

DISPUTE RESOLUTION IN OLYMPIC SPORT: THE COURT OF ARBITRATION FOR SPORT

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I. INTRODUCTION

In 1992, Harry L. "Butch" Reynolds, world-record holder in the 400-meter dash, won a \$27.4 million judgment against the International Amateur Athletic Federation (IAAF), the international governing body for track and field.¹ The IAAF had suspended Reynolds for using a banned substance, the anabolic steroid nandrolone, a charge he vehemently contested.² His two-year suspension prevented him from competing in the 1992 Olympic Games in Barcelona.³ Although the Sixth Cir-

1. *Reynolds v. International Amateur Athletic Fed'n*, No. C-2-92-452 (S.D. Ohio, Dec. 3, 1992) (default judgment awarding Reynolds \$6,839,002 in compensatory damages and \$20,517,006 in punitive damages).

2. On August 12, 1990, Butch Reynolds competed at a track meet in Monte Carlo. *See Decision of the Doping Control Review Board in the Matter of Harry L. Reynolds*, Columbus, Ohio, October 4, 1991 at 1 (hereinafter *TAC Decision*). He submitted to a random drug test in accordance with the drug testing policies of the International Amateur Athletics Federation (IAAF), the international governing body for track and field. *See id.* Officials sent his urine sample to LaFarge Laboratory, the French national drug testing laboratory, where the initial drug screen and subsequent testing yielded positive results for the anabolic steroid nandrolone, a banned substance in track and field. *See id.* Pursuant to IAAF Rule 55, the IAAF suspended Reynolds from all IAAF-sanctioned meets for a two-year period. *See id.* Reynolds claimed that he had not used nandrolone, and that the irregularities in the sample handling and analysis resulted in the positive test results. *See id.* at 3. Lending support to his claim was the result of another random drug test of Reynolds on August 19, 1990, just seven days after the Monte Carlo test. *See id.* at 5. On that date, at a track meet in Cologne, Reynolds had again submitted a urine sample for drug testing. *See id.* The sample was analyzed in the German laboratory of Dr. Manfred Donike, regarded as the world's authority on drug testing in international sport. *See id.* The analytical techniques used in the German laboratory were ten times more sensitive than those used in the French laboratory, but scientists detected no trace of nandrolone. *See id.* at 5-6. Reynolds challenged his suspension through a series of administrative procedures, independent arbitration by the American Arbitration Association (AAA) (pursuant to Article IX, Section 2 of the United States Olympic Committee (USOC) Constitution), and legal proceedings. *See generally* Jill J. Newman, *The Race Does Not Always Go to the Stronger or Faster Man . . . But to the One Who Goes to Court! An Examination of Reynolds v. International Amateur Athletic Fed'n, et al.*, 1 SPORTS LAW. J. 205 (1994).

3. *See generally* Anthony T. 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*, 8 EMORY INT'L L. REV. 347 (1994). The AAA found in Reynolds' favor, but the IAAF refused to recognize its decision. The TAC panel terminated his suspension, finding that Reynolds had "cast substantial doubt on the validity of the drug test attributed to him." *TAC Decision, supra* note 2, at 10. Ultimately, a three-member IAAF arbitration panel reinstated his suspension. *See infra* note 146. Reynolds then sought relief from the courts, seeking a preliminary injunction to allow him to compete at the Olympic Trials in New Orleans, Louisiana on June 19-27, 1992. *See Reynolds v. International Amateur Athletic Fed'n*, 841 F. Supp. 1444 (S.D. Ohio 1992) (granting the preliminary injunction). After a series of legal decisions, the IAAF reluctantly permitted Reynolds to compete at the Trials. *Reynolds v.*

cuit subsequently set aside the judgment for Reynolds,⁴ the threat of future large damage awards against sports federations caused great concern in the Olympic community.⁵

To prevent a potential flood of lawsuits prior to the 1996 Olympic Games in Atlanta,⁶ the International Olympic Committee (IOC) established an arbitration system designed to keep disputes out of the U.S. courts.⁷ The system includes two elements introduced at the Atlanta Games. First, athletes are required to sign entry forms, in which they agree to settle disputes by arbitration.⁸ Specifically, all such disputes are submitted to the Court of Arbitration for Sport (CAS), a recently revamped international tribunal that resolves sports-related

International Amateur Athletic Fed'n, 968 F.2d 1216 (6th Cir. 1992) (granting TAC's motion to stay preliminary injunction) and *Reynolds v. International Amateur Athletic Fed'n*, 505 U.S. 1301 (1992) (granting Reynolds' motion to stay the decision of the Sixth Circuit). He finished fifth in the 400-meter final, qualifying for the U.S. Olympic 1600-meter relay team. See Joe Concannon, *IAAF's Position on Reynolds Case Clear*, BOSTON GLOBE, July, 31, 1992, at 65. The IAAF and IOC had ultimate authority for athlete eligibility at the Olympic Games, however, and they did not permit him to compete. See *id.* The IAAF subsequently extended Reynolds' suspension for an additional four and one half months, invoking the seldom used IAAF Rule 53.1 (viii) that forbids conduct "which in the opinion of the IAAF Council is considered to be insulting or improper or likely to bring the sport into dispute." *Reynolds Banned 4 1/2 More Months*, ATLANTA JOURNAL & CONSTITUTION, Aug. 11, 1992, at E9. The IAAF apparently imposed this penalty as punishment for his pursuit of litigation that allowed him to compete at the Trials and for his pending litigation for damages against the IAAF. See *Olympic Notes: Reynolds' Ban Extended*, SAN FRANCISCO CHRONICLE, Aug. 11, 1992, at C2.

4. See *Reynolds v. International Amateur Athletic Fed'n*, 23 F.3d 1110 (6th Cir. 1994), cert. denied, 115 S. Ct. 423 (1994) (set aside default judgment, holding that the Ohio district court does not have personal jurisdiction over the IAAF).

5. See Bert Roughton, Jr., *Atlanta 1996 Arbitration Plan OK'ed in Effort to Stem Court Fights*, ATLANTA JOURNAL & CONSTITUTION, June 23, 1994, at C8.

6. See Ken Stephens, *Back in the Running: Forced Out in 1992, Butch Reynolds Eyes One Last Shot at Gold*, THE DALLAS MORNING NEWS, May 26, 1996, at 12B.

7. See *id.*; Roughton, *supra* note 5, at C8.

8. See Mike Spence, *IOC Tries to Keep a Step Ahead; Athletes Must Sign Waiver of Legal Relief in Case of Punishment*, LOS ANGELES DAILY NEWS, June 2, 1996, at SB2. The clause added to the entry form states in part: "The decisions of the CAS shall be final, non-appealable and enforceable. I shall not institute any claim, arbitration or litigation, or seek any other form of relief in any court or tribunal." *IOC Eligibility Form for the 1996 Atlanta Olympic Games* (on file with author). In addition, U.S. athletes were required to sign a "Code of Conduct," agreeing to arbitration by the American Arbitration Association (AAA) for any domestic disputes. Letter from Ronald T. Rowan, General Counsel, USOC, to author (Nov. 5, 1997) (on file with author). For example, the past dispute involving Tonya Harding's eligibility to compete in Lillehammer, Norway, and the incident involving Michael Jordan and Magic Johnson covering a sponsor's logo on their warm-up jerseys in Barcelona, Spain, would both be covered by the arbitration clause of the Code of Conduct. See Dan Bickley, *Code of Conduct Requires Athletes to Waive Rights*, CHICAGO SUN-TIMES, May 12, 1996, at 30.

controversies.⁹ Second, CAS arbitration is available at the site of the Olympic Games and decisions are rendered within twenty-four hours.¹⁰

President of the United States Olympic Committee (USOC) LeRoy Walker had expressed doubt that American athletes would sign the entry form, foregoing their right to court adjudication,¹¹ and there was concern that a legal clash between Olympic officials and athletes would disrupt the 1996 Olympic Games.¹² Despite this concern, however, the athletes did sign, and the Atlanta Olympic Games avoided potential legal chaos in this arena.

This Article examines whether the CAS provides an adequate alternative to litigation for resolving disputes within the Olympic community. To provide an understanding of the CAS in its Olympic context, Part II gives a brief history of the Olympics, and Part III describes the complex structure of Olympic sport governance. Part IV explains the structure and operating principles of the CAS, and Part V discusses the advantages and limitations of using the CAS for dispute resolution in Olympic sport. In conclusion, Part VI suggests actions that may improve athlete acceptance of the CAS as a forum for resolving disputes.

II. A BRIEF HISTORY OF THE OLYMPICS

A. *The Ancient Era*

In 776 B.C., Elis, Greece hosted the first recorded Olympic Games,¹³ where participants competed in a single event, a 200-meter foot race.¹⁴ The scope of the ancient Olympic Games gradually expanded as festival organizers added more events

9. See *infra*, notes 62-67 and accompanying text.

10. See *id.* For an excellent discussion of *ad hoc* CAS arbitration during the 1996 Atlanta Olympic Games, see Jill Pilgrim, *The Competition Behind the Scenes at the Atlanta Centennial Olympic Games*, 14 ENT. & SPORTS. LAW. 1 (Winter 1997).

11. See Bert Roughton, Jr., *Olympics IOC, Federations Move to Standardize Drug Tests*, ATLANTA JOURNAL & CONSTITUTION, June 22, 1993, at F3.

12. See Bill Ward, *IOC's Arbitration Pledge Negates Court Option*, TAMPA TRIBUNE, May 26, 1996, at 3.

13. See James A.R. Nafzinger, INTERNATIONAL SPORTS LAW 12 (1988). Greeks frequently included athletic competition in their religious festivals, but there are no written records of competition results prior to 776 B.C. See *id.* Thus, historians consider 776 B.C. as the beginning of the ancient Olympic Games era. See *id.*

14. See *id.* A cook, Coroebus of Elis, won the event. See *id.*

such as boxing, wrestling, chariot racing, and the pentathlon.¹⁵ Elis hosted the Games every four years to promote goodwill and unity among the Greek city-states.¹⁶ To further that purpose, a peace agreement among the participating city-states called *ekecheiria* or "Sacred Truce" mandated a suspension of all hostilities during a three-month period surrounding the Games.¹⁷ By the end of the ancient Games era, the festival had become international, with competitors from more than 100 Greek city-states and from other distant cities of the Roman empire.¹⁸ Greece held the final Games of the ancient era in 393 A.D.¹⁹

B. The Modern Era

In 1894, French nobleman Baron Pierre de Coubertin convened the Congress of Paris, an international conference at the Sorbonne, to resurrect the Olympic Games.²⁰ De Coubertin believed that international cooperation in sports would promote global harmony.²¹ At the conference, thirteen nations met and established the modern Olympic Games that were to be held every fourth year in a different host country.²² They created the IOC,²³ a nongovernmental, nonprofit organization to govern the Olympic movement.²⁴ In 1896, the host city for the

15. See *id.* The ancient pentathlon included running, discus, javelin, long jump, and wrestling. See GUINNESS BOOK OF OLYMPIC RECORDS 1 (Norris McWhirter *et al.* eds., 1983) [hereinafter OLYMPIC RECORDS].

16. See Nafzinger, *supra* note 13, at 12.

17. See *id.* During the three-month period surrounding the Games, the government suspended legal disputes and did not permit inhabitants to bear arms. See *id.*

18. See *id.*

19. See *id.* at 17.

20. See OLYMPIC RECORDS, *supra* note 15, at 2.

21. See Nafzinger, *supra* note 13, at 19.

22. See *id.*

23. See OLYMPIC RECORDS, *supra* note 15, at 2. The Olympic Charter, Article 11 states that "The IOC was created by the Congress of Paris of 23rd June 1894; it was entrusted with the control and development of the modern Olympic Games." OLYMPIC CHARTER, art. 11 (Nafzinger, *supra* note 13, Appendix V contains a partial listing of the OLYMPIC CHARTER).

24. See Nafzinger, *supra* note 13, at 19. The OLYMPIC CHARTER, art. 4 states that "The IOC governs the Olympic Movement and owns the rights over the Olympic Games." OLYMPIC CHARTER, art. 4. Unfortunately the commercialization of the Olympic Games has obscured the concept of the "Olympic Movement," an effort to promote world peace through sport. Article 1 of the Olympic Charter explains that "the aims of the Olympic Movement are: to promote the development of those physical and moral qualities which are the basis of sport, to educate young people through sport in a spirit of better understanding between each other and of friendship, thereby helping to build a better and

first modern Olympic Games was Athens, Greece, where 300 athletes from thirteen countries participated in ten sports with 200 different events.²⁵ The IOC expanded the role of the Olympic movement in international sport competition by initiating the Winter Olympic Games in 1924.²⁶

III. ORGANIZATIONS THAT GOVERN OLYMPIC SPORT

A. *The International Olympic Committee*

The IOC, headquartered in Lausanne, Switzerland,²⁷ is the central governing body in Olympic sport. It creates rules and procedural guidelines for Olympic decision-making,²⁸ selects host cities for the Olympic Games,²⁹ determines qualifications for athletic participation,³⁰ and establishes procedures for electing its own officers and representatives.³¹ The IOC consists of ninety-three members³² selected from countries that have a formally recognized National Olympic Committee (NOC).³³ IOC members are representatives of the IOC in their home countries, not national delegates to the IOC.³⁴ The IOC's powerful Executive Board, composed of a President,³⁵ three Vice Presidents, and seven at-large members,³⁶ decides "all matters of doubt or dispute that are of a non-technical nature

more peaceful world, to spread the Olympic principles throughout the world, thereby creating international goodwill, and to bring together the athletes of the world in the great four-yearly sport festival, the Olympic Games." *Id.* art. 1.

25. See Nafzinger, *supra* note 13, at 19-20.

26. See *id.* at 21. The first Winter Olympic Games took place in Chamonix, France. See *id.* The Winter Olympic Games take place every four years. See OLYMPIC CHARTER, arts. 2-3.

27. See OLYMPIC CHARTER, art. 11.

28. See *id.* art. 4.

29. See *id.*

30. See *id.* art. 26.

31. See OLYMPIC CHARTER, arts. 12-18.

32. See JoAnne D. Spotts, *Global Politics and the Olympic Games: Separating the Two Oldest Games in History*, 13 DICK. J. INT'L L. 103, 109 (1994).

33. See OLYMPIC CHARTER, art. 12. National Olympic Committees (NOCs) are discussed in the next section.

34. See *id.* For example, American IOC member and sole female member of the Executive Board, Anita DeFrantz is an IOC representative to the United States, not the United States delegate to the IOC.

35. Juan Antonio Samaranch, a member of the IOC since 1966, has served as President since 1980. See Morley Myers, *Job For Life Offer for IOC Members*, UPI, June 13, 1995.

36. See OLYMPIC CHARTER, art. 14(D).

concerning the Olympic Games and the Olympic Movement.”³⁷ The Board “may take action on its own initiative or upon request of a member of the IOC, an NOC, an International Federation (IF) or an [Organizing Committee for an Olympic Games] OCOG.”³⁸ In addition to this broad jurisdictional power, IOC decisions are unreviewable because it has “final authority on all questions concerning the Olympic Games and the Olympic Movement.”³⁹

B. National Olympic Committees

To be recognized by the IOC, an NOC must agree to abide by the IOC rules.⁴⁰ An NOC is responsible for its country’s representation at the Olympic Games.⁴¹ In addition, the NOC plays a significant role in the site selection for the Olympic Games. Only an NOC, not a city, may submit a bid to have one of its nation’s cities host the Games.⁴² Once the IOC has selected a site, “the organization of the Olympic Games shall be entrusted by the IOC to the NOC of the country in which the chosen city is situated.”⁴³ The NOC may delegate its authority to an OCOG,⁴⁴ typically a committee consisting of businessmen and government agents of the host city. An OCOG must agree to abide by the IOC rules and regulations.⁴⁵

Established by Congress in 1896,⁴⁶ the USOC is the NOC for the United States. Congress greatly expanded the USOC’s authority to develop and govern amateur sports in the United States by passage of the Amateur Sports Act of 1978 (Act).⁴⁷ The Act allows the USOC to delegate much of its sport develop-

37. *Id.* art. 16.

38. *Id.* Subsequent sections discuss the International Federations (IFs) and Organizing Committees for an Olympic Games (OCOG).

39. *See id.* art. 23.

40. *See* OLYMPIC CHARTER, art. 24(A).

41. *See id.* art. 24(B).

42. *See id.* art. 4.

43. *See id.* art. 33.

44. *See* OLYMPIC CHARTER, art. 33.

45. *See id.* art. 40.

46. *See* H.R. REP. NO. 1627, 95th Cong., 2d Sess. 8 (1978). Congress incorporated the USOC on September 21, 1950. *See* Act of Sept. 21, 1950, ch. 975, 64 Stat. 899 (1950). It subsequently changed the name from the United States Olympic Association to the USOC on August 10, 1964. *See* Pub. L. No. 88-407, 78 Stat. 383 (codified at 36 U.S.C. § 383 (1988)).

47. *See* 46 P.L. No. 95-606, 92 Stat. 3045 (codified as amended at 36 U.S.C. §§ 371-96 (1988)).

ment and governance responsibilities of Olympic sport to the national governing bodies (NGBs) of each sport.⁴⁸ To gain recognition as an NGB, an organization must receive USOC approval.⁴⁹ If approved, the USOC recommends the NGB to its respective IF as the U.S. representative for that sport.⁵⁰ In addition to complying with the rules of its NOC, an NGB must also conform with the rules and regulations of its IF.⁵¹

C. International Federations

To be recognized by the IOC, an IF must agree to comply with the Olympic Charter, show compliance with IOC criteria, and receive approval by the IOC Executive Board.⁵² The IOC has the authority to revoke recognition if the IF fails to comply with any of the requirements.⁵³

The IOC delegates all technical matters of a particular sport to the IF of that sport.⁵⁴ NGBs for the sport from each country comprise an IF's membership.⁵⁵ An IF's responsibilities include: selecting Olympic officials,⁵⁶ determining of athlete eligibility,⁵⁷ defining the technical rules for international competition,⁵⁸ imposing sanctions for rule violations,⁵⁹ drug testing athletes,⁶⁰ and resolving disputes.⁶¹

IV. THE COURT OF ARBITRATION FOR SPORT

A. Background

In 1983, the IOC established the CAS to resolve sports-re-

48. See 36 U.S.C. §§ 392-93 (1988).

49. See 36 U.S.C. § 391(c) (1988).

50. See 36 U.S.C. § 391(d) (1988).

51. See IAAF CONST. Rule 2. This Article uses the IAAF as a model for all IFs, most of whom have similar provisions in their constitutions. The IAAF Handbook 1992-1993 contains the version of the IAAF Constitution used in this article.

52. See *id.* art. 23. The Charter does not define the term "technical," but it typically refers to sport-specific rules and regulations pertaining to competition. For example, the allowable composition of a pole vaulter's pole is "technical." The IAAF, not the IOC, would have final authority in this matter.

53. See *id.*

54. See *id.*

55. See IAAF CONST. Rule 1.

56. See *id.* Rule 5(6)(g).

57. See *id.* Rules 51-54.

58. See *id.* Rule 101.

59. See IAAF CONST. Rule 20.

60. See *id.* Rules 55-61.

61. See *id.* Rules 21-23.

lated disputes.⁶² Although the sports community submitted cases to the CAS,⁶³ there was concern that its close association with the IOC compromised its independence.⁶⁴ To provide a greater degree of independence for the CAS, the IOC, along with the IFs and the NOCs, created the International Council of Arbitration for Sport (ICAS) in 1993.⁶⁵ The ICAS, rather than the IOC, now oversees the administration and financing of the CAS.⁶⁶

The operational role of the ICAS required substantial revisions to the CAS statutes and rules (now combined with the ICAS statute as the "CAS Code"), but many of the procedural rules remain unchanged.⁶⁷ The most important difference is that the IOC no longer has *direct* operational control of the CAS, resulting in greater autonomy for the international arbitration tribunal.

B. *The International Council of Arbitration for Sport.*

The ICAS is a twenty-member council,⁶⁸ composed of high-

62. See Adam Samuel and Richard Gearhart, *Sporting Arbitration and the International Olympic Committee's Court of Arbitration for Sport*, 6 J. INT'L ARB. 39, 43 (1989).

63. See Court of Arbitration for Sport, *CAS Compilation 1993*, at 41 [hereinafter *CAS Compilation*]. As of June 30, 1993, approximately 100 cases had been submitted to the CAS. See *id.*

64. See David J. Ettinger, *The Legal Status of the International Olympic Committee*, 4 PACE Y.B. INT'L L. 97, 112 (1992).

65. See *CAS Compilation*, *supra* note 63, at 40.

66. See *id.*

67. Compare the *Statute of the Court of Arbitration for Sport* in Nafziger, *supra* note 13, at Appendix II and the recently revised *Code of Sports-Related Arbitration*, International Council of Arbitration for Sport (Lausanne, Aug. 1995) [hereinafter "*CAS Code*"]. This publication contains the combined statutes and rules for the CAS and the ICAS (in force as from November 22, 1994).

68. See *CAS Code*, art. S4. The members are appointed in the following manner: (1) four members by the IFs (three members selected by the Association of Summer Olympic IFs and one member by the Association of Winter Olympic IFs), (2) four members by the Association of NOCs, (3) four members by the IOC, (4) four members by the twelve members of the ICAS listed above, after appropriate consultation with a view to safeguarding the interests of athletes, and (5) four members by the sixteen members of the ICAS listed above and chosen from people independent of the bodies designating the other members of the ICAS. *Id.* Currently, two Americans are ICAS members: Judge Richard S. Arnold, Chief Judge, U.S. Court of Appeals for the Eighth Circuit and Michael B. Lenard, attorney and past vice president of USOC. See *Guide to Arbitration*, Appendix V. Former President Gerald Ford previously served as a member. ICAS membership list. Twelve Americans currently serve as arbitrators, including William K. Slate II, President of the American Arbitration Association. See *id.*, Appendix VII. In 1997, Michael Lenard was narrowly defeated by William Hybl in his bid to become USOC president. See Mike

level jurists appointed for a renewable period of four years.⁶⁹ ICAS members may not serve as CAS arbitrators or act as counsel to one of the parties in a proceeding before the CAS.⁷⁰ The President of the ICAS is also the President of the CAS,⁷¹ and the Secretary General of the CAS is the Secretary of the ICAS with non-voting status.⁷² The responsibilities of the ICAS include:⁷³

(1) adopts and amends the "Code of Sports-Related Arbitration" (the statutes and rules of the ICAS-CAS).

(2) elects from among its members: ICAS President, proposed by the IOC,⁷⁴ ICAS Vice-Presidents (one proposed by the IFs and one by the NOCs), CAS presidents and deputies of the Ordinary and Appeals Arbitration Divisions.

(3) appoints CAS arbitrators and Secretary General of CAS.

(4) decides challenges and the removal of CAS arbitrators.

(5) approves CAS budget.

C. *The Court of Arbitration for Sport*

1. CAS Jurisdiction

The CAS has jurisdiction limited to the resolution of sports-related disputes, particularly those involving doping violations.⁷⁵ A sports organization may stipulate matters that are appropriate for submission to the CAS by its statutes or regulations or by contractual agreement with another party.⁷⁶ The CAS has original jurisdiction for matters submitted for arbitration and appellate jurisdiction for decisions of disciplinary

Spence, *Hybl Passes Peace Pipe*, COLORADO SPRINGS GAZETTE TELEGRAPH, Feb. 9, 1997, at C2. Hybl subsequently appointed Lenard to close down the Atlanta Committee. *See id.*

69. *See CAS Code*, arts. S4-S5.

70. *See id.* art. S5.

71. *See id.* art. S9.

72. *See id.* art. S10.

73. *See CAS Code*, art. S6.

74. Previously, the IOC president was also the CAS president. *See Nafzinger, supra* note 13, Appendix II (art. 6). The ICAS president now serves as the CAS president. *See CAS Code*, art. S9.

75. This differs significantly from the previous statute that gave the CAS "jurisdiction to hear and determine 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." *See Nafzinger, supra* note 13, Appendix II (art. 4).

76. The CAS Code is silent on whether, absent a contractual obligation or regulation to submit to CAS, parties may agree to submit a matter before the CAS.

tribunals of federations or other sports bodies.⁷⁷

2. Selection of Arbitrators and Arbitration Panels

The ICAS selects 150 CAS arbitrators⁷⁸ who have "legal training and who possess recognized competence with regard to sport."⁷⁹ The ICAS appoints CAS arbitrators for a renewable period of four years.⁸⁰ An arbitration panel is composed of one or three persons chosen from the list of CAS arbitrators.⁸¹ Parties may choose a panel that consists of a single arbitrator by mutual agreement.⁸² For a panel of three arbitrators, each party appoints one arbitrator, and then the two arbitrators select the president of the panel by mutual agreement.⁸³

Lausanne, Switzerland, is the seat of an arbitration panel unless the parties and the panel or the division president agree otherwise.⁸⁴ In 1996, the IOC added two additional courts to the CAS: one located at the National Dispute Center in Sydney, Australia and the other in Denver, Colorado.⁸⁵ The panel president may select either English or French as the language of arbitration, unless parties stipulate to another language.⁸⁶ Parties may select a person or persons of their choice to represent or assist them.⁸⁷ The Code provides that a CAS arbitrator

77. See CAS Code, art. S20.

78. See *id.* art. S13.

79. *Id.* art. S14. The ICAS selects CAS members in the following manner: (1) thirty from the persons proposed by the IOC, (2) thirty from among persons proposed by the IFs, (3) thirty from among persons proposed by the NOCs, (4) thirty chosen after appropriate consultations with a view to safeguarding the interests of athletes, (5) thirty chosen from among persons independent of the bodies responsible for proposing arbitrators. *Id.*

80. See *id.* art. S13.

81. See CAS Code, art. R40.1. If the arbitration agreement does not specify a number, the division president makes the determination. See *id.*

82. See *id.*

83. See *id.* If the arbitrators do not reach a mutual agreement, the division president appoints the third arbitrator. See *id.* For arbitration during the Olympic Games, the ICAS Board generates a "special list" of arbitrators, chosen from the general list of arbitrators, to be present at the Games. See *id.* art. 3. In Atlanta, there were twelve arbitrators present. See Andy Miller et al., *Opening Day: The Grand Prix Drug Testing Officials Defend Plans for Arbitration Court in Games*, ATLANTA JOURNAL & CONSTITUTION, May 19, 1996, at F05.

84. See CAS Code, art. R28.

85. See Rebecca Cantwell, *Sports Court Comes to Denver. Two New Locations in World Added to Arbitrate Athletes' Disputes*, ROCKY MOUNTAIN NEWS, Aug. 7, 1996, at 2B. Denver is also the site of the American Arbitration Association regional office. See *id.*

86. See CAS Code, art. R29.

87. See *id.* art. R30.

may be challenged,⁸⁸ removed,⁸⁹ or replaced.⁹⁰

3. The Arbitration Process

A party initiates arbitration by submitting a written claim to the Court Office,⁹¹ which assigns the case to either the Ordinary Arbitration Division or the Appeals Arbitration Division.⁹² Parties may not contest the assignment.⁹³ In addition to the original claim, the CAS Code provides for party response,⁹⁴ reply⁹⁵ and, if necessary, a second response.⁹⁶ Parties must submit to the panel written evidence upon which they intend to rely and a list of their witnesses.⁹⁷ Unless the panel resolves the dispute on the pleadings, the panel president convenes the panel and conducts a private hearing.⁹⁸ Minutes are recorded,⁹⁹ but the proceedings are confidential.¹⁰⁰ A party may request the production of documents from the other party if the documents are "likely to exist and are relevant to the dispute."¹⁰¹

The CAS Code provides for multiple claimants and respondents,¹⁰² joinder,¹⁰³ and intervention.¹⁰⁴ The choice of law for the merits of the case is Swiss law, or that which parties choose by mutual consent.¹⁰⁵ In the appellate division, absent mutual agreement, the applicable law is the law of the country in which the federation, association or sports body is domiciled.¹⁰⁶ A majority of panel members, or absent a majority, the panel president makes the award.¹⁰⁷ The panel writes,

88. *See id.* art. R34.

89. *See id.* art. R35.

90. *See CAS Code*, art. R36.

91. *See id.* art. R38.

92. *See id.* art. S20.

93. *See id.*

94. *See CAS Code*, arts. R39 and R44.

95. *See id.* art. R44.1.

96. *See id.*

97. *See id.*

98. *See CAS Code*, art. R44.2.

99. *See id.*

100. *See id.* art. R43.

101. *See id.* art. R44.3.

102. *See CAS Code*, art. R41.1.

103. *See id.* art. R41.2.

104. *See id.* art. R41.3.

105. *See id.* art. R45.

106. *See CAS Code*, art. R58.

107. *See id.* arts. R46 and R59.

dates, and signs the award.¹⁰⁸ Awards are final, binding,¹⁰⁹ and private unless otherwise provided by the award or all parties agree.¹¹⁰ A party may request an interpretation of the award if it is unclear, incomplete, ambiguous, contradictory, or contains clerical mistakes or a miscalculation of figures.¹¹¹

The cost for filing a claim or an appeal is 500 Swiss francs.¹¹² Each party bears the cost of its own witnesses, experts, and interpreters.¹¹³ At the conclusion of the proceedings, the CAS calculates its total cost of arbitration¹¹⁴ and determines which party or in which portion the parties will share that cost.¹¹⁵ Additionally, the arbitral award typically grants the prevailing party a contribution towards its legal fees and costs of witnesses and interpreters.¹¹⁶ In making this determination, the panel may take into account the outcome of the proceedings and the conduct and financial resources of the parties.¹¹⁷

4. Additional Services Provided by CAS

The CAS may resolve a dispute by conciliation,¹¹⁸ rather than by arbitration. The CAS Code allows the division president, before the transfer of the case to a panel, and thereafter the panel, to resolve the dispute by conciliation.¹¹⁹

In addition, the CAS may issue non-binding advisory opinions at the request of the IOC, IFs, NOCs, the OCOGs, and other associations recognized by the IOC.¹²⁰ It is entirely within the discretion of the CAS President whether to forward

108. *See id.*

109. *See id.*

110. *See CAS Code*, art. R59. The rule regarding appellate awards includes a statement providing for the privacy of awards, but the rule regarding ordinary awards does not contain such a statement. *See id.*

111. *See id.* art. R63.

112. *See id.* arts. R64 and R65.2. 500 Swiss francs equals approximately \$400.

113. *See id.* arts. R64.3 and R65.3.

114. *See CAS Code*, arts. R64.4 and R65.1.

115. *See id.* arts. R64.5 and R65.4.

116. *See id.*

117. *See id.*

118. *See CAS Code*, art. R42. Conciliation, similar to mediation, involves a neutral third party who helps parties reach an agreement, but does not impose a solution. *See* Leonard L. Riskin and James E. Westbrook, *DISPUTE RESOLUTION AND LAWYERS*, abr. ed., 4-5 (1988).

119. *See CAS Code*, art. R42.

120. *See id.* arts. S12 and R60.

questions to the panel for such an advisory opinion,¹²¹ and the opinion may be published with the consent of the party who requested it.¹²²

V. EVALUATION OF THE CAS

Arbitration, as an alternative to litigation, offers two major advantages to athletes.¹²³ First, arbitration is typically less expensive than litigation, making dispute resolution available to a greater number of athletes. Although a few wealthy, high-profile athletes can afford the high cost of litigation,¹²⁴ a majority of amateur athletes cannot. Thus, CAS arbitration could provide a viable, affordable method for dispute resolution for most athletes. Second, arbitration generally provides quicker resolution of disputes than litigation.¹²⁵ Because elite athletes generally have short careers, even minimal suspensions can have major consequences. For example, athletes may lose their only opportunity to participate in the Olympic Games during a suspension period or may find that they are unable to compete at their previous skill level at the end of a suspension period. Thus, CAS arbitration could allow an athlete who prevails in a dispute an expeditious return to competition. Additionally, the suspension period may end before a court resolves the dispute, making the lawsuit moot. Although an athlete may pursue a subsequent damage claim, courts may be unable to ascertain damages with any degree of certainty.

121. See *id.* art. R61.

122. See *id.* art. R62. As of June 30, 1993, the CAS had issued only four advisory opinions. See *CAS Compilation*, *supra* note 63, at 41.

123. See Samuel & Gearhart, *supra* note 62, at 41. Arbitration also benefits sports organizations. See *id.* A sports organization may have sufficient funds to conduct litigation, but it can better fulfill its sport development mission (*i.e.*, building training facilities and providing financial support for athletes) by avoiding costly court disputes. See *id.* The IOC also requires coaches, officials, and IFs to sign the waiver form. See McDonald, *supra* note 8, at 3B. All thirty-one IFs that govern summer and winter Olympic sports have signed the agreement under veiled threats of being excluded from the Games. See Roughton, *supra* note 5.

124. Amateur athletes do not receive salaries like professional athletes, but can earn millions of dollars from endorsement contracts and appearance fees. Of course, even wealthy athletes may welcome a less expensive method for dispute resolution, preferring to not to spend their money on attorneys' fees.

125. In addition to its normal proceedings, the CAS also sets up ad hoc courts for the duration of the Olympic Games. See *CAS Code*, arts. 1-24. During the Games, there are special procedures that require panels to render their decisions within twenty-four hours. See *CAS Code*, art. 18.

Even if athletes determine that CAS arbitration is an attractive alternative to litigation, they may still reject it if they fear unjust decisions. Despite good intentions and institutional safeguards, it is impossible to guarantee absolute consistency and fairness in any dispute resolution process. Nevertheless, parties often accept the resolution of disputes, despite outcomes, if the process itself is sound.¹²⁶ Thus, if the procedural system of the CAS is sound, athletes may voluntarily submit to CAS jurisdiction for doping disputes. The goal of any procedural system is the promotion of fairness, efficiency, accuracy, and uniformity in the decision-making process. The following sections evaluate the CAS in terms of those four attributes.

A. Fairness

1. Independence from the IOC

In the past, “the CAS appeared to be the ‘little brother’ of the IOC rather than an independent tribunal.”¹²⁷ The IOC, by establishing the ICAS and revising the CAS statutes and rules, has created a more autonomous arbitration system. The following discussion illustrates the enhanced independence of the CAS.

The ICAS, rather than the IOC, directly controls the CAS.¹²⁸ The ICAS elects its own officers from its membership¹²⁹ and appoints CAS division presidents and their deputies.¹³⁰ The current CAS Code eliminates the requirement that the CAS president must be a member of the IOC.¹³¹ The IOC has diminished influence in the selection of CAS arbitrators.

126. See Laurens Walker et al., *The Relation Between Procedural and Distributive Justice*, 65 VA. L. REV. 1401, 1412-14 (1979).

127. Ettinger, *supra* note 64, at 112.

128. The IOC retains a degree of *indirect* control of the CAS by its authority to appoint four ICAS members and to propose thirty CAS arbitrators. See *CAS Code*, arts. S4 and S14.

129. See *id.* art. S6(2). The ICAS elects the ICAS president, proposed by the IOC. The ICAS is also the CAS president. See *id.* art. S9. This constitutes an improvement over the initial CAS rule where the IOC president was also the CAS president, and the amended CAS rule providing that the IOC president chooses the CAS president from among the members of the CAS.

130. See *id.*

131. Article 6 of the previous CAS Statute explicitly stipulates this requirement, but the revised CAS Code is silent on this matter.

Prior to 1994,¹³² the IOC appointed thirty out of sixty CAS arbitrators, or fifty percent.¹³³ Currently, the ICAS selects thirty arbitrators from those proposed by the IOC, or twenty percent of the 150 CAS arbitrators.¹³⁴ In addition, the IOC appoints twenty percent of the ICAS members.¹³⁵ Thus, the IOC has no direct authority to appoint CAS arbitrators, but maintains some influence by its appointment of ICAS members and by its proposal of CAS arbitrators. The ICAS, rather than the IOC, has the authority to amend the CAS Code¹³⁶ and to oversee the CAS budget.¹³⁷ It is unclear, however, if the ICAS and the CAS or both receive their funding from the IOC.

As a practical matter, recent CAS decisions favorable to athletes may indicate CAS independence from the IOC.¹³⁸ In 1992, the CAS reversed a six-month suspension of British show rider Robert Smith,¹³⁹ a four-month suspension of French equestrian Eric Navet,¹⁴⁰ and reduced a three-month suspension to one month of British equestrian Nick Skelton.¹⁴¹

2. Independence from the IFs

The CAS Code provides IFs limited influence to select ICAS members¹⁴² and to propose CAS arbitrators.¹⁴³ Several IFs have amended their statutes to establish the CAS, rather than

132. The effective date of the revised CAS Code is November 22, 1994.

133. See Nafzinger, *supra* note 13, at Appendix II (art. 7). The IOC appointed fifteen members from its own members or otherwise and the IOC president appointed fifteen members from outside the IOC, IFs, and NOCs. See *id.*

134. See CAS Code, art. S14.

135. See *id.* art. S4.

136. See *id.*, art. S6(1). Previously, the CAS statute modifications required "on the proposal of the Executive Board of the IOC, by the IOC Session, with two-thirds majority." Nafzinger, *supra* note 13, Appendix II (art. 75). The IOC Session is an annual meeting of all IOC members. See *id.*

137. See CAS Code, art. S6(5).

138. See Marcia B. Nelson, *Stuck Between Interlocking Rings: Efforts to Resolve the Conflicting Demands Placed on Olympic National Governing Bodies*, 26 VAND. TRANS-NAT'L L. 895, 922-3 (1993).

139. See *id.* at 922, (citing Genevieve Murphy, *Equestrianism: IOC Court Appeal Open for Navet*, INDEPENDENT, May 6, 1992).

140. See *id.* at 923, (citing Alan Smith, *Equestrianism: FEI Ban on Navet Lifted*, DAILY TELEGRAPH, July 15, 1992, at 31).

141. See *id.* (citing *Equestrianism: Skelton Drug Suspension Reduced to One Month*, DAILY TELEGRAPH, Feb. 1, 1992, at 31).

142. See CAS Code, art. S4(a). IFs appoint four ICAS members, or twenty percent of the twenty-member organization. See *id.*

143. See *id.*, art. S14. The ICAS selects thirty CAS arbitrators from among those proposed by the IFs, or twenty percent of the 150-member organization. See *id.*

themselves, as the exclusive, final tribunal for appeal,¹⁴⁴ and all thirty-one IFs have agreed to submit doping disputes to the CAS.¹⁴⁵ This prevents an IF from acting as both prosecutor and judge in the same case.¹⁴⁶

3. Independence of Arbitrators

The CAS Code provides many safeguards to ensure the neutrality of CAS arbitrators. Article R33 requires arbitrators to "immediately disclose any circumstance likely to affect independence with respect to any of the parties."¹⁴⁷ Additionally, "an arbitrator may be challenged if the circumstances give rise to legitimate doubts over his independence."¹⁴⁸ The CAS Code allows for the removal¹⁴⁹ and replacement¹⁵⁰ of arbitrators. Moreover, parties may challenge a division president "if circumstances exist that give rise to legitimate doubts with regard to his independence vis-à-vis one of the parties to an arbitration assigned to his Division."¹⁵¹ The division president must recuse himself if "one of the parties is a sports body to which he belongs, or when a member of the law firm to which he belongs is acting as arbitrator or counsel."¹⁵²

There is, however, no provision for replacing an arbitration panel that has conducted failed conciliation proceedings.¹⁵³ Some may consider any subsequent arbitration award tainted.¹⁵⁴

144. See James A.R. Nafzinger, *International Sports Law: A Replay of Characteristics and Trends*, 86 AM. J. INT'L L. 489, 508 (1992) (citing *Olympic Rev.*, Aug. 1991, at 407.)

145. See Roughton, *supra* note 5, at C8.

146. The independence of the IAAF arbitration panel that decided the Reynolds case was questionable. The three-member panel had over 2,000 pages of documents and oral arguments to consider, but it released its seven-page opinion only two hours after the hearing. See Dick Patrick, *Reynolds Will Contend Error in Drug-Test Appeal*, USA TODAY, May 14, 1992, at 9C. Many athletes probably shared TAC panelist Tim Baker's sentiment that "The fix was in and it's patently obvious." See *id.*

147. CAS Code, art. R33.

148. CAS Code, art. R34. But the ICAS has the authority to decide these challenges. See *id.*, art. R35.

149. See *id.* art. R34.

150. See *id.* art. R36.

151. *Id.* art. S21.

152. CAS Code, art. S21.

153. See Samuel & Gearhart, *supra* note 62, at 46.

154. See *id.* (citing J.M. Hunter, *Ethics of the International Arbitrator*, 4 ASA BULLETIN 173, 195 (1986).

B. Efficiency

The CAS Code promotes efficiency, the conservation of resources such as money and time, by several of its provisions discussed in this section.

1. Cost

There are four provisions that help control the cost of CAS arbitration. (1) The fee for filing a claim or appeal is minimal.¹⁵⁵ (2) The panel may decide the case on the pleadings, eliminating hearing costs.¹⁵⁶ (3) The hearing before a panel may take place at any location agreed upon by the parties, rather than in Lausanne, thus limiting travel costs.¹⁵⁷ (4) The technical expertise of the CAS arbitrators "may reduce the need to produce [expert] witnesses in person to prove what to an experienced tribunal will be the obvious."¹⁵⁸ This might result in fewer travel costs and reduce expert witness costs.

2. Time

Although arbitration should proceed more quickly than litigation, the CAS Code does little to ensure speed. It has vague time-limit provisions,¹⁵⁹ and contains no penalties for delays. In addition, Article 32 allows division and panel presidents to grant extensions.¹⁶⁰ Depending on the particular circumstances of the case, flexible time-limits may promote a fair and accurate outcome, but they also may undermine the speed of dispute resolution, a fundamental advantage of arbitration. Although the CAS can act quickly, particularly during the Olympic Games,¹⁶¹ some disputes have taken years to

155. See *CAS Code*, arts. R64.1 and R65.2. The filing fee is 500 Swiss francs or approximately \$400. Under the new provisions for arbitration during the Olympic Games, the proceedings are free of charge. See *CAS Code*, art. 22. In addition, during the 1996 Atlanta Olympic Games, volunteer attorneys were available to assist athletes with the grievance process. See Pilgrim, *supra* note 10, at 28. The CAS did not provide this free representation, but CAS personnel encouraged the voluntary participation of attorneys in the arbitration process. See *id.*

156. See *CAS Code*, art. R44.1.

157. See *id.* art. R28. art. R28 states that "should circumstances so warrant, and after consultation with all parties, the President of the Panel or, failing him, the President of the relevant Division may decide to hold a hearing in another place." *Id.*

158. Samuel & Gearhart, *supra* note 62, at 41.

159. See *CAS Code*, arts. R37, R39-41, and R49.

160. See *id.* art. R32.

161. See *id.* art. 18. The panels are required to render their decisions within twenty-

resolve.¹⁶²

The CAS provision for multiparty disputes¹⁶³ promotes efficiency by allowing resolution of the issues for all involved parties, eliminating subsequent litigation or additional arbitration. Further, the CAS provision for award interpretation prevents unnecessary delays in award enforcement.¹⁶⁴ Parties also avoid subsequent litigation when courts find that CAS decisions are final and enforceable. Parties, however, may prefer to sacrifice efficiency to allow review of arbitration decisions. There are indications that the balance between efficiency and review currently exists. There are indications that courts would recognize and enforce arbitration awards by the CAS under the New York Convention on International Commercial Arbitration.¹⁶⁵ They, however, may agree to *review* the award, particularly when an athlete challenges a suspension as an illegal restraint of trade.¹⁶⁶ Thus, an athlete who signs a TOC waiver form agreeing to arbitrate probably retains the right of judicial review of the CAS arbitration panel's decision.¹⁶⁷

four hours, but the time limit may be extended "if circumstances so require." *Id.* See Pilgrim, *supra* note 10, for a discussion of the cases that were decided during the 1996 Atlanta Olympic Games.

162. For example, in case involving a broadcasting contract dispute between Compania Peruana de Radiodifusion S.A. and the International Volleyball Federation, the CAS panel rendered its final arbitral award more than two years after the parties submitted the dispute to the CAS. See Polvino, *supra* note 3, at 366.

163. See CAS Code, art. R41.

164. See *id.* art. R63.

165. See Polvino, *supra* note 3, at 373. In addition, courts favor arbitration because of "Congress' declaration of policy that arbitration is the desirable method for settling labor disputes." *Kansas City Royals Baseball Corp. v. Major League Baseball Players Ass'n*, 532 F.2d 615 (1976) (finding a strong presumption of arbitrability in professional sports collective bargaining agreements.)

166. See Samuel & Gearhart, *supra* note 62, at 51.

167. U.S. Court of Appeals Judge and ICAS member Richard Arnold "acknowledged an athlete can't be prevented from pursuing an appeal in a U.S. court. But arbitration agreements . . . are routinely upheld in courts if impartiality and due process have been ensured." Miller, *supra* note 83, at F05. Although not serving as legal precedent in the U.S., England's Sandra Gasser case provides insight into the factors an American court might consider in enforcing an arbitration award. See *Gasser v. Stimson*, Q.B. (June 15, 1988) (available in LEXIS, Intlaw Library, UKCASE File). An IAAF arbitration panel suspended Gasser for two years because she tested positive for a banned substance. See *id.* Although British courts typically grant sports governing bodies great control over their members, they do review arbitration decisions. See *id.* In the Gasser case, the court held that an arbitration decision will be upheld if (1) there was a valid agreement to arbitrate, (2) the procedure was fair, and (3) the award does not offend public policy. See *id.* Although Gasser's challenge was unsuccessful, her case demonstrates that a court

C. Accuracy

Processes that uncover the "truth" in a dispute promote accuracy. The CAS Code promotes accuracy by providing for multiparty arbitration,¹⁶⁸ allowing all involved parties to present their version of the dispute. In addition, Article R44.3 provides for discovery, allowing parties access to information contained in documents under the control of the other party.¹⁶⁹ The CAS Code, however, does not provide for the cross examination of witnesses. The American legal system views such witness confrontation, guaranteed by the Constitution,¹⁷⁰ as a fundamental tool for the determination of truth. Thus, litigation in U.S. courts, not arbitration, offers an athlete the greatest protection of their rights.

The CAS Code requires that all ICAS members be "high-level jurists"¹⁷¹ and that all CAS arbitrators have "legal training."¹⁷² This greatly reduces the pool of technically qualified arbitrators "who could be of immense value in cases where non-legal issues are involved."¹⁷³ A diverse panel of arbitrators, bringing a variety of experiences, training, and education to the decision-making process, may reach more carefully considered, "accurate" decisions. For example, in the initial stage of the Reynolds case, The Athletics Congress (TAC), the U.S. NGB for track and field, selected a diverse administrative panel to decide the dispute.¹⁷⁴

will review an arbitration decision for fairness, particularly when an athlete faces a long-term or lifetime suspension. *See id.*

168. *See CAS Code*, art. R41.

169. *See id.* art. R44.3.

170. *See U.S. CONST.* Amendment VI.

171. *CAS Code*, art. S4.

172. *Id.*, art. S14.

173. Samuel & Gearhart, *supra* note 62, at 44.

174. *See Transcript of Hearings Before the Doping Control Review Board*, Columbus, Ohio, September 13, 1991 (hereafter *TAC Hearings*). The TAC panel, (now called U.S.A. Track & Field or USATF) in the Butch Reynolds case was composed of Dr. Timothy Baker, social scientist and Director of Penn Relays, Ret. Maj. Charles E. Greene, Olympic gold medalist and the International Special Olympics Director of Summer Sports, and Clifford Wiley, former athlete and attorney. *See id.* A review of the TAC hearing transcript reveals the value of diverse panel membership. *See id.* Baker asked probing questions regarding the scientific validity of the drug testing procedures. *See id.* Former Army officer Greene was more sensitive to issues involving sample collection, chain of custody, and laboratory record-keeping. *See id.* Wiley provided legal expertise in conducting the hearing and in writing the opinion. *See id.*

D. Uniformity

It is difficult to evaluate whether CAS decisions in similar cases are consistent because it has resolved few disputes. Moreover, evaluation is difficult because of the limited public record of CAS proceedings due to *in camera* hearings and unpublished decisions.¹⁷⁵ As a result of the general unavailability of information, some athletes may fear that the CAS is unpredictable and inconsistent.¹⁷⁶

VI. CONCLUSION

A system of dispute resolution that is fair, inexpensive, and fast benefits Olympic athletes. The Butch Reynolds case demonstrates several disadvantages of litigation for athletes. (1) Litigation does not provide quick solutions to disputes. The governing bodies of international sport were able to prevent Reynolds from participating in the Olympic Games and other IAAF-sanctioned competition for over two years.¹⁷⁷ Reynolds has never returned to his pre-suspension performance level. (2) Judgments resulting from litigation may be difficult to collect from foreign sports organizations. (3) Courts may not have personal jurisdiction over an international sport entity domiciled in a foreign country.¹⁷⁸ Ultimately, the Reynolds case may well stand for the proposition that even if you win, you may lose.

Athletes who may plan to challenge the requirement that they submit to binding CAS arbitration to settle disputes should consider the following. The establishment of the ICAS-CAS arbitration system has resulted in a process with increased independence from the IOC. Further, the CAS Code provides a variety of procedural safeguards that promote a fair system of dispute resolution. Moreover, agreement to arbi-

175. See Nelson, *supra* note 138, at 921.

176. See *id.*

177. Because of court intervention, however, he was able to compete at the Olympic Trials, see *supra* note 3.

178. See Randy Harvey, *IAAF's Move Keeps It Step Ahead of Reynolds*, L.A. TIMES, Aug. 12, 1993, at C4. To ensure that U.S. courts could not reach it in the Reynolds case, the IAAF, domiciled in London for almost fifty years, moved its headquarters to Monte Carlo. See *id.* In contrast to its legal status in England, the IAAF will be "an incorporated, national organization with a defined judicial personality" in Monte Carlo. See *id.* The Sixth Circuit holding that the Ohio court did not have personal jurisdiction over the IAAF made the move to Monte Carlo unnecessary. See *id.*

trate does not necessarily preclude court review of the arbitration decision.

Even if athletes determine that arbitration offers significant advantages over litigation, they may still prefer to litigate because of their concerns regarding the fairness of the arbitration process. The behavior of the IAAF arbitration panel in the Reynolds case may have understandably undermined athlete confidence in arbitration processes. Further, the IAAF and the IOC may have alienated athletes by imposing arbitration.¹⁷⁹ Finally, U.S. athletes may not readily accept the jurisdiction of a European institution with unfamiliar procedures and scant public record of its decisions.

However, two factors may assuage the apprehension of U.S. athletes. First, athletes may perceive the court as more "American" because of its location in Denver, Colorado. Second, recent drug testing disputes decided by CAS have yielded decisions that were favorable to the athletes involved.¹⁸⁰

To engender even greater athlete confidence in the CAS arbitration process, sport governing bodies and athletes should consider the following recommendations:

(1) Publish CAS decisions to permit adequate evaluation of its fairness, consistency, and efficiency.

(2) Publish the cost of CAS arbitration for each case.

(3) Provide for the cross examination of witnesses before CAS panels.

(4) Ensure the list of CAS arbitrators includes persons with diverse backgrounds.

(5) Impose reasonable time-limits to complete a CAS arbitration and penalties for undue delays.

(6) Allow more liberal discovery.

(7) Disseminate information to athletes regarding the legal

179. The IAAF and the TOC have threatened in the past to lobby Congress for an amendment to the Amateur Sports Act that would acknowledge the jurisdiction of the CAS if athletes refuse to sign the agreements. See Polvino, *supra* note 3, at 380 (citing David Miller, *Abebe Soldiers on to Record \$500,000 Prize*, THE TIMES, Jan. 25, 1993).

180. See Mark Zeigler, *A Pumped-up World*, THE SAN DIEGO UNION-TRIBUNE, Aug. 17, 1997, at C1. For example, the CAS reduced the suspension of 16-year old American swimmer Jessica Foschi from four years to two, retroactive to the testing date; (*see id.*) overturned the disqualification of athletes competing at the Atlanta Games for testing positive for the stimulant Bromantan, which had not yet been banned; (*see id.*) and upheld Irish swimmer Michelle Smith's entry in the 400 freestyle over complaints that she had not posted a qualifying time by the deadline. See Cantwell, *supra* note 85, at 2B.

implications of signing agreements to arbitrate.¹⁸¹

(8) Encourage the formation of athlete unions with the authority to negotiate agreements with sports governing bodies.

The CAS may provide the best choice for dispute resolution in Olympic sport, but its wide-spread use depends on athletes' informed consent to CAS jurisdiction and their belief that the system is fair.

181. In addition, Jill Pilgrim recommends that information regarding the availability of *ad hoc* CAS arbitration during Olympic Games be more widely disseminated. See Pilgrim, *supra* note 10, at 28. Pilgrim reports that "only the *chef de mission* of each NOC delegation was informed of the availability of the [*ad hoc* CAS] during the Games." See *id.*