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The Law Professor as Faculty Athletics Representative: Some Random Thoughts After Two Years

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THE LAW PROFESSOR AS FACULTY ATHLETICS REPRESENTATIVE: SOME RANDOM THOUGHTS AFTER TWO YEARS

*David Shipley**

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INTRODUCTION

It is a pleasure to write an essay about something I really enjoy, and it is especially pleasing not to worry about footnotes. I have been a law professor since 1977, and in August 2012, I started my 35th year of teaching. It is still fun to be in the classroom; my students energize me, teaching remains a challenge and being a productive scholar is important. I am one of those professors who likes his law school, university and professional service commitments. I am fortunate to have the best job in higher education: being a tenured law professor. My service as the University of Georgia’s Faculty Athletics Representative is the icing on the cake.

I have enjoyed college sports for as long as I can remember—not just as a fan and a mediocre NCAA Division III swimmer and runner (I earned varsity letters in both swimming and cross country). I have long appreciated the role of intercollegiate athletics at a major research university and in that university’s

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home community. I grew up in Urbana-Champaign, Illinois, home of the University of Illinois and have followed the Fighting Illini since boyhood. Moreover, my late father was a professor at the University of Illinois and served from the mid-1960s to the early 1970s as a faculty member on the University's athletic association board. During his tenure on that board, the athletic program was recovering from stiff NCAA sanctions for a "slush fund" scandal that hit football and men's basketball very hard. Attendance at home football games was down, and disciplinary issues caused the board to fire a head football coach midseason. I remember my Dad telling me that it was vital to have at least 55,000 fans in Memorial Stadium for every home football game, in order for the entire athletic program to break even. As a teenager, I learned that football pays the bills. This bit of personal history is relevant because it explains why I was pleased to be elected to the UGA Athletic Association Board four years ago and why I gladly accepted the FAR position just over two years ago.

In the following paragraphs, I will discuss the FAR selection process at UGA, the skills that an experienced law professor brings to the position, my first major challenge as FAR, and how this challenge tested my skills. I will conclude with some random thoughts about lawyers, universities and their athletic associations, intercollegiate sports and the NCAA. In writing this essay, I asked myself what value a lawyer/law professor adds to the performance of the FAR's varied duties. Based on my experience to date, I cannot say something like "A non-lawyer FAR would not have understood this particular process or issue as quickly as a lawyer FAR." My safest conclusion is that the FAR at a research university competing in a major conference, like the SEC or the Big 10, should not be an untenured Assistant Professor or a senior Associate Professor, who is tenured but will never be promoted. It is vital that the FAR be a tenured full professor who is known and respected campus-wide, has credibility with his or her colleagues and with the university's administration, and understands how things work on the campus. An experienced law professor can satisfy these criteria but so can an experienced professor from the English or Physics Department or one from any other department, school, or college at the university.

I. THE SELECTION PROCESS – WHY ME?

The FAR at the University of Georgia (UGA) is appointed by the President and serves at the President's pleasure. There is no nomination, application or interview process. In this regard, UGA is very fortunate that Dr. Michael F. Adams, UGA's President since 1997, has been actively involved with the NCAA for many years. He has held and still holds leadership positions in the organization and was a member of the Knight Commission. President Adams understands and appreciates intercollegiate athletics, the role and operation of the NCAA, and the importance of varsity sports at UGA, especially football. He regards the FAR as a very important position at the University. Dr. Adams will be stepping down as UGA's President on June 30, 2013.

My predecessor as Georgia's FAR, Professor Jere Morehead, is now our Provost. He is a lawyer and graduated from the UGA School of Law. He was an Assistant U.S Attorney before accepting a tenure-track appointment in the Department of Real Estate & Legal Studies at UGA's Terry College of Business. He is an award-winning teacher, the author of a leading textbook for undergraduate legal studies, and for many years the Director of the UGA School of Law's moot court program. In addition, Morehead held several important administrative positions at UGA before becoming Provost, including Interim University Counsel, Director of the Honors College and Vice President for Instruction. He was a member of UGA's Athletic Association Board of Directors (UGAA) when President Adams asked him to become FAR. Early in his tenure as FAR, he was involved in UGA's last major infractions case before the NCAA, and he chaired the search for the prior Athletic Director.

In September of 2009, shortly after the University named Professor Morehead Provost, President Adams called me to ask if I would become FAR effective July 1, 2010. I was on research leave and spending most of September on Block Island, Rhode Island. His call was out of the blue. I am not sure how he tracked me down, and his assistant's voicemail did not give me a clue as to what he wanted. I had known the President since 1998, when he hired me to be the Dean of the law school, and I returned the call right away. During our conversation, he made it clear that he thought it was important for Georgia's FAR to be a lawyer. The

President is not a lawyer, but one of his sons, a daughter-in-law, and his brother-in-law are, and many of his top advisors through the years have been lawyers. My wife told me to accept on the spot, but the President encouraged me to speak with Provost Morehead about what the position entails, the time commitment, and whether it would be possible to maintain a regular teaching load and serve as FAR. I called to accept the position immediately after my conversation with the Provost.

II. MY FAR SKILL SET

My skills are not the same as the Provost's, but there are parallels. I do not have as much practical experience as he does, but I have been a law professor since 1977 at several, large public universities, including four members of the Southeastern Conference (SEC). Throughout my career, I have taught a standard load, while being a productive scholar and performing my fair share of law school and university service. I was also Dean of the law schools at Ole Miss (1990 – 93), Kentucky (1993-98), and most recently, Georgia (1998-2003), serving under President Adams. I have been a regular law professor since stepping down as Georgia's Dean. I have also been an active university citizen since 2003, serving on several important university-wide committees including the University Curriculum Committee and the Committee on Intercollegiate Athletics, chairing several committees, and playing a major campus-wide role in UGA's recent reaffirmation of accreditation by the Southern Association of Colleges and Schools (SACS). In addition, I have chaired several law school accreditation inspections for the American Bar Association and served on several Law School Admissions Council committees for about ten years. As a result of my administrative duties and service commitments, I know many people all over campus, both faculty members and administrators. I was elected by UGA's University Council to the Board of Directors of the Athletic Association (UGAA) in 2008 and was holding that position when the President asked me to become FAR. I shadowed the Provost as "FAR in training" for six months, from January 1, 2010 to June 30, 2010, and attended the NCAA Convention in Atlanta and several SEC meetings with him. I went to one of the

NCAA's rules and regulations workshops and took over as acting secretary for the Board of Directors of the UGAA.

In summary, my skill set for being FAR includes being a senior lawyer/law professor who has considerable administrative experience and a solid understanding of the way UGA operates. I knew most of the key players on campus fairly well when I became FAR. Those key players – both faculty members and administrators – knew me, and I came to the position with some understanding of the Athletic Association and the importance of intercollegiate sports at UGA.

III. MY FIRST BIG CHALLENGE: PUTTING THOSE SKILLS TO THE TEST

My first major task as FAR was to chair the search committee for a new Athletics Director (AD). Our previous AD, who was hired during Provost Morehead's tenure as FAR, was relieved of his duties in early July 2010, following a DUI arrest very late in the evening of June 30th in Atlanta. My first day as Georgia's FAR was July 1st and I was asked to chair the search committee on the 4th – shortly before the official announcement that the current AD was being relieved of his duties.

I served on and chaired several search committees during my academic career but none as high profile as this one. I believe that my experiences as an administrator, as a spokesperson for organizations, and as a lawyer helped me throughout the search process, especially with understanding Georgia's open records and open meetings laws, dealing candidly with the press, and explaining the hiring process to those who expressed interest in the position and those who were calling on behalf of interested persons.

The President appointed the search committee, and he kept it small, comprised of only six members: the Senior Women's Administrator with the UGAA, one of the senior coaches, a past president of the University's Alumni Association who serves on the UGAA Board, the elected student member of the Board, the University's Senior Vice President for External Affairs, and myself. The committee for the previous AD's search was considerably larger. The President felt that the larger committee acted too unwieldy and was prone to leaking information. Even

though the University retained a search firm for the prior search, it was difficult to maintain confidentiality.

The President decided against using a search firm this time. Instead, the Director of UGA's Human Resources Department and an executive search group within that department assisted my committee. The HR Director and another professional in HR did much of the administrative work, including writing the initial drafts of the job description and announcement, setting up a website, handling several calls and inquiries about the position and the hiring process, following up with nominees to see if they were in fact interested in becoming candidates, and processing applications. I also handled many calls and inquiries and talked to quite a few nominees and applicants. I was surprised at the number of search firms that contacted me directly about running the search, even though it had been publicly stated that UGA was not using an outside firm. Moreover, at the start of the process, we agreed that every member of the search committee would direct all calls and questions to me and/or the HR Director. We had no leaks.

One of the most challenging aspects of this process was deciding the best way to handle inquiries from, or about, sitting athletic directors who were interested in the position but were reluctant to apply given their current positions. How could they determine if they were viable candidates for the position? How could they determine whether UGA would be interested in talking to them? How could UGA "check them out" without news of their possible interest in the position getting back to their home institutions? In essence, is there a way for someone to be seriously considered for the position without formally applying and getting his or her name published on one or more of the many blogs and Internet sites serving the world of collegiate athletics?

I do not have quick answers for these questions, but I appreciated the dilemma facing a sitting AD because I had grappled with similar questions during my career. I was Dean at three public law schools for thirteen years, and several times during that period I was either contacted about or had an interest in deanships at other schools. My basic questions for a search committee or search firm were: When would my candidacy become public in the event I applied? Would the names of applicants be

confidential until the school decided who to invite to a screening interview? Would my name become public from the moment I threw my hat in the ring? The decision whether to move forward as a candidate for a position is often difficult. At some point you have to decide if you want to risk rejection and disappointment. At some point your candidacy will become public information. At some point it is necessary to inform your colleagues as well as your President and Provost that you are a candidate for a position at another institution. It is easy to say nothing ventured, nothing gained, but actually becoming a candidate for a position is a tough call for many people.

In August, a little more than a month after our search committee formed, we interviewed five candidates over a weekend at an off-campus location. We interviewed three candidates for two and a half hours each on Saturday and repeated the process with two more candidates on Sunday. I believe we did a good job of honoring requests for confidentiality. We allotted time between each interview to talk among ourselves about our reactions to the candidate. Everyone participated actively, including the student member of the search committee. The President attended, but more as an observer than as an interviewer. After our final interview, all of us, including the President, discussed the five candidates, and the President asked each of us to rank our top two candidates and to give him those rankings on a slip of paper. We did not share our rankings with each other, but the President told us, after he tallied our rankings, that all six of us agreed on the candidates who comprised the top two. The President did his due diligence during the following week and met with the committee at his office to discuss his decision. The public announcement of the hiring of Greg McGarity was made within the next day or two. McGarity started the job shortly after Labor Day in September 2010, roughly two months after the search committee was announced. He is now in his third year as Georgia's Director of Athletics, and there is widespread agreement in the Bulldog Nation that he is doing a fine job.

IV. LAWYERING UP AND THE SPECIALIZED NCAA PRACTICE

Another relevant point about the wisdom of having a lawyer/law professor as FAR is the fact that lawyers play a major

role in the NCAA and intercollegiate athletics. I do not have figures, but there are plenty of lawyers working with the NCAA in Indianapolis, and many lawyers now work in sports administration at colleges and universities. I have represented the SEC on the NCAA's Amateurism Cabinet for over two years, and at least six other members of that committee are lawyers, each representing an athletic conference. In my opinion, it would be wise for every university in major conferences like the SEC, PAC 12, and Big Ten, to have a lawyer performing a leadership role in the athletic department. Moreover, schools that have major issues pending before the NCAA are hiring 'sports' lawyers who know this area of the law and understand the NCAA. Many practitioners are developing sports law expertise, and some have considerable experience working with the NCAA and know how the organization operates.

For example, the UGAA recently turned to a specialized law firm with an NCAA practice for help with several matters involving compliance with NCAA' rules and regulations. These matters included eligibility issues for two student-athletes and gifts made by a head coach to several assistants. In the past, the UGAA had ordinarily turned to a local lawyer who had a varied practice. This time it turned to Mike Glazier, who heads the Sports Practice Group at Bond, Schoeneck & King in Overland Park, Kansas. According to an article in *The Athens Banner Herald*, the firm specializes in dealing with the NCAA.¹ "The primary focus of the article was the amount UGAA paid for Glazier's services. It noted that the Athletic Director worked with Glazier and his firm during his 'time at the University of Florida, and that the outcomes were favorable to Florida and now, to Georgia. The story also reported that Glazier worked in enforcement at the NCAA and formed one of the nation's first NCAA focused law firms many years ago with the current SEC Commissioner, Mike Slive. In short, Glazier knows infractions and the NCAA. His firm was a sponsor at the NCAA's spring 2012 Regional Rules Seminars in Anaheim and Atlanta. The description of the firm in the seminar materials states:

¹ See Marc Weiszer, *Glazier Solves all of UGA's Problems ... for a Price*, ATHENS BANNER HERALD, Jan. 22, 2012, at C1.

The Collegiate Sport Practice Group of Bond, Schoeneck & King, PLLC, is the nation's premier practice group for the representation of colleges and universities in NCAA rules compliance, eligibility and infractions matters. Our group was formed in 1991, making us easily the most-experienced attorneys and consultants in this area of unique and complex regulations. Combined, we have more than 90 years of experience in NCAA-related matters, including serving as counsel to well over 100 NCAA member institutions and more than 40 years of combined experience as NCAA staff members.

The UGAA hiring Glazier and his law firm is comparable to any major business entity hiring a Washington, DC, firm with specialized expertise to help it work through the rules and regulations of a major federal agency, like the Department of Agriculture, the Securities Exchange Commission or the Federal Communications Commission. Expertise is valuable, and the UGAA's decision to hire a firm with expertise is not unique. More universities are turning to one of the several firms in the United States with NCAA expertise. For example, Gene Marsh, an emeritus law professor at the University of Alabama School of Law who served as the University's FAR through several difficult matters, is now "of counsel" with Lightfoot, Franklin & White, a Birmingham, Alabama law firm with a substantial NCAA practice. Marsh has helped several universities respond to major infractions issues, including Penn State.² The Lightfoot firm was also a sponsor at the NCAA's 2012 Rules Seminars. The description of the firm in the program states

During the past decade, Lightfoot has established itself as a national leader in NCAA compliance and collegiate sports law. Lightfoot partner William King has built the firm's NCAA practice area from the ground up, and with the addition of Gene Marsh, former chair of the Committee on Infractions, in 2008, our NCAA practice area now includes representation of member institutions of the Pac-12, Atlantic Coast, Southeastern, Big Ten, Big 12, and Mountain West Conferences. Since 2008, the firm has handled matters that received national attention, including representation

² Karen Sloan, *Lawyer Up for the NCAA*, NATIONAL LAW JOURNAL, Sept. 6, 2010.

of the University of Michigan, University of Southern California, University of North Carolina Chapel Hill, University of South Carolina, Columbia, the Georgia Institute of Technology and Jim Tressel. The firm continues to represent universities in joint infractions investigations with NCAA enforcement and high-profile student-athlete eligibility matters.

V. RANDOM THOUGHTS ABOUT THE VALUE ADDED BY A LAWYER AS FAR

As a law professor who teaches and writes about administrative law, perhaps I can come up to speed on the NCAA's executive, legislative and judicial functions faster than a non-lawyer. After all, the NCAA is like an administrative agency. Of course, a non-lawyer FAR can learn a great deal about the NCAA from reading Professor Jo Potuto's article, *The NCAA Rules Adoption, Interpretation, Enforcement, and Infractions Processes: The Laws That Regulate Them and the Nature of Court Review*.³ Most FARs know that Ms. Potuto, a professor at the University of Nebraska College of Law, has been the Cornhusker's FAR for many years and has held several important positions with the NCAA as well. Also, a new, non-lawyer FAR can learn a great deal by attending one the NCAA's regional rules seminars – I attended one while I was FAR in training in 2009 and another one in June 2012. In addition, FARs are well organized nationally and it is beneficial for a new FAR to meet and get to know his or her fellow FARs, especially those from the other institutions in his or her school's athletics conference and those at similar colleges and universities around the nation.

I think the fundamental question about what difference it makes for a school's FAR to be a law professor can be answered by responding to another question. If a college or university has a law school, do law professors add real value to the college or university's governance and campus-wide policy-making? If the answer is yes, perhaps it makes sense for the FAR to be a law professor. Here again, I recall the conversations I had with my

³ Josephine R. Potuto, *The NCAA Rules Adoption, Interpretation, Enforcement, and Infractions Processes: The Laws That Regulate Them and the Nature of Court Review*, 12 VAND. J. ENT. & TECH. L. 257 (2010).

late father. He was a professor of Art and Design at the University of Illinois for forty years, and for twenty of those years, he served as a department head. During his career, he served on many campus-wide committees and often told me how much he appreciated serving on a committee with professors from the University of Illinois College of Law. What did my Dad value about those law professors at Illinois? Was it their analytical thinking skills, their logical arguments, their basic sense of fairness, their appreciation of the importance of process and hearing all sides or their ability to take a position without becoming overly partisan? I think the answer is obvious – my Dad valued all of those lawyerly attributes.

I have been a tenured law professor at four comprehensive public universities for thirty-five years, and all four schools are members of the SEC. I have served on many campus-wide committees since I earned tenure in the early 1980s. Whether it is genetics, watching my role-model father or being a team player, I have always taken my campus-wide service appointments seriously, served with enthusiasm, and willingly chaired many committees. I have enjoyed getting to know my colleagues from the other schools, colleges and departments on campus, and all of them know that I am a law professor. I think they value my impartiality, sense of fairness, organizational skills, level of preparation and sense of humor.

Of course, my campus-wide experience does not depend on being a law professor. Other professors at UGA have comparable campus-wide experience and exposure. I believe that this kind of service earns respect – your colleagues on campus come to regard you as a person with good judgment and integrity. My colleagues know I have high academic values. Accordingly, I strongly feel that campus-wide knowledge, experience and understanding coupled with a good reputation for honesty and integrity are vital for any institution's FAR. My good reputation as a teacher, scholar, and administrator, coupled with knowledge of who is who on campus and how things work– who to contact in admissions, how to work with the Registrar, understanding the processes for making campus policy, dealing with the student disciplinary process, appreciating the school's administration and so on– has enabled me to be effective in my position as Georgia's FAR. Being

a lawyer/law professor is a plus, but being respected campus-wide and having campus-wide knowledge and experience matter most.