

ATHLETE AGENT REGULATION: PROPOSED LEGISLATIVE REVISIONS AND THE NEED FOR REFORMS BEYOND LEGISLATION

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I. INTRODUCTION

The federal conviction of Norby Walters and Lloyd Bloom for racketeering, extortion and fraud has focused public scrutiny on athlete agents¹ and their norms of conduct.² The Walters-Bloom investigation began after the mysterious slashing and beating of an associate of a rival agent. As the investigation progressed, reports surfaced that the two had made payments to student athletes.³ The conviction of Walters and Bloom raises issues that extend far beyond the facts of their particular case. Their misconduct brings into question the entire body of rules governing the relation of student athletes to professional sports and the role that athlete agents ought to play in that relationship.

Athlete agents are most visible to the public as the individuals who negotiate player contracts for athletes.⁴ The services ath-

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¹ References in the text will be to "athlete agent," or to "agent," which is the term used most often in state statutes. See *infra* note 59. "Sports agent" is another term used by some commentators and is the term employed by the Tennessee legislature in its statute on agency. See, e.g., 49 TENN. CODE ANN. § 49-7-201 (7) (1988).

² *United States v. Walters*, 711 F. Supp. 1435 (N.D. Ill. 1989). On April 13, 1989, the pair was convicted on one count each of racketeering conspiracy, conspiracy to commit mail fraud, wire fraud, and extortion, and two counts each of mail fraud. See Fiffer, *Two Sports Agents Convicted of Fraud and Racketeering*, N.Y. Times, Apr. 14, 1989, at A1, col. 1.

³ Fiffer, *Defense Rests in Agent Trial*, N.Y. Times, Mar. 1, 1989, at A16, col. 6.

⁴ Athlete agent Leigh Steinberg has described the stereotypical member of his profession: "[S]hort and slick, he wears a gold chain around his neck and a diamond ring on his pinky finger; he's armed with a stream of fast talk and a package of promises designed to fatten his wallet at the expense of the athlete." Steinberg, *Time to Revise Game Rules*, *The Sporting News*, Nov. 16, 1987, at 10 [hereinafter Steinberg]. A number of articles have examined various aspects of athlete agency. See, e.g., Note, *The Agent-Athlete Relationship in Professional and Amateur Sports: The Inherent Potential for Abuse and the Need for Regulation*, 30 BUFFALO L. REV. 815 (1981) [hereinafter *Potential for Abuse*]; Note, *Agents of Professional Athletes*, 15 NEW ENG. L. REV. 545 (1980); Nimoy & Hamilton, *Attorneys and the California Athlete Agencies Act: The Toll of the Bill*, 7 COMM/ENT L.J. 551 (1985); Benitez, *Of Sports, Agents, and Regulations—The Need for a Different Approach*, 3 ENT. &

lete agents provide, however, involve all aspects of the players' professional lives, and sometimes extend into their personal lives. Athlete agents frequently manage players' finances, a responsibility that includes obtaining and negotiating endorsement contracts.⁵ In return, successful athlete agents receive substantial financial benefits.⁶

Athlete agency is not a new profession. Its pioneer was the theatrical promoter and showman Charles C. "Cash and Carry" Pyle. Pyle was the agent for many athletes in the early part of this century, most notably the legendary football star Harold "Red" Grange, the "Galloping Ghost."⁷ As players' salaries spiraled

SPORTS L.J. 199 (1986) [hereinafter Benitez]; Burleigh, *Sports Law and Representation: More Agents Than Players in Lucrative Field?*, Chicago Daily L. Bull., Oct. 7, 1987, at 1, col. 4; Note, *Crystal Cruise Cut Short: A Survey of the Increasing Regulatory Influences Over the Athlete-Agent in the National Football League*, 1 ENT. & SPORTS L.J. 53 (1984); Elmore, *The Agent's Role in Professional Sports: An Athlete's Perspective*, BOSTON B.J., July-Aug. 1987, at 6; Uberstine & Grad, *The Enforceability of Sports Contracts: A Practitioner's Playbook*, 7 LOY. ENT. L.J. 1 (1987); Comment, *Regulating the Professional Sports Agent: Is California in the Right Ball Park?*, 15 PAC. L.J. 1231 (1984); Kohn, *Sports Agents Representing Professional Athletes: Being Certified Means Never Having to Say You're Qualified*, 6 ENT. & SPORTS LAW. 1 (Winter 1988) [hereinafter Kohn]; Note, *The NFL Players Association's Agents Certification Plan: Is It Exempt From Antitrust Review?*, 26 ARIZ. L. REV. 699 (1984); Remick & Eisen, *The Personal Manager in the Entertainment and Sports Industries*, 3 ENT. & SPORTS L.J. 57 (1986) [hereinafter Remick & Eisen]; Ring, *An Analysis of Athlete Agent Certification and Regulation: New Incentives With Old Problems*, 7 LOY. ENT. L.J. 321 (1987); Roberts, *Protecting the College Athlete from Unscrupulous Agents*, THE SPORTS LAWYER, Fall 1987, at 8; Sobel, *The Regulation of Sports Agents: An Analytical Primer*, 39 BAYLOR L. REV. 701 (1987) [hereinafter Sobel]; Sullivan, *Remedying Athlete-Agent Abuse: A Securities Law Approach*, 2 ENT. & SPORTS L.J. 53 (1984) [hereinafter Sullivan]; Winter, *Is the Sports Lawyer Getting Dunked?*, A.B.A. J. 701 (1980) (non-lawyer agents in professional sports); Note, *Regulation of Sports Agents: Since at First It Hasn't Succeeded, Try Federal Legislation*, 39 HASTINGS L.J. 1031 (1988) [hereinafter *Regulation of Sports Agents*]; Hochberg, *The State of Agent Legislation*, SPORTS INC., May 30, 1988, at 42 [hereinafter Hochberg]. See also J. WEISTART & C. LOWELL, THE LAW OF SPORTS § 3.17 (1979) [hereinafter WEISTART & LOWELL].

⁵ See Sobel, *supra* note 4, at 705-09.

⁶ Agents generally charge athletes on a percentage basis. The rate varies, but for contract negotiations it is generally less than five percent. See SCHUBERT, SMITH & TRENTADUE, SPORTS LAW 127 (1986) [hereinafter SCHUBERT, SMITH & TRENTADUE] (noting that flat rate fees or some combination of flat rate and percentage contingency fees may be used). The average salary paid by the National Basketball Association ("NBA") is \$515,000, by Major League Baseball \$424,896, and by the National Football League ("NFL") \$209,090. See *Congress Moving Up*, USA Today, Jan. 16, 1989, at 6A, col. 1. For an illustration of how competitive the field has become, see Schmidt, *Agents and Player Charged in Fraud of Colleges*, N.Y. Times, Aug. 25, 1988, at A1, cols. 2-3 [hereinafter Schmidt] (agents indicted for, among other things, warning players that "they had friends who would visit the athletes and break their legs if they tried to back out of the deals they had signed").

⁷ It was Pyle who negotiated a \$3,000 per game contract for Grange to play professional football in 1925. See R. BERRY, W. GOULD & P. STAUDOHR, LABOR RELATIONS IN PROFESSIONAL SPORTS 10 (1986) [hereinafter BERRY, GOULD & STAUDOHR]. Additionally, Pyle negotiated for Grange to receive \$300,000 for movie rights and endorsements. *Id.* Pyle's clients also included French tennis stars Suzanne Lenglen and Mary K. Browne. There were also reports that tennis great Bill Tilden signed with Pyle, which Tilden denied. *Davis Cup Men Deny Signing With Pyle*, N.Y. Times, Aug. 28, 1926, § 9, at 8, col. 7. Another example of an early agent was a sports cartoonist named Christy

upwards, competition among agents to represent them grew correspondingly.⁸ By the 1960's, people from diverse backgrounds and previous professions were becoming athlete agents.⁹

Today, competition to represent those college athletes who could develop into professional stars is fierce.¹⁰ To persuade college players to sign with them, certain agents have violated the rules of the National Collegiate Athletic Association ("NCAA") by offering money to prospective clients.¹¹

Observers have also pointed to instances of income mismanagement,¹² excessive fees,¹³ conflicts of interest,¹⁴ and overtly

Walsh who reportedly advised Babe Ruth to invest in annuities prior to the stock market crash of 1929. See Neff, *Den of Vipers*, SPORTS ILLUSTRATED, Oct. 19, 1987, at 76 [hereinafter Neff].

⁸ See *supra* note 6.

⁹ See WEISTART & LOWELL, *supra* note 4, § 3.17, at 322. Typical was a Hollywood movie producer who orchestrated a \$1 million holdout by Los Angeles Dodgers pitching superstars Sandy Koufax and Don Drysdale. A holdout is a refusal by an athlete to play with a team until the parties have negotiated a salary agreement. See *Double Play*, TIME, Mar. 25, 1966, at 63 (noting that the holdout was for \$167,000 each per season for three years, \$42,000 more than the salary of Willie Mays, baseball's then highest paid player). The agent was "Hollywood Agent-Attorney-Organizer" J. William Hayes. Mann, *The \$1,000,000 Holdout*, SPORTS ILLUSTRATED, Apr. 4, 1966, at 26. See also *All-Star Agent Is A High Scorer*, BUS. WEEK, Sept. 20, 1969, at 153; *Playing The Money Game*, TIME, Mar. 21, 1969, at 94.

¹⁰ See Cataldi and Macnow, *Ethics Lose in the Race to Represent Sports Stars*, Phila. Inq., Aug. 23, 1987, at 1A, col. 1; Macnow, *Becoming an Agent*, Phila. Inq., Aug. 23, 1987, at 12A, col. 2 [hereinafter Macnow]; Steinberg, *supra* note 4, at 10.

¹¹ See, e.g., Schmidt, *supra* note 6, noting that the indictment of agent Norby Walters named 44 former student athletes who received "inducement" payments from Walters. See Robbins & Topol, *Influence on the Bench*, Newsday, Apr. 3, 1988, at 5 (discussing payments by agent Lance Luchnick to high school, junior college, and college coaches). See also Forbes, *College Football's Latest Mess Its Own Fault, Not N.F.L.'s*, USA Today, Aug. 31, 1987, at C6, col. 1 (citing \$5,000 payment by agent to athlete causing ineligibility under NCAA rules); Walters v. Fullwood, 675 F. Supp. 155, 157 (S.D.N.Y. 1987); Walters v. Harmon, 135 Misc. 2d 905, 516 N.Y.S.2d 874 (Sup. Ct. 1987) (payment of \$2,500 by Walters to student athlete). There have also been payments made to coaches to induce them to persuade athletes to sign with a given athlete agent. Goodwin, *NCAA Bans Football at SMU for '87 Season*, N.Y. Times, Feb. 26, 1987, at A1, col. 3 (university staff members, as well as outside representatives not associated with the school, paid 13 players about \$61,000 in violation of the NCAA rules, resulting in seasonal ban).

¹² See, e.g., Goodwin & Goldaper, *Enmeshed in a Tangled Web*, N.Y. Times, Mar. 15, 1987, § 5 (Sports), at 1, col. 2 [hereinafter Goodwin & Goldaper] (discussing a \$50 million lawsuit brought by professional basketball star Kareem Abdul-Jabbar for mismanagement of funds); Neff, *supra* note 7, at 76-77 (describing the circumstances under which four players sued their agent, Joe Courrege, for defrauding them in real estate investments, leading to a settlement out of court); *People v. Sorkin*, 64 A.D.2d 680, 407 N.Y.S.2d 772 (2d Dep't 1978); Montgomery, *The Spectacular Rise and Ignoble Fall of Richard Sorkin, Pros' Agent*, N.Y. Times, Oct. 9, 1977, § 5 (Sports), at 15, col. 1; Nack, *Thrown for Heavy Losses*, SPORTS ILLUSTRATED, Mar. 24, 1986, at 40 (discussing losses incurred by several athletes who, because of their agents, invested in Technical Equities Corporation, which subsequently filed for bankruptcy); *Rodri Faces Lawsuits As Investments Fail*, SPORTS INDUSTRY NEWS, May 22, 1987, at 162; Benitez, *supra* note 4, at 200 nn.6-8.

¹³ See, e.g., *Brown v. Woolf*, 554 F. Supp. 1206, 1207 (S.D. Ind. 1983) (hockey player's agent received nearly 18% of player's salary). Player union regulations now impose ceilings on agents' incomes derived from players' salaries for athletic performance. But there is still little regulation of the fees agents charge for services apart from

unethical tactics to recruit clients.¹⁵ Some commentators have urged strong federal and state legislation to regulate athlete agents and impose severe sanctions on them for violations.¹⁶ As this Article will demonstrate, such legislation is likely to prove ineffective unless it is accompanied by changes in the NCAA rules governing the student athletes. Present NCAA regulations spring from an outmoded conception of the relation between amateur and professional sports. Until the NCAA promulgates rules responding to student athletes' legitimate needs, such students will be strongly tempted to succumb to illegal inducements held out by agents seeking to recruit them.

The first section of this Article discusses the impact that the rules of various associations, ranging from the NCAA to the American Bar Association, have on the relationship between athlete agents and student athletes. In its second section, the Article examines the impact of state and federal law on such conduct and concludes that while existing legislation is partially effective, the addition of requirements that agents meet minimal standards of competency would improve the agency services available to athletes. Finally, the third section of this Article proposes and justifies five reforms that would impede the ability of unscrupulous athlete agents to exploit students and corrupt college sports. The proposed reforms are:

- 1) Permission for student athletes on athletic scholarship to be paid an additional "student life" stipend, to work during the school year, and to receive endorsement revenues. In addition, the NCAA and the various professional leagues should be allowed to make loans available to prospective professional athletes.
- 2) A revised National Football League ("NFL") draft procedure, making students eligible to be drafted prior to their graduation from college, as the National Basketball Association ("NBA") draft does.
- 3) Strict application of standards for certification and decertification of athlete agents by all player associations.
- 4) Greater involvement of the NCAA and the various sports leagues in helping players pick agents wisely and under-

negotiating team contracts. It is not unusual, for example, for an athlete agent to charge 20% for endorsements obtained for an athlete.

¹⁴ See, e.g., *Detroit Lions, Inc. v. Argovitz*, 580 F. Supp. 542, 548-49 (E.D. Mich. 1984), modified, 767 F.2d 919 (6th Cir. 1985) (athlete agent failed to disclose to athlete client his financial interest in a team with which he was negotiating for the athlete).

¹⁵ See *supra* notes 6 and 11.

¹⁶ See, e.g., Benitez, *supra* note 4; Kohn, *supra* note 4; Sullivan, *supra* note 4; *Regulation of Sports Agents*, *supra* note 4.

stand the services the players can expect the agents to provide.

- 5) Vigorous enforcement of existing state and federal laws affecting athlete agency.

II. ASSOCIATIONS AND THEIR REGULATIONS

The key bodies whose regulations affect the conduct of athlete agents are: 1) the National Collegiate Athlete Association ("NCAA") and its member institutions,¹⁷ and 2) professional athlete unions and player associations.¹⁸ In addition, the agents have their own professional association.¹⁹ Finally, 3) the American Bar Association promulgates rules that govern the conduct of attorneys who function as athlete agents.²⁰

A. *National Collegiate Athletic Association*

The NCAA is the oldest and most powerful governing body of college sports.²¹ The association has over 1000 members, including approximately 800 colleges and universities, commonly referred to as member institutions.²² Through these institutions, the NCAA trains and supplies the athletes as they prepare for professional careers in football, basketball, and, to a lesser degree, baseball. Athlete agents serve as intermediaries in a student athlete's transition from college to professional sports. The primary role of the athlete agent at this level is to represent the student in contract negotiations with a professional team.²³ The constitution and by-laws of the NCAA set forth the rules governing eligibility of student athletes.²⁴ Those rules contain specific guidelines which define the type of relationship a student athlete may have with an athlete agent and still maintain collegiate eligibility.²⁵

NCAA regulations do not have the force of law behind them.

¹⁷ See SCHUBERT, SMITH & TRENTADUE, *supra* note 6, at 1-6.

¹⁸ See *infra* notes 38-39 and accompanying text.

¹⁹ See *infra* notes 54-55 and accompanying text.

²⁰ See *infra* note 56.

²¹ See SCHUBERT, SMITH & TRENTADUE, *supra* note 6, at 1-6.

²² *Membership in Association Reaches All-Time High (1,020)*, The NCAA News, Aug. 31, 1988, at 1.

²³ If a student athlete is not drafted, he may choose to retain an athlete agent to aid him in locating an appropriate team to approach for a "free agent" tryout. A free agent is an athlete who has not been drafted.

²⁴ The NCAA Constitution and operating and administrative bylaws are published annually in the NCAA Manual. References herein are to citations in the 1989-90 Manual.

²⁵ See NCAA BYLAWS §§ 12.3.1-.3.3.

Their power is primarily economic. The NCAA has the authority to impose sanctions against a member institution for violating association rules.²⁶ Sanctions at its disposal include barring a member institution's team from television appearances and post-season play.²⁷ Institutions derive significant profits from these sources and their loss can deprive a school of important funds.²⁸ The ability to inflict economic punishment enables the NCAA to enforce its regulations.

In contrast to this financial power over member institutions, the NCAA has only limited power over athlete agents. The NCAA has instituted a voluntary athlete agent registration system.²⁹ Under this system, the athlete agent completes a form, returns it to the NCAA, and promises that he or she will not contact a student athlete or coach without first consulting with the athletic director at that member institution.³⁰ The NCAA makes available, to the student athlete and others, a list of the individuals who register under this program.³¹ Other than removal from the list of registered agents, the NCAA imposes no sanctions against agents who violate their commitments under the agreement.³² The NCAA also offers educational panels to provide the athlete with a neutral source of information about retaining an agent.³³

Although it seems that NCAA regulation of agents is unenforceable, "[t]he NCAA has avoided any question about its power to regulate agents by adopting a plan encouraging, but not requiring, agents to participate and does not punish those who do not."³⁴ Former athlete agent Mike Trope described the situation succinctly: "The NCAA rules are not the laws of the United States. They're simply a bunch of hypocritical and unworkable rules set up by the NCAA. I would no sooner abide by the rules and regulations of the NCAA than I would the Ku Klux Klan."³⁵

²⁶ *Id.* at §§ 19.3-4. A recent example is the sanctioning of Southern Methodist University. For a discussion of the so-called "death penalty," see Smith, *The National Collegiate Athletic Association's Death Penalty: How Educators Punish Themselves and Others*, 62 *IND. L.J.* 985, 998-1026 (1987) [hereinafter *NCAA's Death Penalty*].

²⁷ NCAA Enforcement Procedures 7-(c)(5), (6). See also *NCAA's Death Penalty*, *supra* note 26, at 1009-10.

²⁸ *NCAA's Death Penalty*, *supra* note 26, at 993.

²⁹ See NCAA Memorandum to Individuals Acting in the Capacity of Player Agents, Sept. 2, 1988 [hereinafter *NCAA Memorandum*].

³⁰ *Id.* at 1.

³¹ *Id.* at 1-2.

³² *Id.* at 1.

³³ See *id.*; NCAA BYLAWS 16.3.1(e).

³⁴ NCAA Memorandum, *supra* note 29, at 1. See also Sobel, *supra* note 4, at 728.

³⁵ M. TROPE & S. DELSOHN, *NECESSARY ROUGHNESS* 72 (1987) [hereinafter *TROPE*].

Similarly, prior to his legal difficulties, athlete agent Lloyd Bloom stated in reference to an NCAA rule forbidding student athletes to contract with athlete agents until they graduate,³⁶ "I'll sign anyone I want. The NCAA can't enforce [its rules]. I'll sign a sophomore if I want."³⁷

B. *Players' Associations*

Players associations are labor unions, and operate under the guidelines of the National Labor Relations Act ("NLRA").³⁸ Initiated by the National Football League Player's Association ("NFLPA") and followed by both the National Basketball Player's Association ("NBPA") and later by the Major League Baseball's counterpart, the Major League Baseball Player's Association ("MLBPA"), these unions require athlete agents to register with them and to become certified before representing union members.³⁹ The unions permit teams to negotiate only with certified agents.⁴⁰ In 1987, 750 agents were registered with the NFLPA, which only had 1260 members at that time.⁴¹ Similarly, the NBA in 1987 had 276 players and 208 registered agents.⁴² Agents who violate union provisions are subject to decertification.⁴³ This relatively new sanction may prove to have a significant effect on the athlete agent industry. In 1988, the NBA decertified an agent for improprieties.⁴⁴ Similarly, the NFLPA has decertified an athlete agent for alleged financial improprieties.⁴⁵

The authority of players' unions to certify agents compensates for a limitation in the unions' power. In most industries, unions negotiate salaries, as well as terms and conditions of employment, for all their members. In the major professional sports

and DELSOHN]. See also McLeese, *A Whole New Ballgame For Lawyers*, STUDENT LAW., Oct. 1980, at 41, 46.

³⁶ NCAA MANUAL §§ 12.1.1(f), 12.3.1-.3.4 (1989-90).

³⁷ Selcraig, *Agents of Violence*, SPORTS ILLUSTRATED, Apr. 6, 1987, at 25.

³⁸ 29 U.S.C. §§ 151-69 (1982). For a discussion of the applicability of the NLRA to sports, see BERRY, GOULD & STAUDOHAR, *supra* note 7, at 31-34.

³⁹ See NFLPA Regulations Governing Contract Advisors § 2 (1983) [hereinafter NFLPA Regs]; MLBPA Regulations Governing Player Agents § 2 (1988) [hereinafter MLBPA Regs]; and NBPA Regulations Governing Player Agents § 2 (1986) [hereinafter NBPA Regs].

⁴⁰ See Sobel, *supra* note 4, at 727. The agreement is enforced with teams in collective bargaining agreements. *Id.*

⁴¹ See Macnow, *supra* note 10, at 12A, col. 2.

⁴² See Neff, *supra* note 7, at 78.

⁴³ See *supra* note 39. See also *infra* notes 44 and 45.

⁴⁴ See *Agent Has His Certification Suspended By NBA Union*, Phila. Inq., May 31, 1988, at 5E, col. 4.

⁴⁵ See Macnow, *supra* note 10, at 12A, col. 2 (noting that agent Frank Murtha of Chicago was decertified regarding "the handling of clients' funds").

leagues, the unions negotiate only minimum salaries and all other standard contract terms. The athlete agent negotiates salaries above that minimum. However, by controlling the certification of agents, the players' unions retain a measure of influence over the representation of their members in contract negotiations.

The players' unions derive their certification authority from the National Labor Relations Act. Thus, the MLBPA regulations cite the National Labor Relations Act provision making such unions "the exclusive representatives for all the employees in such unit. . . ."⁴⁶ In addition, the regulations cite the Major League Baseball Collective Bargaining Agreement, which provides that players may negotiate contracts with teams "in accordance with the provisions set forth in this Agreement. . . ."⁴⁷ The regulations also include a collective bargaining requirement, stating that a player may use an agent for negotiations "provided such agent has been certified to the Clubs by the Association [MLBPA] as authorized to act as a Player's Agent for such purposes."⁴⁸

A former shortcoming of the NFLPA rules was that the union did not represent former student athletes who had not yet signed a professional contract.⁴⁹ As a result, the union offered no protection during an athlete's first professional contract negotiations. The rookies entering such negotiations were often unsophisticated about the process and vulnerable to exploitation by unscrupulous agents. However, in 1988, the NFLPA amended its "Regulations Governing Contract Advisors" to include "anyone eligible to play in the National Football League."⁵⁰ Unlike its football counterpart, the NBPA has, since the creation of its rules regulating agents, represented student athletes from the time they are drafted by the league.⁵¹

To receive certification from the NFLPA and NBPA, an agent must complete a form, attend a seminar and pay a fee.⁵² Additionally, the MLBPA prohibits certification of an athlete

⁴⁶ See MLBPA Regs, *supra* note 39, at 1 (citing 29 U.S.C. § 159(a)-(e) (1982)) (emphasis omitted).

⁴⁷ *Id.* at 1-2 (citing MLB Collective Bargaining Agreement, Article II) (emphasis omitted).

⁴⁸ *Id.* at 2 (citing MLB Collective Bargaining Agreement, Article II) (emphasis omitted).

⁴⁹ See Sobel, *supra* note 4, at 732.

⁵⁰ NFLPA Regs, *supra* note 39, sec. 1, at 2. See also NFLPA Memorandum to Contract Advisors, Nov. 1988 (announcing amendments to the regulations).

⁵¹ See Sobel, *supra* note 4, at 734-35.

⁵² See NFLPA Regs, *supra* note 39, sec. 2, at 3-7; NBPA Regs, *supra* note 39, sec. 2, at 2-4.

agent until he or she makes a commitment to represent a client.⁵³

C. *Association of Representatives of Professional Athletes*

To the extent that athlete agents regulate themselves, they do so through the Association of Representatives of Professional Athletes ("ARPA").⁵⁴ Membership in the organization is voluntary, as is compliance with the organization's rules. Although ARPA has a written code of ethics, it has no mechanism to enforce compliance with the code.⁵⁵

D. *American Bar Association*

Many athlete agents are attorneys. While the American Bar Association ("ABA") has no regulations specifically aimed at athlete agents, its Model Code of Professional Responsibility proposes standards of integrity and conduct applicable to all attorneys.⁵⁶ Many state bar associations have adopted some form of this ABA code.⁵⁷ Obviously, however, such regulations have no impact on athlete agents who are not lawyers.⁵⁸

III. ATHLETE AGENTS AND THE LAW

A. *State Law*

Two categories of state law affect athlete agents. The first category comprises laws that are not expressly directed at athlete agents but encompass certain improprieties agents might commit. The second category is made up of the new breed of statutes specifically applicable to athlete agents.⁵⁹

Most of these statutes establish a licensing procedure for in-

⁵³ MLBPA Regs, *supra* note 39, at 3.

⁵⁴ There is a degree of dissent among agents as to ARPA's efficacy, with one agent calling for the formation of a new trade association. See Rosenblatt, *Agent Interests: Can ARPA Do The Job?*, SPORTS, INC., Nov. 16, 1987, at 98.

⁵⁵ See generally ARPA Code of Ethics, reprinted in SCHUBERT, SMITH & TRENTADUE, *supra* note 6, at 284-90.

⁵⁶ See generally MODEL CODE OF PROFESSIONAL RESPONSIBILITY (1980) and MODEL RULES OF PROFESSIONAL CONDUCT (1980).

⁵⁷ See SCHUBERT, SMITH & TRENTADUE, *supra* note 6, at 144-45.

⁵⁸ See MLBPA Regs, *supra* note 39, at 2.

⁵⁹ ALA. CODE §§ 8-26-1 to -41 (Supp. 1989); CAL. LAB. CODE §§ 1500-1547 (West Supp. 1989); FLA. STAT. ANN. §§ 468.451-.457 (West Supp. 1989); GA. CODE ANN. §§ 43-4A-1 to -18 (1988 and Supp. 1989); IND. CODE ANN. §§ 25-9-1-1 to -31 (Burns 1982 & Supp. 1989) (boxing and wrestling only); IOWA CODE ANN. §§ 9A.1-.12 (West Supp. 1989); KY. REV. STAT. ANN. §§ 229.011-.991 (Michie/Bobbs-Merrill 1982 & Supp. 1988) (boxing and wrestling only); LA. REV. STAT. ANN. §§ 4:421-.430 (West Supp. 1989); MD. ANN. CODE art. 56, §§ 632-640 (Supp. 1988); MINN. STAT. ANN. § 325E.33 (West Supp. 1989); MISS. CODE ANN. §§ 73-41-1 to -23 (Supp. 1988); OHIO REV. CODE ANN. §§ 4771.01-.99 (Anderson Supp. 1988); OKLA. STAT. ANN. tit. 70, §§ 821.61 -.71 (West 1989); 18 PA. CONS. STAT. ANN. § 7107 (Purdon Supp. 1989); TENN. CODE ANN.

dividuals entering the field of athlete representation or continuing in it.⁶⁰ The key distinction between state regulations and those of the NCAA, unions, the ARPA, and the ABA is that the state laws are bolstered by civil or criminal penalties for noncompliance.⁶¹ The states that currently have athlete agent statutes are Alabama, California, Florida, Georgia, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Ohio, Oklahoma, Pennsylvania, Tennessee, and Texas.⁶²

The effect of these statutes thus far is unclear. In March of 1989, California's statute, then in existence for eight years, had produced only nineteen registrants.⁶³ California is home for the major college teams of the University of Southern California and the University of California at Los Angeles. Presumably, numerous athlete agents, representing professional athletes these teams have produced, also reside in California. One may reasonably conclude, therefore, that a significant number of athlete agents in California are unregistered.

State laws governing athlete agents have three major weaknesses. First, the conflict of such laws creates confusion.⁶⁴ The courts have not yet decided, for example, whether California may enforce its registration requirements against an Ohio resident

§§ 49-7-2101 to -2109 (Supp. 1988); TEX. REV. CIV. STAT. ANN. art. 8871 (Vernon Supp. 1989).

⁶⁰ Generally, under these statutes an application fee ranging from \$50 to \$1,000 must be paid. See ALA. CODE § 8-26-12 (Supp. 1989); CAL. LAB. CODE § 1517 (West Supp. 1989); FLA. STAT. ANN. § 468.453 (West Supp. 1989); GA. CODE ANN. § 43-4A-12 (1988 & Supp. 1989); 1988 IOWA LEGIS. SERV. H.F. 2432, § 4 (West); LA. REV. STAT. ANN., § 4:422(E) (West 1987); MD. ANN. CODE art. 56, § 633 (West Supp. 1988); MISS. CODE ANN. § 73-41-5(3) (Supp. 1988); OKLA. STAT. ANN. tit. 70, § 821.62(E) (West 1989); TEX. REV. CIV. STAT. ANN. art. 8871, Sec. (2)(f) (Vernon Supp. 1989).

A bond must be posted. See ALA. CODE § 8-26-14 (Supp. 1989); CAL. LAB. CODE § 1519(a) (West Supp. 1989); GA. CODE ANN. § 43-4A-13 (1988); 1988 IOWA LEGIS. SERV. H.F. 2432, § 6(1) (West); MISS. CODE ANN. § 73-41-9 (Supp. 1988); OKLA. STAT. ANN. tit. 70, § 821.62(G) (West 1989); TEX. REV. CIV. STAT. ANN. art. 8871, Sec. (2)(h) (Vernon Supp. 1989).

Extensive financial records must be maintained. See ALA. CODE § 8-26-26 (Supp. 1988); CAL. LAB. CODE § 1532 (West Supp. 1989); LA. REV. STAT. ANN. § 4:427 (West 1987); MD. ANN. CODE art. 56, § 638 (Supp. 1988); OKLA. STAT. ANN. tit. 70, § 821.67 (West 1989); TEX. CIV. STAT. ANN. art. 8871, Sec. (10) (Vernon Supp. 1989).

Finally, the license must be renewed. See ALA. CODE § 8-26-9 (Supp. 1989); CAL. LAB. CODE § 1515 (West Supp. 1989); GA. CODE ANN. 43-4A-9 (1988); 1988 IOWA H.F. 2432, § 3(3); LA. REV. STAT. ANN. 4:422(D) (West 1987); MD. CODE ANN. art. 56, § 633(e) (Supp. 1988); MISS. CODE ANN. § 73-41-5(2) (Supp. 1988); OKLA. STAT. ANN. tit. 70 § 821.62(C)(D) (West 1989); TEX. REV. CIV. STAT. ANN. art. 8871, Sec. (2)(e) (Vernon Supp. 1989).

⁶¹ See Sobel, *supra* note 4, at 726.

⁶² See *supra* note 59.

⁶³ King, *Lawyer Edward King Takes the Field to Represent Defrauded Sports Stars*, San Fran. Bus. Times, Mar. 16, 1987, at 14, col. 1.

⁶⁴ See Hochberg, *supra* note 4, at 42.

who attempts to represent a student athlete attending a California school. It is also unclear whether Ohio's regulations govern the activities of this same agent while she "recruits" clients in California.⁶⁵

Second, state athlete agency laws are deficient because they may conflict with the commerce clause of the United States Constitution.⁶⁶ The commerce clause bars states from regulating affairs of interstate commerce,⁶⁷ and has been held to bar state regulation of sports.⁶⁸ Thus the California Supreme Court ruled that the commerce clause prevented the city of Oakland, California from exercising eminent domain over a sports franchise.⁶⁹

The third shortcoming of state athlete agent laws is that they create no standards of competency that agents must meet. Unlike the requirements for obtaining a driver's license or a license to practice law or medicine, no testing procedure verifies competence among aspiring athlete agents. Although states inquire as to the education and skills of the applicant, none have established minimum competency standards.⁷⁰ The procedure for becoming a "licensed" agent in most states is the equivalent of walking into a motor vehicles office, stating a desire to drive, paying a fee, and walking out with a license.⁷¹

While most state athlete agent laws fail to prevent unqualified individuals from becoming agents, they promote prosecutions by specifying certain undesirable actions as violations of

⁶⁵ As these laws develop, legislators have become aware of these jurisdictional problems. An Oklahoma legislator noted that athlete agents who do not live in Oklahoma "don't pay any attention" to the new law. See Hochberg, *supra* note 4, at 43.

⁶⁶ See Kohn, *supra* note 4, at 17.

⁶⁷ U.S. CONST. art. I, § 8, cl. 3.

⁶⁸ See *City of Oakland v. Oakland Raiders*, 646 P.2d 835, 183 Cal. Rptr. 673 (Sup. Ct. 1982).

⁶⁹ *Id.*

⁷⁰ Although the statutes provide no minimal standards, they often require documentation of the applicant's background. See, e.g., ALA. CODE § 8-26-7 (Supp. 1989); GA. CODE ANN. § 43-4A-7(a) (Supp. 1989) (commission may refuse to grant registration upon proof of false statements in application, prior misappropriation of funds, embezzlement, theft or fraud); 1988 IOWA LEGIS. SERV. H.F. 2432, § 3(1)(e)-(f) (West) (requiring records of all felony and misdemeanor charges and convictions of athlete agents and all felony and misdemeanor charges and convictions of all financially interested partners, associates and profit sharers, excluding bona fide employees); LA. REV. STAT. ANN. § 422(c)(3) (West Supp. 1989) (requires three personal references); MISS. CODE ANN. § 73-41-5(c) (Supp. 1988) (same as Alabama); OKLA. STAT. ANN. tit. 70, § 821.62(C)(4) (West 1989) (requires five professional references); TEX. REV. CIV. STAT. ANN. art. 8871, Sec. 2(b) (Vernon Supp. 1989) (requires employment records).

⁷¹ Some states mandate that the applications be reviewed by a state official such as a Commissioner or Secretary of State. See, e.g., ALA. CODE ANN. § 8-26-6 (Supp. 1989); CAL. LAB. CODE § 1512 (West Supp. 1989); GA. CODE ANN. § 43-4A-6 (1988); 1988 IOWA LEGIS. SERV. H.F. 2432, § 5 (West); MISS. CODE ANN. § 73-41-7(1) (Supp. 1988).

law.⁷² Violating an NCAA rule, or causing an athlete to violate it, may now constitute a civil or criminal offense.⁷³ Although advancing money to a student athlete has been legal in the past, certain recent statutes make such conduct illegal.⁷⁴ Similarly, some state laws deem it a civil or criminal violation to sign an athlete before the expiration of the athlete's collegiate eligibility.⁷⁵ Certain states further monitor agent conduct by requiring agents to file a schedule of fees to be charged,⁷⁶ and to obtain approval of their contract forms.⁷⁷

B. Federal Law

At present, no federal legislation applies specifically to the athlete agent. As with state laws, however, federal statutes with wider application affect the agent's activities. In its prosecution of Norby Walters and Lloyd Bloom, for instance, the federal government alleged mismanagement of funds, fraud, racketeering, and other violations.⁷⁸

Commentators have proposed various types of federal legislation targeted specifically at athlete agents, ranging from a federal version of some of the state legislation to a model based on

⁷² States maintain the right to revoke or suspend a license if there is a violation. *See, e.g.*, ALA. CODE § 8-26-8 (Supp. 1989); CAL. LAB. CODE § 1527 (West Supp. 1989); GA. CODE ANN. § 43-4A-8 (Supp. 1989); 1988 IOWA LEGIS. SERV. H.F. 2432, § 5 (West); LA. REV. STAT. ANN. § 422(F) (West 1988); MD. ANN. CODE art. 56, § 634 (Supp. 1989); 1988 MISS. CODE ANN. § 73-41-7(2) (Supp. 1988); OKLA. STAT. ANN. tit. 70, § 821.62(I) (West Supp. 1989); TEX. REV. CIV. STAT. ANN. art. 8871, Sec. 3 (Vernon Supp. 1989).

⁷³ *See, e.g.*, ALA. CODE § 8-26-41 (Supp. 1989); CAL. LAB. CODE § 1547 (West Supp. 1989); GA. CODE ANN. § 43-4A-11 (Supp. 1989); 1988 IOWA LEGIS. SERV. H.F. 2432, §§ 8(2), 11 (West); LA. REV. STAT. ANN. § 426 (West 1987); MD. ANN. CODE art. 56, § 639 (Supp. 1988); MISS. CODE ANN. § 73-41-15 (Supp. 1988); OKLA. STAT. ANN. tit. 70, § 821.66 (West 1989); TEX. REV. CIV. STAT. ANN. art. 8871, Secs. 8, 9 (Vernon Supp. 1989).

⁷⁴ *See, e.g.*, GA. CODE ANN. § 43-4A-16(b) (Supp. 1989); 1988 IOWA LEGIS. SERV. H.F. 2432, § 8(3) (West); MISS. CODE ANN. § 73-41-11(e) (Supp. 1988); OKLA. STAT. ANN. tit. 70, § 821.66(A)(2) (West 1989).

⁷⁵ *See, e.g.*, 1988 IOWA LEGIS. SERV. H.F. 2432, § 8(3)-(4) (West); KY. REV. STAT. ANN. § 518.080 (Michie/Bobbs-Merrill Supp. 1988); LA. REV. STAT. ANN. § 424(8) (West 1987); MISS. CODE ANN. § 73-41-11(g) (Supp. 1989); OKLA. STAT. ANN. tit. 70, § 821.64(8) (West 1989); TEX. REV. CIV. STAT. ANN. art. 8871, Sec. 6(b)(5) (Vernon Supp. 1989).

⁷⁶ *See, e.g.*, ALA. CODE § 8-26-24 (Supp. 1989); CAL. LAB. CODE § 1531(a) (West Supp. 1989); 1988 IOWA LEGIS. SERV. H.F. 2432, § 7(3) (West); LA. REV. STAT. ANN. § 423(C) (West 1987); MD. ANN. CODE art. 56, § 35(a)(2) (Supp. 1988); OKLA. STAT. ANN. tit. 70, § 821.63(C) (West 1989); TEX. REV. CIV. STAT. ANN. art. 8871, Sec. 5(b) (Vernon Supp. 1989).

⁷⁷ *See, e.g.*, ALA. CODE § 8-26-32 (Supp. 1989); CAL. LAB. CODE § 1530 (West Supp. 1989); 1988 IOWA LEGIS. SERV. H.F. 2432, § 7(1) (West); LA. REV. STAT. ANN. § 423(A) (West 1987); MD. ANN. CODE art. 56, § 635(a)(1) (Supp. 1988); OKLA. STAT. ANN. tit. 70, § 821.63(A) (West 1989); TEX. REV. CIV. STAT. ANN. art. 8871, Secs. 5(a), (c) (Vernon Supp. 1989).

⁷⁸ *See supra* note 2.

federal securities law.⁷⁹ Although sports tend to generate a great deal of public interest, federal legislation in this area has been sparse.⁸⁰ Even though commerce clause considerations and the benefits of uniformity point toward the desirability of uniform federal legislation governing athlete agents, such legislation appears unlikely.⁸¹

If federal legislation is not passed, a variety of state statutes, the NCAA rules, the leagues, and the players' unions will be the sole protection against undesirable agent conduct. Of these, only the players' unions will have any power to enforce agent competency.⁸²

C. *Civil Litigation Involving Athlete Agents*

Private actions in the realm of athlete agency usually involve the athlete bringing an action against the athlete agent.⁸³ The relationship between these two individuals is based on general principles of agency and formalized in an agency agreement.⁸⁴ Thus, with some exceptions, general principles of contract and agency law apply to the relationship between the two parties.⁸⁵ Frequently, an athlete who believes that his or her agent has renegeed on a promise will bring suit on grounds of fraud, negligence, or breach of contract.⁸⁶ There is cause to believe that the majority of such abuses never result in lawsuits.⁸⁷ One reason for this absence of litigation is that the agent's exploitation of his or

⁷⁹ See generally Benitez, *supra* note 4; Kohn, *supra* note 4; Sullivan, *supra* note 4; *Regulation of Sports Agents*, *supra* note 4. The House of Representatives last seriously examined the issue in 1977 and concluded that the wrongs committed by agents were "an insufficient sample upon which to base any recommendation for legislation." See FINAL REPORT OF THE SELECT COMMITTEE ON PROFESSIONAL SPORTS, H. R. No. 94-1786, 94th Cong. 2d Sess. 70, 77 (1977). One bill drafted by the Sports Lawyers Association in 1985 was never introduced due to lack of interest by Congress. See Kohn, *supra* note 4, at 14. See also *Regulation of Sports Agents*, *supra* note 4, at 1069 (discussion of the draft and Congress' failure to review the proposal).

⁸⁰ See BERRY, GOULD & STAUDOHR, *supra* note 7, at 255-56.

⁸¹ *Id.*

⁸² See *supra* notes 38-45 and accompanying text.

⁸³ The reported cases in this area are quite limited. See, e.g., *Brown v. Woolf*, 554 F. Supp. 1206 (S.D. Ind. 1983); *Burrow v. Probus Management Inc.*, Civil No. 16840 (N.D. Ga. Aug. 9, 1973) (unpublished order); *Detroit Lions, Inc. v. Argovitz*, 580 F. Supp. 542 (E.D. Mich. 1984), *modified*, 767 F.2d 919 (6th Cir. 1985) (unpublished decision); *Zinn v. Parrish*, 461 F. Supp. 11 (N.D. Ill. 1977), *rev'd*, 644 F.2d 360 (7th Cir. 1981).

⁸⁴ See WEISTART & LOWELL, *supra* note 4, § 3.18, at 323-26.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ See *supra* note 83; *Potential for Abuse*, *supra* note 4, at 833. See also WEISTART & LOWELL, *supra* note 4, § 3.18, at 323. One athlete agent noted that these matters are often settled before litigation occurs. Interview with Reginald L. Turner, President, Reginald Turner Management Group (Nov. 11, 1988).

her client often leaves the athlete without funds.⁸⁸ Other actions involving agents include suits by one agent against another for interfering with a contractual relationship,⁸⁹ and suits by agents against athletes for breach of contract.⁹⁰

1. Athlete v. Athlete Agent

As noted above, general agency principles govern the athlete-agent relationship. Under these basic rules "[a]gency is a consensual, fiduciary relation between two persons, created by law by which one, the principal, has a right to control the conduct of the agent, and the agent has a power to affect the legal relations of the principal."⁹¹ The law of agency also holds an agent liable to the principal for all damages that arise as a result of the agent's conduct.⁹² An agency agreement between an athlete and an athlete agent specifies the terms with which both parties oblige themselves to comply.⁹³ Typically, an agency contract requires the agent to provide service to the best of his or her ability.⁹⁴

In an area other than negotiating with a team, common law principles governing agency may be the only protection available for an athlete who has suffered from an agent's conduct.⁹⁵ For example, neither the player associations' regulations nor any state laws regulate any aspect of endorsement contracts. An athlete's endorsement income can exceed his or her salary for playing. The large sums paid for endorsements justify the regulation of endorsement transactions.

2. Athlete Agent v. Athlete

An athlete agent will most frequently bring breach of contract actions against athletes to recover payment for services ren-

⁸⁸ *Id.* See *Potential for Abuse*, *supra* note 4, at 821 (citing *People v. Sorkin*, 64 A.D.2d 680, 407 N.Y.S. 2d 772 (2d Dep't 1978)); *Burrow v. Probus Management*, Civil No. 16840 (N.D. Ga. Aug. 9, 1973) (unpublished order). *But cf.* the action by Kareem Abdul-Jabbar against his agent Tom Collins and Ken Norton against his agent Jack Rodri. See Goodwin & Goldaper, *supra* note 12, at 1, col. 2.

⁸⁹ See generally W. PROSSER, *HANDBOOK OF THE LAW OF TORTS* § 129 (4th ed. 1971).

⁹⁰ See, e.g., *Walters v. Fullwood*, 675 F. Supp. 155 (S.D.N.Y. 1987) (action for breach of agency contracts and failure to repay loans).

⁹¹ See W. SEAVEY, *HANDBOOK OF THE LAW OF AGENCY* § 3, 3 (1964) [hereinafter SEAVEY].

⁹² See 3 AM. JUR. 2D *Agency* § 209 (1986).

⁹³ See generally SEAVEY, *supra* note 91.

⁹⁴ *Id.*

⁹⁵ See, e.g., *Remick & Eisen*, *supra* note 4, at 71-72 (generally regarding actions in tort and contract).

dered.⁹⁶ Typical breach of contract actions involve standard evidentiary issues of proof regarding what the parties agreed to and what transpired between them.

Among the remedies an agent may seek is specific performance, which forces the athlete to honor the agency agreement. An agent may also request an injunction, barring the athlete from retaining any other agent.⁹⁷ Both of these equitable remedies force the athlete to have a relationship with an agent against the athlete's will. The law generally will not enforce such agreements, particularly when the remedy at law, i.e., money damages in the amount of services the agent has rendered, is adequate.⁹⁸

In only one case, *Walters v. Fullwood*,⁹⁹ has an agent instituted an action on the theory that NCAA rules have no bearing on the validity of an agreement between an agent and a student athlete. Agent Norby Walters brought suit to recover a loan he had given to a student athlete in violation of NCAA rules barring a student athlete from contracting with an agent or accepting payment for participation in a sport.¹⁰⁰ The judge dismissed the agent's action, noting, "[W]e decline to serve as 'paymaster of the wages of crime, or referee between thieves.'" ¹⁰¹ No agents have subsequently attempted to assert a similar cause of action.

3. Athlete Agent v. Athlete Agent

Typically, suits brought by one athlete agent against another charge interference with a contractual relationship, by which one agent "steals" a client from another.¹⁰² In *Roundball Enterprises v. Richardson*,¹⁰³ an agency representing athletes brought an action against an agent, G. Patrick Healy, and a professional basketball player, Micheal Ray Richardson, then represented by Healy. Roundball alleged that the athlete owed fees for the representation Roundball had provided, and that the athlete's agent had interfered with their contractual relationship.¹⁰⁴

Despite the fact that agents regard the "stealing" of clients as a fairly common occurrence, the practice results in few law-

⁹⁶ See *supra* note 83.

⁹⁷ See E. FARNSWORTH, *CONTRACTS*, § 12.5, 823-38 (1982).

⁹⁸ *Id.*

⁹⁹ 675 F. Supp. 155 (S.D.N.Y. 1987) (court held that because the loans violated NCAA rules they were not enforceable under New York law).

¹⁰⁰ See NCAA BYLAWS §§ 12.1.1, 12.3.1-3.4, 14.01-4.1, 16.01.1.

¹⁰¹ *Fullwood*, 675 F. Supp. at 160.

¹⁰² See, e.g., *Roundball Enter. v. Richardson*, 616 F. Supp. 1537 (S.D.N.Y. 1985).

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 1538.

suits. One reason for this absence of litigation may be that agents regard such conduct as a normal part of the business. The fear of having their own illegal payments and other improper transactions become part of the public record may also deter agents from initiating legal proceedings against each other.

4. Member Institution v. Athlete Agent

Member institutions in the NCAA potentially suffer serious harm from athlete agent improprieties. As the NCAA has no direct contractual relationship with student athletes, it enforces its regulations by taking action against its member institutions.¹⁰⁵ An institution may suffer stiff sanctions by the NCAA if a player has a relationship with an athlete agent in violation of NCAA rules.¹⁰⁶ Curiously, the member institutions do not generally have rules of their own regarding athlete agents. The institutions must rely on private causes of action to remedy injuries for which agents may be primarily responsible.¹⁰⁷ In a number of cases, schools have sued agents for interfering with a contractual relationship between the student athlete and a member institution.¹⁰⁸

The penalty that the NCAA imposed on the University of Alabama is a clear example of the sort of injury a school may suffer as a result of an agent's relationship with a student athlete. The university was required to forfeit \$253,447 for using two players in the 1987 NCAA basketball tournament who had been ineligible because of their dealings with athlete agents.¹⁰⁹

IV. ESSENTIAL REFORMS

The discussion above illustrates that athlete agent regulations, particularly the state laws, are only intermittently effective.

¹⁰⁵ See *supra* notes 26-28 and accompanying text. See also *infra* note 108.

¹⁰⁶ See, e.g., *infra* note 109.

¹⁰⁷ See *infra* note 108.

¹⁰⁸ See, e.g., *Taylor v. Wake Forest Univ.*, 191 S.E.2d 379 (N.C. Ct. App.) *cert. denied*, 192 S.E.2d 197 (N.C. 1972); *Begley v. Mercer Univ.*, 367 F. Supp. 908 (E.D. Tenn. 1973); Note, *Educating Misguided Student Athletes: An Application Of Contract Theory*, 85 COLUM. L. REV. 96 (1985).

¹⁰⁹ *Alabama to Forfeit \$250,000 to N.C.A.A.*, N.Y. Times, Dec. 16, 1987, at B11, col. 5. Charges against Walters were dropped when he and the University of Alabama agreed on a settlement of \$250,000. See Cataldi, *In the World of Agents It's Business as Usual*, Phila. Inq., June 13, 1988, at 1C, col. 1. Walters' associate, Lloyd Bloom, was required to serve a week of a one-year sentence washing the cars of state troopers while staying at the hotel of his choice. See *Agent Pleads Guilty*, N.Y. Times, May 3, 1988, at D35, col. 1; *Agents' Bond Continues*, N.Y. Times, July 13, 1989, at B9, col. 1.

This section suggests reforms, proposes the means to implement them, and examines their probable effect.

A. *Proposed Reforms*

1. The Availability of a "Student Life" Stipend and Additional Funds

As competition for clients increased among athlete agents, the practice of giving or advancing money to student athletes became a way of gaining an advantage over professional rivals.¹¹⁰ NCAA rules preclude student athletes who receive scholarships from working for additional income if the sum total of the work income and scholarship funding exceeds the value of tuition and fees, room and board and required course-related books.¹¹¹ Student athletes with a legitimate need or desire for more money than they receive from their scholarships must turn to their families. If their parents cannot afford the expenditure, the athletes may be tempted to accept an athlete agent's "donation."¹¹² Such payment violates NCAA rules and certain state laws.¹¹³ But the payments will continue as long as rulemakers fail to address the conditions that generate them.

The NCAA objects to payments because they violate the traditional concept of amateurism. The idea of amateurism grew from a period when most participants in sports were aristocrats.¹¹⁴ One commentator describes amateurism as follows:

Amateur regulations were established in the late nineteenth century by wealthy aristocratic gentlemen primarily to keep them from having to compete against their social inferiors, men who often took sport seriously. Some might argue that it was not the conscious intent of the founders of the amateur

¹¹⁰ See *supra* note 11 and accompanying text. See, e.g., *Early Signings Widespread Lawyer Says*, The NCAA News, July 22, 1987, at 5 (noting that it is "amazing" that any of the NCAA athletes follow the rules regarding early signing and payments); *Collegian Ousted For Agent Deal*, Sports Industry News, Mar. 25, 1988, at 93 (noting payment of \$2,000 from agent David Luddueke to Ohio State football player George Cooper).

¹¹¹ NCAA BYLAWS §§ 12.4.1, 15.02.4, 15.1, 15.2.1-2, 15.2.6.

¹¹² See, e.g., Schmidt, *supra* note 6.

¹¹³ The following statutes incorporate the rules of the NCAA: ALA. CODE § 8-26-1 to -41 (Supp. 1988); FLA. STAT. ANN. § 14.22 (West 1987); GA. CODE ANN. §§ 43-4A-1 to -18 (1988); MISS. CODE ANN. § 74-41-1 (Supp. 1988); TENN. CODE ANN. § 49-7-2101 to -2109 (Supp. 1988); TEX. CIV. PRAC. & REM. CODE ANN. § 1-008 (Vernon Supp. 1988).

¹¹⁴ See *Pros, Cons of Amateurism*, Wash. Post, Sept. 16, 1988, at E2, col. 1 (noting that pros from ice hockey, soccer, and tennis may participate in the Olympics and basketball probably will allow it in the future. "Volleyball and boxing are two sports where pros are not allowed to compete."); Denlinger, *These Days, It's Take the Money and Run for the Gold*, Wash. Post, Sept. 16, 1988, at E2, col. 3; Dolson, *Let's Leave the Olympics to the True Amateur*, Phila. Inq., Sept. 20, 1988, at 10C, col. 1.

code to bar all athletes from amateur competition who were not aristocrats, but few will deny that this was what happened when these regulations were instituted. All of the late nineteenth century and early twentieth century distance running greats such as Deerfoot, Walter George, and Alfred Schrubbs were either professionals to begin with or were declared professionals for alleged violations of amateur rules.

“Pure” amateurism is a luxury that only the wealthy can afford. This becomes especially clear when we look at the men and women who usually get to the top in amateur sports that require expensive equipment as well as long periods of time in training.¹¹⁵

With their wealth, aristocrats had no reason to seek remuneration for their athletic activities.¹¹⁶ As times changed, amateur athletes no longer belonged exclusively to the class of the well-to-do, but the “rule” against payments to amateurs remained.¹¹⁷

Today, the division between amateur and professional has become thoroughly muddled.¹¹⁸ There is no uniform definition of an amateur.¹¹⁹ Each entity governing nonprofessional sports has its own regulations covering professional activity.¹²⁰ These regulations usually do nothing to define a meaningful distinction between the amateur athlete and the professional. For example, professional athletes, including millionaire professional tennis stars, may now participate in the Olympics at all levels.¹²¹ In the 1988 Olympics, certain countries reportedly paid cash bonuses to athletes who won medals.¹²² The NCAA, likewise, allows athletes to participate as professionals in one sport and retain amateur eligibility in an-

¹¹⁵ J. SCOTT, *THE ATHLETIC REVOLUTION* 94 (1971). The author goes on to note that: [e]ven track and field, one of the more egalitarian Olympic sports, is not immune from this kind of discrimination based on wealth and social position. Bill Toomey, because of his financial circumstances, was able to buy the best athletic equipment, travel throughout the world seeking the finest competition and coaching, and spend as much time as necessary training for a four or five year period in order to become the world's best decathlon man. Toomey was able to afford amateurism, but there are many equally talented, equally dedicated decathlon men who cannot. Unlike Toomey, they must regularly work at full-time jobs in order to make a living, and they cannot afford to purchase the equipment, drugs, and food supplements that he did, never mind travel around the world looking for competent coaching.

Id. at 94-95. (footnote omitted).

¹¹⁶ *Id.* at 95.

¹¹⁷ See *infra* note 125 and accompanying text.

¹¹⁸ See *supra* note 114.

¹¹⁹ See WEISTART & LOWELL, *supra* note 4, § 1.03, at 6 (noting that the eligibility requirements vary across the various bodies that govern amateur sports).

¹²⁰ *Id.* at § 1.04.

¹²¹ See *supra* note 114. See also Alfano, *Lukewarm Welcome for Professionals*, N.Y. Times, Feb. 12, 1988, at A30, col. 1.

¹²² See *supra* note 114.

other.¹²³ Student athletes involved in non-NCAA track and field competition may receive appearance and endorsement fees, provided that any money received exceeding the athlete's travel and living expenses is maintained in a trust fund.¹²⁴ Despite this ambiguity in its approach to amateur status, the NCAA maintains its ban not only on endorsements but on all outside employment.¹²⁵

The NCAA rules regarding payments to athletes are as follows:

12.1.2 FORMS OF PAY. An individual loses amateur status through receipt of "pay," which includes, but is not limited to, the following practices:

- (a) Educational expenses not permitted by the governing legislation of this Association (see Bylaw 15 regarding permissible financial aid to enrolled student-athletes);
- (b) Any direct or indirect salary, gratuity or comparable compensation;
- (c) Any division or split of surplus (bonuses, game receipts, etc.);
- (d) Excessive or improper expenses, awards and benefits (see Bylaw 16 regarding permissible awards, benefits and expenses to enrolled student-athletes);
- (e) Expenses received from an outside amateur sports team or organization in excess of actual and necessary travel, room and board expenses for practice and game competition;
- (f) Actual and necessary expenses or any other form of compensation to participate in athletics competition (while not representing an educational institution) from a sponsor other than an individual upon whom the athlete is naturally or legally dependent or the nonprofessional organization that is sponsoring the competition;
- (g) Payment to individual team members or individual competitors for unspecified or unitemized expenses beyond actual and necessary travel, room and board expenses for practice and competition;
- (h) Expenses incurred or awards received by an individual that are prohibited by the rules governing an amateur, noncollegiate event in which the individual participates;

¹²³ See NCAA BYLAWS § 12.1.4.

¹²⁴ CHRIS, TACTRUST HANDBOOK 11-13 (1986-87).

¹²⁵ The NCAA is now discussing allowing student athletes in track and field and gymnastics to earn endorsements and other income. See Sports Industry News, Oct. 21, 1988, at 325; Krupa, *NCAA May Okay Endorsements*, SPORTS INC., Oct. 17, 1988, at 50.

- (i) Any payment, including actual and necessary expenses, conditioned on the individual's or team's place finish or performance or given on an incentive basis, or receipt of expenses in excess of the same reasonable amount for permissible expenses given to all individuals or team members involved in the competition;
- (j) Educational expenses provided to an individual by an outside sports team or organization that are based in any degree upon the recipient's athletics ability, even if the funds are given to the institution to administer to the recipient;
- (k) Cash, or the equivalent thereof (e.g., trust fund), as an award for participation in competition at any time, even if such an award is permitted under the rules governing an amateur, noncollegiate event in which the individual is participating. An award or a cash prize that an individual could not receive under NCAA legislation may not be forwarded in the individual's name to a different individual or agency;
- (l) Preferential treatment, benefits or services (e.g., loans with deferred pay-back) because of the individual's athletics reputation or skill or pay-back potential as a professional athlete, unless such treatment, benefits or services are specifically permitted under NCAA legislation, and
- (m) Receipt of a prize for participation (involving the utilization of athletics ability) in a member institution's promotional activity that is inconsistent with the provisions of 12.5 or official interpretations approved by the NCAA Council.¹²⁶

NCAA rules preclude an athlete on full athletic scholarship from working during the school year or while class is in session, or in the case of football, once practice begins.¹²⁷ However, the rules limit the financial aid a student may receive to "tuition and fees, room and board, and required course related books."¹²⁸ Thus, a student athlete on full athletic scholarship may neither receive payment for athletic performance nor work for additional spending money during the school term. The throwback to the aristocratic idea of the amateur is clear.¹²⁹ An athlete with enough funds to lead a comfort-

¹²⁶ NCAA BYLAWS § 12.1.2 (a)-(m).

¹²⁷ See *supra* note 111.

¹²⁸ NCAA BYLAWS § 15.02.4.1. For exceptions for Division III schools, see NCAA BYLAWS § 15.02.4.2.

¹²⁹ See *supra* note 114-15 and accompanying text.

able student life has good reason not to work.¹³⁰ But if the athlete's family is not able to provide money, the student who desires discretionary funds has recourse only to what he or she can earn between semesters. A student athlete in these circumstances may not be able to afford normal recreational expenses, let alone a major purchase such as an automobile.

The student athlete's need for cash opens a window of opportunity that an unprincipled athlete agent may exploit.¹³¹ Former athlete agent Mike Trope stated "If I talk to a player, and he needs a thousand dollars, I've got the money to give him."¹³² Paul Palmer, who admitted receiving monthly payments from an agent as well as a \$5,000 loan, noted, "'Some people did it for greed, some people out of need,' . . . I can't say I did it out of greed. If there was anything, it was more toward need. . . ." ¹³³

One argument advanced for barring student athletes from remunerative work is that their studies would suffer.¹³⁴ This is a valid concern. But it is curious that schools impose no similar limitations on students engaged in extra-curricular drama, art, computer science, or any other pursuit.¹³⁵

With the Pell Grant, the NCAA has attempted to bridge the gap between a student's needs and available funds.¹³⁶ This grant, worth a maximum of \$2,200 per year, may be awarded to student athletes based on need, overall tuition costs, and full- or part-time status.¹³⁷ The awarding of additional Pell Grants is a positive development, as well as an acknowledgment by the NCAA that student athletes have financial problems under the present rules.

Even student athletes whose parents earn a large income, and who therefore do not qualify for the Pell Grant,¹³⁸ have legitimate financial concerns. They become dependent on their parents for additional monies. A student whose parents are wealthy, but

¹³⁰ This certainly allows more time for studies as well as other activities including that athlete's sport.

¹³¹ See *supra* note 11 and accompanying text. See also Rapoport, *Among Other Things, Walters Fills a Need*, *The NCAA News*, Aug. 19, 1987, at 4. Athletic departments and alumni boosters have been involved in these activities as well. Goodwin, *The Receiver and a Possible End-Around Play*, *N.Y. Times*, July 23, 1987, at B5, col. 1. (where a payment of \$7,000 by agent is noted, as well as a statement that it is common practice).

¹³² See Black, *A Hard Look at Agents, Part II*, *SPORT*, Dec. 1979, at 77.

¹³³ *Palmer Says He Accepted Payments*, *Phila. Inq.*, July 23, 1988, at 1D, col. 6.

¹³⁴ *Id.* This is a realistic concern and one that should be addressed. The rather obvious observation that student athletes have less time to devote to their studies than does the average student was verified in a NCAA Study. See *Commission's Study of Student-Athletes Released*, *The NCAA News*, Dec. 5, 1988, at 1.

¹³⁵ Sobel, *supra* note 4, at 784.

¹³⁶ NCAA BYLAWS § 15.2.4.1.

¹³⁷ *Id.*

¹³⁸ *Id.*

choose not to give their child any money, is in financial circumstances as difficult as those of students whose parents can provide no resources at all.

Making student athletes eligible for a "student life" stipend would offer a solution to their dilemma. The stipend would append to the scholarship grant a sum of money additional to the cost of room, board and tuition, enabling the athlete to lead a more normal student life. In addition, student athletes should have the same freedom to work part-time as any other students. Many student athletes have spent their entire careers as students juggling academics and athletics. They are certainly equal to other students in their capacity to judge wisely how to allocate their time between studies and outside work.

Moreover, student athletes should be free to receive payment for product endorsements,¹³⁹ another source of income currently barred by NCAA rules.¹⁴⁰ Schools and booster clubs may use the image and likeness of student athletes for promotional purposes, but the students receive none of the revenue their publicity value generates.¹⁴¹ Additionally, amateurs in a number of Olympic sports endorse products without damaging their amateur status.¹⁴² Finally, a loan fund established by either the professional leagues or the NCAA could make money available to student athletes with pressing financial needs. NCAA sports are highly profitable for the member institutions¹⁴³ and serve as training grounds for the future professional athletes whose play will result in huge revenues for the leagues. In return for the benefits they derive from students' participation in college sports, both the NCAA and the professional leagues have an obligation to ensure that student athletes do not face financial disaster. A loan fund would create an important financial safety net. Moreover, professional "scouting combines" (central scout organizations) produce reports that make it possible to evaluate the likelihood of a player's future professional success in his or her sport and to estimate the time the students will need to repay the loan. Schools might base the size and availability of a loan on an individual's projected athletic future.

Some commentators have proposed paying student athletes an

¹³⁹ This is a potentially valuable source of income that would not take up a great deal of the student athlete's time.

¹⁴⁰ NCAA BYLAWS § 12.5.2.1(a), (b).

¹⁴¹ See *supra* notes 121-22.

¹⁴² *Id.*

¹⁴³ See Bayless, *Not Paying Player is System's Real Injustice*, *The NCAA News*, Jan. 11, 1989 at 4, col. 1 (stating that student athletes are taken advantage of "worse than child actors").

outright salary. Legislation providing pay for athletes has been introduced and defeated in Nebraska.¹⁴⁴ The bill, sponsored by State Senator Ernie Chambers, passed the Nebraska legislature but was vetoed by Governor Kay Orr on the grounds that the university's Board of Regents, not the legislature, was the proper body to address inequities in the NCAA rules.¹⁴⁵ Chambers justified the legislation by citing the large revenues received by Nebraska from athletics. He argued that student athletes are "denied compensation and forced to live with the fiction that they, like flowers, exist on air, sunshine and water."¹⁴⁶

Others have argued in response that one is either an amateur or a professional and only professionals should be paid.¹⁴⁷ In contrast to this bright line distinction, the proposed student life stipend and the other sources of funds proposed above reflect a middle ground, the recognition that student athletes occupy a status somewhere between that of the professional and the pure amateur. By ensuring that student athletes can afford more than just the sheer necessities of student existence, the NCAA would make the blandishments of opportunistic agents far less seductive and the impact of such agents much weaker.¹⁴⁸

2. Right to Turn Professional Prior to Graduation

NCAA regulations bar a student athlete playing on the team of a member institution from entering the National Football League draft prior to the date of the student's graduation.¹⁴⁹

¹⁴⁴ LB 1226, 90th Nebraska Leg., 1988. The bill required the University of Nebraska-Lincoln to pay a stipend to its student football players. In order not to jeopardize the university's NCAA standing, the bill was not to go into effect until four other states with Big Eight schools required similar compensation for the students on their football teams. See also Neff, *Scorecard*, SPORTS ILLUSTRATED, Apr. 18, 1988, at 21.

¹⁴⁵ Message by Gov. Kay Orr vetoing LB 1226. The message was sent to the legislature on April 13, 1988.

¹⁴⁶ *Id.* The bill was vetoed by the governor on April 13, 1988. Sports Industry News, Apr. 15, 1988, at 118.

¹⁴⁷ See, e.g., Guttman, *Let's Accept Professionalism in Big-Time Collegiate Sports*, The NCAA News, Sept. 19, 1988, at 5, col. 1. Guttman notes that institutions should:

[p]ay the athletes a decent salary and provide them with adequate fringe benefits—including the right to attend classes if they wish, either for credit or simply as auditors. Fans who have long accepted the fact that the Los Angeles Dodgers, for example, are not all lifelong Angelenos will soon grow accustomed to the no-less-reasonable fact that the young athletes representing major institutions, are not all students of their universities.

Id. at 11, col. 1. See generally P. LAWRENCE, UNSPORTSMANLIKE CONDUCT (1987) (advocating a similar position).

¹⁴⁸ Obviously, there is a limit to the amount of money schools can make available to students. Nonetheless, an increased stipend will remove the incentive that drives certain needy students to accept "loans" from agents.

¹⁴⁹ NCAA BYLAWS § 12.2.4. See also Eskenazi, *Decision on Draft Raises Questions*, N.Y.

The NFL draft takes place each year following the last post-season game¹⁵⁰ and consists of twelve rounds.¹⁵¹ In theory, each of the league's twenty-eight teams gets to pick one player each round.¹⁵² Players eligible for the draft are 1) those who are no longer eligible to play college football; 2) those who entered college at least five years prior to the draft; and 3) those who will graduate from college prior to September 1 of the next football season.¹⁵³

The NCAA regulates the eligibility of students for college play. Any of a variety of infractions may make a student ineligible, ranging from violations of team discipline¹⁵⁴ to accepting a loan from an athlete agent.¹⁵⁵ Once a student becomes ineligible to play on an NCAA team, no barrier remains to taking advantage of the draft.¹⁵⁶ The NFL has special "supplemental drafts" which, at the NFL's option, allow an NFL team to draft student athletes who have become eligible for professional play since the regular draft.¹⁵⁷

Despite the supplemental draft, the NFL does not normally allow undergraduates to enter the league until they have graduated. This policy reflects the long, cooperative relationship the NFL has had with college football.¹⁵⁸ In the 1940's and 1950's, college football was much more popular than the professional game.¹⁵⁹ The policy against drafting undergraduates before graduation reassured college administrators that their football teams would not be disrupted midseason.¹⁶⁰

Recent instances, however, demonstrate that students may circumvent the policy by finding ways to make themselves ineligible for college play.¹⁶¹ This loophole creates a motivation for

Times, Aug. 23, 1987, § 5 (Sports), at 8, col. 5 [hereinafter Eskenazi]; *Heyward to Be in N.F.L. Draft*, N.Y. Times, Apr. 5, 1988, at A22, col. 4.

¹⁵⁰ NFL CONST. Art. XIV § 14.1. See generally Sobel, PROFESSIONAL SPORTS AND THE LAW (Supp. 1981).

¹⁵¹ NFL CONST. Art. XIV § 14.3(D).

¹⁵² *Id.* at § 14.3(C).

¹⁵³ *Id.* at § 12.1(A).

¹⁵⁴ See Forbes, *College Football's Latest Mess Its Own Fault, not NFL's*, USA Today, Aug. 31, 1987, at C6, col. 1 [hereinafter Forbes].

¹⁵⁵ *Id.*

¹⁵⁶ See, e.g., Klein, *College Football: Keeping 'em Barefoot*, Wall St. J., Sept. 4, 1987, at 13, col. 1.

¹⁵⁷ NFL CONST. Art. XIV § 12.1(J). A maximum of two supplemental drafts are held, one each in July and August. *Id.* at § 12.1(J)(1). A team that drafts a player in a supplemental draft loses a draft-round selection the following April. *Id.* at § 12.1(J)(7).

¹⁵⁸ Eskenazi, *supra* note 149.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ See Forbes, *supra* note 153, at 6C, col. 1. The article discusses the supplemental draft for which student athletes Chris Carter and Charles Gladman became eligible.

agents to convince student clients to break NCAA rules in order to become ineligible for college play.

Under present circumstances, the rule against recruiting college students into the NFL prior to graduation serves little purpose. The NFL is the only league with this policy.¹⁶² Moreover, the rule would probably not survive legal challenge.¹⁶³ Several commentators have argued that courts would find the rule a violation of antitrust law.¹⁶⁴ The National Basketball Association's version of the same rule has already been held invalid.¹⁶⁵ Even so, since the time the NBA dropped its rule against drafting underclassmen, only a small number of athletes have been drafted into the league prior to graduation.¹⁶⁶ The number of student football players to leave college early to join the NFL would probably be even fewer,¹⁶⁷ since the physical maturity required to play professional football appears to be much greater than in other sports.¹⁶⁸

Allowing underclassmen to apply for the NFL draft would eliminate another opportunity for the unscrupulous agent to persuade the athlete to act in a manner that the student would later regret.

3. Player Association Certification and Decertification

Now that player's associations have established their right to certify agents, they should be more aggressive in denying certification to incompetent and dishonest agents and in decertifying

Carter lost his NCAA eligibility because he accepted a loan from agent Norby Walters. When Gladman refused to cooperate in a federal investigation of Walters, he became ineligible for NCAA play as well. *Id.*

¹⁶² Major League Baseball typically signs prospects to their minor league teams out of high school. The NBA has done so since 1971. See *Denver Rockets v. All-Pro Management, Inc.*, 325 F. Supp. 1049 (C.D. Cal.), *injunction reinstated sub nom. Haywood v. Nat'l Basketball Ass'n*, 401 U.S. 1204 (1971).

¹⁶³ See Note, *Herschel Walker v. National Football League: A Hypothetical Lawsuit Challenging the Propriety of the National Football League's Four-or-Five Year Rule Under the Sherman Act*, 9 PEPPERDINE L. REV. 603, 640 (1982) [hereinafter *Hypothetical Lawsuit*] (maintaining that the NFL's rule against drafting underclassmen would survive antitrust scrutiny only if it would develop a rule which evaluates the physical capabilities of a student athlete to compete in the NFL).

¹⁶⁴ *Id.*

¹⁶⁵ See *supra* note 162.

¹⁶⁶ See *Hypothetical Lawsuit, supra* note 163, at 630 n.158.

¹⁶⁷ Physical growth required for professional football is rarely achieved in football prior to the graduation of their class from college. Donald V. Stevenson M.D., sports medicine specialist in Los Angeles, confirms a view expressed by Clarence L. Shields, M.D., the Los Angeles Rams team physician, that twenty-two is the approximate age of peak athletic ability, although the amount of training the athlete has undergone is an important factor as well. Telephone interview with Donald V. Stevenson, M.D. (Jan. 20, 1989).

¹⁶⁸ *Id.*

agents who violate professional standards.¹⁶⁹ Unprofessional behavior in the representation of students or professional athletes should be grounds for refusal to certify or decertification. There is no shortage of athlete agents¹⁷⁰ and tighter scrutiny of their conduct certainly seems appropriate.

The NBPA has taken a step in this direction and decertified an agent for making payments to college, junior college, and high school coaches who, in return, helped him obtain clients.¹⁷¹ Likewise, the NFL decertified an agent for mishandling funds.¹⁷²

The players' unions of the various sports should establish a uniform certification program. In addition to preventing conflicting standards in the regulation of agents, a uniform system would encourage players' associations to exchange information on the improprieties of any of their certified agents.

4. Educational Programs by the NCAA and the Professional Sports Leagues

The NCAA, the leagues, and the players' unions have a responsibility to disseminate information to athletes on choosing and evaluating agents, and the services the athlete can expect the agent to provide. The NCAA ought to require the athletic departments of the member institutions to distribute such information to students in writing¹⁷³ and through discussion at a mandatory meeting. If necessary, the NCAA should consider using its sanction powers against member institutions that fail to comply with such a vigorous education program.¹⁷⁴

Similarly, the professional leagues and players' associations should give new players information about agents at initial rookie meetings or at rookie tryout camps.¹⁷⁵ Players should have access to all information their unions possess about individual agents. With vigorous educational programs in place, young athletes will be better able to select competent agents.

¹⁶⁹ Obviously a potential action by an athlete agent denied certification is an antitrust action.

¹⁷⁰ See *supra* notes 41-42 and accompanying text.

¹⁷¹ See *Agent Has His Certification Suspended by NBA Union*, Phila. Inq., May 31, 1988, at 5E, col. 4; Comte, *Deals May Be Invalid*, SPORTS INC., May 16, 1988, at 3.

¹⁷² See generally Macnow, *supra* note 10.

¹⁷³ At present the NCAA does publish and distribute to students Ruxin, *A Career in Professional Sports: Guidelines That Make Dollars and Sense* (1982), which includes advice on selecting an agent.

¹⁷⁴ See *supra* note 26 and accompanying text.

¹⁷⁵ For example, the NBA already requires attendance at a three day seminar for rookies to discuss matters such as drugs, investments and life on the road. See Goldaper, *Strickland Learns From First Mistake*, N.Y. Times, Oct. 24, 1988, at C2, col. 5.

5. Revision and Enforcement of Existing Laws

As discussed above, many statutes already in existence, although not specifically targeted at athlete agents, are useful in regulating athlete agents' conduct.¹⁷⁶ These laws ought to be supplemented by statutes that set forth requirements for certification or licensing. Applicants for athlete agent licenses or certification who do not meet these standards should be denied permission to practice.¹⁷⁷ Thus, not only should the players' associations deny certification to unqualified individuals, but states should also require prospective agents to meet minimal standards of competence.¹⁷⁸

In addition, existing laws should be vigorously enforced. The prosecutions of Norby Walters, Lloyd Bloom,¹⁷⁹ and Richard Sorkin illustrate the extent to which current statutes can regulate athlete agents. Moreover, athletes should become aware that private suits offer a remedy for exploitative conduct by agents.¹⁸⁰ New laws governing athlete agents ought to focus on screening prospective agents rather than on reinforcing NCAA rules that reflect an outmoded concept of the amateur sportsperson.

V. CONCLUSION

The five reforms suggested above reduce the incentive of student athletes to submit to the inducements of dishonest or incompetent agents. Granting greater financial independence to student athletes will make them less likely to depend on agents for funds. Permitting the NFL to draft students prior to graduation will undermine agents who may currently benefit from convincing student clients to withdraw or be expelled from their college football teams. Certification by player associations can help ensure the competence and integrity of the agents available to athletes. An enhanced educational effort by the NCAA and the professional sports leagues would help players be more sophisticated in their choice of agents. Furthermore, vigorous enforcement of current and future statutes can add greatly to the regulation of athlete agents and the deterrence of future miscon-

¹⁷⁶ See *supra* notes 78-82 and accompanying text.

¹⁷⁷ See WEISTART & LOWELL, *supra* note 4, § 3.20, at 58 (Supp.).

¹⁷⁸ The states should also retain whatever rights they have established for themselves to deny registration for prior criminal, civil or other unethical activities. See *supra* notes 70-71 and accompanying text.

¹⁷⁹ See *supra* note 2 and accompanying text.

¹⁸⁰ See *supra* note 91-95 and accompanying text.

duct. The implementation of these proposals will ensure that the athlete agent business benefits not only its practitioners, but its clients as well.