

**KENNETH L. SHROPSHIRE AND TIMOTHY
DAVIS,**

THE BUSINESS OF SPORTS AGENTS

**PHILADELPHIA: UNIVERSITY OF
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** Book Review by Paul M. Anderson*

In recent years, athletes, scholars, universities, and the National Collegiate Athletic Association (“NCAA”) have joined together fighting to stop what they deem as unscrupulous sports agents. The common scenario presented is that of an individual who approaches a college athlete while her or she is still eligible to compete in intercollegiate athletics, presents them with monetary benefits or makes them sign an agency contract, jeopardizing that athlete’s athletic eligibility. Due to this ineligibility, the NCAA is then forced to sanction the school, the school is faced with lost revenue and other sanctions, and the athlete can no longer participate in athletics. In their book, *The Business of Sports Agents*, Professors Ken Shropshire and Tim Davis explore the business of being a sports agent in the United States. While it is this type of scenario that seems to have spurred the writing of this book, the authors are consistently neutral in their analysis of the sports agent industry.

The David Hauck Professor at the Wharton School of the University of Pennsylvania, Professor Shropshire’s extensive experience and knowledge of the sports industry have made him a well

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respected scholar in legal and business circles for many years. In fact, Shropshire's 1990 book, *Agents of Opportunity: Sports Agents and Corruption in Collegiate Athletics*, was one of the first critiques of the sports agent industry, and serves as the precursor to *The Business of Sports Agents*. A Professor of Law at Wake Forest University, Professor Davis has quickly made a name for himself in sports law academia with the publication of numerous articles in the area. Readers can be assured that Professors Shropshire and Davis are uniquely qualified experts in sports law and that the research behind their book is thorough and professional.

Their book is separated into three parts. "Part I: Background" begins with an interesting discussion of the evolution of the sports agent business. As the authors explain, several factors led to the development of the sports agent industry, including: the demise of the use of the reserve and option clauses in standard player contracts in professional sports; competition from new leagues in the major sports presenting athletes with alternative avenues for employment; growth of players unions in the professional sports leagues; the necessity for athletes to engage in tax planning as salary levels have increased; new sources of revenue for athletes beyond their base salary; and the increasing complexity of clauses required to protect athletes earnings in player contracts. Given this growth, many individuals are drawn to the agency business due to its perceived glamour and earnings potential. However, as Shropshire and Davis explain, the reality is that agents only attract clients by performing increasingly complex services for them.

In "Chapter 2: The Business", the authors begin to present the voluminous examples of the agent business that make up a substantial part of the book. At the outset, these examples provide the reader with the perspective needed to understand the complete breadth of the agent industry.

"Part II: Problems", begins to address perceptions of the problems in the sports agent industry. From payments made to athletes to induce them to sign with an agent to income mismanagement and excessive fees, Davis and Shropshire explore the many problems created by unscrupulous agents. They also acknowledge that many of these problems cannot simply be fixed by legislation that attempts to protect student athletes and universities. Instead, they explore other

legal avenues such as criminal or civil prosecution using claims of fraud, breach of fiduciary duty, and negligence.

The last chapters of Part II concern issues that are most seriously scrutinized by scholars and others critiquing the agent business. Chapter Six addresses conflicts of interest. In this short chapter, the authors address the many conflicts sports agents can face, such as representation of players from different teams in the same sport, undisclosed financial interests that may be in conflict with an athlete client's interests, and representing players on the same team or at the same position. Shropshire and Davis also clarify that conflicts do not only apply to lawyer agents- general agency principles create duties of loyalty, good faith and honest representation in any agency relationship. Still, while acknowledging the many ways in which conflicts can arise, a reader is too often left alone to determine whether real conflicts do exist in certain situations.

"Chapter 7: Ethics" covers the unique ethical obligations that are required of attorneys who act as sports agents. The authors discuss the the Model Rules of Professional conduct, yet they seem to confuse this issue by presenting many examples of lawyers who attempt to disavow their status as a lawyer while they represent athletes. Though it is at times unclear, there is no question that all lawyers must follow these ethical obligations while they are engaged in the practice of law.

The last chapter of this part focuses on amateurism. Similar to many commentators, Shropshire and Davis lay much of the blame for the problems created by athlete agents at the college level, on what they characterize as the NCAA's outdated amateurism rules. Much of this chapter focuses on the historical study of the term amateurism and the fact that supposed Greek notions of unpaid amateurs are a myth. This chapter is a foundation for some of the solutions the authors propose regarding revisions of these amateurism rules. Still, many readers will be left wondering why the solution to deal with unscrupulous conduct by agents who break these rules is to revise the rules themselves instead of enacting stronger measures to discipline the agents.

The final part of the book, "Part III: Solutions," focuses less on what Shropshire and Davis perceive as solutions to the many problems within the agent industry that they have addressed, and more on a review of current measures implemented in an attempt to control athlete agents.

The first chapter of this section focuses on potential private regulation of agents from the NCAA to the professional unions in the major sports leagues. While they recount many examples of the NCAA's regulatory power, the authors acknowledge that the NCAA has no power to discipline agents. The players associations do have the power to regulate athlete agents who represent their players, however, from what Shropshire and Davis present, besides the NFLPA, these associations have done little to impose strict regulations on athlete agents.

Chapter 11 and 12 explore the many legal avenues available to control agent conduct. The authors describe the many state specific athlete agent regulations and other legal avenues such as claims under the RICO Act or under the jurisdiction of the SEC. The authors also review the Uniform Athlete Agent Act that was finalized in 2000. Although they argue that most states will adopt the Act, they also recognize what many see as a need for federal legislation to regulate athlete agents. Though Shropshire and Davis are unconvinced that any federal legislation to regulate athlete agents will ever be enacted, perhaps the current Sports Agent Responsibility and Trust Act of 2002 before Congress will change this perception.

The book ends with Shropshire and Davis presenting their final analysis of what can be done to clean up the problems surrounding the athlete agent business. Although recognizing the role of the professional sports leagues and players' associations, athlete agent legislation and educational institutions, the authors devote the most time to potential reforms of amateurism. As they explain, "We must face the reality that some people will cheat wherever an economic incentive exists for them to do so." (p. 156). Therefore, the system must be changed so that there is no longer an incentive for them to pay athletes with college eligibility or to engage in other unscrupulous acts.

It is this final point that will be very discouraging to many readers. Like so many critics of the NCAA and athlete agents, Shropshire and Davis also seem to blame the NCAA for the unscrupulous and oftentimes illegal acts of athlete agents who they have so clearly shown are beyond the NCAA's control. As a result, instead of pushing for stronger laws to regulate agents, or for the players' associations in all sports to more actively govern their behavior, the NCAA and its university members are left responsible for cleaning up the problem. It is hard to understand what motivation the

NCAA would have to change its policies just so that those who break its rules will no longer have the same rules to break.

Shropshire and Davis clearly present the most extensive and exhaustive look at *The Business of Sports Agents* that exists. They cover every possible part of the business and provide a wealth of examples that cannot be found in any other source. The book is also presented in a concise and easy to understand manner that any reader will find interesting to review. This book will be indispensable for anyone studying the athlete agent business and would be useful reading for those entering the industry.

That being said, *The Business of Sports Agents* suffers from a propensity to include virtually every known example involving a sports agent. While the authors provide an impressive amount of information, at times the sheer volume of examples that follow one after another can overwhelm the reader. In fact, it may be this depth of information that causes the authors to never really present anything but information, and often this information is presented in an entirely neutral fashion. With so much controversy and so many divergent opinions about what should be done to reform the agent business, it would have been useful to have two noted experts like Professors Shropshire and Davis actually discuss what real reforms they see that could be implemented to change the business. Unfortunately, this book leaves a reader with a laundry list of what others have presented and courts have discussed, without much of an idea as to what Shropshire and Davis really think needs to be done.

In the end, given these shortcomings, *The Business of Sports Agents* is still a welcome addition to the field of sports law as it provides the most thorough analysis of the sports agent business to date. Anyone interested in the study of the sports agent business should add *The Business of Sports Agents* to their library.