Faculty Board on Athletics
Meeting of October 11, 2013
9:00 am-11:00 am, **500 Main Building**

Members present: Patricia Bellia (Chair), Ann Firth, John Gaski, Patrick Holmes, Dan Kelly, Thomas Noble, Robin Rhodes, Richard Pierce, Michael Stanisic, Christopher Stewart, Jack Swarbrick, Ann Tenbrunsel

Members excused: Umesh Garg, Erin Hoffmann Harding

Athletics Liaisons: Beth Hunter, Jill Bodensteiner

Observers and Guests: Marianne Corr, General Counsel; Heidi Uebelhor, Director of Compliance; Brent Moberg, Director of Compliance; Tracey Thomas (Recorder)

1. Call to order and opening prayer

Professor Patricia Bellia called the meeting to order, and Professor Thomas Noble gave the opening prayer.

2. Minutes of September 6, 2013

The September 6, 2013, meeting minutes were approved unanimously subject to technical corrections by Student Welfare and Development.

3. Chair's Announcements

Professor Bellia approved three schedules, all of which were in compliance with the class miss policy. The approvals included indoor track and field, men's and women's fencing (fall), and men's lacrosse. Professor Bellia also approved a slate of captains for women's swimming.

Professor Bellia reported on the document detailing four academic initiatives to address concerns about at-risk student-athletes. After the Board endorsed the document at the September 6 meeting, Professor Bellia shared the document with Father Jenkins, who expressed his gratitude for the work of the Board. Implementation has already begun. The Office of Academic Services for Student-Athletes, the Department of Athletics, and Professor Bellia are more actively coordinating concerning at-risk student-athletes, as covered by #3. Professor Bellia and Mr. Holmes are meeting more systematically with coaches, as covered by #4.

Professor Bellia reported on a two-day meeting with ACC Athletic Directors, Faculty Athletic Representatives and Senior Women Administrators, which Mr. Swarbrick, Professor Bellia, and Ms. Conboy all attended. All said the meetings were productive, and they were impressed by the leadership of the ACC. The agenda of most meetings was dominated by discussion of NCAA governance reform. Discussions of governance reform are expected to extend for several months, with the input phase expected to last at least through November,

followed by more focused discussions in January at the NCAA Convention in San Diego, with the intention of producing a useful outcome in July of 2014.

4. Review of Freeh Report: Protection of Children Policy—Marianne Corr, General Counsel

Professor Bellia welcomed Marianne Corr, General Counsel, to report on Notre Dame's review of the Freeh Report and ongoing implementation of recommendations made by the review committee. The Freeh Report is the independent report by former FBI Director Louis Freeh and his law firm into the actions of Penn State surrounding the child abuse committed by former football coach Gerry Sandusky. When the Freeh Report was issued, Father Jenkins convened a committee, chaired by John Affleck-Graves, to review the Freeh report with an eye to evaluating the applicability of the report's recommendations to the Notre Dame campus.

The committee did a thorough review of the report and made recommendations. Ms. Corr noted that Notre Dame measured very strongly against the recommendations of the report, indicating that substantial procedures and policies have already been established at Notre Dame that encompass the protection of children on the campus. Notre Dame was one of the few institutions that already had a Protection of Children policy, and the General Counsel's office received numerous calls from other institutions for access to that policy. One of the recommendations of the Freeh Report review committee was that the University as a whole review its policies and procedures with regard to minors on campus. Father Jenkins asked Ms. Corr to chair a committee to conduct that review. As this overall University review proceeded, a separate Department of Athletics review, chaired by Jill Bodensteiner, was considering the Freeh Report's recommendations on an operational level. Ms. Corr pulled her review committee together with a subgroup of Ms. Bodensteiner's group that was focused on the protection of children section of the Freeh Report. The review culminated in a proposed revision of Notre Dame's Protection of Children Policy.

The proposed Protection of Children Policy was approved by the Policy Committee on October 9, 2013; it will undergo two more levels of review, with the President's Leadership Council and Father Jenkins, before being finalized. Ms. Corr described it as "a good, practical policy." The policy addresses behavioral expectations; it sets forth a duty to respond; it identifies the scope of and protocol for background checks. In addition, it identifies major campus units that will be required to develop operating procedures manuals (includes Admissions, Athletics, the Center for Social Concerns, and the Robinson Center).

One outcome of the work was a survey of the campus to identify all types of university activities that affect minors; the result revealed a surprising number of such activities. The survey highlighted the need to develop centralized processes for the protection of children under a wide range of circumstances, such a natural disaster, physical plant crises, food-related situations, etc. The mandated operating manuals will provide centralized, reasonable, and practical processes for all anticipated situations. The General Counsel's office will offer assistance in the development of these manuals. In addition, the committee will request that the Academic Council consider adopting a policy for secondary units on campus that occasionally sponsor minors.

Professor Noble asked if there is data available to indicate the scope, nationally, of the serious problem uncovered at Penn State. Ms. Corr, noting that there has not been a comprehensive study, said that Notre Dame is focused on instituting best practices, derived in part from benchmarking of peers. Risk management industry experts, for instance, suggested the campus wide survey as part of the effort to broaden the focus out to all areas in which children might be vulnerable.

Professor Bellia thanked Ms. Corr for this informative report.

5. Introduction to Compliance and Policy Management Center of Excellence

Professor Bellia noted that the recent review of the Department of Athletics' organizational structure resulted in the reorganization of the Department into customer-focused "centers of excellence." Jill Bodensteiner serves as the head of the Compliance and Policy Management center for excellence. Professor Bellia welcomed Ms. Bodensteiner and some of her staff and invited Ms. Bodensteiner to provide an overview of her unit's scope and focus, to address ongoing NCAA legislative issues, and to present the Compliance Office's annual report.

a. Compliance and Policy Management Center of Excellence
b.

Ms. Bodensteiner introduced Heidi Uebelhor and Brent Moberg, two of the five other staff members in the Compliance Office (http://ncaacompliance.nd.edu/contacts.shtml). Peer institutions have about six staff in Compliance. Ms. Bodensteiner complimented the hardworking staff. Each staff member has a two-layer assignment. One layer involves certain substantive specialty areas. For example, Mr. Moberg's specialty areas include recruiting issues and summer camps; Ms. Uebelhor's include rules education and student-athlete eligibility. The other layer involves being the primary compliance contact for a number of teams, to provide a "one-stop shop" for coaches with questions and concerns. This layer enables each staff person to be "embedded" in the sport, which has multiple benefits for the team and the Compliance unit.

A new function of the center of excellence is providing policy management. This task was underserved prior to the reorganization. Modeling new practices on those implemented in the General Counsel's office, Ms. Bodensteiner has ordered a cataloguing of all policies, which will then be put on a review schedule. This process will facilitate the development of a training schedule for employees. The office would like to make effective use of technology to provide access to the policies.

Ms. Bodensteiner's new duties also include providing oversight for the sport administrators program. Notre Dame's program is unique in that there is one administrator for each of the 22 sports teams; many of Notre Dame's peers share the administrator jobs among four or five people. Notre Dame's structure improves oversight and offers continuity, as well as an increased opportunity for professional development to the administrator.

Ms. Bodensteiner described the culture of the Compliance Office as "open." She noted that the office is "a hang-out spot" for student-athletes; the staff are not viewed as "the police."

The opportunities for connection are numerous; a member of the staff, for instance, interacts with a member of the basketball staff daily. Jen Vining-Smith, who serves as the Compliance point of contact for football, holds regular "office hours" in the Guglielmino Athletics Complex, which have been well received. The office's philosophy of working for the best interest of the student-athletes is evident. The office inculcates the duty to "follow the rules." Moreover, it is made clear that "this is the right thing to do."

c. NCAA Reform Issues

d.

Ms. Bodensteiner reviewed the ongoing reform efforts of the NCAA, beginning with the President's retreat held by NCAA President Mark Emmert in August, 2011. President Emmert created new working groups and charged them, as well as certain existing committees, with reviewing the rules governing aspects of collegiate athletics. Ms. Bodensteiner summarized three areas of interest: the work of the Enforcement Working Group; the work of the Student-Athlete Well-Being Group; and changes to the athletics certification process.

The Enforcement Working Group determined that the NCAA enforcement process "was not working." The Enforcement Working Group recommended an overhaul; while a complete overhaul has not occurred, the NCAA has implemented some useful "tweaks" to the enforcement process. While in the past, institutions could be charged with secondary and major violations, the new procedures divide violations into four levels, 1, 2, 3, 4, with 1 signifying the most serious violation. The level 4 violations are handled within each collegiate conference, while 1, 2, and 3 are handled at the NCAA level.

In addition, the Committee on Infractions now includes members with campus Compliance experience, including former coaches. There will be an increased reliance on summary disposition as well.

Another change includes a renewed enforcement of a rule on the books, the rule holding head coaches responsible for any and all actions of the staff. This change will necessitate successful education to inform and train coaching staffs to the new level of expectations. This fall, Father Jenkins has established his expectations for coaching staff responsibility, and Mr. Swarbrick has followed this with an all-head coaches meeting, supporting a culture of candor, where people "feel comfortable to do the right thing."

The Student-Athlete Well-Being Group put forward two major initiatives that were highly contentions for NCAA member institutions. First, the group endorsed multi-year athletics aid. Scholarships previously could be offered for one year only; there could be no multi-year scholarship offers. The new initiative permits multi-year scholarships. This initiative survived an override vote and is now in place; however, no institution has fully adopted a multi-year option. At Notre Dame, multi-year scholarships for "head count" sports, in which scholarship student-athletes receive a full grant-in-aid, have a strong appeal. For the "equivalency sports," multi-year scholarships are more complicated, since these sports are permitted to offer partial scholarships. Ms. Bodensteiner noted that a one-year scholarship can be appealing because family economic circumstances can change. Since an institution that promises a multi-year

award cannot revoke it, a multi-year scholarship might adversely affect a student-athlete if a significant change in family circumstances occurs.

The second contentious issue involved a proposal to provide student-athletes with a "miscellaneous expense allowance" of up to $2000 per year to meet an institution's full cost of attendance. The initiative caused significant concerns among member institutions in light of the major financial burden the initiative would impose. In addition, there were concerns about implementation. In theory, the miscellaneous expense allowance was designed to assist the poorest students. If provided to a Pell Grant recipient, however, the allowance would displace federal assistance. This initiative is currently tabled but not dormant.

The NCAA is also revamping its long-standing certification program. In the past, institutions have undergone NCAA certification every ten years. During Notre Dame's last accreditation process, in 2003-04, 800 staff and faculty member hours were involved. This was typical of other institutions, producing many complaints about the process. The NCAA has placed a moratorium on the certification process. In its place, the NCAA has created the IPP—Institutional Performance Program. Under the guidance of Troy Arthur, the NCAA is planning to repackage in a workable technology a massive amount of data that institutions provide to the NCAA on a yearly basis. The dashboard of the IPP has four categories: academic, fiscal, equity and inclusion, and student athlete experience. There are 68 data points to be viewed, enabling institutions to compare themselves with other institutions. The data will be updated annually. Since this program is new, there will be ongoing evaluations of its effectiveness and utility to the institutions.

c. Annual Compliance Report

Ms. Bodensteiner reviewed the confidential Compliance Annual Report. The report compiles data on grants-in-aid, non-renewal of financial aid, federal aid levels, SAOF (Student-Athlete Opportunity Fund) distribution, recruiting visits, rules violations, waivers of NCAA rules, rules education programs, and demographics of the university's sports teams in 2012-2013.

Ms. Bodensteiner reported that a surprising number of student-athletes do not know they are eligible to file a FAFSA form, which affects the availability of Pell Grants. Compliance continues to develop education programs to communicate this information. Pell Grant recipients head the list of student-athletes to whom Compliance makes outreach efforts to provide SAOF funding for items such as health insurance and hall fees. Summer school fees account for a large portion of Notre Dame's SAOF. In 2012-2013, Compliance used SAOF funds for a pilot program providing 100 iPads for student-athlete use. Funds were also used to provide a laptop to any student-athlete who was unable to provide one for him/herself.

Ms. Bodensteiner commented on the thorough oversight of recruiting provided by Mr. Moberg and intern Alex Stone. This is a crucial area for compliance oversight.

Of the NCAA violations recorded by Notre Dame, it was noted that the majority were "self-reported." There are many systems in place to help the Compliance staff and the coaches to self-monitor. Notre Dame's level of violations measures favorably against the ACC

institutions' violation levels. Notre Dame also strongly advocates for NCAA waivers for student-athletes and has a good success rate.

The Compliance office has also made great strides in rules education; members were invited to visit the website, where some excellent videos have been posted. There has been an 88% increase in visits to the website, and outside entities have complimented the effectiveness of the education tools. Boosters in particular are making beneficial use of these tools.

Professor Pierce asked about the effect on Compliance of the revelation of a tutoring scandal at the University of North Carolina (UNC) last year. Ms. Bodensteiner noted that every tutor is individually trained by her and/or Ms. Uebelhor. She complimented ASSA for the access that has been permitted, as Compliance strives to convey the significance of rules in this area. Compliance and ASSA have a close and strong working relationship, as both work to promote the welfare of student-athletes. By way of illustration, those responsible for certifying student-athlete eligibility meet regularly in person to confirm the eligibility status of individual student-athletes.

Mr. Holmes confirmed the effective working relationship of the two offices and noted that Notre Dame's processes for monitoring academic integrity are strong; Notre Dame has been consistently ahead of any crisis.

Professor Bellia offered to forward the Rawlings Report on the UNC scandal to members. She noted that at the ACC meeting, there was discussion of two issues connected to academic integrity. First, should academic support staff contact be permitted to contact student-athletes' faculty directly? While some ACC institutions do not permit this, at Notre Dame ASSA staff members do have such contact. Second, when does student-athlete "clustering" in a course become problematic? Mr. Holmes reported that because of the limited window for enrollment for student-athletes, the limited time frame for possible courses, and the fact that student-athletes compose 8% of the student population, some clustering is unavoidable.

Mr. Holmes also noted that ASSA at Notre Dame is part of the Provost's office, which is atypical. That positions the office firmly on the academic side of the University, with the support of the academy for its work.

Professor Noble asked for more information about the topic of "paying student-athletes" as it pertains to Notre Dame. Ms. Corr reported that the General Counsel is monitoring the O'Bannon case, concerning the use of a student-athlete's image. Mr. Swarbrick noted the University's concern. He reported that Notre Dame asks for and receives waivers from its student-athletes, and no student-athlete image is used without direct permission. He expressed satisfaction with the current practice; he noted that problems for college athletics are "long term." He named two major risks:

1. A triumvirate of legal issues: the image use issue; limits on scholarships as restraint of trade; legal suits arising from concussions.

2. State of the NCAA: the NCAA is in the midst of a "robust public conversation" about the role of the NCAA. Public opinion has been dramatically shifted by such narratives as O'Bannon, Johnny Manziel, and a Sports Illustrated 5 part series on problems at Oklahoma State. The NCAA is ill-equipped to respond effectively to these ongoing cases.
3.

It is not clear where the reform process will go and what will be the impact on the FBS schools. He welcomed the increased grouping of like institutions in the decision making process, which helps to reduce the competitive equity issues.

Professor Bellia thanked Ms. Bodensteiner for her report and for her ongoing excellent management of the Compliance Office.

6. Report on Student-Athlete Drug Testing Program—Ann Firth

Ann Firth, chair of the University's 2013-2014 Drug Testing Oversight Committee, reported on the work of the committee. Father Jenkins mandated a complete review of the program in the 2012-2013 academic year, which resulted in a new policy for drug testing of student-athletes; this policy was approved in May 2013. Ms. Firth announced the new committee members. Professor Umesh Garg, who represented FBA on the old committee, will continue his outstanding work on the new committee. In addition, the committee consists of Jill Bodensteiner, Compliance; Dr. Kevin McAward, University Physician; and Dr. Sue Steibe-Pasalich, of the University Counseling Center. Dr. Jennifer Malcolm was named Drug Testing Coordinator. This marks one distinction from the old program: the coordinator is no longer a member of the committee, which delineates the distinctions of responsibility for each more clearly. The Appeals Board includes chair Tricia Bellia, Brandon Roach, and Christopher Stewart (graduate student representative).

Ms. Firth reported on the 2012-2013 testing cycle under the old drug testing policy. Nine cycles of hair testing were administered in that period. Of the 720 student-athletes, 360 were randomly tested during these nine cycles. Every student on every team, and all cheerleaders, is eligible for testing in every cycle. Thirty-one student-athletes were randomly tested more than once. Of the 360, four received positive drug tests. Two resulted from pain medications prescribed for post-operative pain relief, so those students received a medical exception. Two positives resulted from detection of the active ingredient in marijuana.

The new policy addresses what was considered a very abrupt escalation from the first to the second punishment meted for a positive test. The new sanctions are considered more nuanced (see page 9), with a more useful and appropriate progression of sanctions for the student-athlete. The sanctions aim to support both deterrence and education.

Ms. Firth, noting that this is a transitional year for the policy, said the overhaul was "a very positive step." She expects to deliver a more robust report at the end of the academic year. Ms. Firth expressed appreciation for the strong working relationship between the committee and the Athletics Department; Ms. Bodensteiner is the "point person" for the committee in the Athletics Department. The new Appeals Board is a valuable addition to the policy. The

importance of educational initiatives is conveyed through the new policy. A significant area for education immediately involves the use of supplements by student-athletes. Students are unaware of the possibility of banned substances in supplements, which are often advertised as "natural." She affirmed the committee's commitment to strong education of student-athletes from the time the letter of intent is signed, in terms of behavior and consequences. An additional problem that calls for strong educational leadership is the campus use of the prescription drug Adderall, which is used as a stimulant by students across the campus population. The committee is aware of this pressing issue.

Ms. Bodensteiner remarked that a side benefit of the new policy is the "buzz" created among stakeholders, raising awareness of the rules and the significance of the policy. Mr. Swarbrick thanked Father Jenkins for his leadership on this policy, and Ms. Firth and Professor Bellia (who chaired the review committee) for their work. He said "the system was broken" and required reinvention. Notre Dame now has "the gold standard" of drug testing policies.

Professor Dan Kelly asked about the relationship between individual team rules and the University's drug policy. Ms. Bodensteiner noted that Notre Dame has a unique situation with "three buckets of consequences": team, the drug policy, and University Standards of Conduct. The committee is "acutely aware of the intersections."

Professor Bellia thanked Ms. Firth for her report.

As time had expired, the meeting was adjourned.