1-1-1997

The Game behind the Games: Unscrupulous Agents in College Athletics & (and) California's Miller-Ayala Act

James Malone
Daren Lipinsky

Recommended Citation
Available at: http://digitalcommons.lmu.edu/elr/vol17/iss2/7
I. INTRODUCTION

Anytime an activity generates money and notoriety, people want to become a part of it. Sports is one such activity and it has become a religion, of sorts, in America. Millions of fans make pilgrimages to stadiums, ballparks, and arenas around the country to watch their favorite teams and athletes compete. The athletes who play these games are adored by fans and idolized by kids who aspire someday to be in the limelight. Along with the allure of fame is the desire for riches. For those who have not been blessed with the talent to make it to the professional level, there are other avenues into this national religion called sports.

One of the most attractive jobs in sports is that of the player representative—the sports agent (hereinafter "athlete agent"). Negotiating the latest multimillion dollar deal for the sports superstar has become a goal almost as cherished as a Super Bowl victory or National Basketball Association Championship. The people who seek this prize treat it like a quest for the Holy Grail. One prominent athlete agent has described his job as akin to that of a warrior or a hit man who will "move in for the kill and use everything within [his] power to succeed for [his] clients."¹

In order to be in this position, an agent needs clients. The idea is simple: the more talented the clients, the more money they will be worth, and the more money the agent will earn. This simple notion has become a crisis, especially in collegiate athletics. The competition for the client who will be the next Shaquille O'Neal or Reggie White is fierce, causing athlete agents, both current and prospective, to resort to unscrupulous tactics. Consequently, this industry has experienced a downward spiral of morals and ethics. The sooner the athlete commits to an agent, the better

¹ Michael Bamberger & Don Yaeger, So Sue Me!, SPORTS ILLUSTRATED, July 15, 1996, at 83, 84.
off the agent is in the long run, especially in this era of young talent opting to turn professional before their college eligibility runs out.

Athlete agents are enticing young talented college players with money, cars, and meals. It has become a problem for the universities that have arranged for the services of these athletes. The reason is simple: college athletics is a big business. Schools need to have their best players compete so their teams can win games and the schools can earn revenue from television appearances, merchandising, bowl games, and championship tournaments.

The relationship between the athlete agent and the college athlete is a problem with many complicated issues. In April 1996, a panel discussion was held at Loyola Law School in Los Angeles, California that addressed the problems of athlete agents and their solicitation of college athletes. One of the topics discussed was the regulation of the athlete agents by state governments, specifically pending legislation in California. Recently, the California Legislature passed the Miller-Ayala Athlete Agents Act ("Miller-Ayala" or "Act"), which attempts to regulate the activities of athlete agents pursuing clients. Currently, almost two dozen other states have laws that regulate athlete agents and their activities. Part II of this Article examines the provisions of Miller-Ayala and its implications on athlete agents, athletes, and educational institutions. Part III compares Miller-Ayala to similar statutes in Florida, Texas, and Ohio. Finally, Part IV is the transcript of the discussion held at Loyola Law School in April 1996.

II. THE MILLER-AYALA ATHLETE AGENTS ACT

A. Legislative History of the Miller-Ayala Athlete Agents Act

The Miller-Ayala Athlete Agents Act was enacted by the California Legislature on September 24, 1996, and became effective on January 1, 1997. State Senator Reuben Ayala (D-Chino), a college football

---


3. These states include Alabama, Arkansas, Connecticut, Florida, Georgia, Indiana, Iowa, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Carolina, Tennessee, Texas, and Washington.


5. Senate Bill No. 1401 was passed by the Senate on August 21, 1996. Assembly Bill No. 1987 was passed by the Assembly on August 31, 1996. The Act was approved by Governor
enthusiast, introduced the legislation in response to what he viewed as the increasing number of unethical transactions between agents and college athletes.6 The result is that the athletes and educational institutions to which the athletes are committed almost invariably suffer, while the agents responsible for the alleged violations usually avoid any legal repercussions.7

Prior to enactment of Miller-Ayala, California law regarding athlete agents required agents to register8 and deposit a bond9 with the Labor Commissioner and subjected those who violated the law to maximum punishments of ninety days in county jail and a $1000 fine.10 Prior law did not apply to agents who were also attorneys, a category that includes approximately ninety-eight percent of agents operating in California.11 Rather, agent-attorneys were regulated by rules of ethics set forth by the California State Bar Association. As of April 1996, the California State Bar Association had yet to impose sanctions against any athlete agents.12

Unlike prior California law, Miller-Ayala immediately subjects all agents, including agent-attorneys,13 to criminal and civil penalties for violating specific provisions of the Act. The Act repeals specified provisions of the Labor Code dealing with athlete agents, including the requirement that a sports agent register with the Labor Commissioner. It also makes inoperative, as of July 1, 1997, additional provisions dealing with athlete agents, and it will repeal these provisions on January 1, 1998.14 Once these code provisions are rendered inoperative or are

---

7. Id. A prime example of such a problem arose in the Fall of 1995, when the National Collegiate Athletic Association investigated the University of Southern California for an agent’s relationship with at least 12 of its football players. Id.
9. Id. § 1519.
10. Id. § 1547.
11. R.E. Graswich, Bill Would Help Control Agents, SACRAMENTO BEE, Apr. 17, 1996, at E1. Only about 20 out of an estimated 1000 agents are non-lawyers. Id.
12. Id.
14. The Miller-Ayala Act repeals Sections 1510, 1511, 1512, 1513, 1514, 1515, 1515.5, 1516, 1517, 1518, 1521, 1523, 1524 1525, 1526, 1527, 1528, 1530, 1530.5, 1531, 1531.5, 1532, 1533,
repealed, athlete agents will be subject to the rules set forth in the Act, which will be added as Chapter 2.5 (commencing with Section 18895) of Division 8 of the California Business and Professions Code.\(^{15}\)

**B. Prohibited Conduct Under the Miller-Ayala Athlete Agents Act**

Miller-Ayala defines an “athlete agent” as:

any person who, directly, or indirectly, recruits or solicits an athlete to enter into any agent contract, endorsement contract, financial services contract, or professional sports services contract, or for compensation procures, offers, promises, attempts, or negotiates to obtain employment for any person with a professional sports team or organization or as a professional athlete.\(^{16}\)

The Act regulates the conduct of all athlete agents in their dealings with both student athletes\(^{17}\) and professional athletes.\(^{18}\) This Comment will focus exclusively on those provisions that regulate conduct between athlete agents\(^{19}\) and student athletes, along with the educational institutions to which these student athletes are committed.

Miller-Ayala unequivocally prohibits athlete agents from offering or providing “any other thing of benefit or value to a student athlete.”\(^{20}\) Thus, any promise by the agent to the student athlete of any monetary or material benefits, regardless of whether the agent offers his services in return, is strictly prohibited.

---

\(^{15}\) 1535, 1535.5, 1535.7, 1536, 1537, 1538, 1539, 1540, 1543, 1544, and 1546 of, and to repeal Chapter 1 (commencing with Section 1500) of Part 6 of Division 2 of, the Labor Code, relating to athlete agents.


15. *Id.* “AN ACT . . . to add Chapter 2.5 (commencing with Section 18895) to Division 8 of, the Business and Professions Code . . . .” *Id.*


17. *Id.* § 18895.2(i)(1).

A “student athlete” is defined as:

... any individual admitted to or enrolled as a student, in an elementary or secondary school, college, university, or other educational institution if the student participates, or has informed the institution of an intention to participate, as an athlete in a sports program where the sports program is engaged in competition with other educational institutions.

*Id.*

18. See *id.* § 18895–97.

19. All those provisions under Miller-Ayala that apply to athlete agents apply also to the employees and representatives of those athlete agents. *See id.* § 18895.2(b)(1).

20. *Id.* § 18897.6.
Furthermore, the Act prohibits an athlete agent from making any contact or continuing any contact with any student athlete or any close relative, spouse, or roommate of any student athlete. There are, however, exceptions to this prohibition. One such exception allows an agent to send a student athlete (or any close relative, spouse, or roommate of that student athlete) written materials, provided that "the athlete agent previously has sent, or simultaneously sends, an identical copy of the materials to the principal, president, or other chief administrator of the ... educational institution to which the student athlete has been admitted . . . ." Another exception allows the agent to continue contact with a student athlete who initiates that contact. The Act provides, however, that the athlete agent must notify the institution to which the student athlete is committed of the nature of that contact "[n]o later than the first regular business day after that [student athlete] first initiates the contact." A final exception allows contact between an agent and the student athlete if the contact was initiated solely by the educational institution to which the athlete is committed. However, the agent must not have offered or provided anything of benefit to that educational institution in exchange for initiating the contact.

As long as an athlete agent does not violate any of the provisions of Miller-Ayala, the agent is allowed to enter into any agent contract, endorsement contract, or professional sports services contract with any student athlete. However, notice must be placed in the contract clearly stating: (1) the student athlete is, by entering into the contract, likely to forfeit his eligibility to participate further in any scholastic sporting event, and (2) the student athlete is responsible for promptly notifying the institution to which he is committed of the contract. The athlete agent

21. Id. § 18897.63(a).
   Except as otherwise provided in this section, no athlete agent or athlete agent's representative or employee shall make or continue any contact, whether in person, in writing, electronically, or in any other manner, with any student athlete, or any student athlete's spouse, parent, grandparent, child, sibling, aunt, uncle, or first cousin, or any of the preceding persons for whom the relationship has been established by marriage, or any person who resides in the same place as the student athlete, or any representative of any of these persons.

Id.

22. CAL. BUS. & PROF. CODE § 18897.63(b) (West Supp. 1997).
23. Id. § 18897.63(c).
24. Id. § 18897.63(d).
25. Id. § 18897.67.
26. See id. § 18897.7.
27. Id. § 18897.73.

Every agent contract, endorsement contract, or professional sports services contract entered into by a student athlete shall contain, in close proximity to the signature of the student athlete, a notice in at least 10-point boldface type stating:
must also provide written notice of the contract to the athlete’s educational institution within forty-eight hours of entering into the contract.\textsuperscript{28} Finally, the student athlete has an irrevocable right to rescind the contract with the athlete agent by giving the agent written notice of rescission within fifteen days after the student athlete has entered into the contract. This right cannot be waived by the student athlete under any circumstances.\textsuperscript{29}

The provisions of Miller-Ayala appear to give athlete agents substantial latitude in their communications and dealings with student athletes. Rather than viewing these provisions as broadening the scope of an athlete agent’s immunity from criminal or civil liability, one could argue that they simply hold true to the purpose behind the enactment of Miller-Ayala. Miller-Ayala was not enacted to prevent a student athlete from contracting with an athlete agent. Rather, it was enacted to prevent athlete agents from promising items or services of material value to student athletes without the knowledge of the educational institution to which the student athlete is committed.\textsuperscript{30} According to Senator Ayala, “[t]hese incidents have caused schools to be put on probation, hurting innocent people.”\textsuperscript{31}

Under Miller-Ayala, a student athlete may choose to contact, negotiate, and contract with any athlete agent who does not violate any provisions of the Act.\textsuperscript{32} However, the institution to which the athlete is

\textbf{WARNING TO THE STUDENT ATHLETE: WHEN YOU SIGN THIS CONTRACT, YOU LIKELY WILL IMMEDIATELY AND PERMANENTLY LOSE YOUR ELIGIBILITY TO COMPETE IN INTERSCHOLASTIC OR INTERCOLLEGIATE SPORTS. YOU MUST GIVE THE PRINCIPAL, PRESIDENT, OR OTHER CHIEF ADMINISTRATOR OF YOUR EDUCATIONAL INSTITUTION WRITTEN NOTICE THAT YOU HAVE ENTERED INTO THIS CONTRACT WITHIN 72 HOURS, OR BEFORE YOU PRACTICE FOR OR PARTICIPATE IN ANY INTERSCHOLASTIC OR INTERCOLLEGIATE SPORTS EVENT, WHICHEVER OCCURS FIRST. DO NOT SIGN THIS CONTRACT UNTIL YOU HAVE READ IT AND FILLED IN ANY BLANK SPACES. YOU MAY CANCEL THIS CONTRACT BY NOTIFYING THE ATHLETE AGENT, OR OTHER PARTY TO THIS CONTRACT, IN WRITING OF YOUR DESIRE TO CANCEL NOT LATER THAN THE 15TH DAY AFTER THE DATE YOU SIGN THIS CONTRACT. HOWEVER, EVEN IF YOU CANCEL THIS CONTRACT, THE FEDERATION OR ASSOCIATION TO WHICH YOUR EDUCATIONAL INSTITUTION BELONGS MAY NOT RESTORE YOU ELIGIBILITY.}

\textit{Id.}

28. \textsc{Cal. Bus. \\ \\ & Prof. Code} § 18897.7. This is in addition to the requirement that the student athlete must provide notice of the contract “before the student athlete practices for or participates in any interscholastic or intercollegiate sports event or within 72 hours after entering into the contract, whichever occurs first.” \textit{Id.}

29. \textit{Id.} § 18897.77.


31. \textit{Id.}

committed must be immediately notified by the agent and student athlete so that it is given the opportunity to terminate the student athlete’s participation in sports.\textsuperscript{33} Once this notification is given, the educational institution is no longer “innocent.” Thus, if the school continues to allow the athlete to be eligible for sporting events, Miller-Ayala will not hold the agent legally responsible for such wrongdoing by the school.\textsuperscript{34} Furthermore, the school will lose the right to sue the athlete agent under the Act.

Similarly, when the student athlete contracts with an athlete agent, the contract must clearly state that the athlete ceases to be defined as a “student athlete” and is immediately precluded from participating in any interscholastic or intercollegiate sporting events.\textsuperscript{35} Upon signing the contract, the student athlete is no longer “innocent.” In other words, the agent has properly informed the student athlete of his new rights and responsibilities and is not responsible under the Act for any discipline or losses suffered by the student athlete resulting from the execution of the contract.\textsuperscript{36}

C. Enforcement Under the Miller-Ayala Athlete Agents Act

Clearly, Miller-Ayala was enacted with the intent to encourage enforcement of its provisions through private civil action.\textsuperscript{37} The Act allows for recovery of damages by any institution or individual adversely affected by any acts of an athlete agent that violate any of the Miller-Ayala provisions. Miller-Ayala creates presumptions that student athletes or educational institutions have been adversely affected when the athlete agent has caused the school or athlete to suffer sanctions imposed by the NCAA or conferences.\textsuperscript{38} If a plaintiff prevails in a civil action brought

\begin{footnotesize}
\begin{enumerate}
\item \textit{Id.} \S 18897.7.
\item \textit{See id.} \S 18897.8.
\item \textit{Id.} \S 18897.73.
\item \textit{Id.} \S 18897.8.
\item \textit{Id.} \S 18897.8(c).
\item \textit{CAL. BUS. \& PROF. CODE} \S 18897.8(a). Section 18897.8(a) reads in relevant part: (a) Any ... student athlete, or any ... educational institution or any league, conference, association, or federation of the preceding educational institutions, or any other person may bring a civil action for recovery of damages from an athlete agent, if that ... student athlete, that institution, any member of that league, conference, association, or federation, or that other person is adversely affected by the acts of the athlete agent or of the athlete agent’s representative or employee in violation of this chapter. \textit{A student athlete is presumed to be adversely affected} by the acts of an athlete agent, representative or employee in violation of this chapter if, because of those acts, the student athlete is suspended or disqualified from participation in one or more interscholastic or intercollegiate sports events by or
\end{enumerate}
\end{footnotesize}
under this Act, that plaintiff is entitled to "recover actual damages, or fifty thousand dollars ($50,000), whichever is higher; punitive damages; court costs; and reasonable attorney's fees." The athlete agent is also subject to forfeiture of any right of reimbursement for anything of value given to the student athlete, and must refund any consideration paid to the athlete agent by or on the behalf of the student athlete. In order to ensure personal jurisdiction over the agent, and the agent's ability to pay damages in a civil suit, Miller-Ayala requires that every athlete agent maintain an agent for service of process in California and provide security for judgments against him.

In addition to providing tough civil penalties, Miller-Ayala also provides in section 18897.93:

An athlete agent, or athlete agent's representative or employee who violates any provision of this chapter is guilty of a misdemeanor, and shall be punished by a fine of not more than fifty thousand dollars ($50,000), or imprisonment in a county pursuant to the rules of a state or national federation or association for the promotion and regulation of interscholastic or intercollegiate sports, or suffers financial damage, or suffers both suspension or disqualification and financial damage. An educational institution is presumed to be adversely affected by the acts of an athlete agent or of an athlete agent's representatives or employee in violation of this chapter if, because of those acts, the educational institution, or one or more student athletes admitted to or enrolled in the educational institution, is suspended or disqualified from participation in one or more interscholastic or intercollegiate athletic events by or pursuant to the rules of a state or national federation or association for the promotion and regulation of interscholastic or intercollegiate sports events by or pursuant to the rules of a state or national federation or association for the promotion and regulation of interscholastic or intercollegiate sports, or suffers financial damage, or suffers both suspension or disqualification and financial damage.

Id. (emphasis added).
39. Id. § 18897.8(b).
40. Id.
41. Id. § 18897.83.
42. See id. § 18897.87:
(a) Every athlete agent shall provide security for claims against the athlete agent or the athlete agent's representatives or employees based upon acts, errors, or omissions arising out of the business of the athlete agent in the same amount and manner as required of a limited liability partnership providing legal services pursuant to subparagraph (A) or (B) of paragraph (2) of subdivision (a) of Section 15052 of the Corporations Code. An athlete agent may aggregate the security provided pursuant to subparagraphs (A) and (B) of paragraph (2) of subdivision (a) of Section 15052 of the Corporations Code.
(b) Prior to July 1, 1997, this section does not apply to an athlete agent who has on deposit with the Labor Commissioner a surety bond, or its equivalent, deposited prior to January 1, 1997, in compliance with Chapter 1 (commencing with Section 1500) of Part 6 of Division 2 of the Labor Code, as amended at the 1995-1996 Regular Session of the Legislature.

CAL. BUS. & PROF. CODE § 18897.87.
jail not exceeding one year, or by both that fine and imprisonment. The court may suspend or revoke the privilege of any person convicted of a violation of this chapter to conduct the business of athlete agent.43

Thus, in relation to student athletes, the Act provides for severe civil and criminal penalties for all agents, including agent-attorneys, who violate its provisions. The Act is more comprehensive than its predecessor, yet it does not prohibit all contact, negotiation, and contractual agreements between an athlete agent and a student athlete. Rather, the purpose of the Act is to ensure that when an athlete agent’s illicit behavior subjects educational institutions and athletes to sanctions and/or financial damages, the athlete agent will face civil liability and/or criminal penalties.

III. COMPARING MILLER-AYALA TO OTHER STATE STATUTES

By superseding existing law,44 Miller-Ayala reflects a change in attitudes by many states that currently deal with unscrupulous agents. As noted above, many other states have laws that regulate the activities of athlete agents who recruit college athletes in their states. Florida, Texas, and Ohio, like California, have an abundance of professional prospects competing for their high schools and universities. Like California, these states also have laws that regulate the activity of the athlete agent.46 So how do the laws of these states compare with Miller-Ayala?

A. Florida

Florida’s athlete agent regulations are very similar to California’s regulations with one notable exception: The presence of a licensing requirement.47 Pursuant to this requirement, the prospective agent must meet specific qualifications, submit an application, post a bond, take an

43. Id. § 18897.93.
45. Also, there is currently pending federal legislation that was introduced by U.S Representative Bart Gordon (D-TN). H.R. 3328 would subject any athlete agent who “knowingly influences a college athlete to terminate that athlete’s college eligibility” to a federally imposed fine and/or imprisonment of up to three years. A Federal Answer to Athlete Agency?, SPORTS LAWYER, July/Aug. 1996, at 2.
47. FLA. STAT. ANN. § 468.453(1).
exam, and fulfill continuing education requirements.\textsuperscript{48} The threshold requirement is that the applicant must be at least eighteen years of age\textsuperscript{49} and be of good moral character.\textsuperscript{50}

Next, the prospective athlete agent must submit an application along with fees that could be as high as $2000\textsuperscript{51} and survive a criminal records verification by the Federal Bureau of Investigation.\textsuperscript{52} These requirements seem to deter those who are not serious about representing athletes and those who have questionable backgrounds that could impair their ability to represent athletes in a competent manner. Currently, Florida law is more stringent than both the former California law\textsuperscript{53} and Miller-Ayala, which has no such registration requirements.

Furthermore, the applicant must pass a competency exam, which tests the applicant's knowledge of Florida's laws and rules regarding athlete agents.\textsuperscript{54} The exam, however, is only applicable to those applicants not admitted to the Florida Bar.\textsuperscript{55} Additionally, the applicant must post a surety bond for $15,000 with the Florida Department of Business and Professional Regulation.\textsuperscript{56} This bond will provide compensation to an injured party, either the athlete or the school, in the event that an agent violates the statute. In contrast, California requires the agent to comply with California Corporations Code section 15052.\textsuperscript{57}

The Florida law does not contain a reciprocity provision. Thus, its requirements are equally applicable to out-of-state agents who are recruiting Florida athletes as well as the in-state agents.\textsuperscript{58} This requirement is the most disconcerting aspect of these laws. It is especially onerous for those agents who do not have the resources to register in every state for the sole purpose of communicating with an athlete. It is possible that these laws will be challenged under antitrust laws in the future.\textsuperscript{59}

\begin{itemize}
  \item \textsuperscript{48} Id. \$ 468.453(2);\textsuperscript{54} see also Linda S. Calvert Hanson, Florida Legislature Revisits the Regulation and Liability of Sports Agents and Student Athletes, 25 STETSON L. REV. 1067, 1074–75 (1996).
  \item \textsuperscript{49} FLA. STAT. ANN. \$ 468.453(2)(a).
  \item \textsuperscript{50} Id. \$ 468.453(2)(b).
  \item \textsuperscript{51} Id. \$ 468.453(2)(d).
  \item \textsuperscript{52} Id. \$ 468.453(2)(e).
  \item \textsuperscript{53} CAL. LAB. CODE \$ 1500 (West 1995) repealed by Miller-Ayala Agents Act, CAL. BUS. & PROF. CODE §§ 18895–97 (West Supp. 1997).
  \item \textsuperscript{54} FLA. STAT. ANN. \$ 468.453(2)(c).
  \item \textsuperscript{55} Id. \$ 468.453(3);\textsuperscript{58} see also Hanson, supra note 48, at 1075 n.39.
  \item \textsuperscript{56} FLA. STAT. ANN. \$ 468.453(2)(g).
  \item \textsuperscript{57} See supra note 42.
  \item \textsuperscript{58} Hanson, supra note 48, at 1079.
  \item \textsuperscript{59} See Ricardo J. Bascuas, Cheaters, Not Criminals: Antitrust Invalidation of Statutes Outlawing Sports Agent Recruitment of Student Athletes, 105 YALE L.J. 1603 (1996). Since
\end{itemize}
Although both the Florida law and Miller-Ayala allow for civil remedies, the protected classes differ under each statute. While Miller-Ayala allows both the institution and the athlete to recover damages from the agent, Florida law provides for recovery by the institution only. In Florida, the athlete is protected by the contract avoidance provisions and the surety bond that the agent must file with the state. In contrast to Miller-Ayala, this Florida law does not create any presumptions that would benefit the athlete. On the other hand, the institution is protected by the bond as well as the availability of damages recoverable in a civil action, which can include punitive damages. Miller-Ayala is more generous in this respect to the California athlete who may be adversely affected by the actions of the unscrupulous agent, while the Florida athlete is less protected under the agent regulation in their state.

Although Miller-Ayala and the Florida statute both provide for criminal penalties for offenders, they differ in effect. In Florida, violation of the registration requirements or the notification requirements is a third degree felony that will subject the offender to up to five years imprisonment and/or a fine of up to $5,000. Conversely, violating any provision of Miller-Ayala is a misdemeanor punishable by up to one year in jail and/or a fine of up to $50,000. The low criminal penalties in California are best explained by the fact the legislature intended that the primary enforcement of Miller-Ayala be in civil, not criminal court. Florida’s law is enforced by a state agency, and the State seems to desire enforcement of its law by deterrence.

In all other respects, Miller-Ayala mirrors the Florida law in enforcement provisions and notice requirements. The Florida law contains state universities have a pecuniary interest in an athlete’s eligibility and based on current antitrust case law, he argues that this state action is not immune from antitrust attack and that it constitutes an unreasonable restraint on interstate commerce.

60. CAL. BUS. & PROF. CODE, § 18897.8(a) (West Supp. 1997).
61. FLA. STAT. ANN. § 468.4562. “A college or university may sue for damages, as provided by this section, any person who violates this part. A college or university may seek equitable relief to prevent or minimize harm arising from acts or omissions which are or would be a violation of this part.” Id.
62. Id. § 468.454.
63. Id. § 468.453(2)(g).
64. CAL. BUS. & PROF. CODE § 18897.8(a); see supra note 38 and accompanying text.
65. FLA. STAT. ANN. § 468.4562(3)(b).
66. See id. § 468.4561.
68. Id. § 18897.8(c).
69. Hanson, supra note 48, at 1081.
provisions that prohibit the commingling of assets \(^70\) and the commission of acts involving bad faith or dishonesty. \(^71\) This law includes restrictions on false or misleading information regarding the agent’s background or guarantees of beneficial results to the athlete, a provision that is similar to Miller-Ayala. \(^72\) Both laws also require the athlete agent to notify the new client’s school or institution of the agreement within seventy-two hours or before the next athletic contest in which the athlete would otherwise perform. \(^73\)

Miller-Ayala also follows Florida’s requirements regarding the contractual relationship between the athlete and the athlete agent. Both laws require a notice to be printed in bold face type near the signature line of the contract warning the athlete of the penalties for failure to disclose the formation of this contract to the specified parties. \(^74\) Provisions that can automatically void the agreement between the athlete and the agent are also present in the Florida law. \(^75\)

**B. Texas**

Texas law regulating the activities of athlete agents has been on the books since 1988. \(^76\) Like Miller-Ayala and the Florida law, the Texas statute contains provisions relating to contact with prospective clients, specific contract language in the agreement between the athlete agent and the athlete, and civil and criminal penalties. Like Florida, the Texas law requires registration with the Secretary of State before the agent may have any contact with a college athlete in the state, even if the agent is a member of the Texas State Bar Association. \(^77\) The registration requirements deal mainly with disclosure of all interested parties in the athlete agent’s business as well as some personal references and background information. \(^78\)

Although Miller-Ayala and the Florida law both contain bond requirements, Texas only requires a bond when the agent has a financial services contract with the athlete. \(^79\) The bond is $100,000 and must be

\(^{70}\) FLA. STAT. ANN. § 468.456(1)(d).
\(^{71}\) Id. § 468.456(1)(c).
\(^{72}\) Id. § 468.456(1)(j); cf. CAL. BUS. & PROF. CODE § 18897.37.
\(^{73}\) FLA. STAT. ANN. § 468.454(1); CAL. BUS. & PROF. CODE § 18897.7.
\(^{74}\) FLA. STAT. ANN. § 468.454(2); CAL. BUS. & PROF. CODE § 18897.73.
\(^{75}\) FLA. STAT. ANN. § 468.454(2)-(7).
\(^{76}\) TEX. REV. CIV. STAT. ANN. art. 8871 (West Supp. 1997).
\(^{77}\) Id. § 2(a).
\(^{78}\) Id. § 2(b).
\(^{79}\) Id. § 2(h).
deposited with the Secretary of the State. This bond requirement does not limit the amount that may be recovered if the agent is found liable for any action that arises out of the financial service contract. 80 The Texas law also has a provision that governs the specific contents of the agent contract. 81 These provisions require the contract to state the amount to be paid by the athlete to the agent as well as certain notice requirements typed in bold print. 82 These requirements are very similar in effect to certain provisions in Miller-Ayala. 83 Texas also requires the agent to file a copy of the contract with the Secretary of State as well as with the athletic director of the athlete’s school. 84

The Texas law allows athlete agents to send written materials to the athlete and allows the athlete’s parents, legal guardians, and advisors to initiate personal contact with an athlete agent. 85 However, this provision of the Texas law does not require the athlete agent to notify the athlete’s school. Miller-Ayala also allows agents to have personal contact with the athletes if the athletes or their relatives and advisors initiate the contact and as long as the athletes’ educational institution is notified in writing. 86 Although the athlete agent under California law may send the athlete written materials, Miller-Ayala prohibits the agent from initiating personal contact with the athlete or any of his relatives or representatives until completion of the athlete’s collegiate eligibility. 87

The Texas law could be abused more easily than Miller-Ayala because it lacks a notification requirement. An athlete agent is more likely to be tempted to gain the trust of the athlete’s parents by improper means and then keep it secret from the athlete. On the other hand, Texas has a mechanism in place so an agent can contact prospective athletes. 88 Each university in Texas is required to hold on-campus interviews for the agents to meet with athletes. The agents are notified of the time and place for these interviews by the Secretary of State. 89 Miller-Ayala does not contain

80. *Id.* “‘Financial services contract’ means any contract or agreement under which an athlete authorizes an athlete agent to provide financial services for the athlete, including the making and execution of investment and other financial decisions by the agent on behalf of the athlete.” *Id.* § 1(a)(4).
81. TEX. REV. CIV. STAT. ANN. art. 8871 § 5(b).
82. *Id.*
83. *See supra note 27 and accompanying text.*
84. TEX. REV. CIV. STAT. ANN. art. 8871 § 5(e).
85. *Id.* § 6(c).
86. CAL. BUS. & PROF. CODE § 18897.63(c) (West Supp. 1997).
87. *See id.* § 18897.63(b).
88. TEX. REV. CIV. STAT. ANN. art. 8871 § 7.
89. *Id.* § 7(b).
any specific provision regarding athlete interviews by a athlete agent although it does allow for the school to initiate contact with athlete agents.  

Texas also provides for criminal and civil penalties if an agent violates the law. The law provides for refund of any consideration paid to the agent and forfeiture of the right of repayment for anything of value received by the athlete as well as reasonable attorney's fees incurred by an athlete who sues the agent. Also, any contract with an athlete negotiated by an unregistered athlete is void. Violation of these laws is punishable as a Class A misdemeanor under Texas law, which would subject the offender to as much as one year in jail and/or a fine not to exceed $4000.

Texas also has a provision similar to Miller-Ayala that allows the school to sue the agent for damages sustained as a result of the agent's misconduct. This statute is similar to Florida's in that it does not create any presumptions in favor of the athlete. Although the law does refer to an action that an athlete may bring under this act and provides for recovery of attorney's fees, it fails to specify the types of damages that the athlete may recover against an agent who has violated this law. Like Florida, Texas has afforded more protection to the schools than to its athletes. Miller-Ayala is more progressive in this respect.

Texas allows its Secretary of State to assess a civil penalty against the agent who has been found to have violated any of these laws. Although Miller-Ayala allows the courts to impose fines up to $50,000, Texas allows its Secretary of State to impose a fine only up to $25,000. Even though there is no judicial proceeding required in the Texas statute, the agent can request an administrative hearing to contest the penalty. The result is that the agent may be sued in civil court by the school and the athlete, and fined by the Secretary of State. The Texas law is no less burdensome than Miller-Ayala or the Florida law.

90. CAL. BUS. & PROF. CODE § 18897.63(d).
91. TEX. REV. CIV. STAT. ANN. art. 8871 § 8(a).
92. Id. § 8(b).
93. Id. § 8(c); TEX. PENAL CODE ANN. § 12.21 (West Supp. 1997).
94. TEX. REV. CIV. STAT. ANN. art. 8871 § 8A.
95. Cf. CAL. BUS. & PROF. CODE § 18897.8(a) (West Supp. 1997).
96. TEX. REV. CIV. STAT. ANN. art. 8871 § 8(a)(4).
97. Id. § 9(a).
98. CAL. BUS. & PROF. CODE § 18897.93.
99. TEX. REV. CIV. STAT. ANN. art. 8871 § 9(b).
100. Id. § 9(d).
C. Ohio

In stark contrast to the laws of California, Florida, and Texas, Ohio’s regulations are less restrictive of agent activity within the state. Adopted in 1989, the Ohio regulations require that the agent satisfy two conditions with respect to contractual obligations with a student athlete. First, the contract must be in writing and contain all agreements between the parties. Second, the agent must submit a copy of the contract to the athlete’s school no less than fourteen days before the agreement is signed. If the agent does not follow these requirements, the contract is considered void and unenforceable. Other than these trivial requirements, an agent is not otherwise prohibited from any activity regarding the solicitation and recruitment of athletes for the purposes of representation. Therefore, this law creates an incentive for agents from other states to recruit athletes at schools in Ohio. This law could lead to problems similar to those suffered by schools in California and Florida.

It is clear from the legislation chronicled above that some states recognize the severity of the problem with athlete agents and college athletes. To address this, states have adopted measures that reflect the nature of the scandals that have affected its schools. California and Florida have been injured recently by two very highly publicized incidents. The laws in these states reflect this. However, even though some of the laws are tough, they are not without fault. The discussion below highlights some of the problems with these laws and the need for alternative solutions to these problems, including the payment of student athletes.

101. OHIO REV. CODE ANN. § 4771.02(A) (Anderson 1996).
102. Id.
103. Id. § 4771.02(B).
104. Id. § 4771.04.
105. Specifically, the “Foot Locker Scandal” involving a shopping spree by Florida State University football players and the incidents involving Oxnard, California agent Robert Caron have drawn national attention to the problem of athlete agents and college athletes in the states of Florida and California. See infra Part IV.
IV. PANEL DISCUSSION:
THE SPORTS AGENT AND THE COLLEGE ATHLETE,
AT LOYOLA LAW SCHOOL, LOS ANGELES, CALIFORNIA,
APRIL 1996

Panel Participants

ROBERT CAMPBELL: Mr. Campbell is a partner at the law firm of Thelen, Marrin, Johnson & Bridges in Los Angeles, California. He practices in the Business Litigation Department and is also an athlete agent certified by the National Football League Players Association. He received his law degree from the University of Southern California Law Center.

SCOTT EDELMAN: Mr. Edelman is a partner at the law firm of Gibson, Dunn & Crutcher, LLP in Los Angeles, California. He represented the University of Southern California in a civil suit against athlete agent Robert Caron. Mr. Edelman is a graduate of Boalt Hall (University of California, Berkeley) and has been practicing law since 1984.

ROBERT LANE: Mr. Lane is the General Counsel for the University of Southern California. He was formerly a partner at Paul, Hastings, Janofsky & Walker, LLP in Los Angeles, California. Mr. Lane testified before the California Legislature during passage of the Miller-Ayala Act.

DAREN LIPINSKY: Mr. Lipinsky is a law student at Loyola Law School in Los Angeles, California. He is vice-president of the Entertainment Law Society, which sponsored the discussion. He is also responsible for coordinating the discussion.

JAMES MALONE: Mr. Malone is a law student at Loyola Law School in Los Angeles, California. Mr. Malone serves as the moderator of the discussion. He was a linebacker at the University of California, Los Angeles, from 1988 to 1991 and was the 148th pick in the 1992 NFL Draft.

MIKE SHERRARD: Mr. Sherrard was an All-American wide receiver at UCLA in 1986. He was a first round draft choice of the Dallas Cowboys in 1987. Mr. Sherrard was also a member of the Super Bowl XXIV Champion San Francisco 49ers. He played for the New York Giants from 1993 to 1995. Currently, he is a member of the Denver Broncos.
MR. DAREN LIPINSKY:
Thank you all for coming—the students and faculty of Loyola Law School as well as lawyers. This should be a very interesting and lively discussion of the college athlete. We have a great panel on hand. Feel free to ask questions later on. This should be a very interesting discussion and it should set a precedent for future sports law events at Loyola.

MR. JAMES MALONE (MODERATOR):
As moderator of this event, I will begin by asking the panel to address the problem with athlete agents in college athletics. Anyone can jump in at any time if you need to explain how big the scope of this problem is and what are some of the activities that agents engage in that are against the rules of the NCAA or state laws.

MR. ROBERT LANE:
Well, I will be glad to start. I don’t know if it is a problem with agents, but there certainly are a lot of agents who are constantly contacting college athletes with regard to representation of them once they have completed their college eligibility.

At USC, the practices are open at football season. People can come and stand around the sidelines and watch the players play. The field is not adjacent to the shower room so there is an area where you walk from the playing field to the showers and you can walk along and talk to student athletes during that time period. If you have been to the Coliseum on Saturday afternoons, you know that people come up the tunnel after they have taken a shower and there is always a group of agents standing around outside waiting for the athletes to come out of the tunnel so they can have a chance to chat with them about their performances that day and about how they might be represented by this person once they complete their college eligibility. The University really has had no objection to this, and it has been going on for an extended period of time.

The problem that we have had is that there are benefits being provided by these agents to the athletes prior to the completion of their college eligibility, which under the NCAA rules makes them ineligible for further competition. If the University knows of this and allows these players to participate, the University would have played an ineligible player and would have to forfeit all the games, as well as any revenue that they may have received as a result of that particular competition. So it’s very important that the University impress upon the student athletes that
the acceptance of any benefits could result in penalties for the student athlete and also for the University.

We had a case last year where [panelist] Scott Edelman represented the University and I’ll let him explain more about it; it was a case where the student athletes thought that they were perfectly safe in doing what they did. The athletes’ roommates, one of which played on the football team and another who was a friend, knew a person in Oxnard who was an agent. There is nothing wrong with talking with agents as long as you do not accept any benefits from them. The agent had been a friend to these individual athletes, having met them during practice at USC. The agent had provided these student athletes with pagers and other things of that nature.

It seems like a perfectly innocuous thing to receive. You go along and they say, “Would you like to have a pager? It doesn’t really cost you anything, and I’ll be glad to loan it to you for some period of time.” That’s a violation of NCAA rules and makes you ineligible. The athletes also didn’t know that you have to pay a phone bill when you have a pager; it doesn’t come free. The fact that somebody gives you a pager doesn’t mean that the student athlete is not receiving any benefit. A number of our athletes received pagers via their roommates, who we later found out had received them from the agent. Accordingly, we’re in a situation where student athletes unknowingly had accepted benefits. The University had played these individuals while they were accepting benefits and they were therefore ineligible. The University had, therefore, used ineligible athletes during competition.

So, those were the facts that were involved at the time Scott took over. Scott, you might want to relay a little about what happened at that point.

MR. SCOTT A. EDELMAN:

When something like this happens, it’s always awful. You read about it in the paper and you see what happens to the school; you see what happens to student athletes. You see what happens to the fans and alumni, all of whom follow football and are very interested in it. The people who don’t pay the price are the agents.

This particular problem that happened this year is just one example of something that has been happening for a long time, and it continues to happen today. In one of the interviews with Coach Robinson after this whole thing came to the surface, he said the only consequences are paid by the athletes. The agents or runners or whoever they are fade into the night like drug dealers. Nothing happens to them. They’re not bound—at least
they think they are not bound—by the NCAA rules. So if the student gets disqualified or if the University loses Bowl opportunities, the agents disappear. In this particular incident, Bob [Lane] and I sat down and were very frustrated with the turn of events.

In California, in particular, there is currently no legislation that protects student athletes. There is such legislation in other states, such as Texas. Bob [Lane] can tell you more about that. He recently testified in Sacramento just last week about how California’s laws should be changed. But, what we did together was come up with a strategy to file a lawsuit against the agent. We did it without the benefit of any particular statutes. We relied on general common law principles of interference with contract. We took the position, which the Superior Court accepted, that the students have contracts with the University. It’s not just a position; they do. The student athletes who are on scholarship sign contracts in which they promise to maintain their eligibility and not to do anything to impair their eligibility. And we argued that that is something which all agents know about.

Our argument was buttressed by the fact that we were able to obtain a declaration from one of these roommates, (they’re called “runners”—he was a runner for the agent) who because of his concern about what his actions had done to one of the student athletes, was willing to come forward and admit to the whole scheme. That was really the centerpiece of our lawsuit, our TRO application, and the injunction.

The roommate [runner] basically laid the whole thing out. As Bob [Lane] explained, he was paid by this agent to surreptitiously befriend these student athletes, provide them with favors like pagers and phone cards and pizzas and whatever, without ever divulging where his money was coming from. The agent’s ultimate goal was to be able to go to these student athletes later on and say, “Hey, remember that pager you got? Remember that phone card you got? Remember all those pizzas you got? I paid for those. Sit down and let me talk to you because I have been doing you favors for a number of years.”

We argued that the agent was inducing breach of contract, interfering with the University’s contract with its student athletes, interfering with the student athletes’ contracts with the NCAA, of which the University was a third-party beneficiary. We took the position that this particular agent, who was a lawyer, wasn’t registered with the labor commissioner, and that it was a violation of the Labor Code because agents are supposed to register. Bob [Campbell] and I were just talking about that beforehand, because [he] is a very reputable agent and is also a lawyer. He was telling me that not all lawyers read that provision in that way. The provision
states that if you are a lawyer, you have to register. But, in any event, we took that position and we also argued that the violation of the Labor Code enabled us to bring an action under the Business and Professions Code Section 17-200 for unfair business practices. We went in on all of those grounds and got a TRO. Within about a week, the agent settled, stipulated to a permanent injunction, and agreed to pay the University $50,000, which it has applied toward scholarships for students from neighboring areas.

The lawsuit received a lot of publicity because it was timely in the sense that in the three weeks preceding the law suit, there were problems emerging all over the country linked to this particular agent. I mean at North Carolina, UCLA, USC, and all over the place. It really is a big problem because the NCAA rules are very strict about student athletes not being able to accept any benefits or do anything that would interfere with the principle of amateurism that utilize the rules. Bob, do you have something to say?

MR. ROBERT G. CAMPBELL:

There is absolutely no question that there are unscrupulous agents who violate the law, breach the canon of ethics of the State Bar and do things that they simply shouldn’t do. The problem is certainly big. I applaud USC and Scott [Edelman] for taking on at least one agent and hopefully they put him out of business. Let me just give a little bit of background about my philosophy on this subject.

For as long as there have been people paying to see college athletes perform, there have been athletes with their hand out and there have been plenty of people, not just agents, but members of boosters at college campuses, coaches, and others, who have been willing to put things in their hands. Everybody knows that it’s wrong. With reference to the Robert Caron situation, for those of you who remember, there was published in the L.A. Times what I thought was fascinating: The actual ledger prepared, apparently by the agent or someone in his employ, which listed out nearly $16,000 worth of things that were given to one player. I reject the notion that the player was innocent. When you get $16,000 worth of merchandise, cash, tickets to rock concerts, a refrigerator, and other things, you know that something’s wrong. I have had players approach me asking for things. I have observed prominent players at many prominent schools engaging in activities which I’m quite sure were subsidized by an agent or someone else. So the problem is there, it’s very real, and the question is how to deal with it. I don’t think that there’s a simple solution to it.
A part of the problem is that there's just a terrible psychology on the part of many athletes, not all but many athletes, who are used to being given things. All of their lives they have been pampered and promoted on the basis of their tremendous athletic prowess. It should not necessarily be surprising that after they have been recruited and gone through it—and James [Malone], I would be interested in his comments about the recruiting process, and his memories of his teammates and some of their attitudes on this subject. But there is no doubt that by the time they reach the level of prominence at USC, UCLA, or any other Pac-10 school and it becomes apparent to somebody that they have a shot at making it in the NFL, many of them, not all, but many of them take it for granted that they should be given things because they have been given things all of their lives on the basis of their performance.

Let me just change subjects for a minute and tell you about what it means to be an agent and a lawyer in this state. Of course, if you're a lawyer you're subject to regulation as a member of the state bar. You are required to, of course, abide by the rules of professional responsibility in this state. Certainly if you break the law, you're not doing that, and you ought to be disbarred or suspended. Every players' association, whether it be the NFL Players Association, the Major League Baseball Players Association, the NBA Players Association, are all unions. As a union, they enjoy the exclusive right to negotiate the wages and benefits on behalf of the players. And so they have the power to say who can and who cannot represent a player, as an agent, in negotiating on behalf of that player over wages and benefits. The various associations have the right to regulate agents and they do. The NFL Players Association, of which I am a member, publishes what they refer to as the Code of Conduct, and I have it here. For example, the Code of Conduct prohibits agents from providing or offering a monetary inducement to any player or prospective player to induce or encourage that person to utilize his or her services. Similarly, it goes on to prohibit an agent from making false representations to a player, from using runners or third parties to attract talent to an agent; all of the kinds of things that we intuitively know are wrong.

Unfortunately, until this past year, the NFL Players Association has not taken a particularly active role in enforcing its Code of Conduct. I am informed that this year there are numerous agents who are in the process of losing their certification. It's about time that the Players Association got involved in this problem. I hope that they will continue to be aggressive in that fashion. In terms of other regulations, the State of California has a statute which regulates athlete agents. There is a difference in opinion over the definition of who is and who is not an athlete agent. If you are an
athlete agent, you are required to satisfy a number of statutory requirements, one of which is the posting of a $25,000 bond.

The statute says that an athlete agent does not include any employee or other representative of a professional sports team and does not include any member of the State Bar of California when acting as legal counsel for any person. Yet, when does a lawyer who is also an agent act as legal counsel, as opposed to crossing the line and being simply an agent? Most persons who are agents, as a matter of fact, all agents that I have spoken to on the subject, consider themselves exempt as long as they're active members of the state bar. I understand from talking with Scott [Edelman] on this subject that surprisingly, to me at least, Caron didn't even contest that he was a member. It was on that basis, apparently, that the court concluded that he had violated the statute by not registering.

Numerous other states, by my last count, approximately half the states in this country, have different statutes. If you want to represent a player in Texas who is at Baylor University, you have to register with the State of Texas, which involves paying fees and a host of other requirements. I have binders that are very thick with applications and state laws that govern lawyers. So there is abundant regulation already out there. The problem, in my view, is that those laws, those regulations, have simply not been enforced. Numerous agents in this state who are not members of the state bar and who violate statutes should be held accountable. Simply put, they just never register, and the State of California, to my knowledge, has never prosecuted somebody for violating the athlete agents’ law which currently exists.

MODERATOR:

I'd like to address something that Bob [Campbell] brought up about my perspective as an athlete at UCLA and seeing what agents did there, without naming anyone specific, and other players that I have met throughout my career. The problem is big—players do receive gifts, cars, meals, you name it. The big joke, so to speak, was that players would use agents to receive certain things. Players would say things like, "Give me a nice car, and I'll let you represent me," and then turn around and go with Steinberg or go with someone else. The agent would cry, "You can't keep my car." The athlete would respond, "What are you going to do about it?" The agent can't say, "I gave this guy a car and he won't give it back." Those problems are there.

I think the big crux of the problem, which Bob [Campbell] has addressed, is that a lot of agents are not certified by the NFL. They are not certified by the state. The player doesn't know that—he's not going to ask
to see verification that someone is an agent. As a player, myself and many of my teammates were broke. We were out there making money for the school, and we barely had enough money to get a Big Mac. So if somebody wanted to take you out, feed you a nice meal, and take you around, that was quite okay with us. I think that is the problem, the temptation of the athletes.

Does anybody have any suggestions about what needs to be done about curtailing the temptations of the athletes so that agents cannot go out and recruit players?

MR. LANE:

One suggestion is that you increase the benefits for the players. I know that in the Pac-10 you are entitled to one meal a day, and that’s all. That’s hardly enough when you are out practicing football and burning up thousands of calories and you are entitled to one meal a day. What do you for breakfast and lunch?

There are a lot of what I think are rather outdated rules of the NCAA with regard to what you can provide student athletes. If you can provide them with sufficient funds so that they can carry on some of these activities themselves, you wouldn’t have these problems. But what we find is that a lot of the people that come to the university for athletics are from deprived backgrounds; they are from out of state, they don’t have any funds, they can’t go home during normal holidays, and they are kind of stuck around town. What do they do? Who helps them out during that time period? You can’t have any alumni or anyone else providing any benefit to the student athlete or else it’s a violation of the NCAA rules and they are ineligible.

I don’t see that the NFL Players Association is doing much about this as far as taking action. We were waiting for them to do something. We wrote a letter and received a reply—your letter was received—but nothing that we know of was ever done. They never contacted us again with regards to what might be taking place. You’re kind of left on your own and these student athletes are out there without much protection. No one is really looking out for them; how do they get what they deserve in the way of protection? How do you provide counseling for them? How do we tell them what the rules are from the NCAA’s point of view? That’s really difficult unless you are in a real life situation because they don’t think that if you buy somebody a coke at a party, it’s a benefit, when in fact it is. So you can’t buy them a coke, you can’t buy them a hot dog, you can’t buy them anything. This is a very difficult situation because it’s unrealistic in
the real world. Benefits are anything of value—period. That’s hard for people to understand.

MODERATOR:

I would like to take a moment to introduce Mike Sherrard. I know you were caught in traffic, that’s why he’s a receiver, and that’s all right. [Laughter] Mike, we were just talking about some of the problems with athletes on campus, regarding agents. Please give us your perspective on some of the things that might have happened to you when you were at UCLA, going through the recruiting process and the draft, and your thoughts on solutions to the problem.

MR. MIKE SHERRARD:

When I came out of college it was a long time ago—about ten years ago. It’s tough for students that have no money to deal with the agents and lawyers that are real shifty. They know what to say, and they are conniving. It’s a difficult process. When I came out of college, I probably had seventy to eighty letters or phone calls from agents. And agents do not have to be attorneys. Agents can be anyone. They have to file a paper, I think with the NFL, or the Players Association, and say they want to represent players, there really is no background check or real credential.

So as a college kid, I got all of these letters, you know, and it’s hard to weed out who’s a good agent and who’s not a good agent. I could talk to other players and say, “You deal with so and so, is he good, is he bad, how has he treated you?” But it’s a tough thing to figure out, because a lot of guys came up to me, you know, guys I went to college with, they’ll say, “Mike, I have a good agent. Joe Blow is a good agent, you got to go with him, go to dinner with him, this and that.” Later, I’ll find out that the agent would pay this guy to say good things about him, or this guy would get a cut if I was to sign with this particular agent. And so, it is a cut-throat business.

The agent I picked, Leigh Steinberg, represents a lot of quarterbacks and has a lot of players in the NFL. In one stage in college, as a senior, I broke my collar bone, and so I wasn’t really practicing. I had a lot of time to think about agents, and I end up going out to dinner with a lot of agents, which probably wasn’t a legal thing to do. But as a college kid, it’s hard to turn down a free dinner.

I heard all sorts of things from agents: “We’ll give you this; we’ll give you that.” The guy I picked was one of the few people who did not offer me anything. I was offered cars and money, an allowance; everything that if you don’t have, it’s easy to fall into the trap. It’s easy to
take things, and like the speaker was saying before, college players ought to get paid something. Maybe not as much—obviously not as much—as pro players, but there ought to be some sort of meal money, "go out" money, something, so some of the violations wouldn't take place.

Like I said, my agent didn't offer me anything. He was a guy who represented a lot of big people, believed in giving money back to the hometown where you grew up, as well as your college community, and your pro community. That's something I wanted to be involved in. He was a guy that fit what I wanted to do. But for someone who doesn't have money, it is hard not to take money from agents. It's hard not to be supported. When I was in college, you could not have a job. If you lived on campus, you didn't get any money. No money ever touched your hands from the university. You're making millions of dollars for the university, and you can't even go out and buy pizza because if your parents can't afford it, you're out of luck. If you want to take a dinner from someone—an alumni—that's a violation. I think those rules are kind of strict. I think the NCAA means well, but the rules are way too strict. I really don't think its reasonable.

MODERATOR:

There's also all the benefits that players receive. I don't know if Mike remembers this, but it is not a very good story. When I was a freshman at UCLA, they had some FBI and DEA agents come in telling us about a very unscrupulous agent [who] would seduce players. This person would say "Hey, I'm going to take you out." They were from out of town and would arrive there with maybe a woman looking for a date. This person's name was "Dr. Beaudreaux." He would drug the players and make them do things. A lot of players got caught up in this, mainly because of the temptation.

Sometimes there are people out there that can get you in trouble. Remember the Lloyd Walters and Norby Bloom scandal? They were convicted of paying over $800,000 to college athletes. They got into the business of racketeering, threatening to break athletes' legs, or ruin their careers if they didn't sign with them. So there are also agents that are out for the money factor, and some agents out for various other factors.

MR. SHERRARD:

Also, when agents offer you money, it is a loan. College kids get caught up, "Wow, he wants to give me money. He wants to give me a car." What they don't realize is that you've got to pay it back. Soon as you get that first paycheck, the agents gets his money and some interest
out of it. They are not doing it for free, or to be nice, or to help you out. They're doing it to make money themselves.

MODERATOR:

What are the main solutions? I guess Bob [Campbell] addressed the fact that state law in California is really restrictive. I know that Florida is considering repealing its agent certification law because it is hard to gather evidence against an agent within its jurisdiction. Is there anything that can be done outside of state law? Outside of maybe federal legislation or anything that can be done by the universities?

MR. LANE:

Well, there is state law now proposed in Sacramento: One bill in the Assembly and another bill in the Senate that would regulate athlete agents and give private causes of action to the university. It would also make it a felony to commit acts that would induce players to take benefits before their eligibility is complete. The language is quite strong in the currently proposed legislation in the Assembly, and by Senator Ayala in the state Senate. There is also proposed federal legislation by a lawyer in San Francisco that would cover all fifty states with regard to registration and penalties for violations by sport agents.

MODERATOR:

Mr. Campbell, how would that affect your agent practice?

MR. CAMPBELL:

It depends on the legislation. The Miller-Ayala Bill is particularly onerous. It would require that all agents, regardless whether or not they are members of the state bar, post a $25,000 bond. And it can put you out of business. Most agents, I think I am typical of many of them, don't make a living representing ball players. If you are an agent who represents NFL players, you are limited to four percent of the contract amount that you negotiate. If you are somebody like me, you are fortunate enough to land a sixth-round draft pick like James. I don't remember what James' starting salary was, but I'm going to guess it was somewhere around $110,000 to $120,000. Assume that the total amount that James got as a sixth-round draft pick, which makes him one of the top 200 football players in the country, was somewhere in the neighborhood of $200,000—being extremely generous to James. [Laughter] Four percent of that is $8000.
Let me tell you; the competition to represent somebody who is a sixth-round draft pick is incredible. If you're lucky, like somebody like me, you get one guy like that every couple of years. There are a handful of agents who make all the headlines, who make big money. For the rest of the poor slobs, it is more a labor of love. The psychic rewards far outweigh the monetary awards. Many of these bills, it seems to me, just by reading the proposed legislation, the true intent is that these people just don't like agents and just don't think they should exist. By creating incredible barriers for people who will obey the law—and most agents do—and who will do the right thing, it seems to me that you want to promote those kinds of people. You want those kinds of people to make their services available. You do not want to punish them for the deeds of the few. There is a competing bill which seems to me to be much more appropriate, by Assemblymen Gary Miller. I believe that Miller's bill is far less Draconian. It has a lot of teeth, and I know it has a lot of things that Bob [Lane] wants to see in proposed legislation. I think that's far more appropriate than the Miller-Ayala Bill.

MODERATOR:

Let me ask Mr. Sherrard: How crucial is Leigh Steinberg to your career? If what Bob [Campbell] says is true, there are going to be a lot of agents that will not be in the practice. How crucial is having an agent to your career?

MR. SHERRARD:

It's important to have an agent to negotiate, to help direct the path of your career, but talent is important, too. You have to have talent to play in the league and stick around in the league. Most agents are probably good. There are a few that kind of spoil this and make the name kind of dirty, but most are good. There needs to be some sort of regulation in terms of their treatment toward college kids and their treatment toward guys that are already in the NFL.

MODERATOR:

Mr. Edelman, do you think that civil lawsuits will be the wave of the future. Is that the answer to this problem?

MR. EDELMAN:

No, not at all. I think our situation was unique. You all know when you get out there and practice, it's expensive and time consuming to file lawsuits. Most universities are not going to want to go out and hire private
counsel and do something like this. I think the answer, reiterating what people have said tonight, lies in two areas. The first is additional regulation of agents so that the acts we are speaking about really are made criminal. I hear what Bob [Campbell] is saying about the $25,000 barrier to entry and that may well be a legitimate point because that is a lot of money for somebody to have to put down. But I think the other area is that the NCAA rules have to be relaxed because that’s where the temptation comes from. Yes, agents have to be regulated. However, we’ve got to deal with the initial temptation because as people have pointed out tonight, a lot of these student athletes are scholarship students and they don’t have any money.

The rules are so strict and so limiting to them that human nature is what it is: You have to eat; you want to go out. If you absolutely limit it and take anything from anyone, including a university, these kinds of situations are going to arise. The universities take a lot of criticism because people say, “These student athletes make so much money for you, you go to the Bowls, you get incredible revenue, you sell merchandise, and it’s a real profit-making enterprise for you. The student athletes ought to be benefiting from that in some way.” And of course, the university can’t do anything if the rules of the NCAA aren’t changed.

MR. LANE:

Let me approach it from just a different manner. The university better be squeaky clean when it files the lawsuit because there is discovery on the other side. The first thing opposing counsel will come in and ask is which individuals have received the benefits, what have they received, and what have you done to make sure there is not a similar type of occurrence taking place with other types of agents or otherwise. It’s a risk for the university when it files a lawsuit. The university is subjected to discovery and all other types of investigation that could prove to be very embarrassing if it is not clean when it goes in.

MODERATOR:

Let’s open it up to some questions.

[Question from the audience about whether or not USC filed the lawsuit to avoid NCAA sanctions.]

MR. LANE:

No, it was really to take some action against the person against whom we had brought the lawsuit. We were interested in determining what
action they were going to take. We have a whole bunch of agents who are
generally around our campus on a twenty-four hour basis. We are
interested in knowing when somebody does this, what are you going to do,
what is the penalty when you get caught. If there is no penalty, then we
have to impose the penalty. We are looking to them to police their own
group. I know what Bob read and what it said, but that’s not what
happens. If you violate it then what occurs? If nothing occurs, then it
doesn’t have much meaning.

MR. CAMPBELL:

The NFL Players Association this past year significantly beefed up
the certification requirement. In the past, it was very easy to be an agent
as long as you hadn’t murdered anybody. The certification process now is
far more stringent. It requires, as I recall, a four year degree or its
equivalent. There are significant fees that you have to pay. There are
annual meetings that you have to attend. There’s a lot of education that
goes into being a successful quality agent. I think there’s no question the
NFLPA [National Football League Players Association] was so
sidetracked with labor wars over the past few years that it is just now
getting to the point where it is addressing this significant problem, and I
tell you, for my sake and others who are in my shoes, that they will tackle
the problem head on and aggressively.

[Question from the audience: How do you go about finding players
who will let you represent them?]

MR. CAMPBELL:

That’s an interesting question because James didn’t sign with me.
We are going to have a little talk about that afterwards. That’s very
difficult; if I knew the answer I’d have a lot more clients. It’s hard trying
to get into the psyche of these guys when they are really young. They
don’t have experience, and that is a very difficult thing, and it really varies.
I find that the players who are attracted to me tend to be brighter guys that
hopefully can appreciate that I bring a little more to the table than perhaps
somebody else. I come from a different perspective than many other
agents, but many guys just don’t care about that. A lot of guys simply care
about what you can give them. They care about a lot of things that just
don’t seem to be very important to me, but I can’t change them; I can’t
change the way I approach the players and I can’t change who I am.

I create a list on my own of players who I think have a chance to
make it in the NFL. Toward the end of every season, I send them a resume
and a cover letter. I do my best to make sure I comply with the requirements of the particular university. I have found that my best referrals are from people within the university such as the coaches or the assistant athletic directors. The first person that I ever represented came to me from the assistant head coach at UCLA; the first player who I represented that made an NFL team came to me from a referral from an assistant athletic director at USC. USC has a terrific program where they invite agents every year to come and address the college seniors. I think most of the schools do a terrific job of educating their players, and I think the players for the most part are very savvy by the time they get around to their senior year. So, in the case of USC, I will typically have the opportunity to represent a player or two from that school just by virtue of the fact that I meet them at their annual agent forum; that was the case this year.

In a nutshell, that’s how I go about it. It comes from referrals. Many times I will get a telephone call from a player who I had never met or spoken to. It was something about my cover letter or my resume that caused them to give me a call.

There have been numerous occasions where I’ve gotten together with players before their eligibility is complete, but I tell them right up front, “I’d be happy to sit down and talk with you, but I can’t buy you a coke; I can’t do anything like that. When your eligibility is done and if you sign with me, I’d be pleased to have dinner with you. We will go to a ball game and we will talk at that time in greater detail.” But I don’t want to be a distraction to players when they should be enjoying their college career, when they should be having fun and being college students. So, I hope to distinguish myself with some players by virtue of the fact that I just don’t pester them.

I have seen what happens at the tunnel over at USC, and I have been amazed at the people who hold out their hands to grab a guy by the arm and saying, “Hey, come over and talk to me. I want to introduce myself.” I’ve seen how that works, and I’ve been to the East-West Shrine game up in Palo Alto. It’s remarkable what happens in the hotel lobby. I’ve seen limousines pull up with women who look like hookers, harass the guys, pile them into the limousines, and take them out drinking all night. I mean, that’s the way some agents do it, and it’s successful. It’s a poor commentary on the kids who fall for that stuff. There is no doubt that at this day and age there is plenty of information and counseling available to these guys.
[Question from audience about the possibility of rule changes by the NCAA with respect to paying athletes.]

MODERATOR:

The only thing I know is that the former Executive Director of the NCAA, Walter Byers, is about to publish a book. He said, "Let's throw it all out and let the players come in as freshmen, act as if they are professionals, and sell their services to the university for the fair market value. Let them market themselves and do commercial appearances and do whatever. Scratch the amateurism ideal that they try to promote." That is the only thing I know outside the NCAA, but I don't know about anything else.

[Question about any changes in the rules within the Pac-10 Conference regarding payments to athletes.]

MR. LANE:

No, absolutely not. The University has been making an effort to get three meals a day for student athletes. It has been totally unsuccessful in expanding even that, so that it's not just limited to one meal a day during the season. We've been totally unsuccessful in getting that passed. So you can see getting amateurism in any form changed so that there is greater benefits is very difficult.

MR. CAMPBELL:

All right, let me just jump in there and correct me if I'm wrong, Robert. That particular rule is a Pac-10 rule . . .

MR. LANE:

That is a Pac-10 rule.

MR. CAMPBELL:

... And, at one point in time, the members of the Pac-10 were allowed to give more than one meal a day to their athletes. Certain schools, mainly I think Oregon State, which with a much smaller athletic budget is far less able to provide like USC and UCLA and some of the bigger schools, felt they were at a competitive disadvantage because they were not able to compete at the same level. That is one of the problems. You have the "haves" and "have nots" and how do you create a
competitive balance when all the schools are not able to do the same things.

[Question about giving athletes more money for food outside of what is currently allowed.]

MR. LANE:
You can't do that because that would be a benefit provided to an athlete that is not provided to someone else.

[Question about making athletes more aware of the bad agents that are out there.]

MODERATOR:
I don't know if they had it when Mike was there, but when I was there they had an agent panel: professors from the law school, business school, and what not, that you could go to. I used the panel when I selected my agent. It was supposed to be that buffer that I think you're talking about. But no one else I knew used it. I was one of the few that did. Most people said, "I know it's there, but why would you go talk to some guy anyway?" I don't know if Mike has an experience with that.

MR. CAMPBELL:
Those resources do exist. From my experience, most of the schools have something in the nature of exactly what you are talking about.

MR. LANE:
Yeah, but you've got to be careful because it has to be provided after the athletic competition has been concluded. Otherwise, it is a benefit provided by the university to an athlete that is not provided to the general population. If you do provide any form of benefit to an athlete that is not provided to a non-athlete in the university, that is a violation and you are subject to penalty.

MR. CAMPBELL:
Is that right?

MODERATOR:
Well, the first time we met that panel was after our senior year was over, so . . . .
MR. LANE:
Right.

MR. CAMPBELL:
That’s too late. [Laughter]

[Question from the audience asking whether athletes should be paid.]

MR. SHERRARD:
I agree. That’s what we’ve been talking about. It just doesn’t make sense to me. It’s not really fair. As a student on campus, you receive no money and you can’t have a job. So, what are you supposed to do? If your parents can’t afford to give you money, then you’re stuck. My parents did have some money, but not a lot. I had to take out student loans. I was on full scholarship, but I still had to take out student loans and $2,500 didn’t last through the entire school year. I was calling my mom and dad every week asking for money.

[Question from the audience about how much the athletes should be paid from the schools’ revenues.]

MR. SHERRARD:
I think it’s difficult to figure out the exact dollar amount.

[Question about whether or not all student athletes should be paid.]

MR. SHERRARD:
I don’t know. There should be some sort of money stipend that the athlete gets. But you face the question of which athletes should receive money. Only football players? Only revenue-producing sports? What about the girls’ softball team? Those are the questions that arise because some schools can’t afford to pay everyone on the diving team $200 a month. Those questions are tough, but they need to be worked out. There has to be some sort of solution to keep everyone happy.

MODERATOR:
One thing I’d like to address very quickly is that if you are a student just going to class, someone can come up and give you something, and you can just take it. Just say that an athlete is the same as a student. If
someone wants to give that student something, the student can just take it without being subjected to NCAA restrictions as long as the university doesn’t sponsor the gifts and if they don’t find the people. There are probably a lot of problems that will surface. You get into the whole deal with the agents, but why not just have open season? If the player can get fifty grand from agents and whomever and as long as he’s not bound, and he doesn’t sign anything, then why not allow him to take the money?

MR. EDELMAN:

Let me tell you about a problem with another lawsuit we had this year that picks up on what you mentioned. It involves a football player at USC who is Nigerian. He came to the United States, played here, but didn’t have family here. But there were members of his Ibo tribe in the United States, specifically Los Angeles. Under Nigerian custom, they have a concept of family that is not necessarily the same as the Western custom. It’s a more extended notion of what comprises family. He received money from members of his tribe, not agents—just members of his tribe. The NCAA learned about that and suspended him for several games. The NCAA did not accept his argument, which the University supported. You have to look at different customs and traditions. It may not be a Western notion of family, but it is a Nigerian notion of family. That’s how strict it is. The money wasn’t from an agent, but his argument still didn’t fly.

MR. CAMPBELL:

The “Ibo defense.” [Laughter]

[Question about the amount student athletes may acquire in student loans.]

MR. LANE:

No, there’s a maximum as Mike Sherrard stated. There is a maximum. It’s about $2,500 that you can get over and above your athletic scholarship. That’s the maximum that you can receive.

It covers tuition, books, and room. During the season, in the Pac-10, it also covers one meal a day.

MR. CAMPBELL:

I don’t understand the rationale.
[Question about the rule that prohibits student athletes from holding jobs during the school year.]

MODERATOR:
I think the reason for the rule, in understanding the rationale, is that in the old days, guys would get paid a lot of money to go flip on a light switch, turn on a sprinkler, or open a door. That was their job, and somebody paid them for it. I guess the NCAA, in an effort to curtail such activity, said, "Don’t work at all.”

MR. CAMPBELL:
Now, they just do it in the off-season.

MODERATOR:
Right, in the off-season.

[Question from the audience about the athletes having time to work during the school year, if allowed.]

MODERATOR:
Half of the school year is spent playing football. The entire fall quarter and then during the spring, which is worthless, but you still have to practice during that time.

[Question from the audience about paying college athletes more money under their scholarships.]

MR. CAMPBELL:
I don’t think it is so simple. You’re not talking about stupid people. These are difficult problems. As Mike [Sherrard] pointed out, where do you draw the line? It is not just a matter of how much. At schools like UCLA and other schools where they have enormous numbers of people on athletic scholarships, where do you draw the line? Assume that you could agree on an amount. Would that amount be appropriate for someone living in Lawrence, Kansas as compared to somebody living in Westwood? Those are all difficult questions. There is also the other problem. If you allow players to receive money at certain schools through some funds, what about the schools that don’t have the wherewithal to do the same thing? I don’t know what the answer is, and I don’t pretend to. But, it is certainly a difficult problem. Many proposals have been made over the
years. I don’t think that they are any closer to resolving the issue or creating a solution than they were a decade ago.

MODERATOR:
Any comments? Questions? All right, I guess that’s a wrap. I’d like to thank the panel for coming. It was a very good discussion. Thank you those of you in the audience. We’ll be available if you have any questions for the panel.

James Malone & Daren Lipinsky*

* The authors sincerely thank the staff and editors of the Loyola of Los Angeles Entertainment Law Journal for their extreme dedication and invaluable help and suggestions. The authors also thank the panelists who took part in “The Agent and the College Athlete” Symposium. James Malone wishes to thank his family for their love and support and dedicates this Article to his mother. Daren Lipinsky wishes to thank Gina Ducceschi, Professor Daniel Lazaroff, James L. Perzik, Esq., and the entire Lipinsky family for their encouragement and support. Mr. Lipinsky can be reached for question or comment at Dlipinsky@aol.com.