INTERNATIONAL SPORTS LAW AS A PROCESS FOR RESOLVING DISPUTES

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INTERNATIONAL sports law is more than a static set of rules and principles: it is better described as a process for avoiding and resolving disputes. Recent cases highlight its significance. The *Swiss Equestrian* case,[1] decided by the Swiss Federal Tribunal, demonstrates the efficacy of using this process in cases involving issues of eligibility for competition. By contrast, the *Reynolds* case,[2] decided by US federal courts, shows the folly of ignoring non-judicial remedies prescribed by international sports law. As a result, *Reynolds* became a sort of Dickensian struggle involving three years of litigation and some nine decisions before the case was finally dismissed. The courts could have, and should have, reached the same result by simply enforcing decisions of the appropriate international sports federation and the arbitral tribunal that had upheld the federation's decision. The *Harding* case,[3] which was also decided in the United States, demonstrates that adjudication outside the prescribed process of international sports law is fundamentally unstable.

Several cases from English courts, to be discussed later in this article, suggest appropriate parameters for judicial review and the role of national law.[4] The message is clear: national courts should be cautious about resolving disputes arising out of international sports activity. Judicial review is appropriate primarily when decisions of sports bodies either arrogate jurisdiction from other sports bodies to the injury of individual

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1. *Gundel* v. *FEI/CAS*, I Civil Court, Swiss Fed. Trib. (15 Mar. 1993). The decision is summarised in *Olympic Review*, July–Aug. 1993, p.305.

2. *Reynolds* v. *International Amateur Athletic Fed.* 23 F.3d 1110 (6th Cir. 1994), cert. denied, 115 S.Ct. 423 (1994) (reversing No.C-2-92-452 slip. op. (S.D. Ohio, 3 Dec. 1992), as modified, No.C-2-92-452 slip. op. (S.D. Ohio, 13 July 1993)). See also prior proceedings in 1992 U.S. Dist. LEXIS 8625, at *1, stay of preliminary injunction granted, 968 F.2d 1216 (6th Cir. 1992) (Table), application for emergency stay granted, 112 S.Ct. 2512 (1992); No.C-2-91-003, 1991 WL 179760 (S.D. Ohio, 19 Mar. 1991), vacated and remanded, *sub nom. Reynolds* v. *Athletics Congress of the USA* 935 F.2d 270 (6th Cir. 1991) (Table).

3. *Harding* v. *United States Olympic Committee* No.CCV-942151 (Clackamas County Cir. Or., 13 Feb. 1994) (civil action). See also *State* v. *Harding* No.94-0331872 (Multnomah County Cir. Or., 16 Mar. 1994) (criminal action).

4. *Greig* v. *Insole* [1978] 3 All E.R. 449, [1978] 1 W.L.R. 302; *Reel* v. *Holder* [1981] 3 All E.R. 321, [1981] 1 W.L.R. 1226; *Cowley* v. *Heatley* (1986) T.L.R. 430. See discussion in text at *infra* nn.49–56.

athletes or seriously threaten fundamental rights of athletes including that of due process or natural justice.

I. INTRODUCTION

INTERNATIONAL sports law provides a dynamic, though still incomplete, process to avoid, manage and resolve disputes among athletes, national sports bodies, international sports organisations and governments.[5] This process is distinctive although it incorporates rules and procedures drawn from more general regimes of private and public law and operates within a structure of established institutions, including arbitral bodies and national courts.[6]

Among the most difficult issues of international sports law today—perhaps the most difficult—is the role of national courts. Some would argue that they are too intrusive in the sports arena. Others would argue the opposite: that courts should be more active in protecting the rights of athletes and the best interests of organised sports. Fundamental questions of jurisdiction, choice of law and enforcement of judgments cry out for answers. For example: are decisions by international sports bodies non-reviewable by national courts? On the other hand, may courts simply ignore such decisions? If not, to what extent are they controlling?

Identifying the various fora for resolving international sports disputes, and the relationships between them, is essential in answering such questions. These fora include national sports bodies, international sports federations, Olympic bodies, arbitral tribunals and the courts. Although each has its own process for resolving disputes, they are interrelated. Sports bodies often provide, under national law, for arbitration of disputes by established tribunals.[7] Gradually, a distinctive *lex specialis* is emerging

5. See Anthony Polvino, "Arbitration as Preventative Medicine for Olympic Ailments: The International Olympic Committee's Court of Arbitration for Sport and the Future for the Settlement of International Sporting Disputes" (1994) 8 Emory Int.L.Rev. 349–352; JoAnne D. Spotts, "Global Politics and the Olympic Games: Separating the Two Oldest Games in History" (1994) 13 Dick. J.Int.L. 103; Michael R. Will, "Les structures du sport international", in *Chapitres Choisis du Droit du Sport* (1993), p.21.

6. It is therefore questionable whether the law of sports involves only rules and procedures of more general origin and scope. See Paul C. Weiler and Gary R. Roberts, *Sports and the Law* (1993). In arguing that " 'Sports law' is a misnomer", the authors may have meant only *domestic* sports law, particularly in the US. Even so, many if not most domestic legal systems *do* have distinctive regimes of sports law. E.g. the Amateur Sports Act, 36 U.S.C. §§371–396 (1988), governs not only US participation in international competition but related, often incidental, domestic sports activity as well. Viewing the relationship between sports and the law in only a conjunctive sense can have the effect of distorting the analysis of problems and the perception of applicable law. For example, a short section on Olympic sports in Weiler and Roberts, *idem*, p.690, discloses little awareness of specific international processes for avoiding, managing and resolving sports-related disputes.

7. E.g. the US Olympic Committee provides in its constitution for resolution of disputes by the American Arbitration Association: AAA, *Arbitration Times*, Summer 1993, p.3 (acknowledgement by the AAA of its role).

from a line of arbitral decisions. Standard rules and procedures for avoiding disputes are also emerging within the process of international sports law. A good example is the anti-doping resolution adopted by the International Olympic Committee (IOC) and the Association of Summer Olympic International Federations (ASOIF).[8] It standardises rules and procedures for conducting unannounced tests for doping and provides for technical co-operation among sports bodies responsible for carrying out the tests. The resolution thus establishes a comprehensive means, governed by the IOC, for bringing international sports law to bear on a particularly serious threat to fair play.

The Olympic Movement, though non-governmental, is at the heart of the legal process. Its Charter and the decisions of its governing bodies, especially the IOC, define a broad range of customary practice that applies to both amateur and professional activity. This law addresses political issues affecting sports, eligibility of athletes, racial and gender discrimination against athletes, commercialisation of sports and professionalism.[9] Misunderstanding the central role of the Olympic Movement in training and competition[10] leads to confusion about the legal significance of decisions by international federations,[11] each governing a particular sport, and other sports organisations, generally at national and local levels.

It is, however, difficult to define a single hierarchy of authority and jurisdiction in this process. Trying to resolve the jurisdictional issues—who gets to do what to whom and when?—can be as complicated as it is essential. Relationships between organisations and their dispute-resolution processes vary, as do interpretations of rules and principles among different legal systems. Even so, it is possible to identify eight normative trends, constituting a growing State practice, for avoiding, managing and resolving disputes.

8. *Olympic Review*, July–Aug. 1993, pp.298, 300.

9. E.g. see James Nafziger, *International Sports Law* (1988), pp.71–163 and "International Sports Law: A Replay of Characteristics and Trends" (1992) 86 A.J.I.L. 489, 495–505.

10. "In today's high-technology world of sports, improved performance typically requires professional assistance and money. In response, grass-roots management and funding of training and competition are channeled to aspiring athletes through local and national sports associations. These associations operate at the base of a pyramid of authority with the IFs [international federations] and the IOC at the top. This structure for transmitting the authority and legitimacy of the Olympic process influences even schoolyard and sandlot activities whenever participants receive support from sanctioned sports organizations that are ultimately assisted and governed by organizations within the Olympic Movement": Nafziger, *idem* (1992), pp.492–493.

11. An example of this confusion may be found within a discussion about eligibility for competition in Weiler and Roberts, *op. cit. supra* n.6: cf. pp.690 and 705.

II. NORMATIVE TRENDS IN RESOLVING SPORTS-RELATED DISPUTES

THE eight normative trends referred to above are these:

(1) National sports bodies have primary responsibility for avoiding and resolving disputes, from playing field infractions to eligibility issues. Disagreements between athletes and sports bodies are typically resolved by administrative review within a sports body or by independent arbitration.
(2) International federations may review decisions of constituent national bodies concerning a broad range of issues involving competitions and the status of individual athletes. Disagreements between them and national sports bodies are generally resolved by arbitration.
(3) National Olympic Committees may intervene in disputes involving participation of athletes in sanctioned competition. National laws sometimes accord them exclusive jurisdiction to regulate international competition and the eligibility of athletes to compete.
(4) The IOC, on its own initiative or that of an athlete, or an international federation, may review decisions by National Olympic Committees.
(5) Although civil procedures vary from country to country, judicial complaints must normally satisfy several basic requirements. These may include standing to sue, adequate service of process and jurisdiction over defendants, admissibility and justiciability of the complaint, convenience of the forum, and exhaustion of any administrative or other non-judicial remedies.
(6) Athletes, sports bodies, international federations and National Olympic Committees normally have judicial standing whenever their complaint raises a serious issue of due process or public order. Ordinarily, however, courts will recognise and enforce rules and decisions of appropriate sports bodies and federations.
(7) Parties to a sports contract may stipulate an appropriate choice of law. If they fail to do so, sports authorities may choose the proper law in conformity with accepted rules and principles of private and public international law. Arbitral and judicial tribunals also must bear some responsibility for choosing the proper law.
(8) States ordinarily recognise and enforce foreign arbitral awards or court judgments in accordance with their own positive laws, international agreements and principles of comity, reciprocity and judicial co-operation.

III. THE *REYNOLDS* CASE[12]

THESE norms of dispute resolution may not seem controversial, but the *Reynolds* case reveals serious misunderstandings about them and the role of international sports law. The significance of *Reynolds* is not so much its high visibility or even its outcome, but the extent of judicial errors throughout the complicated proceedings that could have been avoided had the prescribed process of international sports law been followed.[13] As the case bounced up and down the federal court system of the United States over a period of three years, one thing seemed certain: there would be surprises regardless of which side might prevail at a particular stage of the litigation.

Harry "Butch" Reynolds, a world-class runner from the United States, tested positive for the anabolic steroid nandrolone during competition in Monaco. The International Amateur Athletic Federation (IAAF), whose headquarters were in London at the time of the alleged wrong and the litigation, suspended Reynolds from competition for a period of two years, pending a hearing by The Athletics Congress, which was the US governing body for track and field (it is now called USA Track and Field). Reynolds ignored the offer of a hearing and sought to avoid the prescribed administrative process by appealing his suspension in the US District Court for the Southern District of Ohio. The court, however, required him to exhaust his administrative remedies. The Sixth Circuit Court of Appeals not only agreed but vacated the judgment and, quite properly, directed that the entire case be dismissed for lack of subject-matter jurisdiction.

Reynolds next attempted to exhaust his administrative remedies before the American Arbitration Association. The arbitrator found in favour of Reynolds, but failed to apply IAAF rules. Administrative review by The Athletics Congress's Doping Control Review Board produced a similar impasse with the IAAF. Under IAAF rules, the IAAF and The Athletics Congress referred their conflict to independent arbitration in London. In the arbitral hearing both Reynolds and his attorneys participated fully on the merits of the dispute. The tribunal ruled against Reynolds, however, finding that there was "no doubt" about his guilt, and upheld the two-year suspension against him.[14]

12. *Reynolds* v. *International Amateur Athletic Fed.* 23 F.3d 1110 (6th Cir. 1994), cert. denied, 115 S.Ct. 423 (1994); and earlier stages of the litigation (*supra* n.2) and arbitration (*infra* n.14).

13. The case is also controversial because all the district (trial) court opinions were decided by a single, 88-year-old senior judge and are unpublished. When the IAAF finally appeared in the proceedings, it moved (unsuccessfully) to recuse the judge, questioning his impartiality: 23 F.3d 1110, 1114.

14. *In the Matter of An Arbitration Initiated by the International Amateur Athletic Federation (IAAF), Applicant, Under IAAF Rule 20.3(ii) on the Case Where a Member of the IAAF—The Athletics Congress of the US, Respondent—Has Held a Hearing Under the IAAF*

That is where the matter should have ended. Instead, Reynolds promptly revived his federal court action against the IAAF and The Athletics Congress, alleging breach of contract, defamation, denial of due process and tortious interference with business relations. Under US law Reynolds could not, however, claim any right to compete. The Athletics Congress moved to dismiss his complaint for failure to state a claim upon which relief could be granted. The IAAF did not respond to the complaint and neither defendant appeared in the proceedings. This stage of the litigation was complicated by the plaintiff's desire to participate in trials for the 1992 Olympic Games despite the two-year suspension of his eligibility, a period of time that would not expire until after the Games. After a set of proceedings that reached the US Supreme Court, the IAAF and the US Olympic Committee reached an agreement that enabled Reynolds to compete in the trials.[15] He then won a spot as an alternate on the US Olympic team, but the IAAF barred him from potential participation in the 1992 Games and extended his suspension from competition by four months.

After the 1992 Games Reynolds filed a supplemental complaint with the district court that led to a default judgment against the IAAF of $27,356,008, including treble punitive damages. To enforce the judgment, the plaintiff initiated garnishee proceedings against four corporate creditors of the IAAF in the United States. At this stage of the Dickensian saga, the IAAF made an appearance in order to quash the garnishee proceedings, vacate the default judgment and recuse the judge. The district court denied all motions. Finally, however, the Sixth Circuit Court of Appeals reversed this decision and ordered the district court to dismiss the action for lack of jurisdiction. The court held that due process did not permit assertion of specific personal jurisdiction over the IAAF; that the IAAF did not waive its personal jurisdiction defence by failing to appear until after the default judgment was entered; and that the intervention by The Athletics Congress in the action as a co-defendant did not waive the IAAF's objection to personal jurisdiction.

Thus, after some 12 court and arbitral proceedings over a period of nearly four years, Reynolds was left with nothing to show for his marathon exercise in adjudication. Although dismissal of the *Reynolds* action was surely the proper outcome, the case as a whole raises disturbing questions about the merits of adjudicating disputes emerging from the international sports arena.

Rule 59 "Disciplinary Procedures for Doping Offenses" and the IAAF Believes that in the Conduct or Conclusion of Such Hearing the Member Has Misdirected Itself or Otherwise Reached an Erroneous Conclusion (11 May 1992) (London arbitration): *Arbitration Times*, Summer 1992, p.1 (report on earlier AAA arbitration).

15. *Reynolds* 23 F.3d 1110, 1113. For details on the litigation before the Games, see James Nafziger, "Interlocking Rings of International Sports Law" (1993) 1 Pandektis: Int. Sports L.Rev. 406–409.

Reynolds was time-consuming, complicated and unnecessary. Judicial handling of the case was questionable for several reasons. First, the district court does not seem to have fully appreciated the implications, under federal law, of allowing sports bodies to provide for binding arbitration of eligibility issues such as that which divided The Athletics Congress and the IAAF.[16] In this case the former submitted to the IAAF-initiated arbitration. The district court therefore should have enforced the arbitral decision in favour of the IAAF and against The Athletics Congress, thereby upholding the suspension of Reynolds from competition. The UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards,[17] to which the United States is a party, would also require enforcement of such an arbitral award.

It was immaterial that Reynolds himself had not entered into a written agreement to have his dispute with the IAAF resolved by arbitration. He and his attorneys fully participated on the merits of the dispute in the arbitral hearing. Also, even had Reynolds failed to appear in the proceedings, he would have been bound by the decision in the absence of clear and convincing evidence that he had been denied due process. Under federal law of the United States, once an athlete's governing body has agreed to arbitrate a dispute, either in advance of a dispute or by special submission after the fact, an arbitral decision may be binding both on the submitting organisation and on its members through the sports organisation's rules and contracts with them. In enacting the Amateur Sports Act, the US Congress clearly intended to avoid direct judicial regulation of sports in this way.[18]

Second, although both the rationale and the outcome of the *Reynolds* case are commendable, the appellate court's jurisdictional premise merits

16. See 36 U.S.C. §§393, 395; *Dolan* v. *US Equestrian Team* 608 A.2d 434 (N.J. Super. A.D. 1992). Referring to "the Congressional determination that these types of disputes should be resolved outside the judicial processes", the opinion emphasises, *idem*, p.437, that "courts are hardly suitable to determine the eligibility, or the procedures for determining the eligibility, of athletes to participate on our behalf in international competitions".

17. Done 10 June 1958, 21 U.S.T. 2517, T.I.A.S. 6997, 330 U.N.T.S. 3. The Convention provides that arbitral decisions may be refused only by a "competent authority of the country in which ... [the] award was made" (Art.V(1)(e)). Although the Convention authorises a party to refuse to enforce a foreign arbitral award if it is contrary to the public policy of that party (Art.V(2)(b)), the public policy of the US, as expressed in the Amateur Sports Act, would support enforcement of the award. The district court ignored this policy in its discussion of the enforceability of the arbitral award. Instead, the court relied on the lack of a written arbitration *compromis* between Reynolds and the IAAF even though Reynolds and his attorneys participated fully in the arbitration (23 F.3d 1110, 1113) and even though, as a technical matter, the arbitration was not directly between those parties but, rather, between The Athletics Congress and the IAAF: *Reynolds* No.C-2-92-452 slip. op. (S.D. Ohio, 13 July 1993).

18. See Comment, "Butch Reynolds and the American Judicial System v. The International Amateur Athletic Federation—A Comment on the Need for Judicial Restraint" (1993) 3 Seton Hall J. Sports L. 173, 182, 187, 191.

scrutiny, if only to clarify broader jurisdictional premises for future cases. The appellate court based its decision to order dismissal of the action on a theory of *specific* rather than *general* jurisdiction[19] over the London-based IAAF. The court understandably focused on specific jurisdiction because of the reliance put on that theory by Reynolds, to his disadvantage in clearing the jurisdictional hurdle. Accordingly, the court determined that it lacked personal jurisdiction over the IAAF because the latter did not have the minimal contacts with Ohio needed to make such jurisdiction reasonable. Nor did the plaintiff's cause of action arise from specific activities in Ohio by which the IAAF had purposely availed itself of the privilege of acting or causing consequences there. Ordinarily, the long-arm jurisdiction of State law, as applied in diversity-of-citizenship actions by federal courts in the United States, reaches out-of-State principals, such as the IAAF, on the basis of personal jurisdiction over their agents, such as The Athletics Congress. In the *Reynolds* case, however, the principal (IAAF) and the agent (The Athletics Congress) had been at odds; it was their ostensible disagreement that had required the arbitration in London. Thus, although the courts consistently focused on the contractual and tortious relationship between the IAAF and the plaintiff, they could have reasonably concluded, as a matter of specific jurisdiction, that Ohio jurisdiction over the IAAF could not have been premised merely on the basis of the court's "*alter ego*" jurisdiction over The Athletics Congress.

19. Under a theory of *specific* jurisdiction, a plaintiff must show that a cause of action arose out of, or was related to, the defendant's activities in the State where the federal district court is located. Most significantly the IAAF had not "purposely availed itself" very directly of the benefits of that State, Ohio, a due process requirement that was first articulated in *Hanson* v. *Denckla* 357 U.S. 235 (1953). Under a theory of *general* jurisdiction, on the other hand, a plaintiff need show only that the defendant has had a "systematic and continuous presence" in a particular State, regardless of whether the plaintiff's cause of action arose out of, or was related to, that local presence. Two US Supreme Court decisions establish this basis of jurisdiction: *Perkins* v. *Benguet Consolidated Mining Co.* 342 U.S. 437 (1952); *Helicopteros Nacionales de Colombia SA* v. *Hall* 104 S.Ct. 1868 (1984). Coincidentally, *Perkins* established the jurisdiction of a court in Ohio, perhaps because of the lack of an alternative forum in the Japanese-occupied Philippines during the Second World War. The "general jurisdiction" test is obiter in *Helicopteros*, where the court denied jurisdiction to a Texas court in a matter otherwise centred in Colombia and Peru.

The district court has interpreted the Ohio long-arm statute to extend "to the full limits of the Due Process Clause", which would include both specific and general jurisdiction: *International Pizza Co.* v. *C. & F. Packing Co.* 858 F.Supp. 696, 697 (S.D. Ohio 1994) and authority cited therein. Also *Reynolds* seems to assume that Ohio courts would ordinarily accept a theory of general jurisdiction: 23 F.3d 1110, 1116. ("Depending on the type of minimum contacts in the case, personal jurisdiction can be either general or specific [citation omitted]. Reynolds relies on specific jurisdiction because he claims that jurisdiction arose out of the IAAF's alleged wrongful acts in Ohio.") The court did analyse the applicability of Ohio's explicit provision for jurisdiction related to a non-resident's "(1) Transacting *any* business in this state", but limited the applicability of that provision of the Ohio long-arm statute to specific jurisdiction, 23 F.3d 1110, 1115 (emphasis added), as seems to be consistent with Ohio common law.

The peculiar requirements for specific jurisdiction, however, should not have been conclusive. The court should have also considered whether it had *general* jurisdiction over the IAAF. The IAAF was not only the principal of The Athletics Congress, but, in effect, an ultimate authority over international competition involving trials, final competition and athletes residing in Ohio. Thus, the IAAF arguably governed track and field activity in Ohio on a systematic and continuous basis and was therefore subject to the jurisdiction of Ohio courts, even if the plaintiff's cause of action did not arise out of any specific activities of the IAAF in Ohio. To be sure, it is unclear whether State courts in Ohio would ordinarily entertain general jurisdiction over foreign parties,[20] but the issue should have at least been addressed. Unfortunately, the court never properly did so because of the exclusive reliance Reynolds had placed on a theory of specific jurisdiction and the IAAF's decision not to appear in the case until its collateral attack on the default judgment.[21] At the very least, we may conclude that the jurisdictional issues were clearly more complicated than either the parties or the courts intimated. Ultimately, the litigation's focus on jurisdiction may have been misplaced. As we shall see, choice of law, which was not properly addressed, rather than jurisdiction, should have been pivotal in determining the outcome of the case.

Third, in returning to the district court proceedings, it is not at all clear that due-process analysis of Reynolds's claim should have begun with a clean slate. Instead, even in the absence of the IAAF, the district court should have begun with a presumption that the IAAF's hearings and the arbitral decision upholding the IAAF were consistent with procedural due process. The court should then have required Reynolds to carry the substantial burden of showing why the arbitration should not have been enforced. Merely showing the possibility of a mistake in testing procedures, even a serious mistake, was inadequate. Rather, the plaintiff should have had to prove that any mistake in the testing procedures was clearly determinative and, on the issue of punitive damages, that the

20. Ohio's long-arm statute is concerned primarily with specific jurisdiction, but language in it could be interpreted more broadly. See *Ohio Rev. Code Ann.*, §2307.382 (Banks–Baldwin 1994) (e.g. "Transacting *any* business in this state", §(A)(1) (emphasis added); "Causing tortious injury ... if he regularly does or solicits business ... in this state", §(A)(4)). Both the district and appellate courts in *Reynolds* seem to have assumed that Ohio courts would ordinarily entertain general jurisdiction but found an insufficient basis for doing so in *Reynolds* itself. This was apparently because of the plaintiff's failure to seek jurisdiction on that basis. See *supra* n.19.

21. In the US a non-appearing defendant may preserve a right to attack a default judgment on jurisdictional grounds, typically to bar recognition or enforcement of a judgment. On 14 July 1993 the IAAF lost a motion to vacate the judgment against it. The motion was heard by the same judge who made all district court decisions in the case: *supra* nn.2, 13. For a summary of American common law rules concerning collateral attack on the validity of judgments, see Robert Leflar, Luther McDougal III and Robert Felix, *American Conflicts Law* (4th edn, 1986), p.236.

IAAF had acted maliciously. Again, however, the technical questions were not properly addressed because of the defendant's absence before the court until the last stages of the litigation.

Fourth, on the issue of justiciability, the district court ignored the general rule that decisions of sports bodies do not constitute "State action" subject to constitutional scrutiny.[22] Neither the Amateur Sports Act nor any other federal law gives athletes a right to compete or a cause of action in the courts.

Fifth, the district court's choice of law under private international law was badly flawed on the issues of liability and damages. Reflecting its provinciality, the court gave no reasons whatsoever for its selection of Ohio substantive law. Although Ohio *choice of law* rules would clearly apply in a diversity-of-citizenship action such as this, the resulting applicability of Ohio *substantive* law is another matter. Ohio law providing for punitive damages was certainly one possibility, but only a *lex fori* rule or a presumption of *lex fori* would justify the court's complete lack of analysis, and Ohio has not adopted a rule or presumption of *lex fori*.[23] Despite the defendant's failure to appear in the case, the court had a responsibility to apply the right choice of law rule. Had it done so, it might have at least considered the law of Monaco (presumably the law of the place of wrong[24]) or English law (the law of the defendant's place of business and residence at the time of the alleged wrong and the litigation). After the *Reynolds* litigation, for example, another federal court of appeals, approving the *Reynolds* decision, acknowledged the status of the IAAF as an "international organisation" and that of Reynolds as an "international athlete whose professional reputation is not centered in Ohio".[25]

Sixth, had the courts engaged in even a cursory choice of law analysis, they would have been alerted to the existence of the prescribed organisational remedies, namely, the rules and procedures of the IAAF and binding arbitration. Instead, the district court seemed to have viewed the customary process of international sports law as little more than a prerequisite to virtually *de novo* court action. Worse yet, the tone of the district court opinions suggests a presumption of malice rather than good faith on the part of the IAAF. Although neither the IAAF's decisions nor binding arbitration could preclude all constitutional review of the plain-

22. See e.g. *Behagen* v. *Amateur Basketball Ass'n* 884 F.2d 524 (10th Cir. 1989); *Oldfield* v. *The Athletics Congress* 779 F.2d 509 (9th Cir. 1985); *Michels* v. *United States Olympic Comm.* 741 F.2d 155 (7th Cir. 1984); *DeFrantz* v. *United States Olympic Comm.* 492 F.Supp. 1181 (D.D.C. 1980); *Dolan*, *supra* n.16.

23. Ohio has adopted the more complicated, policy-orientated approach of the Restatement (Second) of Conflict of Laws. See e.g. Gregory Smith, "Choice of Law in the United States" (1987) 38 Hastings L.J. 1041, 1121–1123.

24. Historically, the *lex loci delicti* was generally determinative, but that is no longer so in many legal systems, including the US federal system.

25. *Far West Capital Inc.* v. *Towne* 46 F.3d 1071, 1079 (10th Cir. 1995).

tiff's due process claim, the US Constitution has been interpreted to establish international custom as "our law".[26] By failing to acknowledge the customary process of international sports law, the district court misunderstood what process was "due" in the absence of a strong showing that the plaintiff's rights had been violated.

Finally, and perhaps most obviously, the district court's award of over $27 million, including more than $20 million in punitive damages, was absurd. Such an extravagant amount is grossly disproportionate to any reasonable calculation of actual, projected and punitive damages. It would surely contravene the public policy of virtually any foreign State in which the plaintiff might have sought to enforce the judgment. The court's own summary of Reynolds's earnings demonstrated the injustice of the award. It was *over 50 times* the amount of the plaintiff's normal, very comfortable income from endorsements and advertising over a two-year period, which was the duration of his suspension from competition. Even taking generous account of his lost opportunity to compete in the 1992 Olympic Games and the extent of any malice by the IAAF, the award can only be described as unjust.[27]

Although the appellate court in *Reynolds* properly dismissed the action, its jurisdictional rationale is somewhat questionable, and the district court opinions are replete with errors. In sum, *Reynolds* was a judicial steeplechase in which the district court, in particular, stumbled badly and repeatedly.

IV. THE *HARDING* CASE

A vicious attack on US figure-skating star Nancy Kerrigan shortly before the 1994 Winter Games threatened her eligibility. The complicity of her rival, Tonya Harding, became front-page news. On 5 February 1994 the US Figure Skating Association (USFSA) concluded that there was reason to believe Harding had violated the Olympic code of fair play because of her role in the assault and its aftermath.[28]

26. *Paquete Habana* 175 U.S. 677 (1900).

27. The district court found as follows: "Prior to his suspension, Plaintiff earned the following in appearance fees and endorsement contracts: 1987: $56,000 1988: $255,112 1989: $316,915 1990: $333,375": *Reynolds* No.C–2–92–452, slip. op., p.27 (S.D. Ohio, 3 Dec. 1992). The above data would not seem to confirm the court's earlier finding that Reynolds "as an individual, has limited economic resources": *idem*, p.25 (S.D. Ohio, 13 July 1993). The court then speculated about projected loss of earnings, premised on a finding—*after* Reynolds failed to qualify in the Olympic trials except as an alternate—that he "was likely to win a gold medal in the 1992 Olympic Games": *ibid.* Although Reynolds failed to qualify for the Olympics as an individual runner, he remained eligible for selection as a member of the US medley team: Michael Janofsky, "Reynolds Loses His Last Claim to Olympic 400", *New York Times*, 27 June 1992, p.31.

28. "The association found that she was either involved in the assault or that she knew about the attack and failed to prevent it, that she failed to notify authorities or that she made false statements about what she knew of the attack": Michael Janofsky, "Harding's Lawyers

On 7 February the US Olympic Committee (USOC) promptly announced plans to convene a disciplinary hearing concerning Harding. Had it taken place, it would have been conducted by a nine-member Games Administration Board, whose decision would have been subject only to final approval by the IOC. The Board scheduled the hearing in Norway because of the imminence of the Winter Games there. It appeared, therefore, that an interesting question might be whether Harding's due process rights under the US Constitution and the Amateur Sports Act could be satisfied by proceedings conducted in a foreign jurisdiction.

What followed, however, was a sort of judicial ice follies in which Harding compelled the USOC to trace a series of complicated court manoeuvres. On 9 February she filed a $25 million lawsuit against the USOC and asked for an injunction against the hearing in Norway.[29] Three days later, with the court's encouragement, the parties settled their dispute. Harding agreed to withdraw her lawsuit and appear at a disciplinary hearing in the United States after conclusion of the Winter Games. Meanwhile, she was free to compete in the Games. Within a few weeks after the Winter Games, the deferred disciplinary hearing took place. Following that hearing, the decision against Harding, as well as a plea-bargained agreement in criminal proceedings,[30] forced her to resign from the USFSA and effectively barred her from major competition. The USFSA later stripped her of her 1994 national title and banned her for life from sanctioned competition.[31]

To its credit, the court orchestrated a settlement of the dispute under intense time pressures on the eve of the Winter Games. The proceedings were, however, very unstable. The threat of Tonya Harding's $25 million nuisance action clearly shaped the outcome. Rather than risking a rather dicey settlement, the court might have stayed judicial proceedings pending a final decision by the USOC after the scheduled hearing in Norway. Courts should avoid pre-empting customary international authority and

Prepare Strategy", *New York Times*, 9 Feb. 1994, p.B7; Jere Longman, "Official Says Harding Should Skate", *idem*, 5 Feb. 1994, p.34.

29. Jere Longman, "Reynolds Overturned in IAAF Victory", *idem*, 18 May 1994, p.16 (on both *Reynolds* and *Harding*).

30. Under the terms of this agreement, in the face of a possible criminal indictment, Harding pleaded guilty to a felony charge of hindering the prosecution and was placed on three years' supervised probation with the following conditions: an assessment of $160,000 in fines, court costs and charitable donations; resignation from the USFSA; performance of 500 hours of community service; and her submission to psychological evaluation. In return, the court barred further prosecution by "any" jurisdiction for her involvement in the assault on Nancy Kerrigan. If another court initiated a prosecution contrary to the order, Harding would have the right to withdraw her plea and have her sentence set aside: *State* v. *Harding*, *supra* n.3. Jere Longman, "Harding Deal Handed Something to Both Sides", *New York Times*, 20 Mar. 1994, p.21.

31. *The Oregonian*, 1 July 1994, p.A14.

thereby prejudicing the expectations of the international community.[32] In the long run, process may be as important as outcome in an individual case.

V. THE *SWISS EQUESTRIAN* CASE

BY contrast, the *Swiss Equestrian* case[33] was a model of dispute resolution. There, a doping test at an international competition revealed the presence of a banned substance in the urine of a horse. The International Equestrian Federation (FEI) disqualified both the horse and its rider and suspended the rider from international competition for three months. The rider appealed this decision to the Court of Arbitration for Sport,[34] which the FEI had selected to resolve eligibility and disciplinary disputes of this sort. The Court upheld the disqualification but reduced the suspension and imposed a fine on the rider. When the rider appealed this decision to the Swiss Federal Tribunal, it ruled that the Court's award was binding.[35]

Unlike *Reynolds*, the issue of personal jurisdiction was not before the Swiss court, and the court enforced the arbitral award despite issues of procedural fairness in the arbitration. Also, the FEI testing procedures do not seem to have been sharply at issue. More important, however, the *Reynolds* and *Swiss Equestrian* cases are in stark contrast on the fundamental issue of the weight that a national court should give to a customary process of organisational and arbitral review. This contrast is only partly explained by the status and prestige of the Olympic Movement and international sports federations headquartered in the court's venue of Switzerland. A fuller explanation would take account of the failure of the *Reynolds* courts to view their role within an established international legal process.

32. Comment, *supra* n.18, at p.194.

33. *Supra* n.1.

34. The Court (CAS) was established by the IOC and, until recently, was under IOC supervision. Chartered under Swiss law with headquarters in Lausanne, Switzerland, it remains a vital part of the Olympic Movement. See *Olympic Review*, Nov. 1983, p.763. The Statute of the CAS is reproduced in Nafziger (1988), *op. cit. supra* n.9, at p.221. For an introduction to the CAS see Bruno Simma, "The Court of Arbitration for Sport", in K.-H. Böckstiegel, H.-E. Folz, J. M. Mössmer and K. Zemanek (Eds), *Völkerrecht/Recht der Internationalen Organisationen/Weltwirtschaftsrecht: Festschrift für Ignaz Seidl-Hohenveldern* (1988), pp.573, 580.

35. "In a judgement notified to the parties on 18th June 1993, the 1st Civil Court of the Federal Tribunal dismissed the appeal lodged against the FEI and the CAS, and ordered the rider to pay SFr. 9,000 in judicial costs. The federal judges confirmed in their judgement that the CAS is a real arbitral court whose decisions properly constitute arbitral awards at an international level. The CAS therefore represents an alternative to state justice while, of course, respecting certain inalienable fundamental rights. This neutral and independent institution is therefore in a position to pronounce final and enforceable awards which have the force of a judgement. Thus, through recourse to the CAS, sports organizations, athletes and their partners can avoid referring any disputes they might have to ordinary state courts for settlement": *Olympic Review*, July–Aug. 1993, p.305.

VI. THE COURT OF ARBITRATION FOR SPORT

As the *Swiss Equestrian* case demonstrates, the Court is a particularly promising institution for resolving sports-related disputes. Its decisions are helping to articulate the norms of international sports law and strengthen its authority as a governing process.

The Court arbitrates:[36]

> disputes of a *private* nature arising out of the practice or development of sport, and in a general way, *all* activities pertaining to sport and whose settlement is *not otherwise* provided for in the Olympic Charter. Such disputes may bear on questions of principle relating to sport or on pecuniary or other interests.

The Court is not competent to resolve purely technical questions involving, for example, particular rules of the game or the scheduling of competitions. Instead, it addresses critical issues that might otherwise come before courts of law. These include eligibility and suspension of athletes, the adequacy of protections for individual athletes during drug testing, breaches of contract between an athlete and a sports club, the validity of contracts for the sale of sports equipment and the nationality of an athlete for purposes of competition.[37]

All international and national sports organisations have standing to seek an award from the Court, as does "in a general way, any natural person or corporate body having the capacity or power to compromise".[38] The Court may also undertake summary conciliation between disputing parties and render advisory opinions on juridical matters concerning sports competition and the rights of athletes. Domestic courts recognise and enforce the Court's awards, primarily under the UN Convention on Arbitral Awards.[39] European States recognise the status of the Court under the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations.[40]

The Court has grown rapidly since it opened its doors in 1984. The impetus for this growth has been a series of agreements between it and international sports federations by which the latter have acceded to the

36. CAS Statute, *supra* n.34, Art.4 (emphasis added).

37. For examples see Nafziger (1992), *op. cit. supra* n.9, at pp.507–508. In *Federation Internationale de Basketball (FIBA)* v. *Wriedt & Brandt Hagen e.V.* TAS No.94/123 (1994), the CAS decided that an athlete with dual American and German nationality had sufficiently confirmed his German nationality. The CAS therefore concluded that FIBA must allow him to compete as a member of a *Bundesliga* club.

38. CAS Statute, *supra* n.34, Art.5.

39. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10 June 1958, 21 U.S.T. 2517, T.I.A.S. No.6997, 330 U.N.T.S. 3. On the enforceability of CAS and other arbitral awards, and exceptions to the UN Convention, see Adam Samuel and Richard Gearhart, "Sporting Arbitration and the International Olympic Committee's Court of Arbitration for Sport" (1989) 6(4) J.Int.Arb. 39, 52.

40. (1986) Eur.Y.B. (Council of Eur.) 34.

compulsory jurisdiction of the Court over a broad range of disputes.[41] These agreements establish a basis for enforcing the Court's awards against individual athletes, even when their future livelihood may be at issue. That is because the eligibility of athletes for international competition normally depends on their membership in the constituent organisations of international federations at the national level and acceptance of the rules of the organisations. In order to participate in international competition sanctioned by international federations, individual athletes must enter into licensing contracts with national sports organisations. Mandatory arbitration clauses in these contracts, which implement the agreements between federations and the Court, help ensure that the latter's awards will generally be binding on individual athletes.

Domestic courts and other authorities normally enforce the Court's awards. What remains to be seen, however, is the margin of judicial appreciation when an award patently contravenes a fundamental public interest or when issues are raised about the jurisdiction of the Court, its competence to decide a given matter or procedural irregularities during an arbitration. In *Gasser* v. *Stinson*,[42] for example, the English High Court hinted at a restraint-of-trade exception to the normal requirement that domestic courts must recognise and enforce otherwise valid arbitral awards. Although the High Court denied relief to an athlete who had been suspended from competition after testing positive for banned substances, a dictum in the opinion suggests that if an arbitral award deprives an athlete of his or her livelihood the reasonableness of the award *may be* reviewable by a court.[43] The opinion did not, however, specifically consider the special status of the Court of Arbitration for Sport as part of the Olympic Movement.

It is thus unclear to what extent national courts will follow the Swiss lead in broadly recognising and enforcing the Court of Arbitration's awards.[44] Recent reforms are designed to strengthen the Court and make its decisions more acceptable to national courts. A new 20-member Inter-

41. *Olympic Review*, Aug. 1991, p.407; May 1989, p.202; Polvino, *op. cit. supra* n.5, at p.372.

42. *Gasser* v. *Stinson* (15 June 1988 (QB)), available in LEXIS, Intlaw Library, ENGCAS file. See also *Nagle* v. *Feilden* [1966] 2 Q.B. 633.

43. But see *McInnes* v. *Onslow-Fane* [1978] 3 All E.R. 211, 223 ("This is so even where those bodies are concerned with the means of livelihood of those who take part in those activities"); followed in *Law* v. *National Greyhound Racing Club Ltd* [1983] 1 W.L.R. 1302, 1307. In the UK judicial review seems to extend at least to cases involving clearly monopolistic practices in restraint of trade or to those involving discrimination contrary to the fundamental human rights of athletes.

44. Cf. the observation in *R.* v. *Jockey Club* [1993] 2 All E.R. 225, that "never hitherto has any sporting body been found amenable to review. ... *that is really only because the courts have in the past sought to meet the needs of public policy by developing private law principles instead. We are here in a dynamic area of law, well able to embrace new situations as justice requires*" (*per* Simon Brown J, concurring—emphasis added).

national Council of Arbitration for Sport (ICAS),[45] which is an integral part of the Olympic Movement,[46] detaches the Court formally from the IOC, oversees it and in that way enhances its legitimacy. A second reform is designed to promote efficiency and strengthen the legitimacy of the Court by dividing the body into ordinary arbitration and appeals sections.[47] Finally, increasing the number of arbitrators and broadening regional representations will make the Court even more attractive, especially to non-Europeans.[48]

Under the new ICAS umbrella, nearly all international federations have accepted arbitration clauses in athlete-licensing contracts. The Court will thus become the exclusive forum for resolving doping and other disputes between athletes and sports bodies and federations. Accordingly, athletes must bring their disputes before the Court or face expulsion from sanctioned competition in their sport.

VII. ENGLISH CASES

ALTHOUGH the Court of Arbitration for Sport shows great promise as a preferred tribunal for resolving disputes involving international competition and eligibility of athletes, national courts will remain significant. Indeed, it is likely that the volume of sports-related litigation in national courts will continue to grow.

Few would argue against the need for judicial review of some decisions by sports bodies that affect the rights of individual athletes. Nor, on the other hand, should sports bodies be denied judicial enforcement of their own rights, for example those involving intellectual property. The question then becomes, what are the parameters of judicial review?

Several English court opinions provide some guidance in answering this question.[49] Three of these opinions, in particular, disclose the possibility of a trend away from the application of national law to govern the decisions of sports bodies. It must be acknowledged, of course, that three opinions cannot alone establish anything more than a modest (and reversible) trend.

In the earliest of the three cases, *Greig* v. *Insole*,[50] the Chancery Division of the High Court assumed jurisdiction to hear a dispute brought by sev-

45. See *Olympic Review*, July–Aug. 1993, pp.299, 305–306.
46. *Idem*, Jan.–Feb. 1994, p.16.
47. *Idem*, July–Aug. 1993, p.306.
48. The CAS has been Eurocentric: 45 of the 59 arbitrators officially listed for 1991–94 are Western European: *idem*, Aug. 1991, p.408. The CAS is, however, being expanded from 60 to 100 members: *idem*, July–Aug. 1993, p.305. See also Polvino, *op. cit. supra* n.5.
49. For a thorough discussion of issues and applicable English law see Edward Grayson, *Sport and the Law* (1988). This book fully acknowledges the role of courts in giving effect to the public interest and ensuring fairness and natural justice to individual athletes when their rights are seriously threatened.
50. *Supra* n.4.

eral professional cricketers against two sports associations, the International Cricket Conference (ICC) and its English member, the Test and County Cricket Board (TCCB). The Court then held that the two associations had tortiously injured the players by unlawfully attempting to induce a breach of their lucrative contracts with a sports promotional organisation, World Series Cricket. The Court also held that both associations had engaged in unreasonable, *ultra vires* restraints of trade by retroactively barring the players' eligibility for international competition. Of particular relevance to the process of international sports law was the Court's conclusion that neither of the defendant sports associations was an employers' association entitled to statutory immunity. Rather, the ICC was composed of member countries, not individuals who might be deemed to be employees, and the TCCB had no power to regulate relations between employers and workers. Hence, to that limited extent, their decisions were subject to judicial scrutiny under English law.

In *Reel* v. *Holder*[51] the Court of Appeal held that the IAAF had misinterpreted its "only one member for each country" rule in a mutually exclusive manner by allowing athletes from the People's Republic of China to compete to the exclusion of Taiwanese athletes. The Court of Appeal held that membership in the IAAF should not have been confined to teams from sovereign States recognised by the United Kingdom. Instead, the Court gave a plain-meaning interpretation to the governing word "country" in the IAAF rule which provides: "The jurisdiction of members of the federation shall be limited to the political boundaries of the country they represent." Lord Denning said, "We are simply concerned with the interpretation of the rules of the federation" and "Every athletic association in any territory is eligible for membership provided that it is the supreme athletic association for that territory and is not subject to any control by another athletic association." Thus, "The jurisdiction of the Athletic Association of Taiwan is limited to Taiwan. The jurisdiction of the Athletic Association of mainland China is limited to mainland China." In sum, a "country" is not necessarily a recognised "State", as officially defined under national law but, rather, a term of art under international sports law.[52]

51. *Supra* n.4. See discussion in Nafziger (1988), *op. cit. supra* n.9, at pp.90–92.

52. Olympic teams from such entities as Hong Kong, Gibraltar, Puerto Rico, Guam and the Cook Islands are other examples. Eveleigh J, concurring in the decision, emphasised the lack of agreement among States concerning the sovereign status of particular entities: "Those who formed the federation were not concerned with international politics; they were concerned to set standards for athletics throughout the world. They were concerned to collect together people who would be in a position to exercise control over athletics in various parts of the world. Unless a governing body of some kind applies for membership, the federation is not concerned to determine if a given place or area is a country. It is only in connection with an application for membership by an applicant who puts himself forward as a governing body for a particular place, district or region that it becomes necessary to consider the meaning of 'country' in the rules. One thing that is clear is that there may only be one

Finally, in *Cowley* v. *Heatley*[53] the court questioned its jurisdiction to review a decision by the Commonwealth Games Federation that had denied eligibility to a swimmer. The court nevertheless did interpret a national domicile requirement imposed on all athletes under the Commonwealth Games Constitution. The South African plaintiff, Annette Cowley, had recently begun to reside in England and had been nominated to represent England in the Games. The Federation denied her eligibility as a member of the English team on the basis that her "domicile" was not in England. The plaintiff argued that she was domiciled there under a legal definition according to which she could demonstrate current residence in England, however brief, and her intent to remain there. The court concluded, however, that an ordinary meaning of the term applied, rather than the definition provided by the common law. Under the ordinary meaning of the term, she had not resided long enough in England to be domiciled there for the purpose of establishing her eligibility to compete on the English team in the Games.

Of particular interest in *Cowley* was the court's observation "that the constitution covered a large number of different nations in the Commonwealth with members upholding many different systems of law. In those circumstances it was the court's view that the articles of the constitution could not be governed by the law of one constituent member country." The opinion concluded with a famous dictum: "Sport would be better served if there was not running litigation at repeated intervals by people seeking to challenge the decisions of the regulating bodies."

Taken together, these three opinions provide a comparative insight into the parameters of judicial review. *Greig* v. *Insole* affirms the judicial role in ensuring fair and proper organisation and administration of competition, particularly as it involves the livelihood and contractual integrity of professional athletes. In the later case of *Reel* v. *Holder* the court reinterpreted an international federation's "country" membership rule in a way contrary to the organisation's own interpretation. The court made clear, however, that it was relying on a plain meaning of the word "country" rather than a strict legal definition based on the dictates of national law or on sovereign recognition by the Crown. In the more recent case of *Cowley* v. *Heatley* the court was faced with another nationality question, this time not involving the membership of a national group but, rather, the eligibility of an individual competitor. The decision continued a modest trend

member for each country. Therefore, in entertaining an application, it has to be seen whether or not there is an existing member who has control, or a measure of control, over the same area as that for which the applicant contends. There must be no doubt who is to speak with authority as the governing body for a particular group of athletes. The word 'country' has been used in the rules in order to delineate the area of authority. They do not use the word in the sense of sovereign state."

53. *Supra* n.4.

away from applying national law to interpret the rules of private sports associations. The court also extended another trend when it questioned its jurisdiction to hear a complaint brought by an amateur athlete against an international sports organisation, the Commonwealth Games Federation.

Thus, the jurisprudence of English courts cautions judicial restraint in examining sports-related issues.[54] As a result, English sports organisations enjoy substantial autonomy so long as they do not offend fundamental public interests or unjustifiably endanger the livelihood of athletes.[55] The commendable view seems to be that competition in the courtroom is a poor substitute for competition in the sports arena.[56]

VIII. CONCLUSION

A comparison of the *Reynolds* and *Swiss Equestrian* cases, both decided by national courts, demonstrates the efficacy of international sports law. It can be instrumental in blending national and international institutions into a single process of justice that avoids judicial complexity. Although

54. A summary of the English jurisprudence appears in Nafziger (1992), *op. cit. supra* n.9, at pp.509–510. English courts "have normally limited judicial review to disputes requiring them to interpret or enforce professional contracts or otherwise protect a person's ability to earn a living. 'Amateur' athletes, therefore, have generally lacked standing to challenge decisions by their sports organizations. The courts have often refused to issue orders of certiorari to review the decisions of private or 'domestic' tribunals, such as nongovernmental review panels and other organizational mechanisms for dispute resolution. Their rules are said to be 'more than a contract: they are a legislative code laid down to be obeyed by the members.'

Significantly, this jurisdictional barrier has been overcome in several cases: where a plaintiff was denied a right to respond to objections or was confronted with bias; where a sports organization's administrative tribunal was deemed to be exercising public law functions or its decision would have had public law consequences; and where the relationship at issue between the parties was an amateur contract not governed by organizational rules. A final exception involves parties in a monopolistic position, such as international and national federations. These exceptions demonstrate a modest trend toward the judicial assumption of competence to review 'public' issues or issues of procedural fairness."

55. Andrew C. Evans, "English Law of Sport", in Michael R. Will (Ed.), *Auf dem Wege zu Einem Europäischen Sportrecht?* (1989), p.91 at p.95: "the principal feature of English sport law appears to be the freedom enjoyed by sporting organizations to regulate the sport concerned, provided that no right falling within an established legal category is violated. The interest of an individual in participation in sport does not so fall. To the extent that such regulation is thus protected against effective challenge in the ordinary courts, the state could be said to have been captured by such bodies. Such capture might be thought simply to reflect judicial recognition of the fact that the essence of sporting activity would be threatened by the transfer of sporting competition from the stadium to the courtroom... There is no apparent reason why public interest considerations should not equally well be invoked to justify the overruling of restrictions imposed on individual participation by a sporting organization."

56. *McInnes* v. *Onslow-Fane* [1978] 3 All E.R. 211, [1978] 1 W.L.R. 1520, 1535 observed that "the courts must be slow to allow any implied obligation to be fair to be used as a means of bringing before the court for review honest decisions of bodies exercising jurisdiction over sporting and other activities which those bodies are far better fitted to judge than the courts ... The concepts of natural justice and the duty to be fair must not be allowed to discredit themselves by making unreasonable requirements and imposing undue burdens."

courts can be expected to address the most serious issues of due process and public interest, judicial abstention is advisable in most disputes between individual athletes, on the one hand, and designated sports bodies and organisations, on the other. Unless injunctive relief is absolutely necessary to prevent gross injustice to individual athletes or the public, adjudication is especially doubtful under the kind of time constraints that made the *Reynolds* and *Harding* cases so exciting but perilous on the eve of major competition.

The excitement of sports competition is best left to the sports arena, not the courtroom. Fortunately, the federal appeals court in *Reynolds*, after the case had stumbled along for nearly four years, reached the right result of dismissing the action. Moreover, the consistent arrogance of the district court may have been an anomaly. Another court in the United States is perhaps more typical in finding "most unfortunate the increasing frequency with which sporting events are resolved in the courtroom".[57]

Decisions of English courts, particularly *Greig* v. *Insole*, *Reel* v. *Holder* and *Cowley* v. *Heatley*, hint at the bounds of judicial review. Despite the willingness of national courts to review issues of procedural fairness and fundamental public interest, they properly view adjudication as only a last resort for resolving international disputes. Normative trends thus confirm a growing commitment of national legal systems to the special processes of international sports law. The Court of Arbitration for Sport, in particular, is assuming a central position for avoiding, managing and resolving international disputes. What remains is for the legal profession throughout the world to take international sports law seriously.

57. *In re Gault* 179 A.D. 2d 881, 884, 578 N.Y.S. 2d 683, 685 (1992).