

How Agent Competition And Corruption Affects Sports
And The Athlete-Agent Relationship And What Can Be
Done To Control It

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I. INTRODUCTION

Competition is the hallmark of sports. Athletes play to win at all costs, yet there are rules and regulations in every sport to ensure that this competition is both fair and safe. When an athlete partakes in unfair competition, he has a negative impact on the game and is viewed unfavorably by fans and fellow athletes alike. In the world of the sports agent, competition is also natural; however, when this competition reaches the level of illegality and immorality, it has a profound effect on the world of sports. Competition among agents representing professional and amateur athletes is responsible for much of what is wrong with sports today.

There is, in essence, a trickle down effect. Generally, competition between agents often breeds illegality because of the intense pressure to sign big athletes and even bigger contracts. This then affects the athlete's relationship with his agent and the athlete's perception of himself. Eventually, an athlete's overestimation of his worth, combined with potentially shady undertakings with an agent, form the basis of what the public considers to be the negative aspects of sports in general. This is certainly not the case in all instances, but there have been enough overpaid athletes and

corrupt agents to leave a bad taste in anyone's mouth.

The role of the sports agent in representing an athlete has increased in importance in recent years. Once thought of as individuals who negotiated player contracts for athletes, agents are now performing a variety of functions including financial management and accounting, public relations, investment, tax and estate planning and legal counseling.¹ Relatively obscure thirty years ago, the sports agent is now a predominant figure, a staple for any athlete.²

The agent's ubiquitous presence in every aspect of an athlete's professional and personal life has made the athlete-agent relationship almost as important as the relationship between athletes and club owners.³ Unfortunately, problems attributable to athlete-agent interactions have increased as fast as the number of agents in sports.⁴ These problems are caused primarily by the greed of unscrupulous agents lured by the prospect of easy money.⁵ This greed results in unfair competition among the ranks of hungry agents looking to land the biggest and brightest talents who are, all too often, young and impressionable athletes.⁶

The industry has become so pervasive and powerful that recently David Falk sold his Washington firm to SFX Entertainment, Inc. for approximately \$100 million in cash and stocks.⁷ Despite the fact that Falk's firm had only 25 employees and just over 40 clients, one of them being Michael Jordan, it was the biggest deal in a recent series of consolidations in the sports marketing business.⁸ In 1992,

1. See Michael A. Weiss, *The Regulation of Sports Agents: Fact or Fiction?*, 1 SPORTS LAW. J. 329 (1994).

2. See *id.* at 329. According to Weiss, the increase in the agent's presence was a result of the lucrative fees and incomes that the profession has enjoyed in recent years. See *id.*

3. See *id.* at 330.

4. See *id.* at 330. These problems include income mismanagement, excessive fees, conflicts of interest, incompetence, overly aggressive client recruitment practices, disruption of existing contractual relations and misappropriation of funds entrusted to the agent by the athlete. See *id.* at 331.

5. See Weiss, *supra* note 1 at 331.

6. See, e.g., Phil Taylor, *Tangled Web: Marcus Camby was Both Victim and Villain in his Illicit Dealings with Agents While at UMASS*, SPORTS ILLUSTRATED, Sept. 15, 1997, at 66.

7. See Stefan Fatsis, *Michael Jordan's Agent Scores Big in Takeover Deal*, WALL ST. J., May 5, 1998, at B13.

8. See *id.* For example, in 1997, advertising agency Interpublic Group paid

Falk broke away from Proserv Inc., taking Jordan and his other clients with him to form his own firm.⁹ This is one example of the nature of the sports marketing business; an example that only begins to reflect the impact of agent competition.

The purpose of this comment is to examine the effects of agent competition on the individual athlete and on professional sports in general. Part I of the comment introduces concerns regarding an agent's impact on professional sports. Part II of the comment focuses on the severity of competition between agents or the firms with which they are affiliated. Part III explores the athlete-agent relationship and how it is affected by agent competition. Part IV provides an overview of various league, state and federal attempts to regulate athlete agents. Finally, this comment will conclude by assessing the future impact of agent competition and discussing the adequacy of current regulations.

II. THE SEVERITY OF COMPETITION AMONG AGENTS

In the sports management business, competition for athlete clients is fierce. Recent statistics show that, in 1992, of the 200 agents registered with the Major League Baseball Player's Association, only 150 had active clients.¹⁰ The vigorous competition is largely a result of the high income potential, especially in landing a star athlete.¹¹ An agent representing a player who signs for \$10 million over four years stands to earn \$400,000, or four percent over that four

nearly \$30 million to buy Advantage International, which represents 200 athletes. *See id.* Also, Marquee Group recently purchased sports agent giant, Proserv, Inc. *See id.*

9. *See Fatsis, supra* note 7 at B13.

10. *See* Kenneth L. Shropshire, Comment, *Sports Agents, Role Models and Race-Consciousness*, 6 MARQ. SPORTS L.J. 267, 272 (1996). In his article, Shropshire explores the role of the African-American sports agent in representing African-American athletes, and concludes that race-consciousness should be an important factor in choosing an agent. *See id.* at 267.

11. *See id.* While it is true that agents can potentially earn large fees for landing a big client, the various unions for the major sports place a limit on those agent's fees. *See* Walter T. Champion, Jr., *Attorneys Qua Sports Agents: An Ethical Quandrum*, 7 MARQ. SPORTS L.J. 349, 351 (1997).

year period, not including endorsement contracts where the earnings often exceed the value of the player's contract.¹²

Despite recent problems, Proserv, Inc. is still one of the largest sports management firms in the world.¹³ It was founded by Donald Dell who launched the sports-oriented practice when he sensed the coming business prospects in tennis.¹⁴ His brusque approach helped to expand the newly created field of athlete endorsements.¹⁵ After enjoying seemingly endless success, Proserv began to undergo internal divisions in the early 1990s that eventually led to newly formed sports management firms.¹⁶ The competition was truly about to begin.

Many former Proserv executives formed firms on their own, often taking their clients with them.¹⁷ In addition, Proserv's biggest competitor, International Management Group (IMG), was expanding globally in a variety of sports, thus eclipsing Proserv's preeminence in the field.¹⁸ Proserv proved successful in catching the National Basketball Association (NBA) on its rise in the mid-1980s, however, this was short lived because David Falk and his mega clients left Proserv in 1992.¹⁹ Unfortunately for Mr. Dell, the industry had become fiercely competitive to the point where he could no longer command power in the corporate world.²⁰ Large competitors had already occupied many of the best growth areas while smaller competitors filled niches.²¹ "Proserv is a

12. See Shropshire, *supra* note 10 at 269.

13. See John Helyar, *Net Losses: How Proserv, Legend Among Sports Agents, Fell From the Top Seed*, WALL ST. J., Sept. 5, 1997, at A1.

14. *Id.*

15. See *id.* Helyar proffered a story in which an executive of AMF Head balked at renewing Arthur Ashe's \$400,000 a year racket endorsement saying that it was more than he (the executive) made; Mr. Dell responded, "The difference is you don't serve as well as Arthur." *Id.*

16. See Helyar, *supra* note 13, at A1.

17. See *id.*; see also Fatsis, *supra* note 7. For example, Ray Benton, former Proserv president, now runs RHB Associates and the Nuveen senior tennis tour; Steve Disson, who sold lucrative corporate sponsorships, now heads D&F Group; Sara Fornaciari, a senior tennis agent, founded an agency called Sports Plus. See *id.*

18. See Helyar, *supra* note 13, at A1.

19. See *id.*

20. See *id.*

21. *Id.* Helyar points to Advantage International's booming Olympic sponsorship unit as an example of the big firms staking out the growth areas. See

metaphor for the evolution of modern sports, a tale of its pitfalls and a mirror of its founder and chief executive, Donald Dell.²² Stephen Woods, a former Proserv vice president, believed that Dell's arrogance prevented him from changing with the industry and growing with his competitors.²³ Instead, competitors like IMG reshaped the industry.²⁴ They signed the biggest athletes in every country, tapped into their clients' events, and practically invented the made-for-TV sports event.²⁵

In the midst of this division and growing competition is an atmosphere where "what have you done for me lately?" is the standard.²⁶ It is this attitude that infects the sports world with greed and corruption. This is especially true for small time agents who have to compete with the likes of a Proserv, IMG, or Advantage.²⁷ They are forced to go to great lengths, often bordering on illegality, to secure an athlete.²⁸ Conversely, if small agents stay within the rules, they are often muscled out of the competition by the bigger firms potentially utilizing illegal or unethical means.²⁹ In today's

Helyar, *supra* note 13, at A1. He also notes that smaller firms such as Integrated Sports International filled the above-mentioned niches like athlete endorsements. *See id.*

22. *Id.*

23. *See id.*

24. *See* E.M. Swift, *Mark McCormack. (sports agent) (Forty for the Ages)*, SPORTS ILLUSTRATED, Sept. 19, 1994, at 72.

25. *See id.*

26. *See generally*, Helyar, *supra* note 13, at A1. For example, Proserv had Pete Sampras in the early 1990s, but he tired of sharing the firm's top tennis agent with the firm's top tennis client, Stefan Edberg. *See id.* Sampras went to IMG, and Michael Chang went to Advantage for similar reasons. *See id.* In addition, Falk left Proserv with Michael Jordan because he felt Dell never rewarded him for his successful marketing. *See id.*

27. *See generally*, Taylor, *supra* note 6; *see also*, Speakers of Sport, Inc. v. Proserv, Inc., 1998 WL 473469 (N.D. Ill.). Advantage is one of the more prominent sports management firms in the world. *See* Helyar, *supra* note 13, at A1.

28. *See, e.g.*, Taylor, *supra* note 6, at 66. Often, a small firm or solo agent will incur expenses designed to impress and influence a young athlete or his friends and relatives. *See id.* For example, one agent arranged improper payments to a Florida State Seminole player's mother and best friend, while another treated several Seminoles to a shopping spree at a nearby Foot Locker. *See Seminole Justice, infra* note 115 at 10.

29. *See generally*, Speakers of Sport, Inc. v. Proserv, Inc., 1998 WL 473469 (N.D. Ill.); *see also* Bamberger, *infra* note 52, at 82. For example, Proserv's conduct in contacting Ivan Rodriguez and promising him millions in endorsement deals is a pressure tactic a big firm can afford to use.

climate of serious consolidation, the small firm or solo agent has even less protection from big firms who are growing richer and more powerful than ever. They hire prominent lawyers, monopolize the industry and make unfulfilled promises.

The history of controversy encountered by Proserv gives an accurate reflection of the nature and severity of competition in the field of sport law. This is especially true in the case of *Speakers of Sport, Inc. v. Proserv, Inc.*³⁰ in which an Illinois corporation representing professional baseball players brought suit against Proserv.³¹ In 1991, Ivan Rodriguez³² signed the first of a number of one-year terminable at-will agreements appointing Speakers of Sport (Speakers) as his agent.³³ In 1995, Rodriguez, dissatisfied with Speakers, met with agents from Proserv, who left him with the impression that he could acquire two to four million dollars a year in endorsements if he designated Proserv as his agents.³⁴ Shortly thereafter, Rodriguez terminated the relationship with Speakers and signed with Proserv, against warnings by Speakers that Proserv would not be able to produce endorsements in the amount it projected.³⁵ As predicted, Rodriguez did not earn the money he felt he deserved, eventually fired Proserv and signed with a different

30. 1998 WL 473469 (N.D. Ill.).

31. See *Speakers of Sport v. Proserv, Inc.*, 1998 WL 473469, *1 (N.D. Ill.). Proserv is a Washington D.C. corporation that represents a diverse spectrum of professional athletes. See *id.*

32. Rodriguez has been a catcher for the Texas Rangers since 1991 and is considered by many to be the best catcher in baseball. See *Ivan Rodriguez Profile and Scouting Report*, (visited Aug. 5, 1998) <<http://www.ESPN.go.com/mlb/profiles/bio/4680.html>>.

33. See *Speakers of Sport*, 1998 WL 473469 at *1.

34. See *id.* at *1-2.

35. See *id.* at *2. Proserv denied that it ever suggested to Rodriguez that he could expect to obtain endorsement opportunities of two to four million dollars, but admitted that it may have referenced its successful marketing efforts on behalf of other clients such as Nancy Kerrigan. See *id.* It is evident from the case that two to four million dollars was a gross exaggeration of Rodriguez's endorsement potential. See *id.* The court noted Speakers' insistence that "no reasonable agent could honestly suggest, let alone promise, that Mr. Rodriguez could obtain endorsements in the amounts suggested by Proserv." *Id.* at *4. However, the court concluded that Speakers' offered no evidence to support this proposition and, despite its apparent veracity, could not accept it. See *Speakers of Sport*, 1998 WL 473469 at *4. The court also noted that not many figure skaters have ever earned endorsement money comparable to Nancy Kerrigan. See *id.*

agent.³⁶

In 1997, Speakers filed suit against Proserv claiming that its representations to Rodriguez constituted tortious interference with prospective business relations.³⁷ Speakers alleged that the statements were false and thus caused Speakers to lose Rodriguez as a client, along with the annual fees his business would have generated.³⁸ In light of his recent five-year, \$42 million contract with the Rangers, these fees would have amounted to a substantial sum.³⁹

In granting summary judgment for Proserv, the court noted that Proserv's "promise" to Rodriguez did not rise to the level of fraud or improper conduct and furthermore, Speakers offered no evidence suggesting that the endorsement estimates extended to Rodriguez were unreasonable.⁴⁰ The court also recognized that because Rodriguez was an extremely talented baseball player, Proserv could justify its statements as opinions of what its marketing strategies could do for him.⁴¹ Finally, the court perceived no malice on the part of Proserv to deliberately hinder Speakers' business opportunities.⁴²

On appeal, the Seventh Circuit affirmed the decision of the district court.⁴³ The court noted that there is generally nothing wrong with one agent attempting to acquire an

36. See *Speakers of Sport*, 1998 WL 473469 at *2. After firing Proserv, Rodriguez signed with an agent named Jeff Moorad. See *id.*

37. See *id.* Tortious interference is defined as an intentional and unjustified interference with that relationship by defendant, and damage to plaintiff as result of breach of that business relationship. See *Gerber v. Keyes Company*, 443 So.2d 199 (D. Fla. 1983).

38. See *id.* Speakers pointed to the \$42 million, five-year contract that Rodriguez recently received from the Rangers as an example of the loss it suffered. See *Speakers*, 1998 WL 473469 at *2. Ironically, it was Moorad who received the fees from this contract. See *id.*

39. See *id.*

40. See *id.* at *4. The court stated that there was "simply no evidence in the record to suggest that Proserv's conduct was even partially, much less 'solely' motivated by spite or ill will toward Speakers." See *Speakers*, 1998 WL 473469 at *5. The court then reiterated that "Proserv's conduct was in furtherance of its business and is protected by the privilege of competition." *Id.*

41. See *Speakers of Sport*, 1998 WL 473469 at *5. The court also noted that Rodriguez must have believed Proserv or liked the fact that Proserv had more confidence in his marketability. See *id.*

42. See *Speakers of Sport*, 1998 WL 473469 at *5.

43. See *Speakers of Sport, Inc. v. Proserv, Inc.*, 178 F.3d 862, 868 (7th Cir. 1999).

athlete from another as long as it can be done without inducing a breach of contract.⁴⁴ The court believed that this was merely competition which, although fierce and sometimes ruthless, is the cornerstone of our economic system.⁴⁵ With regard to Proserv's endorsement promises, the Seventh Circuit observed that the aforementioned competitor's privilege does not include a right to obtain clients by way of fraud.⁴⁶ However, it must be left to a jury to decide if a competitor knew that it could not fulfill the promise upon making it.⁴⁷

This case highlights many of the themes previously mentioned. The first is the effect that agent competition has on an athlete-agent relationship and the resulting effect on a player's perception of himself and his worth. Proserv was apparently using Rodriguez's ego to sway him away from Speakers. What resulted was a player bouncing from agent to agent with little regard for loyalty and honor. The only concern was the almighty dollar, both for the player and the agent, which turns athletics into a business full of overpaid egomaniacs more concerned with the best contract or endorsement deal than with the game itself.

In a similar unpublished disposition, the Ninth Circuit addressed another interference issue in which Roderic M. Wright, an unregistered agent representing Barry Bonds,⁴⁸ brought a suit against Beverly Hills Sports Council (BHSC) for interference with prospective economic advantage.⁴⁹ BHSC initiated contact with Bonds and tried to hide that fact.⁵⁰ The court held that this did not constitute wrongful

44. *See id.* at 865. In this case, the court pointed out that Rodriguez's contract with Speakers was terminable at will. *See id.*

45. *See id.*

46. *See Speakers of Sport*, 178 F.3d at 865. It should be noted that competition can be tortious without actionable fraud but the Illinois courts had not yet adopted that approach. *See id.* at 867.

47. *See id.* at 865.

48. Bonds is an outfielder for the San Francisco Giants and is generally considered one of the best all around players in the game. *See Barry Bonds Profile and Scouting Report* (visited October 20, 1999) <<http://espn.go.com/mlb/profiles/notes/3918.html>>.

49. *See Wright v. Bonds*, 117 F.3d 1427 (9th Cir. 1997).

50. *See id.* BHSC also had a history of contacting athletes signed with other agents. *See id.*

conduct.⁵¹

These cases highlight the inadequacies of sports agent regulation that will be discussed further in Part V. While the opinions appear legally accurate, they provide for a broad spectrum of competition that borders on interference thereby tolerating unfair and corrupt dealings.

The shady perception of the sports agent is not generally associated with how the agents compete with each other, but is better reflected in their negotiation tactics and negative effect on young players. No one in the world of sports marketing is better known for his no-holds-barred tactics than Drew Rosenhaus.⁵²

David Ware, a veteran NFL agent, says Rosenhaus will stop at nothing to recruit players from other agents. He will demean not only a player's representation, but also his coaches, general manager and teammates. "Drew tells a player that he's worth more money, that his agent is not doing enough for him, that he's better than the guy starting in front of him," Ware says, "Now the player is not only mad at his agent, he's mad at the team management. He sees the guy sitting in front of him as a co-conspirator."⁵³

Rosenhaus is a young, brash, successful agent who uses deceit, lies and threats to defend his clients' interests.⁵⁴ Rosenhaus represents the nature and severity of the dark side of the sports agent. He typifies the image much of the public has of sports agents and their subsequent effect on the sports world. He represents a recent trend where agents stealing clients from one another has accelerated due, largely in part, to regulations⁵⁵ limiting an agent's cut to no more

51. *See id.* The court noted that "to prove interference with prospective economic advantage, Wright must show that BHSC engaged in some wrongful conduct beyond mere interference." *Wright*, 117 F.3d 1427. Wright made a "showing that BHSC contacted Bonds and then tried to hide the fact; that Bonds made false claims against Wright soon after talking to BHSC; and that BHSC had a history of contacting athletes under other agents." *Id.* The court concluded that this evidence could not support a verdict for interference with prospective economic advantage if introduced at trial. *See id.*

52. *See* Michael Bamberger and Don Yaeger, *So, Sue Me! His No-Holds-Barred Tactics Infuriate NFL Executives, But Drew Rosenhaus, the Self-Styled Dark Knight of Sports Agents, Isn't About to Apologize*, SPORTS ILLUSTRATED, July 15, 1996, at 82.

53. *Id.* at 84.

54. *See id.* at 82.

55. *See, e.g., NFLPA Code of Conduct For NFLPA Member Contract Advisors I*

than four percent of a player's contract.⁵⁶ The competition among agents is now so fierce that, at least in the National Football League (NFL), the union's disciplinary committee is arranging for a grievance process to control agents' complaints regarding thieving competitors; appropriately, the grievance procedure is often referred to as "the Drew Rules."⁵⁷

How does this affect the small time agent? The answer all too often is that in order to compete with the likes of Rosenhaus, the small time agent resorts to unethical or even illegal behavior to lure a blue chip prospect.⁵⁸ This not only has a negative effect on the game as a whole, it has a profound effect on the player's image and career.⁵⁹ For example, in November 1995, sports agent Jim Ferraro "wined and dined three University of Miami football stars" and paid for a limousine to escort the players.⁶⁰ That night cost Ferraro five criminal counts and one NCAA violation; in return, the primary player sought by Ferraro signed with Drew Rosenhaus, whom Ferraro had already tried to sue for attempting to steal an athlete.⁶¹

Often, an agent is successfully prevented from reaching an amateur athlete. When this occurs, many unscrupulous agents often use other means to get the job done. One example is the use of a "runner."⁶² The runner operates by befriending college athletes and subsequently contacting several agents seeking to sell their new "friends" to the agents.⁶³ According to David Ware, most athletes are signed before they leave college, even though they cannot commit to an agent, because the runners give athletes money or

(1990).

56. See Bamberger, *supra* note 52, at 84.

57. See *id.*

58. See, e.g., Taylor, *supra* note 6, at 66. Blue chip refers to an athlete rated as excellent or as an excellent prospect. See *Webster Dictionary*, (visited October 20, 1999) <<http://www.m-w.com/cgi-bin/dictionary>>.

59. See *id.*

60. Hank Hersch and Kostya Kennedy, *What an Agent, What a Night*, SPORTS ILLUSTRATED, July 21, 1997, at 23. The players were receivers Yatil Green and Jammi German and running back Danyell Ferguson. See *id.*

61. See *id.*

62. See, e.g., John Bansch, *Agents' View not Always Pleasant*, INDIANAPOLIS STAR, Feb. 8, 1998, at B15.

63. See *id.*

provide a car.⁶⁴ People like Jack Wirth, an agent for eighteen years, only likes to work with veterans now because he believes the business has become too dirty.⁶⁵ There is a widely held perception that agent relationships are worse than ever.⁶⁶ This is exemplified by a number of cases involving acts of unscrupulous agents.

In *United States v. Walters*,⁶⁷ one of the leading cases on the regulation of athlete agents, the defendants Norby Walters and Lloyd Bloom are shining examples of the lengths to which an agent will go in such a competitive market.⁶⁸ Norby and Walters were business agents for entertainment and sports figures during the 1980s.⁶⁹ They created World Sports and Entertainment, Inc. (WSE) with the goal of monopolizing the market of blue-chip college football players.⁷⁰ The two allegedly contracted to represent undergraduate student-athletes who were still competing in intercollegiate athletics.⁷¹ The contracts were constructed so it appeared that the students were not signed until their college eligibility had expired.⁷² Walters and Bloom also offered lavish gifts to student-athletes, including items such

64. *See id.*

65. *Id.* He says, "people pay \$1,000 to become a certified agent, get a business card, stuff a brief case full of money and they are in business. The players know what's going on. They want to be wined and dined and taken care of when they are juniors in college." Bansch, *supra* note 62, at B15.

66. *See, e.g.,* Mike Freeman, *Protecting Players from Their Agents*, N.Y. TIMES, July 26, 1998, § 8 at 1.T. For example, Brad Blank, an agent since the early 1980s, said, "[t]he things agents are doing to each other, to their clients, is worse than I can remember. The reason is pretty simple: there is more big money, but few hard core punishments to serve as a deterrent to an agent who breaks the rules or breaks the law." *Id.*

67. 711 F. Supp. 1435 (N.D. Ill. 1989).

68. *See id.*

69. *See id.* at 1437.

70. Weiss, *supra* note 1, at 337.

71. *See Walters*, 711 F. Supp. at 1437. Bloom or Walters would approach college football players while the players were still eligible and offer the players money and other inducements to sign representation contracts with WSE. *See id.* These inducements included "large amounts of cash, monthly wire transfers of funds; interest-free loans; automobiles; clothing; concert and airline tickets; trips to New York City; hotel accommodations; use of limousines, trips to major entertainment events; introductions to prominent entertainers; cash payments and other benefits for family members; and insurance policies." *Id.*

72. *See id.* The contracts were post-dated to make it appear that they were not signed until after the player's eligibility ceased. *See Walters*, 711 F. Supp. at 1437.

as clothing and airline tickets.⁷³ In addition, Norby and Walters allegedly threatened certain student-athletes with physical harm, possibly assisted by a member of an organized crime family.⁷⁴

WSE successfully signed some of the biggest names in football, including the likes of Rod Woodson and Brent Fulwood.⁷⁵ However, because NCAA rules prohibit this sort of conduct,⁷⁶ several college athletes were declared ineligible when their respective schools discovered the contracts.⁷⁷ Fortunately, things went sour for Norby and Walters. A number of athletes brought suit against them for breach of contract and physical violence.⁷⁸ In addition, several disenchanted clients abandoned WSE to sign with other agents, which prompted frightening responses from WSE and their "associates."⁷⁹ For example, an associate of a competitor agent named Steve Zucker was attacked by an unidentified assailant in her office after three former WSE clients signed with Zucker.⁸⁰

In 1988, a federal grand jury indicted Walters and Bloom on seven counts of RICO,⁸¹ mail fraud and conspiracy.⁸² Walters and Bloom were found guilty by a jury on seven counts consisting of racketeering, racketeering conspiracy, extortionate acts, conspiracy to commit mail fraud, mail fraud and wire fraud.⁸³ Although there were procedural technicalities following the trial, the law and the rulings stood, thereby extending white-collar criminal statutes to

73. See Weiss, *supra* note 1, at 335.

74. See Walters, 711 F. Supp. at 1438.

75. See Weiss, *supra* note 1, at 338.

76. See e.g., NCAA Bylaw 12.1.1(f), 12.3.1, 12.3.1.1.

77. See Weiss, *supra* note 1, at 336.

78. See *id.*

79. See *id.*

80. *Id.*

81. See *Racketeer Influenced and Corrupt Organizations Act (RICO)*, 18 U.S.C. § 1962 (d) (1997). The RICO statute prohibits anyone from receiving income from a pattern of racketeering activity. See *id.* The defendants were accused of violating the RICO statute because they conducted the affairs of Norby Walters Associates and WSE through a pattern of racketeering activity consisting of acts of extortion, acts of mail fraud, acts of wire fraud, and acts of using interstate facilities in furtherance of unlawful activity. See Walters, 711 F. Supp. at 1438.

82. See Weiss, *supra* note 1, at 337. See also Walters, 711 F. Supp. at 1438-39.

83. See Weiss, *supra* note 1, at 337.

include the sports agent profession.⁸⁴

The importance of this case far exceeds the analysis of law in the opinion. First, it highlights a factual setting in which sports agent competition becomes so severe that the people involved often resort to violence and organized crime. Second, it offers some hope in the realm of regulation, which will be discussed further in Part V. For the purposes of this discussion, the facts of this case are of the most significance. The actions of Walters and Bloom cast a shadow on the world of sports, and more particularly, the sports agent. First they violated some of the more important NCAA regulations by signing eligible college players. Then they drowned them in lavish gifts to make sure they remained clients. Later, if there was some inkling that the client would defect, they threatened the athlete or an opposing agent with violence and physical abuse.

The competition over promising athletes in the NFL has intensified largely because the draft has been reduced from thirty rounds to seven.⁸⁵ Recently one agent allegedly received a death threat from another agent who believed he was trying to steal a client.⁸⁶ Often, agents loiter in parking lots after practice or games attempting to persuade players to leave their current agents.⁸⁷

Consider for a moment the effect agents like these have on young athletes and sports in general. The student-athletes stand to either lose their eligibility or get physically injured. If they lose their eligibility, their school is impaired; if their school is impaired, the integrity and competition of the NCAA is injured which then harms professional sports in general. This domino effect might not occur in every case, but it seems clear that under-regulated agent competition has a negative effect on athletics, both professional and amateur.

84. *See id.*

85. *See Freeman, supra* note 66, at 1T.

86. *See id.* Freeman notes these anonymous examples to point out that the fights agents wage to acquire clients has intensified. *See id.*

87. *See id.*

III. THE ATHLETE—AGENT RELATIONSHIP

The relationship between athletes and the agents who represent them is ideally one of friendship and trust. In many instances, this is the case; however, all too often, an athlete's relationship with an agent is based on greed and the aforementioned "what have you done for me lately?" attitude.⁸⁸ This relationship is analogous to the chicken and the egg. Which came first? Was it the overpaid, egotistical athlete that believes he is infallible? Or was it the greedy, manipulative sports agent who steals most of his or her clientele from other agents? Was it the entry of the agent into the sports world that produced astronomical salaries with egos to match, or was it those astronomical salaries that induced people like Donald Dell and Norby Walters to get involved? How it all started means little. However, the ongoing dynamics of this relationship still affect many aspects of the sports we love. As one sports law academic noted, "the reason we needed agents in the first place was to protect the players from owners . . . the problem we have now is how to protect the player from the agent."⁸⁹

An excellent illustration of the athlete-agent relationship is the well-chronicled story of Marcus Camby⁹⁰ and his association with agents John Lounsbury and Wesley Spears.⁹¹ Camby became caught up in the dark side of big-time college athletics.⁹² He was supplied with everything from prostitutes to rental cars, much of which he requested.⁹³ Lounsbury and Spears were two relatively small-time agents who hoped Camby would allow them to

88. See Helyar, *supra* note 13, at A1.

89. Jamie Schulman, *The NHL Joins in: An Update on Sports Agent Regulation in Professional Team Sports*, 4 SPORTS LAW. J. 181, 186-87 (1997).

90. College basketball's Player of the Year in 1995-96, Marcus Camby led Massachusetts to its finest season and its first-ever NCAA Final Four berth. See *Marcus Camby Player Profile*, (visited November 14, 1999) <http://www.nba.com/playerfile/marcus_camby.html>. The second player chosen in the 1996 NBA Draft, behind Allen Iverson, he was voted to the Schick All-Rookie First Team after a solid NBA debut with Toronto. *Id.* Following his second season with the Raptors he was traded to New York for veteran forward Charles Oakley. *Id.*

91. Taylor, *supra* note 6, at 66.

92. See *id.*

93. See *id.*

represent him when he turned pro.⁹⁴ Instead, they each spent an incredible amount of money, sacrificed their reputation and risked criminal punishment only to lose the number one draft pick to Proserv.⁹⁵

There are differing accounts regarding the details of the relationship between Camby and the two agents.⁹⁶ Regardless, the simple fact remains that there was a great deal of corruption and illegality that had a profound effect on Camby, his school, and the sport he plays.⁹⁷ For example, on one occasion, Camby claims that he and two others had sex with a woman Spears had brought to a University of Massachusetts (UMass) dormitory.⁹⁸ Spears also began going to Camby's games with some of Camby's own friends whom Spears furnished with rental cars, money and gifts to give to Camby.⁹⁹ When Camby signed with Proserv, Spears allegedly threatened to expose the improper relationship that he initiated.¹⁰⁰

Lounsbury's involvement with Camby was not as unethical, but it was equally troubling. Lounsbury, who, like Spears, places a good deal of blame on Camby, received an early lesson in the sports agent business.¹⁰¹ Upon approaching one rising Big East college basketball player, Lounsbury was met with an open palm and one question: "What's in it for me"?¹⁰² He knew then that he would need to find an angle for stars such as Camby.¹⁰³ He tried to ingratiate himself with Camby's mother while others were concentrating on his friends or coaches.¹⁰⁴ In the end,

94. *See id.*

95. *See Taylor, supra note 6, at 66.*

96. *See Taylor, supra note 6, at 67.* Lounsbury and Spears paint Camby as the "typical greedy athlete constantly with his hand out." *Id.* Lounsbury claims that whenever Camby wanted money he gave more time and attention to Lounsbury. *See id.* While acknowledging that many of Lounsbury's allegations are true, Camby accuses Lounsbury of rewriting history. *See id.*

97. For example, the University of Massachusetts was forced to return the revenue it earned during Camby's senior year and had to forfeit all four of its tournament victories. *See id.* at 71.

98. *See id.* at 70.

99. *See id.*

100. *See id.*

101. *See Taylor, supra note 6, at 73.*

102. *Id.*

103. *See Taylor, supra note 6, at 74.*

104. *See id.* at 74.

Camby signed with Proserv and gave Lounsbury a modest \$28,500 allegedly because he was in fear for his life.¹⁰⁵

When news of the underhanded dealings involving Marcus Camby spread across the nation, everyone involved was negatively affected. The two agents were forced into bankruptcy and faced criminal prosecution.¹⁰⁶ The reputation of the UMass basketball program was tarnished; the school was forced to return the revenue it earned that year and had to forfeit all four of its tournament victories because Camby's involvement with agents made him "retroactively ineligible."¹⁰⁷ In addition, Marcus Camby's reputation was harmed and college basketball suffered yet another black eye.

Yet another example of an unscrupulous agent taking advantage of a rising star occurred at the professional level. In 1992, former quarterback Jim Kelly published his autobiography, *Armed and Dangerous*, which made several references to Kelly's former agent, A.J. Faigin.¹⁰⁸ Faigin brought a defamation claim against Kelly alleging that he falsely imputed untrustworthy behavior to him.¹⁰⁹

In denying Kelly's motion for summary judgment, the court unraveled some interesting facts that gave rise to the lawsuit.¹¹⁰ The relevant passages in Kelly's autobiography show the development of the athlete-agent relationship.¹¹¹ Kelly began his career with complete faith in his first agents who came highly recommended by fellow football players.¹¹²

105. See *id.* at 76.

106. See *id.* at 71. Lounsbury has recently filed suit against Camby seeking \$40,000 for breach of contract. See Pat Eaton-Robb, *Camby Sued by Spurned Sports Agent* (visited Feb. 17, 1999) <<http://sports.yahoo.com/nba/news/ap>>.

107. See Taylor, *supra* note 6, at 71.

108. See Faigin v. Kelly, 978 F. Supp. 420, 422 (D.N.H. 1997).

109. See *id.* at 420.

110. See *id.* at 423-24.

111. See, e.g., Faigin v. Kelly, 978 F. Supp. 420 (D.N.H. 1997). For example, at pages 159-60 of his book, Kelly states

I learned my lesson the hard way about whom to trust and whom not to trust in business. I had had complete faith in my first agents, Greg Lustig and A.J. Faigin. . . Then Danny and the Trevino brothers started taking a closer look at my business affairs. And the more they looked, the more they didn't like what they found. Finally, I saw the light. In 1988, I fired Lustig and Faigin and put my brother and the Trevinos in charge of all my business dealings.

Id. at 423-24.

112. See Faigin v. Kelly, 978 F. Supp. 420, 423-24 (D.N.H. 1997).

This faith was undermined when Kelly and his brother took a closer look at Kelly's business affairs and discovered some potentially fraudulent dealings.¹¹³ Kelly's encounter with his first agents was less harmful than other unfortunate athletes' experiences because he was able to catch the problem before it was too late. In reflection, Kelly believes athletes are too trusting and vulnerable when they come out of college, especially "when it comes to finding people to handle money."¹¹⁴

This point is highlighted by a series of incidents surrounding the Florida State University scandal of 1994 in which unlicensed agent, Nate Cebrun, illegally funneled payments to Seminole players.¹¹⁵ Cebrun and three others were the first individuals charged with violating a Florida law that mandates agent registration with the state before soliciting an athlete attending a Florida university.¹¹⁶ These opportunistic "agents" engaged in ill-advised conduct in their attempts to land the top athletes. Doug Andreus, one of the individuals charged, arranged improper payments to a Seminole player's mother and best friend, while another, Raul Bey, treated several Seminoles to a \$6,000 shopping spree at a nearby Foot Locker.¹¹⁷ While one may consider the athletes in these situations equal in blame and responsibility, it seems that the proximate cause¹¹⁸ of scandals such as these is the unethical activity of the alleged agent. The athlete ends up with a stiff suspension and a reputation as a troublemaker.¹¹⁹ This is unfair, especially in light of the potential for deception. All-American Derrick Brooks, one of the Seminoles implicated, claims that he was led to believe that Cebrun was a promoter.¹²⁰ This is just

113. *See id.* at 424.

114. *Id.* The court denied Kelly's motion for summary judgment because the passage in question from the autobiography implied factual allegations that the court felt were susceptible of being proved true or false. *See id.* at 425.

115. *See Seminole Justice*, SPORTS ILLUSTRATED, Aug. 8, 1994, at 10.

116. *See Singled Out*, SPORTS ILLUSTRATED, July 25, 1994, at 18.

117. *See Seminole Justice*, *supra* note 115, at 10.

118. Proximate cause is defined as that which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces injury, and without which the result would not have occurred. BLACK'S LAW DICTIONARY 1103 (5th ed. 1979).

119. *See Seminole Justice*, *supra* note 115, at 10.

120. *See id.*

another example of an impressionable, young athlete being corrupted by agents looking to get a step up on the competition. The player, the sport and the institution all suffer a black eye.

In the international arena, agents often have more potential to manipulate and deceive athletes.¹²¹ Andrei Nazarov was a seventeen-year old Russian hockey prospect when he met with Alexander Berkovich in 1992.¹²² Nazarov did not speak English, nor did an attorney represent him at the time of the agreement.¹²³ Despite this, Berkovich, representing International Sports Advisors Co. (ISAC), never gave Nazarov a Russian translation of the agreement that enabled ISAC to represent the young hockey star.¹²⁴ Berkovich was fluent in both English and Russian, yet still exploited the athlete who had never met a lawyer, negotiated a contract or learned how a civil (or criminal) court operated.¹²⁵ In this instance, ISAC contended that Nazarov breached the agreement the two parties had entered.¹²⁶ Specifically, ISAC claimed that it performed services for the defendant for which it was not paid.¹²⁷ ISAC also alleged that Nazarov sent it a notice of termination despite the agreement's provisions, which stated that ISAC's representation was to continue for a number of years.¹²⁸ The dispute involved a forum selection clause that would keep the skillful star in North America.¹²⁹ In this case, it is difficult to believe that ISAC was unaware of Nazarov's limited capacity to voluntarily consent to the contract¹³⁰ despite the bargaining power behind his considerable hockey skills and potential in the NHL.¹³¹

These are just few of the many stories depicting the athlete-agent relationship and how it is affected by agents

121. See *Gandler v. Nzarov*, 1995 WL 363814, *1 (S.D.N.Y.).

122. See *id.*

123. See *id.* at *2.

124. See *Gandler*, 1995 WL 363814 at *2.

125. See *id.*

126. See *id.* at *1.

127. See *id.*

128. See *Gandler*, 1995 WL 363814 at *1.

129. See *id.* at *1.

130. See *id.* at *8.

131. See *id.* at *6.

whose main concern lies not in the well being of the athlete, but in the almighty dollar. These corrupt agents may not represent the majority, but they are significant enough to create a negative image for their profession and the athletes they represent in the eyes of the public and in the various leagues who must monitor them.

IV. REGULATION OF AGENTS

Efforts have been made to address the concerns set out in this comment. These efforts are valiant; however, one must ask if there is enough being done to save athletes and the sports they play from unscrupulous agents vying with each other to build the best clientele. To discover the answer, one must probe the various kinds of regulations promulgated by the various states, leagues and federal institutions.

There are relatively few examples of litigation for sports agent abuses primarily because there are a number of obstacles that prevent athletes from bringing suit.¹³² In addressing the cases dealing with agent abuses, courts often rely on principles of agency law, contract law, and in certain instances, criminal law.¹³³ Despite these efforts, legal remedies for athletes aggrieved by unscrupulous agents only serve to penalize the agent after an injury has occurred and sets no legal precedent for protecting the athlete prior to entering into a contractual relationship with an agent.¹³⁴ Two excellent examples of litigation for agent abuses are *Zinn v. Parrish*,¹³⁵ and *Detroit Lions, Inc., v. Argovitz*.¹³⁶

In *Zinn*, Lemar Parrish, a professional football player, attempted to withhold his agent's fees because he believed the contract they entered into was void due to the agent's

132. See Schulman, *supra* note 8, at 192-93. The opportunity to bring suit against an agent for malpractice is lost if that agent is not a lawyer. See *id.* at 192. Furthermore, agents who mismanage and waste athlete's earnings frequently end up bankrupt, leaving no assets from which the athlete can collect. See *id.* The high costs of litigation, both in terms of money and time, further dissuade athletes from bringing claims through the courts. See *id.* at 193.

133. See Schulman, *supra* note 8, at 193. For example, fraud, embezzlement and larceny have all been employed in some instances against agents. See *id.*

134. See Weiss, *supra* note 1, at 339.

135. 664 F.2d 360 (7th Cir. 1994).

136. 580 F. Supp. 542 (E.D. Mich. 1984).

failure to register under the Investment Advisors Act of 1940.¹³⁷ The circuit court disagreed with the district court's conclusion that Zinn was required to be registered as an investment advisor pursuant to the Act.¹³⁸ However, the court limited its holding to this situation because it found Zinn's investment services as being incident to the main purpose of his management contract to bargain football agreements.¹³⁹ Essentially, though the agent mishandled his client's money, the court allowed him to escape liability because he was not acting in the capacity of an investment advisor.

Argovitz is another example of sports agent regulation through case law. Here, Detroit Lion star, Billy Sims,¹⁴⁰ alleged that a contract negotiated by his agent, Jerry Argovitz, was invalid due to a breach of fiduciary duty.¹⁴¹ Argovitz, co-owner and president of the United States Football League's (USFL) Houston Gamblers,¹⁴² attempted to represent Sims, who was signed with the Lions.¹⁴³ Argovitz influenced Sims to sign with the rival USFL by telling him the Lions team was not interested in his services.¹⁴⁴ The court noted the obvious conflict of interest and found that Argovitz breached his fiduciary duty to Sims by not contacting the Lions with the terms of his team's final offer, thereby depriving Sims of the opportunity to make a well-informed decision.¹⁴⁵ These cases, while somewhat

137. See 15 U.S.C. § 80b-1 (West 1999). See generally, *Zinn v. Parrish*, 644 F.2d 360 (7th Cir. 1981).

138. See *Zinn v. Parrish*, 644 F.2d 360, 364 (7th Cir. 1981).

139. See *id.* The court stated that Zinn fell within the de minimus exception to the Investment Companies Act of 1940 because he had fewer than fifteen clients and did not hold himself out to the public as an investment advisor. See *id.* See also, 15 U.S.C. § 80b-3(b)(3).

140. Sims was a former Heisman trophy winner and all-time leading rusher in Detroit Lion history. See Weiss, *supra* note 1, at 332. At the time of the alleged conduct, he was negotiating a salary with the Houston Gamblers of the United States Football League. See *id.*

141. See *Detroit Lions, Inc. v. Argovitz*, 580 F. Supp. 542, 544 (E.D. Mich. 1984), *aff'd in part, remanded in part*, 767 F.2d 919 (1985).

142. The Houston Gamblers were a team in the now defunct United States Football League. See *Houston Gamblers* (visited October 20, 1999) <<http://www.fortunecity.com/wembley/loftus/97/gamblers.htm>>.

143. See Weiss, *supra* note 1, at 332. (citing *Argovitz*, 580 F. Supp. at 544.).

144. See *id.* at 333.

145. See *id.*

successful in regulating corrupt agents, also highlight the limits of litigation and the ineffectiveness of the common law in regulating agents. The various leagues and state statutes must succeed where the common law fails.

In recent years, the major sports leagues, the NCAA and numerous state legislatures have implemented preventive measures to stem the increasing problems associated with greedy, overbearing agents.¹⁴⁶ At the present time, more than half of the states attempt to regulate agents in one way or another.¹⁴⁷ For example, Florida became the first state to require agents to take a test on the laws and rules applicable to athlete agents working in Florida.¹⁴⁸ At least fifteen of those states require an athlete agent to register with the state and pay a registration fee.¹⁴⁹ An example of typical legislation is a California statute that prohibits an agent or agent's representative or employee from directly or indirectly offering or providing money or any other benefit of value to a student-athlete.¹⁵⁰ The statute also limits athlete agent contact with student-athletes, whether in person, in writing, electronically or in any other manner.¹⁵¹ Contact is limited to situations where the athlete or his family initiate the contact and inform the academic institution immediately.¹⁵² The Act further provides that every contract must contain a notice to the student-athlete regarding the loss of eligibility upon entering into an endorsement or professional sports services contract and allowing the athlete to rescind the contract within fifteen days after execution.¹⁵³ The statute imposes civil and criminal penalties ranging from fines of \$50,000 to one year in jail.¹⁵⁴

While it appears that a state by state approach following California's model, complemented by union regulations,

146. See *id.* at 331.

147. See *Champion*, *supra* note 11, at 349.

148. See FLA. STAT. Ch. 468.451 (1995).

149. See *Champion*, *supra* note 11, at 349, n. 1 (citation omitted).

150. See CAL. BUS. & PROF. CODE §§ 18895-18897.97 (West 1997); see also *Athlete Agent Laws by State* (visited November 3, 1999) <<http://www.ncaa.org/agents/california.html>>.

151. See CAL. BUS. & PROF. CODE §18897.63(a) (West 1997).

152. See *id.* §18897.63(c)

153. See *id.* §18897.73.

154. See *id.* §18897.93.

would be the best approach, approximately twenty states have yet to pass comparable statutes.¹⁵⁵ With this in mind, alternative approaches have been proposed. The Sports Lawyers Association (SLA) announced that a new ad hoc committee has been formed to draft, promulgate and lobby for the passage of a uniform agent regulation law in every state.¹⁵⁶ The purpose of this effort is to create an effective yet politically viable statute that would replace the hodgepodge of agent registration and regulation laws that currently exist in roughly half the states.¹⁵⁷ The repetitive, confusing and inconsistent nature of these statutes creates a tremendous hardship for legitimate agents who want to comply with the regulations of the various states and player's associations.¹⁵⁸

Despite these measures, serious gaps remain in the regulation of sports agents.¹⁵⁹ For example, an attorney is subject to more extensive regulation than a non-attorney agent due to adherence to the Model Rules of Professional Conduct¹⁶⁰ and fear of a malpractice action.¹⁶¹ This is a problem that must be addressed either by the individual states in coordination with the various league rules or by the adoption of a uniform law that coincides with the requirements of the various league organizations.

In 1983, the National Football League Players Association (NFLPA) became the first professional sports player's association to set forth rules regulating agent activities.¹⁶² More recently, in 1996, the union sent agents a basic quiz on the collective bargaining agreement, an area they should

155. See generally, *Athlete Agent Laws by State* (visited November 3, 1999) <<http://www.ncaa.org/agents/>>.

156. See Champion, *supra* note 12, at 354.

157. See *id.*

158. See *id.*

159. See *id.*

160. The Model Rules of Professional Conduct are based on what the American Bar Association (ABA) has set forth. See Daniel L. Shneidman, *Selected Issues of Client Representation by "Sports" Lawyers Under the Model Rules of Professional Conduct*, 4 MARQ. SPORTS L.J. 129 (1993) (stating the relationship between an attorney-agent and his or her client does indeed fall within the traditional Model Rules). These rules have no force in and of themselves. See *id.* Lawyers are regulated by the highest court in their state or by their state's Bar Association which, for the most part, have adopted the Model Rules in some form. See *id.*

161. See Champion, *supra* note 12, at 350.

162. See Weiss, *supra* note 1, at 339.

know well.¹⁶³ Despite being able to reference the actual collective bargaining agreement, forty percent of the approximately 240 agents who took the test failed or scored poorly.¹⁶⁴ This confirmed union fears that many unqualified agents were attempting to take advantage of an extremely lucrative football marketplace that has seen increases in players and salaries.¹⁶⁵ Recently, the NFL mandated that current agents and anyone who registers as an agent must pass a test similar to the one given in January 1996.¹⁶⁶ The test will have questions about collective bargaining, salary cap issues and free agency.¹⁶⁷ If they fail, the agents will be suspended and possibly decertified.¹⁶⁸

Agent complaints have risen dramatically in football and recently, the Securities Exchange Commission (SEC) began a criminal investigation into whether agents have illegally served as financial advisers to their clients.¹⁶⁹ The NFLPA, which has been lenient on agents for many years, will soon implement a stricter application process requiring all agents to pass a mandatory test.¹⁷⁰ The NFL union's new stricter requirements are an improvement, but they should not stop there. They should continue to find ways to monitor agents because the damage done by problematic agents eventually translates into poor performance on the field and dangerous situations off the field.

The National Hockey League (NHL), which has also experienced huge increases in salaries, has recently examined its policy towards agent monitoring. In January

163. See Freeman, *supra* note 66, at 1.

164. See *id.*

165. See *id.* There are 1200 players in the NFL making salaries three times what they were a decade ago. See *id.* The number of agents has gone from 500 in 1990 to 800 today. See *id.*

166. See *id.*

167. See Freeman, *supra* note 66, at 1.

168. See *id.* In addition, any NFL team that negotiates with an agent not sanctioned by the union is subject to a \$10,000 fine. See *id.*

169. See *id.*

170. See *id.* The NBA and Major League Baseball claim to have had mechanisms in place for a long time to protect players from unscrupulous agents. See *id.* The NBA has a grievance process and a code of conduct, and new agents must complete a 24-page notarized application. See *id.* Also, the NFL has the potential to be a better target for corrupt agents because of its recent success and the sheer number of players in the league. See *id.*

1996, the NHL joined the other major sports leagues when it drafted its agent certification program.¹⁷¹ Like the other sports leagues, the NHL also requires annual registration and fees; annual attendance at seminars; a disciplinary system including an arbitration provision; and the ban on specific conflict of interest situations.¹⁷² Unfortunately, similar to other major sports, sanctions are rarely levied when the above policies are violated either due to lack of knowledge or improper enforcement techniques.¹⁷³

The regulation of agents must also take place at the collegiate level where the NCAA is the regulatory authority. Pursuant to the 1998-99 NCAA Manual, a student-athlete may lose his or her eligibility for a number of reasons.¹⁷⁴ First an athlete may not agree to be represented by an agent for the purposes of marketing his athletic ability or agree to be represented after he completes his eligibility.¹⁷⁵ Second, an athlete can lose his eligibility by accepting transportation or any other benefit from any individual who wants to represent the athlete.¹⁷⁶ An agent may distribute personal information to NCAA institutions with permission of a prospective student-athlete without endangering eligibility unless the agent's fee is premised on whether the prospect achieves a scholarship.¹⁷⁷ Third, a student-athlete cannot receive special benefits or handling by an agent due to his or her skill or reputation.¹⁷⁸

Furthermore, under NCAA rules a student-athlete may obtain advice from a lawyer regarding a proposed professional contract, but only if the lawyer does not represent the athlete in negotiations.¹⁷⁹ If a lawyer is in attendance during the discussion of a contract offer from a

171. See Shulman, *supra* note 89, at 203.

172. See *id.* at 203-04.

173. See *id.* at 204.

174. See Thomas J. Arkell, *Agent Interference with College Athletics: What Agents Can and Cannot do and What Institutions Should do in Response*, 4 SPORTS LAW. J. 147, 149 (1997). In the article, Arkell sets out a guideline for athletes, agents and university administrators when presented with issues of agent interference.

175. See NCAA Bylaw 12.3.1, 12.3.1.1; see also Arkell, *supra* note 174, at 148.

176. See NCAA Bylaw 12.3.1.2; see also Arkell, *supra* note 174, at 148.

177. See NCAA Bylaw 12.3.3.1; see also Arkell, *supra* note 174, at 148.

178. See Arkell, *supra* note 174, at 149-50.

179. See NCAA Bylaw 12.3.2; see also Arkell, *supra* note 174, at 149.

professional team, that presence is seen as representation.¹⁸⁰ Finally, a student-athlete may not ask to be on a professional organization's draft list, with a minor exception for men's basketball.¹⁸¹

While student-athletes should be educated to adhere to the above provisions, the following guidelines are more important because they prohibit specific conduct of agents. First, agents cannot employ institutional staff members, financial advisors or "runners" to promote or arrange an encounter between a student-athlete and an agent.¹⁸² Second, an agent may not pay for a prospective high school student-athlete to attend a summer camp.¹⁸³ In addition, agents may not get involved in racketeering or corrupt activities in their quest for student-athletes as potential clients.¹⁸⁴ If an agent has signed a student-athlete too early, the agent must not breach his or her fiduciary duty to that student-athlete.¹⁸⁵ Agents must not interfere with contractual relations between an academic institution and its student-athletes.¹⁸⁶ If these guidelines are adequately enforced and adhered to, it is foreseeable that violations would be rare and easy to monitor.

NCAA sanctions against institutions are an effective means of deterring agent misconduct because it forces the member-schools to take preventive measures to cure the problem before it starts.¹⁸⁷ For example, in 1997, Alabama

180. See NCAA Bylaw 12.3.2.1; see also Arkell, *supra* note 174, at 149.

181. See Arkell, *supra* note 174 at, 149-50. A student-athlete in the sport of basketball may enter a professional league's draft one time during his or her collegiate career without jeopardizing eligibility in that sport, provided the student-athlete is not drafted by any team in that league and the student-athlete declares his or her intention in writing to the institution's director of athletics to resume intercollegiate participation within 30 days after the draft. See NCAA Bylaw 12.2.4.2.1.

182. See *id.* at 154-55.

183. See *id.*

184. See *id.*

185. See Arkell, *supra* note 174, at 154-55. This stipulation prevents agents who have violated NCAA regulations by signing athletes early from disregarding their duties as a fiduciary. Fiduciary is a term to refer to a person having duties involving good faith, trust, special confidence, and candor towards another. A fiduciary "includes such relationships as executor, administrator, trustee, and guardian." See ABA Code of Judicial Conduct, Canon 3C(3)(b).

186. See *id.* at 154-55.

187. See *id.* at 160.

University dismissed Michael Myers, its best defensive player, for taking money from sports agents.¹⁸⁸ The sanction came after a two-week investigation disclosed that Myers accepted hotel expenses from one agent and cash from another.¹⁸⁹ Alabama's action came roughly three years after Antonio Langham's arrangements with an agent at the 1993 Sugar Bowl resulted in NCAA sanctions against Alabama's football program.¹⁹⁰ As a result of the sanctions, Alabama revamped its compliance regulations to avoid a repeat.¹⁹¹

V. CONCLUSION

Sports agents are now permanent fixtures in the sports world. While many agents are ethical and adequately serve their clients' interests, there is an alarming potential for unethical behavior and illegality in representing clients and in vying for their signatures on contracts. Those who take advantage of this potential for abuse have a profound effect on the sports we love. They have the ability to ruin a young athlete's career or corrupt his personality. This translates into the negative aspects of sports that many fans complain of today, including disloyalty, greed, corruption, off the field problems, overpaid athletes and even poor performance. With this in mind, regulation should be the first priority of the major sports leagues, the NCAA and the states that reap numerous benefits from the sports they showcase.

Common law is inadequate by itself. While more and more states have adopted statutes, they are not universal and often unenforced. The various rules of conduct for professionals are somewhat effective, but exclude the vast numbers of non-professional agents. Player's association certification programs and regulations, as well as the NCAA rules, have been vastly improved, but, in order to be effective, they must be enforced more consistently and

188. See Scott Cain, *Alabama Dismisses Top Defender*, ARKANSAS DEMOCRAT-GAZETTE, September 18, 1997, at 1C.

189. See *id.* The University did not seek an appeal to the NCAA to have Myers' eligibility restored. See *id.*

190. See *id.* The University was slow in reporting the contact to the NCAA. See *id.*

191. See *id.*

updated more frequently.

An ideal system would regulate agents on various levels. States could adopt comprehensive legislation similar to Florida and have the ability to enforce and implement it. On another level, the various professional and amateur leagues should promulgate their own regulations in an attempt to complement and stay consistent with state statutes. An agent can then be sanctioned by the league and prosecuted by the state. This would provide an optimum level of deterrence for corrupt agents and also prevent unqualified people from infecting the profession. The common law could still fill gaps, especially in the realm of criminal conduct.

The key to the ideal system is disclosure. Players are often unaware of the abuse, unwilling to report it or more interested in changing agents altogether. An agent's job is to vigorously safeguard and advance his client's interest with the undying loyalty of a fiduciary. At the same time, there must be a level of respect and compliance with the rest of the profession so that competition would exist, but on a fair level, just like the sports that their clients compete in.

Bryan Couch