

[Intro Music]

Nicolas Iovino: Welcome to Sidebar, a podcast from Courthouse News. I'm Nicolas Iovino, one of your hosts and a reporter in San Francisco. In this episode, we'll take an in-depth look at the Republican-led effort to recall a sitting governor in California. We'll also hear about the long-fought legal and political battles over student-athlete compensation, which spurred some major changes in the world of college sports this year. But first, it's been 20 years since airplane hijackers took down the World Trade Center and struck the Pentagon, pulling off the deadliest terror attack ever to occur on U.S. soil. We look at how this infamous event has reshaped the laws of the United States. Denver-based reporter Amanda Pampuro investigates the enduring debate over growing government surveillance powers in the wake of 9/11.

[Footsteps]

Pampuro: Third floor government information library wooden door.

[Door opening]

Another Voice: Oh, so you're on the fourth floor...

Pampuro: This is it. I am standing in the government information library on the third floor of the Norlin Library at the University of Colorado Boulder. In my hands is one of the official copies of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, also known as the USA PATRIOT Act.

Russ Feingold: I was doing an interview like this when we saw the first tower hit. All of a sudden, people rapping very hard on the door and saying get out of here, there's a plane heading toward the Capitol. Of course, that was Flight 93. And so, we adjourned as fast as we could about five or six blocks away to one of my staff member's home where we sort of began to try to figure out what was going on.

Pampuro: That's Russ Feingold, former three-term senator of Wisconsin and current president of the American Constitution Society. He was in Washington, D.C., on Sept. 11, 2001, when Al-Qaeda hijacked four commercial airplanes targeting four symbols of U.S. power. He was there when Congress reconvened.

Feingold: The thing that I was struck by was actually how good people were conducting themselves, how well people were conducting themselves at first, in the first few weeks. There was a spirit of this has nothing to do with politics, we've been attacked. But things really went off the rails a few weeks later, when we were getting ready to pass something that I assumed I would support, which was an updating of law enforcement authorities, surveillance authorities to meet the crisis. The problem is that because of political gamesmanship and exploitation of the moment, we ended up with the USA PATRIOT Act, which was really a very bad piece of legislation not well considered, and in many respects, having nothing to do with terrorism. It was just opportunism. And so, I ended up being the only senator voting against it. I read the bill carefully. And I could see that some of the changes relating to personal library records and business records, some of the changes that allowed so called sneak-and-peek searches of your house, even though you're supposedly protected by the need for a search warrant, these were jammed in there. And in fact, as time proved, they were basically not used for any terrorism cases for years.

Pampuro: In the years since, the USA PATRIOT Act has become shorthand for government surveillance programs in data collection. Chris Finan, executive director of the National Coalition Against Censorship, wrote the history on the fight for free speech in America. It's called "From the Palmer Raids to the Patriot Act."

Pampuro: I do want to ask, there's a description you use in the book where you're talking about the nine things that the Patriot Act did strengthening money laundering, tightening visa regulations and modernizing electronic surveillance. I'm curious where you see the line between modernizing electronic surveillance in the digital age and expanding beyond the scope of free speech?

Finan: Well, that of course is what we've been arguing about ever since: What is an appropriate standard and technology for the government to use and obtain surveillance? How is it monitored? How is it reported to government officials who have oversight? Most of the powers that were controversial in the beginning were ultimately made permanent. This is a, you know, this is a historic and probably inevitable conflict between the government's desire to band its power, protect national security and the concerns of civil libertarians and others that expansions of that power are going to lead to further abuses. So, I think what really happened in the wake of the Patriot Act was that there was a broader awareness developed about that conflict than we've ever known before.

Pampuro: The U.S. Patriot Act expired in December 2020, along with Section 215, the lone wolf provision and others, but that doesn't make U.S. surveillance programs a thing of the past. Notably, the 2008 amendments to the Foreign Intelligence Surveillance Act, or FISA, and the U.S. Freedom Act of 2015 effectively replaced the most problematic portions of the Patriot Act. This begs the very simple question, why does the government perceive the need to collect surveillance? I posed this question to several federal agencies and former government employees, most of whom declined to answer on tape. But one national security attorney pointed me to executive order 12333, a document typed up on an IBM Selectric and signed by President Ronald Reagan in 1981 to address modern security needs. Essentially, this memo orders the Department of Defense, the FBI, the CIA, the NSA and others, not only to collect information for the president, but also to adopt procedures that minimize the collection of information from "non-consenting U.S. persons." Today, those documents have been declassified and are open to the public.

Alex Joel: When Congress passed the USA Freedom Act, they basically said you can't use the statutory authority to collect information in bulk, you have to collect stuff based on some kind of individualized showing.

Pampuro: This is Alex Joel, a senior project director and adjunct professor at the American University's Washington College of Law.

Joel: Before I retired from government, I was the head of the Civil Liberties, Privacy and Transparency Office for the Director of National Intelligence.

Pampuro: Joel likens the search for national security intel to searching for a needle in a haystack and government collection of bulk information to collecting the entire haystack to find that needle.

Pampuro: Would like a public statement, social media posts talking about either Black Lives Matter protest or the January 6 Capitol Riot, would public postings about that give probable cause to want to look at electronic records like emails or browser history.

Joel: Yeah, I mean, I don't know, I haven't been involved in the details of how they try to make a case, but just to explain it to be very extreme, if somebody says, I'm going to blow up, you know, the federal blahdy blah building tomorrow, I've got the bomb and I'm on the way and here's a picture. Yes, so that would definitely provide probable cause or whatever authority is needed to research or search or arrest the person, etc. etc., versus if somebody says I disagree with this administration's policy, I think there are a bunch of idiots they don't belong in office, that that would be a First Amendment free expression issue and that would not be something that one could use as the basis for further action, including in an application to a court. You have to look at it like any other piece of information and say, is this specific enough that it gives me reason to believe that something's going on here? Or, is this just an expression of someone's views?

Pampuro: Is the government collecting more data and surveillance today in general, as opposed to the pre-9/11 world?

Joel: Yes. There's just more data. The world's gone digital.

Pampuro: In 2001, the average internet user spent 83 minutes online a day, according to Pew, and only 3% of Americans looked to the Internet for info on 9/11. Last year, the average Americans spent more than three hours on social media alone, I'm not even going to try to quantify the amount of information on 9/11 posted to YouTube.

Alex Jones: So, Deep State working with radical criminal Islam involved in 9/11, the stand down all of it the CIA building, building seven getting blown up.

Joel: It's really by virtue of the explosion in digital technology, that everybody is collecting more information than they ever have in the past. That's something that everybody has to wrestle with, including intelligence agency.

Pampuro: To complicate matters, everyone is using the same websites to communicate. There is no Facebook specifically for would-be terrorists. If anything, people with nefarious plans would do their best to blend into the normal chatter.

Joel: What I always tell my students, we have to make sure that the legal framework does two things. We want the nation to be protected. We need to authorize agencies whose mission it is to protect the nation to be able to do their jobs. But at the same time, we want to protect ourselves against those agencies. We don't want those agencies to go too far. We need to constrain them, restrain them and oversee them to make sure that we're protecting people's privacy. Otherwise, we're going to create a surveillance state dystopia. We're going to create a terrible government, so we need to both authorize and restrain at the same time.

Pampuro: When the USA Freedom Act passed in June 2015, then-Senate Majority Leader Mitch McConnell is quoted as calling it a "resounding victory for Edward Snowden." Because the law contained additional oversight and disclosure requirements, government watchdogs also considered it a victory, but not one easily won.

Cindy Cohn: None of those things came about because the government unilaterally decided that they needed to increase our due process and increase our checks and balances. My name is Cindy Cohn, executive director of the Electronic Frontier Foundation. Changes were brought about by us, by the civil

liberties community and ordinary citizens and members of Congress who demanded at least some additional protections for us. Example, the FISA Court, that you know the USA Freedom Act contained a provision that frankly, my team at EFF was largely responsible for getting in there, to strengthen the FISA Court and to make sure they could appoint an independent amicus who briefed them on things that they didn't just hear from, you know, a slanted one-sided view from the government trying to sort out what was right. That amicus provision didn't get there because the government decided to increase the checks and balances, it got in there because we fought tooth and nail to make sure that within that provision, we had members of Congress stand with us, we had former members of the FISA Court stand with us, and we got it into that bill, and we got it passed. So, yeah, we've gotten some increased due processes and checks and balances but it hasn't come because the government decided that they needed to up this, they fought every single one of them.

Pampuro: This is a conversation that is unlikely to ever be settled. The issues continue to be analyzed, both in the court of law and the court of public opinion. So, I'd love to know what you all think. We're on twitter @sidebarCNS. And don't worry, the NSA is allowed to read anything publicly disseminated, and I was told they would be very interested in listening in. Thank you to Chris Burrow at the American Writers Museum in Chicago for identifying the Reagan-era typewriter from a photo provided by the Ronald Reagan Presidential Library in Simi Valley, Cali. Thank you, Philip Wrede and Kate Tallman at CU Boulder for digging up that official copy of the PATRIOT Act. And thank you, TeknoAXE, for making this music.

Iovino: You can find more coverage of the ongoing debate over government spying programs at courthousenews.com. We'll be back after a short break.

[Techno Music]

Iovino: At a time when California is struggling to contain wildfires and fight the Covid-19 pandemic, the state's governor is facing his own political crisis. A long list of opponents is vying to replace Governor Gavin Newsom in a recall election this month. San Diego-based reporter Bianca Bruno explains how this longshot recall campaign made it on the ballot and how it could shape the political future of a rising star in the Democratic Party.

[Cicada Sounds]

Comic: Where are all these (bleep) cicadas coming from? I was like what is that, I was like there's something...

Bruno: About every 17 years cicadas emerge from the ground in the strange life cycle experts have yet to fully understand. Recall elections in California appear to be following the same pattern. In 2003, it took a special set of circumstances for Governor Gray Davis to be recalled and actor and bodybuilder Arnold Schwarzenegger to be elected governor. Just over 17 years later, like they did in 2003, swarms of cicadas emerged again this summer. And Californians will decide again whether the current governor of the most populated U.S. state should be removed from office. It's an election experts told me took just the right set of circumstances to emerge.

[Cicada Sounds]

Bruno: This time around, California Governor Gavin Newsom must defend his seat as the state's leader before he's even completed his first term in office. Nick Cahill, the Sacramento politics reporter for Courthouse News, told me state Republicans have been after Newsom's seat ever since he was elected in 2018.

Cahill: The motto for the recall proponents overall has really been try, try and try again, they failed five times to gather the necessary signatures to qualify the recall. Literally the day he was inaugurated, these recall petitions started, so five times they came up empty, but they finally came through on this sixth try. Once it became clear that they were going to meet that threshold, the state GOP latched on to it quickly and, you know, has now become their highest priority of unseating governor Newsom.

Bruno: But how were Newsom's opponents successful? For one, they were handed a court victory which extended the time they had to gather signatures to certify a recall election by four months. The constitutionality of that court decision is still being questioned.

Wesley Hussey: They were lucky on two counts. The first count was they got more time. It's questionable whether that's even constitutional at a state level, the time period to gather signatures for initiatives is a state law, but the time period to gather signatures for recall is built to the state constitution. So, a Sacramento superior court judge gave them additional time. The second was right after or right around that time that they got that window of extra time, that's when Governor Newsom went to the French Laundry. That became a rallying point, I think, to help gather signatures during the recall period because people were already getting upset with Newsom among conservatives, among those who didn't like him. But this made it kind of easier to sell and package to people to sign a signature like yeah, you know, he has one set of rules, he's forcing you to live by a second set of rules.

Bruno: That's Wesley Hussey, a political science professor at Sacramento State. He's referring to the now infamous incident where Governor Newsom was photographed at a swanky dinner in Napa Valley at a time when indoor dining was banned in California. Newsom's pandemic restrictions enforced in the Golden State have been one of the major selling points of his recall proponents.

Cahill: They've sort of painted him as this coastal elite issuing lockdown order after lockdown order and targeting businesses from his decadent mansion.

Bruno: And Newsom didn't take those criticisms seriously at first, Cahill said.

Cahill: First Newsom and the party largely ignored the recall petition. In the final days before, you know, it was put on the ballot by elections officials they were still sort of mum and just kind of saying we're, focused on the pandemic, we're focused on California's issues. But once it you know, indeed landed on that ballot, they went on the offensive. Meanwhile, he's gone up and down the state and has been hosted for press conferences by public officials and mayors and congressmen and even nationally, some of the big guns have come in from the Democratic Party, such as Elizabeth Warren is appearing in ads.

Warren ad: Here's the deal with the recall of Gavin Newsom. We've seen Trump Republicans across the country attacking election results and the right to vote. Now they're coming to grab power in California, abusing the recall process and costing taxpayers millions. Here's how we stop.

Bruno: Professor Hussey said Newsom had to redirect the narrative in campaign messaging late this summer, when initial polling showed the recall election could be closer than many would expect in a state where Democrats have a super majority.

Hussey: You know, and so I think that one of the things that the Newsom campaign did was kind of show to Democrats, hey, if I lose, it's not a moderate smart Republican or it's not another Democrat that you might like, or it might not even be a liberal Democrat that you're enthused about. It's gonna be a really, really conservative Republican. And if you like Donald Trump, oh, you don't, well, here's a, you know, a version of him. Here's a Black Rush Limbaugh who wants to become governor of California and has a real chance if you don't vote to keep me.

Bruno: He's referring, of course, to conservative talk radio host Larry Elder, who is polling highest among the pool of dozens of candidates vying to replace Newsom. For Elder, the unique circumstances which led to the recall election likely created the only shot he has at being elected governor.

Hussey: I think the recall is perfect for Larry Elder because it allows him to run in a very short window. And it allows him not to have to attack other candidates, he doesn't need to win votes against other candidates, he just needs to get votes himself. And because there's no Democrats in this replacement ballot, he can just appear to conservative Republicans and say, I'm your savior.

Bruno: But recent polling by the Public Policy Institute of California shows it's not a close race. The poll found among likely California voters only 39% would vote to replace Newsom. So, what does Elder get out of the likely failed recall election campaign? Fame.

Hussey: Now he's a nationwide figure while before he was kind of, you know, more on the shadows and a marginal figure, well known among some people in California, but not everyone. And now conservatives across the country are gonna love him. And you know, that's gonna help the Larry Elder brand and help him probably get a bigger radio contract. Maybe he'll get a Fox News show or some other conservative outlet news show, and so he'll be a bigger name. For what he's trying to do, it's pretty smart. But obviously, you know, collectively in California, we care more about candidates trying to help the state rather than help themselves.

Bruno: And while Elder stands to benefit from his recall campaign, Hussey said Newsom's political future beyond the Golden State's border may be permanently bruised.

Hussey: It changes people's perceptions of you. No one wants to be in a recall. Winning a recall is great, but not having a recall is better. You know, Gavin Newsom would love to be president at some point. He'd love to have a political career after being governor of California. And I think the recall hurts that. I think it doesn't hurt him at all when reelection if he wants to do that. But I think, you know, if he's up to run for the Senate seat when Dianne Feinstein retires, or if he decides to run for president someday, I think other Democrats will be more willing to challenge it and more willing to say, you know, you had a tough time even winning a recall in a blue state like California.

Bruno: But will anything change to California's recall election rules? The Department of Finance estimated it will cost taxpayers \$276 million.

Cahill: The actual likelihood of substantial changes coming really isn't likely. Major tweaks, you know, to California's recall system would involve amending the state constitution and placing, you know,

something like that on the ballot requires a ton of heavy lifting. It's also important to keep in mind that 2022 is an election year. So, the appetite and the resources and the fundraising to sort of get a constitutional amendment like that on the ballot are probably going to be slim to pull from.

Bruno: While Cahill predicts election rules changes are unlikely during a regular election year, Professor Hussey pointed out there are potential changes that don't involve amending the state constitution.

Hussey: Maybe we don't have to have a replacement ballot. You know, we have a lieutenant governor, we elect a lieutenant governor independently of a governor. If the recall governor succeeds, maybe we don't need to have a replacement ballot to choose a new governor, we have a ready-made governor in waiting. You know, maybe the amount of signatures necessary, the 16% can be raised. It's still a lot of effort and a lot of money to gather those signatures. So, people like oh, the recall happens all the time. No, it's happened twice in 20 years. And before that happened, never in California for a statewide official. So, it's very rare to get that many signatures.

Bruno: Just don't expect recalls to happen more frequently than when cicadas emerge nearly every 20 years.

[Cicada Sounds]

Hussey: You know, for the most part, these are not going to be normal things. And even though the recall I think has been politicized and partisanized, it's still a very high bar to gather that many signatures in that amount of time. When Davis was recalled in 2003 and Schwarzenegger became governor, there was a lot of punditry that said oh, this is the era of recalls all the time in California. It didn't happen. Occasionally there's been a state legislator here or there where there's a lower threshold in a smaller area. But the uniqueness of this and the uniqueness of 2003 means yeah, there will probably be a recall for a statewide official, probably the governor maybe in the next 20, 30, 40 years, but it will also be an interesting case.

Iovino: You can find recall election results and more coverage of all things Sacramento politics at courthousenews.com. You can also follow us on Twitter, we're @CourthouseNews and @sidebarCNS.

[Music Break]

Iovino: For our last segment, we turn to an issue that's top of mind right now as college football season kicks into high gear. Some major decisions made over the last few months could redefine how college athletes get compensated for decades to come. Here's my report.

Jim Nantz: Let's make a little history tonight in Indianapolis. Jim Nantz and Grant Hill...

Iovino: Millions of viewers tune in to the March Madness Men's Basketball Tournament every year, supplying the largest slice of revenue for the National Collegiate Athletic Association, which rakes in about a billion dollars annually. Most of that money helps fund athletic programs at colleges across North America. But in recent years, pressure has been mounting on schools to share more revenue with student athletes whose labor has helped turn college sports into a multibillion-dollar industry.

Gabe Feldman: There are now billion-dollar television contracts. There are many, many coaches including assistant coaches who are making more than a million dollars, if not closer to \$10 million.

There are these gold-plated facilities and all the while college athletes, their compensation if you want to call it that has been flat, while spending everywhere else has increased exponentially.

Iovino: That's Gabe Feldman, director of the sports law program at Tulane University in New Orleans. The NCAA has restricted athlete compensation for decades, arguing such rules were necessary to protect the integrity and popularity of college sports. But this year, a Supreme Court ruling and new state laws have forced the NCAA to ditch some of its old rules, making 2021 potentially the biggest year of change in college sports history.

Joe Starkey: Oh, my god, the most amazing, sensational, dramatic, heart-rending, exciting, thrilling finish in the history of college football...

Iovino: The push to expand rights and compensation for student athletes has been building momentum for over a decade. One pivotal moment came in 2009 when former UCLA basketball star Ed O'Bannon sued the NCAA for featuring him in video games without sharing a cut of the profits. In 2015, the Ninth Circuit found student athletes are entitled to compensation in the form of tuition for the use of their names, images and likenesses. Here's O'Bannon talking about why he decided to sue on the TV show "Exhale" in 2018.

O'Bannon: I saw my likeness on a bib on a basketball video game. I said, you know wow, they're still making money off of my, my likeness, off of my face, off of the things that I did 15, 20 years ago and I just I just thought that that was just ... it's wrong. Yeah, absolutely.

Iovino: More lawsuits followed, including one brought by former West Virginia University football player Shawne Alston.

Sports Announcer: Alston, you can just imagine this forward lean right here you thought he would stop for a second...

Iovino: His suit merged with other cases and eventually made its way to the U.S. Supreme Court.

Supreme Court Chief Justice John Roberts: We will hear argument this morning in case 2512, *National Collegiate Athletic Association vs. Alston*.

Iovino: You just heard Chief Justice John Roberts introducing the Alston case during oral arguments this past March. The court issued a unanimous opinion in June, striking down the NCAA's limits on education related benefits. But it upheld the association's right to ban cash payments and other perks unrelated to education. Professor Feldman told me how that ruling could affect the lives of student athletes for decades to come.

Feldman: That could lead to significant benefits that athletes haven't been able to get in the past. It could be a better laptop, it could be a musical instrument, it could be any number of things. Also, it could be cash, you get \$1,000 if you hit a certain GPA benchmark or something like that, the cap that would be on those cash payments at this point would be about \$6,000. But that's obviously a very meaningful amount of money for most people, particularly for college athletes.

Iovino: You might be asking yourself, why would the NCAA oppose lifting limits on educational benefits? It's a question I had too, so I asked NCAA lawyer Rakesh Kilaru of the firm Wilkinson Stekloff.

Kilaru: I know sometimes people sort of raise eyebrows with that, you know, why would you oppose additional educational benefits? And really, that came down to two things. First, as the trial unfolded, what the judge eventually said she was going to order or permit at least was an additional \$5,000 plus in cash and this was labeled cash tethered to education. But at least from our perspective, it didn't look that different from what had been ordered by Judge Wilken and then denied by the Ninth Circuit in the O'Bannon case.

Iovino: Just a quick note here, Kilaru is referring to the Ninth Circuit's 2015 ruling, which held that the NCAA could not limit tuition-related compensation for athletes, but that it could ban cash payments.

Kilaru: I think there were real reasons why the Ninth Circuit said cash might be a concerning thing to provide. It could lead to abuse, it could lead to payments for you know, things that aren't necessarily educationally related. But I would say even more importantly, it could change the relationship of student athletes to their institutions from an educational and athletic kind of hybrid to more of an employment relationship. And that's something that the NCAA has always been concerned about and that institutions have always been concerned about.

Iovino: One part of the Supreme Court ruling that got a lot of attention was a scathing side opinion by Justice Brett Kavanaugh. The Donald Trump appointee wrote that all restrictions on student athlete compensation could be illegal. Professor Feldman explains.

Feldman: Justice Kavanaugh in his concurrence wrote one of the more scathing concurrences you'll read and said, although the issue is not in front of me, I'm not convinced that any of the NCAA's rules are justifiable under antitrust law, or at least the athlete compensation restrictions because if any other industry tried to do this, if Google and Apple and Sony and Microsoft tried to get together and restrict the compensation of their employees, that would clearly be illegal and in fact has been held to be illegal.

Iovino: But Feldman warns that people shouldn't read too much into Kavanaugh's opinion.

Feldman: Although it's striking that a conservative justice like Justice Kavanaugh wrote that concurrence, it's maybe even more striking that nobody else joined that concurrence. So, none of the other justices, at least in this case, were willing to adopt that reasoning.

Iovino: The High Court's unanimous opinion penned by another Trump appointee Justice Neil Gorsuch wasn't a total loss for the NCAA. Gorsuch wrote that the association could still prevent schools from handing out perks unrelated to education, such as a luxury sports car to help a student get to class. In that way, Kilaru says the Supreme Court preserved the NCAA's right to set rules on what is and is not a legitimate educational benefit.

Kilaru: And even *Alston* recognizes in a lot of places that there have to be some rules and restrictions in place in order for college sports to function. So, there's the kind of notable example Justice Gorsuch gave of the no Lamborghini rule. So certainly, it's a significant opinion against the unanimous opinions, we have to take them seriously. But, you know, I think it's too early to say whether it's a game changer or some kind of broad-brush reworking of college sports.

Iovino: Still, Kilaru acknowledges that the opinion could lead to more lawsuits being filed against the NCAA.

Kilaru: I don't think you can lose a case 9-0 and not think it has to have some impact, even though I have my doubts that *Alston* is quite as broad as many have interpreted to be. The fact remains, there is a Supreme Court decision that at least some people could read to suggest that large segments of the NCAA rulebook are subject to question and I'm not saying I agree with that, but I'd be a little surprised if there wasn't more litigation over the coming years.

Iovino: Another major change came this past July when the NCAA for the first time started letting athletes make money from corporate sponsorships. The new policy debuted after 18 states passed laws giving student athletes the right to profit from their names, images and likenesses.

Ad: Marketing and advertising can and must rise to new heights...

Iovino: Most of those laws took effect July 1, the same day the association rolled out its new policy. Student athletes can now make money by promoting brands on their social media feeds or appearing in TV and radio advertisements. Professor Feldman says this change has opened up all kinds of new financial opportunities for student athletes, and not just those at the top schools who play the most popular sports.

Feldman: It's a different market than professional sports. In professional sports you're looking at the major markets in the country. In college sports, it's actually some of the smaller towns, the college towns, the Tuscaloosas, the Baton Rouges, where the athletes probably have more value than they would in New York because these are such passionate college towns. And whether you're the football player or the soccer player or the swimmer, people want to have a connection with you and people see you as a way to raise the profile of their business. So, we're seeing lots of athletes at lots of levels, both men and women that are making money off their name and likeness.

Iovino: The NCAA has always maintained that relaxing compensation rules could turn amateur athletes into paid professionals and threaten the integrity and popularity of college sports. But some critics say the association has an ulterior motive. I asked NCAA lawyer Rakesh Kilaru what he thinks about claims that his client cares more about protecting profits than doing what's best for student athletes.

Kilaru: Ultimately, I would say I don't agree with that. I mean, I think a lot of what's being protected is opportunity. And that's opportunity for student athletes. So obviously, folks know that football and basketball generate the most revenue. But, you know, there are volleyball players, there are soccer players, there are baseball players, there are, you know, all kinds of different athletes who get this opportunity to participate. And a large part of the budgets for those sports are driven by the revenue that's generated by some of these so-called higher revenue sports. So, every year the NCAA takes the vast majority of the money that's earned through the March Madness basketball tournament and sends it back to the schools in the form of distributions and other forms of share and that distribution and those shares then form the vast majority of the budget for athletic departments that fund all of these other sports.

Iovino: Kilaru says paying male basketball and football players more than female athletes could raise questions about gender equality and compliance with Title IX, a federal law that guarantees equal opportunity for all genders in public education. Looking to the future, Professor Feldman says we're likely to see more battles being waged in the coming years over issues such as better medical benefits,

privacy rights for athletes' data and lifetime scholarships so those who don't finish college can always come back and earn their degree.

Feldman: There are many, many other big if not bigger, issues that are maybe more systemic and more structural that impact college athlete welfare. So, I think ideally, in a year or two, you'll see college athletes have not only greater rights to compensation, but also greater medical health and safety protections.

Iovino: Meanwhile, the legal brawls will continue to play out in court. The NCAA is currently fighting a federal lawsuit in Northern California over its restrictions on name, image and likeness deals. It's also fighting a suit in the Eastern District of Pennsylvania that says student athletes should be treated as employees, paid wages and given full employment benefits. You can find more coverage of those lawsuits and other cases involving student athletes' rights at [courthousenews.com](https://www.courthousenews.com).

[Marching Band Music]

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[Outro Music]