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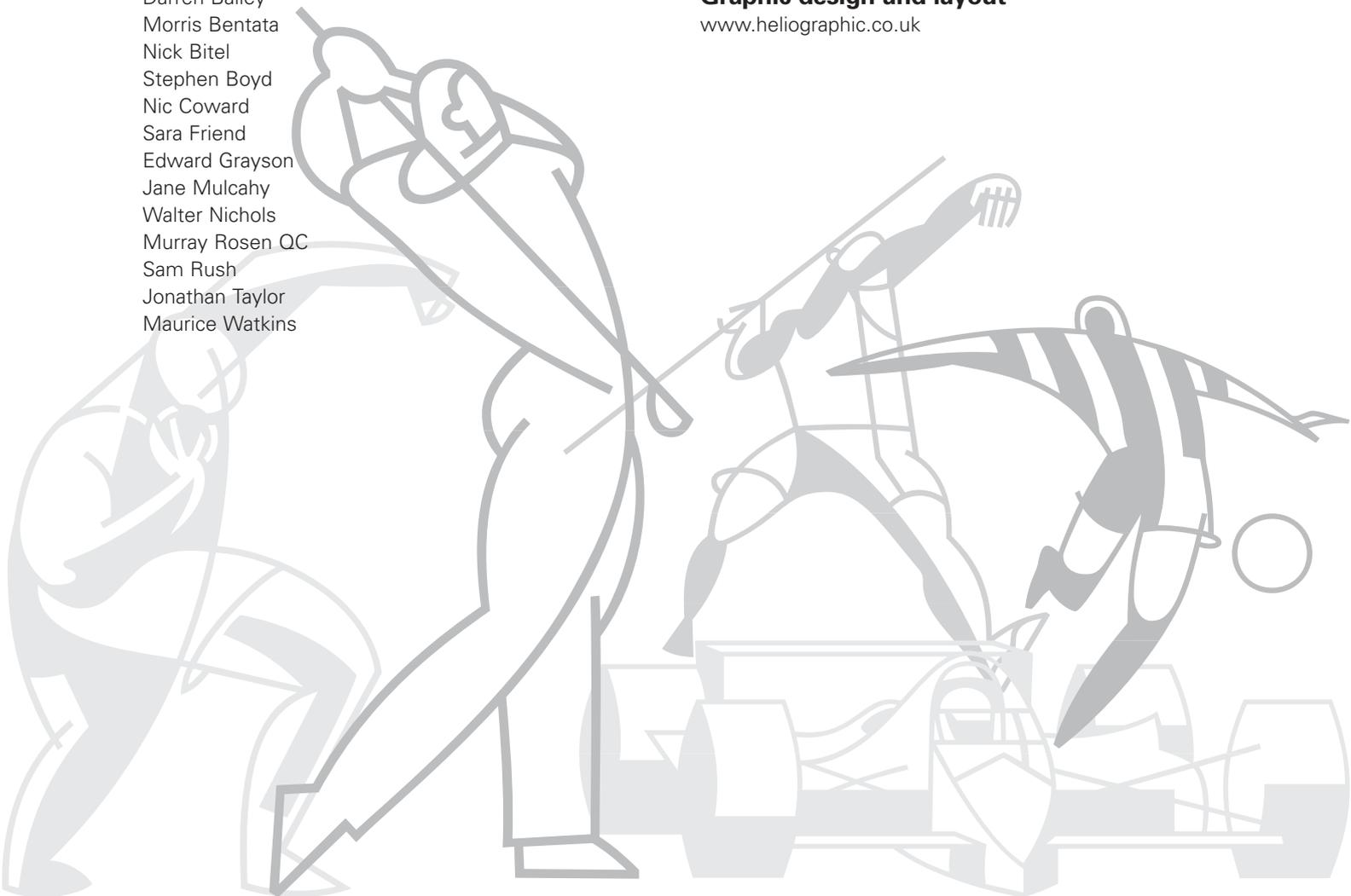
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Editorial

By Simon Gardiner, Editor

This issue of the Sport and the Law Journal covers a number of on-going and current issues. The Opinion and Practice section firstly includes Mel Goldberg and Simon Pentol's examination of the on-going dispute between a number of Premier League clubs, notably Sheffield United and the Premier league in light of the action against West Ham and the deduction of points for the illegal acquisition of players Carlos Tevez and Javier Mascherano. In addition Simon Gardiner evaluates the recent calls for criminalization of doping activities in sport.

The Analysis section features two articles. Ed Franklin and Angus Murray's 'Competition Law at The Races: Excessive Pricing or Value?' provides analysis of the recent litigation between Attheraces and the British Horseracing Board. Additionally Simon Gardiner's 'Sports Participation and Criminal Liability' examines recent developments in both the substantive and procedural law concerning prosecutions for sportsfield participatory violence.

As far as the rest of the Journal, the regular contributions of Walter Cairns' 'Sports Law Foreign Update' and 'Sport and the Law Journal Reports' can also be found.

Finally, it must be stressed that the Journal welcomes contributions from all BASL members and other readers in any of the sections of the Journal including reviews of future sports law related publications. Please contact the Editor with any suggested offerings. 



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Opinion and practice



West Ham and Third Party Transfers – The Opening of the Premier League’s ‘Pandora’s Box’?

**By Mel Goldberg (solicitor) partner at Max Bitel Greene
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The reaction of certain clubs to the decision of the Disciplinary Commission of the Premier League (PL) not to deduct points from West Ham over its acquisition of Carlos Tevez and Javier Mascherano has exposed the curious misalliance that exists between the member clubs and demonstrates the limitations of football to police itself when aggrieved parties seek to challenge the procedure and sanction of the very rules they themselves have implemented.

The Facts

(derived from the judgement of the FAPL commission 27th April 2007)

In the final days of August 2006 the (then) executive management of West Ham United ('WHU') was in discussion over a possible takeover of the club with (a consortium led by) Kia Joorabchian whilst simultaneously negotiating the acquisition of the highly rated Argentinian footballers Carlos Tevez & Javier Mascherano on whose behalf Joorabchian was acting.

Third parties owned (and continue to own) the economic rights of both players. Although both players signed FAPL contracts on 31st August 2006 (on the deadline of the summer transfer window), the economic rights of both players (by agreement) remained vested at all times in 'the companies' who inter alia retained the sole, exclusive & unilateral rights to terminate the players' contracts "without any right of objection from the club or the player".

WHU admitted that the agreements were in breach of rule U18.

Such clauses appear to be an obvious restraint of trade and accordingly, unenforceable in law against either the club or the players. West Ham nonetheless agreed to the terms (by way of "side agreements"), apparently unaware of their deficiencies.

Discussions took place between representatives of the PL & WHU (Aldridge & Duxbury) in August/September 2006 and upon assurances being given by the club that it had not entered into any arrangements with third parties both players were registered to play for West Ham.

In November 2006 a consortium led by Eggert Magnusson (and entirely unconnected with Joorabchian) bought the club and the previous chairman (Terence Brown) & managing director (Paul Aldridge) stood down. Scott Duxbury the then legal director became the deputy chief executive.

On 24th January 2007 having been informed by the FAPL of a proposed report into third party ownership of footballers, Nick Igoe (the financial director of WHU) forwarded to the FAPL the contracts the club had entered into with 'the companies' (with approval of the new executive management of the club) and all matters came to light, resulting in charges being brought on 2nd March 2007.

WHU admitted that its actions in August/September 2006 were in breach of rule B13.

Javier Mascherano subsequently signed for Liverpool FC (February 2007) pursuant to a contract entirely different in form to that agreed by WHU that has been approved by the PL. Carlos Tevez remained a West Ham player (although his status was questionable and the PL were found to have the power to terminate his registration) and following the decision of the Disciplinary Commission, the offending side-agreements were terminated by West Ham to the satisfaction of the PL in order to allow the player to participate in their remaining three fixtures enabling the club to avoid relegation against all odds.

WHU were fined £2.5 M for breaching rule U18 & £3M for breaching rule B13.

Significantly (and most controversially), no points were deducted.

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The Charges

1. Rule U18 – ‘no club shall enter into a contract which enables any other party to that contract to acquire the ability *materially to influence its policies or the performance of its team* in league or (E10) cup matches’.
 - There is no specific rule that outlaws FAPL clubs acquiring the services of players owned by a third party per se – the mischief to be caught by U18 is a wide one with the clear objective of prohibiting any member club from entering into an agreement whereby a third party has the potential to influence its policies or performance, the third party not being a member of the FAPL and accordingly, unaccountable to it – the type of contracts entered into by WHU plainly gave rise to the potential of the third parties to exert a material influence over the club;
 - Of note, U18 is entitled Club Contracts and is included in a section of the rules aimed at prohibiting multiple ownership of clubs;
 - The commission accepted that whatever the terms of the agreements, they did not in fact influence the club’s policies or performance – team selection at all times remained the province of the (then) manager Alan Pardew and the Joorabchian-led consortium did not buy the club;
 - Third party ownership of footballers is widespread and authorised in overseas leagues, particularly in South America. Businessmen/investors agree to meet the accommodation and or training fees of promising young players at clubs that cannot afford to pay them because they are insolvent or in meltdown and in return, acquire the exclusive economic rights in the players in order to recoup their expenses through the provision of future transfer fees & exploitation of image rights. Aside from the moral objection of conferring upon the third party the ability to treat the player as a mere chattel, any club that acquires a player who is owned by a third party is likely to confer upon the third party an ability to influence the performance of both club & player by allowing that party to dictate the playing and remuneration terms of the contract in addition to the timing, fee and destination of any future transfer. On any view, such contracts are not only contrary to the interests of football but also unenforceable in English law and untenable in EU law terms. However, such is the pressure on clubs to enhance their prospects of success (especially in the short term) that expediency often overtakes legality and with the ever-increasing globalization of football, situations like those at West Ham occur. Until the FAPL formally prohibits such deals, they cannot be eradicated;
 - Interestingly, the ever-increasing use of the ‘loan system’ among FAPL clubs would seem to infringe rule U18 in circumstances where the player is forbidden from playing against his permanent club (Ben Foster who was ‘on loan’ from Man United to Watford being a case in point when he was prevented from playing against the Manchester club not only in their league meetings but also in the FA Cup semi-final) because the rationale of the transfer system assumes that all the player’s allegiances to his previous employer are ended. More acutely, Everton and Manchester United entered into a ‘gentleman’s agreement’ whereby their goalkeeper Tim Howard would not play against Everton having signed permanently after being on-loan from the Manchester giants – Everton’s replacement ‘keeper was at fault for the first goal, Man United went on to win and subsequently secured the Premiership.
2. Rule B13 – ‘in all matters and transactions relating to the FAPL, each club shall behave towards each other club and the FAPL with the *utmost good faith*’
 - The logic of the rule is transparent and commits all FAPL members to behave towards each other and the FAPL in good faith – the Premier League is essentially a joint venture between its 20 member clubs that have each signed up to conducting themselves in accordance with a set of rules agreed by them both to the letter and spirit;
 - The officials of WHU by both failing to disclose & deny the existence of the third party agreements in August/September were found to have perpetrated not only an obvious & deliberate breach of the rules, but a grave breach of trust as to the FAPL & its constituent members [because in our finding] the club has been responsible for dishonesty & deceit – moreover, the commission went on to cast doubt upon the assertion that as an experienced legal advisor, Duxbury was unaware of rule U18 or its impact and came to the view that the then executive management of the club were anxious to complete the registration of these players by the deadline of 31st August; they

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knew that the only means by which they could acquire them would be by entering into the third party contracts and that that they knew at the very least that the FAPL in all probability would not have approved of the contracts. They determined to keep their existence from the FAPL:

- The (admitted) behaviour of (some of the then) members of West Ham’s executive management says little for the provision of a ‘fit and proper person’ test to run our clubs. So much for the view that foreign ownership will damage the English game – and at the spiritual home of the esteemed Greenwood, Lyall, Moore, Hurst & Brooking!

The Sanction

Notwithstanding the excoriation of the commission, West Ham avoided the points deduction that would consign the club to inevitable relegation by virtue of :-

- The pleas of guilty;
- West Ham’s previous exemplary record;
- The change of ownership (Alan Sugar reversed a 12 points deduction for Spurs in 1994 where illegal payments to players by his predecessors had been the subject of FA charges);
- The standing of Magnusson & the fact of the new regime (via Igoe) volunteering the agreements to the FAPL in January;
- Had the disclosure been made at the right time, contracts could have been entered into that did not offend the rules (as with Mascherano and Liverpool);
- A points deduction in January (when the matter came to light) would have been easier to bear than at present;
- The FAPL chose not to terminate the registration of Tevez when the breaches came to light, even though it could have;
- The players & fans were blameless and should not be punished.

The fines imposed are nonetheless unprecedented and justified, owing to :-

- The serious nature of the breaches, deserving of heavy punishment;
- Deterrence;
- Had the club paid a transfer fee, it would have been considerable;
- The club paid a considerable amount to an agent for securing the deals.

Reaction

Understandably, the avoidance of a points-deduction generated extreme consternation among other clubs in the relegation zone. After all, Middlesbrough FC suffered a three-point deduction in 1997 for failing to fulfil a fixture (vs Blackburn) in the absence of any allegation of deceit and were relegated from the Premiership as a consequence. Only recently, AFC Wimbledon were deducted three points (reduced from eighteen on appeal) for fielding an ineligible player (Jermaine Darlington from Cardiff City) in circumstances where international clearance had not been secured from the Welsh FA due to an administrative oversight and Bury FC were ejected from the FA Cup for fielding an ineligible player in a second round match against Chester City. However, West Ham were not cited for fielding ineligible players and there is a distinction to be drawn between the ‘ineligible player’ cases brought by the FA where a deduction of points is mandatory (*points shall be deducted...*) nonetheless, the need for a consistent approach is manifest.

The other clubs in the relegation zone (the ‘gang of four’) have been forced to consider their options. Despite public condemnation (from Wigan FC in particular) only Sheffield United who were relegated, have actually been adversely affected by West Ham both avoiding a points-deduction and being allowed to field Tevez in its remaining fixtures.

Legal Recourse

However controversial the decision of the Disciplinary Commission, Judicial Review (JR) does not lie against the PL because it is a mechanism for the control of the exercise of public power by government and that for all their legislative powers, governing bodies in sport are not part of the judicial view of government and therefore fall outside the scope of JR (*R v The FA ex p Football League* [1993] 2 All ER 833 and *R v Jockey Club ex p Aga Khan* [1993] 1 WLR 909).

Although actions for breaches of Natural Justice (expanded to incorporate the implications of the ECHR) are potentially available in a sporting environment, they are limited essentially to procedural shortcomings that offend against the principle of a fair hearing (*Enderbury Town FC v The FA* [1971] Ch 591). The PL followed its legislative function, brought its case against West Ham and had it adjudicated upon by an independent tribunal in accordance with agreed procedure. The decision of the Commission was not perverse (however unpalatable to some) and it has an absolute discretion as to sanction that it exercised judicially. Legal action appears outside to be outside the scope of any club with a grievance.

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Arbitration

Doubtless aware of the limitations of legal action (despite public exhortations to the contrary), Sheffield Utd has imaginatively invoked the Arbitration Protocol contained within Section S of the PL rules in attempt to overturn the decision of the Disciplinary Commission and challenge the PL’s decision to allow Tevez to remain a registered player after the Commission delivered its verdict.

This request amounts to an attempt to achieve a JR through the backdoor of Arbitration where it is not allowed through the front door of the courts. The arbitration provisions were unlikely to have been drawn up for such a purpose and doubtless never envisaged to be used in this way. Sheffield Utd’s complaint is focused against the PL (as opposed to West Ham) and this where the problem lies. The protocol allows for all clubs to submit all disputes that arise between the PL and the Clubs to final and binding arbitration. The PL has been bound to agree to Arbitration.

Procedure

The tribunal shall comprise three members of the panel and within 14 days of the request (for arbitration) each party shall appoint one member. Within 14 days of their appointment, the arbitrators shall appoint a third arbitrator who shall be legally qualified who will sit as chairman. The chairman shall decide all procedural & evidential matters and within 14 days of his appointment, will require the attendance of the parties at a preliminary meeting at which such matters shall be decided. The chairman shall fix the date and venue for the full hearing, giving the parties reasonable notice thereof. Each party may be represented by a solicitor or counsel.

Remedies

The tribunal shall have the power to (inter alia):

- Determine any question of law or fact;
- Determine any question as to its own jurisdiction;
- Make a declaration as to any matter to be determined; and
- Order the rectification, setting aside or cancellation of a deed or other document.

The PL is likely to argue that the decision of the Commission was properly made and therefore falls outside the ambit of Arbitration. It will doubtless rely on the adequacy of its own investigation to satisfy the requirements of the proper registration of Tevez. In any event, Sheffield Utd will have to establish that the decision of the Commission was perverse and that the subsequent registration was improper – both are difficult tasks.

Consequences

But what of West Ham, who are not a party to the Arbitration? They will be affected by any decision contrary to their interests, yet have no locus. The legal ramifications could be startling, especially in light of their rights enshrined by Art. 6 ECHR.

Should the tribunal agree to reconsider the issues requested by Sheffield Utd, it would be tantamount to an invitation to all Premiership clubs to use the arbitration provisions to overturn any decision not to their liking and challenge the actions of other member clubs that have an adverse affect upon them – what would stop Chelsea for example, from using Arbitration to challenge the PL’s view of the Tim Howard ‘gentleman’s agreement’ (see above) and request that Manchester United be docked three points from their game against Everton that may have changed the ultimate destination of the Premiership title?

A sorry saga

This whole incident demonstrates the lack of good governance among our leading clubs and the pressure created by the member clubs to remain in the Premiership despite losing face. It goes further however and shows how the PL is no more than a fragile union of self-interest that cannot satisfactorily police itself when put under scrutiny.

The public condemnation by Dave Whelan (Wigan Athletic) of both the executive management of the PL & West Ham prima facie offends PL rule B.14: no Club . . . shall by any means whatsoever unfairly criticise, disparage, belittle or discredit any other Club or the League or in either case any of its directors, officers, employees or agents – what action if any, will be taken?

The PL after all, is a competition and can it be right for a club to have a competitive advantage by (deliberately) flouting the rules? If in a case as blatant as this, a points deduction can be avoided by the hearing taking place at the ‘business end’ of the season, how else can the good governance of our (major) clubs be ensured? Since when can the lack of blame of the fans amount to a mitigating feature? If other member clubs are dissatisfied by the Commission’s ruling and the way in which the PL investigated the matter so as to invoke the Arbitration Protocol to achieve a more desirable outcome (for themselves), where does that leave the undertaking enshrined in PL Rule B.12 that each club [agrees] to be bound by and comply with . . . the PL rules? Until the member clubs appreciate that their rulebook has to be re-drawn to set timetables for

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inquiries and give firm guidance as to the sanction for breaches of corporate governance, the arguments will rage on and the future of the League itself will be threatened.

It is ironic that at the very time the Sports Minister Richard Caborn publicly called (on 9th May 2007 at the London ‘Soccerex’ Forum) for football to govern itself and not run to lawyers, the judges & the courts, that is precisely what is happening – and will continue to happen until the rulebook is re-visited. BASL

Criminalisation of Drugs in Sport – A Few Comments

By Simon Gardiner

Introduction

Regulation of drugs both in society and sport are rarely out of the news. In society there are mixed views about how best to regulate this social problem. The current criminalisation of ‘controlled drugs’ presents the status quo. However the recent Royal Society for the Encouragement of Arts, Manufactures and Commerce Report argues that the law has been “driven by moral panic” and the “great majority” of drug users did not harm themselves or others.ⁱ

At the same time in sport the moral panic and ensuing rhetoric are alive and well. Recently Dick Pound, president of the World Anti-Doping Agency, to some incredulity, announced that the value of the market for sports drugs now outstripped the combined economic value of recreational drugs, such as marijuana, cocaine and heroin. WADA has been instrumental in developing a harmonised and ordered regulation across much of world elite sport. As such, this approach within sport has been seen as an exercise in self-regulation. However calls for external criminalisation of doping in sport have been gaining pace from a number of quarters.

Firstly a small number of elite sports men and women have shown support. Middle distance runner Paula Radcliffe has vociferously argued, “Doping in sport is a criminal offence and should be treated as such. Being caught in possession of a performance-enhancing drug should carry a penalty.”ⁱⁱ

Eminent lawyer, Michael Beloff QC, has supported this move on the premise that drugs cheating does cause harm by stating that, “[I] now reluctantly believe, in the words of another famous Englishwoman “There is no alternative”.ⁱⁱⁱ

In addition the House of Commons Science and Technology Committee has argued that tougher measures are needed with drug use in sport criminalised and the length of bans increased for positive tests.^{iv} The Committee undertook a review of the regulation of prohibited of drugs in sport. It acknowledged that, “Whilst there has been much progress in the fight against doping, more needs to be done. This is of particular importance since it is essential that the UK plays ‘clean’ and sets a good example for the 2012 Olympics.”^v

House of Commons Science and Technology Committee

The Committee reviewed the interaction between the sports specific anti-doping provisions and the UK law concerning prohibition of drugs in society. Anti-doping mechanisms operated by sports federations are to some extent ‘matched’ by legal regulation through the Misuse of Drugs Act 1971, where a number of substances banned under sporting rules (essentially the WADA list) are also controlled and fall under the Act. The legislation creates three classes of “controlled substances”, and ranges of penalties for illegal or unlicensed “possession” and “possession with intent to supply” are graded differently within each class. However many substances on the sports list are not currently criminalised in any way.

The Committee highlighted that there is no system exists to follow up findings in the sports drug testing programme with investigations that may lead to criminal prosecutions, although individual prosecutions may subsequently be brought.

During its deliberations, it received evidence from Professor Arne Ljungqvist, representing WADA and the IOC, that the UK should look at its criminal laws in this area.

“He explained that in his own country, Sweden, there is a law “specifically directed to the possession, distribution and even use/consumption of doping substances” and that it had been “very helpful” to Swedish sports organisations to have this law in place because it makes it possible for the police authorities to make searches on suspicion. He believed that having this law in place acted as a “very efficient” deterrent of doping, and that it could be good for the image of sport, citing an instance where suspicions of doping had been raised but had been satisfactorily dispelled by police investigation. Appearing at the same evidence session, Dr Richard Budgett of the BOA offered full support for a similar law in the UK. He felt that this would “send a very strong message”.^{vi}

However the Committee received an unequivocal response from the UK Government on this matter:

“When asked whether the Government is considering criminalising doping in sport prior to the 2012 Olympics, the Minister for Sport was very clear that “we are not and we will not go down that route”. The Minister pointed out that

Criminalisation of drugs in sport – A few comments

“WADA is there to root out cheats in sport” and it is the Government’s aim to keep “the policing and the development of WADA very much within sport”. Mr Caborn also told us that he felt it important that sport should “deal with its own misdemeanours” and that to criminalise doping in sport would be “disproportionate” to what the Government is trying to achieve. We note the Minister’s immediate dismissal of the suggestion that doping in sport should be criminalised, since we heard opinions that legislation in this area could help in the fight against doping.”^{vii}

The view of the Committee nonetheless was clear: “We urge the Government to initiate a review of the experience of countries which have put in place laws criminalising doping in sport.”^{viii} The Committee emphasised that some other countries already criminalise the use of performance-enhancing drugs by sportsmen and sportswomen, for example Greece, France and Italy where athletes can face criminal sanctions for doping violations. These countries all share a traditionally interventionist approach to the regulation of sport compared to Britain.^{ix} As highlighted by Beloff, in France and Italy, the respective governments, “have issued codified anti-doping regulations that sports federations must adopt and enforce or else face being deprived of their right to govern their respective sports”.^x It is probably true that this punitive approach to doping in sport facilitated the police taking an active role in exposing the widespread drug use during the Tour de France in the late 1990s. However all of these sports specific criminal laws have been little used. In fact, the Greek law was suspended during the 2004 Athens Olympics and the Italian Government resisted pressure from the IOC to suspend similar laws at the 2006 Torino Winter Games.

What are the arguments in support of criminalisation?

The traditional rationale for the imposition of criminal liability can be reduced into:

- **Legal Moralism:** the criminal law has a role to play where conduct is wrongful and harmful and as it is necessary to condemn and prevent such conduct. In Anglo-American jurisprudence this view is most notably associated with Lord Devlin and his work, *The Enforcement of Morals* (1965).
- **Paternalism:** rejects the above notion of absolute morality, but argues that the criminal law should adopt a paternalistic stance where conduct should be prohibited where it causes harm to others or to the individual themselves. This rationale of the criminal law has been the basis of the current prohibition of controlled substances under the Misuse of Drugs Act 1967.
- **Liberalism:** the two justifications above are rejected by the school of thought that has its roots in the ideas of John Stuart Mill.^{xi} Based on the value of respect and autonomy of the individual, the theory is predicated on the ‘harm principle, i.e. individuals actions can only be controlled where they will cause harm to others. What has taxed subsequent theorists is how harm should be defined. In the context of criminalising drugs in sport, Beloff suggests the following:

“However athletes who cheat are harming others; a dishonest gold medallist has unfairly diminished the earning potential of the honest runner-up. His or her own money has in a broad sense been obtained by false pretences whether directly from sponsors or promoters, or indirectly from the viewing public in stadium or via satellite.”^{xii}

In modern societies such as Britain, increasing areas of human conduct have been criminalised. There are many reasons for this, developments in technology (the internet for example and the Computer Misuse Act 1990) and responses to social problems (e.g. fighting dogs and the Dangerous Dogs Act 1991) being two. However, at a time when dealing with law and order is high on the political agenda and police resources are increasingly stretched, it is crucial to determine whether the criminal law is the appropriate regulatory mechanism. It is strongly argued that this form of social control which involves potential loss of liberty and social stigma should only be used as a last resort where other methods of regulation fail.

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Conclusion

The overriding rhetoric underpinning the calls for criminalisation of drug use in sport is the need to 'get tougher' with the problem of doping. This call for criminalisation in addition to sports-based prohibitions, predicated on the severity of the problem, has to be clearly understood within the context of a questioning of the efficacy of fighting drug use in general society through the criminal law. At a time when the role of the criminal law and the police in the 'war on drugs' is being questioned, it seems odd to almost blindly espouse criminalisation in the parallel 'war on drugs' in sport.

Two major issues face the debate the role of the criminal law and doping in sport. In general society, a growing and persuasive argument is that drug use is essentially a social problem and is best engaged with as social and medical rather than legal problem. Rather than 'ratcheting' up the war on drugs in sport through criminalisation, there is a compelling argument for a meaningful consideration of non-punitive regulatory models, emphasising education and support mechanisms for those athletes who use banned substances.

Secondly, the dominant ethical position presents drug taking as cheating. Sport needs to fundamentally question the ethics concerning what 'harm' is really caused and whether drug use is any different to other technical developments provided by the sports science industry designed to improve elite sporting performance. **BASL**

- i RSA, 'Drugs - Facing Facts', www.rsadrugscommission.org
- ii 'Drugs cheats should be treated as criminals, says Radcliffe', 6 December 2004 www.scotsman.com
- iii Beloff, M Editorial, *International sports Law Review* (2005) February, 1.
- iv House of Commons Science and Technology Committee 'Human Enhancement Technologies in Sport Report', www.publications.parliament.uk/pa/cm200607/cmselect/cmsctech/67/6702.htm
- v *Ibid.*, para. 1.
- vi *Ibid.*, para. 90.
- vii *Ibid.*, para. 91.
- viii *Ibid.*
- ix See Council of Europe, *Study of National Sports Legislation in Europe* (1999).
- x *Op cit.* Beloff, p2.
- xi Mill, JS (1859) *On Liberty*.

Analysis



Competition Law at the Races: Excessive Pricing or Value?

By Ed Franklin and Angus Murray, Hammonds Solicitors

Horseracing has always had a symbiotic relationship with gambling. But in recent years, commercial funding of sport from gambling and media rights has become the norm. For example, professional football in the UK benefits at present from a 5-year deal with bookmakers worth about £3 million per year, and the Premier League has a 3-year deal for media and TV rights, starting next season, worth £2.7 billion.ⁱ

Such arrangements have always raised issues of integrity – the risk of doping, cheating, match or race-fixing etc. More recently, however, such arrangements have also raised issues of competition law. A recent decision of the Court of Appealⁱⁱ has now considered, for the first time, how the competition rules apply to the right to use horseracing pre-race data and, in particular, how to assess whether the price required for such data is “excessive” and “abusive” for the purposes of competition law.

Background

The administration of British horseracing is an unenviable task. Racing’s governing body, the British Horseracing Board (BHB) must juggle the often conflicting interests of its stakeholders, namely the owners, trainers, jockeys, breeders, punters, broadcasters, racecourse administrators, and animal welfare campaigners, whilst ensuring the commercial viability of the sport.

BHB requires a reliable and sufficient source of funding in order to maintain the quality of British Racing in a sports market that is more competitive than ever. Traditionally, the bedrock of such funding has come from a levy on bookmakers,ⁱⁱⁱ introduced when off-course betting was made legal in 1961, to compensate for the consequential loss of punters attending race meetings (and so of revenue). However, the Government has announced plans to abolish the Levy Board, and to sell off another source of funding, the Tote,^{iv} so BHB has been forced to look elsewhere for its income.

BHB therefore has sought to commercialise one of its key assets – pre-race data. It costs around £5m to produce per annum but it is a priceless commodity particularly for the bookmakers and the broadcasters. However, BHB ran into significant problems with this strategy. First, the European Court of Justice (ECJ) ruled that BHB did not have a proprietary right in its database of pre-race data,^v then the High Court decided that BHB

had abused its dominant position in the market by charging broadcaster Attheraces (ATR) excessive, unfair and discriminatory prices for supply of the data.

BHB reached a commercial settlement with ATR on some of the prices in issue, and appealed the High Court’s decision on the other prices.^{vi} In its judgment, the Court of Appeal adopted a different reasoning from that taken by the High Court, and decided that the price charged by BHB was not excessive, unfair or discriminatory, and that BHB’s behaviour was not abusive. In this article we take a closer look at the Court of Appeal’s decision and the reasons behind it. In particular, we analyse the arguments regarding the interpretation of what constitutes excessive and unfair pricing. Not only is this case significant in terms of the development of competition law but, importantly for sport’s governing bodies, the Court of Appeal recognised the need for BHB to benefit from the commercial use that would be made of the data. Its decision was in part an acknowledgment that a governing body’s asset (such as a pre-race data) needs to be exploited in a way that ensures the upkeep and development of the sport.

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Pre-race data

Pre-race data, as it is referred to in this article, is essential information regarding each horseracing fixture staged in the UK. This information includes the venue and the time of each race, the conditions of each race such as the distance, and the type of horse and/or jockey that is eligible to participate. Pre-race data also includes essential information on the runners in each race, such as the horse's name, its breeding, its age, its official rating, its allocated weight, its trainer and jockey and the owner's colours. The daily supply of this information is required by entities such as broadcasters, newspapers, bookmakers, operators of racing websites and the racecourses themselves. Without this information, these entities would simply be unable to provide horseracing services to their customers. BHB, by way of an agreement with Weatherbys Group Limited, collates pre-race data. It is the only source of pre-race data and it has no competitor.

It was accepted that BHB was entitled to make a charge for use of this data. What was in dispute was the price that BHB could charge, and whether it was required to charge the same price to all users (i.e. irrespective of the commercial benefit the user would derive from having the data).

Financing Horseracing

BHB is horseracing's governing authority. It has an essential role to play in the administration of British horseracing. It is responsible for all aspects of race planning, including the compilation of the Fixture List, supervision of the handicapping system and the compilation of race programmes. It is also responsible for strategic planning and policy, the marketing and promotion of British horseracing including the promotion of British horseracing's interests abroad and the interests of the British bloodstock industry.

It also contributes significant sums in race prize money and assists in the funding of the Jockey Club, which is responsible for the policing of horseracing and maintaining the integrity of the sport.

BHB (together with the numerous other regulatory, financial and executive horseracing authorities) has various sources of funding. Its main source of funding is through the Levy Board. The Levy Board collects and distributes contributions from British bookmakers, betting exchanges and the Tote by way of a statutory 10% levy charged on the gross profits of their UK horserace betting business (this amounted to around £103m in 2004/5).^{vii}

In March 2000, the Government put forward proposals to modernise the funding of British racing. The Government's policy was that British horseracing should be removed from Government involvement, and should replace contributions from the Levy Board with other sources of revenue.

The Government has extended the timetable for the abolition of the Levy Board until such time as horseracing's authorities secure steady revenue streams from other sources. Ultimately, the main source of funding will be from the bookmakers. The authorities argue that it is the bookmakers that profit most from the horseracing product and so they must contribute appropriately to its administration. It is BHB's number one aim (according to the Aims set out on its website) "to ensure that a sustainable and enforceable mechanism, by which betting operators using the British racing product can be required to contribute appropriately to the funding of racing, is in place".

The relationship between horseracing's authorities and the bookmakers is an uneasy one. The sport is heavily reliant on the bookmakers and the punters not only in terms of the sport's enduring appeal but also for its funding. Horseracing used to enjoy a near monopoly as the bookmakers' source of business. Over the last decade, the betting and gaming industry has diversified to include many other sports, particularly football, and online gaming has become increasingly popular with the punters and a much cheaper source of revenue for the bookmakers. With bookmakers' profits being undermined by the increasing market share of betting exchanges such as Betfair, they are increasingly reluctant to make the type of contribution to the horseracing product that it did in the past.

For the time being, the authorities can rely on British bookmakers' contributions to the horseracing product through their contributions to the Levy. This will not always be so. The authorities will need to secure income from the British bookmakers through other means once the Levy is finally abolished (currently proposed to be in March 2009). One of the principal funding sources is through the supply of essential pre-race data. The *Attheraces v BHB* case ultimately concerns the contribution of overseas bookmakers (through the services offered by ATR) to the horseracing product and the administration of the sport. What proportion of ATR's profits and contributions from the overseas bookmakers can the BHB legitimately levy?

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BHB v William Hill

One of the main ways in which BHB planned to exploit its assets to secure future funding was to sell its pre-race data to bookmakers and other entities by licensing its purported proprietary rights in its “database” of pre-race data. It proposed to combine its database rights together with “picture rights” owned by the Racecourse Association into a “rights package” for sale to bookmakers and media companies.

However, this proposal suffered a serious setback when William Hill, one of the so-called “big three” British bookmakers (together with Ladbrokes and Coral) challenged the existence of BHB’s proprietary right in its pre-race database.

BHB had originally brought High Court proceedings against William Hill alleging that it had infringed its “sui generis” right provided for under Article 7 of the Database Directive^{viii} by extracting information from BHB’s database without licence. William Hill had been obtaining the information from newspapers published before the day of a race and from a raw data feed supplied to Satellite Information Services Limited (SIS), a subscriber to the BHB database. The Court of Appeal referred the case to the European Court of Justice for a preliminary ruling in relation to the correct interpretation of the Database Directive.^x

In order to qualify for the “sui generis” database right conferred by Article 7(1) of the Database Directive, BHB had to show that it had made “qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents” of the database. The ECJ drew a distinction between resources used to seek out and/or verify existing independent materials and collecting them in a database and resources used for the creation or verification of raw materials for a database. The ECJ stated that the purpose of the protection provided by the Database Directive was to promote the establishment of storage and processing systems for existing information and not the creation of the materials themselves. It held that BHB’s investment in pre-race data was in the raw materials that made up the content of the Database as opposed to an investment in seeking out, collecting and verifying the independent materials in the database. As such, the Database Directive did not protect BHB’s database.^x

In seeking sources of funding for horseracing beyond the Levy, BHB could not therefore rely on the commercial exploitation of its supposed proprietary database right in the pre-race data. However, this did not prevent it from seeking to enter into valid

contractual arrangements for use of its pre-race data. After all, the information costs BHB around £5 million per annum to produce.

Attheraces v BHB

ATR is a joint venture between Arena Leisure Plc and British Sky Broadcasting Group Plc (acting through its subsidiary Sky Ventures Limited). It provides services to its domestic customers through an information and betting website and a dedicated horseracing satellite television channel. It also provides two services to overseas bookmakers. The first is an audio-visual bookmaker service that provides fixed odds betting services. The second is a similar service that provides Tote pool betting services in pari-mutuel betting markets where fixed odds betting is illegal (in the USA for instance). Both services broadcast races from 28 British racecourses. They are produced and distributed by a further company, SIS, on behalf of ATR.

The dispute arose between the parties following a breakdown in negotiations regarding the price BHB should charge ATR for pre-race data to be used for its two overseas operations. Without access to pre-race data, ATR would be unable to provide these services. The pricing mechanism put forward by BHB in mid-2004 was that ATR should pay BHB around 50% of the net revenue generated from these services (i.e. the sums paid by overseas bookmakers to ATR for use of these services). This amounted to £900 per fixture. ATR rejected this proposal.

Another important factor in these negotiations is that BHB had reached a separate agreement with Phumelela Gold Enterprises (“Phumelela”) to supply pre-race data for the purpose of broadcasting to overseas bookmakers in relation to the 31 British racecourses to which ATR did not have the broadcast rights. The terms of this agreement was that Phumelela would pay 30% of its net revenue to BHB for the supply of pre-race data as opposed to the 50% proposed to be charged to ATR.

These negotiations coincided with the ruling from the ECJ in the William Hill case that BHB did not have a proprietary right in its database. The ECJ’s decision was then recognised and upheld in the Court of Appeal.^{xi} ATR stated that BHB had no right to assert such terms and that it had not identified what protectable rights it was entitled to enforce. Having considered its position, BHB told ATR that unless it agreed to pay £900 per fixture for the pre-race data, it would withdraw its supply of pre-race data.

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Following various interlocutory applications, ATR issued proceedings against BHB alleging that BHB had abused its dominant position in the market in its unreasonable refusal to supply the pre-race data and that its pricing of the pre-race data was excessive, unfair and discriminatory. The Court of Appeal summarised the case as follows:

“The essence of Attheraces’ case is that BHB has a monopoly in the supply of pre-race data to broadcasters and bookmakers who require such information; that it has sought to impose its terms for the supply of the pre-race data required by Attheraces for its business; that it has made threats to procure termination of the supply of pre-race data; and that it is guilty of excessive, unfair and discriminatory pricing.”^{xii}

Applicable law

The proceedings were brought pursuant to Article 82 of the EC Treaty and Section 18 of the Competition Act 1988. Article 82 (in identical terms to Section 18 of the Competition Act 1988 save that it provides for trade within Member States and not the UK) provides that:

“Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market insofar as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- ***directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;***
- ***applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;***
- ***making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations, which, by their nature or according to their commercial usage, have no connection with the subject of such contracts.”***

First instance

The trial judge (Etherton J) held that BHB had in fact abused its market dominance as a monopoly supplier of pre-race data to ATR; that pre-race data is an essential facility controlled by BHB, without which ATR would be eliminated from the market; and there was no objective justification for such conduct. In particular, he found that the prices specified by BHB were so unfair and excessive that they amounted to an abuse of its market position. BHB were also found to have imposed a discriminatory pricing mechanism on ATR as the mechanism was substantially in excess of BHB’s normal charge for broadcasters and more onerous than the mechanism agreed with Phumelela, ATR’s direct competitor.

It was BHB’s case that the product it was supplying to ATR was not simply pre-race data but “the ability to create value from the whole show of British racing”. What BHB meant was that the pricing mechanism not only took into account the cost of producing the actual data but the cost to BHB of supplying the horseracing product. This makes British horseracing an attractive proposition to overseas bookmakers. It submitted that its expenditure “pushed out the demand curve” for viewing and placing bets on British racing. BHB contended that the overseas bookmakers would otherwise be “free riders” on British horseracing (bearing in mind the contributions made by British bookmakers under the Levy system) and that BHB was collecting the charge from the overseas bookmakers through the agency of ATR.

In determining what ought to be a fair pricing system, the trial judge referred to the United Brands^{xiii} case in which the ECJ held that a price is excessive if it has no reasonable relation to the “economic value” of the product supplied. The trial judge surmised that the economic value of BHB’s pre-race data should be assessed on a “cost +” basis. He concluded that the competitive price would be the cost of producing the database (about £5m) together with a reasonable return on that cost “and also, in principle, some small additional element to reflect any specific head of expenditure by BHB that could be identified as benefiting Attheraces’ customers”.^{xiv} He concluded that the prices specified by BHB were excessive and unfair.

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The Appeal

The central issue in BHB's appeal of the decision of Etherton J was the assessment of the economic value of the pre-race data and whether the pricing of it by BHB was excessive and unfair. The Court of Appeal largely agreed with BHB's submissions on this issue.

BHB's case

BHB contended that in the circumstances the trial judge had taken too narrow a view on the issue of BHB's costs of producing the pre-race data. It submitted that the "cost +" formula applied did not take sufficient account of the overall cost to the BHB of maintaining, improving and supplying the horseracing product.

BHB's central contention was that it is not correct to apply the "cost +" approach uniformly to the determination of issues of excessive pricing but that it is necessary to consider all the relevant circumstances of the product in question. BHB's approach regarding the treatment of pre-race data was summarised in the following (rather colourful) terms:

"[Pre-race data] is a secondary product or a by-product of British racing. Its existence and value depends on the primary activity of British racing and on the attractions, quality and integrity of the primary activity. The pre-race data relates to actual races held at actual racecourses. The actual races are run by actual horses and jockeys provided by actual owners attracted to prize money. If there were no races, racecourses or entrants, there would be no pre-race data"^{xv}.

BHB highlighted the significant cost of governing, administering and policing the "primary activity". It submitted that the expenditure incurred in improving the quality of the primary activity had increased the demand from overseas bookmakers. For example of particular interest to overseas bookmakers would be the increase in prize money (to which BHB contributed £7m in 2004/5) and improvement and maintenance of the integrity of British horseracing (in 2004/5 BHB contributed £3.5m to the Jockey Club whose primary responsibility is the policing of the sport). It argued that it had produced a positive "externality", which increased the value of the pre-race data to ATR and BHB should be paid accordingly.

Citing the ECJ's decision in *Scandlines*,^{xvi} BHB also contended that the trial judge's assessment of "economic value" did not take account of the value and revenue-earning potential of the pre-race data to ATR as purchaser of the product and the income generated by ATR from the use of the pre-race data. BHB took the

approach that economic value looks to the demand side rather than the supply side, and so means the value to the customer, not the cost to the seller^{xvii}.

Attheraces' case

ATR contended that, if the "cost +" approach was not the appropriate benchmark, then BHB "is entitled to run a coach and horses through competition law by charging whatever it wishes and holding its customers to ransom"^{xviii}.

It argued that BHB was the monopoly seller in the upstream market and ATR was not itself dominant as a buyer in the upstream market or as a seller in the downstream market. It was therefore constrained by other competitors in the market for the supply of products to overseas bookmakers.

In order to illustrate its point ATR asked: can a monopoly electricity supplier legitimately charge a hugely inflated price, albeit one which the purchaser can pay, simply because the purchaser's enterprise will have to close down if its supply is cut off?^{xix}

Court of Appeal decision

The Court of Appeal accepted that BHB was entitled to impose a charge for use of its data by, and for the benefit of, overseas bookmakers, irrespective of whether BHB has database rights or IP rights in its pre-race data. The core issue was whether the amount of the charge was excessive and unfair so as to constitute an abuse of BHB's dominant market position.^{xx}

The Court of Appeal recognised that a comparison between the price of the product and the cost of its production may be relevant in assessing economic value, but only as a baseline below which no price can ordinarily be regarded as abusive. It is not sufficient as a definitive test of abuse. It concluded that the trial judge was incorrect to make charging above "cost +" the principal criterion of abuse of a dominant position.

"It seems to us that the most that a successful challenge under Article 82 can achieve in a case like this is a re-negotiation, not a cost + limit on prices, for whatever else Article 82 does it does not create a European system for determining prices"^{xxi}.

The Court relied on the principal purpose of Article 82 of the Treaty. Referring to the ECJ's decision in *Bronner v Mediaprint*,^{xxii} it argued that the principal purpose of Article 82 was to prevent distortion of competition and

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to safeguard the interests of consumers rather than to protect the position of particular competitors. The Court found that there was little, if any, evidence that competition in the market was being distorted by the demands made by BHB upon ATR. The prices sought by BHB may be considered to be unfair but they do not amount to an abuse of its market position and there was no evidence to show that ATR's competitiveness was being materially compromised by the terms proposed by BHB.

The Court preferred the hypothetical case of a monopoly supplier of a delicacy to a supermarket who charges to the supermarket his cost plus a moderate margin but finds that the supermarket is marking up his product by 500% – would the supplier be abusing his dominant position if he then raised his price to more than he could get in a competitive market however much the supermarket was charging for it? The Court concluded that the supermarket (i.e. the purchaser) had established the economic value and the monopoly supplier was entitled to secure as much as he was able. The purpose of Article 82 may be to protect the customer from the supermarket but not the supermarket from the monopoly supplier. The control on the monopoly supplier would be that if he raised his prices too much, he would lose his business.

On the issue of discriminatory pricing (i.e. the objection by ATR that Phumelela was paying a considerably lower percentage of its net revenue to BHB for equivalent transactions), the Court pointed out that profitability and competitiveness are two different things. It accepted that the arrangements were not “attractive”^{xxxiii} but as a principle of law, differential pricing by a monopoly supplier does not amount to an abuse of its market position. It recognised that each entity's onward market was different and that the differential pricing legitimately reflected the distinct value of the product to each customer (applying similar principles of “economic value” as with the excessive/unfair pricing arguments).

In its concluding comments the Court of Appeal summarised the position as follows:

“In our judgment, there is no reason why such reinvestment [into the primary horseracing product] should not be relevant to the question whether pricing, while high, is in reality excessive. If the gross profits are ploughed back into maintaining the product, and are not simply banked or distributed, this may answer an accusation of excessive pricing and may make it effectively cost +.”^{xxxiv}

Conclusion

On 6 March 2007, BHB announced that it had settled this matter with ATR (on undisclosed terms) and that it will continue to allow ATR access to and use of its authorised pre-race data. Once the Levy is abolished, the Court of Appeal's decision may be an influential factor in negotiations with British bookmakers over the price they pay for pre-race data and the contribution they should make to the sport's administrators.

The Court of Appeal referred to this case as a “complex piece of private law litigation” and it recognised that when negotiations between two parties such as BHB and Attheraces fail, they may be more satisfactorily resolved by a specialist body with appropriate expertise and flexible powers.^{xxxv} The Court was careful to decide this case on its particular facts and its decision was in part recognition of the rather unique set of circumstances put before it. What makes these circumstances unique is the nature of the product that was being supplied by one party to another. The concluding comments set out above are a recognition for BHB and many governing bodies that essentially their profits are being reinvested into the sport and this ultimately makes it more attractive both as a commercial proposition and as a product to the consumer. The remedies that the law provides do not always sit comfortably in situations such as these. **BASL**

- i See the recent Parliamentary adjournment debate on Football (Gambling Companies) 23 January 2007; Hansard Vol. 455, Col 1395
- ii *Attheraces Limited v (1) British Horseracing Board Limited* [2005] EWCA Civ 863; [2005] RPC 35
- iii By schemes made each year under section 27 of the Betting, Gaming and Lotteries Act 1963, and the Horserace Betting Levy Act 1969 and 1981. The Secretary of State has power to impede these provisions by statutory instrument under Section 15 of the Horserace Betting and Olympic Lottery Act 2004.
- iv Section 1 of the Horserace Betting and Olympic Lottery Act 2004 provides for the abolition of the Horserace Totalisator Board as from a day to be appointed by statutory instrument. On 19 April 2007, in a reply to a parliamentary question the Government stated that “an announcement on the sale of the Tote is expected to be made shortly”; Hansard 19 April 2007 Col 781W
- v *The British Horseracing Board Limited and others v William Hill Organization Limited* case C-203/02 [2004] ECR I – 10415
- vi (1) *Attheraces Limited (2) Attheraces (UK) Limited v (1) British Horseracing Board Limited (2) BHB Enterprises Plc* [2007] EWCA Civ 38
- vii Figures taken from “Economic Impact of British Racing” Deloitte & Touche LLP, June 2006
- viii Directive 96/9/EC
- ix *British Horseracing Board and others v William Hill Organisation* [2001] EWCA Civ 1268
- x See footnote 5 above, and the decision of the Court of Appeal [2005] EWCA Civ 863
- xi See footnote 10 above
- xii para 38
- xiii [1978] ECR 207
- xiv See paras 212, 213 and 300
- xv Para 174
- xvi [2006] 4 CMLR 23
- xvii See para 186
- xviii Para 177
- xix Para 209. In response to Attheraces' hypothetical question, the Court of Appeal saw this as a case of overtly arbitrary pricing.
- xx See para 153

Sports Participation and Criminal Liability

By Simon Gardiner, Leeds Metropolitan University

This article will evaluate the debate on where and when the criminal law should be used to regulate acts of violent conduct in sport. This is in the light of the recent case of *R v Barnes* and a restatement of prosecution policy by the Crown Prosecution Service. There are three parts to the article.

First, the historical development of the relevant case law will be examined together with recent cases and the problematic concept of consent within the law of assault will be studied both generally and specifically in sport to help understand where the demarcation can be made to potentially unlawful conduct. Second, the policy issues around determining whether prosecutions should be initiated will be analysed. Lastly the debate will be located within the context of how the concepts of sports-related violence should be understood and why this is an issue being debated at this time.

Introduction

The issue of whether the criminal law should intervene on to the sports ground and regulate conduct between sports participants has emerged as a quantifiable concern over the last quarter of a century or so in Britain. Before then, prosecutions were rare and generally for extreme injuries. Although criminal prosecutions continue to be reasonably infrequent, there are periodic incidents that question the complex and indeed contested nature of the involvement of the criminal law in this context. In the mid-1990s, some high profile prosecutions of professional footballers and a specific development in prosecutorial discretion, led to speculation about the criminal law's role on the sportsfield.¹ Similarly two current developments suggest that there continues to be both jurisprudential doubt and practical confusion as to where and when prosecutions should take place. The first is the recent case of *Barnes*² which has attempted to demarcate where the line might be drawn between 'violent conduct' that should be dealt within sport and that which might be subject to regulation through the criminal law. The second development is the determination of specific prosecutorial policy by the Crown Prosecution Service (CPS) in England and Wales following on from concerns that its existing policy towards violence on the pitch lacks clarity and consistency in prosecutions and provides little practical guidance for the police.

Sport encompasses a range of different physical activities that differ widely in their physicality and degree of both bodily contact and degree of force. It is also an extremely rule-bound area of social activity

which has great specificity and an extremely pervasive culture. Of course the criminal law, specifically in the guise of the law of assaults has engaged with similar specific areas of social or sub-cultural activity, e.g. medical surgery, sado-masochism and initiation ceremonies. This has been most notably in *Brown* where the House of Lords were required to determine the lawfulness of factual consent to homosexual sado-masochistic activities.³ The common issue has been irrespective of what individuals may factually consent to, what degree of harm will the criminal law allow participants consent to at law? Where is the line to be drawn that demarcates conduct that can be dealt with by non-legal rules whatever they might be within a particular social activity, from that which can be criminally prosecuted?

There is a great deal of confusion especially around the operation of consent including whether consent is a defence to be raised by the defendant or a part of the *actus reus* to be proved by the prosecution?⁴ What is apparent however in the existing case law is that sport is treated, along with a number of other necessary and beneficial activities, as an exception to the general rule that an individual can factually but not legally consent to force that leads to resultant injury amounting to actual bodily harm or greater.⁵ Clearly without this exception, most sport could not take place as there is an inherent risk of significant injury. However this position on conduct is tempered by the *mens rea* of the defendant. Any intentional or reckless infliction of injury will not attract the immunity. In *Bradshaw* it was stated that liability would occur where the defendant "knew that, in charging as he did, he might produce serious injury and

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was indifferent and reckless as to whether he would produce serious injury or not.”⁶

One other point must be stressed. There is a problem in the use of terminology used as to the type of sporting conduct that might be regulated by the criminal law. The term violence has no specific definition in English law; it is largely a social construction. In the sporting domain it is constructed not only by mainstream social norms but sporting norms too. A great deal of academic inquiry has focussed on the phenomenon of sports violence particularly highlighting its patriarchal nature.⁷ Many research reports could be cited. In a Canadian study by Smith, sports violence is divided into four types:

1. ‘brutal body contact’ – that is part of sports participation;
2. ‘borderline violence’ – which are assaults although prohibited by the formal rules are essentially the province of referees, umpires etc;
3. ‘quasi-criminal violence’ – which violate not only the rules of the sport but also the informal playing culture.
4. ‘criminal violence’ – so serious and obviously outside the boundaries of sport.⁸

Of course sporting codes use terms such as violent conduct in their playing and disciplinary rules.⁹ In the legal literature, terms such as participator violence have been used.¹⁰ More pejorative terms have been used by the courts such as stating that sport is not a ‘license for thuggery’.¹¹ The reality is that different sports involve the use of variable degrees of force and physicality between individuals. Conduct in a number of sports is inexorably a form of violence.¹² Smith’s taxonomy above highlights this truism. At a time of considerable consternation about levels of ‘violence’ in society generally, it is important to remember how ‘violence’ on the sports field is understood in the debate about what role the criminal law has in regulating its manifestation.

Criminal intervention on the sportsfield

Historically, English common law during its centuries of development has been relatively liberal in the construction of consensual force between individuals. The use of violence to others short of permanent maiming has been justified in the past.¹³ In the late eighteenth century, there were contrary views as to the effect of consensual use of force in sporting situations. Hale argued that death occurring in a mutually consensual activity such as wrestling would result in liability for manslaughter because the participants in such a sport intend to harm each other.¹⁴ Conversely, Foster stated that two individuals who ‘engage by

mutual consent’ in such activities, have no intention to harm one another, and therefore there could be no liability for manslaughter on the death of the other participant.¹⁵ During the nineteenth century, concern over activities such as prize fighting and duelling leading to death led to some regulation by the criminal law.

Two nineteenth century cases indicated as stated above, that players who used intentional or reckless force likely to cause bodily harm to another would be acting illegally.¹⁶ Neither of the cases specifically considered the issue of what effect the victim’s consent to involvement in the game would have on the defendant’s liability. However there was an inference that if the defendant was playing within the rules and practices of the sport, the player would not be acting in a manner likely to cause bodily harm. As stated in Bradshaw:

“if a man is playing according to the rules and practices of the game and not going beyond it, it may be reasonable to infer that he is not actuated by any malicious motive or intention, and that he is not acting in a manner which he knows will be likely to be productive of death or injury”.¹⁷

During the twentieth century there were spasmodic prosecutions which increased in frequency over the last twenty five years or so.¹⁸ These can be classified in terms of the offence individuals are charged with but more instructive is the following taxonomy based on the geographical setting of the incident. Three can be identified.

Environs of the sportsfield

Fights and brawls that occur adjacent to the sportsfield, for example the players’ tunnel or at the side of the pitch have led to convictions for assault offences. In Kamara,¹⁹ a professional footballer was convicted under s.20 OAPA 1861 for punching and breaking the jaw of an opponent after the final whistle for a match had been blown. In Cantona,²⁰ the infamous flying kung-fu kick by Eric Cantona targeted at an opposition fan, inflicted after the defendant had been sent off for an on-field foul, led to conviction for common assault.²¹ In these incidents, the claim by both of the defendants was that their actions were in response to racist provocation. Also similar to both incidents, their occurrence was outside of the pitch, beyond the playing rules of the game and the supervision of the referee and arguably not sporting incidents. Consent will not operate here. Both Kamara and Cantona were however ‘charged’ with wider disciplinary offences under the English Football Association (FA).

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Off-the-ball incidents

Incidents on the sportsfield but off-the ball and way from the play, have led to many convictions in team sport for assault and public order offences. There have been a significantly higher number of prosecutions in amateur rugby and football compared to the professional game which seems to be partly determined by a greater likelihood that offences are reported to the police and that the Crown Prosecution Service will decide to prosecute.²² In addition, the internal sporting disciplinary procedures at regional level are not enforced so effectively compared to the professional game which has a national enforcement procedure.²³

More high-profile case in professional football have occurred than in both the codes of rugby union and league,²⁴ probably explained by the higher levels of 'violent conduct' in off-the-ball fights that are accepted in rugby.²⁵ In football, *Ferguson v Normand* involved the conviction for s.18 OAPA 1861 and imprisonment of Duncan Ferguson for an off-the-ball head butt against John McStay during a match between Glasgow Rangers and Raith Rovers.²⁶ Individuals have also been convicted for public order offences including *Butcher v Jessop*²⁷ when during the Glasgow derby, a number of Rangers and Celtic players were charged with breach of the peace following a goalmouth 'scrum'. Two players were convicted, one was found not guilty and another had his case 'not proven'. The heavily publicised but relatively minor skirmish between Newcastle players Lee Bowyer and Kieran Dyer is a more recent example with Bowyer convicted under section 5 of the Public Order Act 1996, the offences of using "threatening, abusive or insulting words or behaviour" with the likelihood that harassment, alarm or distress would be caused, whether it is intended or not.²⁸ Additionally, police have cautioned professional players for swearing and other anti-social behaviour, by intervening during the actual commission of the game.²⁹

On-the-ball incidents

Events with very close proximity to the point of play, can be termed on-the-ball incidents. The prosecution in *Blisset* is an exemplar of the problem of demarcation of the criminal law's involvement. The Brentford footballer, Gary Blisset was charged with causing grievous bodily harm under S.18 of the Offences against the Person Act 1861 to the former Torquay United player, John Uzzell.³⁰ Up to that point in time most prosecutions had been for the lesser offence of assault occasioning actual bodily harm under s.47. Blisset was involved in a flying collision when both he and Uzzell were challenging to get possession of the ball. Uzzell

suffered a fractured eye socket and cheekbone, and subsequently retired. The referee saw the incident and Blisset was sent off. Blisset said at his trial that what had occurred was an accident, as the two players had jumped for a fifty-fifty ball. He had tried to avoid colliding with Uzzell when he realised he was not going to avoid the ball. Acting as an expert witness, Graham Kelly, the then F.A.'s chief executive, caused some controversy when he said it was an 'ordinary aerial challenge', which he would see 200 times a week if he attended four matches. He considered that this type of play was one that occurred regularly and of a type that participants implicitly consent to. Blisset was acquitted. No clear guidance was provided as to how the law of consent should be applied to sports participation incidents or how it might be possible to determine where the line of demarcation should be drawn for the criminal law's involvement.

The recent Court of Appeal case of *Barnes* highlights this issue again.³¹ The incident in question occurred during an amateur match in the Thanet local league between Minster FC and the Punch and Judy FC. With twenty minutes to go, Minster were two goals ahead. At the time of the alleged offence, the victim playing for Minster guided the ball towards the corner flag as a means of wasting time. Barnes attempted to tackle him and in doing so committed a foul. Minster were awarded a free kick. The referee, Mr Lawrence, who had over 30 years experience, interjected in a heated exchange of words between the two and told them both 'to grow up'. Ten minutes later the victim was in a shooting position around seven yards in front of the goal. He scored but just after kicking the ball, Barnes tackled him from behind, making contact with his right ankle. Barnes was reported to have said words to the effect of "have that". The victim was seriously injured with damage to his ankle and right fibula. The referee sent Barnes off the field for violent conduct. The foul, resultant injury and sending off are not particularly infrequent occurrences and would usually be dealt within football's disciplinary procedures.

However a prosecution ensued and at the trial the referee considered that in tackling, Barnes "had gone in with two feet". Barnes' contention was that he had made a legitimate 'sliding tackle'. In his summing up the Judge stressed that although the consequential serious injury was not in dispute, the characterisation of the tackle was however open to doubt. The Judge indicated that the prosecution had to prove that what happened was "not done by way of legitimate sport" and that "what was done was a deliberate act". By doing so he focused on both the necessary elements of

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actus reus and mens rea. No specific mention was made by the Judge on the issue of consent; although the prosecution argued that the phrase 'legitimate sport' used by the Judge obviously embraced the issue of consent. Barnes was convicted of a s 20 O.A.P.A offence which he appealed.

The Court of Appeal found that although the jury had asked for clarification of what was a legitimate sport, they were "not given any examples of conduct" that might have amounted to it. No attempt was made to determine clearly whether what was happening in the game at the time of the incident was legitimate or not. The Court concluded that "the summing-up was inadequate" and the conviction therefore unsafe. Lord Woolf attempted to articulate what he believed was the narrow area where there might be criminal liability:

"the starting point is the fact that most organised sports have their own disciplinary procedures for enforcing their particular rulers and standards of conduct ... in addition to a criminal prosecution there is the possibility of an injured player obtaining damages at a civil action from another player ... a criminal prosecution should be reserved for those situations in where the conduct is sufficiently grave to be properly categorised as criminal (emphasis added)."³²

Objective Criteria

The Court of Appeal stated that the test for determining 'the gravity' of the incident was an objective one. The criteria "likely to be relevant in determining whether the defendant's action go beyond the threshold", were:

- the type of the sport;
- the level at which it is played,
- the nature of the act;
- the degree of force used;
- the extent of the risk of injury;
- the state of the mind of the defendant.

This was very much the application of guidance that has been laid down in *Brown* and further amplified by the Law Commission in their post-*Brown* consultation. *Brown* provided the opportunity to review the problematic of the law generally on the law of assaults and consent and in specific circumstances such as sado-masochistic sexual activity³³ and sporting activity. The Law Commission has had two attempts at formulating how consent should be constructed generally and in specific circumstances. As far as sport is concerned, what has transpired is a clear articulation of an overtly objective test as to where the line of demarcation is drawn between that consequential injury which can be consented to and that which cannot and could therefore be subject to criminal liability.

In the first Consultation Paper in 1993,³⁴ the Law Commission argues that any perceived subjective construction of consent should be replaced by an objective test. The Paper suggests that it is artificial to talk of participants (subjectively) consenting to risk of injury, as opposed to consenting to take part in the game.³⁵ The approach in a number of Canadian cases to the legal regulation of violence in ice hockey matches which were reviewed in *Brown*, was used by the Commission to support this move to an objective construction of consent. It should be noted that ice hockey in North America is a widely played sport both recreationally, at a number of amateur levels and professionally. It is one of the four major professional sports and in Canada is clearly the national game. Its popularity is based on its fast-moving and highly competitive dynamic. It can be classified as a semi-contact sport but one that involves significant body checking and contact with the stick.

This objective test was first articulated in the case of *Cey*³⁶ and has been supported in later cases.³⁷ This case concerned an assault in an amateur match where the accused used his hockey stick to push the victim into the boards surrounding the rink. The objective criteria constructed were:

- the conditions under which the game in question is played;
- the nature of the act which forms the charge;
- the extent of the force employed;
- the degree of the risk of injury;
- the state of mind of the accused.³⁸

The criteria discussed in *Barnes* are clearly based on these. *Gerwing J.A.* for the majority in *Cey*, considered that the trial judge had been wrong in giving a direction only on the issue of whether the accused had intended to cause serious injury and to thereby exceed the standards by which the game of hockey should be played. She stated that the subjective state of mind of the accused is only one factor, and in fact 'not particularly significant',³⁹ in determining whether actions fall within the scope of activity to which the victim implicitly consents to. She considered the objective criteria discussed should be used to determine whether the actions of the accused were so "violent and inherently dangerous as to be excluded from the implied consent".⁴⁰

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There was however a dissenting judgement in Cey by Wakeling J.A.. He argued:

“The player also expects that in the heat of the action some contact will take place which is dangerous and will therefore occasionally cause injury, even severe injury, but no injury is intended. This conduct will as well call for a penalty, but not criminal charges, for it is such an integral part of the game that a player cannot expect to avoid it and therefore must have given his consent. On the other hand, conduct which is perhaps motivated by retaliation and, in any event, is intended to do bodily harm, could not be taken as within the scope of implied consent. In fact, it may be that a player cannot legally give consent to such a standard of behaviour.”⁴¹

Wakeling J.A. highlights the defendant’s subjective state of mind as an important element and implies the role that the rules of the game have in determining the consensual nature of conduct.

These objective guidelines developed in both Cey and Barnes can be criticised on two major points. Firstly, they deprioritise the subjective state of mind of the defendant. Secondly they fail to take explicit account of the rules of the game and the wider playing culture as a crucial guide to the operation of consent and the legitimacy of the defendant’s conduct.

Subjective Element of the Objective Construction

With regard to the first point, the Court of Appeal in Barnes ignored the reality of sports participation that players implicitly consent to the risk of incurring particular types of injury during a game. This point was reinforced by Lord Mustill in Brown, where the position of consent in the law of assaults was given a comprehensive review. A player in a contact sport: “by taking part...also assumes the risk that the deliberate contact may have unintended effects, conceivably of sufficient severity to amount to grievous bodily harm. But he does not agree that this more serious kind of injury may be inflicted deliberately.”⁴²

Similarly, in Billingham, ⁴³ the judge directed the jury that players were only deemed to consent to the force of a kind which could reasonably be expected to happen during the game. He went on to say that, “there must be cases which cross the line of that to which a player is deemed to consent.”⁴⁴

By limiting the importance of the accused’s subjective state of mind as only one factor and indeed one that may be seen as negligible is problematic. The reality of

sport is that there is a on-going cognitive process to carry out the various physical actions required within the dynamics of play in a particular sport. This includes significant physical contact in many sports. Distinguishing on the one hand between an intent to tackle or recklessness that runs inevitable risk of physical contact, and on the other, any form of criminal intent or recklessness to injure will be extremely difficult. In any criminal case, construction of the mental state of the accused is challenging.⁴⁵ Where the incident is during play or ‘on the ball’, a greater understanding of the participants’ perception of not only the playing rules but also the ‘playing culture’, the informal and largely unwritten guides to behaviour, would support only the most extreme forms of violence being potentially regulated by the criminal law.

The Rules of the Game

The second point of concern involves the role that the sporting normative rules play. They of course must be a crucial guide to the type of contact and injury that players consent to and therefore a clear determining role as to the criminal law’s intervention. They are designed to avoid serious danger of injury. Participants who cause injury to others within the reasonable application of the rules of the sport can rely on the victims consent to potential harm within the rules. However, the reality is that in contact sports there is a continued risk of injury. If consent is only limited to the operation of the specific rules of the sport it will be overly restrictive.

Consent must work therefore within a wider test than the sport’s rules alone. In football for example, the commission of fouls in football due to ‘illegal tackles’ and the consequential injury have inevitability, and although are outside the legalistic interpretation of the rules, are inside ‘the working or playing culture’ of the game.⁴⁶ This provides a wider area in which consent will be operative. As Glanville Williams states:

“the consent by the players to the use of moderate force is clearly valid, and the players are even deemed to consent to an application of force that is in breach of the rules of the game, if it is the sort of thing that may be expected to happen during the game.”⁴⁷

The rules of sport featured in the examination of consent and the law of assaults in the second Law Commission Consultation Paper in 1995.⁴⁸ In comparison to the first Paper, there is a less doctrinal analysis of consent generally and a more practical approach stating that the “law must compromise between treating the victim’s consent as a complete

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defence and regarding it as wholly immaterial."⁴⁹ This, therefore, creates a continuum within which the intervention of the law needs to be determined.⁵⁰ In regard to sport, the Law Commission modifying its approach from the first Consultation Paper, presents the rules of the sport as the determining issue of when the criminal law can intervene. Injury (including serious injury),⁵¹ caused within the rules of the sport will not be subject to a prosecution. The Law Commission proposes the 'special exception' to be:

"that a person should not be guilty of an offence of causing injury if he or she caused the relevant injury in the course of playing or practising a recognised sport in accordance with its rules."⁵²

This is a welcome highlighting of the crucial role that sporting rules should play in constructing consent. However a number of criticisms can be made of this proposal. First, as with the first Consultation Paper, there is general acceptance that intentional infliction of injury should lead to criminal liability and not be the subject of any exception. This is predicated on the premise that such intentional infliction will inevitably be outside the rules of the sport. The clearest examples are 'off-the-ball' acts of retaliation. However this may not be so straightforward a distinction to make. As Gunn argues in the context of boxing:

"the sport itself, and its rules, require the participants to act with the intention of inflicting harm to others."⁵³

If this was the case, Gunn asserts that the sport of boxing would be intrinsically illegal. There is in fact little jurisprudence supporting the assertion that boxing is lawful.⁵⁴ It seems to be purely a matter of public policy that it is NOT unlawful. The same problem could be applied to the plethora of martial art sports where again intentional force is applied within the rules.

Second, a distinction needs to be made on this test between conduct beyond those playing rules that concern the promotion of safety on the one hand and those that are designed to determine the dynamics of play on the other. In football, the rule prohibiting 'tackles from behind' promotes safety; on the other hand the rule that prohibits a kicked back-pass to the goalkeeper or the off-side rule concern the game's dynamics and it would be absurd if they impacted upon the existence of criminal liability. Cricket and the use of short-pitched intimidatory bowling, commonly known as 'bouncers', illustrate the problems with this test. A hard leather ball heading towards the batsman at up to 100 miles an hour could clearly amount to at least an assault, and if there is physical contact it could lead to a more serious offence. There are safety-based rules on what is considered intimidatory short-

pitched bowling and the frequency they can be used by an individual bowler within a six-ball over. Both the number of bouncers that can be legitimately bowled per over and how it is determined has been modified a number of times making it tricky for the umpires to adjudicate upon. In Test Cricket it currently stands at two balls that arrive at the batsman above shoulder height. Using the above test proposed by the Law Commission, what would be the position where the bowler having bowled the legitimate number of bouncers in an over, he or she is adjudged, perhaps in circumstances of some controversy over the umpire's adjudication, to have bowled a third, seriously injuring the batsman?

Third, this test determining the potential criminalisation of sporting conduct within and without the rules ignores of course the important relationship between the playing rules of the sport and the working or playing culture as elements of the normative rule structure which has already been alluded to above. A clear understand of the specificity of a particular sport is a crucial part of the determination of potential liability. By ignoring the wider playing culture in specific sports and reifying the rules alone as a determining guide, what may seem as being an attempt to provide consistency in application of the law may well lead to 'too specific' an intervention by the criminal law. This is particularly apposite at a time when the playing rules promoting safety of most team sports have become significantly more restrictive, e.g. prohibiting tackles from behind in football and spear tackles in rugby. It follows that if these rules are more restrictive, but are part of the guidelines for legal intervention, there is a real danger that the intervention of the criminal law will be deeper and more intrusive.

Concluding remarks on consent

Over ten years since the Law Commission's Consultation, there has been no new legislation in the area of the law of assaults. It continues to be an area of law in need of urgent reform and the Law Commission proposals on consent were a sound starting point. The construction of consent and its operation in the general law continues to be problematic and uncertain. As Omerod states:

"English law's approach to the availability of a plea of consent to an offence against the person has been the subject of sustained and cogent criticism for its lack of clarity and coherence."⁵⁵

In some areas of human conduct, case law has brought some clarity.⁵⁶ A new legislative test has been introduced for consent in sexual offences.⁵⁷ Sport as a human activity that is inherently physical does provide a

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conundrum, but there have been attempts to provide clarity and guidance. The current position culminating in Barnes seems to clearly support an objective construction of whether consent should be operative on the sports field.

The criminal law can have a legitimate role to intervene in incidents where there is clear intentional or reckless retaliation, often, but not exclusively, in off-the-ball incidents. This is clearly outside the rules and playing culture. Where the incident is during play or 'on the ball', the criminal laws' involvement is highly problematic and as Barnes suggests should only where "conduct is sufficiently grave". Consideration of the rules of the sport and the playing culture needs to be an explicit criterion to be considered along with the others. The subjective element of the test for consent based on the expectations of players to their involvement within the game and regulated by the rules and working culture of the sport is another vital element that needs to be fully considered. This runs the risk of blurring the distinction between the mens rea and actus reus, but the participants understanding of foreseeable play within the rules and playing culture is of import. Players consent to injuries that are incidental to physical contact within this sporting sphere and immunity from criminal liability needs to exist. This would indeed seem to be a necessary component of modern contact sports if they are going to continue to be played as in the past.

Prosecutorial discretion – the solution?

The second area of discussion in this article focuses on how discretion is exercised in deciding when to prosecute in sports violence incidents. In June 2005, the Crown Prosecution Service (CPS) held a conference entitled 'Crime in Sport', focussing on the criminal liability of a range of issues including corruption and match fixing, football hooliganism and on-field violence events including racial abuse. It was the regulation of on-field violence that was highlighted during the day with the CPS indicating that it was to review its policy concerning when and where prosecutions are brought, particularly in team contact sports.⁵⁸ Nazir Afzal, the Sector Director for the CPS in London West argued: "The growing feeling among the public is that players are getting away with crime - that footballers in particular escape punishment by criminal justice - and that is wrong ... It is unlawful to assault or racially abuse someone on the street and we prosecute for that. But when it comes to events on the pitch, we don't get involved, usually because there is no complaint and no police investigation."⁵⁹

The CPS has recognised its existing policy towards violence on the pitch is ad hoc and there was no clarity or consistency in prosecutions together with little guidance for the police. This is in comparison with disorderly conduct by spectators and supporters in and around matches, where in addition to a range of public order offences and in the case of football its own specific legislation, clear prosecution guidelines have been developed. This specific focus on the sports field seems to be predicated on the belief that there needs to be firmer action concerning violent and abusive behaviour in the light of public concerns that players escape public prosecution for their actions. As with the discussion of the substantive law, the major issue in the exercise of prosecutorial discretion is determining where the line is to be drawn as to the type of conduct that will be prosecuted?

During the autumn of 2005, the CPS in collaboration with the Association of Chief Police Officers (ACPO) produced some draft guidelines charting the respective responsibilities of the police and the CPS.⁶⁰ The main stated principle is

"That any conduct on the field of play which breaches the criminal law cannot be tolerated and, as with any criminal behaviour in any other walk of life, will be investigated and prosecuted whenever it is appropriate to do so."⁶¹

The Guidelines highlight that the police have discretion in how to deal with any incident including talking to an individual and /or issuing an informal caution, it will be for them to decide "which allegations of criminal behaviour are investigated". Once they decide on a potential offence, the CPS applies the standard two-tier test in deciding whether to bring a prosecution provides difficulty in sporting situations.

First, sufficient evidence needs to be adduced to provide a realistic prospect of conviction. This means establishing that the evidence that can be used is reliable and that a jury or a bench of magistrates, properly directed in accordance with the law, will be more likely than not to convict the defendant of the charge alleged. The Guidelines seem to lean heavily on the Objective Criteria stated by the Lord Chief Justice in Barnes. These Guidelines provide essentially an indication of the qualitative nature of the available evidence and whether the threshold that demarcates the criminal from the non criminal has been reached. These have been discussed above. Perhaps of equal importance, but not discussed in the prosecutorial Guidelines are more practical and quantitative issues concerning the availability of evidence. As noted earlier most prosecutions occur in amateur football and rugby.

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In professional team sport, the specific sporting culture and the prevalent 'code of silence' means injured parties are unlikely to make a complaint and other participants unlikely to give incriminating evidence as witnesses. This clearly strikes at the 'reliability of the evidence'. Of course unlike, amateur sport, most professional sport is now videoed for television transmission so pictorial evidence is invariably available for on-the-ball incidents and sometimes for those off-the-ball. However this has been criticised as it can often provide a two-dimensional image that is far from conclusive.⁶²

Second, if the case does pass the evidential test, the CPS must then decide whether a prosecution is needed in the public interest. The CPS Guidelines list the following criteria:

- the nature of the conduct in the context of the sport under consideration;
- what was the degree of pre-meditation;
- did the offender seek to ensure that match officials were unsuspected when the offence was committed;
- who the conduct was directed at, e.g. other participants, match officials, spectators;
- what was the impact on those other people and their subsequent behaviour, e.g. did the incident lead to further violence or disorder on the field of play or by spectators;
- previous incidents of a similar nature;
- any action taken by the match officials or the governing bodies in relation to the incident.

The CPS will only start or continue a prosecution if a case has passed both the evidential and public interest tests. It is useful to apply these guidelines to the prosecutions against Bowyer for his off-the-ball incident and in Barnes for the on-the-ball incident.

Application of CPS Guidelines to Bowyer Case

The Bowyer-Dyer incident, although legally a common assault, was in the context of contemporary football, little more than a scuffle or using the vernacular, 'handbags' with none or only minor resulting harm. This can be usefully compared to the context of the daily occurrence of many similar incidents and indeed significantly more serious ones in British high streets that are not prosecuted. There was clear visual evidence to support a prosecution of Bowyer as the protagonist. Dyer's involvement was primarily in defending himself. How would this incident pass the public interest test? It was clearly a fight off the ball and away from play. There did not seem to be obvious pre-meditation although the individuals seem to have had

words before hand. The position of the match referee seems to have been irrelevant in the sense that no deception was achieved. The fight was between players of the same team which is a reasonably rare event compared with the more frequent and similar tussles between opponents in football and rugby. The crowd may well have been bemused by the incident and there was no indication of an adverse crowd reaction.⁶³ Bowyer has no real reputation for violent conduct on the football field but has some notoriety with other non-football incidents.⁶⁴ The referee sent both players off and subsequent disciplinary action was taken. So why the prosecution? As Barnes argues:

"One could certainly take the view that pursuing a criminal action against Bowyer is at least partly a result of political expediency."⁶⁵

The fact that this was a 'fight' between two high profile footballers and indeed team mates before more than 50,000 spectators and subsequently millions on TV may provide support for making an example of the perpetrator. But this incident in terms of the physical force used occurs regularly in a range of sports including football, rugby and ice hockey throughout the country. It is not obvious how the public interest was served in albeit what was a minor criminal prosecution. The distinction between on the one hand, on-the ball incidents, and on the other, off-the ball incidents outside the play and the playing rules might be a better guidance on where the public interest test might be satisfied. This would target 'violent conduct' that is clearly not within the particular game. The determination of whether the prosecution is in the public interest however is a balance between factors for and against prosecution. As the CPS states:

"a prosecution will usually take place however, unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour."

In Bowyer, it can be argued that even though the incident was clearly off-the-ball and outside the playing rules and culture, a prosecution was still not warranted in light of the guidelines.⁶⁶ The Chief Crown Prosecutor for Northumbria, Nicola Reasbeck, saw it differently: "The criminal law doesn't cease to operate once you cross the touchline of a sports field ... neither does being disciplined by an employer or a sport governing body make an athlete immune to the law ...when we reviewed the case, we considered charges of assault as well as public order act offences and decided that the most appropriate charge was an offence under Section 4. In making that decision we had to be sure that both the evidential test and the public interest test were met."⁶⁷

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Application of CPS Guidelines to Barnes Case

Applying the Prosecution Guidelines to Barnes and the more problematic issues of on-the-ball incidents, the tackle from behind although outside the playing rules is one that occurs frequently in matches at all playing levels, often leading to a determination of foul play by the referee. There was evidence of pre-meditation on Barnes part to commit the foul. It was committed after earlier altercations between the players. Where the incident is during the play the referee is always likely to see it. The conduct was directed at the victim - he was an opponent of course. It is likely that this incident created significant disquiet on the part of the teammates of the victim. This is a common reaction and reflects the adrenaline-induced excitement and the culture found in team sports. There had been previous incidents in the match and Barnes was sent off for violent conduct. There was no evidence submitted of any history of violent conduct on Barnes' part in his past career. It not obvious that there is any outstanding case for bringing a prosecution on applying these criteria. If there were, then potentially similar prosecutions could arise for analogous circumstances every weekend around the country.

Scottish guidelines

This is not of course the first time that the Prosecution authorities in the UK have considered their policy in relation to conduct on the sportfield. In Scotland in the mid-1990s, there was an increase in the number of prosecutions brought by the Glasgow Region Procurator Fiscal including the high-profile case involving Duncan Ferguson.⁶⁸ In response to these sports participation criminal prosecutions, the Lord Advocate drew up guidelines for bringing such prosecutions in Scotland. These proposed that prosecutions should only occur in instances where the violence used was 'well beyond' that which would be expected to occur in normal play in any particular sport.⁶⁹ This rather general test was criticised in a number of ways. The guidance "simply reminds the police of their powers rather than defining how and when those powers should be used".⁷⁰ Concern was also voiced that the threshold of criminal law intervention was for violence well beyond the normal was too high a standard that would lead to a dearth of criminal cases.⁷¹

However it may well be that the Lord Advocates Instructions were formulated about right. Prosecutions continue to occur in Scotland and the evidence that the threshold test provides effective guidance for general on-field incidents and particularly the rare occasions when an on-the-ball incident might be prosecuted. They

share with the recent draft guidelines for England and Wales an emphasis on police officers exercising discretion on which avenue of action to take as an alternative to involving the prosecution authorities. This high threshold works in putting sports governing bodies on notice that criminal action is a possibility in limited circumstances and encourages the existence of robust and proportionate disciplinary powers.

The reality of sport

The third and last section of the article will stress the reality of the physicality of sport. The essence of most team sports is that physical endeavour and vigour are essential elements. As Di Nicola and Mendeloff state:

"Much of sports appeal comes from its unrestrained qualities, the delight of its unpredictability, the exploitation of human error, and the thrill of its sheer physicalness."⁷²

Team sports are mostly contact sport that can be characterised as heavy contact sports, e.g. rugby; medium contact sports e.g. football and ice hockey; or light contact sports, e.g. basketball. They all share rules and playing cultures that help demarcate what is legitimate or illegitimate. Where the physical contact is illegitimate it is often characterised in rather simplistic terms as sports violence or thuggery. There is variation between different sports as to what is accepted beyond the rules. Significant physical contact takes place. Mistimed tackles in football occur regularly. In rugby, some tackling and rucking can seem brutal. Further, outside the rules but in the playing culture, minor fisticuffs during particular parts of the play in both rugby union and league are familiar events. In ice hockey, skirmishes between players are acknowledged as a routine part of many matches.⁷³ Many spectators expect these and with the body protection used by players the chance of injury is minor.

The difference between these events happening in the street or other public place on the one hand and the sport arenas on the other is that sportsmen are subject to complex regulation by a network of normative rules including playing rules, disciplinary rules and codes of conduct. These sporting incidents are enforced by their clubs and governing bodies rather than prosecuted in the courts. The media generated 'moral panic' over incidents such as that involving Bowyer-Dyer in football needs to be put into context. These incidents happen periodically but are not endemic within that particular sport. Where they occur they are generally policed well by the relevant sporting body. Sports governing bodies have been criticised over administering deficient disciplinary measures, but increasingly reconstitution of

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these procedures has made disciplinary tribunals more effective.⁷⁴ For example Bowyer was banned for seven matches and fined £30,000 by the FA in addition to the club fine of around £200,000. Both codes of rugby have their own examples of foul play that again are subject to increasingly effective disciplinary procedures.⁷⁵

The Search for Principle – Social Utility and Disutility

The position of both the courts and the CPS is clearly based on pragmatism. What principle that can be discerned is based on a notion that once injury reaches a certain level of objective behaviour to be deemed beyond consent, it should be prohibited on public policy grounds. The burden of proof seems to be on the accused to justify his or her behaviour. Sport has a higher profile in the mind of the public. There is more media coverage of professional sport than ever with incidents of alleged violence replayed endlessly. At a time when any violence in society is a matter of condemnation, the specific characteristics of sport seem to have been distorted. The positive reasons for sport of physical endeavour, benefits to health and competitive rivalry have been superseded by this urge to prohibit. Within this current climate it has become more difficult to justify the 'social utility' of allowing unfettered physical sporting activity to take place. An alternative construction of liability which might be usefully employed is that based on the burden of proof being on the prosecution to justify prohibition and is forcibly argued by Kell in his support for a 'social disutility' model.⁷⁶ Arguing in the context of his concerns for the Brown ruling, he provides two main arguments for supporting this alternative approach:

1. It is better suited to a modern democratic society which places significant value on individual autonomy- the question that needs to be answered by the prosecution is, 'what justifies the intervention?
2. The model may actually provide a better explanation to the exceptions to the general rule to consent, including sport than the social utility model.

Kell finds that the ruling of the majority in Brown applied concepts of paternalism and legal moralism in their attempts to justify why these sado-masochistic activities should be prohibited. It is the minority judgement of Lord Mustill which is held up by Kell as advocating a social disutility model and indeed considers that it "points the proper way forward"⁷⁷ for a more coherent jurisprudential development of consent in the future.

So how may this social disutility approach be applied to sport? Firstly, what justification is there for the intervention of the criminal law onto the sportsfield? A response often made is that acts of violence should be acted upon the same way whether they occur on the sports field, the street or the home. This of course fails to recognise the physicality and specific dynamics of sport, and as argued above, sport is a heavily rule-bound social activity. As with domestic violence, the most effective and lasting regulation and remedy for the victim has arguably not been through the criminal law but the injunctive civil relief limiting access to the perpetrator.

Secondly, can the social disutility model support sport being an exception? It is clearly recognised that many sports could not take place if sports was not an exception. But with the line of demarcation difficult to draw, this model may provide guidance. It is perhaps useful to consider levels of injury that might be caused. Statistics that indicate increases in levels of injury are misleading. Higher levels of fitness and physical endeavour in professional sport contribute to more frequent but less serious injuries than in the past.⁷⁸ There is no indication that amateur sport is any different. It might also be argued that violence on the field causes crowd violence or subsequent disorder between violent fans. However there is no reliable evidence to support this assertion. Indeed, in Britain, in football and both codes of rugby, the game is relatively sanitised in comparison to 20 or 30 years ago with rule changes, the introduction of formal codes of conduct and more rigorous officiating leading to safer and less violent play.

This social disutility model may help provide a clear role for sport to engage with incidents of sports violence within its own normative rule structure which has been shown to be increasingly robust.

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Conclusion

As with all the issues on the penumbra of the law of assaults where consent remains problematic, it is not a good use of scarce resources for prosecution authorities to be contemplating criminal actions. This is particularly apposite when there is a view (one albeit contested on the basis of competing statistical measures) that violence generally in society is on the increase.⁷⁹ Can it be argued that this present debate is indeed a perceived need to engage with anti-social behaviour has seeped onto the sports field?

The maintenance of a safe sporting environment has been high on the agenda of the sports governing bodies that oversee sporting codes which involve an inherently dangerous activity. This form of risk management has partly been caused by an increasing awareness of the need to provide a safe working environment for participants that has been created by the consequences of serious incidents such as the threat of legal liability, increased insurance premiums and the response by the variety of stakeholders in sport including fans, media companies and sponsors. Many examples can be used to illustrate – driver safety has been improved immeasurably in motor racing, the wearing of helmets in cricket is compulsory. In some instances this has led to particular sporting activities such as pole vaulting not taking place in schools. Responding to the threat of legal liability so as to minimise its risk is an effective element of risk management. This approach has also involved education programmes for players emphasising the need to play the game in an ethical manner.⁸⁰

Concomitant with the steady rise of criminal prosecutions for sports participants has been the increase in civil liability cases. These have involved a wide catchment area of defendants with players, coaches, referees and sporting bodies being held liable.⁸¹ Similarly the application of the defence of consent is complex in the tort of negligence when applied to the sports field. Additionally the standard of care that has consistently been applied in sports cases has required reckless conduct or disregard. This as Fafinski argues, 'obfuscates the boundary between civil and criminal liability'.⁸² Although there have been attempts to provide no-fault mechanisms to provide a remedy for sports field liability, the reality of potential civil liability seems to have had a positive effect on the promotion of safety and good practice in sport. It is difficult to see how potential criminal liability could augment this process; its only likely impact can be merely a censorial one.⁸³

As highlighted above this emphasis on risk management has led to dynamics of play in a range of team sports that are particularly sanitised compared with those one or two decades ago. Of course different sports involve different types of contact and incur different levels of risk of injury. Also the hierarchical levels of sport down from the elite mainly professional level, to the recreational amateur grassroots, additionally creates great variability in how the sport should be regulated. The imposition of criminal liability to the existing normative rule milieu is therefore always going to be uncertain.

It is hoped that Barnes Objective Criteria act as a constraint on prosecutions for on-the-ball incidents and provide some greater consistency for off-the-ball incidents. Although the final determination of the CPS Prosecutorial Guidelines for sporting incidents is awaited, the draft proposals have adapted the judicial criteria. However it is strongly argued that the judicial Objective Criteria and Prosecutorial Guidelines will be more effective if they have at their core, an appropriate evaluation of the subjective awareness of the participants and an assessment of whether the incident is within the rules and playing culture of the game. This will help facilitate sensible decisions to be made that will only support criminal prosecutions in the most extreme circumstances and promote consistency. This will be both for the good of the game and the recognition of the proper and limited role of the criminal law in regulating sports field violence. BASL

Sports Participation and Criminal Liability

- 1 See P. McCutcheon, "Sport Violence and the Criminal Law" (1994) 55(3) *Northern Ireland Legal Quarterly* 267 and S. Gardiner, "The Law and the Sportsfield" (1994) *Crim. L. R.* 513.
- 2 R v Barnes [2005] 1 W.L.R.
- 3 See R v Brown [1993] 2 W.L.R. 556.
- 4 See D. Lanham, "Larsonneur Revisited" [1976] *Crim. L.R.* 276.
- 5 First articulated in *Attorney-General's Reference* (No. 6 of 1980) [1981] 2 All ER 1057 and restated in R v Brown fn 3 above.
- 6 R v Bradshaw [1978] 1 Cox CC 83 at p 85. The position in Bradshaw has gained support in R v Venna [1975] 3 All ER 788.
- 7 Note there is an extensive sociological literature concerning the understanding of violence in sport, e.g. see Parry, J., "Violence and Aggression in Contemporary Sport" in Parry, J and McNamee, M (eds) *Ethics and Sport* (Routledge, London, 2001) and Kerr, J., 2005 *Rethinking Aggression in Sport* (Routledge, London, 2005).
- 8 Smith, MD, *Violence and Sport*, (Butterworths, London, 1983).
- 9 For example the Fédération Internationale de Football (FIFA) Laws of the Game, Law 12 includes punishment of sending Off for 'Violent Conduct'; the International Rugby Board (IRB) Laws of Game, Law 10 uses term 'Dangerous Play and Misconduct'.
- 10 See M. James 'The Criminal Law and Participator Violence,' Chapter 15 Gardiner et al, *Sports Law 3rd ed.* (Routledge Cavendish., London, 2005).
- 11 R v Hardy [1994] *The Guardian*, 27 July.
- 12 Note George Orwell's belief that 'Serious sport has nothing to do with fair play. It is bound up with hatred, jealousy, boastfulness, disregard of all rules and sadistic pleasure in witnessing violence. In other words, it is war minus the shooting.' "Shooting an Elephant," *The Sporting Spirit*, (1950)
- 13 Hawkins, *Pleas of the Crown 8th ed.* vol. 1. Also see Stephen's, *A Digest of the Criminal Law*, (1894).
- 14 M.Hale, *History of Pleas of the Crown* (1778).
- 15 M. Foster, *Crown Cases and Crown Law* 260 (1763).
- 16 R v Bradshaw fn. 6 above (football player killed when charged by one opponent with a protruding knee); R v Moore (1898) 14 T.L.R. 229 (football player killed when violent push from behind caused his head to strike another player's knee).
- 17 *Ibid.* Bradshaw at 85.
- 18 For a comprehensive analysis see M. James 'The Criminal Law and Participator Violence,' Chapter 15 Gardiner et al, *Sports Law 3rd ed.* (Routledge Cavendish., London, 2005).
- 19 R v Kamara [1988] *Times*, 15 April.
- 20 R v Cantona [1995] *Times*, 25 March.
- 21 See S. Gardiner, "The Law and Hate Speech: Ooh Aah Cantona: Demonisation of 'the Other'" in A. Brown (ed) *Fanatics*, (Routledge, London, 1998).
- 22 In rugby union reported cases primarily concerning appeals against sentence, include, R v Billingham [1978] *Crim.L.R.* 553; R v Gingell (1980) 2 Cr.App.R (S) 198, who was convicted of inflicting grievous bodily harm, when his assault during a rugby match led to a fractured cheekbone, jaw and nose. Sentence of six months reduced to two on appeal. In R v Johnson (1986) 8 Cr.App.R (S) 343 was convicted of s.18 OAPA for biting off part of an opposing player's ear during a rugby match and received a six month sentence. Also see R v Bishop (1986 unreported); R v Lloyd (1989) 11 Cr.App.R (S) 36; Chapman (1989) 11 Cr.App.R (S) 93, Caltan (1998) unreported, see *Sports Law Bulletin*, Vol. 1 No.5, 1998, p.3. In football convictions include R v Birkin [1988] *Crim.L.R.*; R v Shervill (1989) 11 Cr.App.R (S) 284; R v Lincoln (1990) 12 Cr.App.R (S) 250; R v Davies (1991) *Crim.L.R.* 70, R v McHugh (1998) unreported see *Sports Law Bulletin Vol. No.2* (1998), R v Moss (1999) unreported (see *Sports Law Bulletin Vol.2, No.4* 1999, p.2).
- 23 See www.thefa.com/TherA/Disciplinary/
- 24 See R v Stein [1983] unreported, where Mark Stein of Stoke City was convicted of assault occasioning actual bodily harm for injury caused to Jim Gannon of Stockport County.
- 25 But see R v Mills [2005] unreported, see "Doncaster winger is guilty of GBH", bbc.co.uk/news, November 14, 2005.
- 26 Ferguson v Normand [1995] *SCCR* 770; also see the conviction of Scott McMillan for assault after chasing an opponent and head-butting him during a Scottish rugby match is an example of a clear act of retaliation (*The Times*, May 1994).
- 27 Butcher v Jessop [1989] *SLT* 593; also see conviction of Charlie George, in 1990, for behaving in a way that was likely to cause a breach of the peace during a match.
- 28 See Pitch fight lands Bowyer in court", bbc.co.uk/news, June 5, 2006. Bowyer was originally charged with causing fear or provocation of violence under Section 4 of the Public Order Act 1986. That charge was amended after he indicated he would plead guilty to causing harassment, alarm or distress under Section 5 of the same Act.
- 29 Also see R v Diouf (2005) unreported - Eil Hadji-Diouf, the Senegalese international was convicted for disorderly conduct, s.5 Public Order Act 1986, after an 11-year-old Middlesbrough fan alleged he was hit by liquid the Bolton player had expelled from his mouth. bbc.co.uk/news November 16, 2005. The case highlighted that on conviction, it would have been possible to impose a Football Banning Order under the Football (Disorder) Act 2000 which by restricting his attendance at designated football matches could have restricted his ability to play for his employer club.
- 30 R v Blisset [1992] *Independent*, 4 December; also see S.Gardiner, "Not Playing the Game-Is it a Crime?" (1993) *Solicitors Journal* 628.
- 31 R v Barnes fn. 2 above.
- 32 R v Barnes fn. 2 above para 5.
- 33 See L. Bibbings and P. Alldridge, "Sexual Expression, Body Alteration and the Defence of Consent", (1993) *Journal of Law and Society* 366 and M. Weait, "Fleshing it Out", in L.Bentley and L. Flynn (eds), *Law and the Senses*, (London: Pluto Press, 1996).
- 34 "Consent and Offences Against the Person" L.C.C.P 134, (1994) London HMSO. For a general analysis see D. Ormerod, *Consent and Offences Against the Person* (1994) 57 *MLR* 931.
- 35 *Ibid.* L.C.C.P. 134 para. 41.3.
- 36 R v Cey [1989] 48 *CCC* (3d) 480.
- 37 These were followed in R v Ciccarelli [1989] 54 *CCC* (3d) 121, R v Leclerc [1991] 67 *CCC* (3d) and R v Jobidon [1991] 2S.C.R. 714.
- 38 R v Cey [1989] fn 35 above at pp 490-491.
- 39 *Ibid.* at p. 481.
- 40 *Ibid.* at p. 481.
- 41 at p. 482.
- 42 R v Brown fn 4 above.
- 43 R v Billingham [1978] *Crim.L.R.* 553.
- 44 *Ibid.* at 592H-593A.
- 45 Very few sportsmen would admit intention to or recklessness of causing injury, but note the ex-Manchester united player, Roy Keane's admission of intending to injure an opponent, see M. James, "The Trouble with Roy Keane" (2002) 1(3) *Entertainment and Sports Law Journal* 72.
- 46 See *ibid.* Gardiner, fn. 1 above. The American Model Penal Code, s.2.11 (2)(b), also provides this approach, which states that players consent to reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport.'
- 47 G. Williams, *Consent and Public Policy*, (1962) *Crim.L.R.* 74.
- 48 Law Commission modifying its approach from the first Consultation Paper No. 139, *Consent in the Criminal Law* (1995), London, HMSO. (L.C.C.P. 139).
- 49 *Ibid.* para. 4.21.
- 50 For general analysis of L.C.C.P. 139. Also see S. Shute, "Something Old, Something New, Something Borrowed: Three Aspects of the Project" (1996) *Crim. L. R.* 684 and D. Ormerod & M. Gunn, *Consent - a Second Bash* (1996) *Crim.L.R.* 694.
- 51 Serious disabling injury was the term proposed by the Law Commission to replace the current and somewhat archaic term of grievous bodily harm.
- 52 L.C.C.P. 139, para.12.68.
- 53 M. Gunn, "Impact of the Law on Sport with Specific reference to the Way Sport is Played" (1998) 3(4) *Contemporary Legal Issues* 212.
- 54 M. Gunn and D. Ormerod, "Despite the Law: Prize-Fighting and professional Boxing", in S. Greenfield and G.Osborn, *Law and Sport in Contemporary Society* (Frank Cass, London, 2000).
- 55 D.C. Ormerod, "Case Comment - Contact sports: Application of Defence of Consent", (2005) *Crim.L.R.* 384.
- 56 R v Dica [2004] Q.B. 1257.
- 57 *Sexual Offences Act* 2003 s 74.
- 58 For a review of some of the presentations see S. Barker, "Is there a Case for more Criminal Justice Involvement in Sporting Incidents", (2005) 13(2) *Sport and the Law Journal* 13.
- 59 See web site of CPS London at www.cps.gov.uk/london/cps_london_news/latest_news/crime_in_sport_conference_3_june_-_operational_note/
- 60 Draft- Crown Prosecution Service and ACPO, "Guidance to Prosecutors and Police Officers - Crime in Sport" (2005)- see www.cps.gov.uk/news/pressreleases.
- 61 *Ibid.* p 1.
- 62 In the civil action between two professional footballers in Elliot v Saunders (1994) unreported, video evidence that was adduced in the Court was considered by the judge to be of limited use and two-dimensional; see S. Gardiner and A. Felix, "Elliot v Saunders: Drama in Court 14" (1994) 2(2) *Sport and the Law Journal* 1.
- 63 S. Gardiner and A.Felix, "Juridification of the Football Field: Strategies for Giving Law the Elbow", (1995) 5(2) *Marquette Sports Law Journal* 189.
- 64 See his acquittal for s.20 OAPA 1861 concerning allegations that he was involved in fight with a student in Leeds City Centre in 2000 , but note his settling of civil action by victim, "Bowyer payout for attack victim" <http://news.bbc.co.uk/1/hi/england/4482622.stm>, 29 November 2005.
- 65 M. Barnes, "Discipline: Crime and Punishment on the Sports Field" (2005) 3(9) *World Sports Law Reports* 3.
- 66 The Bowyer incident occurred in May 2005 with his court appearance delayed until 14 November 2005. It was reported that Bowyer had sought judicial review of the decision to prosecute. This was refused by Mr Justice Bean in September 2005, when he described the application as "without foundation". An Appeal failed at a hearing in the High Court in January 2005.
- 67 'Lee Bowyer pleads guilty to public order offence', July 5, 2006, www.cps.gov.uk/news/pressreleases/archive/2006/143_06.html
- 68 Ferguson v Normand [1995] fn 25 above.
- 69 See Lord Advocates Instructions to the Chief Constables in Scotland under s.12 Criminal procedure (Scotland) Act 1995.
- 70 M. James & S. Gardiner, "Touchlines and Guidelines: The Lord Advocates Response to Sportfield Violence", (1997) *Crim. L.R.* 41.
- 71 Miller, S "Criminal Law and Sport in Scotland" (1996) 4(2) *Sport and the Law Journal* 40.
- 72 R. Di Nicola & S. Mendeloff, "Controlling Violence in Professional Sport: Rules Reform and the Federal Professional Sports Violence Commission" (1983) 21 *Dusquesne Law Review* 845.
- 73 A criminal prosecution may of course be more valid for such an off-the-puck incident. In 2004, Todd Bertuzzi of the Vancouver Canucks punched Steve Moore of the Colorado Avalanche, knocking Moore unconscious, and then drove Moore head-first into the ice. Moore sustained two chipped vertebrae, a concussion, and facial lacerations. Bertuzzi was charged by police, and given a conditional discharge after pleading guilty to assault causing bodily harm. His 20 game suspension resulted in a loss of \$500,000 in pay and the Canucks were fined \$250,000, see http://news.bbc.co.uk/sport1/hi/other_sports/us_sport/3603396.stm
- 74 The effectiveness of such in-house procedures are always going to be contested as either being too lenient or too harsh by different constituencies but they are procedures that are demonstrably compliant with rules of proper procedure and natural justice and judicially reviewable, see Boyes, S "The Legal Regulation of Sports Governing Bodies" chapter 5 in Gardiner et al *Sports Law 3rd ed.* (Routledge Cavendish., London, 2005).
- 75 The Wales Rugby International was banned for seven weeks for elbowing an opponent, see "Henson's ban reduced after appeal", www.bbc.co.uk, 10 January 2006.
- 76 D. Kell, "Social Disutility and Consent (1994) O.J.L.S 121.
- 77 *Ibid.* p 123.
- 78 See for e.g., B. Wilson, K.Quarrie, P.Milburn, and D.Chalmers, "The Nature and Circumstances of Tackle Injuries in Rugby Union" (1998) 2(2) *Journal of Science and Medicine in Sport* 153.
- 79 Annual crime figures published in July 2005 indicated one million violent offences in 2004-5 - up 7% on the previous year. This can partly be explained by improved crime recording and more proactive policing. Under the National Crime Recording Standard established in 2002, low-level anti-social behaviour not previously included started being recorded as violent crime in 2005- see www.homeoffice.gov.uk/crime-victims/
- 80 After the prosecution in R v Blisset fn 25, the Professional Footballers Association promulgated a campaign highlighting the dangers of injury caused by lifting of arms and swinging of elbows when jumping for the ball. Also note more general campaign by Graham Allen MP suggesting there is a correlation between the inappropriate behaviour by footballers on the pitch including referee baiting and diving and increases in anti-social behaviour in society at large 15th April 2006, *The Observer*.
- 81 See M. James 'Tort, Compensation and Alternative Dispute Resolution for Participator Violence', Chapter 16 in Gardiner et al *Sports Law 3rd ed.* (Routledge Cavendish., London, 2005). Cases include Elliot v Saunders, (1994) unreported; Watson & Bradford City FC v Gray & Huddersfield Town FC unreported (1998), see *Sports Law Bulletin*, Vol. 1, No.6, 1998; Smoldon V Whitworth & Nolan (The Times 18 December 1996); Brady v Sunderland Football club (1998), unreported case, see *Sports Law Bulletin*, Vol.1, No.5, 1998, p.4; Watson v British Boxing Board of Control (1999) *The Law Times* 24 September, 1999, see *Sports Law Bulletin*, Vol.2, no.6, 1999.
- 82 S. Fafinski, "Consent and the Rules of the Game: The Interplay of Civil and Criminal Liability for Sporting Injuries," (2005) *The Journal of Criminal Law* 414.
- 83 Although this consequence of criminalisation is argued by some as a legitimate, it can hardly be seen as a positive one and will probably be as caused by application of disciplinary powers of the relevant sports governing body.

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Sports Law Foreign Update

The Foreign Update of the Sport and Law Journal monitors developments in the field of sports law abroad, in accordance with the following structure:

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Conferences, meetings, lectures, courses, etc.

[None]

Obituaries

Trevor Berbrick

(see below under Item 2, p.52)

Marc Hodler

The International Olympic Committee (IOC) is a body which has a somewhat inglorious past as far as the probity of its procedures is concerned. More particularly, the selection of forthcoming venues for the Games has been the subject-matter of downright corruption. As a prominent member of the IOC, Marc Holder, who died in October 2006 at the age of 87, was a shrewd insider in the world of sports politics, and as such became acquainted with some of these dark practices. However, Mr. Hodler went further than many would have dared by exposing them to public view.

Mr. Hodler made his dramatic revelations in December 1998, during a press conference at IOC headquarters in Japan. The then IOC Chairman, Juan Samaranch, had given him the task of investigating the ever-growing expenses involved in bidding for the Olympics. The local media operating in the US state of Utah had discovered the bribes which had been offered to IOC members by Salt Lake City's bid committee in return for their votes. On being presented with the relevant evidence, Mr. Hodler accused 5 to 7 per cent of IOC members of actually having solicited bribes, and claimed that at least one Committee member was acting as an agent for such inducements. In addition, he alleged that similar corrupt practices had attended the bids made by Atlanta, Sydney and Nagano (Japan). The latter's previous triumph over Salt Lake City had resulted in a donation of approximately \$15 million from a consortium of Japanese companies to an Olympic museum in Lausanne, Switzerland (*The Guardian of 23/10/2006, p. 30*).

Mr. Samaranch initially responded by distancing himself from these allegations, emphasising that Mr. Hodler was not speaking in an official capacity, and by ordering the latter not to give any further media interviews. Mr. Hodler protested strongly at what he described as an attempt to "muzzle" him, and hinted at his fear of being dismissed from the IOC. However, Samaranch was compelled to backtrack, and shortly afterwards

confirmed that the IOC had for some time been concerned by the work of certain agents. He promised to organise an internal investigation. More details of the scandal began to emerge, as it transpired that officials from the Salt Lake City bid committee had even paid for the services of prostitutes for the benefit of visiting IOC members. Mr. Samaranch himself admitted to having received an inscribed pistol and a rifle on two separate visits to the city. Although these gifts appeared to contravene IOC guidelines, Samaranch argued that this rule merely applied to Committee members taking part in the selection process, pointing out that, as IOC president, he did not have a vote (*The Daily Telegraph of 19/10/2006, p. 20*).

Within weeks, the scandal had caused the leaders of the Salt Lake City group organising the Winter Olympics to resign. The scandal also led to an unprecedented purge of IOC members, with six delegates being expelled and four others resigning. The IOC also underwent fundamental changes, and a 50-point reform programme was implemented, placing serious restrictions on its members' activities (*The Independent of 20/10/2006, p. 46*).

Lamar Hunt

Although his name will always be indelibly linked to the creation of the "Superbowl" in American football, the greatest impact produced by Lamar Hunt, who has died aged 74, was on the world of lawn tennis, more particularly by revolutionising the status of the great tournaments in the sport. Until 1968, top-level tennis was divided into two distinct categories: the officially amateur game (which in effect allowed secret payments to be made to its players), enacted in the top arenas of Wimbledon and Forest Hills, and the professional circuit, where players such as Ken Rosewall and Rod Laver displayed their skills in arenas which were in most cases vastly inferior to those available to the "amateur" players. However, all this changed when Mr. Hunt set up the World Championship Tennis circuit, to which he succeeded in attracting many "box office names". This prompted the realisation on the part of major tournaments such as Wimbledon that the time had come to break down the barriers between the two categories, and henceforth the "Grand Slam tournaments" (London, Paris, New York and Melbourne) became "open" events (*The Daily Telegraph of 20/12/2006, p. S12*).

However, Hunt also left his mark on other sports. He was instrumental in setting up the American Football League (AFL) as a rival to the existing National Football League (NFL), after the latter had refused him a licence

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to set up an expansion franchise in Dallas, Texas. The AFL proved to be a huge success, to the point where the NFL was persuaded to merge with it. Mr. Hunt also made unceasing efforts to popularise the other football code, soccer, being a founder member of the original North American Soccer League. He also bankrolled soccer teams in cities such as Dallas, Kansas and Columbus (*The Independent of 15/12/2006, p. 47*).

Bob Woolmer

(see below under Item 2, p.37).

Peter Norman

The Australian medal winner at the 1968 Olympics, who has died aged 64, became an unlikely icon of the US civil rights movement when he supported a symbolic protest made by two black American athletes during the award ceremony at the Mexico Games. One of the more dramatic episodes of those Olympics occurred when sprinters Tommie Smith and John Carlos stood on the victory dais with heads bowed and gloved fists raised during the playing of the US national anthem. Although he stood rigidly to attention, Mr. Norman was wearing a badge identical to those worn by the two North Americans, identifying their Olympic Project for Human Rights (*The Guardian of 5/10/2006, p. 36*).

In fact, it later emerged that the US sprinters had discussed their plan with Norman prior to the ceremony, which resulted in the latter sporting the badge in question. He explained his participation in characteristically simple terms, stating that "I believe that every man is born equal and should be treated that way". Messrs. Smith and Carlos were promptly expelled from the Games, ending their competitive careers. The Australian team management, however, resisted calls by the conservative media to administer similar treatment to Norman. After his athletic career, Norman was active in athletics administration (*ibid*).

Felix Lévitán

A journalist by training, Felix Lévitán, who has died at the age of 95, rose through the ranks to be appointed head of sports reporting at the Parisien Libéré newspaper, which, together with its sister newspaper L'équipe, operated the Tour de France. He soon transformed both the profile and the finances of this major cycling event, expanding the garish cavalcade of advertising vehicles and making stage towns and cities pay heavily for the privilege of hosting starts and finishes. He also understood the significance of selling television rights to the Tour, which is what currently ensures the profitability of the event. His attempts to expand the horizons of cycling events proved his

undoing. Following an abortive attempt at taking the Tour to the Americas, he was dismissed on the grounds that he could not account for the amount of cash spent on the event. However, a court later ruled that the Tour's parent company had no case against him (*The Guardian of 3/4/2007, p. 33*).

Lawyers in sport

[None]

Digest of other sports law journals

[None]

Sport and international relations

Football final unites Iraq's warring factions

Regardless of one's views about the invasion of Iraq by the "coalition of the willing" in 2003, it can be said with certainty that it has aggravated, rather than assuaged, the internecine conflict between the country's ethnic groups, i.e. the Shias, Sunnis, Kurds and Turkomen. It is therefore a relief to be able to report an event which, for a short while at least, caused these various groups to leave aside their differences, to wit the Asian Games football cup final, which was staged in mid-December 2006. In eight matches in just over two weeks, Iraq's national football team had defied the odds to reach the final against the hosts, Qatar. The progress recorded by the team was remarkable given the background of daily kidnappings, death squads and suicide bombs which have beset the country for the past four years (*The Guardian of 16/12/2006, p. 21*).

There had been extraordinary scenes during the second week of the Games, when Iraq succeeded in knocking out the tournament favourites, South Korea, in the semi-final. Jubilant crowds briefly reclaimed the streets of the capital, Baghdad, from the gunmen, waving the national flag and firing shots in the air. Even the normally divided Sunni and Shia media had united in order to rejoice at the team's success. When the final came, and national coach Yehya Mehal led his players from the tunnel onto the field, the streets of the capital emptied. Fans gathered in friend's houses, or in coffee shops – in fact, at any point where there was electricity and a television. At checkpoints and neighbourhood

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barricades across the city, police and local militias huddles in the dark around their portable radios. Although the national side ultimately lost the final 1-0, the Iraqi President praised his men for having “brought a smile to every Iraqi house from Kurdistan to Basra” (*ibid*).

Rugby teams make international history at Croke Park (Ireland)

In 1920, at the height of the Irish war of independence, British troops disrupted a top Gaelic Football fixture in Dublin in order to seek out the perpetrators of an assassination in which 12 alleged spies died. In the resulting confusion, 13 people, which included a prominent Gaelic footballer, perished. Since then, nothing even vaguely British had been visited upon the arena in question – Croke Park – since any sport other than Gaelic football was not allowed to disport itself on the hallowed turf. However, in mid-2005 the Gaelic Athletic Association (GAA) abandoned this proscription, in time for the Park to be used as a venue for the rugby internationals hosted by the Ireland team. This was done in order to enable Croke Park to offer temporary accommodation to the Irish Rugby union whilst the latter’s traditional venue, Lansdowne Road, is rebuilt. This in turn meant that, for the next few years, the “Croke” would host matches involving the three British members of the Six Nations Championship. The first such occasion arrived in early February 2007 with the top fixture between the Irish and English teams.

Naturally, in spite of the recent advances made in securing peace in the disputed territory of Northern Ireland, the impending fixture was surrounded by some trepidation as to the possibility of disruption by some of the more fanatically militant opponents of the rule change. This was all the more so since normal protocol required the playing of the British national anthem before kick-off (*The Daily Telegraph of 7/2/2007, p. S11*). Such fears had been allayed to a certain extent by memories of the 1973 fixture between these two teams when, at a time of much greater political tension between the two nations, John Pullin’s England side defied dark threats of terrorist assault to compete in the planned fixture (*ibid*).

In the event, there was not the slightest hint of any trouble, not even during the playing of God Save the Queen. Although too much is often made of the ability of sporting activity to bring nations closer together, this episode was a fitting tribute to those who had taken considerable risks in order to bring it to a successful conclusion.

Flower makes renewed call for the imposition of sanctions on Zimbabwe

The “Zimbabwean question”, as extensively documented in this organ and elsewhere, is an issue which has divided the cricketing world for nearly a decade and greatly imperilled the outcome of the 2003 World Cup in Southern Africa. Put briefly, it concerned the question whether the top cricketing nations, as well as the sport’s international authorities, should ostracise Zimbabwe because of the gross violations of human rights perpetrated, directly and indirectly, by the political regime of Robert Mugabe. Prominent among the nation’s top cricketers calling for such a boycott was the former Zimbabwe captain, Andy Flower, who left his native land four years ago after he had led a black-armband protest prior to his national team’s World Cup fixture against Namibia in order to highlight these concerns.

This protest action meant the end of Mr. Flower’s international career, which had spanned 63 Tests and 213 one-day internationals. He is currently exiled in England, where he plays county cricket for Essex. He once again called for action against his country of origin when news broke of the arrest of, and physical beating administered to Morgan Tsvangerai, the head of the opposition Movement for Democratic Change (MDC) – coincidentally at around the same time when Zimbabwe were competing in the 2007 World Cup in the Caribbean. He declared himself saddened but not surprised by the violence meted out to Mr. Tsvangirai, stating:

“Worse things have happened because people have been killed and tortured in Zimbabwe. But when you see how badly the leader of the official opposition has been beaten, it shows just how out of touch with the reality the government, the ZANU PF thugs, are. They will do anything to stay in power. Robert Mugabe has never changed since he took over in the early 1980s” (*The Daily Telegraph of 15/3/2007, p. S22*).

This time, however, Flower supported a comprehensive sporting boycott rather than the individual type of gesture which he had made four years earlier (*ibid*).

1. General

Rowers venture into troubles international waters (Ukraine)

In late March 2007, it was learned that Ukrainian border guards arrested the national rowing team of neighbouring Belarus for having illegally entered the country in a flotilla of eight boats. The relevant border guard service explained that a coast-guard vessel had been dispatched to intercept and detain 10 rowers who had ventured into Ukrainian waters. The athletes in question informed officials that they were unaware that they had crossed the border into a southern Ukrainian region. They were expected to face judicial prosecution later in the year (*The Independent of 21/3/2007, p. 30*).

Tennis star appointed UN goodwill ambassador (Russia)

In mid-February 2007, Russian tennis prodigy Maria Sharapova was named as goodwill ambassador for the United Nations (UN) development agency UNDP. In this capacity, she will focus on projects dealing with the aftermath of the 1986 Chernobyl nuclear disaster. Ms. Sharapova declared herself deeply honoured by this nomination, and immediately donated \$100,000 to various projects dealing with the consequences of the worst nuclear accident the world has ever known (*The Independent of 16/2/2007, p. 250*).

Recognition of Gibraltar by UEFA remains in balance

In the previous issue of this Journal ([2006] 2 Sport and the Law Journal, p. 66), mention was made of proposals to have the British dependency of Gibraltar accepted as a member of the governing body of European football, UEFA. Following several years of petitioning, the European body accepted Gibraltar as a provisional member in December 2006. A decision on the question whether this should be converted into full membership is still pending. It is expected that Spain will vigorously oppose this move, in the fear that its claims over this disputed territory will be undermined if Gibraltar is accepted as a footballing "nation" (*The Daily Telegraph of 27/12/2006, p. 16*).

Other issues

Vatican condemns "irresponsible" Dakar race

The Dakar rally is an annual motor race which takes place in the deserts of Northern Africa. It has not been without controversy or criticism, fuelled recently by the death of a South African competitor in the Moroccan desert. To these critical voices has recently been added that of the Vatican, in the shape of its official organ L'osservatore romano, which strongly condemned the event as a bloody, irresponsible, violent and cynical attempt to impose Western tastes on the developing world. More particularly, it claimed that

"the trail of blood which grows longer from year to year on the route of the race instead underscores the undeniable component of violence that lies behind every attempt to export Western models to human environments and ecosystems that have little to do with the West" (*The Guardian of 11/1/2007, p. S2*).

The newspaper went on to describe the wrecks of vehicles abandoned in the desert as "rusty monuments to irresponsibility" (*ibid*).

2. Criminal Law

Corruption in sport

Cricket corruption scandal – an update

Gibbs names three players to inquiry

It will be recalled from a previous issue ([2000] 3 Sport and the Law Journal, p. 78) that South African opening batsman Herschelle Gibbs was heavily implicated in the match-fixing scandals which startled the cricketing world towards the end of the last decade. Following his admission that he had been paid \$15,000 to score fewer than 20 runs in the fifth one-day international between his country and India in 2000, Mr. Gibbs was penalised by his country's cricketing authorities by means of a 6-month suspension. Fearing arrest in India for his part in this affair, he declined inclusion in two subsequent touring parties. He had been implicated by evidence originally obtained from intercepted telephone conversations between his former captain, the late Hansie Cronje, and a bookmaker.

However, on the occasion of the ICC Champions Trophy, which was held in India during the autumn of 2006, Mr. Gibbs did form part of the national touring party, having agreed to assist in the Indian authorities' continued investigation of the affair. During the interview, which lasted 2 ? hours, Gibbs is reported to have given the names of three other players allegedly involved in the scandal. He was informed by the New Delhi police that he may be interviewed again on this subject (*The Guardian of 13/10/2006, p. S9*). No further details are available at the time of writing.

The Samuels affair (West Indies)

What with the increasing concerns that the Anti-Corruption and Security Unit (ACSU), which was established in the wake of the match-fixing scandals referred to in the previous section, may not have achieved the results expected of it (of which more later in this section), the run-up to this year's World Cup was just about the worst time for the practice which prompted its creation to rear its unattractive head again. Unfortunately this is precisely what happened in mid-February 2007, when the West Indies Cricket Board undertook to investigate claims that all-rounder Marlon Samuels communicated confidential team information to a bookmaker on the eve of the first one-day international between the West Indies and India in Nagpur.

India won this fixture by 14 runs, and the four-match series by 3-1. During the series, Samuels had bowling figures of 0-53 and scored 40 runs. Investigations were commenced by the Nagpur police, who confirmed that

"confidential team information" had been passed on by Mr. Samuels to Mukesh Kochchar, a well-known international bookmaker (*The Daily Telegraph of 8/2/2007, p. S12*). Mr. Kochchar promptly denied that he was a bookmaker, and pledged to co-operate with any inquiry commenced by the International Cricket Council (ICC). Mr. Kochchar, an Indian national residing in Dubai, described himself as a "father figure" to the West Indies player, who faces a life ban if the allegations of corrupt practices are proved against him. He did, however, admit to gamble on the outcome of cricket fixtures (*The Daily Telegraph of 10/2/2007, p. S13*).

Details of the police investigation, which included tapped telephone conversations between Samuels and Kochchar, were communicated to the ACSU, who began an investigation (*ibid*). Indian police stopped short of describing Mr. Samuels's conduct as "match-fixing", in the absence of any evidence of a financial transaction between the two men, or of any cash changing hands. However, it is understood that the taped conversation included a section where Samuels informed Kochchar that he would be staying in Mumbai for a few days after the one-day series. This appears to have been the case, and police have been studying Samuels's movements and contacts in the course of that period. The West Indian player, for his part, denied any wrongdoing (*The Daily Telegraph of 9/2/2007, p. S8*).

It also emerged that the Samuels affair had not come as a complete surprise, since it emerged that the ACSU had been operating in the West Indies since the last World Cup ended, i.e. in 2003. More particularly it set itself the task of identifying gangs and syndicates who were capable of "tapping up" players from the teams involved in the 2007 world tournament. Its task of identifying corrupt players has been made progressively more difficult as bookmakers seek to place their bets, not on the actual result, but on details such as the position which a player will occupy in the batting or bowling order. This is the process known as "micro-fixing" (*The Sunday Telegraph of 11/2/2007, p. S13*). In the meantime, more details of the Samuels/Kochchar conversation began to emerge, the most telling of which being the detail that the player informed Kochchar that he was going to bowl first-change in the Nagpur one-day international to be played the next day. Mr. Samuels is a flat off-spinner and would normally not be expected to bowl at such an early stage in the innings – ahead of three pace bowlers. The previous occasion on which Samuels had bowled first-change had occurred 20 internationals previously, when the West Indies played Zimbabwe in Trinidad (*ibid*).

2. Criminal Law

This column will naturally follow further developments in this saga with keen interest.

Was gambling-related corruption at the root of the Woolmer murder?

The shocking murder of Pakistan coach Bob Woolmer, which removed much of the excitement and enjoyment inherent in the 2007 World Cup, is dealt with extensively below (p.38 et seq). As the investigation into this sordid affair began to gather momentum, speculation inevitably arose as to whether corrupt gambling practices constituted an element which had to be included in the equation. Within hours of the Jamaican police confirming that the unfortunate Woolmer had died through strangulation, former Pakistan fast bowler Sarfraz Nawaz claimed that he had been killed by gangsters because he was about to reveal details of alleged match-fixing. More particularly, Mr. Nawaz alleged that defeat of the Pakistan team by the West Indies in the opening fixture of the World Cup had been fixed, and that Woolmer had discovered details of the misdeed (*Daily Mail of 22/3/2007, p. 96*).

Such speculation intensified with the revelation that Mr. Woolmer was preparing the publication of two books when he died. At least one of these was alleged to contain details of match-fixing practices. It also emerged that the Pakistan coach had suffered the unwelcome attentions of the illegal bookmaking fraternity before. More particularly when the Hansie Cronje match-fixing scandal (referred to earlier) erupted, Woolmer, who was coaching the South African national side at the time, had expressed concerns about his own safety, fearing that disgruntled bookmakers might attempt to assault him. On the day when the tapes incriminating Cronje were first broadcast, Mr. Woolmer met a journalist in Johannesburg for a pre-arranged interview in order to discuss his first book, *Woolmer on Cricket*. It appears that Woolmer changed the venue of the interview from his room at the first-class Grace Hotel in Rosebank to the cramped lobby area, just yards from the busy main reception desk. When asked whether the party could move somewhere quieter, such as his room, Woolmer explained that he preferred the noisy lobby on the grounds that he felt "more comfortable in public places". Asked whether he was concerned about his personal safety, he replied that he was concerned at the possibility that someone might wish to vent his/her displeasure about the discovery of match-fixing practices on him (*The Mail on Sunday of 1/4/2007, p. 119*).

Since the investigation into the Woolmer murder was fully in progress at the time of writing, it would obviously be wrong to draw any hasty conclusions at this stage.

How successful is the ACSU?

As was mentioned earlier in this section (p.36), the world of cricket has become increasingly concerned that the ACSU, being anti-corruption body established by the ICC in the wake of the aforementioned corruption scandals, has not been truly effective in dealing with, and ultimately stamping out, this problem. It will be recalled from previous issues that the ACSU had enacted a series of measures aimed at ensuring that leading cricketers be as far removed from any contact with corrupt elements, mainly in the gambling world, as possible. However, the Samuels affair referred to above, as well as the alleged involvement of illegal gambling interests in the Woolmer murder, have compelled further reflection on the question whether the ACSU has succeeded in removing all but the most glaring of abuses.

One of those prominent in the game who have severe doubts on this score is former Pakistan captain Rashid Latif. Speaking within a few days of the Woolmer murder, the successful wicketkeeper-batsman, who retired from international cricket in 2003, claimed that his own attempts at exposing corruption within the game were "not taken seriously". He told a radio interviewer:

"I was willing to work with the ACU and had a detailed meeting with them in London in 2003. I put my life at stake and shared important facts with the ACU, but I was not taken seriously" (*The Daily Telegraph of 27/3/2007, p. S13*).

Mr. Latif, who currently plays for the charity side *lashings*, based in Kent, gave evidence to the Qayyum Commission in 2000 – this being one of the two judicial investigations conducted into allegations of corruption made against Pakistani players. This inquiry led to life bans being imposed on Salim Malik and Ata-ur-Rehman, and to a fine for former skipper Waqar Younis. Mr. Latif's own career suffered as a result of his testimony. (On the penalty imposed on Ata-ur-Rehman, see below, p.38). Now he feels that speaking out on this issue has not led to any improvement in the prevention of match-fixing (*ibid*).

However, Mr. Latif was far from being the only leading personality in the game to indicate that corruption remained rife in the game at the top level. Also speaking in the wake of the Woolmer murder, current England captain Michael Vaughan stated his belief that this cancer continued to ravage the game. He stated:

"My gut feeling is that match-fixing still goes on. I have never experienced it in my team or felt it has taken place in teams that I have played against. But my gut feeling is that there is still some sort of corruption within the game. There are passages of play that I have seen in games that were slightly unusual and it makes me wonder whether it is still about" (*The Independent of 24/3/2007, p. 88*).

2. Criminal Law

One of the more intractable problems with which the ACSU has to contend is that which arises from the illegal status of gambling in most Asian cricketing nations. The underground nature of this betting creates its own sinister underworld which is difficult to control by the police authorities in these countries, let alone by the ACSU, which has hardly any autonomous policing powers. The sheer amounts gambled in these countries is also a significant factor. Whereas £100 million was predicted to be wagered on the World Cup with British bookmakers, it was confidently estimated that, in the sub-continent, half that amount could be gambled on a single game. However, the illegal nature and size of the betting do not constitute the only difference between “Northern” and “Southern” betting cultures. The type of wager and the manner in which they are placed also differ considerably.

During the past decade, the number of markets offered by fixed-odds bookmakers has risen extensively. It is true that British bookmakers have followed a similar trend. Only a few years ago, a typical one-day fixture would provide only a few betting opportunities, the match result and the top-scorer markets being the most popular. The fact that Ladbrokes were offering 14 different markets – including which team would win the toss – on such a low-key fixture as the World Cup group match between Bangladesh and Bermuda indicates how times have changed. Most bookmakers also offer bets on the match outcome during play. However, most British betting firms stop short of “bad taste” wagers such as a bowler being hit for six or the wicketkeeper dropping a catch.

This is in marked contrast with some of the more esoteric wagers on offer in Asia, where punters regularly bet on the question whether a delivery will be a “dot ball” or whether a particular player will be omitted from the team. These are instances of what the former Pakistan Cricket Board chairman Shahryar Khan describes as “spot-fixing”. This is almost invariably an outcome which an individual can control, and whilst they may be insignificant in the context of a match, they can attract enormous amounts of money from betting syndicates (*The Guardian of 26/3/2007, p. S10*).

All this prompts the question whether the ACSU is properly equipped and resourced for the admittedly enormous assignment expected of it. This question is important, not only for the sake of the sport, but also in the wider context of the fight against crime, and even terrorism – as can be seen from the next section.

Cricket corruption linked to India’s “most wanted man”

The fight against cricket corruption has undoubtedly much wider implications than the sport itself. Attention has recently been focused on the role played in the murky world of match-fixing by the notorious Indian gangster, Dawood Ibrahim, given that match manipulation is the least of the allegations made against him. He appears to be wanted for every misdemeanour, from a terrorist bombing in Mumbai to drug-running, as well as for his alleged links with Al-Qa’ida. He is said to reside in Pakistan, under the reported patronage of that country’s intelligence agencies, having previously been based in Dubai. As well as being the source of considerable tension between India and Pakistan, he is the former country’s most wanted man, blamed for involvement in terrorist atrocities and attempts to destabilise the country (*The Independent of 26/3/2007, p. 55*).

At the time of writing, Ibrahim was reported to be hiding somewhere in Pakistan, and operating through an informal network called D-Company, through which he maintains his close business links with the Mumbai underworld. Interestingly, his daughter is married to the son of Javed Miandad, the former Pakistan captain and coach. For the 2007 World Cup, Ibrahim allegedly sent several Pakistani bookmakers to the West Indies, according to Pakistan press reports. These were said to include Khwaja Arif Pappu, a former tax inspector turned underworld boss. Indeed, following the Woolmer murder, various fingers were pointed in his direction when it came to establishing its cause – if not its actual commission. Although some of these sources are less than honourable, it seems that allegations of Mr. Ibrahim’s involvement in cricket manipulation and other crimes have become so common in the subcontinent that few would care to challenge them. His name was also mentioned during the Qayyum enquiry, referred to earlier. According to the resulting report, Wasim Akram, the former Pakistan fast bowler, admitted taking a call from Ibrahim during a 1999 tournament in Sharjah, during which he (Akram) was informed that the match had been fixed (*ibid*).

Ban on Ata-ur-Rehman lifted

In early November 2006, it was learned that the International Cricket Council (ICC) had revoked the life ban imposed on the former Pakistan test player for his involvement in match-fixing. The fast bowler, now in the twilight of his career, and who played 13 Tests and 30 one-day internationals, had been banned in 1999 by the Pakistan Cricket Board (*The Independent on Sunday of 5/11/2006, p. 74*).

2. Criminal Law

Italian football corruption scandal – an update

Leading clubs successful in appeals

The reader will recall from previous issues the corruption scandals which have rocked Italian football to its foundations over the past two years. As a result, various top teams were relegated to lower divisions and/or had points deficits imposed on them. One such team was top Turin side Juventus, who suffered the double indignity of relegation to the Serie B and having to start the season with a 17-point deficit. However, the club's chances of returning to their "natural berth" in the top division (Serie A) received a boost in late January 2007 when they successfully appealed for a reduction in the points penalty. The arbitration panel of the Italian Olympic Committee, which is Italy's highest sporting authority, restored eight points to la Juve. Combined with their undefeated record up to that point in the season, this left the Turin side merely eight points behind the league leaders, Genoa.

Other clubs, originally penalised for their part in the scandal, also appealed with success to the Committee. Top Roman side Lazio, who were originally docked 11 points, also had eight points restored to them, whereas Florence's top side Fiorentina, who started the season with a 19 point deficit, received a four-point boost. However, there was no change in the penalty incurred by AC Milan, which remained at 8 points (*The Guardian of 28/10/2006, p. S3*).

Top clubs face fresh probes into their finances

It seems that the saga of financial irregularities in Italian football is set to continue, judging by recent official probes into the top Milan clubs' accounts. In mid-January 2007, it was learned from a reliable judicial source that the President of Internazionale, Massimo Moratti, and the AC Milan vice-president, Adriano Galliani, were being investigated by an Italian judge who is probing false accounting in the Serie A. As a result, the public prosecutor (Ministero pubblico) for the city, Carlo Nocerino, intends to summon both men for questioning on possible balance-sheet irregularities. More particularly, the investigators are examining whether the clubs manipulated their balance sheets by inflating the prices of players whom they bought and sold (*The Guardian of 18/1/2007, p. S2*).

This news came hard on the heels of the tidings that examining judges in Rome have called for the president of AS Roma Franco Sensi, as well as the former president of their arch-rivals Lazio, i.e. Sergio Cragnotti, to stand trial for false accounting. Both men deny the accusations (*ibid*). No further details are available at the time of writing.

Heavy with corruption? Sumo wrestling rocked by match-fixing accusations

The Far East is a place in which the most sophisticated cultures flourish. However, no such qualification can be given to one of the region's most popular sports, i.e. sumo-wrestling, in which typical bouts last no longer than 10 seconds and start with a bone-crunching clash of flab and foreheads. Recently, however, a new element seems to have been added to this sport of physical titans – to wit, corruption. In fact, at the very moment when the sport's greatest attraction looked set to take his place among the all-time greats, a scandal has erupted which threatens to undermine his place in history.

Asashoryu, a Mongolian fighter whose true name is Dolgorsuren Dagvadorj, carried off his 20th Emperor's Cup in January 2007, putting him on course to become one of the most prominent wrestlers in the history of Japan's ancient sport. However, he has now been accused of match-fixing, a charge which he strongly denies. Recent reports in the weekly magazine *Shukan Gendai* allege that the grand master paid his opponents to allow him to win in the Kyushu tournament, which took place the previous November, and during which he won all 15 bouts to capture his 19th title (*The Independent of 9/2/2007, p. 71*). These allegations were based on the claims made by an unnamed fighter, who alleged that the champion paid opponents \$6,500 to lose fights. These accusations seemed to confirm Asashoryu's "bad boy" image in the eyes of many traditionalist followers of the sport. In his most famous transgression of the sport's ethics, he pulled an opponent to the ground by tugging at his mage (top knot), a ploy which outraged conservative observers. A multitude of other "sins", including dressing-room fights with other wrestlers and nightclub crawls, had added to this negative profile (*The Independent of 16/3/2007, p. 45*).

Having conducted its own internal investigation, the conclusions of which were that no irregularities had occurred, the Japan Sumo Association announced its intentions to bring an action in defamation against the publishers of the said magazine. They also intend to demand an apology for the allegations made in the article. However, *Shukan Gendai* stands by its story, and issued a statement claiming that the report was based on data emanating from reliable sources (*The Independent of 9/2/2007, loc. cit.*). In addition, there have been some suggestions that the Association itself was involved. Insiders maintain that the publishers are likely to lose the action unless more testimonies are forthcoming from fighters other than the one who gave rise to the original accusation (*ibid*).

2. Criminal Law

Athletics authorities act to avert betting scandal

The potentially corrupting influence of large-scale sports betting has been well documented in these columns and elsewhere, having found expression in the recent scandals involving cricket and German football (Journals passim). It is therefore only natural that alarm bells should have started ringing in the world of athletics when it was learned that an athletics betting website had been launched which was owned by one of the sport's leading agents. The site in question, AthleticBet.com, was established by Austrian sports agent Robert Wagner and has a client list which includes leading sprinter Jason Gardener, the former world indoor 60m champion, and the world indoor 800m record holder, Slovakian runner Jolanda Ceplak. Mr. Wagner's decision to venture into the bookmaking arena raised questions about a possible conflict of interest because he could, theoretically, have an influence on the outcome of races (*The Sunday Telegraph of 11/2/2007, p. S11*).

Thus at a certain point Mr. Wagner's website was running a bet on the women's 800m event at the Sparkassen indoor meeting at Stuttgart. Ms. Ceplak, the overwhelming race favourite, was well beaten after attempting to keep up with the suicidal pace-making of US runner Sasha Spencer – who happened to be another Wagner client, as well as being the website's marketing and public relations manager. Whilst there was no suggestion of anything untoward, the very presence at that race of two athletes managed by Wagner raised the possibility of a conflict of interests. The reaction to this news by the International Olympic Committee, which only the previous week had tightened its own gambling rules by prohibiting athletes, coaches and officials from wagering on Olympic events during the 2008 Beijing Games, was distinctly cool. Yet the International Association of Athletics Federations (IAAF) initially seemed disinclined to raise any objections, and had not even entered into a memorandum of understanding with the venture in order to monitor any betting irregularities (*ibid*).

However, the dangers inherent in this kind of situation gradually sank in on the international athletics authorities, and towards the end of March 2007 it adopted a harder line on the issue. Meeting in Mombasa, Kenya, at the conclusion of the World Cross-Country Championships, the IAAF ruling council issued a resolution which prohibited:

“officials, athletes, their representatives, managers, coaches, meeting organisers and trainers from taking part, either directly or indirectly, in betting, gambling and similar

events or transactions connected with athlete competitions under the rules of the IAAF or its members (...) or having active stakes in companies, concerns, partnerships, joint ventures or other organisations that promote, broker, arrange or conduct such events or transactions” (*The Daily Telegraph of 27/3/2007, p. S15*).

Mr. Wagner commented that he had been expecting such an outcome, and pledged to “sit down with the IAAF” in order to find a solution. He also appeared to recognise that having IAAF members among his company's clients constituted a “problem”. However, he stressed that they had no right to operate a betting website (*ibid*).

FIFA “fine top official's son” for World Cup ticket irregularities

The name Jack Warner is not an unfamiliar one to regular readers of this column. Although never officially penalised by the body of which he is a Vice-President – to wit football's world governing body FIFA – his name has frequently been associated with unorthodox goings-on in connection with the marketing of tickets for major football events. Judging by recent reports, members of his family also appear to have become enmeshed in such practices. In mid-March 2007, the Daily Mail reported (*13/3/2007, p. 91*) that FIFA had secretly fined Mr. Warner's son, Daryan, almost \$1 million for the illegal sale of tickets for the 2006 World Cup, and banned his family's travel company from dealing in tickets. These deals had apparently been set up by Jack Warner himself. His Trinidad-based company Simpaul Travel acquired over 5,400 tickets from the world governing body, and sold them for a considerable profit to tour operators in England, Japan and Mexico. He diverted a further 1,700 tickets, which had been allocated to the Trinidad World Cup team, to Simpaul, which caused him to be found guilty of breaching the FIFA ethics code in early 2006. He escaped being penalised by disposing of his shares in Simpaul. However, his son continued as managing director of the company, and during the World Cup passed hundreds more tickets to illegal sellers.

Accountants Ernst & Young have alleged that the Warners stood to make nearly \$1 million profit. In secret, the FIFA Executive Committee imposed a fine, equal to the expected profit, to be donated to the SOS Children's Villages charity. However, it appears that, by late December 2006, only quarter of this amount had been paid despite numerous reminders from FIFA. There is some disquiet at the fact that news of this fine was kept secret by FIFA. In addition, some FIFA insiders believe that no action will be taken if the fine is not paid in full, Warner Sr. controls 35 of the 207 votes which FIFA President Sepp Blatter requires for his re-election in May 2007 (*ibid*).

2. Criminal Law

Leboeuf and Tuzzio go on trial for taking illegal transfer payments

In late March 2007, it was learned that former Chelsea football star Frank Leboeuf, as well as Eduardo Tuzzio, a former Marseille team-mate, had been put on trial accused of taking illegal transfer payments. If found guilty, they face up to five years' imprisonment and fines of £255,000.

Mr. Leboeuf, who was a World Cup winner with France in 1998, and the Argentinian defender Tuzzio, have been accused over the purchase of the latter for €6.4 million, one month after he had been valued at €2.2 million by his club, San Lorenzo of Argentina. The prosecution have alleged that Tuzzio joined Marseille via the Swiss club Servette for the purpose of falsely inflating his value, and that several middlemen obtained sizeable commissions as a result. Mr. Leboeuf is accused of receiving €457,000 via a Luxembourg bank account, and Tuzzio of having received €6 million which was transferred to a New York account (*The Guardian of 22/3/2007, p. S8*).

The outcome of the trial was not yet known at the time of writing.

Aussie rules to inspire sporting bodies in anti-corruption move

In mid-March 2007, it was learned that major sporting authorities were turning to Australian law as a means of regulating the use of data and events by sporting bookmakers. Competition organisers have claimed that betting is undermining the integrity of the sporting industry with its potential for match-fixing, and that introducing safeguards against this is an expensive matter. The bodies concerned are mobilising under the aegis of the Sports Rights Owners Coalition (SROC), a grouping which includes football's world governing body FIFA, Formula One racing, and the International Cricket Council. It intends to take its representations to the European Commission for inclusion in the latter's White Paper on sport (*The Guardian of 13/3/2007, p. S2*).

For this purpose, the consortium has retained the services of Sam Walch, who pioneered Cricket Australia's agreement with the Government of Victoria. This ensures that all bookmakers' markets are first submitted to the competition organiser, and that a fee may be charged. The coalition has also secured the continuation as Chairman of Nic Coward, in spite of the latter having been appointed Chief Executive to the British Horseracing Board (BHB). Both Coward and Walch, who has recently moved to the Australian Football league, have ensured the inclusion of the International Federation of Horseracing Authorities and Australian Rules Football under the SROC umbrella (*ibid*).

Chinese grand prix goes ahead in spite of corruption inquiry

In mid-January 2007, it was learned that Yu Zhifei, general Manager of the Shanghai International Circuit (SIC), had come under investigation by the authorities in connection with a wide-ranging social security scandal. This gave rise to the question whether the event itself would go ahead as planned. However, the circuit chairman, Mao Xiaohan, confirmed that this would indeed be the case, commenting:

"The SIC, as a corporation, is not involved in the investigation at all. Some people acted completely on their own. Major races like the MotoGP and Formula One Chinese Grand Prix will go ahead as planned" (*The Daily Telegraph of 18/1/2007, p. S17*).

The outcome of the corruption charges against Mr. Zhifei were not known at the time of going to press.

Israeli referee jailed for match-fixing

In early October 2006, it was learned that Israeli football referee Johanan Cibutaru had been sentenced to a three-year term of imprisonment by a Tel Aviv court for match-fixing. This concerned four matches involving Second and Third Division teams which took place between 1997 and 2000. Mr. Cibutaru is the third Israeli football official to have been jailed following police investigations (*The Independent of 2/10/2006, p. 54*).

Beijing crackdown on Olympic corruption

This issue is dealt with under item 5 (see below, p.000).

Hooliganism and related issues

Tennis hooliganism raises its head in Melbourne (Australia)

It seems a sad fact of life that an increasing number of sports are falling prey to the evils of spectator disruption. The latest victim seems to have been tennis, which hitherto has largely been spared such excesses. This was very much in evidence at the Australian Open, a major Grand Slam tournament played in Melbourne. This city houses a heady mix of several ethnic groups, most of them from Eastern Europe, and age-old tensions between their countries of origin tend to spill over into the sporting arena. Trouble erupted on the first day of the tournament, when flag-waving groups of supporters representing these factions constituted a significant proportion of the record 55,000 attendance (*The Independent of 16/1/2007, p. 47*).

2. Criminal Law

At a certain point, 40 police officers had to intervene in the middle of the day after violence had erupted in the Garden Square area of Melbourne Park. The “supporters” kicked and punched their rivals, flagpoles were used as weapons, and bottles were thrown. The violence only abated when the police officers, many of them with batons drawn, intervened and ejected the troublemakers from the ground. Bystanders maintained that the trouble erupted when Croatian and Serbian spectators wearing their national football shirts traded insults whilst Croatia player Mario Ancic was completing his victory over Japan’s Go Soeda. It was also reported that the Serbians chanted “Die, Croatians, die” (*The Daily Telegraph of 16/1/2007, p. S5*).

It appears that Melbourne sport is no stranger to violence between ethnic communities. The city’s two football clubs, South Melbourne and Melbourne Knights, were owned and followed by Greeks and Croats respectively. The resulting tensions were solved by the simple expedient of creating a single club, Melbourne Victory, to represent the city in Australia’s A-league. Neither faction embraced the new club, and football-related violence was consigned to the past (*Daily Mail of 16/1/2007, p. 83*). It remains to be seen what can be done to avoid repetitions of such excesses at the most important tennis tournament to be held in the city.

Australian authorities take measures to quell cricket hooliganism

At around the same time as the disruption reported in the previous section, the city of Melbourne was scheduled to host another major sporting event, i.e. one of the Test Matches in the eagerly-awaited Ashes series. Unlike tennis, however, cricket has already witnessed a good deal of unruly crowd behaviour (Journals passim) and, accordingly, the authorities were compelled to take certain precautions. These apprehensions were well-founded, given the notoriety which the hooligan element among the England supporters, the “Barmy Army”, had acquired for themselves. With the series over a month away, Cricket Australia, the game’s domestic authority, unveiled its “Dob a Yob” scheme, under which spectators would be able to text details of misbehaving spectators to stadium security staff. Prior to this, Morris lemma, the state Premier of New South Wales, had already requested from the British Prime Minister details of known hooligans who might travel to Australia for the series, and he too endorsed the proposal to establish such a “text hotline” (*The Guardian of 19/10/2006, p. S2*).

Gradually, further details of the scheme emerged. Spectators would be able to send a text message to a number displayed on their tickets, or on the stadium

scoreboard, to security staff. Officials would then use closed-circuit television in order to investigate whether the complaint was justified. Police in Melbourne, where nearly 100,000 were expected for the first four days of the Boxing Day Test, commented that it was a potentially useful crowd-management measure (*ibid*). This and other measures taken by the Australian authorities undoubtedly produced the desired result – a certain barometer of their effectiveness being the beatings of certain self-appointed supporters’ cheerleaders who claimed that everything was being done to “make sure there is no fun in the game” just because a persistent English trumpeter had been ejected from the Gabba ground in Brisbane. However, Cricket Australia responded by stating that they merely wished to target “a small minority of idiots who had been ruining people’s day out for some time” (*The Guardian of 1/12/2006, p. S6*).

Policeman death shuts down Italian football

The sorry tale of crowd misbehaviour at top Italian football fixtures, well documented here and elsewhere, took on an infinitely more sinister and tragic turn in early February, when a police officer was killed as serious trouble erupted in the Sicilian derby between Catania and Palermo. The police officer in question, Filippo Raciti, was reported to have been struck in the face by a small explosive whilst attempting to deal with fighting outside the stadium. He was taken to hospital but died from his injuries. The Italian Football Federation promptly held an emergency meeting, as a result of which commissioner Luca Pancalli announced an immediate suspension of football throughout the country (*The Daily Telegraph of 3/2/2007, p. S1*). Around 100 people were injured, some seriously, as a result of the fracas during the build-up to the fixture and then throughout the evening. After the final whistle, layers and staff were held inside the stadium by police whilst the area was secured (*The Guardian of 3/2/2007, p. S6*).

It later emerged that, following a series of violent clashes at Serie A matches, some 1,500 police officers had been drafted in for this top game. The rivalry between these two historically underachieving teams, which had reached fever pitch as both teams were vying for a place in the European Champions League, took centre stage as Palermo fans fired tear gas at the home supporters. Choking players ran from the field as the game was suspended, whilst outside the ground Catania “supporters” showered police with rocks, flares and the small explosive which found its way towards Mr. Raciti – who, according to investigators, may already have been stunned by a rock when the charge went off. The fixture had been moved forward from the traditional Sunday to make way for the annual celebration of St Agatha,

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Catania's patron saint. In fact, the fatal explosive may have been sold locally to celebrate the saint's day (*The Observer of 4/2/2007, p. 31*).

The ban affected football at all levels, cancelling more than 10,000 matches. Even the Sporting Union of Christian Workers cancelled its amateur league fixtures, and instead of the usual Sunday live televised matches, fans were shown highlights of the previous week's second division games. In the meantime, the Italian Olympic Committee and the Football Federation met in Rome in order to discuss possible ways of restoring confidence in the sport. In addition, state prosecutors announced that they were to investigate links between the mafia and hooligan groups responsible for the trouble. Weekend raids across Sicily yielded home-made bombs, illegal fireworks and ecstasy pills (*The Daily Telegraph of 5/2/2007, p. 19*). The decision to abandon all football was applauded by the new President of European governing body UEFA, Michel Platini (*The Sunday Telegraph of 4/2/2007, p. S10*).

Amid suspicions that the unfortunate Mr. Raciti had been the victim of a premeditated killing, the Italian Government also became involved. Within days, Interior Minister Giuliano Amato announced a raft of new security measures. These included spectators being excluded indefinitely from grounds which failed to comply with existing safety regulations (*The Independent of 6/2/2007, p. 23*). Barely half a dozen top division stadiums are thought to meet the requirements of a law adopted two years ago under the previous administration of Silvio Berlusconi (*The Guardian of 5/2/2007, p. 17*). The block sale of tickets to away fans was also to be discontinued, and the police given the power to make arrests without a warrant for football offences up to 48 hours after the crime had been committed. In addition, the existing system of stadium bans for those found guilty of violence at fixtures would be strengthened to include those aged under 18 (*The Independent of 6/2/2007, loc. cit.*). Finally, clubs would be prohibited from forming financial relationships with militant supporters' groups (*The Guardian of 6/2/2007, p. 15*).

As a result of the new set of regulations, the general football ban was lifted the following weekend, although many of the matches played took place in empty stadiums because of the safety conditions contained in the new measures (*The Daily Telegraph of 8/2/2007, p. S6*). The latter drew fierce criticism from major figures in the world of Italian football, who accused the Government of knee-jerk reaction to the incident. Aurelio De Laurentiis, President of top side Napoli, even went so far as to state that a "fascist climate" had

descended on the country since the unfortunate policeman's death, and hinted darkly at the possibility of a strike by those affected. He was echoed in these sentiments by Alessandro Cosimi, the Mayor of Livorno (whose team are in the top Serie A division), who also warned that Italian football risked more damage to its image when European games resumed. It has to be admitted that the financial consequences of these measures were potentially calamitous, with clubs not only facing loss of revenue from ticket sales, but also having to reimburse season ticket holders (*The Guardian of 8/2/2007, p. S4*).

As expected, many of the top clubs failed the security conditions laid down by the Government. Among these were the two Milan clubs, Internazionale and AC. The city's police did, however, allow season ticket holders to attend the games whilst the remedial work was being carried out, albeit subject to stringent security checks (*The Independent of 12/2/2007, p. 55*). In addition, once the stadiums reopened, the violence resumed, although confined to the lower divisions. Thus a cache of petrol bombs was found at Castellammare di Stabia, near Naples, which were primed for use at the Serie C match between JuveStabia and Avellino. That same weekend, following an under-20 fixture in Bari, Avellino midfielder Diego Matarazzo had to be treated in hospital after having been beaten up on the pitch by five hooded men (*The Independent of 26/2/2007, p. 63*).

In the meantime, investigators in Catania were examining a film of the fatal assault which sparked off the ban, in an attempt to identify suspects. The film was reported to show the fighting outside which commenced after the match in question had started, including youths with partially covered faces approaching the victim of the killing and one of them hitting him in the abdomen. The film also reportedly showed him being hit with a sink. Mr. Raciti continued to work, but around 45 minutes later climbed out of his car when someone threw a firecracker into it, and collapsed as a small, crude bomb exploded next to him. Police initially believed that the policeman was killed by the bomb, but officials later said that he died from severe injuries to his liver, probably after being hit with a blunt object (*The Independent of 8/2/2007, p. 56*).

The next day, the investigation team appeared to have made its first major breakthrough with the arrest of the person who was suspected of having hurled a ceramic basin at Mr. Raciti. Police claimed that examination of the news footage surrounding the incident led to his identification, his head half hooded and armed with a lavatory basin which had been torn from the wall of a

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toilet inside the stadium. He turned out to be a 17-year-old rugby-mad fascist, who had no previous convictions. His profile seemed to reinforce the anxiety which has been voiced for some time by police and politicians in Italy, to wit that Italy's worst hooligans, i.e. the notorious Ultras or teppisti, are no longer to be found exclusively among the deprived and dysfunctional families on grim housing estates, but are increasingly drawn from the middle class. The suspect was said to be a fanatical rugby player, whose father works for a local electronics firm. He is a season ticket holder for Catania's home games, and the only black spot on his record is his membership of Forza Nuova, a far-right splinter group which claims the credit for having the city's planned Gay Pride parade cancelled in 2006. The group's website claimed that the accused and the organisation were the victims of a conspiracy organised by the intelligence services which decided to blame them for the violence at the match in question (*The Independent of 9/2/2007, p. 35*).

Although football activity was gradually been resumed as per normal, the Italian authorities were beginning to consider the long-term issues and ways of solving them. Within a few weeks of the events described above, Interior Minister Giuliano Amato flew to Britain in order to seek advice on combating hooliganism. To this end, he was to meet Home Secretary John Reid in order to establish what lessons his country could learn from the stringent measures applied in the UK and which have seriously reduced the disorder which blighted English football in the 1970s and 1980s. Mr. Reid pointed to the firm, co-ordinated action, which involved the clubs, the police, the game's authorities, the courts and the Government, taken in conjunction with initiatives from supporters, which had led to the changes. The Home Secretary also highlighted the system of banning orders which were introduced after English "fans" caused trouble in Belgium during the European Championships of 2000. These orders prevent around 3,500 convicted or suspended troublemakers from attending matches either at home or abroad. As a result of these measures, arrests have fallen by 32 per cent in each of the past two seasons, and an average of just one person per game is now detained by the police for football-related offences. Mr. Amato was also offered access to Britain's leading experts on combating hooliganism (*The Observer of 18/2/2007, p. S18*).

However, there is some doubt as to whether the same measures will prove equally effective in Italy. One of the main reasons is the different nature of hooliganism in that country. Although fewer in number than their English counterparts of the 1970s and 1980s, they

appear to be much more rigorously organised and more tightly focused. It is estimated that there are around 60,000 ultras, organised in tight, military-style groups whose enemies are not only the opposing fans, but also the police, whom they often describe as "murderers" (*The Daily Telegraph of 5/2/2007, p. S10*). In fact, this is a factor which seems to be common to many Italian militant and anarchistic groupings outside the world of football, who aim much of their violent action at the state and its representatives (*The Independent of 6/2/2007, loc. cit.*). Even more disquietingly, the "bosses" of these groups, the capultra, often have a hand, albeit secretly, in the much of the politics of the football club, and make unholy deals with police captains who rely on them to keep their members in check. Many of them fight with the police fully expecting to be beaten up, but not to be arrested (*The Daily Telegraph of 5/2/2007, loc. cit.*). They also raise funds by charging membership subscriptions, with larger groups producing branded merchandise and taking "commission" on ticket sales (*The Observer of 4/2/2007, p. S22*).

As an illustration of deep this cancer has spread into the fabric of Italian football, the trials experienced by Claudio Lotito, a businessman who is now the majority stakeholder in a top Italian side, are extremely instructive. Admittedly the club in question is Lazio Roma, a side for which few people outside the shade of the Colosseum feel much admiration in view of the fascistic attitudes of the bulk of their support (and even some of their players – naming no names, except that his initials are Paolo di Canio [see below, p.79, and Journals passim]). When Mr. Lotito refused to co-operate with the club's moronic fringe support (aka the Irreducibili, the Untouchables, Italy's best organised group of ultras), nine home-made bombs were hurled over the garden wall of his plush offices. The ultras in question had attempted to "negotiate" with him the lucrative rights to sell club merchandise which they had won from his predecessor, Sergio Cragnotti – not to mention the alleged 800 free tickets per match which they resold and the £17,000 which they banked from the club for staging "colourful" displays during home games (*The Observer of 11/2/2007, p. 40*).

Mr. Lotito's refusal to dispense tickets and other concessions convinced the ultras that they should attempt to take over the club two years ago – by force if necessary. Even as the club rose in the rankings to mount a challenge for a place in the Champions League, ultra-controlled radio stations continued to denounce Lotito, coach delio Rossi and any fans or players who supported them. The turnaround came in October 2006 with the arrest of four leading ultras

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linked to the take-over bid. It is a hopeful sign that pro-Lotito fans are currently said to be shouting down his vociferous opponents at the club stadium (*ibid*).

Investigation opened into killing of football fan by policeman (France)

In a surreal and ghastly reversal of the events described in the previous section, the French authorities have also been compelled to deal with a hooligan-related killing – only on this occasion, the controversy involved a football fan killed by a police officer. The fan in question was shot dead after a mob of young white males, screaming anti-Semitic and racist insults, assaulted an Israeli supporter outside the Parc des Princes football ground following a UEFA Cup game between Paris St. Germain and Hapoel Tel Aviv. The plain-clothes officer in question was placed under arrest (*The Independent of 25/11/2006, p. 27*).

Police and eye-witnesses claim that a mob of some 300 white men chased a Tel Aviv supporter, shouting “dirty Jew” and “fat Jew”, making Nazi salutes and screaming “Le Pen Président”. The transport police officer in question, who is black, and was on duty to protect buses, intervened in order to rescue the Tel Aviv fan. The mob then turned on him, shouting “dirty black”, “France for the French” and making monkey noises. After having been knocked to the ground and beaten, the policeman drew his gun and fired, killing one man and seriously injuring another (*ibid*).

Paris prosecutor Jean-Claude Marin opened the resulting judicial investigation, although he commented that the police officer concerned, Antoine Granomort, probably acted in self-defence. The latter was later called upon to testify as a “legally represented witness” – which in French law has a status between a witness and a suspect (*The Observer of 26/11/2006, p. 35*). Paris Saint-Germain (PSG) have a record of racial violence among fans, including their involvement in brawls between groups of supporters having white, North African, black or anti-racist allegiances. The crowd who chased the Tel Aviv fan were said to be part of a white supremacist, skinhead group called the “Boulogne Boys” (*The Independent of 25/11/2006, loc. cit.*). In fact, police later confirmed that the two men shot were members of PSG’s far-right fan base. PSG fans had been on the rampage that night, in order to vent their disappointment at their club’s heavy 2-4 home defeat. Earlier that month, PSG fans had been arrested following a match in Le Mans after a Senegal-born local man had been beaten (*The Observer of 26/11/2006, loc. cit.*).

A few days later, Mr. Granomort was released from custody, all charges against him having been dropped by examining judge Henri Pons (*www.kasi.fr of 29/11/2007*).

Interestingly, Mr. Granomort did subsequently find himself on the wrong side of a criminal prosecution when, in early April 2007, he was issued with a five-month suspended jail sentence by the Paris District Criminal Court (Tribunal Correctionnel) for fraud, resulting from events which predated the PSG incident. Although the Public Prosecutor, Béatrice Vautherin, had also demanded that he be dismissed from the police force, the Court failed to meet this demand (*Le Figaro of 3/4/2007, p. 12*).

British fans involved in crowd trouble in various European competitions

English and Croatian football authorities penalised for disturbances at Euro 2008 qualifier

When Croatia and England were scheduled to meet in their qualifying group for the Euro 2008 tournament, all eyes were on the former’s fans during their home tie, since they had previously been known to perpetrate racist chants and other noises during other international fixtures. However, it was the visiting supporters who were in the spotlight at the fixture, played in late October 2006. Thirty-one England fans were arrested before the game, and 25 at the stadium. The disturbances at the stadium culminated in a baton charge by the police. However, there were also arrests of Croatian fans involved in running battles between Dinamo Zagreb and Hajduk Split supporters. Croatian police said that England fans had “assaulted security staff” and that three of them would face charges of violent behaviour (*The Guardian of 13/10/2006, p. S4*).

Predictably, there were protests from the English Football Supporters’ Federation (FSF), who accused the local forces of law and order of “primitive policing”. Spokesman Kevin Miles commented:

“The police baton charge was indiscriminate and brutal. They were battling people to the ground and dozens of fans required attention. One had a broken collar bone and four or five had injuries. I spent most of the first half helping. There was no violence or disorder from the fans – it was a crush and batoning seemed to be the first form of crowd control” (*ibid*)

However, following the UEFA delegate’s report on these proceedings, the European governing body charged both the English and the Croatian football associations – the former for failing to control their fans,

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the latter for failing to operate the ground effectively (following the malfunctioning of the turnstiles through which away supporters had to pass, and the Croatians' failure to heed advice on ticket arrangements and crowd control) (*Daily Mail of 25/10/2006, p. 84*).

Following the UEFA hearing concerning this matter, the English FA were fined £4,222 for the improper conduct of their fans, and the Croatian FA were fined £21,113 for their part in the trouble (<http://home.skysports.com> of 9/11/2006).

Trouble in Spain involving Glasgow Rangers supporters

When the origins of British football hooliganism are discussed, the finger of censure is often pointed at Glasgow Rangers fans, who during the 1972 European Cup-winners Cup final against Spartak Moscow invaded the pitch after the first goal scored by their team. That particular match was played in Spain, and relations between the Scottish club's followers and the Iberian constabulary have not been of the most amicable ever since. This sad fact was once again on display when Rangers were drawn against Osasuna in this year's UEFA Cup, played in late March 2007. During the away leg of the tie, in Pamplona, Scottish fans clashed with local police – thus maintaining a momentum which may see the club banned from European football. The Rangers authorities admitted that hooligans who had been banned from Ibrox had succeeded in circumventing the normal ticketing channels for the away leg in Spain. At a certain point, Rangers fans spilled over into areas which had not been designed for them, and the Spanish riot police reacted with severity (*The Daily Telegraph of 6/3/2007, p. S4*).

It also transpired that there had been considerable provocation from some visiting fans, particularly in the form of sectarian chanting – which has landed Rangers in trouble with the European football authorities before (see Journals passim). Following the somewhat bizarre decision by the Osasuna management to play the Tina Turner number *Simply the Best*, a song which has been adopted in the past by Rangers supporters, some away fans chanted their wearisome slogan "F**k the Pope and the IRA" (*The Guardian of 20/3/2007, p. S6*). The previous season, Rangers had been fined £13,000 and warned about their supporters' future conduct after a similar incident. The UEFA response to this latest trouble was not yet known at the time of writing.

Lille and Manchester United fined over crowd trouble in Lens (France)

The first leg of the crucial European Champions League match between Lille and Manchester United could not take place at the Lille ground itself. Since the latter was in the process of being redeveloped, the tie was switched to the neighbouring town of Lens. The fixture itself experienced a controversial outcome in the shape of a Ryan Giggs goal which the home side considered to be illegal – of which more later (see below under item 17, p.67). Only five minutes of the game had been played when it became clear that late arrivals had swelled the away supporters' area. A number of United supporters were clearly being crushed, whereupon several scaled the perimeter fences, signalling frantically for assistance. One woman was dragged out by security stewards. Another fan ran onto the playing surface, signalling that the match should be stopped, and for several minutes there were scenes which were frighteningly reminiscent of the Hillsborough disaster in 1989. At a certain point, riot police fired tear gas into an overcrowded section of United supporters after they had attempted to scale the perimeter fences in order to flee that area. Delegates from the European football governing body, UEFA, were so concerned that there were appeals over the loudspeakers for calm at the away end (*The Guardian of 21/2/2007, p. S1*).

The crowd trouble did not end there, because after the controversial goal was scored, United defender Gary Neville was struck by an object thrown from the crowd (*The Times of 21/2/2007, p. 86*). Inevitably, UEFA opened an investigation into the disturbance – and almost as inevitably, the ping-pong of mutual accusations started between the various parties involved. Although there were vociferous protestations from Manchester United supporters that poor organisation and police brutality were to blame for the trouble, the French police suggested that the English fans were impossible to control and were to blame for attempting to gain access to the stadium using forged tickets. In the words of their spokesman:

"Some English fans had counterfeit tickets. The capacity of this stand is 3,500 and it seems there were 5,000 fans in there. We had to intervene as some policemen were in opposition with the fans who were out of control. They had to use tear gas" (*Daily Mail of 22/2/2007, p. 91*).

These accusations were hotly denied by the Manchester United Supporters' Association, who labelled the incident as "typical of another Continental police force" which chose to hit people first and ask questions later. According to other witnesses, United supporters were beaten and attacked with dogs outside the stadium

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before the match kicked off. Further problems seem to have arisen when fans without tickets were admitted during the first half, causing a crush at the front of the United section (*ibid*). Back came the Lille authorities, in the shape of Xavier Thuilot, the club's managing director, who claimed that United had been quick to point the finger at Lille because they feared that UEFA would administer the same punishment to them as they did to Netherlands club Feyenoord, expelled from the UEFA Cup following crowd trouble in their fixture against Nancy in November 2006 (see below under Item 17, p.67). He insisted that United had distributed their tickets too enabling quality forgeries to be made. Police confirmed that around 1,500 forged tickets were in circulation (*Daily Mail of 23/2/2007, p. 107*).

The President of the world governing body FIFA, Sepp Blatter, seemed to weigh in on the United side of the argument when he expressed his disbelief that a fixture such as this one was played at the Lens stadium, stating **"I cannot understand that those who organise the Champions League accept a stadium like Lens to play such a match. In Lens, there are fences still, and it should not be permitted to play Champions League matches in such a stadium"** (*The Daily Telegraph of 1/3/2007, p. S5*).

These comments were in turn bitterly condemned by the Lens club authorities, who pointed out that a number of European fixtures had been played at this ground, the Felix Bollaert stadium, since 1998. They also maintained that the ground's enclosures complied entirely with UEFA regulations, and that there had never been the slightest incident until the English supporters provoked one using forged tickets (*The Independent of 2/3/2007, p. 77*). Lille's manager Claude Puel also made his inevitable contribution, blaming "violent" United fans for the trouble (*The Daily Telegraph of 7/3/2007, p. S1*).

In the event, UEFA fined Manchester United the sum of £6,300 for the conduct of their fans, whereas the home side were issued with a £42,000 penalty for breaches of security, a lack of organisation and the improper conduct of the team during the match (see below). The fine on United was justified on the basis that some fans had let off fireworks, whereas others were involved in disturbances at the stadium entrance (*The Guardian of 23/3/2007, p. S6*).

Roma v Manchester United fixture marred by crowd disturbances (Italy)

No sooner had the proverbial particles settled on the Lens imbroglio, than Manchester United fans were once again involved in crowd trouble abroad – this time in Rome on the occasion of their away tie in the quarter-final of the European Champions League (United having disposed of Lille in the qualifying stages). The United club authorities had made every effort to advise their players about the possible violence that could be expected whilst they were in Rome. It was felt that this hindered rather than helped the cause of keeping the fixture as peaceful as possible, since the host city's mayor and chief of police took exception to these warnings, whereas Roma fan websites had been filled with outraged remarks – which took little account of the violent history which Roma supporters have to their detriment.

The police were naturally out in force near the Stadio Olimpico, complete with riot shields and batons, but they seemed unable to prevent locals from ambushing around 300 United fans on a bridge passing over the river Tiber close to the stadium, thus giving the lie to the advice that there would be safety in numbers. However, inside the stadium there was also trouble. Although the away fans were packed into an area far away from the Curva Sud, which is the Roma fans' traditional end, the Curva Nord, which is much closer to the "away" enclosure and is normally a stronghold of Lazio, the other Rome side which uses the stadium, was also populated with home fans. The United fans appear to have been quite provocative, chanting "Lazio" in a bid to make themselves as unpopular as possible (*The Times of 5/4/2007, p. 116*).

The trouble started in earnest when Roma took the lead after 44 minutes. Until then, only a few stray missiles had been thrown between the rival fans, but the goal prompted a more aerial assault from both sides. The Carabinieri then waded into the United fans' area, lashing out apparently indiscriminately. Several United fans were left bleeding profusely from head wounds. One supporter was seen on the ground with blood pouring from his forehead, and was led away from the police by fellow-supporters. Some of the away fans responded in kind, whereas others hurled more missiles into the uniformed ranks. However, most were compelled to leap over seats towards safety – some making it, others not (*ibid*).

Once again, it was post-mortem time, with mutual accusations flying as freely as the missiles hurled at opposing fans. The away supporters, and most of the British press, were so incensed by what they perceived

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as a gross over-reaction and downright thuggery on the part of the Rome constabulary, that, at the time of writing, the Home Office was considering a formal complaint to European governing body UEFA on the policing methods used before and during the match. It requested the consular staff in Rome, the Greater Manchester police, the Football Association's security delegates, independent fans' groups and the United club authorities themselves to contribute their testimony on the causes of the trouble at the Stadio olimpico. UEFA naturally also launched its own investigation but warned that it had little jurisdiction over the policing of stadiums in some countries. As UEFA Director of Communications, William Galliard, explained:

"The problem is the ownership of the stadiums. In Italy particularly they are owned by the municipal governments, with one or two exceptions. So they are public spaces and so it is only the police and the Carabinieri who have any jurisdiction in the stadiums. The stewards' role is very limited" (*The Guardian of 6/4/2007, p. S1*).

Predictably, an entirely different version emanated from the Italian side. The Prefect of the city's security services, Achille Serra, claimed that "drunk and aggressive" Manchester United supporters were to blame for the clashes. He showed a seven-minute video clip taken from the security cameras at the stadium, and picked out two United fans in particular whom he accused of inciting violence. The fan with blood all over his face, referred to earlier, was described by Mr. Serra as "one of the most aggressive" in inciting his companions to violence and throwing missiles at the police. The man in question, 44-year-old Martin Varnock, from Stockport, claimed in a British newspaper that the police baton charges had been "totally unprovoked" (*The Daily Telegraph of 7/4/2007, p. S2*). Certainly a group of around 20 United fans, dressed in black and many with black scarves around their faces, could clearly be seen provoking the police and pushing towards them. Mr. Serra further claimed that the trouble erupted when drunk English fans broke through the stewards and rushed towards the barrier which separated them from home supporters.

Three unnamed men who were arrested at the stadium were brought before magistrates the day following the match, and banned for three years from all Italian stadiums for having disturbed the peace (*ibid*). Since the events in question took place shortly before this issue went to press, it is too early to report any action taken by UEFA in this matter.

Tottenham Hotspur fans clash with police in Seville (Spain)

The sad procession English club followers who have found themselves at odds with the forces of law and order abroad continued on the occasion of Tottenham Hotspur's away tie against Seville in the UEFA Cup, played in early April 2007. The violence commenced prior to kick-off, with riot police having to separate rival fans outside the ground, and broke out again 25 minutes into the first half. This continued until the start of the second half, as the police, themselves hurling batons, struggled to gain control. The problems were aggravated by the lack of clear segregation, and the chaotic seating arrangements. According to some Spurs supporters, they were beaten with batons as they attempted to reach the toilets, which provoked an angry response. Seats were ripped up and thrown, and the fighting continued (*The Independent of 6/4/2007, p. 68*).

A spokesman for the British Embassy later confirmed that six supporters were injured, with three taken to hospital, and that six arrests had been made. Spanish police, for their part, stated that two of their officers were also injured in the fracas. However, on this occasion the traditional "tit for tat" response between the clubs was missing. To universal surprise, Sevilla club officials and supporters joined in criticising the ferocity of the police response during the match. It certainly appeared that the contrast between the mayhem inside the stadium and the calm which had reigned in the city centre before and after the game could not have been more marked. In a stern verdict on the local police force, Sevilla admitted to being "perplexed" at the "excessive force" used, a club spokesman stating

"We think this small incident could have been handled and peace restored without the use of police batons. We are investigating the reason for the police action" (*The Daily Telegraph of 7/4/2007, p. S1*).

This unusual statement and turn of events naturally caused a good deal of damage to the reputation of the local constabulary, particularly as allegations of hooliganism grew scarce. Indeed, there had been very few indications of tension in the streets prior to the game, with Sevilla fans keen to establish a spirit of fraternity by offering free paella and sandwiches in Tottenham's "hospitality zone". The police intervention was universally identified as the decisive element which spared off the violence. In reinforcing this claim, Spurs could also draw on reports submitted by British police officers who had been at the game as observers. Chief Superintendent O'Brien, the borough commander for Haringey, put it as tactfully as he could where he stated

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that there was a “different level of police intervention” from that which was normally employed in the UK. He further held that the introduction of the police during the game in one section of the crowd “undoubtedly contributed” towards the disturbances witnessed. These comments were endorsed by the Football association’s security adviser, Andy Smith (*ibid*).

As was to be expected, however, the Spanish authorities took an aggressive line, with a Government official, Faustino Valdes, claiming:

“We have two police who have suffered some serious blows and we have also arrested (seven) Tottenham fans who should now be appearing in court. Some Tottenham fans under the influence of alcohol attacked the private security officers and police, there were some incidents as security tried to overcome the fans and nothing more. It was an incident surrounding a few people who behaved badly; probably because they had drunk too much” (*The Independent of 7/4/2007, p. 69*).

Given that the Seville disturbances took place just after the trouble in Rome with Manchester United supporters, it is too early at the time of writing to report on the measures, if any, which European governing body UEFA intend to take as a result of their investigations.

Spanish police act following Madrid hooliganism

Spain is one of Europe’s prominent footballing nations, but has also been plagued by the cancer of hooliganism in recent years. This was once again in evidence for one of this season’s Madrid derby games between fierce rivals Atletico and Real, played in late February 2007, when police had to use rubber bullets and baton charges to disperse fans before the match.

The trouble seems to have commenced when a group of Atletico’s ultras (Spain is also afflicted with this lower form of the human species) threw bottles and other objects at the police, who responded by attempting to disperse the multitude. The fans reacted by destroying cars belonging to the local media which had been parked alongside the stadium. Local emergency services said that the disturbances resulted in injuries to 17 people, four of whom were later taken to hospital. In a separate incident, approximately a dozen fans of Atletico fell some seven feet to the ground at one end of the ground when a barrier collapsed whilst they were celebrating the opening goal of the game (*The Independent of 26/2/2007, p. 63*).

Spurs win UEFA Cup bye as Feyenoord lose crowd trouble court case (Netherlands – UK)

See below under Item 17 (p.94)

Other incidents (all months quoted refer to 2007 unless stated otherwise)

Red Star fans clash with police – 15 hurt (Serbia)

In early March, fifteen people were injured and 40 arrested in violent clashes between fans of Red Star Belgrade and police at a Serbian First Division fixture. Five of those who sustained injuries were police officers, with three sustaining serious injuries and the other two incurring minor wounds. The disturbance arose in the Northern city of Zrenjanin, when a group of Red Star supporters who had no tickets attempted to force their way into the stadium for the game against Banat. Clashes spilled over into the terraces, and the match was briefly interrupted midway through the first half as riot police moved in to restore order (*The Guardian of 5/3/2007, p. S16*).

Thirty injured in Greek league match

At least 30 people sustained injuries in late October 2006 when rival supporters clashed during a Greek league fixture. Hundreds of Larisa and PAOK fans did battle in the stands of Larisa’s Alkazar stadium during the game, throwing rocks and flares at each other and tearing up seats. Police were forced to use tear gas, compelling the referee to suspend the match for 25 minutes. Clashes between supporters also erupted outside the stadium following the match (*The Independent of 30/10/2006, p. 63*).

Neo-Nazi symbol ban following football riots (Germany)

In November 2006, the worst violence to hit German football in recent years took place, leaving 23 police officers and over 60 supporters injured. At the worst trouble spots, anti-semitic and racist chants were heard. This has prompted Hertha Berlin to refuse entry to anyone wearing clothes bearing right-wing symbols or anti-police slogans (*The Guardian of 3/11/2006, p. S2*). Hertha play in the Olympic Stadium, which was the site of the “Hitler Games” in 1936.

Marseille fury at their own fans following firebomb injury (France)

Towards the end of October 2006, the French League fixture between Nice and Marseille was suspended for five minutes after a fire officer lost two fingers whilst handling a firebomb thrown by Marseille supporters. This caused the Marseille Chairman, Mr. Pape Diouf, to condemn his club’s violent supporters in very strong terms (*The Independent of 30/10/2007, loc. cit.*).

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“On-field” crime

The Trevor Brennan affair (France)

Ever since Eric Cantona performed his infamous Kung Fu kick against an abusive spectator a decade ago, retaliation by sporting performers to provocation (real or alleged) from the sidelines has acquired a momentum of its own. This was certainly the case during the rugby union Heineken Cup fixture between French side Toulouse and Irish club Ulster, both occupying positions in Pool Five of the tournament.

Trevor Brennan is a 33-year-old Dubliner who plays for the French side, and – given the origins of the opposing team – could always be expected to have a certain edge to his game that afternoon. However, no-one expected such tension to spill over into downright thuggery – which was not confined to the field of play. Mr. Brennan operates a popular bar in Toulouse, which was full of Ulster fans during the nights preceding the game. As he was to enter the fray as a replacement for the home forward Millochlusky, barracking emanated from the Ulster supporters, the subject of their invective reportedly being the quality of his beverage dispensary. Thereupon Mr. Brennan saw fit to march 50 yards to the corner of the stadium, climb into the crowd, and throw four or five punches before leaving, drenched in water hurled by the fans. Some 12 security men were drafted into the area, but that did not prevent Gareth Thomas, the former Welsh captain, who has played for Toulouse for three years, from also remonstrating with some elements in the crowd. This did not seem to have assuaged the Dubliner’s thirst for robust action, since within minutes of joining the fray on the pitch he was locked in close personal combat with Justin Harrison, Ulster’s Australian second-row forward and captain (*The Guardian of 22/1/2007, p. S12*).

Naturally, this episode did not escape the attention of the authorities at various levels. In the first instance, an investigation was launched by European Cup Rugby (ERC) into the incident, which naturally was heavy with disciplinary consequences. However, the indications were that the forces of law and order might also have a say in the matter. The victim of Mr. Brennan’s pugilistic talents, Patrick Bamford, was said to be taking legal advice, and made his way to a local police station before flying home, where he was reported to receive hospital treatment.

There were unsurprisingly conflicting versions of exactly what was the nature of the barracking allegedly levelled at Mr. Brennan. Ulster fans insisted afterwards that the only chants directed at Mr. Brennan had amounted to

no more than banter about the merits of his pub. However, a close relative of the Toulouse player maintained that Mr. Brennan had reacted badly because of insults directed at his mother, and because of religiously-motivated abuse. This in turn was hotly denied by the Ulster club (*The Times of 23/1/2007, p. 66*). The Toulouse club also joined the debate, contending that a section of the Ulster fans were chanting “Brennan, your mother is a whore”. The French club, however, went even further and described their player’s reaction as “understandably human” (*The Guardian of 23/1/2007, p. S2*). Mr. Bamford, for his part, steadfastly denied having made any disparaging observations about Brennan’s mother, or having engaged in any sectarian abuse, and pronounced himself “saddened and disappointed” by the Toulouse club’s response (*The Guardian of 24/1/2007, p. S1*).

Ultimately, no criminal action was taken against Mr. Brennan. However, at the time of writing, he was facing a civil action brought by Mr. Bamford. The Irish player announced his retirement before any action was taken by the relevant rugby authorities. However, a hearing did take place, as a result of which Mr. Brennan was banned for life. He was also fined the sum of €25,000 and instructed to pay €5,000 by way of compensation to Mr. Bamford, as well as the costs of the hearing. The ERC disciplinary board stated that it could not “envisage a more serious misconduct in relation to spectators”, and that therefore the maximum permissible suspension was appropriate (*The Guardian of 17/3/2007, p. S6*).

Vicious on-field brawl erupts after Valencia v Inter Milan tie (Spain)

When the European Champions League for this season promised a tie between Valencia and Inter Milan, the expectation was of a very close result with two evenly-matched sides. However, the excellent football on display proved to be a mere sideshow to the events which marred the game immediately after the final whistle had sounded, with the Spanish side winning on the “away goals” rule. Tempers flared when Carlos Marchena kicked out at Inter’s Argentinian defender Nicolas Burdisso. The latter and his team-mates reacted angrily, and there followed an exchange of blows. Curiously, the main villain of the piece turned out to be an unused Valencia substitute, David Navarro, who was clearly seen delivering a blow to the Argentine player. Navarro was then chased across the Valencia pitch, and the commotion continued in the tunnel. Some players, including the former Italy goalkeeper Francesco Toldo, were reported to have clashed in the dressing rooms, compelling security guards to intervene (*Daily Mail of 7/3/2007, p. 83*).

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Naturally, the European governing body, UEFA, took this matter extremely seriously and both teams were immediately charged with improper conduct. Five players (Navarro, Marchena, Burdisso, Cordoba and Maicon) were also charged with gross unsporting conduct (*The Independent of 8/3/2007, p. 62*). Disturbingly, however, no criminal charges were brought, for an altercation which was entirely divorced from the run of play. However, the worst culprit, David Navarro, did express remorse and publicly apologised to Mr. Burdisso (*ibid*). UEFA later banned Messrs. Burdisso and Maicon for six consecutive European matches and Ivan Cordoba for three such games (*Daily Mail of 18/3/2007, p: 127*).

Police investigate poison dart attack on racehorses (Hong Kong)

In late March 2007, police in Hong Kong began an investigation into what appears to have been an attempt to shoot horses with poisoned darts at one of the most famous racetracks in the world. Staff at the Happy Valley track, owned by the Royal Hong Kong Jockey Club, discovered the bizarre plot after finding 12 metal tubes, each one foot long, filled with darts and buried in the turf near the starting gates. The tubes were wired together and linked to a wireless receiver. It is believed that they could have been shot into specific horses and their jockeys in order to affect the outcome of a race (*The Guardian of 23/3/2007, p. 17*).

The drama, which one horse trainer compared to a plot from a Dick Francis novel, began soon after the early morning training sessions, a feature of Hong Kong life for at least 150 years. Jackson Wong Chak-shuen, a Jockey Club track supervisor, went out as usual to inspect the track. He took up the story:

“I was doing my checking of the track routinely, when I noticed something unusual, buried in the ground. After inspecting it briefly, I called my supervisor and he in turn called in security and, eventually, the police as well. We were able to trace leads from the device that led to a battery” (*ibid*).

Police and club officials started to search the grounds, after which bomb disposal experts pronounced the devices safe by 4.20 pm. Metal detectors having made no further discoveries, the races went ahead on schedule at 7.30 pm. The club’s Chief Executive, Winfried Engelbrecht-Bresges, later stated that the darts could have been fired at all 12 horses on the track at the same time. He added that they were designed to cause “destruction and injury” (*ibid*).

Rugby international fined for assaulting photographer (France)

What is it about a certain French rugby club and its players that the latter tend “Toulouse it” when dealing with ordinary mortals on the pitch? Two months after the Brennan incident, reported above, it was learned that French international fly half Frédéric Michalak was fined €300 for having slapped a photographer whilst playing for Toulouse in a match in Pau. Mr. Michalak was also required to pay a symbolic €1 by way of compensation to the photographer in question, Bruno Poumirou, who had taken legal action against the player (*The Sunday Telegraph of 18/3/2007, p. S15*).

It appeared that Mr. Pomirou had attempted to play a joke on the Toulouse players in front of their changing rooms by showing a photograph taken a year earlier, with Mr. Michalak trying to make a telephone call with a shoe – thus alluding to the reputation of bad behaviour by the Toulouse side (*ibid*).

“Off-field” crime

Bob Woolmer murder – the story so far (Jamaica/Pakistan)

The agonising journey from “natural” death to murder...

The world of cricket was, almost literally, stunned when, the news broke that Bob Woolmer, the former Kent and England batsman was no more. Coming within barely a day of the highly unexpected early exit of Pakistan, the team which he was coaching, from the World Cup tournament, the drama began when Mr. Woolmer was found unconscious in his hotel room in Kingston, Jamaica (*The Daily Telegraph of 20/3/2007, p. S14*). He was then rushed to the University of West Indies hospital, where he was pronounced dead shortly afterwards. Because he had suffered from diabetes and experiences frequent breathing difficulties, it was at first taken for granted that the causes of his demise were entirely natural – or at least without any criminal overtones – even though the Deputy Commissioner of Jamaica’s police force, Mark Shields, ominously stated that his constabulary would treat any sudden death as “suspicious until we can prove otherwise”, and the victim’s widow, Gill, had given permission for the performance of a post-mortem (*The Guardian of 20/3/2007, p. S9*). It was also thought initially that perhaps the pressures of his post – reckoned to be the most stressful in the world of cricket – and the ignominious defeat by his team at the hands of the unfancied Ireland team had also probably played a part.

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However, concern that all might not be as it should in this affair came when it was learned the next day that the initial post-mortem was “inconclusive”, and that further tests were being carried out. These were intended to give police a “clearer picture” of what happened (*The Guardian of 21/3/2007, p. 58*). However, two days later it was learned that the official pathologist report following the post-mortem had attributed Woolmer’s death to asphyxia as a result of manual strangulation, thus throwing cricket into its greatest crisis in living memory. There was very little evidence of any struggle having taken place, although there were some signs of vomiting in the bathroom. None of Mr. Woolmer’s possessions had been taken. A huge murder hunt was immediately launched. Mr. Shields announced that he would investigate every possible motive for the murder, including match-fixing and the involvement of betting syndicates, which was immediately and widely speculated (*The Guardian of 23/3/2007, p. 1*).

Initially, the investigation focused on electronic information, with CCTV footage being seized from the hotel and Woolmer’s mobile and hotel telephone, as well as the relevant computer traffic, being analysed. All those having a possible connection to the Pakistan coach were interviewed – including naturally all the players and management team. However, no attempt was made to prevent them from returning to Pakistan (*ibid*). There was talk of cancelling the World Cup itself because of this momentous development, but ultimately the International Cricket Council (ICC) decided to continue the tournament (*Daily Mail of 23/3/2007, p. 96*).

Was cricket corruption at the root of the murder?

[See above under the section entitled “Corruption in Sport”, p.36].

Other possible motives

Amid all the fevered speculation about the possible motive for the murder, one possibility that was mooted at a certain point was that the death of the former Test batsman may have been entirely disconnected from any murky goings-on in the world of cricket. Even before the tournament started, serious concern has been mounting in the Caribbean about soaring crime levels, which often take on a violent form. Thus in Trinidad, at around 30 killings per 100,000 the murder rate is 19 times that in England and Wales. The British Foreign Office had in fact issued a warning about these developments to those intending to travel to the West Indies for the World Cup (*The Guardian of 27/1/2007, p. 7*). This violent crime wave was also in evidence in Jamaica, where there has been a surge in murders and other crime, often drug-related, culminating in the

violent death of former boxing champion Trevor Berbrick last October (see below).

At a certain point, suspicion also centred on the possibility that Woolmer’s death was cricket-related, but not in the sense of being linked to corruption. In the first place, there was some unease about the relations between the coach and his team, which were said to be very strained throughout the tournament, particularly after the defeat against Ireland which provoked Pakistan’s ejection from the tournament. It was alleged that there was a fracas in the dressing room after the match, and on the bus which took the players from the Ireland game to their hotel. Assistant coach Mushtaq Ahmed was seen sporting a cut nose and black eye which provoked some speculation. This was later ascribed to an accident during fielding practice (*The Independent of 26/3/2007, p. 54*).

Closely related to this theory was that which held that a deranged fan was so embittered by his side’s defeat that his frustration boiled over into homicidal thoughts (*The Independent of 24/3/2007, p. 88*). Certainly feelings had run high in Pakistan when news of their team’s elimination came through, with effigies of the coach and of captain Inzamam-ul-Haq being burned to the accompaniment of chants proclaiming “Death to Woolmer, Death to Inzamam” (*The Daily Telegraph of 23/3/2007, p. S12*). Although such demonstrations of frustration were normally regarded as no more than letting off steam, they betrayed a fanaticism which could possibly inspire some of the more unbalanced elements among the nation’s followers of cricket to do the unthinkable. In fact, the entire atmosphere which surrounds the sport in Pakistan is perhaps more volatile than is the case in any other nation – reflecting the continuing problems of factionalism, nepotism and corruption which have plagued it ever since it was created in 1947 (*The Daily Telegraph of 23/3/2007, p. S12*).

However, at the time of writing it looked as though the circumstances which led to the unfortunate Mr. Woolmer’s death would still take some time to come to the surface, with Commissioner Shields talking in terms of months rather than weeks (*The Independent of 28/3/2007, p. 55*). This column will naturally follow further developments in this saga with keen interest.

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“How I would have done it” by O J Simpson (US)

Few real-life crime mysteries have had such bizarre overtones as the murders of Nicole Brown and Ron Goldman, for which the former American footballer O J Simpson was eventually acquitted a decade ago. However, even this case surpassed itself in its surreal quality with the announcement that Mr. Simpson was to feature in a television programme in which he was to reveal how he would have killed his former wife and the latter's male friend if he had been responsible for the murders. The interview was to be conducted by celebrity publisher Judith Regan, and the day after its broadcast, Regan Books was due to publish Simpson's new book, *If I Did It*. According to a leading US newspaper, the publishers paid Mr. Simpson \$3.5 million for the book (*The Guardian of 16/11/2006, p. 19*).

This naturally caused some outrage, not only among the surviving members of the victims' families, but also among the public at large. Ms. Brown's sister, Denise, condemned the interview and expressed concern for the former's two children, who are being brought up by Mr. Simpson. The issue also had civil law overtones, since Simpson was subsequently found to have been liable for the death of Brown and Goldman and ordered to pay \$33,5 million to the victims' heirs – for which he has, to date, not made any payment whatsoever. Lawyers for the Goldman family stated that they would explore legal action should Simpson profit from the book or the interview (*ibid*). Such was the general outrage among the US population, that several affiliates (i.e. local stations) of the FOX TV network, the Rupert Murdoch-owned consortium which also owns the Regan Books company, refused to screen the interview on grounds of bad taste (*The Guardian of 20/11/2006, p. 15*). In addition, some of the news network's leading stars, such as Geraldo Rivera and Bill O'Reilly, condemned the planned interview and publication as “garbage” and “disgusting” (*The Daily Telegraph of 20/11/2006, p. 18*).

Gradually, the project started to unravel. Part of the build-up to the publication of the book was to have been an interview conducted by ABC network celebrity Barbara Walters. However, shortly before the interview was scheduled to go ahead, Ms. Walters withdrew from the deal. According to the magazine *Newsweek*, the journalist had concluded that the project “wasn't right for her”. By then, however, negotiations were so advanced that Murdoch's organisation had to pay compensation, said to be in the region of \$1 million. This eased some of the financial pain which ensued when, buckling under these various pressures, Mr.

Murdoch decided to cancel publication of the book, calling it an “ill-considered project”. Murdoch also cancelled the Simpson interview, which was conducted by Judith Regan herself after Barbara Walters had withdrawn (*The Guardian of 29/11/2006, p. 20*). However, it was later alleged by the victims' families that the Murdoch empire had attempted to buy their silence in an attempt to keep the project alive (*The Independent on Sunday of 17/12/2006, p. 51*).

Nor did the legal repercussions of this affair end there. Less than a month elapsed after the cancellation of the Simpson project, when Judith Regan herself was dismissed from Murdoch's news Corporation (*The Observer of 17/12/2006, p. 29*). No reason was offered for this announcement, but it was widely thought to be linked to the Simpson affair (*The Independent on Sunday of 17/12/2006, loc. cit*). However, Ms. Regan signalled her intention not to go quietly, and announced that she had employed one of Hollywood's most feared celebrity lawyers, Bert Fields, to handle her case against the corporation (*The Independent of 19/12/2006, p. 23*).

Almost inevitably, one of the chapters of the planned publication leaked out, and it features OJ Simpson describing in detail the events immediately before and after the murders, which occurred on 12 June 1994. According to an account in *Newsweek* magazine, Mr. Simpson relates how he was infuriated by his former wife's behaviour and decided to visit her. He parked in an alleyway behind the apartment and. To scare her, he donned the gloves and woollen hat which he kept in his car. However, as he entered through the back gate, he met Goldman, a waiter who was returning a pair of glasses left at the restaurant. When he noticed that the family dog gave Mr. Goldman a friendly greeting, Simpson concluded that Goldman had visited the premises before, and shouted as much at the waiter. Thereupon Nicola Brown came at Simpson “like a banshee”, but lost her balance, cracking her head. Mr. Goldman then assumed a karate position, angering Mr. Simpson, who dared him to fight. At this point, writes the author, “something went horribly wrong” and the next moment he realised he was drenched in blood and holding a blooded knife. He then describes stripping to his socks and rolling his blooded clothes around the knife. The police never found his clothes or the weapon, but they did find the bloodied socks (*The Guardian of 15/1/2007, p. 17*).

However, Mr. Simpson went out of his way to stress that this chapter in no way amounted to a confession, claiming that the extract in question was created mostly on the basis of a ghost writer's research. He added that the account “had so many holes in it” that anyone who

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knew anything about the affair would know that he had not written it (*The Independent of 15/1/2007, p. 26*). It has since been learned, however, that efforts to secure payment of the amount O J Simpson still owes by way of compensation (see above) are achieving some success. In mid-February 2007, a San Monica judge ordered that his income from past work should be allocated to Ron Goldman's family (*The Independent of 21/2/2007, p. 25*). These include royalties from his films, such as the *Towering Inferno* and *Naked Gun* (*The Daily Telegraph of 14/2/2007, p. 15*).

Former conqueror of Muhammed Ali murdered (Jamaica)

In mid-October 2006, it was learned that Trevor Berbick, the only boxer to have beaten the legendary Muhammad Ali, had been killed in Jamaica by an assailant wielding a machete. He had suffered a gaping head wound in the attack, which had occurred in a church courtyard in his native Norwich village (145 miles east of the capital Kingston) and was pronounced dead at Port Antonia hospital. Mr. Berbick had vanquished Ali in 1981 in the Bahamas, and held the world heavyweight title briefly in 1986 before losing it to Mike Tyson, blown away in two rounds. He represented Jamaica at the 1976 Olympics (*The Observer of 20/10/2006, p. 18*).

The former champion's death was as controversial as his life. Having attempted to settle in Florida, he was deported to Jamaica in 2003 after a parole violation. He had in fact been in trouble with the law on several occasions. He threatened one of his former business managers with a gun, and served 15 months of a four-year jail sentence for an alleged sexual assault on a babysitter. Once back in Jamaica, he was also arrested for breaking into a neighbour's home (*The Sunday Telegraph of 29/10/2006, p. 30*). He had also been found guilty of fraudulently obtaining a mortgage (*The Observer of 29/10/2006, p. 42*).

Several days after the killing, police arrested two men in connection with the murder. One was Harold Berbrick, nephew to the boxer, the other being Kenton Gordon – both from the same village as the murder victim. They have been in custody ever since, the various attempts at conducting a preliminary inquiry into the slaying having delayed on four occasions because of the absence of either one or both of the lawyers defending the suspects. It was expected that the two men would not put in a court appearance until late April 2007 (*www.ziplaw.com/znews of 1/3/2007*). No further details are available at the time of writing.

L'affaire Cécillon ends with former rugby star's conviction (France)

It will be recalled from a previous issue of this Journal that a former French rugby union international, forward Marc Cécillon, who won 46 caps for France, had been arrested for the killing of his wife Chantal. The trial opened in mid-November 2006 in Grenoble Mr. Cécillon admitted the shooting, but denied murder, claiming that he had merely wished to intimidate his wife (*The Independent of 7/11/2006, p. 19*).

In the course of the trial, it emerged that the former international arrived at a barbecue party organised by friends in the town of Saint-Savin during which he had an argument with the hostess and slapped the latter. He was asked to leave, and when his wife refused to leave with him, he returned with a Magnum revolver, brought back from a South African tour, and shot her five times. Cécillon's lawyers argued that their client's action was a crime passionnel induced by alcohol and depression caused by his wife's recent request for a divorce (*The Daily Telegraph of 7/11/2006, p. 19*). Although it was argued in his defence that he had always been known as the "calm man of rugby", some witnesses painted a more turbulent picture. One woman claimed that she had conceived a child with Cécillon in 1989 when she was 17, but that he had not recognised the infant. Another woman claimed that he had accosted her in 2001 just after her husband had died (*The Daily Telegraph of 9/11/2006, p. S13*).

Eventually, the court returned a guilty verdict and sentenced Mr. Cécillon to a 20-year term of imprisonment. The sentence was harsher than the 15 years demanded by the prosecution, and even went against the wishes of the former international's two daughters, whom he had not seen since the shooting (*The Daily Telegraph of 11/11/2006, p. 17*).

Justin Harrison held in Spanish prison after assault charge

Scottish WBO featherweight champion Scott Harrison is a boxer who has had a somewhat turbulent past in his home city of Glasgow, where he had been released on bail on charges of, inter alia, assaulting a police officer. It is for this reason that he had been training in the south of Spain in preparation for the defence of his title against Londoner Nicky Cook in December 2006. However, Mr. Harrison's controversial lifestyle seems to have continued in his temporary abode where, once again, he was arrested for having attacked a police officer (*The Guardian of 18/10/2006, p. S8*). He spent 40 days in custody in Spain on that charge, before being conditionally released, and subsequently praised his fellow-inmates who, he

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maintained, were extremely helpful in enabling him to prepare for the defence of his title (*The Daily Telegraph of 24/11/2006, p. S17*). The outcome of the court actions in which the boxer found himself involved as a result of these alleged misdemeanours was not yet known at the time of writing.

Indian Test cricketer jailed for manslaughter

In early December 2006, Navjot Singh Sidhu, a former Indian Test player, who is also a member of Parliament, was convicted of culpable homicide when an earlier acquittal relating to a "road rage" incident 17 years ago was overturned by the High Court. He had been accused of assaulting a car driver, who died as a result of his injuries (*The Guardian of 2/12/2006, p. 12*). The former India opening batsman was later jailed for three years. The sentence has been suspended in order to allow Mr. Sidhu to appeal (*The Guardian of 7/12/2006, p. S2*).

Tyson in trouble with the law – again (US)

The former world heavyweight boxing champion has had many a confrontation with the forces of law and order in his time, and seems determined to continue this sorry record if his latest scrape with the penal authorities is anything to go by. With just days to go before the New Year, he was arrested on suspicion of driving under the influence and possession of cocaine, when police stopped him shortly after he left a nightclub in Arizona. His car was apparently stopped after it nearly hit a sheriff's vehicle (*Daily Express of 30/12/2006, p. 85*). At the time of writing, the matter had yet to reach the judicial stage.

French tennis coach faces charges of sex abuse

Amid claims of sex abuse, and even rape, Régis de Camaret, a top tennis coach famed for training some of the most famous names in French tennis over the past 20 years, is, at the time of writing, in custody awaiting trial. At least 10 former players have come forward, and the investigation is likely to be extended to Britain, which sent several female tennis hopefuls to Mr. de Camaret's private tennis academy in the South of France in the 1980s and early 1990s. One of the accusers, former 1989 French champion Isabelle Demongeot, claims that the coach began abusing her when she was 14. She commented:

"For years I endured a form of manipulation that I could not combat. I had a child's body and he was an adult. I thought I couldn't succeed without him" (*The Observer of 18/3/2007, p. 41*).

Ms. Demongeot claims to have been "haunted" by her experiences, and after meeting other de Camaret trainees who had similar stories to tell, she approached

the police in 2005. However, her evidence will not be heard at the trial, which is expected next year. French law prohibits paedophilia crimes committed prior to 2004 from being brought to court more than 10 years after the victim reaches the age of 18. The public prosecutor's department (Ministère public) will instead submit evidence from two victims, who were allegedly abused – and one says she was raped – between 1989 and 1991. One of these is "Marie", who has described being assaulted in the coach's car on the way home from a tournament. Mr. de Camaret strenuously denies the allegations, which he ascribes to French tennis being a world of "jealousy and bitterness" (*ibid*).

Former Sri Lanka cricket chief sentenced for forgery

In early April 2007, the former head of Sri Lanka's cricket board, Thilanga Sumathipala, was sentenced to two years' hard labour for passport forgery. However, the court released him on bail following an appeal to a higher court. Mr. Sumathipala was accused of altering the passport of Dhammika Amarasinghe, an alleged contract killer, in order to enable him to travel to England for the 1999 World Cup. At the time, the accused was President of Sri Lanka Cricket. For Mr. Sumathipala, this was not the first time he had committed such misdemeanours. He was dismissed as Sri Lanka Cricket president in 2001 on corruption charges. He was re-elected in 2005, but within weeks he was once again dismissed, accused of financial mismanagement. As for Mr. Amarasinghe, who was accused of dozens of killings and of the attempted assassination of a newspaper editor in 1998, he was shot dead in January 2004 as he arrived in court to face murder charges (*The Independent of 5/4/2007, p. 67*).

Dino Zoff victim of street robbery (Italy)

In early November 2006, the former Italian coach and goalkeeper Dino Zoff was robbed by a gang in Rome, having been targeted whilst unloading suitcases from his car. He was forced to hand over £700 in cash, as well as watches, mobile phones and jewellery (*Daily Mail of 7/11/2006, p. 77*).

Riise takes former agent to court for fraud (Norway)

In early March 2007, it transpired that Liverpool FC midfielder John Arne Riise was at the centre of a major football fraud case, and was pursuing his former agent, Einar Baardsen, through the Norwegian courts for approximately £3 million. The latter has denied the claim, stating that he in turn will launch a counterclaim for £750,000 against the Liverpool star. At the time of writing, the case was in the hands of the administrators

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who are deciding what assets Mr. Baardsen, who is registered as bankrupt in Norway, has to share among his creditors. Once this has been sorted out, the dispute between the two is likely to be decided in the Norwegian town of Stavanger (*The Independent of 9/3/2007, p. 76*).

The money which Mr. Riise claims has gone missing was allegedly taken out in loans unauthorised by him, but contracted in his name. The player has privately admitted that he signed documents on Baardsen's recommendation without him scrutinising the detail. Investments also include a hotel which went out of business. The fear is that, if Riise cannot obtain the money from Baardsen, he may be forced to cover the costs of certain creditors himself (*ibid*). The outcome of this case was not yet known at the time of writing.

Death threats to Adebayor over Togo strike threat

See under Item 3, below p.58.

America's Cup "was ETA target"

ETA is a Basque separatist organisation which has committed many a terrorist outrage in the past. It was in evidence again in late January 2007, when an ETA suspect arrested in Spain was alleged by the local media to be planning an attack on the world's most prestigious yachting regatta, i.e. the America's Cup. Iker Aguirre Bernadal was detained by police on a train which was travelling from France to Barcelona. Newspapers, quoting police sources, claimed that he had been found with bomb making manuals, and was trying to obtain information about the competition (*The Times of 27/1/2007, p. 11*).

Moin Khan arrested (Pakistan)

In mid-January 2007, it was learned that police had arrested former Pakistan cricket captain Moin Khan after his wife alleged that he was drunk and had beaten her (*The Daily Telegraph of 18/1/2007, p. S13*). No further details are available at the time of writing.

Security issues

Chappell receives extra security (India)

In January 2007, Greg Chappell, the former Australian Test batsman who is now India's national coach, was assaulted by a fan during a home series against the West Indies. He was pushed and hit on the back when the Indian team arrived in the eastern state of Orissa. For the one-day series against Sri Lanka, police decided to give Mr. Chappell extra security, at Eden Gardens in Calcutta (*The Daily Telegraph of 7/2/2007, p. S6*).

Other issues

Vertical gym helps to combat crime (Venezuela)

That sport can be an element which can channel excess energies in the right direction rather than towards the criminal underworld is an established fact. However, Venezuela seems recently to have discovered an entirely new tool to combat rampant street crime and gang warfare, to wit a vertical gym. A four-storey steel-and-glass sports complex with a roof-top football pitch has been credited with slashing crime rates by almost one third in a tough neighbourhood of the nation's capital, Caracas. Ever since its opening in 2004, the gym has been inundated by local youths who are provided with free membership. As a result, local statistics indicate that muggings, killings and other crimes in that area have dropped by 30 per cent (*The Observer of 28/1/2007, p. 32*).

This particular experiment, which has proved a striking and isolated success in one of South America's most violent cities, is set to be repeated. Another vertical gym is scheduled to rise over a Caracas neighbourhood later this year, and the Mayor of New York, Michael Bloomberg, is said to be considering the construction of one such facility on Governors Island, off Manhattan's southern tip. The idea of building this gym came about when the municipal authorities, flush with oil revenues, wished to build a \$1 million sports complex at Barrio la Cruz, a slum near the centre of Caracas, but found that there was insufficient space for this project. Accordingly, a group of architects, civil engineers and planners from a local firm, called Urban Think Tank, was commissioned to build it on the site of a former football ground. The result was a four-level, 2,500 square metre facility which looms over a warren of tin-roof dwellings. A series of ramps connects basketball courts, a dance studio, a weightlifting room, a running track, a rock-

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climbing wall and an open-air football pitch. Open late into the evening seven days per week, the gym is used by approximately 15,000 people each month (*ibid*).

Haul of fakes includes 1 million pair of Nike trainers (Germany)

In mid-November 2006, it was learned that German customs officers had seized what could prove to be the world's largest haul of counterfeit goods, including nearly 1 million pair of fake NIKE trainers. Officers in the port of Hamburg stated that they had confiscated 117 shipping containers filled with faked goods since the end of August. The equivalent amount in genuine goods would be worth approximately £258 million. The goods were shipped from Asia and were destined for Italy, Austria and Hungary. The customs department added that it was for the brand name holders to take further legal steps against the smugglers (*The Guardian of 15/11/2006, p. 24*).

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Media rights agreements

ESPN wins global ICC media rights

Audio-visual coverage of cricket is big business, and the right to broadcast the major international events in this sport has become the subject-matter of cut-throat competition. When the International Cricket Council (ICC) opened the bidding process for an eight-year deal from 2007-2015, the media rights at stake covered two World Cups, as well as other various one-day internationals under the aegis of various tournaments. In late October 2006, India sent shockwaves through the world of cricket by announcing their determination to bid for these global rights. Its determination to control the marketing of the game caught the other major cricketing nations by surprise, and led to frantic behind-the-scene negotiations before the ICC Board meetings which were to decide the issue (*The Guardian of 30/10/2006, p. S6*).

In the event, the much-coveted deal was allocated to an Indian-based consortium, ESPN-Star Sports. This decision was announced at the conclusion of the ICC Board meeting in Dubai in mid-December 2006. The decision was a unanimous one. The final figure on the agreement was not, however, disclosed, but it was thought to be well in excess of the ICC's previous commercial deal (*www.rediff.com/cricket of 11/12/2006*).

Legal issues arising from transfer deals

Portuguese court allows move between clubs based on unpaid wages

In late March 2007, the world governing body in football, FIFA, was forced to monitor yet another threat to the sport's transfer system after a court in Portugal allowed a player to move from one club to another for the price of unpaid wages from the remainder of his contract. Midfielder Zeto had left the club Leiria a few months after joining them in 2000, and successfully challenged the club's claim for a £7 million fee. The court set the compensation figure at a mere £70,000 (*Daily Mail of 26/3/2007, p. 78*).

"Renting" of players should be stopped, demands footballers' union

See below, p.59.

Norway police investigate Mikel transfer

The various manoeuvres, both orthodox and unorthodox, by certain English Premier League clubs in attempting to lure the 19-year-old Nigerian prodigy John Obi Mikel away from Norway have been well documented in previous issues of this Journal. Originally, the Nigerian was due to sign for Manchester United from Lyn Oslo in June 2006, but the London club subsequently reached a £12 million agreement with United to allow him to move to Stamford Bridge.

However, it would appear that the legal repercussions of this long-running saga are far from over, with the news, which broke in mid-March 2007, that Norwegian police were about to investigate Mr. Mikel's transfer to Chelsea. Oslo police attorney Paul Hernaes commented that the case was about "document forgery", which they were taking extremely seriously. He added that Mr. Mikel was to be questioned by them in London, but that he was "just a witness" in the case (*The Daily Telegraph of 7/3/2007, p. S9*). No further details are available at the time of writing.

Employment law

Death threats to Adebayor over Togo strike threat

Emmanuel Adebayor, a key player in the line-up of English Premiership side Arsenal, was considering his international future in late March 2007, when he received death threats before Togo's home win over Sierra Leone in a qualifying match for the African Nations Cup. Mr. Adebayor is a central figure in a series of disagreements between Togo players and officials. He had threatened not to play unless he and his teammates received payments which they claim remain outstanding for the 2006 World Cup (*Daily Mail of 26/3/2007, loc. cit.*).

Dwight Yorke sued by FC Sydney for breach of contract (Australia)

Now in the twilight of his career, Trinidad and Tobago striker Dwight Yorke is now playing for English League club Sunderland. However, in early February it was learned that he was being sued for £150,000 by his former club FC Sydney, who claim breach of contract. More particularly, the Australian club claim that Mr. Yorke broke the terms of his deal when he took time off to prepare for Trinidad and Tobago's 2006 World Cup appearance, before leaving for the North of England. The player, who helped Sydney to win the inaugural A-League title before leaving in August 2006, has himself

3. Contracts

launched a counter-action against Sydney, claiming that the latter failed to pay money owed to his management firm (*Daily Mail of 2/2/2007, p. 91*). The outcome of this case was not yet known at the time of writing.

“Renting” of players should be stopped, demands footballers’ union

PSV Eindhoven are not the most glamorous of top European sides, but in early March 2007 they did succeed in eliminating last year’s European Cup finalists, Arsenal, from this year’s Champions’ League. However, there was some controversy about the winning goal in that tie – not because it infringed the rules of the game, but on the grounds that it was scored by a player who is officially registered as a Chelsea footballer, to wit Brazilian defender Rodrigo Alex. The Netherlands club claim that the latter had been “rented” from the English Premiership champions.

No rules were broken in the process, either at the national or at the international level, and if PSV had drawn Chelsea in the next round Mr. Alex would have been perfectly entitled to appear for the former against the latter. However, FIFPRO, the international players’ trade union, has appealed to European governing body UEFA, and more particularly its new President, Michel Platini, to discontinue this practice. Philippe Piat, who chairs the union, has specifically written to Mr. Platini on this subject, stating that a player should “belong in totality to the club he plays for” (*The Guardian of 9/3/2007, p. S1*). The Brazilian himself is quite open about his relationship with Chelsea:

“Chelsea bought me a couple of years ago from Santos (Brazil) but because of the visa situation (he did not qualify for a British work permit), I went on loan to PSV. We couldn’t talk about the deal at first and I wasn’t allowed to say anything. Then they started talking about it, so I could too” (*ibid*).

UEFA’s own website states that, in July 2004, Mr. Alex was signed by Chelsea directly from Santos in a deal worth over £5 million, using cash “available following the sale of Arjen Robben (to Chelsea). However, the English Football Association (FA) has no record of the player ever having been registered with the London club, which would appear to indicate that Alex’s position at PSV is not a conventional loan agreement. In fact, PSV have come under fire from their own national authorities over such deals. Mathieu Sprengers, the President of the Netherlands Football Association (KNVB) had warned the club that any repeat of such deals might see their Champions’ League participation threatened.

As for Mr. Platini, he is said to be troubled by this issue, but believes that UEFA might find it difficult to apply regulatory powers to this kind of deal. One measure which Mr. Piat has suggested, however, is that all transfer monies be passed through an independent auditor, which could be governing bodies such as FIFA, UEFA or even national football associations (*ibid*).

Zimbabwe cricketers have World Cup pay held back

Few cricket pundits were surprised when the Zimbabwean national team made an early exit from the 2007 World Cup after the group stages. Almost equally predictable, given the turbulent history of relations between players and administrators in that country (Journals *passim*), were the industrial disputes that would result from this development. No sooner had the players touched down in Harare, than they were greeted with the news that they would not be paid for their efforts until June. The match fees were set at \$2,000 per game, plus \$500 for each half-century. They were also told that they would have to wait until then for their salaries to be paid in foreign currency (*The Sunday Telegraph of 1/4/2007, p. S9*).

For players in most other countries this would represent a minor inconvenience; for Zimbabwe’s representatives, however, matters are not that straightforward. As matters stand, they are paid in Zimbabwe dollars, and with the currency losing value by the day, these salaries have been effectively reduced to naught. What makes this development also difficult for the players is that their central contracts contain a clause under which they must be available for all fixtures organised by Zimbabwe Cricket (ZC). This effectively means that they cannot find employment as club professionals in England this season. Should any of the players join an English club, ZC will almost certainly withhold the money for breach of contract. The latter were aware that some players were likely to adopt such a course of action after the World Cup, and would be unlikely to return. The inter-provincial Logan Cup starts in April, and a number of A-team tours have been planned as the country prepares for a return to Test cricket in November (see below, p. 000). A leading Zimbabwe international commented:

“We have been told that we cannot join clubs in England, but at the same time we will only get our money from the World Cup in June. This means we will be stuck here until June, and if we join clubs in England we will lose all our money as we would have breached our contracts” (*ibid*).

ZC are believed to be in the red, already operating under an overdraft, with a large amount of the World Cup money having been spent before it has even been received (*ibid*).

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Sporting agencies

[None]

Sponsorship agreements

FIFA dismiss four executives following US court ruling on sponsorship negotiations

In mid-December 2006, it was learned that the world governing body in football, FIFA, had lost a court action in the US over sponsorship negotiations. In a damning verdict, the Court upheld MasterCard's complaints concerning FIFA's "serial lying" in these negotiations (*Daily Mail of 12/12/2007, p. 71*). In order to limit the damage resulting from this affair, FIFA immediately moved to dismiss four top executives, after having been named in the court decision as having seriously misled the credit card company. According to a statement by the governing body:

"The FIFA employees who had conducted negotiations with VISA and MasterCard were accused of repeated dishonesty during negotiations and of giving false information to the FIFA-deciding bodies in question. FIFA cannot possibly accept such conduct among its own employees" (*The Daily Telegraph of 13/12/2006, p. S7*).

The court ruling held that FIFA breached their obligation to give MasterCard first refusal on post-2006 sponsorship when they agreed a deal with Visa instead (*ibid*). As a direct result of this ruling, FIFA lost a major bank sponsoring agreement for the women's World Cup, due to take place in China. Subsequently, FIFA decided, somewhat surprisingly, to launch an appeal against this decision. The US judge in question has, however, rejected the governing body's request that the appeal be heard on its home territory in Switzerland (*Daily Mail of 7/3/2007, p. 85*). The trial itself had not taken place at the time of writing.

Sportswear giants Nike face "gazump" claim (Germany)

In mid-March 2007, it was learned that leading sportswear manufacturer Nike had succeeded in ousting arch-rivals Adidas as kit supplier to the German national football team. This has caused Adidas to take the German football federation (DFB) to arbitration. Adidas claim that it and the DFB issued a statement in August 2006 announcing the renewal of an association which stretches back to 1950. This was understood to value the deal at £7.5 million per year between 2011 and 2014. However, six months after the statement, Nike announced an eight-year deal said to be worth £340 million. Adidas is seeking to hold DFB to its verbal agreement, although it may offer an enhanced deal (*The Guardian of 21/3/2007, p. S2*). The outcome of the arbitration proceedings was not yet known at the time of writing.

Other issues

Club v. country disputes – an update

Henry injury blamed on French football federation by Wenger

The columns of this Journal have frequently reported various instances of the friction which can arise between leading football clubs and the national sides with whom they supply their players on international duty. It was perhaps not unexpected that English Premier League club Arsenal, whose ranks include players representing a multitude of nations, should be in the front line of this struggle. This was in evidence yet again in mid-March, when the news broke that club captain Thierry Henry would be out of action for the remainder of the season. Manager Arsène Wenger put at least part of the blame for this state of affairs on the French footballing authorities and management. Mr. Henry is, not unnaturally, first choice for his country on international duty, and this is always likely to take its toll in physical terms.

However, Mr. Wenger had particularly bitter words for French coach Raymond Domenech for playing Henry for 90 minutes in all but one of the seven internationals in which he featured between August and February of the current season. He was especially vexed at Mr. Domenech's insistence that the Arsenal striker should play out the entire duration of a friendly fixture against Bosnia in mid-August, fewer than two weeks after the player had returned from holiday. Wenger claimed that he had rested his key forward for the Champions league qualifier against Dynamo Zagreb on 8 August,

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and hoped that the French football federation might reciprocate. As a result, he claims, Henry just played 27 games this season, 16 of these in the Premier League (*The Independent of 14/3/2007, p. 56*).

It would therefore seem that the "club v country" issue has acquired yet another dimension – not only the question whether national federations should pay the clubs whose players they use for their services, but also the conditions in which they should be used. Clearly, this is not an issue which is going to subside easily.

Nigeria coach attacks Chelsea over use of Martins over availability for international duty

When Nigeria were due to play Ghana in an international friendly in London, the national team management was surely entitled to expect its England-based players to be readily available. Not so – much to the annoyance of coach Austin Eguavoen. He castigated, and threatened to report, Newcastle and Chelsea to world governing body FIFA for their reluctance to release Obafemi Martins and John Obi Mikel respectively for the fixture. Newcastle manager Glenn Roeder claimed that Martins was "tired", whereas Chelsea boss José Mourinho claimed that Mikel had collected an injury during a Premiership match against Charlton (*Daily Mail of 5/2/2007, p. 77*).

The Nigerian coach's suspicions about Mr. Mikel seemed to have been vindicated when the latter played a full 90 minutes against Ghana. He therefore voiced the legitimate thought that Chelsea "were not being straight" with him. As for Mr. Martins, he failed to show up at all – even though Newcastle had given him clearance to play. Mr. Eguavoen said he would take the matter "to the highest authority" (*The Independent of 7/2/2007, p. 56*).

Agency accepts bet on dead horse – gambling watchdog investigates (Australia)

Official invigilators of gambling activity will have encountered many a bizarre incident in the course of their mandate, but cannot have imagined that they would be faced with a situation such as that which occurred in late September 2006 in South Australia.

Clearly intent on giving new meaning to the phrase "flogging a dead horse", the State's betting agency had accepted a wager on a horse more than two weeks after the unfortunate animal had passed away. More particularly the Totalisator Agency Board had accepted an A\$ 5.00 bet on Chickaloo, with odds of 200-1 to win the Epsom Handicap on 7 October. In fact, the hapless mare had already been put down after breaking a leg a

month earlier. Strangely, punter Tom Hunt said that he was aware the horse had died when he placed the wager, and just "went to the TAB to see if they'd take my money". In a later statement, South Australia's gambling minister, Paul Caica said that the TAB had claimed not to have been informed of Chickaloo's demise, and that those bettors who had wagered on the dead horse would receive a refund (*The Guardian of 28/9/2006, p. S12*).

Michelin takes legal action after losing tyre contract (France)

In mid-March 2007, Michelin, the legendary French tyre corporation, announced that it was taking unprecedented court action against the FIA, being the world governing body in motor racing, after failing to win the contract to supply the World Rally Championship with tyres for the next three years. The FIA having awarded the contract to rivals Pirelli, Michelin's competitions director, Frédéric Henry-Biabaud, alleged that the decision had been taken for "reasons that have nothing to do with sport". Accordingly, the tyre manufacturer has brought an action against the FIA in a French court, demanding that the decision be set aside because of "irregularities in the tender process" (*The Guardian of 16/3/2007, p. S2*). The outcome of this case was not yet known at the time of writing.

Williams sisters did not breach contract, rules Florida court (US)

In late December 2006, a jury in Florida ruled that Serena and Venus Williams, two leading tennis players on the women's circuit, did not infringe the terms of a contract with two promoters by failing to appear at a tennis event in 2001. Promoters of the event in question, the "battle of the sexes", claimed that they lost \$9 million because the sisters failed to compete. However, the jurors agreed with the Williams's legal team that their father, Richard Williams, had no authority to represent them when he concluded the deal. The pledge to play was signed by the father, and as a result, the action in breach of contract was dismissed (*The Daily Telegraph of 22/12/2006, p. S22*).

4. Torts and Insurance

Sporting injuries

East Germans receive compensation for systematic doping

In the course of its brief existence, the German Democratic Republic, also known as East Germany, gained an extraordinary number of sporting honours in various fields. To a large extent, as we then suspected and now know, these were due to an extensive doping programme. It is reliably estimated that some 10,000 athletes received performance-enhancing drugs, which enabled East Germany to win 454 medals at Olympic summer games and 110 medals at winter games before being reunited with West Germany in 1990. Many of the athletes who had these drugs administered to them have suffered considerable health problems.

In December 2006, it was decided by the German Olympic Sports Federation (DOSB) that all athletes who were subjected to this treatment should receive compensation amounting to £6,000 each. The cost is to be shared between the DOSB and the Federal Government. Two-thirds of the money will come from the funds set aside for cultural activities during the 2006 football World Cup. This settlement is the result of a court action initiated by the victims against various German sports organisations. They had argued that the latter should be held liable since they had inherited the property and funds of former GDR institutions (*The Guardian of 14/12/2006, p. S8*).

Libel and defamation issues

Slavkov obtains compensation over untrue charges (Bulgaria)

In mid-December 2006, it was learned that Ivan Slavkov, the Bulgarian expelled from the International Olympic Committee (IOC) after the BBC had alleged that he was engaging in corrupt practices in a programme which nearly wrecked London's chances of winning the 2012 Games, was awarded £5,000 by a court in Sofia. He had sued the Bulgarian Government over charges which had been brought against him as far back as 1990, when he had been tried for the misappropriation of £5,000 in his capacity as head of the Bulgarian Olympic Committee, as well as for the illegal possession of two revolvers, three guns and ammunition. A six-year trial relating to these charges ended when a court ruled that Mr. Slavkov, the son-in-law of the former Communist leader Todor Zhivkov, should be compensated over the case involving illegal firearms because the charges were untrue (*The Guardian of 14/12/2006, p. S8*).

Insurance

[None]

Other issues

[None]

5. Public Law

Sports policy, legislation and organisation

Internet sports gambling in the wars (US, Italy and France)

US legislators move to stop online gambling

There has been mounting concern in several countries that the increasingly popular pastime of gambling on the outcome of sporting contests through the Internet is threatening to spiral out of control, particularly in view of the online variety's ability to evade many of the checks and controls which exist for conventional forms of wagering.

In the country where this form of betting appeared to have become the most prevalent, i.e. the US, there have, for some years now, been a number of attempts to have this practice outlawed. In fact, several states had already begun a crackdown on this form of wagering outside the federal framework – hence the arrest, in July 2006, of David Carruthers, then the Chief Executive of British gambling company BetonSports, on charges of racketeering, fraud, tax evasion and conspiracy (see [2006] 2 *Sport and the Law Journal*, p. 77). The legal framework which existed at the time when this form of betting started in earnest had been drawn up to cover telephone betting in the 1960s, and the position of online gambling under these rules had been far from clear. In the early autumn of 2006, an attempt to that effect by Republican senator Bill Frist had at first appeared to stall after he had failed to attach the measure to a Bill authorising continued military operations in Iraq and Afghanistan. Undaunted by this setback, the doughty senator succeeded in manoeuvring legislation outlawing most forms of online gambling on the back of an unrelated Bill on maritime port security (such are the vagaries of American legislative procedure). The new law makes it unlawful for US banks and credit card companies to process payments to online gambling companies (*The Guardian of 2/10/2006*, p. 19).

Fallout of this legislation

Naturally, shares in the relevant companies went into freefall, with some £4 billion being wiped off values within hours of the legislation being adopted. Some analysts compared this development with the collapse of the "dotcom boom". Companies which grew in a wave of optimism about expanding into US faced at least drastic contraction, with many attempting to refocus their activities on the UK, Europe and the relatively untapped Asian markets. The crisis also caused alarm at football clubs and among sports

administrators. Particularly badly hit was the English Premier League, for which the online gaming industry yielded £15 million during the 2005-6 season. It had also been seen as a financial saviour for snooker, once tobacco sponsorship had been banned (*The Guardian of 5/10/2006*, p. 20).

Not all online gambling firms were resigned to their doom, and some sought to find and exploit any loopholes in the new rules. This Sportingbet, which had seen its shares fall by 62 per cent following their adoption, decided to focus its efforts on horse racing and fantasy sports, which are both exempted from the relevant legislation. However, in order to take bets on US horse racing, bookmakers need a licence. It is not yet known whether Sportingbet has succeeded in obtaining one. In addition, moves were being made to attract these companies to other shores. Thus the UK government is hoping to promote this country to gambling groups as an attractive alternative to offshore bases such as Gibraltar, where firms such as 888 and PartyGaming are located (*The Daily Telegraph of 9/10/2006*, p. B4).

Other companies, however, looked like being less fortunate. Thus World Gaming, which is currently fighting for survival after it suspended dealings in its shares because of a "fundamental uncertainty" over its ability to continue trading". Given that 95 per cent of its revenue was generated from the US, it appeared that World Gaming had been the hardest hit by the new regime. Even before the latter became reality, it appeared to be in dire financial straits, having a bank debt of over \$30 million at the end of June 2006 (*The Daily Telegraph of 10/10/2006*, p. S1). Later, two London-based companies, Fairground Gaming and leisure and gaming, suspended operations there as a result of the new US legislation (*The Independent of 11/10/2006*, p. 440). Sportingbet, which, as reported earlier, had already suffered at the hands of US measures against online gambling, was also badly hit, with the Chief Executive reporting that the measure would cost the company £210 million in the year to 1/7/2007 (*The Daily Telegraph of 20/10/2006*, p. B3).

France starts its own clampdown

PartyGaming was also one of the firms badly affected by the new US rules referred to above, and had to drop out of the FTSE 100 index amidst rumours that it too was experiencing cash problems (*The Daily Telegraph of 10/10/2006*, loc. cit). It then set about targeting markets in Europe, more particularly in France. However, here too the industry started to experience problems. In late February 2007, a leading British newspaper learned that

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PartyGaming was closing its website to French customers without informing its investors. Just three days later, one of the firm's largest shareholders sold 123 million shares. The company refused to comment on its reasons for the move. Meanwhile, authorities in Paris requested interviews with executives from an estimated 20 companies (said not to include PartyGaming) over the lawfulness of their marketing activities in France (*The Guardian of 28/2/2007, p. 26*). The letters in question invited executives for interview, although the authorities were understood to have made clear that an alternative approach might be to issue arrest warrants. In a separate, but related, development, the founders of Bwin, another gambling operator, were arrested by the French authorities at a press conference which they had called to publicise a shirt sponsorship deal with leading football side AC Monaco. They were bailed three days later, but informed that they could face three years in jail if found to have contravened laws on gambling advertising (*ibid*).

This toughening French stance raised the prospect of a co-ordinated crackdown on off-shore-licensed gambling groups similar to that launched by the US Department of Justice the previous year (independently of the anti-online gambling legislation referred to above). However, France's position appeared to be at odds with EU competition rules, which many offshore operators hope will be strengthened because of a landmark ruling by the European Court of Justice, which ruled against Italian attempts to maintain a ban on cross-border betting (see also below under item 9, p.64). However, industry insiders suspect that France is stepping up its lobbying efforts in Brussels, fearing that open competition – particularly from online firms based in offshore tax havens – could destroy the French PMU monopoly on which domestic horse racing relies for funding (*ibid*).

British bookmakers win Italian online licences

However, not all is doom and gloom for cybernetic betting operators. In late December 2006, British-based bookmakers Ladbrokes, William Hill and Gala won licences for sports and horse race betting over the internet and telephone in Italy, according to the country's state betting agency AAMS (*The Independent of 29/12/2006, p. 40*). William Hill and Ladbrokes had also been awarded new licences for sports betting and horse race betting throughout the country. Ladbrokes announced that it was planning to expand its Italian business after winning 51 licences for betting at franchises in cafes and bars, as well as 33 for horse race betting and 58 for sports wagering at betting centres (*The Times of 29/12/2006, p. 49*). (On the subject of Italian betting law and EU law, see below under item 9, p. 000).

Spanish matadors may be forced to spare the bull

The regular reader of this Journal is no doubt aware that this column refuses to recognise the organised killing or wounding of animals for ostensible entertainment as a sport – except where measures are taken to prohibit it or at least mitigate its cruellest aspects. Thus it is with bullfighting, which has been suffering a few setbacks in recent years, at least in certain parts of the Iberian world, notably Catalonia (see below). In late December came another development which may give this activity a slightly less reprehensible aspect, when the Spanish Minister for the Environment, Cristina Narbona, stated that the law should be changed to spare the bull its traditionally bloody end. Instead, Spain should follow the example of its neighbours Portugal and hold bullfights without killing the animals.

Ms Narbona's comments were met by immediate and predictable opposition from those who are keen to preserve Spain's controversial national "sport" – some of it from the most unlikely quarters. Thus bull-breeders and left-wing politicians locked horns – so to speak – with the Minister for pandering to what one described as "Anglo-Saxon prejudices". However, animal rights activists and ecologists baked this proposal, which came after Barcelona's city council announced that the city's sole bullring may have to close because of falling demand for bullfights. Warming to her theme, the Minister recalled that recent legislation introduced by Madrid which made provision for jail sentences and tough fines for animal cruelty and the organisation of "unauthorised shows" such as cockfighting or illegal greyhound races should also include bullfights. However, the level of support which the Minister had in Spain's ruling Socialist party was as yet unclear. In fact, the Party's Secretary General, Jose Blanco, commented that this proposal was not "part of our policy" (*The Independent of 22/12/2006, p. 28*).

As a matter of fact, the impending closure of Barcelona's last operational bullring merely reflected a steady decline in the appeal of this spurious entertainment among the public at large. According to a Gallup survey in October 2006, only 27 per cent of Spaniards expressed any interest in bullfighting, whereas 72 professed to having none whatsoever. Its popularity has steadily declined over the past three decades. It stood at 55 per cent in 1971, falling to 46 per cent in 1980, 31 per cent in 1992, before hitting the present all-time low. Since Barcelona usually provides the yardstick for all things cultural across Spain, the closure of its final bullring should perhaps be taken very seriously (*The Daily Telegraph of 20/12/2006, p. 12*).

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Chinese authorities show their best and worst sides in preparations for Beijing 2008

Beijing promises "frugal" Games

It is widely predicted that the 2008 Games will be the most sumptuous ever, in terms of the facilities and opportunities on offer. However, there appears to be a laudable effort on the part of the Chinese authorities to ensure that as many members of the public as possible will be able to afford access to the multitude of events. In fact, when ticket prices were announced in late November 2006, some of them proved to be as low as 10 per cent of those which were charged at the last Olympics, in Athens. Most spectators will pay no more than 100 yuan (£6.50) under a ticketing policy which reflects China's lower average income (*The Guardian of 30/11/2006, p. S21*). The price range will be between 30 and 1,000 yuan, with preliminary events starting at 39 yuan and finals tickets at 60 yuan (*The Daily Telegraph of 30/11/2006, p. S4*).

There are other aspects as well which indicate that frugality will be the norm, in that China will spend considerably less on security than recent host countries. However, organisers maintain that the safety of the Games can be ensured at a low cost. Chinese media reported that organisers had budgeted merely \$300 million for security purposes (*The Guardian of 1/3/2007, p. S10*).

Authorities clamp down on corruption

That the vast sums inevitably expended on this massive project has attracted its share of corruption amongst officials is not entirely surprising, as has already been documented in previous issues of this Journal (*[2006] 1 Sport and the Law Journal p. 61*). Last year, Liu Zhihua, the Deputy Mayor of the city, was dismissed because he took several million yuan in bribes and "helped his mistress to seek profit in projects", according to a state television news report. He was later dismissed from the Communist Party (*The Daily Telegraph of 13/12/2006, p. S3*). It later transpired that the bribes in question were for awarding sites near Olympic venues to developers. He was allegedly caught after corruptly offering a building plot to two companies. The losing bidders also filmed him with prostitutes in Hong Kong and sent the tape to the Politburo (*The Daily Telegraph of 30/1/2007, p. 19*).

Police instructed to "strike hard" at Olympic dissidents

One of the less attractive features of Chinese public policy, however, looks also set to be very much on display at next year's Games, with the announcement that the Chinese police in attendance at the Olympics

should "strike hard" at Olympic "dissidents". China has never enjoyed the most favourable of reputations in terms of its toleration of those who depart from the official political and ideological line, and the minds of the authorities have been particularly exercised by those groups who have a past record of organising sit-down protests, as well as those who engage in "splitism and religious extremism". The latter appears to be a catch-all phrase to denote anyone supporting independence, or at least greater autonomy, for Tibet, Xinjiang or Taiwan. The Government fears that "free Tibet" campaigners in particular could use the Games as an opportunity to boost international sympathy for their cause. Tibetan activists, as well as representatives of the Uighurs, the Muslim ethnic group which lives in Xinjiang, are regularly harassed and jailed, with well-documented allegations of torture (*The Daily Telegraph of 21/3/2007, p. 20*).

This will come as a major disappointment to the International Olympic Committee (IOC), which awarded the Games to Beijing in 2001, and in so doing stated that this would provide an opportunity for China to improve its human rights record. It is true that, since then, websites have given a voice to individuals' complaints about official corruption and social problems such as inequality whilst, in accordance with IOC demands, heavy restrictions on reporting by foreign journalists were lifted at the beginning of 2007. Newspapers and official spokespeople have also become quicker to respond to international media and incidents which could show the authorities in a poor light. However, the Government has frequently insisted that there is no chance of the Olympics bringing an end to single-party dictatorship. It appears to be nervous of the example set by neighbouring South Korea, whose military dictatorship was compelled to introduce democracy after a series of demonstrations during the run-up to the 1988 Olympics in Seoul (*ibid*).

Fears for Olympic workers as underground rail link claims lives

Another major source of concern – and potential embarrassment to the authorities of a country supposedly based on the "dictatorship of the proletariat" – are the safety standards and working conditions associated with the construction of the Olympic facilities. This was very much in evidence in early April 2007, when it was learned that six men died whilst constructing an underground railway. Police and state media moved rapidly to expose those believed to be responsible for the accident, in which a tunnel on the new line connecting Beijing to the Olympic Village collapsed. Later, there were 10 arrests in relation to the accident, the man responsible for the labour sub-

5. Public Law

contracts at the site having fled. The state-run construction company responsible for the work was so concerned to keep details of the accident secret that it locked workers inside the construction site and confiscated their mobile phones whilst attempting its own rescue work. Eventually, one man who had succeeded in retaining his telephone crept away and called a relative who works for the police (*The Daily Telegraph of 3/4/2007, p. 14*).

There is no clear evidence that the delay in organising a city-led rescue effort caused preventable deaths. However, the accident has highlighted increased anger, now officially backed at the highest levels, that China's great projects, including the Olympics, come at the expense of the workers who create them. For some time now, some local newspapers have raised concern about the safety standards of Beijing's large-scale Olympic face-lift, which has seen the city congratulated worldwide for the extremely rapid completion of many stadiums and other sporting projects. Moreover, China's general record on industrial safety appears to be far from satisfactory. A reported 127,000 people died in industrial accidents in China in the course of 2005, and whilst this includes many road deaths, fatalities in the construction and mining industries number many thousands. State-operated construction firms have a particularly bad record on safety and other aspects of worker relations (*ibid*).

Rural migrant workers – the other face of the “Olympic miracle”

One further negative aspect of the labour conditions for those working on the Olympic the construction of the Olympic sites is the fact that most of them are imported from rural areas, and living in dormitories with little access to independent representation. In many cases, they are not even paid the wages owed to them. Very few of them have any employment contracts, so they are not covered by medical insurance – which is supposed to be mandatory. In addition, they bring many children with them, and some surveys suggest that almost one-third of these do not go to school at all, creating a growing underclass of ill-educated Chinese (*The Sunday Telegraph of 4/3/2007, p. 30*).

This has highlighted the poor state of the country's unequal education system generally. One third of the schools in the remote West of China cannot afford to buy teaching materials. Even in the booming cities of the East, the lack of official funding compels schools to charge parents unofficial fees of up to 12,000 yuan per annum. Those who cannot pay are simply excluded from the system. This in turn is fuelling tensions,

already heightened by the widening gap between rich and poor (*ibid*).

Bids for major sporting events

US to bid for 2016 Games – but which city?

In January 2007, it was learned that the US Olympic Committee decided to bid for the 2016 Games, clearing the way for either Chicago or Los Angeles to become the official candidate. This decision the result of a long process aimed at avoiding a repeat of New York's failed attempt to host the 2012 Olympics (*The Independent of 10/1/2007, p. 47*). Although a decision by the International Olympic Committee (IOC) will not be made until 2009, it is expected that a US city will be selected (*The Daily Telegraph of 8/2/2007, p. S9*).

South Korea and Russia host successive athletics championships

In late March 2007, Daegu, in South Korea, and Moscow were selected to host the 2011 and 2013 World Athletics Championships respectively. The decision was made at the International Association of Athletics federations (IAAF) council meeting in Mombasa following day of presentations and lobbying. The other candidates were Barcelona, bidding for 2013 only, and Brisbane (*The Guardian of 28/3/2007, p. S2*).

Prague to bid for 2016 or 2020 Olympics

In mid-March 2007, Pavel Bem, mayor of the Czech capital Prague, announced that his city was to bid to host the 2016 or 2020 Olympics. The city's Executive voted to go ahead with the bids, which are aimed at bringing the summer Games to Eastern Europe for the first time since the fall of communism (*The Daily Telegraph of 14/3/2007, p. S20*).

China bids for 2018 World Cup

In early March 2007, there came official confirmation that China will submit a bid to host the 2018 World Cup tournament (*The Guardian of 2/3/2007, p. S2*).

Russia bids for 2014 Winter Games

(See below, p.67.)

5. Public Law

Doubts continue to grow on South Africa's ability to host the 2010 World Cup

It has been reported before in this Journal that, although most people would recognise the desirability to hold football's most prestigious tournament in the African continent, the selection of South Africa for the 2010 event may not have been the happiest of choices. These doubts were boosted in October 2006, when it was learned that the host country's projected bill for organising the tournament had ballooned to more than £850 million – adding to concerns that soaring crime and inadequate public transport could derail the planned tournament. These figures came shortly after the controversy, reported in a previous issue, which resulted from Franz Beckenbauer, the Chairman of the 2006 World Cup Organising Committee, accusing South Africa's organisers as being afflicted with "African problems" and touting Australia as an alternative host.

These latest figures represent a considerable jump from the initial £160 million projected when the country won its bid to host the event three years ago. Costs appear to have rocketed after the original plans, which consisted in upgrading the country's existing rugby stadiums, led to accusations that the traditionally "white" sport would benefit, whilst black-dominated football would remain its poorer relations. In response, the Government decided to build six entirely new football grounds and renovate four others. This obviously sent costs spiralling upwards. Although the chief organiser of the 2010 Cup, Danny Jordaan, maintains that most of the work will be completed within 30 months, construction has yet to start on any of the planned stadiums at the time of writing (*The Independent of 31/10/2006, p. 36*).

Meanwhile, Johannesburg, one of the main venues for the tournament, has come under severe criticism for the absence of a solid system of public transport for the millions of extra visitors predicted. Carless commuters currently have to rely on rickety taxi minibuses, the erratic schedules of city buses, or crime-ridden trains. In fact, the country's high crime rate also constitutes a major source of concern – even though the Secretary-General of world governing body FIFA has coyly referred to it as a "challenge" (*ibid*).

Environmental issues

WWF in plea to Russia to save wildlife habitat from 2014 Winter Olympics bid

Russia has recently decided to submit a bid to stage the 2014 Winter Olympics. This will almost certainly entail the destruction of rare wildlife habitat in Sochi, on the country's Black Sea coast. Before the International Olympic Committee (IOC) visited the area in order to decide for themselves, the World Wildlife Fund (WWF) wrote to the Russian President, Vladimir Putin, in a last-ditch attempt to stop this environmental degradation (*The Independent of 15/2/2007, p. 23*). The outcome of the IOC's deliberations on this issue is not yet known at the time of writing.

Rare storks put paid to Spain's "golf city"

(See below under Item 6, p.70.)

Public health and safety issues

Travelling supporters' safety must be "top priority" for new UEFA chief

David Taylor is a stalwart of the Scottish Football Association (SFA) who has now been promoted to the position of General Secretary to UEFA, the European governing body in the sport, thus acting as "right-hand man" to the new UEFA President, Michel Platini (see below, p.93). Mr. Taylor has set as his absolute priority the safety of travelling supporters. More particularly, he believes that UEFA may have to set "minimum standards" of security with which all clubs would be required to comply. Mr. Taylor's observations came in late March 2007, as concern was mounting about the manner in which some top-level European games were being policed and organised – as was seen earlier (p.46), Lille FC, the French side, were fined for breaches of security and poor organisation in relation to their home tie with Manchester United. According to Mr. Taylor:

"Supporters have to be safe when they're travelling and going to stadiums in different countries in Europe. We can't have football matches where there's an unsafe environment. We are disappointed with some of the things that have been happening recently. I think it's a bit naïve to think we need absolute standardisation across Europe because there are different cultures, different police forces, different security methods. But there should be certain minimum standards that people can enjoy. I think that's obviously now very much up towards the top of the European football agenda because of what's been happening in recent weeks" (*The Observer of 25/3/2007, p. S6*).

5. Public Law

It remains to be seen whether these fine words will be converted into concrete action.

Nationality, visas, immigration and related issues

Bahrain cancels citizenship of naturalised athlete

In early January 2007, it was learned that Bahrain had revoked the citizenship of Kenyan-born athlete Mushir Salem Jahwer. What caused the authorities to take this drastic step was the fact that Mr. Jahwer took part in a marathon in Israel, a country with which Bahrain has no diplomatic relations. The Bahrain Athletics Association (BAA) also removed the athlete from its list, and is withholding the passport which he uses in order to run under the Bahraini flag after he won the Tiberias marathon. Mohammad Abdul Jalal, Deputy President of the BAA, described Jahwer's action as being "outside the rules", and further castigated the runner for going to Israel without even informing the Association. Mr. Jahwer, whose original name was Leonard Mucheru, was given Bahraini nationality in 2002 (*The Guardian of 8/1/2007, p. S17*).

New "grannygate" imbroglio costs Kiwis dear (Rugby League)

Devotees of the game of rugby at the international level will recall the various "grannygate" scandals which afflicted the sport some years ago, under which players had become eligible to compete for national sides on extremely flimsy, if not downright bogus, grounds of genetic filiation. However, these cases were restricted to rugby union, and usually concerned Southern Hemisphere players attempting to gain international credentials in the North. In the case described under this heading, the code in question was rugby league, and the imbroglio was between two Southern Hemisphere countries.

During the traditional Tri-Nations tournament, which took place in October/November 2006, the New Zealand side which beat Great Britain in the opening fixture contained one Nathan Fien, who was making his debut for the Kiwis, although born and bred in Australia. He gained his place in the New Zealand side on the basis that his grandmother was born in New Zealand. However, closer scrutiny revealed that it was in fact Mr. Fien's great-grandmother who had her place of birth there – a remote connection too far, even by the current somewhat far-fetched rules which currently apply on the subject. This caused Brian Noble, the Great Britain

coach, to call for New Zealand to be deducted two points for fielding an ineligible player (*The Daily Telegraph of 31/10/2006, p. S14*).

The Executive Committee of the Rugby League International Federation (RLIF) thereupon ruled that the New Zealand Rugby League (NZRL) was to be given until the next evening to make a written submission about Mr. Fien's eligibility, with any penalties to be determined the next day. It transpired that, in fact, Australian administrators and journalists had been inquiring into Mr. Fien's qualifications for several weeks, with tournament organisers demanding to see the birth certificate of the "grandmother" which would have given the Queensland-born player to represent New Zealand. After the birth certificate was published in a leading Sydney newspaper, it became apparent that the "grandmother" in question would by now be well over 100 years old – whereupon the NZRL Chairman conceded that she was actually the player's great-grandmother (*The Guardian of 31/10/2006, p. S10*).

In the event, the RLIF decided to impose a two-point penalty on New Zealand. This led to the resignation of Selwyn Bennett, the NZRL Executive Chairman, resigning his position, and an apology from the Kiwis. It was also decided that Mr. Fien was banned from playing for New Zealand for the remainder of the tournament. Mr. Bennett's place was taken by Andrew Chalmers (*The Independent of 4/11/2006, p. 56*).

Sporting figures in politics

Female wrestler elected to Japanese parliament

During her sporting career, Shinobu Kandori was frequently dubbed "the strongest man" in Japanese women's professional wrestling. Since her retirement from the ring, she has made politics her new calling, more particularly in the cause of the ruling Liberal Democrat party. In September, she achieved the distinction of a seat in Japan's Upper House of Parliament. She was first in line for the seat vacated by the retiring Minister of the Interior, Heizo Takenaka. There, she joined two other former professional wrestlers (both male). Japan's electoral system allows parties to rotate members in and out of parliamentary seats (*The Guardian of 29/9/2006, p. 24*).

5. Public Law

Other issues

Traffic congestion gets the better of Spartak Moscow (Russia)

The difficulties experienced by Muscovites to move from Point A to B in their sprawling city makes the traffic problems of most other capitals seem trivial by comparison. Calls for an urgent improvement in this situation became more intense in early November 2006, after some of the Russian capital's citizens witnessed the bizarre sight of players from Spartak Moscow, the city's premier football side, having to run through the city's streets ahead of a crucial European Champions League game. After sitting in traffic which failed to move for over 45 minutes, the Spartak manager, Vladimir Fedotov, decided that the team would have to abandon their bus and run to the nearest underground station, which was over a mile away. Even though the Moscow metro attendants allowed the team members through the ticket barriers without paying, the experience proved to be a challenge, especially since, in Mr. Fedotov's words:

"I was afraid that we would lose some of our players because most of them probably have never used the metro before and could have got lost there. I had to chase after everyone and make sure no-one was left behind" (*The Daily Telegraph of 2/11/2006, p. 25*).

The team's unusual warm-up was followed by an even more surreal pre-match talk, conducted in packed metro carriages as it hurtled noisily through dark tunnels. This saga caused outrage in the Russian Parliament – particularly since Spartak lost the match 0-1, conceding a goal in the first minute. It appears that the road infrastructure in Moscow has changed little from the 1980s, when only 1 per cent of the population possessed a car. The current rate of ownership is over 30 per cent (*ibid*).

6. Administrative Law

Planning law

“Golf city” sunk by rare storks (Spain)

In a rare victory of environmental protection over the desire to cover the landscape with golf courses, a handful of rare and rather timid black storks have paralysed work on a massive “golf city” in protected woodlands near Avila, outside the Spanish capital Madrid. Initially, the developers of this project had been given authorisation by the conservative regional authority to cut a swathe through the vast and beautiful pine forest outside Las Navas del Marques, hacking down thousands of trees, in defiance of a regional court ruling which had banned the project. This frenzy of destruction ceased only when the local mayor ordered it to stop, pending an appeal, thus leaving a wide and unsightly gash in the woods. The woodlands constitute the habitat of five nesting pairs of black storks (*Ciconia negra*) and other endangered species including the imperial eagle, which the regional authorities are pledged to protect (*The Independent of 12/10/2006, p. 25*).

The site was originally owned by the local council, which reclassified it as “urban” and auctioned it to a property developer seeking to build a massive estate which includes four golf courses and two luxury hotels. The hillside beauty spot is merely an hour’s drive from the capital, guaranteed to attract prosperous escapees from the sprawling metropolis. Eight environmental groups, including Greenpeace, Friends of the Earth and SEO/Birdlife condemned the project and signed a legal petition against the tree-felling. They faxed their complaint to the region’s environmental legal officer, who imposed a banning order. Days earlier, the Regional High Court of Castilla-Leon ruled that the project infringed protected areas whilst providing no public benefit, that it would destroy the storks’ habitat, and should be discontinued on environmental grounds. A David-and-Goliath stand-off ensued between the environmental lobby, armed with a court order, and powerful developers backed by conservative local politicians (*ibid*).

Although the present author very much hopes that common sense, and therefore the environment, will prevail, there were no further developments to report on this matter at the time of writing.

Judicial review (other than planning decisions)

[None]

Other issues

Village bans cricket in response to India World Cup exit

Tournaments such as the cricket World Cup are bound to leave some nations disappointed, but few countries have taken their side’s exit from the tournament as hard as India. So disenchanting does the Indian public seem to have become following the failure by the national side to make it to the “Super Eight” stage of the 2007 World Cup in the Caribbean, that the local council of Uchana, in the Jind district, has actually banned the sport in response to India’s dismal performance. Nor can this be written off as an isolated eccentricity since the decision has been supported by 27 surrounding villages which are also considering introducing their own ban (*The Daily Telegraph of 4/4/2007, p. 19*).

Village elders, infuriated by their national side’s failure, announced that anyone opposing the ban would face being ostracised socially. The council’s secretary, Jogi Ram, stated that cricket was “as bad as a disc jockey” and that the villagers should instead play football and volleyball (in that area, disc jockeys are associated with western licentiousness). Other council members commented that the ban would be no great loss since cricket was not the country’s national game. Although some may be taken aback by the strictness of this measure, it is perhaps preferable to the less than peaceful reaction by other members of the Indian public, since on returning home, the Indian team members had to be given a police escort home by way of protection. In addition, the homes of the players have been given armed guards by the respective state governments, after many incensed fans destroyed the home of wicketkeeper Mohinder Dhoni in eastern India following India’s defeat at the hands of Bangladesh in the group stages (*ibid*).

7. Property Law

Land law

[None]

Intellectual property law

Reebok sues Nike over patent

In early April 2007, it was learned that sportswear giants Reebok had taken legal action in the US accusing its rival, Nike, of patent infringement in connection with Reebok's collapsible shoe technology. Reebok, which was acquired by Adidas last year, claims that a number of shoes made by Nike violate its patented flexible sole technology, which enables shoes to be collapsed for travel or packaging purposes. The court action also alleges that, despite the patent protection enjoyed by Reebok, Nike "wilfully and intentionally" developed shoes using Reebok's technology (*The Daily Telegraph of 4/4/2007, p. B2*). The outcome of this case was not yet known at the time of writing.

Other issues

[None]

8. Competition Law

National competition law

[None]

EU competition law

UCI to make complaint to Commission against Tour organisations

In mid-January 2007, it was learned that the UCI, the world governing body in cycling, was to file a complaint against the organisers of the top three Tours (Tour de France, Giro d'Italia and Spanish Vuelta) for "anti-competitive practices". In particular, the UCI accuses these organisers of "operating as a cartel" over the professional tour schedules and entry criteria for the "Big Three" races (*The Daily Telegraph of 10/1/2007, p. S17*). No further details are available at the time of writing.

9. EU Law

EU Law (Excluding competition law)

Ministerial conference on “The EU and Sport: matching expectations”

In late November 2006, a Ministerial Conference “The EU & Sport: Matching expectations” was organised in Brussels by the European Commission in cooperation with the Finnish EU Presidency. The Conference reached a number of conclusions (www.europa.eu.int)

A. The EU Sports Ministers

1. Emphasised the importance of sport, taking into account the 2000 Declaration on the Special Characteristics of Sport and its Social Function in Europe (Nice Declaration).
2. Unanimously welcomed the Commission’s intention to launch a policy initiative on the role of sport in Europe, which could take the form of a White Paper, as a response to the Sport Ministers’ wish to give sport a higher profile in European and national policy making.
3. Noted with interest that the White Paper intends to address, in addition to the intrinsic value of sport, the societal and economic dimensions of sport and promote its specific organisational features across Europe. The Ministers agreed that, more specifically, the White Paper should aim at (a) ensuring that European policies increasingly take into account the added value of sport and its potential for achieving the EU’s strategic objectives in the social and economic fields, (b) further developing and implementing the “specificity of sport” in line with the Council’s Nice Declaration, in full compliance with European and national laws and recognising the subsidiarity principle, and (c) facilitating the relations between the EU and sport with the aim to give guidance and achieve more clarity for sport stakeholders.
4. Called on the Commission to identify and focus on priority areas relating to the three main sections of the White Paper.
5. Made the following suggestions regarding the societal role of sport: (a) define and promote the social and educational roles of sport in the framework of the EU’s cohesion policy, as well as the status of non-profit sport organisations based on volunteering (b) find ways to integrate the concept of health-enhancing physical activity (HEPA) with the concept of the societal role of sport, especially in relation to achieving the objectives of the recommendations adopted at the informal meeting of Member State Sport Ministers in

Luxembourg (April 2005) and the work of the Working Group Sport and Health under its extended mandate, and (c) mobilise the policy instruments and programmes of the EU to use sport as a tool for strengthening economic development, social cohesion, education, health and active citizenship.

6. Made the following suggestions regarding the economic dimension of sport: (a) improve the understanding and raise the visibility of the macro-economic impact of sport, in particular its growth and job creation potentials, by enhancing work at EU level on common data and statistical definitions, (b) link the economic potential of sport to the achievement of the EU Lisbon goals, and (c) launch a reflection on the need to put funding for sport on a more secure footing.
 7. Having listened to presentations by Mr José Luís Arnaut, based on the Independent European Sport Review, and Mr Kai Holm, on behalf of the International Olympic Committee, made the following suggestions regarding the organisation of sport: (a) address the challenges posed by the interaction between the specificity of sport and the application of EU law to sport, (b) continue the dialogue with the sport movement, in respect of the latter’s autonomy, to address these challenges at the European level, and (c) encourage this process by facilitating the exchange of information, data and best practice in the field of the organisation of sport.
 8. Confirmed their commitment to putting the aims set out in the Nice Declaration in practice, thus ensuring that necessary work at European level can be continued.
 9. Expressed the need for the Commission to maintain an open and transparent White Paper consultation process and expressed the wish to remain closely involved in that process. To this end, EU sport ministers will establish a working group during the German Presidency, in cooperation with the Commission, with the objective to help the Commission in preparing the White Paper.
- #### B. The European Commissioner for Education, Training, Culture and Multilingualism, in charge of sport:
10. Confirmed his intention to draft a White Paper on the role of sport in Europe as a means to give sport a higher profile in European policy making,
 11. Took note of the suggestions of EU Sport Ministers

9. EU Law

and set out to take them into account in the future White Paper.

C. EU Sport Ministers and the European Commissioner:

12. Confirmed that health-enhancing physical activity over the whole lifespan should be integrated into different policy sectors through cross-sectoral cooperation both at EU level and in the Member States,
13. Recommended that the priorities of the Working Group on Sport and Health be extended to include the exchange of best practices between all EU Member States; research to develop good practice and projects undertaken together with sports organisations; and the drafting of common European guidelines for health-enhancing physical activity, in cooperation with the Commission's Platform on Nutrition, Health and Physical Activity and other relevant European expert bodies,
14. Confirmed the establishment of a Working Group to review the status of non-profit sport organisations in relation to Community law, to be chaired by the European Commission,
15. Recognised the specific nature of non-profit sports organisations and affirmed that the difference between voluntary non-profit sports organisations and profit-seeking business enterprises should be taken into consideration in Community policies,
16. Expressed their appreciation of having been able to speak with one voice in WADA elections; congratulated Mr Jean-François Lamour, French Minister for Youth, Sports and Associations for his election as WADA Vice-Chair and Mr Brian Mikkelsen, Danish Minister for Culture, for his election to the European seat on the WADA Executive Committee,
17. Underlined the importance of the World Conference on Doping in Sport, to be held in Madrid on 15-17 November 2007; agreed to have the preparation of the conference, including its priorities, on the agendas of the upcoming EU sport ministers meetings,
18. Expressed their strong commitment to the ratification and implementation of the Unesco International Convention against Doping in Sport and conducted a preliminary discussion on the aims to be set for the first Conference of the parties to the Convention,
19. Welcomed the declaration by the European Youth and Sport Forum 2006,
20. Took note of the next Informal Sport Ministers Meeting to be organised during the German Presidency in Stuttgart on 12-13 March 2007, and of the possibility to link this event with Stuttgart's role as European Capital of Sport during the same year.

Gaming industry wins rare victory in European court

In early March 2007, the European Court of Justice (ECJ) ruled that the Italian criminal penalties for the collection of bets by intermediaries acting on behalf of foreign companies were contrary to EU law (Joined Cases C-338/04, C-359/04 and C-360/04, Criminal proceedings against Massimiliano Placanica and Others, not yet published) (Press Release No. 20/07) .

Under Italian legislation, the organising of games of chance or the collecting of bets is subject to possession of a licence and to police authorisation. Any infringement of those rules carries criminal penalties of up to three years' imprisonment. In 1999, following calls for tenders, the relevant Italian authorities awarded 1,000 licences for sports betting and 671 new licences for betting on competitive horse events (329 existing licences were automatically renewed). Those licences were valid for six years and renewable for a further period of six years. The calls for tender excluded in particular operators in the form of companies whose shares were quoted on the regulated markets.

One such company was Stanley International Betting Ltd ('Stanley'), a company incorporated under English law, licensed by the City of Liverpool and a member of the group Stanley Leisure plc, an English company quoted on the London stock exchange which at that time was the fourth biggest bookmaker and the largest casino operator in the United Kingdom. Stanley operates in Italy through 'data transmission centres' (DTCs) run by independent operators with contractual links to Stanley, who place a data transmission link at the disposal of bettors so that they can access the server of Stanley's host computer in the United Kingdom.

Mr Placanica, Mr Palazzese and Mr Sorricchio are all DTC operators linked to Stanley. In 2004 they appeared before the Tribunale di Larino and the Tribunale di Teramo, charged with pursuing the organised activity of collecting bets without the required police authorisation. Those courts asked the Court of Justice of the European Communities whether the Italian legislation on betting and gaming is compatible with the

9. EU Law

Community principles of freedom of establishment and the freedom to provide services. The Court of Justice pointed out, first, that legislation which prohibits – subject to criminal penalties – the pursuit of activities in the betting and gaming sector without a licence or a police authorisation issued by the State, places restrictions on the freedom of establishment and the freedom to provide services. However, moral, religious or cultural factors, as well as the morally and financially harmful consequences for the individual and for society associated with betting and gaming, may justify such restrictions. Those restrictions must nevertheless satisfy the conditions concerning their proportionality. The Court proceeds to examine the various requirements imposed by Italian legislation.

As to licences, Italy is pursuing a policy of expanding activity in the betting and gaming sector, with the aim of drawing players away from clandestine betting and gaming – activities prohibited as such – to activities which are authorised and regulated. The Court recognised that in order to achieve that aim, authorised operators must represent a reliable, but at the same time attractive, alternative to a prohibited activity. This may as such necessitate the offer of an extensive range of games, advertising on a certain scale and the use of new distribution techniques.

The objective invoked by Italy by way of justification for the licensing requirement was that of preventing the exploitation of activities in the betting and gaming sector for criminal purposes. The Court acknowledged that a licensing system may constitute an efficient mechanism enabling the control of operators active in that sector. The Court did not, however, have sufficient facts before it to be able to assess whether the limitation of the total number of licences is compatible with Community law. The fact that a particular number of licences was considered on the basis of a specific assessment to be 'sufficient' for the whole of the national territory could not of itself justify the obstacles to the freedom of establishment and the freedom to provide services brought about by that limitation. In that connection, the Court therefore directed the national courts to determine whether, in limiting the number of operators active in the betting and gaming sector, the national legislation genuinely contributes to the objective invoked by the Italian Government, namely, that of preventing the exploitation of activities in that sector for criminal or fraudulent purposes.

The Court also held that the blanket exclusion of companies from tender procedures for the award of licences went beyond what is necessary in order to

achieve the objective of preventing operators active in the betting and gaming sector from being involved in criminal or fraudulent activities. There were other ways of monitoring the accounts and activities of operators which impinge to a lesser extent on the freedom of establishment and the freedom to provide services (for example, the gathering of information on their representatives or their main shareholders). The Court added that, in view of the unlawful nature of the exclusion of certain operators from the tender procedures, the Member State has an obligation to lay down detailed procedural rules (for example, for the revocation and redistribution of the old licences) to ensure the protection of the rights which those operators derive by direct effect of Community law. Meanwhile, the lack of a licence cannot be a ground for the application of sanctions to such operators.

As regards police authorisations, the procedure for the grant of such authorisation presupposed the award of a licence and, in consequence, was marked by the same defects as tainted the award of the licences. Accordingly, the lack of a police authorisation cannot be a valid ground for complaint in respect of persons who have been unable to obtain them because, contrary to Community law, they were barred from any possibility of being granted a licence.

As far as the criminal penalties were concerned, in principle, criminal legislation is a matter for which the Member States are responsible. However, Community law sets certain limits to that power: criminal legislation may not restrict the fundamental freedoms guaranteed by Community law. The Court makes it clear once again that a Member State may not apply a criminal penalty for failure to complete an administrative formality where such completion has been refused or rendered impossible by the Member State concerned, in breach of Community law. In consequence, Italy could not apply criminal penalties to persons such as the defendants in the main proceedings for pursuing the organised activity of collecting bets without a licence or a police authorisation.

10. Company Law

[None]

11. Procedural Law and Evidence

[None]

12. International Private Law

[None]

13. Fiscal Law

Racehorse breeder at centre of tax evasion inquiry (India)

In late November 2006, it was learned that a reclusive racehorse breeder who is based in a small southern Indian city has emerged at the centre of a 200 billion rupee tax evasion investigation, which officials claim to be the largest in the country's history. Tax investigators raided the Pune ranch of Hassan Ali the previous month, recovering a laptop computer as well as other bank documents. Television reports have claimed that "incriminating evidence" points towards half a dozen Swiss bank accounts containing billions of dollars. If this money turned out to be Mr. Ali's, it would catapult the little-known "face from the races" into the front rank of India's richest men (*The Guardian of 20/11/2006, p. 16*). No further details are available at the time of writing.

14. Human Rights/Civil liberties

Racism in sport

Wisla player suspended for racist taunts (Poland)

It had been some time since English side Blackburn Rovers last adorned the European scene with their skills, and this season presented them with another opportunity in this respect when they qualified for the UEFA Cup. They were cast in Group E, in the company of Polish side Wisla Krakow. In the first leg, in the historic Silesian city, Blackburn put on an extremely mature display to win 1-2. However, their joy at this result was marred by allegations of racism. More particularly manager Mark Hughes claimed that the visitors' South African striker, Benni McCarthy, had to endure a number of insults in the course of the match, and that he would make an official complaint to the delegate representing UEFA, the European football governing body (*The Daily Telegraph of 20/10/2006, p. S4*). After the match ended, McCarthy confronted the home side's Serbian striker, Nikola Mijailovic over the matter, and the pair had to be separated by players from both sides (*Daily Mail of 20/10/2006, p. 103*).

Although he admitted that he and Mr. McCarthy had had a "running battle" from the outset of the game, the Serb player vehemently denied having levelled racist abuse at him (*The Independent on Sunday of 22/10/2006, p. 83*). However, UEFA were not impressed by his protestations of innocence, and – in an unusually swift and determined stance against racialism – imposed a five-match ban on the Wisla defender. This verdict was welcomed by the Kick It Out campaign, which seeks to eliminate racism from football (*The Independent of 27/10/2006, p. 77*).

Aaron Hunt first banned, then reprieved, by UEFA in under-21 racism claims (Germany)

When England obtained a deserved 0-2 victory in Leverkusen over German in an under-21 international, their victory was marred by an imbroglio over alleged racism. Two England players, Micah Richards and Anton Ferdinand, alleged that they had been called "monkeys" by German opponents during the game (*The Guardian of 11/10/2006, p. S1*). The Football Association (FA) held talks after the game with the delegate from the European football governing body, UEFA, in the hope that serious action would be taken (*The Daily Telegraph of 11/10/2006, p. S6*). Germany's under-21 coach, Dieter Eilts, then contacted his players in order to inquire about the alleged incident. One of the players accused, Aaron Hunt, denied having made racist insults (*The Guardian of 12/10/2006, p. S6*).

As a result of these accusations, UEFA formally charged Mr. Hunt with "gross unsporting conduct" following an official complaint made by the FA (*The Independent of 8/11/2006, p. 57*). The relevant disciplinary hearing resulted in a two-match ban for Hunt (<http://soccer.net.espn.go.com/news>, 13/11/2006). However, the German football association (DFB) lodged an appeal against this decision, and as a result UEFA's appeals body overturned the ban. The decision was welcomed by Mr. Hunt's club, Werder Bremen, who insisted that there was "no room for racism" at their club (www6.sbs.com.au/epl, of 9/12/2006).

Leading French socialist dismissed for "French team too black" remark

When the French national football side won the World Cup in 1998, the Front National leader, Jean-Marie Le Pen, complained that the team looked "insufficiently French" because of its multi-ethnic make-up. In late January 2007, the racial composition of the national side once again burst into the country's politics when the Socialist Party (PS) expelled one of its leading members for stating that there were "too many black players" in the team (*The Observer of 28/1/2007, p. 32*).

This incident occurred at a particularly crucial time for the party, since the politician in question, Georges Freche, was a founding member of the party and a supporter of Ségolène Royal, who was carrying the banner for the PS in the race for the country's presidency, to be decided in May of that year. Nor did this appear to be an isolated case, since Mr. Freche was also fined the sum of £10,000 by a French court for calling Algerians who fought alongside the French in Algeria's war of independence "sub-human" (*ibid*).

Racism in Spanish football – an update

Aragones cleared of racism by court

The mercurial career of Luis Aragones, coach to the Spanish national team, has intruded on this column on many previous occasions – notably when, during training session preparing for an international fixture with France in October 2004, he had described French striker Thierry Henry as a "black sh*t" ([2005] 1 Sport and the Law Journal p. 91). He had been fined ?3,000 by the Spanish football federation (RFEF) for behaviour "contrary to the good order. The offence was later upgraded to "conduct which could be considered as racist" by the Government-operated Spanish Committee for Sporting Discipline. However, Mr. Aragones and the RFEF later successfully appealed against this before a Spanish court (*The Daily Telegraph of 8/2/2007, p. S3*). The Spanish Federation later said in a statement:

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"The Court found that the Spanish Committee for Sporting Discipline had incorrectly evaluated the evidence. We now hope that all measures will be taken to clear the good name of the national coach and the (Federation's) disciplinary committees" (The Guardian of 8/2/2007, p. S1).

Whether he will still be required to pay the fine imposed on him by the Federation was unclear at the time of writing. However, what is certain is that the decision was greeted with dismay by anti-racist campaigners. Piara Powar, of Kick It Out, a founding partner of the pan-European Football against Racism in Europe network, commented:

"Both the football authorities and the state authorities have shown their disdain for the issue. I think everyone in Europe recognises that racism is endemic in Spanish football. I am surprised at the ruling because the Spanish government do keep talking about taking this seriously. There's an anti-violence commission in Spain that encompasses anti-racism issues. You would generally expect some sort of censure; this is pretty appalling really" (ibid).

World governing body FIFA were still formulating a formal position on the affair at the time of writing, though Mr. Powar noted that it would normally resist judicial interference in the rulings of sporting authorities (ibid).

Spain must tackle racism – Samuel Eto'o

The Barcelona Cameroon striker Samuel Eto'o is no newcomer to these columns, since he has been the victim of a well-documented stream of racist abuse at various Spanish footballing venues (see, for example, [2005] 1 Sport and the Law Journal p. 92). So serious is the situation at many of these grounds that Mr. Eto'o has recently admitted that he prefers not to take his children to matches because of the racialism on display there. Last season, he threatened to walk off the pitch after suffering racist insults whilst playing against Real Zaragoza, who were later fined ?9,000 by the Spanish Football Federation. The African international called upon everyone involved in Spanish football, players, leaders and the media, to join forces to arrest these vile practices (*The Independent of 5/4/2007, p. 69*).

Racism (real and alleged) in cricket

Hair appeals against ICC exclusion on grounds of "racism"

The difficulties experienced by international umpire Darrell Hair as a result of his unfortunate intervention in the Fourth Test between England and Pakistan, which took place in August 2006, have been extensively dealt with in the previous issue of this organ ([2006] 2 Sport and the Law Journal p. 93). In that ill-fated encounter, both Mr. Hair and fellow-umpire Billy Doctrove accused the Pakistan side of ball-tampering, as a result of which the away side refused to take the field and had to forfeit the match. Pakistan were later cleared of ball-tampering, even though their captain, Inzamam-ul-Haq was banned for four one-day fixtures for bringing the game into disrepute. In November 2006, the International Cricket Council decided to relegate Mr. Hair to the umpiring of second-string internationals between such teams as Kenya and Scotland, following the decision by the International Cricket Council (ICC), taken in November 2006, to exclude him from all matches involving the top 10 Test Match-playing nations (*The Guardian of 15/1/2006, p. S15*). (For more details of the disciplinary aspects of this affair, see below under Item 17, p.95 et seq.).

Since then, Mr. Hair has decided to hit back by commencing legal proceedings against the ICC and the Pakistan Cricket Board, which initiated the proceedings against him. He alleges that the decision to exclude him from top-level umpiring was taken on racial grounds, and that Pakistan encouraged the ICC to engage in discriminatory acts by lobbying for his removal. Mr. Hair's lawyer, Daniel Mark, was confident of winning the case, which is to be dealt with by an employment tribunal in London (*The Daily Telegraph of 8/2/2007, p. S13*). The ICC resolved to defend itself with vigour (*The Independent of 9/2/2007, p. 74*). The case had yet to commence at the time of writing. The latest information available was that the case would be heard by the relevant tribunal as from 1 October 2007. The case is expected to last over two weeks. John Jameson, the former Warwickshire and England batsman who was responsible for the redrafting of the laws of cricket when he was Assistant Secretary to the MCC seven years ago, will appear as a witness for Mr. Hair (*The Daily Telegraph of 4/4/2007, p. S15*). It is understood that Mr. Hair's lawyers intend to call an expert in cricketing law to support the contention that the Australian umpire did everything in accordance with existing rules and procedures (*The Daily Telegraph of 30/3/2007, p. S17*). The present author pledges to monitor further developments with the keenest of interest.

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Gibbs banned for racist remark (South Africa)

The first Test between South Africa and Pakistan, played in Johannesburg in early January 2007, was marred by an incident in which a player for the home side was heard making racist comments about his opponents. The phrase “a bunch of bloody animals” – alongside even less palatable observations – was clearly picked up by a stump microphone and broadcast live on television (*The Independent of 15/1/2007, p. 45*).

It later transpired that the author of these remarks was opening batsman Herschelle Gibbs, a player who has had his brushes with the game’s authorities before (Journals passim). Match referee Chris Broad, the former England batsman, promptly banned Gibbs for two Tests following a hearing. The Chief Executive of the International Cricket Council (ICC), Malcolm Speed, had laid the charge as a result of this incident. Cricket South Africa also announced that Mr. Gibbs would appear before a separate, internal disciplinary hearing. Mr. Gibbs himself claimed that the remarks in question had been directed in general terms at a section of the crowd which had been verbally abusing team-mate Paul Harris (*The Daily Telegraph of 16/1/2007, p. S8*).

Caborn urges ICC crackdown on racism

It appears that, although the Ashes Test series between Australia and England in 2006-7 passed off without any serious incidents on the field of play, two members of the visiting side complained about racial taunts emanating from the spectators during England’s warm-up matches. More particularly Monty Panesar and Kevin Pietersen alleged that they had been singled out for such “inappropriate heckling”. This has led the British Minister for Sport, Richard Caborn, to urge the International Cricket Council (ICC) to come down hard on such behaviour. He also said that, in this respect, there was a good deal which the cricket authorities could learn from their counterparts in football (*The Daily Telegraph of 17/11/2006, p. S15*).

Serena Williams requests removal of “racist” spectator (US)

In spite of the excesses by the occasional hooligan element, some of which have been described in this Journal (see above under Item 2, p.41) tennis spectators have hitherto not been known for engaging in racist abuse. Unfortunately, it seems that this particular threshold was crossed during a recent tournament in Miami, Florida, when leading player Serena Williams requested the removal of a spectator in the third round of the Sony Ericsson Open. She alleged that, as well as calling bogus foot faults, the abuser

shouted insults such as “Hit the ball, hit the net like any negro would”. Following the match, which she won, Ms. Williams expressed her disbelief that anyone could say such things “outside of first grade” (*The Guardian of 27/3/2007, p. S7*). However, it was not sure whether the culprit was actually ejected (*The Daily Telegraph of 27/3/2007, p. S11*).

Di Canio claims to be a “fascist, not a racist” (Italy)

The former West ham striker, Paolo di Canio, who now plays for Lazio Roma, has been at odds before with the footballing authorities for his habit of giving salutes to the crowd which evoke Italian fascism. Undeterred by the flak he has taken for this practice, Mr. di Canio, in an interview with FourFourTwo magazine, complained that no-one gives Fascism a break, in the following terms:

“It’s 2006. Racial laws don’t exist; extermination doesn’t exist, thank God. So why can’t the social idea of a radical right wing be expressed democratically? The communists do it. Some people say Fidel Castro is great, but millions are segregated in Cuba, the world’s greatest open prison, where dissidents still vanish. And nobody says a word. Then they break my balls (sic). Come on! Yes, I’m a fascist. So what? I’m not a racist” (*The Guardian of 1/11/2006, p. S2*).

It is not recorded whether his club or the Italian football authorities have reacted in any way to this outburst.

Human rights issues

[None]

Gender issues

French tennis open offers women equal prize money

In mid-March 2007, it was announced that the French Open, played in Paris every year, was to offer equal prize money for men and women – the last of the four Grand Slam tournaments to do so. This suggests that the French tennis authorities had felt increasingly isolated after the previous month’s decision by Wimbledon officials to introduce parity of remuneration (*The Daily Telegraph of 17/3/2007, p. s21*).

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Athlete stripped of medal after failing gender test (India)

In mid-December 2006, Santhi Soundarajan, an Indian athlete, was stripped of the Asian games women's 800-metres silver medal after failing a gender test in Doha. The Indian Olympic Association (IOA) explained that the athlete had been requested to undergo a femininity test after the race, which took place earlier that month, and that the Olympic Council of Asia had then instructed India to return the medal, which was henceforth awarded to third-placed Viktoriya Yalovtseva, of Kazakhstan. The race itself had been won by Maryam Jamal, of Bahrain. The IOA announced that it would hold an inquiry into this incident, which has naturally embarrassed officials (*The Guardian of 20/12/2006, p. S2*).

Other issues

[None]

15. Drugs legislation & related issues

General, scientific and technological developments

“CSC Initiative” launches new dope-detection programme in cycling

Doping is a problem which has beset the sport of cycling for more than forty years. In all these years, the various sporting authorities, both general and specific, have yet to find a lasting solution even at the level of detection. Faced with this official impotence, individual cycling teams on the professional circuit, fearful about the future of their sponsorship, are displaying their lack of faith in their governing body, the International Cycling Union (UCI), by setting up internal programmes aimed at combating drug-taking. In mid-January 2007, the members of the CSC squad, ranked as the world's No. 1, received a fax detailing the anti-doping regime which the team will introduce next season with the assistance of Dr. Rasmus Damsgaard, project manager at the research department of Bispebjerg Hospital in Copenhagen (*The Guardian of 14/1/2007, p. S7*).

The team's management claim that this is the most rigorous regime yet devised, with the riders undergoing 800 blood and urine tests in the course of the season – mostly out of competition. The programme is rumoured to be costing some €500,000. It has also emerged that CSC are not the only team to adopt this strategy: T-Mobile, the most sizeable backer of professional cycling, has announced a joint venture with the University of Freiburg later this year, including out-of-competition testing and blood volume measurement as a means of detecting blood transfusions.

The core of Prof. Damsgaard's system is detailed physiological profiling of the riders collated through the unannounced blood and urine tests. The UCI already builds up such profiles, but Prof. Damsgaard expresses the belief that they do not go far enough. He also sees this programme as a means of prompting the authorities to perform more out-of-competition testing. It probably is no coincidence that CSC and T-Mobile were the two teams who were hardest hit by the revelations yielded by operation Puerto last year (see below, p.86). The CSC manager, Bjarne Riis, later revealed that he feared losing the backing of his sponsor, Computer Sciences Corporation (*ibid*).

Doping issues and measures – international bodies

WADA considers four-year doping ban – other bodies already enact it

Because of the increasing incidence of drug use among sporting performers at all levels, well documented in these pages and elsewhere, voices have increasingly been raised in favour of extending the current two-year maximum ban for those found to have taken prohibited substances. The issue was debated at the Executive Committee meeting of the World Anti-Doping Agency (WADA) which was held in November 2006. Prominent among those who advocate the change is the International Association of Athletics Federations (IAAF), whose leaders have had meetings with WADA on the subject (*The Daily Telegraph of 17/11/2006, p. S7*).

The IAAF reinforced their case by citing the work of a Swedish PhD student whose thesis showed that people who have taken steroids maintained their muscular development beyond the two years of the current maximum. The feeling with the IAAF is that, whilst their members were at one time very much concerned about the legal challenges which could be mounted against a four-year ban, attitudes around the world have hardened as a result of the BALCO doping scandal in the US and the positive test recorded by Olympic medal-winner Justin Gatlin (both cases having been extensively reported in previous issues of this Journal). WADA Chairman Dick Pound has, however, warned that, having made considerable efforts to having the two-year ban accepted in all sports, WADA would have to consider the problems involved in repeating the exercise (*ibid*).

In fact, some sporting bodies have already decided to go down this road autonomously. Thus in early March 2007, the European Athletics Association introduced a new rule under which any European athlete serving at least a two-year doping ban will be unable to compete in the Association's major events before a further two years have elapsed (*The Daily Telegraph of 8/3/2007, p. S20*). The timing of this decision was interesting, coming as it did on the eve of the European Indoor Championships, which saw the return of the disgraced Greek athlete Ekaterina Thanou (see also below, p.87) (*The Guardian of 1/3/2007, p. S1*). Ms. Thanou was roundly booed by the crowd when she made her “comeback”, which must have strengthened the European body in its determination to ensure that European athletics be no longer tarnished (*The Guardian of 8/3/2007, p. S8*). The new EAA rule comes into effect

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in June 2007; however, any athletes affected by it will still be able to compete in national, invitational and grand prix meetings. The IAAF are expected to take a similar decision at their Congress in August of this year (*The Daily Telegraph of 8/3/2007, loc. cit.*).

Another radical proposal which has been mooted by the IAAF is to use blood tests in order to be able to disqualify suspected athletes even before they start competing in an event. This notion, which will be discussed at a forthcoming IAAF meeting, involves an athlete being given a blood test before a competition, and the results compared with a previous test. Only 24 hours would be needed to obtain a result, compared to the more lengthy process involved with urine samples. If the results show abnormal changes, the athlete could be barred from competing. The IAAF already has 651 samples of top athletes' blood (*The Daily Telegraph of 2/10/2006, p. S7*).

Doping issues and measures individual countries

Balco scandal repercussions continue

Balco whistleblower faces doping probe

In late October 2006, it was learned that the US coach whose "whistle-blowing" triggered off the Balco scandal (Journals passim), which prompted bans on a number of athletes, has come under investigation himself. Already embroiled in a US court case in order to answer charges that he supplied drugs to athletes, he has now been charged by the US Anti-Doping Agency (USADA) of other doping violations. Mr. Graham, whose Sprint Capital group has included US sprinters Marion Jones, Justin Gatlin and Tim Montgomery, could face a lengthy ban if found guilty (*The Daily Telegraph of 9/11/2006, p. S12*).

Journalists' prison threat lifted

In the previous issue of this Journal ([2006] 2 Sport and the Law Journal p. 77), it was reported that Mark Fainaru-Wada and Lance Williams, of the San Francisco Chronicle, whose best-selling work *Game of Shadows* detailed the activities of the Balco laboratory, were in serious danger of receiving a prison sentence after defying a judge by refusing to reveal the source who provided them with the relevant material. In the event, the journalists were spared this predicament when the lawyer of two of the personalities convicted as a result of the scandal admitted that it was he who had leaked them details of confidential court documents. Troy

Ellerman, the lawyer in question, also conceded that he leaked the documents at a time when he was complaining to a judge in the case about leaks to the press, and was calling on the court to dismiss the charges against James Valente, another Balco employee, on the grounds that the extensive media coverage of leaked testimony had rendered a fair trial impossible (*The Guardian of 16/2/2007, p. S6*).

According to federal prosecutors, Mr. Ellerman had been given access to the testimony in order to assist with his client's defence, but only after signing a confidentiality agreement. He subsequently swore in court that he was not the source of the leak to the reporters. Under a plea-bargaining agreement, Ellerman could serve a maximum of two years in gaol and ordered to pay a fine of up to \$250,000. Throughout the case, Messrs. Fainaru-Wada and Williams had refused to reveal their sources, claiming that any attempt to compel them to do so constituted an attack on press freedom – a stance backed by many politicians, journalists and civil liberties organisations (*ibid*).

Leading baseball players to be prosecuted – Bonds faces possible prosecution for perjury

Barry Bonds is a phenomenal baseball batter who is expected some time this year to overtake Hank Aaron's career record of 755 home runs. However, there are indications that he could be chasing this record with a perjury charge hanging over him.

It will be recalled that, during the Grand Jury investigation into the Balco scandal, Mr. Bonds testified that he had never knowingly taken steroids, and that he believed that what were alleged to be steroids and human growth hormone which he received from Balco were flaxseed oil and a rubbing balm for arthritis. However, this claim could be undermined by intervening developments. In a recent decision, a San Francisco court allowed prosecutors to pursue 104 baseball players who tested positive for steroids during the 2003 season. If Mr. Bonds proves to be one of those informed that he had tested positive during that season, he could face a perjury charge. It emerges from the 125-page verdict issued by the 9th US Circuit Court of Appeals that eight of the 104 players are also among the 11 who were previously implicated in the Balco inquiry. These could include Mr. Bonds, although his lawyer was quick to nip such speculation in the bud (*The Guardian 11/1/2007, p. S6*). However, to add fuel to this speculation, the New York Daily News has since alleged that Bonds failed a major League Baseball test in 2006 (*The Daily Telegraph of 12/1/2007, p. S21*).

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It has been rightly pointed out that baseball only has itself to blame for being involved in this tawdry legal saga. Quite apart from having ignored the physical evidence of players growing implausibly larger during the late 1990s, and in many cases improving their performance to an unbelievable extent as their careers wound down, Major League Baseball (MLB) itself created the conditions for the current difficulty. When it eventually came under increasing pressure to fall into line with every other major sport and introduce some kind of testing, MLB made a somewhat bizarre deal with the players' union – i.e. steroid tests were to be carried out, but without penalties, during the 2003 season. If over 5 per cent of those turned out to be positive, a proper system of testing (including bans for guilty parties) would be introduced the next year. Even with prior warning of a crackdown, 104 of the 1,200 tests carried out proved positive. This figure passed the 5 per cent threshold, demonstrating just how widespread the problem was.

By failing to destroy the survey samples taken, the MLB Players' Association – the very powerful trade union which bitterly opposed any form of testing for decades – then left the way open for federal prosecutors to seek out the results in search of names. A subpoena was issued, a computer containing the relevant files was seized, and now it seems that the court has cleared the way for the guilty parties to be identified. However, many in the media and the general public have seemed more concerned about the privacy aspects of the case, in that the Government is being accused of overstepping the mark by pursuing “innocent” participants in a confidential survey (*ibid*).

It is obvious that this saga will continue to run, and this column will follow future developments very closely.

France seeks ban for nations who fail to sign doping pact

The French authorities have decided to adopt a hard line on doping in sport – not only in terms of the individuals who infringe the rules, but also as regards countries who refuse to co-operate. In early February 2007, the French Minister for Sport, Jean-François Lamour, asserted the view that all those countries which failed to sign a new convention on doping in sport should be banned in future from participation in major events. Said Mr. Lamour:

“All countries must adopt this Code and put it into practice. If they don't, then they might be stopped from presenting their teams at sporting events” (*The Guardian of 6/2/2007, p. S6*).

At the time of writing, some 41 governments have already signed the Convention.

East Germans receive compensation for systematic doping

See above under Item 4, p.62.

Doping issues and measures individual sports

Armstrong claims victory after Pound reprimanded

It may have dawned on the regular reader by now that Richard Pound QC, the Chairman of the World Anti-Doping Agency (WADA), is not a personality who has the unstinting admiration of the present author – mainly on account of his propensity for making ill-advised statements which sometimes worsen rather than improve the situation under discussion. This trait has been very much in evidence over the feud in which Mr. Pound has found himself locked with seven-times Tour de France winner Lance Armstrong over allegations that the latter may have been assisted in his legendary performances by the use of illegal substances.

So strong were Mr. Armstrong's feelings on the subject that he had called for the WADA Chairman to be stripped of his post after the latter had speculated that the Texan rider might have used the banned blood-booster erythropoietin in the course of the 1999 Tour. This comment followed an allegation that a French laboratory had discovered the substance in six urine samples supplied by Armstrong during the race, when they were tested retrospectively in 2005. However, an inquiry by the world governing body in cycling, the UCI, subsequently found that Mr. Armstrong had no case to answer. As a result, Mr. Pound was rebuked by the Ethics Commission of the International Olympic Committee (IOC) in early February 2007, finding that the WADA Chairman had:

“the obligation to exercise greater prudence consistent with the Olympic spirit when making public pronouncements that may affect the reputation of others”
(*The Guardian of 13/2/2007, p. S9*).

Although this fell short of Mr. Armstrong's demand that Pound be dismissed, the US rider felt sufficiently vindicated, and expressed his hope that this would “establish a certain precedent” that the WADA President had to act in a certain way in public (*ibid*).

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Museeuw to stand trial in doping case (Belgium)

Johan Museeuw was, before he retired in 2004, one of the best one-day racers of his generation, having won the World Road Race championship in 1996 as well as 11 World Cup races in the course of his illustrious 17-year career. However, a police probe into the actions of a veterinary surgeon who was then accused of supplying Mr. Museeuw and other riders with banned substances, such as the blood boosters Aranesp and EPO (*The Guardian of 25/1/2007, p. S2*) has cast a shadow on his career. In mid-January 2007, a Belgian court decided that he and six others must stand trial for charges arising from these revelations, having dismissed the riders' appeal aimed at avoiding trial (*The Guardian of 17/1/2007, p. S2*). The former World Champion, who admits that during his career he did "things which were not 100 per cent by the rules", points out that he has never failed a dope test (*ibid*). The trial is expected to take place later this year.

"CSC Initiative" launches new dope-detection programme in cycling

(See above, p.81)

Cofidis trial begins (France)

Before the end of the year 2006, the trial began of the ten people, seven of them cyclists, for their part in the alleged Cofidis doping scandal. The cyclists were charged with "acquiring and holding banned substances". The other three defendants – a cycling technician, a pharmacist and a former Cofidis physiotherapist – face charges stemming from their alleged role in encouraging the riders to take drugs and supplying them with performance enhancing substances. All defendants each face jail sentences of a maximum of five years and fines of £50,000.

The case hinges on the case of Bugoslaw Madejak, a former Cofidis physiotherapist and Polish citizen, who joined the team in 1997. French investigators claimed to have intercepted telephone calls between Mr. Madejak and two Polish Cofidis riders, in which they appear to talk in code about trafficking substances used in doping. In January 2004, the French authorities stated that they had found Marek Rutkiewicz, one of the riders who was returning from a trip to Poland, in possession of seven vials of the performance-enhancer EPO. Under questioning, Mr. Rutkiewicz maintained that Madejak's father has supplied him with the drug. The defendants also include David Miller, who has already acknowledged taking EPO and received a two-year suspension (*The Guardian of 6/11/2006, p. S16*). The verdict in the trial had not yet been reached at the time of writing.

Landis launches appeal against Tour title loss – 2007 Tour faces nightmare scenario (US/France)

It will be recalled that the 2007 Tour de France winner, US rider Floyd Landis, was stripped of his title as a result of his testing positive for the male hormone testosterone during the race. Mr. Landis has bitterly protested his innocence and appealed to the American Arbitration Society, and at the time of writing was also considering an appeal to the Court of Arbitration for Sport. He has since rolled out the key elements of his defence in an online presentation.

On his website, Landis posted a presentation prepared by Arnie Baker, a retired doctor and the cyclist's long-serving coach and advisor, as well as hundreds of pages of documents. The presentation highlights inconsistencies in the paperwork and the results provided by the French laboratory which reported elevated levels of testosterone and epitestosterone in Mr. Landis's samples, as well as the presence of synthetic testosterone. His main contention is that a number of factors could have triggered off the result – thyroid medication, cortisone injections which he was taking for his damaged hip, his body's tendency to produce too much testosterone, and even the whiskey which he consumed the night before Stage 17 – during which he made the staggering comeback performance which gave him an unassailable lead in the race. The online presentation maintains that, among the French laboratory's mistakes, it incorrectly labelled various samples and ignored testing standards set by the World Anti-Doping Agency (WADA) (*The Independent of 13/10/2006, p. 63*).

In fact, almost exactly one month after this presentation became public property, Mr. Landis's case received a boost in the shape of an admission by the French national anti-doping laboratory that one of the samples was incorrectly labelled. The laboratory director, Jacques de Ceaurriz, said that the flask containing the cyclist's B sample had been "recorded with the wrong number on the form during the second analysis. However, Mr. de Ceaurriz described the error as "minor", stating:

"It's a graphical error which does not cast doubt on the values found during the analysis nor on the provenance of the flask. These kinds of misprint do happen. They are noted and rectified. I'm not surprised if [Landis's] team are using it. I don't see that it invalidates the result of the analysis" (*The Guardian of 16/11/2006, p. S5*).

The entire affair even became quite bizarre when it was learned that hackers broke into the internal computer system of the French doping laboratory in question, which is located in Châtenay-Malabry, South of Paris.

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The hackers compounded their felony by sending confidential material by letters and emails in an apparent attempt to discredit the laboratory. These letters and emails, dated on the first two weeks of September and signed with a false name, were sent to such bodies as the International Cycling Union, WADA, and the International Olympic Committee (IOC), as well as journalists and other anti-doping laboratories accredited by WADA (*The Guardian of 15/11/2006, p. S10*). The next day, Mr. de Ceaurriz claimed that there could be a link between Mr. Landis's positive testosterone test and the hacking operation. More particularly, he expressed his suspicion that this event and the news about the incorrectly labelled sample were "almost synchronised". Mr. Landis's spokesman, Michael Henson, stated that claims attributing the computer piracy to Landis or his defence team were "baseless" (*The Guardian of 17/11/2006, p. S2*).

The case assumed even more surreal dimensions two months later, when it was revealed that the 2007 Tour runner up, Oscar Pereiro, who stands to be declared the winner if the case against Landis is confirmed, was himself embroiled in doping controversy. More particularly it emerged that he was one of a dozen cyclists who had been requested to submit medical justification for the use of a banned substance – in the Spanish rider's case, the anti-asthma drug salbutamol. Communicating through a spokesman of his Caisse d'Epargne team, Mr. Pereiro admitted that he had failed to reply to two registered letters sent to him by the French anti-doping agency requesting an explanation. Salbutamol was reported to have been found in two of his samples, for stages 14 and 16. According to his spokesman, Francis Lafargue:

"He had the documents, but did not answer, which was negligent. Recently, he received a third letter threatening him with being banned from racing in France, and he only reacted then" (*The Guardian of 19/1/2007, p. S10*).

However, Mr. Pereiro ultimately was one of a group of 11 riders who was cleared of doping charges by the French Anti-Doping Authority. The case against Pereiro and the other cyclists was dismissed when it was confirmed that the riders had official medical clearance to use certain banned substances (*The Daily Telegraph of 26/1/2007, p. S18*).

The outcome of the Landis appeal was not yet known at the time of writing. However, it was learned before this issue went to press that the case would be heard by the US Anti-Doping Agency (USADA) in mid-May. This development leaves the organisers of this year's Tour de France with a nightmare scenario. If USADA

confirms the rider's positive test, the race is likely to start on 7 July (in London) with the winner of the previous year's race still to be named, because Mr. Landis is certain to appeal to the Court of Arbitration for Sport (CAS). This will almost certainly delay the case by a further six months. However, even if Mr. Landis is cleared, the US rider remains unlikely to be present at the London start in his cycling kit. He is currently recovering well from a hip replacement operation, and is contemplating a possible return to competition, but the late date of the USADA hearing means that even if he is fit, he will have difficulty finding a sponsor before the Tour commences (*The Guardian of 8/2/2007, p. S9*).

"Operation Puerto" case closed – but the effects linger on...

It will be recalled from an early issue of this organ ([2004] 1 Sport and the Law Journal p. 92) that Jesus Manzano, a Spanish cyclist who used to ride for the Kelme team, chose to reveal a number of alleged illegal medical practices within his team during a television programme. More particularly he claimed to have had personal experience of such practices during the Tour of Portugal and the Tour de France, and that he had been kicked off a train in Valencia because he was "half dead" (presumably from drug use). In a further interview, he listed a large number of banned substances, complete with prices and methods used in their application, all of which he claimed had been used at some point during his career.

These allegations gave rise to "Operation Puerto", which consisted of close surveillance by the police of a Madrid flat which, according to Mr. Manzano, was visited by many sporting figures and apparently used for blood-doping purposes. This resulted in a raid in the course of which, according to the police, bags of frozen blood, steroids and hormones, including EPO, were found – as well as various lists naming over 100 top-level athletes. Many of these had been filmed entering and leaving the clinic. The police seized 100 bags of frozen blood and equipment for treating blood, as well as documents on doping procedures.

The investigation – which in the meantime had led to several top riders being barred from the 2006 Tour de France – ultimately landed before a Spanish examining judge. It came as a considerable surprise to observers and all those involved in the case to learn that, in mid-March, the Spanish judge in question decided to close the case. All this left a cloud of suspicion over the sport. Riders held a minute's silence before the opening stage of the Paris-Nice classic race which started the next day (*The Independent of 13/3/2007, p. 48*). British rider

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David Millar voiced the opinion of the majority of his colleagues where he stated:

"It's a pity the process was so badly done. The judge shouldn't have permitted leaks from the investigation of the case against these riders wasn't going to stand up in court. All I can hope is that the riders implicated have learned their lesson" (*ibid*).

In fact, the leaks to which Mr. Millar referred were to have further repercussions even after the archiving of the Spanish proceedings. One of the people most affected by the whole affair was the German rider Jan Ullrich, the 1997 Tour de France winner. His was one of those suspected of being implicated in the scandal, and was withdrawn from the Tour de France in 2006 by his team, T-Mobile, the day before the race commenced in Strasbourg. Following this demotion, he was also dismissed by T-Mobile and charged with sports fraud Bonn (*The Daily Telegraph of 27/2/2007, p. S14*). This indicated that, even after the Spanish authorities had lost interest in the case, their German counterparts remained far from satisfied. In late January 2007, the Public Prosecutors' department (Staatsanwaltschaft) of Bonn announced that it wished to compare the blood samples taken during the Puerto investigation with a saliva specimen taken a few months earlier in Switzerland (where Mr. Ullrich now lives). Mr. Ullrich objected to this proposal, but indicated that he was willing to provide the German authorities with a specimen – which he eventually did, in Konstanz, across the border from his Swiss home (*The Guardian of 2/2/2007, p. S2*).

Two months later, the state prosecutor's office in Bonn confirmed that a DNA analysis had shown that certain packs of blood found during Operation Puerto were from Mr. Ullrich. This made the German cyclist the first rider to be confirmed as being linked to the blood doping ring investigated by Operation Puerto. By then, the matter had become academic from the point of view of Ullrich's career, since he had announced his retirement at the end of February (*The Daily Telegraph of 27/2/2007, loc. cit*). However, it remained a live issue as far as his personal circumstances were concerned, since the German authorities were determined to prosecute him should any definitive evidence linking him to the scandal materialise. He therefore embarked on a rearguard action, which appeared to border on the paranoid, judging by the brief statement which appeared on his personal website, in which his lawyers alleged that the blood sample may have been tampered with:

"Given the irregular practices which have already been seen in the conduct of the inquiry in Spain and by the International Cycling Union, it is perfectly possible that this so-called discovery is merely the result of a manipulation

[of the sample]" (*The Guardian of 4/4/2007, p. S8*).

On the basis of this discovery, the German prosecutors announced that they hoped to charge Mr. Ullrich with fraud before the end of this year. The DNA breakthrough seems to have had even wider implications, since it was announced, just as this issue went to press, that all ProTour teams, and all but a handful of their riders, had committed themselves to making DNA profiles available for testing in anti-doping disputes (*The Times of 5/4/2007, p. 99*). It was not clear at the time of writing whether or not this element would be added to the "CSC Initiative" described earlier (p.81).

Other cases (all months quoted refer to 2007 unless stated otherwise)

Vandenbroucke spared further penalties (Belgium)

In mid-March, it was learned that Franck Vandenbroucke had been acquitted by a Belgian court of appeal of doping offences, on the basis that he had already been punished by means of a suspension. On the occasion of a police raid on Mr. Vandenbroucke's home in 2002, quantities of the blood-booster EPO had been found. He was sentenced to 200 hours of community service by a Belgian court but took his case to the Supreme Court (Hof van Cassatie) which ordered a lower court to deliver a new verdict because he had already served a six-month ban in 2002 (*The Guardian of 15/3/2007, p.S2*).

Former Vuelta winner banned (Spain)

In late December 2006, Aitor Gonzalez, who won the Tour of Spain (Vuelta) in 2002, was banned for two years because of doping offences after the Court of Arbitration for Sport (CAS) upheld an appeal by the International Cycling Union (UCI). Mr. Gonzalez had tested positive for the stimulant methyltestosterone in an out-of-competition test in August 2006, and in a test held during the Tour of Spain a month later. The Euskaltel rider had blamed a contaminated food supplement prescribed by a doctor (*The Daily Telegraph of 23/12/2006, p. S22*).

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Doping issues and measures – athletics

Gatling case continues (US)

It will be recalled from a previous issue of this Journal that Justin Gatlin, a former world and Olympic 100-metres champion, now faces what amounts to a lifetime ban from the sport after testing positive for testosterone in April 2006 – this being his second failed doping test. In mid-February, Mr. Gatlin applied for an arbitration hearing on these charges. It appears that, when Mr. Gatling accepted the positive test, part of the agreement was that he had the right to challenge the suspension (*The Daily Telegraph of 17/2/2007, p. S22*). The date of this hearing was not yet known at the time of writing.

German athletics rocked by doping investigations

Following the Balco scandal, extensively reported in these columns, it may be that German athletics could find itself enmeshed in a similar imbroglio. In a documentary broadcast by the German state television channel ARD in mid-January 2007, it was alleged that seven Olympic champions were among some 400 German athletes who escaped punishment for missing a drugs test in 2006. At least one champion is alleged to have missed five such tests. Michael Vesper, the Secretary-General of the country's Olympic Sports Federation (OSB) admitted that the report had revealed "weaknesses in the system" and demanded that the nation's anti-doping authority should look into the matter. Helmut Digel, the former head of German athletics, claimed that the anti-doping authorities had too few staff to be at all effective (*Daily Mail of 18/1/2007, p. 81*).

This development came hard on the heels of the news that Germany's Athletics Federation (Deutscher Leichtathletikverband – DLV) were investigating Nils Schumann, gold-medal winner in the 800-metre event in at the Sydney Olympics (2000) and former European 400-metre champion Grit Breuer over suspected infringement of rules on drugs. The DLV, acting on evidence obtained during the case of convicted coach Thomas Springstein (see [2006] 2 Sport and the Law Journal p. 91) announced that they had also filed a complaint against Dutch agent Jos Hermens and Spanish doctor Miguel Angel Peraita (*Daily Mail of 21/11/2006, p. 71*). There may be a connection with the "Operation Puerto" affair in the world of cycling (see above, p.85), since it has been reported in the Spanish media that Dr. Peraita shares, or shared, an office with Jose Merino Batres, one of the doctors who came under investigation in this affair (*The Independent of 23/1/2007, p. 63*).

Mr. Hermens – whose clients include Haile Gebrselassie and Kenesina Bekele, Ethiopia's Olympic 10,000 metres champions – strongly denies having sent some of his athletes to Dr. Peraita for drug-taking purposes. He admitted to a leading German newspaper that he had sent Mr. Schumann and two other German athletes to Dr. Peraita, but merely because he believed some of the Spanish doctor's methods, which include homeopathy, were revolutionary. He did concede, however, that he may have been "a little dumb" and should have asked more questions about the exact way in which the doctor operated (*ibid*).

The present author will follow further developments in this case with keen interest.

Thanou/Kenteris affair lingers on... (Greece)

The case of the two Greek athletes, Kostas Kenteris and Katarina Thanou, who missed three drugs tests – the last one on the eve of the 2004 Athens Olympics – has been extensively documented in these pages and elsewhere. As has been the case with many other sporting figures caught infringing the relevant rules, they have found themselves at odds not only with the sporting federations, but also with the criminal authorities. Both athletes have been charged by Greek public prosecutors with perjury stemming from this affair – more particularly in relation to the mysterious "motorcycle accident" which they allegedly suffered and which they claimed to have been the reason for their absence from the Olympic tests. Also true to tradition, it appears that once again, the court system is not showing itself at its most expeditious, since it was decided, in January 2007, to postpone the case until September that year (*The Daily Telegraph of 30/1/2007, p. S18*).

However, in the meantime, the two-year ban visited upon the two athletes has come to an end, and at least one of them is seeking a return to top athletics. As was mentioned earlier (above, p.000) Katarina Thanou qualified for the European indoor championships held in early February 2007 – not exactly to universal acclaim, in view of the sustained barracking to which she was subjected during the event. However much the present author deplores boorish behaviour by spectators at sporting events, he finds it extremely difficult to raise any sympathy for Ms. Thanou, particularly in view of certain interviews she has given on the subject of her suspension. She has not only admitted having continued training during this period, but also announced that returning to top-level athletics was "all I could think about" (*The Guardian of 1/3/2007, p. S8*). She did not appear to have the slightest remorse about her part in these events, and clearly merely looked upon

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her suspension as an irritating but surmountable obstacle in her path to further honours. The same applies to her disgraced team-mate, Kostas Kenteris, whose suspension had not yet ended before he was already claiming that he could be competing at the 2008 Olympics – again, without one word of remorse other than the now-obligatory mumbles about “mistakes having been made” (*The Daily Telegraph of 4/12/2006, p. S25*). (See also the return of the Chinese runner Sun Yingjie after the expiry of her suspension, below p.89.) Ms. Thanou’s lawyer, Gregory Ioannidis, has not helped the cause of humility either by attacking the testing procedures imposed by the World Anti-Doping Agency (WADA), stating:

“The system does not work because there are a lot of holes in the way it is applied. There are numerous cases where testers do not find an athlete on one day or on the next days and then he is being given two missed tests. It is necessary to have an evaluation of missed tests. Why the athlete could not be present” (*The Guardian of 18/1/2007, p. S2*).

All this does not exactly send out the right signals in the sporting authorities’ “war on doping”, and it is obviously this case, and many others of its kind, which have prompted the international athletics federation to propose, and the European athletics authorities to enact – albeit within a limited scope – stiffer bans for those caught out (see above, p.87).

However, the way back to the top may not be as straightforward as Ms. Thanou believes. With two months to go before the latter’s suspension ended, it was discovered by a leading British newspaper that she was considering a move to train and race in Britain in order to escape the attentions of the Greek media (*The Daily Telegraph of 26/10/2007, p. S4*). However, when her lawyer, the ubiquitous Dr. Ioannidis, attempted to talk the Milton Keynes Athletics Club into allowing her to join them, he was rebuffed in no uncertain terms. Mick Brownlow, the Chairman of the club, explained:

“The issue of Thanou’s possible membership was discussed by the committee and the conclusion was that we have sponsors, athletes and parents, all of whom would be against her joining because she’s been involved in one of the big scandals of the Olympic Games. (...) She would bring a lot of negative publicity and, given we’re strong in the sprints, she wouldn’t necessarily be an asset in the leagues in which we compete” (*The Daily Telegraph of 27/10/2006, p. S12*).

It is difficult to imagine any other club entertaining a different opinion.

Lewis manager admits planting spy in dope room (US)

One of the developments which brought home the seriousness of the drugs problem in the world of athletics was the positive test recorded by Canadian sprinter Ben Johnson following his medal-winning performance at the 1988 Seoul Olympics, causing him to lose both his medal and world record. Mr. Johnson continues to protest his innocence (at least about the Seoul Games). During a recent promotional visit to Australia, he accused Carl Lewis, the runner-up in the race who was subsequently awarded the gold medal, of being involved in a conspiracy to sabotage his drug sample, which tested positive for anabolic steroids. He has admitted taking performance-enhancing drugs during his athletics career, but alleges that he was “clean” in Seoul because he had abandoned drugs in time for them not to be revealed in a test.

The accusation in question came during an interview with the Melbourne newspaper Herald Sun. Mr. Johnson blamed an American footballer, a friend of Mr. Lewis’s, with whom he shared a beer in the drug-testing room, for spiking his drink with stanozolol. He stated:

“I have the information on how it was done and why it was done this way and who was behind it. I won’t say too much but (...) he’s (Lewis) involved. I’ve been speaking to my lawyer and he wants to keep it as low as possible until next June. We’re trying to get some information (*The Guardian of 7/2/2007, p. S9*).

Mr. Lewis’s manager has admitted smuggling a spy into the drug-testing room, but emphatically denies the claim that interfered with the drug sample. He justified the move in the following terms:

“If I thought Ben was going to take a masking agent I might plant somebody in there to make sure if he did he would take a photo of it. You want to make sure somebody doesn’t take anything from their bag, to get close enough to make sure he (Johnson) didn’t take anything to cover up” (*ibid*).

It is unclear at the time of writing whether these accusations and revelations will produce any legal consequences.

French athletics coach charged with administering drugs

In late January 2007, Fodil Dehiba, husband and coach of French 1500-metres record holder Hind Dehiba, was charged with administering doping products to athletes. In addition, he was charged with the unlawful importation of medication and transporting poisonous substances. The Dehibas, as well as another unnamed runner, had been detained by customs officers at

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Charles de Gaulle airport when they were found to be carrying vials of human growth hormone. The two athletes were later released (*Daily Mail of 25/1/2007, p. 81*). At the time of writing, the results of the prosecution were not yet known.

Sun Yingjie to compete again on expiry of doping ban(China)

In mid-January 2007, it was learned that Sun Yingjie, China's top woman runner, is to compete in the Beijing Marathon on October this year, two days after her doping ban ends. The world 10,000 bronze medallist was suspended for two years for taking steroids (*The Daily Telegraph of 12/1/2007, p. S21*).

Doping issues and measures – cricket

The Shoaib Akhtar/Mohammad Asif affair (Pakistan)

Doping scandals do not often occur in the world of cricket, but when they do they produce a considerable impact. It may be recalled ([2003] 2 Sport and the Law Journal p. 124) that, four years ago, Australian Test bowler Shane Warne was sent home from the World Cup in South Africa after he had been found to have ingested a banned diuretic.

In mid-October 2006, the Champions Trophy was similarly besmirched when two Pakistan fast bowlers, Shoaib Akhtar and Mohammad Asif, were sent home from the tournament after testing positive for the performance-enhancing drug nandrolone (*The Independent of 17/10/2006, p. 62*). The face-saving explanations were naturally not slow in being forthcoming. Shaharyar Khan, the former Pakistan Cricket Board chairman, blamed this incident on "poor education among players", claiming that many of the country's players had low levels of schooling and did not understand rules, regulations and contractual obligations. The late Bob Woolmer, the coach who was to meet such a dreadful end to his life only a few months later, stated his belief that the players might have fallen prey to over-the-counter medication – perhaps in the form of build-up powder (*The Independent of 19/10/2006, p. 57*). Any lingering doubt that no freak of the testing procedures was to blame was dispelled two weeks later, when it was learned that the players, after being questioned for hours at a special tribunal in Karachi, declined to have their B-samples tested, thus effectively admitting guilt. However, they continued to deny knowingly taking the drug (*The Mail on Sunday of 29/10/2006, p. 124*).

Shortly afterwards the Pakistan Cricket Board (PCB) announced that Shoaib had been banned for two years, whereas Asif was banned for just one year. For the former, who was aged 31, this effectively meant the end of his career – at least at the international level (*The Independent of 2/11/2006, p. 59*). As for Asif's one-year ban, this appeared to run counter to the rules of the International Cricket Council (ICC), which stipulate a two-year ban as a minimum penalty for a first offence. The ICC did not, however, demur – no doubt in view of the difficulties with which cricket's anti-drugs policy has been strewn to date. The difference in the penalty administered to the two test players was explained by the three-strong tribunal on the basis that Mr. Asif had never attended an anti-drugs lecture and that there was doubt whether he had even received a list of anti-doping regulations. It was also held in his defence that he had a limited grasp of English and may therefore not have fully understood the contents even if he had received such a list (*The Guardian of 2/11/2006, p. S1*).

Not unexpectedly, the two players appealed against these bans (*The Guardian of 9/11/2006, p. S2*). Four weeks later, the appeals tribunal sensationally cleared both players and lifted their bans. The main ground on which they were cleared was that the pair had not had sufficient warning that the supplements they were taking could be contaminated by the steroid. The players had therefore met the test of "exceptional circumstances" as laid down in PCB regulations (*The Independent of 6/12/2006, p. 58*). This was not at all to the taste of the World Anti-Doping Agency (WADA), which immediately set about inquiring whether it had legal jurisdiction to challenge this decision (*The Sunday Telegraph of 10/12/2006, p. 39*). Shortly afterwards, WADA lodged an appeal against the latter before the Court of Arbitration for Sport (CAS) (*The Guardian of 7/2/2007, p. S2*). The Court had yet to pronounce itself on the matter at the time of writing.

Naturally, the repercussions of the entire affair did not end there. In the first place, attention was rightly drawn to the poor state of the PCB's drug-testing procedure. Dr. Danish Zaheer, one of the three-man panel which overturned the initial decision, was one of many to point out the flaws. Although his was a dissenting opinion on the tribunal, he criticised the fact that the players were not issued with written notifications before testing, but were merely informed by telephone (*The Daily Telegraph of 28/11/2006, p. S8*). The question whether the two players would be selected again for their country also gave rise to some recriminations. Initially, Shoaib was omitted from the 17-man touring party to South Africa, which commenced the following January

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(*The Daily Telegraph of 1/1/2007, p. S21*). However, this was remedied in the wake of much and vocal criticism (*The Guardian of 9/1/2007, p. S2*). Ultimately, Mr. Shoaib travelled with the party but was unable to play because of a hamstring injury (*The Guardian of 23/1/2007, p. S2*). However, both Shoaib and Asif were selected for inclusion in their country's ill-fated World Cup squad (*The Daily Telegraph of 14/2/2007, p. S13*).

Naturally, the Pakistan cricket authorities were extremely anxious to avoid another doping scandal during cricket's showpiece tournament in the Caribbean, and announced that they would carry out drug tests on all 30 players included in the provisional World Cup squad. The PCB's communications manager, Ehsan Malik, stated that the Pakistan cricket authorities were maintaining a "zero-tolerance" policy on the use of drugs (*The Daily Telegraph of 18/1/2007, p. S13*). They were given clearance by the ICC to replace any players in their squad who would test positive as a result (*The Daily Telegraph of 8/2/2007, p. S17*). Yet here again, controversy loomed. All players except for Messrs. Shoaib and Asif were tested in mid-February, and no date was set aside for these two players to be tested (*The Mail on Sunday of 25/2/2007, p. 133*). This naturally caused a good deal of criticism, particularly as the opening of the World Cup was only a few weeks away. Australian opening batsman Matthew Hayden even went so far as to describe the pair's selection in these circumstances as "ludicrous" (*The Daily Telegraph of 1/3/2007, p. S12*).

In the event, the "tainted two" did not play in the World Cup. With two weeks to go before the tournament, both were ruled out with injuries. Yasir Arafat and Mohammad Sami were called up as their replacements, but had to await ICC clearance. The PCB insisted that the two withdrawals had been purely based on fitness considerations and had nothing to do with concerns about being tested. They also denied media reports that the pair had been privately tested to establish whether any nandrolone had remained in their bodies. Not everyone was convinced, particularly since, as former Pakistan pace bowler Sarfraz Nawaz pointed out, both the captain and coach of the squad had said only two days before that the pair were merely afflicted with "niggles" and would recover in time. It would appear that the ICC were far from convinced either, since they insisted on seeing the medical evidence attesting the players' injuries before giving clearance to their replacements (*The Guardian of 2/3/2007, p. S10*). These medical reports were sent to the ICC four days later (*The Guardian of 6/3/2007, p. S2*), and Sami and Arafat were allowed to join the squad.

Doping issues and measures – boxing

"East Coast Balco"? Concerns rise over Holyfield's links with pharmaceutical companies (US)

The sport of boxing has hitherto remained relatively untainted by drug-taking scandal. This may be about to change quite dramatically as a result of police action against certain pharmaceutical companies, the implications of which are potentially so explosive that the resulting imbroglio could go down as the "East Coast Balco" scandal. The main leading sports personality to have emerged from the investigations thus far is Evander Holyfield, four-time world heavyweight boxing champion, whose connections with the said companies have raised a number of serious questions.

As Mr. Holyfield was holding a press conference in which he confidently predicted victory in his next bout, investigators were beginning to analyse their findings from two drugs raids in Florida made earlier that day. They were carried out by federal and state agents – one on a clinic in Orlando called the Signature Pharmacy, the other on the Palm Beach rejuvenation Centre in Jupiter. The former is a client of the latter – apparently for some £10 million. The sheer size of the business transacted has attracted the interest of the investigators. The first name to have appeared in media reports that week was Richard Rydze, a team physician for the Pittsburgh Steelers American Football franchise. He is alleged to have used his credit card to purchase \$150,000 worth of human growth hormone from the Signature Pharmacy (*The Times of 2/3/2007, p. 56*).

Within a few days, however, a report from CNN.com claimed that the client lists had led investigators also in the direction of Mr. Holyfield. Although the latter was not named in person, the moniker "Evan Fields" caught their attention. It has allegedly turned out that Mr. "Fields" shares the same date of birth as Holyfield – i.e. 19/10/1962 – and his address in Fairfield, Georgia, was similar to the latter's. When the telephone number featured on the documents was called, it was, according to the investigators, Holyfield himself who answered. The same sources claim that "Evan Fields" did not receive prescriptions directly through the post, but collected them through a Georgian doctor, whose offices were also raided. The drugs allegedly came from the Applied Pharmacy, located in Mobile, Alabama – also raided by investigators, during the autumn of 2006 (*ibid*).

Two other names have been linked via the Applied Pharmacy client lists. One is associated with the Los

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Angeles Angels of Anaheim baseball franchise. The other is Jose Canseco, a retired baseball player whose openness about his doping history is such that he has made a good deal of money from publishing a book about it. Investigators are examining documents which apparently allege that "Fields" collected supplies of syringes, as well as three vials of testosterone and two vials of Glukor (a drug used to treat male impotence but also suspected of being used by body-builders before and after steroid cycles), five vials of Saizen, a brand of human growth hormone, and other related supplies. It is alleged that he returned for further treatment for hypogonadism, a form of male impotence.

Mr. Holyfield has steadfastly denied any involvement in drugs whatsoever, in the following terms:

"I do not use steroids. I have never used steroids. I resent that my name has been linked to known steroid users by sources who refuse to be identified in order to generate publicity for their investigation" (*ibid*).

Clearly, this is a story which will continue to run in the near future. The present author, as ever, pledges to keep his readership duly informed of any further developments in this saga.

Tapia "critical" following cocaine overdose (US)

In mid-March 2007, it was learned that Johnny Tapia, the former world champion at three weights, had been admitted to a hospital in Albuquerque, New Mexico, after having reportedly taken an overdose of cocaine (*The Daily Telegraph of 14/3/2007, p. S20*). He is known to have had a history of drug problems. This came only two weeks after he had won a majority decision over Evaristo Primero in a fight billed as Mr. Tapia's farewell to the ring. In his autobiography, *Mi Vida Loca*, he claims to have been clinically dead six times, on each occasion because of a drugs overdose (*The Guardian of 14/3/2007, p. 9*). At the time of writing, there was no change reported in his condition.

Doping issues and measures – racing

Fallon banned after positive test in France

In late November 2006, it was learned that Kieren Fallon, the top Irish jockey, was banned for six months by the French racing authorities for testing positive for a prohibited substance at Chantilly in July that year. The rider is already banned in Britain and Hong Kong pending legal proceedings, but this French suspension is expected to be reciprocated by racing authorities worldwide. Mr. Fallon, who faces criminal charges of conspiracy to defraud following a London police inquiry into alleged race-fixing, tested positive for a metabolite, which is a prohibited substance. Under French rules, this is a "strict liability" offence. The B sample later also proved to be positive (*The Guardian of 1/12/2006, p. S11*).

Deep Impact fails dope test (France)

In mid-October 2006, it was learned that Japanese "superhorse" Deep Impact had failed the routine drugs test taken after finishing third behind Rail Link and Pride in the Prix de l'Arc de Triomphe, France (*The Independent of 20/10/2006, p. 64*). He was found to have been administered a nasal spray which contained a prohibited substance. No skulduggery was suspected – the spray was reportedly administered under veterinary supervision, but a mistake was made in the cut-off date. Nevertheless, he was stripped of the third place he had achieved (*The Daily Telegraph of 20/10/2006, p. S16*). It transpired that the horse had been treated for a respiratory problem for a month before the race, and had a drug containing a banned substance prescribed by a French veterinary surgeon (*The Independent of 20/10/2006, loc. cit*).

Trainer fined after Takeover Target fails dope test (Hong Kong)

In late December 2006, it emerged that Takeover Target, the Australian sprinter, had tested positive for an unlawful substance in Hong Kong. He was therefore withdrawn from the Hong Kong Sprint, for which he was one of the hot favourites (*The Daily Telegraph of 8/12/2006, p. S4*). Days later, the B-sample was also returned positive by the Australian Racing Forensic laboratory in Sydney, Australia (*www.theage.com.au/horse-racing of 5/1/2007*). The horse's trainer, Joe Janiak, was subsequently fined HK \$200,000 by the Hong Kong racing authorities, who adopt a policy of zero tolerance on drug-taking (*www.brisnet.com of 5/2/2007*).

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Doping issues and measures – other sports

Weight lifting

Iranian weightlifters suspended

It will be recalled from a previous issue of this Journal (*[2006] 2 Sport and the Law Journal p.87*) that nine of the 11 members of the Iranian weightlifting team had tested positive for unidentified drugs on the eve of the World Championships held in 2006. This ban was accompanied by a \$400,000 fine. One of the weightlifters, Mohsen Davoudi, has been banned permanently because of a previous positive test. The team's Bulgarian coach, Georgy Ivanov, who was identified by the International Weightlifting Federation as the main person responsible for the infringements, was banned from coaching for life. If the \$400,000 fine is not paid, Iran will remain excluded from more international events (*The Guardian of 3/10/2006, p. S8*).

Baseball

Barry Bonds faces perjury charge

(See above, p.82).

Rowing

Russians fail World Championship dope test

In late January 2007, it was learned that the Russian quad crew were disqualified from the event which they had won during the 2006 World Championships, because of a positive drug test on their bow woman, Olga Samulenkova. The latter had failed the test in July 2006 following a random test carried out by the World Anti-Doping Agency (WADA) at the Russian training camp in Belmeken, Bulgaria. She was also banned for two years from the sport. This development caused the champions' title to be awarded to the British crew (*The Guardian of 30/1/2007, p. S9*).

Swimming

Thorpe denies drugs violation (Australia/France)

Ian Thorpe is undoubtedly one of Australia's finest swimmers – nay sportsmen – ever, and he could have expected that, when he retired in 2006 at the age of 24, his place in the pantheon of Australian sport would be assured. However, his reputation could be tarnished by allegations of drug-taking. Following a report in the French sports newspaper *L'équipe* that Mr. Thorpe had shown abnormal levels of two banned substances in a doping test conducted in May 2006, FINA, the world governing body of swimming, confirmed it had lodged an appeal with the Court of Arbitration for Sport (CAS) on a drugs test conducted by the Australian Sports Anti-Doping Authority (ASADA). FINA, refusing to name the swimmer, regarded the sample as having returned an "adverse analytical result", which is not the same as a positive drugs test. The object of the appeal, said one of its spokespersons, was to "clarify the issues surrounding this case" (*The Sunday Telegraph of 1/4/2007, p. S13*).

Mr. Thorpe, in the meantime, pronounced himself "confident" that he would be cleared of any doping violations. He informed a press conference that he feared his reputation would not recover from the claims made in the French newspaper. It appears that the substances in question were testosterone and luteinising hormone. These are banned substances, but are also naturally produced by the human body. The five-time Olympic medal winner said that he had been one of the most tested athletes in sport, and that he remained a "strong supporter" of the drug-testing system. He was unsure what caused the unusually high readings, but that he would co-operate with the authorities in an effort to clear his name (*The Independent of 2/4/2007, p. 55*). The World Anti-Doping Agency (WADA) subsequently criticised the handling of the affair, claiming that confidentiality was breached by revealing his name prematurely (*The Daily Telegraph of 3/4/2007, p. S7*). No further details are available at the time of writing.

16. Family Law

[None]

17. Issues specific to individual sports

Football

Platini plans Champions League shake-up

In January 2007, Michel Platini, the former French international, was elected President of European regulatory organ UEFA, narrowly defeating the incumbent Lennart Johansson who had held the post for 17 years.

His appointment was welcomed in many quarters. However, some of the larger footballing nations in Europe will have less charitable feelings, in view of the plans which Mr. Platini had already divulged about reforming the current formula of the European Champions League. The main plank in this proposed reform is to reduce the maximum number of places for these major countries from their present four to three. Motivated by a desire to give the smaller nations greater influence in the competition, Mr. Platini will present his proposals to that effect later this year. Prominent among the sceptics were the English Premier League, which is among those competitions entitled to four places. Its leaders are, however, believed to be privately confident that the financial case for retaining the status quo, allied to the democratic safeguards in UEFA's constitution, will ensure that Mr. Platini will not be able to force through the proposed changes (*The Guardian of 27/1/2007, p. S6*).

Blatter seeks league fixtures switch

Sepp Blatter, the president of FIFA, the world governing body in football, is never far away from controversy. He remained true to his reputation in early December 2006, when he expressed his belief that Europe's domestic leagues should take place from February to November. He contends that such a switch would:

“allow a longer recuperation period and for qualification matches (European championships and World Cup) to be played in the winter. I've already proposed that clubs play in summer so that the season follows the calendar. You play in the summer during the two warmest months of the year and take a winter break. This idea is supported by big European clubs” (*The Daily Telegraph of 5/12/2006, p. S7*).

To ease fixture congestion further, Mr. Blatter proposed that there be a greater number of qualifying groups with fewer teams in each vying for European Championship places (*ibid*).

European Super League mooted (yet again)

For the past decade, one of the perennial talking points in the game at the top European level has been the various proposals made to form a top league consisting of the continent's premier teams. Hitherto such plans have tended to peter out within a few weeks of being mooted. However, recent developments in this field have taken a turn which could prove more obdurate than its predecessors. In early April it was discovered that secret talks had been taking place between Europe's leading sides and Brussels politicians which could lead to a breakaway super league. Sources involved in the discussions, held at a Champions League fixture in February 2007, revealed that the breakaway was the “ultimate threat” which could be exercised if governing bodies UEFA and FIFA “run wild” in their administration of the game (*The Guardian of 2/4/2007, p. S1*).

The talks in question were prompted by the leading clubs' concerns over the findings of the Independent European Sport Review, being a report commissioned by the British sports minister Richard Caborn during the UK's presidency of the European Union last year. The review set in train a process which will come to an end when Commissioner Jan Figel, who attended the “breakaway” meeting, issues a White Paper for Sport to the European Commission later this year. The politicians present included Toine Manders, a Netherlands MEP who is a long-standing advocate of free-market principles in football, and Ivo Belet, a Belgian MEP who drafted the input by the European parliament into the White Paper (*ibid*).

It is not known exactly what form such a league would take. However, over a year ago, it was discovered that the powerful G14 group of leading sides had already drawn up a blueprint for a breakaway league, under which top team in each country would completely

17. Issues specific to individual sports

detach themselves from their home leagues and set up a competition of their own. For the time being, there is a strong commitment among leading clubs to the Champions League and to domestic football. However, they are definitely seeking to retain control over their own commercial activities and feel that the politicians who joined them at the aforementioned meeting have been sympathetic to their position (*ibid*).

Video technology proposed and introduced at various levels

Several sports currently use video replay technology in order to decide borderline issues at top events. Football has been lagging behind this trend, much to the frustration of many top personalities in the game who feel that the “beautiful game” should throw off the shackles of such conservatism and follow where other sports have led. There seems to have been a major breakthrough in this thinking with the news, which was announced in mid-November 2006, that world governing body FIFA was introducing goal-line video technology at the next World Club Championship, following trials in junior competitions (*Daily Mail of 22/11/2006, p. 82*). In fact, FIFA had planned to use the technology in last summer’s World Cup, but dropped the idea after trials had proved inconclusive (*The Daily Telegraph of 22/11/2006, p. S6*). However, both FIFA and UEFA have rejected proposals made by the English premier league for the introduction of a video referee to resolve offside disputes, penalty claims and off-the-ball clashes (*ibid*).

Experiments with this kind of technology have also been taking place at the national level. In late December 2006 it was announced that goalline technology would be tested in the Italian League, more particularly during Reggina’s Serie A match at Udinese. Four high-resolution cameras, recording 200 frames per second, were installed at a height of 20 metres above the corner flags. These were trained on the goals and connected to computers, which then analyse the images and determine whether or not the ball has crossed the line should the referee be in doubt (*The Guardian of 29/12/2006, p. S2*). However, at the game itself the technology was not needed in the absence of any relevant incident (*Daily Mail of 4/12/2006, p. 83*).

UEFA dismiss Lille protest over Giggs goal (France)

As has already been indicated earlier (see above, p.46), the European Champions League fixture between Lille and Manchester United, played in Lens, was one of those matches which, as the wearisome cliché goes, would “be remembered for all the wrong reasons”. Not only was the match marred by crowd trouble, but it was also interrupted when the home side took umbrage at the manner in which Ryan Giggs scored the only goal of the match for the visitors. With seven minutes to go, United were awarded a free kick. As the Lille goalkeeper lined up his defence, Ryan Giggs asked the Dutch referee whether he could take a quick free kick. Giggs managed to score from that set piece. Lille then kicked the ball into touch and began to walk off. After several minutes of argument, play resumed.

Lille made a complaint to European governing body UEFA about the propriety of that goal (*The Independent of 22/2/2007, p. 53*). They claimed that they had not been ready for the free kick, having waited for referee Eric Bramhaar to blow the whistle, and demanded that the game be replayed. However, not only did UEFA dismiss the complaint, they also fined Lille over the crowd disturbances and over the actions of their players in response to the Giggs goal (*The Independent of 23/3/2007, p. 71*). The French club remained deeply dissatisfied, and launched an appeal against UEFA’s decision (*The Guardian of 27/2/2007, p. S4*). This too was dismissed (*The Daily Telegraph of 7/3/2007, p. S1*).

Spurs win UEFA Cup bye as Feyenoord lose crowd trouble court case (Netherlands – UK)

The Dutch former European Cup winners, Feyenoord, have in recent years been afflicted with crowd problems, and suffered the consequences in disciplinary terms. When their fans once again caused trouble during their UEFA Cup group match in Nancy, France, in November 2006, the European regulatory body decided to act. Initially, UEFA’s independent disciplinary body fined £81,000 and issued a suspended sentence of playing their next two matches behind closed doors. However, the main governing body appealed this decision because of the club’s previous record, and expelled the Rotterdam side from the tournament. In addition, they gave their originally-planned opponents, Tottenham Hotspur, a bye into the next stage of the competition rather than having them face Polish side Wisla Krakow, who had finished below Feyenoord in Group E. Feyenoord decided to throw themselves at the mercy of the Court of Arbitration for Sport (CAS) by appealing this decision (*The Times of 26/12/2006, p.*

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87). The CAS, however, later confirmed the ban – and the Spurs' walkover (*The Guardian of 10/2/2007, p. S4*).

Tottenham received this news with mixed feelings. Although naturally pleased that they would progress to the next stage unhindered, the fact that they were given a bye meant a considerable loss of revenue – in terms of gate income and television fees. UEFA, however, ruled out any notion of compensation in respect of such loss (*The Times of 23/12/2006, p. 68*). Nevertheless, Spurs manager Martin Jol was not too disheartened, commenting that, since his side had experienced such a congested fixture list during the preceding period, it as an advantage to have a rest (*The Guardian of 10/2/2007, p. S4*).

UEFA threaten to ban clubs having unlicensed managers

European clubs could find themselves barred from playing in European competitions if they do not appoint managers with the right qualifications. Governing body UEFA is to introduce new guidelines after losing patience with the English Premiership, who appear to be flouting European standards by giving sides special dispensation to employ managers (invariably former players who lack the required coaching badges). Thus Gareth Southgate has been allowed to manage Middlesbrough without a UEFA licence, whilst at the time of writing Newcastle coach Glenn Roeder is only halfway through his course.

UEFA's club licensing system, a blueprint for regulating coaching standards among all clubs entering European competitions, is being phased in to allow for a smooth transition. However, after the start of the 2009-10 season, none of the elite leagues in Europe will be allowed to go their separate way on the subject of coaching qualifications (*The Daily Telegraph of 29/10/2006, p. S4*).

Russia bans coach who had his players assaulted

In early November 2006, a former manager of Third Division Russian club Metallurg Lipetsk was issued with a life ban after inciting a vicious attack against a group of his players. The disciplinary board of the Russian Football Association suspended Stanislav Bernikov for his part in hiring a gang of thugs who attacked three players at the club training ground two months earlier. The team captain, Alexei Morochko, spent several weeks in hospital with a broken nose, concussion and a bullet wound in one arm. A defender and a goalkeeper incurred minor injuries. An inquiry found that the coach and the players had argued about allegations of match-fixing and bribery, and that the gang arrived shortly afterwards (*The Guardian of 6/11/2006, p. S3*).

Cricket

Pakistan cleared of ball-tampering – Hair career in balance

The unseemly scenes at the Oval on day four of the Fourth Test between England and Pakistan in August 2006 have been extensively described in this organ and elsewhere. After accusing the visiting side of ball-tampering by umpires Darrell Hair and Billy Doctrove, the Pakistan team refused to emerge from the dressing rooms after tea in protest. Thereupon the umpires removed the bails and declared the match to have been forfeited by the visitors, leaving England to win the series 3-0.

The inevitable inquiry by the International Cricket Council followed in late September. Officially, the hearing concerned a charge brought against Pakistan captain Inzamam-ul-Haq for bringing the game into disrepute through his role in the affair. The ball was produced at the hearing for analysis by former Sri Lankan Test batsman Ranjan Madugalle, who chaired the proceedings. There were indeed substantial scrapes on the ball of a kind which could only legally be produced by the ball making contact with a hard object, such as the boundary board. However, the Pakistan team lawyers argued, successfully as it turned out, that the marks did not provide clear evidence that the ball was tampered with (*The Daily Telegraph of 28/9/2006, p. S20*). The Pakistanis were therefore acquitted of ball-tampering, although Mr. Inzamam was banned for four one-day internationals for his part in the affair (*The Guardian of 20/9/2006, p. S1*).

The decision to overturn the umpire's verdict was unprecedented, and may well change the nature of umpiring at the international level. Never before has an umpire been expected to produce evidence for their decisions, although this was perhaps inevitable in an age of technology, high finance and sports lawyers (*ibid*).

As for Mr. Hair, it was clear that his international career was very much in the balance following this affair. Immediately after the hearing, he was withdrawn from the team of umpires due to officiate in the ICC Champions Trophy, which was due to be played the following month in India – ostensibly for security reasons. This reason was thrown into disarray by the Indian Cricket Board, who insisted that the umpire's safety was not an issue (*The Guardian of 30/9/2006, p. S10*). This gave rise to suspicion that the security issue had been used as a pretext to put Mr. Hair on "gardening leave" whilst the ICC discussed his future.

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In early November, he was in fact removed from the ICC elite list of umpires on the grounds that he had lost their confidence (*The Independent on Sunday of 5/11/2006*). This decision was met with severe criticism from several sources – and not only in Mr. Hair's native Australia. Understandably, some asked the question why the other umpire involved in the affair, Billy Doctrove, had not been visited with a similar ban. Australian umpires – somewhat over-dramatically – wore black ribbons in support of their colleague during club matches in the immediate wake of the ban (*The Daily Telegraph of 30/11/2006, p. S3*). Hair was, however, allowed to umpire in the triangular tournament involving Scotland, Kenya and Canada in January 2007 (*The Daily Telegraph of 15/1/2007, p. S30*). This was justified on the basis that these three nations were not Test-playing countries (even though he had officially been banned from "all international games" by the relevant ICC panel) (*The Guardian of 15/1/2007, p. S15*).

As was noted earlier (p.78), the affair has not subsided yet, in view of the race discrimination claim which Mr. Hair has brought against the ICC, and which was undecided at the time of writing.

Illegal bowling actions – an update

Bangladesh bowlers. In mid-November 2006, the Bangladesh Cricket Board barred 13 bowlers in its domestic matches for illegal actions. These include Faisal Hossain and Jamal Babu, who have all played at the international level (*The Guardian of 11/11/2006, p. S12*).

Shabbir Ahmed. In late December 2006, it emerged that the International Cricket Council (ICC) cleared the remodelled bowling action of Pakistan Test bowler Shabbir Ahmed. The right-arm paceman was the first international player to be banned for a year in December 2005 for having an unlawful bowling action. However, a report by bio-mechanics expert Dr. Bruce Elliot which pronounced Mr. Shabbir's action as being legal has now been accepted by the ICC (*The Daily Telegraph of 22/12/2006, p. S22*).

Afridi disciplined after imbroglia with fan (Pakistan)

During the first one-day international of a series against South Africa, played in early February 2007, Pakistan all-rounder Shahid Afridi was involved in an altercation with a spectator after returning to the pavilion on his dismissal (*The Guardian of 9/2/2007, p. S2*). He was subsequently banned by the International Cricket Council (ICC) for four one-day internationals (*The Independent on Sunday of 11/2/2007, p. 71*).

Rugby Union

French and English clubs threaten Heineken Cup boycott

The Heineken Cup is Europe's prime club tournament in rugby, and as such commands a good deal of media prestige and money. Increasingly the top sides in the competition, or those who aspire towards such status, have been demanding a greater say in the management of the tournament and its commercial operation. More particularly the English sides have wanted half of the shares held by the Rugby Football Union (RFU) on the European Rugby Cup (ERC) board, as well as equal voting rights with the latter. The Italian and French unions sided with their clubs' demands and agreed that ERC's shareholding should be changed. The English clubs have pulled out of the European competition before, namely in 1998-99, but returned the next year after signing the eight-year Paris Accord, which ends in May 2007 (*The Guardian of 25/10/2007, p. S1*).

As the May deadline drew nearer, the pressure on the clubs and unions to sign a new agreement increased, and the very future of the competition was in serious doubt when, as the old year turned into the new, the French clubs joined England's in refusing to make such a deal. The crisis intensified in mid-January when the French top league announced that it was withdrawing its clubs from the Cup (*The Guardian of 17/1/2007, p. S4*). The English RFU responded by saying that it would refuse to submit to blackmail, after being cited by the president of the league, former international winger Serge Blanco, as the main reason for the boycott (*The Guardian of 18/1/2007, p. S9*). There was some respite when, in mid-March, the French clubs and union agreed to delay a decision on whether to press ahead with the boycott (*The Guardian of 24/3/2007, p. S13*). However, matters once again took a turn for the worse two weeks later, when the English clubs announced that they too would pull out of the tournament (*The Independent of 3/4/2007, p. 49*). In the meantime, the French Rugby Union had relented its hard-line stand, and urged the French clubs to withdraw their threat (*The Independent of 5/4/2007, p. 63*), but at the time of writing the clubs had not yet responded positively to these urgings.

Munster forward banned for stamping (Ireland)

In mid-December 2007, it was learned that Munster's back row forward Alan Quinlan was suspended for six weeks after admitting stamping during a Heineken Cup game at Cardiff (*The Guardian of 21/12/2006, p. S10*).

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Other sports

Swimming

Ukrainian coach challenges ban for assaulting daughter

In early April 2007, it was learned that Mikhail Zubkov, a Ukrainian coach who was suspended for six years after being filmed fighting with his daughter at the recent World Championships in Melbourne, was to appeal against this penalty. FINA, the world governing body in the sport, had found him guilty of breaching their code of conduct and of bringing the sport into disrepute. He had been filmed pushing and shoving his daughter, Kateryna, in a marshalling area; Mr. Zubkov intends to appeal before the Court of Arbitration for Sport (*The Guardian of 3/4/2007, p. S2*).

American Football

Haynesworth earns record ban for stamping

In early October 2006, the Tennessee Titans defensive tackle Albert Haynesworth received a record ban of five matches for stamping on the head of the Dallas Cowboys centre Andre Gurode. This is the longest suspension ever administered by the National Football League (NFL) for an on-field incident (*The Independent of 4/10/2006, p. 49*).

Sport and the Law Journal Reports



Sport and the Law Journal Reports

(2007) SLJR 1-4 are reported in the Sport and the Law Journal, Volume [15] Issue [1]

(2007) SLJR 1
ATHERACES LIMITED v THE BRITISH HORSE RACING BOARD
 Horse racing – Broadcasting rights – Bookmakers – EC Competition law.

(2007) SLJR 2
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 Football – Merchandising – Replica shirts – Trade Marks.

(2007) SLJR 3
NEWCASTLE UNITED PLC v THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS
 VAT – Football Clubs – Football Players' Agents – Whether Football Club could reclaim VAT paid to a player's football agent.

(2007) SLJR 4
PAUL STRETFORD v THE FOOTBALL ASSOCIATION LTD & OTHERS
 Arbitration – FA rules – Football Players' Agents – Article 6 ECHR – Disciplinary proceedings – Whether provision in FA rules requiring arbitration breached Article 6 ECHR.

The law reports in the Sport and the Law Journal are compiled by Barristers at Blackstone Chambers, Middle Temple, under the editorship of Nick De Marco. The individual reporters (indicated by their initials after the date of the judgment) are James Segan and Nick De Marco. The Reports should be cited by their "SLJR" number

(2007) SLJR 1
Horse racing – Broadcasting rights – Bookmakers – EC Competition law.

ATHERACES LIMITED v THE BRITISH HORSE RACING BOARD

Court of Appeal (Civil Division) (Mummery, Sedley and Lloyd LJJ [2007] EWCA Civ 38, 2 February 2007 (Reporter: JS)

Facts

The Claimant ("Attheraces") was a provider of websites, television channels and other audio-visual media relating to British horse racing. The Defendant ("BHB") played a central policy, promotional and administrative role in British racing. BHB maintained and operated a large database of race meetings, runners, times and similar information. As part of its commercial operations, BHB supplied information from that database for payment to interested parties, including Attheraces.

Attheraces brought proceedings under Article 82 of the Treaty of Rome and section 18 of the Competition Act 1998 for an injunction, declaration and other relief to restrain BHB's alleged abuse of a dominant position. The abuses alleged by Attheraces were: (i) "excessive, unfair and discriminatory pricing" by BHB in the supply of pre-race data; and (ii) unreasonable refusal by BHB to supply such data to Attheraces. BHB argued that it was not dominant, and in any event had not abused its position.

At first instance (reported as (2006) SJLR 9), Etherton J upheld the claim. He held that BHB was dominant in all countries outside the UK and Ireland in the market for the supply of UK pre-race data to those that required such information for the services they provide their customers. He further held that BHB had abused its dominant position by: (i) charging prices which were significantly in excess of the economic value of BHB's pre-race data and not otherwise justified; (ii) threatening without justification to discontinue the supply of pre-race data to Attheraces, even though Attheraces was an existing customer of BHB and pre-race data was an essential facility controlled by BHB; and (iii) charging prices which were substantially in excess of BHB's normal charges for comparable customers without objective justification.

Held (allowing the appeal)

The judge's findings as to dominance were not, save for a somewhat esoteric and ultimately immaterial argument concerning "super-dominance", appealed by BHB. The Court of Appeal in any event indicated that it

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agreed with Etherton J, holding that BHB was in an “incontestably dominant position”.

However, the Court overruled Etherton J on each of the three categories of alleged abuse of that dominant position which he had identified.

On the first issue of whether BHB had charged an excessive price to Attheraces, the Court found that Etherton J had erred, when calculating a putative non-abusive price, by giving primacy to a “cost plus” test. The Court criticised this approach on the ground, effectively, that it risked turning Article 82 into a price-regulating provision rather than a pro-competitive one. To this end, the Court further held that a “cost plus” test did not take adequate account of: (i) the “positive externalities” which BHB’s activities created, in particular the attractiveness and integrity of British racing; and (ii) the value of the information to the buyer, i.e. Attheraces. The Court therefore held that BHB’s pricing had not been excessive within the meaning of Article 82 or domestic competition law.

On the second issue of whether BHB had abused its dominant position by threatening to refuse to supply an essential facility, the Court again disagreed with Etherton J. After a detailed review of the correspondence and negotiations between the parties, the Court held, in summary, that the negotiations between the parties had never been sufficiently advanced for there to be a clear-cut abuse.

On the third and final issue of whether BHB had abused its position by charging discriminatory prices, the Court again disagreed with Etherton J. The Court acknowledged that BHB did indeed charge differential prices to Attheraces, which were substantially higher than those charged to other purchasers. However, the Court found that it had not been proved that such differential pricing had any anti-competitive effect.

The result of the Court’s decision on these three issues was that Attheraces’ claim failed.

Commentary

For all those connected with British horse racing, this is a very important judgment. It is most notable for its resounding endorsement of the commercial ambitions and plans of the BHB. In a twenty-paragraph introduction, the Court described the history of the BHB. It was plainly a significant factor in the Court’s decision that BHB had, as a result of statutory changes, lost income from the levy, and would need therefore to develop alternative sources of funding for racing.

(2007) SLJR 2

Football – Merchandising – Replica shirts – Trade Marks.

SCORE DRAW LIMITED v ALAN FINCH

High Court, Chancery Division (Mr Justice Mann), [2007] EWHC 462 (Ch), 9th March 2007 (Reporter: JS)

Facts

This judgment was an appeal from a decision of a Hearing Officer concerning the validity of the registration as a trade mark of the badge of the CBD, formerly the governing body for sport in Brazil. The significance of this badge was that it featured on the shirts of the Brazilian football team between 1914 and 1971. It was hence a crucial feature of replica shirts of historical football heroes such as Pele and Jairzinho.

The Respondent (“Mr Finch”) was a manufacturer of such shirts. He had registered the CBD badge as a trade mark, and had then licensed the mark to his trading company, TOFFS Limited. The Appellant (“Score Draw”) was also a manufacturer of replica historical shirts. Score Draw sought to argue that the badge was incapable of registration as a trade mark.

Held (allowing the appeal)

Mann J (“the judge”) assessed the evidence and came to the conclusion that “...both TOFFS and Score Draw (and some third parties) have used the mark extensively on replica football kit since 1994/1995, and probably before. Both present the kit as being a replica of what the Brazilian team has worn over a number of preceding years”.

In a short judgment, which whilst disagreeing on the result valiantly sought to defend the thin reasoning of the Hearing officer below, the judge held that the CBD badge was indeed incapable of registration as a trade mark. The judge adopted two bases for this conclusion.

First, the judge held that the mark was devoid of any distinctive character, and was therefore invalid under section 3(1)(b) of the Trade Marks Act 1994 (“the 1994 Act”). He held that “...there came a time, once the badge was no longer used by the Brazilian team, when it acquired such significance as a badge connoting the former Brazilian football team that it could no longer be taken to denote the trade origin of anyone, and particularly of one like Mr Finch who sought to use it on replica football kit”. In adopting this reasoning, the judge explicitly distinguished the cases of Arsenal

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Football Club Plc v Reed [2001] RPC 46 and Tottenham Hotspur plc v O'Connell (BL/0/024/03), in which it had been held that emblems of football clubs could function as both a badge of origin and a mark of allegiance. The judge held that on the facts of the present case, the use of the badge as associated with the Brazilian football team had robbed the badge of its power to be distinctive of trade origin.

Secondly, the judge held that the badge consisted exclusively of a sign which served in trade to designate the historic Brazilian teams, and was therefore invalid under section 3(1)(c) of the 1994 Act. The judge reasoned that although the badge did not say "Brazilian National club" in terms, "...it would mean that to the relevant public even if (as seems likely) they do not know the Portuguese words for which the initials stand".

Commentary

This decision is of obvious relevance to participants in the historic sporting merchandise industry. The most prominent purpose of Mann J's judgment appears to be to seek to put a stop to opportunistic registrations of historical sporting signs as trade marks, so that a competitive market in historic strips and memorabilia can be maintained. However, the decision is also of wider relevance to those involved in advising sports clubs as to merchandising in general, since it identifies the limits to the Arsenal and Tottenham judgments.

(2007) SLJR 3

VAT – Football Clubs – Football Players' Agents – Whether Football Club could reclaim VAT paid to a player's football agent.

NEWCASTLE UNITED PLC v THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

High Court (Chancery Division) (Mann J), [2007] EWHC 612 (Ch), 23 March 2007 (Reporter: NDM)

Facts

Appeal by Newcastle against the decision of the VAT Tribunal that the football club was not allowed to deduct input tax in respect of certain sums paid to players' agents. Newcastle had paid £3.1 million to football agents in relation to 46 transactions (both transfers to the club, and re-signing of players' contracts); input VAT on this sum was £543,067. Newcastle had deducted the sum of £543,067 from the output tax for which it is liable, on the basis that it claimed the agent was providing a service to the club for which the club pays his fees. However, HMRC found that Newcastle could not deduct the sum and would have to re-pay it, as the football agent did not act for (and therefore supply services to) the football club, but for the player.

The VAT Tribunal had found that the agent was contracted with the player, not the club. There were only alleged oral contracts between the agent and the club, whereas the player had written contracts with the agent. Also the FIFA and FA regulations on agents provided that agents could only act for one party in a transaction, and so they could not act for the club where they were acting for the agent. In addition the FA regulations provided that where an agent acts for a club he must do so under a written contract – that had not occurred here so.

Newcastle argued that the VAT Tribunal had been wrong to base its findings only upon written contracts, and not on the reality of what happened. The club had paid the agent (including a sum for VAT) because the agent was in fact working for the club (even though he was also working jointly for the player), or alternatively the club had received a genuine benefit from the transaction, and out to be able to deduct VAT on the basis of that.

Held (allowing the appeal)

The appeal was allowed; the decision of the VAT Tribunal overruled; and the case remitted back to the VAT Tribunal.

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The Court found that the VAT Tribunal had made a number of errors. It misinterpreted some of the contracts. It also assumed that the conflict of interest arising from the agent acting for both the player and the club prevented there from being a contract between agent and club. This was wrong. Even though it was highly likely a conflict of interest would arise, it did not automatically follow that there was no contract between club and agent. An agent of one party is not incompetent to act as agent for another – but if he does so he runs the risk of finding himself in a position where his duty to one party is inconsistent with his duty to the other (citing *Bowsted & Reynolds on Agency*, 18th ed., para 2-013).

The VAT Tribunal's findings that a contract could not exist between the club and the agent because it would be in breach of the FIFA and FA regulations were also wrong. The regulations do not regulate the technical capacity of an agent to enter into contracts. A breach of the regulations did not mean the breaching act did not in law happen.

The Court was not able to reach its own decision on the basis of the facts before it arising out of the Tribunal's decision. The evidence was not full. The matter therefore had to be remitted to the Tribunal. If there was, in fact, a contract between the club and the agent, then Newcastle may be able to deduct as input VAT the amount of VAT paid to agents.

Commentary

This case is extremely important for football clubs. The financial impact of clubs not being able to reclaim VAT paid to agents could be catastrophic, and would be serious for even the richest clubs. With respect, the approach of the Court must be correct. Regardless of the arguments about conflicts of interest or the FA regulations, if an agent does in fact supply a service to a Club by negotiating the signing or re-signing of a Player, and if the Club pays for that service and pays VAT, then surely the Club should be entitled to reclaim that VAT.

In addition, the Court was correct in stressing that the real question was what actually occurred – i.e. did the agent provide a service to the football club such that VAT could be reclaimed? The VAT Tribunal had gone about it in the wrong way, reasoning backwards from the fact that an agent acting in this way may put him in a conflict of interests and/or in breach of the FA regulations, to the conclusion that there could be no contract. Whether or not there was a contract was a question of fact and there could be one even if it breached FA regulations (albeit it might then not be a contract recognised by the FA).

The common practice in the football industry has been for a football club to pay the agent of a player either on its own behalf or on behalf of the player. Where it does so in future it will need to be careful to have a written contract with the agent (which is an obligation under the FA regulations in any event) by which it is clear that the agent is providing services to the club. If the club is merely paying the agent on the player's behalf and will recover the money from the player's wages (something contemplated by the new draft FA regulations) then provision will need to be made to recover monies paid by way of VAT. Otherwise, not only may the Club find itself in breach of FA regulations and subject to financial penalties, but it may also find it has a hefty backdated bill to be paid to the VAT man.

Sport and the Law Journal Reports

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Arbitration – FA rules – Football Players’ Agents – Article 6 ECHR – Disciplinary proceedings – Whether provision in FA rules requiring arbitration breached Article 6 ECHR.

PAUL STRETFORD v THE FOOTBALL ASSOCIATION LTD & OTHERS

Court of Appeal (Sir Anthony Clarke MR, Waller LJ and Sedley LJ), [2007] EWHC 612 (Ch), 21 March 2007 (Reporter: NDM)

Facts

Appeal by Paul Stretford against the decision by the Chancellor, Sir Andrew Morritt, staying the proceedings under s.9(4) of the Arbitration Act 1996 as the dispute was had been submitted to arbitration under Rule K of the Football Association Rules.

Stretford is a football agent licensed by the FA and bound by its various rules. On 17 June 2005 the FA issued disciplinary proceedings against him in relation to the circumstances surrounding his acquisition of the right to represent the football player, Wayne Rooney.

Rule K of the FA rules provided (amongst other things) that any dispute between participants (to the rules) shall be referred to arbitration under the FA rules.

Stretford argued that the disciplinary proceedings did not comply with his rights to a fair hearing pursuant to Article 6 of the European Convention of Human Rights as applied in the Human Rights Act 1998, that the rule upon which the charges were based was an unlawful restraint of trade and contrary to public policy. He brought proceedings under CPR Part 8 seeking a declaration that the FA disciplinary proceedings were unlawful for these reasons. The FA applied for a mandatory stay of the proceedings under s.9 of the Arbitration Act.

The Court below found that Rule K was incorporated into the contract between Stretford and the FA and that the proceedings must therefore be stayed. Stretford appealed, emphasising the Article 6 grounds.

Held (refusing the appeal)

There was no dispute that the arbitrators would be determining Stretford’s civil rights and obligations. Stretford was therefore entitled, under Article 6 ECHR, to a fair and public hearing by an independent tribunal established by law.

Various other sections of the Arbitration Act provided for protection of this right. For example: s. 24 gave the Court the power to remove an arbitrator on grounds of impartiality; s. 33 provided the arbitrators must act impartially; ss. 67 and 68 provide for challenging an award on grounds of lack of substantive jurisdiction and serious irregularity; s. 69 provides for circumstances in which an appeal can be brought to the High Court (although this can be excluded by agreement by the parties, as it was in Rule K5(c) of the FA rules).

The parties had agreed to waive the right to have the hearing in public via the incorporation of Rule K. Where parties voluntarily entered into an arbitration agreement they are treated as waiving their some of the rights under Article 6. The requirement to arbitrate in Rule K was not contrary to public policy nor was in contrary to the ECHR principle of constraint (rather like duress, undue influence and mistake).

Neither rule K, nor any arbitration held under it which would be subject to the other provisions of the Arbitration Act, gave rise to any infringement of Stretford’s Article 6 rights. The appeal was dismissed and the stay maintained.

Commentary

This is a key case in sports’ law. It establishes, beyond doubt, that the rules of sports bodies which make it mandatory that any disputes or appeals be determined by arbitration under the sports’ bodies rules can be legitimate and not contrary to the right to a fair hearing. It indicates, yet again, that not only will Courts often be reluctant to intervene in the decision making and dispute resolution of sports’ governing bodies, but that they will refuse to intervene at all where there is a proper arbitration agreement and arbitration is conducted fairly and lawfully.

Given the particular attention the Courts have given to Rule K of the FA rules, and the fact it has been held to be a lawful arbitration agreement, other sports’ bodies may be wise to look at their own rules to ensure that they have similarly worded provisions. BASK