Athletes and Agents

**Introduction**

*“Like serpents they infest the gardens and groves of American sport, poised to strike at the wealth professional athletes earn in such plenty*."

 (Neff, 1987)

This past spring, at the 2014 NFL Draft, Jadeveon Clowney was selected as the number one overall pick by the Houston Texans. He later signed a four year contract with the Texans for $22.272 million (guaranteed) with a signing bonus of $14.518 million (Belzer, 2014). Clowney’s agent, Bus Cook, received over $1.1 million for negotiating the deal. With this amount of money at stake, it is no wonder that some sports agents have crossed the line in their attempts to secure the representation rights to many of today’s college athletes. To counter this, the NCAA and government officials have tried to develop ways to ensure that unethical sports agents do not take advantage of the student athlete. These methods have included stepped up enforcement and oversight of sports agents interactions with the student athlete. This increased scrutiny has been ineffective at best and has generated new discussions about how best to protect the student athlete and ensure that his/her best interests are protected while at the same time ensuring that the rights of the sports agent are not violated. Striking that perfect balance has proven elusive up to this point.

 **Issue**

The issue of how best to protect the student-athlete from unethical sport agents has been an ongoing problem for the NCAA and government officials for some time. Unethical sport agents have targeted student-athletes for years in an attempt to represent them in their potential professional sports career. Cash payments, cars, drugs, and other enticements have been offered to select student-athletes and/or their families in an attempt to curry favor with the student-athlete in an effort to secure their commitment. In some cases, this activity has led to loss of the student-athletes eligibility, sanctions against the team and the university, in addition to other adverse effects. The NCAA along with federal and state officials has enacted rules and regulations in an attempt to clean up the business of sports representation. For the most part, the results have been disappointing. In the absence of strong federal leadership, states developed and implemented their own rules and regulations which ultimately led to confusion among the student-athletes, sports agents, and government officials (Willenbacher, 2004). Since many of these states enacted different laws, it was difficult for the sports agents to comply with them and it was difficult for the NCAA and government officials to enforce them. Finally, in 2011, congress passed the Sports Agent Responsibility and Trust Act (SPARTA) in an effort to try and gain control of the situation (Staudohar, 2006). This act identified certain actions by the sport agents as illegal and provided punishment guidelines for the offenders. Unfortunately, the act failed to provide any sanctions that would deter unethical behavior on the part of some sports agents. It also failed to consolidate authority to regulate sports agents under one jurisdiction and therefore the act has failed to achieve its goal to clean up the sports agent profession and protect the student-athlete.

**Literature Review**

There are several examples of case law available which deals with the problem of sports agents and the issue of regulating their access to student-athletes. Some cases established the need for sports representation while other cases addressed unethical conduct on behalf of the sports agent.

In the case, *Los Angeles Rams Football Club v. Cannon* (1960), the court determined that the student-athlete must have professional representation in order to validate any agreements between themselves and professional sport teams. The court decided that a seasoned NFL executive had an unfair advantage over the student-athlete when it came to negotiations. This decision validated the need for professional sports agents for student-athletes. However, the courts have also taken action against those sports agents they have determined to have acted unethically.

 In the case, *Detroit Lions, Inc v Argovitz* (1984), the court determined that the sports agent had acted in an unethical manner and threw out his contract with football superstar Billy Simms. During contract negotiations on behalf of Mr. Simms, Mr. Argovitz had used his position to steer Mr. Simms to the Houston Gamblers of the United States Football League (USFL) with whom Argovitz had a financial interest. Mr. Argovitz convinced Mr. Simms to negotiate a contract with the Gamblers and once a contract had been agreed to, Argovitz failed to give the Detroit Lions (who had the draft rights to Mr. Simms) the opportunity to match the offer or make a counter offer. The court found that the sports agent had not acted in the best interest of Mr. Simms and had instead steered the player towards a situation that would have been more lucrative to the sports agent. Unfortunately, the court did not assign any punitive damages against Argovitz due to the fact that there were no regulations or laws on the books at the time. This case was critical as a catalyst in the push to enact laws and regulations to ensure that sports agents were qualified and working in the best interest of their clients. In some cases, the sports agents had not only acted in their own financial interests, they also used the threat of force to secure the commitment of the student athlete.

In the case, *United States v Walters* (1989), Norby Walters and Lloyd Bloom were indicted by a Federal District Court for their actions with student-athletes. In this case, Walters and Bloom induced the student athletes to sign representation contracts with them even though they were still amateur athletes. To get around the rules, the sports agents had the players sign post dated contracts. This allowed the players to continue to participate in collegiate athletics. Some players eventually decided to go with other representation which did not sit well with Walters and Bloom. The two sports agents used physical threats and intimidation to coerce student-athletes to honor their postdated contracts. Walters and Bloom were eventually indicted on mail fraud, conspiracy, and violations under the Racketeer Influenced and Corrupt Organizations Act (RICO). Both were found guilty and Walters was sentenced to five years in prison while Bloom received a three year sentence. Their actions were so horrendous that many states began enacting their own laws regulating the activities of sports agents. One state that enacted their own laws to the deal with the situation was Florida who actually enacted laws with teeth.

In 1995, a Las Vegas businessman named Raul Bey was sentenced to a year in jail and a $2,000 fine after pleading no contest to failure to register as a sports agent in Florida (Corgan, 2012). In 1993, Bey had a partner travel to Florida State University to try and persuade some of the football players to sign with him for representation. Bey and his partner had tried to entice the players through the use of improper benefits (cash, merchandise, jewelry, etc.). Once this was uncovered, Bey was charged under the Florida sports agents’ law and found guilty of failing to register. After the Bey case, the Florida legislature started requiring that all sports agents (licensed to practice in the state) must take a written test to ensure that they were aware of the laws and regulations covering their actions (Closius, 1999). All of these state requirements led to confusion throughout the industry which demanded federal action to clarify the situation. In the 1980’s, a bill was floated in Congress (The Professional Sports Agency Act of 1985) which attempted to address the issue of unethical conduct on the part of sports agents (Powers, 1994). The bill sought to establish standard requirements and registration for sports agents at a federal level which would have eliminated the confusion of numerous and different state laws and regulations. Proponents of the bill contended that since the sports agent/student athlete relationship often occurred across state lines, therefore federal authority should be established under their interstate commerce jurisdiction. Unfortunately, the bill never made it to the floor of Congress for a vote. It died in committee when it failed to get a sponsor. In some cases, even though the student-athlete never actually signed with the sports agent, preliminary interaction between the two ultimately cost the player their eligibility.

In *Banks v NCAA* (1990), a player sued the NCAA to have his football eligibility reinstated. The player had chosen to declare for the draft even though he had another year of eligibility remaining due to his concern over a previous injury. After talking with a family friend, who also happened to be a sports attorney, Banks decided that he would most likely be drafted if he came out early. He eventually decided to declare for the draft and have the family friend represent his interests. In order to officially declare for the draft, Banks signed documentation waiving his remaining year of eligibility. As a matter of fact, he signed it twice due to a clerical error on the original document. When he was not selected in the draft, Banks decided he wanted to go back to college and utilize his remaining year of eligibility to increase his draft stock. Unfortunately for Mr. Banks, he had signed away his remaining eligibility and retained a sports agent which automatically forfeited any eligibility he had remaining according to NCAA bylaws. The courts sided with the NCAA and refused to force the NCAA to reinstate Mr. Banks. In order to stop this type of scenario from happening again, the NCAA in conjunction with the NFL, have come up with a solution that allows NFL personnel to evaluate the players draft potential without declaring for the draft and/or signing with a sports agent. This allows the player to make and educated decision about his/her future.

The common thread that runs through many of the plaintiffs cases is their ascertain that the NCAA is in violation of the Sherman Anti-Trust Act of 1890 which, in Section 2, forbids the establishment of monopolies garnered through the use of unfair power (Edelman, 2013). The plaintiffs contended that the NCAA is itself a monopoly due to the fact that they have no competition. So far, all of the courts have ruled against that argument and the NCAA has been able to maintain their autonomy and develop those rules and by laws they feel are necessary to protect the student-athlete.

Another common thread is that many of these agents participated in the act of tortious interference with contract. Tortious interference with contract is where the agent intentionally damages the client’s potential contractual or business relationships with others. This can be applied in two ways to these situations. One way is that the unethical sports agent has irreparably damaged the “contract” between the student athlete and the NCAA. When a player commits to play for a school, they do so with the understanding that they will remain in an amateur status and that failure to do so will cause them to lose their eligibility. This “contract” between the player and the NCAA is irreparably harmed when the student athlete signs with a sports agent and is compensated. The other way that tortuous interference comes into play is when the sports agent uses their influence to steer their clients to particular teams even when it is not in the client’s best interest.

**Discussion**

 A coordinated approach to this problem is a necessity. The approach of using state and organizational regulations to provide the proper oversight to sports agents has been proven to be ineffective at best. This problem requires a national solution in the form of legislation that would create a governing body which would provide oversight, certify, and license all sports agents. They would also be able to punish sports agents who run afoul of the rules and regulations through revocation of certification, stripping of the license, and other punitive measures. Forcing potential sports agents to demonstrate the knowledge and experience required to effectively represent their clients along with mandating that they carry liability insurance in case they fail to represent their client’s best interest would go a long way in cleaning up the system. Licensing and certification requirements would also ensure that only certified sports agents could legally negotiate lawfully binding deals on their client’s behalf. This would eliminate the incentive for an unethical sports agent since whatever deal they negotiate would be invalid from the start. This would also allow potential clients to access a federal database of certified sports agents from which they could choose from. It would also be beneficial to the NCAA who would be able to identify legitimate sports agents from the predators. With this knowledge, the NCAA would have a better chance of monitoring sports agents and student athlete’s interaction and could take a proactive approach to enforcement of their bylaws. These steps would also allow the sports agents to police their own. Sports agents in good standing would more than likely be happy to identify those who would look to take advantage of student athletes since in essence they would be tarnishing the reputations of legitimate sports agents and taking business away from them.

 **Conclusion**

Like any other business entity, sports agents should be subject to certain limitations and restrictions when dealing with student-athletes. It is imperative that the NCAA in conjunction with government agencies establish clear rules and regulations that leave little doubt as to what is and what is not acceptable. In addition, the establishment of uniform and behavior altering penalties to punish those who do not follow the rules are critical to ensuring sports agents follow the rules and that ethical standards are adhered to. Failure to address the situation will only lead to continued problems for student-athletes, the NCAA, and legitimate sports agents.

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