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So You Want to Be a Sports Lawyer, or Is It a Player Agent, Player Representative, Sports Agent, Contract Advisor, Family Advisor or Contract Representative

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SO YOU WANT TO BE A SPORTS LAWYER, OR IS IT A PLAYER AGENT, PLAYER REPRESENTATIVE, SPORTS AGENT, CONTRACT ADVISOR, FAMILY ADVISOR OR CONTRACT REPRESENTATIVE?

DEAN ROBERT P. GARBARINO*

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Garbarino: So You Want to Be a Sports Lawyer, or Is It a Player Agent, Playe
I. Introduction

As sports has grown into a multi-billion dollar industry, there has been an explosion in the number of lawyers who specialize in sports law. There has been an understandably significant increase in the number of persons desiring to represent professional athletes. This increase can be explained by the high-profile status of sports and the tremendous salaries of professional athletes.¹ The

¹ The fact that 273 major league baseball players earned a salary of one million dollars or more as of April 1993 and agents usually receive four percent of the player's salary as their fee is one cause of the dramatic growth of persons desiring to represent athletes. Phils Are Pikers in Millionaire Set, PHILA. INQUIRER, Dec. 15, 1993, at D5; see Hal Bodley, Media No Longer Avert Eyes from Poor Behavior, USA
attractiveness of being a sports agent has lead to tremendous competition in the quest to secure an athlete as a client.²

Although there is heated competition to represent professional athletes, there is only a small number of agents representing the majority of players.³ In light of these numbers and with relatively few players in the potential client pool, the competition to represent players is vigorous and at times unprincipled. Another factor that contributes to the competition is the fact that attorneys often have financial difficulty sustaining practices that are based solely on the representation of a few professional athletes in contract negotiations. Often an attorney will need a substantial number of professional athlete clients in order to achieve financial stability or success.⁴ Fortunately, a lawyer who specializes in sports law is not limited to player representation in contract negotiation; there are many varied opportunities for a sports lawyer. However, the distinctions between a sports lawyer and a sports agent are often hazy. In order to understand the differences, it is essential to first define the concept of sports law and to discuss the duties of sports representatives.


2. Similar to the approximately 6,318 to 1 long-shot odds of a high school football player becoming a professional football player, prospective agents in the NFL must compete with the nearly 1,600 agents who are registered with the National Football League Players' Association (NFLPA). See Dan Margolies, Sports Agent Expects Best from Athletes, KAN. CITY BUS. J., Dec. 3, 1993, at 3; David Salter, Playing Ball with Colleges, USA WEEKEND, Jan. 23, 1994, at 8 (stating there are nearly 950,000 high school football players and only 150 per year make NFL). Those 1,600 registered agents seek to represent approximately 1,300 NFL football players. Margolies, supra, at 3.

3. For example, over 22 NFL quarterbacks are represented by agents Leigh Steinberg and Jeffrey S. Moorad. Barry Horn, The Deal Maker, DALLAS MORNING NEWS, Aug. 7, 1993, at B1 (reporting that Steinberg and Moorad represent over 60 NFL players in total); Joel Kaplan, "The Most Fun They've Ever Had": Lawyers in the World of Pro Sports, A.B.A. J., Apr. 1992, at 56. Leigh Steinberg usually represents the quarterbacks, while his partner, Jeff Moorad, represents a number of Major League Baseball players. Horn, supra, at B1; Leonard Shapiro & Ken Denlinger, With Big Bucks the Name of the Game, Agents Become Big-Time Players of Let's Make a Deal, WASH. POST, Aug. 30, 1992, at D1.

4. The late Bob Woolf, a Boston attorney, is considered to have been the pioneering sports agent. Alan Dershowitz, A Superstar Lawyer to the Superstars, BUFF. NEWS, Dec. 9, 1993, at 3. Bob Woolf represented an impressive group of professional athletes. Id.
II. WHAT IS SPORTS LAW?

Sports law is an amalgamation of many legal disciplines, ranging from antitrust law to tax law. These disciplines are applied to facts arising from a sports context and are supplemented by case law nuances and a growing body of state and federal statutes specifically applicable to sports. Sports law, with its wide variety of legal aspects, probably encompasses more areas of the law than any other legal discipline. Sports law is also a dynamic field of the law with new issues arising on an almost daily basis due to court decisions, new legislation and regulations. Sports law's breadth is exemplified by the following issues.

A. Collective Bargaining Agreements

Presently athletes are represented by unions in the four major professional sports: baseball, basketball, football and hockey. Collective bargaining agreements in the context of professional sports are contracts between management and the players' union which govern the working relationship between the two parties and the players. These agreements contain a plethora of rules, regulations and contract provisions. The following represents some of the issues raised by and the nuances of collective bargaining agreements in professional sports.


The standard contracts between players and their teams have been the subject of considerable discussion. Standard contracts include provisions on the length of the contract, publicity and group licensing programs, compensation, physical condition, injury, skills, performance and personal conduct criteria, termination, in-
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jury grievance, integrity of the game and other conditions to the engagement of the player by the team. Union regulations governing player-agent relations in each sport dictate required terms of each player-agent contract, including mandatory provisions concerning circumstances under which the agent is paid, minimum player salaries, maximum agent fees and charges, right of termination by the player and other restrictions on the agent. The sports representative must carefully review the rules and regulations of each sport, as each sport has distinct nuances.

2. Merchandising and Licensing Rights

The marketing of leagues, teams and players is one of the most lucrative areas in sports. Marketing is accomplished by entering into group contracts that allow merchandisers to purchase the limited right to use the likeness or name of the league, team or player. Merchandising and licensing rights can create confusing and conflicting interests between the league, team, union and player regarding the use of licensing rights. Income from licensing rights is a major source of funding for several union activities; thus the union has more than a passive interest in overseeing licensing rights. A suit brought by the National Football League Players' Association (NFLPA) against four NFL players who sold their licensing rights to a company controlled by NFL owners, allegedly in breach of the players' contract with the NFLPA, exemplifies the importance of licensing rights. Issues may also arise in the area of skills. These clauses have been the subject of litigation and grievances as players challenge the limits of management's discretion in determining when the invocation of the skills clause is appropriate. See Peterson v. Kennedy, 771 F.2d 1244, 1248-49 (9th Cir. 1985) (discussing grievance filed by player who was terminated pursuant to skills clause); Hennigan v. Chargers Football Co., 431 F.2d 308 (5th Cir. 1970); Houston Oilers v. Neely, 361 F.2d 36 (10th Cir. 1966).


player endorsements, personal appearances and other marketing and promotional activities. The sports representative should be aware of the player’s pre-existing obligations before entering into any licensing or marketing agreements. Policies must also be made regarding the propriety of certain product endorsements and personal appearances.

3. Standard Form Contracts

The various players’ unions have standard form contracts governing the relationship between the player and agent. These contracts must be filed with the respective labor organization. The union derives its authority to regulate and certify representatives from its certification as the exclusive bargaining agent for the players. The union then delegates to the athlete or the athlete’s representative the authority to act in a limited capacity as the union’s agent. The union’s power is further buttressed by its concern for protecting the integrity of benefits obtained in collective bargaining.

4. Scope of a Commissioner’s Authority

The scope of a commissioner’s authority to determine what conduct is detrimental to the sport is governed by the applicable league constitutions, related constituent documents and collective bargaining agreements. The strength or weakness of a sport’s commissioner is thus determined by those documents and interpretations of the provisions in the documents. For example, the Commissioner of Major League Baseball’s authority to act in the “best interests of baseball” has historically been used for a broad array of actions. Baseball commissioners have banned the majority owners of teams from participating in the team’s business and sus-
pended players for illegal drug use\textsuperscript{17} and gambling.\textsuperscript{18} The Commissioner has even barred a majority owner from trading the key players of his Major League Baseball (MLB) team.\textsuperscript{19} However, in 1994, the MLB owners stripped the Commissioner of the power to act in the "best interests of baseball."\textsuperscript{20} Another consideration in evaluating the scope of a commissioner's authority is the procedure or due process applicable in an action where a commissioner has deemed a player or team official's actions detrimental to the sport.\textsuperscript{21}

\textsuperscript{17} Several Commissioners have issued drug policies based on the power associated with the "best interests" clause. They suspended 17 players from 1980 to 1991 for involvement with illegal drugs. E.g., Hal Bodley, Vincent Tells Nixon to Sit: Atlanta Star out 60 Days in Drug Violation, USA TODAY, Sept. 17, 1991, at C1, C2. In 1988, David Stern, the National Basketball League (NBA) Commissioner, and the National Basketball Association Players' Association (NBPA) agreed upon a comprehensive anti-drug program. Laurence M. Rose & Timothy H. Girard, Drug Testing in Professional and College Sports, 36 Kan. L. Rev. 787, 797-802 (1988); Yasser, supra note 12, at 491. Commissioner Stern could not have unilaterally imposed a drug program because the NBA Commissioner has a narrowly defined authority.

The NFL, like MLB, has not been able to reach any broad accord between management and the players' union on an anti-drug program. NFL Commissioners have issued substance abuse testing policies dating as far back as 1971. However, these policies have been successfully attacked in several arbitration proceedings brought by the NFLPA. David J. Sisson & Brian D. Trexell, The National Football League's Substance Abuse Policy: Is Further Conflict Between Players and Management Inevitable?, 2 Marq. Sports L.J. 1, 11 (1991).


\textsuperscript{19} Finley v. Kuhn, 569 F.2d 527, 535 (7th Cir.), cert. denied, 439 U.S. 876 (1978) (interpreting "best interests of baseball" clause broadly). In 1976, Commissioner Bowie Kuhn forbade Oakland A's owner Charles O. Finley from trading the best players on his team. Id. at 531. The Seventh Circuit upheld Commissioner Kuhn's action. Id.

Another example of the Commissioner's broad exercise of authority is the Commissioner's rule precluding minor league baseball players from chewing tobacco. Mike Jensen, Baseball Finds It Hard to Snuff a Bad Habit, Phila. Inquirer, Sept. 4, 1991, at C1, C4. However, the Commissioner's exercise of authority does not always prevail. Sarah Nordgren, Judge Sides with the Cubs in Realignment Battle, Phila. Inquirer, July 24, 1992, at C1 (power to act in "best interests of baseball" does not override National League Constitution).


\textsuperscript{21} See, e.g., Susan Gallagher, Steve Howe Suspended for 7th Time, Phila. Inquirer, June 9, 1992, at C1. On seven occasions, baseball player Steve Howe was suspended by several different MLB Commissioners for violating MLB's anti-drug policies. Id. However, arbitrator George Nicolau, in a proceeding instituted by the MLB Players' Association, reversed Howe's lifetime suspension on the grounds that Howe was addicted to drugs and could not control that addiction, therefore, a suspension was too punitive. Jack Curry, Arbitrator Puts Howe back in Major Leagues, N.Y. Times, Nov. 18, 1992, at B7.
B. Workers' Compensation

While most employees have extensive workers' compensation laws which protect them in the event of a job-related disability, there are different protections for and issues relating to workers' compensation and professional athletes. For example, in 1991, a star professional quarterback was awarded workers' compensation benefits for an injury that occurred during off-season training at the quarterback's home.22 In another trend, workers' compensation claims filed after a professional player retires are growing at a rapid rate. These claims are likely to substantially increase the workers' compensation premiums paid by professional teams for insurance.23

A related issue is whether a college athlete, injured while participating in an intercollegiate sport, is eligible for workers' compensation. An essential ingredient for workers' compensation eligibility is that the injuries must be sustained by an employee in the course of employment. Several courts have held that, for workers' compensation purposes, an athletic scholarship is an employment contract and, therefore, workers' compensation may be available to the "employee" student-athlete.24

C. Sports-Related Torts

Tort actions, generally for battery or negligence, arise in a variety of sports contexts and are, therefore, included in the duties of sports lawyers. The plaintiffs in these tort actions may include spectators, college athletes and professional athletes. The defendants

22. W. Dale Nelson, Redskins Must Pay Williams a Lifetime Stipend, PHILA. INQUIRER, May 24, 1991, at D1; see also Yasser, supra note 12, at 3-12 (discussing athletes and their ability to collect workers' compensation).
23. Kaplan, supra note 3, at 59; see Greenberg, supra note 5, at 3, 6.
24. Some states have specifically excluded college athletes as a class from workers' compensation coverage. See Rensing v. Indiana St. Univ. Bd. of Trustees, 444 N.E.2d 1170, 1174-75 (Ind. 1983) (rejecting claim that football scholarship created employer-employee relationship); Coleman v. Western Mich. Univ., 336 N.W.2d 224, 228 (Mich. Ct. App. 1983) (treating athletic scholarship as wages, but rejecting existence of employer-employee relationship); see also Greenberg, supra note 5, at 3, 6. But see VanHorn v. Industrial Accident Comm'n, 33 Cal. Rptr. 169, 172-74 (Cal. Ct. App. 1963) (ruling football player was "rendering services," and thus employed by university); University of Denver v. Nemeth, 257 P.2d 423, 430 (Colo. 1953) (awarding workers' compensation benefits to football player who also worked for university in athletic department). Also, in 1993, the Texas Workers' Compensation Commission ruled that a scholarship football player is a university employee and must be paid workers' compensation if he is injured. Douglas Lederman, Texas Panel Awards Workers' Compensation to Injured Athlete; First Such Case in the 1990's May Have Broad Ramifications, CHRON. HIGHER EDUC., Apr. 7, 1993, at A33-34.
range from the tortfeasor to management under theories of respon-
deat superior.

1. Liablility for Fan Injuries at Athletic Contests

Negligence actions are often brought for spectator injuries caused by the normal actions of the athletic participants. In the context of professional hockey, the issue may involve whether the owner of the sports facility, the owner of the home team or the hockey player is liable to a fan who is hit by an errant puck in the area outside of the glassed-in section of the stands. While regular tort principles are applied, courts have split in determining whether the defense of assumption of the risk is available. Courts located in cities in which the sport of hockey has been established for a long time tend to disallow recovery, provided there is sufficient screening in the dangerous area. In cities where hockey is a relatively new sport, courts have tended to conclude that inexperienced spectators cannot be held accountable for knowledge of the game’s dangers and do not, as a matter of law, assume the risk.

2. Educational Malpractice

In the field of education, the issue has arisen whether a former college athlete with negligible educational skills may sue the college based on theories of negligent admission, educational malpractice and negligent infliction of emotional harm. These causes of action are based on the college’s alleged failure to adequately educate the

25. Under this approach, when hockey is played in an old hockey franchise city, the fan consents to what could otherwise be a tort. The fan is assumed to know the concomitant risks of attending a hockey game. YASSER, supra note 12, at 405 (citations omitted).

26. An Illinois appellate court in 1992 considered an analogous situation where a child was hit in the face with a foul ball at a baseball game. Yates v. Chicago Nat’l League Ball Club, Inc., 595 N.E.2d 570, 573 (Ill. App. Ct. 1992). The injured child was struck by a batted ball while sitting behind home plate. Id. at 573. The issue was whether there were adequate seats behind the screen for persons wanting a safe seat. Id. at 578-79. In the past, baseball teams were protected by the National Pastime defense which provided that a spectator at a baseball game was presumed to know and assume the risk of a batted or thrown ball in the area outside the screen behind home plate, provided the screen covered the most dangerous part of the grandstand and provided there were sufficient seats in the screened area for those who might reasonably be anticipated to require a protected seat for a typical game. Id. at 578; see also Coronel v. Chicago White Sox, 595 N.E.2d 45, 47 (Ill. App. Ct. 1992). The Court in Yates refused to apply the National Pastime defense and held for the injured child. Yates, 595 N.E.2d at 578. In response to the Yates decision, the Illinois legislature passed legislation in late 1992 protecting baseball teams from suits by fans injured by foul balls or broken bats. Jack Carey, Pay Due, USA TODAY, Sept. 25, 1992, at C1.
athlete while allegedly exploiting his athletic abilities. The Seventh Circuit held that the lower court can pass on whether the college breached an alleged contract to provide tutoring and other services needed to educate the athlete but disallowed the claims for educational malpractice, negligent admission and negligent infliction of emotional harm. Although the case was settled, the Seventh Circuit's holding clears the way for similar litigation, thereby exposing universities to liability for providing a substandard education.

3. Duty and Required Standard of Care of a Team Physician Treating Scholarship Athletes

In light of the several recent deaths of athletes during competition, team physicians are exposed to liability for allowing the athlete to participate despite a known health condition. Courts have had to determine the appropriate duty and standards of care to which a team physician must conform when the physician decides whether to allow a college or high school athlete with a health problem to participate. Courts will also have to address whether a waiver of liability by an athlete's parent or legal guardian is enforceable where the team physician will not authorize participation and the athlete insists on playing.

D. Tax-Related Issues

Because there are significant revenues and salaries in sports, tax law is also an important component of a sports law practice. Beyond a sports lawyer's involvement in an athlete's finances, sports lawyers must be aware of tax issues. IRS attempts to impose more taxes on sports organizations and personnel have raised several issues which are dynamic and unresolved. There are at least three areas in which taxation issues have or will be raised: 1) player's compensation; 2) tax status of teams and 3) college revenues.

27. Ross v. Creighton Univ., 957 F.2d 410, 417 (7th Cir. 1992) (allowing ex-basketball player to maintain suit against Creighton for failure to allow him to participate in and benefit from University's academic program).

28. Id. Creighton University announced that the case had been settled for $30,000, with Creighton University admitting no liability. Greenberg, supra note 5, at 6; Jack Carey, Contract Breach?, USA TODAY, Mar. 3, 1992, at C1.

29. YASSER, supra note 12, at 412. The University of Texas reinstated a baseball player suffering from a heart condition under threat of suit by the player's parents. Rick Lawes, Larkin Gives Longhorns Heart to Win, USA TODAY, June 1, 1992, at C1, C2. The parents argued that the student could die from the condition while sitting at home or playing baseball and they agreed to sign waivers and a full release. Id. at C2.
1. **Taxing of Players’ Compensation**

Many teams defer substantial amounts of a player’s compensation. However, the taxation of deferred income in the present fiscal year is subject to various tax criteria and is not completely resolved. Another issue is whether there is any present tax liability for contract commitments to provide insurance coverage for the player’s benefit or to provide favorable loans that extend over the term of the professional contract.

In light of several economic downturns, municipalities have sought creative ways to expand their revenues. Several cities have begun to collect nonresident wage taxes from visiting athletes.\(^\text{30}\) This effectively ends the system of not taxing visiting athletes and creates substantial accounting problems for professional athletes. These are some of the issues that sports lawyers must track in order to effectively represent a player.

2. **Tax Status of Professional Teams**

Professional teams are often purchased and owned as a limited partnership or have S corporation tax status.\(^\text{31}\) An issue related to the tax status of teams is whether the individual partners or shareholders of the team should receive the benefit of full amortization on the value allocated to player contracts. This minimizes taxable income to the partners or shareholders, while at the same time leaving them more than adequate cash flow because such amortization is a non-cash expense item. An affirmative answer may indicate that a team is operating at a loss for tax purposes and, at the same time, “throwing off” cash available for distribution.\(^\text{32}\)

3. **Taxing College Revenues**

There have been several attempts by the IRS to tax corporate sponsorship of college football bowl games on the theory that the publicity the corporation receives from the sponsorship is unrelated to the bowl organizer’s tax exempt purposes.\(^\text{33}\) If the corpo-
rate bowl game sponsorships are taxable, two results would be likely to occur: 1) bowl game sponsorships by corporations would decrease and 2) corporations would attempt to deduct the sponsorships under the theory that the sponsorships are an advertising expense.34

The IRS has not yet fully resolved the issue of whether elaborate college gift shops, the sale of advertising space in college football game programs or booster donations for special seats are “unrelated businesses” rather than “educational endeavors.”35 If the business activity is an “educational endeavor,” the college is exempt from taxation and the donor in the case of a booster donation receives a gift deduction. If the business activity is an “unrelated business” venture, the money earned by the college is taxable income and there is no corresponding gift deduction.36 The magnitude of the “unrelated business” funding issue could jeopardize the nonprofit tax status of the college or cause the college to become a private foundation with all the ramifications of the private foundation status. Colleges have shown considerable lobbying muscle in resisting these IRS efforts.

In a related issue, high school athletes, presumably amateurs and unpaid, may have tax liabilities associated with college recruiting of which they may not be aware. The Tax Reform Act of 1986 provided that university payment of travel costs for a recruiting visit by a high school athlete is taxable income to the athlete.37 Likewise, the room and board portion of an athletic scholarship is taxable income to the athlete.38

E. Antitrust Issues in Professional Sports

Professional sports leagues have faced considerable antitrust litigation. Although leagues have been challenged by competitors

Sponsorship Income, For Rec., Dec. 1993-Jan. 1994, at 3 (discussing proposed IRS Regulations on taxation of corporate donations to college bowl games); Matt Yancey, College Bowls Seek Advertising Tax Break, PHILA. INQUIRER, July 9, 1993, at D2. The IRS will tax contributions made to bowl games if the promotion includes an urge to buy, an endorsement, a price or a comparison with other products. Id. 34. The IRS has proposed differentiating between recompense for advertising and acknowledgements of sponsorships. IRS Proposes New Approach for Sponsors, NCAA News, June 27, 1992, at 1.


36. Id.; Glen Macnow, A New Set of Rules Is Changing Game of Corporate Sponsorship, PHILA. INQUIRER, Feb. 25, 1992, at E1. According to Thomas L. Gowen, Chairman of the U.S. Pro Indoor Tennis Tournament, the IRS guidelines may end the relationship between business and nonprofit sporting events. Macnow, supra at E1.


38. Id.
under monopoly theories, most of the challenges and problems arise from restraining labor pacts. The courts, while reluctant to expressly abandon the "per se" doctrine which condemns restraining labor agreements, have preferred to apply the "rule of reason" in deciding these cases.39

1. The NBA Salary Cap

The National Basketball Association has a monetary cap on the aggregate player salary that each team may pay.40 The cap effectively limits the salary that may be paid to a drafted or contract renewal player.41 The 1992 Collective Bargaining Agreement between the NFL and the recertified NFLPA includes a cap similar to the NBA's salary cap.42 The NFL's salary cap differs from the NBA's cap, in that the NFL has a separate formula for rookies.43 Although these salary caps may appear to violate antitrust laws, the statutory and case law labor exemptions to antitrust laws44 protect these caps from antitrust challenge because they are part of the collective bargaining agreements between union and management. However, as occurred in the NFL, if the NBPA elected to become decertified as the players' union, the labor exemption would not apply to the NBA cap.45 When the NFLPA decertified in 1991, the NFL took the position that agents would have antitrust problems exchanging salary and other financial data and in devising a joint strategy for determining the salaries for early round draft selections. The United States District Court for the District of Minne-
sota rejected the NFL’s argument and found that the agents violated no antitrust laws. 46

2. NFL Antitrust Litigation

Throughout its history the NFL has restricted the movement of players within the league. Perhaps the most restrictive provision stated that “a drafted player who does not sign with the NFL club drafting him and who chooses to play for another professional football team cannot sign with an NFL club other than the drafting team for four years.”47 This and related provisions restricting the right of athletes to switch clubs and the NFL’s rigid free agency rules were the subject of a series of suits brought against the NFL by several groups of players.48 The NFLPA, although decertified during part of the litigation, funded and supported the players’ litigation.49

The principal suit50 was a successful challenge to the validity of the NFL’s Plan-B free-agent system which was unilaterally adopted by management in 1989.51 Considering the short playing life of the average NFL player, the four year restriction was tantamount to a life-time restriction on player movement. The jury verdict and subsequent settlement of the litigation created a form of free agency and a salary cap. These developments have had a significant impact on players’ salaries, the revitalized NFLPA, the teams and the competitive structure of the NFL. The new system has resulted in substantial increases in players’ salaries and related benefits.52

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47. YASSER, supra note 12, § 4.04(1), at 4-21.


51. Id. at 875. Under Plan B each team was allowed to protect 37 of its players each season. The unprotected players became free agents and could offer their services to other teams from February 1 to April 1, after which the players' rights reverted to their original team. Id. at 875; see Gordon Forbes, Labor Front Gets Shot of Optimism, USA TODAY, May 21, 1992, at C3; Glen Macnow, Players' Case Looks Strong as NFL Trial Takes Break, PHILA. INQUIRER, July 12, 1992, at G1.

52. Cf. McNeil, 790 F. Supp. at 875. In finding for the players, the jury concluded that the Plan B right of first refusal had a substantially harmful effect on
another significant decision, a jury awarded the former owner of the New England Patriots football team 114 million dollars and another 10 million dollars for legal fees resulting from NFL restrictions on the sale and ownership of NFL teams. The decision may signal the end of the NFL rule against corporate ownership of an NFL team and issuance of publicly traded stock. 53

3. Major League Baseball's Exemption from Antitrust Laws

In 1922, the Supreme Court determined that Congress had no intention of including professional baseball within the scope of antitrust laws. 54 The Supreme Court's decision has continually been upheld over the years, despite a change in the fundamental nature of baseball. 55 While baseball has a unique exemption from the antitrust laws, it has had the most extreme salary adjustments of any major sport, particularly in the application of its salary arbitration proceedings. 56 However, baseball's antitrust exemption has been

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55. Portland Baseball Club, Inc. v. Kuhn, 491 F.2d 1101, 1103 (9th Cir. 1974) (exempting professional baseball from reaches of antitrust laws). Additionally, baseball's system of reserving players was not within the reach of the federal antitrust laws. See Flood v. Kuhn, 407 U.S. 258, 282-84 (1972); Toolson v. New York Yankees, Inc., 346 U.S. 356, 357 (1953). The Flood Court reasoned that congressional inaction evidenced Congress' intent to retain baseball's judicially created exemption to the antitrust laws. Flood, 407 U.S. at 282-84. The vitality of the Flood Court's reasoning is jeopardized by recent attempts by U.S. Senator Howard Metzenbaum and others to remove the exemption and by baseball's movement away from an innocent and revered game to a business based on revenue projections and profit margins. In 1994, Senator Metzenbaum renewed his attack on baseball's exemption shortly after the owners removed the Commissioner's power to act in the "best interests of baseball." Metzenbaum Criticizes Owners, Plain Dealer, Feb. 15, 1994, at D3. Congress will hold hearings on the exemption during its 1994 term. Id.

56. The salary adjustments are a testament to Marvin Miller, a union economist and founding Executive Director of the Major League Baseball Players Association. Miller out-negotiated management representatives and used labor law to circumvent the exemption and the application of the reserve clause which tied a player to one team. See generally Marvin Miller, A Whole Different Ball Game, THE SPORT AND BUSINESS OF BASEBALL (1991) (recounting Miller's experiences as longtime head of MLBPA).
attacked on many occasions and in a 1993 case involving rejection of a Florida group's purchase of the San Francisco Giants baseball franchise, the United States District Court for the Eastern District of Pennsylvania held that MLB's antitrust exemption is limited solely to the reserve clause. The suit is now pending and could result in a precedent-setting decision that would alter the structure of MLB.

Baseball's antitrust exemption also applies to its governance of minor league baseball. The minor leagues are extensively regulated, to the point where players' salaries are standardized and free player movement between teams is nonexistent. The Major League Baseball Players' Association (MLBPA) does not represent minor league players, therefore, minor league players must seek a substantial signing bonus or promotion to the major leagues as the vehicle for receiving significant compensation. In another example of a rule in baseball that has antitrust implications, a high school or college baseball player subject to the draft was restricted to bargaining only with the drafting team for a period of one year. One attempt to change the rule was made in 1992, but it failed.

F. NCAA Regulations

The National Collegiate Athletic Association (NCAA) is the primary governing body of intercollegiate athletics and as such it has promulgated a plethora of regulations which are highly complex and minute in detail. Major areas of concern with the NCAA's rules include: 1) the complex and strict rules of amateur eligibility; 2) the implications on procedural due process by the application of the NCAA's rules; 3) the Title IX gender equity provisions' effect on university athletic programs and 4) the validity of the NCAA's drug-testing program.

58. The major league teams have, by agreement, established for each minor league the monthly salary range for players. Yasser, supra note 12, at 151 (citations omitted); Jeffrey S. Moorad, Negotiating for the Professional Baseball Player, ch. 5, §§ 5.03, 5.06-08 (Release #2, 2/91), in LAW OF PROFESSIONAL AND AMATEUR SPORTS (1992).
59. In 1992, the exclusive draft rights assigned to a given team were unilaterally extended by the owners to five years, but the provision was later stricken by an arbitrator's decision. The MLBPA successfully challenged in arbitration the new five year draft rule for amateur players as a violation of the Collective Bargaining Agreement. The arbitrator concluded that the unilateral extension of the rule violated the collective bargaining agreement between management and the MLBPA. Hal Bodley, Baseball, USA TODAY, July 20, 1992, at C6.
1. **Eligibility for Professional Drafts**

NCAA regulations allow a high school or college baseball player to be entered in the MLB draft by a professional team without jeopardizing college eligibility, providing the player does not engage an agent or sign with a professional team. In contrast, a college football player who declares for the draft or secures an agent, loses intercollegiate athletic eligibility even if the player never signs a professional contract.60

In 1992, the NCAA liberalized its draft rules by permitting college basketball and football players to request information concerning their market value and by allowing the athlete, the athlete’s legal guardian or an NCAA sanctioned professional sports panel to negotiate with a professional team without loss of the athlete’s amateur eligibility.61 In 1994, the NCAA further liberalized its draft rules by allowing college basketball players to declare for the draft and be drafted without losing eligibility.62 If the athlete decides to return to college within thirty days of the draft, there is no loss of eligibility.63 College football players, unlike their basketball playing counterparts, cannot test the draft waters.64 The NFL does not permit negotiations with athletes who are not entered in the draft.

2. **Procedural Due Process**

The NCAA’s enforcement of its regulations has been challenged on the grounds that the NCAA does not accord due process when taking punitive action against a member institution or when it recommends a member take punitive action against a coach or player.65 The Supreme Court addressed this due process issue in

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60. 1992-93 NATIONAL COLLEGIATE ATHLETIC ASS’N DIVISION I MANUAL, §§ 12.2.4, 12.3.4 [hereinafter 1992-93 MANUAL]; Moorad, supra note 58, § 35.02; see Banks v. NCAA, 746 F. Supp. 850, 861-63 (N.D. Ind. 1990), aff’d, 977 F.2d 1081 (7th Cir. 1992), cert. denied, 113 S. Ct. 2336 (1993); Gaines v. NCAA, 746 F. Supp. 738, 743-45 (M.D. Tenn. 1990) (sustaining legality of NCAA rules, specifically §§ 12.1.1, 12.2.4 and 12.3.1).

61. 1992-93 MANUAL, supra note 60, § 12.2.4.3. A student-athlete in any of the three major sports who retains an agent will lose amateur status. Some contact with a lawyer is permitted, unless the lawyer is acting as the athlete’s agent.


63. Id.


65. See NCAA v. Tarkanian, 488 U.S. 179, 199 (1988) (holding NCAA’s sanctions were not product of state action, thus no Fourteenth Amendment due process protection owed to Tarkanian).
**NCAA v. Tarkanian.** The Court held that Tarkanian, the controversial and highly successful former men's basketball coach at the University of Nevada-Las Vegas, was not entitled to Fourteenth Amendment due process protection during an NCAA investigation. At issue in *Tarkanian* was whether the NCAA was a state actor, thereby subjecting its actions to the due process clause of the Fourteenth Amendment. In holding that the NCAA was not engaged in state action and, therefore, not subject to the due process clause, the Supreme Court further affirmed the NCAA's broad regulatory power.

Some states have recently enacted laws requiring the NCAA to provide due process in college infraction proceedings. One such law was successfully challenged by the NCAA on the basis that the statute imposed an unreasonable burden on interstate commerce. Absent a finding of state action, the scope of judicial review of NCAA actions against member institutions is limited to review under the law of private associations—that the NCAA complies with its own procedures and rules. Courts have yet to address the legality of the NCAA's requirement that member colleges include stipulations in coaches contracts relating to NCAA rules violations. Another significant, but as yet unresolved, issue is whether the NCAA can legally establish minimum grade point averages and test scores as criteria for awarding scholarship assistance by member colleges.

66. *Id.* at 191.
67. *Id.*
68. *Id.*
69. *NCAA v. Miller*, 10 F.3d 633 (9th Cir. 1993). Nevada imposed the law to avoid situations like *Tarkanian*. The Nevada law at issue in *Miller* was held to violate the Commerce Clause of the United States Constitution as an unreasonable burden on interstate commerce. *Id.*
70. Due process would be required if (1) the school engaged in state action; (2) the school violated its own procedural rules or a contract or (3) the state's constitutional due process requirements were more protective than the safeguards of the United States Constitution.
71. 1992-93 Manual, *supra* note 60, § 11.2.1. In most contracts between a coach and a member college, if a coach violates NCAA regulations, the coach is subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures. *See id.* For example, a coach can be suspended or terminated if the coach is found to be involved in deliberate and serious violations of NCAA regulations. *Id.*
3. Compliance with Title IX’s Gender Equity Requirement

Title IX of the Education Amendments Act of 1972 is the federal law that guarantees equity in access to sports opportunities for both sexes in the nation’s schools and universities. Title IX states that educational programs which discriminate on the basis of sex will be denied federal funds. There has been considerable recent activity in Title IX cases resulting from passage of the Civil Rights Restoration Act of 1987 and the Supreme Court’s decisions in Cannon v. University of Chicago and Franklin v. Gwinnett County Public Schools, which provided for the right to bring private and class action suits for monetary damages when faced with such discrimination. The NCAA is also taking action to step up enforcement of Title IX.

One reason for the perceived ineffectiveness of Title IX was that there was no incentive for law firms to take gender bias cases on a contingent fee basis. Punishment at that time was limited to the loss of federal funding to the noncompliant area of the school’s program. In Franklin, the Supreme Court provided the incentive to pursue Title IX cases when it ruled that damages could be awarded in cases of intentional Title IX discrimination. Substantial efforts by the NCAA’s Division I universities to bring women’s

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74. *Id.*
76. 441 U.S. 677 (1979). The Court held that even absent express statutory authority, women denied entrance to medical school could sue under Title IX. *Id.* at 688-93.
79. For a discussion of whether comparative gross revenues, including football revenues, are a valid test for determining whether there is sports equity in the comparison of male and female sports programs under the Fourteenth Amendment and Title IX, see Blair v. Washington State University, 740 P.2d 1379, 1382-83 (Wash. 1987) and Yasser, *supra* note 12, at 79-92:
80. *Franklin*, 112 S. Ct. at 1038 (holding student who was sexually harassed could collect monetary damages under Title IX).
sports programs into parity with men's sports are ongoing. Title IX remains a highly volatile area of the law.

4. **NCAA Drug Testing Program**

The NCAA has a drug testing program applicable to all NCAA sponsored athletic events and post season bowl games. The NCAA tests for most drugs at championships; it tests football players for steroids year round. The testing is conducted at random and without evidence of probable cause. A recent decision by the Supreme Court of Colorado found an analogous university program to be in violation of the United States and Colorado constitutions. However, in 1994, the Supreme Court of California held that the NCAA’s drug-testing was a reasonable invasion of privacy. The NCAA’s victory in *Hill* ensures that it can continue to implement its drug-testing program.

III. **The Role of the Agent Lawyer in Sports Law**

The foregoing Sections illustrate some of the areas a sports lawyer must be familiar with in order to effectively practice sports law. Sports lawyers must be more than versatile, they must be knowledgeable as clients are generally concerned with singular issues. The next Section addresses the sports lawyer’s role when acting as a representative.

A. **The Multitude of Agents**

In general, the terms sports agent, player agent, sports or contract representative or contract advisor are used interchangeably. While the NFLPA tends to use the term contract advisor, the MLBPA and the NBPA tend to use the term player agent. All of these terms, whether identifying a lawyer or a nonlawyer, describe a representative who performs essentially the same function. The function of these representatives is to represent, counsel, advise and assist a professional athlete in the negotiation, execution and enforcement of the player’s contract.

81. Topsy Siderowf, *Gender Equity: A Numbers Game*, GOLF DIG., Apr. 1993, at 86 (discussing University of Miami’s cancellation of men’s golf team in favor of spending on women’s sports).
The term attorney is preferred by those advising a drafted high school or college baseball player who wants to test the market or investigate market value and still retain collegiate eligibility. A prospective attorney-agent may talk to the player, but cannot agree to represent the player in contract negotiation without compromising the player’s amateur eligibility. Under the “Attorney Exception” to the NCAA rule concerning MLB’s annual amateur draft, a baseball player may be entered in the draft by a MLB team and seek advice from an attorney on the athlete’s legal and eligibility status. The player may also seek advice on a contract offer by the selecting team. The attorney may not, however, be employed or engaged as a representative, nor may the attorney participate in any direct discussion or contract negotiation with the drafting team. The NCAA draft rules are disliked by teams because they force teams to “bargain against themselves” because the attorney cannot directly negotiate on the player’s behalf. Some attorneys prefer to characterize this NCAA-permitted contact with the player as discussions and not negotiations with the selecting team.

A professional agent, who may not be an agent under the NCAA rules, is sometimes called a family advisor. One sportswriter sarcastically attacked this appellation, referring to a well-known agent as a “family adviser (read agent).” The writer characterized the “non-agent” status in such cases as being “euphemistically called an 'adviser' to placate the NCAA.” Agents must draw the line between acting as a family advisor and as an agent while also understanding the limits on the scope of permissible action by the agent.

There are myriad definitions of athlete representatives, but it should be obvious that to be a good sports lawyer, one must first be a good lawyer. One misconception regarding sports law is the belief that sports lawyers spend the bulk of their time in the thrilling, high-profile business of negotiating professional player contracts or engaging in high-stakes MLB salary arbitration. On the contrary, there is nothing thrilling about getting a call at 3:00 a.m. from a

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85. 1992-93 MANUAL, supra note 60, § 12.1.1; Moorad, supra note 58, §§ 5.03, 5.06-5.08.
86. 1992-93 MANUAL, supra note 60, §§ 12.2.4-3.4.2; Moorad, supra note 58, § 5.03, at 5-6.
88. Rod Beaton, Astros' First Selection Only Certainty in Crazy Draft, USA TODAY, June 1, 1992, at C8. Despite Beaton’s criticism, the objective of the NCAA’s approach allowing limited discussions as to market value is not without merit. In dealing with high school and college students, it is important to keep them from making a hasty decision that may cause them to lose the bargaining power of their collegiate eligibility.
player-client who has been arrested for drunken driving or in seeing a client suffer a debilitating injury which ends the athlete’s career. Despite the negative aspects of practicing sports law, even the most prominent sports agents agree that the most exciting and satisfying part of being a representative is the development of close personal relationships with clients.89

There has been a growing trend among sports agents to limit their representation activities to one sport or one type of athlete.90 In contrast, a sports lawyer is frequently a business or corporate lawyer who adds the various and dynamic nuances of sports law to the lawyer’s area of expertise. As the foregoing established, sports law is an undefinable amalgamation of many legal specialties. Contract negotiations is one particularly well-known and profitable subset of sports law.

Some sports lawyers are involved in negotiating contracts on behalf of a player, while others may represent a team in player contract negotiations.91 A lawyer who is primarily involved with contract negotiations and player problems is really a sports agent who happens to be a licensed lawyer.92 The services provided by law firms that are primarily engaged in contract negotiation vary greatly in scope. These services range from the singular act of negotiating a contract to a full-service package including negotiating, legal counseling, securing endorsements, financial planning, career planning and counseling, marketing the athlete and resolving disputes arising under an employment contract.93

B. What Does It Take to Be a Respected Player Agent?

The key to being a respected player agent is to determine the client’s best interests and try to achieve those objectives. There are

89. Kaplan, supra note 3, at 58. When Bob Woolf, a close friend of former Massachusetts Governor Michael Dukakis was asked about the possibility of a position on the Supreme Court if the Governor became President, he is reported to have said that as impressive as that appointment would be, he could not give up the camaraderie and excitement of his personal relationship with his clients. Id.

90. Id.

91. In MLB, the representation of a management entity, be it a team or a coach, must be disclosed to the athlete-client or the athlete may terminate the representation contract and the agent’s certification may be revoked. See, e.g., MAJOR LEAGUE BASEBALL PLAYERS’ ASS’N REGULATIONS GOVERNING PLAYER AGENTS § 3B, at 6 (1991) [hereinafter MLBPA REGULATIONS].

92. Lawyers engaged in such a role find it extremely difficult to obtain professional liability insurance.

93. YASSER, supra note 12, at 237-39 (citing Robert C. Berry, Representation of the Professional Athlete (ABA Forum Comm’n on the Ent. and Sports Ind., Nov. 1, 1988)).
a number of factors which determine the agent's quality: integrity, background, experience, expertise and preparation.

1. **The Attorney-Agent**

   All things being otherwise equal, the athlete would be best served by an attorney-agent because of the added protection of the attorney's code of professional responsibility. The *Martindale-Hubbell Law Directory* rates attorneys from all states on the basis of review by the attorney's peers in the attorney's practicing county. Thus a player has some quantifiable measure to rate a lawyer under consideration as a potential representative. However, *Martindale-Hubbell* does not rate attorneys according to their specialties such as sports law. A player can also check with the state bar or governing body in which the attorney practices to see if the attorney has maintained good standing. Membership in the Association of Representatives of Professional Athletes (ARPA) evidences a representative's willingness to comport to its Code of Ethics as required by membership in that group. Membership in the National Sports Law Institute and the American Bar Association Forum on Entertainment and Sports Industries is further evidence of the representative's intent to keep apprised of the law and to adhere to ethical standards.

2. **Confrontational Agents**

   The professional athlete is better served by an agent who maintains a low public profile, rather than by an agent with a reputation for confrontational, public negotiation or by an agent with a reputation for causing clients to miss preseason training. This is not to diminish the substantial value of favorable publicity, for there are some successful confrontational agents. There are, however, hazards to negotiating in the media, rather than with the team.

   A marginal player, in danger of losing a job, might be placed in special danger by a confrontational agent. A team might be faced with a choice between ten players of comparable ability who are competing for two or three slots. It is very easy for management to decide to keep players represented by a low-profile agent rather than those represented by a confrontational agent. Blue chip draft choices may be adversely affected by the threat of missing preseason training, as an increasing number of teams appear to be choosing among potential high draft choices based on their ability to come to terms before draft selection.\(^{94}\) Such predraft negotia-

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94. Beaton, *supra* note 88, at C8 (selection of agent considered in drafting top players); see also Rod Beaton, *Draft Revision Purely Economic*, USA Today, Mar. 18,
tions appear to violate an NFL tampering rule, adopted in 1990, which restricts discussion of contract specifics prior to the draft. The NFL has permitted teams to discuss signing prospects and salary range while it is the team's turn to select.95

3. Registration and Certification

Registration with or certification by the various players' unions is a prerequisite to representation.96 Certification may be denied if the agent cannot be reasonably expected to carry out the responsibilities of representation.97 The unions also require all agents to attend annual seminars98 on current developments relevant to the agent's duties.99 An advantage that certified agents have is that they have access to the valuable salary information of union members, as well as access to the scouting information on college seniors. A player should check with the union to confirm that the agent is registered or certified and in good standing with the union.

An ever-growing number of states are regulating agents in contract negotiation. An issue raised by these statutes is whether they are unconstitutional and whether proposed federal laws will constitutionally preempt the field.100 Some of these regulations exempt lawyers and others specifically include lawyers.101

Depending on which state is the locus of the representation contract or representation activities or which state purports to govern the agency relationship, an athlete's representative may have to register, pay a registration fee and post a bond.102 This process can be expensive, as posting bonds of up to $100,000 in several different states requires substantial capital. A representative should carefully consider the number of states in which to register. Registering in too few states will result in limiting the states in which the repre-


96. YASSER, supra note 12, at 252-53, 258; see, e.g., CODE OF CONDUCT FOR NFLPA MEMBER CONTRACT ADVISORS § 1 (1990).

97. See, e.g., NATIONAL BASKETBALL ASS'N PLAYERS' ASS'N REGULATIONS GOVERNING PLAYER AGENTS § 2C (1991) [hereinafter NBPA REGULATIONS].

98. There are a number of excellent seminars conducted annually by law schools on current matters of interest, including the art of representation.

99. Id. § 3A(2).

100. Kaplan, supra note 3, at 59; YASSER, supra note 12, at 268.

101. YASSER, supra note 12, at 264-68.

sentative can work, while registering in too many may place an undue financial burden on the representative. Registration with a NCAA sanctioned university’s professional sports counseling panel is a further indication of a representative’s responsible nature. This registration provides the panel and the athlete with extensive information about an agent’s qualifications. While colleges have no statutory authority to regulate agents, if an agent wants to visit a college campus to scout college athletes, it behooves the agent to register and cooperate with the university’s professional sports panel.

4. Complying with Players’ Union Regulations

The applicable players’ union regulations and standard representation contracts provide important protections for the athlete. Unions limit fees that agents may charge and the amount of a player’s salary which is payable via deferred compensation. No payment can be made to the agent unless payment has been received by the player. Additionally, there are limits on the duration of the representation contract, provisions for early termination and other important protections for the player.

For instance, NBPA and MLBPA regulations preclude an agent from representing coaches, general managers and other management personnel without prior written authorization of the union. NBPA and MLBPA contract regulations provide that representation of two or more players on the same team is not a per se violation of the prohibition against actual or potential conflict of interests. Close representation of similarly situated players could create either a conflict of interest or a breach of client confidentiality or both, particularly if the clients play the same position. However, agents disagree that there is an inherent or serious risk of conflict. Suffice it to say that anyone engaging in multiple player representation needs to consider the propriety of such representation and maintain clear divisions between clients.

104. Under one form of contract only $2,000 may be charged for obtaining the minimum compensation.
105. NBPA Regulations, supra note 97, § 3B(f); MLBPA Regulations, supra note 91, § 3B(6); Larry Weisman, Redskins Get a Good Deal in Harvey, USA Today, Mar. 9, 1994, at C3.
106. NBPA Regulations, supra note 97, § 3B(g); MLBPA Regulations, supra note 91, § 3B(8).
5. The Importance of College Professional Sports Panels

The NCAA has broadened the scope of activity that college professional sports panels can engage in without jeopardizing a player’s eligibility.\textsuperscript{107} The panels are given authority to provide guidance to the student-athlete concerning future professional athletic careers. The panels assist athletes in making the decision to stay in college or seek a professional career by ascertaining the athlete’s professional market value. The panels also aid the athlete in selecting a reputable agent and the panels may assist in contract negotiation. Additionally, the panels provide information to the athlete regarding the purchase of disability insurance and they educate the athlete about NCAA eligibility legislation. Furthermore, the panels may now negotiate with a professional sports organization, which is not permitted of a lawyer or agent.\textsuperscript{108}

At Villanova University, the professional sports counseling panel is appointed by the President of the University and, pursuant to NCAA regulations, includes only one representative from the athletic department.\textsuperscript{109} The Villanova Professional Sports Career Counseling Panel includes the author as Chairperson, the General Counsel for the University, the Associate Athletic Director and the Chairman of the Department of Education and Human Services.

C. Negotiating the Contract

There is no single proven method to successfully negotiate a contract because negotiations vary with different circumstances and in different contexts. There are three important characteristics which are shared by successful negotiators. First, the representative must be completely informed about the negotiations. Second, the representative must ascertain the client’s needs and objectives. Third, the representative must choose an effective strategy and negotiate diligently to achieve the client’s goals.

1. Necessary Information Gathering

It is often easier to negotiate a sports contract than most other contracts because there is extensive data available to the representa-
tive. Information is available from a number of sources including the union, other players and agents, the media and from the team. Such information will include salary data which is compared by tenure and position and players' statistics.

The agent must absorb and synthesize the information from these sources to understand the sport and its organizational structure. Familiarity with the basics of the particular sport is essential. The agent must know the teams, the players, the injury propensities of the players, the minor league prospects, the attitude of the drafting team's fans concerning the need to sign a blue chip player, the economic condition of the teams and the teams' needs. Moreover, the agent needs various levels of knowledge regarding a variety of league and NCAA governing documents, regulations and operating manuals.

2. **Identifying Client Concerns**

Despite the volume of information available to the representative, the most important information does not come from the written page. The representative must become familiar with the athlete's needs, objectives in life and economic prudence or extravagance. The representative's first priority is the athlete's economic needs as it is usually the client's most pressing concern. For example, if the client needs money promptly, the agent may attempt to negotiate a large signing bonus or a front-loaded contract. If the player is either injury-prone or older, there is incentive for the representative to seek a guaranteed or a no-cut, long-term contract with injury insurance. The agent should be aware of the fact that guaranteed contracts are extremely rare in the NFL, but relatively common in the NBA. The agent must also consider the use of in-

110. For information on college athletics, see two weekly publications: the NCAA News and the Chronicle of Higher Education.

111. The NBA Boston Celtics are a public company and, accordingly, extensive financial information about the team is available to all stockholders from the team or through the Securities & Exchange Commission.

112. The agent should be fully knowledgeable of the NCAA regulations and its Operating Manual; the constituent documents governing the professional player's status, namely, the sport's constitution, rules, regulations and by-laws, the collective bargaining agreement between the players association and the league, the standard player contract and the standard representation agreement between the player and the agent and, with respect to minor league baseball players, the applicable Major League Baseball regulations and the National Association of Professional Baseball League's regulations; also Canadian or other international league regulations and constituent documents in the involved sports.
centives, particularly in light of the player's physical and psychological ability to meet those goals. Finally, the agent must carefully consider the effective marketing of the athlete, especially in the area of endorsements.

3. The Negotiation

Regardless of the plentiful information available, the agent must understand the art of negotiation in order to be an effective representative. While any comprehensive instruction in the art of negotiation is beyond the scope of this article, suffice it to say that the art of negotiation is an essential element of effective representation. An agent should know how to support a player's salary objective with statistical and other relevant data to "package" a proposed contract and recognize not only the needs and objectives of the player, but also the tax implications of a successful negotiation. A smart agent will understand the impact of those needs and objectives on management, on the tax strategy of the owners and on the other players. The hallmark of a successful agent is designing contracts that satisfy the needs of both parties. That kind of business imagination can readily build substantial respect for the agent by management and players.

4. Unique Aspects of Representing Coaches and Management

If the agent represents a coach, general manager or front office employee, such clients are not in the players' union and their duties differ from player responsibilities. No standard contract is available for management personnel, thus different concerns and needs require that the representative draft an appropriate contract. Firms that regularly represent management personnel have developed their own forms that are protective of their client's interests. Thus the form of a contract can range from a simple let-

113. There are a variety of bonuses: roster bonuses for making the team; honor clauses for making all-star teams; staying healthy bonuses; weight reduction bonuses; bonuses for finishing college and, of course, signing bonuses. YASSER, supra note 12, at 294-95.

114. Representation of coaches, general managers and other management or supervisory personnel involved in players' compensation effectively limits a representative's representation to management personnel. As noted above, under the player-agent regulations of MLB and the NBA, failure to identify all such representations is a ground for revocation of the contract between the player and the agent. See supra note 105.

ter agreement to a complicated, comprehensive legal document.\footnote{Id.}{\textsuperscript{116}} It is important that the duties and responsibilities of the coach be made clear; that the compensation package, including income from television programs and other sources not directly paid by the university, is made part of the "package" of compensation; that care be taken to avoid the effect of rollover provisions giving the university the option of extending the coach's contract each succeeding season; that the contract not contain a reassignment clause whereby the coach can be assigned to a menial position without terminating the employment contract; that the coach is not subject to termination clauses without cause and that the coach is not obligated to mitigate loss of salary by taking and seeking other employment. These are just a few of the important considerations in contract negotiations for coaches, particularly at the college level.

5. Representing a University

The preceding analysis focused primarily on professional sports and those NCAA regulations which relate to the loss of NCAA eligibility. A sports lawyer representing a college will be faced with many questions concerning compliance with NCAA regulations relating to the recruiting and educating of student-athletes. The NCAA regulations are such a complicated set of rules that many universities have established internal NCAA compliance departments. Typical issues encountered by a compliance department include a student-athlete's loss of eligibility due to violations such as prohibited payments, employment or recruitment violations.

In this context, even innocent actions may result in sanctions against both the university and the student-athlete. For example, prohibited payments made by coaches, boosters or agents to student-athletes before or after enrollment may result in NCAA sanctions against the school or athlete. Sanctions for NCAA violations can be dire—ranging from a loss of revenue to a complete shutdown of the athletic program, the "death penalty."

6. Thou Shalt Communicate with Thy Client

Player representation has evolved since Jim Ringo, an outstanding center for the Green Bay Packers, walked into Coach Vince

\footnote{Id.}{\textsuperscript{116}} The considerations or elements that should be contained in such contracts are beyond the scope of this article. While there is no standard coaching contract, a university-oriented checklist of such terms can be found in The Model University Coaching Contract. Id. at 215.
Lombardi’s office with an agent. Lombardi reportedly left the room, got on the phone and traded Ringo to the Philadelphia Eagles rather than negotiate with an agent. 117

A player representative must strive to establish a deserved reputation for credibility and integrity. A reputation for credibility and integrity may arise through friendship, personal contacts, or by the recommendation of players, management or coaches. Further, a representative’s reputation may arise by virtue of knowing responsible people in the sports field.

A sports lawyer must learn how to keep clients content and informed. Communication is, therefore, very important. Further, treating each player-client as a respected and intelligent individual is important. While some player-clients may be very bright and sophisticated, others may be poorly educated and inexperienced. However, all clients deserve respectful treatment.

Informing clients as to the particulars of their contract is also important as some players may not fully understand some of the standard provisions of the contract. There may be no greater shock than for a player to learn that his multi-year contract can be terminated at any time under the skills clause giving the coach full discretion in determining whether to cut a player from the squad. Players may also be shocked to learn that they may be traded to a team in another city. Further, if an athlete suffers an injury, the athlete may only be paid for the balance of the season and not the balance of the contract. 118 Without appropriate communication the representative-client relationship is at risk, with the client suffering the adverse consequences.

IV. How Does a Lawyer Get Into This Business?

A frequently asked question is how does a lawyer become involved in the field of sports law and athlete representation. A variety of firm or individual contacts may offer inroads into the field. Connections arise from a number of sources, including representing parents of players, representing unions and representing team doctors. Lawyers may also represent persons holding an equity interest in the ownership of a team. There are innumerable ways to become involved either primarily or incidentally in sports law matters.

117. Shapiro & Denlinger, supra note 3, at D1.

118. Unfortunately, few athletes are able to obtain adequate protection in the form of a guaranteed or no-cut contract, a no-trade clause or a clause requiring the team to pay for injury insurance.
In tort matters, plaintiffs are generally represented by regional personal injury lawyers. Those cases are usually defended by regular counsel for the insurance company in the locale. Employment, whether for a firm, an insurance company or as a sole practitioner, may result in contact with a facet of sports law. An opportunity for employment also exists as part of a college or professional sports administration.

Sports law is a broad legal discipline. Lawyers and agents desiring to enter the field must know they face intense and sometimes unprincipled competition. Fledgling sports representatives will likely have to augment their income with other legal work that will provide regular income unless and until the agent contracts with several successful clients. However, sports lawyers are not limited to representing athletes; they have many opportunities to practice in different areas of the law. Some lawyers represent athletes only as an ancillary part of their business.

A lawyer in a large firm may have difficulty in entering the field of player contract negotiations. Large firms often demand more of a young attorney's time and the firm's compartmentalization may keep the lawyer from encountering opportunities in the sports industry. The possibilities for innocent, intrafirm conflicts of interest are also more likely in large firms with many clients than in smaller firms.

A common method of obtaining clients is by using personal contacts, friends and other athletes to meet professional athletes. The more sports figures you know, meet and represent, the better the chance of engaging some as clients. Knowing college

119. The author attended St. Bonaventure University (SBU) with a surprisingly large number of sports personalities which contributed to his attaining knowledge in the field. This group included Eddy Donovan who went on to become coach, general manager and vice president of the New York Knicks during their championship years in the early 1970s; Chuck Daly, former head coach of the New Jersey Nets and the Detroit Pistons, attended SBU as a player before transferring to Lebanon Valley College; Paul Owens, now Assistant to the President of the Philadelphia Phillies, who as a former manager and general manager of the Phillies won the 1980 World Series; Jack Butler, an all-pro defensive halfback for the NFL Pittsburgh Steelers, who organized one of the first professional scouting organizations for potential draft choice selection, known as BLESTO; Ted Marchibroda, head coach of the Indianapolis Colts; Tom Kenville, a promoter with Madison Square Garden; his brother, Billy Kenville, a star guard for the NBA Detroit Pistons; the author's roommate, Ken Murray, who was unofficial Rookie of the Year with the Fort Wayne, Indiana Zollners (now the Detroit Pistons); Sam Urzetta, national amateur golf champion and NCAA college basketball foul shooting champion in 1950 and now a golf pro in Rochester; and a half-dozen SBU graduates who played for or were drafted by NFL or All-America Football Conference (AAFC) teams (prior to its demise and acceptance of certain of its teams into the NFL).
coaches is an obviously beneficial way to obtain clients. Success and good publicity also broaden avenues of opportunity for sports lawyers.

A. How Does a Young Lawyer Become a Sports Lawyer or Player Agent?

The best source for obtaining clients is by developing a reputation for integrity, diligence and availability, fostered by satisfied clients who provide favorable recommendations to others. Most important, however, is the acquisition of the first client. If the first client is pleased with the lawyer's service, that client can in good conscience recommend the lawyer to colleagues in the sports industry. Remembering the principle that preparation is the most important element in player representation can save a sports lawyer's practice. A negative recommendation from a player can be very harmful. Therefore, it is important to represent the first client diligently and to keep the client informed. The procedure for retaining sports clients is not all that different from standard legal practice. However, in the field of player representation, a client expects the lawyer to be extremely available. The pressures of obtaining or retaining clients and the intense competition may pres-
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Sure the lawyer to violate NCAA regulations, fiduciary obligations, ethical standards and a number of state sports laws. No amount of pressure can excuse a breach of a lawyer’s code or the law.

B. Which Career Path Is the Appropriate One?

Prospective sports lawyers may pursue one of several career paths. One route is to be hired by a law firm frequently involved with sports law. Another path is to be engaged by a player-agent firm, or by an individual agent, whether the agent is a lawyer or nonlawyer. The office of the university’s general counsel, the union’s office, the team’s office and the league and commissioner’s offices are other possible sources for employment.

If an aspiring sports lawyer works for an agent, it is important to maximize exposure to the agent’s actions in connection with sports clients. The same principle applies regardless of the aspiring representative’s employer. Further, a young sports lawyer may have contacts with potential athletes and may be able to import business into the firm to be handled by a more experienced lawyer in the firm. A lawyer may spend considerable time with minor league players, taking the risk they will not be promoted to the major leagues. The more exposure an aspiring representative receives to the business of sports law, the better. Young sports lawyers should be wary of some agents who are fearful of losing clients to their own employees and who may not be willing to provide maximum exposure.

In parallel, whenever time permits, become thoroughly familiar with the constituent documents of the involved sport. Observe, if at all possible, the preparation skills and techniques for an upcoming negotiation. A young lawyer should become an expert in a particular area to increase the lawyer’s value to the employer. A lawyer should devour reading material on negotiation techniques, the sport and its players. A sports lawyer should also become familiar with the organizational structure of the Canadian and American minor leagues and the European and Japanese professional leagues as alternatives to an unsatisfactory drafting team or an inadequate salary offer. In the arena of professional basketball and now professional football, a thorough understanding of the salary cap and the options for players not able to survive the “cut” is essential. Further, a sports lawyer must learn the special tax ramifications of foreign income and potential irresponsible conduct by the foreign
team’s management. The goal for a lawyer is to become as informed as is possible.

C. The Firms that Practice Sports Law

Certain firms tend to represent the same type of client. Universities tend to be represented by in-house counsel or by large outside firms when litigation is involved. The NCAA has its own legal staff in addition to being represented by law firms. While professional team owners are typically represented by large law firms, coaches and general managers are more likely to be represented by an agent or a small firm. Management personnel and coaches are particularly sensitive about publicity regarding their representation relationship because representation of management personnel is perceived as a disloyal act. There has been considerable change in this regard. Blue chip players are usually represented by prominent agents, with less talented players represented by player-agents who may or may not be lawyers. Further, some players represent themselves. These are generalizations and there may be many exceptions.

V. THE CRYSTAL BALL

Sports law will undergo fascinating and interesting changes in the years to come. Professional sports are undergoing a transformation, as the nature and economics of the games change. The outcome of this conversion is unclear. It is unclear how profitable professional sports are in current economic conditions. The recent NFL antitrust cases described a multi-million dollar salary payment to one owner and significantly underestimated profitability for some teams. However, the evidence also shows that a number of franchises are losing money based on reasonable accounting evaluations. In contrast, the recent sales of the Baltimore and San


124. For a further discussion of the NFL antitrust litigation, see supra notes 47-53 and accompanying text.

125. In the NFL, the San Francisco 49ers and the New York Giants, two of the most successful NFL teams, lost money from 1986 to 1989, despite Super Bowl
Francisco baseball teams, the record breaking sale of the Philadelphia Eagles and the competition for new franchises despite their cost, reflect significant value of sports franchises.

Players and agents should concern themselves with recent trends and events in the professional sports industry. For example, the enormous increase in salaries, free agency, labor stoppages, and the rapidly emerging limits on TV revenues, ticket prices, sky boxes and other revenue constitute significant considerations for NFL players and their agents. Further, the growing unavailability of municipal funds for stadium or arena improvements and construction, and the increasing use of deferred compensation, should act as both a red flag for players and an area of serious concern for agents. Additionally, teams from small cities have made extensive use of deferred compensation as a means of competing with the salaries offered by teams situated in large cities. The amount of deferred compensation combined with the financial difficulties of some teams has reached significant heights. Correspondingly, a player's representative must consider seeking the personal guarantees of financially responsible owners and the use of escrow for the player-client's full compensation when representing blue chip players and outstanding coaches. This strategy is especially pertinent when dealing with foreign teams.


127. Maria Goodavage, Stadium Campaign Proves Divisive, USA TODAY, June 1, 1992, at C8; Julianne Malveaux, Let Owners Build Stadiums, USA TODAY, July 14, 1992, at A12 (rejecting owner's attempts to have fans subsidize stadiums). For fan surveys concerning rising ticket prices, tax payer funded professional sports facilities and players' salaries, see USA TODAY/ESPN joint report entitled Outside the Lines: The Sport of Money, see also Ben Brown, Fans Say Professional Sports No Bargain, USA TODAY, July 14, 1992, at C1 (reporting findings of poll on fan dissatisfaction).


129. The horizon is not, however, without sunshine. Overseas expansion, international television contracts, salary caps and the continued expansion of pay-per-view sports contests may provide the salvation for professional sports.

130. In response to the deferred compensation dilemma facing teams from smaller markets, the NBPA negotiated a thirty percent limit for deferred compensation of the total value of the contract. Id. Additionally, the MLBPA successfully negotiated a provision requiring clubs to fund deferred obligations in current dollars within four years of entering into the contract. ROBERT C. BERRY, LAW OF PROFESSIONAL AND AMATEUR SPORTS 4-20, 4-25 (1992).

131. Sweek, supra note 123, at 4-5; see, e.g., Bullets Sign Gugliotta, USA TODAY, Oct. 20, 1992, at C5 (discussing use of balloon payment to avoid NBA's salary cap).
Sports law is a fascinating and ego-sustaining field. More importantly, sports law is a demanding legal specialty that requires patience in return for rewarding client relationships. The sports law field requires the competence of a first-class lawyer, expertise in a variety of disciplines, and knowledge of the various remedies and nuances applied to a sports context. Ample room in the field of sports law and in the field of player contract representation exists for diligent, ethical lawyers.