

**Faculty Board on Athletics
Meeting of October 14, 2009
Monogram Room**

Members present: Patricia Bellia (Chair), Stephen Fallon, Thomas Frecka, Umesh Garg, Patrick Holmes, William Kelley, Tracy Kijewski-Correa, Mary Ann McDowell, Richard Pierce, Clark Powers, Robin Rhodes, Kevin Richards (student representative), Frances Shavers, Jack Swarbrick

Member absent: Rev. Mark Poorman, C.S.C.

Board Liaisons present: Missy Conboy, William Scholl

Observers and Guests: Marianne Corr—Vice President and General Counsel; Muffet McGraw—Head Coach, Women’s Basketball; Dr. James Moriarity—Head University Physician; Tracey Thomas (Recorder)

1. Call to Order and Opening Prayer

Prof. Bellia welcomed members and guests and invited Prof. Stephen Fallon to deliver the opening prayer.

2. Minutes of September 14, 2009 Meeting

The Board unanimously approved the minutes of the September 14, 2009 meeting.

3. Update on Women’s Basketball Program—Coach Muffet McGraw

Prof. Bellia welcomed Coach Muffet McGraw, who had been invited to provide an update on the women’s basketball program.

Coach McGraw began by praising the recent renovation to the basketball arena; the first practice in the new space will be this Saturday, October 17, 2009. She said the women’s basketball team will likely be ranked in the top ten as a preseason ranking. They welcome two outstanding freshmen, Kaila Turner, a guard from the Chicago area, and Skylar Diggins, a South Bend native and guard.

Coach McGraw noted that one difficulty for women’s basketball has been an inability to schedule a full complement of the permitted number of games due primarily to restrictions on available home dates in December. While an away game might be possible, the team strives not to travel because of academic needs during the reading period and finals. This year the team will travel to the Virgin Islands over Thanksgiving for a tournament; there they will play three games in three days, without which the schedule would actually be short an additional game. Coach McGraw said she is on the NCAA Division I Women’s Basketball Issues Committee, where there is an initiative being considered to reduce the number of games allowed, as other teams are experiencing the same difficulties. She pointed to the goal of winning at least 22 games heading into tournament play, and said that number can be hard to reach under these scheduling difficulties.

Prof. McDowell asked if there is a nearby arena in which a game could be scheduled, to ease the multi-sport crowding; she mentioned the successful experience men's basketball had playing in Fort Wayne last year. Coach McGraw agreed that was a good experience, but said that in fact the away schedule was easily arranged; home games present a bigger challenge. She explained some of the growing pressures on scheduling home games, as teams are increasingly willing to offer not only room and board as incentive but also substantial cash payments to visiting teams. Notre Dame has been able to resist this practice, but it has affected the home game scheduling. She said this is a price to be paid as the women's basketball team has gotten steadily stronger. Ms. Conboy agreed that mid-major teams are looking for budget support and making revenue demands of Division I teams as part of the agreement to play at those schools.

Prof. Fallon asked if the scheduling difficulty is primarily a problem of these external factors or if FBA policies also contribute to the difficulty. Coach McGraw said that the restriction on playing during study days adds to the difficulties. While she would agree that most of the study days are needed for academics, she suggested that the first study day of the exam period might be expendable. She firmly supports the prohibition on playing games during finals, although she noted that many other institutions do not have this rule. Prof. Bellia said that the scheduling difficulty will be examined at the next FBA meeting, noting that the men's basketball team faced a similar issue for several years and was regularly approved to play on a study date. The Board needs to examine its policy and decide whether a policy change is warranted or whether it should continue with the ad hoc, individual instance approvals.

Coach McGraw next discussed the problem of a limit on summer school credits. Recently two students have attended the summer London program which offers a terrific opportunity for athletes to gain foreign study and travel experience. Students earn three credits during this short session. The problem for the women's basketball program is that that student spending the remainder of the summer at Notre Dame taking classes and working on training can only earn three more credits. Coach McGraw said this is an inefficient use of team funds, in room and board costs, to earn only three more credits. Prof. Richard Pierce noted that a proposal to change the London program to a longer, eight-week program might make it impossible for student-athletes to avail themselves of this option.

Prof. Bellia asked Coach McGraw for an update on the women's basketball team's summer 2009 foreign tour. Coach McGraw said that the ten-day trip, which included games in France and Italy, was an amazing cultural experience for all team members. She described the invaluable opportunities for team bonding and for the coaches to interact with team members in fresh settings.

Members asked Coach McGraw several questions concerning the approach of the coaching staff to academic integrity issues. Coach McGraw said that integrity is "extremely important" to the women's basketball team. Coaches impress upon team members that integrity is more than just an NCAA rule. She said that an emphasis on recruiting integrity makes the daily enforcement easier, and noted that there had been only one violation in the past 20 years. Prof. Kelley noted that coaches are not notified about academic violations until a second offense, thus possibly masking some instances of first time violations. Coach McGraw said this issue of

communication is very important to her; she would favor being informed earlier of any academic violations. In response to a question from Prof. Pierce, she noted that there is no formal policy for athletes to report honor code violations to the coaching staff. Coach McGraw observed, however, that because of a strong relationship with rectors, the coaching staff is on top of residential life issues almost before they happen.

4. Follow-Up on Drug Testing Program for Student-Athletes—Dr. James Moriarity, head University physician

Prof. Bellia said that she had invited Dr. Moriarity to give a presentation on the drug testing program as the Board, at its April 2009 meeting, had raised questions about the scope and focus of the program and about the possibility of racial bias in the kinds of tests administered.

Dr. Moriarity gave a brief history of the University of Notre Dame's drug testing program, which began in the 1980s and assumed its current form in 2002, and discussed how Notre Dame's program related to the NCAA program. In Division I, the NCAA currently conducts urine tests for steroids on a random basis, with 48-hours' notice during academic terms year-round. Eighteen to twenty-four football players plus four to eight athletes from other selected sports are tested. The selection of athletes is based on NCAA criteria. The administration of an NCAA test may be appealed, but the result may not. A positive test results in a one-year suspension; a second offense results in a loss of all athletic eligibility.

Dr. Moriarity said this protocol "put sharp teeth in the NCAA policy," and put every Division I team on the same playing field. According to Dr. Moriarity, the NCAA process largely eliminates the need for universities to conduct random testing for steroids. Nonetheless, Notre Dame still administers urine tests for every football team member as well as members of teams in sports in which there is a trend toward high steroid use, including baseball and cheerleading (statistically, male cheerleaders show a high use of steroids). In part, the rationale for this approach is that a majority of positive tests result from athletes' use of tainted supplements rather than from illegal sources. Because the NCAA testing procedure may catch an athlete who thinks he or she is using a permitted substance, Notre Dame uses its steroid testing as a screening device to identify and educate those athletes.

Dr. Moriarity then explained that hair testing is used to detect any other illicit drug use by student-athletes. Dr. Moriarity indicated that the hair test is used because, from an administrative perspective, it affords a window of opportunity to test that does not exist with the urine test. The hair test can detect drug usage in the previous three months. Under the University drug testing policy, once notified, a student-athlete has a two-week window within which to submit to the hair test. According to Dr. Moriarity, because the existence of drug residue in hair cannot be altered in the two-week time span, an athlete cannot manipulate the test. In contrast, Dr. Moriarity stated that substances can be easily masked in a urine test if the student is given sufficient warning. Further, Dr. Moriarity stated that the only way of guaranteeing the production of a clean urine sample is to watch the actual production of urine, an embarrassing and time-consuming process for all involved.

According to Dr. Moriarity, the question of whether there is a racial bias in hair testing has been examined by a number of courts, all of which have concluded that there is no racial bias. Dr.

Moriarity suggested that while there may be evidence that darker colored hair does have a higher affinity for uptake of drug residue than does lighter colored hair, the test never provides a false positive. That is, it will not misidentify an individual non-user as a drug user because of dark colored hair. Dr. Moriarity indicated that in heavy drug users, dark colored hair may accumulate heavier evidence over time; in single use occasions, dark hair may retain slightly more evidence than light colored hair, but very minimally. According to Dr. Moriarity, because the test is looking for evidence of use rather than a quantity of evidence, any difference attributable to the tendency of dark colored hair to take up more drug residue does not harm an individual.

Prof. Rhodes asked about the process used by Notre Dame. Dr. Moriarity explained that of the 700 student athletes, 48 are randomly chosen for testing every two weeks, of which 40 are actually tested. When a positive test results and a student is ineligible for competition, that student is out of the testing pool, but all athletes go back into the pool as soon as eligibility is restored. At Notre Dame, athletes have an extremely high probability of being tested in their four years of participation; in fact, there is a high probability of being tested more than once. Prof. Kijewski-Correa asked about institutional procedures if drug use other than steroids is detected. Dr. Moriarity said he is given all information on confirmed drug use, and he then informs the chair of the drug testing committee and the athletics designee. The committee's procedures for declaring a student ineligible are separate from the Residential Life procedures for non-athlete offenders.

Prof. Fallon asked how an athlete is tested who makes a style choice to shave head and body hair. Dr. Moriarity said students are offered several alternatives of body materials to test, including fingernails, or the opportunity to grow back head hair for testing. Because the test picks up drug use in the past three months, this opportunity does not defeat the testing intention. Dr. Moriarity noted that deliberate attempts to subvert or avoid a drug test count as violations of Notre Dame's institutional policy and are treated as positive test results.

Professors Rhodes and Frecka asked if results of Notre Dame's own testing protocols must be reported to the NCAA. Dr. Moriarity said the University tests for drugs as an institutional policy, and there is no requirement to notify the NCAA of institutional policy outcomes. Dr. Shavers noted that the University has an extensive testing program where some other institutions have no programs at all. Mr. Swarbrick confirmed that at virtually no other institution is in-house non-steroid drug testing being done.

Dr. Moriarity further explained that the policy on drug use at Notre Dame allows for one infraction with a less severe penalty. [The student generally receives a drug evaluation and mandatory treatment recommendations; if the student complies there is no ramification for eligibility.] With the first infraction involving a steroid, the athlete is suspended from play and practice until the drug clears the system. Frequent testing is administered to determine when the steroid clears. With non-steroid drug detection, the procedure is broadly similar. Drug use also provokes a mandatory assessment by the Counseling Center for severity of the problem. The athlete may return to the random drug testing pool once the drug has cleared the system. [A second violation will trigger permanent banning of the student from participating in varsity athletics at the University.] Ms. Conboy noted that a failure of the NCAA test and a second

failure of the University's procedures counts as two failures, triggering permanent banning from varsity athletics; she said "we have very high standards."

Members discussed whether coaches are informed of positive drug test outcomes. Dr. Moriarity explained that by policy only a limited number of committee members are informed of test results. The Director of Athletics and the student are informed, and parents are not automatically informed. At the discretion of the Director of Athletics, coaches may be informed. These guidelines are intended to protect the privacy of the athlete. Prof. Fallon asked if grant-in-aid is affected by a drug test failure. Dr. Moriarity said that is outside the parameters of the committee's responsibilities.

5. Department of Athletics Strategic Goals—Jack Swarbrick, Director of Athletics

Mr. Swarbrick said he was sorry to have been unavoidably out of town at the previous meeting. He first commented on a few aspects of the Department of Athletics reorganization, which had been discussed at that meeting.

He explained that the reorganization took a full year for two reasons: he made a thorough evaluation of staffing, and a reorganization in the middle of sports seasons proved impractical. So it was timed for a down period, in the summer. As part of the reorganization, flexibility was incorporated by not filling all positions. This approach was dictated in part by the current economic climate, but a more significant issue is the commitment to increase staff diversity. Many of the open positions previously had been held by diverse staff, so the temporary freeze on hiring will be maintained until economic conditions permit successful searches that incorporate diversity criteria.

The reorganization exercise provided a key opportunity to rebuild the Compliance Office staff. Mr. Swarbrick noted the importance of periodically providing a fresh perspective to the vital task of compliance. Another foundational aspect of the reorganization was a comprehensive analysis of the Department of Athletics' key constituencies, with the goal of examining how services are provided to each. Ideally the map produced from this analysis would match the organization chart for the newly organized department. But given the talented, dedicated and unusually senior staff in the Department, it would have been imprudent to change some of the longstanding aspects of the Department. The end result is a marriage of current strengths with the enhanced understanding of service requirements gained from the analysis to produce the new structure of the Department. More than eighty percent of the ideal map matches the actual structure that has emerged.

The next phase for the Department of Athletics is to maximize performance through significant attention to professional development and staff training. Training of the new sports administrators is already under way. In addition, renewed attention is being given to evaluating performance. While core job functions are already effectively evaluated on a regular basis, a more responsive evaluation of sports administrators is being crafted. It may be that individuals will be evaluated to be effective in the core functions but not as a sports administrator, or vice versa. Prof. Pierce asked if there is a measurement tool to assess morale in the Athletics staff. Mr. Swarbrick said that is done broadly as part of the employee evaluation program. He agreed that a specific measurement tool, as is used with the student-athletes, would be helpful.

Mr. Swarbrick said that one question which had arisen at the last meeting was why other University functions, such as Academic Services for Student-Athletes as represented by Pat Holmes, were included on the Department of Athletics chart even though they report elsewhere. He explained that because these functions are so important to what the Department of Athletics does, he wanted to emphasize this by placing them visibly on the map.

Next, Mr. Swarbrick discussed the ongoing development of a strategic plan for the Department of Athletics. Mr. Swarbrick noted that the plan is still in draft form but described its main elements. He observed that two elements that might not be expected in the strategic plan include a case statement to remind stakeholders of the relevance of the function of the Department of Athletics to other university functions, and an examination of the impact of environmental factors—including external industry factors and internal university elements—on the functioning of the Department.

Mr. Swarbrick then enumerated the five core values which constitute the focus of the Department of Athletics and briefly described the ways in which the strategic plan aims to address these values, noting that the final plan will include an extensive list of goals and strategies with each core value analysis.

1. Excellence. Mr. Swarbrick emphasized that athletic excellence is just one aspect of this value, which includes academic and ethical excellence as well. Mike Karwoski is now managing all aspects of the Department that touch on sport performance outside of competition. A first task is to more effectively share information within the Department and across the University, so as to tap into University resources that can aid the Department in being its best.

Prof. Rhodes asked about outreach from the Department of Athletics to the College of Arts and Letters. Mr. Swarbrick said it is a goal and a concern of the Department of Athletics that student-athletes have similar intellectual experiences to those of the student body as a whole. He agreed that success in connecting effectively with faculty is currently mixed, and he noted that the Department is eager and open to hearing ideas that would improve and enrich that connection to the benefit of both the students and the University.

2. Community. Sport clearly builds community, and the Department of Athletics is focused on fostering that within the University. In addition, a particular focus is developing ways to connect to the local South Bend community through sports. Tom Nevala has been tasked with this focus. He is in charge of all youth programming, including summer sports camps. Also he is developing sports outreach programs, in the form of community clinics and making Notre Dame's facilities available to local sports teams. Chris Zorich is part of the team implementing this core value.

3. Education. The Department of Athletics envisions its function to support the central educational mission of the University. One aspect of that is to attract athletes who are also committed students. While there is enormous educative value in the sport activity itself, the Department of Athletics is working to increase leadership training programs among the student-athletes, with the goal of helping emerging as well as current leaders to be effective. Thus team

captains are provided with leadership skills training; in addition, potential leaders are identified for skills training with the intent of maximizing potential. Ms. Conboy pointed to the example of Haley Scott DeMaria, who is currently involved in presentations to different groups of athletic leaders on campus. She is deeply invested in this program, the Rosenthal Leadership Academy.

4. *Faith.* As an extension of the faith focus that comes with operation within a religiously based institution, the Department of Athletics has set the goal of building an environment of faith in which care for one another is a central focus. The move to a single sport administrator for each sport in part is a move to build a committed team around each sport, with sports administrators, liaisons, priests, and coaching staff all working to shape a culture of caring and faith within each sport.

5. *Tradition.* Notre Dame's sports traditions are renowned, of course, and a particularly successful manifestation of that is the athlete-alumni outreach programs, of which the Monogram Club is an important entity. As was reported by Beth Hunter at the last meeting, outreach programs—such as the reunion to honor the 60th anniversary of minority athletes or invitations to a football game for Olympic athletes with Notre Dame connections—are making a significant impact. The new Alumni Player's Lounge in the stadium, for instance, is viewed as an enormous benefit by athlete-alumni. The Department of Athletics is looking to reconnect with athlete-alumni in every way it can.

Mr. Swarbrick concluded his presentation by noting that once the strategic plan is in place, the successful implementation of these five core values will take concerted efforts of people and revenue.

6. Confidentiality and FERPA—Marianne Corr—Vice President and General Counsel
Prof. Bellia welcomed Marianne Corr, who had been invited to speak to the Board about FERPA, the Family Educational Rights and Privacy Act of 1974.

Ms. Corr said that FERPA has “taken on a life of its own” in the 35 years since its creation; the act itself is in fact a simple and straightforward act. She said in her remarks today she would address only the aspects of FERPA that bear on FBA concerns.

Ms. Corr said that her office is currently engaged in a review of university FERPA policy, anticipating making some recommendations to change university policy. The act's function is to protect the privacy of student educational records, which are held to be generally confidential, although students have a right to inspect and amend them. Students also can refuse outside access to their records as a right. Over the years, sixteen exceptions to the access prohibition have been carved out, thus taking some of the teeth out of the act. The act's limitations on disclosure of student records apply in particular to institutions that receive federal funds for student aid.

Ms. Corr noted that the act permits the release of records to school officials who have been determined by the institution to have a legitimate educational interest in the information. Ms. Corr said that FBA members, in fulfilling the FBA's functions, can view student records. However, there is no right of disclosure to anyone else other than board members. Specifically,

there is no legitimate educational interest to disclose student educational records to non-members of FBA. This limitation includes even other faculty who might be working to assist a student. Such an instructor who needs access must go through established procedures. Pat Holmes noted that last year a question arose regarding whether FERPA limited members' access to grade reports reflecting team academic performance; the advice provided indicated that FERPA did forbid disclosure of this information. Ms. Corr said that her reading of FERPA would reverse this advice.

Members discussed whether FERPA constrains the flow of information regarding a student's first offense under the honor code. Ms. Corr noted that the University Committee on the Honor Code is currently involved in considering the question of who can legitimately be told of honor code violations. Ms. Corr stated that FERPA does not preclude appropriate disclosure of information regarding an honor code violation where a legitimate educational interest exists. She explained her interpretation in part by noting that to withhold honor code violation information could deprive students of access to University resources that are in place to support students.

A final issue discussed was the difficulty of clearly identifying what is "personally identifiable information" in released student information. If it is possible to identify a specific student by information even when a name is withheld, then the release of information may violate FERPA. Also, many student-athletes exercise their right to limit disclosure of "Directory Information," which includes height and weight data, information about a student's hometown and field of study, etc., which is often released. Student-athletes often sign consent forms that release the Department of Athletics from restrictions. A careful tracking of which students have or have not signed such consent forms is important for the protection of the University. In response to Prof. Frecka's question about whether FBA members could communicate via a listserv with student-athletes who are part of a team to which the member serves as a liaison, Ms. Corr said that some team members might have opted out of the inclusion of personal information in directories, if so, the student's information should not be released without a consent form. Ms. Conboy noted that coaches are likely the source of listserv data for board members, and that the coaches are likely to be unaware that it might be impermissible to pass on this kind of data.

As time had expired, Prof. Bellia thanked Ms. Corr for her presentation. The meeting was adjourned at 4:20 p.m. for a tour of Purcell Pavilion.