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*535 BUSINESS AND BROTHERHOOD, CAN THEY COINCIDE? A SEARCH INTO WHY BLACK ATHLETES DO NOT HIRE BLACK AGENTS

[James G. Sammataro](#) [FN1]

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I. INTRODUCTION

When University of Michigan basketball star Juwan Howard announced in 1994 that he was foregoing his last year of collegiate eligibility to enter into the National Basketball Association's (NBA) draft, the "sports agent's scramble" ensued. Although the flurry of activity resulting from an athlete's declaration to "go pro" was customary, Howard's announcement created an unusual stir among sports agents. What made Howard's declaration different was that word had circulated that Howard and the other members of the "Fab Five" - the University of Michigan's famed 1991 freshman recruiting class [FN1] - had made a pact to sign with black agents if and when they turned professional. [FN2]

This seemed like a golden opportunity for Henry Thomas. "[Not only was] he a black sports agent, but he had an accounting degree, two law degrees, a specialty in taxation, experience as a litigator, a decade teaching sports law at DePaul University and, perhaps most importantly, a big-name NBA client - perennial all-star Tim Hardaway."*536 [FN3] Moreover, both Thomas and Howard were from Chicago, and Thomas had even played high school basketball with Howard's godfather. Despite his credentials, his connections, and the Fab Five pact, Thomas was not even given the opportunity to meet with Howard. [FN4]

Instead of selecting a black agent, Howard signed with David Falk, the reputed king of basketball agents, whose star-studded roster of clients was headlined by Michael Jordan. [FN5] "The rest, as they say, is history. Howard made the all-star team in his second NBA season and [later] commanded a new seven year, \$105 million contract, which

made him one of the league's best-paid players.” [\[FN6\]](#)

Falk professed that he won the competition for Howard because he demonstrated that he was the best negotiator. [\[FN7\]](#) Tales like Henry Thomas' are however, all too familiar among black sports agents. Despite breaking into the business over three decades ago, black sports agents have not, until recently, had much success in recruiting clients. [\[FN8\]](#) Even today, they lag well behind their white counterparts. “In many respects, the struggles of black sports agents parallel those of other black professionals - black professors trying to earn tenure at predominately white academic institutions, black lawyers trying to make partner at prestigious law firms, black builders trying to win construction contracts to build suburban malls.” [\[FN9\]](#) In one respect, however, black sports agents struggle alone. It is largely black athletes who, whether they admit it or not, discriminate against them.

***537** To fully explore the predicament of black sports agents is to plow through the rather complicated subtexts of race in the 1990s. Section two briefly describes the role of the sports agent and the business of sports agency. Section three focuses upon the improbable dearth of black sports agents. Section four addresses plausible theories that explain why black athletes choose to not hire black agents. Section five analyzes the impact of race on contract negotiations. Section six contemplates whether there really is a “best agent.” Sections seven and eight conclude by framing the raging debate: should race matter in the agent selection process?

II. THE AGENT: HIS SKILLS & HIS BUSINESS

A. The Sports Agent Business

The sports representation business is fiercely competitive; success stories, black or white are rare. [\[FN10\]](#) Approximately 5,000 individuals [\[FN11\]](#) call themselves sports agents. [\[FN12\]](#) Yet, after discounting the employees at a few major sports management and marketing firms, there are less “than two dozen people making a living at that job exclusively.” [\[FN13\]](#) The profession is permeated by envy, as aspiring and established agents alike salivate at the prospect of signing a blue-chip prospect or ***538** luring a competitor's top-drawer client. [\[FN14\]](#) As the field of competitors for a limited number of clients has escalated, [\[FN15\]](#) so have the cutthroat methods of competition. [\[FN16\]](#) Stories of unsavory agents employing either unethical or illegal methods are legendary. [\[FN17\]](#)

***539** The driving force of this intense competition is money. There are big paydays at stake. The potential income a sports agent can reap from representing even a single client is astonishing. Take, for example, agent Eric Fleischer and his client Kevin Garnett, the young potential mega-star for the NBA's Minnesota Timberwolves. The twenty-one year old star forward has a player contract for a reported \$125 million over six years. Based on his four percent commission of Garnett's salary alone, Eric Fleischer stands to earn approximately ***540** \$4,880,004 over that six-year period. [\[FN18\]](#) This amount is for a single client and does not include any commissions from endorsements. It is common for an agent to make anywhere from ten to twenty-five percent of endorsement deals. [\[FN19\]](#) For example, an agent can make \$4 to \$10 million for a \$40 million dollar sneaker contract. For a superstar client, such as Garnett, it is likely that endorsement fees can match or even exceed the value of his player's contract. [\[FN20\]](#)

Even if the sports agent is lucky enough to sign his desired client, the business can remain intensely competitive. The agent can never rest. [\[FN21\]](#) He simultaneously serves as contract negotiator, financial advisor, image

consultant, securer of endorsement deals, trouble-shooter, career counselor, pseudo-therapist and friend. The agent sometimes has to “explain a player's wayward behavior to the press, handle house-purchase closings, and help plan weddings.” [\[FN22\]](#) As Henry Thomas professes, “I pay bills for the mother and father, [and] make travel arrangements when they go on vacation. All kinds of things.” [\[FN23\]](#) Cynthia Deatrick, former manager of Leigh Steinberg's office, explained, “you cannot believe some of the things players expected us to do. One client [a Bay Area baseball player] used to ask us to send [our interns] over to wash his car, or to take his clothes to the dry cleaners. . . . It has simply become the nature of the business.” [\[FN24\]](#)

David Ware, a black Atlanta-based attorney and sports agent, told a gathering of aspiring sports agents, “[t]he good agents have to accept that [babysitting] is part of the business. If you don't like being in the personal service business, then being a sports agent is not the business for you. You may not think that the 1:00 A.M. phone call from a player describing the [night's] bad game is that important, but obviously he does.” [\[FN25\]](#) Today's athletes expect to be coddled, and if *541 one agent is not willing to do it, another agent will. Seventeen-year old tennis sensation, Anna Kournikova explained her recent contentious parting of ways with International Management Group (IMG) and former IMG agent Tony Godsick, by stating, “[h]ow can a person manage you when he's not with you at a Grand Slam, not there when you beat the Number 1 player, or for your first Top 10 win? When I beat Steffi Graf, my agent wasn't there.” [\[FN26\]](#)

B. The Role of the Sports Agent

The popular portrayal of the sport agent conjures images of the quintessential Hollywood lifestyle: fast cars, fancy clothes, wads of cash, and beautiful women. The agent is essentially depicted as a high-class pimp. Leigh Steinberg, one of the more successful and respected agents, describes the stereotypical sports agent, “[he is] short and slick, he wears a gold chain around his neck and a diamond ring on his pinky finger. He's armed with a stream of fast talk and a package of promises to fatten his wallet at the expense of the athlete.” [\[FN27\]](#) While this negative stereotype [\[FN28\]](#) is widely accepted, in truth, sports agents differ and have varying levels of success as in any other industry. [\[FN29\]](#) And it is equally true that agents largely attract clients based on their ability to perform valuable services for athletes enmeshed in increasingly complex business activities. [\[FN30\]](#)

*542 Perhaps the agent's principal contribution is to level the playing field in negotiations between the athlete and the club (or other contracting entity). [\[FN31\]](#) Club management comes to the table with legal advisors and more experience. Depending upon the sport, club management may negotiate as many as a dozen to fifteen contracts per season. On the other hand, the athlete, particularly a marginal one, may have only one opportunity to negotiate a contract in his entire professional career. Accompanied by a sports agent, the represented athlete ideally comes to the table with sufficient comparable negotiating experience. [\[FN32\]](#) An effective sports agent may thus, be considered “a great equalizer of the bargaining power between an athlete and a professional sports team, serving to bridge the gap of unequal access to information in a situation where a well-established corporate entity with vast resources sits across the bargaining table from an often young and naïve athlete.” [\[FN33\]](#)

*543 Sports agent Angelo Wright, [\[FN34\]](#) stated that in addition to bringing negotiating experience, he also provides a heightened knowledge of the game.

“I know as much football as these coaches and executives ... and thus, I can ensure whether my client and his skills are going to be employed appropriately. I do my homework and find out such things as the team's salary structure, what defensive scheme the team's going to employ, what the team's long-term vision is, and how my client fits into their plans. As a third party you're able to play matchmaker, trying to place your client in the ideal setting, and to tailor the deal to his specific needs.” [\[FN35\]](#)

In their article, *When Should We Use Agents? Direct v. Representative Negotiation* [\[FN36\]](#), Jeffrey Z. Rubin and Frank E. A. Sander emphasize that the athlete's salary negotiation is the archetypal scenario in which an agent should be employed. “The use of an agent is most appropriate when special expertise is required, when tactical flexibility is deemed important and, most importantly, when direct contact is likely to produce confrontation rather than collaboration.” [\[FN37\]](#)

In the sports setting, it is particularly important to avoid confrontation, especially if the negotiation occurs mid-season. The ultimate objective is for the athlete to play for the team once the negotiation is completed. By introducing an agent into the negotiations, the player can more accurately express his goals as a member of the team. The agent serves as a buffer. [\[FN38\]](#) He can tout the athlete's accomplishments and attributes. [\[FN39\]](#) At the same time, the agent can listen to the management*⁵⁴⁴ and highlight the athlete's deficiencies and shortcomings. [\[FN40\]](#) Negotiating through an agent may thus prevent ill will between a player and the owner or general manager. It is easier “both literally and ideologically for both parties to negotiate when the player doesn't actually have to brag, or invite management's criticisms.” [\[FN41\]](#)

In addition to correcting inequities at the bargaining table, a good sports agent should be counseling his client about post-career security, both financial and occupational. The agent's job no longer stops at brokering contracts and endorsement deals. [\[FN42\]](#) While the last topic an athlete wants to broach is what happens when their playing career is over, the reality is that for most athletes the end is near shortly after it begins. For example, the average career for a professional football player lasts only three and a half years. [\[FN43\]](#) It is the agent's job, therefore, to furnish a certain amount of perspective and to force his client to confront the future. As Leigh Steinberg cautioned, “without proper financial and career planning, the athlete may find himself at mid-life with no alternative skills and very little savings or income to show for his career.” [\[FN44\]](#)

To prevent such a dire scenario, most of the larger agencies employ entire financial divisions to help athletes manage their seven and eight-figure incomes. The philosophy of nearly all of the established agencies is to be conservative. Jan Plewis, Vice President of Financial Services for Advantage International, whose company's client roster includes tennis stars Michael Chang, Steffi Graf, and Anna Kournikova, stated, “[when investing for our clients,] the profile we use is someone nearing retirement, even if the client is only twenty or twenty-five years old.” [\[FN45\]](#)

Similarly, Jimmy Sexton, a Memphis-based agent whose clientele includes former Green Bay Packer Reggie White and Scottie Pippen of the Houston Rockets, states, “the main focus of an agent should be ‘what is my client's life going to be [like] when he's forty to forty-five *⁵⁴⁵ years old?’” [\[FN46\]](#) Curtis Polk, President of David Falk's Falk Associates Management Enterprise (FAME) advises FAME's clients, some of whom are as young as twenty-one years old, to place their money in conservative investments such as municipal bonds. “There's just no certainty as to how

many years these athletes are capable of earning such a high level of income.” [\[FN47\]](#) Earl Layne, Vice President of Professional Sports Division of Star Bank in Cincinnati, and a financial advisor for seventy-six professional athletes, agrees with this conservative financial view. “Caution is the best method. I generally recommend placing the athlete on an allowance and investing the rest. It’s the best way to make sure that they’re secure for life.” [\[FN48\]](#)

Agents often serve as invaluable counselors. The best agents make sure they help their clients steer clear of problems along the way. As Angelo Wright stated, “[p]erhaps, my most important skill is my ability to motivate the players. I tell it to them straight. I might tell them such things as ‘you are drinking too much, or you are not working out enough.’ I have a close relationship with many of my clients, and when they hear advice from me, as opposed to the club, they take it to heart. They know that I have their best interests in mind.” [\[FN49\]](#) A good agent does more than help his client convert his athletic skills into financial security. [\[FN50\]](#) He protects his client’s rights and keeps the player in a frame of mind where he can perform best for himself and his team, thereby maximizing the financial return on the player’s career.

***546 III. AGENT SELECTION: BY THE NUMBERS [\[FN51\]](#)**

Given that the nature of the player-agent relationship frequently involves a great deal of intimate, personal interaction, “the selection of an agent is a highly personal matter.” [\[FN52\]](#) The vast majority of professional athletes in the three major professional sports (baseball, basketball and football) are black. [\[FN53\]](#) Inasmuch as each of these black athletes unilaterally possess the power to select the agent they desire, it would be logical to assume that the pairing of a black agent to represent successful black athletes would be a natural occurrence. The reality, however, is that until recently, such black-on-black representation was rare. [\[FN54\]](#) Even with the rapid ascension of numerous black agents, it is alarming just how few black sports agents represent successful athletes. The numbers are grim. The Blacks Sports Agents Association (BSAA), an organization aimed at raising the profile and stature of black sports agents, estimates that there are about 400 black sports agents (among 5,000 sports agents), and only fifty or so have recognizable clients. [\[FN55\]](#) The most generous estimate is that ten percent of the approximately 1,500 black professional athletes have black agents. [\[FN56\]](#) In major league baseball, nineteen percent of the players are black. [\[FN57\]](#) As of 1992, [\[FN58\]](#) 150 of the 200 agents registered with Major League Baseball Players Association had active clientele; black agents accounted for a mere three percent of this 150. [\[FN59\]](#) In professional football, sixty-nine percent of the players are black, but black agents comprise*547 only fourteen percent of the registered agents with active files. [\[FN60\]](#) Worse yet, more than eighty percent of the NBA’s players are black, but less than ten percent of them have black agents. [\[FN61\]](#)

While it may not be realistic to expect an exact correlation between the number of black athletes and black agents, a greater black presence in the agent business would seem reasonable. [\[FN62\]](#) One explanation for this disparity is the possibility that there are not enough black agents for black athletes to choose from. Charles Farrell, director of the Rainbow Coalition for Fairness in Athletics, asserts, “there are plenty of good black agents out there.” [\[FN63\]](#) One reason for the availability of good black agents is that there are few barriers that prevent blacks from becoming agents. [\[FN64\]](#) There is no formal educational requirement and in most states, becoming an agent only requires certification from the respective professional league’s players association. [\[FN65\]](#) Often, the certification process is relatively simple, and fairly inexpensive. [\[FN66\]](#) Thus, becoming an agent does not require a great deal of educational or financial resources that may operate to exclude blacks from other professions. Why then are black athletes reluctant to

select agents of their own race? The most commonly cited factors [\[FN67\]](#) include (1) the historical allegiance of black athletes to white agents, [\[FN68\]](#) (2) the negative rhetoric of white agents, [\[FN69\]](#) (3) the seductive resources ***548** white agents possess to court black athletes, [\[FN70\]](#) and (4) the media's disparaging portrayal of the professional capabilities of black agents. [\[FN71\]](#) This article posits two additional reasons why black athletes choose not to hire black agents.

IV. WHY BLACK ATHLETES DO NOT "BUY BLACK"

A. The Internalized Negative Image of Race: "The Colder Ice Syndrome"

The primary challenge confronting black sports agents is their image in the eyes of black athletes. They need to secure from black athletes the same consideration and respect afforded to white agents. Whether they admit it or not, many black players have internalized racial stereotypes about blacks and thus, discriminate against their own people. Billy Mayo, a black consultant for Self-Evaluation Consultants, a company that conducts workshops to increase understanding of other races and cultures, professes it's difficult to be bombarded with messages such as you're less intelligent, you're lazy, you can't do the job, throughout your life without being scarred in some way. [\[FN72\]](#) These comments manifest themselves in blacks "turning" upon one another, believing these comments to be true about their brethren. Mayo states, "when a black person steps out to take a leadership role, nine chances out of ten, it will be blacks that cut him down." [\[FN73\]](#)

Noted psychologist Kenneth Clark produced perhaps the most prominent work on the negative esteem in which blacks hold themselves.***549** [\[FN74\]](#) In his 1947 study on the repercussions of school desegregation upon the ego development of black children in the American South, Clark found that most black children presented with both black and white dolls preferred the white doll. [\[FN75\]](#) The children characterized the black dolls as "bad" or "a bad color" while conversely describing the white dolls as "nice" and "better." [\[FN76\]](#) In 1985, clinical psychologists Darlene Powell Hopson and Derek Hopson repeated the Clark study. [\[FN77\]](#) The Hopsons reported that not only did a majority (sixty-seven percent) of the black children prefer to play with the white doll, but seventy-six percent ascribed negative attributes to the black dolls. [\[FN78\]](#)

The significance of the doll research is that "[it] is indicative of children picking up on the messages that they are getting from society." [\[FN79\]](#) In their book, *Different and Wonderful: Raising Black Children in a Race-Conscious Society*, the Hopsons report that when asked to pick out the doll that "looked more like them," many black children selected the white doll. [\[FN80\]](#) The Hopsons explain, "[t]hese results tell us [that] early in their lives, many black children learn that 'whiteness' is more valued than blackness in society. Therefore, when they have a choice, they will often choose white over black." [\[FN81\]](#)

The stereotype stems from and is perpetuated by the environment in which the athlete's career develops as well as the overall business of sports. [\[FN82\]](#) Sports agent David Ware agrees, asserting that by the time the black athlete hits high school, "it's too late, they're indoctrinated."***550** They've been told and they believe it's the white agent and the white attorney that can get you the most money." [\[FN83\]](#) More likely than not, if the athlete plays at a major college program, his coach is white. [\[FN84\]](#) Professional team sports, especially football and baseball, have largely excluded blacks from high-level positions within their organizations. [\[FN85\]](#)

Since there are a limited number of black professionals who can influence black athletes and serve as their role models, and because the majority of businessmen in the sports environment are white, black athletes turn to white agents. [\[FN86\]](#) A stigma against black professionals, specifically black agents, is embedded in the minds of black athletes. [\[FN87\]](#) They are convinced that a black agent will not be treated with the same respect from professional sport's all-white hegemony.

*551 Black agent Ray Anderson wholeheartedly agrees, “unfortunately, some of the star black players have swallowed the line that you've got to have a white agent, and maybe a white [] Jewish agent to get the best deal.” [\[FN88\]](#) Henry Thomas noted, “[there] is an unconscious feeling [among black players] that they will get a better contract, better endorsement possibilities if they choose someone white.” [\[FN89\]](#) Len Elmore, an agent of considerable success who became so disillusioned that he abandoned the business altogether commented, “[the problem] is simple, black athletes are not convinced that we can do the job.” [\[FN90\]](#) Those beliefs are confirmed by black Hall of Fame football player and college All-American Kellen Winslow. As a college senior, destined to become a high first round draft pick, Winslow recalled:

I needed someone white preferably Jewish. My statements concerning the type of agent I wanted reflected the worst. It showed that I went beyond understanding and into the realm of believing that I and those like me, black people, were not only disadvantaged, but unable to handle my affairs with the NFL. [\[FN91\]](#)

Such sentiments are common, stated Farrell, “[t]here's a weakness in the African-American community. We still think that white doctors, white attorneys and white agents are somehow better because of the color of their skin. It's what we in the black community call the ‘colder ice syndrome.’” [\[FN92\]](#) The ‘colder ice syndrome’ is based on an often-repeated tale, commonly credited to Malcolm X, [\[FN93\]](#) which provides insight into the black community's general perception of the competence of their own professionals. According to the tale, in a small, southern town on an extremely hot day, a long line of people waited to purchase ice. Yet, on the other side of town a black ice *552 vendor sat with an abundance of ice doing very little business. When a black patron in the long line was asked why he stood in the long line rather than purchasing the ice in his own neighborhood, he quickly retorted, “well everybody knows that the white man's ice is colder.” [\[FN94\]](#) Different variations of this phenomenon have been used to account for similar instances where blacks fail to patronize black businesses or trust blacks in positions requiring good faith and expertise. [\[FN95\]](#)

For example, take the story of Leonard Mungo, a black Detroit-based attorney and Chairman for the Michigan chapter of the Rainbow Coalition's Commission on Fairness in Athletics. Mungo's own nephew, Tyrone Wheatley, the New York Giant's 1995 first round draft pick, spurned him in favor of Joel Segal, a white agent. “When it came time to fill out his Pell Grant forms, I was the man,” Mungo said, “but when it came down to bigger things, clearly I wasn't.” [\[FN96\]](#)

B. The “**crabs-in-the-barrel**” phenomenon

In addition to contending with the negative regard among black athletes, black agents have to withstand internal strife. “There's a lot of defamation of character among black agents,” says Andre Farr, President of a California-based sports marketing company and Chairman of the BSAA. “If a black player is being recruited by four black agents and

one white one, it's not uncommon for the four black agents to slander each other and the player to go to the white agent." [\[FN97\]](#)

In the black community, this is known as the “**crabs-in-the-barrel**” phenomenon. [\[FN98\]](#) The underlying rationale of such behavior is that many blacks are convinced that the only way for them to ascend is to drag down one of their own. They are convinced that white America will permit only so many blacks to succeed and, therefore, their primary competition is in fact each other. [\[FN99\]](#)

*553 Yale Law Professor Stephen Carter advances that racial preferences have a tendency to place “terrible psychological pressure” on their beneficiaries and that the “best black notion” (e.g., that blacks can only compete among themselves to be the “best black,” rather than competing successfully against whites) is most likely a by-product of affirmative action policies. [\[FN100\]](#)

Bill Strickland, arguably the most successful black agent in the business, serves as a good example of this phenomenon. He has often been the target of biting criticism. He began his career at ProServ, where from 1983 to 1991, he first served as David Falk's assistant and then as part of a team that successfully lured Patrick Ewing, Dominique Wilkins, and Michael Jordan. [\[FN101\]](#) In 1992, Strickland left ProServ [\[FN102\]](#) to become President of Basketball Operations for Cleveland-based sports management industry king IMG, to charter their Washington, D.C., office. At IMG, Strickland attracted a cadre of promising young talent including Portland Trailblazer forward Rasheed Wallace, New York Knick Allan Houston, Washington Wizard Mitch Richmond and former Fab Fiver, Chris Webber. [\[FN103\]](#)

Despite his years of experience and a degree from Georgetown Law School, scathing criticism belittled Strickland's accomplishments, reducing his role from instrumental to illusory. The critics dismissed Strickland as a “runner” - a lackey in agent's parlance. [\[FN104\]](#) A black runner's primary qualification, in this context, is having the same skin color as the potential client. [\[FN105\]](#)

*554 “It was an attempt to undermine my credibility,” Strickland says, “that while I was the agent of record for certain players, I was really not the agent in charge.” [\[FN106\]](#) Strickland is not alone, as almost all black agents working for white-owned sports management firms [\[FN107\]](#) have been demeaned as “tokens” and “birddogs” hired only to help procure young, black talent. [\[FN108\]](#) Essentially Strickland and other black agents have merely been subjected to the same bromide that black professionals immersed among the white elite have long been subjected to. These professionals have been criticized as “working for the white man, being an Uncle Tom, and selling out.” [\[FN109\]](#) Except in sports, the dart throwers are largely other black agents.

The predominate ‘**crabs-in-the-barrel**’ mindset is self-defeating, as Andre Farr detailed, “unless [black agents] work together, we're all going to perish.” [\[FN110\]](#)

V. THE IMPACT OF RACE ON NEGOTIATIONS: DO WHITES AND BLACKS NEGOTIATE THE SAME?

A relatively novel question - one barely whispered amidst heightened political correctness - is whether there are in fact any meaningful differences in the manner in which white and black agents negotiate and, more importantly, whether these differences significantly affect the resulting contracts.

Surprisingly, there is little research, and even fewer recent studies, analyzing the influence of race on negotiations. Charles B. Craver, an experienced negotiator and legal negotiating instructor, advances that “people who participate in bargaining transactions should recognize that the specific circumstances and unique personal traits of the individual negotiators - rather than generalized beliefs regarding ethnic or cultural characteristics - determine the way in which each interaction*555 evolves.” [\[FN111\]](#) This position fails to take into consideration the reality that individuals do not negotiate in a social or cultural vacuum, and it is likely that interaction between races is strongly influenced by the race of the participants.

According to the “social identity theory,” espoused in *Interracial Interaction Disability*, [\[FN112\]](#) social behavior is an amalgam of interactions impressed by individual characteristics and respective memberships in social groups or categories. [\[FN113\]](#) Yet, once engaged in an inter-group conflict such as in a negotiation, members of different races are prone to exhibit behavior that reflects their respective group memberships rather than their individual characteristics. [\[FN114\]](#) The “social identity” paradigm thus, maintains that it is impracticable to expect individuals to divest themselves of “unsatisfactory, underprivileged, or stigmatized group membership.” [\[FN115\]](#)

This theory intimates that such racially-stratified negotiations, as when a black athlete and his black agent negotiate with the club's all-white management, are likely to be resolved decisively in favor of the all-white management. According to Craver, “people tend to negotiate more cooperatively with opponents of the same race than with adversaries of another race.” [\[FN116\]](#) This phenomenon is best illustrated when there is a conflict of interest between the racial groups. In such situations, ethnocentrism - the tendency to favor one's own group over another - is exhibited almost exclusively by the ethnic majority group. [\[FN117\]](#) Conversely, the minority group members are more apt to belittle their own group while acting positively toward the ethnic majority. [\[FN118\]](#) This self-derogation is due in part to the minority group's internalization of racial stereotypes and their lower social status. [\[FN119\]](#)

In circumstances where whites and blacks work together on a new cognitive task,

*556 [b]oth races are likely to be handicapped by built-in expectations for superior performance and greater participation on the part of the whites as compared to the blacks. Even with no prior knowledge of the capabilities of the individuals involved, there is diffusion from the more general societal principle of superior-inferior relationships of blacks and whites. [\[FN120\]](#)

Craver's study of multi-racial groups of school-aged males in cooperative problem-solving situations revealed that the white children were more “talkative, argumentative and interactive” and were more inclined to attempt to exert their influence. [\[FN121\]](#) The blacks were much more quiet and subdued, offering “short, clipped suggestions with little non-verbal communication.” [\[FN122\]](#) In negotiating, the white children were much more likely to employ competitive techniques, utilizing adversarial and manipulative tactics, whereas the black children proved more accommodating, employing more cooperative techniques, and occasionally, at times of heightened tension, acquiescing altogether. [\[FN123\]](#)

Another more recent study, examining whether the process of negotiating for a new car disadvantages women and minorities, revealed that white males receive substantially better prices than blacks of both genders and white women. [\[FN124\]](#) The results of the study - in which “testers” of different races and genders [\[FN125\]](#) entered new car deal-

erships separately and bargained to purchase a new automobile employing a uniform negotiation strategy - revealed that “white women had to pay *557 forty percent higher markup than white men; black men had to pay more than twice the markup; and black women had to pay more than three times the markup of white male testers.” [\[FN126\]](#) Of particular interest is that white males received better offers from both white and black salesmen. This runs counter to the experience of the black male testers who, though discriminated [\[FN127\]](#) against by all the salespeople, received, the worst deals from the black salesmen. [\[FN128\]](#) The pertinent results of these tests reveal that sellers steered testers to salespeople of their own race and gender, who in turn proceed to give them the worst deals. [\[FN129\]](#)

VI. NEGOTIATING SPORTS CONTRACTS: IS THERE REALLY A ‘BEST AGENT’?

Despite the results of the aforementioned studies and the fact that people may bring stereotypical expectations [\[FN130\]](#) into the negotiation, there is no evidence that race plays any role in a sports agent's success in negotiating. There is no particular negotiating style or racial attribute, which will guarantee success in the sports agent business. To the contrary, there appears to be an abundance of anecdotal evidence suggesting that there is no such thing as the “best agent.” [\[FN131\]](#) When asked if white agents may be more effective negotiating with white team executives, John Nash, the white general manager for the NBA's New Jersey Nets, responded with “that's hooley. None of these agents are easy to deal with, and there certainly is no ‘best’ agent.” [\[FN132\]](#) Jerome Stanley, a Los Angeles-based agent who represented New York Jets wide receiver Keyshawn Johnson, the first pick in the 1996 NFL draft, stated “it becomes a self-fulfilling prophecy. I say, ‘I'm better,’ you believe it. You give me a chance; I get great dollars. I say, ‘I told you so.’ You take any of the competent black agents and *558 you give them the clients David Falk has and they'd be David Falk - plus some.” [\[FN133\]](#)

In the locker rooms and on the teams' airplanes, there is a lot of talk about agents - who is good, and who is not. Ostensibly, the players simply do not grasp that, contrary to popular belief, they are the ones who both command and earn whatever deal they sign, not the agents. James Coleman, a Professor at Duke University School of Law and a black agent that specializes in representing players in drug testing disputes stated, “unlike other fields, here the margin-of-error is so slight. You are dealing with a known quantity: the market value of the player, and thus, it's largely just a matter of ironing out the specifics.” [\[FN134\]](#) Mike Anderson, a partner at Signature L.L.C., a Baltimore-based sports management firm, agrees, “[t]he one thing I would like to get across to these guys is don't feel like you have to have one [[[particular] agent to get paid. A lot of people can do this stuff. It's not rocket science.” [\[FN135\]](#) Thus, the reality is that even David Falk, the self-professed “best negotiator,” and the agent perhaps best known as a “deal-maker,” cannot bring home a blockbuster deal for a marginally talented player. [\[FN136\]](#)

Paul Haagen, a Professor at Duke University School of Law and member of Duke's agent screening panel that advises Duke's undergraduate*559 athletes, qualifies the statements made by James Coleman and Mike Anderson:

If you assume competence ... and I'm not entirely sure you can with some of the people holding themselves out as agents, then yes, it's true anyone can negotiate these contracts, but even still, there are varying degrees of success. It is indeed possible to make a mistake by erroneously interpreting the market, or by simply making a poor decision. [\[FN137\]](#)

Paul Haagen further asserts that an agent may be able to secure his client a more lucrative contract if he is prepared. [\[FN138\]](#)

Preparation is really the key. In many respects, the agent has to act like a litigator on the eve of the trial. The agent may have to identify, hunt down, and correct rumors. Suppose, for example, that at a NBA pre-draft camp, questions are raised about your client's health. A good agent will have his client tested in attempts to alleviate all fears. Similarly, a good agent will try to sell his clients with top-notch promotional videos. The agent who goes the extra step generally gets better results. [\[FN139\]](#)

In addition to preparation, Paul Haagen details that a good agent must also both understand the underlying background (i.e., the collective bargaining agreement, the salary cap structure, and the economics of certain payments) [\[FN140\]](#) and have the trust of his client. [\[FN141\]](#)

Trust is huge. So many of these players are interested solely in obtaining the highest number [of dollars], even at the expense of actually receiving less value. They all want the biggest contract ... but what they seemingly don't grasp is that the biggest number is not always the most money. It is important for the agent to first secure the trust of the client so that he can get him the best possible deal in terms of actual dollars. [\[FN142\]](#)

However, Paul Haagen agrees, "there is no dynamic or component which would preclude a competent black agent from negotiating as effectively as a competent white agent. The underlying details of *560 the negotiation really have nothing to do with the negotiator's race." [\[FN143\]](#)

Thus, competent agents can achieve varying degrees of success, depending on certain factors. [\[FN144\]](#) These factors include preparation, an understanding of both the law and economics of the sports industry, and the client's trust. [\[FN145\]](#) A good agent needs access to management's gossip in order to address concerns that may arise about an athlete. [\[FN146\]](#) In addition, the agent should know about his client's strengths and weaknesses, both professional and personal. [\[FN147\]](#) The agent also needs access to and an understanding of the salaries of other athletes, the salary cap structure, and the economics of certain payments. [\[FN148\]](#) Essentially, a good agent needs information and the ability to use it in order to achieve a favorable result, which in turn, builds trust with the client.

If there is indeed a "best agent," he is the agent who possesses the best information and knows how to use it to his client's advantage. Thus, whether the "best agent" is white or black may depend on whether black agents and their white counterparts have the same access to this information (and whether others, including the client, believe that the black agent has access to this information).

Blacks and whites both have access to certain types of information. Certain information can be obtained through a formal education. [\[FN149\]](#) For instance, an agent could learn about collective bargaining agreements in law school, or could learn to better understand the economics of certain payments in business school. [\[FN150\]](#) Blacks and whites also have access to information that can be obtained through the media or from conventional research. [\[FN151\]](#) An agent can follow an athlete's career by reading the newspaper or learn certain details of a sports franchise through careful research of public records. [\[FN152\]](#)

However, other types of information cannot be gleaned from simply reading the newspaper or from studying law. The management of sports franchises gossips about athletes and about the market in their *561 respective sport. [\[FN153\]](#) This information is invaluable and can greatly assist in a negotiation. This information is often gained at

social gatherings, golf courses, and through acquaintances and friends. [\[FN154\]](#) The owners and management of these franchises are predominately educated white males, [\[FN155\]](#) and there is a belief that blacks tend to socialize with other blacks and whites tend to socialize with other whites. [\[FN156\]](#) Assuming blacks agents do not associate with whites as readily as white agents, many black agents are not privy to this type of very important information.

Thus, if black agents and white agents do not have the same access to certain types of information, one could argue that there is a “best agent” and that race plays a role in identifying this “best agent.” However, such an argument fails to take into account that even if black agents are at a disadvantage, they may have certain advantages that white agents do not have when dealing with black clients. If blacks and whites do, in fact tend to socialize with their own race, then black agents and black clients would tend to relate to one another better than white agents relate to black athletes. [\[FN157\]](#) Thus, black clients could more readily communicate with their agents about certain issues that may arise and about their career goals. Arguably, a black agent could then more readily serve his client's interests and simultaneously build trust.

VII. THE CONUNDRUM, THE DISPARITY AND THE DEBATE

A. The Conundrum:

The conundrum for all agents, black or white, trying to crash the upper ranks of the business is simple: without a reputation, it is difficult to recruit clients and without opportunity, it is difficult to build a reputation. “Who else do you represent?” is the first question asked by most perspective athlete-clients. C. Lamont Smith, one of the country's most successful black agents and founder of the recently-formed All Pro Sports & Entertainment International [\[FN158\]](#) had his big-***562** break nine years ago in a Wichita soul-food restaurant. There, he met with William Sanders, father of Barry Sanders, then a standout running back at Oklahoma State University. Smith was bereft of any brand-name clients to trumpet. As Smith recalls, “I pretty much pleaded my case to him. I laid out what I had done with third-round draft picks and he said, ‘I'm going to give you a shot.’ But he told me, ‘if you screw it up, you've got me to deal with.’” [\[FN159\]](#) Luckily for Smith, he did not “screw up,” as he and David Ware, another black agent, negotiated Sanders' then record-setting contract with the NFL's Detroit Lions in 1997. [\[FN160\]](#)

B. The Disparity:

Unlike white agents, black agents, by and large, do not have access to the white athlete. The BSAA estimates that black agents represent less than one percent of white professional athletes. [\[FN161\]](#) Detroit-based Carl Poston commented on this disparity. “White agents have an advantage because black athletes go to white agents, and white athletes go to white agents. White players don't even give me the time of day ... never have and never will ... and it can't be because of my qualifications. [\[FN162\]](#) When we see black attorneys and agents representing ***563** white players as well, then that's a sign that things are becoming equal.” [\[FN163\]](#) The stark reality, adds Eugene Parker, [\[FN164\]](#) the Fort Wayne agent who represents Tim Brown, Rod Woodson and Deion Sanders, is “black agents can't even get interviews with white players, and nobody says anything about that. If it's a problem one way, why shouldn't it be a problem the other way?” [\[FN165\]](#) Jim Steiner, a white sports agent, agrees with Poston and Parker but feels the situation will change. “It will change, but it will take much longer. This is the way of the world. I cannot think of any other reason other than it is the evolution of it all.” [\[FN166\]](#)

While agreeing that signing white players is not easy, some black agents say that part of the blame lies with themselves. “The overwhelming majority of black agents stick with just the NFL and the NBA, both predominately black leagues because the two leagues give them the safest route of success.” [\[FN167\]](#) Raymond Anderson agrees, “we as black agents also have to take some responsibility to target non-African Americans as guys we want to do business with.” [\[FN168\]](#)

Nevertheless, the bottom line for black agents is that because white athletes do not hire black attorneys and agents, it is all the more imperative that the cycle of black athletes not hiring black agents be broken. [\[FN169\]](#)

***564 C. The Debate:**

As the number of black agents asserting their influence grows, some white agents have criticized black agents for using their race for recruiting leverage. Leigh Steinberg, whose intimate relationship with former Seattle Seahawk's black quarterback Warren Moon was the model for the player-agent relationship/friendship in the movie Jerry Maguire, disapproves of racial appeals. “I don't think it's particularly effective,” states Steinberg. “I certainly don't go up to Troy [\[FN170\]](#) and say, ‘I'm white, so I can really relate to you.’” [\[FN171\]](#) Scott Casterline, a Dallas-based veteran white football agent, quipped that some “very prominent black competitors” were using the “race card” in attempts to lure away his top clients. [\[FN172\]](#)

According to Casterline, the player was pressured thusly, “hey, you're setting the black race back 200 years by signing with the white guy.” Casterline, who represents forty-seven clients, forty-four of whom are black, retorted, “my sentiment is [that] those kind of statements are setting the American race back 200 years,” [\[FN173\]](#) and “[hiring an agent] should be based on talent and performance and experience, not race.” [\[FN174\]](#) Jerome Stanley counters “[t]here's no question that the best deal for a young black athlete is to choose a qualified, competent black sports attorney. A person who's walked that path before you is in a lot better position to guide you than someone who hasn't.” [\[FN175\]](#)

The debate on whether race should matter in the selection of an agent has other black proponents. Angelo Wright agreed that “certainly,*565 it's true that as a ‘black’ you can better understand the black athlete's experience. You can relate to the many factors that are motivating his behavior.” [\[FN176\]](#) William Sanders emphatically asserts:

I wasn't going to raise my son his whole life and then turn him over to some white people and let them run his life. A lot of them [white agents] called me and told me how well they knew all the owners, how they play golf with them, but ... I was looking for somebody honest, somebody I could communicate with and go to church with. I just felt more comfortable with blacks. Some people might say that's prejudice, but its not. Plus, their kids don't sign with black agents, why should ours sign with white agents? [\[FN177\]](#)

Charles Farrell believes a black athlete signing with a black agent affords more than an important synergy between two in-sync souls. [\[FN178\]](#) “It's about empowerment.” [\[FN179\]](#) Lamar Lathon, an All-Pro NFL linebacker for the Carolina Panthers, stated, “I see whites and Asians patronizing their own people, and I thought as a professional football player it would be good for me to set the example. I don't like to be closed-minded about anything, but I think it's important for black athletes to realize that we need to put some money back into our community.” [\[FN180\]](#)

C. Lamont Smith echoes this point, “the sports and entertainment industry is to blacks what technology is to the Japanese and oil is to the Arabs. It is incumbent upon us to work to control our natural resources.” [\[FN181\]](#) Given the trickle-down effect in the panoramic scope of marketing, advertising, public relations and accounting, black agents, Farrell argues, are most likely to steer black athletes to black realtors, car dealers, charities, and financial planners. In essence, black agents are more likely to put a black athlete's millions in black hands, benefiting the black community as a whole. Another black agent, requesting anonymity, concurred, “once a black player is signed by a white agent, the black community can forget about getting any of his money ... we are left out in the cold.” [\[FN182\]](#)

David Falk counters, “I tell the players this is not about black or white. This is about green. This is a business issue, not a social issue.”*[566 \[FN183\]](#) John Thompson, formerly one of the country's highest-profile black collegiate basketball coaches and an individual who has confronted civil rights battles in his profession, [\[FN184\]](#) surprisingly supports Falk, who not only represents Thompson but the many collegiate stars he has coached at Georgetown, including Patrick Ewing, Alonzo Mourning, Dikembe Mutombo and Allen Iverson. In response to a hail of criticism, Thompson asserted:

What does it mean to give other agents a chance to compete? Do you give somebody a chance when you go in for heart surgery? There are some areas of life where you don't give anyone else a chance. [\[FN185\]](#) ... Loyalty based on performance is important. If the man down at the corner store gives me a good price, I go back to his store... .What irks me is that many of the black agents who contact me try to sell their ability to relate to the kid, to counsel the kid. These kids have enough people to relate to them. They don't need that in an agent. [\[FN186\]](#)

*[567](#) “The bottom line,” Thompson continued, “is that [black agents] want me to discriminate against David Falk. Anybody who has that sick **mentality** perpetuates discrimination against blacks.” [\[FN187\]](#)

VIII. CONCLUSION

Discrimination is, however, a complicated thing. Perhaps the most persuasive argument for considering race when searching for representation is that if black athletes can learn to apprehend and evaluate same-race representation as a positive variable in the agent selection process, then the complexion of the business will continue to change. In other words, if the collective image of the black sports agent shifts from a negative to a positive, then black agents and black lawyers can emerge as equal participants in professional sports. The black athlete holds the unique power to elevate his community. [\[FN188\]](#) By *[568](#) hiring individual agents, stressing to major firms the import of legitimate black representation and speaking out on the issue, black athletes may be able to confront the myriad of racial stereotypes cast upon the black community that have been destructively internalized.

While this article does not advance that black athletes should hire a representative based solely on the agent's skin color, it urges that black athletes should likewise not employ race to reject one. Sadly, the latter has been the unfair rule. As Kenneth Shropshire recognizes in his article *Sports Agents, Role Models, and Race-Consciousness*, “race has always been a factor, but one in which white was positive and black negative.” [\[FN189\]](#)

[\[FN1\]](#). The “Fab Five,” consisted of Chris Webber, Juwan Howard, Jalen Rose, Jimmy King, and Ray Jackson and is

widely acclaimed to be the best basketball recruiting class ever assembled. These five freshmen were starters for the 1992 national championship game in which Michigan lost to Duke. See Kevin Merida, *Business, Brotherhood or Both? Black Agents Find Tough Competition For Top Athletes*, Wash. Post, Oct. 4, 1997, at A01.

[FN2]. See *id.* Former Fab Fiver, and the spiritual leader of the group, Chris Webber lived up to his end of the bargain by signing with Bill Strickland, the previous year. See *id.* In so doing, Webber had become only the second top selection in the NBA draft to be represented by a Black agent (Bill Strickland had previously represented Pervis Ellison, the top selection of the 1986 draft). See *id.* Webber remained faithful to his vow when he subsequently decided to be represented exclusively by L. Fallashia Ewin, a Black, Detroit-based lawyer and certified public accountant. See *id.*

[FN3]. Other notable players Thomas represents include small forward, Michal Finley of the Dallas Mavericks, guard, Anthony Parker of the Philadelphia 76ers, and guard, Charles Smith of the Los Angeles Clippers. See [Gregory Clay, Black Agents' Contract Success Empowers Minorities, Daily Oklahoman, Aug. 10, 1997, at 04, available in 1997 WL 2459023](#).

[FN4]. See Merida, *supra* note 1, at A01. Henry Thomas later reflected, "I thought that I would at least get to sit down and give my presentation. [Not to get that chance] was disappointing, and it was disappointing that I never got an explanation as to why I didn't get an interview. To this day, I don't know. Juwan has never told me." *Id.*

[FN5]. See *id.* Falk negotiated a record \$36 million one-year contract for Michael Jordan, and has more NBA all-stars and rookies-of-the-years in his stable than any agent in the business. See *id.*

[FN6]. *Id.*

[FN7]. See *id.* In describing his negotiation with Juwan Howard, Falk stated "I think he was extremely savvy and analyzed what was best for him. He had printouts comparing all of the contracts [of the previous year's rookies] in front of him." Merida, *supra* note 1, at A01.

[FN8]. See Barry Cooper, *Black Sport Agents Beat Odds With Top Clients*, New Pittsburgh Courier, July 13, 1994, at A-10, quoted in Kenneth Shropshire, [Sports Agents, Role Models and Race-Consciousness](#), 6 Marq. Sports L.J. 267, 273 (1996). As Barry Cooper so aptly described, "ten years ago, high profile Black sports agents were as rare as snowballs in Miami." *Id.* at 272-73.

[FN9]. See Merida, *supra* note 1, at A01.

[FN10]. Kenneth Shropshire, [Sports Agents, Role Models and Race-Consciousness](#), 6 Marq. Sports L.J. 267, 271 (1996).

[FN11]. See Kevin Merida, *Group Hopes to Raise the Profile of Black Male Athletes*, Wash. Post, Oct. 4, 1997, at A14. It is difficult to track the precise number because there is no formal education requirement and, in most states, becoming an agent requires only bravado and the easy-to-acquire certification from the respective pro league's players

association. See *id.* To become a certified agent for the NFL for example, all one has to do is pay a \$400 application fee applicable towards the \$800 annual membership fee, and fill out a 14 page application. See NFLPA Regulations Governing Contract Advisors, § 2 (1998); see generally Michael A. Weiss, Note, *The Regulation of Sports Agents: Fact of Fiction?*, 1 Sports L.J. 329, 339-41 (1994). After a processing period of up to 45 days, and a background check, the person then pays the remaining \$400 to be “certified.” The NBA has a similar certifying procedure, except the annual dues are \$1,500. See NBPA Regulations Governing Player Agents (1998).

[FN12]. See Merida, *supra* note 11, at A14. Perhaps the best way to describe the vast majority of these self-described agents is to analogize them to prospectors who dream of striking gold one day but so far have only dirt to show for their efforts. See *id.* The adage, though trite, is accurate: all you need to be an agent is a client, and thus many of these prospective agents will keep digging.

[FN13]. Robert H. Ruxin, *An Athlete's Guide to Agents* 31 (1989). Most combine their not so thriving sports agent business with other careers, varying from public relations directors, lawyers, accountants, concert promoters, dry-cleaning managers, ex-coaches, insurance agents, and kosher caterers. See *id.*; see also Shropshire, *supra* note 10, at 269; Merida, *supra* note 11, at A14; see generally James Malone & Daren Lipinsky, *The Game Behind the Games: Unscrupulous Agents in College Athletics & California's Miller-Ayala Act*, 17 Loy. L.A. Ent. L.J. 413, 413-15 (1997) (explaining that there is a tremendous amount of money to be made in the sports agent business).

[FN14]. See Merida, *supra* note 1, at A01. Mike Rozier, winner of the 1987 Heisman Trophy the award given annually to the best college football player - estimated that he received roughly 1,200 letters while at the University of Nebraska. “Most of [these letters] came from people I have never heard of, and who did not even know me, or want to know me. All they wanted was to line their pockets with the money I was soon to make.” *Id.* More recently, Skip Hicks, a 1997 All-American running back from UCLA, described how he had to stiff-arm some of the 200 agents who registered for the 1998 Senior Bowl activities. See Ron Higgins, *Future NFLers Wary of Agents*, Harrisburg Patriot & Evening News, Jan. 17, 1998, at C01. “Every agent comes at you with a different story, what they can do for you, how they can get you drafted in the first round, and why this [other] agent may be bad.” *Id.* Tori Neal, another 1997 NFL draft pick, exclaimed “you don't want to be without an agent before you come here to the Senior Bowl-agents walk around the lobby like sharks looking for meat.” *Id.*

Brian Hunter, the young center fielder for the Detroit Tigers and the object of other agents' wooing concluded, “the agent business is so tough, because it's a dog-eat-dog world and because all you can really work off is trust.” Tyler Kepner, ‘Larry Maguire’ As an Agent with a Conscience, *Riverside-based Larry Reynolds Builds on Personal Attention and Trust*, Press Enterprise, Jan. 13, 1998, at D01.

[FN15]. In 1996, for example, there were nearly 1,600 agents certified by the NFL for roughly 1,300 players. See Rob Remis, *The Art of Being a Sports Agent in More Than One State: Analysis of Registration and Reporting Requirements and Development of a Model Strategy*, 8 Seton Hall J. Sport L. 419, n.43 (1998). Less than half of the registered agents with the National Football League Players Association have clients in the league. See J. Mark Rodgers, *The Need For Federal Agent Regulation*, 13 The Sports Law., Mar/Apr. 1995, at 3. Likewise, of the 161 agents certified by the NBA players Association, only 94 represent current players. See *id.*

[FN16]. In his autobiography, *The Boz*, former Oklahoma star linebacker and NFL bust, Brian Bosworth detailed,

“[y]ou get hit on constantly by agents ... or by friends of agents. Even pro players call you and try to sign you with their guy. Howie Long of the Raiders called me to see if I wanted to hook up with his guy. I didn't even know Howie Long, much less his guy.” Brian Bosworth with Rick Reily, *The Boz: Confessions of A modern Anti-Hero* 229 (1989), quoted in Shropshire, *supra* note 10, at 16.

A newspaper investigation of Lance Luchnick, a Houston-based agent, unearthed that Luchnick gave gifts and paid basketball coaches amounts ranging upwards of \$14,269 dollars to help him recruit their players. See Danny Robbins & Manny Topol, *The Agent & His Coaches*, *Newsday*, Apr. 3, 1988, at 5, 19. In one case, the newspaper reported that Luchnick paid a three percent commission to the coach. See *id.* at 19.

[FN17]. The rules of the National Collegiate Athletic Association (NCAA) explicitly prohibit student-athletes from signing with agents before their eligibility expires to keep collegiate sports in the realm of amateurism. See Mark Asher, *Identifying Secret Agents: NCAA, Colleges Begin to Crack Down on Payment*, *Wash. Post*, Oct. 21, 1995, at B01. The NCAA also forbids student athletes from receiving any “pay.” *Id.* An athlete that violates these rules jeopardizes his eligibility for further collegiate sporting events. See *id.*

“Pay” is defined broadly, and includes any gift from an agent. See NCAA Bylaw 12.1.2 (1989). For example, in December 1997, Penn State's star running back Curtis Enis was declared ineligible for the Citrus Bowl after he admitted to accepting a \$400 dollar suit from agent, Jeff Nalley. See Michael Raphael, *Enis Admits Taking Gifts from Agent*, *Las Vegas-Rev. J.*, Dec. 24, 1997, at C1. University of Miami wide receiver Jammi German was ruled ineligible to play his senior year after he accepted and later denied an agent-financed limousine ride taken in 1995. See Asher, *supra* at B01. Similarly, Donnie Edwards, a star linebacker at UCLA, was suspended for one game in 1995 for accepting unsolicited bags of groceries left at his doorstep by an agent's representatives. See *id.*

Many agents attempt to forestall any objective decision-making on part of the athlete by getting their hooks in the athlete early and never letting go. The pursuit of the college athlete is intense. Even those who quite obviously will not be drafted in the top rounds, are courted. See Shropshire, *supra* note 10, at 271-73 (explaining some of the tactics used by certain sports agents to sign athletes). Cunning agents prey on the athletes' ‘what can you do for me now?’ **mentality**. They lure the precocious athlete into an intricate web of deceit by offering money, jewelry, cars, drugs, sexual favors, etc. See Craig Neff, *In Hot and Heavy Pursuit*, *Sports Illustrated*, Oct. 19, 1987, at 84 (describing the aggressive tactics employed by sports agents as they pursue potential clients).

The most infamous example of agent corruption remains the Norby Walters-Lloyd Bloom scandal of the 1980s. See [United States v. Walters, 997 F.2d 1219 \(7th Cir. 1993\)](#). By the time they were convicted of racketeering, conspiracy and mail fraud in 1989, the agents piloted a “kamikaze venture” into sports representation in which they enlisted the aid of a reputed crime family and paid out more than \$800,000 dollars to 58 college athletes. See [United States v. Walters, 913 F.2d 388, 389-91 \(7th Cir. 1990\)](#); see also Robert E. Fraley & Russell Harwell, [The Sports lawyers' Duty to Avoid Differing Interest: A Practical Guide to Responsible Representation, 11 Hastings Comm. & Ent. L. J. 165, 169-70 \(1989\)](#). Included on the list were Purdue Cornerback, Rod Woodson, now with the Baltimore Ravens and Alabama forward Derrick McKey, now with the Indiana Pacers. See Bruce Selcraig, *The Deal Went Sour: Sports Agents Norby Walters and Lloyd Bloom Were Indicted for Racketeering and Extortion*, *Sports Illustrated*, Sept. 5, 1988, at 32 (quoting agent Lloyd Bloom, upon learning of University of Texas football player Everett Gay's retaining another agent, “we can get someone from Vegas to come down and see that [Everett] doesn't play football again.”).

Despite the highly public trial and conviction, such corruption remains pervasive. In 1995, University of Southern California Running Back, Shawn Walters was declared ineligible after an NCAA investigation revealed that Walters had accepted a sum of money, alleged to be as high as \$15,900 dollars, from Robert Caron, a sports agent from

Oxnard, California. See Tony Fong, *The Lure of Money: How Professional Agents Corrupt College Sports*, Syracuse Herald, Mar. 14, 1996, at A1. In 1996, the number of reported agent-related infractions investigated and resolved by the NCAA reached an all-time high of 19. See *id.* Then in 1997, it was revealed that former University of Massachusetts star Marcus Camby had received gifts from prospective agent, John Lounsbery. See Phil Taylor, *Marcus Camby Was Both Victim and Villain in His Illicit Dealings With Agents While at UMASS.*, Sports Illustrated, Sept. 15, 1997, at 66.

The scandal worsened as reports surfaced that Camby had simultaneously received money, jewelry, rental cars, and women for both him and his friends from Welsey Spears, a Hartford lawyer also hoping to become his agent. See *id.*

Dallas Cowboy Cornerback, Deion Sanders countered that most athletes “are hip to the game,” insinuating that many athletes are as much villain as victim, and solicit such offers by deceitfully promising agents that they will sign when it is legal to do so. Sanders boasted that he and his Florida State teammates primed agents. “There wasn't a week that I didn't walk around college without five grand in my pocket from an agent.” Bobby Clay, *Black Agents Compete for Blue Chip Athletes*, Black Enterprise, July 1992, at 54.

[FN18]. NBA players' union rules prohibit an agent from taking more than four percent of a contract. See the NBA's Collective Bargaining Agreement.

[FN19]. The NBA Players Union does not set limits on how much the agent can take in endorsement deals. The going rate ranges from 10 to 30%. See *id.*

[FN20]. See Shropshire, *supra* note 10, at 272.

[FN21]. See Merida, *supra* note 1, at A01; see also Kenneth Shropshire, *Agents of Opportunity: Sports Agents and Corruption in Collegiate Sports* 10, 11 (1990).

[FN22]. Robert P. Garbarino, *So You Want to Be a Sports Lawyer, or is it Player Agent, Player Representative, Sports Agent, Contract Advisor, Family Advisor, or Contract Representative?*, 1 Vill. Sports & Ent. L.J. 11, 32 (1994).

[FN23]. Merida, *supra* note 1, at A01.

[FN24]. Interview with Cynthia Deatrick, Leigh Steinberg's former Office Manager, in La Jolla, Cal. (Aug. 12, 1998).

[FN25]. David Ware, *Remarks at the National Football League Players' Association Agent Certification Meeting*, quoted in Shropshire, *supra* note 21, at 11.

[FN26]. S.L. Price & L. Jon Wertheim, *Spite and Spice: The Repackaging of Anna Kournikova is Big - and Bitter - Business*, Sports Illustrated, Sept. 14, 1998, at 90, 92.

[FN27]. Leigh Steinberg, *Time to Revise Game Rules*, Sporting News, Nov. 16, 1987, at 10; see also Mike Conklin, *Odds & Ins*, Chi. Trib., Aug. 6, 1990, at 9 (reporting that at a sports agent meeting, “dark suits, big cigars, and pinkies

are optional.”).

[FN28]. See *Inquiry Into Professional Sports: The Select Committee on Professional Sports*, H.R. Rep. No. 94-1786, at 70 (1977) (noting that agents have also been labeled the most destructive force in sports and described as vultures, parasites, bloodsuckers, charlatans, and leeches); Craig Neff, *Den of Vipers, A Sports Scourge: Bad Agents*, *Sports Illustrated*, Oct. 19, 1987, at 76 (stating “like serpents they infest the gardens and groves of American sports poised to strike at the wealth professional athletes earn in such plenty.”). Karen Allen, *Gottfried Aims to Curb Agents Seeking Underclassmen*, *USA Today*, Jan. 26, 1988, at 7C (Coach Mike Gottfried commenting “these agents stalk players like vultures and prey on their innocence. I’d like to apologize to the bird species for connecting these two.”);

[FN29]. See *Shropshire*, supra note 21, at 7.

[FN30]. See Jamie P.A. Shulman, *The NHL Joins In: An Update on Sports Agent Regulation in Professional Team Sports*, 4 *Sports Law. J.* 181, 182 (1997) (commenting, while sports agents may appear as synonymous with the world of sports as the athletes they represent, the emergence of the sports agent is a relatively recent phenomenon. Historically, agents were not needed because professional athletes possessed minimal, if any, bargaining power in negotiations with their teams).

In years past, many teams refused to even negotiate with sports agents. Take, for example, the actions of Vince Lombardi, the legendary coach of the Green Bay Packers. When informed that an agent was present to negotiate the contract of player Jim Ringo, Lombardi walked into his office and closed the door. After a few minutes, he returned and relayed to the would-be negotiator, “you [are] negotiating with the wrong team. Mr. Ringo has just been traded to Philadelphia.” Weiss, supra note 11, at 330. The role of the sports agents has dramatically changed as a result of such occurrences as: (1) the transformation of the players associations of the various sports from powerless, loosely organized groups into true labor unions with the power to bargain collectively and call strikes; (2) the implementation of collective bargaining agreements between the leagues and the players’ associations which gave rise to the advent of player free agency; (3) the formation of rival leagues and the subsequent competition between the leagues causing player salaries to increase; (4) an increase in the media coverage of sports resulting in escalating revenues for professional teams; and (5) the opportunities for athletes to earn additional income through the endorsement of goods and services. See *Charles E. Ehrhardt & J. Mark Rodgers, Tightening the Defense Against Offensive Sports Agents*, 16 *Fla. St. U. L. Rev.* 634, 637 (1988).

[FN31]. See Shulman, supra note 30, at 185 (“It is now widely recognized by athletes and professional teams alike that an athlete should not negotiate his own contract, since most athletes lack knowledge of contract and labor laws and have not developed the negotiation skills necessary to protect their own interests.”).

[FN32]. See *id.* (commenting “[a] competent and trustworthy agent can reasonably be expected to negotiate a better deal than the average athlete, who is often young and without business savvy.”). The reality is that most athletes, particularly those coming from the college ranks, are unschooled in economic principles. This point is well illustrated by a survey taken in 1992 by former player Ralph Cindirch, which revealed that 76% of the top prospects polled in the draft class were unaware that they might be responsible for \$300,000 to \$350,000 in taxes in a projected million dollar contract. See Don Pierson, *Ripoff Agents Get an Enemy*, *Chi. Trib.*, May 10, 1992, at 3.

The athletes’ need for aid is accentuated by the fact that the complexities of a multi-million dollar, multi-year

contract can “demand a significant understanding of income taxes, annuities, salary deferments, incentive bonuses, injury protection, and the collective bargaining process.” Ehrhardt & Rodgers, *supra* note 30, at 637. See also Lionel S. Sobel, *The Regulation of Sports Agents: An Analytical Primer*, 39 *Baylor L. Rev.* 701, 703-09 (1987).

[FN33]. Jamie E. Brown, *The Battle the Fans Never See: Conflicts of Interest for Sports Lawyers*, 7 *Geo. J. Legal Ethics* 813, 816 (1994).

[FN34]. Angelo Wright, an Oakland-based agent, represents such NFL stars as the New Orleans Saint's Sean Dawkins, the Seattle Seahawks' Sam Adams, and the Buffalo Bill's Ted Washington. Telephone Interview with Angelo Wright, Oakland-based Sports Agent (Apr. 14, 1998).

[FN35]. *Id.*

[FN36]. Jeffrey Z. Rubin & Frank E.A. Sander, *When Should We Use Agents? Direct vs. Representative Negotiation*, *Negotiation J.*, Oct. 1988, at 401, quoted in Shropshire, *supra* note 21, at 9.

[FN37]. *Id.*

[FN38]. See Shulman, *supra* note 30, at 185 (noting that the “insulating function” performed by agents is critical).

[FN39]. See Leigh Steinberg, *The Role of Sports Agents*, in *The Business of Professional Sports* 247, 249-50 (Paul D. Staudohar & James A. Mangan eds., 1991). Even agents should be chary in boasting about their clients and in negotiating through the media. Take, for example, the plight of William Floyd. Locked in a contentious contract dispute with the San Francisco 49ers, Roosevelt Barnes boldly declared (his then rookie client), William Floyd, to be “the best fullback in the game, bar none.” *Id.* This phrase spawned an instant nickname (“Bar None”) and made Floyd the object of ribbing from some of his veteran 49er teammates who figured Floyd should actually play “a down” of professional football before he was hailed the game's best fullback. See *id.*

[FN40]. See Shropshire, *supra* note 21, at 9.

[FN41]. *Id.*

[FN42]. See Ruxin, *supra* note 13, at 31. It should be noted that in some instances agents are finished with their duties once the contract is negotiated and they receive their fee. The precise contours of the agent's duties are contingent upon the specific nature of the athlete/agent agreement. See *id.*

[FN43]. See *Curtis D. Rypma, Sports Agents Representing Athletes: The Need for Comprehensive State Legislation*, 24 *Val. U. L. Rev.* 481 n.181 (1990).

[FN44]. Steinberg, *supra* note 39, at 249.

[FN45]. Eric Fisher, Agents Find Jocks Today More Savvy, Wash. Times, Dec. 8, 1997, at D13.

[FN46]. Higgins, *supra* note 14, at C01.

[FN47]. Telephone interview with Earl Layne, Vice President of the Professional Sports Division of Star Bank (Apr. 22, 1998).

[FN48]. *Id.*

[FN49]. Telephone Interview with Angelo Wright, *supra* note 34.

[FN50]. See Rob Remis, [Analysis of Civil and Criminal Penalties in Athlete Agent Statutes and Support for the Imposition of Civil and Criminal Liability Upon Athletes](#), 8 *Seton Hall J. Sport L.* 1, 6 (1998). In sum, sports agents perform numerous functions, the most important of which include: (1) negotiating player contracts; (2) obtaining and negotiating endorsement and publishing contracts; (3) financial management and accounting; (4) insurance, investment, tax and estate planning; (5) legal counseling; (6) present and post athletic career counseling; (7) public relations; (8) resolving disputes arising under the athlete's employment contract and collective bargaining agreement; and (9) catering to the athlete's every whim. See Richard C. Webb, [Personal Services Lawyering: Sports, Entertainment, Art ... Or Just Plain Risky Business?](#), 5 *S. C. Law.* 11, 12 (1993).

[FN51]. While this article exclusively focuses on agents representing athletes in the three major team sports of baseball, basketball and football, agents do represent athletes in every professional sport, and frequently, other professional sports personalities such as coaches and broadcasters as well.

[FN52]. Shropshire, *supra* note 10, at 272.

[FN53]. See S.L. Price, What Ever Happened to the White Athlete? Unsure of His Place in a Sports World Dominated by Blacks Who are Hungrier, Harder-Working and Perhaps Physiologically Superior, the Young White Male is Dropping out of the Athletic Mainstream to Pursue Success Elsewhere, *Sports Illustrated*, Dec. 8, 1997, at 30 (noting that 17% of major league baseball players are black, while 20% of major league baseball players are mostly black Latinos, 67% of NFL players are black, and 80% of NBA players are black).

[FN54]. See Shropshire, *supra* note 10, at 267.

[FN55]. See Merida, *supra* note 11, at A14.

[FN56]. See *id.*; Joseph E. Green-Bishop, Black Sports Agents Want to See the Money, Too, *Baltimore Bus. J.*, Oct. 17, 1997, at 12.

[FN57]. Merida, *supra* note 11, at A14.

[FN58]. See *id.* Due to the fact that becoming a sports agent does not necessitate passing strenuous criteria, the numbers are somewhat difficult to estimate. Furthermore, none of the professional leagues or players associations currently track the race of player agents. See *id.*

[FN59]. Moreover, in 1996 when Baseball America named the 15 most influential agents in Baseball, not one was Black. See Clay, *supra* note 17, at 48.

[FN60]. See *id.*

[FN61]. Merida, *supra* note 1, at A01.

[FN62]. See [Local 28 Sheet Metal Worker's Int'l Ass'n v. EEOC, 478 U.S. 421, 494 \(1986\)](#) (O'Connor, J., concurring in part, dissenting in part) (“[I]t is completely unrealistic to assume that individuals of each race will gravitate with mathematical exactitude to each employer or union absent unlawful discrimination.”); see also Timothy Davis, *Who's In and Who's Out: Racial Discrimination in Sports*, 28 *Pac. L.J.* 341 (1997).

[FN63]. George Hunter, *Black Sports Agents Win a First at NFL Draft*, *Detroit News*, Apr. 22, 1997, at B1. “I have really tried to crack the market here in Baltimore with Black athletes, but I can't seem to get in,” said one exasperated Black sports agent who asked not to be named.” Green-Bishop, *supra* note 56, at 12.

[FN64]. See generally Remis, *supra* note 15 (discussing the fairly simple requirements needed to become a sports agent).

[FN65]. See *id.* at 453 (noting that the NFL requires a college degree).

[FN66]. See *id.*

[FN67]. These factors and, to some extent, the “colder-ice syndrome” can be gleaned from the many works of Professor Kenneth Shropshire, one of the few authors who has sincerely delved into the issue of race and agent selection. See Shropshire, *supra* note 10; Shropshire *supra* note 21.

[FN68]. See William Oscar Johnson, *How Far Have We Come?* *Sports Illustrated*, Aug. 5, 1991, at 38-39.

[FN69]. See Phillip M. Hoose, *Necessities: Racial Barriers in American Sports* 29 (1989), quoted in Shropshire, *supra* note 10, at 275. Fred Slaughter of Los Angeles, one of the pioneer Black agents, told writer Phillip Hoose:

White agents just tell the kid, [sic] ‘only a white man can make that deal for you.’ They have actually said that. And some kids, who are sitting there in a well-furnished office with computers clicking and listening to a guy with gold teeth think ‘wait a minute. If he's saying that, he must be right.’ *Id.*

[FN70]. See Williams *Today Would Hire a Minority*, *USA Today*, Feb. 9, 1993, at 4C (Doug Williams, former NFL All-Pro, and the only Black quarterback to win the Super Bowl asserting that “what black agents don't have is access to

the same type of clientele. Most black agents don't have the resources or contacts to fly in players, advance them money or get them a loan for the car of their dreams like a lot of white agents can.”).

[FN71]. Take for example the HBO series “Arless” or the 1996 hit movie “Jerry Maguire,” where Tom Cruise plays a shrewd agent who represents a somewhat emotionally unbridled black football player. The media typically projects the sports agent as a white male. There are very few, if any, opportunities for a black athlete to see portrayals of a black man or woman as a competent negotiator. See Shropshire, *supra* note 10, at 276. Susan Holbert, director of marketing-public relations for Thomas Sports Management Ltd., added, “if you went to the average [b]lack athlete, and asked him to name five [[b]lack agents, I don't think he could do it.” Clay, *supra* note 3, at 04.

[FN72]. Gregory Freeman, *Rediscovering Human Race*, St. Louis Post-Dispatch, Oct. 27, 1989, at 1C.

[FN73]. *Id.*

[FN74]. See Kenneth B. Clark and Mamie Clark, *Racial Identification and Preference in Negro Children*, in *Readings in Social Psychology* 152, 153 (T. Newcomb & E. Hartley, eds. 1994).

[FN75]. See *id.*

[FN76]. *Id.*

[FN77]. See Yvonne S. Lamb, *Doll Play and a Child's Self Image*, Wash. Post, Sept. 9, 1991 at B05.

[FN78]. See *id.* Valeria Lovelace, director of research for “Sesame Street,” affirmed that the same results occurred when “Sesame Street” organized a group of inter-racially mixed preschoolers to play with dolls. See *id.* Lovelace further commented, “Black and White children said they would play with both color dolls, but when given the choice, the children picked the white dolls.” *Id.*

[FN79]. Black agent and attorney Eugene Parker asserts, “[being black] can be a problem because people have grown up in the television age getting their perceptions and ideas of success from TV. The presidents of companies and judges on TV are all Caucasian. Subsequently, people associate success with being Caucasian ... [and] the perception becomes ‘white is better.’” Dan Pompei, *Black Agents on Rises Series: The NFL's Real Players*, Chi. Sun-Times, Apr. 17, 1995, at 84.

[FN80]. See Lamb, *supra* note 77, at B05.

[FN81]. *Id.*

[FN82]. See Kenneth Shropshire, *In Black and White: Race and Sports in America* 135 (1996) [hereinafter Shropshire, *Race and Sports*].

[\[FN83\]](#). Id.

[\[FN84\]](#). See Charles S. Farrell, Coaches Cornered: The 1997 Racial Report Card; The Future of African-American Football Coaches May Fall Victim to the Assault on Affirmative Action, *Black Issues in Higher Educ.*, Apr. 16, 1998, at 22, available in [1998 WL 11320620](#) (as of 1998, of the 112 universities with Division 1-A football programs, only five had black coaches). In fact, only 14 blacks have ever been head football coaches at Division 1-A institutions. See id.

Rudy Washington, the executive director of the Black Coaches Association, which has been working for over a decade to improve the number of black coaches, deemed the paucity of black coaches as “deplorable.” “It is getting to be a situation where Black football coaches are used to recruiting college athletes, but are not used to running the teams. . . . I’m convinced football is one of the most racist sports today that blacks are participating in.” *Lack of Black Football Coaches in Colleges Raises Questions, Anger*, *Rocky Mountain News*, Dec. 29, 1996, at C6, available in [1996 WL 12362904](#).

The coach disparity does not improve among professional ranks. While blacks comprise 80% of the players in the NBA, over three-quarters of the teams have a white head coach. See Brian McGrory, *Clinton Panel Decries a Racial Barrier in Sports*, *Boston Globe*, Apr. 15, 1998, at A1. Similarly, black athletes make up more than 67% of the roster spots in the NFL, yet 90% of the head coaches are white. See id.

[\[FN85\]](#). See McGrory, *supra* note 84, at A1 (noting among all major professional sports, there is not a single black or hispanic owner. The Racial Report Card found that excluding players, there were fewer than a hundred minorities employed by baseball organizations. The survey found just 55 blacks employed, few were in high-level positions); see also Larry Whiteside, *A Wake-Up Call: Little Progress Has Been Made Since Al Campanis Spoke*, *St. Louis Post-Dispatch*, Apr. 20, 1997 at F5, available in [1997 WL 3337089](#); Charles Grantham, *NBA: A Land of Unequal Opportunity*, *Chi. Sun Times*, Sept. 27, 1992, at 30; *Blacks in Baseball's Front Office* (ABC's Nightline transcript of broadcast, June 5, 1991) (Hank Aaron, explaining that blacks continue to be extremely underrepresented in major league baseball management positions).

[\[FN86\]](#). See Shropshire, *supra* note 10, at 273. It is understandable for example that the coach becomes one of the most prominent and influential figures in the athlete's life, often “steering” the athlete to a particular agent. Arguably, a white coach is more inclined to refer an athlete to a white agent. “The life experiences and associations of a head coach are likely to be no different from the associations of anyone else, largely limited to one's own race.” Id.

[\[FN87\]](#). See Merida, *supra* note 1, at A01. Tim Hardaway, who does have a black agent, somewhat ironically stated, “I’m not going to knock black agents but a lot of them are shysters. There's absolutely no way you can trust these guys.” Id.

[\[FN88\]](#). Clay, *supra* note 17, at 49.

[\[FN89\]](#). Merida, *supra* note 1, at A01.

[\[FN90\]](#). Clay, *supra* note 3, at 04. In regards to Elmore, a source requesting anonymity stated, “proof of racism in the agent-selection process is Elmore. There is no reason for athletes, especially the Black [athletes], to not hire him. He's

every bit as smart as Falk, and as tough as anybody in the business, but Arn Tellum.” Id.

[\[FN91\]](#). Shropshire, *supra* note 21, at 135.

[\[FN92\]](#). Merida, *supra* note 1, at A01.

I grew up in inner-city Los Angeles where my father was a surgeon. More than once I recall him telling a colleague or a friend about the longtime patients who came in for remedies to treat the common cold or to ease the aches and pains. At some point they had an ailment that required surgery. They would ask my father whom he could recommend, knowing his training, but presuming his race precluded him from being the “best.” It seemed, “a Black doctor is fine unless you've got cancer,” my father would remark.

Shropshire, *supra* note 10, at 269.

[\[FN93\]](#). See Shropshire, *supra* note 10, at 269.

[\[FN94\]](#). Id. at 267; see Cooper, *supra* note 8, at A-10 (recounting of the same story by the national director of the Rainbow Coalition for Fairness in Athletes (“RCFA”). The RCFA held a meeting with black agents in November of 1997 exploring this very issue. The meeting was billed as “The Colder Ice Syndrome.” See id.

[\[FN95\]](#). See Shropshire, *supra* note 10, at 267. The failure of blacks to patronize black businesses is an entrenched axiom, which receives infrequent attention from the popular media. See id. at 268-69; Lucie Cheng & Yen Espiritu, Korean Businesses in Black and Hispanic Neighborhoods: A Study of Intergroup Relations, 32 Soc. Persp. 521, 526-28 (1989).

[\[FN96\]](#). Rob Parker, *Re Agents, Players Not in Black*, *Newsday*, July 12, 1995, at A61.

[\[FN97\]](#). Merida, *supra* note 1, at A01.

[\[FN98\]](#). Id.

[\[FN99\]](#). See id.

[\[FN100\]](#). See Linda P. Campbell, Affirmative Action Part of Doing Business; Fears Not Always Justified, *Expert Says*, *Chi. Trib.*, Dec. 1, 1991, at 25.

[\[FN101\]](#). See Paul Farhi, Parting Company at ProServ: Longtime Partners Split, Surprising the World of Sports Marketing, *Wash. Post (Business)*, Apr. 6, 1992, at 1. The team consisted of Bill Strickland, David Falk and ProServ's owner, Donald Dell. ProServ, then an Arlington, Virginia-based firm is credited with revolutionizing the sports marketing business by “terrorizing the millionaire oligarchy of the NBA, negotiating enormous contracts for clients such as Patrick Ewing and Dominique Wilkins,” as well as “transforming Michael Jordan into a multinational merchandising conglomerate.” Id.

[\[FN102\]](#). See Clay, *supra* note 17, at 53. Strickland candidly admits that, “I left [ProServ] out of personal frustration.”

Id. A statement that naysayers, including an anonymous source, construed to legitimize their criticism; “he was a smiling black face at ProServ, and he’ll be a smiling black face at IMG.” Telephone Interview with Anonymous Source (Mar. 22, 1998).

[FN103]. See Merida, *supra* note 1, A01. Strickland has subsequently left IMG to start his own Washington area firm, taking 12 NBA clients with him. One factor in his decision was that some NBA players ironically insinuated that his client list would be longer if he were not working for a white company. “We wait to see how it goes,” said Strickland. Id.

[FN104]. Id.

[FN105]. Clay, *supra* note 17, at 53. See Ruxin, *supra* note 13, at 27 (citing the Commissioner of the Central Intercollegiate Athletic Association as stating, “a lot of black athletes are misled by ‘black legmen’ to think that they will be represented by a black firm.”).

[FN106]. Merida, *supra* note 1, at A01.

[FN107]. See *id.* Much like the leagues and teams, the three largest firms in the business, all with world-wide offices, IMG, Advantage International, and ProServ, have been remarkably slow to hire and retain Blacks at the highest levels.

[FN108]. Shropshire, *supra* note 10, at 280. A source interviewed requested anonymity when he stated that “unequivocally, [David] Falk is the master at this. Whenever he attends a press conference there is always some black-faced token agent somewhere in the background.” Telephone Interview with Anonymous Source (Mar. 22, 1998).

[FN109]. Gary Stewart, [Black Codes and Broken Windows: The Legacy of Racial Hegemony in Anti-Gang Civil Injunctions](#), 107 *Yale L.J.* 2249, 2272 (1998) (explaining how the black community uses the terms “Uncle Tom” and “sell-out”).

[FN110]. Merida, *supra* note 1, at A01.

[FN111]. Charles B. Craver, *Effective Legal Negotiation And Settlement* 283 (3d ed. 1997).

[FN112]. Elizabeth G. Cohen, *Interracial Interaction Disability*, 25 *Human Rel.* 9 (1972).

[FN113]. See Henri Tajfel & John C. Turner, *The Social Identity Theory of Intergroup Behavior*, in *Psychology of Intergroup Relations* 7, 8-11 (Stephen Worchel & William G. Austin, eds., 2d ed. 1986).

[FN114]. See *id.* at 10-11.

[FN115]. Id. at 9.

[FN116]. Craver, *supra* note 111, at 281. See also Jeffrey Z. Rubin & Bert R. Brown, *The Social Psychology Of Bargaining And Negotiation* 163-66 (1975).

[FN117]. See Tajfel & Turner, *supra* note 113, at 10-11. “Ethnocentrism among stratified groups is, or at least has been, very much a one-way street.” *Id.* at 11.

[FN118]. See *id.*

[FN119]. *Id.*

[FN120]. See Tajfel & Turner, *supra* note 113, at 10; James Coleman, a Professor at Duke University School of Law and a black agent who specializes in representing players in drug testing disputes, recognizes that the internalization of stereotypical expectations “sometimes works to the advantage of the negotiator whose opponent has unwarranted low expectations of his ability. I often saw this in litigation. Once the low expectations are shattered, the negotiator who had them [the erroneous expectations] is lost and feels out of context.” Interview with James Coleman, Professor of Law at Duke University, in Durham, N.C. (Sept. 23, 1998); see generally Edmund S. Phelps, *The Statistical Theory of Racism and Sexism*, 62 *Am. Econ. Rev.* 659, 659-60 (1972) (arguing that individuals may discriminate on their previous statistical experience with a group—such as blacks or women—rather than judge people on an individual basis).

[FN121]. Craver, *supra* note 111, at 20-21.

[FN122]. *Id.*

[FN123]. See *id.*

[FN124]. See [Ian Ayers, Fair Driving: Gender and Race Discrimination in Retail Car Negotiations](#), 104 *Harv. L. Rev.* 817, 825 (1991).

[FN125]. See *id.* In order to minimize the potential for non-uniform bargaining the study paid particular attention to experimental control issues. See *id.* The testers shared similar characteristics and were specifically trained to behave in a standardized behavior. See *id.* The testers were, for example, all between 24 and 28 years of age, all had between three to four years of college education, all were similarly dressed in comparable yuppie-like clothing, and all were of average attractiveness. See *id.* Moreover, if asked each tester provided (1) a fake name and an address for an upper-class, Chicago neighborhood; and (2) said the he/she was a young urban professional (for example, a systems analyst for First Chicago Bank). See *id.*

[FN126]. See Ayers, *supra* note 124, at 819.

[FN127]. See *id.* As employed, the term ‘discrimination’ is utilized to refer to the result that the seller's conduct was race-dependent (i.e., the sellers took race into account and treated testers differently even though they were otherwise

similarly situated). The term is not meant to imply that the salespeople harbored animus based on race; see also Paul Brest, The Supreme Court 1975 Term-[Foreword: In Defense of the Anti-Discrimination Principles](#), 90 *Harv. L. Rev.*, 1, 6 (1976) (defining race discrimination in terms of “race-dependent decisions and conduct”).

[\[FN128\]](#). See Ayers, *supra* note 124, at 847.

[\[FN129\]](#). See *id.* at 841.

[\[FN130\]](#). See Craver, *supra* note 111, at 282.

[\[FN131\]](#). Merida *supra* note 1, at A01.

[\[FN132\]](#). *Id.*

[\[FN133\]](#). *Id.*

[\[FN134\]](#). Interview with James Coleman, Professor of Law at Duke University School of Law, in Durham, N.C. (Mar. 26, 1998). Take, for example, the “slotting” procedures that dictate dealings with a NFL first-round draft pick. The conventional standard is that there should be a 15% increase in salary over that same pick received the year before. Yet, whatever the increase, the slotting usually dictates the seventh pick in the draft, for example, gets less than the sixth pick but more than the eighth. Furthermore, each NFL team has a limit to what they can pay their draft picks. Thus, the teams first round draft pick gets say 30% of the rookie money, the second round pick 15% and so on. In terms of draft picks, it is uncontroverted that very little discretion is involved. See *id.*

[\[FN135\]](#). Merida, *supra* note 1, at A01. Agent Larry Reynolds concedes that a player essentially negotiates three-quarters of his contract by his performance. See Kepner, *supra* note 14, at D01. The base salary, he asserts, is settled on the field, but the last quarter, particularly the way the contract is structured and the incentive clauses, is where the agent can have a prominent role. *Id.* “You’ve got a guy that goes out and hits .200 . . . he’s gonna get .200 money.” *Id.*

[\[FN136\]](#). See Parker, *supra* note 96, at A61. Falk could not, for example, break the bank for Dwayne Schintzius, who subsequently became one of the few white players to hire a black agent. Like Falk, the Pistons were unable to do much for the former University of Florida talent. This is not to maintain that the sports agent has absolutely no bearing on the negotiation process. It is certainly true that an agent can, to some extent, help a marginal player. A shrewd agent, with a stable full of clients, could for example “package” his players. Many baseball commentators intimated that the lure of a potential package deal is the only reason why the Arizona Diamondbacks extended such a lucrative offer to pitcher Andy Benes. Benes was represented by Scott Boras, the same agent who represents Yankee megastar Bernie Williams. An agent like Boras can thus arguably make a difference for borderline talent, but only because he simultaneously possess the power to deliver the megastar.

[\[FN137\]](#). Interview with Paul Haagen, Professor of Law at Duke University School of Law, in Durham, N.C. (Oct. 10,

1998).

[\[FN138\]](#). See id.

[\[FN139\]](#). Id.

[\[FN140\]](#). See Ruxin, supra note 13, 18-20 (commenting that “[i]n addition to knowing what other comparable players are being paid, a good agent offers ... [[[a] detailed knowledge of the rights of his client under his contract and the sport's collective bargaining agreement.”).

[\[FN141\]](#). Interview with Paul Haagen, supra note 137.

[\[FN142\]](#). Id.

[\[FN143\]](#). Id.

[\[FN144\]](#). See id

[\[FN145\]](#). See id.

[\[FN146\]](#). Interview with Paul Haagen, supra note 137.

[\[FN147\]](#). See id.

[\[FN148\]](#). See id.

[\[FN149\]](#). See id.

[\[FN150\]](#). See id.

[\[FN151\]](#). Interview with Paul Haagen, supra note 137.

[\[FN152\]](#). Id.

[\[FN153\]](#). See id.

[\[FN154\]](#). Id.

[\[FN155\]](#). See id.

[FN156]. See Haagen, *supra* note 137.

[FN157]. See *id.*

[FN158]. See Telephone Interview with C. Lamont Smith, President of All-Pro Sports & Entertainment International, (Apr. 6, 1998); The co-founder of the Los Angeles-based All-Pro Sports & Entertainment International is noted criminal defense attorney Johnnie Cochran. See *id.* Their hope is that the agency will become a powerhouse all-black agency, and one that could conceivably compete with the big boys - FAME, IMG, ProServ and Advantage International. See Green-Bishop, *supra* note 56, at 12.

To date, the firm has not made any big splashes, landing just one client, Oklahoma guard Corey Brewer selected 51st overall by the Miami Heat, in the June 1998 NBA draft. The firm has, however, received substantial headlines in response to their alleged interest in hiring rapper, song writer, and producer, Sean “Puff Daddy” Combs. See Ross McKeon, PM Buzz the Rap on Agents, *San Francisco Chronicle*, Mar. 9, 1998, at B2.

[FN159]. Merida, *supra* note 1, at A01.

[FN160]. See Clay, *supra* note 3, at 04. In addition to the reported five year, \$34.56 million dollar contract, even more money, in endorsements will be coming Sanders' way. He has endorsement deals with Wheaties, Nintendo, Foot Locker Athletic Wear, Wilson Sporting Goods and Armitron Watches. See Clay, *supra* note 17, at 55.

[FN161]. See Marc J. Spears, Black Agents Rare for Whites: Anderson-Zandofsky Alliance One of the Few Exceptions to the Rule, *L.A. Daily News*, July 5, 1998, at S11. Mike Zandosky, a white offensive lineman and a 10-year veteran of the NFL, is an exception to the rule. Zandosky has spent his entire career with Raymond Anderson, a black agent. Zandosky relayed that when he was with the Atlanta Falcons, three black teammates were shocked upon learning that he was represented by the same agent as they were. See Kepner, *supra* note 14, at D01 (commenting, Reynolds representation of white players added to his credibility).

Other exceptions include such “household” names as Dwayne Schinztius, see *supra* note 136, former St. Louis Cardinal catcher Ray Stevens and current Boston Red Sox pitcher, Brad Tweedlie, the latter two players are represented by Larry Reynolds, a black Riverside-based agent. See *id.*

[FN162]. David Barron, HBO Eyes Role of Black Agents, *Hous. Chron.*, Nov. 17, 1997, at 9. Carl and Kevin Poston, who opened Professional Sports Planning, Inc., in 1989, represent NFL all-pro Terrell Buckley, Orlando Pace, the top pick in the 1997 NFL draft, and NBA superstar Anfernee “Penny” Hardaway. *Id.* The unprecedented 13-year, \$68 million dollar contract the Postons negotiated for the then-untested Hardaway has been hailed by many as one of the most creative in NBA history. *Id.* The Postons also secured Hardaway a lucrative shoe and sports apparel deal with Nike, helping to develop the popular “Lil' Penny” commercials. See George Hunter, Black Sports Agents Win a First with NFL Draft, *Detroit News*, Apr. 22, 1997, at B1.

In relating the details of his selection of Professional Sports Planning, Hardaway stated, “when I did my interviews, they brought the most to the table. Although they hadn't done basketball work before, they had worked out a lot of great football deals. So it was never about skin color, only competence.” Eric L. Smith, *Negotiating the Deals*, *Black Enterprise*, July 1, 1995, at 96.

[\[FN163\]](#). Barron, *supra* note 162, at 9.

[\[FN164\]](#). Parker, *supra* note 96, at A61. Parker, who played basketball at Purdue, got his start as an agent when his former teammate and then NFL football player, Roosevelt Barnes (currently an agent himself), purposely sought him out. In describing his relationship with Deion Sanders, the signing of whom essentially placed Parker on the map, Parker detailed, “[w]e met for the first time at a combine in Indianapolis. Basically, I didn't try to sell him on me. I just tried to offer him some advice that would help him. I think he saw that I took a different approach and we struck up a relationship.” *Id.*

[\[FN165\]](#). *Id.*

[\[FN166\]](#). *Id.*

[\[FN167\]](#). Spears, *supra* note 161, at S11.

[\[FN168\]](#). *Id.*

[\[FN169\]](#). Carolyn White, Agents See More Racial Diversity, USA Today, May 7, 1993, at C9.

[\[FN170\]](#). “Troy” is a reference to Troy Aikman, a White quarterback who has led the Dallas Cowboys to three Super Bowl titles in the 1990s.

[\[FN171\]](#). Merida, *supra* note 1, at A01.

[\[FN172\]](#). *Id.*

[\[FN173\]](#). *Id.*

[\[FN174\]](#). Barron, *supra* note 162, at 9.

[\[FN175\]](#). Merida, *supra* note 1, at A01. Certainly, a black agent may see opportunities for a client based on shared racial sensibilities. It is arguable, for example, that few white agents would have supported Chris Webber as vigorously as Fallasha Erwin did in Webber's dispute with the all-powerful Nike. Frank Hughes, Webber Puts Foot Down on Nike Deal, Wash. Times, Nov. 5, 1996, at B1. Webber severed ties with Nike largely because the company insisted on charging \$140 dollars for the shoe named after him (the “CWebb”). See *id.* Erwin claimed that both he and Webber firmly disagreed with the company's strategy to target economically depressed, inner-city youths in an attempt to ignite purchasing trends that would spread into the suburbs. See *id.* Erwin further commented that they were revolted by the idea that the shoe could possibly lead to violence. Webber later commented, “[h]ow can I charge that [price] for my shoe when I speak to all those inner-city kids.” See *id.*

Similarly, in the summer of 1997, the Miami Heat's Tim Hardaway sponsored a free basketball camp in the

inner-city of Chicago for over 200 youths, including four of the best school boy players from South Africa. Inviting the Soweto youths was the brain-child of Black agent Henry Thomas. See Merida, *supra* note 1, at A01.

[FN176]. Interview with Angelo Wright, *supra* note 34.

[FN177]. Clay, *supra* note 17, at 55.

[FN178]. See *id.*

[FN179]. *Id.*

[FN180]. Mark Wright, Nothing But Net, *Black Enterprise*, Jan. 1998, at 44, 48.

[FN181]. C. Lamont Smith, Address at the Wharton School, Univ. of Penn. (Dec. 9, 1994), quoted in Shropshire, *supra* note 21, at 274-75.

[FN182]. Telephone Interview with Anonymous Source, Sports Agent (May 10, 1998).

[FN183]. Merida, *supra* note 1, at A01.

Some black players who hired white agents candidly admit that they did not want to be race warriors when it came to a decision of such gravity as hiring an agent. Albert Lewis, corner back for the Oakland Raiders, explained that he signed with Scott Casterline because he was honest and open ... and 'I thought he was best for me. It's just an instinct you have. Yeah, there was some pressure to sign with black agents. But I don't think you make this decision based on color.

Id.

[FN184]. See Tim Layden, The Boycott Is On: Thompson's Perspective Has Changed, *Newsday*, Jan. 12, 1994, at 126. In addition to spearheading a public outcry over the lack of black head coaches in Division I basketball, Thompson has also publicly protested NCAA rules aimed at denying scholarships to student-athletes who did not meet specified minimal academic requirements (Proposition 48) and to reduce per team scholarships from 14 to 13. See *id.* Thompson charged that both rules were discriminatory and served to curtail educational opportunities for minorities, particularly blacks. See *id.* In commenting on the 1994 proposal to reduce the team scholarship total by one, Thompson stated 'you have to put this in perspective, [this is about 330 individuals, mostly black inner-city kids] getting an education. More than that, it's the opportunity to use that education' *Id.*

[FN185]. Such an assertion is rather problematic in that its logical extension is that historically successful college programs need never give a black coach a chance, a premise that Thompson himself disagrees with. On numerous occasions, Thompson has in fact openly uttered sentiments to the contrary. See *id.* Ed Hinton, Bighouse in a Small Place, *Nat'l Sports Daily* (New York), Mar. 9, 1990, at 30. After becoming the first black coach ever to win the Division I national championship and being asked his thoughts on the occasion of the achievement, Thompson responded, "I pointed out, that there were several guys of color who hadn't been given the opportunity I had." *Id.* Similarly, earlier this year, as a panelist on President Clinton's Town Hall Meeting on Race, Thompson exclaimed,

“[a]ll we [minorities] want is an opportunity and a right to fail. I'm sick of us having to be perfect to get the job.”
McGrory, *supra* note 84, at A1.

[\[FN186\]](#). Merida, *supra* note 1, at A01.

[\[FN187\]](#). *Id.*

[\[FN188\]](#). An in-depth discussion as to whether athletes should assume the responsibility inherent in being role models lies beyond the scope of this article (for such a discussion, see [Adeno Addis, Role Models and the Politics of Recognition](#), 144 *U. Pa. L. Rev.* 1377 (1996)). This article embraces the seemingly uncontroverted notion that the black community has long drawn strength from black athletes, furnishing them as symbolic proof that given a fair chance, they can succeed. See William C. Rhoden, *Protests Push into Athletes' Sheltered Lives*, *Emerge*, May 31, 1995, at 43.

This observation prompts a more contestable inference: because the black community - underrepresented in the political, social, and economical life of this country - relies so heavily upon the popular black athlete (and black entertainer), the prevalent black athlete is capable of positively affecting the psyche of the black community. The black athlete's capacity to affect the black community is arguably more so than the lesser-known black doctor, black lawyer, black engineer, black professor, and other talented and affluent blacks. Thus, it is all the more damaging when the black athlete, many of whom come from economically disadvantaged backgrounds, either consciously or unwittingly, follows the same path of abandonment, distancing themselves from the traditional black community, its institutions, and its problems. The black athletes' movement away from the black lower class and its problems, thus firmly stamps that “moving up and out of the [b]lack community ... [is] synonymous with making it.” Harry Edwards, *The End of the “Golden Age” of Black Sports Participation?*, 38 *S. Tex. L. Rev.* 1007, 1016 (1997).

Many commentators urge that black athletes owe a duty to pool together their resources and use their enormous wealth to promote black economic development. The National Urban League has, for example, identified the considerable economic power of black athletes as “a ready resource to foster and develop opportunities in the black community.” Editorials, *Hous. Chron.*, Jan. 27, 1994, at 12.

Craig Hodges is one of the few black athletes who has openly called upon and criticized his fellow athletes for failing to lend both psychological and economical support to the black community. “The cold fact is that most other ethnic groups look to support qualified and not so qualified members of their own group because they are intelligent enough to understand that by doing so, they aid and assist their group to advance in society.” Ron Daniels, *Indulging the “Freedom” to be Foolish*, *Michigan Citizen*, May 2, 1998, at A7.

In 1991, Hodges was bold enough to criticize his then teammate Michael Jordan. Hodges alleged that Jordan and the Bulls, “don't do enough for the [[[b]lack community.” Eddie Sefko, *Wave of Top Centers Affects Olajuwon's Value*, *Hous. Chron.*, June 7, 1992, at 12. Citing the horrific poverty lurking in the shadows of the Bulls arena, Hodges continued, “you have the Bulls here, this [b]lack man (Jordan) there and the poverty, it's all connected. How much money did they make off Michael ... and how many of these kids' lives change? The reason poverty continues to exist is because brothers like Jordan are extracted out of the city. The herd of sports agents and other mechanisms have desensitized the stars. They [the black athletes] are removed emotionally from impoverished areas, even if the cases where they are from those areas.” *Id.*

Black athletes undoubtedly can positively influence and benefit the black community. The bigger question, and one which resides beyond the parameters of this article, is whether successful athletes are more responsible than other successful entrepreneurs, black or white, to do so.

[\[FN189\]](#). Shropshire, *supra* note 21, at 280.

[\[FN11\]](#). (C) 1998, James G. Sammataro. B.A. Cornell University, 1995; J.D. Candidate, Duke University School of Law, 1999. The author would like to thank his family and friends for their support. A special debt of gratitude is owed to Duke University School of Law Professor James Coleman, Cristina Avello, Justin Amaechi Okezie, Andre Rose, and John Marcoux.

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