

# Reflections on the Harry Reynolds Litigation

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## Introduction

In the Spring 2003 issue of *Entertainment Law* Ken Foster<sup>1</sup> wrote of the distinction between 'international sports law' and 'global sports law', with the latter connoting immunity from national law that 'international sports law' does not purport to possess. In his introduction to that article, Foster wrote briefly of the litigation between the International Amateur Athletic Federation (hereafter IAAF) and Harry ('Butch') Reynolds, the American track athlete who failed an IAAF doping test in the early 1990s and was banned as a consequence. Foster used that case as an example of governing bodies' response to the possibility of the 'ordinary' courts intervening in their disciplinary processes, citing the words of IAAF luminary Arne Ljungqvist. In the course of the litigation Ljungqvist famously stated that 'the Courts create a lot of problems for our anti-doping work, but we don't care in the least what they say. We have our rules and they are supreme.'<sup>2</sup>

The purpose of this short piece is to shed a little more light on the *Reynolds* litigation. It seeks to illustrate the extent to which this particular governing body regarded itself as immune from intervention by the courts and free to violate its own disciplinary procedures with impunity. It also makes the point that, despite the US courts' best endeavours, the perceived absence of a contractual relationship between athlete and governing body was fatal to Reynolds's case.

## *Reynolds* Cases: Preliminary Skirmishes

The cases were the consequence of a random drug test carried out at an IAAF-sanctioned meeting in Monte Carlo in August 1990. Reynolds's A sample tested positive for nandrolone, an anabolic steroid, and in early November his B sample similarly tested positive. Reynolds was suspended from competition once the B sample test result was announced.

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Rule 59 of the IAAF Rules<sup>3</sup> afforded Reynolds the right to a review hearing concerning his positive test, and under the rules as drafted at that time his suspension should have been stayed once he announced his intention to appeal and pending the outcome of that hearing. This did not happen, however, and Reynolds was suspended as of 4 November. Reynolds requested a review hearing to be conducted by The Athletic Congress of the United States (hereafter TAC) in accordance with IAAF Rules, but his suspension remained in place in the interim. In March 1991 Reynolds launched an action in the Southern District of Ohio<sup>4</sup> in which he argued that the drug test was carried out negligently and that it had produced an erroneous result. He sought to prevent them conducting the hearing and/or from declaring him ineligible to compete on the basis of the results of his Monte Carlo urine sample. In addition to asserting a violation of rule 59, Reynolds claimed the defendants had 'failed to produce certain information vital for him to properly prepare for the hearing and that the decision with respect to eligibility had been predetermined and thus the hearing was a sham'.<sup>5</sup>

He also alleged they had violated his due process rights under the Fifth Amendment by suspending him before the hearing took place; that the IAAF and the International Olympic Committee (IOC) had breached their contract with him regarding his participation in amateur athletics; that by improperly suspending him they had tortiously interfered with his business relationships; and that they intentionally and maliciously disclosed to the media that he had tested positive for nandrolone.<sup>6</sup> The defendants filed a motion to dismiss Reynolds's attempt to prevent the initial TAC hearing on the ground that they were not a state actor and, as such, there was no prospect of success. This motion was successful. Reynolds appealed, but to his undoubted chagrin the Sixth Circuit Court of Appeals directed that the entire case be dismissed for lack of subject matter jurisdiction<sup>7</sup> on the ground that he had failed to exhaust his internal remedies as provided by the Amateur Sport Act 1978.

### **The 1978 Act**

The 1978 Act<sup>8</sup> established specific administrative procedures for resolving disputes such as this, and the court held that athletes were only excused from exhausting those procedures in the face of 'clear and convincing evidence that pursuit of those remedies would result in unnecessary delay'.<sup>9</sup> Far from supporting Reynolds's contention that the administrative procedures were inadequate and resort to them would be futile, the court ruled that 'the issues presented in this matter are well suited for resolution by the administrative procedures contained (in the 1978 Act)'.<sup>10</sup> In particular, s.395 of that Act allowed Reynolds to appeal to the United States Olympic Committee (hereafter USOC) if he was unhappy with either the substantive decision

reached by TAC or the procedures that it followed in order to reach it. This procedure had previously been followed in the doping-related cases of *Plucknett v. The Athletic Congress*<sup>11</sup> and *Stulce v. The Athletic Congress*.<sup>12</sup> Consequently Judge Kinneary held that 'the plaintiff is required to exhaust his administrative remedies under (the 1978 Act) before seeking judicial review.'

### **The Internal Appeals**

In June 1991, in a belated attempt to exhaust his internal remedies Reynolds participated in an expedited American Arbitration Association (hereafter AAA) hearing. At this hearing Reynolds was cleared of any doping offence on the ground that there was strong evidence of his A and B urine samples being taken from different people, neither of whom was Harry Reynolds. The AAA recommended he should be declared eligible to compete forthwith. The IAAF were adamant that their labelling, storage and testing procedures had been correctly followed but in the face of the AAA's decision and with the threat of a \$12.5 million lawsuit TAC announced it was 'bound by American federal law to recognize the AAA's decision.'<sup>13</sup> It declared Reynolds eligible to compete in the forthcoming US Athletic Championships and other domestic events.

Not so, declared the IAAF, adamant the suspension must stand. It announced that it 'could not accept the doubts being cast on the doping control tests'<sup>14</sup> by the AAA. It 'instructed' The Athletic Congress not to let Reynolds take part in domestic events, threatened to ban any athletes who ran against him,<sup>15</sup> and even to ban the United States from all IAAF-sanctioned competitions<sup>16</sup> if TAC refused to play ball. It continued to put pressure on TAC to hold a hearing in accordance with Rule 59,<sup>17</sup> and this was eventually held in October 1991 (Reynolds having been given 'special dispensation' to compete in the interim).

After two weeks' deliberation, that panel also exonerated Harry Reynolds on the ground that there was substantial doubt on the validity of the drug test attributed to him. The panel found that the B sample positive result reported by the laboratory had been tampered with. True to form, the IAAF refused to accept this finding and in November 1991, pursuant to its own Rule 20,<sup>18</sup> it ordered TAC to submit to arbitration of the result of the Rule 59 hearing. That hearing, held on 11 May 1992, lasted just two hours. The three-member panel<sup>19</sup> issued a seven-page decision saying there was no doubt about Reynolds's guilt and rejected the claims of his lawyers (and the AAA's and TAC's findings) that the correct procedures had not been followed. It was also stressed that 'within the IAAF rules, the findings of the arbitration panel are final and binding on all parties and there is no right of appeal from (its) decision.'<sup>20</sup>

### **Reynolds Cases: Battle is (Re)joined**

In response to this 'final and binding' decision Reynolds returned to the Ohio District Court to seek an injunction restraining TAC from acting in compliance with the IAAF's edicts by preventing him competing at a meeting in late June 1992 (the results of which would determine the composition of the US team for the 1992 Barcelona Olympics). On 27 May he was duly granted a temporary restraining order to prevent TAC, the IAAF, its agents, or other persons 'from commencing or prosecuting in any other forum any action with regard to ... the plaintiff's participation in any or all international and national amateur competition ... (This Order) is essential to protect the court's jurisdiction to proceed to final judgement in the matter before it, and to secure the respect due to this court.'<sup>21</sup> The injunction was extended in June 1992 and converted into a permanent injunction on 19 June 1992 by the Ohio Southern District,<sup>22</sup> but later the same day the Sixth Circuit Court of Appeals set the injunction aside.<sup>23</sup> However, Reynolds was ultimately victorious, at least in this respect: on 20 June Supreme Court Judge Stevens (sitting as a circuit judge) lifted the stay.<sup>24</sup> Reynolds could run again.

On 23 and 24 June 1992 Reynolds participated in the Olympic qualifying event in New Orleans, but he fared badly.<sup>25</sup> Prior to the event the IAAF announced a 'relaxation' of its 'contamination rule' so that those who competed against Reynolds were no longer threatened with disqualification. But it also stressed that 'in the light of interference by the civil courts in the (Reynolds) case' it wanted TAC and USOC to press the US government for legislation that would prevent the courts from interfering in its affairs subsequently.<sup>26</sup> Furthermore, although Reynolds's performance made him eligible for selection as a member of the relay squad, the team management decided not to select him.

### **The Damages Claim**

In December 1992, free from the distraction of athletics, Reynolds returned to the courts and filed a new claim in Ohio in which he sought damages for, *inter alia*, loss of earnings and punitive damages.<sup>27</sup> Once again, the IAAF refused to appear, so default judgment was ordered against it and the district court awarded damages of \$27 million, \$20 million of which represented punitive damages on the ground that the IAAF had acted with 'ill will and a spirit of revenge against Mr Reynolds.'<sup>28</sup>

In February 1993 Reynolds instituted garnishment proceedings against four organisations that had connections with the IAAF, and it was at this stage that the IAAF finally deigned to participate in the proceedings. In

March 1993 it filed a motion to vacate the default judgment on the ground that the court lacked personal and subject-matter jurisdiction over the issue. Reynolds argued that Ohio's 'long arm statute' did indeed give it jurisdiction over his case.

### **The Long Arm of Ohio Law**

In the state of Ohio the burden is, of course, on the plaintiff to found a claim<sup>29</sup> and the burden is discharged if the plaintiff is able to make out a *prima facie* case that would be sufficient to avoid a motion to dismiss.<sup>30</sup> The IAAF's refusal to appear or even submit affidavit evidence in the earlier proceedings meant Reynolds had been able to proceed on the basis of nothing stronger than a paper claim that satisfied the test in *Welsh v. Gibbs* (1980) 631 F. 2d 436, 439. This initial error of judgment had been compounded by its refusal to appear in the subsequent proceedings also, thereby obliging the court to enter default judgment against it. In *Welsh*, the Sixth Circuit appeal court stated that when a defendant refuses to appear despite being given notice of the hearing, 'the district court must consider the pleadings of the affidavits in the light most favourable to the plaintiff'<sup>31</sup> and the plaintiff's uncontested allegations should be taken as true.<sup>32</sup>

On the jurisdictional issue, whether the court was competent to hear the case depended upon whether the relationship between the defendant, the forum and the litigation was such that it rendered a defendant amenable to a particular state's long-arm statute. If it was, the court had jurisdiction so long as the exercise of that jurisdiction would not violate the Due Process clause of the US Constitution.<sup>33</sup> In the earlier proceedings it had already been noted that Ohio's long-arm statute had been 'construed to extend the jurisdiction of Ohio's courts to the constitutional limits laid down in *In-Flight Devices Corporation v. Van Deusen Air Inc* (1972) 466 F. 2d 220.'<sup>34</sup> Given that the IAAF had failed to appear, the court was able to accept jurisdiction on the ground that there was unchallenged *prima facie* evidence that the IAAF 'transacts' business in the state of Ohio:

The IAAF makes eligibility determinations with respect to Ohio athletes – including Mr Reynolds. It arguably enters into a contractual relationship with those athletes and, as averred in the Complaint and presently stands uncontradicted before this court – it has breached that contract with respect to Mr Reynolds, thereby causing him significant financial loss.<sup>35</sup>

This state of affairs was sufficient to satisfy the *Welsh* test, not least because a considerable element of Reynolds's financial loss was the decision by a

number of Ohio-based companies to terminate endorsement contracts with Reynolds once his status as a supposed drug-user had been revealed.<sup>36</sup> Of course, the court's decision to accept jurisdiction was no reflection on the merits of the case, for the judge commented on more than one occasion that (for example) it was 'the uncontroverted nature of the alleged tortious activity' that rendered 'the IAAF ... amenable to suit under the long-arm statute'.<sup>37</sup> Arne Ljungqvist's assertion that 'we don't care in the least what (the civil courts) say; we have our rules and they are supreme'<sup>38</sup> was untenable so far as the Ohio court was concerned. 'It is simply an unacceptable position that the courts of this country cannot protect the rights of United States citizens where those rights are threatened by an association which has significant contracts with this country'.<sup>39</sup>

Twenty years after the event, Ljungqvist's repudiation of the juridical field's inherent jurisdiction over the activities of his association seems faintly ludicrous. It was based on the IAAF's belief that it had no direct contact with any country or with any athlete and that such contact as it did have was via its constituent member associations like the Athletic Congress. The IAAF was hauled out of the hole it had dug for itself by the fact that the appellate court decided there was not a contract between it and Reynolds and that, in consequence, Ohio's long-arm statute was otiose. This decision was subsequently confirmed by the Supreme Court.<sup>40</sup>

### Discussion

The risk of the IAAF pursuing its 'untouchables' line to such an extent that it didn't even put in a notice of appearance would have been evident from the decisions in earlier cases – notably *Behagen v. Amateur Basketball Association* (1984) 744 F.2d 731 (10th Circuit)<sup>41</sup> and *Martin v. International Olympic Committee*.<sup>42</sup> In *Behagen*, the long-arm statute of Colorado (worded very similarly to that of Ohio) was deemed to give the courts of that State *prima facie* jurisdiction over the Federation of International Basketball Associations (hereafter FIBA). This was a body based in Germany but which had no offices or personnel in Colorado or anywhere else in the United States. The case concerned a Colorado-based professional basketball player who wanted to have his amateur status reinstated so he could play amateur basketball in Italy. His application to the US-based Amateur Basketball Association (hereafter ABA) was turned down, but the court ruled that the ABA's role was primarily to implement the rules of the FIBA in respect of amateur competitions, player eligibility and so forth. As such, there was a 'prima facie showing that FIBA maintains continuous and substantial activity in Colorado',<sup>43</sup> which was enough to grant the court jurisdiction over the matter.

*Martin* concerned women runners from 21 nations who alleged that the IOC's decision to only schedule 5,000m and 10,000m races for men at the 1984 Los Angeles Olympics violated the California Civil Code, the Civil Rights Act 1964, the Amateur Sports Act 1978 and various provisions of international law.<sup>44</sup> They argued that those events were sufficiently popular to comply with the provisions of the Olympic Charter, rule 32 of which provided that a sport had to be practised in at least 25 countries on a minimum of two continents before it can be considered for inclusion in the Games. The plaintiffs invited the court to hold that the IOC's contacts within California enabled it to assert jurisdiction even though the IOC was based in Switzerland and despite the fact that the decision in *Defrantz v. United States Olympic Committee* (1980) 492 F. Supp 1181<sup>45</sup> indicated that the IOC's decisions would not be open to challenge by the US courts.

In the event, the court did not consider the jurisdictional issue and denied a preliminary injunction on the ground that the plaintiffs had failed to show a sufficiently strong *prima facie* case that their rights had been violated. However, one could argue that, if the athletes' argument had been made out, the IOC could have been amenable to suit because the court could have determined that it had international legal capacity. The IOC's Charter allows it to contract with organisations based in jurisdictions other than Switzerland (media companies, corporate sponsors and so forth); it has its own rules and bylaws; it asserts its independence from international control; and it exists to perform a particular, specific task – the promotion and governance of the Olympics. No less important is the element of perpetual succession: countries may withdraw from the IOC and new ones join and IOC representatives from the member countries can be replaced, but the IOC itself continues to exist regardless.

However, the court decided the IOC only contracts with the host Olympic Organising Committee rather than with individual athletes or other legal persons.<sup>46</sup> Although the area Olympic Organising Committees – and athletes like Martin – had no real choice but to accede to the IOC's terms, even the longest of long-arm statutes were otiose in the absence of a contract. In this respect, Harry Reynolds's position with regard to the IAAF was no different. As Ken Foster inferred, the real interest of the Harry Reynolds saga, 20 years after the event, rests in what it reveals about governing bodies' beliefs in the sanctity of their own decision-making processes and their powers to run their fiefdoms in whatever way they saw fit, regardless of the broader legal principles with which their activities appeared to be in conflict.

## NOTES

The author would like to thank Ken Foster for his comments on an earlier draft of this Intervention. Any errors and omissions remain his own.

1. K. Foster, 'Is There a Global Sports Law?', *Entertainment Law* 2/1 (2003), 1–10.
2. *Ibid.*, 1.
3. 'Every athlete shall have the right to a hearing before the relevant tribunal of his national federation before any decision on eligibility is reached.'
4. Ohio was the State in which Reynolds resided.
5. *Reynolds v. The Athletics Congress et al.* [1991] US Dist. LEXIS 21191, at p.2.
6. *Ibid.*
7. *Reynolds v. The Athletics Congress* [1991] 935 F. 2d 270.
8. On which see D. McArdle, 'Outside the Norm. The Curious Legal Status of the United States Olympic Committee', *International Sports Law Journal* (2003) forthcoming.
9. *Reynolds v. The Athletics Congress et al.* [1991] US Dist. LEXIS 21191, at p.10.
10. *Reynolds v. The Athletics Congress et al.* [1991] US Dist. LEXIS 21191, at p.18.
11. [1982] Unreported, CA No C820545 (ND Cal).
12. [1990] Unreported, CA No H-90-1915 (SD Tex).
13. *The Times*, 12 June 1991, 40.
14. *Ibid.*
15. Under IAAF Rule 53: any athlete who 'has taken part in any athletic meeting or event in which any of the competitors were, to his knowledge, ineligible' will be disqualified.
16. In effect, any athletics meeting of any importance held anywhere.
17. See below.
18. Which provides for arbitration in the event of disputes between the IAAF and its own members.
19. Selected by the IAAF 'on the basis of their legal training and experience, their ability, their impartiality and their knowledge or experience of amateur athletics or sport', *The Times*, 9 May 1992, 27.
20. *Ibid.*
21. *Reynolds v. IAAF et al.* [1992] US Dist LEXIS 8383, at p.1.
22. [1992] US Dist LEXIS 8625
23. US APP LEXIS 14058
24. [1992] 112 S. Ct 2512; confirmed later that same day by the full Supreme Court: 112 S. Ct. 2986: US LEXIS 3865.
25. Reynolds finished fifth in the 400 metres and thus failed to qualify for Barcelona.
26. *The Times*, 24 June 1992, 30.
27. [1994] *Reynolds v. IAAF* Unreported. Case No C2-92-452
28. *Ibid.*
29. *Weller v. Cromwell Oil* [1974] 504 F. 2d 927.
30. *Welsh v. Gibbs* [1980] 631 F. 2d 436.
31. *Welsh v. Gibbs* [1980] 631 F. 2d 436, 439.
32. *American Land Program v. Bonaventura* [1983] 710 F. 2d 1449.
33. *In-Flight Devices Corporation v. Van Deusen Air Inc* [1972] 466 F. 2d 220.
34. *Reynolds v. The Athletics Congress et al.* [1994] 23 F. 2d 1110 at p.1150 per Kinneary, J.
35. *Reynolds v. The Athletics Congress et al.* [1994] 23 F. 2d 1110 at p.1151 per Kinneary, J.
36. Oregon-based Nike also terminated an endorsement contract with Reynolds.
37. *Reynolds v. The Athletics Congress et al.* [1994] 23 F. 2d 1110 at p.1151 per Kinneary, J.
38. Per Ken Foster.
39. *Reynolds v. The Athletics Congress et al.* [1994] 23 F. 2d 1110 at p.1151 per Kinneary, J.
40. [1994] 115 S. Ct 423.
41. [1984] 744 F.2d 731 (10th Circuit).
42. [1983] 9 September, unreported. CD Cal No 83-5847.
43. [1984] 744 F.2d 731, at p.734 per Seymour, J.
44. Including the United Nations Charter, Arts 1(3), 5C and 56 and the Convention for the Protection of Fundamental Rights and Freedoms, 1950.
45. [1980] 492 F. Supp 1181.
46. A situation that has now changed: athletes now sign a contract directly promising not to sue the IOC under any circumstances (thanks to Ken Foster for pointing this out).