports/wp/2017/12/07/nfl-players-should-let-roger-goodell-keep-his-sweeping-disciplinary-powers/?utm_term=.01754d654da6.

