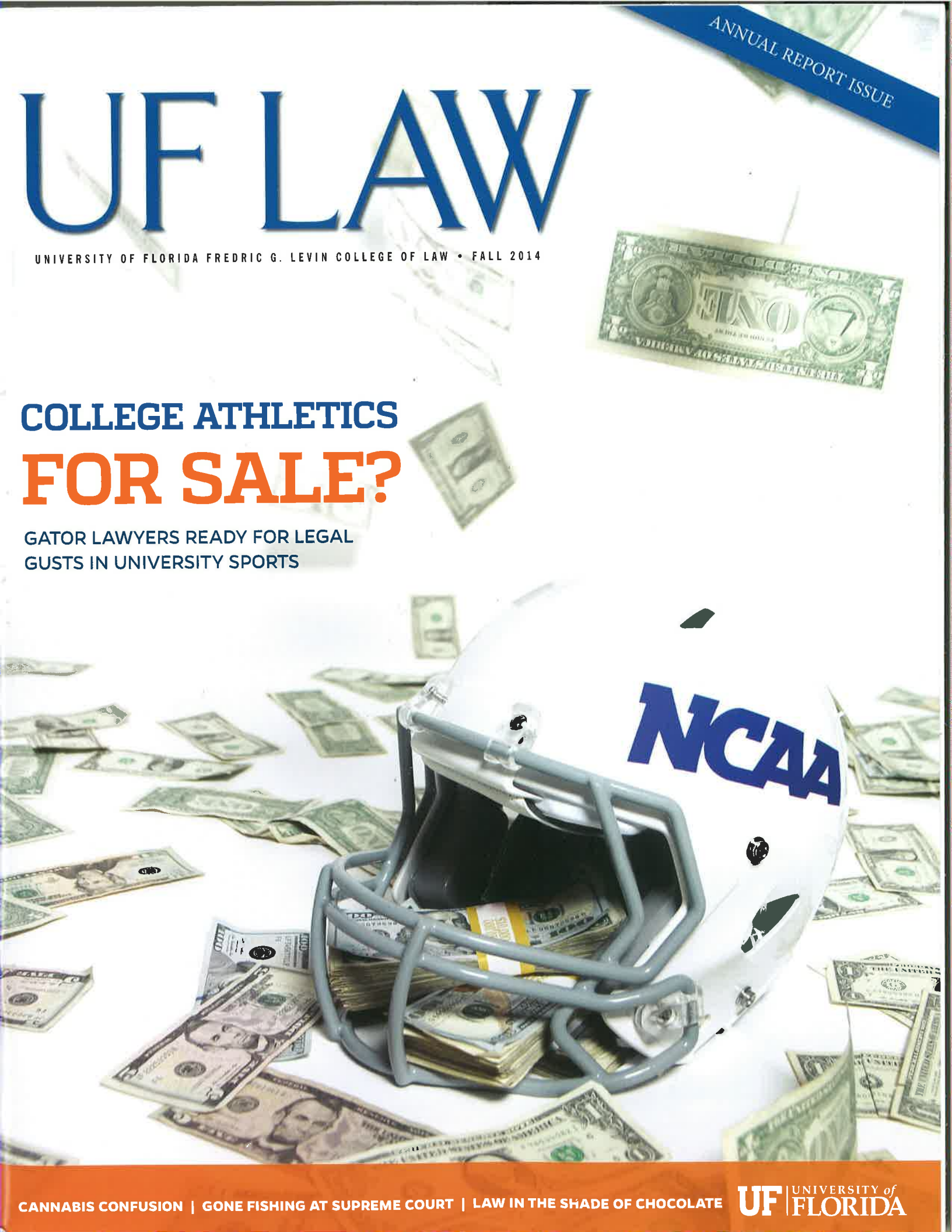


UF LAW

UNIVERSITY OF FLORIDA FREDRIC G. LEVIN COLLEGE OF LAW • FALL 2014

COLLEGE ATHLETICS FOR SALE?

GATOR LAWYERS READY FOR LEGAL
GUSTS IN UNIVERSITY SPORTS



COLLEGE ATHLETICS

FOR \$ ALL

Pay football and basketball players in big-time college athletics?
A federal judge says yes. UF Law's athletes take a more nuanced view.

BY ANDREW STEADMAN (3L)

Billy Steinmann (2L) traded a blue-and-orange Gator football uniform for a brand new suit, fresh off the rack at Jos. A. Bank. It was a graduation gift, intended to ease the transition from college life — and the gridiron — to the “real world” where he was about to start a career away from football.

The suit didn't come from someone in his family. It came from Florida athletics officials, purchased with money from the NCAA Student Athletic Opportunity Fund, which provides money for athletes' expenses like traveling home for a family member's funeral. Or, as in this case, it provides all players concluding their college eligibility at Florida with a suit to use for job interviews and the like. Steinmann got his in 2012 after a four-year football career.

It's simultaneously a symbol of appreciation for the player's contributions on the football field and a nod to the future — acknowledgement that the world is waiting, whether it's the promise of a career in professional sports or an entirely different career path.

But the suit also dresses up an uncomfortable fact: NCAA rules forbid universities from paying their athletes, and students can't receive payment from third-parties for their participation in collegiate athletics. College athletes have begun to push back against

rules barring them from a cut of the profits with a string of legal and regulatory challenges.

The most prominent of these is the Ed O'Bannon antitrust case. A federal judge ruled in August that universities must pay athletes at least \$5,000 per year for the use of football and basketball players' names, images and likenesses. The NCAA is appealing.

Steinmann is now enrolled in UF Law, hoping to launch his career in sports law. He called the suit he was given upon graduation a nice gesture useful for pursuing career opportunities. But he said players would likely prefer a cut of the profits the program earned from the use of their likenesses.

“Something like (that) could benefit a player much more, especially if they immediately begin looking for a job and do not continue with school or play professionally,” Steinmann said. “Even guys that are free agents aren't getting everything paid for while training for a combine. So the money could benefit them, as well.”

WHO FILLS THE SEATS?

The athletes are the reason why the tickets are sold and the seats are filled. They give the game their all, in the process bringing entertainment to sports fans and profits to universities. And yet these players aren't compensated for their efforts beyond the

E?



Billy Steinmann (2L) played tight end for the Gators. (Photo by Julian Pinilla)

“Even guys that are free agents aren’t getting everything paid for while training for a combine. So the money could benefit them, as well.”

—Billy Steinmann (2L)

scholarships they receive. Their likenesses appear in television ads and popular video games, but the players don't see a penny of the money.

At least, that's how some college football and men's basketball players see it. In 2009, former UCLA basketball star Ed O'Bannon and other former college athletes joined a class action antitrust lawsuit against the NCAA, alleging that the collegiate sports organization had deprived him and his fellow athletes of his right to publicity. The question of whether college athletes should be compensated for their efforts has continued to snowball.

A series of legal and regulatory decisions this year is reshaping the environment in which student athletes compete. First, Northwestern University football players successfully petitioned the National Labor Relations Board for the right to create the nation's first college football players union (athletes had not voted to establish a union as of Nov. 1, 2014).

Then, Electronic Arts and the Collegiate Licensing Company departed from *O'Bannon v. NCAA* and settled their portions of the antitrust lawsuit for \$40 million.

Finally, on Aug. 8 federal District Judge Claudia Wilken issued her ruling in *O'Bannon*. Wilken ruled that the NCAA could not enforce rules that prevented Division I football and men's basketball players from receiving profits earned through use of their likenesses in television broadcasts, advertisements and video games. Under the ruling, the NCAA is enjoined from capping scholarships below the cost of attendance and from banning trust funds created to pay players for use of their names, images and likenesses, known as NILs.

Wilken wrote in her 99-page decision that schools would be able to cap the amount that football and men's basketball players could receive for use of their NILs, but the cap can be no less than \$5,000 per year.



Fawbush



Russell



Collins

**“Who pays them,
and how much?
And if it is coming
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—Steve Russell,
Sports Director, WUFT

O'Bannon dealt a blow to the NCAA's long-standing contention that college athletes are purely amateurs: full-time students who happen to participate in athletics. However, *O'Bannon* raises more questions than it answers. The path to a definitive solution is fraught with problems ranging from Title IX implications — federal statutes that prohibit discrimination on the basis of sex at educational institutions — to the financial health of many university athletic programs.

On top of all the questions, the NCAA is also facing another threat in the form of an anti-trust lawsuit filed by Jeffrey Kessler on the behalf of Martin Jenkins, a former Clemson football player. Kessler is the lawyer who negotiated free-agency systems in the NFL and NBA, and now he has set his sights on the NCAA. The NCAA has retained Jeffrey Mishkin, who has faced off against Kessler while representing NBA team owners.

GATOR ANGLES

Andrew Fawbush (JD 74), the chair of the executive compensation and benefits practice at Smith, Gambrell & Russell, played football for the Gators in 1964. As a walk-on, he played fullback and wide receiver. Fawbush described his role on the team as primarily a “tackling dummy,” but today he leads University of Florida Athletic Association as president of its board of directors. The UAA is a nonprofit support organization that manages the university's expansive athletic

programs funded through ticket revenues, student fees, Southeastern Athletic Conference revenue and donations from the Gator Boosters.

Fawbush noted that he was not speaking on behalf of the UAA and could not comment specifically on the *O'Bannon* ruling. But he said the recent litigation and rulings could have far-reaching impacts.

Fawbush said few university athletic programs operate in the black, but Florida is one of them. The UAA contributes a portion of its revenue to other campus programs, but many other university athletics programs struggle simply to support their sports teams. Fawbush said those programs stand to suffer.

“At many of the schools that have revenue issues anyway, the student athletic opportunities may actually decrease as a result of these rulings,” Fawbush said.

Steve Russell, sports director at WUFT and host of SportsScene with Steve Russell, said the question of coming up with the money is central to the issue of paying student athletes.

“Who pays them, and how much?” Russell said. “And if it is coming out of the school coffer, how much is it and where does the money come from?”

Russell said that some universities have already moved into the realm of selling alcohol at university athletic events. He said universities likely would have to make more decisions along those lines.

Grace Collins (3L), a UF Law student who played softball at Barry University in Miami, said federal rules banning discrimination on the basis of sex at educational institutions would put additional pressure on colleges facing the prospect of paying their athletes.

“They would have to pay the same number of female athletes in order to stay in Title IX compliance,” Collins said. “Schools know this and it's one of the other reasons they don't want to pay, because they can't afford both.”



The Swamp erupts Sept. 6 after a touchdown in Florida's 65-0 win against Eastern Michigan. (Photo by Julian Pinilla)

Fawbush said that schools have already dropped some men's sports in order to comply with Title IX requirements. The recent rulings, then, could spell the end for athletic programs that are already struggling.

"It may shrink the scholarship opportunities that are available for men and women at many schools," Fawbush said.

Glenn Cameron (JD 87), a college and pro football player, said the question of fairness even extended to backup or walk-on players who practice and workout with the team but never play.

Cameron is a trial lawyer at Cameron, Gonzalez & Maroney in West Palm Beach, and played linebacker for the Gators from 1971 to 1974 before being drafted by the Cincinnati Bengals and playing 11 seasons in the NFL. After retiring from pro football, Cameron returned to UF Law to pursue a career as a lawyer.



"He works his tail off to do that every week, but he doesn't get to run out of the tunnel in between the band and the cheerleaders," Cameron said of the backups. "How do you pay Rudy for what he does?"

For Russell, that question can be solved by scaling the profits depending on the players' roles, gauged by playing time and screen time.

"If it's (Gators quarterback) Jeff Driskel, and it's obvious he's in that (video) game a lot, then he's going to be paid \$5,000," Russell said, "as opposed to a guy who's standing on the sidelines. But I still think they ought to be compensated if they're in there at all."

Fawbush said juggling the responsibilities of attending classes, playing football and working gave him a unique perspective on the situation. Fawbush said he considered the athletic scholarships awarded to many college athletes to be an extremely valuable resource. Cameron agreed, saying that the money the athletes would receive is nearly inconsequential compared to the value of a scholarship to a university.

"So you pay the kid five grand a year and they put it in some trust," Cameron said.

"That's nice, but if he doesn't have an education at the end of those four years, and he's not in the NFL, what has all of this done to help him better himself and further himself?"

The scholarship covers the work the players put in for the team itself, Russell said. However, a scholarship alone doesn't address the money universities pull in from using players' likenesses on television and in video games.

"I think that's a separate issue from players getting paid for use of their likeness," Russell said.

"In my opinion, these players were getting exploited."

"They're getting paid to go to college, in the form of their education and their room and board."

—Glenn Cameron (JD 87)

EDUCATIONAL INVESTMENT

Jim Barrie (JD 14) was a highly recruited offensive tackle who played for the Gators from 2006 to 2009 before a torn ACL ended his college football career. Barrie went on to attend UF Law, where he wrote a research paper arguing that NCAA licensing practices violate antitrust laws.



Barrie

“The driving force of the revenue is, of course, the players, as both the product on the field and the licensing rights to their names, images, and likenesses,” Barrie said. “Athletes,

particularly at elite institutions, essentially work full-time jobs all year round without receiving appropriate compensation.”

The definition of “appropriate compensation” varies. For example, Cameron said the value of an athletic scholarship is often underestimated because people forget that scholarships allow athletes to skip the increasingly stringent college admissions process.

“If you take away their athletic scholarship, I’d like to see how many actually qualify for entrance to the University of Florida,” Cameron said. “How much is that worth to a parent who has Gator ties and would like to see their children go to the University of Florida?”

Cameron said he thought athletic scholarships were adequate compensation for playing college sports, but with a caveat: an academic scholarship is only valuable if the student actually receives an education.

“They’re getting paid to go to college, in the form of their education and their room and board,” Cameron said. “If you want to take the façade down, just hire them to play football.”

Cameron said the current state of college athletics can prevent players from focusing on their educations. Grueling practice schedules shuffle players into certain academic tracks that leave them unprepared for the prospect of a career after sports. That’s a far cry from Cameron’s days playing for the Gators, when players arrived late to practice because they had labs for their classes. “I think that’s where the rubber meets the road in this anti-trust litigation,” Cameron said. That’s something we’ve lost sight of, or these athletic departments have lost sight of.”

Cameron said the most important aspect of the recent rulings had been lost in the furor over the possibility of college athletes getting paid. The players at Northwestern didn’t unionize purely to make money. They wanted increased negotiating power, which could translate to greater freedom in choosing classes.

“The thing that interested me with this antitrust litigation was that kid at Northwestern seemed to me like a real student-athlete, not just a football player,” Cameron said.

Steinmann, who majored in political science and got a masters in entrepreneurship, said academic and athletic success are not mutually exclusive at the University of Florida, although time management can become a challenge with the additional responsibilities of playing football.

“Athletes, particularly at elite institutions, essentially work full-time jobs all year round without receiving appropriate compensation.”

—Jim Barrie (JD 14)

Club takes advantage as opportunity knocks for sports law

Recent litigation is forcing changes on collegiate athletics and opportunities for sports lawyers are on the uptick. UF Law’s Entertainment and Sports Law Society wants to take advantage. When the sports law society shot back to prominence last year, UF Law re-established itself as a destination for law students interested in sports law.

Last year’s Society President and current Symposium Chair Josh Corriveau (3L) said he has been driven by a desire to see more sports law offerings at UF Law. He reinvigorated the group and re-established UF Law’s Sports Law symposium, an event that attracts students and professionals from across Florida.

“It really means a lot to me to

see the growth of the organization and how it has opened many doors for UF Law students,” Corriveau said.

Society President Lauren Kerr (2L) said the explosive growth of interest in sports law at UF is evidenced by the success of the group known as EASLS.

“It’s amazing to me that only two years ago, EASLS had a budget of \$80 and three members,” Kerr said. “Now, we’re set to host our second sports law symposium with panelists who are at the top of the field.”

Besides working throughout the year to organize the March 20 symposium, Corriveau also lobbied for adding sports-related classes to the curriculum. Currently, the only sports-law class is a seminar, offered once a year, with a cap of 15 students.

“We are currently working with the administration to re-configure a master

of science in sport management and J.D. dual degree program with UF Law and the UF College of Health and Human Performance,” Corriveau said.

Corriveau said the society is continuing to work with UF Law administration to establish a connection with the University Athletic Association, UF athletic department, and other sports entities in Florida for internship placement and other jobs.

“The O’Bannon suit is only the tip of the iceberg,” Corriveau said, referring to a federal judge’s ruling that NCAA football and basketball players be paid \$5,000 per year in return for their Division 1 play. “I expect there will be a larger necessity for more lawyers going forward in the next three to five years to work for both the NCAA as an institution and its member schools.”

—Andrew Steadman (3L)



"For students who are medical or engineering majors, it is quite difficult to find the time, especially in the fall, to truly dedicate a large amount of time to studying," Steinmann said. "I have seen it successfully done by walk-ons and scholarship athletes, and I have seen many fail."

Russell said that rethinking current NCAA regulations could put the focus back on academics.

"If you truly are wanting the full welfare of the athlete, of this student, then don't make football a year-round sport," Russell said. "Give kids (time) off, give the coaches (time) off, give some relief in re-recruiting. Kids don't have to be bombarded with this stuff. They can get a job and they can really focus on their studies."

Steinmann got first-hand experience juggling his academic and athletic responsibilities.

"Watching film, meetings, strength and conditioning workouts, treatment and practices take a lot of time during the fall semester," Steinmann said. "This is where having a smart and seasoned academic adviser is key for the athlete. The adviser can then place the athlete in classes that are 'easier' for the fall and leave the more difficult ones 'till the spring and summer when the time demand is much less."

While it may seem that some universities could change their own policies to ensure academic success for their athletes, Russell suggested that a desire to be successful in the big-money arena of college sports has made this unlikely.

"The problem is everybody's scared they're going to lose the advantage," Russell said.

OPPORTUNITY FROM UPHEAVAL

Complications may be coming for college athletics, but Fawbush sees the situation as an opportunity for law students.

"It's attracted political attention and it's attracted legal attention," Fawbush said. "There are people who have varying views on what should be done and how things should be done. That involves using lawyers, because people don't agree and they end up in court."

For example, students interested in compliance will likely find employment options at schools struggling to meet the new requirements.

"I think it's going to create a lot of opportunities for people to get involved in

various ways in a legal profession dealing with sports," Fawbush said.

Steinmann, Collins and Barrie have all applied their own experiences in college athletics to their legal careers in varying ways. Collins, in particular, wants to pursue a career in compliance at a university. The Entertainment and Sports Law Society at UF Law, which had all but disappeared by 2012, is enjoying a revival, thanks in no small part to law students' interest in the issues surrounding college athletics. The sports law seminar class at UF Law is a consistently popular course.

Come what may, the Gators expect to ride out the storm.

"I don't know that it changes a lot that we have to do," Fawbush said. "Our role on the (UAA) board, basically, is to make sure the program stays on its mission, which is to continue to have top-quality athletic programs and to provide the education and opportunities for student athletes."

"The leadership and the athletic program at the University of Florida is so strong that they'll make the adjustments they need," Fawbush said.



Where the money goes



NCAA
REVENUE

\$913
MILLION*

NCAA
RESERVE FUND

\$627
MILLION*

NCAA MARCH
MADNESS REVENUE

\$681
MILLION*



WILL MUSCHAMP
COMPENSATION

\$2.75
MILLION**



BILLY DONOVAN
COMPENSATION

\$3.9
MILLION**



UNIVERSITY
ATHLETIC
ASSOCIATION,
INC. REVENUE

\$106.9
MILLION***

UAA, INC.
TRANSFERRED TO
UNIVERSITY IN
FY 2013-14

\$4.4
MILLION***

UAA, INC.
TRANSFERRED
TO UNIVERSITY
SINCE 1990

\$79.5
MILLION***

*NCAA Consolidated Financial Statements; fiscal year ending Aug. 31, 2013. **University of Florida's University Athletic Association, Inc.; fiscal year ending June 30, 2014. ***University of Florida's University Athletic Association, Inc. Financial Statements and Operating Budget Executive Summary; Fiscal year ending June 30, 2014. *All figures are rounded