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Flag on the Play: The Ineffectiveness of Athlete-Agent Laws and Regulations - and How North Carolina Can Take Advantage of a Scandal to Be a Model for Reform

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FLAG ON THE PLAY: THE INEFFECTIVENESS OF ATHLETE- AGENT LAWS AND REGULATIONS—AND HOW NORTH CAROLINA CAN TAKE ADVANTAGE OF A SCANDAL TO BE A MODEL FOR REFORM*

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INTRODUCTION

In January 2010, fans of the University of North Carolina's ("UNC") football program received unexpected, fantastic news. Star defensive tackle Marvin Austin announced on his Twitter account that he planned to return to Chapel Hill for his senior season, rather than—as many predicted he would—forego his final year of collegiate eligibility for the fame and fortune of the National Football League

* © 2012 Timothy G. Nelson.

("NFL"): "I will be a Tar Heel for 2010! I could go get paid but in some things it ain't all about the money," Austin wrote. "I love Carolina."¹ Austin's declaration was followed by similar, though less-spirited, pronouncements from other defensive players and the team's top offensive star, wide receiver Greg Little, all of whom decided to stay in college for at least one more season.² Expectations and excitement soared amongst UNC faithful and some experts even believed that North Carolina, better known for its basketball prowess, had an outside shot of competing for a national football championship in the 2010–2011 season.³

But many months later, in the summer of 2010, those expectations started crumbling amidst media reports and rumors that the National Collegiate Athletic Association ("NCAA") had launched an investigation into allegations that Austin, Little, and other players had received improper benefits from sports agents.⁴ Some sources described the purported illicit agent activity on campus in Chapel Hill as "hectic" in the months following announcements that several star players would pass on the NFL draft, presumably because all of the NFL-caliber players who had opted to stay in school would eventually need representation.⁵ Then, just weeks before the Tar Heels' nationally-televised, season-opening game against the Louisiana State University ("LSU") Tigers, word came that several players were allegedly involved in an academic scandal and received improper help from a tutor.⁶ As a result of the concurrent investigations—one agent-related, the other academic—

1. Josh Sanchez, *North Carolina DT Marvin Austin Returning for Senior Season*, NFLMOCKS (Jan. 3, 2010), <http://nflmocks.com/2010/01/03/north-carolina-dt-marvin-austin-returning-for-senior-season/>.

2. Lorenzo Perez, *UNC Juniors Sticking Around One More Football Season*, NEWS & OBSERVER (Raleigh, N.C.) (Jan. 4, 2010, 11:49 AM), <http://blogs.newsobserver.com/accnow/unc-juniors-sticking-around-one-more-football-season#storylink=misearch>.

3. See Andrea Adelson, *Twenty Teams with Best Title Shot*, ESPN (Aug. 16, 2010), <http://sports.espn.go.com/ncf/preview10/news/story?id=5467170>.

4. See WILLIAM H. KING, III & WILLIAM H. BROOKS, THE UNIV. OF N.C. AT CHAPEL HILL, RESPONSE TO NOTICE OF ALLEGATIONS, CASE NUMBER M357, at I-2 (2011), available at http://www.unc.edu/news/ncaa/NOA%20Response%20_%20redacted.pdf ("The investigation began in June 2010, when the [NCAA] enforcement staff notified the University of information it had obtained that suggested several football student-athletes had received impermissible extra benefits."); Sources: *NCAA Probing UNC Football*, ESPN (July 15, 2010, 10:44 PM), <http://sports.espn.go.com/ncf/news/story?id=5384232>.

5. Sources: *NCAA Probing UNC Football*, *supra* note 4.

6. See Brett Friedlander, *Academic Scandal Has Permanently Soiled UNC's Image*, STARNEWSONLINE (Aug. 27, 2010, 5:48 PM), <http://acc.blogs.starnewsonline.com/15152/academic-scandal-has-permanently-soiled-uncs-image/>.

thirteen UNC players did not travel to Atlanta with the football team and were held out of the game against LSU.⁷ The Tar Heels lost to the Tigers 30–24.⁸ Two weeks later, Georgia Tech beat UNC by the same score.⁹

As the team struggled on the field, investigations into the allegations revealed that several star players received improper benefits from agents, prompting NCAA penalties.¹⁰ In October 2010, the NCAA ruled Greg Little and star defensive end Robert Quinn permanently ineligible to play football “for violations of NCAA agent benefits, preferential treatment and ethical conduct rules.”¹¹ Marvin Austin was kicked off the football team as well.¹² In addition, the Tar Heels’ Associate Head Coach, John Blake, was forced to resign after reports that he had accepted loans from, and tried to steer college players toward, a well-known agent during his tenure with UNC.¹³ Ultimately, UNC—in response to formal allegations by the NCAA regarding both improper benefits and academic impropriety—self-

7. See KING, III & BROOKS, *supra* note 4, at I-1 (“[UNC] withheld from competition 13 football student-athletes in its first game of the 2010 season. Four of these student-athletes never again competed for the University.”); Heather Dinich, *Thirteen Tar Heels Ruled Out for Opener*, ESPN (Sept. 4, 2010, 10:58 AM), <http://sports.espn.go.com/nct/news/story?id=5527407>.

8. *UNC Loses to LSU in Final Seconds*, ABC11.COM (Sept. 5, 2010), <http://abclocal.go.com/wtvd/story?section=news/sports&id=7650848>.

9. J.P. Giglio, “*Eerily Similar*”: *Tar Heels See Another Fourth-Quarter Drive Come Up Short*, NEWS & OBSERVER (Raleigh, N.C.), Sept. 19, 2010, at 1C.

10. Mike Charbonneau, *UNC Announces Penalties, Conditions for Players’ Return*, WRALSPORTSFAN.COM (Sept. 23, 2010), <http://www.wralportsfan.com/unc/story/8332534/>.

11. *UNC’s Little and Quinn Ruled Permanently Ineligible*, NCAA (Oct. 11, 2010), <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Latest+News/2010+news+stories/October/UNCs+Little+and+Quinn+ruled+permanently+ineligible>. The NCAA determined that Little received approximately \$4,952 in improper benefits, including diamond earrings and trips to the Bahamas, Washington, D.C., and Miami. *Id.* Quinn accepted two black diamond watches, matching earrings, and a trip to Miami, among other benefits, in the amount of \$5,642. *Id.*

12. J. Andrew Curliss & Robbi Pickeral, *With 3 Players Gone, UNC Will Tighten Rules*, NEWS & OBSERVER (Raleigh, N.C.), Oct. 12, 2010, at 1A. A preliminary investigation by the NCAA revealed that Austin had taken between \$10,000 and \$13,000 in improper benefits from sports agents. *See id.*

13. See KING, III & BROOKS, *supra* note, 4, at I-1; Charles Robinson, *Money Trail Ties Agent, Ex-UNC Coach*, YAHOO! (Sept. 29, 2010), <http://rivals.yahoo.com/ncaa/football/news?slug=cr-uncagents092910>. Blake was accused of trying to steer college players, including some who were not even playing for him at UNC, to agent Gary Wichard. *Id.* Wichard later had his agent certification suspended by the National Football League Players Association (“NFLPA”). *CARD Committee Issues Discipline on Two Contract Advisors*, NFL PLAYERS ASS’N (Dec. 3, 2010), <https://www.nflplayers.com/Articles/Press-Releases/CARD-Committee-Issues-Discipline-on-Two-Contract-Advisors/>.

imposed numerous penalties, including vacating all of the football team's victories from its 2008 and 2009 football seasons, putting itself on two years of probation, and agreeing to pay a \$50,000 fine.¹⁴

The scandal at UNC highlights several of the problems caused by unscrupulous sports agents and their associates, particularly in the world of college football, which, along with other intercollegiate sports, has been described as "the last field in the world in which athletes are supposed to receive absolutely no direct monetary compensation for their athletic prowess."¹⁵ The competition to sign star athletes is intense.¹⁶ Although there are federal and state laws that prohibit certain kinds of contact between sports agents and amateur athletes, such laws are rarely enforced,¹⁷ and penalties for violations hardly provide adequate deterrence when one considers the financial windfall an agent can reap from landing even one high-profile future star.¹⁸ Add it all up, and you get what one agent—who has actually been a staunch advocate of reforming the rules and laws governing his profession—called a "Wild, Wild West," in which some agents blatantly break the law, confident that in a risk-versus-reward calculation, they are better off violating the rules than playing by them.¹⁹

14. See KING, III & BROOKS, *supra* note 4, at I-6. UNC also self-imposed a reduction of the amount of football scholarships it will offer to student athletes between 2012 and 2015. See *id.*

15. KENNETH L. SHROPSHIRE & TIMOTHY DAVIS, *THE BUSINESS OF SPORTS AGENTS* 6 (2d ed. 2008).

16. See Eric Willenbacher, Note, *Regulating Sports Agents: Why Current Federal and State Efforts Do Not Deter the Unscrupulous Athlete-Agent and How a National Licensing System May Cure the Problem*, 78 ST. JOHN'S L. REV. 1225, 1227 (2004) (stating that in 2002, almost 800 of nearly 1,200 player agents certified by the NFLPA did not have a single client).

17. See *infra* Part II.A–B.

18. See *infra* text accompanying notes 32–33; see also, e.g., Pete Thamel, *Central Florida To Face an Investigation by the N.C.A.A.*, N.Y. TIMES, Aug. 18, 2011, at B14 (describing an NCAA investigation into the football and basketball programs at the University of Central Florida that includes allegations that a convicted felon "with ties to a sports agency, helped recruit players to the university"); Lynn Zinser, *Southern California Stripped of the 2004 B.C.S. National Title*, N.Y. TIMES, June 7, 2011, at B13 (describing the result of a scandal involving former player Reggie Bush at the University of Southern California ("USC"), in which the NCAA determined that "Bush and his family had received improper benefits after they became partners with two men to form New Era Sports and Entertainment. New Era provided housing, air travel, an automobile and other benefits to Bush's mother and stepfather."). Ultimately, the NCAA vacated USC's 2004–2005 national championship, reduced the number of football scholarships it could offer for several years, and enforced a two-year postseason ban on the football program. *Id.*

19. Michael Casagrande, *Agent Tells His Side of Story amid Controversy About Alabama Football Coach Nick Saban Comparing Rogue Agents to Pimps*, LEDGER-ENQUIRER (Columbus, Ga.) (July 25, 2010), <http://www.ledger-enquirer.com/2010/07/25>

Based on recent national media attention, it certainly appears that illicit athlete-agent activity is on the rise.²⁰ In the summer of 2010, several prominent head football coaches, frustrated by what they saw as the deplorable behavior of sports agents, took to name-calling, referring to agents as “pimp[s]”²¹ and “predators.”²² John Phillips, an agent who has been among the most vocal on the subject of the need for reform in the athlete-agent industry offered a frank condemnation of his profession:

/1205808/agent-tells-his-side-of-the-story.html; see also UNIF. ATHLETE AGENTS ACT prefatory note, 7 Part IB U.L.A. 55 (2000), available at <http://www.law.upenn.edu/bll/archives/ulc/uaaa/aaa1130.htm> (“[T]he practices of a minority of agents or would-be agents in obtaining the right to represent athletes who may produce substantial fees for their agents have caused serious problems for student-athletes and educational institutions. The tactics of this minority include secret payments or gifts to the athlete, undisclosed payments or gifts to friends and relatives who may be in a position to influence the athlete, unrealistic promises and considerable arm-twisting.”); SHROPSHIRE & DAVIS, *supra* note 15, at 7 (“Improprieties occur because the opportunity exists to make money.”).

20. See *infra* Part I.A.

21. John Zenor, *Saban Blasts Agents*, NEWS & OBSERVER (Raleigh, N.C.), July 22, 2010, at 6C (quoting Nick Saban, head football coach at the University of Alabama).

22. Jason Lieser, *Florida Coach Urban Meyer and His Peers Say It's Hard To Tackle the Issue of Unscrupulous Agents*, PALM BEACH POST (July 24, 2010), <http://www.palmbeachpost.com/sports/gators/florida-coach-urban-meyer-and-his-peers-say-821611.html> (quoting Urban Meyer, former head football coach at the University of Florida). Another head football coach, Rod Broadway of Grambling State University, went so far as to say that sports agents should all be “put . . . in front of a firing squad.” Glenn Davis, *Grambling State Football Coach Suggests Very Harsh Punishment for Out-of-Line Agents*, SPORTSGRID (July 23, 2010, 2:15 PM), <http://www.sportsgrid.com/ncaa-football/grambling-state-football-coach-suggests-very-harsh-punishment-for-out-of-line-agents/>. Notwithstanding this sentiment, some insiders contend that inappropriate agent activity is not increasing. The NCAA’s Director of Agent, Gambling and Amateurism Activities, Rachel Newman Baker, recently suggested that there are not necessarily more instances of improper agent activity; rather, she believes, the cases are simply getting more attention. *Q & A with NCAA Director of Agent, Gambling and Amateurism Activities Rachel Newman Baker*, NCAA (July 29, 2010), <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Latest+News/2010+news+stories/July+latest+news/Interview+with+NCAA+Director+of+Agent%2C+Gambling+and+Amateurism+Activities>. Baker believes that social media has helped bring agent-related problems to the forefront of the public’s consciousness:

That has contributed to not only our being able to find out more about what’s going on in this area, but it also has contributed to inappropriate interaction or behavior being reported or called into question more publicly. In addition to communication being more public, there also seem to be significantly more people now who are tired of witnessing the abuses that have gone on over time and are speaking up and providing information.

Id.

The need for change is real because the current state is unfair to every institution, league, player and professional honestly involved in the representation or marketing of the professional athlete. The status quo is reprehensible and encourages flagrant disregard of the rules and law, thereby fully sanctioning criminal behavior. The laws are weak and unenforced. Schools are afraid to speak up for fear of retribution by the NCAA.²³

If that summation is an adequate description of the landscape of sports agent behavior on college campuses generally, then the situation at UNC is an ideal microcosm by which to view and analyze the problem. In addition to providing clear examples of the shortcomings of both the law and regulations, the UNC scandal also provides a lens through which one can examine possible reforms and remedies to the growing problem.

Specifically, the UNC situation presents an opportunity for the State of North Carolina and UNC to take vital steps to address the problem of recurring, blatant lawbreaking by increasing civil penalties on, and exercising available rights of action against, unscrupulous agents. Such action must also be taken on a national scale. This Comment argues that increasing penalties and enforcement at the state level and having damaged educational institutions seek legal recourse are both accomplishable and practical solutions to the college athlete-agent problem—solutions that are likely to have a swift and significant impact. While, on the surface, one might wonder whether sports agent indiscretions have a significant, detrimental impact, consider that an educational institution whose athletic programs are subject to NCAA sanctions can suffer severe damages, both in terms of monetary loss and reputation.²⁴

Part I of this Comment discusses the evolution of the sports agent and the sports agent's role in America's current sporting landscape, and documents several recent, high-profile scandals involving illicit agent activity. Part II explores the myriad laws and regulations currently in place which are designed to govern athlete agents. An explanation of the ineffectiveness of existing statutory and regulatory schemes and the need for reform is the subject of Part III. This Comment concludes by arguing that given the significant need to address the problem of law-breaking by athlete agents, the State of

23. John M. Phillips, *How Dare-Us?: Agent Contempt and Need for Reform (Draft)*, BREAKTHROUGH SPORTS AGENCY (May 23, 2011), http://mybtsa.com/BTSA/Blog/Entries/2011/5/23_How_Dare-Us__Agent_Contempt_and_need_for_reform_%28draft%29.html.

24. See *infra* text accompanying notes 162–66.

North Carolina and UNC have a unique opportunity to affect the national landscape on this issue first by amending the current state statute to increase civil penalties on law-breaking agents, and second by exercising a right of action to sue those individuals who impermissibly gave UNC football players improper benefits.

I. SPORTS AGENTS AND THE RECENT UNC SCANDAL

Sadly, the UNC scandal is merely one of the most recent in a long line of stories involving athlete agents behaving badly. To best contextualize the role agents now play, and the weaknesses of the numerous efforts to police their behavior, it is necessary to understand the history of the profession.

A. *The Evolving Role of Sports Agents in the Modern Sporting World*

While it is an inseparable part of the professional sports landscape today, the sports agent industry began quite humbly. Athlete agents have been around since the 1920s,²⁵ but more recently grew in number and influence during the 1960s.²⁶ In the following decade, restrictive contractual clauses that had once been standard for professional athletes, such as “reserve and option clauses,” were frequently found to be legally invalid as “improper restraints of trade,” giving players more freedom to negotiate and increasing the relevance of sports agents.²⁷ Several other factors contributed to the growth of the agent industry through the 1980s, including stronger players’ unions, greater player bargaining power with professional teams, and alternative new leagues in several major sports that

25. See SHROPSHIRE & DAVIS, *supra* note 15, at 10 (noting that most consider the first sports agent to be Charles Pyle, who negotiated a \$3,000-per-game contract for legendary football star Harold “Red” Grange in 1925).

26. *Id.* There is an oft-recited story—the veracity of which is debated—involving legendary Green Bay Packers Coach Vince Lombardi and his star center, Jim Ringo. As the tale goes, following a football season in the 1960s, Ringo met with Lombardi to discuss the player’s contract. Ringo asked for a \$25,000 raise. He brought a man wearing a suit with him to the negotiations. Lombardi inquired as to whom the man was and Ringo responded that the man was there to assist with the contract discussions. Lombardi excused himself and returned minutes later. He famously informed Ringo that he was no longer a member of the Packers and had been traded to the Philadelphia Eagles. See Symposium, *Ethics and Sports: Agent Regulation*, 14 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 747, 748–49 (2004).

27. See SHROPSHIRE & DAVIS, *supra* note 15, at 12–13. Such clauses essentially meant that the rights to an athlete remained with the team for which he played even when his contract with that team expired, such that he was not free to sign with another organization. *Id.*

rivalled and provided an “appealing alternative to participation in the established leagues.”²⁸ Perhaps the primary reason, however, that the sports agent business has grown and become more competitive in the last several decades is simply because there is more money in professional sports than ever before, drawing more people to the industry.²⁹ Athlete contracts,³⁰ as well as the amount of money companies spend on athletes through endorsement deals,³¹ have grown exponentially since the 1980s. The money going to agents has also swelled: “Athletes paid an estimated \$385 million in fees to agents for their services in 2005.”³² The largest sports agent firms bring in revenues and profits in the hundreds of millions of dollars.³³ Ten years ago, one of the largest firms, SFX Entertainment, Inc., was sold for \$4.4 billion.³⁴ Today, there are roughly 1,600 registered agents across the four major sports, from roughly 400 registered in California, to one in North Dakota.³⁵

In addition to negotiating contracts with teams, agents also seek and negotiate endorsement deals and speaking engagements, and advise clients on investment and financial planning, real estate decisions, and income tax preparation.³⁶ Along with their scope of responsibility, the potential for profit—and competition amongst agents—has dramatically increased over the years. So, too, has the temptation to engage in illegal activities to sign clients.³⁷ The National Football League Players Association (“NFLPA”) caps the commission an agent can earn for negotiating a player’s contract at

28. *See id.* at 13.

29. *See id.* (“The surge in salaries over the last twenty years has only fueled the recent competition by agents for clients.”).

30. *See id.* at 13–14 (using, as an example, the guaranteed money given to the NFL’s number one draft pick over the past several years to show the increase in salaries: in 1983, John Elway’s signing bonus was \$1 million; in 2005, Alex Smith received \$24 million in guaranteed money, part of which was the signing bonus).

31. *See id.* (stating that in 2006, shoe manufacturers Nike and Reebok combined to spend nearly \$2.5 billion on endorsements).

32. *Id.* at 14.

33. *See Willenbacher, supra* note 16, at 1226.

34. *Id.*

35. Alan Scher Zagier, *Report: State Agent Laws Unenforced*, ESPN (Aug. 17, 2010), <http://sports.espn.go.com/ncaa/news/story?id=5470067>.

36. *See* Melissa Neiman, *Fair Game: Ethical Considerations in Negotiation by Sports Agents*, 9 TEX. REV. ENT. & SPORTS L. 123, 127 (2007).

37. *See* SHROPSHIRE & DAVIS, *supra* note 15, at 5 (stating that agents engage in “illegal and unethical conduct” and that the “self-interest of sports agents is the right to receive approximately 2 to 5 percent of multimillion-dollar athlete contracts coupled with up to 30 percent of multimillion-dollar endorsement deals”).

three percent.³⁸ Such a figure may appear low, but consider that an agent who represents several players with contracts totaling \$20 million stands to gross \$600,000 on those deals, notwithstanding any other lucrative agreements he negotiates, such as endorsements. There appears to be a link between the corresponding increases in the industry's profitability and corruption. As one commentator has asserted, "In response to the numerous actors in the market and the limit on commissions, competition among agents has erupted, causing a race to the bottom where sports agents conduct themselves unethically in order to secure clients."³⁹ A former agent, Josh Luchs, who confessed to various indiscretions in a *Sports Illustrated* cover story, recounted how he routinely paid college football players in the hopes they would sign with him, estimating that he paid more than thirty athletes between 1990 and 1996.⁴⁰ Luchs, now banned by the NFLPA, claims that the agent business is one in which inducements to players are "widespread" and that "players have their hands out,"⁴¹ often expecting to receive benefits from those who seek to represent them. Another anonymously-quoted NFL agent recently said, "[t]he bigger the money gets, the bigger the agent-athlete problem is going to get until they come down hard on people. There's a lot of good agents out there, but there's a good amount that will do whatever it takes. Everything you see in the movies—it all happens."⁴²

B. *The UNC Football Scandal*

This "anything goes" approach manifested itself within the UNC football program in the summer of 2010, causing the NCAA to begin investigating allegations that several players "received impermissible extra benefits."⁴³ The NCAA notified UNC of the allegations in June, and UNC then worked with NCAA investigators in July and August to uncover whether the allegations were true.⁴⁴ After a wide-ranging investigation that included interviews with both football players and witnesses outside the University, the NCAA and UNC determined that several football players "had received impermissible benefits in violation of NCAA bylaws governing agents, runners, and

38. George Dohrmann, *Confessions of an Agent*, SPORTS ILLUSTRATED, Oct. 18, 2010, at 62, 67.

39. See Willenbacher, *supra* note 16, at 1227.

40. See Dohrmann, *supra* note 38, at 67.

41. *Id.* at 70.

42. Lieser, *supra* note 22 (internal quotations omitted).

43. KING, III & BROOKS, *supra* note 4, at I-2.

44. *Id.*

preferential treatment.”⁴⁵ The investigation revealed that seven UNC football players received a total of more than \$27,000 in impermissible benefits during 2009 and 2010.⁴⁶ These included “travel accommodations, meals, entertainment expenses, and, in some instances, cash and jewelry.”⁴⁷ Among those whom the NCAA alleged provided such benefits were at least three individuals the NCAA identified as being affiliated with sports agencies.⁴⁸ It was also alleged that a fourth individual “triggered” NCAA agent investigations, despite not being registered as an agent.⁴⁹

The improper agent activity at UNC was not confined to football players, but extended to the coaching staff as well. The NCAA claimed that, while employed as UNC’s associate head coach, John Blake partnered with sports agent Gary Wichard and “was employed and compensated by [Wichard’s agency,] Pro Tect Management to influence football student-athletes to hire Wichard to represent them in marketing their athletic abilities and reputations.”⁵⁰ During the time Blake served on the staff of the UNC football program, he purportedly received tens of thousands of dollars from Pro Tect Management.⁵¹

45. *Id.* During the course of the investigation UNC discovered what would become the second prong of the scandal at the University. *See id.* UNC determined that a former part-time tutor “had provided impermissible help in the form of free tutoring services to several football student athletes . . . and edit[ed] papers the student-athletes sent her—correcting spelling and grammar mistakes and adding a few sentences.” *Id.* at 1-3. That tutor also provided certain football players approximately \$3,500 in benefits, including payments for an airline ticket and a football player’s parking tickets. *See id.* at 2-1 to -6.

46. *See id.* at 4-1 to -20.

47. *Id.* at 4-10. Note that it does not appear from the NCAA’s allegations that persons who were considered “agents” necessarily provided all of these benefits. *See id.* at 4-1 to -7. As an example, it appears that one player received \$5,000 in benefits from a person described as a jeweler. *See id.* at 4-2. Additionally, note that, for privacy reasons, the descriptions of specific benefits received have been redacted in UNC’s publicly-released document responding to NCAA allegations. *See id.* at 4-1 to -7. Football players’ names have been redacted as well, making it difficult to discern exactly who received what from whom. *See id.*

48. *Id.* at 4-1 to -3 (reciting the NCAA’s allegations, which included allegations that Gary Wichard of Pro Tect Management, Todd Stewart of Pro Sports Financial, and Michael Katz of Rosenhaus Sports all provided impermissible benefits to at least one UNC football player).

49. *See id.* at 4-5 to -6. This individual was Chris Hawkins, a former UNC football player who was allowed to work out at UNC’s football facilities and was allegedly affiliated with a sports agent. *See id.* at 9-1 to -2. According to UNC, Hawkins “provided \$886 in impermissible benefits” to three football players. *Id.* at 9-1.

50. *Id.* at 6-1. Blake was employed by UNC from December 2006 to September 2010. *Id.* He resigned two days after UNC’s first game of the 2010 season. *Id.* at 1-1.

51. *Id.* at 6-4 to -5. Blake claimed that these payments were not related to athletic activities. *Id.* at 7-2.

II. REGULATIONS AND LAWS GOVERNING AND IMPACTING AGENTS

Although some have described the world of big-time sports agents as “lawless,”⁵² the industry is not unregulated. To the contrary, federal and state laws restrict agents engaging with amateur athletes. Penalties for violations of those laws can include fines, felony convictions, and jail time.

A. Federal Legislation and Regulation

For purposes of NCAA regulations and state and federal laws, the definition of “agent” is often broader than one might customarily think.⁵³ As an NCAA officer has said,

when we refer to an agent, we are referring to anybody that is marketing an individual’s athletics ability and representing them. But also included in that general agent term are “runners.” . . . Runners are individuals who recruit athletes, and they receive a finder’s fee. Some are actually independent contractors that, for lack of a better term, try to sell an athlete to a particular agent.⁵⁴

52. See Casagrande, *supra* note 19.

53. The NCAA does not appear to specifically define “agent.” See NCAA, 2010–11 NCAA DIVISION I MANUAL art. 12.02 (2010) (failing to include a definition of “agent” in the Article of the NCAA by-laws governing agents). State laws regulating agents do generally provide definitions of the term “agent.” See, e.g., N.C. GEN. STAT. § 78C-86(2) (2011). North Carolina’s law defines an “athlete agent” in the following manner:

An individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract. The term includes an individual who represents to the public that the individual is an athlete agent. The term does not include a spouse, parent, sibling, or guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

Id. The federal law governing sports agents defines an “athlete agent” as

an individual who enters into an agency contract with a student athlete, or directly or indirectly recruits or solicits a student athlete to enter into an agency contract, and does not include a spouse, parent, sibling, grandparent, or guardian of such student athlete, any legal counsel for purposes other than that of representative agency, or an individual acting solely on behalf of a professional sports team or professional sports organization.

15 U.S.C. § 7801(2) (2006).

54. *Ethics and Sports: Agent Regulation*, *supra* note 26, at 756–57.

The Sports Agent Responsibility and Trust Act (“SPARTA”),⁵⁵ passed in 2004,⁵⁶ is the only federal legislation dealing specifically with sports agents.⁵⁷ SPARTA “was enacted to protect colleges and universities and, to a lesser extent, student-athletes from improper recruitment practices of agents.”⁵⁸ Among other things, the law makes it illegal for an athlete agent to provide “anything of value to a student athlete or anyone associated with the student athlete before the student athlete enters into an agency contract, including any consideration in the form of a loan, or acting in the capacity of a guarantor or co-guarantor for any debt”⁵⁹ Under SPARTA, agent violations are deemed unfair and/or deceptive trade practices, regulated by the Federal Trade Commission (“FTC”).⁶⁰

In addition to SPARTA, federal authorities have turned to various other federal criminal statutes to investigate and prosecute sports agents.⁶¹ Such probes have played an “important, albeit sporadic, role in regulating agents.”⁶² Athlete agents have been subject to white-collar crime statutes, including mail fraud, tax evasion,⁶³ conspiracy, and violations of the Racketeer Influenced and Corrupt Organizations Act (“RICO”) for their involvement in trying to illicitly sign student athletes.⁶⁴ The Securities and Exchange

55. Sports Agent Responsibility and Trust Act, Pub. L. No. 108-304, 118 Stat. 1125 (2004) (codified at 15 U.S.C. §§ 7801–7807 (2006)).

56. *Id.*

57. *See* Neiman, *supra* note 36, at 128.

58. Timothy Davis, *Regulating the Athlete-Agent Industry: Intended and Unintended Consequences*, 42 WILLAMETTE L. REV. 781, 812 (2006).

59. § 7802(a)(1)(B).

60. *See* § 7803(a).

61. *See* SHROPSHIRE & DAVIS, *supra* note 15, at 144. Many of these statutes were primarily used prior to SPARTA’s enactment. *Id.*

62. *Id.*

63. In 2001, Myron Piggie, a youth basketball coach described as a “classic” runner, was sentenced to thirty-seven months on one count of conspiracy to commit wire and mail fraud and one year for failing to file income tax returns. *See id.* at 59–60. Piggie became a prominent figure in the discussion of improper sports agent activity because he was able to influence star high school basketball players to commit to play for certain schools. *Id.* at 60. He pled guilty to “defrauding the NCAA and four universities because he compromised the status of amateurs by providing them with cash and other gifts.” *Id.*

64. Willenbacher, *supra* note 16, at 1235–36. In perhaps the most notorious use of the RICO statutes against sports agents, an Illinois district court convicted two agents, Lloyd Bloom and Norby Walters, of several federal crimes in the early 1990s. Bloom and Walters gave improper “cash, loans . . . and other gifts” to several college football players, and in exchange, signed the players to agency contracts while the players were still in school, forcing the players to lie about the contracts in order to retain their NCAA eligibility. *Id.* Some reports claimed Walters and Bloom paid more than \$800,000 to roughly fifty athletes. SHROPSHIRE & DAVIS, *supra* note 15, at 58. When the vast majority of the players signed with other agents after graduating from college, Walters and Bloom

Commission ("SEC") has also used its regulatory authority to monitor athlete agents, taking what some have described as an "aggressive posture"⁶⁵ in investigating "whether agents have illegally served as financial advisers to their clients."⁶⁶ Such SEC actions frequently allege mismanagement of players' money and investments, including allegations ranging from the defrauding of players to theft of players' money.⁶⁷

B. State Legislation

Forty-three states, the U.S. Virgin Islands, and the District of Columbia have laws regulating athlete agents.⁶⁸ The vast majority of those states—at least forty of them⁶⁹—have adopted the Uniform

attempted to enforce the contracts through personal threats, rather than the legal system. Willenbacher, *supra* note 16, at 1235–36. The racketeering at issue that allowed federal prosecutors to apply the RICO statutes in the case was "the mail fraud perpetrated against the NCAA when the student athletes, paid by Walters and Bloom, had letters sent to the NCAA by their schools proclaiming that they were eligible to compete under NCAA rules when, in fact, they were not." SHROPSHIRE & DAVIS, *supra* note 15, at 145. Jury convictions of the agents, however, were later reversed on procedural grounds. *United States v. Walters*, 913 F.2d 388, 393 (7th Cir. 1990).

65. See SHROPSHIRE & DAVIS, *supra* note 15, at 76, 146.

66. Bryan Crouch, Comment, *How Agent Competition and Corruption Affects Sports and the Athlete-Agent Relationship and What Can Be Done To Control It*, 10 SETON HALL J. SPORT L. 111, 133 (2000).

67. See SHROPSHIRE & DAVIS, *supra* note 15, at 75–79. Examples of SEC action include a complaint against financial adviser Donald Lukens for "dup[ing]" athletes into investing in high-risk investments and allegedly defrauding at least 100 clients, *id.* at 75–76; the guilty plea and ten-year prison sentence of agent John W. Gillette, Jr., who was charged with stealing nearly \$6 million from NFL players, *id.* at 76; a complaint against Dunyasha Yetts, who allegedly defrauded customers of nearly \$2 million in an investment scheme, the majority of which was invested by NFL player Antoine Winfield (a federal judge ordered Yetts to pay nearly \$3 million and a civil penalty of more than \$100,000). *Id.* at 76–77. Agent William "Tank" Black has been described as the agent "most aggressively pursued by state and federal forces." *Id.* at 6. The SEC, IRS, FBI, United States Attorney's Office, and state prosecutors in Florida and Louisiana investigated Black. *Id.* at 78. Black was accused of making routine payments to college athletes through a runner. *Id.* at 4. Ultimately, Black was sentenced to more than six years in prison on money laundering charges and an additional five years in prison on conspiracy, mail and wire fraud, and obstruction of justice charges. *Id.* at 79. The latter sentence "grew out of allegations that Black stole upward of \$13.5 million from football players . . . whom he represented as a financial advisor." *Id.*

68. *FAQ on Uniform Athlete Agents Act*, NCAA (July 29, 2010), <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Latest+News/2010+news+stories/July+latest+news/FAQ+on+Uniform+Athlete+Agents+Act> (stating that forty states have adopted the Uniform Athlete Agents Act, the most recent state being Illinois, whose adoption became effective January 1, 2011, and that California, Michigan, and Ohio also have their own laws regulating athlete agents).

69. *Id.*; see also Phillips, *supra* note 23 (summarizing the relevant statutes). States have left the original language of the Uniform Athletic Agents Act relatively unchanged.

Athlete Agents Act (“UAAA”),⁷⁰ model legislation designed to govern the relationship “among sports agents, student athletes and educational institutions.”⁷¹ The UAAA—completed by the National Conference of Commissioners on Uniform State Law (“NCCUSL”) in 2000—was drafted in large part because, while twenty-nine states had enacted statutes regulating sports agents, those statutes were not uniform and they failed to provide reciprocity such that registration and enforcement in one state would be recognized in another.⁷² The purpose of the UAAA is to provide for

See ALA. CODE §§ 8-26A-1 to -31 (LexisNexis 2002 & Supp. 2011); ARIZ. REV. STAT. ANN. §§ 15-1761 to -1776 (2009); ARK. CODE ANN. §§ 17-16-101 to -123 (2010 & Supp. 2011); COLO. REV. STAT. §§ 23-16-201 to -221 (2011); CONN. GEN. STAT. ANN. §§ 20-559 to -599s (West 2008 & Supp. 2011); DEL. CODE ANN. tit. 24, §§ 5401-5420 (2011); D.C. CODE §§ 47-2887.01-.18 (2005); FLA. STAT. ANN. §§ 468.451-.4571 (West 2007); GA. CODE ANN. §§ 43-4A-1 to -4A-20 (2011); HAW. REV. STAT. ANN. §§ 481E-1 to -19 (LexisNexis 2009); IDAHO CODE ANN. §§ 54-4801 to -4820 (2007); 225 ILL. COMP. STAT. ANN. 401/1-215 (West 2012); IND. CODE ANN. §§ 25-5.2-1-1 to -2-16 (LexisNexis 2006); IOWA CODE ANN. §§ 9a.101-.119 (West Supp. 2011); KAN. STAT. ANN. §§ 44-1516 to -1536 (Supp. 2010); KY. REV. STAT. ANN. §§ 164.6901-.6935 (LexisNexis 2009 & Supp. 2011); LA. REV. STAT. ANN. §§ 4:420-.433 (2011); MD. CODE ANN., BUS. REG. §§ 4-401 to -421 (LexisNexis 2010 & Supp. 2011); MINN. STAT. ANN. §§ 81A.01-.21 (West 2009 & Supp. 2012); MISS. CODE ANN. §§ 73-42-1 to -35 (West 2010 & Supp. 2011); MO. ANN. STAT. §§ 436.215-.272 (West 2010); NEB. REV. STAT. §§ 48-2601 to -2619 (2010); NEV. REV. STAT. ANN. §§ 398.400-.620 (LexisNexis 2008); N.H. REV. STAT. ANN. §§ 332-J:1-J:15 (LexisNexis 2010); N.M. STAT. ANN. §§ 61-14F-1 to -19 (West Supp. 2011); N.Y. GEN. BUS. LAW §§ 899-899-P (McKinney Supp. 2010); N.C. GEN. STAT. §§ 78C-85 to -105 (2011); N.D. CENT. CODE §§ 9-15.1-01 to -16 (2006); OKLA. STAT. ANN. tit. 70, §§ 821.81-.99 (West 2005 & Supp. 2012); OR. REV. STAT. §§ 702.005-.994 (2007); 5 PA. CONS. STAT. ANN. §§ 3101-3320 (West 2008); R.I. GEN. LAWS §§ 5-74.1-1 to -20 (2009); S.C. CODE ANN. §§ 59-102-10 to -180 (2004 & Supp. 2011); S.D. CODIFIED LAWS §§ 59-10-1 to -20 (2009 & Supp. 2011); TENN. CODE ANN. §§ 49-7-2122 to -2141 (2009 & Supp. 2011); TEX. OCC. CODE ANN. § 2051.001-.553 (West 2007); UTAH CODE ANN. §§ 15-9-101 to -119 (LexisNexis 2009 & Supp. 2011); WASH. REV. CODE ANN. §§ 19.225.010-.903 (West 2007); W. VA. CODE ANN. §§ 30-39-1 to -21 (LexisNexis 2007); WIS. STAT. ANN. §§ 440.99-.999 (West 2005 & Supp. 2011); WYO. STAT. ANN. §§ 33-44-101 to -114 (2011).

70. UNIF. ATHLETE AGENTS ACT, 7 Part IB U.L.A. 63-127 (2000), *available at* <http://www.law.upenn.edu/bll/archives/ulc/uaaa/aaa1130.htm>.

71. Robert N. Davis, *Exploring the Contours of Agent Regulation: The Uniform Athlete Agents Act*, 8 VILL. SPORTS & ENT. L.J. 1, 5 (2001) (quoting Letter from Richard C. Hite, Chairman, Study Comm. on Athlete Agents, Nat'l Conference of Comm'rs on Unif. State Laws, to Study Committee Members (July 23, 1996) (internal quotations omitted)).

72. *Legislative Fact Sheet—Athlete Agents Act*, UNIF. LAW COMM'N, <http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Athlete%20Agents%20Act> (last visited Feb. 28, 2012); see Davis, *supra* note 71, at 2. States began regulating athlete agents in 1981. *Id.* at 7.

[T]he early approach focused on registration of agents, disclosure of past practice, work experience, internal operations and registration fees. By the late 1980s, widespread inducements paid to college athletes by aggressive sports agents convinced college administrators and state legislators that current efforts were not

the uniform registration, certification, and a mandated criminal history disclosure of sports agents seeking to represent student athletes who are or may be eligible to participate in intercollegiate sports, impose[] specified contract terms on these agreements to the benefit of student athletes, and provide[] educational institutions with a right to notice along with a civil cause of action for damages resulting from a breach of specified duties.⁷³

The UAAA, therefore, is designed to protect colleges and universities from the negative consequences that can arise when a student athlete impermissibly signs with an agent.⁷⁴

North Carolina has adopted the UAAA, and its law is similar to that of the other adopting states.⁷⁵ The North Carolina statute requires agents to register with the Secretary of State's office before acting as an athlete agent in the state.⁷⁶ Among other qualifications, an athlete agent's application for certification must include several disclosures, including a description of the applicant's formal training, practical experience, and educational background relating to agent activities.⁷⁷ North Carolina's Uniform Athlete Agents Act ("the

effective deterrents. Thus, beginning in 1988, several states re-evaluated the original sports agent regulatory models and chose, instead, to adopt legislation with stiffer penalties.

Id. The lack of interstate uniformity, however, led to the need for and creation of the UAAA. *Id.* at 2; see also Davis, *supra* note 58, at 808–09 (stating that a "critical objective" of the UAAA's creation was uniformity).

73. *Athlete Agents Act Summary*, UNIF. LAW COMM'N, <http://www.uniformlaws.org/ActSummary.aspx?title=Athlete%20Agents%20Act> (last visited Feb. 28, 2012).

74. Davis, *supra* note 58, at 809. The UAAA is also aimed at protecting student athletes and, as the name implies, remedying the previous problem of a lack of uniformity among agent laws. *Id.*; see UNIF. ATHLETE AGENTS ACT prefatory note, 7 Part IB U.L.A. 55 (2000), available at <http://www.law.upenn.edu/bll/archives/ulc/uaaa/aaa1130.htm> (explaining that the UAAA was drafted in response to requests by universities and the NCAA to provide uniformity and reciprocity of athlete-agent laws nationwide).

75. Uniform Athlete Agents Act, 2003 N.C. Sess. Laws 1067 (codified at N.C. GEN. STAT. §§ 78C-85 to -105 (2011)); see also *FAQ on Uniform Athlete Agents Act*, *supra* note 68 (stating that "[a]mong the states that have adopted the UAAA, some have slightly altered various provisions to meet the specific needs of the state").

76. See § 78C-88(a).

77. See *id.* Athlete agents must also provide contact information for three people not related to the applicant who will provide references for the applicant; information regarding all clients the athlete agent has represented in the previous five years; whether the applicant or certain of his business associates has been convicted of certain crimes; whether there have been any judicial or administrative determinations that the applicant or certain of his business associates has made false, misleading, deceptive, or fraudulent representation, or whether such person's activities have led to the sanction or suspension of a student athlete or school; and whether any sanction or suspension has been imposed on the applicant or certain of his business associates. § 78C-89(a)(4)–(6), (8)–(11). The

Act”) also provides requirements for contracts entered into between agents and athletes, including a “conspicuous” warning to the potential client that his signature will result in a loss of intercollegiate eligibility.⁷⁸ An agency contract that does not meet the express terms of the statute is voidable by the student athlete.⁷⁹

In addition, the law also prohibits an athlete agent from engaging in certain specified conduct.⁸⁰ Athlete agents are prohibited from furnishing “anything of value to a student-athlete before the student-athlete enters into the agency contract” or “giving anything of value to any individual other than the student-athlete or another registered athlete agent” with the intent to entice a student athlete to enter into an agency contract.⁸¹ North Carolina’s law provides both criminal and civil penalties for violators: an athlete agent who breaks the law is guilty of a Class I felony⁸² and will be subject to a civil penalty of up to \$25,000.⁸³

A school that is affected when an athlete agent or student athlete violates the North Carolina statute is also granted a private right of action against the athlete and the agent for damages.⁸⁴ Such damages

Secretary of State is given broad power under the law to deny certification of such registration and, in issuing a denial of certification, may consider whether the applicant has been the subject of the aforementioned criminal, judicial, administrative, or disciplinary actions. *See* § 78C-90(b). Applicants must also pay a \$200 fee. § 78C-93. The UAAA generally provides for reciprocity so that repeating the registration process in numerous states is unnecessary. *See FAQ on Uniform Athlete Agents Act, supra* note 68 (“To ease the burden on athlete agents [wishing to register in multiple states], the UAAA provides a reciprocal registration process in which a valid certificate of registration in one state will be honored in other states that have adopted [the UAAA], if certain requirements are met.”).

78. § 78C-94(a)–(c). The conspicuous notice on such contract must be in boldface type, in capital letters, and must state, as a warning to the student athlete that signing the contract will result in loss of intercollegiate eligibility as a student athlete; the student athlete and athlete agent must notify the student-athlete’s athletic director of the existence of the contract within seventy-two hours of entering into the agreement; if the athlete agent is an attorney, the student athlete waives his attorney-client privilege with respect to the agency contract; and the student athlete may cancel the contract within fourteen days of signing it, but such cancellation will not restore the student athlete’s eligibility. § 78C-94(c).

79. § 78C-94(d). A student athlete entering into an agency contract may not waive the right to cancel such contract. § 78C-96(b).

80. *See* § 78C-98.

81. § 78C-98(a)(2)–(3). Additionally, an athlete agent shall not make false promises or give “materially false or misleading information.” § 78C-98(a)(1).

82. § 78C-99.

83. § 78C-101.

84. § 78C-100(a).

include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of this Article or was penalized, disqualified, or suspended from participation in athletics by: (i) a national [association] for the promotion and regulation of athletics; (ii) an athletic conference; or (iii) reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by an athletic organization.⁸⁵

The availability of a private right of action is important because a football program and its university can lose millions of dollars if they are subject to NCAA sanctions resulting from a student athlete's violation of NCAA rules.⁸⁶ For example, the University of Southern California ("USC")—which had to vacate a national football championship and was punished with a two-year postseason ban largely because former star running back Reggie Bush accepted improper benefits from agents—incurred damages resulting from the NCAA sanctions estimated to be in the tens of millions of dollars.⁸⁷ This estimate included lost postseason bowl appearance payments, attorneys fees, and reduced receipts due to lower ticket sales.⁸⁸ Admittedly, such damages are hard to quantify, but they are undoubtedly significant. Even the drafters of the UAAA indicated that such losses were a central concern and a reason to grant educational institutions a right of action against law-breaking agents:

[NCAA] sanctions can be very severe and may include loss of, or liability to return, substantial revenues for participation in post-season events. Frequently, the non-monetary sanctions

85. § 78C-100(b).

86. SHROPSHIRE & DAVIS, *supra* note 15, at 149 (stating that a "successful football program at a public or private Division I college could potentially lose millions that might be derived from television and postseason competition if it is sanctioned by the NCAA"); *see also* Davis, *supra* note 71, at 16–17 ("The damage caused by improper and illegal enticements to student-athletes is far greater than the casual observer might believe. The student-athlete who enters into an agency contract may lose eligibility and may diminish his or her value in the professional sports market. The educational institution may also lose post-season competition revenue and may be subjected to sanctions from the NCAA."); Phillips, *supra* note 23 ("If players are suspended and that [a]ffects bowl game eligibility or placement, millions of dollars are lost, jobs are in jeopardy and a school's future can be [a]ffected for nearly a decade simply because a university fell off the balance beam of double jeopardy.").

87. *See* Gary Klein, *Bush Beleaguered: The High Price USC is Paying for NCAA Sanctions Goes Well Beyond the Diminishment of Its Football and Basketball Programs, to Revenue Losses Running into the Tens of Millions*, L.A. TIMES, June 22, 2011, at C1.

88. *See id.* Others, including a sports economist, suggest that additional, less tangible losses, including dilution of USC's brand and a weakened ability to secure the highest level recruits, add to the damages incurred because of the Reggie Bush scandal. *See id.*

have long-term, adverse effects on athletic programs. Perhaps as important as any other effect, the reputations of respected educational institutions are tarnished and there is a severe disruption in the activities of those responsible for administration of the institutions.⁸⁹

C. *Players' Associations*

In addition to oversight at the state and federal levels, players' associations for the four major professional sports leagues (the NFL, the National Basketball Association, Major League Baseball, and the National Hockey League) regulate agent activity.⁹⁰ Such associations require that agents become certified prior to contract negotiations, often place restrictions on the size of commissions, and provide provisions for early termination of representation contracts.⁹¹ These associations also retain the ability to revoke an agent's certification for violation of its rules. The NFLPA, for example, provides that an agent may lose his certification temporarily or permanently if he

[p]rovid[es] or offer[s] money or any other thing of value to any player or prospective player to induce or encourage that player to utilize his/her services; [or] [p]rovid[es] or offer[s] money or any other thing of value to a member of the player's or prospective player's family or any other person for the purpose of inducing or encouraging that person to recommend the services of the [agent].⁹²

Given this Comment's focus on football, it is particularly important to discuss the NFLPA's rules and regulations. The NFLPA is the "sole and exclusive bargaining representative of present and future employee players in the NFL."⁹³ The NFLPA requires that any individual desiring to represent an NFL player must have received an undergraduate degree and a post-graduate degree, although individuals may be excepted from this requirement.⁹⁴ Individuals must also attend a seminar presented by the NFLPA and pass a written examination in order to become certified to represent

89. UNIF. ATHLETE AGENTS ACT prefatory note, 7 Part IB U.L.A. 55 (2000), available at <http://www.law.upenn.edu/bll/archives/ulc/uaaa/aaa1130.htm>.

90. See Neiman, *supra* note 36, at 128.

91. *Id.*

92. NFL PLAYERS ASS'N, NFLPA REGULATIONS GOVERNING CONTRACT ADVISORS § 3(B)(2) (2007) [hereinafter NFLPA REGULATIONS].

93. *Id.* at Introduction.

94. *Id.* § 2(A).

players.⁹⁵ The NFLPA may deny certification for a wide variety of reasons.⁹⁶ Once certified, agents cannot provide money or anything else of value to collegiate athletes or athletes' families as a means of securing representation.⁹⁷

Further, agents must disclose to the NFLPA all payments made to individuals (such as runners) and entities in furtherance of the recruitment of a player.⁹⁸ Those registered as agents by the NFLPA are prohibited from engaging in numerous other, specific forms of conduct under a catch-all provision that provides that agents may not engage in unlawful activity or any other "conduct involving dishonesty, fraud, deceit, misrepresentation, or any other activity which reflects adversely on his/her fitness as a Contract Advisor or jeopardizes his/her effective representation of NFL Players."⁹⁹ The NFLPA can also levy penalties against an agent for a violation of regulations, such as suspension or revocation of an agent's certification.¹⁰⁰ Finally, the NFLPA's rules limit the maximum commission that an agent can receive to three percent of a player's salary.¹⁰¹ Although the NFLPA's regulatory scheme is carefully reasoned, it nonetheless falls short of adequately deterring agent misconduct.

D. NCAA Regulations

The NCAA does not have any actual regulatory authority over agents.¹⁰² It does, however, have regulatory authority over student athletes, coaches, and educational institutions.¹⁰³ Thus, the NCAA

95. *Id.* §§ 2(A), (C).

96. *Id.* § 2(C) (setting forth a non-exclusive list of eight reasons why the NFLPA may deny certification to a prospective NFL agent, among them that the applicant has engaged in conduct that "significantly impacts adversely on his/her credibility, integrity or competence to serve in a fiduciary capacity on behalf of players").

97. *Id.* §§ 3(B)(2)–(3).

98. *Id.* § 3(A)(19)(a).

99. *Id.* § 3(B)(14).

100. *Id.* §§ 6(D)(1)–(6) (stating that punishments assessed by the NFLPA's disciplinary arm may range from an informal letter of reprimand to be maintained in an agent's file, to monetary fines, or even to suspension or revocation of certification).

101. *Id.* § 4(B).

102. *See* SHROPSHIRE & DAVIS, *supra* note 15, at 133–34 (quoting former NCAA Executive Director Richard Schultz, who said that sports agent improprieties are "really one of the knottiest problems we have because there is not a lot we can do about it. All we can do is penalize the institution or the athlete.").

103. *See Ethics and Sports: Agent Regulation*, *supra* note 26, at 759 (quoting Rachel Newman-Baker, an NCAA official who worked in the area of agent activities, stating "[w]e can discipline our coaches, and we can discipline our student-athletes, but we cannot discipline agents").

indirectly regulates agents.¹⁰⁴ Further, the NCAA clearly posts on its website “dos” and “don’ts” for agents, summarizing what conduct is and is not permitted under state laws (such as the UAAA) and discussing what agent activities could threaten a student athlete’s intercollegiate eligibility.¹⁰⁵ For their part, athletes are routinely made aware of the consequences of entering into agreements with agents and/or accepting benefits from them.¹⁰⁶ In theory, the punishments and sanctions against players and schools should deter illicit contact with agents.

The NCAA bylaws make clear that a student athlete will be deemed ineligible to participate in intercollegiate sports if he or she enters or agrees to enter into an agency contract, or otherwise agrees to be represented by an agent “for the purpose of marketing his or her athletics ability or reputation.”¹⁰⁷ Similarly, a student athlete or prospective student athlete will lose eligibility to compete after entering into an agreement for future representation.¹⁰⁸ A student athlete will also lose eligibility if he or she—or his or her friends or relatives—accepts certain benefits from either an agent or a person who works for an agent, such as a runner.¹⁰⁹ Engaging in any of these activities compromises a student athlete’s amateur status, which is a

104. Davis, *supra* note 58, at 806.

105. See *Guidelines for Agents*, NCAA (July 29, 2010), <http://www.ncaa.org/wps/wcm/connect/public/ncaa/resources/latest+news/2010+news+stories/july+latest+news/guidelines+for+agents> (informing athlete agents that, where applicable, they are required to follow state laws that govern their activities, and also giving specific examples of activities that agents should not engage in, including: (1) entering into an agreement for future representation with student athletes who have remaining collegiate eligibility; (2) working with runners or other business associates who provide impermissible benefits to student athletes who have remaining collegiate eligibility, or their friends or relatives; and (3) marketing student athletes with remaining collegiate eligibility).

106. See, e.g., KING, III & BROOKS, *supra* note 4, at 4-15 (stating that each year, before preseason football practice started, UNC’s NCAA Compliance Staff “conducted a rules education meeting with the entire football team on NCAA regulations applicable to them NCAA legislation regarding agents and those acting on their behalf was an area of particular emphasis [T]he staff informed the student-athletes that they are prohibited from accepting any benefits of any kind from agents, runners, or financial advisors, as this . . . would jeopardize their eligibility.”).

107. See NCAA, *supra* note 53, at art. 12.3.1.

108. See *id.* at art. 12.3.1.1.

109. See *id.* at art. 12.3.1.2(a)–(b) (“An individual shall be ineligible . . . if he or she (or his or her relatives or friends) accepts transportation or other benefits from . . . (a) Any person who represents any individual in the marketing of his or her athletics ability. The receipt of such expenses constitutes compensation based on athletics skill and is an extra benefit not available to the student body in general; or (b) An agent, even if the agent has indicated that he or she has no interest in representing the student-athlete in the marketing of his or her athletics ability or reputation and does not represent individuals in the student-athlete’s sport.”).

prerequisite to intercollegiate athletics participation.¹¹⁰ It is the responsibility of a student athlete's school to determine the validity of its student athletes' and prospective student athletes' amateur statuses and to notify the NCAA if it has reason to believe that one of its athletes is no longer eligible for competition.¹¹¹

In addition to revoking a student athlete's eligibility, the NCAA has the power to sanction schools whose student athletes engaged in illicit behavior.¹¹² Among the many penalties that the NCAA may levy upon such schools are: the forfeiture of contests in which an ineligible student athlete played,¹¹³ institutional fines for each violation (with penalties ranging from \$500 to \$5,000)¹¹⁴ or potentially greater financial penalties for more significant violations,¹¹⁵ a reduction in the number of scholarships the school may offer in the sport involved;¹¹⁶ and prohibition from participation in postseason competition (such as football bowl games or the NCAA basketball tournament).¹¹⁷

III. THE INADEQUACIES OF CURRENT REGULATIONS

Despite the multiple means by which agents are regulated, the current regulatory scheme is generally ineffective at preventing and

110. See *id.* at art. 12.1.1 (stating that a student athlete must be certified as having amateur status in order to participate, and that "[a]s a condition and obligation of membership, it is the responsibility of an institution to determine the validity of the information on which the amateur status of a prospective student-athlete . . . is based").

111. See *id.*; see also *id.* at art. 12.1.1.1.2.2 ("If an institution receives additional information or otherwise has cause to believe that a prospective student-athlete's amateur status has been jeopardized, the institution is responsible for promptly notifying the NCAA Eligibility Center of such information."). Note, however, that the NCAA will also investigate whether its rules have been broken on its own initiative when it learns of information suggestive of violations. See *id.* at art. 32.2.1.1 ("[E]nforcement staff may initiate an investigation on its own motion when it receives information that an institution is, has been, or may have been in violation of NCAA legislation.").

112. Davis, *supra* note 58, at 806-07.

113. See NCAA, *supra* note 53, at art. 19.5.1(b).

114. See *id.* at art. 19.5.1(d).

115. See *id.*; see also, e.g., Davis, *supra* note 58, at 807 (discussing an instance in which the University of Alabama was penalized by the NCAA and forced to forfeit \$253,477 for playing two student athletes later declared ineligible because of their improper behavior with agents).

116. See NCAA, *supra* note 53, at art. 19.5.2.2(c).

117. See *id.* at art. 19.5.2.2(h). An example of the levying of such penalties is found in the previously discussed scandal involving the USC that resulted in a two-year postseason ban for the school's football program. See Klein, *supra* note 87. Similarly, in 1993, the NCAA punished Auburn University for violations that included improper payments to players, including a two-year postseason ban. See Robert McG. Thomas, Jr., *Tapes Bring Auburn Penalties*, N.Y. TIMES, Aug. 19, 1993, at B16.

detering athlete agents from engaging in improper behavior. The laws are rarely enforced, and when they are, punishments fail to adequately penalize violators enough to deter others from committing future violations. Moreover, those who have incurred losses as a result of agent indiscretions rarely seek judicial recourse for compensation.

The shortcomings of the various laws and regulations are explored below. While each of the categories discussed is in need of reform, this Part focuses primarily on two areas that would likely reduce illegal agent conduct. First, state lawmakers must strengthen the laws governing agents by increasing penalties and enforcement. Second, universities that have incurred losses as a result of illegal agent behavior must bring legal action. This Part argues that the UNC scandal can provide a case study of how pursuing both of these courses of action will reduce illegal agent activity in North Carolina in the future. National adoption of such policies would broadly curtail improper agent behavior.

A. Federal Legislation

SPARTA was not designed to be the primary means to regulate illegal agent activity. Through FTC enforcement, SPARTA was intended only to supplement state agent legislation.¹¹⁸ The FTC will only order the responsible or violating agent to stop the misconduct for the first SPARTA violation, even if unfair or deceptive trade practices are discovered.¹¹⁹ If the agent continues the illegal activity, the FTC is permitted to seek a penalty of up to \$16,000 for each violation¹²⁰ and permits state attorneys general to bring federal actions against those who violate SPARTA if it is determined such violations have harmed the interest of state residents.¹²¹ The law also provides educational institutions with the right to pursue federal private rights of action against violators.¹²²

118. See Davis, *supra* note 58, at 813; see also 15 U.S.C. § 7803 (2006) (explaining that a violation of SPARTA is to be enforced as if it were a violation of the unfair or deceptive act or practice rule prescribed by the FTC).

119. Willenbacher, *supra* note 16, at 1243; see also 15 U.S.C. § 45(b) (2006) (“[The Commission] shall issue and cause to be served . . . an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice.”).

120. See 15 U.S.C.A. § 45(l) (2010), amended by 16 C.F.R. § 1.98(c) (2009) (raising the maximum penalty for a first violation from \$10,000 to \$16,000).

121. See 15 U.S.C. § 7804(a)(1).

122. See *id.* § 7805(b).

Such provisions and penalties may appear adequate, but in practice, they provide little help in combating illegal agent behavior. Since SPARTA is designed to supplement state laws, many of which are modeled after the UAAA, a quick comparison of SPARTA with an average, state-adopted version of the UAAA illustrates SPARTA's shortcomings. For example, North Carolina's Uniform Athlete Agents Act allows for a \$25,000 civil penalty per violation,¹²³ while SPARTA's penalty scheme only provides for a cease-and-desist order upon the first violation, and a \$16,000 penalty upon further illegal conduct. While having SPARTA is certainly better than nothing, particularly in those states that have failed to pass any legislation governing agents, it is hard to imagine that the threat of a cease-and-desist order, even if followed by a \$16,000 fine, would deter a rogue agent.¹²⁴

B. State Legislation

As the UNC scandal demonstrates, state regulation of agents is also inadequate. In addition to penalty provisions that are too low to serve as effective deterrents even if they *were* enforced, the collective failure of states to pursue action against agents has resulted in the codification of empty threats.¹²⁵ In efforts to obtain up-to-date information on state law enforcement of sports agents, more than forty states were contacted for purposes of this Comment; nineteen responded.¹²⁶ Of those nineteen, fifteen states reported taking no

123. N.C. GEN. STAT. § 78C-101 (2011).

124. See Willenbacher, *supra* note 16, at 1243 ("If SPARTA's penalty and remedy provisions are no different from those that already exist, it begs the question: How will SPARTA effectively stop sports agents from engaging in these activities? The uneasy answer is that it will not."). John Phillips, the sports agent who has argued vehemently for reform of his own profession, has written that he knows of no instances of the powers granted under SPARTA actually being used. See Phillips, *supra* note 23 (referring to SPARTA as a "toothless warrior").

125. See *infra* notes 126–38 and accompanying text.

126. See E-mail from Angela Arrington, Att'y, Div. of Enforcement, Wis. Dep't of Licensing & Regulation, to author (Jan. 4, 2011, 17:16 EST) (on file with the North Carolina Law Review); E-mail from Judy Bradshaw, Office of Ala. Sec'y of State, to author (Dec. 22, 2010, 15:27 EST) (on file with the North Carolina Law Review); E-mail from Colleen Byelick, Gen. Counsel and Licensing Dir., Office of Neb. Sec'y of State, to author (Dec. 28, 2010, 09:28 EST) (on file with the North Carolina Law Review); E-mail from Kaley Dion, Office of N.H. Sec'y of State, to author (Jan. 3, 2011, 08:15 EST) (on file with the North Carolina Law Review); E-mail from Div. of Prof'l Regulation Info. Ctr., State of Del., to author (Jan. 7, 2011, 10:08 EST) (on file with the North Carolina Law Review); E-mail from Gina Marie Fontanini, Office of the Iowa Sec'y of State, to author (Dec. 27, 2010, 11:28 EST) (on file with the North Carolina Law Review); E-mail from Steve Lindsey, Exec. Dir., Ga. Prof'l Licensing Bds. Div., to author (Dec. 22, 2010, 15:27

action against agents within the last five years; in some cases, readily available information did not go back that far.¹²⁷ Additionally, Delaware stated that it anticipated having its law repealed during the next legislative session,¹²⁸ and Arkansas did not know whether its law had been enforced in the last several years.¹²⁹ Only two of the

EST) (on file with the North Carolina Law Review); E-mail from Tim Lueckenhoff, Exec. Dir., Mo. Office of Athletics, to author (Dec. 28, 2010, 09:27 EST) (on file with the North Carolina Law Review); E-mail from Richard Maloney, Dir. of Trade Practices, Conn. Dep't of Consumer Prot., to author (Dec. 22, 2010, 16:13 EST) (on file with the North Carolina Law Review); E-mail from Sandra McGrew, Pub. Affairs Coordinator, Office of the Ark. Sec'y of State, to author (Jan. 6, 2011, 11:15 EST) (on file with the North Carolina Law Review); E-mail from Clyde Ormond, Bureau Manager, Utah Div. of Occupational & Prof'l Licensing, to author (Dec. 27, 2010, 14:58 EST) (on file with the North Carolina Law Review); E-mail from Frances Short, Ky. Labor Cabinet, to author (Dec. 28, 2010, 08:50 EST) (on file with the North Carolina Law Review); E-mail from Cherie Simpson, Mgmt. Assistant, Idaho Bureau of Occupational Licenses, to author (Dec. 23, 2010, 10:48 EST) (on file with the North Carolina Law Review); E-mail from Holly Textor, Notary Unit Supervisor, Office of the Ariz. Sec'y of State, to author (Jan. 5, 2011, 10:31 EST) (on file with the North Carolina Law Review); E-mail from JoAnn Uchida, Haw. Dep't of Commerce & Consumer Affairs, to author (Dec. 22, 2010, 17:12 EST) (on file with the North Carolina Law Review); E-mail from Shannan Velayas, Press Sec'y, Office of Cal. Sec'y of State, to author (Jan. 4, 2011, 10:00 EST); E-mail from Mark Welch, Exec. Counsel, Office of R.I. Sec'y of State, to author (Jan. 7, 2011, 16:55 EST) (on file with the North Carolina Law Review); Telephone Voicemail from Michael Powell, Att'y, Bus. and Filings Div., Office of the Tex. Sec'y of State (Jan. 7, 2011); Telephone Interview with Thomas Riley III, Assistant Sec'y of State, Bus. Serv., Office of Miss. Sec'y of State (Jan. 7, 2011).

127. See, e.g., E-mail from Angela Arrington, *supra* note 126 ("There has never been an agent found to have violated the athlete agent laws [in Wisconsin] since the laws [sic] inception in 2003."); E-mail from Gina Marie Fontanini, *supra* note 126 ("As far as I know [I consulted others that have been in the office since the 1980's] none of them ever recall taking any action against an Athlete Agent in Iowa."); E-mail from Steve Lindsey, *supra* note 126 ("In the past eight years . . . there have been zero instances of confirmed violations by athlete agents [in Georgia] . . ."); E-mail from Tim Lueckenhoff, *supra* note 126 ("[T]he Missouri Office of Athlete Agents has had no complaints and no discipline."); E-mail from Holly Textor, *supra* note 126 ("I have never received any complaints regarding any Athlete Agents on file with our office [in Arizona] since . . . November 19, 2005."); E-mail from JoAnn Uchida, *supra* note 126 ("No complaints, investigations or prosecutions [in Hawaii] since the law was enacted in 2007."); E-mail from Mark Welch, *supra* note 126 (stating that in the last five years, Rhode Island has "not had occasion" to find any individuals in violation of the state's athlete agent law).

128. E-mail from Div. of Prof'l Regulation Info. Center, *supra* note 126 ("The Delaware athletic agent law was enacted in July 2001, however, no board, regulations or applications were ever . . . established We anticipate at the next legislative session that our athletic agent law will be repealed and will no longer exist.").

129. E-mail from Sandra McGrew, *supra* note 126 ("We don't know what sorts of punishments, if any, have been levied [in Arkansas], because we do not enforce and there is no requirement that . . . infractions be reported to us."). Note, however, that Arkansas has amended its law in a way this Comment argues is necessary, suggesting the state's approach is moving toward one of greater enforcement. See *infra* note 182 and accompanying text.

nineteen states, Alabama and Texas, reported taking disciplinary action against agents in recent years. The Alabama Secretary of State's Office, although unable to provide specific information on enforcement activities, was able to say that "[f]ines have been levied" and "[l]icenses have been revoked."¹³⁰ Texas appears to have engaged in the most robust enforcement efforts, punishing thirty-one agents for violations of the athlete-agent statute in the last two years.¹³¹ However, the cumulative amount of fines levied against those violators totaled a paltry \$32,000, averaging just above \$1,000 per agent.¹³²

In a similar survey conducted in August 2010, twenty-four states surveyed by the *Associated Press* "reported taking no disciplinary or criminal action against sports agents, and were unable to determine if state or local prosecutors had pursued such cases."¹³³ One state, Colorado, rescinded its sports-agent law only two years after its passage because only four agents had registered with the state.¹³⁴ The *Associated Press* found that only Pennsylvania and Texas could cite specific instances in which it had punished agents. Pennsylvania penalized agents four times in the previous seven years, never fining violators more than \$1,000.¹³⁵

The low enforcement level is not surprising considering the level of staffing dedicated to overseeing and enforcing state athlete-agent laws. Most surveyed states reported little to no staff dedicated to the enforcement of these laws.¹³⁶ Some states have much more impressive enforcement regimes, which in some cases include staff who handle the processing of applications for certification, coupled with additional, dedicated enforcement agents.¹³⁷ In Idaho, for example, a

130. E-mail from Judy Bradshaw, *supra* note 126 (adding that no agents found to have violated the statute in Alabama have received jail time).

131. Telephone Voicemail from Michael Powell, *supra* note 126.

132. *Id.*

133. See Zagier, *supra* note 35.

134. See *id.*

135. See *id.*

136. See, e.g., E-mail from Judy Bradshaw, *supra* note 126 ("[Alabama] doesn't have an enforcement section except for the attorney general's office."); E-mail from Clyde Ormond, *supra* note 126 ("The Division [in Utah] was given this program in 2003 and no staffing was provided."); E-mail from JoAnn Uchida, *supra* note 126 (stating that one agency with a staff of sixty-six persons in Hawaii is tasked with enforcing forty-six different licensing boards, including the board that licenses athlete agents).

137. See, e.g., E-mail from Angela Arrington, *supra* note 126 ("There are close to 5 staff that work in the areas of credentialing, enforcement, and other regulatory matters for athlete agents [in Wisconsin]. These staff persons do not only work on athlete agents matters but other professional areas as well."); E-mail from Steve Lindsey, *supra* note 126

state that reports having just fourteen registered agents, there is “[a]n investigative unit [with other responsibilities as well] . . . that includes 7 investigators” overseeing agent activity.¹³⁸ This is not, however, representative of staffing levels nationwide.

The lack of enforcement and attention to agents is understandable; there are more serious crimes worthy of priority.¹³⁹ One might thus question the wisdom, legitimacy, and necessity of laws that are unlikely to be enforced. However, state laws and their enforcement are absolutely necessary to protect educational institutions from the significant reputational and financial damage that results from violative behavior.

The current enforcement scheme of North Carolina’s athlete-agent law is of great importance in the wake of the UNC football scandal. North Carolina should seize the opportunity this scandal presents by aggressively reforming and enforcing its laws. The scandal itself brought to light the severe lack of enforcement of North Carolina’s athlete-agent law; for the first time, the Secretary of State’s Office opened an investigation into whether the state’s agent law was broken.¹⁴⁰ While launching the investigation, however, the Office was forced to shift around personnel, asking investigators who normally deal in securities fraud to adopt new roles¹⁴¹ because legislators failed to dedicate new resources for enforcement when it adopted the UAAA in 2003.¹⁴² Agents who wanted to illegally procure new clients on UNC’s football team obviously did not have much reason to fear detection or punishment.

C. *Players’ Associations*

Most experts and commentators agree that the NFLPA serves as a model for the other major sports when it comes to agent

(“In addition to staff who process applications, [Georgia has] a staff of enforcement agents who are charged with investigating complaints against licensees and unlicensed practice.”).

138. See E-mail from Cherie Simpson, *supra* note 126.

139. The director of the Wharton Sports Business Initiative at the University of Pennsylvania makes the point this way: “If you’ve got bank robbers and rapists, white-collar crime—how many agent issues should be raised to the top of some prosecutor’s desk?” Zagier, *supra* note 35.

140. Jeff Gravley, *N.C. Secretary of State Launches Investigation into Agents*, WRALSPORTSFAN.COM (July 22, 2010), <http://www.wralsportsfan.com/unc/story/8011502/>.

141. See Zagier, *supra* note 35.

142. *Id.*

regulation.¹⁴³ But its efforts still provide inadequate deterrence of the kind of improper agent conduct that threatens to strip eligibility from student athletes and lands university football programs on probation.¹⁴⁴ To its credit, the NFLPA has increased the level of education it requires of individuals before they will be certified as agents in recent years,¹⁴⁵ and in 2002 adopted a requirement that an agent negotiate at least one contract every three years in order to maintain his certification.¹⁴⁶ Further, the NFLPA requires its certified agents to make written disclosures of payments made to runners¹⁴⁷ and now requires them to obtain malpractice insurance.¹⁴⁸

Apparently in response to the newfound attention being given to the issue of improper agent activity, the NFLPA has taken even further action. In August 2010, two months after the UNC scandal, the NFLPA, the NFL, the NCAA, and the American Football Coaches Association took preliminary responsive measures, beginning a series of meetings designed to tackle the “age-old problem” of improper agent activity with student athletes.¹⁴⁹ The head of the NFLPA also publicly warned that rogue agents would be subject to aggressive disciplinary action.¹⁵⁰ In the months following the NFLPA made good on those threats when its Committee on Agent Regulation and Discipline (“CARD”) disciplined five agents for violating NFLPA regulations in dealing with student athletes,

143. See Davis, *supra* note 58, at 818 (stating that the NFLPA regulations should be looked to by other leagues because they are comprehensive in nature, responsive to ongoing problems, and because the NFLPA has been increasingly aggressive in enforcing its regulations in recent years).

144. See, e.g., *id.* at 826–27.

145. See *id.* at 820.

146. *Id.*

147. *Id.* at 821.

148. *Id.* at 820–21.

149. *Statement: Organizations To Meet To Address Agent Issues*, NFL PLAYERS ASS'N (Aug. 17, 2010), <https://www.nflplayers.com/Articles/Press-Releases/Statement-Organizations-Meet-to-Address-Agent-Issues/>. A second meeting was held in October 2010, and the parties involved planned to continue to meet in the future. See *Statement: NCAA, AFCA, NFL, NFLPA Meet over Agent Issues*, NFL PLAYERS ASS'N (Oct. 13, 2010), <https://www.nflplayers.com/Articles/Press-Releases/Statement-NCAA-AFCA-NFL-NFLPA-Meet-Over-Agent-Issues/>.

150. Michael C. Wright, *Source: NFLPA Probing Greengross*, ESPNCHICAGO (Sept. 2, 2010), <http://sports.espn.go.com/chicago/nfl/news/story?id=5401023> (quoting NFLPA Executive Director DeMaurice Smith as saying that improper agent activity was an “insidious problem”). Smith went on to say that agents found to have run afoul of NFLPA regulations would be dealt with “extremely aggressively.” *Id.* Smith also warned: “God help those agents” who are found in violation of the NFLPA regulations. Liz Mullen, *NCAA Investigation Has Agents Buzzing*, SPORTS BUS. J. (July 26, 2010), <http://www.sportsbusinessjournal.com/article/66323>.

which culminated in the revocation of two agent certifications,¹⁵¹ suspension of two agents,¹⁵² and issuance of a complaint against another.¹⁵³

The NFLPA's investigative process, however, continues to move slowly.¹⁵⁴ Another concern is that the NFLPA has little incentive to penalize agents for improperly soliciting college players, aside from creating the perception of doing the right thing. The NFLPA may well wield the biggest stick in the battle against agents by virtue of its ability to freeze agents out of the NFL for improper behavior, but it does not benefit from doing so. After all, the Marvin Austins, Robert Quinns, and Greg Littles of the world will still end up in the NFL, regardless of the damage they have caused their teams and schools by

151. See *CARD Committee Issues Discipline on Two Contract Advisors*, NFL PLAYERS ASS'N (Dec. 3, 2010), <https://www.nflplayers.com/Articles/Press-Releases/CARD-Committee-Issues-Discipline-on-Two-Contract-Advisors/> (stating that agent Teague Egan's certification was revoked because Egan violated numerous NFLPA Agent Regulations when he gave USC football player Dillon Baxter a ride in his company's golf cart, after Egan had been advised by USC officials that giving such a ride was an improper benefit under NCAA Rules); *CARD Committee Revokes Contract Advisor's Certification*, NFL PLAYERS ASS'N (Oct. 21, 2010), <https://www.nflplayers.com/Articles/Public-News/CARD-Committee-Revokes-Contract-Advisors-Certification/> (stating that agent Josh Luchs's certification was revoked after Luchs admitted to making or attempting to make payments to more than thirty student athletes while they still had collegiate eligibility).

152. See *CARD Committee Issues Discipline on Two Contract Advisors*, *supra* note 151 (stating that agent Gary Wichard had his NFLPA certification suspended by the CARD Committee for nine months for his improper activity with UNC's Marvin Austin); *NFLPA Disciplines a Contract Advisor for Violations*, NFL PLAYERS ASS'N (Oct. 12, 2010), <https://www.nflplayers.com/Articles/Public-News/NFLPA-Disciplines-a-Contract-Advisor-for-Violations/> (stating that agent Marlon Sullivan had his NFLPA certification suspended for six months and that he was fined \$10,000 for "improperly supervising" a person who was working for him; that person, a recruiter for Sullivan, "provided money to a former college player as an inducement" to sign with Sullivan as his agent).

153. *Statement: CARD Committee Issues Complaint Against Agent*, NFL PLAYERS ASS'N (Nov. 5, 2010), <https://www.nflplayers.com/Articles/Press-Releases/Statement-CARD-Committee-Issues-Complaint-Against-Agent/>. The NFLPA issued a disciplinary complaint against agent Ian Greengross after it was found that Greengross violated numerous regulations and that Greengross's recruiter, Kenny Rogers, allegedly acted improperly in misrepresenting himself to prospective clients and in trying to recruit players who were represented by other agents. See *id.* There are also allegations that Rogers solicited cash from persons associated with the Mississippi State University football program in exchange for the commitment of highly sought-after quarterback Cam Newton. See Pete Thamel, *Auburn Star is Focus of an Inquiry*, N.Y. TIMES, Nov. 5, 2010, at B11.

154. See *Agent Could Face NFLPA Suspension in Wake of UNC Scandal*, SPORTINGNEWS (Sept. 30, 2010), <http://www.sportingnews.com/ncaa-football/feed/2010-08/unc-investigation/story/agent-could-face-nflpa-suspension-in-wake-of-unc-scandal#subnav> (quoting former NFL running back and CARD committee member Robert Smith stating "I wish we could do more and move faster to get these morons out of there. . . . It has been a real hassle." (internal quotation marks omitted)).

taking improper benefits.¹⁵⁵ While the NFLPA may prefer that sports agents act properly in dealing with college athletes, its primary concern is with athletes once they reach professional status level. After all, the NFLPA is a union for professional football players and cannot be relied upon as an enforcement agency responsible for reigning in unscrupulous agents who break state and federal laws.¹⁵⁶

D. NCAA Regulations

NCAA regulations are aimed at student athletes and the institutions for which they play. While the regulations have an indirect effect on regulating agents, “[i]t is highly unlikely that these regulations do much to deter agents from using improper inducements to recruit student-athletes.”¹⁵⁷ The usefulness of these regulations is incidental to the threat that a loss of NCAA eligibility has upon student athletes contemplating accepting improper benefits. Some insiders have suggested that it is often student athletes who solicit such benefits;¹⁵⁸ in such circumstances, the fear of NCAA punishment is not likely to exist. Based on the odds of getting caught, this attitude may be justified: as recently as 2003, there were just four people employed in the NCAA’s Agent, Gambling and Amateurism Activities (“AGA”) subgroup governing hundreds of schools.¹⁵⁹

155. See J.P. Giglio, *School-Record 9 Tar Heels Selected*, CHARLOTTE OBSERVER, May 1, 2011, at 11C. Robert Quinn was drafted as the fourteenth overall pick in the first round of the 2011 NFL draft by the St. Louis Rams; Marvin Austin was selected in the second round (fifty-second overall) by the New York Giants; Greg Little was also selected in the second round (fifty-ninth overall) by the Cleveland Browns. *Id.*

156. Additionally, in his article advocating for agent reform, agent John Phillips argues that NFLPA punishment is not really punishment at all: “[T]he NFLPA does little to regulate the ‘contract advisors’ it allows to represent its Players. In fact, if someone was suspended by the NFLPA, he/she could *still* work in the industry and do most of what agents do, except for negotiate with NFL teams.” Phillips, *supra* note 23.

157. Davis, *supra* note 58, at 807.

158. See, e.g., Dohrmann, *supra* note 38, at 67 (“One of the misconceptions about the agent business is that the kids are victims [M]ost of the time the player or someone from his family approaches us.”).

159. See *Ethics and Sports: Agent Regulation*, *supra* note 26, at 756 (quoting a member of the AGA as saying, “[w]e have a director, two investigators, and a staff assistant. Our job is to investigate any and all NCAA violations that come in related to any one of those three areas. So, anything that has to do with agents, gambling, or amateurism we are going to get our hands on and dig in.”).

IV. THE UNC SCANDAL: APPROPRIATE LEGISLATIVE AND ADMINISTRATIVE RESPONSES—AND THE OPPORTUNITY TO BE A MODEL

Because of the timing of the UNC scandal and its high-profile nature, the reactions of both UNC and the State of North Carolina will likely be monitored by others across the country. If they respond properly, both entities could serve as models for other states and educational institutions hoping to tackle the athlete-agent problem.

A. *The UNC Scandal*

When the 2010 UNC football season came to a close, the Tar Heels finished with a record of eight wins and five losses.¹⁶⁰ It was an impressive record, given the off-field distractions, but ending the season with a 30–27 victory over the University of Tennessee in the Music City Bowl was a far cry from the preseason aspirations of a national championship.¹⁶¹ The Tar Heels had seven players suspended due to either confirmed or suspected improper dealings with agents,¹⁶² and the football team lost its associate head coach due to his dealings with a later-disciplined agent.¹⁶³ As a result of both the agent-related and academic investigations, UNC fired its head football coach, Butch Davis.¹⁶⁴ In the wake of the aftermath, both the athletic department's good name and the reputation of the University were stained.¹⁶⁵ UNC has self-imposed numerous penalties, including vacating wins from two football seasons, reducing scholarships, putting the football program on two years of probation, and paying a \$50,000 fine.¹⁶⁶ The University has taken several other steps as well, enhancing efforts to educate its student athletes on “regulations concerning agents, extra benefits, and preferential treatment”;¹⁶⁷

160. J.P. Giglio, *Tar Heels Well-Positioned for 2011*, NEWS & OBSERVER (Raleigh, N.C.), Jan. 4, 2011, at 1C.

161. See Bill Cole, *Busy Offseason Expected for UNC*, WINSTON-SALEM J., Jan. 1, 2011, at B1, available at <http://www2.journalnow.com/sports/2011/jan/01/wssport01-busy-offseason-expected-for-unc-ar-658389/>.

162. See KING, III & BROOKS, *supra* note 4, at 4-1 to -20; *supra* text accompanying notes 10–13.

163. KING, III & BROOKS, *supra* note 4, at I-1, 6-1 to -5.

164. See Ken Tysiac, *UNC Fires Football Coach to Restore Confidence in University*, NEWS & OBSERVER (Raleigh, N.C.), July 28, 2011, at 1A.

165. See KING, III & BROOKS, *supra* note 4, at I-1, I-6 (stating that UNC had only appeared before the NCAA's Committee on Infractions once before the football scandal, and that UNC is “embarrassed and disappointed” by the violations).

166. *Id.* at I-6; Cole, *supra* note 161.

167. KING, III & BROOKS, *supra* note 4, at 11-6.

expanding its staff whose responsibilities include compliance with NCAA rules,¹⁶⁸ and implementing a more stringent policy governing the contact between student athletes and agents.¹⁶⁹

Nevertheless, more action is necessary. Both the University and the North Carolina General Assembly should take legal measures to demonstrate that the UNC scandal is not only unacceptable, but that it will not happen again. Although there are plenty of entities who would like to put an end to unscrupulous agent activity, only a few groups currently have the power to stem the tide and curb the practice of bestowing improper benefits upon amateur athletes: players' associations and state and local prosecutors. The General Assembly must adopt laws with sufficient penalties to deter improper behavior and must provide the resources to enforce them.¹⁷⁰ Victimized educational institutions must also have recourse through private rights of action.¹⁷¹

Other commentators urging reform have taken the stance that the players' associations—specifically the NFLPA—must do more.¹⁷² Many have argued that the numerous parties directly and indirectly policing athlete agents need to “work more closely together,” arguing that communication between such parties is the critical element: “From the empirical experience over the past several years, it is evident that no entity acting alone can resolve the problems of the sports agent industry.”¹⁷³

It is inappropriate to rely too heavily on the NFLPA to take affirmative action to solve a problem that is not theirs to solve. An alternative, workable solution is preferable. Unscrupulous and illegal

168. *Id.* at 11-9 to -10.

169. *Id.* at 11-8 to -9.

170. See Andy Staples, *Saban and Slive Are Powerful Men, but Are Powerless Against Agents*, SI MOBILE (July 23, 2010, 10:15 AM), <http://si.mlogic.mobi/news/wr/wr/detail/2790899;jsessionid=F158A43D2B620374D2C1D10837917A10.cnnssi2> (“Only two groups have the power to make a dent. The NFL Players Association decides who is allowed to represent NFL players and can yank the certification of an unscrupulous agent, but it has no dominion over financial advisors, marketers and the other remoras that circle potential NFL players hoping to siphon off scraps Truly, the only people who can police the larger group are the actual police.”).

171. See *supra* Parts II.A–B.

172. See, e.g., Phillips, *supra* note 23 (“The NFLPA must be more proactive. An intern could simply monitor state registration requirements as Standard Representation Agreements are turned in. Agents must not be allowed to improperly sign Players. To skip this step means the laws mean nothing. Violations are rampant. Level the playing field and make those that abide by the rules the ones that obtain the contracts. Discipline agents for not abiding by state law. The NFLPA needs to actively investigate all of the cases investigated by States. No exception.”)

173. SHROPSHIRE & DAVIS, *supra* note 15, at 171–72.

athlete-agent behavior detrimentally affects intercollegiate athletics and educational institutions—not professional football. However, there is merit in an approach that seeks increased cooperation among multiple entities. In fact, a dual-pronged approach, undertaken by state legislatures and educational institutions, is ideal. Unfortunately, hoping numerous entities will work together in combating illicit agent behavior may be expecting too much and it is unlikely the disparate entities which have individually failed to properly police the problem will rally together in an even greater undertaking.

The UNC football scandal offers the opportunity to find a workable solution that can serve as a model to be repeated and adopted on a broader scale. Ultimately, the entities that have been damaged as a result of illegal behavior have the responsibility to ensure that laws are followed. North Carolina—like all states—must either act seriously about its athlete-agent law and enforce it, or repeal it altogether. The educational institution injured by lawbreakers should also seek retribution from those who have done the damage. To these ends, two particular steps should be taken that will result in greater compliance and less law- and rule-breaking: (1) the North Carolina General Assembly should increase significantly the amount of civil penalties levied by statute; and (2) UNC should take advantage of its statutory right of action and bring legal action against agents who infiltrated the athletic program and violated the law.

B. Statutory Changes

The General Assembly has an opportunity and responsibility to respond to the current situation. UNC is a taxpayer-funded state institution whose reputation has been tarnished.¹⁷⁴ When UNC's reputation is damaged, the reputation of the state is damaged as well. The civil penalties currently available in North Carolina's UAAA—including a maximum fine of \$25,000—are not sufficient monetary deterrents to prevent illegal agent behavior. As one commentator noted:

174. See Friedlander, *supra* note 6; see also KING, III & BROOKS, *supra* note 4, at I-1 (stating that UNC had only appeared before the NCAA's Committee on Infractions once, more than fifty years ago, and that "[b]efore this investigation, [UNC] had never had a major infraction in the football program"). The second prong of the UNC scandal, pertaining to academic impropriety, see *supra* note 45 and accompanying text, may be even more damaging to the reputation of UNC, given that it is first and foremost an academic institution.

[A]n agent who can secure just a handful of superstars or a stable of average players has earnings potential well into the millions of dollars. It is preposterous to assume that [current] penalties . . . will deter an agent from engaging in this enormous opportunity. There is simply too much to gain as a successful agent to be deterred from fines this low.¹⁷⁵

The remedy to such an argument is obvious. If the current fines are too low to serve as a deterrent, raise them. Responding to heightened media scrutiny and public outcry over improper agent behavior, Arkansas and Oklahoma now have drastically higher penalties for violations.¹⁷⁶ The new Oklahoma law expands the definition of the term "athlete agent,"¹⁷⁷ requiring any person registering as an agent in Oklahoma to post a \$250,000 surety bond,¹⁷⁸ and dramatically increases penalties for violation of the law.¹⁷⁹ Under the new law, a first violation of the law can subject the violator to a fine of up to \$250,000.¹⁸⁰ A person found to have committed a second violation will now be guilty of a felony and fined a minimum of \$50,000.¹⁸¹ Arkansas has taken similar action and now threatens a monetary penalty of between \$50,000 and \$250,000.¹⁸²

The North Carolina General Assembly should react in similar fashion and amend its law by increasing the maximum fine, using Oklahoma's statute as the model. A maximum fine of \$250,000 would likely serve as an effective deterrent on a risk-reward basis because such an amount is roughly equal to an agent's three percent fee on a

175. Willenbacher, *supra* note 16, at 1244–45.

176. See ARK. CODE ANN. § 17-16-117 (2010 & Supp. 2011); OKLA. STAT. ANN. tit. 70, § 821.95(A) (West 2005 & Supp. 2012).

177. See OKLA. STAT. ANN. tit. 70 § 821.82(2) (including as an "athlete agent" anyone who "[c]ontributes a causal nexus to a student-athlete becoming the signator to an agency contract").

178. § 821.85(C).

179. § 821.95.

180. *Id.* (increasing the range of fines for a first violation from between \$1,000 and \$10,000 to between \$10,000 and \$250,000).

181. See *id.*

182. ARK. CODE ANN. § 17-16-117 (2010 & Supp. 2011). Violations in Arkansas are also now considered felonies, rather than misdemeanors. § 17-16-115. By contrast, in the first legislative session following the UNC scandal, lawmakers in the North Carolina General Assembly introduced a bill that, as amended, would have required applicants to post a cash bond and required athlete agents to keep and make available more extensive records, among other things. See S.B. 224, 2011 Gen. Assemb., Reg. Sess. (N.C. 2011), available at <http://www.ncleg.net/Sessions/2011/Bills/Senate/PDF/S224v2.pdf>. The bill, however, was significantly weakened, and by the time it was ratified it did not deal with athlete agents whatsoever, instead dealing with the public appointment of certain individuals to various offices. See Act of Nov. 29, 2011, §§ 1.1–2.3, 2011 N.C. Sess. Laws 418, available at <http://www.ncleg.net/Sessions/2011/Bills/Senate/PDF/S224v5.pdf>.

contract between \$8 million and \$8.5 million. Raising fines to this range would particularly deter an agent who is new to the industry and financially unsettled.¹⁸³ At the very least, the potential for heavier fines should alter an agent's decision whether it is worth the risk to offer a top prospect from a North Carolina school an improper benefit. Although this larger fine would obviously be less crippling to a representative of a bigger agency, it would still be headline-grabbing—and thus ammunition competing agents could use against the agency when recruiting future clients.

Even an eye-popping fine does little good if agents and their runners remain confident that North Carolina's athlete-agent law will not be enforced. The Secretary of State's Office did not have anyone devoted to enforcing this law at the time the UNC scandal surfaced. In fact, even months after the scandal surfaced, the North Carolina Secretary of State's publicly-available online database of registered agents had not been updated since 2006.¹⁸⁴ Thus, legislators should create at least one full-time position dedicated to enforcing the law.¹⁸⁵ A large fine, coupled with knowledge that the law will in fact be enforced, will deter unscrupulous agent activity statewide in a way not seen before. Additionally, legislators should consider cherry-picking some of the best ideas from the various players' associations and other states and enact them into law. For example, North Carolina could require that registered agents disclose payments made to runners in the state.

North Carolina would not be the first state to make such changes. However, the fact that such reform would come in the wake of a scandal that directly impacted a state-run institution would distinguish the North Carolina response, giving it more precedential power nationwide. Legislators would be giving voice to the idea that, having seen the embarrassment and damage that unscrupulous agents can do, North Carolina isn't going to take it anymore.

183. See Willenbacher, *supra* note 16, at 1227 (explaining that two-thirds of agents certified by the NFLPA do not have any NFL player clients).

184. The site was finally updated in November 2010, reflecting 124 registered agents in the state at that time. *List of Athlete Agents*, ATHLETE AGENT REGISTRATION OFFICE, N.C. SEC'Y OF STATE, <http://www.secretary.state.nc.us/athlete/agentlist.aspx> (last visited Feb. 28, 2011).

185. Here again, Oklahoma serves as a good model for North Carolina. Oklahoma has created a special prosecution team specifically charged with uncovering, investigating, and prosecuting sports agents who violate the state's athlete-agent law. Wayne Greene, *Oklahoma AG Puts Together Team To Investigate, Prosecute Sports Agents*, TULSA WORLD (Sept. 10, 2011), http://www.tulsaworld.com/news/article.aspx?subjectid=11&articleid=20110910_16_A1_CUTLIN160500.

C. *Recommendations for a Proud University*

The UNC investigation—the kind which universities often try to prevent from becoming public—was well-publicized, primarily because the scandal surfaced immediately before and during the 2010 football season. Further perpetuating its publicity, many have suspected that the NCAA came down hard on UNC in terms of athlete punishment to make an example out of the school.¹⁸⁶ Commentators have suggested that educational institutions choose not to exercise their private rights of actions created under SPARTA and the UAAA for that very reason: “[I]t is certainly better for a university to put violations as far in the past as possible and not allow them to remain in the media or public eye.”¹⁸⁷ Since UNC does not have the luxury of hiding this problem, it again has the unique opportunity to serve as a model in its response to the scandal. To that end, UNC should exercise the right reserved for it in North Carolina’s UAAA and, if a legitimate cause of action against an “agent” exists, pursue those agents who have violated the Act to the fullest extent. It appears such actions are available.¹⁸⁸ Even if the damages sustained by the institution are small (if perhaps the school is not required to return monies received from bowl appearances) or difficult to prove (for example, reputational damage and/or lost profits resulting from player suspensions and dismissals), UNC must show that such illegal agent activity will not be tolerated. It is important that UNC sue the responsible agents to show that, at least in North Carolina, illegal

186. Jonathan Jones, *UNC Football Investigation Can Serve as a Lesson for Other Universities*, DAILY TAR HEEL (Oct. 13, 2010), http://www.dailytarheel.com/index.php/article/2010/10/unc_football_can_serve_as_an_example_for_other_universities (“[T]he University has now become an example.”).

187. Willenbacher, *supra* note 16, at 1247; *see also* Lieser, *supra* note 22 (stating that the University of Alabama declined to press charges or exercise a right of action against the agent involved with former star football player Andre Smith, who was suspended for the school’s bowl game in 2009, because of the fear that doing so “might make Alabama vulnerable to NCAA sanctions”); Phillips, *supra* note 23 (“A university must decide whether it should help clean up its campus and aggressively assist in the prosecution of agents (and potentially open itself up for more NCAA scrutiny), or just do its best (such as the University of Texas’ purported monitoring of the registration of its players’ vehicles). Some schools opt to not listen too carefully, lest they hear the campus’ worst-kept secret: that some players are receiving benefits or are actively being courted by rogue agents, financial advisers and those who try to be ‘matchmakers’ and get a piece of the ultimate deal.”).

188. *See* Heather Dinich et al., *UNC Documents Detail Alleged Benefits*, ESPN (Oct. 23, 2010, 7:53 AM), <http://sports.espn.go.com/ncf/news/story?id=5716015> (“Three people acted as ‘prospective agents’ by providing benefits to North Carolina Tar Heels players in connection with the ongoing NCAA investigation into the program . . .”).

agent activity will result in burdensome and very public legal proceedings for the offenders.¹⁸⁹

There are few examples of schools having done this in the past. The most prominent instance occurred in the 1990s in California, where USC sued a sports agent, Robert Troy Caron, after learning that he had given three USC football players benefits, including gifts and money.¹⁹⁰ At the time, such action taken by a university against a sports agent was unprecedented.¹⁹¹ USC settled out of court and the agent repaid the university \$50,000.¹⁹² In another high-profile case involving agent Jeffrey Nalley and Penn State running back Curtis Enis, the school encouraged criminal prosecution of the agent, yet never followed up on its own threats to sue.¹⁹³ In the wake of the UNC scandal, Debbie Yow, the athletic director of one of UNC's rivals, North Carolina State University ("N.C. State"), issued a warning to sports agents that "I'm going to protect N.C. State University from any agent abuse."¹⁹⁴ Crystallizing the threat, she added, "if they violate the law while dealing with N.C. State athletics, the school will sue them."¹⁹⁵

Though litigation is expensive and time-consuming, UNC should take a similar stand—both to actually punish those who are responsible for what has happened and to deter future agent misconduct. If the right of action in North Carolina's athlete-agent

189. Under North Carolina's UAAA, a court is permitted to award a party prevailing on its civil claims reasonable costs and attorneys fees. N.C. GEN. STAT. § 78C-100 (2011).

190. *U.S.C. Files Suit Against Agent*, N.Y. TIMES, Oct. 7, 1995, at 33. The suit involved Caron's payments to three football players: Shawn Walters, Israel Ifeanyi, and Errick Herrin. *Id.*

191. See Elliott Almond, *U.S.C. Will File Suit Against Agent*, L.A. TIMES, Oct. 6, 1995, at C1 (quoting the NCAA's Director of Enforcement as saying he did not believe that such an action had happened before).

192. *Ethics and Sports: Agent Regulation*, *supra* note 26, at 786 n.101; *Robert Caron, Investor and Attorney, Dies at 52*, PAC. COAST BUS. TIMES (Cal.) (June 25, 2010), http://pacbiztimes.com/index.php?option=com_content&task=view&id=1676&Itemid=1.

193. *Rose Bowl Will Woo Sponsor*, SEATTLE TIMES (Jan. 7, 1998), <http://community.seattletimes.nwsources.com/archive/?date=19980107&slug=2727294>. Penn State University President Graham Spanier said that agent Nalley had "fooled around with the integrity of the university, and I won't stand for that," and encouraged two district attorneys to prosecute Nalley for purchasing clothing for Enis. *Id.* The prosecutors did eventually charge Nalley with breaking Pennsylvania law when he bought gifts for Enis. *Agent in Enis Case Pleads No Contest*, N.Y. TIMES, Apr. 24, 1998, at C7. Nalley agreed to a plea deal, pleading no contest to misdemeanor charges. *Id.* Additionally, the NFLPA punished Nalley for his actions, suspending him for two years. See Staples, *supra* note 170. It does not appear that Penn State ever brought suit against Nalley. *Id.*

194. Ken Tysiac, *Yow To Send Warning to Sports Agents*, CHARLOTTE OBSERVER, Aug. 6, 2010, at 1C.

195. *Id.*

law is ever to be exercised, now is the time. The football program's reputation has been dragged through the mud, and the chance to benefit from a national championship in 2010 is long gone. The school is already on probation, has agreed to pay a \$50,000 fine, and a former associate head coach is now under investigation for possible felonies. The school must now hold the responsible agents accountable for their violations.

CONCLUSION

UNC has long been a crown jewel for the state and an institution that is the envy of other schools nationwide. Both the state and the system, in responding to the scandal, should take the opportunity to demonstrate to the nation how to tackle head-on those who flout athlete-agent laws. As Marvin Austin might say—or rather Tweet—some things “ain’t about the money.” But they are about principle, and if there are going to be rules and consequences, rules must be enforced for consequences to exist.

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