

The Regulation of Sport Agents: for the Love of Money

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"Nothing we are involved with has a greater chance of being the ruination of intercollegiate athletics than agents. And yet, the tragedy of all this is most places do not seem to take it seriously."

Jim Livengood , Athletic Director
at the University of Arizona

INTRODUCTION

In 1925, Charles C. Pyle became officially the first sport agent when he negotiated a contract for Harold "Red" Grange to play with the Chicago Bears (Carter, 1994). However, the sport representation business did not really emerge until the mid 1960s. Prior to this time, it was not uncommon for a student athlete not to have anyone represent them in contract negotiations with a National Football League (NFL) franchise. Therefore, the general manager could dictate terms and conditions of employment, and the student athlete could be denied service of a lawyer or the advice of a representative. In addition, the student athlete was not privileged to see individual contracts entered into by other NFL players. The system was very one sided in favor of the NFL franchises (Garvey, 1991).

It was not until the American Football League (AFL) was formed in 1961 that agent services were remotely in demand. The AFL used agents to persuade student athletes to accept contracts in their league instead of the NFL. The agents for their services would usually receive ten percent of the player's contract and a bonus from the AFL (Garvey, 1991).

In 1966, the two leagues merged and shortly thereafter formed the NFL Players Association (NFLPA). The players' union demanded that student athletes be represented by an at-

torney or other representatives of the athlete's choice in their contractual negotiations. This request opened the flood gates in the sport representation business because there was no constraints on who could become an agent (Garvey, 1991).

In 1975, the NFLPA realized that this decision brought more harm to the players than it did good. It opened Pandora's box as unscrupulous, incompetent, and unethical agents swamped student athletes campuses, coaches, athletic directors, clinics, homes, and friends. Agents' unethical behavior became apparent to the student athletes when the league turned over all the standard form contracts to the NFL Players Association. The contract figures showed that there was really no need for an agent to negotiate an athlete's salary. After all, the players were making the same salary whether they had an agent or not, especially in the third rounds and below. Nevertheless, this did not stop agents from continuing to solicit and exploit student athletes (Garvey, 1991). One of the most highly publicized cases in the industry has been that of Norby Walters and Lloyd Blooms who solicited fifty eight student athletes at thirty two institutions and made payments to them reportedly in excess of \$800,000. Unfortunately, this behavior does not appear to be the exception in the business but sadly, it appears to be the rule (Woolf, 1989).

In 1995, University of Southern California All-American Wide Receiver Keyshawn Johnson was under the microscope for allegedly accepting money from an agent. However, the NCAA failed to uncover enough evidence to indict him. Unfortunately, this was not the case for his teammates Errick Herrin, Israel Ifeanyi, and Shawn Walters who were suspended for accepting monetary donations from an agent (Chi, 1995).

It was reported that at The Ohio State University, in 1994 All-American Joey Galloway was suspended for two games by the National Collegiate Athletic Association for accepting \$300 from an agent. Ohio State proceeded to win these two games without Galloway. However, the Ohio State Football program was not as fortunate in 1987 when the NCAA declared Ohio State All American Chris Carter ineligible to compete because he accepted \$6,800 from Norby Walters. Carter had caught twenty seven touchdowns in three years and had propelled the Buckeyes to a 9-3 record during his junior year. The following year which would have been Carter's last year of eligibility, Ohio State finished a miserable 6-4-1. However, their biggest loss occurred with the firing of head coach Earl Bruce before the Michigan game. This occurrence resulted in widespread criticism and irreparable damage to the program and the institution in its entirety. Unfortunately, similar accounts on other university campuses are becoming even more common and prevalent (Mckenna, 1991).

STATEMENT OF THE PROBLEM

The corruption and abuses of the student athlete/agent relationship, committed by the unethical agents has threatened the integrity of intercollegiate athletics. Therefore, there is an urgent need to find a way to regulate sport agents. In order to accomplish this objective, this paper examines the current need for sport agents, the perspective of various parties involved (agents, student athletes, NCAA, institutions) and propose possible solutions to this complicated problem.

THE NEED FOR AN AGENT

In the past decade, sport has grown astronomically. The evolution of the East Coast Hockey League, Major League Soccer, The Global Basketball Association, and the expansion of the NFL, NBA, and NHL has increased the number of athletes seeking sport agents. In addition, expanded media during the same period has played a significant role in developing the market for agent representation. Revenues extracted from gate attendance, retail sales, corporate sponsors, television contracts, and pay per view broadcasts have increased professional teams' revenues, which has in return allowed managers to increase players' salaries (See Table 1 below).

Table I		
	NBA STARTERS 1989-90 AVERAGE SALARIES	NBA STARTERS 1992-93 AVERAGE SALARIES
<u>POSITION</u>	<u>AVERAGE SALARY</u>	<u>AVERAGE SALARY</u>
CENTERS	\$1,144,273	\$2,169,720
POWER FORWARDS	989,987	2,107,734
SHOOTING GUARDS	907,266	1,537,173
POINT GUARDS	798,098	1,570,479
SMALL FORWARDS	1,073,679	1,947,925

Furthermore, changes in league management regulation policies have generated a great demand for qualified agent representation. As sport has grown also has the role of the agent. The responsibility of an agent has evolved past mere contract negotiation and currently includes the following:

- a) counseling the player about post career security (both financial and occupational),
- b) helping the athlete find a new club for a free agent,
- c) arranging trades for a player under contract,
- d) helping the athlete earn extra income from endorsements,
- e) speeches and commercials, advising an athlete on his personal conduct and relationship with the press,
- g) referring an athlete to medical specialists and drug/alcohol treatment facilities, and providing general advice on legal and tax

matters (Ruxin, 1993).

Few athletes have expertise in all these areas, therefore increasing the demand for a competent agent. The ratio of athletes to agents is rather deceiving as there are approximately 3,000 outstanding sport contracts to be negotiated in a year, and there are 11,000 sport agents to negotiate them. However, the problem for the athlete is distinguishing the unscrupulous agent from the competent one (Wilde, 1992).

AGENT PERSPECTIVE

Agents admit that making inducements to student athletes prior to their eligibility expiring is very common in the industry. In NCAA Division I football and basketball, insiders estimate that seventy percent of student athletes have been contacted by a sport agent before their eligibility is up. Agents believe in order to stay up with the competitive nature of the business, such actions are necessary. Hagwell & Mott (1995a) state that agents also agree that the actual recruitment process is happening earlier in student athletes' lives than ever before and involves athletes on all levels (Divisions I, II, III).

There are usually two methods a sport agent predominantly uses to persuade prospective clients. Sport agents will hire "runners" to solicit the student athletes (and everyone whom regularly comes into contact with) to sign a contractual agreement with a particular agent. If this method is unsuccessful, sport agents and runners will even approach a coach or athletic director and offer him/her inducements if they send an athlete in their direction. Sport agents realize that it is extremely hard for others to police their activities. This would entail someone being with

them or the athlete twenty four hours a day. Therefore, there is no major deterrence for the sport agent to curtail his activity. Sport agents view themselves as "untouchables" with nothing to lose and everything to gain (Hagwell & Mott, 1995).

STUDENT ATHLETE PERSPECTIVE

Many student athletes believe that they are victims of the NCAA manual. They are placed in an environment in which everywhere they look, others around them are well off. They are expected to put in long hours on the practice field and in the classroom. Nevertheless, when they are required to go to a particular function in which they need to be dressed up, they are often utterly embarrassed because they can not afford a suit. This economic/financial aid prob-

Table II

NCAA Rules forbid:

- An athlete to agree, either orally or in writing, to be represented by an agent or organization in the marketing of his or her athletic ability or reputation until after completion of the athlete's last intercollegiate contest, including post-season tournament or bowl games. This prohibition includes entering an agreement that is "not effective" until after the last game.
- An athlete to sign a playing contract in any sport in which he or she intends to compete or to market the name or image of the athlete; it makes difference whether the contract is legally enforceable.
- An athlete to ask to be placed on a professional league's draft list, whether he is actually drafted, or whether he signs a professional contract. This rule primarily affects undergraduate basketball players who apply for the NBA draft and some football players.
- An athlete to accept expenses or gifts of any kind (including meals and transportation) from an agent (or anyone else) who wishes to provide service to the athlete. Such payment is not allowed because it would be compensation based on athletic skills and preferential benefit not available to other students.
- An athlete to receive preferential benefits or treatment (for example, loans with deferred payback basis) because of the athlete's reputation, skill, or payback potential as a professional athlete. The exception is a loan to buy disability insurance.
- An athlete to retain professional services for personal reasons at less than the normal charge from a representative of his or her school's athletic interests.
- A coach or other member of the athletic staff to represent, directly or indirectly, a student-athlete in the marketing of his or her athletic ability or reputation to a professional sports team or organization and to receive any compensation or gratuities for such activity.

Table III

NCAA Rules allow:

- An athlete to compete professionally in sports in which he or she does not participate for the university (but signing a professional contract terminates eligibility for an athletic scholarship in any sport).
- An athlete to retain an agent specifically limited in writing to representing him or her in those sports in which he or she competes as a professional.
- An athlete to retain an attorney for matters of personal nature, including evaluating the terms of a proposed professional contract, providing the attorney does not represent the athlete in negotiating such a contract and has no contract with the pro sports organization and does not market the individual's athletic ability or reputation in a particular sport.
- An athlete to talk to an agent, providing he or she neither agrees to be represented nor accepts anything of any value from the agent.
- An athlete to ask a pro league or team about his or her eligibility to be drafted.
- An athlete, an athlete's parent, or the professional sports advisory panel of an athlete's university to negotiate a pro sports contract. (Ruxin, 1993)

lem has been preyed on and exploited by agents for years. Agents are conscientious that if they can get an athlete to accept money from them, they have got them! A sport agent gave UCLA's Donnie Edwards a bag of groceries worth about \$150. To Donnie, this may have appeared to have been on the surface, a kind gesture when he was in a time of need. However, this act was a direct violation of NCAA, rules (see Table 1). NCAA rules prohibit athletes from accepting payments or other benefits from agents (Mott & Hagwell, 1995B).

Donnie's sport agent eventually used Donnie's acceptance of the groceries as a ploy in forcing Donnie to sign a contractual agreement with him early or lose his last year of eligibility. After all, Donnie's sport agent had nothing to lose in reporting this NCAA violation. Greg Hill, a member of the Kansas City Chiefs, stated "I think guys get into it initially because of need. And once they got them into it, there's no turning back" (Almond, 1996).

There are other athletes who become in-

involved with agents, purely "for the love of money." Young athletes coming out of high school are curious about how it feels to have a little extra spending money in their pockets, not realizing the damaging repercussions they may occur in the future for their actions.

It takes two to tango. Athletes themselves have been known to target numerous agents for monetary donations and in return never sign with any of them. Therefore, there are constituents that blame the student-athlete for the current problems with agents. They are the ultimate gatekeepers of their future. Student-athletes are the ones who say yes or no. They make the ultimate decision (Mott & Hagwell, 1995B).

Student-athletes do not have a solution to this growing problem. However, they recognize the need to have patience, support from family, coaches, and friends to help them make mature decisions when confronted by sport agents (Mott & Hagwell, 1995B).

NCAA/PROFESSIONAL LEAGUES/ GOVERNING BODIES

The increasing number of sport agents in intercollegiate and interscholastic athletics venues has made this issue of utmost importance to the NCAA, the professional leagues, and national governing bodies in determining ways to regulate sport agents. Currently, the NCAA procedures have been criticized for having too many loopholes and too few deterrents. The NCAA's largest weakness is that it has not jurisdiction over sport agents. The NCAA is absolutelyThe NFLPA in 1983 became the first professional league to develop a player-agent certification program. If sport agents did not comply with the program, they were subject to fines, suspensions, and/or revocations of licenses as a penalty. Nevertheless, there were still many imper-

fections with this program. The program required agents to provide their educational background, but did not require a minimum level of training. In addition, the program did not directly address the deviant behavior of agents on intercollegiate campuses. However, the program did limit sport agents compensation for contractual negotiations. In 1986, the National Basketball Players Association followed suit (Wilde, 1992).

The Association of Representatives of Professional Athletes (ARPA) is the only self-regulating organization within the sport agent business. "The ARPA code of ethics attempts to ensure integrity, competence, dignity, management responsibility, and confidentiality from agents in the representation of their client" (Dunn, 1988). However, the organization is actually no better than the NCAA in regulating sport agents as membership is voluntary.

Indirectly, the American Bar Association can regulate an attorney's behavior with a student-athlete by revoking his license and even disbarring him. This certainly makes some attorneys think twice before approaching a student-athlete. In conjunction with the law profession, states are beginning to add agent-specific state legislation in an effort to regulate this industry (Ruxin, 1993).

The one drawback from this trend is that there is no federal legislation that addresses this issue. Therefore, there has been a lot of litigation and confusion resulting from conflicting state laws. The Florida statute is one of the toughest sport agent legislation enacted. It explicitly states:

The legislature finds that dishonest or unscrupulous practices by agents who solicit representation of student-athletes can cause significant harm to student-athletes and the academic institutions for which they play. It is the intent of the legislature to protect the interest of student-athletes in academic institutions by regulating the activities of the athlete agents which involve student-athletes at colleges or universities in the state. (Florida Athlete Agent Act of 1988).

One unique element about Florida statute is that it has provisions imposing criminal sanc-

tions on student-athletes for failing to give notice of signing and holds the student-athlete or sport agent liable in damages that result to the college from an athlete's failure to notify the athletic director that the student-athlete has entered into a contractual binding agreement that results in the athlete's premature loss of eligibility.

Kentucky's state law does not allow any contract whatsoever with an athlete until the expiration of his collegiate eligibility. Kentucky's legislation on regulating agents has not been without criticism. Some proponents argue that the provision keeps student eligible to play for universities, rather than protecting the student-athlete in the advancement of their professional careers (Wilde, 1992).

In addition to state specific legislation, there are also other legal causes of action one can use to deter unscrupulous sport agents. Often misrepresentation, fraud, deceit, and negligence are commonly litigated in sport agent cases. However, the University of Alabama recently filed suit against a sport agent for the tortuous interference with contractual and business relations. Restatement (second) of torts 766 (1979) states, "The general rule of law regarding tortuous interference with a contractual relationship is that one who, without justification intentionally induces a third person not to perform a contract with another person, is liable to such other person for the harm caused thereby" (Wood & Mills, 1988).

The scholarship provided by the institution to the student-athlete can be viewed as a binding contract in which a student-athlete agrees to participate in athletics in exchange for the institution's promise to provide tuition and other financial assistance. Therefore, because of this fiduciary relationship between the student and the institution, a sport agent may be assumed to know its legal significance. Consequently, a sport agent's solicitation of a student-athlete before his eligibility has expired may constitute an intentional interference with a contractual and business relationship (Wood & Mills, 1988).

Even with such trends happening in legislation, the NCAA is still looking towards the institutions themselves for further assistance in combating this growing problem. Robert J.

Minnix, former NCAA director of enforcement urges institutions to become more assertive in investigating their student-athletes' activities with agents. All too often, institutions claim they did not know about a particular student-athlete's activities with agents. All too often, institutions claim they did not know about a particular student-athlete's involvement with an agent. This comment would be acceptable by the NCAA if it felt that these institutions were making a good faith effort in investigating this problem. Minnix also cautioned the Division II and III programs who felt that this is a Division I problem, that they were not immune to this epidemic (Hagwell & Mott, 1995b).

In order to effectively deal with this problem, the NCAA realizes it will have to get everyone involved. The Players Association (NBA, NFL) have the power to certify and decertify agents, but they rarely have used their power to decertify agents. They need to take a more stringent stand. As well as the institutions themselves need to be more proactive in their efforts than reactive.

In its February 1995 meeting, the Professional Sport Liaison Committee proposed many safeguards to the NCAA council. The recommended legislation included the following:

- Sponsor legislation prohibiting student-athletes from making agreements with financial advisors, thus treating such advisors as agents with a different name.
- Sponsor legislation defining as sports agents any apparel manufacturers that own, operate or have a financial interest in any entity that is in the business of representing professional athletes. Under such legislation, benefits provided by such manufacturers to student-athletes would be regarded as benefits from an agent.
- Sponsor legislation amending NCAA Bylaw 10.1 to define as unethical conduct the receipt of benefits by an institutional staff member for facilitating or arranging a meeting between a student-athlete and sports agents, runners or financial advisors.
- Information in clearinghouse on "agent-type" misconduct.

The NCAA realizes that they can have all of

these safeguards in place, but if they do not get support from the student-athletes themselves, the problem will persist.

INSTITUTIONS

Coaches and administrators feel that their hands are tied when it comes to regulating agents. They view their primary role as educators, constantly informing the student-athletes about the repercussions of interacting with an agent. Institutions admit there is a lack of unity among all levels (Divisions I, II, III) in combating sport agents which has stifled federal legislation from being passed. A lot of the smaller institutions claim they do not have the time or resources to invest in a Division I top twenty-five problem. Ironically, it is the same institutions that feel the only real hope to deterring unscrupulous agents would involve legal action (Mott & Hagwell, 1995c).

CONCLUSION

It is amazing how a single interaction between a student-athlete and a sport agent can have such a rippling effect on intercollegiate athletics. This problem is multi-faceted. It involves sport agents, institutions, NCAA, professional leagues, the judicial system, and most of all the student-athlete. All these groups share a responsibility in improving the current situation. Often, the NCAA is looked upon as the leader and governing body which sets the rules and oversees the enforcement of its concepts of amateurism in college athletics.

Unfortunately, it lacks sufficient control over the sport agent. At times, it appears the sport agent has control over the NCAA. An agent can come onto a college campus and has the potential to put a program on probation, have a student-athlete lose his eligibility, bring negative media exposure to the school, and simply walk away untouched. For the sake of the integrity of intercollegiate athletics, other parties besides the NCAA are going to have to assist in making an assertive effort in regulating sport agents. It is the author's opinion, if the following vehicles are implemented, the various parties collectively can reach their objective:

- 1) NCAA rules should be changed to allow the impressionable freshmen student-athletes

coming out of high school, the opportunity to disclose to the institution any existing pre-college agreements with an agent.

This would encourage students to be honest and forthright with the institution. In return, the institution should grant immunity to the student-athlete and allow the student the opportunity to play on the collegiate level. This measure will set a tone for a strong relationship between the student-athlete and institution built on trust. In addition, the propensity for interscholastic athletes to have interacted with a sports agent are becoming even greater.

- 2) State agent specific legislation needs to be enforced. Florida's legislation on agents is arguably the toughest in the nation, but it does not matter if the rules are not enforced. Certainly, the input of agent specific legislation has tremendous potential to curtail the corrupt agent.
- 3) Federal legislation would be ideal. Federal legislation would be beneficial in addressing discrepancies between state specific legislation. Federal legislation is needed because this problem is not isolated to a couple of states, but it is a nationwide epidemic.
- 4) Education
Institutions need to provide a forum in which interested constituents can educate themselves. Student-athletes should be given information on career choices, and sport agents by their academic advisors. Coaches need to bring in guest speakers (lawyers, accountants, financial consultants) to address the problem.
- 5) NCAA rules need to be more conscientious of the financial need of student-athletes. Socio-economic status of poor student-athletes makes inducements from agents tempting.
- 6) Certification
All Professional Players Associations need to limit sport agents commission on a player's contractual agreement. In addition, these associations need to become more selective on an agent educational background to ensure competent representation. All sport

agents should be required to be licensed professionals.

The sport agent has become intercollegiate athletics number one enemy. Perhaps with the aforementioned recommendations unscrupulous agents will be disciplined and the masses will be better educated.

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