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Taking a Shot at Mediation is the Solution to NBA Player-trade Demands

By: **Jemuel Gascon**

I. INTRODUCTION

Imagine a hypothetical where it is the year 2002, you are a child, and you are a huge Kobe Bryant fan. Kobe plays for the Los Angeles Lakers, one of the best basketball teams in the league.¹ Kobe is your favorite player because he is skilled, and he has a killer mentality for winning. You buy all his jerseys, went to all his games, and even got an autograph and picture with him after you waited outside of the arena for an hour. And anytime you had an opportunity, you would pretend to be him and perform his patented move, the fadeaway jump shot.² You would roll up a piece of paper and try to shoot it into a trash can as you yell out his name, “Kobe!”

Then you grow up, but you remain loyal to him as a player and to the team. Then after years of loyalty and winning championships, Kobe is up for free agency—meaning that he could go to another team.³ But imagine during an interview and on his Instagram page, Kobe promises that he is staying with the Lakers, your team, and promises to bring more championships. Kobe then signs a

¹ *Kobe Bryant*, *Britannica.com*, <https://www.britannica.com/biography/Kobe-Bryant> (last visited Sept. 1, 2020).

² NBA, *Kobe's Signature Fadeaway*, YOUTUBE (Oct. 28, 2010) <https://youtu.be/lk5o2PK76hs>.

³ *Free Agency*, *SportingCharts.com*, <https://www.sportingcharts.com/dictionary/nba/free-agent.aspx> (last visited Sept. 1, 2020).

four-year deal worth \$200 million dollars. After hearing this news, you decide to buy your season tickets to the Lakers because you grew up idolizing Kobe.

Then imagine four months into that contract, Kobe becomes unhappy and demands a trade to another rival even though he just signed a new contract.⁴ All of those promises Kobe made are now out the door. Eventually, the team succumbs to Kobe's demands and trades him to another team. All of those jerseys and autographs you accumulated since you were a child mean nothing to you anymore. A mix of emotions rise through you and you feel angry and betrayed. Even though you do not know Kobe in real life, you still feel like you have been connected to him for years.⁵ For fans too emotionally attached to favorite players, drastic events like trades to other teams sometimes cause jersey burning.⁶ This hypothetical with Kobe Bryant did not happen in real life, and Kobe stayed with his team and brought more championships in 2009 and 2010.⁷ But this similar situation has occurred to other players.⁸

⁴ See also Mike Pesca, *Opinion: Now Is The Winter Of The NBA Players' Discontent*, NPR (Feb. 6, 2019, 5:00 AM), <https://www.npr.org/2019/02/06/691909965/opinion-now-is-the-winter-of-the-nba-players-discontent>. The modern NBA has players with an immense sense of control and power over their brand and where they play. Pesca, *supra*. An example of this is in 2010 when LeBron James decided that he no longer wanted to play with his original team that drafted him and decided to make a super team with the Miami Heat. Pesca, *supra*. Unlike now, in 1985 a player would have accepted situation and not tried to move to different teams or colluded with others with comparable talent to be on the same team. Pesca, *supra*.

⁵ See Harry Lyles Jr., *Fans burned Isaiah Thomas jerseys after he was traded. This trend needs to stop*, SBINATION (Aug 24, 2017, 1:03 PM), <https://www.sbnation.com/2017/8/23/16190450/burning-nba-jersey-kyrie-irving-isaiah-thomas>. When Isaiah Thomas was traded to a different team, people started burning Thomas' jerseys as a sign of discontent with the trade. Lyles Jr., *supra*.

⁶ Lyles Jr., *supra* note 5.

⁷ See Kobe Bryant, *supra* note 1.

⁸ See also Pesca, *supra* note 4.

A real-life scenario of this hypothetical occurred when Anthony Davis, a basketball player for the New Orleans Pelicans, was fined \$50,000 by the National Basketball Association (NBA) for making a public trade demand.⁹ Specifically, Anthony Davis was fined “for violating a collectively-bargained rule prohibiting players or *their representatives* from making public trade demands.”¹⁰ The fine was administered after Rich Paul, Anthony Davis’ agent, made comments in multiple interviews that Davis wanted to be traded out of New Orleans and would decline a contract extension—which was estimated to be worth up to \$240 million dollars.¹¹

The issue here is that players are under contract obligations for a number of years but because their current team is not doing well in terms of competition, the players want to go to a different team that gives them the ability to win championships.¹² Players should have the right to do what is best for them and their career.¹³ Consequently,

⁹ Dave Consolazio, *Was Anthony Davis Demanding a Trade Bad for the NBA’s Future?*, SPORTSCASTING (Jul. 26, 2019), <https://www.sportscasting.com/was-anthony-davis-demanding-a-trade-bad-for-the-nbas-future/>.

¹⁰ Jeff Zillgitt, *Pelicans superstar Anthony Davis fined \$50,000 by NBA for trade request*, USA TODAY (Jan. 29, 2019, 8:48 PM), <https://www.usatoday.com/story/sports/nba/2019/01/29/anthony-davis-pelicans-fined-nba-trade-request/2714996002/> (emphasis added). Nate Robinson, a then-player for the New York Knicks, was fined \$25,000 after Aaron Goodwin, his agent, told reports and the media that he requested a trade for Nate from the New York Knicks. Zillgitt, *supra*. The specific language that Robinson was fined was “conduct detrimental to the league” and the NBA said that players are responsible for all statements made by them or their representatives. Zillgitt, *supra*. The NBA rules say that the maximum amount a player can be fined is \$50,000 for making a public trade request. Zillgitt, *supra*.

¹¹ Marc Stein, *N.B.A. Fines Anthony Davis \$50,000 After Agent’s Request for a Trade*, THE N.Y. TIMES (Jan. 29, 2019), <https://www.nytimes.com/2019/01/29/sports/anthony-davis-fine-trade.html>.

¹² Clinton Jackson, *The Fight Against NBA Trade Demands: Future Contracts May Include Financial Penalties*, THE SOURCE (Feb 19, 2019), <https://thesource.com/2019/02/19/nba-trade-demands-future-contracts/>.

¹³ See Consolazio, *supra* note 9.

player-trade demands put teams in tough situations in whether to fold or refuse to give into those demands.¹⁴ In the end, Anthony Davis got what he wanted and was traded to the Lakers to join forces with another superstar, LeBron James.¹⁵

In the long run, teams and players will work things out no matter how dirty the negotiations may get. The real people affected are the fans and people who invest their own hardworking money to watch these players play a game. Fans are people who identify themselves with a sports team or player.¹⁶ Being a fan of a sports team is similar to how people identify with ethnicity, gender, or sex.¹⁷ Fans who identify with a certain team where its star player no longer wants to be a part of it is like someone discriminating against the fan for their gender or ethnicity.¹⁸ It affects them at an emotional level.¹⁹ How fans feel is important because they are the reason why the NBA or any other sports league exists.

The NBA is a multi-billion dollar industry that is increasing its value every year.²⁰ The average NBA

¹⁴ See Consolazio, *supra* note 9.

¹⁵ Dave McMenamin, *How a busted trade request got Anthony Davis to Los Angeles*, ABC7 SPORTS (Oct. 9, 2019), <https://abc7.com/sports/how-a-busted-trade-request-got-anthony-davis-to-los-angeles/5602331/>. Anthony Davis was traded to the Los Angeles Lakers and in exchange, the New Orleans Pelicans received: “the No. 4 pick, Lonzo Ball, Brandon Ingram and Josh Hart, as well as a 2021 first-rounder protected Nos. 9-30 (which becomes unprotected in 2022), first-round swap rights in 2023 and a 2024 first-round pick with the option to defer to 2025.” McMenamin, *supra*.

¹⁶ Shirley Wang, *Sports Complex: The Science Behind Fanatic Behavior*, ASSOCIATION FOR PSYCHOLOGICAL SCIENCE (May 1, 2006), <https://www.psychologicalscience.org/observer/sports-complex-the-science-behind-fanatic-behavior>.

¹⁷ Wang, *supra* note 16.

¹⁸ Wang, *supra* note 16.

¹⁹ Wang, *supra* note 16.

²⁰ Kurt Badenhausen, *NBA Team Values 2019: Knicks On Top At \$4 Billion*, FORBES (Feb. 6, 2019, 09:00 AM), <https://www.forbes.com/sites/kurtbadenhausen/2019/02/06/nba-team-values-2019-knicks-on-top-at-4-billion/#1e203cb6e667>.

franchise, or team, is worth \$1.9 billion dollars, and the NBA has television deals with TNT and ESPN worth \$24 billion dollars.²¹ The NBA has a lot of money invested and is a living, breathing machine.²² So when a star player of a basketball team is unhappy with his situation and demands to be traded, it causes a domino effect that starts with the fans and ends with the NBA's money.²³

It is understandable for a player to sign with a different team after their contract is completed or when they enter free agency; but to hold a team hostage by refusing to play or displaying their unhappiness with passive aggressive actions is a problem for the team and the fans, especially.²⁴ These trade demands hurt not only the teams and the fans of these NBA franchises but also the players.²⁵

The Collective Bargaining Agreement (CBA) allows a player to earn X amount of money if they stay with their franchise.²⁶ The CBA is a contract between the players, owners, and the NBA regarding rules and actions related to

²¹ Badenhausen, *supra* note 20.

²² See Badenhausen, *supra* note 20.

²³ Calvin Fong, *Are trade demands really "bad for the NBA"?*, CLUTCHPOINTS (Jul. 27, 2019) <https://clutchpoints.com/are-trade-demands-really-bad-for-the-nba/>.

²⁴ Brian Windhorst, *Who wins and who loses when an NBA player demands a trade*, ESPN (Nov. 14, 2018), https://www.espn.com/nba/story/_/id/25265468/nba-trade-demands; see Wang, *supra* note 16.

²⁵ Windhorst, *supra* note 24. Irving, a basketball player, was traded to the Boston Celtics team and missed out on extra cash incentives due to the trade. Windhorst, *supra*.

²⁶ Windhorst, *supra* note 24. See NBAPA, <https://nbpa.com/cba> (last visited Oct. 1, 2020) ("The Collective Bargaining Agreement between the NBPA and the NBA sets out the terms and conditions of employment for all professional basketball players playing in the National Basketball Association, as well as the respective rights and obligations of the NBA Clubs, the NBA, and the NBPA.").

the NBA league.²⁷ The CBA is negotiated between the Players Association and the NBA, and the current CBA expires on June 30, 2024.²⁸

There are many trade-related clauses in the CBA such as the no-trade clause, which gives a player the ability to prevent a team from trading him to another team; however, there is nothing in the CBA about a player wanting to be traded to another team.²⁹ By demanding a trade and being traded as a result, the player can lose millions of guaranteed dollars for being traded to another team, according to the CBA.³⁰ The current provisions in the CBA are meant to dissuade star player movements, however they have not proved to be enough of a deterrent.³¹ For example, Paul George and Kawhi Leonard both gave up a Designated Player Veteran Extension (DPVE) as laid out in the CBA.³² Meaning, both star players lost as much as \$70 million dollars of guaranteed money on the table when they forced trades to a different team.³³ Another example is Jimmy Butler, who walked away from \$47 million dollars when he forced the Minnesota Timberwolves to trade him to the Philadelphia 76ers.³⁴ When perennial All-Star Kyrie Irving requested a trade from the Cleveland Cavaliers to the Boston Celtics and was asked about missing out on millions of dollars on the DPVE, he said, “ You can’t put a price on

²⁷ NBA-NBPA, COLLECTIVE BARGAINING AGREEMENT 1 (2017), <https://cosmic-s3.imgix.net/3c7a0a50-8e11-11e9-875d-3d44e94ae33f-2017-NBA-NBPA-Collective-Bargaining-Agreement.pdf>. See See NBAPA, *supra* note 26.

²⁸ NBA-NBPA, *supra* note 27, at 466.

²⁹ NBA-NBPA, *supra* note 27, at 368. NYTIMES, *Milwaukee Bucks Tampering Giannis*, <https://www.nytimes.com/2019/09/24/sports/milwaukee-bucks-tampering-giannis.html> (last visited Oct. 1, 2020) (The closest thing to player-trade demands is tampering, however it is very difficult to get a no-trade clause if you are not a star player or have enough leverage.).

³⁰ Windhorst, *supra* note 24.

³¹ Windhorst, *supra* note 24.

³² Windhorst, *supra* note 24.

³³ Windhorst, *supra* note 24.

³⁴ Windhorst, *supra* note 24.

happiness.”³⁵ These numerous illustrations show that the CBA and NBA have not solved player-trade demands.

This is where mediation is a possible solution to player-trade demands while under contract. This topic is important because of the money and the millions of people involved in the sports industry. Mediation is a way of venting one’s emotions, and having a neutral party facilitate is the cleanest way to solve this problem.³⁶ Therefore, this article proposes that the upcoming CBA in 2024 should include an initial mediation process for voluntarily resolving trade demands.

Part two of this article looks at the background of player-trade demands; it looks at past demands in both the NBA and other sports.³⁷ It also explores the pros and cons about player-trade demands and how they affect the NBA.³⁸ Part three of this article proposes that the use of mediation can tame trade demands’ negative side effects and explores the proposition of including a voluntary mediation clause for trade demands on the next CBA negotiations.³⁹ Part four will raise potential objections to mediation as an avenue of solving player-trade demands.⁴⁰ Lastly, part five concludes that mediation is the right step towards fixing the conflict between players and the NBA.⁴¹

II. BACKGROUND

This section will discuss the background behind the motivation of player-trade demands, player-trade demand

³⁵ Windhorst, *supra* note 24.

³⁶ JAY FOLBERG & DWIGHT GOLANN, *MEDIATION: THE ROLES OF ADVOCATE AND NEUTRAL*, 98 (3rd ed. 2016).

³⁷ *See infra* notes 42–83.

³⁸ *See infra* notes 84–113.

³⁹ *See infra* notes 114–138.

⁴⁰ *See infra* notes 139–147.

⁴¹ *See infra* pages 27–28.

frequency and occurrences in other sports, and arguments for and against addressing player-trade demands.

According to the CBA, a “Traded Player” means a player whose Player Contract is assigned by one Team to another Team other than by means of the NBA waiver procedure.⁴² A player-trade demand is when a player demands his current team to trade him to a different team, preferably one of his choices.⁴³ It becomes a “public” trade demand when this information leaks to the media, the public is aware of it, and the player had some control in the release of this information.⁴⁴ There has been a sudden increase in public trade demands since the 2017–2018 season of the NBA.⁴⁵ Players who were discontent with their predicament have asked to be traded in the past.⁴⁶ However, those players usually did so in private and not in the media or public eye.⁴⁷ These public trade demands are not liked by the NBA commissioner (also known as the chief executive of the NBA), Adam Silver, nor the fans of that particular team.⁴⁸ Commissioner Silver said, “I don’t like trade demands and I wish they didn’t come.”⁴⁹ Player-trade demands give players leverage on deciding where to go and can hold a team hostage in terms of player personnel and team direction.⁵⁰

⁴² NBA-NBPA, *supra* note 27, at 12.

⁴³ Pesca, *supra* note 4.

⁴⁴ Zillgitt, *supra* note 10.

⁴⁵ Dwight Jaynes, *Kyrie Irving’s demands are taking disloyalty to an obscene new level*, NBC SPORTS (Jul. 23, 2017, 11:40 AM), <https://www.nbcsports.com/northwest/nba/kyrie-irvings-demands-are-taking-disloyalty-obscene-new-level>.

⁴⁶ Jaynes, *supra* note 45.

⁴⁷ Jaynes, *supra* note 45.

⁴⁸ Kyle Newport, *Adam Silver: No One Likes to See Players Demanding Trades While Under Contract*, BLEACHER REPORT (Feb. 16, 2019), <https://bleacherreport.com/articles/2821153-adam-silver-no-one-likes-to-see-players-demanding-trades-while-under-contract>.

⁴⁹ Newport, *supra* note 48. Jimmy Butler, Kawhi Leonard, Anthony Davis, and Kyrie Irving have all requested trades within the past couple of years and all were ultimately moved by their prior teams, feeding into Commissioner Silver’s dissatisfaction with the notion of trade demands. Windhorst, *supra* note 24.

⁵⁰ See Windhorst, *supra* note 24.

Depending on the player's talent and contract, some player-trade demands hold more leverage than others.⁵¹ Contrasting Kawhi Leonard's and Jimmy Butler's trade scenarios with Kyrie Irving, Irving had less leverage because he had two years left on his contract while Leonard and Butler had one year left.⁵² The threat or possibility of Leonard's and Butler's teams getting nothing if those players did not re-sign and left in free agency was greater than Irving's demand to be traded.⁵³

A. SUDDEN INCREASE IN PUBLIC TRADE DEMANDS AT THE END OF 2017 SEASON.

At the end of the 2017 season, public trade demand by players became more frequent in terms of publicity and media coverage.⁵⁴ These player-trade demands likely arose from unhappiness or dissatisfaction with the direction of the team, such as requesting a trade demand because of a lack of with the team's staff or medical team.⁵⁵ Kawhi Leonard played only nine games in the 2017 season due to a quadriceps injury.⁵⁶ Leonard's team, the San Antonio Spurs, disagreed on the severity of the injury and what course of action Leonard should take in rehabilitating that injury.⁵⁷ This led to Leonard seeking his own physicians and his own treatment plan in New York.⁵⁸ Leonard's actions seemed to bother the Spurs, and Leonard did not trust them anymore; in June, Leonard notified the franchise that he would like to be traded to a different team.⁵⁹ This type of situation and

⁵¹ Windhorst, *supra* note 24.

⁵² Windhorst, *supra* note 24.

⁵³ See Windhorst, *supra* note 24.

⁵⁴ Daniel Rapaport & Dan Gartland, *The Most Famous Trade Requests in Sports History*, SPORTS ILLUSTRATED (Sept. 25, 2018), <https://www.si.com/extra-mustard/2017/08/23/kyrie-irving-best-trade-requests-sports-history>.

⁵⁵ Rapaport & Gartland, *supra* note 54.

⁵⁶ Rapaport & Gartland, *supra* note 54.

⁵⁷ Rapaport & Gartland, *supra* note 54.

⁵⁸ Rapaport & Gartland, *supra* note 54.

⁵⁹ See Rapaport & Gartland, *supra* note 54.

others like it will keep happening when players have years left on their contract and they are unwilling to continue to play for the team due to an incident or an accumulation of events.⁶⁰

B. NBA TRADE DEMANDS IN THE PAST.

Player-trade demands are not new in the NBA.⁶¹ The NBA has acknowledged that this is a problem but has not figured out a solution.⁶² NBA Commissioner Silver has said that “trade demands are disheartening” and that they need to address the issue cautiously.⁶³ There is a power struggle between the NBA, teams, and the players. In the past, player-trade demands usually ended up working out for all sides, but the process has sometimes been messy.⁶⁴ For example, Chris Paul is a great illustration in which a player-trade demand situation caused then-NBA Commissioner David Stern to step in.⁶⁵ Chris Paul, then on the New Orleans Hornets, told the Hornets that he was not signing a

⁶⁰ Windhorst, *supra* note 24. Another example of a reason why players would like to be traded to a different team is another player. Rapaport & Gartland, *supra* note 54. Jimmy Butler and Karl-Anthony Towns played on the same basketball team, but they reportedly did not get along well with each other. Rapaport & Gartland, *supra*. So when the basketball team, Minnesota Timberwolves, extended the contract for Towns, Butler requested to be traded to a different team even though he still had one year left on his contract. Rapaport & Gartland, *supra*.

⁶¹ Newport, *supra* note 48.

⁶² Newport, *supra* note 48.

⁶³ Jason Owens, *Adam Silver: NBA to address ‘pointless’ tampering rules, ‘disheartening’ trade demands*, YAHOO (July 9, 2019, 9:44 PM), <https://sports.yahoo.com/adam-silver-nba-to-address-pointless-tampering-rules-trade-demands-are-disheartening-024407748.html>.

⁶⁴ Rapaport & Gartland, *supra* note 54.

⁶⁵ Rapaport & Gartland, *supra* note 54. Other examples included Kareem Abdul-Jabbar where he won an NBA title with the Milwaukee Bucks but then asked to be traded to Los Angeles because he was unhappy living in Wisconsin. Rapaport & Gartland, *supra*. Kareem wanted to move to LA to grow his brand and to win more games. Rapaport & Gartland, *supra*. Eventually, his demand was granted and in 1975, was traded to the Los Angeles Lakers. Rapaport & Gartland, *supra*. Kareem would end up winning five more championship rings and become NBA’s all time leading scorer while the Bucks faded into obscurity. Rapaport & Gartland, *supra*.

contract extension (Paul had one year left) and asked to be traded.⁶⁶ There was a three-way deal in place between the Hornets, Los Angeles Lakers, and Houston Rockets, but former NBA Commissioner Stern stepped in and controversially prevented the deal.⁶⁷ He did so to prevent a competitive imbalance because the deal could have ended with Paul and Kobe Bryant together or even Paul, Carmelo Anthony,⁶⁸ and Amar'e Stoudemire, who could have formed a super team.⁶⁹ Ultimately, Paul was traded out of the Hornets to the Los Angeles Clippers.⁷⁰

However, there are also examples of teams refusing to succumb to player-trade demands and it benefited all parties involved.⁷¹ Hakeem Olajuwon wanted out of the Houston Rockets; after the Rockets refused to trade him, they won two championships.⁷² And in 2007, Kobe Bryant made a statement on a public sports radio show saying he wanted the Lakers organization to trade him after someone in the organization leaked that Kobe was the reason Shaq left Los Angeles.⁷³ The organization ultimately did not trade Kobe, and they ended up winning two more NBA championships.⁷⁴

⁶⁶ Rapaport & Gartland, *supra* note 54.

⁶⁷ Rapaport & Gartland, *supra* note 54.

⁶⁸ See Rapaport & Gartland, *supra* note 54. Carmelo had multiple trade demands in his NBA career. Rapaport & Gartland, *supra*. He was first drafted and played for the Denver Nuggets and when that relationship was destroyed, he was traded to the New York Knicks. Rapaport & Gartland, *supra*. But then that situation turned sour again and he again asked to be traded to the Houston Rockets. Rapaport & Gartland, *supra*.

⁶⁹ Rapaport & Gartland, *supra* note 54.

⁷⁰ Rapaport & Gartland, *supra* note 54.

⁷¹ Rapaport & Gartland, *supra* note 54.

⁷² Rapaport & Gartland, *supra* note 54.

⁷³ Rapaport & Gartland, *supra* note 54.

⁷⁴ *Kobe Bryant*, *supra* note 1.

C. PUBLIC PLAYER–TRADE DEMANDS ALSO OCCURS IN OTHER SPORTS.

Player-trade demands that occur in the public eye do not only occur in the NBA, but also in other sports.⁷⁵ In the National Football League (NFL), Antonio Brown of the Pittsburgh Steelers had an incident with Ben Roethlisberger, the quarterback of the football team, and it resulted in Brown being benched for a pivotal game.⁷⁶ Subsequently, Brown requested a trade through his social media account and was traded soon after to the Oakland Raiders.⁷⁷ Brown was upset at the team and wanted out of the organization he had lost trust in.⁷⁸ Emotions and disagreements are usually the fire-starter for these player-trade demands.⁷⁹ One emotional argument between players and staff can be blown out of

⁷⁵ Vincent Frank, *Antonio Brown Officially Requests a Trade from the Steelers*, FORBES (Feb. 12, 2019), <https://www.forbes.com/sites/vincentfrank/2019/02/12/antonio-brown-officially-requests-a-trade-from-the-steelers/#3bef8d46029d>.

⁷⁶ Frank, *supra* note 75.

⁷⁷ USA TODAY, *Steelers agree to trade Antonio Brown to Raiders*, <https://www.usatoday.com/story/sports/nfl/2019/03/10/antonio-brown-trade-steelers-raiders/3103058002/> (last visited Oct. 1, 2020); Frank, *supra* note 75. Other NFL player demands include Eli Manning when he refused to play for the San Diego Chargers and was later traded to the New York Giants—noting that Manning did not play one single game for the Chargers. Rapaport & Gartland, *supra* note 54. John Elway was another NFL player who was in the same predicament as Manning but he had more leverage in his player demand because he had “a baseball career to fall back on” if he was not traded away from the Colts. Rapaport & Gartland, *supra*.

⁷⁸ Jeremy Fowler, *How it has gone wrong with Antonio Brown and the Steelers*, ESPN (Jan. 25, 2019), https://www.espn.com/blog/pittsburgh-steelers/post/_id/29995/inside-the-antonio-brown-steelers-drama-its-probably-over. See also Rapaport & Gartland, *supra* note 54 (illustrating that emotions are the driving factor for trade demands with the incident of Steve Young and Joe Montana of the San Francisco 49ers).

⁷⁹ Rapaport & Gartland, *supra* note 54.

proportion and lead to a domino effect where the player is eventually traded after he makes a public request.⁸⁰

Emotions of conflict between a team or another player are predominately one of the reasons for the existence of player-trade demands, but trade demands can also arise from a player's ego. For example, Neymar, a famous and talented football (called soccer in the United States) player, wanted to be on his own and prove himself on his own team rather than being ranked as the second best player on his current team.⁸¹ He demanded a huge trade that landed him on a totally different team, just because he wanted to be the best player on a team rather be considered the second best.⁸² Neymar's situation is similar to Kyrie Irving when he demanded a trade from the Cleveland Cavaliers because he did not want to be second to LeBron James.⁸³

D. ARGUMENTS AGAINST TRADE DEMANDS.

Steve Kerr is a head coach of a basketball team and identifies that trade demands are "bad for the league."⁸⁴ Kerr does not have an issue when a player is a free agent and is allowed to switch to a different team for it is allowed by the CBA, the contract that the NBA Players Association and

⁸⁰ Morgan Campbell, *Will Trade Demands Turn the NFL into the NBA? Hopefully*, THE STAR (Sept. 18, 2019), <https://www.thestar.com/sports/sports-prism/2019/09/18/will-trade-demands-turn-the-nfl-into-the-nba-hopefully.html>.

⁸¹ Rapaport & Gartland, *supra* note 54.

⁸² Rapaport & Gartland, *supra* note 54.

⁸³ Rapaport & Gartland, *supra* note 54; Jaynes, *supra* note 45.

⁸⁴ Des Bieler, *Steve Kerr Criticized Anthony Davis's Trade Demand. Kendrick Perkins Took Issue with That*, WASH. POST (July 24, 2019) (quoting Steve Kerr), <https://www.washingtonpost.com/sports/2019/07/25/steve-kerr-criticized-anthony-daviss-trade-demand-kendrick-perkins-took-issue-with-that/>; see Fong, *supra* note 23; Consolazio, *supra* note 9

NBA have agreed.⁸⁵ Kerr's issue begins when a player is perfectly healthy and decides that he wants to leave the organization even though he has a couple of years left on the contract.⁸⁶ Kerr believes that "if you sign the contract, then you should be bound to that contract."⁸⁷

Another argument that trade demands are bad for the league is from the standpoint of the team. Player-trade demands "creates a culture of self-centeredness and a 'looking out for number one' mentality in star players" that has a detrimental effect on the team's performance.⁸⁸ For example, when there were trade rumors of Anthony Davis demanding to be traded from the New Orleans Pelicans to a team like the Los Angeles Lakers, it affected both the Pelicans' and the Lakers' team performance on the court.⁸⁹ Instead of focusing on the game and winning it, players on the Lakers team may have been mentally distracted from the

⁸⁵ Fong, *supra* note 23; Consolazio, *supra* note 9; Bieler, *supra* note 84; *see also* Jonathan B. Goldberg, *Player Mobility in Professional Sports: From the Reserve System to Free Agency*, 15 SPORTS LAW. J. 21, 46–47, 46 nn.235–48 (2008) (citing MLB, Basic Agreement 2007–2011, art. XX) (describing the differences in a MLB free agent, unrestricted agent, and the process a MLB team can claim a free agent from another team).

⁸⁶ Fong, *supra* note 23; Consolazio, *supra* note 9; Bieler, *supra* note 84.

⁸⁷ Fong, *supra* note 23; Consolazio, *supra* note 9; Bieler, *supra* note 84. Coach Kerr understood Kevin Durant's decision to choose the Golden State Warriors because he had completed his tenure with the Oklahoma City Thunder. Jaynes, *supra* note 45. Durant completed the contract he signed with the Thunder, and therefore he has every right to choose which team he desires. Jaynes, *supra*. It goes the same with LeBron James when he picked Miami Heat after his contract was completed with the Cleveland Cavaliers. Jaynes, *supra*. Kerr has an issue when a player like Paul George who signed a huge deal with the Thunder for multiple years but after one year into the contract, he demands to be traded to the Los Angeles Clippers because another star player, Kawhi Leonard, called him up and wanted to play with him. Fong, *supra* note 23.

⁸⁸ Fong, *supra* note 23.

⁸⁹ Colin Rizzo, *Temptation to Tamper: The Ineffectiveness of the NBA's Anti-Tampering Policy and Why the League May Be Forced to Take Drastic Measures to Fix It*, 26 JEFFREY S. MOORAD SPORTS L.J. 403 (2019); *see also* Windhorst, *supra* note 14 (illustrating how player-trade demands affect team performance when Jimmy Butler performed a version of a holdout and skipped practices citing issues of injury risk and therefore affecting his trade stock).

possibility they would be traded in exchange for Anthony Davis.

It is true that general managers of teams can trade a player anytime, but this is done with the mentality of improving the team rather benefiting one individual.⁹⁰ A specific example of the “looking out for number one” mentality is when Paul George signed a four year, \$137 million deal with the Oklahoma City Thunder in the summer of 2018.⁹¹ Then, in the summer of 2019, after Leonard wanted to play with him in Los Angeles, “George immediately demanded a trade and forced his way to” the Los Angeles Clippers.⁹² The franchise and fans of Oklahoma had every right to feel like they had been betrayed.⁹³ The issue is not that players have power, but that they have too much power in that in a split second, their power can destroy a franchise, especially when a team commits \$137 million to a player.⁹⁴

Commissioner Silver has not solved the problem of preventing player-trade demands, but he can prevent tampering.⁹⁵ Tampering is a broad rule, exercised at the discretion of the NBA Commissioner, in which a team cannot make any comment or do anything to entice another

⁹⁰ Fong, *supra* note 23.

⁹¹ Fong, *supra* note 23.

⁹² Fong, *supra* note 23.

⁹³ Fong, *supra* note 23; *see also* Daniel C. Glazer, *Can't Anybody Here Run This Game? The Past, Present and Future of Major League Baseball*, 9 SETON HALL J. SPORT L. 339, 419 (1999) (pointing out that teams that lose a star player lose their competitive advantage and teams with all the great players will affect the competitive balance of a league).

⁹⁴ Fong, *supra* note 23; BLEACHER REPORT, *Magic Johnson Says Lakers 'Crossed a Line' in Paul George Tampering*, <https://bleacherreport.com/articles/2732898-magic-johnson-says-lakers-crossed-a-line-in-paul-george-tampering> (Sept. 12, 2017).

⁹⁵ Newport, *supra* note 48.

contracted player to come to their respective team.⁹⁶ An example of tampering is when the Lakers' management at the time Earvin "Magic" Johnson made comments in an ESPN interview about Paul George, who was signed with a different team at the time.⁹⁷ Magic was fined \$500,000 for those comments, but if in the end they do get that player they so desire, it may be worth paying the penalty.⁹⁸ However, recent trends may indicate that player tampering may be new, but like player-trade demands, tampering can be traced to the past.⁹⁹

Even though tampering may be difficult to monitor, the NBA has recently announced in September 2019 that it is considering treating player-induced trade demands as tampering, whereas tampering normally involves penalty fines or removal of draft picks from the team.¹⁰⁰ This recent development may be a solution to the NBA's issue of player-trade demands, but it would likely cause resentment and more secrecy between the players and the teams. This situation does not foster a team atmosphere.

⁹⁶ Jack Maloney, *NBA commissioner Adam Silver Calls Trend of Trade Demands 'Disheartening,' Hints at Changes to Free Agency Timeline*, CBS SPORTS (Jul. 10, 2019, 5:51 PM), <https://www.cbssports.com/nba/news/nba-commissioner-adam-silver-calls-trend-of-trade-demands-disheartening-hints-at-changes-to-free-agency-timeline/>.

⁹⁷ Maloney, *supra* note 96; See BLEACHER REPORT, *supra* note 94.

⁹⁸ Maloney, *supra* note 96.

⁹⁹ Alan M. Levine, *Hard Cap or Soft Cap: The Optimal Player Mobility Restrictions for the Professional Sports Leagues*, 6 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 243, 284 (1995).

¹⁰⁰ THE ATHLETIC, *Tamper, Tamper: It's time for the NBA to get rid of its unenforceable tampering rules*, <https://theathletic.com/1070552/2019/07/10/tamper-tamper-its-time-for-the-nba-to-get-rid-of-its-unenforceable-tampering-rules/> (Jul. 10, 2019); Grey Papke, *NBA Will Treat Player-Induced Trade Demands as Tampering Violations*, MSN (Sept. 27, 2019), <https://www.msn.com/en-us/sports/nba/nba-will-treat-player-induced-trade-demands-as-tampering-violations/ar-AAHX7ZA>.

E. ARGUMENTS FOR THE ACCEPTANCE OF PUBLIC TRADE DEMANDS.

On the other side of the coin, advocates for trade demands argue that players should have the power to decide where they play and how they live their lives.¹⁰¹ It is known that the NBA is a player's league meaning individual players get more attention than their own team, compared to any other sport.¹⁰² As a result, players demanding trades to get out of their contracts is simply a manifestation of the players' growing power.¹⁰³ An example of the power struggle between owners and players is when Blake Griffin's loyalty ended up back-firing on him.¹⁰⁴ Griffin promised that he would re-sign with the Los Angeles Clippers, and he did, but he was soon after traded to the Detroit Pistons without notification. Griffin may have felt slighted because of this.¹⁰⁵ Loyalty can only go so far.

Others who are indifferent or favor player-trade demands would argue that teams will do anything to save money or win a championship by dealing away star players who have showed loyalty to the team.¹⁰⁶ DeMar DeRozan was a casualty in a team wanting to win at any cost.¹⁰⁷ In 2016, DeRozan signed a \$139 million contract for five years with the Toronto Raptors.¹⁰⁸ Then, when Kawhi Leonard demanded to be traded from the San Antonio Spurs after his

¹⁰¹ Fong, *supra* note 23.

¹⁰² Fong, *supra* note 23. NBA players are more popular and recognized than other sports because it is likely due to the number of players on a team and how intimate a fan can get with a player. There are only 15 players on a team, and they do not wear helmets that cover their faces. They are more likely to get recognized than someone who is the offensive lineman of the San Francisco 49ers.

¹⁰³ Fong, *supra* note 23.

¹⁰⁴ Fong, *supra* note 23.

¹⁰⁵ Fong, *supra* note 23.

¹⁰⁶ Levine, *supra* note 99, at 302.

¹⁰⁷ Consolazio, *supra* note 9.

¹⁰⁸ Consolazio, *supra* note 9.

situation with the team's medical staff, the Raptors jumped on that opportunity and traded DeRozan to the Spurs for Leonard.¹⁰⁹ In an interview, DeRozan showed his frustrations about the trade: "I definitely was extremely hurt. I'd be lying if I told you I wasn't. I always made it clear that Toronto was where I wanted to retire."¹¹⁰ The relationship between DeRozan and the Raptors has been damaged. Player trades may have become more personal rather than a business deal.

F. THERE IS A LACK OF SOLUTION FOR PLAYER-TRADE DEMANDS.

As alluded to earlier, there is still no solution to player-trade demands.¹¹¹ There is nothing in the CBA that deals with a situation where an NBA player requests to be traded to a different team.¹¹² It continues to be an issue because of its unforeseen side effects.¹¹³ Seeing as though there are no current solutions to player-trade demands, the NBA and its players should consider using mediation as a tool to resolve situations where a player wants to be traded.

III. PROPOSED SOLUTIONS

To counter the undesirable effects of NBA players' public trade demands, this section proposes that the upcoming CBA should include a mediation provision that allows for voluntary mediation between the player and the teams when a player wishes to be traded to another team.

¹⁰⁹ NYTIMES, *Kwahi Leonard Traded to the Raports for DeMar DeRozan*, <https://www.nytimes.com/2018/07/18/sports/kawhi-leonard-demar-derozan.html> (Jul. 18, 2018).

¹¹⁰ Consolazio, *supra* note 9.

¹¹¹ Maloney, *supra* note 96. Commissioner Adam Silver has acknowledged that a lack of solution to trade demands is disheartening and also acknowledges the effort of the league to address this situation. Newport, *supra* note 48.

¹¹² NBA-NBPA, *supra* note 27.

¹¹³ Maloney, *supra* note 96.

A. MEDIATE WHEN A PLAYER WANTS TO BE TRADED.

When a star player, or any player in fact, feels that he wants to leave his current team and be traded to a different team, it is important to provide him an avenue or mechanism of exploring that option. That way, this avenue or mechanism can help solve some or all of the issues that come with a player demanding a public trade while he is still under contract. The best mechanism or procedure would be to have a mediation clause in the CBA to allow players to mediate a desire to be traded to a different team while under contract with the current team. Mediation is the best mechanism to achieve this. Mediation may allow players to voice their desire to leave the team more candidly and freely versus direct negotiation between the managers of the team and the player's agent.

"Mediation is a process of assisted negotiation in which a neutral person helps people to reach agreement."¹¹⁴ Mediation is different from the normal negotiation that occurs in the NBA because it involves an "impartial third party."¹¹⁵ Discussions about trade demands occur all the time, but when the parties meet, there are may be ulterior motives. Having a third party who is impartial may allow the parties to see the goal clearly and work together to achieve a common goal of solving the conflict. Mediation also gives the agent, lawyers, or general managers a large amount of freedom to shape the process and help balance the power between the parties.¹¹⁶

Caucuses are private meetings in which the parties talk to the mediator individually in private and voice their concerns.¹¹⁷ Each player has a different motivating factor

¹¹⁴ FOLBERG & GOLANN, *supra* note 26, at 73.

¹¹⁵ FOLBERG & GOLANN, *supra* note 26, at 73.

¹¹⁶ FOLBERG & GOLANN, *supra* note 26, at 74.

¹¹⁷ FOLBERG & GOLANN, *supra* note 26, at 75.

for why they want to leave a team via a trade.¹¹⁸ Using caucuses may have a positive effect on player-trade demands.

Emotions run high and one misspoken word can affect the way the parties come to an agreement. This is likely the reason why information about players wanting to be traded gets leaked into the media. The mediator can shape the NBA players' dialogue and reason in productive ways, and vice versa, the general manager of the NBA team.¹¹⁹ If the goal of the NBA player is to end the relationship with the team, mediation can still allow that to occur by ending it on the best possible terms, leaving the team better off than ending up with nothing but a former disgruntled employee.¹²⁰ Mediation will work to solve the negative effects of public player-trade demands because "it provides a safe forum for airing grievances and venting emotion."¹²¹

For example, the Kawhi Leonard trade situation between the San Antonio Spurs and the Toronto Raptors was birthed from Kawhi's distrust of the medical staff of the Spurs.¹²² This disagreement snowballed into Kawhi demanding a trade, which got leaked to the public.¹²³ The information of Kawhi wanting to be traded shook the entire NBA.¹²⁴ If there was a mechanism in the CBA that allowed mediation before making such demand, then the Spurs could have assessed their options and presented them to Kawhi. The mediator would hear both sides and propose solutions

¹¹⁸ See also Frank, *supra* note 75. Football player Antonio Brown was upset for being disciplined by being benched during a pivotal game. Frank, *supra* note 70.

¹¹⁹ FOLBERG & GOLANN, *supra* note 26, at 75.

¹²⁰ FOLBERG & GOLANN, *supra* note 26, at 93.

¹²¹ FOLBERG & GOLANN, *supra* note 26, at 98 (citing Daniel Bowling & David Hoffman, *Bringing Peace into the Room: The Personal Qualities of the Mediator and Their Impact on the Mediation*, 16 NEGOT. J. 5 (2000)).

¹²² Rapaport & Gartland, *supra* note 54.

¹²³ Rapaport & Gartland, *supra* note 54.

¹²⁴ Rapaport & Gartland, *supra* note 54.

that could have satisfied both parties. The Spurs could have had their assets ready and made deals with teams that did not compromise Kawhi's stock value.

Fans are highly emotional in terms of their sports teams.¹²⁵ If fans perceive that the player made an effort to work with the team when there is a likelihood of trade, it may lessen the volatile response by the team's fan base. Mediation gives that perception because there is a preconceived notion that mediation is consensual and voluntary.¹²⁶ Two parties in conflict go to a neutral third party to help solve their dispute.¹²⁷ This course of action shows good faith.

The purpose of mediation is to give the team a chance to keep the player, for the player to be heard about his grievances, or to give the team leverage to trade the player to a preferred situation if both parties cannot coexist.

B. WRITE MEDIATION INTO THE CBA CONTRACT.

Once it is agreed that mediation can be a solution to player-trade demands, the next step is to write it into the CBA. The current CBA does not have a provision addressing trade demands or mediation as a possible solution.¹²⁸ The CBA does have a provision for arbitration when grievances like penalties and fines for breaking an NBA rule occur, such as throwing a punch at another player.¹²⁹ If arbitration is already included in the CBA, then integrating mediation as a requirement before demanding a trade would not be difficult for the NBA.

On June 30, 2024, the current CBA expires and will be renegotiated between the owners and basketball

¹²⁵ Wang, *supra* note 16.

¹²⁶ See FOLBERG & GOLANN, *supra* note 26, at 73.

¹²⁷ FOLBERG & GOLANN, *supra* note 26, at 73.

¹²⁸ NBA-NBPA, *supra* note 27, at 392.

¹²⁹ NBA-NBPA, *supra* note 27, at 392, 404.

players.¹³⁰ This a perfect opportunity to talk about implementing mediation as a requirement for player-trade requests before using other methods such as making a public demand. If the NBA commissioner and players' union cannot wait until the expiration of the current CBA deal, then there should be a special meeting to vote this provision in.¹³¹

The Major League Baseball Players Association got into a similar conflict with the baseball teams and owners in 1976 when there was a lockout due to players refusing the restriction of player-trades between teams.¹³² There, the parties remained in a stalemate until four months later when the owners granted the players the right to demand a trade after five years and other perks.¹³³ This is an example of how discussion among the owners and players regarding trade demands can end in an agreement. Of course, that is not the current situation, but the example illustrates that trade demands can be incorporated into the agreement between the players' union and the sports league they are under.

Another reason for incorporating a mediation requirement when an NBA player wants to be traded while under contract is that there is a similar provision in the CBA. The CBA has a no-trade clause and a limited-trade clause.¹³⁴ As said earlier, a no-trade clause allows a player to refuse a team's decision to trade said player to a different team.¹³⁵

¹³⁰ Clinton Jackson, *The Fight Against NBA Trade Demands: Future Contracts May Include Financial Penalties*, THE SOURCE (Feb 19, 2019), <https://thesource.com/2019/02/19/nba-trade-demands-future-contracts/>.

¹³¹ See also Goldberg, *supra* note 85, at 46 nn.235–48. (citing MLB, Basic Agreement 2007-2011, art. XX) (illustrating why player mobility is important in giving players more power and participation in where they can play).

¹³² Genevieve F.E. Birren, *A Brief History of Sports Labor Stoppages: The Issues, the Labor Stoppages and Their Effectiveness (or Lack Thereof)*, 10 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 1, 5 (2014).

¹³³ Birren, *supra* note 132, at 5.

¹³⁴ Daniel M. Faber, *The Evolution of Techniques for Negotiation of Sports Employment Contracts in the Era of the Agent*, 10 UNIV. MIA. ENT. & SPORTS L. REV. 165, 183 (1993).

¹³⁵ Faber, *supra* note 134, at 183.

A limited-trade clause, on the other hand, gives the player the ability to submit a list of NBA teams that the player is willing to be traded to.¹³⁶ These are difficult provisions to obtain and usually involve the player giving up something in return for one of these clauses.¹³⁷ Since these types of provisions are already in the CBA, adding mediation regarding trade demands will not be difficult. Better yet is submitting a list of possible NBA teams that will likely receive a trading player positively in a mediation setting rather than a straight negotiation setting where bargaining power is unequal.

Further, confidentiality is one of the benefits of mediation.¹³⁸ To prevent information of a possible trade, the mediation requirement should also be confidential, and if anyone notifies the media or public of the initiation of the mediation, then fines should be imposed. Speculation is a dangerous road, and if the CBA has a mediation before trading demand clause, then any player who has a mediation with his respective basketball team can be under scrutiny for trying to leave his team. The proper way to incorporate mediation is to say that a basketball player needs to mediate any issues he has with his current contracted team, including but not limited to a desire to be traded, issues with teammates, or wanting certain meals. That way, by having a vague and ambiguous reason for when a basketball player goes into mediation, people will not know if it is regarding a trade or what he wants to eat after a game.

¹³⁶ Faber, *supra* note 134, at 183.

¹³⁷ Faber, *supra* note 134, at 183.

¹³⁸ Kimberly Taylor, Mediation: Confidentiality and Enforceability of the Process, JAMSADR (APRIL 6, 2015), <https://www.jamsadr.com/blog/2015/mediation-confidentiality-and-enforceability>.

IV. DISCUSSION OF POTENTIAL OBJECTIONS.

The next section deals with potential objections to mediation as a solution to player-trade demands.

A. OPPONENTS MAY ARGUE THAT EVERYTHING WILL WORK ITSELF OUT.

Opponents against the implementation of mediation process as a requirement regarding player-trade demands will likely argue that it is not necessary because things have a way of working themselves out.¹³⁹ The idea is that player-trade demands create drama and buzz for the sports league—something that people can talk about.¹⁴⁰ It also does not change the end result in that the player will likely be traded, which is ultimately why the player demanded a trade in the first place.¹⁴¹ No one wants an unhappy employee to remain at the jobsite out of which he tried and failed to transfer.

The issue with this argument is that it focuses on the result of the conflict, rather than the process and consequential side effects. Opponents against mediation should look at the side effects of a star player's demanding to be traded to a different team. It is there where the true conflict lies. Proponents are correct in that the NBA player who demanded the trade in the first place will get what he wants, but the baggage that comes with the decision has real consequences. Teammates, managers, fans, and endorsers will have a different perspective on how they see or feel about that certain player.¹⁴²

¹³⁹ Consolazio, *supra* note 9 (calling the increase in public player-trade demand unlikely to become an epidemic).

¹⁴⁰ Consolazio, *supra* note 9; *see also* Bieler, *supra* note 79 (illustrating the drama and attention that comes with demanding a trade).

¹⁴¹ Consolazio, *supra* note 9.

¹⁴² Consolazio, *supra* note 9.

B. OPPONENTS MAY ARGUE THAT MEDIATION WILL NOT WORK BECAUSE THE CURRENT TAMPERING RULES ARE NOT WORKING IN PREVENTING PLAYER MOVEMENT.

Individuals who are against mediation as an avenue for solving player-trade demands may argue that it would be ineffective, just like the anti-tampering rules. For that same reason, mediation is a solution because it is a stronger deterrent than tampering rules. Tampering usually precedes a public player-trade demand.¹⁴³ However, NBA Commissioner Adam Silver even admits that tampering regulations are not working and are “disheartening” to him.¹⁴⁴

Furthermore, requiring mediation as a prerequisite before taking any other course of action may result in lawsuits under the Sherman Act. The Sherman Act is an antitrust law that prohibits the restraint of trade, meaning that there cannot be a rule that limits the ability of the league to regulate teams from trading players and discussing contracts.¹⁴⁵ However, the NBA tampering policy has been ruled as an exception to this Act and similar antitrust laws.¹⁴⁶ The Supreme Court reasoned that anti-tampering regulations that prevent other teams from discussing contracts with other teams’ players equate to conspiracy and have a “pernicious” effect on the competition and lack any redeeming value.¹⁴⁷ Therefore, if this mediation provision is incorporated, then opponents may analogize it to the anti-tampering regulations that have been approved as an exception to the Act.

¹⁴³ Owens, *supra* note 63.

¹⁴⁴ Owens, *supra* note 63.

¹⁴⁵ Levine, *supra* note 99, at 254 n.65.

¹⁴⁶ Rizzo, *supra* note 89, at 414.

¹⁴⁷ Goldberg, *supra* note 85, at 28 (citing MLB, Basic Agreement 2007-2011, art. XX).

No matter what argument opponents may bring, mediation is better than sitting idle and hoping things will work themselves out.

V. CONCLUSION

Money, players, and fan investment are the essential parts of any sports league. If players are unsatisfied, it will have a domino effect and cause fan dissatisfaction and result in conflict and drama. Mediation solves this situation quickly and beneficially for both sides. Only through mediation and a neutral third party can a player-trade demand be solved without being messy. Ultimately, the player and the team each want to be heard. Most importantly, the mediator will control the emotions of the room and level the playing field.

The next time a caliber player like Kobe Bryant or Kawhi Leonard demands to be traded, the fan, the team, and the media can look positively towards a grown man's decision to leave a situation that is not beneficial to anyone. There will be no ill will or resentment because the player made an effort to work out an agreement with the team regarding his decision to move on. Mediation is worth a shot for NBA players and NBA teams, even if the ball does not go in the hoop.