Faculty Board on Athletics
Meeting of October 2, 2015
8:30-10:30 am, 500 Main Building

Members present: Patricia Bellia (Chair), Alexa Baltes, James Brockmole, Ann Firth, John Gaski, Patrick Holmes, Dan Kelly, Sean Kelsey, Mary Ann McDowell, Robin Rhodes, Michael Stanisic, Jack Swarbrick, Erin Hoffmann Harding, Kevin Vaughan

Members excused: Ann Tenbrunsel

Athletics Liaisons present: Jill Bodensteiner, Missy Conboy, Michael Harrity, Beth Hunter

1. Call to order and opening prayer

Professor Bellia called the meeting to order and invited Professor Kelsey to offer the opening prayer.

2. Minutes of September 23, 2015, meeting

After technical changes, the minutes of September 23, 2015, were unanimously approved.

3. Chair's Announcements

Professor Bellia had no new schedule approvals or captaincy approvals to report.

4. Additional Report from Pat Holmes: Fifth-Year Student-Athletes

Mr. Holmes provided an academic report on student-athletes completing a fifth year of athletics eligibility in 2014-2015. There were fifteen fifth-year student-athletes, fourteen males and one female. Twelve were graduate students, including six enrolled in a graduate program and six enrolled as unclassified graduate students. Three were completing an undergraduate degree. The fifteen student-athletes were from eight different teams. Football and men's soccer each had four fifth-year student-athletes.

Those student-athletes who were in graduate programs performed better than those who were unclassified, something that has been standard through the years.

Professor Kelly asked why the performance of students enrolled in graduate programs exceeded the performance of unclassified graduate students. Mr. Holmes replied that the programs that students pursue and the nature of the students affect these numbers.

5. Annual Compliance Office Report

Jill Bodensteiner, Senior Associate Athletics Director, shared the annual report of the Compliance Office. She introduced staff attending with her, including Brent Moberg, Jennifer Vining-Smith, and Erin Abbey. Erin is newly hired as a Director of Athletics Financial Aid. Having Erin dedicated to financial aid issues will be a huge benefit for the office, freeing up Heidi Uebelhor and Ms. Vining-Smith to focus on other responsibilities.

Ms. Bodensteiner first presented information on national letters of intent, team size, and athletics scholarships. She noted that Notre Dame does not manage squad sizes at this time; many other institutions do. There have been significant changes in cross-country/track and field. Coach Alan Turner's goal is to create smaller, more tight-knit squad. Women's fencing is higher than usual at 26 student-athletes. There has also been some fluctuation in rowing, which relates to how the Compliance Office counts student-athletes participating in the novice program. Previously, the number reflected an early fall snapshot; based on Department of Education guidance, she was not comfortable with the timing of the count. Her office now waits until later in the fall to take a count, so the number has trended lower.

In discussing athletics scholarships, Ms. Bodensteiner explained the distinction between head count and equivalency sports. Equivalency sports are those in which one scholarship is shared across multiple student-athletes. For example, men's tennis has 4.5 scholarships to share, with some student-athletes receiving only a partial scholarship. Head count sports are those in which each student-athlete receives a full scholarship.

In discussing the balance of aid provided to male and female student-athletes, Ms. Bodensteiner reviewed the three aspects of Title IX compliance: participation, financial aid, and overall experience. Regarding the participation prong, a school can demonstrate compliance if its gender breakdown in athletics is proportional to its breakdown of undergraduates; if it has a historical practice of increasing opportunities for the traditionally underrepresented gender; or if it has adequately accommodated the interests of underrepresented students. Regarding financial aid, Title IX regulations require that scholarship aid provided to student-athletes must be within one percent of the percentage of female student-athletes. In Notre Dame's case, 42% of our student-athletes are female, and 41% of scholarship aid is awarded to women. Regarding overall experience, Title IX regulations require an assessment of student-athletes' overall experience in eleven specifically designated program areas (including, among other things, equipment and supplies, travel, and scheduling of game and practice times).

Ms. Bodensteiner provided data on the cancellation, reduction, and nonrenewal of athletics-related aid. She described the Faculty Board on Athletics' longstanding policy against cancellation, reduction, or nonrenewal based on injury or athletic performance. There will always be some nonrenewals, however, when (for example) a student voluntarily withdraws from a team, transfers, or graduates with eligibility remaining. In

some cases, a coach might reward a walk-on student-athlete with a scholarship for one year.

Mr. Swarbrick asked Ms. Bodensteiner to comment on recent rule changes. Ms. Bodensteiner described three recent changes. (1) An institution used to be limited to providing student-athletes a one-year award; now NCAA rules permit an institution to offer multi-year agreements. (2) An athletics scholarship used to be capped at tuition, room and board, books, and fees. At the January 2015 NCAA Convention, the autonomy conferences voted to change the definition to include personal and transportation expenses, so as to enable students to receive the full cost-of-attendance (COA). (3) The autonomy conferences also adopted a rule like the FBA's traditional rule, under which institutions cannot reduce, cancel, or decline to renew athletics aid based on athletics reasons or injury.

Ms. Bodensteiner noted that schools have already tried to circumvent these changes. Regarding the limitations on reduction, cancellation, and nonrenewal, the legislation exempted students who did not receive aid in their first year, so as to preserve a coach's option to reward a walk-on student with a one-year aid agreement. Some schools have circumvented the policy by not giving aid in the first year, which enables them to provide aid in a subsequent year and then later to cut the student-athlete without running afoul of the restriction. Regarding the COA legislation, some schools do not award personal and travel expenses to those students receiving partial grants. Instead, they use the extra money to provide aid to more student-athletes (essentially increasing the overall equivalency limit.) Also, with equivalency sports, some schools elect to pay per credit hour and house students in a less expensive dorm in an effort to save money, but still represent that these students have a full scholarship. Another trend is to promise a lifetime scholarship, so that an institution will cover a student-athlete who leaves early, even if the student-athlete leaves after one year and comes back without eligibility remaining.

In response to Professor Brockmole's question, Ms. Bodensteiner explained disparities in schools' published COA. Ms. Bodensteiner indicated that the number is set by each financial aid office, within federal guidelines. Traditionally, private universities keep their COA low, because many meet full financial need of the entire student body. In addition, private institutions try to keep the cost low to prevent "sticker shock."

With so much changing in terms of how aid packages are offered, Ms. Bodensteiner stated that Notre Dame is advocating a "Truth in Lending"-style form that would allow prospects to clearly compare the value of offers from competing schools.

Mr. Swarbrick provided two takeaways. First, he stated that this illustrates why passing legislation is so difficult; institutions have fewer common interests. Second, we tend to think that those institutions that are less rigorous academically are engaged in this gamesmanship. This is not the case. What do you say in response to an elite institution saying a tennis player has a lifetime scholarship? When we pass legislation to avoid cancellation of aid for athletic reasons, this results in baseball players not getting aid in

their first year. When we decide that there is no good reason to exclude student-athletes from receiving the full COA, institutions completely re-do costs in response.

Professor McDowell asked what the ramifications are of giving a student-athlete a lifetime scholarship. Ms. Bodensteiner stated that the ramifications are purely budgetary. Notre Dame has been very generous in helping former student-athletes return to school, but it does so on a case-by-case basis. Some of the key decision points are: Should the institution offer the same aid to a former student who was here just one semester, versus one who is just a semester shy of finishing? Should the institution treat transfers differently from those who leave early to pursue a professional career? When a student leaves the institution, are we being clear about conditions for readmission? If a student leaves with a 1.2 GPA, is he or she going to get readmitted?

Professor Bellia asked Ms. Bodensteiner how to solve the problem of schools using the additional COA funds to increase the overall aid amount. Ms. Bodensteiner stated that some schools are advocating a limit on the number of counters for each sport, although Notre Dame does not believe that more regulation is the answer.

Professor Brockmole observed that some of the strategies other institutions are using to gain a competitive advantage may require that Notre Dame fundamentally shift the way it operates in order to compete. Ms. Bodensteiner agreed. She noted, however, that at the end of the day, Notre Dame is still offering roughly a $70,000 value, when one factors in summer school. When you put these numbers together for a recruit, it is pretty compelling. We are not going to be able to pull back the other schools from playing games, so we really have to tout the value we are offering.

Mr. Swarbrick noted that he is increasingly finding himself in the deregulation camp. So many university-wide decisions are being pushed by athletics at many institutions. Why not deregulate and let institutional differences occur? We are trying to keep a level playing field, but it's not going to happen.

Returning to her report, Ms. Bodensteiner provided data on the number of student-athletes that complete the Free Application for Federal Student Aid (FAFSA) and the number that receive Pell Grants. Ms. Bodensteiner indicated that there has been a misunderstanding that student-athletes on full scholarship do not need to apply for Pell Grants. When the Compliance Office educated student-athletes on the importance of applying, Notre Dame experienced a high number of student-athletes applying and not receiving them. As a result, the Compliance Office education now targets lower income students. Last year, Notre Dame's student-athletes qualified for a total of $277,000 in Pell grant funds.

Ms. Bodensteiner reviewed the source and distribution of money in the Student Assistance Fund (SAF). In sum, through March Madness, the NCAA receives billions of dollars, which the NCAA redistributes to member institutions. The SAF is one form of redistribution. This year, Notre Dame received $667,000 (including a rollover from the previous year). The amount an institution receives depends on: (1) the number of sports a

school sponsors; (2) the amount of athletics aid a school awards; and (3) the number of student-athletes who are Pell Grant recipients. This distribution formula is unique in that it rewards what should be rewarded—broad-based participation. The intent at Notre Dame is to get the SAF funding into the hands of student-athletes with financial need. The Compliance Office uses the funds predominantly to cover summer grant-in-aid, and for other academic needs. In addition, every Pell Grant recipient receives a debit card for $600. Funds can be used to buy, for example, an interview suit or winter jacket. The Compliance Office can also use SAF funds to assist with trips home for Pell Grant recipients, or to assist with travel when catastrophic situations arise. If student-athletes come to school uninsured, the Compliance Office can use SAF to pay their insurance premiums ($2300 a year).

Professor Bellia asked Ms. Bodensteiner to comment on how our use of this fund compares with that of other institutions. Ms. Bodensteiner responded that our use compares favorably with other institutions. Some institutions do not seem to use it appropriately. The fund is not supposed to be used for skill-related costs, but some schools have used it to pay premiums on disability and loss of value insurance, which can range from $10,000 to $100,000 plus per student-athlete. One institution spent $100,000 from a $300,000 SAF for one student-athlete. Should we be spending any institutional funds to pay those premiums? Doing so has huge gender equity implications, and a school could deplete the entire fund on a couple of student-athletes. Student-athletes are well-educated about SAF now. The compliance office has 10-15 students a day come in with SAF questions. Mr. Brockmole asked what graduate school fees SAF pays for. Ms. Bodensteiner stated that SAF can be used to pay up to $1000 per student-athlete for any fees related to graduate school, including standardized test registration fees or prep courses/books, application fees, interview expenses, etc.

Ms. Bodensteiner invited Mr. Moberg to present information on recruiting. He first discussed the difference between official and unofficial visits. Official visits occur when we bring in high school seniors (in men's basketball, juniors and seniors) and pay for their expenses over a 48-hour period. Unofficial visits can occur earlier, but we cannot pay any expenses; we are allowed only to provide three complimentary tickets. We see a much higher number of unofficial visits than official visits, particularly in sports that recruit early (for example, women's lacrosse, women's soccer, and volleyball).

Ms. Bodensteiner indicated that the real problem is that 14-15 year olds are verbally committing in some women's sports. The culture of the sport and nature of recruiting is moving the timetable earlier and earlier. There are concerns about young students (14- and 15-year-olds) staying in our dorms during campus visits, and Ms. Bodensteiner's staff is working closely with Student Affairs staff on this issue.

Ms. Bodensteiner provided an update on waivers and violations. We were down to 17 waivers last year. Historically, the number has been higher, but the vast majority were for trivial reasons (e.g., sending flowers to prospect who was injured). Many of these rules have been eliminated; as a result, many of the situations that used to require

waivers no longer do. Ms. Bodensteiner also indicated that initial eligibility waivers are handled through her office. For initial eligibility, student-athletes have to meet sliding scale of GPA, test scores, and core credits. If a student-athlete falls short in any of these categories, a waiver is needed. Ms. Vining-Smith indicated that core course waivers make up the majority of our initial eligibility waivers. For example, we may find out that a student-athlete has 15 instead of 16 core courses and file a waiver.

Ms. Bodensteiner noted that 67 percent of our NCAA violations are in recruiting, which is common. For example, Fighting Irish Media might produce a video, and accidentally show a prospective student-athlete in it, which is a violation. The vast majority of our rules education focuses on recruiting. There are three ways we might discover a violation: monitoring, self-reporting, or a third party. We have good balance between self-reporting and monitoring. If those categories are out of proportion to one another, we should be concerned. Ms. Bodensteiner also explained the recent changes in leveling of violations, which replaced the traditional major/secondary labels.

Professor Kelly asked why the violations in football were higher than in other sports. Ms. Bodensteiner replied that more violations are to be expected, because of the high number of coaches and student-athletes in the program, and because third parties are more likely to report a violation in football than in other sports. There are no current trends that concern us, and Ms. Vining-Smith works closely with the football program. Mr. Swarbrick added that if you look at the number of violations in relation to the amount of recruiting activity, the number is actually low.

Professor Bellia thanked Ms. Bodensteiner and her staff for the informative report.

6. Introduction of Mike Litzinger, Women's Swimming and Diving Head Coach

Professor Bellia introduced Mike Litzinger, new head coach of women's swimming and diving. She invited Ms. Vining-Smith, sport administrator for women's swimming, to discuss the search process. Ms. Vining-Smith noted that Mr. Swarbrick gave her the freedom and resources to run a thorough search. The unusual timing of the search gave her an opportunity be very deliberate about it. Coach Litzinger's name came up in every circle, and fortunately he was interested in the position.

Coach Litzinger was previously the associate head coach at the University of North Carolina and head coach at the University of Utah. Coach Litzinger indicated that feels very fortunate to be at Notre Dame and working with the student-athletes here. His father was a professor at St. Bonaventure and the University of Wisconsin, among other places, so he has never left a college campus. He is happy to be able to raise his children on a campus, especially a faith-based one. His experience at St. Bonaventure instilled great values, and he sees those same values in the student-athletes here, and in the people he works with daily. We have something that other state schools do not have. There is something special about Notre Dame. His uncle is a 1973 graduate of the University.

Professor Bellia asked what major challenges face the program. Coach Litzinger noted that, coaching-wise, he has seen it all. He has rebuilt programs. The women on the team have gone through difficult times and inconsistencies. The challenge is establishing baseline consistency, leadership, and excitement about the sport again. He wants to develop great people, and at the end of the day, it is about excellence and serving others. The members of the team are high achievers, and the academic piece is huge for him. The team will be successful. Recruiting has wrapped up for this year, and it is in the top 5-8 of recruiting classes in the country. The Admissions Office has very been supportive.

Professor McDowell commented on how stressful the transition is for first-year students. How do student-athletes manage? Coach Litzinger noted that he and his staff never talk about just meeting the minimum. Student-athletes need to be able to manage a high level of dedication to their studies and other areas. The biggest challenge to any new student-athlete is the pace of life picking up dramatically. There is definitely a learning curve, but we have great resources in place. Academic advising is as good, or better, than anywhere he has been. Student Welfare and Development does a great job. The challenge is how student-athletes use the available resources.

Professor Bellia asked whether his student-athletes face conflicts between class choices and practice times. Coach Litzinger replied that the team practices from 6-7:45 am. If they practice in the afternoon, it is from 4-6pm. They do run into conflicts with some classes, but they volunteer to make up the practices. It is a really good sign that they are staying on top of their studies. Divers are on their own schedule. Cross-over in practice times limits pool space and distance. Men's swimming, women's swimming, and the diving programs work closely to make the facility work. One drawback is that the swimmers do not interact as much with the divers as he would like.

Ms. Vining-Smith commented on the fact that it has been a difficult few years for women's swimming. She sees the student-athletes enjoying their sport again, which is exciting to see. The student-athletes are working very hard and are excited to see results in meets. There is a different vibe around the team.

Coach Litzinger noted that his practices are always open; he invited members to come by any time. Professor Bellia thanked Coach Litzinger for visiting with the board.

7. Developments in Intercollegiate Athletics

Professor Bellia invited Mr. Swarbrick to comment on developments in intercollegiate athletics. Before turning to that topic, he complimented the Compliance Office staff on its leadership in the national landscape, and he complimented Ms. Vining-Smith on her leadership in the coaching search.

Mr. Swarbrick briefly touched on three topics:

- The 9th Circuit's Decision in *O'Bannon* earlier in the week. The outcome was perhaps the best that one could hope for, given the circumstances of the case. He

offered two large takeaways: (1) The NCAA is subject to antitrust laws. This was a good ruling, and the right one. It was not a surprise. (2) The Ninth Circuit essentially found credible the defense that amateurism is a worthy goal that NCAA could pursue, and could adopt rules to maintain the amateur model of sport. The trial court had concluded that the NCAA could not prevent institutions from adopting a deferred compensation scheme, under which institutions could hold $5,000 in trust to distribute to student-athletes in compensation for name, image, and likeness rights. On appeal, two judges rejected the trial court's approach. The outcome was generally good news for intercollegiate athletics. Professor Brockmole asked whether other cases will be filed to create circuit splits. Mr. Swarbrick acknowledged the potential for a split, but stated that the ruling was nevertheless helpful. Between this and the NLRB case (disallowing unionization), the climate feels better than it did a few months ago. There is a now a better opportunity to move forward. Professor Bellia noted that Associate General Counsel Brandon Roach would be attending the November meeting to provide an update on *O'Bannon* and other legal issues.

- Father John's New York Times (NYT) story: Father John's decision to talk to NYT was very important. No President wants to be identified with athletics; he was very courageous to say "I want to do this." It is important for Notre Dame to be clear about how it approaches athletics. The execution of the story was really good, in that the reporter came out to spend a significant amount of time here. Although the story engendered a lot of cynical response, as we knew it would, he feels lucky that Father John was willing to do this interview. Father John experienced an outpouring of support from colleagues, as did Mr. Swarbrick. Ms. Firth commented that Father John hoped that the story would draw other leaders into the conversation. It has.

- D-IA Athletics Directors' Association Meeting: Mr. Swarbrick noted that his staff members are redoubling their efforts to lead. He is the chairman of the Division I-A Athletic Directors' Association. He views this role as an opportunity to engage practitioners. The Association has hired a new executive director, Tom McMillan, a former Academic All-American, All-American, Rhodes Scholar, three-term congressmen, and 11-year NBA veteran. At the Association's September meeting, Ms. Bodensteiner organized sessions at which the attendees took on the great subjects of the day. The goal is to make the Association a forum where decisions can be made, with institutions and practitioners contributing to the discussions and the legislative process.

Professor Bellia thanked Mr. Swarbrick for his report. The meeting was adjourned for subcommittee discussions.