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Policing Sports Agents: The First Four Years

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UNIVERSITY OF MIAMI ENTERTAINMENT & SPORTS LAW REVIEW

ARTICLES

POLICING SPORTS AGENTS: THE FIRST FOUR YEARS

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JOSEPH DIGIUSEPPE**

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I. INTRODUCTION

On July 15, 1987, the National Collegiate Athletic Association (NCAA)¹ declared Ohio State all-American wide receiver Cris

1. The NCAA is:

a private non-profit association organized in 1905. [The] NCAA consists of approximately 900 members. Membership is open to four-year institutions which meet certain academic standards. Allied and Associate membership is open to athletic conferences, associations and other groups interested in intercollegiate athletics. . . . [The] NCAA operates pursuant to a Constitution and Bylaws adopted by the membership and subject to amendment . . . by the membership at annual conventions. When the annual convention is not in session, policy is established and directed by the NCAA council of 22 members elected by the entire membership at the annual convention. [The] NCAA has a professional staff located at its headquarters in Shawnee Mission, Kansas. Some 80 employees execute NCAA policy under the supervision of [an executive director].

Carter ineligible to compete in intercollegiate athletics for accepting money from sports agent Norby Walters.² With Carter in the line-up as a junior the year before, the Buckeyes had compiled a 9-3 record that included a victory over Texas A&M in the Cotton Bowl.³ However, without Carter, Ohio State, which had been a pre-season top ten pick, finished a disappointing 6-4-1.⁴ For the first time in fifteen years, the Buckeyes did not play in a post-season bowl.⁵ Finally, five days before the team's final game against arch-rival Michigan, head coach Earl Bruce was fired.⁶ Bruce's firing drew widespread criticism.⁷ Bruce countered with a \$7.4 million

Board of Regents v. National Collegiate Athletic Ass'n, 546 F. Supp. 1276, 1282 (W.D. Okla. 1982), *aff'd in part, rev'd and remanded in part*, 707 F.2d 1147 (10th Cir. 1983), *aff'd*, 468 U.S. 85 (1984).

2. *Eagles Nab Carter in Special Draft*, The Philadelphia Inquirer, Sept. 5, 1987, at D1, col. 5, D4, cols. 3-6. In three years at Ohio State, Carter caught 27 touchdowns, but also admitted to having accepted \$6800 in loans from Norby Walters. *Id.* Ohio State University later decided not to appeal the NCAA decision in an attempt to restore Carter's eligibility. *Ohio State Won't Appeal on Carter*, The Philadelphia Inquirer, Sept. 1, 1987, at 4C, cols. 4-5. Ohio State University President Edward Jennings said Carter's financial aid would be maintained so Carter could continue his studies at the university if he so chose. *Id.* However, Carter said he was disappointed by Ohio State's decision and would probably make himself available for a National Football League supplemental draft. *Id.*

3. *See Ohio State Won't Appeal on Carter*, The Philadelphia Inquirer, Sept. 1, 1987, at 4C, cols. 4-5. Carter was the Buckeyes' all-time leading pass catcher. *Id.*

4. *Buckeye Record Has Coach Bruce Squarely on Spot*, Courier-Post, Nov. 12, 1987, at 7D. Some people felt that 1987 might have been the year Ohio State would contend for its first national championship since the Rex Kern and Jack Tatum team of 1968. *Id.* The Buckeyes' loss to Iowa was its third consecutive loss, and the Buckeyes' first to the Hawkeyes at Ohio Stadium since 1959. *Maryland Tips W. Chester to Win Field Hockey Title*, The Philadelphia Inquirer, Nov. 16, 1987, at 9C, col. 2.

5. *Buckeye Record Has Coach Bruce Squarely on Spot*, Courier-Post, Nov. 12, 1987, at 7D. The Buckeyes made eight Bowl appearances during the nine seasons under the direction of head coach Earl Bruce. *East Discovers a New Beast in '87*, The Philadelphia Inquirer, Nov. 27, 1987, at 8C, col. 1.

6. *See Ohio State Fires Bruce; AD Resigns in Protest*, The Philadelphia Inquirer, Nov. 17, 1987, at 4C, col. 3. That same day, State Athletic Director Rick Bay resigned in protest. *Id.*

7. *Ohio State Firing Draws Widespread Criticism*, The Philadelphia Inquirer, Nov. 18, 1987, at 5D. "It's bad commentary obviously for our coaching profession when a guy who wins a Cotton Bowl game last year and loses three or four games this year is out of a job," said Pennsylvania State coach Joe Paterno. *Id.* Bruce's chief rival also came to his aid. "He's done everything in my judgment that a top football coach ought to do," said Michigan's Bo Schembechler. "I think this has done irreparable damage, particularly to the profession." *Id.* Columbus radio stations were deluged with phone calls from fans, the majority supporting Bruce and attacking Jennings' handling of the situation. *Id.* One ardent Buckeye supporter even filed a lawsuit requesting a temporary restraining order to block the firing. *See Judge Throws Out Lawyer's Suit to Block Bruce's Firing*, The Philadelphia Inquirer, Nov. 24, 1987, at 3D. However, Franklin County Common Pleas Court Judge William T. Gillie denied the request by Columbus attorney Phillip D. Cameron, an Ohio State graduate and former Buckeye baseball player. *Id.*

lawsuit against the Ohio school and its president.⁸ The suit was later settled for an immediate payment of \$471,000.⁹

It may be an overgeneralization to say that Walters' dealing with Carter ultimately caused the demise of the once proud Buckeyes. If nothing else, the Walters/Carter affair did have an impact on Ohio State football simply because the Buckeyes lost the service of an all-American wide receiver.

What Carter did is nothing new.¹⁰ For years, college athletes with eligibility remaining have dealt with agents.¹¹ However, only recently has it become evident just how pervasive these dealings are, and how widespread the financial ramifications have become. This Article analyzes the magnitude of the situation and how various states address it.

II. THE MAGNITUDE OF THE SITUATION

On December 16, 1987, college athletics were rocked by the announcement that Atlanta sports agent Jim Abernethy,¹² in violation of NCAA rules, had signed seven college football players to contracts before their eligibility had expired.¹³

8. *Bruce Sues Ohio State Over Firing*, The Philadelphia Inquirer, Nov. 23, 1987, at 10C, col. 1. Bruce filed a lawsuit claiming that he was wrongfully dismissed and that Jennings slandered him in statements to reporters. *Id.* Jennings had not publicly disclosed why Bruce was fired, but said that the decision to fire Bruce was his alone. At a news conference, Jennings said that his decision to fire Bruce was difficult, but that he felt it was "the right thing to do." *Id.*

9. *Bruce Drops Suit in a Settlement with Ohio State*, The Philadelphia Inquirer, Nov. 28, 1987, at 5D, col. 1. The \$471,000 represented the money Bruce could have expected to receive if he had stayed at the school until his contract expired in June 1989. *Id.* Both sides agreed not to pursue any further action against each other. *Id.* Bruce was paid less than \$90,000 annually as head football coach. *Id.* Bruce would have been entitled to about \$140,000 for the time remaining on the contract in effect when he was fired. *Id.* According to a University attorney, the settlement included reimbursement for lost income from a TV contract, a sporting equipment contract, miscellaneous clinics, health benefits, and an early-retirement policy. *Id.*

10. In November 1987, two football players, Riccardo Ingram of Georgia Tech and Tony Jeffrey of Texas Christian, lost their eligibility after it was revealed that they had had dealings with sports agent Jim Abernethy. *Agent Says He Signed 7 Collegians to Contracts*, The Philadelphia Inquirer, Dec. 16, 1987, at 1F, col. 1. For a discussion of the Abernethy affair, see *infra* notes 12-100 and accompanying text.

11. *Rules Some Agents Play By: None*, U.S.A. Today, Dec. 22, 1987, at 1C, col. 4. According to George Kickliter, an agent who specializes in representing Auburn players, there were 1200 agents before the NFL players' union ruled that agents had to pay \$200 for certification. "Suddenly, we're down to 600," Kickliter said. "What's that telling you?" *Id.* at 2C, cols. 1-7.

12. *Id.* at 1C, cols. 4-5. Abernethy is an Atlanta millionaire, who attempted to take the sports agency business by storm. *Id.*

13. *Agent Says He Signed 7 Collegians to Contracts*, The Philadelphia Inquirer, Dec. 16, 1987, at 1F, cols. 1-5. The seven college football players were Kevin Porter (Auburn

The disclosure by Abernethy cost three of these college athletes their eligibility.¹⁴ Within a day, Auburn University officials announced that junior cornerback Kevin Porter, an all-Southeastern Conference player, would be barred from further competition starting with the Tigers' Sugar Bowl game against Syracuse on January 1, 1988.¹⁵ Memphis State officials, having heard about the newspaper report in advance, had already ruled two nights earlier that a pair of starters on their basketball team, junior center Marvin Alexander and sophomore forward Sylvester Gray, were ineligible.¹⁶

Abernethy identified the other four players who allegedly signed contracts as offensive tackle Tony Bartley and fullback Melvin Collins of Texas A&M, and defensive back John Booty and wide receiver Wayne Waddy of Texas Christian University.¹⁷ Waddy, a junior, lost his senior season of eligibility at Texas Christian University while Booty, a senior, had already completed his college career.¹⁸ Bartley and Collins were declared ineligible for the Aggies' Cotton Bowl matchup against Notre Dame on January 1, 1988.¹⁹ Abernethy later stated that the then Texas A&M football coach Jackie Sherrill tried to negotiate a quick financial settlement in an apparently futile effort to get two of his players back on the team in time for the Cotton Bowl.²⁰

University), Tony Bartley (Texas A&M), Melvin Collins (Texas A&M), John Booty (Texas Christian University), Wayne Waddy (Texas Christian University), and basketball players Marvin Alexander (Memphis State University) and Sylvester Gray (Memphis State University). *Id.* at col. 3. Abernethy gave the Atlanta Journal-Constitution copies of all but one of the contracts. *Id.* at col. 5. He said his contract with Collins was locked in a safe-deposit box, but that he could produce it on request. *Id.*

14. *See id.*

15. *Id.* Abernethy said he believed that he paid Porter about \$1000 a month, plus bonuses. *Alabama Grand Jury Indicts Sports Agent*, The Philadelphia Inquirer, Jan. 12, 1988, at 8D, col. 1.

16. *Agent Says He Signed 7 Collegians to Contracts*, The Philadelphia Inquirer, Dec. 16, 1987, at 1F, col. 3.

17. Then Texas A&M coach Jackie Sherrill stated that the school was investigating the matter, but added, "We don't think either one of our players signed anything with anybody." *Id.* at col. 5.

18. *Id.* at col. 4. It is against NCAA rules for players to accept benefits from agents or to sign contracts with them. *Id.* Before the NCAA will consider restoring a player's eligibility, all money must be repaid to the agent and the player released from his contract. *Id.*

19. *Sports in Brief*, The Philadelphia Inquirer, Dec. 19, 1987, at 3C, col. 3. Texas A&M football coach Jackie Sherrill said, "This is the biggest game of their lives. You're taking away the Cotton Bowl from these boys." *Id.*

20. *Id.* Abernethy said he had agreed to a settlement with Sherrill on the release of his contract with the two Aggies players who lost their eligibility, and that he signed a release in lieu of receiving a settlement of \$5600 for money he gave to Melvin Collins and \$1500 for money he gave to Tony Bartley. *A & M Pair Must Pay for Mistake*, U.S.A. Today, Decem-

Abernethy also said that either he or his former associate, Gary Wilson, had dealings with Clemson defensive tackle Michael Dean Perry, South Carolina wide receiver Sterling Sharpe, and Auburn defensive tackle Tracy Rucker.²¹ Perry, the brother of Chicago Bears defensive tackle William "The Refrigerator" Perry, denied making any oral or written agreement with Abernethy.²² Sharpe said he had no recollection of meeting with the agents.²³ Abernethy said Rucker was entertained at the agents' expense in Atlanta, but Auburn officials cleared the player of any wrongdoing.²⁴

Later, the University of Alabama discovered that the dealings of basketball players Derrick McKey and Terry Coner with agents cost the University of Alabama \$253,447 in basketball receipts from the 1987 NCAA tournament.²⁵ The NCAA concluded that based on the Southeastern Conference's revenue-sharing arrangement, fifty percent of a school's share of money from NCAA championships goes into the conference for distribution to other South-

ber 22, 1987, at 1C, col. 3.

21. *Agent Says He Signed 7 Collegians to Contracts*, The Philadelphia Inquirer, Dec. 16, 1987, at 1F, col. 3.

22. *Id.* at 5F, col. 6. Recruiter Fred Gibbs delivered Perry to a meeting in Gibbs' office in Augusta. *Rules Some Agents Play By: None*, U.S.A. Today, Dec. 22, 1987, at 2C, col. 4. Gibbs insisted Perry and Abernethy never talked contract. *Id.* "I always talked contract," Abernethy said. *Id.* "The idea was once you got them in the room, not to let them out until they signed. I didn't drive up from Atlanta just to chat." *Id.* Perry insists there was no such meeting. *Id.* Perry said he met Abernethy at a steak house and briefly chatted with him. *Id.* According to NCAA rules, any of the three versions of the meeting fell within the rules, as long as no money changed hands and no contract was signed. *Id.* Abernethy, however, thought he was putting one over on the NCAA, and was almost hurt when he was told the NCAA considered his Perry escapade perfectly legitimate. *Id.* at cols. 4-5.

23. *Agent Says He Signed 7 Collegians to Contracts*, The Philadelphia Inquirer, Dec. 16, 1987, at 1F, col. 3. However, Terrence Flagler, now with the San Francisco 49ers, had a vivid recollection of Abernethy while at Clemson. *Id.* He tells of Abernethy and three assistants showing up at his hotel room the night before the Gator Bowl. *Rules Some Agents Play By: None*, U.S.A. Today, Dec. 22, 1987, at 2C, cols. 3-4. "I thought from the very start he wasn't very professional; I could tell he wasn't being honest," Flagler said. *Id.* "I'd already met another guy I thought wasn't very honest, Norby Walters." *Id.* Flagler's dealings with Walters were the subject of a suit in New York, wherein Walters sought to recover money paid to Flagler. *Id.*

24. *Agent Says He Signed 7 Collegians to Contracts*, The Philadelphia Inquirer, Dec. 16, 1987, at 1F, col. 3. NCAA spokesman Jim Marchiony told the Associated Press that "it's up to the schools to do something first" about the players in question. *Id.* at 5F. "If what [Abernethy] says is true, the normal procedure is to declare the player ineligible and then appeal to the NCAA Eligibility Committee for reinstatement." *Id.*

25. *Id.* McKey, the Southeast Conference player of the year as a junior, was declared ineligible for his senior season after his dealings with New York sports agent Norby Walters were revealed. *Id.* He then entered the NBA draft and was picked in the first round by the Seattle SuperSonics. *Id.* Coner was also linked to Walters, but by then he had already completed his senior season at Alabama. *Id.*

eastern Conference members, and that the participating school keeps fifty percent.²⁶

Abernethy said the reasons for his decision to go public about his activities were the following: (1) his religious experience with the Pentecostal Church; (2) an ongoing investigation by the newspaper; (3) the "hypocrisy" of the NCAA; and (4) his opinion that "athletes are total con artists."²⁷ In an interview with the Associated Press, he declared that "every [sports] agency in the country [was] doing it. . . . You have no idea how big this is. This is just the beginning."²⁸

Abernethy's estimate was criticized by many of America's top agents,²⁹ who claim that no more than twenty-five percent of college players are on some agent's payroll.³⁰ Super-agent Leigh Steinberg believes the figure is twenty to twenty-five percent.³¹ The grand jury investigation into the Norby Walters and Lloyd Bloom situation "has gotten a high level of publicity . . . [and] has sent up a warning flag for parents and the players themselves."³² However, NCAA's Rick Evrard stated, "I'd be guessing if I put a figure on it. The more reputable agents give a lower number."³³

Tony Argonne, an agent for over ten years,³⁴ expressed:

Every year, there's going to be [twenty] percent you don't have a shot at. Those kids have made their deals, taken their money, driving their cars. . . . I don't pay players. . . . As soon as it gets to that, I tell them I don't pay. Then I give them the names of a few guys who [do]—and damn if one of them doesn't end up being their agent.³⁵

26. *Id.*

27. *Id.*

28. *Id.*

29. *Rules Some Agents Play By: None*, U.S.A. Today, Dec. 22, 1987, at 2C, cols. 3-4.

30. *Id.*

31. *Id.*

32. *Id.* For a complete discussion of the Norby Walters and Lloyd Bloom prosecution, see *infra* notes 124-60 and accompanying text.

33. *Rules Some Agents Play By: None*, U.S.A. Today, Dec. 22, 1987, at 2C, cols. 3-4.

34. *Id.*

35. *Id.* Argonne, a self-proclaimed honest agent, claims that 60 of the top football players each year are gone when he inquires as to the athlete's representation. *Id.* Abernethy was the type of agent who paid players. *Id.* at col. 2. In February 1986, Abernethy went to the NFL scouting combine, a three-day tryout used to review potential professional players. *Id.* "Minutes after the last sprint of the day, Abernethy was in tears and on the telephone with his public relations man in New York. In his eyes, he had played fair and lost. Abernethy was too late. All the deals, the illegal cash deals, were done deeds. Consequently, Abernethy was not a big-time player in the 1986 NFL draft." *Id.* at cols. 2-3. Determined not to be beaten again, after the 1987 bowl games, Abernethy sent Assistant Gary Williams sneaking onto campuses, handing out cash. *Id.* "I wasn't comfortable with it," Abernethy

Another successful agent, Mike Trope, proclaimed that he "never saw the rule book. . . . I was making loans to players when someone brought up that it might be breaking the rules. I had no idea if it was or wasn't."³⁶

If it only takes a few rotten apples to ruin a barrel, then the sports agent business is rotten to the core. For instance, Abernethy had contracts with seven college football players.³⁷ If forty-nine of the six hundred agents signed seven college football players, that would be enough to cover the entire NFL draft.³⁸

"C'mon, that's the way they all operate," Abernethy stated. "The kids just ask and ask. And we pay and pay."³⁹ But Trope disagreed, stating: "Not everybody pays—it is just that nearly everybody cheats."⁴⁰ Finally, Trope declared that the NCAA was not blameless:⁴¹

You take this rancid lettuce that's three weeks old. It smells and it isn't going to taste good. But you put all the other things on it and you pour lots of blue cheese dressing on it and you can make it look good. But when you try to eat it, it still is going to make you sick. For years, the NCAA has been the salad dressing for college football.⁴²

III. ALABAMA AND UNLAWFUL AGENTS: ONE STATE'S ANSWER

A. Introduction

"If you go to Alabama, don't offer any bribes to these young people. Don't pass them any money under the table, because their attorney general will try to put you in jail or have you convicted and have you washing cars at the state trooper post."⁴³

Alabama Attorney General Don Siegelman issued this warning to athlete agents and his threat has been enforced.⁴⁴ Jim Aberne-

said in retrospect, "but I was convinced that was how business was done." *Id.* at col. 3. The spending spree included meetings in out-of-the-way places, trips to Puerto Rico for players, as well as entertaining families and friends of athletes at plush hotels. *Id.*

36. Technically, handing out cash did not become "wrong" until a few years ago. *Id.* By that time, however, Trope had entered into other business ventures. *Id.*

37. *Id.* at col. 6.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Quote of the Day*, U.S.A. Today, May 9, 1988, at 9C, cols. 1-2.

44. *Alabama Grand Jury Indicts Sports Agent*, The Philadelphia Inquirer, Jan. 12, 1988, at 8D, col. 1. For investigative purposes, Siegelman also contacted the federal prosecu-

thy and Lloyd Bloom are living proof that if you get caught bribing an Alabama college athlete, the Alabama Attorney General's office will try to put you in jail or make you do a lot of washing and waxing.⁴⁵ Bloom, Norby Walters' former partner, pleaded guilty to an incident involving payments to two University of Alabama basketball players during the 1986-87 season.⁴⁶ As a result, he was sentenced to seven days of washing state trooper cars in Tuscaloosa.⁴⁷

On January 12, 1988, a grand jury in Opelika, Alabama, indicted Abernethy on misdemeanor counts of tampering with a sports event, violating the Deceptive-Practices Act, and commercial bribery.⁴⁸ The indictment was handed down after Abernethy had previously confirmed that he paid performance bonuses to Auburn defensive back Kevin Porter.⁴⁹

At the time, Attorney General Siegelman said his office was doing everything it could "to get Jim Abernethy before a judge and jury."⁵⁰ Less than two months later, Siegelman accomplished his goal. In the Circuit Court of Lee County, Alabama, a jury found Abernethy guilty of a misdemeanor tampering charge and sentenced him to one year in jail and a \$2000 fine.⁵¹

tor in Chicago who had been investigating legal issues involving athletes and sports agents, including New York agent Norby Walters. *Id.*

45. *Id.*

46. *Quote of the Day*, U.S.A. Today, May 9, 1991, at 9C, cols. 1-2.

47. *Id.*

48. *Abernethy v. State*, 545 So. 2d 185, 187 (Ala. Crim. App. 1988). Abernethy was indicted for commercial bribery in violation of ALA. CODE § 13A-11-120 (1975), unlawful trade practice in violation of ALA. CODE § 8-19-5 (1975), and tampering with a sports contest in violation of ALA. CODE § 13A-11-148 (1975).

The indictment charged as follows:

Abernethy . . . did with intent to influence the outcome of a sports contest, to-wit: an intercollegiate football game of Auburn University's 1987 football season, knowingly tamper with a sports participant, to-wit: one Kevin Porter, a football player for Auburn University, in a manner contrary to the rules and usages purporting to govern the sports contest in question, to-wit: by providing said player with monetary consideration pursuant to a contract relating to said player's athletic performance and athletic services, in violation of the governing rules of the National Collegiate Athletic Association and its Constitution, in violation of § 13A-11-143, Alabama Code 1975.

Abernethy, 545 So. 2d at 187.

49. After his indictment, Abernethy could not be reached for comment. However, he had stated earlier that the grand jury investigation "sound[ed] like sour grapes from Auburn fans who wanted Porter in the Sugar Bowl." *Alabama Grand Jury Indicts Sports Agent*, *The Philadelphia Inquirer*, Jan. 12, 1988, at 8D, col. 1.

50. *Id.*

51. *Id.* After deliberating nearly 2½ hours, the jury of seven women and five men convicted Abernethy of tampering with a sports event. *Id.* The jury also found Abernethy not guilty of the two other misdemeanor charges of commercial bribery and violation of

The Alabama Court of Criminal Appeals reversed the conviction, noting it was "a case of first impression."⁵² The court held that paying a collegiate athlete for entering into a representation agreement with an agent did not constitute "tamper[ing] with a sports contest."⁵³ In addition, the court concluded that a violation of the NCAA rules and regulations did not, by itself, constitute criminal tampering with a sports contest, unless the violation tended to influence the final score of a game.⁵⁴

B. The Abernethy Decision

1. The Facts

A review of the *Abernethy* opinion demonstrates that the facts of the case were just as crucial as the law.⁵⁵ In 1987, Porter was an outstanding football player attending Auburn University on a football scholarship.⁵⁶ He was also ranked the number one cornerback in the nation.⁵⁷ On August 3, 1987, just before the beginning of his senior year at Auburn, Porter signed a three-year contract with Abernethy in Abernethy's Atlanta office.⁵⁸ According to the contract, Abernethy agreed to "represent [Porter] in the negotiation of

deceptive trade laws. *Id.* See *supra* note 48.

52. *Abernethy*, 545 So. 2d at 186. The *Abernethy* court neither cited nor found any reported case involving the conviction of a sports agent. *Id.* at 187.

53. *Id.* at 191.

54. *Id.* at 187. The crime of tampering with a sports contest is defined as follows:

(a) A person commits the crime of tampering with a sports contest if, with intent to influence the outcome of a sports contest, he:

(1) Tampers with any sports participant or sports official, or with any animal, equipment or other thing involved in the conduct or operation of a sports contest, in a manner contrary to the rules and usages purporting to govern the sports contest in question; or

(2) Substitutes a sports participant, animal, equipment or other thing involved in the conduct or operation of a sports contest for the genuine person, animal or thing.

(b) Tampering with a sports contest is a Class A misdemeanor.

ALA. CODE § 13A-11-143 (1975).

55. During the course of the trial, the parties agreed to three stipulations. First, they agreed that before the *Abernethy* case there had never been an attempted prosecution of any sports agent in Alabama for affecting the eligibility of a student-athlete. *Abernethy*, 545 So. 2d at 186. Second, in the past, there had been numerous instances in Alabama where student-athletes had violated NCAA rules and regulations and had been declared ineligible. *Id.* at 187. Third, there had been instances where players had been discovered to have been ineligible for accepting favors, signing with agents, or other reasons, only after the players had either played all of their games, or after their ordinary period of eligibility had ended, and there had been no prosecution of any athlete, sports agent, or third party. *Id.*

56. *Id.* at 186.

57. *Id.*

58. *Id.*

professional sporting contracts and commercial endorsement contracts."⁵⁹

Abernethy gave Porter \$2000 as a "signing bonus," and was to give Porter \$900 each month, plus \$400 for Thanksgiving and \$500 for Christmas.⁶⁰ Porter received \$900 in September and October of 1987, but did not receive any additional funds or payments from Abernethy because Abernethy went out of the sports agent business.⁶¹

Auburn University was a member of the NCAA⁶² and was governed by that organization's rules and regulations.⁶³ Those rules

prohibited the 'professionalization' of a student athlete and provided that a player was not eligible to participate in a sport if that player had 'ever taken pay, or the promise of pay for competing in that sport or if the player had ever agreed to have an agent market . . . [that player's] athletic ability or reputation in that sport.'⁶⁴

The court stated that "[t]he contract between Abernethy and Porter was in violation of N.C.A.A. rules and rendered Porter ineligible to play football for Auburn."⁶⁵ Porter had testified that players signing a contract with a sports agent should be declared ineligible, but in fact they remain eligible after signing an agent contract "pending that the University doesn't find out."⁶⁶

On December 15, 1987, the University "found out," after an article appeared in *The Atlanta Constitution* publicizing Abernethy's activities involving Porter and several other college athletes.⁶⁷

59. *Id.* The terms of the contract specified that Porter was to pay Abernethy 5% of his base salary for each contract negotiated, and 10% of the endorsement fees negotiated by Abernethy. *Id.* At trial, Porter testified that he needed money because his mother was financially strapped. *Id.* In return for representation by Abernethy, Porter agreed to "play ball." *Id.*

60. *Id.* Porter was also to receive \$100 for every pass he intercepted. *Id.*

61. *Id.* In November 1987, Abernethy dissolved his sports agency, Jim Abernethy Sports, Inc. *Id.*

62. *See supra* note 1.

63. *Abernethy*, 545 So. 2d at 186.

64. *Id.*

65. *Id.*

66. *Id.* Porter stated that Abernethy told him "never to tell anyone [about their relationship] because it would destroy his own reputation." *Id.*

67. *Id.* The article concerned a sports agent investigation conducted by reporter Chris Mortenson. *Id.* At trial, Mortenson testified that one of the reasons Abernethy divulged his activities was because Abernethy said he had a "religious experience." *Id.* Mortenson testified that, initially, Abernethy "vehemently denied involvement" with the players, but then admitted that he "lied to protect the players," and that he "felt a real responsibility to the athletes, a real loyalty, and [he] didn't want to see all of those kids hurt." *Id.*

Porter played in all eleven of Auburn's 1987-88 season football games even though he was technically ineligible.⁶⁸ After publication of the newspaper article, however, Auburn declared Porter ineligible because of his dealings with Abernethy, and was not allowed to participate in the 1988 Sugar Bowl.⁶⁹

2. Analysis

As a preface, the *Abernethy* court noted that it had thoroughly and repeatedly reviewed and scrutinized the evidence that the state presented against Abernethy for any fact, circumstance, or inference of criminal intent.⁷⁰ In the court's own words, it was "convinced that the State's evidence proved that Abernethy did not have the requisite criminal intent in his association with Porter."⁷¹

As a foundation for its analysis, the court stated that Abernethy was convicted pursuant to Alabama Code section 13A-11-143, which defined the crime of tampering with a sports contest.⁷² The court explained that a statute defining a crime must be strictly construed, and that "one [could not] commit an offense under a statute except in the circumstances it specifie[d]."⁷³

The Alabama court first noted that "the crime of tampering with a sports contest require[d] proof that the tampering was done 'with the intent to influence the outcome of a sports contest.'"⁷⁴ The court further defined the requisite element of intent: "A person acts intentionally with respect to a result or to conduct described by a statute defining an offense, when his purpose is to

68. *Id.*

69. *Id.*

70. *Id.* at 187.

71. *Id.*

72. *See supra* note 54.

73. *Abernethy*, 545 So. 2d at 187 (citations omitted). The court adhered to the rules of statutory construction set out in *Clements v. State*, 370 So. 2d 723, 725 (Ala. 1979), *rev'd on other grounds*, *Beck v. State*, 396 So. 2d 645 (Ala. 1980):

There are several long-settled rules of construction to which we are bound in our review of this cause. . . . A basic rule of review in criminal cases is that criminal statutes are to be strictly construed in favor of those persons sought to be subjected to their operation, i.e., defendants. . . . Penal statutes are to reach no further in meaning than their words. . . . One who commits an act which does not come within the words of a criminal statute, according to the general and popular understanding of those words, when they are not used technically, is not to be punished thereunder, merely because the act may contravene the policy of the statute.

Abernethy, 545 So. 2d at 187 (citations omitted).

74. *Id.* at 188. *See ALA. CODE* § 18A-11-143(a) (1975).

cause that result or to engage in that conduct.”⁷⁵ Moreover,

[i]n the context of this case, a violation of the N.C.A.A. rules and regulations does not constitute the criminal offense of tampering with a sports contest unless that violation was done ‘with the intent to influence the outcome of a sports contest.’ Mere tampering with a player’s eligibility in violation of N.C.A.A. rules is not a criminal offense unless done with the specific intent to influence the outcome of a sports contest.⁷⁶

The court then wrestled with the definition of the word “outcome”⁷⁷ before construing the phrase “outcome of a sports event” as used in the Alabama statute and in connection with a football game to mean the final score of the game.⁷⁸ In resolving this issue, the court stated: “Observing the previously stated rules of statutory construction, and there being no indication that the Alabama Legislature intended otherwise, we do not interpret the term ‘outcome of a sports contest’ to include the playing statistics of any individual football player.”⁷⁹

The state argued before the appellate court that the prosecution had sufficiently proven Abernethy’s criminal intent under two different theories.⁸⁰ First, the state maintained that evidence of intent was supplied by Abernethy’s knowledge of the NCAA rules prohibiting the professionalization of college athletes.⁸¹ The court

75. *Abernethy*, 545 So. 2d at 188 (citing ALA. CODE § 13A-2-2(1) (1975)).

76. *Id.*

77. *Id.* at 187. Because the word “outcome” was not defined by statute, it must be given its “natural, plain, ordinary, and commonly understood meaning.” *Alabama Farm Bureau Mut. Casualty Ins. Co. v. City of Hartselle*, 460 So. 2d 1219, 1223 (Ala. 1984). An “outcome” is “[a] natural result, consequence.” *THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE* 932 (1969). It is “something that comes out of or follows from an activity or process.” *WEBSTER’S THIRD INTERNATIONAL DICTIONARY* 1601 (1971).

78. *Abernethy*, 545 So. 2d at 188.

79. *Id.*

80. *Id.*

81. *Id.* The state explained its position in the following manner:

Appellant thus intended for Porter to play, even though ineligible, and re-affirmed this intention with every payment made thereafter. As a direct result of Appellant’s actions, Auburn University *did* play an ineligible player the entire regular season and, consequently, each of those games were [sic] subject to forfeiture under NCAA rules. Abernethy was aware of these rules and obviously was aware of the risk of forfeiture of these games. He clearly intended for Auburn University to play an ineligible player, which act in turn created the possible result of an automatic loss through forfeiture of each game of that particular season. This may have not been the intended consequence, but it was certainly a possible consequence of the Appellant’s intended act.

Id. at 188 (emphasis in original) (citation omitted).

dismissed this theory as unreasonable.⁸²

Pursuant to the law under which Abernethy was prosecuted, it was not a criminal offense to intend for Auburn to play an ineligible player unless there also existed an intent to thereby influence the final score of the game. Without the specific criminal intent of the statute, even an intentional violation of the N.C.A.A. rules resulting in a player being declared ineligible does not constitute the offense of tampering with a sports contest.⁸³

The court found that Alabama's first theory was based on possibility, speculation, and unfounded conjecture, and not on a legitimate inference from the evidence.⁸⁴ "[N]o rule is more fundamental or better settled than that convictions cannot be predicated upon surmise, speculation, and suspicion to establish the accused's criminal agency in the offense charged."⁸⁵

The second theory advanced by the state to prove Abernethy's intent was found in Abernethy's offer "to 'purchase' additional interceptions with a reward of bonus money for such achievements."⁸⁶ Specifically, the state argued:

The most apparent evidence of his intent is that he promised to give 'incentives' of \$100.00 to Porter for each interception he made. The Defendant told Chris Mortenson that he provided these 'incentives' to give him an advantage over other agents and added that he should benefit from these plays as the N.F.L. teams do. Essentially, the Defendant was purchasing interceptions or glamour plays, to increase Porter's and his other client's draft value, thus increasing the money he would receive upon Porter's signing an N.F.L. contract.⁸⁷

The court also found this theory unpersuasive "because, like the

82. *Id.*

83. *Id.* The court further stated:

It makes no difference if it does appear that appellant's conduct primarily was the cause of the unfortunate occurrence, for the law does not countenance the conviction of any person for an offense not contemplated, intended, or committed by him, and of which he had no knowledge that the offense was about to be committed.

Id. at 188-89 (quoting *Rogers v. State*, 23 Ala. App. 149, 150, 122 So. 308 (1929)).

84. *Id.* at 189 (citation omitted). The *Abernethy* court explained that "[a]n inference can be drawn only from facts, and mere possibilities will not sustain a legitimate inference." *Id.* (citation omitted). "[T]he possibility that a thing may occur is not alone evidence even circumstantially, that the thing did occur." *Id.* (citation omitted).

85. *Id.* (citation omitted).

86. *Id.* (citation omitted).

87. *Id.* (citations omitted).

first theory, it simply did not support a legitimate inference that Abernethy intended to influence the outcome of a sports contest."⁸⁸

The court explained that not only had Alabama failed to prove that Abernethy had the requisite criminal intent, but the state's own witnesses *proved* that Abernethy had no criminal intent.⁸⁹ In return for his representation by Abernethy and the financial benefits, Porter only agreed to "play ball."⁹⁰ According to the court, Porter had testified that both he and Abernethy intended for him to play every game that Auburn scheduled for the 1987 football season, and that his contract with Abernethy had no effect on his playing performance.⁹¹

Having examined the evidence under the principles for reviewing convictions based on circumstantial evidence, the court concluded that the evidence presented by the state was insufficient to afford the jury any reasonable inference that the crime of tampering with a sports contest had been committed.⁹² According to the

88. *Id.* If anything, the court noted that the second theory, like the first, showed that Abernethy intended for Porter to play every game and that having Porter declared ineligible would be against Abernethy's own financial interest and frustrate the very purpose of the agent contract. *Id.*

89. *Id.*

90. *Id.*

91. *Id.* at 189-90. The record showed that Porter testified as follows on cross-examination by defense counsel:

Q. Kevin, let me ask you this: Suppose you had never met Jim Abernethy, and suppose that you had never had any dealings at all with any kind of sports agent, wouldn't you have done your very best in every game that you played with Auburn University in 1987?

A. Definitely.

Q. Did you in fact, play your very best in every game that you played for Auburn University?

A. Yes, I did.

Q. And wasn't that exactly what you and Jim Abernethy wanted?

A. Yes.

Q. So, then, Kevin, wouldn't it be true, that the contract that you signed with Jim Abernethy did not hurt your performance in any of the Auburn football games?

A. Not at all.

Q. You still did your best, didn't you?

A. Very best.

Q. In fact, the contract that you signed with Abernethy Sports had no effect, whatsoever, on your game play performance, did it?

A. None.

Id. at 189.

92. *Id.* at 190. The court explained the rationale for its conclusion in the following manner:

Intent, we know, being a state or condition of the mind, is rarely, if ever, susceptible of direct or positive proof, and must usually be inferred from the facts

court, the fundamental reason for reversing Abernethy's conviction was that the crime of tampering with a sports contest did not and was not intended to embrace the particular agent contract issue presented to the court in this case.⁹³ Although the Alabama Athlete Agents Regulatory Act of 1987⁹⁴ was designed to control and regulate the activities of sports agents, it did not specifically prohibit or make criminal the making of a sports contract with a student-athlete.⁹⁵ Under the Act, "[n]o person shall engage in or carry on the occupation of an athlete agent either within the state or with a resident of the state without first registering with the [Alabama Athlete Agent Regulatory] commission."⁹⁶ The Act provided that the Commission may refuse to grant, revoke, or suspend the registration of any athlete agent applicant who had "engaged in conduct which violate[d] or cause[d] a student-athlete to violate any rule or regulation promulgated by the National Collegiate Athletic Association governing student-athletes and their relationship with athlete agents."⁹⁷ A violation of any provision of the act constitutes a Class C felony "punishable by a fine of not more than

testified to by witnesses and the circumstances as developed by the evidence. However, "[i]ntent can only be shown by facts and circumstances from which the jury is authorized to draw the inference. There must be a guilty scienter before a defendant can be convicted of crime, and this must be established by the evidence beyond a reasonable doubt. It is very true that to constitute a crime, there must be both an act and an intent. . . . [I]ntent . . . mean[s] the state of mind of any person at the time he does the act—the act together with such state of mind constituting the charged crime. A wrongful act and a wrongful intent must concur, to constitute what the law deems a crime."

In determining whether circumstantial evidence is sufficient to support a conviction, "the basic question must be whether or not the evidence adduced is consistent with guilt and inconsistent with any reasonable hypothesis that the [defendant] is innocent. . . . [I]f circumstantial evidence fairly permits an inference consistent with innocence, it will not support a conviction."

Id. (citations omitted).

93. *Id.* Even the trial judge recognized this when, in response to defense counsel's motion for a judgment of acquittal made at the close of the state's evidence, he stated: "[I]t's obvious to me that these statutes have been stretched to almost the breaking point in order to try to embrace the Defendant's conduct within the four corners of these statutes. And I have some doubts as to whether or not any one of these statutes apply [sic]." *Id.*

94. Ironically, the Alabama Athlete Agents Regulatory Act of 1987 became effective on the same day the contract between Porter and Abernethy was signed. See ALA. CODE §§ 8-26-1 to -41 (1975 & Supp. 1988).

95. See ALA. CODE § 8-26-23 (1975) ("The contract shall contain, in close proximity to the signature of the athlete, a notice in at least 10-point type stating that the athlete may jeopardize his or her standing as an amateur athlete by entering into the contract.") The Act does provide that "[a]ny and all contracts to be utilized by athlete agents shall be on a form approved by the commission." ALA. CODE § 8-26-22 (1975).

96. *Abernethy*, 545 So. 2d at 190 (citing ALA. CODE § 8-26-4 (1975)).

97. *Id.* (citing ALA. CODE §§ 8-26-7(a)(4), -8 (1975)).

\$5,000.00 or imprisonment for a period of not less than one year nor more than [ten] years, or both."⁹⁸

In closing, the court noted that it had not been called upon to decide whether Abernethy was guilty of violating any of the provisions of the Alabama Athlete Agents Regulatory Act.⁹⁹ Rather, the court concluded:

The State utterly and completely failed to prove that Abernethy tampered with a sports contest with the criminal intent to influence its outcome. Because the State had the opportunity but failed to develop a case that warranted submission to a jury, this case must be reversed. Because this reversal is the result of an insufficiency of the evidence, the Double Jeopardy Clause prevents Abernethy's retrial.¹⁰⁰

IV. THE NCAA FIGHTS BACK

The same day that the Alabama grand jury indicted Abernethy, NCAA executive director Dick Schultz declared that the NCAA would soon require college athletes to submit sworn affidavits stating they had not signed agreements with agents.¹⁰¹ As a result, if someone who signed an affidavit also signed with agents, the NCAA would likely sue both the athletes and the agents.¹⁰²

Four months earlier, the NCAA took steps to encourage cooperation with athletes who had dealt with agents in violation of NCAA rules.¹⁰³ This occurred when the NCAA Eligibility Committee voted to restore the eligibility of University of Pittsburgh defensive back Teryl Austin, a senior who acknowledged taking money from Norby Walters.¹⁰⁴ Austin thus became the first student-athlete permitted by the NCAA to resume his collegiate career after prematurely taking money from or signing a contract with a sports agent.¹⁰⁵

98. *Id.* at 191 (citing ALA. CODE § 8-26-41 (1975)).

99. *Id.*

100. *Id.* (citing *Burks v. United States*, 437 U.S. 1 (1978)).

101. *Alabama Grand Jury Indicts Sports Agent*, *The Philadelphia Inquirer*, Jan. 12, 1988, at 8D, col. 1.

102. *Id.* The requirement was later implemented just in time for the NCAA basketball tournament in March 1988. *Id.*

103. *NCAA Reinstates a Player Who Took Agent's Money*, *The Philadelphia Inquirer*, Aug. 27, 1987, at 4C.

104. *Id.*

105. *Id.* "By taking this action, we hope we can encourage student-athletes who have signed with agents to come forward with the knowledge that the eligibility committee will consider restoring a substantial part of their remaining eligibility," stated Lew Cryer, the chairman of the Eligibility Committee and Commissioner of the Pacific Coast Athletic Asso-

Based in part on the action by the NCAA to restore the eligibility of Teryl Austin, the University of Texas decided to appeal the NCAA decision declaring football and track star James Lott ineligible because he accepted cash from a sports agent.¹⁰⁶ Texas declared Lott, a senior defensive back and high-jumper, ineligible after learning that he accepted \$800 from professional sports agent Lloyd Bloom in September 1986.¹⁰⁷ The NCAA concurred with the University's action, but gave the school the right to appeal.¹⁰⁸

In another move aimed at curtailing the signing of underclassmen, the NCAA began withholding revenues.¹⁰⁹ For example, the NCAA withheld \$633,616 in post-season basketball tournament receipts for the University of Alabama pending a review of the school's use of two players who took money from an agent.¹¹⁰ Alabama and NCAA officials stated that the funds were put on hold after junior center Derrick McKey and senior guard Terry Coner conceded that in April 1986 they accepted money from agent Norby Walters.¹¹¹ According to NCAA Assistant Executive Director for Enforcement, David Berst, the issue was whether "the funds should be forfeited because ineligible players participated."¹¹² The University of Alabama had its case heard by the NCAA Executive Committee in December 1987.¹¹³ The Committee ruled against Alabama and the university forfeited the money.¹¹⁴ If Alabama had won the case, it would have received half of the funds and the Southeastern Conference would have received half.¹¹⁵

V. THE NORBY WALTERS—LLOYD BLOOM SCANDAL

A. *The Brent Fullwood Case*

The Norby Walters and Lloyd Bloom scandal represents per-

ciation. *Id.*

106. The Philadelphia Inquirer, Sept. 3, 1987, at 4C.

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.* See *supra* note 25.

112. *Id.*

113. *Id.* At the time, Berst suggested that the Committee could rule that Alabama forfeit the money, or that the school could receive all or part of the amount. *Id.*

114. *Id.* Telephone interview with Richard Hilliard, Director of Enforcement for the NCAA (July 2, 1991).

115. *Id.* Later, the University of Alabama and Norby Walters settled their dispute for \$200,000 in exchange for the dismissal of criminal charges against Walters. *In the World of Sports Agents It's Business as Usual*, The Philadelphia Inquirer, June 13, 1988, at C1, col. 5.

haps the most flagrant example of the corruption and greed rampant in college athletics today. The uproar began slowly in the form of a simple state court contracts case before mushrooming into a federal matter when a district court voided a contract between former Auburn University running back Brent Fullwood and agent Norby Walters, and dismissed Walters' \$500,000 lawsuit against Fullwood.¹¹⁶

At the time, Fullwood's new representative, George Kickliter, thought the ruling might curtail the number of campus-trotting agents who sign college athletes with eligibility remaining:

This is a significant thing, a landmark decision for other states. . . . It conceivably could have a real big impact on the agent problem. It'll affect a lot of people and certainly tend to reduce the number of so-called agents who sign athletes with these methods. It'll do a lot more good than so-called state legislation.¹¹⁷

B. The Ronnie Harmon Arbitration

The avalanche continued to bear down on Walters when an arbitrator ruled that running back Ronnie Harmon of the NFL's Buffalo Bills did not have to repay Walters the nearly \$50,000 that was given to Harmon when he was a junior at the University of Iowa.¹¹⁸ The arbitrator's decision held that Harmon must repay only \$5,869.47 of the \$454,924.42 that Walters gave the player in the form of cash, airline tickets, and a car,¹¹⁹ and that the \$50,000 was part of a contract that would be void under the NFL Players' Association rules.¹²⁰

C. The Big Ten Conference Settlement

In an attempt to cut their losses, Walters and Bloom settled a lawsuit filed against them by the Big Ten Conference.¹²¹ The Big Ten had filed suit seeking to prohibit Bloom and Walters from dealing with its athletes, and requesting damages if it could not

116. *Sports in Brief*, The Philadelphia Inquirer, Dec. 20, 1987, at 17D, col. 4.

117. *Id.*

118. *Sports in Brief*, The Philadelphia Inquirer, Nov. 5, 1987, at 7C, col. 4.

119. *Id.*

120. *Id.*

121. *Sports in Brief*, The Philadelphia Inquirer, Dec. 24, 1987, at 4D, col. 6. Bloom later stated that the settlement was "meaningless" because he had decided to concentrate on representing Hollywood entertainers instead of athletes. *Id.*

stop the contacts.¹²² Under the settlement agreement, the two could not sign eligible Big Ten Conference athletes without notifying the League and the schools involved.¹²³

D. The Federal Indictment

In May 1987, Walters and Bloom were charged in the United States District Court for the Northern District of Illinois, in a seven-count indictment, with mail fraud, conspiracy, and RICO violations.¹²⁴ Count I, charging conspiracy, alleged that from early 1981 to December 1987, Walters and Bloom misrepresented their professional status in the following manner:

[D]efendants Norby Walters and Lloyd Bloom assured each student-athlete that through their joint efforts at concealing the existence of the representation agreement, the date it was actually signed, and the monies paid by defendants [] to the student-athlete, no one, including representatives of the student-athlete's school, would find out that the student-athlete was no longer eligible to compete in intercollegiate athletics in his sport as a result of his having signed a representation agreement with and taken money from the agent.¹²⁵

The indictment also charged Walters and Bloom, as well as the participating student-athletes, with falsely certifying that the students had complied with the NCAA's rules.¹²⁶ The NCAA's rules require that any student-athlete who agrees to be represented by an agent concerning the athlete's sports abilities forfeits his or her eligibility to compete in the particular sport in which the athlete participated.¹²⁷ The NCAA's rules also forbid the acceptance of money, the promise of money, or any financial assistance related to the student's athletic ability.¹²⁸

To enforce these rules, the NCAA requires every student-athlete participating in intercollegiate athletics to sign and submit to the NCAA a statement identifying all forms of financial assistance the athlete receives.¹²⁹ The student must also certify that he or she

122. *Id.*

123. *Id.*

124. *United States v. Walters*, 913 F.2d 388 (7th Cir. 1990), *rev'd* 704 F. Supp. 844 (N.D. Ill. 1989).

125. Indictment at 8, *United States v. Walters*, 704 F. Supp. 844 (N.D. Ill. 1989), *rev'd*, 913 F.2d 388 (7th Cir. 1990) [hereinafter Indictment].

126. *Id.*

127. *Id.* at 10-12.

128. *Id.*

129. *Id.*

is currently complying with the NCAA's rules.¹³⁰ Any falsification or deliberate omission of representation of the college athlete by a sports agent forfeits the student's eligibility to compete in intercollegiate athletics or receive an athletic scholarship.¹³¹

Walters and Bloom were also charged with extortion¹³² and with defrauding the student-athletes' schools. The fraud consisted of allowing the schools to provide financial assistance to the student-athletes based on false representations made to the football players' respective schools.¹³³

In furtherance of the conspiracy, the indictment also charged that Walters and Bloom solicited noted college football players to sign representation agreements.¹³⁴ These agreements allowed Walters' corporation, World Sports & Entertainment,¹³⁵ to represent the student-athlete in its negotiations with professional teams.¹³⁶ In return, the agents would receive a commission.¹³⁷ To entice these college football players into signing with World Sports & En-

130. *Id.*

131. The student-athlete forfeits eligibility to participate in an intercollegiate sport if the student-athlete agrees, whether "orally or in writing, to be represented by an agent in the marketing of the individual's athletic ability or reputation in a sport." NCAA Const. Act. III, Section 1(c). No student-athlete may accept anything of material value from an agent without losing his or her eligibility. NCAA Const. Act III, Section 1(a)(1), (3). However, a student-athlete may consult with an attorney concerning a proposed professional sports contract as long as the attorney does not represent the student-athlete during the negotiations of such contract. NCAA Const. Act III, Section 1(c).

132. Walters and Bloom violated 18 U.S.C. §§ 894, 1951 (1987). The indictment also charged Walters and Bloom with using organized crime connections to obtain entertainment clients by extortion. The indictment alleged Walters and Bloom used Michael Franzese, an alleged member of a New York City organized crime family, to intimidate entertainment figures into business deals with Walter and Bloom. Indictment at 5. The indictment specifically cited an attempt by Walters and Bloom to become the booking agent for the 1981 Jackson Five Tour. Indictment at 5-6. When the group's manager rejected Walters and Bloom by selecting another booking agent, Walters and Franzese threatened the manager. Walters and Franzese told the group's manager that they were going to be involved in the upcoming Jackson Five tour or "there would be no tour." Indictment at 6.

133. See 18 U.S.C. § 1341 (1987).

134. Indictment at 6-9.

135. According to the indictment, World Sports & Entertainment was organized as a corporation under the laws of the State of New York and was engaged primarily in the business of recruiting highly-rated college athletes whom they would represent in the negotiation of professional sports contracts as well as in the marketing of these athletes' ability and reputation in their sport. World Sports & Entertainment conducted its business affairs through and as part of Norby Walters Associates by using the resources of Norby Walters Associates, including its bank account, wire transfer account, offices, telephones and employees.

Indictment at 1.

136. *Id.* at 6-7.

137. *Id.* at 7.

tainment, Walters and Bloom offered the athletes cash and gratuities such as concert tickets and limousine rides.¹³⁸

To protect their student-athletes' NCAA eligibility, Walters and Bloom concealed the fact that the players had signed with an agent and had accepted money for doing so.¹³⁹ One deceptive measure involved post-dating the representation agreement to make it appear that the contract was signed after the student's last season.¹⁴⁰ To cover the periodic cash payments students would receive, Walters and Bloom sent the payments by money orders payable to third parties.¹⁴¹ Walters and Bloom paid all signing bonuses in cash.¹⁴²

Walters and Bloom would assure the players that, through joint efforts of concealment, no one would find out that the athletes had actually forfeited their eligibility to compete in intercollegiate athletics.¹⁴³ However, if a student-athlete decided he or she no longer wanted to be represented by World Sports & Entertainment, or if a student-athlete refused to renew the World Sports contract, Walters and Bloom responded with threats.¹⁴⁴ Walters and Bloom would threaten to expose the athlete's representation agreement with World Sports and Entertainment.¹⁴⁵ Additionally, recalcitrant athletes were threatened with physical harm to themselves and their families.¹⁴⁶ The same threats occurred if Walters and Bloom had trouble collecting any money the student-athletes owed them.¹⁴⁷

138. *Id.*

139. *Id.* at 7.

140. *Id.*

141. *Id.* at 8.

142. *Id.*

143. *Id.*

144. *Id.* at 9.

145. *Id.*

146. *Id.*

147. Student-athlete Maurice Douglas attempted to retain a new agent and terminate his representation agreement with World Sports & Entertainment prior to the 1986 National Football League draft. Indictment at 44. Walters and Bloom responded by threatening to "have somebody 'break his legs' so Douglas would not be able to make it to the upcoming draft." *Id.* Douglas decided to terminate the representation agreement anyway. Bloom and Douglas then demanded the return of all the money Douglas had been advanced. Walters and Bloom "threaten[ed] to send someone to 'get' Douglas if the money was not repaid immediately." *Id.*

When student-athlete Ronald Morris refused to sign a second representation agreement with World Sports & Entertainment, Walters and Bloom demanded the return of money Morris had been advanced. Indictment at 45. Lloyd Bloom told Morris that the advanced money didn't belong to Bloom or Walters, but to "people in Los Angeles who 'don't play around' and who 'don't care what they do to you or your family.'" *Id.* Walters and Bloom implied that these "people" would attempt to blow up Morris' new agent's house. *Id.* They

The indictment also charged Walters and Bloom with defrauding Temple University's Paul Palmer of the \$145,000 he received as a signing bonus from the National Football League.¹⁴⁸ According to the indictment, Lloyd Bloom invested Palmer's money in a phony "credit repair" business.¹⁴⁹ The grand jury found that at least half of Palmer's money went to buying Bloom a Rolls-Royce convertible.¹⁵⁰

Walters and Bloom were convicted of multiple acts of extortion and attempted extortion, in violation of 18 U.S.C. § 1951, for threatening the student-athletes who attempted to get out of their representation contracts.¹⁵¹

In April 1989, Bloom and Walters were found guilty on five of the seven counts charged in the indictment.¹⁵² On September 17, 1990, the Seventh Circuit reversed their convictions.¹⁵³ Walters and Bloom based their appeals on the fact that they sought advice of counsel before beginning their enterprise, and were told their proposed actions were not illegal.¹⁵⁴

At trial, Walters advanced a "good faith reliance of counsel" defense. Walters claimed that because he was advised that his actions were not illegal, he could not have acted with the requisite

also threatened to expose Morris' relationship with World Sports & Entertainment, which would mean the NCAA's "death penalty"—prohibiting his school from playing intercollegiate football entirely for two years. *Id.* at 46.

In 1986, Everett Gay allegedly considered retaining a different agent. *Id.* at 46. Walters and Bloom, hearing that Everett was considering leaving World Sports & Entertainment's representation, told Gay that Walters and Bloom sent "some people" to the parent of another football player who had left them after signing a representation agreement. *Id.* at 47. Bloom told Gay: "That's why we have partners in California to make sure we don't get messed over." *Id.*

In 1986, Pittsburgh's Anthony Woods considered leaving World Sports & Entertainment's representation. *Id.* at 48. Walter and Bloom responded by threatening Woods' brother and teammate. *Id.* As Walters told Woods:

This is my life on the line . . . now it's your life on the line. To me I say you have to examine it because it is your life, your reputation, your business . . . your family, your brother, your school, everything is going to be tainted and tainted bad. It's gonna be trouble for you.

Id. at 49.

148. *Id.* at 49-52.

149. *Id.*

150. *Id.* at 51.

151. *United States v. Walters*, 913 F.2d 388, 390-91 (7th Cir. 1990).

152. *Id.* at 390. Bloom and Walters were found not guilty of mail fraud against Michigan State University and the University of Iowa. *Id.* at 391. United States District Judge George Marovich sentenced Walters to five years in prison and Bloom to three years. The judge also ordered each to serve five years of probation after leaving prison. *Id.*

153. *United States v. Walters*, 913 F.2d 388 (7th Cir. 1990), *rev'g* 704 F. Supp. 844 (N.D. Ill. 1989).

154. *Id.* at 391.

intent required for conviction.¹⁵⁵ Walters' trial attorney requested a jury charge based upon Walters' reliance on counsel; the trial judge refused.¹⁵⁶ In reversing, the Seventh Circuit held that such a charge should have been given, and that, if re-tried, Walters' jury must be given an instruction addressing Walter's "good faith reliance on counsel" defense.¹⁵⁷

Bloom's appeal centered on the fact that Walters' defense violated Bloom's individual attorney-client privilege with his lawyer, who had also counseled Walters.¹⁵⁸ Bloom therefore argued that his trial should have been severed from that of Walters.¹⁵⁹ The Seventh Circuit agreed.¹⁶⁰

While the appellate court overturned the convictions of Walters and Bloom, it never addressed the merits of the government's case against the two agents. In addition, the court did not address the question of whether the trial evidence justified the verdict in the case.

VI. STATE REGULATION

A. Introduction

Twenty-three states have adopted athlete-agent legislation: Alabama, Arkansas, California, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Nevada, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia.¹⁶¹ Only Tennessee, in subjecting NCAA violators to state sanctions, specifically

155. *Id.*

156. *Id.*

157. *Id.* at 392.

158. *Id.*

159. *Id.*

160. *Id.*

161. See ALA. CODE §§ 8-26-1 to -41 (1989 & Supp. 1990); ARK. STAT. ANN. §§ 17-48-101 to -201 (Supp 1989); CAL. LAB. CODE §§ 1500-1547 (West Supp. 1989); FLA. STAT. §§ 240.5337, 468.452-.457 (1989); 1988 Ga. Laws §§ 43-4A-1 to -18 (effective April 3, 1989); ILL. ANN. STAT. ch. 38, para. 29-1(e) (Smith-Hurd Supp. 1991); IND. CODE ANN. § 35-46-4-1-4 (West Supp. 1990); IOWA CODE § 9A (1989); KY. REV. STAT. ANN. §§ 518.010 to -080 (Baldwin 1989); LA. REV. STAT. ANN. §§ 4:422A(1) - :422A(2) (West Supp. 1991); MD. ANN. CODE art. 56, § 632(f) (1989); MICH. COMP. LAWS ANN. § 750.411e(1)(a) (West 1990); MINN. STAT. ANN. § 325 E.33(3) (West 1990); MISS. CODE ANN. §§ 73-41-1 to -23 (1989); NEV. REV. STAT. ANN. § 388.085 (Michie 1990); 1990 N.C. Adv. Legis. Serv. 78C-71 to 78C-80; OHIO REV. CODE ANN. §§ 4771.01 to .99 (Anderson Supp. 1989); OKLA. STAT. ANN. tit. 70, §§ 821.61-.71 (West 1989); 18 PA. CONST. STAT. ANN. § 7107(e) (Purdon 1983 & Supp. 1990); S.C. CODE ANN. §§ 59-102-10 to -40 (1990); TENN. CODE ANN. §§ 49-7-2101 to -2109 (1989); TEX. REV. CIV. STAT. ANN. art. 8871, §§ 1-11 (Vernon Supp. 1991); VA. CODE ANN. §§ 54.1-518.A to -524 (1990).

incorporated the NCAA's regulations.¹⁶² The remaining states established their own restrictions, which has resulted in a lack of uniformity in the regulation of athlete-agents. For example, while most state regulations require athlete-agents to register with the individual state, Indiana and Illinois have no such requirement.¹⁶³

Moreover, each state places different restrictions on activities agents can perform while their target athletes remain eligible for intercollegiate competition. Most states, for instance, prohibit agents from entering into a representation contract with intercollegiate athletes while the athletes are eligible to participate in intercollegiate sports. Ohio, however, allows agents to sign a collegiate athlete at any time, provided that the contract is both written and submitted to the athlete's school for inspection.¹⁶⁴

Lack of uniformity also exists concerning regulation of the scope of agent activities. Agent activities normally range well beyond representing an athlete in professional contract negotiations; agent and management activities can also encompass investment management, tax and estate planning, and long-range career planning.¹⁶⁵ Enormous potential exists for experienced businessmen to embezzle funds from a young, financially unsophisticated athlete, or for inexperienced businessmen to simply mismanage funds.

B. Analysis

Little regulation of the activities of sports agents in the field of intercollegiate athletics exists. At one time, the NCAA did provide an annual registration program for sports agents. Each participating agent was required to: (1) give the NCAA the agent's professional and educational background; (2) notify a school's athletic director before contacting an enrolled student-athlete with remaining eligibility; and (3) refrain from any activity which would jeopardize a student-athlete's NCAA eligibility.¹⁶⁶ The program, however, was strictly voluntary. It was discontinued because some registered agents told student-athletes that the NCAA endorsed

162. See TENN. CODE ANN. § 49-7-2103 (1989).

163. See ILL. ANN. STAT. ch. 38, para. 29-1(e) (Smith-Hurd 1989); IND. CODE ANN. §§ 35-46-4-1 to -4 (West 1989).

164. See OHIO REV. CODE ANN. § 4771.02 (Anderson Supp. 1989).

165. For an overview of the potential duties assumed by agents and managers, see generally Remick & Eisen, *The Personal Manager in the Entertainment and Sports Industries*, 3 U. MIAMI ENT. & SPORTS L. REV. (1986).

166. Telephone interview with Richard Hilliard, Director of Enforcement for the NCAA (July 2, 1991).

them.¹⁶⁷

California,¹⁶⁸ Oklahoma,¹⁶⁹ Louisiana,¹⁷⁰ Texas,¹⁷¹ and Alabama¹⁷² require prospective agents to be licensed by the state labor commissioner.¹⁷³ To obtain a license in California, for example, an applicant must meet the following requirements: (1) provide information concerning the applicant's training and experience in contract negotiation, contract dispute resolution, and arbitration;¹⁷⁴ (2) post a bond of \$25,000 with the labor commissioner;¹⁷⁵ (3) file a fee schedule;¹⁷⁶ (4) allow inspection of the applicant's records;¹⁷⁷ and (5) avoid conflict of interest.¹⁷⁸

California's law prohibits collecting fees which amount to more than ten percent of an athlete's earnings over any calendar year.¹⁷⁹ Contracts not negotiated by a registered agent are void and unenforceable.¹⁸⁰ Violation of the law is a misdemeanor, punishable by a fine of not less than \$1000 or imprisonment of not more than ninety days, or both.¹⁸¹

Athletic agents in Oklahoma must register with the Oklahoma Secretary of State in order to contract NCAA athletes.¹⁸² To register, agents must provide information concerning their background¹⁸³ and pay an annual fee of \$1000 to the state.¹⁸⁴ Oklahoma law also requires that agents: (1) avoid conflicts of interest;¹⁸⁵ (2) not solicit applicants;¹⁸⁶ (3) file copies of the fee schedules; and (4) put a \$100,000 bond or proof of the equivalent amount in malprac-

167. Address by Richard Perko, NCAA Legislative Services, in Madison, Wisconsin (August 11, 1990). The sole sanction for a violation was removal of the agent's name from the registration list. *Id.*

168. See CAL. LAB. CODE §§ 1500-1547 (West Supp. 1989).

169. See OKLA. STAT. ANN. tit. 70, §§ 821.61-.71 (West 1989).

170. 1987 La. Acts 925 §§ 421-430.

171. See TEX. REV. CIV. STAT. ANN. art. 8871, §§ 1-13 (Vernon 1989 & Supp. 1991).

172. ALA. CODE § 8-26-4 (1989 & Supp. 1990).

173. See CAL. LAB. CODE § 1513 (West Supp. 1989).

174. *Id.* at § 1511(d).

175. *Id.* at § 1519.

176. *Id.* at § 1531(a).

177. *Id.* at § 1533.

178. *Id.* at §§ 1535.5 -.7.

179. *Id.* at § 1531(b).

180. *Id.* at § 1546.

181. *Id.* at § 1547.

182. OKLA. STAT. ANN. tit. 70, § 821.61C (West 1989).

183. *Id.*

184. *Id.* at § 821.62E.

185. *Id.* at § 821.64.5.

186. *Id.* at §§ 821.64.6-.7. An agent may not offer anything of value to an employee of an institution or to athletes. *Id.*

tice insurance.¹⁸⁷ Agents cannot offer anything of mutual value to induce a college player to sign a representation agreement.¹⁸⁸ Fees may not exceed ten percent of an athlete's earnings over the course of a twelve-month period.¹⁸⁹ Any agent contract negotiated by an athlete-agent who has failed to comply with this act is void.¹⁹⁰ Violations of the Oklahoma laws are subject to civil and criminal penalties.¹⁹¹

In Louisiana, athlete-agents must register annually with the Louisiana Secretary of State and pay an annual fee of \$100.¹⁹² Louisiana law allows registered agents to contact athletes, but only after the completion of the athlete's last intercollegiate contest.¹⁹³ An attorney in Louisiana is permitted to act as an agent in his practice of law and hence is not required to register with the Secretary of State or pay the annual fee.¹⁹⁴ A Louisiana attorney practicing as an agent is subject to the same penalties as a registered athletic agent.¹⁹⁵

Texas requires athlete-agents to register and post a bond.¹⁹⁶ Agents may not contact athletes until the athlete's collegiate career has ended, but an agent can send the player materials relating to his or her credentials or services offered.¹⁹⁷ Athletes are allowed to contact agents to determine the agent's ability to provide financial and material services to the athlete.¹⁹⁸

The remainder of this section will discuss and analyze each of the twenty-three state's regulations, in order to provide a comparison and contrast of the current status of athlete-agent legislation.

1. Alabama

The Alabama Athlete Agents Regulatory Act of 1987 established a commission to regulate athlete-agents.¹⁹⁹ The commission sets forth rules of conduct governing Alabama athlete-agents, hears disputes and controversies, and evaluates applicants for registra-

187. *Id.* at § 821.62G.

188. *Id.* at §§ 821.64.6-.7.

189. *Id.* at § 821.63D.

190. *Id.* at § 821.66B.

191. *Id.* at §§ 821.66.A1, .A2, & .A4.

192. LA. REV. STAT. ANN. § 4:422E (West Supp. 1991).

193. *Id.* at § 4:424(8).

194. *Id.* at §§ 4:430-430B.

195. *Id.* at § 4:430E.

196. TEX. REV. CIV. STAT. ANN. art. 8871, § 2(h) (Vernon Supp. 1991).

197. *Id.* at § 6(c).

198. *Id.*

199. ALA. CODE §§ 8-26-1-41 (1989 & Supp. 1990).

tion of athlete-agents.²⁰⁰ Alabama requires the registration of all athlete-agents,²⁰¹ and in evaluating applications, the commission considers the "education, training, experience, and character of the applicant."²⁰²

By a majority vote, the commission may reject an applicant for making a false representation on his or her application, misappropriating funds, violating a fiduciary duty, or engaging in conduct which violates or causes a student-athlete to violate any rule or regulation promulgated by the NCAA governing student-athletes and their relationship with athlete-agents.²⁰³ Thus, the Alabama Act attempts to enforce, on its own, the NCAA's regulations. Applicants whose registrations are rejected or revoked are given a hearing.²⁰⁴

The Alabama Act defines an athlete-agent as anyone who "recruits or solicits any athlete to enter into any agent contract or professional sports services contract, or, for a fee, procures, offers, promises, or attempts to obtain employment for any athlete with a professional sports team."²⁰⁵ Under the Act, attorneys are considered athlete-agents when advising or conducting contract negotiations for their athlete clients.²⁰⁶

While asset management is not included in the definition of an athlete-agent's activities, those agents who receive an athlete's salary for management fees must deposit the funds into a trust fund established for the athlete.²⁰⁷ In addition, agents must reveal any ownership interest they may have in entities recommended by the agent and used by the athlete for investment decisions.²⁰⁸ Athlete-agents must file a fee schedule with the commission, outlining the fees for services the agent intends to charge.²⁰⁹ Under the Alabama statute, no agent may collect in one year more than ten percent of an athlete's total yearly compensation.²¹⁰

To ensure that the commission can regulate agency records, agents are required to keep records mandated by the commission

200. *Id.* at §§ 8-26-3, -5(5), -38.

201. *Id.* at § 8-26-4.

202. *Id.* at § 8-26-6.

203. *Id.* at § 8-26-7(a).

204. *Id.* at § 8-26-7(b). This includes the right of cross-examination. *Id.*

205. *Id.* at § 8-26-2(3).

206. *Id.*

207. *Id.* at § 8-26-25.

208. *Id.* at § 8-26-31.

209. *Id.* at § 8-26-24(a).

210. *Id.* at § 8-26-24(b).

concerning the agent's contractual relationship with the athlete.²¹¹ The records must include the fees received from each athlete, as well as a copy of the contract signed with each athlete.²¹² All agency contracts must conform with the commission's requirements.²¹³ While Alabama does not require that contracts be submitted to the commission for approval, the contract itself must state that the athlete jeopardizes his or her amateur status by entering into the contract.²¹⁴

The agent must either deposit a surety bond of at least \$50,000 with the commission or maintain malpractice insurance worth at least the same amount.²¹⁵ Violation of the Alabama Act subjects the agent to possible forfeiture of this bond,²¹⁶ and may also result in a fine of not more than \$5,000, or imprisonment of at least one year but not more than ten years, or both.²¹⁷

2. Arkansas

Arkansas defines an athlete-agent as someone who, "for compensation, directly or indirectly recruits or solicits an athlete to enter into an agent contract or professional sport services contract with that person or that for a fee procures offers, promises, or attempts to obtain employment for an athlete with a professional sports team."²¹⁸ Arkansas law, however, does not include any "employee(s) or other representatives of professional sports team(s)," or any licensed members of the Arkansas Bar, in its definition of athlete-agent.²¹⁹

Athlete-agents must register with the Arkansas Secretary of State before contacting any athlete, either directly or indirectly.²²⁰ Applicants for registration must provide the Secretary with information concerning the agent's formal background and training.²²¹ Additionally, the agent must list all financially-interested parties in the agent's business.²²² To receive a certificate of registration,

211. *Id.* at § 8-26-26.

212. *Id.* at §§ 8-26-26(2)-(3).

213. *Id.* at § 8-26-22.

214. *Id.* at § 8-26-23.

215. *Id.* at § 8-26-14.

216. *Id.* at § 8-26-15.

217. *Id.* at § 8-26-41.

218. ARK. STAT. ANN. § 17-48-101(a)(2)(A) (Supp. 1989).

219. *Id.* at § 17-48-101(a)(2)(B).

220. *Id.* at § 17-48-201(a).

221. *Id.* at § 17-48-201(b)(3).

222. *Id.* at § 17-48-201(b)(3)(E).

athlete-agents must post a \$100,000 surety bond.²²³

Any representation contracts negotiated by athlete-agents who violate Arkansas regulations are void.²²⁴ Agents who violate the Arkansas statute face forfeiture of any consideration paid to the athlete-agent on the athlete's behalf,²²⁵ and any right of repayment for anything of value the agent may have given the athlete to induce the athlete to sign with the agent.²²⁶

3. California

California's Athlete Agencies Act (Act), passed in 1981, represented the first state governmental attempt to regulate sports agents.²²⁷ Under the Act, "no person shall engage in or carry on the occupation as an athlete-agent without first registering with the Labor Commissioner."²²⁸ The Act defines an agent's activities as the solicitation of an athlete for purposes of professional representation, negotiation of a professional representation contract for an athlete, or any attempt to procure employment for an athlete.²²⁹

Upon receipt of an application for registration, the California Labor Commissioner may evaluate an applicant by investigating the applicant's respective education, training, professional experience and personal character.²³⁰ If approved, registration lasts one year and the agent must re-apply annually.²³¹

The Act requires that all contracts between the athlete and his or her agent be written on a form approved by the Labor Commissioner.²³² Approved forms must inform athletes that, although the agent is registered with the State Labor Commissioner, such registration does not imply approval by the Labor Commissioner of the terms and conditions of the particular athlete-agent contract in question or the competence of the athlete-agent.²³³ The contract must also state that the athlete may jeopardize his or her amateur standing by entering into a representation contract.²³⁴

223. *Id.* at § 17-48-202(a).

224. *Id.* at § 17-48-102(b).

225. *Id.* at § 17-48-102(a)(2).

226. *Id.* at § 17-48-102(a)(1).

227. *See* CAL. LAB. CODE §§ 1500-1547 (West Supp. 1989).

228. *Id.* at § 1510.

229. *Id.* at § 1500(b). Representation contracts entered into with unregistered agents render the contracts void. *Id.* at § 1546.

230. *Id.* at §§ 1512, 1513.

231. *Id.* at § 1515.

232. *Id.* at § 1530.

233. *Id.*

234. *Id.* at § 1530.5.

Under the Act, no agent may receive directly or indirectly more than ten percent of an athlete's yearly gross earnings.²³⁵ Each representation contract must contain a fee schedule delineating the amounts the agent intends to charge for professional services.²³⁶ Licensed agents must also post a \$25,000 surety bond with the Labor Commissioner prior to the issuance or renewal of a registration to insure against potential misconduct or misrepresentation by the athlete's agent.²³⁷

Agents who violate the California regulations face license revocation or suspension.²³⁸ In addition, agents may face criminal sanctions including fines of not less than \$1000, or imprisonment for a period of not more than ninety days, or both.²³⁹

While the Act grants the State Labor Commission broad discretion over the licensing of agents and threatens recalcitrant agents with criminal penalties, it contains several loopholes. Members of the State Bar of California, for example, are exempt from the Act's regulations when attorneys act as "legal counsel" for represented athletes, even when these attorneys also serve as agents.²⁴⁰ Under the Act, an agent-attorney negotiating a contract for an athlete-client would fall outside the scope of the Act's regulations. The Act's definition of "agent" represents another weakness—investment counseling and money management do not fall within the Act's definition of agent activities.²⁴¹

4. Florida

Florida defines an athlete-agent as one who directly or indirectly recruits or solicits a student-athlete to enter into an agent contract, or who, for a fee, procures offers, promises, or attempts to obtain employment for a student-athlete with a professional sports team or as a professional athlete.²⁴² Athletes must register with the Florida Department of Professional Regulation every two years.²⁴³

In Florida, athlete-agents may not publish or provide any false

235. *Id.* at § 1531(b).

236. *Id.* at § 1531(c). The contract must also describe the type of services to be performed for these fees. *Id.*

237. *Id.* at § 1519.

238. *Id.* at § 1527.

239. *Id.* at § 1547.

240. *Id.* at § 1500(b).

241. *Id.*

242. FLA. STAT. §§ 240.5337(1)(b), 468.452(1) (1989).

243. *Id.* at § 468.453(1).

or misleading information,²⁴⁴ nor offer anything of value to induce a student-athlete to enter into an agreement by which the agent will represent the student-athlete.²⁴⁵ Agents are also prohibited from offering anything of value, or agreeing to offer anything of value, to any employee of a college or university located in the state in return for referrals of student-athletes.²⁴⁶ Florida, however, does not consider negotiations concerning an agent's fee an "inducement."²⁴⁷

Florida regulations do not prohibit contacting or even signing a student-athlete before the athlete's last intercollegiate contest.²⁴⁸ Nevertheless, contracts between an agent and a student-athlete must warn the student that signing the contract might jeopardize the student's eligibility to participate in intercollegiate athletics.²⁴⁹ In addition, contracts between agents and student-athletes require that the athlete notify the athletic director or president of the athlete's school of the signing of the contract before the student begins practicing for or participating in any intercollegiate athletic event, or within seventy-two hours after entering into the contract.²⁵⁰ Florida student-athletes retain the right to rescind their representation contracts within ten days following the signing of the contract or notification to their school.²⁵¹ The athlete, however, must repay the agent anything paid to the agent, exclusive of travel, meals, lodging, or entertainment expenses if the athlete chooses to rescind the contract.²⁵² Student-athletes may not waive their right to rescind under any circumstances,²⁵³ or postdate agent contracts.²⁵⁴

Under Florida law, sports agents and student-athletes may be held liable to the student's school for damages resulting from student ineligibility following the signing of a contract with an agent.²⁵⁵ An agent or student may also be assessed treble damages equal to three times the value of the athlete's scholarship furnished by the school to the student during the student's period of

244. *Id.* at § 468.456(1).

245. *Id.* at § 468.456(4).

246. *Id.* at § 468.456(3).

247. *Id.*

248. *See generally* FLA. STAT. §§ 240.5337, 468.452-.457 (1989).

249. *Id.* at §§ 240.5337(8), 468.454(4) (1989).

250. *Id.*

251. *Id.* at §§ 240.5337(8), 468.454(7).

252. *Id.*

253. *Id.*

254. *Id.* at §§ 240.5337(9), 468.454(8).

255. *Id.* at §§ 240.5337(7), 468.454(6).

eligibility.²⁵⁶ Moreover, the Florida Department of Professional Regulation may revoke the registration of any athlete-agent for failure to comply with the state's regulations.²⁵⁷

5. Georgia

The Georgia Athlete Agents Regulatory Act of 1988²⁵⁸ (Georgia Act) established the Georgia Athlete Agent Regulatory Commission. This Commission, whose members are appointed by the state governor and legislature,²⁵⁹ reviews applications for athlete-agent registrations²⁶⁰ and promulgates rules and standards of conduct for athlete-agents.²⁶¹

The Georgia Act defines athlete-agent as a person who directly or indirectly recruits or solicits an athlete to enter into an agent contract or professional sports services contract, or attempts to obtain employment for an athlete with a professional sports team.²⁶² All athlete-agents must register with the Athlete Agent Regulatory Commission.²⁶³ Registration applicants must provide the Commission with evidence of experience either in the fields of contracts, contract negotiation, complaint resolution, arbitration, or civil resolution of contract disputes.²⁶⁴

In its evaluation, the Commission may consider relevant training, experience, or education in any of the above-mentioned fields.²⁶⁵ Additionally, the Commission may, by a majority vote, refuse or revoke a registration on the basis of false representation, misappropriation of funds, prior convictions, violation of any NCAA rule, or engagement in any act resulting in an athlete's loss of intercollegiate eligibility.²⁶⁶ If granted, registration is valid for up to two years.²⁶⁷ All registered athlete-agents must post a surety bond with the Commission of at least \$10,000.²⁶⁸ The bond must be commissioned to pay damages to any athletic department af-

256. *Id.*

257. *Id.* at § 468.455.

258. 1988 Ga. Laws §§ 43-4A-2 to -19.

259. *Id.* at § 43-4A-3(a).

260. *Id.* at § 43-4A-5(a).

261. *Id.* at § 43-4A-16(a).

262. *Id.* at § 43-4A-2(3).

263. *Id.* at § 43-4A-4(a).

264. *Id.* at § 43-4A-5(b).

265. *Id.*

266. *Id.* at § 43-4A-7(a).

267. *Id.* at § 43-4A-9.

268. *Id.* at § 43-4A-13.

fects by the agent's actions.²⁶⁹

Under the Georgia Act, athlete-agents who intend to sign college athletes to a representation contract must notify the Commission of this intended action at least thirty days before the signing of the actual contract.²⁷⁰ The Commission, in turn, confidentially notifies the athletic director of the athlete's school.²⁷¹

The Georgia Act prohibits agents from compensating or otherwise jeopardizing any athlete eligible to participate in intercollegiate athletics.²⁷² Athlete-agents who violate the Georgia Act are subject to forfeiture of the surety bond, voiding of an agent's representation contract with an athlete, and forfeiture of any compensation given to an athlete to enter into a representation contract.²⁷³

6. Illinois

Under Illinois law, any person who gives any money, goods, or other items of value to an individual enrolled in an institution of higher education who participates in interscholastic competition, and represents or attempts to represent this individual in future negotiations for employment with any professional sports team, commits a misdemeanor.²⁷⁴ Thus, Illinois flatly prohibits monetary inducement to enter into a representation agreement, or any representation of an athlete still enrolled in school.

7. Indiana

In Indiana, anyone who intends to enter into either a representation contract or a sports services contract with any athlete eligible to participate in intercollegiate athletics must provide written notification, no later than ten days prior to executing the contract, to the Athletic Director of the athlete's school.²⁷⁵ Presumably, this means both the athlete's agent and the professional sports team with which the athlete signed a contract could be held accountable for failure to notify.

Notification must include the following: (1) the name and business address of each party to the relevant contract; (2) whether the contract represents a representation agreement or a profes-

269. *Id.*

270. *Id.* at § 43-4A-16(a)(1).

271. *Id.*

272. *Id.* at § 43-4A-16(b).

273. *Id.* at §§ 43-4A-16(c)-(e).

274. ILL. ANN. STAT. ch. 38, para. 29-1(c) (Smith-Hurd Supp. 1991).

275. IND. CODE ANN. § 35-46-4-4 (West Supp. 1990).

sional services contract; and (3) the date that the relevant contract will be executed.²⁷⁶ The agent and/or professional team that fails to notify the athlete's Athletic Director commits a felony under Indiana law.²⁷⁷

8. Iowa

Iowa defines athlete-agent more broadly than other states.²⁷⁸ Iowa's regulations provide that athlete-agents are those who solicit a student-athlete to enter into a representation contract, or who attempt to obtain employment for a student-athlete with a professional sports team.²⁷⁹ Iowa, however, also defines an athlete-agent as anyone who represents a student-athlete for compensation.²⁸⁰ Notwithstanding this broad definition, Iowa excepts state-licensed attorneys from its definition of athlete-agent.²⁸¹

All athlete-agents in Iowa must register with the Iowa Secretary of State.²⁸² Registration in Iowa lasts for one year.²⁸³ To receive a registration certificate, agents must submit information concerning their background, including education and training history.²⁸⁴ Agents must also submit information concerning any criminal record they might have.²⁸⁵ In addition, agents must disclose to the Iowa Secretary of State any sanctions or disciplinary actions assessed against the agent by any educational institution.²⁸⁶

Moreover, athlete-agents must provide the Iowa Secretary of State with the names and addresses of all persons "financially interested" in the agent's business, including partners and associates.²⁸⁷ All athlete-agents registered in Iowa must post a bond of at least \$25,000 with the Secretary of State. Non-resident agents must consent to Iowa service of process.²⁸⁸

Iowa athlete-agents are specifically forbidden from entering into a representation agreement with any student-athlete, or giving anything of value to a student-athlete, until the completion of the

276. *Id.*

277. *Id.*

278. See IOWA CODE § 9A.2 (1989).

279. *Id.*

280. *Id.*

281. *Id.*

282. *Id.* at § 9A.3(1).

283. *Id.* at § 9A.3(2).

284. *Id.* at § 9A.3(1)(c).

285. *Id.* at § 9A.3(1)(e).

286. *Id.* at § 9A.3(1)(g).

287. *Id.* at § 9A.3(1)(d).

288. *Id.*

student's last intercollegiate contest, including post-season games.²⁸⁹ Iowa athlete-agents are prohibited from postdating any agreements signed before the athlete's last game.²⁹⁰ The Iowa statutes proscribe agents from offering athletes anything of value to induce an athlete to enter into a representation agreement with the agent.²⁹¹

Iowa law permits athlete-agents to interview college athletes during the athlete's senior year if the athlete's school permits the agent to conduct on-campus interviewing during the school year.²⁹² In return, the agent must abide by the rules of the school allowing the interviews.²⁹³

All agent contracts entered into with student-athletes must follow the state-approved form.²⁹⁴ Approved contracts must include, in bold print, that registration with the Iowa Secretary of State does not imply approval of the agent or endorsement of the contract.²⁹⁵ Moreover, approved contracts must declare that, by entering into the contract, the athlete may jeopardize his or her standing to participate in intercollegiate athletics.²⁹⁶ Approved contracts must also inform the student that he or she may terminate the contract within five days of its signing.²⁹⁷ Under an approved contract, agent compensation must follow Iowa's established fee schedule.²⁹⁸

Agents who violate Iowa's regulations are subject to a civil penalty of \$10,000.²⁹⁹ A violation of Iowa's regulation is also considered a misdemeanor.³⁰⁰ The Secretary of State may deny or revoke certification to anyone who violates the regulations.³⁰¹ In addition, the state may also deny or revoke certification to any agent who falsifies his or her application form, or who breaches his or her fiduciary duty to his or her client.³⁰²

289. *Id.* at § 9A.8(3).

290. *Id.* at § 9A.8(4).

291. *Id.* at § 9A.8(2).

292. *Id.* at § 9A.9.

293. *Id.*

294. *Id.* at § 9A.7(1).

295. *Id.* at § 9A.7(2).

296. *Id.*

297. *Id.*

298. *Id.* at § 9A.7(3).

299. *Id.* at § 9A.11(2).

300. *Id.* at § 9A.11(3).

301. *Id.* at § 9A.5(4).

302. *Id.* at § 9A.5(2)(3).

9. Kentucky

The Kentucky Penal Code classifies Unauthorized Sports Agency" as a felony.³⁰³ "Unauthorized Sports Agency" is defined as directly or indirectly recruiting or soliciting a student-athlete to enter into an agent contract, or procuring, offering, promising or attempting to obtain employment for a student-athlete with a professional sports team or as a professional athlete before the student-athlete's eligibility for collegiate athletics expires.³⁰⁴

10. Louisiana

In Louisiana, an agent must register with the Louisiana Secretary of State prior to contacting any Louisiana NCAA athlete or non-NCAA athlete who has never signed a professional sports contract.³⁰⁵ Louisiana defines an athlete-agent as one who directly or indirectly recruits or solicits an athlete to enter into an agent contract or professional sports services contract with that person, or who, for a fee, procures, offers, promises, or attempts to obtain employment for an athlete with a professional sports team.³⁰⁶ Registration applicants must provide the Secretary of State with information concerning his or her professional background.³⁰⁷ No guidelines for applicant acceptance are given, but the Secretary may revoke any agent's license for violation of Louisiana law pursuant to an adjudicatory hearing.³⁰⁸

Under the Louisiana statute, agents must submit a list of proposed fees they intend to charge for their services.³⁰⁹ In addition, athlete-agents must, for at least five years, keep records outlining travel and entertainment expenses incurred by the athlete-agent.³¹⁰ These records must include the nature, dollar amount, purpose, date and place of the expenditure, as well as the person on whose behalf the expenditures were made.³¹¹

Louisiana prohibits athlete-agents from entering into any agreement with an NCAA athlete until the completion of the athlete's last intercollegiate sports contest.³¹² Moreover, agents may

303. KY. REV. STAT. ANN. §§ 518.010 to -.080 (Baldwin 1989).

304. *Id.* at § 518.080.

305. LA. REV. STAT. ANN. §§ 4:422.A(1)-(2) (West Supp. 1991).

306. *Id.* at § 4:421.A(2).

307. *Id.* at §§ 4:422.C(1)-(4).

308. *Id.* at § 4:422.F.

309. *Id.* at § 4:423.C.

310. *Id.* at § 4:427B.

311. *Id.* at §§ 4:427A(1)-4:427A(5).

312. *Id.* at § 4:424(8).

not make any false statements to any Louisiana NCAA or non-NCAA athlete.³¹³ Curiously, Louisiana law forbids agents from offering anything of value to non-NCAA athletes to induce them to enter into a representation agreement, but remains silent on inducing NCAA athletes using similar means.³¹⁴

Civil penalties for violation of the Louisiana statutes include the refund of any fees paid by the athlete to his or her agent,³¹⁵ as well as forfeiture of anything of value paid to an NCAA athlete to induce the athlete to enter into a representation contract.³¹⁶ Criminal penalties include a \$10,000 fine or imprisonment for up to one year.³¹⁷

11. Maryland

Maryland's regulations classify a sports agent as anyone who "recruits or solicits an athlete to enter into an agent contract or financial services contract with that person for a fee, or attempts to obtain employment for an athlete with a professional sports team for a fee."³¹⁸ Thus, Maryland's regulations encompass asset management as an agent activity. In addition, Maryland attorneys are subject to athlete-agent registration.³¹⁹

Sports agents in Maryland must apply for registration and a license with the Secretary of State.³²⁰ Applicants must provide the Secretary with a description of their formal training, practical experience, educational background, and the names and addresses of all persons who hold a financial interest in their business.³²¹ Maryland's regulations do not state what the Secretary may take into consideration in approving an application. Registrations are valid for a period of one year.³²² The Secretary may, after a hearing, suspend or revoke any license granted under these provisions.³²³

Agents must also file a fee schedule with the Secretary of State, delineating the fees the agent collects for its services.³²⁴ No agent may collect, during a twelve-month period, more than the

313. *Id.* at § 4:424(4).

314. *Id.* at § 4:424(7).

315. *Id.* at § 4:426A(2).

316. *Id.* at § 4:426A(1).

317. *Id.* at § 4:426(C)(5).

318. MD. ANN. CODE art. 56, § 632(f) (1989).

319. *Id.* at § 633(b)(ii).

320. *Id.* at § 633(a).

321. *Id.* at §§ 633(b)(3)-(4).

322. *Id.* at § 633(d).

323. *Id.* at § 634.

324. *Id.* at § 635(a).

amount earned by the agent's athlete in that period.³²⁵ Agents are required to maintain records concerning travel and entertainment expenditures, and expenses incurred in servicing the agent's athlete.³²⁶

Maryland's regulations prohibit false representation, paid referrals from any school employees, and the offering of "anything of value" to induce athletes to sign a representation contract with the agent.³²⁷ Additionally, prior to a student-athlete's last school contest, agents are restricted in their communications with the student athlete from inducing the athlete into entering a representation agreement.³²⁸ The agent, however, may contact student athletes by sending them his or her professional credentials, and materials describing the specific services provided by that agent.³²⁹

Sanctions for violating Maryland's regulations include the refund of any payments made to the agent on the athlete's behalf for the athlete's representation services, and forfeiture of any funds paid to the athlete to induce the athlete to sign a representation agreement.³³⁰ Criminal penalties consist of a fine not exceeding \$10,000, or imprisonment not exceeding one year, or both.³³¹

12. Michigan

Michigan prohibits athlete-agents from inducing student-athletes into entering into a representation contract while the athlete is eligible to compete in intercollegiate athletics.³³² Michigan also proscribes the giving or offering of anything of value to school employees, in exchange for referrals of student-athletes to the agent.³³³

Michigan designates athlete-agents as those who attempt to obtain employment for student-athletes or attempt to recruit student-athletes to enter a professional agent services contract or an agent contract.³³⁴ The statute exempts members of an athlete's immediate family from its definition of athlete-agent.³³⁵ Athlete-

325. *Id.* at § 635(b).

326. *Id.* at § 638.

327. *Id.* at §§ 636(a)(1)-(4).

328. *Id.* at § 636(a)(5).

329. *Id.* at § 636(c).

330. *Id.* at § 637.

331. *Id.* at § 639.

332. MICH. COMP. LAWS ANN. § 750.411e(1)(a) (West 1990).

333. *Id.* at § 750.411e(1)(b).

334. *Id.* at § 750.411e(3)(b).

335. *Id.* at § 750.411e(3)(b). The statutory definition of immediate family is spouse, child, parent, step-parent, grandparent, grandchild, brother, sister, parent-in-law, brother-

agents who violate the Michigan statute are guilty of a misdemeanor.³³⁶

13. Minnesota

In Minnesota, agents may neither help student-athletes enter into a professional sports contract nor represent a student-athlete before the student signs a waiver of intercollegiate athletic eligibility.³³⁷ Contracts entered into without the waiver are voidable at the student-athlete's option.³³⁸ If the contract is voided, the agent must return to the student-athlete any compensation received under the student-athlete contract.³³⁹

Additionally, under the Minnesota statute, agents may not give, offer, or promise to give anything to an employee of an educational institution in exchange for either referrals of student-athletes, or for influencing a student-athlete towards entering into either a representation contract with an agent or any professional sports contract.³⁴⁰

14. Mississippi

Mississippi enacted its regulatory legislation in 1988.³⁴¹ Under the Mississippi statute, athlete-agents must register with the Mississippi Secretary of State before making any contact with an NCAA athlete.³⁴² The Secretary may refuse to register an applicant on the basis of false or misleading statements on the applicant's registration application, previous conviction for fraud, embezzlement, theft, or misappropriation of funds.³⁴³ In addition, an applicant may be rejected for having violated the NCAA Code.³⁴⁴

The Mississippi statute prohibits agents from giving "anything of value" to a Mississippi NCAA athlete to induce the athlete to

in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or the spouse or guardian of any of the aforementioned relatives. *Id.* at § 750.411e(3)(c).

336. *Id.* at § 750.411e(2). The statutory violation is punishable by a fine of not more than \$50,000, or an amount equal to three times the value of the amount given, offered, or promised to induce the signing of a representation agreement, or the amount paid to a school employee for a student referral, or imprisonment for up to one year, or both. *Id.*

337. MINN. STAT. ANN. § 325E.33(3) (West 1990).

338. *Id.* at § 325E.33(5).

339. *Id.*

340. *Id.* at § 325E.33(4).

341. MISS. CODE ANN. §§ 73-41-1 to -23 (1989).

342. *Id.* at § 73-41-3.

343. *Id.* at § 73-41-7(1)(a)(b).

344. *Id.* at § 73-41-7(1)(c).

sign a representation contract.³⁴⁵ In addition, the statute forbids the sale or transfer of an interest in an athlete without prior written disclosure to the state,³⁴⁶ the intentional declaration of any false representation or promise to any athlete,³⁴⁷ and the payment to any college employee for referrals.³⁴⁸ The statute also attempts to protect athletes from financial mismanagement by requiring any agent who signs a financial services contract with an athlete to post a \$100,000 surety bond.³⁴⁹

Criminal sanctions for violating the Mississippi statute include up to two years imprisonment or a fine of up to \$10,000, or both.³⁵⁰ Civil penalties consist of a refund of any payments made to the agent on behalf of the athlete.³⁵¹ However, before an agent's registration can be suspended or revoked, the agent is entitled to a hearing before the Secretary of State.³⁵²

The Mississippi statute differs from the regulatory statutes of California,³⁵³ Oklahoma,³⁵⁴ and Texas³⁵⁵ in that it does not hold the agent exclusively responsible for violations. A college that loses the eligibility of an athlete due to violations of the NCAA rules has a cause of action against either the agent or the athlete.³⁵⁶

15. Nevada

Nevada's athlete-agent statutes put teeth into the NCAA's regulations. In Nevada, anyone who causes an institution or a student-athlete to violate an NCAA rule becomes liable for damages.³⁵⁷ Damages may include lost revenues from television contracts, or prohibition from participating in post-season tournaments.³⁵⁸ Furthermore, institutions bringing successful suits under this statute are entitled to attorney's fees.³⁵⁹

345. *Id.* at § 73-41-11(g).

346. *Id.* at § 73-41-11(a).

347. *Id.* at § 73-41-11(d).

348. *Id.* at § 73-41-11(f).

349. *Id.* at § 73-41-9(1).

350. *Id.* at § 73-41-15(e).

351. *Id.* at § 73-41-15(2)(b).

352. *Id.* at § 73-41-7(3)(b).

353. *See supra* notes 227-241 and accompanying text.

354. *See infra* notes 397-410 and accompanying text.

355. *See infra* notes 438-449 and accompanying text.

356. MISS. CODE ANN. § 73-41-23 (1989). The college may sue to recover scholarship costs, losses of revenue, and other damages suffered by the institution as a result of the offending athlete's loss of eligibility. *Id.*

357. NEV. REV. STAT. ANN. § 388.085 (Michie 1990).

358. *Id.*

359. *Id.* at § 398.085(4).

The Nevada statute regulates student-athletes entering into a contractual relationship with a sports agent for the purpose of procuring employment with a professional sports team, providing loans or other forms of financial assistance to the student-athlete, or representing the student-athlete in any matter related to the student's pursuit of a career in professional sports.³⁶⁰ Attorneys acting as legal counsel for an athlete, however, are excepted from the Nevada regulations.³⁶¹

All agent-student contracts must be in writing, signed, notarized, and contain a warning that a student-athlete who signs such an agreement may lose his or her eligibility to compete in intercollegiate athletics.³⁶² Notice of this agreement must be sent to the athlete's school.³⁶³

Student-athletes have twenty days to rescind a representation agreement if they so choose.³⁶⁴ If the student rescinds the agreement within the allotted twenty day period, any consideration paid to the student by the agent to induce the signing of the agreement is considered a gift, and therefore not recoverable by the prospective agent.³⁶⁵

Any contract between an agent and a student-athlete which violates the Nevada regulations is void and unenforceable.³⁶⁶ In addition, provisions for criminal sanctions guard against certain actions by the agent.³⁶⁷ Under threat of criminal penalty, sports agents may not make any false promises or representations concerning employment, offer anything of value to employees of educational institutions in return for the referral of potential clients, or offer anything of value to anyone to encourage a student-athlete to enter into a contractual relationship with the agent.³⁶⁸

16. North Carolina

North Carolina defines athlete-agent as one who, for compensation, solicits an athlete to enter into a representation contract with the agent, attempts to obtain employment for the athlete with a professional sports team, or provides financial services for an

360. *Id.* at § 398.015.

361. *Id.* at § 398.065.

362. *Id.* at §§ 398.095(1)(a)-(d).

363. *Id.* at § 398.095(3).

364. *Id.* at § 398.095(4).

365. *Id.* at § 398.095(6).

366. *Id.* at § 398.095(7).

367. *Id.* at § 398.065.

368. *Id.* at § 398.065(1).

athlete.³⁶⁹ The definition, however, excepts state-licensed attorneys who represent no more than two athletes.³⁷⁰

Athlete-agents must register yearly with the North Carolina Secretary of State.³⁷¹ Registration applications must include the agent's educational background and history of formal training, as well as the applicant's occupation for the five years preceding the date of the agent's application.³⁷² Furthermore, the agent must provide the names and addresses of all parties "financially interested" in the agent's business, such as partners or associates.³⁷³ Registered agents applying for renewal must also provide the Secretary of State with the names and addresses of all athletes previously represented by the agent.³⁷⁴

North Carolina athlete-agents are required to post an annual bond of \$100,000 with the state.³⁷⁵ A state-registered athlete-agent must also keep records of all fees received from his or her clients and all expenses incurred on behalf of the agent's clients, including travel and entertainment expenditures.³⁷⁶

Athlete-agents in North Carolina are forbidden from direct contact with a student-athlete to discuss representation of the athlete or the possibility of future professional sports employment for the athlete until after completion of the student's last school contest, including post-season games.³⁷⁷ In addition, an athlete-agent may not offer "anything of value," (except for "reasonable entertainment and transportation" expenses), to a student-athlete to persuade him or her to enter into a representation agreement.³⁷⁸

Athlete-agents may, however, send students written materials stating the professional credentials of the agent or the specific services the agent offers.³⁷⁹ North Carolina specifically permits a student-athlete's parents or legal guardians to contact and interview an agent to determine the agent's professional proficiency.³⁸⁰ Agents planning to contact athletes must give the athlete's school

369. 1990 N.C. Adv. Legis. Serv. § 78C-71.

370. *Id.* at § 78C-72(K).

371. *Id.* at § 78C-72(D).

372. *Id.* at §§ 78C-72(B)(2)-(3).

373. *Id.* at § 78C-72(B)(5).

374. *Id.* at § 78C-72(E)(1).

375. *Id.* at § 78C-72(H).

376. *Id.* at § 78C-80.

377. *Id.* at § 78C-76(B)(5).

378. *Id.* at § 78C-76(B)(3).

379. *Id.* at § 78C-76(C).

380. *Id.*

prior written notice.³⁸¹

All financial-services contracts entered into by athletes and agents in North Carolina must disclose the fees and percentages the athlete is paying the agent under the contract.³⁸² In addition, the contract must not only state that the athlete may cancel the agreement within sixteen days of its signing,³⁸³ but also that registration of an agent with the state does not imply endorsement of the agent or approval of the contract.³⁸⁴

Athlete-agents who violate North Carolina's rules are subject to forfeiture of any right of repayment of anything of value the agent may have given the athlete to induce the athlete to enter into a representation or financial services contract.³⁸⁵ Moreover, agents who transgress the regulations face the refunding of any consideration paid to the agent by the athlete for the agent's services.³⁸⁶ Violators of North Carolina's regulations may also be subject to a civil fine of up to \$25,000.³⁸⁷ Knowing violators of the laws are guilty of a felony.³⁸⁸

17. Ohio

Ohio's athlete-agent regulations are considerably more relaxed than similar statutes enacted in other states.³⁸⁹ Ohio does not restrict the time in which agents may approach student-athletes.³⁹⁰ Agents may enter into representation contracts with student-athletes at any time, provided that the contract is put in writing and submitted to the director of the student's particular sports program.³⁹¹

In addition, Ohio excludes money management from its definition of an agent's activities.³⁹² The Ohio regulations define an agent as anyone who solicits a representation agreement with, or negotiates a professional sports contract for, a student-athlete.³⁹³ Attorneys and members of the athlete's immediate family are ex-

381. *Id.* at § 78C-77.

382. *Id.* at § 78C-75(B).

383. *Id.* at § 78C-75(B)(3).

384. *Id.* at § 78C-75(B)(1).

385. *Id.* at § 78C-75(A)(1).

386. *Id.* at § 78C-75(A)(2).

387. *Id.* at § 78C-79.

388. *Id.* at § 78C-78(C).

389. See OHIO REV. CODE ANN. §§ 4771.01-.99 (Anderson Supp. 1989).

390. *Id.* at § 4771.02.

391. *Id.*

392. *Id.* at § 4771.01(A).

393. *Id.* at § 4771.01(B).

empted from the statute's definition of athlete-agent.³⁹⁴ Thus, under the Ohio statute, a student-athlete has no protection whatsoever from an agent if the agent is an attorney or a relative.

Criminal violations of Ohio's regulations are classified as first degree misdemeanors.³⁹⁵ Civil penalties can be assessed up to \$10,000, however, an agent need not put up any money as surety.³⁹⁶

18. Oklahoma

The Oklahoma Athlete Agent Act (Oklahoma Act) requires athlete-agents to register with the Oklahoma Secretary of State before contacting any Oklahoma NCAA athlete or any Oklahoma non-NCAA athlete who has never signed a professional sports contract in the state.³⁹⁷ An applicant's registration may be denied on the basis of his or her professional background,³⁹⁸ and registration must be renewed annually.³⁹⁹ Registered agents must pay an annual filing fee of \$1000.⁴⁰⁰ Additionally, registered agents must post a \$100,000 surety bond or carry \$100,000 worth of professional liability insurance.⁴⁰¹

The Oklahoma Act limits the amount of fees an agent may collect for professional services, but this limit only applies to a narrow spectrum of athletes.⁴⁰² Represented by the amount the athlete actually earns during the relevant year, the limitation applies only to multi-year contracts negotiated for non-NCAA athletes who have never before signed an employment contract with a professional sports team.⁴⁰³

Oklahoma specifically prohibits agents from offering "anything of value" to induce any Oklahoma non-NCAA athlete who has never previously signed a professional sports contract to enter into a representation contract.⁴⁰⁴ Curiously, the Oklahoma Act does not

394. *Id.* at § 4771.01(C). The Michigan statute also exempts family members. See *supra* note 335 and accompanying text.

395. *Id.* at § 4771.99.

396. *Id.* at § 4771.05(B).

397. OKLA. STAT. ANN. tit. 70, §§ 821.62(A)(1)-(2) (West 1989). Note that the Oklahoma Act, like the California Athlete Agencies Act, excepts Oklahoma attorneys from registration requirements.

398. *Id.* at § 821.62(C)(3).

399. *Id.* at § 821.62(D).

400. *Id.* at § 821.62(E).

401. *Id.* at § 821.62(G).

402. *Id.* at § 821.63(D).

403. *Id.*

404. *Id.* at § 821.64(7).

offer the same protection to Oklahoma NCAA athletes.⁴⁰⁵ The Oklahoma Act also forbids registered agents from selling or transferring interests in their athlete without the Secretary of State's permission,⁴⁰⁶ and from publishing any false representations to athletes.⁴⁰⁷

Sanctions for violating the Oklahoma Act include fines, refunds of any fees paid on behalf of the athlete to his or her agent, and criminal penalties.⁴⁰⁸ Criminal penalties under the Oklahoma Act consist of, among other things, imprisonment of up to one year.⁴⁰⁹

The Oklahoma Act suffers from the same restrictions that limit the effectiveness of the California statute, namely, the narrowness of the scope of regulated agents' activities. Under the Oklahoma Act, agent activities may include contract negotiation and representation solicitation, but exclude investment counseling and finance management.⁴¹⁰ Thus, as in the California legislation, Oklahoma agents face no sanctions for mismanaging or embezzling their athlete's finances.

19. Pennsylvania

Pennsylvania's regulatory statute, passed in 1988, defines athlete-agent as anyone who recruits a person to enter into an agent representation contract or attempts to procure employment for someone as a professional athlete.⁴¹¹

Pennsylvania does not require registration of athlete-agents.⁴¹² However, the statute prohibits contracting with, or promising or offering anything to, a student or his or her family before the student's athletic eligibility for college athletics expires.⁴¹³ The statute also prevents agents from offering or giving anything "of value" to college or university employees in exchange for referrals of students to the agent.⁴¹⁴

Violation of the Pennsylvania statute is a misdemeanor crime, subject to fines or imprisonment for not more than one year, or

405. *Id.*

406. *Id.* at § 821.64(1).

407. *Id.* at § 821.64(2).

408. *Id.* at §§ 821.66(A)(1)(3), 821.66(C).

409. *Id.* at § 821.66(C).

410. *Id.* at § 821.61(A)(2).

411. 18 PA. CONS. STAT. ANN. § 7107(c) (Purdon 1983 & Supp. 1990).

412. *Id.* at § 7107.

413. *Id.* at § 7107(a)(1)-(2).

414. *Id.* at § 7107(a)(3).

both. The fines imposed are not more than \$10,000, or an amount equal to three times the amount offered as an incentive to the student-athlete or the school employee, whichever is greater.⁴¹⁵

20. South Carolina

South Carolina classifies an athlete-agent as a person who recruits or solicits a student-athlete to enter into an agent contract, or who, for a fee, attempts to obtain employment for a student-athlete with a professional sports team or as a professional athlete.⁴¹⁶ Agents must register biennially with the South Carolina Department of Consumer Affairs.⁴¹⁷ The statute's only registration requirement is a biennial fee of \$300.⁴¹⁸ Violation of the registration requirements, however, is a felony under South Carolina law, punishable by a fine of up to \$5000, or imprisonment for up to five years, or both.⁴¹⁹

Athlete-agents in South Carolina may not offer "anything of value" to induce a student-athlete to enter into a representation agreement with the agent.⁴²⁰ South Carolina also specifically prohibits offering, or agreeing to offer anything of value to any employee of a school in return for referring student-athletes to an agent.⁴²¹

Contracts entered into between athlete-agents and athletes must specifically warn the student-athlete that, by entering into such contract, the athlete may lose his or her eligibility to compete in intercollegiate athletics.⁴²² Both agents and athletes who sign contracts before the completion of the athlete's last intercollegiate contract, including post-season games, must notify the athlete's school within seventy-two hours of the signing of the contract.⁴²³

Student-athletes who sign an agreement with an athlete-agent may rescind the agreement within ten days of the signing of the contract.⁴²⁴ The student-athlete, however, must repay any money (other than travel, lodging, meal, and entertainment expenses)

415. *Id.* at § 7107(b).

416. S.C. CODE ANN. § 59-102-10(2) (Law. Co-op. 1990).

417. *Id.* at § 59-102-20(A).

418. *Id.*

419. *Id.* at § 59-102-20(C).

420. *Id.* at § 59-102-40(4).

421. *Id.* at § 59-102-40(2)(3).

422. *Id.* at § 59-102-30(D).

423. *Id.* at § 59-102-30(A)-(B).

424. *Id.* at § 59-102-30(G).

given by the agent to the athlete.⁴²⁵

Agents and student-athletes who do not notify the athlete's school of their contractual relationship are liable for any damages to the school resulting from the athlete's ineligibility.⁴²⁶ In addition, damages may be assessed in an amount equal to three times the value of the scholarship given to the athlete during the athlete's eligibility to participate in intercollegiate athletics.⁴²⁷

21. Tennessee

Tennessee's athlete-agent regulations essentially put teeth into the NCAA's regulations.⁴²⁸ The Tennessee statute provides that a "person who causes, aids, or abets a student-athlete or institution, or both, to violate or be in violation of a rule or rules of its governing national collegiate athletic association" liable to the athlete's school for damages.⁴²⁹ To be liable for damages, the violator must have acted with scienter.⁴³⁰ In addition, the violation must have caused either the loss of eligibility of the agent's athlete, or disciplinary action against the school by the NCAA.⁴³¹

Violators of NCAA regulations may be liable, under the Tennessee statute, for "[l]ost television revenues, lost ticket sales of regular season athletic events, and lost revenues from not qualifying for post season athletic events, such as football bowl games and tournaments[.]"⁴³² Additionally, violators may be held liable for money "received for post-season participation" which had to be returned or forfeited by a school due to disqualifications caused by the violator's actions.⁴³³ Such violators may also be assessed damages in an amount equal to three times the value of the athletic scholarship furnished by the institution during the student-athlete's period of eligibility.⁴³⁴

Tennessee also requires that representation agreements follow statutory guidelines.⁴³⁵ Agent contracts must clearly and expressly inform the athlete that signing the contract will result in forfeiture

425. *Id.*

426. *Id.* at § 59-102-30(F).

427. *Id.*

428. See TENN. CODE ANN. §§ 49-7-2101 to -2109 (1989).

429. *Id.* at § 49-7-2103(a).

430. *Id.* at § 49-7-2103(a)(1). This Section states: "The person knew or reasonably should have known that a rule was violated or would be violated"

431. *Id.* at §§ 49-7-2103(a)(2)(A) to 49-7-2103(a)(2)(B).

432. *Id.* at § 49-7-2106(1).

433. *Id.* at § 49-7-2106(2).

434. *Id.* at § 49-7-2107.

435. *Id.* at § 49-7-2104.

of his or her eligibility to compete in intercollegiate athletics.⁴³⁶ The contract must tell the athlete that he or she has twenty days to rescind the contract.⁴³⁷ Attempted waivers of this right to rescind are ineffective.⁴³⁸ To be valid, copies of the contract must be sent to the athlete's school.⁴³⁹

Agents who violate Tennessee's contractual regulations face the voiding of the agent-athlete representation agreement, and the forfeiture of any money paid to the athlete to induce him or her to sign the representation contract.⁴⁴⁰

22. Texas

Texas' regulation of athlete-agents requires agents to register with the Texas Secretary of State before contacting any athletes located in the state.⁴⁴¹ The Secretary may take into consideration the applicant's formal training, practical experience, and educational background in deciding whether to register the applicant.⁴⁴² All athlete-agents must reapply for registration yearly.⁴⁴³

Under the Texas statute, all representation contracts must state, *inter alia*, that the agent is registered with, but not endorsed by, the State of Texas.⁴⁴⁴ All representation contracts must also disclose the amount of money the agent is receiving for his or her services.⁴⁴⁵

The Texas statute forbids athlete-agents from contacting student-athletes at state colleges before the athlete's last collegiate game.⁴⁴⁶ In addition, the athlete-agent may not offer "anything of value" to induce the athlete to sign a representation contract with the athlete-agent.⁴⁴⁷

Sanctions for violating the Texas statute include the civil penalty of fines not exceeding \$10,000.⁴⁴⁸ Criminal penalties include restitution of any fees paid to the agent by the athlete, the voiding of all the agent's representation contracts under the statute, and a

436. *Id.* at § 49-7-2104(b)(2).

437. *Id.*

438. *Id.* at § 49-7-2104(b)(5)(B).

439. *Id.* at § 49-7-2104(b)(2).

440. *Id.* at § 49-7-2104(b)(10)(B).

441. TEX. REV. CIV. STAT. ANN. art. 8871, § 2(a) (Vernon 1989 & Supp. 1991).

442. *Id.* at § 2(b)(3).

443. *Id.* at §§ 2(d)-(e).

444. *Id.* at § 5(b).

445. *Id.* at § 5(c).

446. *Id.* at § 6(b)(5).

447. *Id.* at § 6(b)(4).

448. *Id.* at §§ 9(a)-(b).

prison sentence of up to one year.⁴⁴⁹

Agent activities are defined more broadly under the Texas statute than under the California and Oklahoma Acts. Under the Texas statute, the activities of a sports agent include financial services, representation solicitation, as well as contract negotiation.⁴⁵⁰ Thus, the Texas statute, unlike the California⁴⁵¹ and Oklahoma⁴⁵² Acts, offers athletes protection from agents mishandling the athletes' finances.

23. Virginia

Virginia defines athlete-agent as anyone who recruits an athlete to enter into a representation contract or who, for compensation, attempts to procure employment for an athlete with a professional sports team.⁴⁵³ All athlete-agents must be licensed by the Virginia Department of Commerce.⁴⁵⁴

To receive or renew a Virginia license, athlete-agents must comply with a number of requirements.⁴⁵⁵ Agents must post a bond of \$100,000, or provide the state Department of Commerce with proof that they carry professional liability insurance in the same amount.⁴⁵⁶ Agents must also provide the state with the names of all athletes the agent represents or has represented.⁴⁵⁷ They must inform the state of all persons who have a financial interest in the business dealings of the athlete-agent.⁴⁵⁸ Furthermore, athlete-agents must disclose to the state information concerning their educational and professional backgrounds.⁴⁵⁹

The Department of Commerce requires that all athlete-agents file annually business records revealing the names of the athletes the agents represent, the fee received from each client, and the specific services provided for each athlete.⁴⁶⁰ Athlete-agent licenses must also be renewed annually.⁴⁶¹

Registered Virginia athlete-agents may not offer student- ath-

449. *Id.* at §§ 8(a)(1)-(4)(c).

450. *Id.* at §§ 1(a)(2)-(3).

451. *See supra* notes 227, 229.

452. *See supra* note 397.

453. VA. CODE ANN. § 54.1-518.A (1990).

454. *Id.* at § 54.1-519A.

455. *Id.* at §§ 54.1-519, 54.1-524.

456. *Id.* at § 54.1-519(F).

457. *Id.* at §§ 54.1-519(C)(4)-(5).

458. *Id.* at § 54.1-519(C)(6).

459. *Id.* at § 54.1-519(C)(3).

460. *Id.* at § 54.1-524.

461. *Id.* at § 54.1-519(D).

letes "anything of value," except "reasonable entertainment and transportation expenses," to induce the athlete to enter into a representation contract with the agent.⁴⁶² Athlete-agents are also precluded from splitting a fee with anyone at a Virginia college or university for referring a potential client to an agent.⁴⁶³

Generally, agents are forbidden from approaching college athletes to discuss agent representation or employment procurement until after the athlete's last intercollegiate contest, including post-season games.⁴⁶⁴ However, if a school allows agents to conduct on-campus interviews, agents may discuss representation or employment, subject to the rules of the individual school allowing the interviews.⁴⁶⁵

Representation contracts signed by Virginia college athletes must be filed with the Virginia Department of Commerce, and with the student-athlete's school.⁴⁶⁶ Any contract signed by a college athlete may be terminated, at the athlete's option, within ten days after the signing of such contract.⁴⁶⁷

Agents who violate Virginia's regulations face repayment of any consideration paid to the agent by the athlete for the agent's services, and reimbursement to the athlete for reasonable attorney's fees if the athlete sues the agent for a violation of these regulations.⁴⁶⁸ Any contract negotiated by an agent who violated any Virginia regulation is held void.⁴⁶⁹

VII. FEDERAL LEGISLATION

Representative John Bryant of Texas has introduced a bill to federally regulate sports agents.⁴⁷⁰ The proposal in effect assigns regulatory powers and duties to "agency associations," groups of government-approved professional sports agents.⁴⁷¹

The proposed legislation defines a sports agent as someone who enters into a representation contract with an athlete, advises an athlete concerning advertisements or public appearances, or

462. *Id.* at § 54.1-521(A)(7).

463. *Id.* at § 54.1-521(A)(6).

464. *Id.* at § 54.1-521(A)(8).

465. *Id.* at § 54.1-522.

466. *Id.* at § 54.1-520.

467. *Id.*

468. *Id.* at § 54.1-523(A)(2).

469. *Id.* at § 54.1-523(B).

470. See H.R. 4842, 101st Cong., 1st Sess. (1990). The proposed legislation is included in this Article as an appendix [hereinafter Appendix].

471. Appendix, *supra* note 470, at Section 5.

who manages an athlete's money.⁴⁷² Relatives of an athlete by blood or marriage, however, are excepted from the legislation's definition.⁴⁷³

The bill prohibits sports agents from using the mails or any other means of interstate commerce to effect any transaction concerning an athlete without being registered with an agency association.⁴⁷⁴

Under the proposed legislation, all agency associations would have to be approved by the Secretary of Commerce.⁴⁷⁵ Associations would have the power to examine and verify the character and qualifications of applicants.⁴⁷⁶ Associations could revoke or suspend the registration of agents who violate the association's standards or regulations.

Edward Vincent King, Jr., Esquire, of San Francisco, has suggested numerous changes to the proposed federal legislation.⁴⁷⁷ King proposes additions to the current registration requirements of character investigation, supporting affidavits, and application disclosure.⁴⁷⁸ According to King, the federal legislation should require malpractice insurance, bonding requirements, and contributions to a fraud reimbursement fund.⁴⁷⁹ The fund reimbursement contributions could be taken from agent registration fees.⁴⁸⁰

King would also add broader disclosure requirements to the personal information already required by the proposed federal legislation.⁴⁸¹ Under King's proposal, student-athletes would report all agent contracts to their respective schools, under threat of fine, scholarship revocation, or expulsion.⁴⁸² All athlete-agent contacts would be reported to an athlete's school.⁴⁸³ Agents would be required to identify, yearly, their employees, associates, and indepen-

472. *Id.* at Section 3.

473. *Id.* at Section 3(11).

474. *Id.* at Section 6(a).

475. *Id.* at Section 4.

476. *Id.* at Section 5.

477. Monograph of Edward Vincent King, Jr., on the proposed federal Sports Agent Act (September 24, 1990) [hereinafter King Monograph]. On several occasions King has successfully litigated on behalf of athletes against their former agents for breach of fiduciary duties, including malpractice. Interview with Edward Vincent King, Jr., Esq., in Madison, Wisconsin (August 11, 1990).

478. Appendix, *supra* note 470, at Section 5, 19-22.

479. King Monograph, *supra* note 477, at 3-4.

480. *Id.*

481. *Id.* at 4.

482. *Id.*

483. *Id.*

dent contractors.⁴⁸⁴

King also suggests that any proposed federal sports agent legislation make several athlete-protective assumptions.⁴⁸⁵ Under the legislation, all athletes should be assumed to be "unsophisticated" in business matters.⁴⁸⁶ Furthermore, all documents signed by an athlete represented by an agent should be presumed to have been signed in reliance upon the agent's advice.⁴⁸⁷ Finally, the federal statute should presume the broadest possible fiduciary relationship between athlete and agent.⁴⁸⁸

King offers two proposals to eliminate difficulties in the resolution of athlete-agent disputes.⁴⁸⁹ First, King suggests that federal regulation provide that agents who conduct business within a certain state constructively consent to jurisdiction within that particular state.⁴⁹⁰ Second, arbitration, with full discovery and subpoena power, should be mandatory for athlete-agent disputes.⁴⁹¹

To encourage the private enforcement of the federal regulations, King recommends that attorneys' fees be provided for in successful actions.⁴⁹² Additionally, King suggests punitive and/or treble damages be made available to successful athlete plaintiffs.⁴⁹³

According to King, all agent contracts should be voidable at the athlete's option in the event of agent failure to comply with the relevant federal requirements.⁴⁹⁴ When such a contract is voidable, the affected agent should be allowed no equitable relief or *quantum meruit* recovery.⁴⁹⁵ King believes that broader damages and voidable contract options would provide greater deterrence to agent abuses than the current federal proposals of registration revocation and/or yearly suspension.⁴⁹⁶

VIII. CONCLUSION

Given the fact that representation of athletes transcends state lines, it is burdensome to require agents to register in every state.

484. *Id.*

485. *Id.* at 2.

486. *Id.*

487. *Id.*

488. *Id.*

489. *Id.* at 2.

490. *Id.* at 1-2.

491. *Id.* at 2.

492. *Id.* at 3.

493. *Id.*

494. *Id.*

495. *Id.*

496. *Id.* Appendix, *supra* note 470, at Section 7.

Consequently, federal regulation of sports agents would provide uniformity, efficiency, and consistency in this area. State statutes regulating sports agents vary not only in their scope, but also in their approach to enforcement. With the exception of Alabama, which aggressively prosecutes sports agents who break its laws, the majority of states have not routinely pursued violators. For example, California enacted its law requiring agents to register in 1989.⁴⁹⁷ To date only twenty-four have registered pursuant to that law.⁴⁹⁸

Moreover, societal priorities such as drugs and violent crime, spirit the states' resources away from sports agent regulatory enforcement. Failure to enforce state laws merely encourages the lawlessness of agents who continually flaunt contempt for state regulations.

Self-regulation and education are possible alternatives to federal legislation. To this end, Ed Garvey, the former executive director of the National Football League Player's Association, has developed SportSeminars and educational conferences dealing with representation of professional athletes.⁴⁹⁹ The idea behind SportSeminars was to train professionals who represent athletes.⁵⁰⁰ Through numerous seminars around the country, Garvey's group found plenty of professionals who wanted to represent athletes.⁵⁰¹ However, one glaring problem existed—those professionals could not get clients.⁵⁰² The problem was due in part to ethical restraints and because some of the athletes were offered substantial enticements to sign with certain agents.⁵⁰³ As a result, Garvey's group decided that it needed a more intensive training program for the professionals, a required examination, and a certification program.⁵⁰⁴

Furthermore, SportSeminars decided it had to attack the problem from both ends, and had to get to the athletes as well. Consequently, Garvey and a few college officials began speaking to

497. See CAL. LAB. CODE §§ 1500-1528 (West Supp. 1989).

498. Interview with Edward Vincent King, Jr., Esq., in Madison, Wisconsin (August 11, 1990).

499. Interview with Ed Garvey, in Madison, Wisconsin (August 12, 1990).

500. Working materials from the Second Annual Sports Law Institute Sports Seminars at the University of Wisconsin Law School 8 (August 9-12, 1990).

501. *Id.*

502. *Id.*

503. *Id.*

504. *Id.* These programs would help assure potential clients that their certified professionals carried a working knowledge of the Sports Law field. Interview with Ed Garvey, in Madison, Wisconsin (August 12, 1990).

various student-athletes.⁵⁰⁵ Although the athlete often understood the pitfalls of signing with any agent, the vital link between trained professionals and those athletes was missing.⁵⁰⁶

The objective of SportSeminars is to encourage athletes to hire professionals by informing athletes of the services a contract negotiator can provide, defining the reasonable fee, and explaining the means by which athletes can find a competent professional.⁵⁰⁷ The main purpose is to provide the athletes an opportunity to "find a talented representative who plays within the rules."⁵⁰⁸ The ultimate goal of Garvey's organization is to provide athletes whose eligibility has expired with competent professional representatives.⁵⁰⁹ Given the fact that many agents pay or "loan" athletes money to have the athlete retain them, the question remains will this approach work?

505. Interview with Ed Garvey, in Madison, Wisconsin (August 12, 1990).

506. Working materials from the Second Annual Sports Law Institute SportSeminars at the University of Wisconsin Law School 9 (August 9-12, 1990).

507. *Id.*

508. *Id.*

509. *Id.*

APPENDIX

IN THE HOUSE OF REPRESENTATIVES

A BILL

To provide for the regulation of sports agents operating in interstate commerce and through the mails, to prevent inequitable and unfair practices in athletics, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Professional Sports Agency Act of 1989".

SECTION 2. FINDINGS.

The Congress finds that —

(1) the practice of sports agency entails a national public interest which makes it necessary to (A) provide for regulation and control of such practices and related matters; (B) assure that sports agents follow honest practices, adhere to professional responsibilities, and maintain educational and ethical standards; and (C) assure that clients of sports agents receive the highest levels of service consistent with licensed professional practice;

(2) current law does not provide for the licensing and regulation of independent contractors who (A) seek to recruit or solicit professional athletes to enter into agency contracts; (B) represent professional athletes entering into professional sports services contracts or various marketing arrangements; or (C) administer the funds received by such athletes through such activities;

(3) sports (A) are enjoyed by the general public throughout the United States; (B) are affected by means of the mails and instrumentalities of interstate commerce; and (C) constitute an important part of the current of interstate commerce;

(4) sports contracts often are affected by means of the mails and instrumentalities of interstate commerce, and parties to such contracts and sports agents involved in such contracts frequently are located in diverse States; and

(5) sports agency and the solicitation of sports agency and sports contracts, marketing arrangements, and the administration of funds for professional athletes are often susceptible to impropriety, to the detriment of the general public, and athletes and athletics in general.

SEC. 3. DEFINITIONS.

As used in this Act the following terms have the following

meanings:

(1) The term “active representation” means the rendering of the following services (or holding one’s self out as available to render such services) to or for an athlete:

(A) Soliciting, entering into, or negotiating an agency contract.

(B) Soliciting, negotiating, or advising or consulting with an athlete regarding a sports contract.

(C) Soliciting, negotiating, or advising or consulting with an athlete regarding an advertisement, public appearance, endorsement, or similar arrangement for, on behalf of, or with respect to, an athlete.

(D) Managing or handling funds belonging to an athlete, except where all services rendered constitute (i) investment advisory services rendered by an investment advisor registered with the Securities and Exchange Commission or pursuant to the exemption under section 202(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(11)); (ii) banking or trust services rendered by a bank or a licensed trust company; or (iii) legal services rendered by a licensed attorney, where all funds are held or maintained in a trust fund established by the attorney or his firm; however, nothing in this paragraph shall be interpreted to exclude attorneys from the applicability of the other provisions of this subsection.

(2) The term “agency contract” means any oral or written contract, transaction, or arrangement, pursuant to which a person is, or purports to be authorized or empowered as, a sports agent.

(3) The term “associated with” means having a legal affiliation or employment relationship.

(4) The term “athlete” means any person who participates or who is engaged in discussion which may reasonably be expected to result in participation, in professional sporting events or with professional sports teams.

(5) The term “national sports agency association” means any association of sports agents which has been approved by and registered with the Secretary as a national sports agency association pursuant to the requirements and guidelines set forth in this Act.

(6) The term “professional sporting event” means a sport contest, game, competition, or exhibition, taking place within the United States, where at least one of the participants is paid, remunerated, or compensated for the participant’s services, or who may, if successful, win financial or valuable prizes (other than a reduction or elimination of college tuition).

(7) The term “professional sports team” means any organiza-

tion, association, corporation, or other commercial or legal entity—

(A) engaged in regular or periodic athletic competition or exhibition which takes place within the United States as part of a league or system of inter-team competition, or

(B) which pays, remunerates, or otherwise provides compensation or financial or valuable prizes (other than a reduction or elimination of college tuition) to some or all of those participating in such competition.

(8) The term “registered agent” means a sports agent who has been registered and certified as a sports agent by an approved and registered national sports agency association, after having met that association’s standards and maintained the agent’s certified status in good standing.

(9) The term “Secretary” means the Secretary of Commerce.

(10) The term “sports agency” means the business of acting as a sports agent.

(11) The term “sports agent” means a person who conducts or participated in (either directly or indirectly) active representation; and such term does not include conduct or participation in active representation by any person related to an athlete by blood or by marriage.

(12) The term “sports contract” means any contract, transaction, or arrangement whereby an athlete agrees to render services as a participant or player to a professional sports team or as part of a professional sporting event.

(13) The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

SEC. 4. RESPONSIBILITIES OF THE SECRETARY OF COMMERCE.

(a) **IN GENERAL.** — The Secretary shall be responsible for carrying out those functions specified as functions of the Secretary under this Act.

(b) **APPOINTMENT OF STAFF.** — The Secretary may, subject to applicable provisions of title 5, United States Code, appoint and fix the compensation of such attorneys, experts, and other employees as are necessary to carry out the Secretary’s functions under this Act.

(c) **ADMINISTRATIVE OFFICE.** — The Secretary may designate (by regulation) an existing department, bureau or office, or establish a new office, within the Department of Commerce for the

purpose of administering the Secretary's functions under this Act.

(d) **ASSISTANCE FROM NONFEDERAL ENTITIES.** — Notwithstanding any other provisions of law, in accordance with regulations which the Secretary shall promulgate under subsection (e) to prevent conflicts of interest, the Secretary may accept payment and reimbursement, in cash or in kind, from non-Federal agencies, organizations, and individuals for travel, subsistence, and other necessary expenses incurred by employees of the Secretary hired pursuant to this Act in attending meetings and conferences related to functions of the Secretary under this Act. Any such payment or reimbursement shall be deposited in the Treasury and credited to the appropriate account.

(e) **PROMULGATION OF RULES AND REGULATIONS.** — Any rules or regulations required or permitted to be promulgated by the Secretary under this Act shall be promulgated in accordance with section 553 of title 5, United States Code.

SEC. 5. NATIONAL SPORTS AGENCY ASSOCIATIONS.

(a) **REGISTRATION OF NATIONAL SPORTS AGENCY ASSOCIATIONS.** — An association of sports agencies may be registered as a national sports agency association under the terms and conditions provided in this section by filing with the Secretary an application for registration, in such form as the Secretary may prescribe, by rule. Such application shall contain the rules of the association and such other information and documents as the Secretary may prescribe, by rule, as necessary to carry out this Act.

(b) **ELIGIBILITY CRITERIA FOR REGISTRATION.** — An association of sports agents shall not be registered as a national sports agency association under this section unless the Secretary determines that —

(1) the association is so organized and has the capacity to be able to carry out the purposes of this Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of this Act, the rules and regulations promulgated pursuant to this Act, and the rules of the association;

(2) subject to section 6, the rules of the association provide that any sports agent is eligible to become a member of such association;

(3) the rules of the association assure a fair representation of its members in the selection of its directors and the administration of its affairs and provide that one or more directors shall be representative of athletes and not be, or be associated with, a sports agent;

(4) the rules of the association provide for the equitable allo-

cation of reasonable dues, fees, and other charges among its members;

(5) the rules of the association are designed to (A) prevent fraudulent and manipulative acts and practices, promote just and equitable principles of conduct and fair dealings, and foster cooperation and coordination among athletes, sports agents, professional sports teams, sponsors of professional sporting events, and educational institutions; (B) mitigate abuses in sports contracts and services provided by sports agents; and (C) protect athletes and the public interest;

(6) the rules of the association are not designed—

(A) to permit unfair discrimination among athletes, sports agents, professional sports teams, sponsors of professional sporting events, or educational institutions, or

(B) to regulate, by virtue of any authority contained in this Act, matters not related to the purposes of this Act or the administration of the association;

(7) the rules of the association provide that (subject to any rule or order of the Secretary pursuant to section 6) its members [and persons associated with such members] shall be appropriately disciplined for violation of the provisions of this Act, any rules or regulations promulgated under this Act, or the rules of the association, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, suspension or prohibition from association with a member, or any other appropriate sanction;

(8) the rules of the association are consistent with subsection (d), and there are fair procedures for (A) disciplining members and persons associated with such members; (B) denial of membership to any person seeking membership; (C) barring of any person from becoming associated with a member; and (D) prohibition or limitation by the association of any person with respect to access to services offered by the association or a member of the association;

[(9) the rules of the association do not impose any burden on competition not necessary or appropriate to further the purposes of this Act;] and

(10) the rules of the association do not unduly conflict with those of any previously registered association in a manner which would make compliance by a prospective member with such conflicting rules difficult.

(c) **MEMBERSHIP RESTRICTED.** — (1) A national sports agency association shall deny membership to any person other than a natural person or any natural person who is not, or is not associated with, a registered sports agent.

(2) A national sports agency association may or, where the Secretary directs (by order) as necessary or appropriate in the public interest or for the protection of athletes a national sports agency association, shall deny membership to any sports agent or natural person associated with a sports agent, and bar becoming associated with a member, any person who is subject to a statutory disqualification. A national sports agency association shall file notice with the Secretary not less than 30 days before admitting any person to membership or permitting any person to become associated with a member, if the association knew or, in the exercise of reasonable care, should have known that such person was subject to a statutory disqualification. Such notice shall be in such form and contain such information as the Secretary, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of athletes.

(3) A national sports agency association may deny membership to, or condition the membership of, a sports agent, if—

(A) such sports agent does not meet such standards of financial responsibility or operational capability, or such sports agent, or any natural person associated with such sports agent, does not meet such standards of training, experience, and competence, as are prescribed by the rules of the association; or

(B) such sports agent, or any natural person associated with such sports agent, has engaged, and there is a reasonable likelihood that such agent or person will again engage, in acts or practices inconsistent with just and equitable rules of the association or conduct as a sports agent.

(4) A national sports agency association may examine and verify the qualifications of an applicant to become a member and any natural persons associated with such an applicant, in accordance with procedures established by the rules of the association.

(5) A national sports agency association may bar a natural person from becoming associated with a member, or condition the membership of a member or the association of a natural person with a member, if such associated person —

(A) does not meet such standards of training, experience, and competence as are prescribed by the rules of the association; or

(B) has engaged, or there is a reasonable likelihood such person will again engage, in acts or practices inconsistent with just and equitable rules of the association or conduct of a sports agency.

(6) A national sports agency association may examine and verify the qualifications of an applicant to become a person associated

with a member, in accordance with procedures established by the rules of the association. A national sports agency association may require any person associated with a member, or any class of such persons, to be registered with the association, in accordance with procedures established by the rules of the association.

(7) A national sports agency association may bar any person from becoming a member or a person associated with a member, if such person does not agree, to the extent permitted by law, to—

(A) supply the association with such information with respect to its relationship and dealings with the member or with the person associated with the member, as the case may be, as is specified in the rules of the association; and

(B) permit the examination of such person's books and records to verify the accuracy of any such information.

(d) DISCIPLINARY PROCEEDINGS. — (1) In any proceeding by a national sports agency association to determine whether a member or person associated with a member should be disciplined (other than a summary proceeding conducted pursuant to paragraph (4)), the association —

(A) shall bring specific charges,

(B) shall notify such member or person of such charges,

(C) shall give such a member or person an opportunity to defend against such charges, and

(D) shall keep a record of such proceeding.

(2) A determination by the association to impose a disciplinary sanction on such member or person shall be supported by a statement setting forth —

(A) any act or practice in which such member or person associated with a member has been found to have engaged, or which member or person has been found to have omitted;

(B) the specific provisions of this Act, any rules or regulations promulgated pursuant to this Act, or of the rules of the association which the association determines to have been violated; and

(C) the sanction imposed and the reasons for such sanction.

(3) In any proceeding by a national sports agency association to determine whether a person shall be denied membership, barred from becoming associated with a member, or prohibited or limited with respect to access to services offered by the association or a member of such association (other than a summary proceeding pursuant to paragraph (4)), the association shall notify such person of the specific grounds for denial, bar, or prohibition or limitation under consideration. Such person shall be afforded an opportunity for a hearing (which hearing may consist solely of the submission

of affidavits or presentation of oral arguments) regarding such specific grounds. The association shall keep a record of such proceeding. A determination by the association to deny membership, bar a person from becoming associated with a member, or prohibit or limit a person with respect to access to services offered by the association or a member of the association shall be supported by a statement setting forth the specific grounds on which such denial, bar, or prohibition or limitation is based.

(4) A national sports agency association may summarily suspend a member if the association determines that such member is in such financial or operating difficulty that the member cannot be permitted to continue to do business as a member without jeopardizing athletes, other members of the association, the public, or the association. The association shall notify the Secretary of such determination. Any person aggrieved by such summary suspension shall promptly be afforded an opportunity for a hearing (which hearing may consist solely of the submission of affidavits or presentation of oral arguments). The Secretary shall keep a record of such proceeding. The Secretary, by order, may stay any such summary suspension on the Secretary's own motion or upon application by any person aggrieved by such order, if the Secretary determines summarily or after notice and opportunity for hearing (which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that such stay is consistent with the public interest and the protection of athletes.

(e) **FIXED COMMISSIONS AND OTHER FEES PROHIBITED.** — No national sports agency association may impose any schedule or fix rates of commissions, allowances, discounts, or other to be charged by its members. A national sports agency association may require its members to disclose all such commissions, allowances, discounts or other fees to athletes or others, in such manner and form as it may prescribe.

SEC. 6. REGISTRATION AND REGULATION OF SPORTS AGENTS.

(a) **UNREGISTERED AGENT ACTIVITY PROHIBITED.** — (1) It shall be unlawful for any sports agent (other than a sports agent whose business is exclusively intrastate and who does not make use of any service of a national sports agency association) to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce entry into, any agency contract or sports contract, unless such agent is registered in accordance with subsection (b).

(2) The Secretary may, by a rule or an order the Secretary

deems consistent with the public interest and the protection of athletes, conditionally or unconditionally exempt from paragraph (1) any sports agent or class of sports agents specified in such rule or order.

(b) AGENCY TRANSACTIONS BY PERSONS NOT MEMBERS OF ASSOCIATIONS IS PROHIBITED. — It shall be unlawful for any sports agent required to register pursuant to this Act to effect any transaction regarding any agency contract or sports contract, or to induce the formation of any sports agency contract or contract, unless such sports agent is a member of a national sports agency association, and is registered pursuant to this section.

(c) AGENT MUST MEET STANDARDS OF CAPABILITY. — (1) No registered sports agent shall effect any transaction in, or induce the formation of, any agent contract or sports contract, unless such sports agent meets standards of capability, and such sports agent and all natural persons associated with such sports agent meet such standards of training, experience, competence, and such other qualifications, as a national sports agency association or the Secretary finds necessary or appropriate in the public interest or for the protection of athletes. A national sports agency association shall establish such standards by rules which may specify that all or any part of such standards shall apply to any class of sports agents and persons associated with such sports agents. [NOTE: Contrast with section 5(e)]

(2) A national sports agency association may, by rule, prescribe reasonable fees and charges to defray its costs in carrying out this subsection, including fees for any test administered by such association or under its direction. The Secretary may cooperate with national sports agency associations in devising and administering test. The Secretary may require registered sports agents and persons associated with such sports agents to pass such tests administered by or on behalf of any such association, and to pay such association reasonable fees or charges to defray the costs incurred by such association in administering such tests.

(d) ASSOCIATION REGISTRATION APPLICATION. — (1)(A) A sports agent may register with a national sports agency association by filing an application for registration. Such application shall be in writing and in such form and contain the information specified in paragraph (2) and such other information and documents concerning such sports agent and any persons associated with such sports agent as the national sports agency association or the Secretary, by rule, may prescribe as necessary or appro-

priate in the public interest or for the protection of athletes.

(B) Within 10 days after the date of filing of such application, the national sports agency association shall deliver a copy of such application to the Secretary. Within 45 days after the date of the filing of such application, the national sports agency association shall grant registration to the sports agent, or request the Secretary to institute proceedings to determine whether registration should be denied. Such proceedings shall include a notice of the grounds for denials which are under consideration and shall afford an opportunity for a hearing. The proceedings shall be concluded within 120 days after the date of filing of such application. At the conclusion of such proceedings, the Secretary shall, by order, grant or deny such registration.

(C) The Secretary shall grant such registration if the Secretary finds that the requirements of this section are satisfied. The Secretary shall deny such registration, if the Secretary does not make such a finding or if the Secretary finds that, if the application were approved, the applicant's registration would be subject to suspension or revocation under section 7(a).

(2) An application filed under paragraph (1) shall contain all of the following information:

(A) The name, home address, social security number, drivers license number (and State), and professional license numbers and (States) and date and place of birth of the applicant.

(B) The addresses where the applicant resided during the preceding 10 years.

(C) The street and number of the building or place where the business of the applicant is to be conducted.

(D) All businesses or occupations engaged in by the applicant for at least 5 years immediately preceding the date of application.

(E) The educational background of the applicant, including names and locations of schools, dates of attendance, degrees or courses taken, transcripts and faculty references.

(F) The results of any tests or examinations required by the rule of the national sports agency association.

(G) Information regarding any arrests, indictments, convictions, administrative hearings, professional license proceedings, or civil litigation involving or regarding the applicant and all persons (except bona fide clerical employees on stated salaries) who are financially interested, either as partners, associates, bonus participants or profit sharers, in the operation of the sports agency in question, together with the amount or basis of their respective interests.

(e) **SUPPORTING AFFIDAVITS REQUIRED.** — Any such application must be accompanied by affidavits of at least 2 [reputable] persons who have known or have been associated with the applicant for a period of at least five years, and who are residents of the city or county in which the applicant has resided during that period or in which the business of the sports agent is to be conducted. Such affidavits shall state that the applicant is a person of good moral character, has a reputation for fair dealing, and has no known history of civil or criminal proceedings or litigation or administrative or licensing hearings or proceedings, except as noted in the affidavit.

(f) **CHARACTER INVESTIGATION.** — Upon receipt of an application under this section, a national sports agency association shall investigate the character and responsibility of the applicant and the premises designated in the application as the place in which the business of the sports agent is to be conducted. If the association requests the Secretary to institute proceedings to determine whether registration should be denied, the association shall forward to the Secretary the results of all such investigations.

(g) **APPLICATION FOR SUCCESSOR AGENT.** — An application of a sports agent to be formed or organized may be made by a sports agent to which the sports agent to be formed or organized is to be the successor. Such application, in such form as the national sports agency association may, by rule, prescribe, shall contain such information and documents concerning the applicant, the successor, and any persons associated with the applicant or the successor, as the national sports agency association may, by rule, prescribe as necessary or appropriate in the public interest or for the protection of athletes. The grant or denial of registration to such an applicant shall be in accordance with the procedures set forth in subsection (d)(1). If the national sports agency association approves such registration, the registration shall terminate on the forty-fifth day after the effective date of such approval, unless before such forty-fifth day the successor, in accordance with such rules and regulations as the national sports agency association may prescribe, notifies the national sports agency association that it has become the applicant.

(h) **DISAPPROVAL OF PREVIOUSLY REVOKED APPLICATION.** — No application shall be approved under this section if a registration of the involved sports agent had been revoked within 3 years from the date of such application.

(i) **INSPECTION OF PREMISES OF SPORTS AGENT.** — Within 6 months after the date of approval of an application under

this section, the Secretary or, upon the authorization and direction of the Secretary, a national sports agency association of which the sports agent is a member, shall conduct an inspection of the premises where the business of the sports agent is conducted, to determine whether such business is being conducted in conformity with this Act and any rules and regulations promulgated under this Act. The Secretary may delay the inspections of any class of sports agents for a period not to exceed an additional 6 months, if the Secretary determines that such delay is necessary or appropriate.

(j) **WITHDRAWAL FROM REGISTRATION.** — Any registered sports agent may, upon such terms and conditions as the Secretary considers necessary or appropriate in the public interest or for the protection of athletes, withdraw from registration by filing a written notice of withdrawal with the Secretary. If a national sports agency association finds that any sports agent which is a member of such association has ceased to do business as a sports agent, the association may cancel the registration of such sports agent by giving appropriate notice to the sports agent and the Secretary. Such sports agent may make protest to the Secretary regarding such withdrawal, and the Secretary shall afford such sports agent the opportunity for a hearing.

SEC. 7. LIMITATIONS.

(a) **[DISCIPLINARY ACTION].** — The Secretary shall, by order, upon the recommendation of a national sports agency association or on the Secretary's own initiative, censure or place limitations on the activities, functions, or operations of any sports agent, or suspend for a period not exceeding 12 months or revoke the registration of any sports agent, if the Secretary finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such sports agent (whether before or after becoming a sports agent) or any person associated with such sports agent (whether before or after becoming a sports agent)—

(1) was convicted, within ten years preceding the date of filing of any application under section 6 or at any time after such filing, of any felony or misdemeanor which the Secretary finds (A) involved agency contracts or sports contracts (or similar arrangements involving industries other than sports) and the taking of a false oath, the making of a false statement, bribery, perjury, or conspiracy to commit any such offense; (B) arose out of the conduct of the business of a sports agent, attorney, accountant, investment advisor, entertainment agent, business agent or consultant, financial advisor, or fiduciary; or (C) involved the larceny, theft,

robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds;

(2) is permanently or temporarily enjoined by order, judgment or decree of any court of competent jurisdiction from acting as a sports agent or from engaging in or continuing any conduct or practice in connection with conducting business as a sports agent, or in connection with the establishment or conduct of any sports contract;

(3) has willfully violated any provision of this Act, any rule or regulation promulgated under this Act, any rule of a national sports agency association, or any rule of the Secretary promulgated under this Act;

(4) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of this Act, any rule or regulation promulgated under this Act, any rule of a national sports agency association, or any rule promulgated by the Secretary under this Act, or has failed reasonably to supervise (in order to prevent violations of such statutes, rules, and regulations) any person who has committed such a violation, if such other person is subject to the supervision of such sports agent or any person associated with such sports agent; or

(5) is subject to an order of the Secretary entered pursuant to this subsection which bars or suspends the right of such person to be associated with a sports agent.

For the purposes of paragraph (4), no person shall be considered to have failed reasonably to supervise any other person, if there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect (insofar as practicable) any such violation by such other person, and if such person has reasonably discharged the duties and obligations incumbent upon such person by reason of such procedures and system without reasonable cause to believe that noncompliance with such procedures and system exists.

(b) SUSPENSION OF REGISTRATION PENDING FINAL DETERMINATION OF REVOCATION OF REGISTRATION. — Pending a final determination whether any registration under this section shall be revoked, the Secretary may, by order, suspend such registration, if such suspension appears to the Secretary, after notice and opportunity for a hearing, to be necessary or appropriate in the public interest or for the protection of athletes.

(c) DISCIPLINARY ACTION. — (1) The Secretary shall, by order, upon the recommendation of a national sports agency asso-

ciation or on the Secretary's own initiative, censure or place limitations on the activities or functions of any person associated or seeking to become associated with a sports agent, or suspend for a period not exceeding 12 months or bar any such person from being associated with a sports agent, if the Secretary finds, on the record after notice and an opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has been convicted of any offense specified in subsection (a)(1) or has committed or omitted any act or omission specified in subsection (a)(3) or (4).

(2) It shall be unlawful for any person as to whom such an order is in effect willfully to become, or to be, associated with a sports agent, without the consent of the Secretary.

(3) It shall be unlawful for any sports agent to permit such a person to become, or remain, a person associated with such sports agent without the consent of the Secretary, if such sports agent knew, or in the exercise of reasonable care should have known, of such order.

