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On Your Mark, Get Set, Stop! Drug-Testing Appeals in the International Amateur Athletic Federation

Hilary Joy Hatch

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NOTES AND COMMENTS

On Your Mark, Get Set, Stop! Drug-Testing Appeals in the International Amateur Athletic Federation

I. INTRODUCTION

Amateur athletes must abide by strict rules set out by various organizations to be eligible to compete in athletic events. Elite athletes wishing to compete in the Olympic Games have many concerns besides their athletic performance. These athletes must follow drug-testing rules set forth by their nation's Olympic Committee, the International Olympic Committee, and international athletic federations.¹ If an athlete tests positive for drugs before, during, or after competition, he or she may be declared ineligible, and a world record can be invalidated.² In order to equalize competition and to "safeguard the health of the young competitors," drug testing has become a necessary part of international sports.³

To understand the complexities of drug testing for the Olympic Games, one must first understand the relationship among the many organizations that promulgate and enforce the drug-testing guidelines. The International Olympic Committee ("IOC") "is the highest authority" within the Olympic structure.⁴ The IOC oversees the national olympic committees ("NOCs"), such as the

1. See THE HONOURABLE CHARLES L. DUBIN COMMISSIONER, COMMISSION OF INQUIRY INTO THE USE OF DRUGS AND BANNED PRACTICES INTENDED TO INCREASE ATHLETIC PERFORMANCE 80-89, 128-36 (1990) [hereinafter DUBIN COMMISSION]; see also INTERNATIONAL OLYMPIC CHARTER AGAINST DOPING IN SPORT (1988).

2. For example, during the 1988 Seoul Olympics, Ben Johnson tested positive for steroids. He was stripped of his gold medal and his world record was invalidated. Furthermore, he was suspended from competition for two years. Michael Janofsky, *Johnson Loses Gold to Lewis After Drug Test*, N.Y. TIMES, Sept. 27, 1988, at A1.

3. Eric Dobberstein, Note, *Drug Testing: The Toughest Competition an Athlete Ever Faces*, 13 T. MARSHALL L. REV. 143, 145-46 (1988). But see Norman Fost, *Banning Drugs in Sports: A Skeptical View*, HASTINGS CENTER REP., Aug. 1986, at 5-9.

4. Marfa Tai Wolff, Recent Developments, *Playing by the Rules? A Legal Analysis of the United States Olympic Committee—Soviet Olympic Committee Doping Control Agreement*, 25 STAN. J. INT'L L. 611, 616 (1989).

United States Olympic Committee ("USOC"), and international federations ("IFs") for individual sports, such as the International Amateur Athletic Federation ("IAAF") for track and field athletes.⁵ There are also national federations ("NFs") of an IF, such as The Athletic Congress ("TAC"), which is the governing body for track and field in the United States.⁶ Furthermore, "the IOC can discipline an NOC by directing the IFs to suspend [a] country's affiliate"⁷ like the TAC.

This Note will review Harry "Butch" Reynolds' dispute with the IAAF before the 1992 Barcelona Olympics. The IAAF declared Butch Reynolds, the 1988 Olympic silver medalist in the four-hundred meters, ineligible after a 1990 track meet in Monte Carlo for allegedly using the steroid nandrolone.⁸ The IAAF banned Reynolds from amateur track and field competitions for two years; this ban extended until August 12, 1992, after the 1992 Barcelona Olympics.⁹ Reynolds claimed that he did not use steroids and that the IAAF violated its own procedural rules in finding that he tested positive for nandrolone.¹⁰

This Note will examine the procedural and administrative events leading up to Reynolds' suspension from international competition and the subsequent appeal process. When the IAAF denied Reynolds' appeals, he brought suit in federal district court.¹¹ Subsequently, the case was appealed to the Sixth Circuit Court of Appeals¹² and to the U.S. Supreme Court¹³ within two days. This Note will review the findings in *Reynolds* and examine the issue of jurisdiction over the IAAF.

5. *Id.* at 617. The IAAF, an "unincorporated association of 184 members, is the international governing body for track and field." DUBIN COMMISSION, *supra* note 1, at 444.

6. The Athletic Congress is the U.S. Track and Field member of the IAAF. See JAMES A.R. NAFZIGER, INTERNATIONAL SPORTS LAW 153 (1988).

7. Wolff, *supra* note 4, at 617.

8. Phil Hersh, *Supreme Court Backs Reynolds[;] But Runners in 400 Vote To Skip Race*, CHI. TRIB., June 21, 1992, at C1.

9. *Id.*

10. *Id.*

11. *Reynolds v. International Amateur Athletic Fed'n*, No. C-2-92-452, 1992 U.S. Dist. LEXIS 8625 (E.D. Ohio June 19, 1992) [hereinafter *Reynolds I*].

12. *Reynolds v. International Amateur Athletic Fed'n*, No. 92-3596, 1992 U.S. App. LEXIS 14058 (6th Cir. June 19, 1992) (unpublished opinion) [hereinafter *Reynolds II*].

13. *Reynolds v. International Amateur Athletic Fed'n*, ___ U.S. ___, 112 S. Ct. 2512, 120 L. Ed. 2d 861 (Stevens, Circuit Justice 1992) [hereinafter *Reynolds III*].

The IAAF claims that no court has jurisdiction over its organization.¹⁴ Nevertheless, the *Reynolds I* court found that the IAAF satisfies the minimum contacts test for personal jurisdiction and that it is, therefore, subject to the court's jurisdiction.¹⁵ Subsequent to the U.S. Supreme Court's opinion holding that Butch Reynolds could compete in the U.S. Olympic Track and Field trials,¹⁶ the IAAF threatened that the United States must pass legislation regarding IAAF jurisdiction before the 1996 Atlanta Summer Olympics; the IAAF stated that Congress' failure to pass legislation may result in significant tensions between the IAAF and U.S. courts over potential decisions allowing U.S. athletes to compete on U.S. soil.¹⁷

This Note will conclude that there must be some alternate forum for amateur athletes to raise their complaints after they have exhausted the administrative remedies that the IAAF provides. There is a problem with IAAF member nations having jurisdiction over the IAAF because, even if they purport to be neutral, individual nation's courts may be biased toward their own athletes. On the other hand, it is problematic for the IAAF to have jurisdiction over individual athletes, some of whom complain that the IAAF denies them procedural due process in its decisions.¹⁸ Focusing on

14. See Randy Harvey, *IAAF Isn't Helping the Sport's Image*, L.A. TIMES, June 20, 1992, at C6. In June 1992, the IAAF's President, Primo Nebiolo, stated: "We will never accept a decision of any court in the world against our rules." *Id.*

15. *Reynolds I*, *supra* note 11, at *18. See also *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (holding that 'minimum contacts' are a prerequisite for personal jurisdiction).

16. *Reynolds III*, *supra* note 13.

17. In a press release after the Supreme Court allowed Reynolds to compete in the Olympic Trials in New Orleans, the IAAF asked that

the United States Olympic Committee and The Athletics Congress . . . engage as soon as possible the proper authorities in the US [sic] government to enact legislation that will prevent civil courts from acting in the matters of amateur sport. If such legislation is not achieved, the Olympic Games in Atlanta in 1996 . . . will risk grave damage.

David Powell, *Reynolds Quickly Back on Track*, THE TIMES (London), June 24, 1992; Tom Weir, *Reynolds Lets Emotions Run Loose*, USA TODAY, June 24, 1992, at 11C; see Julie Cart, *Reynolds Keeps Winning, This Time on the Track*, L.A. TIMES, June 24, 1992, at C1.

18. Michael Stulce, 1992 Olympic gold medalist in the shot-put who had previously been banned for using drugs and served out his two-year ban, stated that the IAAF process "[i]s a witch hunt . . . [and is] totally out of control. We're basically slaves in the system. The burden of proof is on us. We have no due process. There's nothing we can do." Joe Concannon, *US Puts Forth Its Best Shots, Summer Olympics '92*, BOSTON GLOBE, Aug. 1, 1992, at 39. Jackie Joyner-Kersey, world long-jump champion, claims that "she [is] upset because of the seeming powerlessness of the athletes to redress grievances as well as the scorning of the court ruling by the IAAF. 'It's like we're handcuffed, we're puppets and

Reynolds, this Note will conclude that the appeals process for an IAAF-banned athlete is in need of drastic improvement. The right of appeal should be to a body other than the one that originally imposed the penalty.

This Note will also examine American athletes' claims against the IAAF based on the function of the IAAF appeals system. An athlete is first notified about his or her positive test, suspended, and then allowed to pursue an appeal.¹⁹ Thus, an athlete cannot offer evidence on his or her behalf before a suspension. Eliminating drugs from sports is important, and the IAAF has specific mandatory procedures for drug testing athletes.²⁰ If proper procedures are not followed, however, it is unfair to ban an athlete for a so-called positive drug test, especially if the result is equivocal.²¹ United States statutory rights under the Amateur Sports Act of 1978²² are in conflict with rules that the IAAF promulgates for the drug-testing appeals process. This Note will propose solutions for this conflict.

This Note proposes that the Court of Arbitration for Sport ("CAS")²³ is the best forum to hear athletes' claims of faulty drug-testing procedures. Although there are disadvantages to the CAS because some of its jurists are chosen by IFs,²⁴ this body is more impartial than the IAAF. In addition, once the parties consent to its jurisdiction, its decision is binding.²⁵ Moreover, if NFs remove

we've just got to go out there and do what we're told to do" *Court Says Yes, IAAF Says No, So Reynolds Sits Out*, WASH. POST, May 31, 1992, at D7.

19. See Michael Janofsky, *Track and Field; Reynolds Case Spotlights Battle of the Regulators*, N.Y. TIMES, Oct. 11, 1991, at B15.

20. See INTERNATIONAL AMATEUR ATHLETIC FEDERATION rule 144, at 100-04 (1988-89) (official handbook).

21. Some athletes, however, may dishonestly protest their innocence to continue competing. While no one except Butch Reynolds may ever know whether he really took nandrolone, as the procedures were not precisely followed, it is not fair to presume his guilt without a hearing. It may not be morally right to lift a guilty athlete's ban based on a procedural error, but otherwise, due process rights are worthless. The Dubin Commission pointed out that, before the IAAF began vigorous enforcement of its anti-doping rules, it was less than diligent in drug testing. DUBIN COMMISSION, *supra* note 1, at 446. The Commission also commented on "the IAAF's apparent lack of serious intent to implement its own policies and procedures and to compel the national federations to comply." *Id.*

22. 36 U.S.C. §§ 371-396 (1978).

23. See generally NAFZIGER, *supra* note 6, at 35-37, 66-67, 153, 221-27. See also Michael Dockterman, *International Sports Law*, 83 AM. J. INT'L L. 690-94 (1989) (book review). See *infra* notes 145-59.

24. See NAFZIGER, *supra* note 6, at 35-36.

25. *Id.* at 36. Furthermore, the CAS can "resolve such disputes as those involving an athlete's suspension from competition from drug abuse." *Id.*

from their constitutions loopholes that allow athletes to avoid suspensions, the number of conflicts between the IAAF and the NFs would decrease.

Finally, this Note will propose that the procedures used in drug testing athletes must be greatly improved and that the procedural rights of athletes must conform with the statutory rights of each NF's country or the credibility of the system will be irretrievably lost. Inconsistency threatens the reliability of IAAF procedures when an athlete's ban is lifted because of technicalities in his or her NF's constitution, while others have their bans extended for fighting the system. Although gains have been made by, for example, the U.S.-Soviet Doping Control Agreement,²⁶ the IAAF must improve its procedures. The IAAF must ensure that the chain of custody is followed and that labs process the samples for testing quickly and reliably. If procedures are followed improperly, the IAAF should not ban an athlete, for doing so only highlights the inconsistencies that undermine the authority of the IAAF.²⁷ Furthermore, once the IAAF improves its appeals process, it will become more credible and, therefore, less susceptible to civil suits around the world.

Part II of this Note will profile the events leading up to Reynolds' case against the IAAF. In Part III, this Note will analyze the opinions of the district, appellate, and Supreme Court in *Reynolds*. Part IV will cover the treatment of other Olympic athletes in similar situations. Part V will discuss the jurisdictional issues involved and the proposed solutions for an independent arbitrator to hear appeals. Finally, Part VI will briefly cover U.S. athletes' rights under the IAAF appeals process.

II. EVENTS LEADING UP TO *REYNOLDS*

On August 12, 1990, after placing third in an international track meet in Monte Carlo, Butch Reynolds took a routine drug

26. See generally Wolff, *supra* note 4.

27. Another example of IAAF unfairness is a new rule that the IAAF adopted in 1990. The rule states that a written or oral admission of taking a banned substance is enough to ban an athlete from competition. The IAAF applied this rule retroactively to Ben Johnson and to Angella Issajenko, another Canadian 100 and 200 meter champion. After the rule went into effect, both athletes admitted that they used banned substances prior to the rule's effective date. The IAAF then banned them from competition based on their admissions. DUBIN COMMISSION, *supra* note 1, at 549. This rule is understandable; however, applying it retroactively "contravenes every principle of natural justice and fairness." *Id.* at 550.

test.²⁸ On November 5, 1990, the IAAF reported that Reynolds tested positive for nandrolone, a steroid on the list of IOC-banned drugs, and requested TAC to suspend him from competition for two years.²⁹ Reynolds immediately proclaimed his innocence.³⁰

In March 1991, Reynolds asked for a court order to force TAC to allow him to compete again.³¹ Reynolds stated that he never used nandrolone, challenged the identification of the urine samples, and argued that TAC banned him without a hearing and thereby denied him his due process rights.³² The Sixth Circuit Court of Appeals upheld the district court's dismissal of the case because Reynolds had not exhausted his administrative appeals, which are a prerequisite to the court's exercising subject matter jurisdiction.³³ Reynolds then asked the appellate court to stay his suspension so that he could run in the 1991 U.S. National Championships, the qualifying meet for the World Championships.³⁴ Again, the Sixth Circuit dismissed his suit because he had not exhausted his administrative remedies.³⁵

On June 10, 1991, however, the American Arbitration Association ("AAA") temporarily lifted his ban and ordered TAC to permit Reynolds to run in the National Championships.³⁶ Reynolds brought his case to the AAA under a rule in the Amateur Sports Act of 1978.³⁷ The AAA found that there was "clear and convincing evidence" that the two alleged Reynolds samples were not

28. See Hersh, *supra* note 8.

29. See Michael Janofsky, *2 U.S. Track Stars Face 2-year Ban for Drug Use*, N.Y. TIMES, Nov. 6, 1990, at A1.

In cases of a positive finding, . . . the international federation instructs the national federation to suspend the athlete, and usually, it is done at once. But with athletes from the United States, the process is delayed while the athlete exhausts an appeal process available through The Athletic Congress. Then, only if the positive finding is upheld, would the athlete be suspended.

Id.

30. *Id.*

31. *Sprinter Reynolds Appeals Ruling*, WASH. POST, Mar. 28, 1991, at B2. Reynolds' suit was for permanent reinstatement and \$12.5 million in damages. *Reynolds Still To Compete in U.S. Track Championships*, REUTERS, June 12, 1991, available in LEXIS, Nexis Library, Reuter File [hereinafter *Reynolds Still To Compete*].

32. *Reynolds v. Athletic Congress*, No. C-2-91-003 (S.D. Ohio Mar. 19, 1991).

33. See *Reynolds Turned Down*, N.Y. TIMES, Apr. 5, 1991, at A20.

34. See *Reynolds I*, *supra* note 11, at *3.

35. *Id.*

36. *Reynolds Still To Compete*, *supra* note 31.

37. Amateur Sports Act of 1978, 36 U.S.C. § 395(c). See also John Jeansonne, *One-Week Furlough from Steroid Prison; Reynolds Wins in Court but Loses Race*, NEWSDAY, June 14, 1991, at 192. The AAA decision applies only to competitions among U.S. citizens,

from the same person and "substantial evidence" that neither was from Reynolds.³⁸ While TAC reluctantly allowed Reynolds to compete because federal law compels TAC to respect the federal arbitrator's decision,³⁹ the IAAF demanded that TAC enforce Reynolds' ban. This conflict existed because TAC must first follow federal rules before it follows international sports rules.⁴⁰ TAC Executive Director, Ollan Cassell, stated:

The IAAF has the authority to take sanctions against us if it wants to. I would be surprised if they did. In view of what our laws are and their rules are, we had no choice but to allow Reynolds to run unless we wanted to go to jail or be held in contempt of court.⁴¹

The IAAF then threatened to invoke its "contamination rule"⁴² against the other athletes who competed against Reynolds. Although the IAAF did not ban the other "contaminated" athletes, the IAAF indicated that Reynolds' running was "unlawful" and that it could "endanger the participation of American athletes in major world competitions," and threatened to extend his suspension.⁴³ Thus, the IAAF did not enforce its rules for Reynolds' unlawful competition, although the IAAF reiterated that it had no doubt that the positive test results were accurate.⁴⁴

Subsequently, Reynolds appealed to TAC. Reynolds had to prove his innocence in his hearing before a three-person Doping Control Board on September 13, 1991, because he was "presumed guilty until proven innocent."⁴⁵ On October 4, 1991, TAC's Board overturned the IAAF suspension because of procedural errors in

as it is an administrative remedy for U.S. citizens. See 36 U.S.C. § 395(c); see also *Ban Lifted, Reynolds To Run in N.Y.*, CHI. TRIB., June 11, 1991, at C6.

38. *Reynolds Still To Compete*, supra note 31.

39. Amateur Sports Act of 1978, 36 U.S.C. § 391.

40. See Jeansonne, supra note 37, at 192.

41. Randy Harvey, *Reynolds Runs, Fails To Qualify*, L.A. TIMES, June 14, 1991, at C2.

42. *Id.* Under IAAF Rule 53(ii), the IAAF can suspend every athlete who "has taken part in any athletic meeting or event in which any of the competitors were, to his knowledge, ineligible to compete under IAAF rules." INTERNATIONAL AMATEUR ATHLETIC FEDERATION, supra note 20, rule 53, at 77-78. See also Phil Hersh, *Reynolds Runs, Puts TAC, IAAF at Odds*, CHI. TRIB., June 14, 1991, at C3.

43. *IAAF Warns Reynolds Against Repeat Performance*, UPI, June 15, 1991, available in LEXIS, Nexis Library, UPI File.

44. Stephen Parry, *IAAF Threatens U.S. Suspension if Doping Ban Is Defied Again*, REUTERS, June 15, 1991, available in LEXIS, Nexis Library, Reuter File.

45. Dick Patrick, *Reynolds Resumes Drug Appeal*, USA TODAY, Sept. 13, 1991, at 2C.

the handling and testing of the sample by a Paris laboratory.⁴⁶ This decision cleared Reynolds for domestic competition only. His next step was an appeal to the IAAF to compete internationally. Reynolds had TAC's support for the appeal set for November 16, 1991.⁴⁷

The IAAF repeatedly postponed Reynolds' case.⁴⁸ Commentators speculated that the IAAF did not want to jeopardize the accuracy or reputation of the Paris laboratory that analyzed Reynolds' sample because the laboratory also tested samples for the Winter Olympics.⁴⁹ Meanwhile, in April 1992, TAC cleared Reynolds for more domestic competition pending his hearing before the IAAF.⁵⁰ Finally, on May 11, 1992, an IAAF arbitration board upheld Reynolds' suspension, thus prohibiting him from competing in the Olympics.⁵¹ Reynolds again professed his innocence and protested the IAAF's lack of diligence in adhering to its drug-testing procedures.⁵² His agent, Brad Hunt, complained that the IAAF Board spent only two hours considering Reynolds' claim.⁵³

46. Mark Asher & Christine Brennan, *TAC Clears Reynolds of Steroid Use Charge; International Hearing His Next Hurdle*, WASH. POST, Oct. 5, 1991, at G7. Also, the Board concluded that one of the two samples which tested positive was not that of Reynolds. *Id.* "TAC's decision will be widely viewed as an attempt to undermine the IAAF's drug-testing program." Phil Hersh, *Clearing of Reynolds Opens TAC-IAAF Fight*, CHI. TRIB., Oct. 6, 1991, at C8.

47. *TAC Exonerates Reynolds of Alleged Steroids Use*, AGENCE FRANCE PRESSE, Oct. 5, 1991.

48. Karen Rosen, *Reynolds' Agent Questions Delay in Hearing Date*, ATLANTA J. & CONST., Jan. 12, 1992, at E8.

49. *Id.* Further, "[t]he IOC accredited laboratories are reluctant to have the accuracy of their tests challenged. They have a legitimate concern that releasing technical information would allow athletes interested in cheating to benefit from that information." DUBIN COMMISSION, *supra* note 1, at 497.

50. Jack Carey, *Reynolds' Hope*, USA TODAY, Apr. 13, 1992, at 1C. See also Phil Hersh, *TAC/USA Clears Reynolds for Domestic Competition*, CHI. TRIB., Apr. 13, 1992, at C8.

51. Julie Cart, *Panel Refuses To Lift Ban on Record-Holder Reynolds*, L.A. TIMES, May 12, 1992, at C3. The panel's president from Finland stated that the panel "was convinced that the samples were Reynolds', that they contained nandrolone, [and] that they had not been tampered with." *Id.* The decision of the panel "demonstrates the extreme difficulty any athlete faces trying to prove his innocence once a test result has been ruled official." Michael Janofsky, *World Panel Denies Reynolds' Appeal*, N.Y. TIMES, May 12, 1992, at B15.

52. Dan Giesin, *Reynolds Continues His Quest*, S.F. CHRON., May 23, 1992, at D3; Dick Patrick, *Reynolds Will Contend Error in Drug Test Appeal*, USA TODAY, May 14, 1992, at 9C.

53. The AAA spent four days and TAC spent two weeks considering Reynolds' claims. Cart, *supra* note 51.

Because Reynolds had exhausted the administrative appeals process established by the IAAF, he went to his last resort—the U.S. courts. Reynolds filed a lawsuit against the IAAF, asking for \$12.5 million in damages.⁵⁴ An Ohio federal district court judge ordered a temporary restraining order against the IAAF, allowing Reynolds to compete in pre-Olympic qualifying heats.⁵⁵ With this court order, Reynolds planned to run in the Bruce Jenner Classic in San Jose, California. Nonetheless, the director of the race withdrew Reynolds' invitation due to pressure from the IAAF, including the IAAF's threat to invoke the "contamination rule."⁵⁶ On June 6, 1992, Reynolds ran in a San Francisco meet to qualify for the U.S. Olympic Trials, and once again the IAAF reiterated its position.⁵⁷ This time, however, the IAAF barred the seven runners who competed against Reynolds from future IAAF competitions based on its contamination rule.⁵⁸ TAC was caught in the controversy between the IAAF rules and federal court decisions.⁵⁹

Reynolds' next step was to run in the Olympic Trials in New Orleans to qualify for the Olympics. The only legal precedent was discouraging.⁶⁰ A London court had previously rejected a similar appeal against the IAAF brought by Sandra Glasser, a Swiss middle distance runner.⁶¹ Nonetheless, on June 8, 1992, federal district court Judge Joseph Kinneary converted a ten-day temporary restraining order into a preliminary injunction enjoining TAC and the IAAF from "commencing or prosecuting in any other forum any action with regard to, affecting or in any way involving [Reynolds'] participation in any or all international and national amateur track and field competition including, without limitation the 1992

54. *Reynolds I*, *supra* note 11.

55. *Judge Says Reynolds Can Run*, CHI. TRIB., May 29, 1992, at C3. A USOC spokesman said, however, that a court could not get Reynolds into the Olympic Games. "The IAAF controls, not the USOC and not a court." *Id.*

56. *Reynolds Vows To Continue Fight*, AGENCE FRANCE PRESSE, May 31, 1992.

57. Hersh, *supra* note 8.

58. See Christine Brennan, *IAAF Says No Way to Reynolds; 7 Saturday Opponents Declared Ineligible*, WASH. POST, June 10, 1992, at C1.

59. *Id.*

60. John Mehaffey, *Reynolds Considers Immediate Legal Action To Overturn Ban*, REUTERS, May 12, 1992, available in LEXIS, Nexis Library, Reuter File.

61. *Gasser v. Stinson*, Q.B., June 15, 1988, available in LEXIS, Intlaw Library, UK-CASE File (official record unavailable) (trial for declaratory relief, damages, and injunctive relief stemming from Gasser's disqualification for a positive drug test before the 1988 Summer Olympics). See also Mehaffey, *supra* note 60.

U.S. Olympic Trials and the 1992 Summer Olympic Games.”⁶² Judge Kinneary issued the injunction because, if Reynolds were denied the chance of running in the trials, he would suffer irreparable harm.⁶³

Although this temporary restraining order permitted Reynolds to compete in the Olympic Trials, the court also issued a permanent injunction.⁶⁴ The following day, the U.S. Supreme Court heard Reynolds’ case. Thus, Reynolds’ appeals lasted twenty-two months, interfered with his training, and cost him thousands of dollars.⁶⁵ The case not only challenged the credibility of the IAAF’s drug-testing procedures, but also served to characterize the IAAF as a dictatorial body.

III. THE *REYNOLDS* CASES

A. *The District Court Allows Reynolds To Run in the Trials*

On June 19, 1992, one day before the Olympic trials were to begin, U.S. district court Judge Kinneary converted the preliminary injunction against the IAAF and TAC into a permanent injunction.⁶⁶ The IAAF did not appear at any of these hearings or at the instant case because, as it informed Reynolds by letter, it did not believe a U.S. court had personal jurisdiction over it.⁶⁷

After discussing the events leading up to the case, the court found that it had personal jurisdiction over the IAAF.⁶⁸ As plaintiff, Reynolds had the burden of proving personal jurisdiction; however, Reynolds only needed to make a prima facie case, as the district court determined the issue on the basis of written materials and not oral argument.⁶⁹ Because the IAAF was a non-resident defendant in a diversity case, the court stated that the IAAF “must be amenable to suit under the forum state’s long-arm statute and the exercise of jurisdiction over the defendant must not violate the Due Process clause of the United States Constitution.”⁷⁰ The dis-

62. *Reynolds v. International Amateur Athletic Fed’n*, No. C-2-92-452, 1992 U.S. Dist. LEXIS 8383 (E.D. Ohio June 19, 1992).

63. *Id.*

64. *Reynolds I*, *supra* note 11.

65. *Id.*

66. *Id.*

67. *Id.* at *1.

68. *Id.* at *18.

69. *Reynolds I*, *supra* note 11, at *8.

70. *Id.* at *9. See U.S. CONST. amends. V, XIV, § 1.

strict court found that Reynolds' alleged jurisdictional facts were sufficient to make out a prima facie case based on the IAAF's "transact[ing] business"⁷¹ in Ohio and the "tortious activity provisions of the Ohio long-arm statute."⁷²

Furthermore, the court found that the IAAF had minimum contacts with Ohio under the test articulated in *International Shoe Co. v. Washington*,⁷³ and that it, therefore, was subject to personal jurisdiction.⁷⁴ The court quoted a letter from the IAAF President to TAC's President, in which the IAAF stated that even if "the American guarantee of individual rights overlaps with [TAC's] duty to follow [the IAAF] rules," the TAC President still must do "everything possible . . . within the framework of the IAAF constitution" to conclude this case "in [the] name of the entire world athletics movement."⁷⁵ In response, the court stated:

Initially the court must sharply reject the IAAF and TAC's position that the IAAF is not subject to the jurisdiction of any court anywhere in the world. . . . Apparently the IAAF takes the position that to accord athletes the individual rights the United States has always accorded its own citizens is inconsistent with the rules of the IAAF. . . . It is simply an unacceptable position that courts of this country cannot protect the individual rights of United States citizens where those rights are threatened by an association which has significant contacts with this country, which exercises significant control over both athletes and athletic events in this country, which acts through an agent in this country, and which gains significant revenue from its contacts with United States companies.⁷⁶

Thus, the court found that it had personal jurisdiction over the IAAF because the IAAF had minimum contacts with Ohio, and that, as it failed to object to personal jurisdiction, the IAAF waived its right to contest it.⁷⁷

The court then discussed the issue of the preliminary injunction. Judge Kinneary determined that the irreparable harm to Reynolds' career that would result if he were not allowed to compete in the Olympic Trials outweighed the possibility of the IAAF's

71. *Reynolds I*, *supra* note 11, at *13.

72. *Id.* at *15.

73. 326 U.S. 310, 316 (1945).

74. *Reynolds I*, *supra* note 11, at *18.

75. *Id.* at *19.

76. *Id.* at *18-*20 (footnotes omitted).

77. *Id.* at *25-*26.

suspending other athletes.⁷⁸ In the Sixth Circuit, an injunction may be granted when the plaintiff establishes: "(1) the likelihood of the plaintiff's success on the merits; (2) whether the injunction will save the plaintiff from irreparable injury; (3) whether the injunction would harm others; and (4) whether the public interest would be served by the injunction."⁷⁹ Using the balancing test and weighing most heavily the irreparable injury prong⁸⁰ against the harm to others prong, the court focused on the IAAF's threat of contamination to other athletes running with Reynolds.⁸¹ Finding the threat "unconvincing," the court did not consider weighing it against the harm to Reynolds.⁸² The court stated that it found "the IAAF rule underlying the threat to be a grossly unsavory method of enforcing its anti-doping rules."⁸³ Also, the harm to Reynolds, were he prevented from competing in the Olympic Trials, would be significant.⁸⁴ Thus, Judge Kinneary determined that the irreparable harm to Reynolds' career that would result were he not allowed to compete in the Olympic Trials outweighed the possibility of the IAAF's suspending other athletes.⁸⁵ Finally, the court found that Reynolds had a good chance of winning on the merits.⁸⁶ Therefore, it issued a permanent injunction against the IAAF and TAC from interfering with Reynolds' running in the Olympic Trials and from the IAAF's contaminating the other runners.⁸⁷

An attorney for TAC planned to file an emergency appeal with the Sixth Circuit Court of Appeals to stay the district court

78. *Id.* at *28-30.

79. *Reynolds I, supra* note 11, at *26, citing *International Longshoremen's Ass'n Local 1937 v. Norfolk S. Corp.*, 927 F.2d 900, 903 (6th Cir. 1991), *cert. denied*, 112 S. Ct. 63 (1991). The four factors are not prerequisites, but elements to balance in relation to each other "with no single element being dispositive." *Id.* at *27, citing *In re DeLorean Motor Co.*, 755 F.2d 1223, 1229 (6th Cir. 1985).

80. *Id.* at *33.

81. *Id.* at *26.

82. *Id.* at *28. The threat was unconvincing because it was not clear to the court that the "IAAF's contamination rule is mandatory in nature." *Id.* at *29. See also *supra* text accompanying notes 42-44. Furthermore, the court did not believe the IAAF would prohibit top "United States track and field athletes uninvolved in this litigation from participating in the Olympics on the basis of Rule 53(ii) alone." *Reynolds I, supra* note 11, at *29.

83. *Reynolds I, supra* note 11, at *30.

84. *Id.* at *33.

85. *Id.*

86. *Id.* at *32.

87. *Id.* at *34-35.

order.⁸⁸ Meanwhile, athletes set to compete in the four-hundred meter race did not know whether they would compete against Butch Reynolds and face a ban from the IAAF.⁸⁹

B. *The Court of Appeals Reinstates the Ban*

Later that afternoon, Sixth Circuit Court of Appeals Judge Eugene Siler⁹⁰ stayed the injunction that the district court had issued hours earlier.⁹¹ In a much shorter opinion than the twenty-six page opinion issued by Judge Kinneary, Judge Siler held that Reynolds would suffer irreparable harm if he is not allowed to compete in the Olympic Trials, but that the harm did not extend beyond the Trials because the court questioned its power to force the IAAF to allow Reynolds into the Olympics.⁹² Furthermore, the appellate court found that the IAAF could act on its contamination threat, which would cause harm to the other athletes in the Trials.⁹³ Finally, the appellate court stayed the injunction because it did not believe Reynolds showed that he could succeed on the merits.⁹⁴ Thus, Reynolds was out of the races again. The Sixth Circuit did not address the issue of jurisdiction over the IAAF.

With the heats for the four-hundred meters set for 2:45 p.m. on Saturday, June 20, 1992, and the IAAF contamination threat

88. *Judge Rules Reynolds Can Run in Trials*, ATLANTA J. & CONST., June 19, 1992, at H3. The permanent injunction put TAC in the position of either violating a U.S. court order or causing the IAAF to issue sanctions against other runners. *Id.*

89. *See id.*

90. Judge Siler stated that he was a member of TAC and that, if either party objected, that party could request another judge. Neither objected, however. *Reynolds II*, *supra* note 12, at *1.

91. *Id.*

92. *Id.* at *3.

93. *Id.* The factors that must be weighed for granting a preliminary injunction and for granting a stay are identical. *See supra* note 79 and accompanying text. "[T]he flexibility traditionally afforded examination of the foregoing factors is tempered by the need to analyze carefully the dynamics of the injury claimed by each of the parties in the case." *Reynolds I*, *supra* note 11, at *28, citing *Schalk v. Teledyne, Inc.*, 751 F. Supp. 1261, 1264 (W.D. Mich. 1990) (citing *Friendship Materials, Inc. v. Michigan Brick, Inc.*, 679 F.2d 100, 103 (6th Cir. 1982)). It appears that the appellate court gave more weight to the harm to others prong and the potential for success on the merits prong than the district court did. The appellate court concentrated not so much on the harm to Reynolds, but on the public interest, the threat to the other athletes, and the possibility of success on the merits. *Reynolds II*, *supra* note 12, at *3-*4. While these factors are to be considered in the balancing test of whether to issue the stay, the harm to the plaintiff is an equally, if not more, important aspect of the test.

94. *Reynolds II*, *supra* note 12, at *4. The Sixth Circuit also recognized that "[t]he rules of the bodies [the IAAF and TAC] do not allow for an appeal to a court." *Id.*

still in effect, Reynolds sought relief from the stay from Justice John Paul Stevens, Circuit Justice for the Sixth Circuit, on Saturday morning.⁹⁵ The races were postponed first until 5:00 p.m. Saturday, then to Sunday, leaving the other runners in a quandary as to when they would race and, therefore, upsetting their training schedules.⁹⁶

C. *The Supreme Court Lets Reynolds Out of the Starting Blocks*

Justice Stevens granted Reynolds' application and lifted the Sixth Circuit stay of the injunction.⁹⁷ Justice Stevens focused, as district court Judge Kinneary had, on the IAAF threat. He held: "[T]he IAAF's threatened harm to third parties cannot dictate the proper disposition of [Reynolds'] claim."⁹⁸ He stated that the district court persuasively found that Reynolds had a good chance of success on the merits. Furthermore, Justice Stevens held that damages were no replacement for the value of the opportunity to win a gold medal at the Olympics.⁹⁹ Justice Stevens concluded that a legal remedy of damages is not an "adequate substitute for the intangible values for which the world's greatest athletes compete."¹⁰⁰

TAC then asked the full Court to review Justice Stevens' order. Saturday night, the full Court issued a one-sentence order: "The motion of The Athletics Congress of the U.S.A., Inc. to vacate the stay entered by Justice Stevens is denied."¹⁰¹

D. *The IAAF's Reaction to the Supreme Court's Decision*

The IAAF responded to the U.S. Supreme Court's ruling by reiterating that the contamination rule was still in effect.¹⁰² The

95. John Jeansonne, *Trials & Tribulations; Top Court Wades into Butchgate*, NEWS-DAY, June 21, 1992, at 2.

96. *Id.*

97. *Reynolds III*, *supra* note 13, at 2513.

98. *Id.* "The IAAF's threat to enforce its eligibility decision—no matter how arbitrary or erroneous it may be—by punishing innocent third parties cannot be permitted to influence a fair and impartial adjudication of the merits of applicant's claims." *Id.*

99. *Id.*

100. *Id.*

101. *Reynolds v. International Amateur Athletic Fed'n*, 120 L. Ed. 2d 864 (1992) (mem.). "The decision by the Supreme Court to let Stevens' ruling stand is a landmark in the high court's history . . . Never before had the court made a decision affecting Olympic competition. It is a precedent that concerns the [USOC]." Julie Cart, *Supreme Court Backs Reynolds*, L.A. TIMES, June 21, 1992, at C1.

102. See *Supreme Court Justice Allows Reynolds To Compete*, REUTERS, June 20, 1992, available in LEXIS, Nexis Library, Reuter File.

runners voted, and thirty of the thirty-two, all except Reynolds and his brother, Jeff Reynolds, decided not to run.¹⁰³

The IAAF changed its position on Sunday when the IAAF President, Primo Nebiolo, asked the IAAF Council to waive its contamination rule for these trials only.¹⁰⁴ On Monday, June 22, the IAAF issued a statement waiving the contamination rule to "support and protect the best interests of its athletes and their possibility to qualify for the Olympic Games in Barcelona," and allowed Reynolds to run.¹⁰⁵ The IAAF made clear that the exception was for this race only, which was now set for Tuesday, June 23, 1992.¹⁰⁶

When the dust settled, Reynolds placed only fifth in the finals and earned himself a place on the U.S. Olympic Team as an alternate.¹⁰⁷ Basically, the issue of whether he could compete in the Olympics was moot, as he failed to qualify as a starter, although it was questionable whether he would be allowed in the Olympic Village and whether his name would be submitted to the IOC as a member of the U.S. Olympic Team. The IAAF had to have the last word, however, and extended Reynolds' suspension until December 31, 1992, as "'a message' to athletes challenging its rulings."¹⁰⁸ Reynolds' lawsuit for damages against the IAAF was decided on December 4, 1992.¹⁰⁹ He won 27.3 million dollars.¹¹⁰

103. Michael Janofsky, *Olympics; Supreme Court Clears the Lane for Reynolds*, N.Y. TIMES, June 21, 1992, at B1.

104. *IAAF Makes Exception, Reynolds Can Race*, REUTERS, June 23, 1992, available in LEXIS, Nexis Library, Reuter File.

105. *Id.*

106. *Id.*

107. Phil Hersh, *Reynolds' Bid Ends—in 5th*, CHI. TRIB., June 27, 1992, at C1.

108. Dick Patrick, *Reynolds' Ban Extended*, USA TODAY, Aug. 11, 1992, at C1. This IAAF "action was based on IAAF Rule 53.1 (VIII) that forbids athletes from conduct which in the opinion of the IAAF Council is considered to be insulting or improper or likely to bring the sport into disrepute." *IAAF Extends Suspension of Reynolds Until Dec. 31*, NEWSDAY, Aug. 11, 1992, at 116.

109. *Reynolds v. International Amateur Athletic Fed'n*, No. C2-92-452 (S.D. Ohio Dec. 3, 1992). Judge Kinneary stated that "the record in this case established that the IAAF has purposefully avoided the truth, if for no other reason than its desire to protect the credibility of its drug-testing facilities at the personal expense of Mr. Reynolds." *Id.* at 23-24. The court granted Reynolds a default judgment against the IAAF for breach of contract, breach of contractual due process, defamation, and tortious interference with business relations. *Id.* at 29-30. The court also granted Reynolds a permanent injunction and declared that the suspension imposed on Reynolds was void. *Id.* at 30-32.

110. The IAAF owes Reynolds \$6,839,002 in compensatory damages and \$20,517,006 in punitive damages for a total of \$27,356,008. *Id.* at 30.

E. Critique of the Procedural Aspects of Reynolds

Rarely does a case progress as quickly through the federal court system as did *Reynolds*. Like a death penalty case, however,¹¹¹ time constrained the courts. The courts should be commended for acting quickly and efficiently. Justice Stevens correctly decided that the harm to Reynolds, if he were unable to compete in the trials, outweighed the harm to the IAAF. Reynolds' failure to qualify mooted the issue of whether he would compete in the Olympics, but the issue of jurisdiction over the IAAF continued to be critical for the IAAF because of the potential for similar incidents with other athletes. Justice Stevens also stated that if Reynolds were to qualify, his eligibility could be resolved before the final event at the Olympics.¹¹² Furthermore, his focus on the threat of contamination to the other runners was important. The tactics the IAAF uses to "contaminate," or to compel other "clean" athletes not to run against athletes who are alleged to use drugs, are compelling to other runners because, unless they comply, they will not be able to compete in later events. These tactics, however, put elite athletes in jeopardy for occurrences beyond their control. Although athletes may or may not choose to run, they have no control over a fellow drug-tainted runner's desire to compete in spite of a positive drug test. Also, the threat of contamination is not always strictly enforced. Additionally, if the IAAF chose to enforce its threat in this case, many of the world's top runners would have been unable to participate in the Barcelona Olympics. Thus, Justice Stevens properly weighed the harm to Reynolds against the harm to third parties in granting the injunction.

Whatever basis the Supreme Court had for jurisdiction over the IAAF was not decided in *Reynolds*. Although Justice Stevens did not explicitly discuss the issue of jurisdiction over the IAAF, such jurisdiction is implicit in his address of the appeal. The district court properly found jurisdiction over the IAAF through either TAC as its NF, or through the state's long-arm statute. The IAAF transacted business with Reynolds through TAC, its agent. The IAAF delegated to TAC "the duties of notifying [Reynolds] that

111. A lawyer for TAC stated that "[t]his is being litigated like a death penalty case." Statement of Doriane Lambelet, reprinted in Jay Weiner, *Appeals Court Denies Reynolds Berth in Olympic Trials*, STAR TRIB., June 20, 1992, at C7.

112. *Reynolds III*, *supra* note 13, 112 S. Ct. at 2513. Justice Stevens did not explain how this matter would be resolved.

the IAAF suspended him . . . , of conducting a hearing and of investigating the matter further.”¹¹³ The IAAF meets the *International Shoe* minimum contacts test with each state because of its relationship to its representative, TAC. Whether the finding would have been different had the IAAF contested jurisdiction cannot be ascertained. Nonetheless, the courts’ efficient handling of *Reynolds* and their finding jurisdiction are exemplary of how U.S. courts may treat similar situations. Even if the IAAF does not agree with how the courts treated *Reynolds*, if it does not want duplicate litigation in all of its member countries, the IAAF needs to make changes.

IV. TREATMENT OF OTHER ATHLETES

While Butch Reynolds succeeded in his attempt to obtain a U.S. court order to compete over IAAF protests, he did not succeed in convincing the IAAF to overturn its decision. Other athletes, however, such as German runner Katrin Krabbe, did have bans overturned on technicalities.¹¹⁴ Katrin Krabbe, Silke Moeller, and Grit Breuer, three “clean” German runners, allegedly manipulated their urine samples, which were all found to have come from the same person.¹¹⁵ In these German athletes’ cases, the IAAF lifted the suspensions because it found that the German NF of the IAAF, the German Athletic Federation (“DLV”), “has no provision either for out-of-competition testing, or for a proper penalty procedure for an athlete who tests positive, even during competition.”¹¹⁶ Unlike Reynolds who took his test, these athletes apparently manipulated their tests. In its decision to ban an athlete, an athlete’s own manipulation of test procedures or results should be of greater concern to the IAAF than a laboratory’s mistake. Moreover, the DLV, the governing body for these runners, rejected its own panel’s decision to lift the suspensions and appealed to the IAAF.¹¹⁷ In contrast, TAC supported its panel’s lifting of Reyn-

113. *Reynolds I*, *supra* note 11, at *12.

114. The IAAF lifted a four-year ban on Katrin Krabbe, Silke Moeller, and Grit Breuer before the Olympics. Timothy Heritage, *Watts Wins 400 Metres, Drugs Cast Shadow over the Olympics*, REUTERS, Aug. 5, 1992, available in LEXIS, Nexis Library, Reuter File.

115. John Goodbody, *Testing Is Put to the Test by Krabbe*, THE TIMES (London), June 30, 1992.

116. *Id.*

117. Randy Harvey, *Krabbe, Two Teammates Cleared for Olympics*, L.A. TIMES, June 29, 1992, at C10.

olds' suspension and backed him in his appeal to the IAAF.¹¹⁸ Furthermore, the IAAF took two days to hear these three German athletes' claims, compared to the two hours for Reynolds.¹¹⁹ The IAAF should have decided Reynolds' case in favor of Reynolds, as it did Krabbe's, Moeller's, and Breuer's cases, because all four samples had procedural problems in testing, whether or not any of these athletes actually used the prohibited substances. Although the factors underlying these cases were similar, the decisions of the IAAF were not. These inconsistent decisions make it difficult for an athlete to anticipate how the IAAF will react to a positive test.

The IAAF also lifted U.S. shot-putter James Doehring's suspension because of "major irregularities in the handling of a second urine specimen by the laboratory concerned."¹²⁰ Thus, unlike Reynolds, Doehring got off on a technicality. Like the DLV in Krabbe's case, TAC upheld Doehring's suspension, which the IAAF overruled.¹²¹ Nevertheless, like Reynolds' case, the AAA decided that Doehring's suspension should be lifted, a decision with which the IAAF agreed.¹²²

Randy Barnes, a U.S. shot-put world record holder, did not share Reynolds' success in the U.S. court system. The IAAF upheld Barnes' suspension for his positive test of the steroid methyltestosterone after a track and field meet in Sweden in 1990,¹²³ despite Barnes' claim that improper drug-testing procedures were used.¹²⁴ A West Virginia court ruled that Barnes must be allowed to compete at the Olympic Trials.¹²⁵ The court found jurisdiction over the IAAF and TAC because "both sanction events in the state and 'therefore are considered to be present and operating in the state.'"¹²⁶ Once again, neither the IAAF nor TAC were

118. See *supra* text accompanying note 47.

119. *Id.*

120. *Krabbe Affair Goes to Arbitration*, AGENCE FRANCE PRESSE, May 31, 1992.

121. Jim Byers, *Suspended Germans' Fate Decided Soon*, TORONTO STAR, June 1, 1992, at D6.

122. *Id.*

123. Julie Cart, *Barnes Says Drug Test Mishandled*, L.A. TIMES, Nov. 7, 1990, at C1.

124. Julie Cart, *Barnes Stays Out of Trials*, L.A. TIMES, June 26, 1992, at C4.

125. *Barnes v. International Amateur Athletic Fed'n*, No. 92C-2640 (W. Va. Cir. Ct. June 22, 1992). Because there were "serious and substantial defects" in the IAAF drug-testing procedures, Judge Paul Zakaib, Jr. ruled that Barnes must be allowed to compete. *Judge: Barnes Gets His Shot*, L.A. TIMES, June 23, 1992, at C1. The court permanently enjoined the IAAF and TAC from interfering with Barnes' participation in the Olympic Games. *Barnes*, No. 92C-2640.

126. *Judge: Barnes Gets His Shot*, *supra* note 125.

present at the hearing.¹²⁷ Nevertheless, TAC removed the suit to U.S. district court based on diversity jurisdiction.¹²⁸ The district court dissolved the restraining order, finding that Barnes had not exhausted his administrative remedies¹²⁹ and that his claim, therefore, was not ripe for litigation.

Comparison of Krabbe's, Doehring's, and Barnes' cases to Reynolds' case shows too many discrepancies between the IAAF's written standards and procedures and their actual implementation. An athlete cannot be expected to know if a laboratory will handle her sample properly, which steps to take in the appeals process, and the rules of the IAAF or her NF. Until the IAAF resolves these dilemmas, athletes will be at a severe disadvantage. Resolution of these discrepancies would aid the IAAF in deterring athletes from using performance-enhancing drugs.

V. JURISDICTION OVER THE IAAF

A. Jurisdictional Issues

Reynolds raises an issue that has not previously been decided: IAAF's amenability to suit in its member nations. The IAAF believes that it is not amenable to suit anywhere, and it has stated that it will never accept a decision of any court in the world against its rules.¹³⁰ The IAAF position, however, does not leave much room for athletes' legal rights.

First, U.S. courts have decided that the IAAF is amenable to suit.¹³¹ The *Reynolds I* court even went so far as to say that, "as the IAAF acts through its [NFs], it is reasonable to subject the IAAF to jurisdiction anywhere its member organizations may be subject to suit."¹³² This decision, however, is antithetical to the IAAF's own conclusions.¹³³

127. *Id.*

128. *Barnes v. International Amateur Athletic Fed'n*, No. 2:92-0603 (S.D.W. Va. June 25, 1992), *dismissed*, Sept. 30, 1993.

129. *Id.*, slip op. at 16.

130. *See Harvey*, *supra* note 14.

131. *Reynolds I*, *supra* note 11; *Barnes*, No. 92C-2640 (W. Va. Cir. Ct. June 22, 1992).

132. *Reynolds I*, *supra* note 11, at *21-*22. *Behagen v. Amateur Basketball Ass'n*, 744 F.2d 731 (10th Cir. 1984) (holding that an international organization which acts through its members may be subject to personal jurisdiction based upon a member's contacts with, and activity in, the forum).

133. "The IAAF says it can't relinquish its anti-drug efforts to the court systems of the more than 200 nations that make up its membership" because clean runners will not be

Because the IOC oversees the IAAF, and the IOC has been called into various nations' courts,¹³⁴ there is a strong argument that the IAAF is likewise amenable to suit. Nevertheless, in finding that they do not have jurisdiction over the IOC, some courts have deferred to Rule 1 of the Olympic Charter, which aims "to spread Olympic principles."¹³⁵ Also, Rule 16 of the Olympic Charter gives the IOC "Supreme Jurisdiction," and states that "[i]t shall be the interpreter of the Rules."¹³⁶ Furthermore, Rule 23 states that the IOC is "the final authority on all questions concerning the Olympic Games and the Olympic Movement."¹³⁷ Thus, the IAAF has a strong point that it is not amenable to suit anywhere and that it is the final authority on all its decisions, like the IOC. Nevertheless, if the IAAF acts on its own authority in an unchecked, dictatorial manner, then it is not really spreading "Olympic principles," but doing individuals injustice by depriving them of their rights. Furthermore, because the IAAF is not as powerful as the IOC, plaintiffs like Reynolds have a better chance that a court will find the IAAF subject to U.S. jurisdiction, especially when an athletic event takes place in the United States. The IAAF is therefore concerned because any U.S. court decision may be enforced on U.S. soil during the 1996 Atlanta Olympics, unlike in Barcelona, had Reynolds qualified for a starting position.

As long as the IAAF is amenable to suit in the United States or other countries, there will be conflicts between international rules and an individual nation's laws concerning the eligibility of athletes.¹³⁸ TAC must abide by the laws of its government, but it

completely protected. David Greifinger, *31 Competitors Shouldn't Be Denied Chance To Follow Dreams*, USA TODAY, June 23, 1992, at 10C.

134. *San Francisco Arts & Athletics, Inc. v. United States Olympic Comm'n*, 483 U.S. 522 (1987). Also, the Taiwanese NOC brought an action "against the IOC in the courts of Switzerland, where the IOC is chartered." NAFZIGER, *supra* note 6, at 95. "A 1977 Belgian court decision, confirming a position taken by French Courts, as well as the Council of Europe and the High Court of Justice of the European Communities, have established that the international rules of sport supersede conflicting national policies and laws in particular contexts." *Id.* at 34.

135. OLYMPIC CHARTER rule 1, *reprinted in* NAFZIGER, *supra* note 6, at 233.

136. *Id.* rule 16, at 235.

137. *Id.* rule 23, at 235.

138. See Goodbody, *supra* note 115 (discussing DLV's lack of rules on out-of-competition testing and penalty procedure). Also, there is a difference between the appeal procedures under IAAF rules and under U.S. law. Under IAAF rules, one is first suspended, then there is a hearing, then an athlete may be ruled ineligible. Under the Amateur Sports Act of 1978, however, an athlete has the right to appeal before any ruling of ineligibility. 36 U.S.C. § 395(c).

must also follow the IAAF rules.¹³⁹ If there are inconsistencies, a NF may not know which rule to follow. The IAAF would prefer international sports law to supersede each member country's own law. Unfortunately, this position is too idealistic in this day and age when politics and sports are inextricably intertwined.¹⁴⁰

Because a court may find that it has jurisdiction over the IAAF, banned athletes may resort to litigation, and the cost to both the athlete and the IAAF may be tremendous. Furthermore, sanctions against drug users will be dissolved out of the fear that the athlete will challenge the sanction in a court anywhere in the world.¹⁴¹ The Dubin Commission of Canada recommended after the Ben Johnson incident in Seoul

that decisions on eligibility for competition remain a function of the sport-governing bodies themselves. While the federal government can and should reserve the right to determine what individuals and bodies receive government funding, it is not appropriate for the Government of Canada to determine who is eligible to compete in either domestic or international competition.¹⁴²

Therefore, other forums should be available for an athlete to contest a positive drug test because it is unfair for the IAAF to be the final arbitrator in these situations, especially when the IAAF's enforcement record is inconsistent. The IAAF has not proven to be a neutral arbitrator in the past. It would, however, be unworkable for every member nation to have jurisdiction over the IAAF. Forcing the IAAF into any court where it operated would eventually destroy it.¹⁴³ The IAAF would be wise to choose a neutral

139. The USOC President Harvey Schiller stated after the Supreme Court decision in Reynolds that "[w]e've got to be careful that we don't allow the selection of our Olympic team by court order." Cart, *supra* note 101.

140. For example, the U.S. boycott of the 1980 Moscow Olympics and the U.S.S.R. boycott of the 1984 Los Angeles Olympics showed that political ideas mixed with sports are detrimental to Olympic principles. See NAFZIGER, *supra* note 6, at 4, 50, 101-37.

141. *A Battle Far from Won*, INDEPENDENT, July 31, 1992, at 16.

142. DUBIN COMMISSION, *supra* note 1, at 532. "[I]t is urged that all athletes who have been subjected to disciplinary action should be afforded the right of appeal in accordance with the principles of natural justice." *Id.* at 498.

143. An IAAF spokesman asked: "What would happen if the jurisdictions of all 200 member federations challenged the IAAF's ruling? [The Reynolds decision] is a decision that may lead to chaos." Michael Wilbon, *IAAF Takes Gold in Olympic Absurdity*, WASH. POST, June 20, 1992, at G1.

forum for an athlete to appeal his or her case.¹⁴⁴ The IAAF must not have the final word on everything as it currently does.

B. Jurisdictional Solutions

There are several solutions available for the current problem. Disputes between the IAAF and individual athletes could be brought to the following forums: the Court for Arbitration of Sport, the International Court of Justice, or the International Olympic Committee. While the IAAF would like each athlete to relinquish his or her right to dispute an IAAF finding, the best solution is to have an independent arbitrator.

1. Independent Arbitrator

One possibility for an independent forum for cases like Reynolds' is the Court of Arbitration for Sport ("CAS").¹⁴⁵ The International Olympic Committee, in 1983, created the CAS to provide for dispute resolution.¹⁴⁶ The IOC, the IOC President, the IFs, and the NOCs each appoint fifteen jurists¹⁴⁷ with legal training and competence in the field of sport to sit on the CAS.¹⁴⁸ The CAS is intended to settle nontechnical disputes "of a private nature arising out of the practice or development of sport," and generally, "all activities pertaining to sport and whose settlement is *not* otherwise provided for in the Olympic Charter."¹⁴⁹

Article 11 of the Statute of the CAS provides that, "[f]or each case, the CAS sits in the composition of a panel consisting of one or three arbitrators mandatorily chosen from among its members."¹⁵⁰ After each of the parties appoints one arbitrator, the two parties come to an agreement as to the appointment of the third arbitrator.¹⁵¹ If they cannot agree, the President of the Federal Tri-

144. "The national and international bodies must work together to set world-wide drug-testing standards, jurisdiction and resolution procedures." Frank Greenberg, *Supreme Court Ruling Forbids Ban from Trials*, USA TODAY, June 23, 1992, at C10.

145. See TRIBUNAL ARBITRAL DU SPORT (TAS) (1991).

146. Statute of the Court of Arbitration for Sport art. 1 (1983), *as amended* 1990, in TRIBUNAL ARBITRAL DU SPORT, *supra* note 145, at 45 [hereinafter Statute of the CAS]. See NAFZIGER, *supra* note 6, at 35.

147. Statute of the CAS, *supra* note 146, art. 7.

148. *Id.* art. 6; see NAFZIGER, *supra* note 6, at 36.

149. Statute of the CAS, *supra* note 146, art. 4 (emphasis added); see NAFZIGER, *supra* note 6, at 36.

150. Statute of the CAS, *supra* note 146, art. 11.

151. *Id.* art. 12.

bunal of the Swiss Confederation appoints the third member of the panel.¹⁵² If there is only one arbitrator, the parties mutually agree on the arbitrator and nominate him.¹⁵³

The parties bringing the dispute to the CAS “sign an arbitration agreement in which they agree to submit their dispute to the arbitration of the CAS.”¹⁵⁴ This means that the two parties have to agree to allow the CAS to hear the case; thus, the jurisdiction is optional because if one of the parties does not agree to submit to the jurisdiction of the CAS, the CAS cannot hear the dispute. Although CAS jurisdiction is optional, it can convene anywhere in the world,¹⁵⁵ and, once a party submits to its jurisdiction, the decision is binding. Both IFs and “any natural person or corporate body having the capacity or power to compromise” have standing to bring a dispute to the CAS.¹⁵⁶ Although many of the decisions from the CAS originate from disputes between athletic clubs and NFs or between a NOC and an athlete,¹⁵⁷ there is no reason the CAS could not decide a dispute like the one between Reynolds and the IAAF.¹⁵⁸ Nonetheless, an individual athlete may be wary of taking his or her case to the CAS because of the IFs’ jurist appointment power. Furthermore, the IAAF may feel that it compromises its jurisdiction if it agrees to a binding decision. Without compromise by both sides, however, disputes over imperfect drug-testing procedures and results will continue to taint amateur sports.

The CAS statute may only be modified by a proposal by the Executive Board of the IOC, and only if two-thirds of the IOC session approves the amendment.¹⁵⁹ Thus, it may be difficult for the CAS to change its statute to remove the jurist appointment power from the IFs. Amending the CAS statute is an important step that would make the drug-testing appeals process fairer. The CAS is relatively easy to convene and is more impartial than the current IAAF panel appeals process. The only drawbacks are that the statute itself has to be modified to remove the jurist appoint-

152. *Id.*

153. *Id.*

154. *Id.* art. 19.

155. *Id.* art. 2; see NAFZIGER, *supra* note 6, at 36.

156. Statute of the CAS, *supra* note 146, art. 5; see NAFZIGER, *supra* note 6, at 36.

157. NAFZIGER, *supra* note 6, at 37.

158. The CAS issued an “advisory opinion for the benefit of the Norwegian Olympic Committee in which it upheld the right of an NOC to exclude an athlete for life if he or she has violated anti-doping rules within the IOC framework.” *Id.*

159. Statute of the CAS, *supra* note 146, art. 75.

ment power from the IFs, and that this body may not want to be involved with numerous drug-testing disputes. The advantages of impartiality and uniformity outweigh the drawbacks, however, and the modified CAS is the best solution to the Reynolds type of problem.

The International Court of Justice ("ICJ"), sometimes referred to as the World Court, is another possible independent arbitrator.¹⁶⁰ The only parties allowed to bring disputes to the ICJ, however, are states.¹⁶¹ Nonetheless, a nation may take up an individual's claim and make an international claim on his or her behalf at the ICJ.¹⁶² Thus, the United States could advocate Reynolds' claim against the IAAF.¹⁶³ As for the IAAF, an international organization, it is questionable whether the ICJ would have jurisdiction over the IAAF if the IAAF makes a claim on its own behalf. The ICJ may render advisory opinions on disputes between a state and an international organization,¹⁶⁴ so perhaps the ICJ would grant jurisdiction to the IOC for the IAAF. The United States and the IOC could then dispute Reynolds' claim against the IAAF in the ICJ. Because it is doubtful that the World Court would want to be burdened with trivial questions concerning sports, this proposal may not be a likely solution.

Like the CAS, ICJ jurisdiction is optional.¹⁶⁵ Once each party consents to jurisdiction, the decision is binding only between the two parties.¹⁶⁶ Hence, although Reynolds and the IAAF could settle their dispute, any decision concerning IAAF procedures will not be binding, and the IAAF, therefore, need not follow the decision in future disputes. Furthermore, there is also a problem of enforcement if only an advisory opinion is handed down.¹⁶⁷ Unlike the decisions of the CAS, if the outcome is against the IAAF in the ICJ, it may be more difficult to enforce the decision to allow an

160. Reynolds' agent, Brad Hunt, stated that the World Court might be a possibility for appeal while Reynolds waited for the federal courts' decisions. Mike Rowbottom, *Athletics: World Threat from Reynolds*, INDEPENDENT, June 23, 1992, at 28.

161. SHABTAI ROSENNE, *THE WORLD COURT: WHAT IT IS AND HOW IT WORKS* 82 (1988).

162. *Id.* at 82-83.

163. The U.S. Government, however, may not want to engage in this tinkering with the Olympics.

164. ROSENNE, *supra* note 161, at 83.

165. *Id.* at 82-92.

166. *Id.* at 144-45.

167. *Id.* at 107.

individual athlete to run if he or she participates on foreign soil. Thus, the CAS may be a better forum than the ICJ, because the CAS is more tightly connected with the IOC and the IOC could force the IAAF to comply with the decision through its recognition and non-recognition policies.¹⁶⁸

One possible solution that the IAAF would probably favor would be an appeal to the IOC. This is preferable to the IAAF, as the IOC is the interpreter of its own rules and has "final authority" over all decisions affecting the Olympics.¹⁶⁹ When it was uncertain whether Reynolds would win at the trials, the executive director of the USOC, Harvey Schiller, stated that, "'depending on the circumstances' the USOC would ask the IOC, as final authority to rule on the case."¹⁷⁰ Because Reynolds only placed as an alternate, and the IOC did not rule on the case, the IOC had no cause to decide Reynolds' case.

If the IFs do not have the power to appoint the CAS jurists, the best forum for an athlete's claim is an independent arbitrator, such as the CAS. The jurist appointment power needs to be removed from the IFs, the bodies which impose the penalties, for an athlete to obtain an impartial final appeal. An IF might also favor the CAS because it is under the auspices of the IOC. The CAS is the best arbitrator to hear these claims because it can convene anywhere. There is, however, the problem of optional jurisdiction. If the IAAF, TAC, other NFs, and individual athletes do agree to submit to the jurisdiction of one of these arbitrators, the CAS would be the best forum, especially if jurist appointments were restructured so that the IFs did not appoint any jurists.

2. IAAF's Solution: Each Athlete Agrees To Submit to IAAF Rules

Nebiolo's solution is to require all athletes to sign an agreement relinquishing "their rights to seek court action as a condition of eligibility."¹⁷¹ While it is difficult to imagine an American athlete agreeing to this requirement and effectively giving up his or

168. The IOC can withdraw recognition of an IF if it does not comply with the Olympic Charter. NAFZIGER, *supra* note 6, at 28.

169. See *supra* notes 136-37.

170. Michael Janofsky, *Olympics; Reynolds Advances in Legal Rat Race*, N.Y. TIMES, June 25, 1992, at B19.

171. Michael Janofsky, *Barcelona: Track & Field; On Your Mark, Get Set, Go Home: It's Drugs, Again*, N.Y. TIMES, July 31, 1992, at B14.

her right to sue the IAAF in court, as *Reynolds* established, Nebiolo believes it is "critical to the success of the competition and useful as an indirect way of discouraging others from using drugs."¹⁷² One reason the IAAF President wants this requirement for all track and field athletes is that the IAAF fears the ramifications of U.S. court decisions for the 1996 Atlanta Olympics. The IAAF would have no authority to block enforcement of decisions allowing a banned athlete to participate.¹⁷³ As *Reynolds* proved, however, Nebiolo's proposal is an unworkable solution, for the IAAF is not a neutral forum where athletes are insured fair treatment if there is a problem with drug-test results.¹⁷⁴ Such a waiver would be palatable only if the IAAF has adequate and consistent procedures to protect athletes against technical mistakes in drug testing.

3. Other Solutions

Individual NF's constitutions could be made more uniform. For example, Krabbe, Moeller, and Breuer had their bans lifted because of a technicality in the DLV constitution.¹⁷⁵ If every constitution were more like the IAAF's, i.e., stricter, or the same or very similar to all the other NFs, there would be fewer opportunities for an athlete to challenge the system on a claim of inconsistency. If the standards were equal between the NFs and the IAAF, fewer athletes would take their cases to court.¹⁷⁶ Otherwise,

172. *Id.*

173. *Id.*

174. The *Reynolds I* court concluded that the IAAF does not strictly adhere to its own rules. *Reynolds I*, *supra* note 11, at *29. The court made this statement because there was conflicting evidence as to whether the IAAF suspended Reynolds or declared him ineligible after the Monte Carlo track meet. According to TAC, Reynolds was merely suspended, while the IAAF contends that Reynolds was ineligible. IAAF Rule 59 states that "disciplinary proceedings must occur in three stages: suspension, hearing, and ineligibility." *Id.* at *2. If a U.S. court makes this type of evaluation about the IAAF, an athlete who feels his test results were incorrect cannot feel secure in bringing a claim to the IAAF.

175. See Goodbody, *supra* note 115. Krabbe and two other athletes "escaped suspension on a technicality because Germany's doping rules were not incorporated directly into the constitution of the German athletic federation." Iain MacLeod, *Drugs in Sport: Call for More Harmony To Prevent Drug Cheats Securing Smaller Bans*, DAILY TELEGRAPH (London), Oct. 1, 1992, at 32. Mark Gay, IAAF external counsel, said that "[u]nless adequate constitutional provisions exist to support a system of drug-testing, there is no point in even starting to test." *Id.*

176. When these problems arise, they raise questions about the validity of the testing and the credibility of the IAAF.

[e]ven though the athlete is still likely to be banned, if he continues to protest his innocence and persists in legal action against governing bodies, there comes a point at which some people may think he would not be pursuing the matter with such vigour unless there was something in the claims he was making.¹⁷⁷

Adopting the section of the IAAF constitution on drug-testing procedures itself or using another set of procedures that the NFs agree to and adopt verbatim into their own constitutions would lead to more uniformity.¹⁷⁸ Then, the IAAF would no longer have to worry about individual athletes challenging IAAF decisions based on NFs' constitutions. There would only be a slight difference, or none at all, between the IAAF and the NFs' constitutions concerning the drug-testing appeals process. The best solution is for the IAAF to receive input from as many NFs as possible, and then restructure its rules on procedures and athletes' rights. The IAAF could then request that each NF adopt these new rules as part of each NF's constitution. Because this proposal is subject to passage by a number of diverse bodies, however, this approach is unwieldy.

The Dubin Commission recommended that all NFs "establish within their own rules a grievance process through which athletes may receive a fair hearing from the sport-governing body itself, including a mechanism for arbitration by an independent arbitrator mutually acceptable to the parties."¹⁷⁹ Although TAC has established this process, TAC could take it one step further by making the proposed CAS, and not the IAAF, the forum for final appeal. Furthermore, it would be appropriate for all other NFs to implement this appeals process to promote uniformity.

Another solution is to allow individual athletes to sue the IAAF in any court. This solution is advantageous because the IAAF would be on notice to adhere to a uniform drug-testing and appeals system. The disadvantage of this approach, however, is that much time and money would be wasted.

177. Iain MacLeod, *Sports Politics: New Year Starts with Massive Drug Hangover*, DAILY TELEGRAPH (London), Dec. 30, 1992, at 25 (statement of Mark Gay, IAAF external counsel).

178. This agreement could, in turn, be adopted by the IAAF if it were comprehensive enough. The IAAF agreement could supersede the present rules, and perhaps include more rights for athletes.

179. DUBIN COMMISSION, *supra* note 1, at 556.

The IAAF could also be the final arbitrator, but, as *Reynolds* demonstrates, this solution is untenable unless significant changes are made in the way the IAAF addresses the appeals process. There must be a change from the present inconsistent system for the IAAF, NFs, and individual athletes to stop the court challenges to the procedures. The three groups, perhaps along with the IOC, need to negotiate a solution that creates a neutral forum where athletes can bring their grievances. Otherwise, lawyers, and not the athletes, may as well be on the starting blocks in Atlanta in 1996.

VI. ATHLETES' RIGHTS UNDER THE AMATEUR SPORTS ACT OF 1978

Reynolds also raises the issue of athletes' rights when they are tested for performance-enhancing drugs,¹⁸⁰ and the ensuing appeals process if the sample tests positive for a banned substance. In the United States, the Amateur Sports Act of 1978¹⁸¹ guarantees an athlete "the right to an appeal before any ruling of ineligibility."¹⁸² The "appeal process was built into the Amateur Sports Act to sanctify the notion of innocent until proven guilty, a backbone of jurisprudence in the United States, Canada and elsewhere."¹⁸³ Nonetheless, IAAF rules, promulgated in 1989, mandate an athlete's suspension immediately on the finding of a positive test.¹⁸⁴ Instead of an athlete having a right to a hearing "before a pronouncement of guilt and the imposition of any penalty,"¹⁸⁵ the onus is on an athlete to prove his or her innocence, rather than on the IAAF to prove guilt.¹⁸⁶ Deterrence was the driving force behind the promulgation of this rule, but the rule seems contrary to U.S. notions of due process.

180. Whether there is a procedural due process issue in drug testing is beyond the scope of this Note. While it is unresolved whether the USOC is a state actor, for purposes of this Note, the author assumes that TAC and the IAAF are not governmental actors. For more detailed information on this topic, see Wolff, *supra* note 4, at 630-37.

181. Amateur Sports Act of 1978, 36 U.S.C. § 395(c) (1978). The Amateur Sports Act does not mention a question of judicial review, let alone specifically preclude it. *Reynolds v. International Amateur Athletic Fed'n*, No. C2-92-452 (S.D. Ohio Dec. 3, 1992) (deciding the damages against the IAAF). For this reason, among others, the court in *Reynolds'* damages suit held that it had jurisdiction over the IAAF through TAC.

182. Janofsky, *supra* note 19.

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

The International Olympic Charter states that “[a]ny individual involved in an alleged doping infraction should have available to them review and appeal mechanisms. Doping infractions should be investigated to determine the possible involvement of others beyond the athlete . . . and any individual subject to investigation must have reasonable due process protection.”¹⁸⁷ While the Olympic Charter does not clarify the IAAF rule, it seems to give athletes more rights than the IAAF’s new rule.

There is a conflict between U.S. statutory rights and the IAAF rules. Under the Amateur Sports Act,¹⁸⁸ if an athlete tests positive for drugs, he or she must be granted a hearing before eligibility can be determined.¹⁸⁹ Furthermore, conflict arises because TAC must abide by the IAAF’s rules without violating U.S. law.

A. Solution: Provide Athletes with a Hearing Before Ruling on Eligibility

Before 1989, the IAAF allowed athletes a hearing before suspension. To combat increasing drug use in sports and the technological advances making drugs more difficult to detect, the IAAF changed its procedure and switched to suspension before a hearing. This policy is in direct conflict with the U.S. Amateur Sports Act and, thus, must be changed. There is no reason to presume an athlete guilty unless drug-testing procedures are one-hundred percent accurate. Given that the test results are not perfect and that more athletes are challenging the findings because of the stakes involved,¹⁹⁰ the IAAF has two choices.

First, the IAAF should return to the pre-1989 system of hearings before suspensions in order to conform to some of its member nations’ statutorily protected rights. If this change grants athletes of some countries more rights than their nations already prescribe, those nations’ NFs can follow their more restrictive rules if they so desire. This solution, however, will conform IAAF rules with U.S.

187. INTERNATIONAL OLYMPIC CHARTER AGAINST DOPING IN SPORT, *supra* note 1, § 3.7. The Charter also provides that due process mechanisms include “compliance with written Standard Operating Procedure Guidelines during all phase [sic] of the testing process.” *Id.* § 7.1.

188. Amateur Sports Act of 1978, 36 U.S.C. § 395(c).

189. *Id.*

190. There are more challenges today because the stakes are higher and the cash awards are larger. Track and field has more challenges than any other Olympic sport “perhaps because the potential monetary gain from a medal in track remains by far the greatest.” Phil Hersh, *Drugs Still Mystery Olympic Ingredient*, CHI. TRIB., July 22, 1992, at C1.

law and similar countries' laws, and athletes will be less likely to sue the IAAF based on its decisions. The IAAF will be able to enforce its drug rules more efficiently, especially if it allows the athletes an opportunity to be heard along with the results from the test. Not only will athletes respect the IAAF and its decisions more if they have an opportunity for a fair hearing prior to deprivation of their athletic status, but athletes will be less likely to challenge IAAF decisions in courts across the world. This will be particularly effective if the IAAF allows athletes to appeal to an independent arbitrator such as the proposed modified CAS.¹⁹¹

The other solution is to keep the present procedure intact, but to ensure that the test results and the methods used for administering the tests, including the chain of custody requirements, are infallible. The Dubin Commission recommended taking more athletes' urine, while testing only some of the samples, so that more athletes face the possibility of testing.¹⁹² Random testing and an on-the-spot determination of the result, or some other change in the rules, may ensure perfect results; however, this appears to be a nearly impossible task. The IAAF cannot keep its present appeals process without making its testing procedures absolutely accurate. The risk of erroneous deprivation of athletes' opportunities by suspension, without a hearing first, is too great.

International organizations obviously cannot mimic the rules of all its member nations; sports organizations, however, cannot offend the rights of athletes from any country. Thus, unless all the countries that participate in the Olympics decide to grant the IAAF the power to enforce international sports law, the best solution is to give athletes who test positive for performance-enhancing drugs an opportunity to be heard in front of a neutral tribunal before their rights are rescinded. Again, more uniformity with others' laws will lead to fewer challenges in courts of law.

VII. CONCLUSION

The Olympic Games are events in which the world should peacefully join together to enjoy sport. The Olympics are not the proper forum for political disputes between states and international bodies. There should only be competition between individuals, and nations should compete to determine physical strength,

191. See *supra* text accompanying notes 145-59.

192. DUBIN COMMISSION, *supra* note 1, at 541.

speed, and skill. Sports, drugs, and politics are incompatible. When they are integrated, one athlete may not be able to compete, or even worse, a country may not be able to field a team if the IAAF and courts are involved. Unfortunately, drugs are prevalent in sports, and drug testing is necessary.¹⁹³ The rules that the IFs and especially the IAAF establish to ensure clean competition among their athletes must be followed for an athlete to be banned. If the IAAF does not abide by its own rules, it cannot expect its members to do so. Because of the high stakes involved, the competence and integrity of the system will always be challenged unless there is more uniformity in decisions and until the final arbitrator is changed. Furthermore, the rules enacted by the IAAF must be changed to allow a hearing before there is a ruling on an athlete's eligibility.

Hopefully, the IAAF, NFs, and individual athletes will reach a solution quickly, before the 1994 Winter Olympics and especially before the 1996 Atlanta Summer Olympics. Otherwise, if the IAAF and the U.S. courts continue to reach contrary decisions over athletes' claims, the courts' decisions will be enforced. United States courts can use *Reynolds* as precedent to find the IAAF amenable to suit. Because of this "threat," the IAAF wants Congress to pass legislation concerning the jurisdiction over the IAAF. This is an unlikely occurrence. If the IAAF abides by its own rules as strictly as it applies them to its athletes and NFs, and all three groups recognize some independent arbitrator—like the proposed CAS, who can resolve disputes over testing procedures quickly and efficiently—there would be no need for Congressional legislation. The modified CAS is the best solution to problems such as the one Butch Reynolds faced.¹⁹⁴

Hilary Joy Hatch

193. Although track and field has made progress over the past years, it is "now perceived as a drug-ridden sport. If the sport hopes to eradicate that perception, it must find a way to make testing procedures more reliable. Bad drug testing is worse than none at all." Merrell Noden, *A True Test?*, SPORTS ILLUSTRATED, June 22, 1992, at 9.

194. As this Note was going to press, the Tonya Harding-Nancy Kerrigan Olympic figure-skating controversy erupted. Before the National Competition in Detroit, Michigan, several men connected with Harding executed a plot to injure Harding's rival, Nancy Kerrigan. Although the injury prevented her from skating in the Nationals, Kerrigan made the U.S. Olympic team. Harding also made the team by finishing first in the Nationals. Harding, eventually implicated in the incident, insisted on her innocence; however, the USOC decided to hold a disciplinary hearing concerning the incident and Harding's subsequent

conduct a week before the 1994 Winter Olympic Games. As a result, Harding sued the USOC in Clackamas County, Oregon, to obtain an injunction against the USOC. She relied on many of the same arguments that Butch Reynolds had used in his civil suit. Because of Judge Patrick Gilroy's encouragement, Harding and the USOC settled the matter; the USOC dropped its plans to press administrative charges against Harding, and Harding dropped her \$20 million lawsuit. Nonetheless, Tonya Harding may still face civil and criminal liabilities that may result in USOC and/or U.S. Figure Skating Association sanctions. See David A. Kaplan & Patricia Rogers, *This Skating Judge Wears a Robe*, NEWSWEEK, Feb. 21, 1994, at 44-45.

The Harding-Kerrigan controversy confirms the importance of establishing an independent arbitrator to resolve Olympic disputes. Based on *Reynolds*, American athletes have a great inducement to sue the organization, like the USOC or the IAAF, which accuses them of wrong-doing. Furthermore, courts do not perceive these organizations as fair because they do not observe the due process rights that their constitutions grant to the athletes. The USOC worried about the precedential value of *Reynolds*, and its worries were well-founded. Without the successful negotiations between the two parties in the Harding case, this case could have hurt the USOC. Therefore, the need for an independent arbitrator, one who is seen as neutral and who will respect athletes' rights, has never been greater.