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Introduction

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Introduction

Abstract

"It didn't seem so wrong. It seemed as though I worked my whole life to get where I am, and at the same time, when it was presented to me, it was like this was the time I could start to get back some of the fruits of my labor."¹ —Paul Palmer, former star college football running back, regarding cash payments of more than \$5,000 he received while a college senior from sports agent Norby Walters.

This epigraph has remained in our text through multiple editions. Its continued relevance is underscored by the irony that, in a recent court ruling, a judge pegged the minimum dollar figure for college athletes to received from licensing revenues at \$5,000. This book, meanwhile, focuses on the evolving sports agent industry, the issues affecting it, and how to improve and regulate it. Key issues and problems associated with sports agents are visible at the high school, collegiate, and professional levels. Whatever the concerns that lie at the center of the sports agent storm, it is a business that captures the attention of many.

Disciplines

Law | Legal Studies | Sports Management | Sports Studies

Introduction

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For years, the dominant sports agent images were the fictional Jerry Maguire and Arli\$\$\$; more recently it has been the faceless mega-agencies that have resulted from the consolidations discussed in Chapter 3. Today's most intriguing image may be entertainment mogul, now sports agent, Shawn Carter, known professionally as Jay Z, sitting next to his latest celebrity athlete recruit at a sporting event. Whatever the image, the business is complex, and the line between what helps a client and what hurts a client can often be thin.

The widely rebroadcast 2005 press conference featuring sports agent Drew Rosenhaus speaking on behalf of client Terrell Owens after Owens was suspended from the National Football League's Philadelphia Eagles, for conduct detrimental to the team, remains illustrative. With Owens in the background, Rosenhaus stood at the microphones responding to seemingly every query regarding the suspension with the response "Next question?" Many observers expressed concern about the strategy

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the agent employed and its impact on the already tarnished image of his client. Others wondered whether the apparent grandstanding was more of an agent's ego-trip than an earnest attempt to advance his client's interests. While there is no way to know for sure, not long after the incident Rosenhaus penned a book entitled *Next Question: An NFL Super Agent's Proven Game Plan for Business Success*. Several years after the book's publication, however, Owens fired Rosenhaus due to other conflicts, and at the time of this writing Owens was suing him on several grounds (discussed in Chapter 5).

Although it generated considerable attention, the Rosenhaus microphone event is a relatively mild example of an agent taking action that arguably is not in his or her client's best interests. At the extremes, agent misconduct and malfeasance, ranging from mismanagement and misappropriation of athlete clients' assets to disparagement of other agents in order to gain a competitive advantage, fuel perceptions of an industry composed of individuals too willing to compromise ethics and competent representation for financial gain. Agent impropriety overlaps with the reality of many newly or prospectively rich individuals not receiving the counseling they require to duplicate success on the field with success off the field.

Although concerns involving the athlete representation business loom large at the professional level, they remain at the collegiate level as well. It is there that, no matter how mature they may be, young men often succumb to the corrupt actions of seasoned professionals. Paul Palmer's dilemma, noted above, remains with us today. He is not alone in having received payments that violate National Collegiate Athletic Association (NCAA) rules and, now, state and federal laws. Other student athletes have received inducements such as interest-free loans, automobiles, clothes, concert tickets, airline tickets, insurance policies, and dates with models.² In 2000, an Auburn University basketball star admitted to taking \$2,500 from Nate Cebrun, a "runner" for a sports agent. The student athlete, Chris Porter, said that he used the money to pay his mother's mortgage.³ The interaction with Porter was not Cebrun's first controversial contact with student athletes. In 1994, Cebrun, acting on behalf of certain agents, arranged a shopping spree for Florida State student athletes.⁴ A more recent illustration of alleged improper student athlete/agent interaction involved the benefits allegedly bestowed upon running back and Heisman Trophy winner Reggie Bush during his collegiate career.

In 2006, allegations surfaced that Bush and his family had accepted payments and benefits from marketing agents attempting to entice Bush to sign a representation agreement with them. According to media reports, Bush and his family accepted gifts, money, and other benefits

totaling more than \$100,000 from two marketing firms while Bush was still playing football for the University of Southern California (USC). Bush's family allegedly failed to pay rent of \$54,000 during a year in which they lived in a house owned by the agent, Michael Michaels, with whom Bush did not sign a representation agreement. Bush's family allegedly agreed to repay Michaels after Bush turned professional. Media reports also alleged that Mike Ornstein, head of the agency selected by Bush to provide marketing services, provided the athlete and his family with gifts that included money for hotel, airfare, and car-related expenses. The NCAA ultimately sanctioned USC.⁵ Amid these allegations, it was also revealed that Bush had a summer internship with Ornstein's marketing firm. In the end, with his professional career underway, Bush decided to return his Heisman Trophy.

The incidents involving Palmer, Cebrun, student athletes from Florida State, and Bush are points along a continuum that more recently includes financial scandals associated with University of Miami athletes and books by the likes of former agent Josh Luchs. Many will also have in mind the improprieties surrounding NFL star Cam Newton during his days as a student athlete at Auburn.

An illustration from the mid-1990s involving former NFL running back Greg Hill reveals why some athletes take benefits from agents. In responding to the controversy involving agents, Hill stated, "The guys accepting pay or the guys who want to take pay, that mainly falls on . . . the NCAA. . . I think that's [their] fault because of the strict restrictions on how long guys work and how much [financial aid] guys get. Many families are too poor to give that child money. My mom couldn't give me any money. Sometimes your team has functions where you have to dress up. Some guys don't have suits. I didn't have a suit. I had to wear jeans all of the time."⁶ The views expressed by Hill are not unique. From the student athletes' perspective, rules perceived as unfair and irrelevant to their life circumstances fail to deter problematic or possibly illegal involvement within the underground economy of college sport.

In the broadest stroke, recent student athlete lawsuits against the NCAA and athletes' efforts to unionize reflect the desire by many student athletes to receive greater compensation either directly or indirectly. There is also an attitude expressed by some college athletes that playing the sport on the way to the pros is the very reason why they are in college. A tweet by Ohio State quarterback Cardale Jones, who helped lead his team to the inaugural College Football Playoff championship in 2015, is indicative of this view: "Why should we have to go to class if we came here to play FOOTBALL. We ain't come to play SCHOOL classes are POINTLESS."⁷ These reflections on the part of Jones, which came even before he was a starter, are nothing new.

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As Stephon Marbury, a former National Basketball Association (NBA) and Georgia Tech star, told the *New York Times*, "When I signed to go to Georgia Tech, we were on ESPN twenty times, instantly. When you make the tournament they just give you money. And then they say a coach can't buy you a winter coat, even if you grew up in the hood and you don't have one."⁸ Former college basketball star Eldridge Hudson summarized the attitude of at least some athletes in a *Time* magazine cover story more than two decades ago: "Once you get out on the floor, it's a job, and you expect to get paid. If a kid is busting his ass on the court, if somebody wants to buy a car, let him have it."⁹ Commenting on Reggie Bush's alleged acceptance of unauthorized gifts, one commentator expressed similar views: "Almost all the incentives in big-time college sports point toward cheating. First, there's the perception, probably more or less accurate, that everybody else is doing it so you have to do it just to keep up. . . . Second, winning is enormously lucrative for everyone involved except the players, who happen to have the biggest influence over who wins and who loses. If you get a multimillion-dollar producer to work for you without pay, it's a fantastic deal even if you have to slip him a few thousand bucks from time to time."¹⁰

This is the focus of many of the cases discussed herein. The amateurism foundations that college sports were designed around are no longer taken for granted. As a result, greater compensation flowing to student athletes is not the anathema it was once thought to be. This was brought to light broadly in a feature piece in the *Atlantic*, "The Shame of College Sports," by historian Taylor Branch.¹¹ Branch argued strongly that college athletes should be paid.

An affidavit submitted by NFL linebacker Johnny Rutledge focusing on payments he received during his collegiate career at the University of Florida illustrates the improper transactions between student athletes and agents:

Beginning in 1997, my junior year, I began receiving money from Alfred Twitty, who worked for [then sports agent] Tank Black and his company PMI [Professional Marketing Incorporated] in Columbia, S.C. I initially received \$200 per month, but in the summer of 1997 I asked for more. Twitty told me then that the usual amount for players like me was \$600 per month. I thereafter received \$600 per month through December of 1998. On occasion, I would get more than \$600, like in December for Christmas and during my birthday month when I got \$1,000 in cash.

Twitty began asking me about what car I wanted during my junior year, when it was possible I would consider turning pro. I decided to play my senior year instead. During my last season in 1998, Twitty again asked me what car I wanted. I eventually told him in December of 1998 that I wanted a Mercedes Benz S420. I understood while I was receiving cash from Twitty that it was being provided by Tank Black. I met Tank Black in Tampa in the summer of 1998 at an event

arranged by Twitty. Present were myself, Jevon Kearsse, Fred Taylor and others from Tank's agency. At that time, Tank asked me, "Is Tweet taking care of you?" I answered in the affirmative. And he told me that if I ever needed anything, I should contact Tweet. I also talked with Tank during the balance of 1998 when he would call me by telephone and ask how I was doing. On one such call, I told him I needed money to buy furniture. Soon thereafter, Twitty came with the cash (about \$700) and Reggie McGrew and I used it to purchase furniture for our apartment. I was aware that Jevon Kearsse and Reggie McGrew [other players] were also receiving monthly cash payments from Twitty. On occasion, the entire amount for all three of us would be delivered to one of us. . . . I knew all along that it was expected by Twitty and Tank Black that I would sign with PMI when I turned pro. I informed them late in the 1998 season that I would do so. The day I signed with PMI—Jan. 4, 1999—I got the car I told Twitty that I wanted, which was a 1999 Mercedes S420 with all of the equipment I had said I wanted.¹²

Additionally, automobiles and cash payments may be supplemented by even more unsavory promises, involving drugs or prostitutes. One such example is the courtship of former University of Massachusetts basketball star Marcus Camby by agents John Lounsbury and Wesley Spears. The agents supplied Camby with prostitutes, cash payments, stereo equipment, jewelry, and rental cars in the hope that they would represent Camby once he turned pro.¹³ In addition, Lounsbury and Spears, an attorney, followed another course of action often pursued by agents. They attempted to gain favor with Camby by ingratiating themselves with his family, friends, and other associates, oftentimes by providing them with gifts. Despite the agents' efforts, Camby signed with neither Lounsbury nor Spears, but with the once dominant ProServ athlete representation firm. (Much of this type of unsavory activity reemerges in the 2010 case involving Nevin Shapiro, discussed in Chapter 5.)

Other criminally culpable conduct by agents also occurs. In 1987, a federal investigation of agents began after the alleged slashing and beating of an agent's associate by a rival agent. The investigation revealed that agents had threatened to "break the legs" of athletes who would not sign with them.¹⁴ Although there is no evidence to suggest that threats and acts of violence are employed today, criminal acts are certainly being committed. Over the past couple of decades, for instance, sophisticated stock market scams and money-laundering schemes have grown in popularity among agents seeking to exploit athletes.

Why do agents engage in illegal and unethical conduct? Why do payments by agents to athletes and other improprieties persist? Economists refer to such actions by agents as "opportunism." Oliver Williamson, in his work *Markets and Hierarchies*, defines opportunism as "self-interest seeking with guile."¹⁵ The self-interest of sports agents is the right to receive approximately 2 to 5 percent of multimillion-dollar athlete-team

contracts coupled with up to 30 percent of multimillion-dollar endorsement deals. As a result of this income opportunity, a wide range of techniques has been developed to secure student athletes as clients. For example, payments to athletes with college playing eligibility remaining have become standard practice for some agents. Agent Jim Abernethy told *USA Today* back in 1987, "Everyone is being paid and signed. If anyone says otherwise, they're really stupid, blind or they're lying."¹⁶ A few years later an industry insider made a similar observation: "It is the wild, wild west out there. . . . The reason is pretty simple: there is more big money, but few hard-core punishments to serve as a deterrent to an agent who breaks the rules or breaks the law."¹⁷ There is nothing to indicate that such payments have ceased. If anything, they are being made with a higher level of sophistication that inhibits efforts to detect wrongdoing.

An additional reason for the absence of meaningful change in this regard is the heightened competition for representing an athlete. As discussed in greater detail in Chapter 3, the trend toward consolidation of sports agencies typically advantages the larger athlete representation firms in securing clients. Thus, structural changes in the industry exacerbate problems derived from competition for a limited number of athletes. In the late 1980s and 1990s, industry consolidation produced deep-pocketed representation firms such as SFX Sports (SFX), Assante, IMG, and Octagon that had the resources to spend considerable amounts to obtain and retain clients. Although some of these firms have either lost their prominence in the agency representation business or no longer exist, consolidation persists with agencies such as Creative Artists Agency (CAA) and Wasserman Media Group (WMG) now leading the way.

SFX exemplified the advantages reaped by size and resources. It reportedly advanced wide receiver Peter Warrick a \$500,000 line of credit on the bonus he was to receive from the Cincinnati Bengals upon signing his initial contract. SFX spent even more in attempting to recapture Warrick as a client when he fired the firm days after the draft.¹⁸ When lacking resources, some competitors are not averse to turning to illegal conduct as a way of leveling what may be perceived as an unlevel playing field in their efforts to sign clients. As discussed above, agents Lounsbury and Spears not only spent significant sums of money but also were willing to take risks that exposed them to criminal liability in their attempts to sign a representation agreement with Marcus Camby.

Changes in the business of sports agency are today converging with a uniquely American sacred cow: collegiate amateur sports. Collegiate sport, although slowly evolving, is the last field in the world in which

athletes are supposed to receive absolutely no direct monetary compensation for their athletic prowess in a setting where great revenues are generated. Under current NCAA rules, the athlete may receive from colleges—in exchange for athletic participation—room, board, tuition, cost-of-living expenses, and educational fees. This concept of amateurism becomes more problematic, as discussed in Chapter 9, when one considers that Greek amateurism, which many perceive to be the ideal upon which American collegiate sports were founded, may have actually allowed amateur athletes to receive compensation. Classicist David C. Young maintains that amateur athletes in ancient Greece won prizes worth as much as the value of ten years' wages.¹⁹ If this is the case, then why is so much energy expended to ensure that collegiate athletes receive no compensation? Such efforts persist in the arguments asserted by various parties against student-athlete attempts to unionize, to expand what falls within the parameters of permissible aid provided by colleges, and to receive compensation for the use of their likenesses and images. And even if the Greeks were not compensated, why is it so important to retain this limitation today? What of the fact that many of the athletes generating these huge collegiate revenues are African Americans from lower socioeconomic backgrounds? These issues are key elements in the present agent regulation problem.

What is being done to stop undesirable agent activities? First, state and federal prosecutors are taking action. High-profile prosecutorial action dates as far back as 1989 when sports agents Norby Walters and Lloyd Bloom were convicted and sentenced for racketeering, conspiracy, mail fraud, wire fraud, and extortion after a trial that showcased sports and entertainment figures such as University of Michigan head football coach Bo Schembechler and singer Dionne Warwick. Those convictions, ironically, were ultimately overturned. In addition to prosecutorial action, colleges and universities are taking direct action against agents. In 1999, the University of Southern California sued Robert Caron, an attorney and unregistered agent, alleging that he improperly induced certain of its student athletes to violate NCAA rules.²⁰

Second, it is now commonplace for states to have legislation regulating athlete agents. As addressed in Chapter 11, these laws focus on regulating illegal activities of agents. Unfortunately, legislation that has been either enacted or proposed has done little to ensure agent competency. In fact, except for the higher price tag, registering to be a sports agent is often as simple as obtaining a license to fish: complete a form, pay a fee, and you're a "licensed" sports agent. It is the exception for states to require applicants to pass a competency exam. The number of states that have enacted athlete agent legislation has increased with the promulgation of the Uniform Athlete Agents Act (UAAA) in August 2000.

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However, as Chapter 12 outlines, even though over forty-three states and territories have adopted the UAAA, there is an increasing lack of uniformity as state legislatures vary the act's provisions to address what they perceive as its shortcomings. State variations undermine a principal goal of the UAAA, which was prepared by the National Conference of Commissioners on Uniform State Laws (now known as the Uniform Law Commission) to create uniform standards for regulating athlete agents. Proponents of the UAAA hope that recently revised uniform standards will curtail the noncompliance with existing state legislation. As of this writing and as Chapter 12 expounds, the vast majority of agents, no matter where they are located in the United States, are governed by some form of agent-specific legislation.

Third, the NCAA, and more specifically certain of its conferences, have made incremental changes that recognize the need to reconceptualize some aspects of the NCAA's long-standing definition of amateurism.²¹ In addition, the sports agent question is an important element in the NCAA's ongoing regulatory review process.

What else can be done to stop the corruption associated with sports agents? Improprieties occur because the opportunity exists to make money. The solution, in the broadest terms, is simple: remove the opportunity to prosper by "cheating." As the following discussion reveals, layers of regulatory mechanisms will help to stymie the improprieties so prevalent in the sports agent industry. At the collegiate level, these mechanisms can be combined with efforts aimed at eliminating the opportunity for agents to benefit from improper conduct by implementing reforms that recognize the economic, social, and structural realities of college sports. Once the focus goes beyond college sports, the reform emphasis must be on agent competency and honesty. As you will read, this is much more simply said than done. The reality is that the system may always have major flaws.