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The NBA Can Take A Play Out Of The NFL's Disciplinary Policy

BY [JOEL KROOKS](#) / ON OCTOBER 22, 2016

Derrick Rose was recently sued in federal civil court because he and two friends allegedly gang-raped a woman. A federal civil trial was held in California in which Jane Doe is suing Rose and his friends for sexual battery. The trial for the August 2013 incident was held October 14 , just before the start of the NBA season.[\[1\]](#)

Allegedly, Rose and his friends broke into his ex-girlfriend's house and took turns raping her while she was in and out of consciousness. The woman, referred to as Jane Doe, claims she was too drunk to give consent. She sued Rose in civil court for 21.5 million dollars.[\[2\]](#)

Rose admits that he and his friends engaged in group sex with Jane Doe that night, but he maintains that she was not drunk and that Rose and his friends were welcomed into her home and that she initiated sex with them.[\[3\]](#) Rose requested sexual activities from Jane Doe consistently throughout their relationship, including requests for group sex. The night of the alleged rape, Doe texted Rose, "u need to come to me right now."[\[4\]](#) Doe did not seek medical attention or law enforcement following the alleged rape. A criminal investigation is open but Rose has not been arrested.[\[5\]](#)

On October 19, Rose and his two friends were found not liable by a jury. Rose's attorney, Mark Baute, stated "We're very happy that the system worked."[\[6\]](#) "All three men were innocent from day one." While, the plaintiff's attorney stated, "I think it's a shame for women, for this country, that a celebrity can come into court and slut-shame a woman like my client."[\[7\]](#)

The NBA will have to make a decision on whether they should suspend Derrick Rose for a portion of the season. If the NBA believes that this is just a case of extortion, then in all likelihood Rose will not be suspended. If Rose does lose this civil proceeding though, the NBA may act and suspend Rose.[\[8\]](#) Rose has admitted to group sex in his testimony. Although group sex is not illegal, this situation that Rose is in is not a good look for the NBA. The NBA has the power to discipline players for off-court conduct in order to protect the best interest of the game of basketball under Article 35 of the CBA.[\[9\]](#) Similarly, the NFL has broad authority to suspend their players for off the field actions under Article 46 of their CBA. [\[10\]](#) The NFL has recently used this provision to suspend players such as Tom Brady and Ray Rice. Roger Goodell holds NFL players to a higher standard than the criminal justice system does.[\[11\]](#) Derrick Rose would almost certainly be suspended if he was in the NFL. Although this is a civil suit, the Derrick Rose situation is very bad press for the NBA and Adam Silver can take the initiative and suspend Derrick Rose for his actions. But, suspending Rose

could have its consequences. Adam Silver has to be careful. NFL players do not favor Goodell's broad disciplinary power and are fighting to take this power away. If Adam Silver wants to keep his power and keep his good relationship with the players, then he has to be careful with his suspensions.

Joel Krooks is a second year law student at Benjamin N. Cardozo School of Law and a staff editor of the Cardozo Arts & Entertainment Law Journal. He is a sports enthusiast who hopes to pursue a career as a sports lawyer.

[1] See Adrienne Lawrence, What you need to know about the Derrick Rose case, ESPN, (Oct. 4, 2016) http://www.espn.com/espn/otl/story/_/id/17700146/derrick-rose-case-need-know.

[2] See *id.*

[3] See *id.*

[4] Tim Cato, The specifics of the Derrick Rose rape case, as explained by lawyers, SB Nation, (Sep 16, 2016) <http://www.sbnation.com/2016/9/16/12797572/derrick-rose-rape-trial-lawyer-new-york-knicks>.

[5] See Michael Mccann, Legal strategies for Derrick Rose, accuser ahead of rape civil trial, Sports Illustrated, (Oct. 4, 2016) <http://www.si.com/nba/2016/10/04/derrick-rose-rape-trial-civil-lawsuit-knicks-adidas-analysis>.

[6] Derick Rose, two friends found not liable in sexual assault civil trial, ESPN, (Oct. 19, 2016) http://www.espn.com/nba/story/_/id/17834977/derrick-rose-new-york-knicks-found-not-liable-sexual-assault-civil-trial.

[7] *Id.*

[8] See Justin Gloria, NBA Rumors: Derrick Rose to miss season, suspended by Knicks due to gang rape case?, Sports Rageous, (Sept. 2, 2016) <http://www.sportsrageous.com/nba/nba-rumors-derrick-rose-to-miss-season-suspended-by-knicks-due-to-gang-rape-case/44057/>.

[9] See National Basketball League Collective Bargaining Agreement (Aug, 2014) <http://www.nba.com/media/CBA101.pdf>

[10] See National Football League Collective Bargaining Agreement (Aug. 4, 2011), <https://nflpaweb.blob.core.windows.net/media/Default/PDFs/2011%20CBA%20Updated%20with%20Side%20Letters%20thru%201-5-15.pdf>.

[11] Brent Shrotenboer, *Why are fewer NFL players being arrested?* USA Today (Dec. 18, 2015) <http://www.usatoday.com/story/sports/nfl/2015/12/18/nfl-arrests-personal-conduct-policy-roger-goodell/77481108/>.