

# ValpoScholar

## Valparaiso University Law Review

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Volume 35  
Number 2 *Symposium on Dispute Resolution in Sports*

pp.357-377

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*Symposium on Dispute Resolution in Sports*

### Arbitration of Rights and and Obligations in the International Sports Arena

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#### Recommended Citation

James A. R. Nafziger, *Arbitration of Rights and and Obligations in the International Sports Arena*, 35 Val. U. L. Rev. 357 (2001).

Available at: <https://scholar.valpo.edu/vulr/vol35/iss2/2>

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# Articles & Speeches

## ARBITRATION OF RIGHTS AND OBLIGATIONS IN THE INTERNATIONAL SPORTS ARENA

James A.R. Nafziger\*

Arbitration of disputes related to international sports competition is a growth industry. Certainly one of the most important developments in sports law during the past few years has been the expanded role of the Court of Arbitration for Sport ("CAS").<sup>1</sup> Business is also brisk for the American Arbitration Association and other national arbitral bodies around the world.<sup>2</sup> Many of the disputes have involved the eligibility of athletes on the eve of sanctioned international competition.<sup>3</sup>

### I. GROWTH OF INTERNATIONAL SPORTS ARBITRATION

In 1988, not a single demand for arbitration was filed during the run-up to the Olympic Games in Seoul.<sup>4</sup> By contrast, in 2000, the docket prior to the Sydney Games numbered some eight cases in the United States alone<sup>5</sup> and six times that number in Australia.<sup>6</sup> Arbitration of international sports disputes in Europe is also common.<sup>7</sup> The growth

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<sup>1</sup> See Matthieu Reeb, *The Role of the Court of Arbitration for Sport*, in INTERNATIONAL LAW AND THE HAGUE'S 750TH ANNIVERSARY 233 (Wybo P. Heer ed., 1999); James A.R. Nafziger, *The Court of Arbitration for Sport and the General Process of International Sports Law*, in INTERNATIONAL LAW AND THE HAGUE'S 750TH ANNIVERSARY 239 (Wybo P. Heer ed., 1999).

<sup>2</sup> Newspaper headlines tell the story. See, e.g., Jess Bravin, *Ready, Set, Arbitrate!: Here is This Year's New Hot Olympic Event: Arbitration*, WALL ST. J., Aug. 18, 2000, at A1, A6; Vicki Michaelis, *Roster Disputes Go Down to the Wire*, USA TODAY, Aug. 24, 2000, at 1C.

<sup>3</sup> See, e.g., LAURI TARASTI, LEGAL SOLUTIONS IN INTERNATIONAL DOPING CASES: AWARDS BY THE IAAF ARBITRATION PANEL 1985-1999 (2000); RECUEIL DES SENTENCES DU TAS/DIGEST OF CAS AWARDS 1986-1998 (Matthieu Reeb ed., 1998).

<sup>4</sup> Bravin, *supra* note 2, at A1.

<sup>5</sup> Michaelis, *supra* note 2, at 1C.

<sup>6</sup> *Id.*

<sup>7</sup> See, e.g., LUC SILANCE, LES SPORTS ET LE DROIT 406-08, 417-18 (1998) (referring particularly to Belgian and French practice).

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industry of international sports arbitration is clearly multinational. Hailing, as I do, from the state that brought you Tonya Harding in 1994,<sup>8</sup> Mary Decker Slaney in 1996, 1997, 1998 and 1999,<sup>9</sup> and Matt Lindland in 2000<sup>10</sup> - three very different individuals, but all seasoned veterans of arbitration - I hope you appreciate that we Oregonians are doing our part to fuel this industry. And, as Matt Lindland's silver medal in Sydney attests, we are getting better at quality control within the industry.

What accounts for this "trendy Olympic event,"<sup>11</sup> this "burgeoning Olympic sport of arbitration,"<sup>12</sup> as it has been called? Several explanations are immediately apparent. Video taping and electronic records of trials and final events provide better evidence to resolve disputes and thereby encourage more challenges to decisions. More obviously, perhaps, issues involving doping and the use of other performance-enhancing agents have sparked a substantial amount of arbitration. Even though the identification, testing, and sanctioning of prohibited substances and techniques are more effective today than even five years ago, the circumstances of their procurement, distribution and use are subtle and often ambiguous, giving rise to more disputes. And speaking of agents, the growing role of professional agents and sports lawyers has given athletes a keener eye for infractions of their rights, procedures for implementing those rights, and alternative remedies for redressing their grievances. Today's athletes have a better idea of their rights and are prepared to act on them regardless of the traditional etiquette against doing so on the eve of competition. They also know that the stakes of eligibility are much higher than they used to be.

In responding to these developments, arbitration has become a preferred means for resolving sports-related disputes. In the United States, this trend is in part the result of the Ted Stevens Olympic and Amateur Sports Act<sup>13</sup> - otherwise known as the Amateur Sports Act - which endorses arbitration to resolve disputes in the sports arena. The law requires National Governing Bodies ("NGBs") for each sport to

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<sup>8</sup> See James A.R. Nafziger, *International Sports Law as a Process for Resolving Disputes*, 45 INT'L & COMP. L.Q. 130, 140-42 (1996).

<sup>9</sup> See TARASTI, *supra* note 3, at 155.

<sup>10</sup> See *infra* Parts II-III.

<sup>11</sup> Michaelis, *supra* note 2, at 1C.

<sup>12</sup> Jere Longman, *On the Olympics: Athletes Are Taking the Trials from the Arenas to the Courts*, N.Y. TIMES, Aug. 23, 2000, at C23.

<sup>13</sup> 36 U.S.C.A. §§ 220501-220509 (West Supp. 2000) ("Ted Stevens Olympic and Amateur Sports Act").

agree to submit all disputes within the scope of the Act to binding arbitration by the American Arbitration Association ("AAA"). The law also entitles Olympic, Pan American and Paralympic athletes, or other parties aggrieved by decisions of the United States Olympic Committee ("USOC"), to a review of their grievances by the AAA.<sup>14</sup> Under the USOC Constitution, NGB decisions are subject to arbitration by the AAA.

Beyond the United States, at the global level, many international sports federations ("IFs") have entered into agreements with the CAS for binding arbitration of disputes between them and their constituents. In turn, IFs normally require their member organizations to provide for arbitration of their disputes with athletes. Athletes selected for the Olympics and other international competition must now sign a waiver form by which they agree to exclusive CAS jurisdiction over all disputes involving doping and other issues of eligibility.<sup>15</sup> In *Ragheeb v. IOC*,<sup>16</sup> the CAS confirmed that it could review an issue of eligibility only on the basis of such an arbitration agreement or a specific accreditation of an athlete for competition by the IOC. Because of the emerging role of the CAS in resolving these kinds of disputes at the international level, one commentator has suggested that the Amateur Sports Act should be amended to substitute the International Council of Arbitration for Sport, which is the parent organization of CAS, in place of the AAA as the designated arbitral body to hear all disputes between athletes and the USOC or its designated NGBs.<sup>17</sup>

For all these reasons, international sports arbitration is a growth industry. Litigation, on the other hand, is number two and, therefore, has to try harder. But courts have found it hard to try harder. Courts of law are, first of all, very reluctant to review eligibility and other decisions by sports bodies involving access to competition. When they do undertake such review, the process is often time-consuming and risky.<sup>18</sup> Although that may also be true for arbitration, on balance,

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<sup>14</sup> 36 U.S.C.A. § 220529 (West Supp. 2000).

<sup>15</sup> OLYMPIC CHARTER ¶ 74 (2000).

<sup>16</sup> The decision of *Ragheeb v. IOC* is a decision of the Court of Arbitration for Sport. This decision is unpublished and on file with CAS in Lausanne, Switzerland. *Ragheeb v. IOC*, CAS (August 30, 2000) (on file with CAS).

<sup>17</sup> Edward E. Hollis III, Note, *The U.S.A. Olympic Committee and the Suspension of Athletes: Reforming Grievance Procedures Under the Amateur Sports Act of 1978*, 71 IND. L.J. 183, 200 (1995).

<sup>18</sup> See generally, James A.R. Nafziger, *International Sports Law: A Replay of Characteristics and Trends*, 86 AM. J. INT'L L. 489, 508-10 (1992).

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arbitration is less costly, more expeditious, and more flexible in responding to new circumstances. The 1998 Amendments to the Amateur Sports Act that bar athletes from litigating eligibility decisions within twenty-one days before major competition also encourage arbitration unless the newly created USOC ombudsman is successful in facilitating a resolution of the dispute.<sup>19</sup>

II. RECENT DEVELOPMENT: *LINDLAND V. U.S.A. WRESTLING*

Arbitration is not, however, without its problems. For one thing, any third-party settlement of grievances by athletes is apt to be controversial. After all, good sportsmanship is supposed to avoid squabbling. Disputes are supposed to be resolved on the playing field. But legal disputes are inevitable. When they do arise, any review process on the eve of major competition may affect team morale, compete for the attention of sports organizations at the expense of athletes, consume

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<sup>19</sup> The amended law provides as follows:

(a) General. [ . . . ] In any lawsuit relating to the resolution of a dispute involving the opportunity of an amateur athlete to participate in the Olympic Games, the Paralympic Games, or the Pan-American Games, a court shall not grant injunctive relief against the corporation within 21 days before the beginning of such games if the corporation, after consultation with the chair of the Athletes' Advisory Council, has provided a sworn statement in writing executed by an officer of the corporation to such court that its constitution and bylaws cannot provide for the resolution of such dispute prior to the beginning of such games.

(b) Ombudsman.-

(1) The . . . ombudsman for athletes . . . shall—

(A) provide independent advice to athletes at no cost about the applicable provisions of this chapter (citation omitted) and the constitution and bylaws of the corporation, national governing bodies, a paralympic sports organizations [sic], international sports federations, the International Olympic Committee, the International Paralympic Committee, and the Pan-American Sports Organization, and with respect to the resolution of any dispute involving the opportunity of an amateur athlete to participate in the Olympic Games, the Paralympic Games, the Pan-American Games, world championship competition or other protected competition as defined in the constitution and bylaws of the corporation;

(B) assist in mediating any such disputes.

36 U.S.C.A. § 220509 (1994 & West Supp. 2000).

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valuable training time for the competitors, and sap their energy.<sup>20</sup> Even so, the enthusiasm of Tammy Thomas, Lisa Raymond, Matt Lindland, Julie Smith and other claimants to pursue their rights to participate in international competition appeals to us more than the apathy of certain men's tennis and basketball players whom we might like to have seen in Sydney.

What, then, are the hurdles in the path of arbitration and how can they be cleared? In addressing this question, the dispute between Matt Lindland and the United States of America Wrestling Association ("U.S.A. Wrestling") is a good place to begin.

In one sense, the *Lindland* case is unusual because it does not involve the dominant theme in international sports arbitration of doping. The case does, however, raise a number of significant issues about the structure for resolving eligibility disputes and the role of arbitration in this structure. *Lindland* demonstrates what happens when function follows form in dispute resolution.

On June 24, 2000, in Bout #244 of the Greco-Roman Wrestling trials to determine the United States Olympic team, Keith Sieracki beat Matt Lindland 2-1 in a best-of-three series to gain a berth on the team in the seventy-six kilogram (167.5-pound) class.<sup>21</sup> In accordance with U.S.A. Wrestling rules, the three mat officials included a referee, a judge, and a mat chairman. Lindland immediately protested the officiating of his loss, claiming that Sieracki had applied an illegal hold by using his legs and had also attempted to flee a hold in violation of the rules of both the international wrestling federation ("FILA") and U.S.A. Wrestling.<sup>22</sup>

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<sup>20</sup> See Michaelis, *supra* note 2, at 2C.

<sup>21</sup> For a summary and chronology see Gary Mihoces, *Grappling with a Decision Lindland Goes to Sydney, While Sieracki Stays Home*, USA TODAY, Sept. 14, 2000, at 1C.

<sup>22</sup> The Official Rules of FILA (the Fédération Internationale des Luttes Associées) (1999) are the international rules of wrestling. These rules have largely been adopted by U.S.A. Wrestling with some modifications. Article 61 of the FILA Rules provides as follows:

A. In Greco-Roman Wrestling, it is forbidden to grasp the opponent below the hips or to squeeze him with the legs. All pushing, pressing or "lifting" by means of contact with the legs on any part of the body of the opponent is also strictly forbidden.

In Greco-Roman wrestling, unlike Free Style wrestling, it is necessary to accompany the opponent to the ground.

B. In Free Style wrestling, a scissor lock with the feet crossed is forbidden on the head, the neck or the body.

FILA Rules, available at <http://www.iat.uni-leipzig.de/iat/fila/RULES/drules.htm> (last visited March 27, 2001).

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Lindland's protest complied with the Protest Procedures of U.S.A. Wrestling and special procedures for the 2000 Olympic trials. The Protest Committee, however, refused to overturn the decision against Lindland on the basis that it involved judgment calls by mat officials that were beyond the Committee's competence to review. For good reason, mat decisions are simply not subject to change on review. Lindland appealed the denial of his protest to U.S.A. Wrestling's Standing Greco-Roman Sport Committee. He argued before this body, in a telephonic hearing on July 13, 2000, that the mat officials had not simply misinterpreted U.S.A. Wrestling rules, but had misapplied them. For proof of his claim, he demanded that the Committee view a videotape of the match despite an organizational rule against the use of videotaped evidence.

Six days later, on July 19, 2000, the Standing Committee denied Lindland's appeal, four to one, largely on the basis of the discretion vested in mat officials to make or not make penalty calls. As a result, U.S.A. Wrestling added Sieracki's name to the roster of nominations to be submitted to the USOC for the 2000 Olympic team. Lindland then brought a demand for arbitration in Chicago of his grievance against U.S.A. Wrestling,<sup>23</sup> as he was entitled to do under the Amateur Sports Act.<sup>24</sup> Such proceedings are usually referred to as Article IX arbitrations, after Article IX of the USOC Constitution.<sup>25</sup> In accordance with the Amateur Sports Act, the winner of the disputed event, Keith Sieracki, was not a party to the arbitration between Lindland and U.S.A. Wrestling.

In the Chicago arbitration, Lindland argued that U.S.A. Wrestling had not provided procedures for the prompt and equitable resolution of his grievance, as the Amateur Sports Act requires.<sup>26</sup> This requirement

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Article 57 of the FILA Rules provides as follows: "Fleeing a hold occurs when the defending wrestler openly refuses contact in order to prevent his opponent from executing or initiating a hold." *Id.* Article 59 of the FILA Rules ("Illegal Holds") establishes several duties of the referee in the event of a prohibited act by a competitor. *Id.* Lindland claimed the referee failed to fulfill these duties.

<sup>23</sup> Lindland v. United States Wrestling Ass'n, Inc., Am. Arb. Ass'n No. 30-190-00443-00 (Aug. 9, 2000) (Burns, Arb.).

<sup>24</sup> 36 U.S.C.A. § 220529 (West Supp. 2000).

<sup>25</sup> This provision implements the provision in the Amateur Sports Act for arbitration of grievances against the USOC. U.S. OLYMPIC COMMITTEE CONST., art. IX.

<sup>26</sup> 36 U.S.C.A. § 220522(a)(13) (West Supp. 2000) ("An amateur sports organization is eligible . . . to continue to be recognized, as a national governing body only if it . . . provides procedures for the prompt and equitable resolution of grievances of its members."). 36 U.S.C. § 220503(8) assigns the following purpose to the USOC and therefore, by delegation,

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formed the legal framework of the proceedings that followed. The gist of Lindland's arguments was that the Greco-Roman review committee had failed to follow U.S.A. Wrestling's own rules and had fashioned new ones to suit its interests, for example, by recusing four committee members who might have supported Lindland's claim. The arbitrator, Daniel Burns, agreed with Lindland and ordered a rematch between the two competitors. Sieracki participated in the rematch under protest. This time Lindland won 8-0. U.S.A. Wrestling, however, simply added Lindland to its Olympic eligibility list as an alternate, leaving Sieracki as its nominee to the USOC for the Olympic team. Lindland responded by seeking enforcement of the arbitral award in the federal District Court for the Northern District of Illinois. The court dismissed his action, without a written opinion, apparently for lack of federal jurisdiction.<sup>27</sup> Now, let us return to the arbitral award.

After the Chicago award but prior to the rematch, Sieracki filed his own arbitration demand in Denver before A. Bruce Campbell, seeking confirmation of his status as the sole nominee in his weight class for the Greco-Roman wrestling team.<sup>28</sup> Lindland counterclaimed to the opposite effect. So, we have the prospect of a rematch of dispute resolution as well as wrestling. As we shall see, however, the prospect of repetitive dispute resolution by virtue of a second round of arbitration in Denver was fuzzy because some of the issues in Denver were materially different from those in the Chicago arbitration. The Denver arbitrator first determined the arbitration was proper and allowed all evidence offered by the parties except the videotape of Bout #244. Sieracki won this second round of arbitration. After four conferences in which all parties in the overall dispute participated, Arbitrator Campbell determined that Sieracki was not bound by the Chicago Award because he had not been a party to it. He found no evidence that the mat officials in Bout #244 had misapplied the rules or otherwise abused their

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to the NGBs: "to provide swift resolution of conflicts and disputes involving amateur athletes, national governing bodies, and amateur sports organizations, and protect the opportunity of any amateur athlete, coach, trainer, manager, administrator, or official to participate in amateur athletic competition."

<sup>27</sup> See *Lindland v. United States Wrestling Ass'n, Inc.*, 230 F.3d 1036, 1038 (7th Cir. 2000).

<sup>28</sup> *Sieracki v. United States Wrestling Ass'n, Inc.*, Am. Arb. Ass'n No. 30-190-00483-00 (Aug. 24, 2000) (Campbell, Arb.). Since this second arbitration did not fall within the prescribed process for reviewing a grievance under the Amateur Sports Act, it had the rather odd posture of a friendly action between the like-minded Sieracki and U.S.A. Wrestling as a means to confirm the latter's decision in Sieracki's favor, to challenge the fairness of the Chicago arbitration, and to question whether the notice and circumstances of the rematch were fair. See *id.*



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authority. He also found that U.S.A. Wrestling's procedural arrangements, including the review committee's refusal to hear the team coach's testimony or to view video tape of the match, had not prejudiced either wrestler, did not constitute an irregularity or impropriety, and did not justify setting aside the grievance process. The Denver Award concluded by ordering U.S.A. Wrestling to withdraw Lindland's name from the eligibility list for the team and to confirm Keith Sieracki as the sole nominee on the team roster to be submitted to the USOC.

Just a few hours after the Denver Award, however, the Seventh Circuit Court of Appeals reversed the lower court in its refusal to enforce the Chicago Award in Lindland's favor and issued a mandate to U.S.A. Wrestling to enforce the award by nominating Lindland to the USOC.<sup>29</sup> When Lindland sought to enforce this decision, however, the district court refused again on the basis that it lacked jurisdiction.<sup>30</sup> Lindland then obtained a writ of mandamus from the Circuit Court that ordered the lower court to enforce the Chicago Award.<sup>31</sup> At this point U.S.A. Wrestling and the USOC were faced with what appeared to be contradictory orders.

Since arbitration is not normally subject to issue and claim preclusion,<sup>32</sup> each of the wrestlers therefore was free to seek judicial confirmation of the arbitral award in his favor under § 9 of the Federal Arbitration Act.<sup>33</sup> Lindland, who was back in the federal courts for the second time, specifically requested a court order to compel the USOC to send his name to the IOC despite the USOC's argument that it could not do so because it had already sent Sieracki's name to the IOC. The Denver court, on the other hand, transferred the Sieracki action to the Chicago federal court, where the opposing federal actions were consolidated. (One might well ask what would have happened if the federal district court in Denver had not transferred the Sieracki action to the federal court in Chicago for consolidation of the two actions.)

After consolidation of the two actions, the Northern District of Illinois court, in the face of the mandamus order issued by the Seventh Circuit, directed the USOC to substitute Lindland for Sieracki as U.S.A. Wrestling's sole nominee to the USOC and denied Sieracki's petition to

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<sup>29</sup> *Lindland*, 230 F.3d at 1040.

<sup>30</sup> See *Lindland v. United States Wrestling Ass'n., Inc.*, 228 F.3d 782, 783 (7th Cir. 2000).

<sup>31</sup> *Id.*

<sup>32</sup> *Brotherhood of Maint. of Way Employees v. Burlington N. R.R.*, 24 F.3d 937, 939-41 (7th Cir. 1994).

<sup>33</sup> 9 U.S.C. § 9 (1994).

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confirm the Denver Award in his favor. In compliance with the district court order, the USOC requested the IOC to replace Sieracki with Lindland as a member of the Olympic team. It also appealed the court ruling that required it to take this action. U.S.A. Wrestling appealed each of the mandated district court decisions to the Seventh Circuit, which upheld both orders.<sup>34</sup> In the end, less than two weeks before the beginning of the Olympic Games, United States Supreme Court Justice Stevens (also from Chicago, incidentally) denied a request by the USOC for a stay of the Seventh Circuit's mandamus order.<sup>35</sup>

From the record, it appears that the case was very ably, indeed admirably argued by counsel for the parties. In view of the time constraints, the advocacy was exemplary. And reasonable minds can certainly differ on the outcome of the case. I personally have no quarrel with it. But I do want to question several of its legal premises. Fundamentally, the Chicago Award was based on a determination that U.S.A. Wrestling's review of Lindland's protest was procedurally defective. The arbitrator found that the organization's rules were inadequate to deal with the issues that arose in the case concerning possible conflict of interest, recomposition of the review committee, and restrictions on testimony.<sup>36</sup> The materiality of these defects is questionable,<sup>37</sup> as was the advisability of ordering a rematch rather than a recomposition and reconvention of the Protest Committee.<sup>38</sup> Simple

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<sup>34</sup> *Lindland v. United States Wrestling Ass'n., Inc.*, 227 F.3d 1000 (7th Cir. 2000).

<sup>35</sup> See Jess Bravin, *High Court Ensures Wrestler's Trip to Olympics*, WALL ST. J., Sept. 7, 2000, at B19 (noting that Justice Stevens denied the request for review without comment).

<sup>36</sup> See *Lindland v. United States Wrestling Ass'n., Inc.*, Am. Arb. Ass'n No. 30-190-00443-00 (Aug. 9, 2000) (Burns, Arb.).

<sup>37</sup> See *Sieracki v. United States Wrestling Ass'n., Inc.*, Am Arb. Ass'n No. 30-190-00483-00 (Aug. 24, 2000) (Campbell, Arb.).

<sup>38</sup> In the Chicago arbitration, the justification in the "Conclusion and Award" reads as follows:

Changed situations of Committee participants, the question of the President of USA will attend and vote [sic], the exigencies of the present circumstances of final team selection, the fact that a crucial witness's testimony was chilled at the first hearing, the potential atmosphere of a reconvened full Committee, and the very lack of guidance in USA Wrestling by-laws and rules, when grouped together, are convincing that Lindland cannot be put back to the same position he was on July 12, and cannot receive the prompt and equitable resolution of his grievance that he has been promised. For example, one excluded member of the Committee was a fellow wrestler with a grievance *pending* at that time. That grievance has now been finally resolved. Another mistake made in fashioning the July 13 Committee, [sic] was the erroneous belief that some members of the Greco-Roman Sports Committee had also *voted* on that Protest Committee, and they

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mathematics reveals that if Lindland's corner coach in Bout #244 had recused himself, as would surely be appropriate, and if all of the remaining three committee members who recused themselves had instead voted in Lindland's favor, the result at most would have been a tie, which would have been insufficient to reverse the original decision in favor of Sieracki.<sup>39</sup>

Even so, the bases for review within U.S.A. Wrestling, as the process developed, are murky. What is clear is that the by-laws and rules of U.S.A. Wrestling did not provide any real guidance on appropriate procedures for reviewing a protest of this sort.<sup>40</sup> As a result, simply reconvening the Protest Committee might not have overcome apprehensions about the fairness of the administrative process.

U.S.A. Wrestling's refusal to entertain videotaped evidence except for during-match viewing by mat officials and for viewing flagrant misconduct and allegations of brutality is also questionable. The rule against videotaped evidence is designed to shield judgment calls from endless challenge and dispute. The rule thus protects the integrity of officiating and avoids substituting arbitrators for referees. Nevertheless, excluding videotaped evidence clearly conflicts with the rules of FILA, the international wrestling federation.<sup>41</sup> Moreover, the governing law of

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were excluded for that reason. In fact, only one member had actually voted at the Protest Committee and that was the president of the USA Wrestling, who testified he was an *ad hoc* member of the Committee and may have attended one Committee meeting over the past several years. As significant is the lack of guidance and advance notice on these issues to Lindland, and Committee members, as he attempted to process his protest. Unfortunately, the same lack of guidance defeats any attempt to reconvene the Committee and provide a clean slate to press his claim in the short time before final team selection.

Lindland, Am. Arb. Ass'n No. 30-190-00443-00.

<sup>39</sup> See Sieracki, Am. Arb. Ass'n No. 30-190-00483-00, at ¶1(f).

<sup>40</sup> The Chicago award found:

USA Wrestling has not provided any written rules, regulations, by-laws, or precedential authority justifying its actions and decisions regarding: 1) the determination of the number and identities of the Greco-Roman Sports Committee when hearing appeals such as Lindland's; 2) grounds for excluding sitting Committee members from participating and deliberating in appeals such as Lindland's; 3) limitations on the nature and extent of the testimony of witnesses; 4) who is permitted to appear and participate in the hearing....

Lindland, Am. Arb. Ass'n No. 30-190-00483-00, at Findings of Fact ¶9.

<sup>41</sup> In the event of a protest, Article 63 of the Official Rules of FILA clearly encourages the use of videotape. See FILA Rules, available at <http://www.iaat.uni-leipzig.de/iat/fila/RULES/drules.htm> (last visited March 27, 2001); see *supra* note 23. To

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the Amateur Sports Act seems to contemplate a freer evidentiary environment by stating that "[t]he parties may offer any evidence they desire and shall produce any additional evidence the arbitrators believe is necessary to an understanding and determination of the dispute. The arbitrators shall be the sole judges of the relevance and materiality of the evidence offered."<sup>42</sup>

Reasonable minds may, of course, differ on the advisability of allowing videotaped evidence. What is hard to dispute, however, is the complexity of the legal process which extended over a period of two-and-one-half months and involved thirteen stages of dispute resolution.<sup>43</sup> Surely that was an unlucky thirteen, not just for Sieracki, but for the reputation of dispute resolution related to international sports competition. In the cogent words of Matt Lindland's wife, "[t]hey're probably going to have to change the rules after this one."<sup>44</sup>

## III. THE SEVENTH CIRCUIT OPINIONS

The formal process for resolving the *Lindland* dispute merits consideration. I would argue that, although the selection of Lindland to the Olympic team was a reasonable outcome of the dispute, the premises of the Seventh Circuit's orders to that effect are shaky. Indeed, *Lindland* is a good example of the difficulty that federal courts have had in defining their role in disputes involving the eligibility of athletes for international competition.<sup>45</sup>

At the heart of the Seventh Circuit's opinions, written by Judge Frank Easterbrook, is a conclusion that the Chicago Award was valid while the Denver Award was invalid.<sup>46</sup> The rationale was that because the Chicago Award had been upheld by a court of law, any later award,

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the contrary, one of the few modifications of the FILA rules by U.S.A. Wrestling provides as follows: "Under no circumstances shall the use of video tapes or films of a bout be considered or shown in the evaluation of any protest. Elements of the FILA Protest procedures may be applied as determined by the protest committee." U.S.A. Wrestling, Article 63, U.S.A. Wrestling Protest Procedures (1999), available at <http://www.usawrestling.com>.

The Denver Award wisely sidestepped the issue of whether U.S.A. Wrestling's rules are "less or more wise" than those of FILA. *Sieracki*, Am. Arb. Ass'n No. 30-190-00483-00, at ¶ II-6.

<sup>42</sup> 36 U.S.C.A. § 220529(5) (West Supp. 2000).

<sup>43</sup> See *Lindland v. United States Wrestling Ass'n.*, 230 F.3d 1036, 1037-38 (7th Cir. 2000) (noting the several stages of litigation); Michaelis, *supra* note 2, at 1C.

<sup>44</sup> Michaelis, *supra* note 2, at 1C.

<sup>45</sup> See Nafziger, *supra* note 8, at 134-42 (discussing the *Reynolds* and *Harding* cases).

<sup>46</sup> *Lindland v. United States Wrestling Ass'n, Inc.*, 227 F.3d 1000, 1005 (7th Cir. 2000).

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namely the one in Denver, could not purport to countermand it. Once the court had ordered U.S.A. Wrestling and the USOC to substitute Lindland for Sieracki on the Olympic team, that was it. Although the Seventh Circuit's confirmation of the Chicago Award is certainly reasonable, its negative conclusion about the Denver Award is much less compelling. While acknowledging the lack of issue and claim preclusion in arbitration, the court's opinion enlists two principal arguments against the Denver Award, concluding therefore that it was "doubly flawed."<sup>47</sup> First, Judge Easterbrook concluded that the Denver Award was, in his words, *ultra vires* because, unlike the Chicago Award, it was not conceived as an appeal of a USOC or NGB decision under the Amateur Sports Act. But he failed to appreciate that, unlike the Chicago arbitration, which was premised in the Amateur Sports Act, the Denver arbitration was brought under the USOC's Grievance Procedures for Code of Conduct and Team Selection 2000 Olympic Games.

Second, Judge Easterbrook construed Rule 48 of the Commercial Arbitration Rules of the American Arbitration Association to bar the Denver Award as a redetermination of the merits of a claim already decided.<sup>48</sup> But Rule 48 merely bars a redetermination of the merits in a *modification of a single award*. What makes the double arbitration in *Lindland* so interesting is that the two awards involved different parties and, to an extent, different issues. Not only did the Circuit Court minimize these differences, but it took Denver Arbitrator Campbell to task for deciding, in the court's words, to "ignore" Rule 48 "utterly"<sup>49</sup> and thereby to flout the judicial confirmation of the Chicago Award. But Campbell had reason to ignore Rule 48 because it simply did not apply.

Judge Easterbrook's opinion emphasized that the winner of a contested event is normally not a party to an Article IX proceeding. That is certainly true and appropriate under the law. But there were four material differences between the Chicago and Denver arbitrations. First, the Denver claimant, Sieracki, had been unable to appear formally in the Chicago arbitration. Although that did not in any way call into question the Chicago Award, by the same token it enabled him to demand relief in Denver from the mandatory rematch ordered by the Chicago Award. Judge Easterbrook seems to have been bothered by Sieracki's timing of this demand prior to the event itself. But what was Sieracki supposed to do to vindicate his position after the award in the Chicago arbitration to

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<sup>47</sup> *Id.* at 1003.

<sup>48</sup> *Id.* at 1004.

<sup>49</sup> *Id.*

which he was not a party? Perhaps he should have waited a few days until he had lost the rematch before pursuing a judicial remedy. But, under the time constraints imposed by the Amateur Sports Act, it was probably wise for him to get off the mat and get moving again. In any event, he had standing under the 2000 Protest Rules to demand arbitration. Surely, the Denver arbitrator was acting properly in hearing the demand of an athlete whose original selection to the team was in jeopardy.

Although many Article IX disputes involving allegations against an athlete impact only indirectly on other identifiable competitors, an either-or eligibility issue of the sort at issue in *Lindland* is materially different. Article IX's exclusion of the disputed winner of an event in an arbitration of that dispute presents a serious issue. It is simply unfair to ignore the winner's interests on the basis that arbitration of a grievance under the Amateur Sports Act excludes the winner as a party. In the Denver arbitration, on the other hand, both of the contesting wrestlers, as well as U.S.A. Wrestling, made appearances.

Second, the Denver arbitration, although it considered Lindland's protest *de novo*, also heard new issues related to the rematch that occurred while the Denver arbitration was pending. It simply is not correct to conclude, as the Seventh Circuit opinion does, that "[t]he whole point of the Campbell proceeding [Denver arbitration] was to redecide issues."<sup>50</sup> That may have been part of the point but by no means the whole point. Judge Easterbrook's opinion itself acknowledges that Sieracki initiated his arbitration, "protesting the result of the rematch."<sup>51</sup> Moreover, unlike the issues raised by Lindland in the Chicago arbitration, Sieracki's demand in Denver sought a determination that he should be the sole nominee to the Greco-Roman Olympic team, to the exclusion of Lindland.

Third, it is reasonable to view the Denver arbitration as a fresh proceeding, unaffected in part by the Seventh Circuit order that confirmed the Chicago Award. After all, the rematch had converted Sieracki, the original winner, into a loser. Surely, Sieracki, the "new" loser, so to speak, should have been entitled to the same right to demand the same kind of arbitration as Lindland, the "old" loser, so to speak, had enjoyed. Thus, Sieracki could claim the arbitrability of his grievance under either the Code of Conduct and Team Selection or, arguably,

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<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 1003.

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under a theory that the results of the rematch could be contested as a fresh action and hence that the second arbitration in Denver was proper under the same provision of the Amateur Sports Act which Lindland had legitimately invoked.

Even if one does not accept the recharacterization of the Denver arbitration as a fresh action, perhaps because Sieracki had not exhausted the internal protest and grievance procedures required by law,<sup>52</sup> it nevertheless seems clear that the complex of dispute resolution was more of a muddle than the Seventh Circuit seems to have appreciated. For instance, the opinions failed to appreciate the very real dilemma faced by U.S.A. Wrestling and the USOC in the face of two inconsistent awards. Instead, one of Judge Easterbrook's opinions intimates that NGBs like U.S.A. Wrestling are "scofflaws,"<sup>53</sup> chastises the USOC for insisting that "it is entitled to do as it pleases - defying injunctions to its heart's content,"<sup>54</sup> and surmises a conspiracy between U.S.A. Wrestling and the USOC in contempt of court.<sup>55</sup> These observations may or may not be correct, but that kind of fighting language by an appeals court, without adequate proof, is disconcerting.

That said, one of the Circuit Court opinions does hint at some productive new directions for resolving these kinds of disputes. In Judge Easterbrook's words, conflicting instructions may not be an "irremediable evil. Injunctions create property rights, which may be altered by private agreements. Bargaining among Sieracki, Lindland, and U.S.A. Wrestling could lead to a settlement that would relieve U.S.A. Wrestling of any incompatible obligations."<sup>56</sup> Judge Easterbrook caps this observation with a challenge: "Definitive resolution of the right way to handle conflicting awards, after one has been confirmed, may await another day."<sup>57</sup>

I am quite sure that that day has not yet arrived. I do want to ask, however, what can be done, specifically, to improve the process. Let me say again that I think both the Chicago and Denver arbitral awards in *Lindland* were creditable. Neither was spoiled by any of the defects of

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<sup>52</sup> See 36 U.S.C.A. § 220529 (West Supp. 2000); *Dolan v. U.S. Equestrian Team, Inc.*, 608 A.2d 434 (N.J. Super. Ct. App. Div. 1992). Sieracki, on the other hand, was seeking to vindicate his initial victory under severe time constraints.

<sup>53</sup> *Lindland v. United States Wrestling Ass'n, Inc.*, 227 F.3d 1000, 1008 (7th Cir. 2000).

<sup>54</sup> *Id.* at 1007.

<sup>55</sup> *Id.* at 1006.

<sup>56</sup> *Id.* at 1003.

<sup>57</sup> *Id.*

corruption, fraud or evident partiality for which the Arbitration Act allows an award to be set aside.<sup>58</sup> Even if one were to agree that a first award ordinarily should bar a second award, the two awards in this case differed substantially from each other.<sup>59</sup> Consequently, Judge Easterbrook's misunderstanding of the express reach of the first award,<sup>60</sup> his caustic appraisal of the second award, and his injudicious name-calling were simply off the mat. The problem lay not in the second arbitration itself but in the structure of dispute resolution that encourages proliferation and, worse yet, redundancy of proceedings.

#### IV. IMPROVING THE STRUCTURE OF DISPUTE RESOLUTION

Let me offer several suggestions to improve the structure. First, in reviewing arbitrations under federal law, the courts should proceed cautiously. Judicial relief from the decisions of sports bodies should be reserved for cases where due process violations are patent, and the violations dispositive, as they were not in *Lindland*. The financial stakes for athletes, absent issues of labor law,<sup>61</sup> do not alone provide a compelling basis for judicial intervention. To quote another Seventh Circuit judge, Richard Posner: "[T]here can be few less suitable bodies than the federal courts for determining the eligibility, or the procedure for determining the eligibility, of athletes . . ."<sup>62</sup> The *Harding* court in Oregon also had it right, I think, in cautioning that:

Intervention [by the courts] is appropriate only in the most extraordinary circumstances, where [a national governing body] has clearly breached its own rules, that

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<sup>58</sup> See 9 U.S.C. § 10(a) (Supp. V 1999).

<sup>59</sup> See *supra* notes 50-51 and accompanying text.

<sup>60</sup> Despite Judge Easterbrook's argument that the Denver Award purported to rescind the Chicago Award's order to place Lindland on the Olympic team, not only does the Denver Award contain no such attempted rescission, but the Chicago Award, in the first instance, did not actually order Lindland's selection to the U.S.A. Olympic team. See *Lindland v. United States Wrestling Ass'n, Inc.*, Am. Arb. Ass'n No. 30-190-00443-00 (Aug. 9, 2000) (Burns, Arb.).

<sup>61</sup> Compare the following timely observation:

U.S. courts and international federations must begin viewing amateur athletics in a more employment-related light, as substantial sums of money are at stake when suspensions of Olympic athletes occur. In the U.S.A., amateur athletes have traditionally not been viewed as "employees" due to the strict NCAA regulations prohibiting college athletes from receiving financial rewards for their talents.

Mary K. Fitzgerald, *The Court of Arbitration for Sport; Dealing with Doping and Due Process During the Olympics*, 7 SPORTS LAW. J. 213, 236 (2000).

<sup>62</sup> *Michels v. United States Olympic Comm.*, 741 F.2d 155, 159 (7th Cir. 1984).



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breach will imminently result in *serious* and irreparable harm to the plaintiff, and the plaintiff has exhausted all internal remedies. Even then, injunctive relief is limited to correcting the breach of the rules. The court should not intervene in the merits of the underlying dispute.<sup>63</sup>

Second, repetitious proceedings and the complexity they entail, particularly in eligibility cases, could be avoided by amending the Amateur Sports Act and the USOC Constitution to enable an individual winner of a disputed competition to participate in a single arbitration alongside the individual claimant, NGB and, as appropriate, the USOC. It is simply unfair to presume that a contested winner's interests are fully represented by an NGB.<sup>64</sup> A unified arbitration would then bar subsequent arbitration. In team sports, the problem of standing to appear is considerably more complicated. Even so, as a starter, team members of a class potentially affected by an eligibility decision might simply elect one of their number to represent their common interests.

Third, the Amateur Sports Act should be interpreted or, if necessary, amended to avoid arbitration of a referee's decision so long as a claimant has had the benefit of a full and fair review by the appropriate NGB, unless that body would itself permit such a review.<sup>65</sup> In *Lindland*, the Chicago Award steered clear of scrutinizing judgment calls. The Denver Award, on the other hand, seemed to comment fairly directly on the judgment of the mat officials. A procedural rule barring review of such judgment calls in all but the most egregious cases would help avoid understandable suspicions by the media and the public that arbitrators can make second calls. In the Lindland-Sieracki match, there were three mat officials, all of whom appear to have satisfied U.S.A. Wrestling's requirement that they understood the rules and avoided wrongful, dishonest, intentionally improper, or bad faith conduct.<sup>66</sup> Even if they failed to take account of illegal wrestling maneuvers in violation of the

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<sup>63</sup> *Harding v. United States Figure Skating Ass'n*, 851 F. Supp. 1476, 1479 (D. Or. 1994).

<sup>64</sup> U.S. OLYMPIC COMM. CONST., art IX, § 2 (providing that a demand for arbitration must designate "such USOC member," normally an NGB, as an adverse party). See also *Lindland v. United States Wrestling Ass'n, Inc.*, 230 F.3d 1036, 1039 (7th Cir. 2000). As Judge Easterbrook's opinion points out, this is in keeping with the arrangement in labor arbitration that an employee who is discharged from employment may arbitrate a grievance with his employer but need not designate as an additional party a replacement who may be dischargeable by an award in favor of the grievant. *Id.*

<sup>65</sup> Longman, *supra* note 12, at D8 ("There is no quicker way to kill spectator interest than to have a game played and the outcome decided a month later by lawyers.")

<sup>66</sup> *Sieracki v. United States Wrestling Ass'n, Inc.*, Am. Arb. Ass'n No. 30-190-00483-00, II-1, 2, (Aug. 24, 2000) (Campbell, Arb.).

rules of the game, such bad judgment calls or inaction should not be subject to arbitration or litigation in the absence of evidence that they had simply failed to understand the rules or that they abused their authority.

Fourth, we should make it clear that the merits not only of judgment calls but of the rules of the game themselves are generally beyond the competence of arbitration or litigation. After all, technical rules are constantly under review and reform by the IOC, IFs and NGBs themselves. One commentator has therefore proposed that the Amateur Sports Act be amended to provide that the jurisdiction of courts under the Act should be limited to determinations of whether responsible sports organizations have complied with their own rules of eligibility, presumably within an acceptable margin of discretion. This proposal would bar courts from evaluating the merits of a dispute, confining their review to an evaluation of procedural due process.<sup>67</sup>

In drawing a line between nonreviewable game rules and reviewable rules, procedures and practices, two cases of the CAS are instructive. The first arose out of an incident during the 1996 Atlanta Games.<sup>68</sup> In reviewing a referee's disqualification of an athlete, known as "Boxer M," for landing a below-the-belt punch on his opponent, the CAS applied international custom, particularly from the United States, France, and Switzerland. The CAS concluded from this general practice that a technical decision, standard or rule - in other words, a nonreviewable game rule - is shielded from arbitral or judicial scrutiny unless the rule or its application by sports officials is arbitrary, illegal, or the product of a wrong or malicious intent against an athlete.<sup>69</sup> In such cases, the rule or its application is reviewable. Sanctions appearing to be excessive or unfair on their face are also reviewable. The rationale for the *Boxer M* decision was two-fold: that IFs have the responsibility to enforce rules, and referees or ring judges are in a better position than arbitrators to decide technical matters.<sup>70</sup>

In the second CAS case, the AOC Advisory Opinion, the CAS considered the reviewability of a decision by the international swimming federation ("FINA"), less than a year before the 2000 Olympic Games, to

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<sup>67</sup> Hollis, *supra* note 17, at 200.

<sup>68</sup> Reeb, *supra* note 3, at 413 (M. v. Ass'n Internationale de Boxe Amateur)(CAS Ad Hoc Division, Atlanta 1996).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

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approve the use of full-body ("long john") swimsuits.<sup>71</sup> These highly elastic suits, which were first marketed by Speedo, attempted to simulate natural sharkskin. The suits were designed to increase a swimmer's speed and endurance, to reduce drag, and possibly to enhance the buoyancy of the swimmer. The FINA Bureau, after lengthy discussion, ruled that "the use of these swimsuits does not constitute a violation of the FINA Rules."<sup>72</sup> In response to this ruling, the Australian Olympic Committee ("AOC"), nervous about possible claims of unfairness at the Sydney Games, asked the CAS for an advisory opinion under its Rule 60. The AOC inquired whether the FINA ruling had complied with FINA's own rules and whether, in any event, use of the suits would raise contestable issues of fairness. In a thorough and thoughtful opinion, the CAS properly advised that FINA had reached its decision in compliance with its own rules and that its ruling, which was tantamount to approval of bodysuits, did not raise any reviewable issues of unfair procedure, bad faith, conflict with general principles of law, or unreasonableness.<sup>73</sup>

Fifth, NGBs and other sports associations, under the supervision of IFs, should draft more explicit and uniform rules of eligibility and remedies for relief of legitimate grievances by athletes. Sheer chaos reigns today, and that is grossly unfair to athletes. For example, NGBs should clarify the precise weight that they will give to career records and recent international performance in determining eligibility when team tryouts alone are not determinative. Such clarification would have avoided the arbitration to determine the composition of the U.S. Women's softball team in Sydney and another arbitration involving the U.S. women's cycling team.<sup>74</sup> The demand by Tammy Thomas, winner of the 500-meter women's trial for the 2000 Olympics, against Christine Witty, whom the United States cycling federation selected on the basis of her superior two-year performance profile, was a variation on the *Lindland* case. Although an arbitrator ordered a ride-off to settle the controversy, much like the *Lindland* wrestling rematch, Witty, unlike Sieracki, simply refused to show up and promptly filed her own arbitration action.

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<sup>71</sup> Advisory Opinion Delivered by the Ct. of Arbitration for Sport at the request of the Australian Olympic Committee, TAS 2000/C/267 ACO (Richard M. McLaren, Sole Arbitrator) (on file with author).

<sup>72</sup> *Id.* at 12.

<sup>73</sup> *Id.* at 19-21. But see Jarwillem Soek, *You Don't Win Silver - You Miss the Gold*, INT'L SPORTS L.J., Sept. 2000, at 15 (criticizing the advisory opinion for assuming the existence of a dispute between the AOC and FINA and thereby failing to resolve the issue of fairness of the controversial bodysuits).

<sup>74</sup> Bravin, *supra* note 2, at A1.

Let me underscore the need, for reasons of fairness, to harmonize rules and remedies to make them as uniform and predictable as possible, across the range of sports. For example, serious questions of equity and due process arise whenever a track-and-field athlete is barred for life for ingesting a substance that is permitted (or was permitted) in baseball. Similarly, the Amateur Sports Act should make it clear that ad hoc measures, such as rematches, should be only a last resort when reconstitution of a defective eligibility review process would be grossly unfair or impossible.

#### V. OBLIGATIONS OF ATHLETES

Finally, my most far-reaching suggestion for reform is that arbitral awards should take account of obligations or duties as well as rights of athletes. We often forget that the framework for protection of human rights includes obligations or duties as well. It is a trade-off. Rights arise out of reciprocal relations within a community. They are confirmed by social contract. Article 29 of the Universal Declaration of Human Rights establishes that "[e]veryone has duties to the community in which alone the free and full development of his personality is possible."<sup>75</sup> Similarly, the African Charter on Human and Peoples' Rights acknowledges obligations and duties of individuals toward society,<sup>76</sup> and the American Declaration of the Rights and Duties of Man establishes ten specific duties.<sup>77</sup>

To be sure, this authority only confirms the reciprocal nature, in very general terms, of the social contract putting human rights into play. None of the human rights instruments comes close to identifying specific duties of athletes or to providing any specific legal basis for imposing duties on them. Still, the general authority provides a normative foundation for more specific requirements. The Olympic Charter, for example, establishes that "[t]he practice of sport is a human right."<sup>78</sup> Several decisions of the CAS have elaborated on the obligation of athletes to serve the community interest in ensuring fairness and a level playing field for all. For example, in several doping cases, the CAS

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<sup>75</sup> Art. 29, UNIVERSAL DECLARATION OF HUMAN RIGHTS, G.A. Res. 217A, U.N. GAOR, 3rd Sess. Pt. 1, Resolutions, at 71, U.N. Doc. A/810 (1948); see Keba Mbaye, *Sport and Human Rights*, OLYMPIC REV., Dec. 1998-Jan. 1999, at 8-12.

<sup>76</sup> AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS, O.A.U. Doc. CAB/LEG/67/3 Rev. 5, arts. 27-29, (1981).

<sup>77</sup> AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN, O.A.S. Res. XXX, O.A.S. Off. Rec. OEA/Ser. L/V/I.4, arts 29-38, (1965).

<sup>78</sup> OLYMPIC CHARTER, Fundamental Principle 8 (2000).

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established a duty of athletes to disclose information coming to their attention about doping to the detriment of competition.<sup>79</sup>

Although the ideal of athletes as role models is often romanticized and exaggerated, athletes unquestionably influence young people.<sup>80</sup> Therefore, in reviewing claims, arbitrators should consider the special obligations or duties that athletes owe to society as well as their rights. In reviewing disputes involving the status of athletes, the issue ought to be what is in the best public interest, not just what is in the best interest of particular sports.<sup>81</sup> In that light, it is difficult to justify the outcome of the *Sprewell* arbitration. Latrell Sprewell's physical, indeed nearly homicidal, assault on Head Coach Peter Carlesimo and the Golden State Warriors' team trainer, followed by his angry return from the locker room to reiterate his threats and repeat his assaults, surely warranted the most severe penalty. Accordingly, the National Basketball Association ("NBA"), in consultation with the Warriors, imposed a one-year, 82-game suspension from NBA play without pay – the most severe sanction that the NBA had ever imposed on a player. The Warriors also terminated the remaining years in Sprewell's Uniform Player Contract with the Golden State Warriors.<sup>82</sup>

However, the arbitrator hearing Sprewell's demand for relief mitigated the suspension to the remaining 68 games of the season and reinstated Sprewell's contract with the Warriors.<sup>83</sup> The Grievance Arbitrator's generous treatment of Latrell Sprewell unfortunately minimized the social consequences of his decision. In all fairness, the Grievance Arbitrator was fundamentally concerned about the issue of due process insofar as there had been no precedent for the severe penalty of a one-year suspension and termination of Sprewell's guaranteed contract. Perhaps, though, precedent, like consistency, can be a

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<sup>79</sup> Reeb, *supra* note 3, at 142, 143, 158.

<sup>80</sup> See, e.g., René Lefort & Jean Harvey, *What's in a Game?*, THE UNESCO COURIER, April 1999, at 18.

<sup>81</sup> See Paul C. Weiler & Gary R. Roberts, *SPORTS AND THE LAW: TEXT, CASES, PROBLEMS 86* (#3) (2d ed. 1998).

<sup>82</sup> See *Latrell Sprewell Reinstatement Ruling*, in Walter T. Champion, Jr., *FUNDAMENTALS OF SPORTS LAW* 442 (Cum. Supp. 1999).

<sup>83</sup> Sprewell later brought action in the federal district court against the NBA and the Golden State Warriors claiming thirty million dollars in damages on the basis that the arbitral award against him was racially discriminatory. See *Sprewell v. Golden State Warriors*, C-98-2053-VRW, 1999 WL 179682 (N.D. Ca. Mar. 26, 1999). Sprewell's action and a revised version of it were both dismissed as meritless suits in 1998 and 1999, respectively. On review, the Ninth Circuit Court of Appeals upheld the lower court. *Sprewell v. Golden State Warriors*, 231 F.3d 520 (9th Cir. 2000).

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hobgoblin. Perhaps serious physical assault should be treated the same in the sports arena and sports arbitration as on the streets.

By the same token, sports organizations have ethical obligations to society, too. This expectation underlies an arbitral decision that upheld the most severe penalty ever imposed by the NBA.<sup>84</sup> The Minnesota Timberwolves had received this sanction for secretly conspiring with an athlete to avoid the NBA's salary cap, a requirement that is further elaborated in the league's collective bargaining agreement with the players' association. Ethical issues of this sort are particularly serious when, as in this case, an athlete and a sports association conspire to violate fundamental organizational rules.

Although sports and athletes are special, their special status means a higher standard of conduct. In the words of one observer, "players are highly visible in the community, and that carries a public obligation."<sup>85</sup> Sport is also highly visible in the community. As we arbitrate rights and perhaps take account of obligations within the international sports arena, the public interest should be paramount. Surely that is an appropriate world view for arbitrating sports disputes in the early twenty-first century.

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<sup>84</sup> See David DuFree and Vicki Michaelis, *Smith Cap Ruling Upheld*, USA TODAY, Nov. 10, 2000, at 1C (summarizing the arbitrator's approval of a penalty that denied the Timberwolves first-round draft picks during the next five NBA drafts and fined them \$3.5 million).

<sup>85</sup> John Gibeaut, *When Pros Turn Cons*, ABA J., July 2000, at 108.

