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Editorial

By Simon Gardiner, Editor

This issue of the Sport and the Law Journal concerns a number of on-going and current issues. The **Opinion and Practice** section provides firstly a review of the attempts in the minor team sport of polo to protect itself against the in flux of foreign talent. Richard Bryan's 'Player Quotas in Polo' discusses developments in English polo on this familiar issue in professional team sports where different strategies have been used to work within the legal parameters that have been drawn by the Bosman and Kolpak cases. Secondly, Simon Gardiner's 'Sports Participation in Extreme Environmental Conditions', concerns potential issues of liability especially for sports medical practitioners where sporting activity takes place in extreme conditions such as heavy pollution and extreme heat.

The **Analysis** section features two articles focusing on two new regulatory frameworks. Firstly, Paul Groves' 'To what extent, if at all, should the Gambling Commission seek to impose Restrictions on Gambling Operators' marketing efforts in the sports sector?', reviews the implementation of the Gambling Act 2005 with the UK in a period of significant transformation as the Government seeks to execute a comprehensive modernisation of the existing gambling laws and to encapsulate that new system into that one single definitive piece of legislation. Secondly, Liz Ellen's 'Football Agents: a Critique of the Football Association's New Regulations', evaluates these new regulations which replaced a set of rules that had only come into effect in 2006. A fundamental question is why did The FA need to introduce a different set of regulations, less than two seasons after the 2006 Regulations were brought in?

Additionally the regular **Sports Law Foreign Update** by Walter Cairns and the **Sport and the Law Journal Reports** can be found.

One on-going issue over the last few months has been the legal standing of the life time Olympic ban operated by the British Olympic Association. This has been in the context of two leading athletes. Firstly, Christine Ohuruogu's successful appeal against her ban from Olympic participation after serving a ban for failing to be available for a number of anti-doping tests, highlighted that where the doping offence was minor, there were significant mitigating circumstances in relation to the doping offence and there was a finding of no fault or negligence or of no significant fault or negligence in respect of the doping offence, a successful appeal is possible.

Secondly, Dwaine Chambers who completed a two-year ban after testing positive for anabolic steroid tetrahydrogestrinone (THG) in 2004 has suggested he might fight the ban in the High Court before the Beijing Olympics. Although he has had a recent dalliance with Gridiron football in Europe and currently is involved with a rather bizarre attempt to play Rugby League for the Castleford Tigers, he states that he believes that he can win an Olympic medal in Beijing in August without taking performance-enhancing substances.

What are the opposing arguments that the High Court would consider if it hears the case? Those that favour Chambers, would support the view that the relevant BOA bye-law is unreasonable in that it provides an additional ban for an individual who has already been punished with a ban from the relevant sports governing body. This reflects the principle of double jeopardy where being 'prosecuted' and punished more than once for the same act is questionable. In addition, the concept of rehabilitation in that he has 'done the crime and served his time' would be highlighted. Also his lawyers would point out that only Britain operates such a harsh regulation and it is not part of the 'global sports law' of WADA.

However, the BOA will argue that Chambers knew of the bye-law when he began taking a prohibited drugs and therefore had full knowledge of and intent to the consequences of his actions. The bye-law will be presented as a legitimate way to uphold the integrity of participation in Olympic sport.

A key point for the Court to consider will be that clearly in the current climate of a very punitive 'war on drugs' such a life time ban is within the discourse of the regulation of drugs in sport. However an important evaluation will be determination of whether the bye-law is a proportionate response in all the circumstances. The clock is ticking as we will see what Chambers decides to do.

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



Player quotas in polo

Richard Bryan, Clarke Willmott Sports Team

Despite the game enjoying new levels of popularity, polo is clearly not a game for the masses, it also stands out from other team sports in that a polo player is only as good as his pony and player handicaps exist to create a competitive playing field. To play the game at the highest level involves a considerable financial backing; therefore, the 'high goal' professional end of the game involves teams funded by patrons or corporate sponsors. Indeed, although polo in the UK has a form of professionalism, it is more truthful to describe the top tournaments as pro-am; usually a patron playing alongside three professionals. An example of sponsorship in polo and the costs involved was announced in December 2006, with the \$1 million signing of a new all-professional English team by Barbadian businessman Sir Charles Williams for the Apes Hill Polo Team.¹

It might seem strange to associate the Bosman case with polo; a case striking at the heart of professional football and a pro-am sport provided for by patrons. The sport itself seemed to have the same reservations and up until 2002 there were still restrictions on all foreign players, i.e. non-British players, with only two being allowed in any one team, guaranteeing a British presence in a team. However, a potential legal challenge saw polo come into line with the Bosman ruling, whereby EU players must be allowed to move freely between EU countries and EU nationals can no longer be described as 'foreign'

As a result English polo now has a problem with an influx of Argentine players into the professional game.² Argentina is considered to be the world's best polo-playing nation with the longest season, the best players and horses; logically their players are highly sought after. Many such players are free to enjoy the freedoms of EU workers due to their being dual passport-holders of Italy or Spain and Argentina. The problem is exacerbated by the relative ease with which Italian passports are issued to those from other countries who are the descendents of Italian citizens. In addition the number of South African players in the UK is also increasing due to the Kolpak ruling. At present the Hurlingham Polo Association (HPA), the sport's

governing body, stipulates how many non-EU overseas sponsored players (OSPs) are permitted to play in a team at different levels of polo. Teams at the high goal end of the sport, 17 to 22 goal, are limited to two OSPs, with exceptions made for national teams. However, tensions exist in the British game concerning those Argentines who avoid any restrictions due to possession of an EU passport.

It is perhaps unsurprising that tensions are high when the best polo players earn over £100,000 per season in England. The perception amongst British players is that too many Argentines play in the UK, limiting the chances of young British players, and that some use EU passports as a convenience to allow them to work in the UK for 5 months before returning to Argentina. There are also accusations of British players being undercut by Argentine players whose fees are less because of a favourable exchange rate and the non-payment of taxes in the UK.³ This has led to British players lobbying both the Government and the HPA for restrictions on the number of foreign players in the game. Alternatively there is a similar argument as seen in other British sports, that the foreign players raise the standard of British polo but this benefit is negated when it suffocates English talent. To put matters in perspective, Argentina can currently boast ten players with the highest rated handicap of 10; Britain by contrast has not had a 10-goal player since 1945.⁴ Britain also boasts some of the most prestigious tournaments in world polo and the most money; so it is natural that the world's best players would want to play in this country.

The largest and most renowned tournament in Britain is the Veuve Clicquot Gold Cup for the British Open Championship, which attracts some of the best players in the world. In the 1998 tournament the percentage of English-qualified players retained by patrons was 20.5%, in 2006 the figure had dropped to 10.5%. By comparison, in the 2006 tournament 51.3% of players were Argentine, a third of whom were dual EU passport holders.⁵ This lack of English participation was identified by Sir Charles Williams as a reason for establishing the Apes Hill Polo Team.⁶ It is also important to note that

Player quotas in polo

this is not simply a British problem. Pro-am polo is played at various levels throughout Europe in countries such as France, Spain and Germany. However, similar problems exist in these countries as in England with dual EU passport-holders taking many of the professional slots available.⁷

The HPA admit to investigating ways of protecting English players but have so far drawn a blank.⁸ Hypothetically, in response, one could imagine a rule developing in polo based upon UEFA's homegrown player rule. In high goal British tournaments one place in a team could be reserved for a homegrown player, who between the ages of 15 and 23 spent at least 3 or 4 years living and playing in the UK. The age and time requirements might need adjusting for polo's own requirements. The amount of time annually spent in the UK would need setting to stop foreign seasonal migrants claiming homegrown status. Under current HPA guidelines 9 months per annum establishes principle residence in a country.

Possible justification for such a rule if faced with a legal challenge would concentrate on encouragement for the training of young players; an aim that has found continued support throughout EU institutions. As for competitive balance, this is already clearly dealt with in polo by use of the handicap system and if some of the foreign players' handicaps need scrutinizing, as has been suggested by British players,⁹ this is an HPA matter. English polo could argue that its national identity is being eroded with the amount of foreigners in the game but, as will be shown, there appears to be a lack of consensus on what polo's national identity is. With regard to improving the standard of the national side and improving the competitive balance at national level, both of which potentially could find favour with the European Court of Justice; there would appear to be a legitimate cause for concern in Europe as a whole and not just England. However, in comparison with cricket, which as a sport in England is financially highly reliant upon the national team, one has to consider the importance of the national side to polo.

England are already considered to be one of the stronger international sides. However, to put matters in perspective they can currently field a 26 goal national team, by contrast Argentina can field a 40 goal handicap team, therefore England are some way off the best in the world. Although a strong national team at important events like the Cartier International day will raise the public profile of the sport to some extent, polo does not rely upon its national team to the same extent as cricket. If the national team were to improve, would this

necessarily change the domestic polo scene? Therein lies the problem, whilst the British Association of Professional Polo Players, the British polo press and other interested parties seek protection, the HPA, as guardians of the game at large, although sympathetic appear to be less forthcoming. Perhaps the onus should be on the patrons funding the top teams to promote English players, the problem being that 60% of the patrons at the 2006 Veuve Clicquot Gold Cup were non-British.¹⁰ Current figures clearly show that patrons prefer to employ Argentines for their perceived greater professionalism and the HPA are understandably wary of alienating the game's influential patrons by dictating to them who they can and cannot employ.¹¹

From a proportionality point of view would the rule meet an existing need and could less restrictive measures be introduced? With regards to the training of young players, the rule would certainly force team patrons to take on homegrown talent in the top competitions. However, reserving places in the top tournaments will not help if the homegrown talent is not competitive and the British tournaments will suffer; and it is here where the views on the competitiveness of the English talent vary between the HPA and those seeking protection. Yet the fact is that in the UK training of young players is considered to be amongst the best in the world. This training is largely conducted by the Pony Club, who hold national championships from the age of nine through to twenty-one.¹² The national team's sponsorship deal extends to a junior development squad, allowing for foreign tours to take place under the guidance of the HPA.¹³ Training youngsters does not seem to be the problem, however, if the chances of a young player reaching the top of the sport are limited, this in itself will discourage youngsters in their development. In the long term such a trend could affect the number of youngsters attracted to the sport and the health of the sport in the UK.

With regard to improving the standard of the national team, it would appear that the HPA has already taken measures. In 2006 England introduced a new ten player professional squad system and played three summer tests plus a winter test programme abroad. With this relatively new departure and more time spent training and playing together the national team has a more professional outlook. However, more needs to be done before the national team can be considered to be of prime importance. For a team to improve it needs to be regularly playing or training together, three summer tests would seem to be a poor return compared with Test cricketers playing six, five day matches per summer and those matches being the lynch pin of the

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cricket season. Presumably in polo this would clash with the hectic tournament season. In addition there would appear to be little point in improving support structures for the national team if the players who potentially fill that team cannot gain access to the top pro-am tournaments in their own country. It appears to be a matter of priorities and at present the responsibility for protecting English players seems to lie with patrons and sponsors, and the national team and international competition at large do not appear to be central to the fortunes of English polo.

It is also arguable that a homegrown player rule would be too restrictive to EU passport holders when the HPA's overseas player rule for high goal polo remains as wide as it presently is. Currently, no team may have more than two overseas sponsored players.¹⁴ Therefore, half a team can legitimately comprise of two Argentines providing they have a work permit, irrespective of any EU passport. The effect is such that in 2003 it was reported that the number of non-EU work permit applications had risen by more than 60% in two years.¹⁵ The criteria for work permits issued by the Home Office are selected after consultation with the HPA, polo club representatives and the British Association of Professional Polo Players; the player must be of level 2-goal handicap or above and be a member of the HPA, with handicaps being assessed on arrival in the UK.¹⁶ Compared with other sports this would seem excessively generous, county cricket allows for just one such official overseas player in a team of eleven. Any EU institution reviewing the case of polo would have difficulty allowing a homegrown player rule that potentially restricts EU passport holders, when the sport's own governing body allows 50% of playing berths to go to non-EU players. If the HPA were to reduce this figure to a maximum of one non-EU player per team, as in lower handicap polo, the opportunities for British players would rise considerably, although the playing standard of British tournaments would clearly dip and one suspects that the hunt for EU passports in South America would intensify.

Therefore, polo's problems appear to be a question of balance, currently favouring overseas players, whilst the HPA find themselves in the unenviable position of balancing the interests of English players with those of the patrons and sponsors who fund the teams and tournaments. In other sports, such as cricket and football, the governing bodies have led their sports into finding ways of protecting their national interests and youngsters. Ultimately, it will fall to the HPA to protect the English players and they are currently looking at potential solutions. Those solutions should include a

review of the work permit criteria and the overseas player quota in high goal competitions as a minimum. If this did not arrest the influx of foreigners then a 'homegrown player rule' could be valid, promoting the development of British or "true" EU talent. There may be an argument for making such a rule genuinely European, as the dual national is considered to be the real problem, perhaps the EU would be more easily placated by 'homegrown' referring to homegrown EU players. This would be in conjunction with a greater emphasis on the national team and international matches. Admittedly it is not easy to borrow measures from one sport and transport them to a sport as unique as polo, however, if English polo is to be renowned for more than just its tournament season these measures should be considered. BASIL

- 1 "Record Sponsorship for All-Professional British Team", *Polo Times* Vol.11 Issue 10 November/December 2006
- 2 Chaudhary V "British polo players fear foreign invasion" article from www.guardian.co.uk dated 6/3/2004
- 3 Froggatt C "The English Point of View" an article in *Polo Times* Vol.11 Issue 9 October 2006
- 4 Chaudhary V *ibid.*
- 5 Figures from Margaret Brett *Polo Times* editor; figures are for patron retained players and do not include self-funded British teams of which there was one in the 2006 Gold Cup. This is to allow a like-for-like comparison between British and Argentine professionals.
- 6 *Polo Times* Vol.11 Issue 10 p.4
- 7 Margaret Brett interview
- 8 Interview with David Woodd, Chief Executive of the HPA, dated 10/7/07
- 9 *Polo Times* Vol.11 Issue 9
- 10 *Polo Times* Vol.11 Issue 7
- 11 David Woodd interview 10/7/07
- 12 Interview with Margaret Brett
- 13 From an article "Audi England prepares for summer challenges", available at www.hpa-polo.co.uk, dated 18/2/2007
- 14 Meaning those unable to claim EU working rights
- 15 Figures from an article by Pyke N: "Homegrown polo players are being ridden out of town, forcing one ex-captain of England to work as a labourer." Available at www.pololine.com.ar
- 16 www.workingin

Sports participation in extreme environmental conditions

By Simon Gardiner, Reader in Sports Law, Leeds Metropolitan University

The International Olympic Committee (IOC) has recently stated that Beijing's pollution may not harm athletes this summer but admits performances might be effected. This reflects wider concerns about sports athlete performance in extreme environmental conditions. The Olympics has been here before – at the 1968 games in Mexico City, the effects of high performance at an altitude of over 2,200 metres were unknown.

The consequences that other extreme environmental factors have on health during elite sport are not certain. For example the short-term effects of extreme heat leading to heat stroke are well documented – the long-term effects of regular exposure are not. The threat of possible legal litigation by those adversely effected, has created a need to be clear on who determines when sports events might be postponed.

So what are the dangers of legal liability? Civil liability particularly in the tort of negligence has extended beyond that of only other participants who cause harm to a sportsmen to include match or event officials, governing bodies and employing clubs through the principles of vicarious liability. There is however little case law concerning liability of coaches and sports medical practitioners, both who might be closely involved in deciding whether sports events proceed due to extreme environmental factors.

Korey Stringer case

As far as sports participation in conditions such as extreme heat a host of ethical dilemmas may not be appreciated or if known, ignored. The following is a good illustration. In the United States, in May 2003, the Estate of Korey Stringer, along with his widow, reached a settlement with the Minnesota Vikings' training camp physician, Dr. David Knowles, and his Mankato Clinic, both of whom were independent contractors for the team, for an undisclosed sum. The Stringers had sued for US\$100 million and contended that Korey Stringer, a National Football League (NFL) All-Pro offensive lineman, did not receive proper medical care when he collapsed during the 2001 football training camp season. The 335-pound lineman died of heat stroke one day after his collapse.

It was reported in his Complaint that Stringer had repeatedly suffered from heat illness as a result of his participation in Vikings' pre-season summer camps in

1998, 2000 and again on 30 July 2001. The temperature during the training sessions was over 40° Centigrade with extreme humidity. On that day he 'vomited numerous times on the practice field and became severely dehydrated and ill from the heat forcing him to leave the afternoon practice early'. The then assistant and now head coach, Michael Tice, was reported to have observed Stringer vomiting and derided him as a 'big baby'.

The Complaint argued that Stringer was in a dangerously volume-depleted state, a condition that was ignored by the defendants. He received no medical care. On the morning of 31 July, Assistant Coach Tice displayed a newspaper picture of Stringer vomiting the previous day at a team meeting. Presumably it was intended as a form of humiliation for Stringer. At around 11.15am during the morning practice session, Stringer collapsed on the field, in full view of players, coaches and observers. It was alleged that he lay there for a significant period of time unattended. He then managed to stagger to the Vikings' 'First Aid station in a trailer. It was further alleged that during the 50 minutes at the First Aid post, no qualified medical staff were present to provide treatment. As argued in the Complaint, "as critical minutes of inattention passed inside the trailer, Korey's heatstroke progressively attacked his brain and other vital organs, causing him to hyperventilate violently and lapse into unconsciousness."

He was transported to the ER at a local hospital arriving at 12.24. At 12.35 his core body temperature was measured at 108.8 Fahrenheit. At 1.50pm he was transferred to the hospital's critical care unit. During the ensuing 13 hours, Stringer continued to experience acute multiple organ failure, swelling of the brain, massive internal bleeding and heart failure. At 1.50am on 1 August, Korey Stringer was pronounced dead.

Sports participation in extreme environmental conditions

At the hearing in May 2003, Stringer's legal claims against the Vikings along with their coaches and other team employees were however dismissed. The court ruled that the evidence was insufficient to determine that the conduct of any of the Vikings defendants constituted "gross negligence" which is the State of Minnesota's legal standard the plaintiffs must meet in order to proceed to trial. The NFL subsequently has banned the drug ephedra, which has been identified as a weight-loss and speed-type of drug that is especially dangerous when used in extreme heat.

Conclusions

My research in this area in Australia has shown how sports organisations have acted prospectively based on risk assessments of the dangers of sports activity in extreme heat. A number of sports have identified problems including tennis with the Australian Open Tennis organisers in November 2007 deciding that once the tournament's extreme heat policy came into effect when the temperature exceeded 96F (35C), only the on-going set would be completed and not the match before play would be suspended. Additionally the recent tournament involved a new playing surface that was developed to absorb greater heats.

However there is evidence that even with a clear cross-sport extreme heat policy developed by Sports Medicine Australia (SMA), the response to the impact upon both elite participation and recreational sporting activity is interesting to examine. There is evidence that sports bodies are at best inconstant and at worst clearly negligent in heeding the advice provided by medical experts on sports participation and extreme heat. For example, in a late February 2004 weekend, the Australian Gold Coast experienced record high temperatures of 40°C+. The area has a high density of sporting activities. A number of sports events were either cancelled or shifted to the evening. However, some events went ahead despite this dangerously high temperature. A training session of the 'Matildas', the Australian women's soccer team took place in the middle of the day, leading to a number of player suffering from heat exhaustion. Some junior cricket matches continued to take place, and even though measures such as additional water breaks were incorporated, Sports Medicine Australia claimed this continued sporting activity was 'insanity ... sporting associations need to get serious about heat stress ... all organized sport should have been cancelled in southeast Queensland'

The IOC has indicated that they may need to cancel certain events in Beijing if conditions warrant it. As a form of risk management, this concern is clearly an

appropriate pro-active measure. According to Appenzeller (1998, Risk Management in Sport: Issues and Strategies Carolina Academic Press), risk management is a crucial part of the any sport program and where an effective risk management program is developed and implemented, the potential for litigation diminishes. Awareness of legal liability is a crucial part of any risk management program. This risk management paradigm in sport has developed over a significant period of time in countries such as the USA, Britain and Australia.

The preceding discussion has identified that many actors participate in the organisation of sport expose themselves to significant legal liability. Prominent are sport medical practitioners. In the context of sports participation in extreme heat, clear indication of when that activity should cease, or if it is considered it can still take place, what precautions should be exercised, is clearly an example. The best protection will be written risk assessments of sports participation and training techniques and regimes that show that risks are being minimised.

As sports science develops, a whole host of protective measures may need to be imposed on sports participation training regimes that are aimed at protecting sports persons against other short to long-term injuries. And when it comes issues such as extreme forms of weather, such as high heat, as more and more research highlighting the medical problems associated with training regimes and participation is produced, the onus will increase on sports medical practitioners to not only be aware of these developments and act upon its findings, but also disseminate this information to those he has professional contact with in a particular sport.

Legal liability of sports medical practitioners and the other actors can be extended or limited by judicial and legislative measures. Notwithstanding the reality of the vagaries of the tort of negligence, sports clubs, organisations and coaches have a moral imperative in responding to such developing information to ensure safety. Sports medical practitioners are pivotal and not only do they need to act ethically in the interests of their sporting patients; they need to act proactively to their increasing vulnerability to legal liability for their actions. However there is an interesting cultural clash between parties such as sports administrators, coaches and doctors on whose opinion will determine when sporting activity is stopped. 

Analysis



“To what extent, if at all, should the Gambling Commission seek to impose restrictions on gambling operators’ marketing efforts in the sports sector?”¹

By Paul Groves, solicitor at Harbottle & Lewis

Introduction

Although the marriage of sport and gambling has a long and established history within the United Kingdom, both parties to that relationship have transformed dramatically in recent times and, consequently, their public association is now facing increased pressure from outside influences.

The recent boom in online gaming has seen the gambling industry transform into a remarkably profitable operation and its willingness to part with enormous sums of money in order to raise brand awareness via sport has been well documented. Similarly, modern day professional sport has evolved, in virtually all instances, into a fruitful economic enterprise with both clubs and governing bodies becoming highly adept at exploiting their commercial rights. However, these developments and, more importantly, the visible affiliation between the gambling industry and sport may have come at a price. The elevated publicity achieved by a number of prominent sponsorship deals, at a time immediately prior to a regulatory overhaul of the gambling industry as whole, prompted an inquiry into the extent to which a potentially harmful industry such as gambling should maintain an unfettered right to use the sports sector as a marketing platform.

The first warning shot was fired in December 2006 when the UK Sports Minister, Richard Caborn, informed the House of Commons that he was concerned about the use of sponsorship in sport by gambling companies and that the Gambling Commission, the new body appointed by the Government to, amongst other things, monitor and govern the advertising being carried out by gambling operators, would be consulting on that issue in 2007 with his full support². The Commission has now reported on that consultation and, although there were no immediate restrictions in relation to the sports

sector, it did imply that there is a clear obligation on the gambling industry to consider its position in that regard and has reserved its right to take further action.

This article will, therefore, initially assess the risks presented by both gambling and the gambling industry’s marketing efforts in the sports sector before proceeding to investigate the various further measures that might be employed by the Gambling Commission to counteract those risks.

Regulatory framework

Prior to 1 September 2007, any advertising or promotion carried out by gambling operators in the UK was subject to various constraints that were embodied in both statutory and self-regulatory provisions. In particular, the relevant legislative measures were contained within the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968, the Lotteries and Amusements Act 1976 and the Betting and Gaming Duties Act 1981. The titles and dates of these enactments alone are representative of their somewhat convoluted and antiquated nature, which has historically led to an inconsistent and often unclear set of rules governing the gambling industry generally and, more specifically, the means by which they can promote their services. For example, there is no clear guidance on their application to the sponsorship of teams in the sports sector and such matters have developed either wholly unregulated or subject only to guidance papers rather than legislative or regulatory provisions³.

However, following the implementation of the Gambling Act 2005 (the “Gambling Act”) in September 2007, the UK now finds itself in a period of significant transformation as the Government seeks to execute a comprehensive modernisation of the existing gambling

“To what extent, if at all, should the Gambling Commission seek to impose restrictions on gambling operators’ marketing efforts in the sports sector?”

laws and to encapsulate that new system into that one single definitive piece of legislation. In particular, the Gambling Act includes measures that will reform virtually all of the existing statutory restrictions on the advertising of lawful gambling conducted within the UK.

By way of example, the Gambling Act has introduced a new, wider definition of advertising which covers anything that is done to encourage the use of gambling facilities, including entering into arrangements such as brand sharing and sponsorship.⁴ Nevertheless, despite the widening of that definition, some gambling sectors, such as betting and gaming, will actually have a new and augmented scope to advertise. Therefore, measures are currently under consideration that will counteract this development and ensure that gambling is advertised in a manner which reflects the Government’s earlier determination that the “reduction of harm should take precedence over the maximisation of innovation, consumer choice and economic gains”⁵.

Some measures intended to achieve that objective are already in place. For example, the Committee for Advertising Practice (“CAP”) and the Broadcast Committee of Advertising Practice (“BCAP”) now have their own new rules on gambling advertising⁶ that also came into force from September. These rules are very similar to those already in place for alcohol advertisement. For instance, they contain prohibitions on adverts which portray, condone or encourage gambling behaviour that is socially irresponsible or could lead to financial, social or emotional harm or exploit the susceptibilities, aspirations, credulity, inexperience or lack of knowledge of children, young persons or other vulnerable persons. Similarly, in August 2007, the gambling industry devised its own voluntary code entitled the “Gambling Industry Code for Socially Responsible Advertising” that introduced additional standards designed to protect children and vulnerable people.

However, in addition to the CAP/BCAP advertising rules and the Gambling Industry Code, the Gambling Commission is under a more general obligation to uphold and promote the licensing objectives contained within the Gambling Act, which includes a specific duty to protect “children and other vulnerable persons from being harmed or exploited by gambling”⁷. The Gambling Commission can enforce that objective in a number of ways but, in particular, it has the ability to include prohibitions or restrictions relating to advertising in its Licence Conditions and Codes of Practice (the “LCCP”) that will apply to all licensed gambling operators.

Therefore, it is clear that the Gambling Commission not only has the authority but also the obligation to ensure that children and other vulnerable persons are protected from harm or exploitation from gambling advertising.

Should gambling advertising be banned entirely?

In light of the above, before proceeding to consider the less draconian restrictions that may be available to the Gambling Commission, it is necessary to first carry out a more rudimentary assessment of whether, in light of the risks posed by gambling advertising to the young and vulnerable, it would be preferable to impose a complete prohibition on gambling operators’ marketing efforts within the sports sector. For the purposes of this essay, it is advantageous to structure that assessment by first highlighting the risks associated with gambling and the advertising of gambling services and then proceed to contemplate the various factors that might be taken into account when determining how those risks should be addressed by the Gambling Commission.

To what extent does gambling pose a risk to young and vulnerable persons?

At its most fundamental level, it is undeniable that the gambling industry carries a significant and not entirely baseless disdain amongst certain groups. A fairly representative description adopted by a number of dissenters would be that gambling is “historically and notoriously immoral, evil and sinful”⁸. Even within a sporting context, examples of conscientious objection are not without precedent. For example, Fredi Kanoute, a devout Muslim, caused controversy in 2006 when he refused to wear a Sevilla shirt bearing the logo of 888.com on the basis that gambling was a “tool of the devil”⁹.

Scientific studies have also demonstrated that gambling can lead to, amongst other things, psychological addiction¹⁰, anti-social behaviour¹¹ and, in a more philosophical context, undermine social and individual responsibility by deluding people into thinking it is possible to get something for nothing instead of hard work and achievement¹². Furthermore, focusing on the Gambling Commission’s duty to protect children and other vulnerable persons from being harmed or exploited by gambling, particularly alarming statistics have also shown that one in five teenagers that are found to be pathological gamblers will consider suicide¹³.

As such, it is quite apparent that, in certain circumstances, gambling can represent a very real and powerful risk.

“To what extent, if at all, should the Gambling Commission seek to impose restrictions on gambling operators’ marketing efforts in the sports sector?”

Addressing the risks of gambling and gambling advertising

(a) Measures adopted in other territories

The risks highlighted above also reflect the underlying rationale for the prohibitions on gambling advertising that already exist in other territories. For example in both Sweden and France online betting firms are banned from seeking clients within their respective territories¹⁴. In particular, the enforcement of the French provisions culminated in the arrest of two top executives of Bwin Interactive Entertainment on 15 September 2006 as they travelled to a press conference to announce their sponsorship deal with AS Monaco¹⁵. This illustrates the fact that other countries have deemed it necessary to impose prohibitions on gambling advertising and are willing to enforce those constraints vigorously in a sporting context.

(b) Comparable bans in other industries

It is also true that complete prohibitions on the advertising of hazardous products in the sports sector are not unheard of within the UK. For example, together with certain European Union provisions, the UK Government has comprehensively banned the advertising and promotion of tobacco products¹⁶.

However, it does not necessarily follow that the justifications supporting a ban in that context will automatically apply to gambling. After all, irrefutable scientific research demonstrates that smoking will always cause harm¹⁷ while gambling, if carried out responsibly, can be an enjoyable pastime with no negative consequences. In other words, to paraphrase Tony Blair’s famous quote on alcohol, one could say that there is no such thing as a safe cigarette but there is a reasonable balance that can be struck when gambling¹⁸. As such, it is somewhat false to only compare gambling advertising with the promotion of tobacco when it is more likely that other industries, such as the alcohol industry, represent a more accurate parallel.

For example, can it be objectively justified that while the UK has, amongst many other forms of alcohol sponsorship, the “Carling Cup” in football or the “Guinness Premiership” and “Heineken Cup” in rugby, gambling operators be prohibited from promoting their brands in the same manner? After all, a recent study published by the Lancet Medical Journal ranked alcohol as much more harmful than the Class A drug ecstasy, LSD and cannabis¹⁹. This would suggest that prohibitions on advertising and sponsorship by gambling advertisers in sport would not reflect an even-handed position in comparison with other commensurate industries and it

would be unjust and disproportionate to preclude those activities in such an inequitable fashion.

(c) The Government’s “Non-interventionist” approach to sport generally

The tobacco measures set out above further demonstrate an instance where the Government can justifiably intervene into the operation and management of the sports sector. For example, many supporters of the gambling industry’s right to promote itself via the sports sector would seek to assert the UK government’s historical “non-interventionist” approach and recite the Prime Minister’s decree that “the Government does not and should not run sport”²⁰. However, the central tenet of the non-interventionist approach is that sport is best placed to govern matters of a sporting nature. Although this is an extremely persuasive argument in a general sense, it is far more difficult for the sports sector to contend that an assessment of wider social policy issues, such as the prevention of harm to young and vulnerable persons, represents a topic that is purely sporting in nature.

As set out above, gambling as an activity can cause considerable harm and one of the key roles of the Gambling Commission is to assess the risk of such harm and to minimise its effects. As such, they are in a far superior position to carry out a wider assessment of the relevant considerations than a sports body who is also burdened with weighing up such matters against the commercial opportunities that such deals with gambling operators represent. In short, as with tobacco and crowd safety, we are not talking offside rules or competitive balance but the need to prevent the wider and potentially devastating social harms that gambling may bring about. Similarly, the sports sector itself cannot demand Government intervention in areas such as hooliganism and/or betting corruption on the grounds that they represent wider concerns but then seek to retain their autonomy over commercial deals if similar risks can be demonstrated.

(d) The distinction between gambling and gambling advertising

Nevertheless, although intervention may be ostensibly justified, it is still important to appreciate the distinction between gambling and the advertising of gambling services. For example, to date, no empirical research has been able to categorically demonstrate that gambling brand advertising leads directly to an increase in gambling activity itself²¹. Similar studies in related fields, such as the alcohol industry, have also shown that advertisements do not necessarily stimulate primary demand²². Therefore, in the absence of

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evidence to the contrary, it is arguable that gambling operator’s marketing activities in the sports sector will not lead to an increase in the harms caused by gambling itself.

Furthermore, studies have shown that a number of other factors, such as a person’s direct family and social environment or the fact that gambling activities are widely and legally available in the UK can lead to a more dangerous “culture of acceptability”²³. In that regard, despite the fact that the intervention of the Gambling Commission may be warranted on social policy grounds, the role of the incumbent Government in encouraging gambling within the UK also warrants a more comprehensive overview in order to assess whether they could impose a prohibition without appearing hypocritical and undermining the effectiveness of such measures through its own activities.

Even in very general terms, the annual stake value of gambling under the Labour Government has soared from £7 billion in 1997 to £48 billion in 2005²⁴. The UK’s largest lottery, the National Lottery, was set up under a Government licence in 1993 and approximately £5 billion is staked by the British public on this form of gambling each year. With regard to advertising, the National Lottery is the subject of two family “prime-time” television programmes each week and both its television and print advertising is widespread and conspicuous. Similarly, since September, remote gambling services will be available within the UK for the first time and in March 2007, Tessa Jowell, the Minister for Sport, delightedly announced that Manchester would be the location of the UK’s first “Super-casino”²⁵. Only days later, a report submitted by one of Britain’s top police officers in response to the earlier consultation on such Super-casinos was made public as part of an investigation by Channel 4’s Dispatches programme. The report warned that the proposed Super-casinos would “increase access to gambling for children and vulnerable groups”²⁶. In short, if gambling really is the work of the devil, then the Government has sold its soul and the benefit, if any, that may be gained from the reduction in gambling advertising in a sporting context is likely to be undermined by the more widespread lottery advertising and climate of acceptability that is being created by the Government through its many pro-gambling initiatives. Furthermore, it seems inherently self-seeking that the Government might try to justify the licensing and widespread promotion of gambling activities for its own gain via taxes and National Lottery revenues then decree that the sports sector must refuse crucial commercial funding from other gambling operators on the basis that those same activities can cause harm.

(e) The financial impact of a prohibition on sport

The sponsorship of sporting events is a business practice that continues to develop at a remarkable pace and the flourishing online gaming and betting industry has contributed a significant proportion of those monies. Deals with businesses operating in that industry has become common place for many leading teams and governing bodies, for example, companies such as 32 Red (Aston Villa), Bet24 (Blackburn), 888.com (Middlesbrough) and Mansion (Tottenham) have all secured shirt deals in the last two seasons with Premiership football clubs. In particular, Tottenham’s deal with Mansion is worth £34 million over four years and has been hailed as one of the top ten largest shirt sponsorship agreements ever in the UK²⁷. However, it is important to acknowledge that the gambling companies are not just investing money in the affluent and high profile sports. For example, the sponsorship monies of gambling operators became the saviour of a number of less profitable sports, such as darts and snooker, that were left reeling by the ban on tobacco advertising²⁸.

Therefore, it is apparent that sponsorship deals with gambling operators have come to represent a fundamental source of income for not only top level sport but also for their less auspicious counterparts. Although funding might be attainable from alternative sources, the immediate and significant loss of such revenue could represent a tremendous impairment to the future of a number of national sports. Similarly, it would be naïve to presume that gambling operators would still invest in sport quite so readily if they could not receive the same level of brand exposure. For example, the sixteen federal states in Germany met in December 2006 to agree on new legislation to outlaw all online gambling. Although the necessary unanimity to proceed was not achieved at that particular time, one particular betting operator, Bwin, immediately responded by reducing its German sponsorship budget for 2007 by €40 million²⁹, which was already earmarked to go directly into the pockets of German sports teams.

(f) Preservation of the integrity of sport

Despite the financial benefits highlighted above, some would still argue that gambling operators’ money should be refused in order for sport to preserve the highest standards of integrity and, most importantly, uphold the vital uncertainty of outcome. On that basis, the Gambling Commission would simply be preventing the sports sector from vilifying the principles that it should represent by accepting revenues from gambling operators. This conjecture could be supported by any one of the numerous instances where the gambling industry has formed an unfortunate link between sport

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and corruption. For example, even back in the early 20th century, the world of baseball was thrown into disarray when several members of the Chicago White Sox (now known as the “Black Sox”) were bribed to throw the 1919 World Series. As such, it is arguable that betting and sport have never been comfortable bedfellows and, prima facie, it may not be in the best interests of the integrity of the sports sector for such relationships to continue.

However, it is important to appreciate the distinction between the corruption of individuals within a sport and the advertising of gambling in association with that sport and, in the opinion of the author, it is the very existence of gambling, rather than its advertising, which is the cause of such corruption. For instance, the Black Sox example set out above took place at a time when sports betting, let alone the advertising of such services in association with sport, was completely prohibited. There will always be unscrupulous people willing to fix sporting events but, just because an individual elects to exploit their position for illicit personal gain, it does not always follow that the gambling industry or the sport itself should be held accountable. By way of analogy, if underhanded employees of a company used their position for the purposes of insider trading, it does not automatically follow that the Stock Exchange itself should be held accountable. In many ways, this underpins a more persuasive theory that the prevention of corruption in sport is a matter where brand exposure of gambling companies is a largely unrelated factor and perhaps individual sportsmen need to accept personal responsibility for their own greed and dishonesty.

Furthermore, from a financial perspective, it is often the bookmakers and/or sports teams that are the real victims of such schemes and it seems unfair that they should be burdened with both the loss and the blame. After all, it should not be forgotten that legitimate bookmakers will invariably fight corruption just as fiercely as the Government and the Gambling Commission. For example, Betfair now has a memorandum of understanding with a number of sports governing bodies, including the ICC and the FA, and is proactively taking steps to prevent such corruption³⁰. Furthermore, the Gambling Commission is aware of its own responsibilities in this regard and is already consulting on the possibility of requiring gambling operators to share information of irregular betting patterns in order to prevent corruption in sport as part of the LCCP³¹.

(g) Children’s replica shirts: A sporting anomaly

Recent marketing activities by gambling operators in the sports sector have raised a particular anomaly which is very pertinent to the protection of the young, namely the display of gambling operators’ logos on children’s replica kits. Although it is undoubtedly morally awkward for small children to be wearing clothes with gambling logos emblazoned across their chests, certain parties have taken this a stage further and put it forward as a calculated attempt by gambling companies to encourage and promote gambling specifically amongst minors and called for a specific prohibition on that activity³². Consequently, despite the fact that the Gambling Commission concluded in its consultation not to impose any requirement in the LCCP that required the removal of such sponsor branding from children’s replica shirts, the gambling industry bowed to the subsequent Government pressure and agreed to a self-imposed ban on the inclusion of branding on children’s replica shirts within deals entered into after 1 September 2007 as part of the “Gambling Industry Code for Socially Responsible Advertising”. Nevertheless, some have suggested that such obligations should not be contained in a voluntary code but, instead, directly governed by the Gambling Commission as part of the LCCP, whether in their current state or perhaps in a more onerous form.

However, it remains to be seen whether such self-imposed prohibition will achieve the desired results and there are a number of reasons why that may not be the case. Firstly, it would be unrealistic to claim that gambling operators enter into such transactions with the explicit intention of producing branded shirts for minors. Furthermore, a ban on the official sale of such goods would not necessarily suppress the desire of young persons to look like their sporting heroes and, in all likelihood, it would simply result in a black market for shirts bearing the gambling operators’ logos. Such black market substitutes would not be subject to the rigorous health and safety checks that are imposed upon the official equivalent. Therefore, the result of such a ban could be to remove the unproven and distant risk of a small child developing into a problem gambler with the very real and immediate health and safety concerns involved with the purchase of black market replica kits. In addition, with regard to teenage fans, it is fair to presume that the vast majority will purchase and wear adult sized kits. As such, a ban on branding on children’s replica shirts would have almost no effect on older children choosing to wear adult sized shirts. This is especially significant when you consider that this age group are particularly susceptible to the dangers of problem gambling when compared with their younger counterparts.

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In light of the above, the self-imposed ban on the sale of replica kits to children featuring gambling operators’ names or logos is unlikely to achieve its intended objectives and any move by the Gambling Commission to directly impose similar restrictions in a non-voluntary regime would not be effective or proportionate. It would fail to achieve its desired result and could, in fact, put the very young at an increased risk of harm. At most, the Gambling Commission, via the LCCP, should require that gambling operators ensure that unbranded replica kits are made readily available in children’s sizes in order to provide parents with a choice. Nevertheless, further consultation and research should be fulfilled on that point, including an assessment of the impact of the voluntary restrictions already in place, prior to implementing such measures in order to ensure that they do not place an unnecessary commercial burden on clubs if the unbranded shirts prove to be unpopular.

Prohibition: An Interim Conclusion

Therefore, in light of the various issues raised above, although gambling as an activity can lead to harm in certain circumstances, the advertising of such services in a sporting context does not necessarily lead to an increase in the risk of such harm. Without more supporting evidence to confirm that their promotional activity causes harm and that its prohibition would correct such effects, it would be wrong and disproportionate for the Gambling Commission to impose such measures on gambling operators’ activities in the sports sector. Furthermore, the financial harm to sport, the more lenient approach applied to comparable industries and the gambling activities currently being endorsed, offered and promoted by the Government all confirm that such draconian measures cannot be objectively justified at this stage.

Alternative Solutions

Pro-Active Requirements

It is, however, still necessary to consider the pro-active requirements that may also be available to the Gambling Commission. Two such methods, namely warning and educational messages, are already in effect to a limited degree under the voluntary regime of the Gambling Industry Code for Socially Responsible Advertising and, as such, it is useful to begin by considering those options in more detail.

In general terms, warning and educational messages in this context would comprise of compulsory statements in any advertising or sponsorship by gambling operators that set out the potentially negative consequences of

gambling³³. Notionally, the inclusion of such messages would offer a further mechanism for protecting the vulnerable, reinforce the CAP Code rules on such promotional activities and act as a useful signal to the public that, although gambling is a form of entertainment, it is one that requires regulation and the exercise of personal restraint.

However, as conceded by the Gambling Commission in its own consultation document³⁴, despite a plethora of academic research on the efficacy of compulsory warning and educational messages, very few studies have shown even the slightest positive impact. For example, one study based on the impact of alcohol advertising did show a small positive effect with consumers showing decreased trust in alcohol products but conceded that there was no impact on the public’s perceptions of the risks and benefits associated with alcohol³⁵. Similarly, another study recorded a small impact on the quantity of tobacco smoked following the implementation of warnings on tobacco advertising but did not note any effect on smoking prevalence³⁶. Even the CAP/BCAP consultation on the subject of gambling advertising stated that “no clear evidence exists that messages or warnings are effective in either sense”³⁷. Other research shows that messages have a negative effect whereby many viewed the markings as a cynical “disclaimer” designed only to protect the advertiser³⁸ whilst others simply become desensitised to their presence³⁹. These issues are compounded by the fact that compulsory messages are, by their very nature, prescriptive and, as such, can become dull and repetitive in the minds of the public.

Nevertheless, the advocates of warning and educational messages would still argue that, in light of the inherent risks that gambling represents, it is better to safeguard against such risks wherever possible even if a positive effect is yet to be empirically vindicated⁴⁰. However, alternative research has actually shown that such messages can have the opposite effect to the one that was intended through what has become known as a “boomerang effect”⁴¹. In summary, where products carry a compulsory warning or educational message, it can actually increase their appeal to minors and youths simply because of the risk, dangers and/or challenge that they represent. This, in turn, will heighten the consumer’s desire to use the product in question and young people, especially young men, were most likely to react⁴². This poses a particular concern because that group of persons is most at risk from problem gambling.

In the context of sport sponsorship, it is also important to consider whether it would be realistic from a practical perspective to have a warning message emblazoned

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across the front of a team’s kit. For example, to use an illustrative message put forward by the Gambling Commission in their consultation document, I doubt that any team would be overly enthusiastic to play a competitive match with the phrase “If it’s no longer fun, walk away” emblazoned across the front of their shirt.

Therefore, in light of the above, it is the contention of the author that compulsory warning and/or educational messages would not achieve the objectives set for them. In addition to their possible inefficacy, there is also a risk of inducing counterproductive outcomes and, on that basis, it is arguable that it would be frivolous for such measures to be made obligatory by the Gambling Commission without further and more comprehensive research in support of those concepts.

Voluntary Measures

Although it appears that prohibitive and compulsory measures directly imposed by the Gambling Commission may not be appropriate, there are a number of other initiatives that could be promoted by the Gambling Commission in alliance with both the gambling industry and the sports sector on a voluntary basis. Such measures might include public awareness campaigns or even discretionary educational and warning messages. Those methods would permit gambling operators to constitute a socially responsible means of advertising.

Such initiatives are, in fact, already emerging in the gambling context. For example, the Gambling Industry Code for Socially Responsible Advertising is already in place and a public awareness strategy and campaign is currently being chaired and project managed by Responsibility in Gambling Trust (“RIGT”) who are working with a group of stakeholders that have come together to form a public awareness task force. This task force’s membership includes industry bodies, the Gambling Commission, public health experts and academic representatives and will aim to develop a long-term strategy on public awareness of responsible and problem gambling. This development is to be encouraged and the Gambling Commission should continue to advance and develop that task force in order to satisfy its statutory objectives.

Similarly, even if the Gambling Commission were to directly require warning and/or educational messages to be utilised then it would seem appropriate for a similar voluntary process to be continued. After all, although cynics would always question the proficiency of voluntary measures, it is important to acknowledge that some previous voluntary measures in similar industries

have been both genuine and, in some cases, more effective. For example, whilst a compulsory “warning” message can easily be disregarded by a consumer, the same cannot be said for the oversized Fosters’ banners displayed at the Australian Grand Prix this year which read “if you drink and drive you are a bloody idiot”⁴³. This shows that gambling operators may actually be in a better position to originate more effective and inventive means of protecting the young and vulnerable via educational messages and, as such, reduce or avoid the negative issues set out above that preclude a more regulative intervention by the Gambling Commission.

If such voluntary measures were to prove ineffective then the Gambling Commission would still be in a position to intervene and require a greater commitment to such initiatives as part of the LCCP. However, it must ensure that it grants such voluntary initiatives adequate time to prove their effectiveness before intervening in order to avoid scuppering the active involvement and co-operation of the gambling industry that currently exists.

Therefore, for the time being, it would seem wise for the Gambling Commission to continue working together with the gambling industry and the sports sector in order to develop an effective public awareness campaign. Furthermore, although the effectiveness of such methods may be controversial, any decision by the Gambling Commission to require messages within advertising should be continued as part of the voluntary “Gambling Industry Code for Socially Responsible Advertising” in order to maximise its efficacy and minimise any potential negative consequences.

Conclusion

In conclusion, it is undeniable that gambling as an activity can represent a significant risk of harm to both young and vulnerable persons and that a legitimate obligation has been exacted upon the Gambling Commission to seek to minimise or prevent that harm. Nevertheless, the existence of that objective does not automatically vindicate the imposition of restrictions on gambling operators’ marketing efforts in the sports sector.

In short, any outright prohibition on such activities would be disproportionate, arguably ineffective, incomparable with the restraints on other commensurate industries, tainted with governmental hypocrisy and could be a crippling financial set-back for a number of national sports. Similarly, any additional prohibition on children’s shirts featuring gambling operators’ logos and compulsory educational and/or warning messages are unlikely to achieve their desired

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goals and certain evidence suggests that such measures could actually increase the risks posed to the very people that the Gambling Commission is obligated to protect.

On the contrary, genuine and purposeful efforts are being made to bring about a self-regulatory and voluntary scheme that would engage all of the relevant parties and devise methods that could prove to be more pragmatic and effective methods of achieving the Gambling Commission’s objectives. In turn, the Gambling Commission can continue to monitor such activities and, through the LCCP, ensure that licensed gambling operators make genuine efforts to achieve their stated goals. However, for the time being, the Gambling Commission must grant such initiatives a fair opportunity to demonstrate their effectiveness before intervening further. The Gambling Commission, like a Blackjack dealer, should not decide whether to stick or twist until it has seen the cards drawn by the sports sector and the gambling industry, especially when the stakes are so high. **BASL**

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Football agents: A critique of the Football Association's new regulations

By Liz Ellen, solicitor in the Fraud Group of the Litigation Department at Mishcon de Reya, a licensed football agent and a member of the FA Agents Panel (as an Agents' Representative)

In the words of Graham Bean, the former Head of the Football Association ("The FA") Compliance Unit, "Irrespective of how you want to window-dress it, you cannot get away from the fact that the world of agents is a very murky one. That will always be the case, even if the authorities put in watertight restrictions on agents' conduct... Agents have a stranglehold on the game that has taken all common sense out of it."¹

Introduction

The Role of Agents in Football

The traditional role of a football agent has been to advise the player and negotiate on his behalf when the player is transferred or seeking a new contract with his club. However, the breadth of work undertaken by agents has grown to accommodate the demands of the modern day footballer, which have in turn have developed as a result of inflated incomes and media interest.

Post-Bosman², top players have been in an increasingly strong position when it comes to contract negotiations with their clubs, and agents have been instrumental in this transition: "The evolution of the modern-day footballer into a high earning superstar saw the pendulum of power over labour rights shift away from the clubs/authorities and rest with the player and the agent...It is arguable that the agent has become the most important figure in the football market and more have become involved in the English football business, fuelled by large commission fees available for negotiating contracts that could be worth millions of pounds. Agents are able to manoeuvre and act by inhabiting the space that occurs between player and club, coming to occupy a key role in player trading."³

It is not unusual for agents, particularly of Premier League players, to manage the day-to-day affairs of their clients, as well as sponsorship, image rights, marketing and financial matters. The closeness can be such that, "it tends to be a relationship which recognises few boundaries in terms of levels of intimacy involved".⁴ Furthermore, agents can be heavily involved during the formative years of a player's career, as the competitive nature of the business means that

talented youngsters are scouted from an early age. It is therefore essential that agents be closely regulated to provide some protection to the many players who undoubtedly place a great deal of reliance and trust in their agent.

The Present Regulations and the Need for Change

Agents⁵ in England are currently subject to two sets of regulations. These are the Players' Agents Regulations of FIFA (the "FIFA Regulations")⁶ and the Football Agents Regulations of the Football Association. Essentially, regulations of The FA govern domestic issues, and regulations of FIFA cover international transfers and activity.⁷

The current set of FA Regulations came into force on 1 September 2007 (the "new Regulations"). These new Regulations replaced a set of rules that had only come into effect the previous year (the "2006 Regulations"). Bearing in mind the FIFA Regulations have remained virtually unchanged for many years, why did The FA need to introduce a different set of regulations, less than two seasons after the 2006 Regulations were brought in? The answer could be that the previous regulations failed to sufficiently deal with the perceived problems in the agency industry, or more pertinently, that The FA did not trust agents and clubs to adhere to them.

The Poor Reputation of Agents

The role of agents has been under increasing scrutiny over the last few years and brought to the public eye by 'bung' allegations,⁸ the furore leading to Panorama's documentary on "Football's dirty secrets",⁹ and the media's intense reporting of the 'scandals' that are blighting the beautiful game.¹⁰ Whatever the

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involvement of players, managers and clubs in the various stories that have created something of a frenzy in the press, ultimately, it is the already dubious reputation of agents that has taken the biggest blow.

The credibility and ethics of agents have certainly been called into question, and concerns over the role of agents in football are such that the issue is a key matter of debate for many groups and organisations, both domestically and internationally.¹¹

Comments from those in the game have further fuelled the debate. Crystal Palace chairman, Simon Jordan, was quoted as saying, "Agents are nasty scum. They're evil and divisive and pointless."¹² Manchester United's Gary Neville was equally dismissive of agents, stating, "I would like to see the removal of agents in the game... How a guy can go in and ask for your wage and expect to be given hundreds of thousands of pounds and sometimes millions in this day and age, I can't see it...Footballers think they need agents – but it's not the case."¹³

The Lord Stevens Inquiry

On 25 February 2006, Quest¹⁴ was appointed by The FA Premier League to "conduct an Inquiry into alleged Irregularities in relation to transfer dealings" (the "Inquiry"). Quest Chairman and former Metropolitan Police Commissioner, Lord Stevens, conducted the Inquiry. His recommendations were published on 20 December 2006 (the "Inquiry Recommendations").

General observations of the Inquiry have included an administrative slackness on the part of Premier League clubs,¹⁵ and ignorance on the part of players.¹⁶ It should not be overlooked that clubs and players, as well as agents, have obligations under FA Regulations.

The main proposals of the Inquiry relate to improving transparency in the game as between players and agents, and between agents and The FA. The extent to which the Inquiry Recommendations are reflected in the new Regulations will be considered below.

Key rules of the new regulations

There were many controversial rules that The FA sought to introduce or reinforce under the new Regulations. Some survived the challenge of the Association of Football Agents and the Law Society of England of Wales, but there was a significant amount of drafting and re-drafting to be done before the new Regulations could be introduced. For the purposes of this article, the focus will be on four main areas of the rules:

- The Reality of the Arrangements;
- Dual Representation and Conflicts of Interest;
- Remuneration; and
- Registered Lawyers.

The Reality of the Arrangements

The introduction and interpretation section of the new Regulations provides that The FA shall have regard to "the reality and substance of any dealings or arrangements and not just their form." The 2006 Regulations made no reference to The FA's ability to consider the reality of a deal, and it seems to be a sensible and necessary amendment to make. It would be futile for The FA to prohibit clubs from paying agents for services on behalf of a player who is transferred, if the payment was then dressed-up as a scouting fee or as part of a commercial agreement.

The Inquiry Recommendations report quoted an unnamed agent as saying, "Should the Premier League adopt the suggestion of placing the direct liability for payment of fees upon players exclusively, there is no doubt in our view that there would be a return to the 'bad old days' where schemes would be created once more to evade and avoid the Rules." This quote refers to the potential for collusion between clubs and agents to structure payments in such a way as to benefit the club and the agent at the likely expense of the player. Even if evasive schemes spring up as a result of perceived injustice of the new Regulations, The FA should not tolerate them. That is why the "reality and substance" provision in the new Regulations is crucial, and will allow for investigation of deals where the requisite transparency is lacking.

It must be remembered that any such 'evasive' agreement requires the consent and participation of the club as well as the agent.

Rule C: Dual Representation & Conflicts of Interest

The most important aspect of Rule C is the basic premise that an agent should not be allowed to act for more than one party to a transaction.¹⁷ The FA has deemed that in certain situations "the risk of a conflict of interest is so high that the prohibition on the Authorised Agent acting is absolute, unless he receives written authorisation from The FA."¹⁸ To this end, Rule C effectively provides that:

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An agent cannot act on behalf of a club in relation to a player, if the agent has represented that player in respect of a transaction or contract negotiation during the course of the previous two completed transfer windows ("Rule C2").¹⁹

Once an agent has acted on behalf of a club in respect of a player, the agent is not permitted to act on behalf of any other club in respect of that player until there has been another transaction for that player in which he was not involved, or the expiration of two complete transfer windows, whichever is the later ("Rule C3").²⁰

In addition, where there is any actual or potential conflict of interest between clubs, players or agents in a transaction or contract negotiation, the written consent of all other parties involved in the matter must be obtained.²¹ Such conflict must be declared to The FA as soon as possible.

The FA's rationale for the Rule C2 is that it prevents agents switching to be paid by a club, where in reality he has been representing the player.²² The rationale for the Rule C3 is that it prevents agents from 'shadow' representing a player, to cover situations where an agent improperly claims to act on behalf of a club rather than the player.²³ In both circumstances, the agent's intention is to receive payment from the club, rather than the true principal, the player. As well as improving transparency, Rule C is intended to prevent conflicts of interests and potential breaches of confidentiality.

The dual representation and conflicts of interest issue was a concern raised by the Inquiry, particularly as most of the parties interviewed by the Quest team were "oblivious to the fact or did not consider" that there was any potential conflict of interest. The "significant" conflicts of interest that arose during the Inquiry included individual agents acting on two sides of the same transfer. However, the Inquiry Recommendations made no proposals along the lines of Rules C2 and C3.

It has been suggested that the prohibition should go further, and that agents should be prevented from acting for clubs at all.²⁴ This would certainly avoid any problems with dual representation, an issue that appears to be high on the agenda of almost every debate on the role of agents. It would also deal with the additional suspicion that clubs may use agents to carry out work they are prohibited from doing themselves, with tapping up of players being the most obvious example.

Rule G: Remuneration

The key provisions under Rule G as between players and agents are:

- Where an agent has acted on behalf of a player, only that player may remunerate the agent. A club cannot make the payment on the player's behalf, except (at the player's written request) as a genuine deduction of the player's salary;²⁵
- Payment can be made by instalments or a lump sum only of a percentage of the player's guaranteed income, but only on the terms set out in a player's representation contract;²⁶

An agent must give disclosure of remuneration that he has received (or is due to receive) to The FA within 5 days of completion of a transaction or contract negotiation.²⁷ There is a further disclosure obligation on an agent to provide a player client with an annual itemised statement (copied to The FA) of remuneration or other payments charged to that player.²⁸

Originally, the rule went even further and required that payment be made by a player to an agent only by way of instalments paid in arrears. Under pressure from the Association of Football Agents, The FA amended the draft to allow a player to pay his agent by means of a lump sum payment up front. Had the original draft been introduced, it would have been a controversial and significant practical difference from the 2006 Regulations, under which clubs were allowed to pay an agent's fee on behalf of the player, either by way of a lump sum or annual instalments.

The presumed rationale for this rule is that it improves transparency by forcing an agent to reveal to the player exactly what money he is taking from the transfer or contract renegotiation. At present, although players are obliged to sign documentation that would detail this information, it is likely that in many cases, players simply do not read it. This would seem to be corroborated by the Inquiry's findings that in 15 of the transactions investigated the agent took more in fees than the player's annual salary.²⁹

Rule G is largely supported by the Inquiry Recommendations, which proposed that player-agents should only be employed and remunerated by the player, and that agents should submit a quarterly report declaring all agreements entered into and all payments made.

An extreme example of player apathy in respect of agent's fees arose in the controversial transfer of Harry Kewell from Leeds United to Liverpool in 2003. Whilst

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Leeds received a £5million transfer fee from Liverpool for the player, £2million of this had to be paid to Kewell's agent. The Leeds Chairman at the time, John McKenzie, was reported to be furious about this, but the player claimed he was not interested in what his agent was receiving, stating, "I'll get my money from Liverpool and let my agent get whatever he gets – that's up to him, I know nothing about that."³⁰

It would seem naive for a player to show such ignorance of a multi-million pound business transaction to which he is central. However, through the new Regulations, The FA seems to be saying that if players will not instinctively take an interest in the fees being paid to their agents, then the issue will be brought directly to them and they can pay the fees themselves. Arguably, agents are being punished for their client's lack of awareness.

Registered Lawyers

The new Regulations were originally drafted so as to require all lawyers carrying out Agency Activity to pre-register with The FA. In registering, the lawyer had to agree to act in accordance with the new Regulations, and to submit to the authority and jurisdiction of The FA. However, following the intervention of the Law Society of England and Wales (who were unhappy with The FA's attempt to remove the pre-existing exemption for solicitors), a hybrid position was created.

A solicitor can now be either a Registered Lawyer or an Exempt Solicitor. The main difference between the two positions appears to be that Registered Lawyers submit entirely to the jurisdiction of The FA (as any other Licensed Agent), whilst Exempt Solicitors have a more restricted scope of obligations to The FA.

Presumably, the rationale for the introduction of Registered Lawyers³¹ is that where a lawyer is working in the arena of football agency, he is acting as an agent (albeit with the knowledge and qualifications of a solicitor). The FA would therefore claim it is necessary for them to impose the rules and regulations of football agency on that lawyer.

The Inquiry supported The FA's initial position of requiring all solicitors acting as agents to be Registered Lawyers. It found that there was a need for the regulatory body to be empowered to regulate all agents acting in the UK, including the previously exempt lawyers and family members. To further justify this finding, the Inquiry highlighted instances where a solicitor was appointed as an intermediary in a transfer to mask the real identity of the agents involved.

The Agents Panel

It is worth mentioning the Agents Panel of The FA, which was set up under the new Regulations, having been established by the Football Regulatory Authority. Where a party wishes to act other than in accordance with particular rules³² of the new Regulations, an application can be made to The FA for permission to do so. The application will be referred to the Agents Panel, who will consider each application on a case-by-case basis, before determining whether the circumstances are such that an exception to the rule should be allowed.

The Agents Panel List is composed of FA Council Members, FA employees, independent members, and those nominated by clubs, players and agents.

Challenges to the 2007 regulations

Legal Challenges of Agents

The Association of Football Agents and some of the leading football agencies will feel pleased that they have achieved a certain degree of success in challenging The FA over the new Regulations. There remains discontent over areas of the new Regulations, but The FA and agents managed to settle some of the more controversial rules without having to revert to threatened litigation. Had there been any legal challenge, it would presumably have been on the basis of an unjustifiable restraint of trade or a breach of competition law,³³ considered here in the context of Rule C and Rule G.

If a rule under the new Regulations would have the effect of restricting the business activity of an agent, The FA could be faced with having to defend a restraint of trade cause of action. The onus would be on The FA to show that the rule being challenged was required to protect a legitimate interest, and was reasonable in protecting that interest.

The European Competition Law challenges would come under a breach of Article 81³⁴ or Article 82³⁵ of the EC Treaty. The FIFA Regulations have previously been challenged under European Competition Law in the case of *Laurent Piau v European Commission*,³⁶ where Mr Piau claimed that FIFA's rules on licensing were an excessive and discriminatory restriction on access to the agency industry. The Court of First Instance ruled in *Piau* that FIFA was an association of undertakings; that the activities of agents were an economic activity; and that FIFA held a dominant position in the market for players' agents. It is assumed that by analogy the same arguments would apply to The FA and the new Regulations.

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Rule C: Dual Representation & Conflicts of Interest

Rules C2 and C3 are a potential restraint of trade as they prevent an agent from freely representing players or clubs for a period of time. A legal challenge would have seemed inevitable if The FA had maintained the provisions as per the original draft, in which both rules had been drafted with far longer restrictive covenants. The FA had intended for Rule C2 to last for a period of three years, with Rule C3 as a lifetime prohibition on acting for any other club in respect of the same player. Such restrictions could have amounted to an appreciable restriction on the market under Article 81, as player careers are short, the number of potential clubs for each level of player is limited, and restrictive covenants as envisaged under Rule C could considerably limit an agent's business.

In defence of both a restraint of trade and competition law challenge, The FA would argue that the rules have a legitimate aim, as they are needed to protect against the unethical practices of shadow representation and of player-agents switching sides to be paid by the club. Rule C may further that aim, but the three-year and lifetime restrictive covenants referred to above would have been disproportionately long and inflexible. A player's circumstances can change so quickly in football, that confidential information of which an agent has knowledge can soon become redundant. For example, knowledge gained from being party to the first professional contract of a player at a Championship club, may well have little relevance if two highly successful years later that player were to enter into discussions with a view to joining a Premier League club.

The FA has adopted a far more practical stance in the final version of the new Regulations. Agents can even avoid having to comply with the time limits imposed by Rule C2 and Rule C3 if The FA (after referral to the Agents Panel³⁷) considers that in the circumstances an exception should be allowed.

However, it could be argued that with a requirement on players, clubs and agents to declare any potential conflicts of interest to The FA, and the common law fiduciary duties resulting from the agent-principal relationship,³⁸ there is absolutely no need for The FA to put any time restrictions on an agent's activity. Measures already existed to provide the protection that Rule C seeks to offer, so rather than the introduction of additional rules, enforcement of existing rules should have been The FA's priority.

Rule G: Remuneration

As discussed above, Rule G states that only a player can pay his agent's remuneration, and commission can only be calculated on the basis of the player's annual basic gross income, excluding benefits or bonuses that are not guaranteed.

As with Rule C, The FA has had to soften its approach from the rule as originally drafted. It had intended to prohibit lump sum payments up front, instead requiring payment in arrears and by instalment only. Such an approach would have been a significant restriction on the freedom of a player and his agent to negotiate the terms of payment appropriate for them. Again, there would have been a potential restraint of trade challenge due to the restriction on an agent's business, and such a constraint may also have been a breach of competition law.

The FA would probably be able to point to the Conduct of Employment Agencies and Employment Businesses Regulations 2003³⁹ as justification for requiring remuneration of the agent by the player alone. However, a prohibition on lump sum payments would have been harder for The FA to justify, as it is debatable whether a restriction on payment terms protects a legitimate interest. There may be good reason for The FA to regulate clubs' payments to agents, as a 'bung' would be easier disguised in a lump sum than payment by instalments, but the same rationale cannot be applied to players. The contract negotiated between player and agent should be a private matter, so if The FA is still concerned as to whether players are sufficiently protected, it should perhaps reconsider the criteria it sets for becoming an agent in the first place.

There are additional practical problems with Rule G. At the written request of the player, commission payments can be made by a club as a deduction of a player's salary. This leaves the agent at risk of not getting paid if, for example, he has a falling out with the player during the term of the player's contract and the written request is withdrawn. The player can simply refuse to pay what the agent has already earned, and potentially leaves the agent in the uneasy position of having to sue for his fee.

Even in the absence of any particular breakdown of the relationship between player and agent, an agent is still at risk of losing out on the payment that he expects to receive. Under Rule G9, an agent could lose his entitlement to remuneration if a player re-negotiates his employment contract either with the use of another agent or without an agent at all. Whilst this protects the player from having to pay double agent's fees for the same period, surely the protection of the player should be balanced with the risk to the agent.

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The Law Society of England and Wales

The Law Society of England and Wales were particularly unhappy when the draft regulations included a requirement for previously exempt lawyers to become Registered Lawyers, saying "We do not believe there is any justification for removing the long-standing exemption for solicitors from The FA's licensing regime. Solicitors are already fully regulated by the Law Society. If The FA Council approves the rules in this form, we will immediately consider legal action to challenge its decision."⁴⁰ It is understood that the Law Society followed up this statement by contacting all Premier League clubs, informing them that they did not intend to comply with this requirement.

As this issue effectively concerns restrictive practices relating to licensing of agents, we are brought back to the Piau case. In Piau, the Court of First Instance accepted the Commission's argument that, "The restrictions entailed, which are intended to raise ethical and professional standards, are proportionate. Competition is not eliminated. The very existence of regulations promotes a better operation of the market and therefore contributes to economic progress."⁴¹ Furthermore, "the licence system, which imposes restrictions that are more qualitative than quantitative, seeks to protect players and clubs and takes in consideration, in particular, the risks incurred by players, who have short careers, in the event of poorly negotiated transfers."⁴² Whilst this argument may be considered reasonable and proportionate for a general licensing rule, it would seem that such a justification is not appropriate where lawyers are concerned. The Law Society and Bar Council already impose high standards of conduct on lawyers.

The FA may have argued (and would have been supported by the Inquiry Recommendations) that the change would protect a legitimate interest, as the "multiplicity of individuals" that are able to act in an agency capacity is undermining The FA's ability to regulate the industry. Furthermore, the process of registration is not onerous – "Registration will be very straightforward – no test or other barrier to entry just a form to fill in."⁴³ Nevertheless, The FA were evidently not willing to risk a further fight with the Law Society, as they have continued to allow solicitors to carry out agency activity as Exempt Solicitors, subject to them complying with certain areas of the new Regulations.

The Challenge of Enforcement

Legal challenges aside, the biggest problem facing The FA will be that of enforcement. The FA will have to confront the issue from two sides in attempting to enforce against agents, players and clubs, whilst also ensuring that unlicensed agents are not circumventing the rules. The activity of unlicensed agents in the industry is one that The FA has recognised, and has attempted to address within the new Regulations. Nevertheless, it will be a difficult job to exercise control over agents of whom The FA may not even be aware.

Perhaps a solution is for an annual or ongoing inquiry, by means of an independent auditing office.⁴⁴ However, this would be an expensive exercise and would risk duplicating the work of The FA's Regulation and Compliance Unit.⁴⁵

Whilst the new Regulations attempt to bring added transparency to the business of football agency, it is quite possible that they will only impact those agents who already conduct their business in an ethical and transparent manner. However much The FA tries to regulate agents, there will always be a greedy few who will evade the rules by underhand, dishonest dealings. The FA will never be able to monitor every individual involved in a transaction, and certainly unlicensed agents will not disappear from the game, whatever the rules may state. Threats of fines or suspensions against these individuals are not enough of a deterrent where possible big money deals are involved.

Rather than throw all their efforts into stopping the small number of dubious agents, The FA should put pressure on the member clubs to adhere to the rules. A concerted attempt to educate clubs about the new Regulations, combined with the imposition of meaningful sanctions for breach (such as points deductions and transfer bans) could be a powerful means of cutting the bad agents out of the game. If the clubs are not willing to conspire with these agents to break the rules, the agents will be left with no option but to comply. Clubs are rarely innocent parties so far as prohibited agency activity is concerned, and if nothing else, such an approach may stop clubs from using agents to breach the rules on their behalf. As said by one agent, "Who are agents doing business with? They don't do business with other agents. They do business with football people. If football was straight, agents would be straight, but, as it is, agents are convenient scapegoats for football's inadequacies, which are incompetence and corruption."⁴⁶

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For club-focused enforcement to be effective, a regular and thorough examination of transfer business would have to be conducted. To what extent The FA will be willing and able to undertake such investigation is a difficult question, but at least a rapidly expanding compliance department suggests there is an enthusiasm to tackle the problem.⁴⁷ In addition, there has been the recent introduction of a 'Whistleblower' telephone line and a new instruction for Quest. The Whistleblower line was set up in February 2008 "for football participants to provide information in relation to potential problems with the transfer market and the financial side of football generally".⁴⁸

Quest has been engaged to carry out an audit of a selection of transfers from the January 2008 and summer 2008 transfer windows, which will focus on The FA's processes in relation to the new Regulations, assessing compliance with FA rules, and identifying areas of poor practice within the industry.⁴⁹ Agent Athole Still has taken a healthy view of the new Quest audit, saying "If, this time, they dig up something illegal, then I will be delighted. Anything that keeps the game clean and improves the, in many respects, totally unjustified opinion of agents all being money-grabbers and dishonest and so on, is absolutely fine."⁵⁰

Conclusion

The FA's intention with the new Regulations appears to be to improve transparency within the perceived murky industry of football agents, and to give itself greater regulatory control over the activity of those who are involved in that industry.

A Duty to Report and to Educate

The FA has in some respects created a regulatory nightmare for itself, and in particular its compliance unit. There is no point in requesting detailed disclosure of matters such as an agent's income or conflicts of interests, if there is no review of the information received. Furthermore, such information needs to be analysed and processed so that The FA can provide guidelines to the sport of acceptable practice and procedures. The FA has given no indication of what it considers to be appropriate commission, so arguably, only through making use of the data can The FA justify seeking disclosure of an agent's income.

Most importantly, if there is to be wholesale compliance with the new Regulations, The FA must educate those who are affected by the new rules.⁵¹

The Role of the PFA

Whilst accepting the important role of the PFA as advisers to players, the Inquiry Recommendations included a proposal that the PFA should not act as agents for players. PFA Chief Executive Gordon Taylor took great objection to this, describing the suggestion as "arrogant and patronising". The PFA believes that it is the appropriate body to act as agents for players, as, "the PFA's job, as it has been for almost one hundred years, is to protect players and look after players, and to make sure they're not exploited."⁵²

The PFA's agents may well be ethical, but the issue is more the potential conflict of interests. An agent should only have to concern himself with achieving the best deal for his principal, but a PFA agent would in theory at least have to give some regard to the interests of the collective.

A Future for Professionals

Despite the torrent of bad publicity surrounding agents, and increasingly stringent regulation, agents' involvement in the game is bound to continue. Manchester United Chief Executive David Gill defended the role of agents in football, "We have to use agents to acquire players and renegotiate contracts with them. Agents provide a service in football, just as they do in the arts, or even when you are buying a house."⁵³

The strictness of the new Regulations suggests that FA has serious concerns about the activity of football agents. If that is the case, and the PFA agents face a conflict of interests in representing players, then the future for the industry may lie with legal advisers. The FA's qualification requirements of agents seem to be disproportionately low when balanced with the wealth and profile of some of the players they represent and the clubs with whom they must negotiate. It could be argued that the entry criteria for becoming an agent should be raised to improve the credibility of the industry.

Amongst the top level of players in particular,⁵⁴ there would seem to be compelling reasons why players should consider using lawyers as agents. The growing number of sports lawyers means that players can find an adviser who is well versed in the regulation and business of football, and the prospect of hourly-rate charge rather than a percentage commission would be another attraction. It has been debated for some time whether or not lawyers can do the work of an agent.⁵⁵ However, the stricter the regulation, the more likely it is that there will be a place for lawyers, as "if clubs and players are aware that there are serious repercussions for breaking the rules, who better to interpret them than lawyers?"⁵⁶

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Enforcement, Enforcement, Enforcement

The FA is right to try and tighten the regulation of agents. There is no harm in requiring a high level of transparency, and if strict rules make it harder for agents to get away with bad practices, then football's stakeholders should support The FA's approach. However, The FA must be careful not to present agents as a scapegoat for all that is bad in football. Indeed, Lord Stevens found there to be no inherent dishonesty amongst agents. It is clear that the problem is not as widespread as the adverse publicity would suggest.

Now that the new Regulations are in force, agents will have to live by the rules, whether or not they agree with them. The new Regulations apply to agents, players and clubs, and their application to the last category must not be overlooked: "You can't expect bad agents to self-regulate against their nature, and you can't expect any authority to effectively contain them without due vigilance within clubs."⁵⁷ The key to success for The FA must lie in enforcement – and recognising that even the worst agents cannot act alone. BASL

- 1 Transfer corruption 'rife', www.bbc.co.uk, 30.1.04.
- 2 *URBSFA v Jean-Marc Bosman* (Case C-415/93 [1995] ECR I-4921).
- 3 Shifting balances of power in the new football economy, Magee in *Power Games: Theory and Method for the Critical Sociology of Sport*, Sugden & Tomlinson (Routledge, London 2002).
- 4 Singer & Friedlander's *Football Review 2000-01 Season - the Role of Agents in Professional Football*, Roderick, University of Leicester, 2000.
- 5 Under The FA Regulations, any agent acting in the transfer or contract renegotiation of a player may only do so if he holds a licence issued by The FA. A licence is obtained by fulfilling The FA's requirements of a test of good character and reputation, successfully completing The FA's written examination, and by procuring and filing appropriate professional indemnity insurance. Agents are also required to sign up to a code of conduct.
- 6 These were passed at a meeting of the FIFA Executive Committee on 10.12.00, and effective from 1.3.01.
- 7 This article will primarily consider the role and regulation of football agents in domestic situations, and will focus on the relationship between players and agents.
- 8 See Agents demand bung claim apology, www.bbc.co.uk, 28.9.06; New allegations in Eriksson saga, www.bbc.co.uk, 21.1.06; and FA to meet Newell over bung claim, www.bbc.co.uk, 12.1.06.
- 9 Undercover: Football's dirty secrets, *Panorama*, BBC1, 19.9.06.
- 10 See Cole's agent handed FA suspension, www.bbc.co.uk; 26.9.06; Allardyce faces new agent probe, 3.3.07, *Daily Mail*; and Cut out the double agents and clean up the murky business of player transfers, *Daily Telegraph*, 14.7.03.
- 11 Such groups include the UEFA Professional Football Working Group on the Role of Agents in European Football, FIFA Task Force 'for the Good of the Game', the Independent European Football Review and the All Party Parliamentary Football Group.
- 12 Agents are nasty scum. They are evil, divisive and pointless, *The Sunday Times*, 5.12.04.
- 13 Neville: Get rid of agents, www.manutd.com, 15.2.07
- 14 Quest is an independent private intelligence firm.
- 15 The Inquiry Recommendations noted that: 16 FAPL clubs failed to appropriately document financial arrangements relating to transfer; on 3 occasions payments were made to agents with no supporting invoices; 2 clubs failed to enter into written agreements with agents; and 6 clubs failed to identify an agent on the form when that agent acted in the transfer.
- 16 The Inquiry Recommendations suggested that players are largely unaware of the fees paid to agents acting on their behalf, despite players signing documentation noting such fees.
- 17 Rule C1, 2007 Football Agents Regulations
- 18 Guidance Note to the 2007 Football Agents Regulations
- 19 Rule C2, 2007 Football Agents Regulations.
- 20 Rule C3, 2007 Football Agents Regulations.
- 21 Rule C4, 2007 Football Agents Regulations.
- 22 New Regulations approved, 21.6.06, FA Statement www.FA.com.
- 23 *Ibid.*
- 24 See *The State of the Game, The Corporate Governance of Football Clubs 2006 and The Role and Regulation of Agents in Football*, Holt, Michie and Oughton, *The Sports Nexus* (London 2006), which suggests there is a strong argument in favour of the US practice of forbidding clubs from employing agents.
- 25 Rule G4 and G5, 2007 Football Agents Regulations.
- 26 Rule G7, 2007 Football Agents Regulations.
- 27 Rule G8, 2007 Football Agents Regulations.
- 28 Rule G12 and G13, 2007 Football Agents Regulations.
- 29 Inquiry Recommendations Report. In addition, in 70 instances, the size of the fee paid to agents by clubs gave cause for further investigation.
- 30 Row Saddens Kewell, www.bbc.co.uk, 10.07.03.
- 31 A Registered Lawyer under the new Regulations is a sub-category of Registered Agents. Within the new Regulations, an agent can either be a Licensed Agent (being an agent who holds a licence issued by The FA), a Registered Agent (being a player's close relation, a lawyer, or an agent who holds a licence issued by another national association) or an Exempt Solicitor.
- 32 An application can only be made for permission to act outside the general rules in relation to specific terms relevant to the Representation Contract, conflict of interest provisions, and representation of players in full-time education prohibition.
- 33 The arguments in this article will be in relation EC Competition Law. However, the same arguments would apply if a challenge were made under Chapter I and Chapter II of the Competition Act 1998.
- 34 This prohibits as anti-competitive all agreements, decisions and practices between undertakings which may affect trade between EU member states and which have as their object or effect the restriction or distortion of competition within the common market. See PLC, www.practicallaw.com/0-107-6433.
- 35 This prohibits any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it, as incompatible with the common market in so far as it may affect trade between EU member states. See PLC, www.practicallaw.com/8-107-6434.
- 36 *Laurent Piau v Commission of the European Communities* (Case T-193/02).
- 37 An agent's fiduciary duties include: to act in good faith; not to use his position as agent to acquire benefits for himself; not to put himself into a situation where his interests will conflict with those of his principal; to disclose all material facts to the principal and to refrain from divulging confidential information to third parties; and not to make a secret profit or accept bribes. For a summary of the law of agency, please see the PLC Practice Note at www.practicallaw.com/6-107-4049.
- 38 SI 2003/3319. The FA's Guidance Notes to the 2006 Regulations specify that the rule that an agent may only be paid by one party to a transaction arises as a result of Conduct of Employment Agencies and Employment Businesses Regulations 2003.
- 39 Lawyers cry foul over FA move to bring them under same regime as agents, *The Gazette*, 9.11.96.
- 40 *Laurent Piau v Commission of the European Communities* (Case T-193/02), paragraph 62.
- 41 *Laurent Piau v Commission of the European Communities* (Case T-193/02), paragraph 100.
- 42 Agents threaten litigation over 'unworkable' agent regulations, *World Sports Law Report*, Volume 4 Issue 12, December 2006.
- 43 As suggested by Henry Winter and Oliver Brown of the *Daily Telegraph* - Stevens effect has cleaned up game and Regulation is difficult to achieve (21.12.06)
- 44 A principal recommendation of The FA Structural Review (the Lord Burns Report) was the creation of a semi-autonomous Regulation and Compliance Unit, "to carry out the enforcement functions of The FA in accordance with the handbook."
- 45 Evil empire? The agents hit back, *The Time*, 24.1.05.
- 46 FA Chief Executive Brian Barwick spoke of The FA's decision to "significantly increase the resource dedicated to the compliance and registration areas, with more dedicated investigative resource - both internal and external." FA Statement 21.12.06, www.thefa.com.
- 47 www.thefa.com/TheFA/NewsFromTheFA/Postings/whistleblower.htm
- 48 www.thefa.com/TheFA/NewsFromTheFA/Postings/2008/02/Questappointed.htm

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- 50 www.telegraph.co.uk/sport/main.jhtml?xml=/sport/2008/02/14/ufnfa214.xml
- 51 *The Inquiry Recommendations report noted that three clubs were not familiar with the applicable rules, and recommended annual training for relevant club officials.*
- 52 *I wouldn't tell you how to do your job, don't tell me how to do mine - Taylor tells Stevens, GiveMeFootball.com, 21.12.06*
- 53 *United see profits slump after £4.4m outlay to agents, The Times, 28.9.04*
- 54 *With established top-level footballers, the more specialised agent task of sourcing or creating deals is less of a requirement. Being able to negotiate favourable contract terms will be more relevant.*
- 55 *See Lawyers on the spot, The Gazette, 28.6.02. Agent of change?, The Gazette, 4.8.05 and Football agent regulations: The case for the lawyer, Sport and the Law Journal, Volume 4(12), December 2006,*
- 56 *Agent of change?, The Gazette, 4.8.05.*
- 57 *Agents an easy target - a bigger problem is the enemy within, The Observer on Sunday, 22.1.06.*

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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.

Seminar on sports law in Brazil

The third Seminar on Sporting Legislation, organised by the Brazilian sports law organisation under the direction of the celebrated academic professor Alberto Puga, took place on 13 and 14 January 2008 in Foz de Iguacau. The conference theme was "Sporting legislation: the Challenges and Contradictions", and it brought together the widest possible range of specialists in this area. The topics discussed included:

- access by transsexuals to official sporting competitions – a question of human rights;
- the development of sport and state sponsorship
- tort liability of physical education professionals
- sport and alcohol, tobacco and propaganda
- the rights of sporting teams and sporting legislation governing children's football
- Brazilian sporting legislation and the Unesco international convention on doping

Obituaries

Hans Ruesch

This man of many talents and interests of Swiss nationality, who had died aged 94, was not only the last survivor of a motor racing Grand Prix event before World War II; he was also an author, screenwriter and committed animal rights activist. Following his racing career, which came to an end as a result of a crash into a crowd which caused one death and three serious injuries, he turned to writing novels. He also took up medicine when living in Rome, and this caused him to become a committed opponent of vivisection. He even established a Centre for Scientific Information on Vivisection, which he headed until his death (*The Times of 21/9/2007, p. 52*). His interest in this subject had been latent since the death, in infancy, of his brother Konrad, apparently after the latter had been administered medication which had been cleared after tests on animals (*The Guardian of 15/9/2007, p. 43*). His books on the subject included *Slaughter of the Innocent* (1978) and *Naked Empress* (1982).

John Woodruff

The infamous 1936 Olympics, held in Berlin, are known mainly for the shameless manner in which they were exploited by the Hitler régime for propaganda purposes, and for the victory of black sprinter Jesse Owens, widely seen as a humiliation for the racial theories expounded by Nazism, based as they were on the innate superiority of the Aryan race. In fact, the first black man to obtain a gold medal at these Games was another US citizen, John Woodruff, who has died at the age of 92. He did so in the 800 metres event and in the most remarkable manner possible. Having found himself boxed in after around 300 metres, he simply stopped and restarted in the outside lane, overtaking the field in a matter of 100 metres. Although overtaken at one point by the Canadian Phil Edwards, he succeeded in striding past the latter at the final turn, winning the race in 1 min. 52.9 sec. (*The Guardian of 21/12/2007*). He had experienced racism at every stage of his career – in fact, he only applied for a scholarship at Pittsburgh University after having been refused employment at his local glass factory, on the basis that "we don't hire negroes". Even at college, life was no easier: some visiting teams refused to compete against black athletes, and when representing his University elsewhere, he was compelled to find lodgings with a local black family or at a blacks-only hotel (*The Independent of 5/11/2007, p. 43*).

René Desmanson

This French climber, who has died at the age of 77, can fairly be described as one of the more controversial exponents of a sport which itself frequently earns itself unwelcome headlines. This was not only on account of some of his more daring exploits, in the course of which he would push existing climbing techniques and equipment to their absolute limits, along with their margin of survival. His second winter ascent of the Walker Spur mountain in 1963, reputed to be one of the more fearsome climbs in the Alps, almost ended in disaster. He sustained a fall, miraculously escaping without injury, and employed some desperate manoeuvres, including a dynamic "one-way" leap for a hold 70 ft above a belay. His other stunts included a televised climb of the Eiffel Tower, Paris, in 1964 (*The Independent of 5/10/2007, p. 53*).

However, it was his taste for publicity that earned him a reputation which went beyond mere sporting controversy. In 1966, he was expelled from the *Compagnie des Guides de Chamonix*, being the world's oldest and most distinguished mountain guiding society. This came about as a result of an "unsanctioned" rescue of two German climbers who had found

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themselves trapped on the West face of the Petit Dru, which involved not only Desmaison himself but also Mick Burke (Britain) and Gary Hemming (US). The society, which had devolved responsibility for mountain rescue to the French National Gendarmerie in 1958, accused Ms. Desmaison of having undertaken the rescue as a publicity stunt – an accusation which was buttressed by the fact that the latter later sold photographs of the rescue operation to the French weekly magazine *Paris Match*. Perhaps the most controversial episode in his career came five years later. This happened during an attempt at pioneering a difficult winter route to the left of the Walker Spur, which turned into a two-week battle for survival, as a result of which his companion, Serge Gousseault, could not continue. When assistance finally arrived, the latter had been dead for three days, and Desmaison was informed that he had cheated death by very little. The incident caused bitter recriminations, with Desmaison suspecting Maurice Herzog, the famous climber who had become mayor of Chamonix, of obstructing a prompt rescue as a “punishment” for his impetuous actions five years earlier. Mr. Desmaison, on the other hand, was accused of deliberately spending too much time on the route in order to court publicity (*Ibid.*).

Lawyers in sport

[None]

Digest of other sports law journals

[None]

Sport and international relations

Unsettled Zimbabwe question continues to cause problems

The problems caused in the international sporting arena by the dictatorial regime of Robert Mugabe have been extensively documented in earlier editions of this organ. These difficulties probably reached their climax during the cricket World Cup of 2003, when England’s players refused to travel to Harare for their group match against Zimbabwe because of concerns over security. On the other hand, their tour of Zimbabwe in 2004 went ahead, but only after England had been warned that they could face a £1 million fine from the International Cricket Council if they withdrew. Since then, various countries have refused contact with the African state (*see, e.g.*

[2007] 2 *Sport and the Law Journal* p. 44), but the question has continued to simmer in the background, particularly in cricket. Fresh problems are anticipated when Zimbabwe are scheduled to tour England in 2009.

The question whether this tour should go ahead was raised at the very highest level of both the sporting and the political realm, in the form of an intervention by Bill Morris, the former head of the British Transport and General Workers’ Union (TGWU) and currently a director of the England and Wales Cricket Board (EWCBC). In late September 2007, he openly questioned whether this tour should be allowed to proceed, with Mr. Mugabe’s régime facing growing international pressure over the country’s economic collapse (*The Daily Telegraph* of 27/9/2007, p. S6). Mr. Morris said:

“The (British) Prime Minister is on the record saying that in blunt terms he doesn’t want to be in the same room as Robert Mugabe. That raises the whole question of 2009 when Zimbabwe are due to share the tour with Australia. If the PM doesn’t want to be in the same room as Mugabe, how fair is it to ask sportsmen and women to be on the same field of play with representatives from the regime? (...) It will become more and more political as the regime becomes more and more oppressive and this will be one of the things the Board will have to grapple with and the Chairman will have to show leadership on” (*Ibid.*)

The Chairman in question was Giles Clark, who had defeated Mr. Morris when elections for the post took place earlier that week. Mr. Morris said that, had he been elected, he would have wanted to stage a comprehensive review of this issue. Mr. Clark, for his part, seemed to keep quite a low profile on the issue – until it transpired, in mid-December, that a meeting had taken place in Johannesburg, at which Clark offered to pay around £220,000 to Zimbabwe Cricket (ZC), the game’s governing body in the country, in exchange for the latter calling off the tour. This sum was presented in some quarters as “conscience money”, and therefore took on the appearance of an underhand manoeuvre and sleight of hand. This was hotly disputed by the EWCBC, who asserted that the meeting in question had been organised by the ICC, and that the latter’s president, South African Ray Mali, had been in attendance (*The Daily Telegraph* of 14/12/2007, p. S13). Since reports of this meeting arose just before the time of writing, it was too early for any definite response from the Zimbabwean side. However, reports in the Zimbabwe Independent claimed that Peter Chingoka, the Chairman of ZC, intended to dismiss the EWCBC offer (*Ibid.*).

Interestingly, although Mr. Chingoka was recently denied entry to Britain, the latter’s Foreign Office stated

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that this did not amount to a blanket ban on Zimbabwean sporting teams. This position may, however, change given that, in mid-November 2007, it was learned that the British Government was reviewing sporting links with Zimbabwe, in a sign that they may finally be prepared to take decisive action on this thorny question. The Government had taken the opportunity afforded by the appointment of two new Cabinet ministers (David Miliband at the Foreign office and James Purnell at the Department for Culture, Media and Sport) to re-examine the subject. Previously, British ministers had insisted that the Government had no powers to prevent cricketers from travelling to Zimbabwe, this being a stance which left English cricket vulnerable to possible penalties from the ICC if fixtures were to be cancelled. Now, it would seem, a hardening of attitudes on the subject since Gordon Brown became Prime Minister has caused the Government to reconsider all the legal options (*The Sunday Telegraph of 18/11/2007, p. S11*).

For Zimbabwe, this would be a major setback from a purely cricketing point of view, particularly since its fortunes on the playing field had started to improve after a prolonged lean period. The World Cup of 2007 had not proved the unmitigated disaster many had predicted, and a number of key players were starting to return to the fold. Thus Tatenda Taibu, their former captain who had left the country two years earlier, ended his self-imposed exile in mid-August. Mr. Taibu had turned his back on the country of his birth in November 2005, pleading his displeasure with the manner in which the aforementioned Peter Chingoka and Ozias Bvute, the team's managing director, were operating the sport in Zimbabwe. He had also feared for his life following a number of threatening telephone calls. He had spent time playing in various countries, including Bangla Desh, England and Namibia. (*The Sunday Telegraph of 12/8/2007, p. S7*). Zimbabwean cricket had also been boosted by the return of top-order batsman Brendan Taylor. He had refused to play for his province, Northern, in Zimbabwe's first-class competition, the Logan Cup, shortly after his return from the World Cup, then defied Mr. Bvute's order not to accept contracts with clubs abroad during the off-season by taking up an appointment in the Netherlands (*Ibid*).

This column will, as ever, continue to monitor developments in this saga with the keenest of interest.

Olympic Torch to by-pass Taiwan

Ever since the Chinese civil war ended in 1949, with the non-Communist part of the country isolating itself on the island of Taiwan, mainland China has claimed the latter as its territory and refused to recognise its independent existence. These tensions have come to the fore yet again, in relation to the traditional route taken by the Olympic torch towards the site of the 2008 Games, which is Beijing. In late September 2007, it was learned that the two sides had failed to resolve a dispute over this issue, after Taiwan officials had objected to the insistence by the Chinese authorities that the use of the self-governing island's flag and national anthem be restricted at each torch-related event. As a result, the torch route will now avoid Taiwan altogether. The Chinese authorities described this outcome as a "vile event" (*The Independent of 22/9/2007, p. 41*).

Palestinian football battles against adversity – but is thwarted by politics

If sport – and in particular football – is "war by other means", as the author said, there are plenty of instances where it has in fact attempted to, and even succeeded in, heal wounds where statesmen have failed. In fact, it is sometimes the world of politics which frustrates the peaceful endeavours of the world of sport. Recent events in, and concerning, the Middle East have served to highlight both these commendable and not-so-commendable aspects of international sport.

First the good news. In early December 2007, it was learned that Israeli and Palestinian officials were bringing their young athletes together in sports competitions in an attempt to assist with strengthening the peace process in the Middle East. The Israeli Minister for Sport, Science and Culture, Ghaleb Majadie, described this as an attempt to build trust and co-operation for the future. Under a plan hatched over the past few months by a joint team representing the Israeli and Palestinian Ministries of Sport, young people from both sides were to cross into each others' territories as from February next year in order to engage in football, table tennis and chess competitions. The Israeli minister did not elaborate how this plan would work. However, it appears to have been modelled on a number of programmes of mixed Israeli-Palestinian sports teams organised by the non-governmental Peres Centre for Peace, which have included programmes for children as young as six. The sports in question were chosen for this initiative because of their popularity and on the grounds that they do not require extensive facilities, in a tacit acknowledgement that most sporting facilities in Palestinian territories are underdeveloped or have been

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damaged during the fighting (*Associated Press, www.findlaw.com of 7/12/2007*).

However, there are plenty of other developments in the world of international politics which are capable of undoing much of the good work performed by such initiatives. This in late October 2007, the Palestinian football team complained that it has missed its World Cup qualifying match in Singapore because of Israeli travel restrictions. The team failed to show for the game because 18 of its players and officials live in the Gaza Strip, according to Jamal Abu Hasheesh, a spokesman for the Palestinian football federation. The piece of land in question had been under tight control since the Islamic militant group Hamas took over in June 2007. In fact, only a month before the Palestine fixture Israel had declared Gaza as "hostile territory" and declared it would only permit its inhabitants to leave on grounds of humanitarian hardship (*Associated Press, www.findlaw.com of 29/10/2007*). Mr. Hasheesh added that the 18 team members in question failed to obtain Israeli permits enabling them to leave Gaza for the match. Since then, the Palestinian federation has applied to FIFA, the world governing body in football, to reschedule the match, but thus far no news on the outcome of this application has been forthcoming (*ibid*).

However, it would seem that Britain has also displayed certain signs of intransigence in the face of sporting attempts to promote the Middle East peace process. In late August 2007, the Palestinian under-19 football squad were informed by the British consulate's office in Gaza that all the players involved had been refused visas to enter this country. That summer, the 22 youngsters in question, who had beaten scores of other young club players to be selected for the side, the majority being from Gaza, had been training hard for what would have been, for them, the undisputed highlight of the last two years which, as has been indicated earlier, have been among the toughest in the country's already turbulent history. They were due to have started a three-week summer training camp at Chester University, during which they were to have played fixtures against the youth teams of Chester FC, Tranmere Rovers and Blackburn Rovers. Apart from representing a real break from the stifling adversities of Gaza – in which there are merely four passable football grounds for 1.4 million people, this would have represented the ideal preparation for the forthcoming under-19 Asia Cup qualifying fixtures in Uzbekistan (*The Independent of 27/8/2007, p. 27*).

The reasons for this refusal caused even greater consternation than the decision itself. Officially, the reason for the refusal was the failure on the part of the

squad to provide evidence that Israel would allow the players out of the country (for reasons explained above). In the absence of any co-ordination between the Hamas administration and the Israel authorities (see above) this would, to put it charitably, been an extremely challenging proposition. However, there seems to have another political factor behind the British refusal. Whilst the letter sent to the players did not say as much, British officials have revealed to, amongst others, Rod Cox (the enterprising Chester businessman who operates the Chester and Palestinian Exchange organisation, and on whose initiative the visit was to have taken place) that the grinding poverty which prevails in Gaza was one of the main reasons for the ban. According to one official, the calculation was that, because of the lack of opportunities in Gaza, and the fact that the players were themselves unmarried and therefore without wives and children to which to return, they might be tempted to remain in Britain once the training camp had finished. No doubt the fact that other groups of athletes have engaged in similar manoeuvres previously (*Sport and the Law Journals passim!*) may have added to these fears. The players seem therefore to have become caught in a geo-political "catch 22" situation. The poverty and unemployment afflicting the region is at least in part due to a boycott of Gaza imposed by many western countries (including Britain) following the victory by the Hamas group, referred to above. Accordingly it would seem that 22 youngsters who have with the utmost endeavour striven to make something of their lives, in the most challenging of circumstances, now find that this very poverty is the reason for their freedom being restricted even further (*The Independent, loc. cit*).

If true, these reasons would seem to be largely unfounded. Commenting on the ban, Abu Zahir, a former top goalkeeper in Gaza, stated his belief that the decision was based on a misunderstanding of the culture prevailing in Gaza, including the closeness of family ties and the central importance vested in education by Palestinians generally. Pointing out that, at the time when the refusal was announced, the Palestinian under-15 side were taking part in a tour of Norway, he stated that no young or adult footballer travelling in the context of a national team outside the country (and these are sides which usually have to play even their home games abroad, mostly in Qatar or Jordan) has ever failed to return (*ibid*).

Just before the year ended, yet another example of the stranglehold exerted by international politics over soccer in the Middle East came to light, when it was reported that footballing twins from Brazil, currently playing in the troubled region were unable to communicate by

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telephone or by post. Born in Inhumas, a town located in the mountainous heart of the South American state, the 25-year-old Antonelli brothers had travelled to the Middle East during the summer of 2007 in order to develop their careers. Romulo, a striker with a reputation for strength and speed, landed in Israel, playing for the league leaders, Beltar Jerusalem. Rodrigo, on the other hand, was a more solid defensive player, and started playing for a team in Damascus, Syria. Although they lived only a few hours' drive away from each other, the state of war which, officially, still exists between Israel and Syria (which dates back to the 1970s) means that the brothers are virtually cut off from each other. According to Romulo:

"I cannot send him a letter or even ring him up. I don't really understand all the politics but it is amazing that people in two countries next door to each other cannot even talk. The only way for us to communicate is Skype over the internet – but even that has problems. The internet connection over there is really bad and it only works well at night, so we have to wait up to the middle of the night to try to talk. And with him training hard for matches and me training hard for matches, sometimes it is not good to be up at night" (The Daily Telegraph of 26/12/2007, p. 21).

Relations between Israel and Syria remain very tense, with Damascus continuing to demand the return of the Golan Heights, a mountainous region of Syrian territory occupied by Israel since the Six Day war in 1967. The border between the two countries, which is heavily mined, is policed by a United Nations force and is rarely opened. The only regular border crossings involve apples grown on the Israeli side by Druze farmers, who are driven across to Syria each spring under the protection of the International Committee of the Red Cross (*Ibid*).

The fraught nature of Middle East politics has even played havoc with German football. In mid-October 2007, it was learned that Ashkan Dejagah, a footballer playing for the German national team but who was born in Iran, announced his refusal to play for the under-21 side in Tel Aviv, Israel in a qualifying fixture for the European under-21 Championship, citing political reasons. Somewhat disingenuously, he gave the following explanation:

"Everybody knows I am a German-Iranian. I have more Iranian than German blood in my veins. I am doing it out of respect. After all, my parents are Iranian" (Associated Press, www.findlaw.com of 9/10/2007)

Although it was generally known that Iran does not recognise Israel, and has warned its athletes against travelling to Israel in order to compete there, this move naturally did not pass without comment in various circles. The President of the Central Council of Jews in Germany,

Charlotte Knobloch, described Mr. Dejagah's action as "deeply unsportsmanlike". She added that Germany was "aware of its historical responsibility" and that it would represent a major affront if such behaviour were to be tolerated within the national team. She also called for the player's exclusion from the national team (*Ibid*).

However, in spite of the furore unleashed by the Iranian-born player's boycott, it was announced a few days later that Mr. Dejagah would continue to play for the German national team, following a meeting between the latter and officials from the German football federation (DFB). The latter's president, Theo Zwanziger, explained that the player had given a categorical assurance that his request not to be nominated for the match had no racist or anti-Semitic background, and that his only motivation had been the welfare of his family and relatives in Iran (*Associated Press, www.findlaw.com of 16/10/2007*).

FIFA holds out prospect of united Cypriot team

The island of Cyprus has been officially divided for over 30 years between its Greek and Turkish components, and only the presence of UN troops has prevented open hostilities between the two sides. However, there are signs that sport could once again be the catalyst for change. In late September 2007, talks sponsored by FIFA, the world governing body in football, started in order to attempt the creation of a unified national team in the near future. The meeting in question brought together the presidents of the official Cyprus Football Association, representing the Greek side, and the unofficial Turkish Cypriot Football Association, and took place at FIFA headquarters in Zurich, Switzerland. More talks involving the two sides were expected before meeting the relevant European and world authorities. At present, FIFA only recognises the Greek Cypriot association because its constitution prohibits competing associations. As a result, teams and players from the Turkish side have been barred from taking part in any official international fixtures (*Associated Press, www.findlaw.com of 24/9/2007*). This column hopes to be able to report on more progress in this direction in a forthcoming issue.

Tillman death saga: an update

It will be recalled from a previous issue of this Journal (*[2004] 2 Sport and the Law Journal p. 50*) that Pat Tillman, a former American footballer, was killed in action in the course of the allied forces' campaign in Afghanistan which followed the 11 September attacks. At the time, Mr. Tillman's death was reported to be the result of an

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enemy ambush, and therefore the outcome of heroism in battle. He was posthumously awarded the Silver Star for valour. President Bush described him as a “national inspiration”. It has now been established beyond doubt, however, that Mr. Tillman was killed by fire emanating from his own side. Worse still, it has been alleged that attempts had been made at the highest military level to suppress the circumstances of Mr. Tillman’s death [(2007) 2 *Sport and the Law Journal* p. 61].

Since then, this entire affair has reached the stage of the army judiciary, which could result in a US general being demoted because of his handling of the affair. The officer in question, Lieutenant-General Philip Kensinger Jr., has been indicted for failure of leadership and lying to the relevant investigators. The proceedings before the army Board in question had not yet been completed at the time of writing. However, in a statement made through his lawyer. Mr. Kensinger announced his intention of providing his own defence (*International Herald Tribune of 14/8/2007, p. 4*). The outcome should be known by the time at which the next issue of this Journal goes to press.

UN “basketball diplomacy” tried and found wanting

Sport has frequently smoothed the path of international relations, the most famous example being that of “table-tennis diplomacy” which helped to thaw the frozen relations between the US and mainland China nearly 40 years ago. Something similar seems to have been attempted in recent months at the very heart of international diplomacy, to wit the UN and its New York headquarters, but with apparently disappointing results.

In mid-November 2007, the US made an attempt at “basketball diplomacy” in order to encourage the UN to operate with a greater sense of teamwork. To this end, Zalmay Khalizad, Washington’s UN envoy, invited his fellow-diplomats from the UN Security Council to witness the New York Knicks, one of the country’s leading sides, in action. The excursion meant that several of the dignitaries involved – including the UN Secretary-General, Ban Ki Moon – visited the famous Madison Square Garden arena for the first time. However, it appears that the local team were not quite up to the occasion, going down to a 108-82 defeat to the Golden State Warriors. Not only did this represent the Knicks’ seventh successive loss, but it seemed to confirm a “Security Council jinx”, since this is the third occasion on which a visit by Security Council representatives has been accompanied by defeat for the home side. Nor did the game bring much cheer to the diplomats themselves,

with Mr. Moon describing himself as “very disappointed” with the local team’s performance (*The Times of 22/11/2007, p. 45*). Perhaps they should try the New York baseball derby the next time.

Victims of war take part in “amputee football world cup”

Another region of this earth which has been blighted by armed strife and warfare in recent times is Latin America, and it is here that a remarkable experiment was born. Some 30 years ago, a group of El Salvadorean players, who had all suffered injury in the country’s civil war, decided to create their own version of football. Just because they had lost limbs to bombs and landmines, they saw no reason to abandon their chosen sport, so they devised their own rules, designed their own kit, and sought out other maimed opponents. Since then, the sport has grown both in size and in organisation, to the point where it now holds its own World Cup, the finals of which took place in Antalya, Turkey, in mid-November 2007 (*The Independent of 12/11/2007, p. 55*).

The team with the most poignant story to tell must be that from Liberia, a country which has seen more bloodshed than most these past few decades. One of the team’s players, Dennis Parker, was forced to fight for the then president, Charles Taylor, in 1990, when he was only 16 years of age, thus taking part in the savage civil war which racked the nation in the first half of the last decade. As a result of the fighting, his right leg had to be amputated at the knee. He was forced to beg for a living, and faced unremitting hostility from his fellow-citizens. In 2005, Mr. Parker and 300 other amputees took action, storming the Taylor party’s headquarters, in protest at their miserable plight. During the resulting stand-off, a Pentecostal minister, Robert Karloh, stepped in and persuaded the protesters to leave the building and rebuild their lives through sport. This gave rise to a six-strong Liberian league in the sport, and to the country being one of its leading international sides (*Ibid*).

Cuban cricket team barred from tournament through US ban

Latin America is also the area which accommodates the island of Cuba, which for the past 50 year has represented a considerable thorn in Uncle Sam’s side by their wilful insistence on governing themselves without taking instructions from across the water. In January 2008, the country’s cricket team was to have taken a considerable step on the way towards world-wide recognition by taking part in an international

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competition for the first time. However, with only a few weeks to go before the tournament started, the US government blocked Cuba's participation because one of its citizens is sponsoring the event, due to take place in Antigua. The sponsor in question, Antigua-based businessman Allen Stanford, commented:

***"We have been anxious to include the entire Caribbean in the Stanford 20/20 tournament and I am extremely disappointed that Cuba will not be able to play. We are requesting that the denial from the US Government be reconsidered and we are exploring every option to secure their future participation"* (The Guardian of 21/12/2007, p. 26).**

This represents a serious setback for cricket in Cuba, which was moving towards embracing it as a national sport – a move which, for obvious reasons, has momentous diplomatic implications. The interest in the sport has been encouraged by the British Foreign Office, India and other Caribbean nations, who will have been dismayed by the US's unilateral action. Cricket has a lengthy history on the island. In the 1920s and 1930s, migrant cane cutters from surrounding Caribbean islands came to work in the sugar fields of Cuba, and established leagues in Guantanamo and Santiago. That tradition lingered on throughout the revolutionary years of the late 1950s and has continued to this day (*Ibid*).

placed Levante to take their place in the Cup. The latter went on to beat their cross-town rivals Valencia 1-0 to win the only trophy the club has ever acquired (*The Guardian of 1/10/2007, p. S1*).

However, the Franco régime refused to recognise the Republican league and cup, and removed all mention of Levante's victory from the record books. The sole evidence of the club's victory comes from contemporary newspaper reports and the fans' memories. One fan in particular, Xavier Rius, was desperate to have the history books rewritten, and appealed to the Spanish football federation to recognise the club's victory, without success. The matter was then taken to a political level, with the local MP taking up the issue with the Spanish parliament, which approved a motion calling upon the federation to recognise the Republican Cup (*Ibid*).

Other issues

Spanish football club receives trophy – 70 years after winning it

Fortune has not been kind to the Spanish club Levante, who find themselves firmly anchored at the bottom of the Premier Division even as the present author pens these lines. However, the club has been assured of collecting one trophy this season – even if this is 70 years overdue. The Spanish Parliament (Cortes) recently voted to recognise the club's victory in the Republican Cup final, played on 18/7/1937, being a fixture which has long disappeared from the official records.

During the year in question, Spain was divided. The fascist forces of General Franco occupied just over half of the country, whereas the Republicans were besieged on the other side. However, this being Spain, footballing activity was maintained even throughout this turbulent time, and the eight clubs on the Republican side organised their own league, with the four top sides competing for the Republican Cup, being an offshoot of the King's Cup. That year, Barcelona, having won the League, proceeded on a tour of the US and Mexico in order to raise funds for the Republic, thus allowing fifth-

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Corruption in sport

Tennis corruption: the saga continues

The story so far

It will be recalled from a previous issue of this Journal [(2007) 2 *Sport and the Law Journal* p. 46] that concern was rising at the possibility that gambling irregularities may have infiltrated the world top-level tennis. More particularly the fixture between Nikolay Davidenko and Martin Vassallo Arguello, in the Poland Open held in the summer of 2007, had given rise to suspicion following an unusually poor performance by the Russian accompanied by irregular betting patterns with Betfair, the online bookmakers. It will also be recalled that the professional players' governing body, the ATP, had turned to the regulatory unit of the British Horseracing Authority (BHA) in order to investigate the matter. Later, it was learned that, on the BHA's recommendations, two independent investigators had been retained to examine links between those who bet on the fixture in question and the two players or their associates (*The Guardian* of 18/8/2007, p. S13). Under the ATP's anti-corruption code, investigators have the power to demand that players, as well as their support staff (who can include agents, trainers as well as friends and family members) provide evidence in any inquiry (*The Daily Telegraph* of 18/8/2007, p. S24).

More allegations emerge

Up to this point, one may have been forgiven for harbouring the impression that the Davydenko allegation was but a singular event in an otherwise honest sport. Those thinking along such lines were given a rude shock when, the following month, more allegations of tennis corruption began to surface. First Gilles Elseneer, an average Belgian professional, claimed that he was offered the sum of £70,000 to lose a match at Wimbledon. He alleged that he was offered the sum "in my face" so that he might lose to Italian Potito Starace in the first round of the 2005 All England championships. The Belgian apparently dismissed the offer without hesitation and went on to beat the Italian in straight sets (*Daily Mail* of 27/9/2007, p. 82). The following day, Mr. Elseneer went into more detail about this offer, claiming that those who approached him were "active in the tennis world", although he added that this did not refer to a player or coach. He also claimed that this was far from being an isolated incident, but that "it happens a lot" (*Daily Mail* of 28/9/2007, p. 90). Another Belgian player, Dick Norman, claimed that he had been offered £9,000 to provide information about his fellow-players (*The Daily Telegraph* of 27/9/2007, p. S19). There were also reports that Novak Djokovic, the Serb player ranked

No 3 in the world, had been offered £110,000 to lose a match in St. Petersburg last season. Mr. Djokovic apparently rejected the offer and did not play in the tournament (*The Daily Telegraph* of 28/9/2007, p. S13).

Naturally, these developments attracted the attention of the tennis authorities, and the supreme governing body, the ITF, indicated their desire to speak to obtain more information from Mr. Elseneer on this subject. The ITF President, Francesco Ricci Bitti, admitted that the integrity of the sport was being threatened by the potential problems raised by the betting industry, in particular online gambling, whilst the ATP reiterated that any player proven to have been involved in match-fixing would be banned for life (*Ibid*).

Barely a week later, more disquieting developments rocked the tennis world when it was revealed that Betfair had delayed payment of bets laid on a women's match played in India after becoming concerned at what appeared to be irregular gambling patterns. The fixture in question was a quarter final of a tournament in Calcutta played between Tatiana Pontchek, from Belarus, and Mariya Korytsseva, from the Ukraine. The latter won in straight sets, but officials at Betfair contacted the Sony Ericsson WTA women's tour to inform them that they were delaying payment as they felt there was reason to investigate suspicious betting movements during the match. It is understood that almost £1 million had been wagered on the outcome (*The Daily Telegraph* of 4/10/2007, p. S6).

Within the next few days, an increasing number of authoritative voices were added to those making claims about the ubiquity of tennis corruption. First Mark Davies, the managing director of Betfair, argued that this threat was not new, stating:

"I think that all sport has always been liable to corruption, by the very nature of it producing clear results one way or another. They say that chariot races were rigged for financial reward. I don't see why subsequent sporting events should suddenly have been less liable to corrupt practice. We would strongly dispute the idea that sport suddenly has a corruption problem because of the boom in gambling" (The Daily Telegraph of 9/10/2007, p. S15).

Murray hints... but reaps the whirlwind

The very next day, British tennis hope Andy Murray added his voice to the controversy, claiming that it was difficult to prove if a player had deliberately lost a match or simply not tried. The favoured technique appeared to be to try one's best until the last few games, then hit a few double faults, which would be sufficient to lose the match. He

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added ominously that “everyone knows it goes on”. Predictably, this drew an instantaneous reaction from the ATP, who indicated that they would be summoning Mr. Murray to clarify these remarks. His observations were made at a particularly crucial time in this context, coming as they did just as the first tennis Integrity Unit was being established by the four main stakeholders in the sport, including the Grand Slam tournaments. Proposals for measures similar to those which were taken to counteract the cricket corruption scandal (Journals passim) were made, notably at an ATP Player Council meeting, which included the notion of separate locker rooms being built to which only players would have access – to the exclusion of coaches, family members or “hangers-on”. Players would also be given 48 hours to report to the authorities any approaches made to them about match-fixing, and risk penalties if they failed to do so (*The Times of 10/10/2007, p. 76*). The ATP have also set up a special “Crimestoppers”-style telephone hotline, which players may use in order to disclose information in confidence. If they so wish, players may address the authorities anonymously (*The Daily Telegraph of 10/10/2007, p. S6*).

Meanwhile, Andy Murray’s colleagues had also taken note of the comments made by their fellow-professional, but were much more outspoken in their reaction. He was roundly condemned for these observations by two of the world’s top players. Spanish ace Rafael Nadal accused him of having “gone overboard” on this issue, and doubted whether Mr. Murray’s knowledge of these matters was any greater than other players’ (*Daily Mail of 12/10/2007, p. 88*). Nikolay Davidenko, on the other hand, who was still under investigation over the “Polish Open” affair described earlier, went even further by implying that Murray could be involved in untoward practices himself, claiming that the Scot’s observations could be taken as meaning that he also engaged in gambling on the outcome of fixtures (*Ibid.*). Ivan Ljubicic, the president of the ATP Player Council, also questioned the Scot’s observations, claiming that the latter “talked more about what he heard than about what he knows”. He added his conviction that none of the top players were involved in betting or match-fixing (which, in itself, is a statement capable of more than one interpretation...) (*The Independent of 13/10/2007, p. 56*).

Predictably, there followed a “clarification” from the Murray camp, using the tried and trusted technique of claiming that he had been “quoted out of context”. In a statement released by his agent, he said:

“When I said that ‘everyone knows that it’s going on’ I meant that everyone has probably heard that three or four players have spoken out about being offered money to lose matches – which they refused. I am glad that the governing

bodies are coming together to set up an anti-corruption unit to address this” (The Independent of 12/10/2007, p. 65).

Some observers might regard this as a retraction rather than a clarification, and it may have made it easier for the tennis authorities, meeting a few days later, to conclude with the declaration that they did not “believe that our sport has a corruption problem”. Nevertheless, the establishment of the Integrity Unit, described above, proceeded as planned (*Daily Mail of 13/10/2007, p. 114*). At all events, any complacency the tennis authorities may have experienced at this point was quick to evaporate a few days later, when anti-corruption investigators from Betfair launched an inquiry into the St. Petersburg Open fixture between Dmitry Tursunov and Boris Pashanski, won by the former 4-6, 6-3, 6-4, after bettors cried foul over unusual market patterns. One bettor claimed that Tursunov was constantly being backed to win the match at 5-1, despite having lost the first set and trailing 2-0 in the second (*The Guardian of 27/10/2007, p. S1*).

Betfair declined to void the market because, according to a source close to the investigation, prices had been influenced by the actions of a single high-playing punter, being an individual well known to the online betting exchange as a significant net loser. It was claimed that he had attempted to place a large bet discreetly through the organisation’s brokerage team but, frustrated at the delays he encountered, vastly increased his stake “up front”, thus sending prices tumbling. However, independent bettors who were observing the market believed that Mr. Tursunov continued to have significant short-term backers other than the aforementioned “oddball punter”. It was even contended that the Russian player continued to be backed at exaggeratedly low prices even whilst he was receiving treatment for a lower back injury at the end of the first set. The ATP pledged to look into this matter (*Ibid.*).

The focus switches to Germany....

Around the same time, more allegations about tennis corruption were being articulated – this time on German television, which reported that tennis authorities had scrutinised 140 matches suspected of possible match-fixing since July 2002 – including several at Wimbledon. WDR TV’s Sport Inside programme claimed to be in possession of the list of these suspect fixtures which had been examined by the ATP. The programme also claimed that seven of the top 10 professionals were implicated in the list, which comprised matches involving 154 male and 11 female players. The channel also carried the comments of a German top player who (whilst refusing to

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reveal his identity) claimed that bets were being organised openly in the players' lounge, saying:

"There aren't many of them but always the same ones. Those who do it sometimes have a more professional approach to it than they do to playing tennis itself" (The Guardian of 6/11/2007, p. S10).

The unnamed player also claimed to have been approached by a fellow-German professional to place a bet of a "five-figure" sum in euros on his match. He also averred that tennis insiders knew when a specific match had been fixed (*Ibid*).

As if the beleaguered sport and its equally harassed administrators did not have sufficient cause for concern, another storm was brewing over an even more serious accusation which involved not only the possibility of corruption, but also the contingency that players may be physically interfered with for this purpose. In early November 2007, the ITF commenced an investigation following claims by the German No 1, Tommy Haas, that he had been poisoned during his country's Davis Cup match with Russia two months previously. In the fixture in question, Haas was beaten in straight sets by Igor Andreev, enabling Russia to win the entire rubber (*The Daily Telegraph of 8/11/2007, p. S8*). His fears that his poor performance was due to more than an ordinary stomach virus were strengthened by team-mate Alexander Waske, who claimed to have spoken to a man involved with the management of certain Russian players. He commented:

"It was a tight match, it's a shame that Tommy was poisoned. Believe me, Alex, I know Moscow. There are people who can make these things happen" (Daily Mail of 9/11/2007, p. 102).

The German Tennis Federation, on the other hand, were adamant in their belief that nothing sinister had occurred. As a result, they announced that they would not be lodging any protest about the result (*Ibid*). Mr. Haas, however, flew to New York the next day to undergo tests aimed at verifying whether in fact any foul play had been perpetrated (*The Guardian of 9/11/2007, p. S9*). Nevertheless, approximately a week later, it was announced that blood tests revealed no evidence of poisoning (*The Independent of 19/11/2007, p. 53*).

This turned out to be a mere respite for German tennis, since in the meantime Philipp Kohlschreiber, the world No. 32, was compelled to deny that he was involved in match-fixing, a German newspaper having published allegations linking the Davis Cup player to abnormal betting patterns on internet gambling websites. The leading daily Die Welt contended that Mr. Kohlschreiber

was one of a group of around 30 players from Germany, Argentina, Italy and Russia who were involved in fixing matches. More particularly, the newspaper claimed that two fixtures involving Mr. Kohlschreiber had been the subject of an abnormal volume of bets. The German's defeat against Frenchman Jo-Wilfried Tsonga in early October during the ATP tournament in Metz, which Kohlschreiber was the favourite to win, was one of the fixtures highlighted. The German professional fiercely denied the claims, stating:

I am shocked, these unfair and scandalous accusations are a slur on my name and reputation and a player. I am a professional sportsman and I always play to win. I have strictly nothing to hide, I am at the disposal of the German confederation and ATP to answer all their questions (The Daily Telegraph of 12/11/2007, p. S27).

Georg von Wadenfels, the President of the German Tennis federation (DTB), responded by pledging to contact the player as quickly as possible to discuss the claims.

...then to France

Meanwhile, the spotlight switched to France, more particularly in connection with the important Paris Masters tournament. During the run-up to this event, held in late October, French undercover police had been invited to be in attendance. More particularly officers specialising in gambling from the Renseignements Généraux being the intelligence service of the French police, were given full accreditation to roam incognito among the stands and the corridors. Although more accustomed to investigating casinos and horse racing, they were alert to the possibility of suspicious betting activity in the world of tennis. In addition, former top players were employed in order to cast their expert eyes on matches from the stands and report on any strange behaviour on court. All singles fixtures were recorded on film. The French tennis federation had also joined forces with the international gaming association European Lotteries, which had undertaken to use its own surveillance system to keep the federation informed. Online gambling is illegal in France, and those involved in the tournament were warned that they would have their accreditation withdrawn if they were caught placing a bet on the internet (*The Guardian of 29/10/2007, p. S16*).

These efforts seemed to bear fruit when, in the middle of the tournament, four spectators with laptop computers were ejected from the tournament. Although the tournament director, Jean-François Caujolle, indicated that paranoia had a good deal to do with the crackdown, he stressed that the tennis authorities had to work hard at maintaining control over the situation

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(*The Observer of 4/11/2007, p. S16*). In the meantime, his compatriot, Michael Llodra, the Wimbledon doubles champion, fuelled the debate by claiming on French radio that he had been asked to fix a match four years previously. He said:

***"I was in my hotel room and somebody called to ask me not to try too hard the next day. That was four years ago. I said 'no' and hung up. Now, with what has happened since, I think maybe I was one of the first players to have been approached"* (The Guardian of 31/10/2007, p. S8).**

Mr. Llodra's doubles partner, Arnaud Clément, a former top 10 singles player, also said that he had been similarly approached (*ibid*).

Davydenko continues to make the headlines...

In the meantime, the Russian player Davydenko remained under investigation for his performance in the Polish Open. However, he became the focus of renewed interest by the authorities as a result of his participation in the St. Petersburg Open in late October 2007. In second round of the tournament, he was paired with unfancied Croatian teenager Marin Cilic, and duly won the first set 6-1. However, during the second and third sets his error count increased exponentially, and he went on to lose the match. He was rebuked by umpire Jean-Philippe Dercq, and was later fined by the ATP for "a lack of best effort". This appears to be officialese for the practice known as "tanking" i.e. simply not trying (*The Daily Telegraph of 27/10/2007, p. S1*). The following week, French umpire Cedric Mourier also called Mr. Davydenko's professionalism into question during an extraordinary exchange at a changeover during the Paris Masters tournament in Bercy. Commenting on the Russian's poor serving, the umpire told the latter to "try to get it in the box", ending with the distinctly eccentric statement "You should serve like me" (*The Observer of 4/11/2007, p. S16*). However, two weeks later Davydenko won an appeal against this fine (*The Guardian of 14/11/2007, p. S10*). This affair naturally did nothing to enhance the ATP's prestige – already under fire for the association's handling of the crisis thus far.

As to the investigation into the Polish Open affair, this was being conducted in the first instance by the former Scotland Yard detectives who, as was mentioned earlier, had been drafted in to lead the inquiry. This took an extraordinary twist in mid-November 2007 when the investigators flew to Frankfurt in order to interview the Russian player's wife and brother about his ability to withstand pain. They had followed this line of inquiry because Davydenko had received prolonged treatment before and during the match in question for the foot injury which prompted his withdrawal. This fact-finding trip took

place after Mr. Davydenko had refused to volunteer records of all telephones owned or used by him when requested to do so under the ATP's anti-corruption rules. The organisation had required these records to be handed over within seven days, but Davydenko, on legal advice, refused to co-operate (*The Guardian of 9/11/2007, p. S1*). The lawyer advising the Russian player on this matter was Professor Frank Imminga, who described this demand as "unreasonable", particularly since the requirement to provide records of all telephones used would involve providing data from third parties (*The Guardian of 12/11/2007, p. S7*).

In fact, the dispute over the legality of the investigation was referred to the ATP-appointed anti-corruption hearing officer in Switzerland, who had the task of deciding whether there was sufficient evidence to charge Mr. Davydenko. However, lawyers representing the ATP indicated that all participants in the sport agreed to abide by its regulations and therefore waived specific data protection rights. However, whilst waiting for the hearing officer's verdict, Prof. Imminga demanded a moratorium on the investigation in view of the economic and mental pressure which this entire affair had placed upon his client. He also claimed that the ATP's investigators had informed him that, among the account holder who bet against Davydenko in the contentious Polish Open match, were nine people based in Russia. He claimed that these nine stood to make £725,000 from the Russian player's failure, adding that another two account holders whose locations were not known had increased that figure to £3.3 million (*The Guardian of 9/11/2007, loc. cit.*). Previously, he had accused the ATP of conducting a "witch hunt" against his client, and had written to the body in question requesting the removal of the umpires who had questioned the seriousness of Davydenko's endeavour (*The Daily Telegraph of 10/11/2007, p. S11*). At the time of writing, no definitive hearing for the Polish Open affair had as yet been fixed.

Italians become the first to be disciplined

Although far from uncontroversial, the efforts undertaken by the tennis authorities represented a genuine attempt at getting to grips with the problem. In mid-November 2007, it was announced that Alessio Di Mauro, ranked 124th, had been found guilty of betting on the outcome of tennis matches, fined £30,000, and suspended from the ATP tour for nine months. The Italian player had admitted to placing small bets of little more than £10 on tennis fixtures between September 2006 and June 2007, but denied that these had involved matches in which he participated or even tournaments in which he was playing. He announced his attention to appeal against this penalty (*Daily Mail of*

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12/11/2007, p. 88). The outcome of this appeal was not yet known at the time of writing.

The next month, two more Italian players felt the full impact of the tennis authorities' determination to eradicate corruption from their ranks. Potito Starace and Daniele Bracciali had also been found guilty of betting on tennis matches. The former was suspended for six weeks and fined \$30,000 by the ATP, whereas the latter was banned for three months and fined the sum of \$20,000. The Italian Federation, however, stated that Mr. Starace had placed five bets totalling \$30 two years previously, whilst Mr. Bracciali had made 50 bets of \$5 each between 2004 and 2005, and denounced the penalties as "disproportionate", stating that the players had never bet on their own matches (*The Sunday Telegraph of 23/12/2007, p. S9*). The Italian players claimed that they were the "sacrificial lambs" for the recent aspersions cast on the integrity of the sport (*Daily Mail of 23/12/2007*), a feeling which had been echoed by others in the game as regards the penalty administered to Mr. Di Mauro earlier (*Daily Mail of 12/11/2007, p. 80*).

Other developments

It has already been mentioned earlier (p.35) that the women's game was not free from allegations of corruption. In early December, there were further indications that gambling syndicates had attempted to fix women's matches. Larry Scott, the Chairman and Chief Executive of the WTA tour, revealed that quite a few players had informed the organisers that they had been approached to lose a match deliberately or to provide information on players' form. He also indicated that there had been many such approaches, and that it involved a limited number of countries, including Russia. He stressed, however, that there was no evidence that any of these approaches had succeeded in distorting the result of a fixture (*The Guardian of 7/12/2007, p. S2*).

In the meantime, concern has been rising over some of the logistics involved in operating the newly-established Integrity Unit – more particularly its funding. In a surprising development, ATP Chairman Etienne De Villiers stated that he expected the online betting companies to foot the bill for the new unit and for any investigations into betting malpractice. The total cost has yet to be established at the time of writing, but it will probably amount to millions of pounds in respect of the extra staff required, since the ATP are seeking to have someone on-site at each tournament to whom players or coaches can disclose any suspicious approaches (*Daily Mail of 17/11/2007, p. 84*). Whether the ATP chief will be able to convince the companies in question is open to some doubt.

IOC Presidents sets out plans to tackle Olympics corruption

The Olympic movement has not hitherto been entirely free from corruption, as witness the scandals surrounding the Salt Lake City bid for the 2002 Winter Olympics, as a result of which ten members of the International Olympic Committee (IOC) were expelled (*[2002] 1 Sport and the Law Journal p. 87*). To date, however, there have been no proven cases of match-fixing connected to illegal betting activity. Yet in view of the scandals in this field which have afflicted a number of sports at the top level in recent years – football cricket and, as is reported above, tennis – there can be no room for complacency even in this exalted company. This much was recognised by the President of the IOC, Jacques Rogge, himself when, shortly before the year ended, he set out his plans to tackle this growing threat.

In the first instance, Dr. Rogge has called upon the head of the International Cricket Council's Anti-Corruption Unit (ACU), Lord Condon, to brief the IOC executive on the manner in which other sports are dealing with the problem. Secondly, whilst he stressed that it was too early to moot the idea of establishing an equivalent of the World Anti-Doping Agency (WADA) for gambling, the IOC President called for a seminar of world sports federations to be held in the course of the coming year in order to discuss a unified international policy on the issue (*The Daily Telegraph of 13/12/2007, p. S20*). He said:

***"I'm not speaking about the threat for any particular Games. I'm speaking about the threat for sport in general in the world and this is something we have to address. There are some sports more touched (...) than others. We've seen examples recently. The purpose of the IOC is to have an organised and common approach with that. This is what we did with the fight against doping and what we did in many other aspects"* (ibid.).**

Dr. Rogge also disclosed that, at present, the IOC did not have any information-sharing arrangements with gaming companies in order to ensure that they are alerted in the event of suspicious betting patterns. He added, however, that he was examining the question whether agreements could be concluded ahead of the Beijing Games. However, the IOC has ruled out any commercial relationships with bookmakers and rejected advances made by some betting companies during its last round of sponsorship talks. The IOC's ethical code for athletes prevents competitors and other accredited individuals from gambling on Olympic sport (*The Guardian of 12/12/2008, p. S7*). As for Lord Condon, he did not believe that the Olympics were particularly at risk from gambling corruption, if only because corrupt operators turned their attention to other types of event

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where it was easier to arrange the fixing of results (*Associated Press, www.findlaw.com of 12/12/2007*).

FIFA (and its Ethics Committee) strangely unmoved by accusations of impropriety

From past issues of this Journal, the advised reader will have gathered that the financial propriety of the world governing body in football, FIFA, and some of its leading administrators, has sometimes been called into question. It was in the light of such allegations that, in the course of 2006, the body established an Ethics Commission, to be chaired by leading British Olympic official Lord Coe. However, the manner in which it approaches its task has already given rise to some adverse comment in the appropriate circles. Thus it was recently revealed in a leading British newspaper that the Commission has only met once – and that was for its inaugural gathering in October 2006 (*The Daily Telegraph of 4/10/2007, p. S9*). It has yet to make any public rulings, and its one major case, an investigation into allegations of racism against Scottish FA chief John McBeth, was abandoned after he agreed not to take up his seat on the FIFA executive committee in May (*Ibid – see [2007] 1 Sport and the Law Journal p. 77*). This is currently the subject of a great deal of criticism from many quarters in the world of football, particularly as this seems to follow the same pattern of weak governance which football's supreme body and its organs have displayed in the past.

It is not as though there has been a shortage of issues which deserved the fullest possible scrutiny, and, in at least some of these cases, firm and decisive action. Thus the reader may recall that, in mid-February 2006, it was learned that FIFA vice-president Jack Warner risked being suspended from the world governing body in football after having been judged to have infringed the organisation's code of ethics. More particularly it was being claimed that Mr. Warner was guilty of a conflict of interests after his family's travel agency were awarded the rights to sell the entire World Cup ticket allocation given to Trinidad and Tobago. Although the former Ethics Committee had ruled that Warner was involved in a conflict of interests, the Executive Committee disagreed on the grounds that, since then, he had sold his shares in the firm and removed his name, along with those of his wife and two sons, from the company register (*[2006] 2 Sport and the Law Journal p. 66*).

In fact, even when the affair referred to in the previous paragraph came to public attention, the controversial Mr. Warner was no newcomer to these columns, more particularly as regards various allegations of malpractice involving the abuse of his position in Caribbean football

(*[2002] 2 Sport and the Law Journal p. 18-19*). In mid-September 2007, his name once again arose in connection with a Caribbean football scandal when it emerged that the Trinidad and Tobago Football Federation, which is controlled by Mr. Warner, had earned income in excess of £16 million from the 2006 World Cup, despite having previously declared the relevant figure to be less than £1.6 million (and that figure does not even include income from five World Cup warm-up matches). This £15 million discrepancy was revealed by the London lawyers who were acting for the Trinidad and Tobago (T&T) players' union. The T&T side had been less than happy at the distinctly ungenerous sums offered to them by Mr. Warner, to wit around £500, as their half-share in the income generated by the tournament (*Daily Mail of 19/9/2007, p. 87*).

To this expression of dissatisfaction, Mr. Warner had reacted by banning the 16 players in question. Despite receiving complaints concerning this matter, FIFA have thus far not considered referring the case to the Ethics Committee, since it is regarded as a domestic affair. However, at the time of writing the London firm representing the players were taking court action in support of their claim (*Ibid*). Nor was this the only accusation levelled recently against the embattled football administrator. Barely a month later, he was named in the BBC Panorama programme as having demanded a personal cheque following a T&T friendly against Scotland, played at Easter Road, Edinburgh. The accusation was made by former Scottish FA President John McBeth, who claimed that the Caribbean football supremo had made the demand following the game, played in May 2004, requesting that the appearance money be paid to his personal account. Subsequently, however, Mr. McBeth claimed to have discovered that he had approached other Scottish FA staff to do likewise. As a result, the Scottish official sent the payment to the T&T Football federation, on the basis that if they owed Mr. Warner any money, they could make the appropriate payment to him (*Daily Mail of 23/10/2007, p. 82*).

Once again, FIFA declined to involve the Ethics Committee in this matter, on the grounds that McBeth was a discredited witness – ironically as a result of the only occasion when the Ethics Committee could be galvanised into action in relation to allegations that the Scottish official had delivered himself of racist remarks (see above). Mr. Warner himself dismissed the allegations, stating that:

"It's lies issued by someone whom I got removed from the FIFA Executive Committee and whose memory has suddenly come to life" (Ibid).

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Similar reticence was displayed by the FIFA authorities when, in early October 2007, controversy arose concerning the £4 million pay-off made to former FIFA General Secretary Urs Linsi. This massive settlement caused particular anxiety to FIFA, amid claims from the Swiss Sunday newspaper, *Sonntagszeitung*, that the hapless Linsi had succeeded in obtaining an eight-year contract two months before he was dismissed. It had been widely anticipated that Mr. Linsi would leave once Sepp Blatter secured another four-year term as president at the last FIFA Congress, held in May 2007. However, he did not clear his desk until June, to be replaced by Jérôme Valcke. This was the marketing expert who made a startling return to the governing body despite being at the centre of the expensive legal battle over FIFA's handling of the negotiations between rivals MasterCard and Visa (*see [2007] 1 Sport and the Law Journal p. 72*). When approached, a spokesman for FIFA refused to comment on the allegations made by the Swiss newspaper, which focused on the identity of two senior figures at the governing body who signed Mr. Linsi's contract extension (*The Daily Telegraph of 4/10/2007, p. S9*).

Because there could be at least an element of financial impropriety about this whole affair, this was felt by some FIFA insiders to be precisely the kind of controversy which should be assigned to the Ethics Commission (*Ibid*). However, to date nothing of this nature appears to have happened. It is expected that FIFA will continue to expose itself to considerable criticism as long as this "relaxed" approach persists.

UEFA starts match-fixing probe

Match-fixing is not exactly an unprecedented development in the world of football – from the players banned for life from the English game in the 1960s to the German and Italian refereeing scandals which have been extensively documented in these columns and elsewhere. This sad procession seemed bound to continue when, in early December 2007, the European governing body, UEFA, started an investigation into a series of matches. Although the governing body proved extremely reticent in providing details of the probe, a report by the German magazine *Der Spiegel* claimed that the investigation was to cover up to 26 matches, dating back to July 2005. The magazine also alleged that among the fixtures under suspicion three matches from the preliminary round of the Champions league, two in the UEFA Cup, and one among the qualifying games for the Euro 2008 tournament. These concerned mostly teams from eastern and southern Europe, in particular Bulgaria, Serbia and Croatia, as well as the northern Baltic states (*The Observer of 2/12/2007, p. S8*).

The week before these allegations were made in the press, Michel Platini, the UEFA president, met representatives from Europol, the pan-European police organisation which deals with organised crime in order to discuss how to improve early-warning systems capable of identifying unusual betting patterns surrounding football fixtures. He described the kind of scenario UEFA were facing in the following terms:

***"We know that in Hong Kong, Singapore or elsewhere in Asia you might have a single bet of \$10 million on a match ending 4-4. It's coming to the end of the match, it's 2-2 and there are four penalties, and it finishes 4-4. We knew about these cases because we do have an early-warning system in place. We do know that some teams were approached by people"* (The Sunday Times of 2/12/2007, p. S2).**

It is understood that a 96-page case file has been handed over to Europol, outlining circumstances surrounding some 15 matches. In addition, Mr. Platini and European Commission Vice-President Franco Frattini agreed to hold a conference later this year in order to consider "criminal phenomena" in sport, such as money-laundering, match-fixing and illegal betting. Graham Bean, a former police officer who once headed the English Football Association's compliance unit, commented that, although these allegations would be difficult to investigate, the European governing body must have evidence of some kind – maybe as a result of strange betting patterns (*Ibid*). It was also learned that UEFA had launched an investigation into the InterToto cup match between Bulgarian side Chernomorec and Macedonian team Makedonija, played in early July 2007, which Chernomorec won 4-0. The Bulgarians denied any wrongdoing. In addition, a 2004 UEFA Cup tie between Greek club Panionios and Dinamo Tbilisi of Georgia, which attracted unusually high stakes, was still awaiting the verdict of a UEFA disciplinary committee at the time of writing (*Ibid*).

Two years ago, the European governing body concluded an agreement with Betfair, the online bookmakers, for the monitoring of football betting with a view to ensuring the continued integrity of European football. Under the terms of the agreement, UEFA were given access to a greater level of information than it had previously been able to collect, and it is understood this may have been how the current revelations came to light (*The Independent of 3/12/2007, p. 64*).

Strong indications that there were at least some grounds for initiating the investigation referred to above came only a few days after the news of the UEFA investigation broke, when the head of Albania's football federation was accused by his country's Minister of

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Culture, Yili Pango, of “selling” two qualifying matches for the Euro 2008 tournament. The Albanian Prime Minister Sali Berisha, even went so far as to brand his national team as “a mafia group who sell their shirts”. Albania lost 4-2 at home to Belarus and 6-1 away to Romania in their last two qualifiers, which caused Mr. Pango to call upon UEFA to investigate “clear suspicions” that the fixture might have been the subject-matter of match-fixing. However, the players hit back at Mr. Berisha, even threatening to sue if an investigation proved that they were not to blame (*Daily Mail of 6/12/2007, p. 77*). The outcome of this case was not yet known at the time of writing.

Cricket corruption scandal – an update

Boje continues to attract interest of Indian police

The Hansie Cronje affair is generally regarded as the lowest point in the corruption scandal which rocked the world of cricket less than a decade ago (Journals passim). However, anyone who thought that the Indian constabulary had given up in their quest to ensure that every angle of this affair had been covered was in for a surprise – and a nasty one at that, as South African player Nicky Boje found out in early December 2007 (*The Guardian of 6/12/2007, p. S2*). Mr. Boje, although he had refused to tour India with his national side during the intervening years, recently joined Hyderabad Heroes in the Indian Cricket League (of which more later – see p. 000). Mr. Boje, his former captain Hansie Cronje and opening batsman Herschelle Gibbs were charged with match-fixing by the Delhi police following South Africa’s tour of the country in 2000. Cronje was banned for life (which was cut short by an aeroplane crash in 2002), whereas Boje and Gibbs were issued with fines. The South African was interviewed by police the following week (*The Guardian of 12/12/2007, p. S4*). The outcome of this interview was not yet known at the time of writing.

Samuels conduct gives rise to inquiry

The events described in the previous paragraph relate to events which occurred at the height of the cricket corruption scandal at the beginning of this decade. However, there would appear to be no room for complacency, if recent events are anything to go by. Thus in early November 2007, the news broke that the West Indies cricket authorities had been ordered to conduct an investigation into the off-field actions of Jamaican all-rounder Marlon Samuels, as a result of police allegations made during the Caribbean side’s tour of India earlier that year. The International Cricket Council (ICC) had decided on this course of action at a

meeting in Dubai after receiving a report from the Anti-Corruption and Security Unit, reviewed by Michael Beloff QC (*The Daily Telegraph of 1/11/2007, p. S11*).

These developments followed reports by the Indian police that the Jamaican, who had been allowed to play in the 2007 World Cup earlier last year, had allegedly communicated confidential team information to a bookmaker on the eve of the first one-day international in Nagpur on 21 January. Police officials reported that they had taped alleged telephone conversations between Mr. Samuels and a bookmaker. The city’s chief of police, SPS Yadav did, however, concede that they had no evidence of any match-fixing. India won the match in Nagpur by 14 runs, and the four-match series 3-1. Samuels took 0-53 and scored 40 runs (*The Guardian of 1/11/2007, p. S8*).

The Anti-Corruption unit held an inquiry, and its report was reviewed by the Code of Conduct Commission Chairman, the aforementioned Mr. Beloff. It was then forwarded to the Board, which then concluded its two-day meeting. The West Indies Board was expected to submit its report to an official inquiry, which would involve Mr. Beloff and two other code-of-conduct panel members unconnected with the Caribbean Board. That panel will then review the report, including any penalty recommended by the West Indies cricketing authorities, before the matter returns to the ICC Board (*ibid*). This column will naturally endeavour to report on these subsequent developments in a forthcoming issue of this Journal.

The law closes in on internet sports gambling

It will not have escaped the notice of our readers that one of the most important influences in the spread of corruption in the various sports covered above is that exerted by internet gambling sites. In fact, these have been regarded as such a threat to public policy that the law has been closing in on their activities in certain countries, especially the US and France.

Thus in early October, it was announced that Andy McIver, the chief of online gambling firm Sportingbet was negotiating with the US authorities with a view to ending the threat of legal action against his company. Mr. McIver hoped to strike a deal with prosecutors who have been targeting online betting sites since the US legislature adopted a law outlawing companies from taking bets over the internet from their own citizens. It was also announced that gambling sites 888 and PartyGaming were holding similar discussions (*The Independent of 3/10/2007, p. 44*). No further news about

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the outcome of these negotiations was available at the time of writing.

However, in France more decisive action appears to have been taken with a view to curtailing illegal online betting activity. Later that same month, it was learned that Petter Nylander, the chief of Unibet, which is regarded as the most active online bookmaker in France, was arrested over alleged infringements of the French law designed to protect state-controlled betting monopolies. Mr. Nylander, a Swedish national residing in London, was detained by the Netherlands authorities at the request of their French counterparts as he prepared to board a flight to the UK. This detention comes 13 months after the arrest of two executives employed by Bwin, Unibet's fiercest rival in France, as they prepared to unveil a sponsorship deal with the Monaco football club. Other internet gambling sites targeted by the French authorities, or to have discontinued their French operations, include 888, PartyGaming, Zeturf and Partouche Group. All operate from Gibraltar without a French licence (*The Guardian of 24/10/2007, p. 25*).

The arrest came as a surprise to sources within the industry, who had all been encouraged by suggestions that France was preparing for a "controlled opening" of its online gambling market. At the time of writing, France and certain other countries are in slow-moving negotiations with the European Commission on the question of inconsistencies between laws protecting gambling monopolies and the EU rules on free trade. However, the French authorities remain hostile to overseas-based internet operators, claiming that such firms are poorly regulated and threaten tax revenues. Two years ago, the Stockholm-listed Unibet company acquired Mr. Bookmaker, an online business targeting French and Belgian gamblers through low-profile internet marketing. Since then, however, it has pursued a more aggressive advertising strategy, sponsoring France's largest poker tournament as well as a cycling team. Police raided the tournament and Tour de France organisers have banned the mentioning of Unibet's name on cyclists' jerseys. Earlier that year, several gambling chiefs were invited to attend for interview with the French authorities in Paris. Mr. Nylander refused after police were unable to assure him that he would not be arrested (*Ibid*).

The activities of internet gambling sites in Gibraltar have also given cause for concern amongst the authorities of other countries – including Britain. During the same month as that in which the developments described above took place, it was announced that Government ministers were to approach the Gibraltar Gambling Authority amidst concerns that the latter's "light-touch"

regulatory regime could provide a back door for corruption in British sport. The move came after Lord Faulkner demanded action from the UK Department of Culture, Media and Sport (DCMS) against overseas bookmakers who refused to implement information-exchange agreements with the sporting authorities. These memoranda of understanding are required in the UK under Gambling Commission regulations, but some overseas operators have rejected demands to apply them (*The Guardian of 30/10/1007, p. S1*).

Lord Faulkner, who chaired an all-party betting and gambling group, decided to take action after the Football Association (FA) requested his assistance in investigating infringements of its rules on betting. The inquiry by the FA considered allegations made the previous November by a former employee of Victor Chandler International (VCI), who claimed that four Premier League managers had placed sizeable bets on English matches. Lord Faulkner raised his concerns with VCI about the apparent violation of FA Rule 8, which prohibits participants from gambling on competitions in which they are involved. Lord Faulkner had previously attended a meeting involving VCI's Chief Executive, Jonathan Hall, at which the latter had asked the bookmaker to sign an information exchange agreement. VCI insisted that it would consider any proposal by the FA provided that it applied to the industry as a whole (*Ibid*).

Portuguese police investigate Mourinho bribery claim

In late October, it was learned that the Portuguese Ministry of the Interior was investigating claims that the former Chelsea manager, José Mourinho, bribed the author of a book not to reveal details of his alleged extra-marital affair. It is claimed that Mr. Mourinho paid an unspecified sum to Carolina Salgado, the former partner of Porto president Jorge Nuno Pinto da Costa, not to reveal the story in her autobiography. Ms Salgado's sister, Ana, has alleged that the authoress changed the book to exclude the allegations in question (*Daily Mail of 26/10/2007, p. 91*). No further details are available at the time of writing.

Rick Tocchet ice hockey ban extended (US)

In early November 2007, the news broke that the role played by ice hockey forward Rick Tocchet in an illegal gambling ring would keep the latter out of the National Hockey League (NHL) until at least February 2008. Mr. Tocchet had pleaded guilty to promoting gambling and conspiracy to promote gambling. As part of a plea deal, he had been sentenced by a New Jersey court to two

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years' probation, thus avoiding imprisonment. He has been on indefinite leave from his post as assistant coach with the Phoenix Coyotes under Wayne Gretzky, and had his ban extended by NHL commissioner Gary Bettman (sic) until 7 February, i.e. two years after the leave commenced. Mr. Bettman commented:

"Employment and participation in the National Hockey League is an honour and privilege that cannot be taken for granted. Those in our game who engage in conduct detrimental to the game or its good reputation will be held strictly accountable for their decisions to engage in such conduct" (Associated Press, www.findlaw.com of 1/11/2007)

Mr. Tocchet, who could have received a five-year jail sentence, still hopes to be reinstated in his former position.

Hooliganism and related issues

Hooligan element mar Hatton v Mayweather contest

That English football fans have caused untold havoc during their travels abroad, allegedly to give encouragement to the team they claim to support, is a fact known to many a long-suffering Continental café-owner. However, in recent years there have been worrying signs that the followers of other sports have also made their unwelcome presence felt once they leave the shores of this sceptred isle. It has already happened in cricket, with the infamous but aptly-named Barmy Army, and now this malady appears to have affected boxing as well, judging by the demeanour of those who travelled to Las Vegas in order to support Ricky Hatton in his contest against Floyd Mayweather.

The trouble started during the weigh-in, when the British contingent in the crowd started to abuse all and sundry, heckling those who were attempting to speak – an atmosphere of hostility and violence which was not helped by Mr. Hatton thrusting his crotch towards the audience and screaming "let's f***ing have him" – by which he presumably meant his opponent who was about to put him decisively on the canvas 24 hours later. There prevailed a sinister atmosphere in the town throughout the weekend of the fight, with bars being closed for the first time in casino history (*The Daily Telegraph of 12/12/2007, p. S4*). At the beginning of the contest, the "fans", high on considerable amounts of alcohol, booed the US national anthem and behaved in the most confrontational manner possible (*The Daily Telegraph of 13/12/2007, p. S13*). The fact that there were no arrests was probably due to the fact that the

local constabulary simply did not expect such behaviour, and therefore were not present in sufficient numbers to uphold the rule of law.

Hooliganism continues to deface Italian football (with a little help from the English)

Background

The followers of Italian football are known for the passion with which they support their team, which sometimes spills over into unwelcome manifestations of violence. Prominent among these followers have been the so-called "ultras", who have caused many a riot in stadiums throughout the country. However, there have been signs recently that they have carried their excesses outside the football grounds, as events described below will amply demonstrate.

One of the problems seems to be that Italian football hooligans, threatened by ever tougher rules and police tactics, are looking further afield in order to learn new "tricks of the trade". It will hardly cause a tremor of surprise that in so doing they have looked towards this country and its less civilised followers of the game in order to find appropriate tutors. In early September 2007, a prominent Italian newspaper reported that ultras from Turin, Verona and Rome were travelling to London on budget airlines in order to witness the acknowledged masters of football hooliganism in action so that they could import their dubious skills and styles into their own arenas. In addition, some of the ultras appear to be young people who worked in London for a few years and frequented the local football grounds, thus witnessing the unacceptable face of the English game at first hand. It appears that Millwall and West Ham were the favoured teams, where they apparently earned "respect" by fighting in the front line. Thus they returned to their homeland having learned their "craft", including the avoidance of club colours to avoid detection, moving around in small groups, not attacking opponents spontaneously at the ground but fixing appointments for fights, etc. (*The Independent of 6/9/2007, p. 32*).

This did not augur well for the start of the season, and shortly after its commencement there were all-too familiar scenes being enacted at various footballing venues. Police in Rome held 66 Lazio fans carrying machetes, knives and chains who were preparing to drive north for a game against Atalanta. Sampdoria and Genoa fans fought for an hour before their local derby that same month (*The Guardian of 12/11/2007, p. 19*). In addition, Napoli fans were barred from the away game against Juventus because of their "criminal behaviour" (*Associated Press, www.findlaw.com of*

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7/11/2007). However, matters were to become infinitely worse by the time the season truly got under way – as is detailed below.

Death of fan provokes riots across the country

It will be recalled from a previous issue of this Journal ([2007] 1 Sport and the Law Journal p. 59) that the relations between the law enforcement authorities and football fans had suffered a setback with the killing of a police officer at a local derby in Sicily. By an almost surreal and ghastly trick of fate, the same result has been produced by a new killing – this time that of a football fan by a policeman. In mid-November, a supporter of the capital's Lazio team was shot dead by a police officer at a motorway station. As a result, riots erupted at football grounds across the country, and over 100 rioters stormed the headquarters of the Italian Olympic Association, which governs all sport in the country. Hand bombs were thrown both inside and outside the building, which is next to Rome's Olympic Stadium, and the offices were wrecked. Elsewhere in the capital, police stations were attacked, and cars and buses set on fire by means of Molotov cocktails (*The Daily Telegraph of 12/11/2007, p. 8*).

The fan in question, Gabriele Sandri, was shot in the back of the neck and died in his car. Mr. Sandri, who worked as a disc jockey in Rome, was said by his friends and acquaintances to have been an ardent fan, but never a violent one. Within hours of the shooting, Vincenzo Giacobbe, the chief constable of Arezzo, the province where the death occurred, stated that the killing of Mr. Sandri was a "terrible mistake". He added:

"Our officer intervened to prevent the scuffles between two small groups, who had not been identified as football fans, degenerating with serious consequences for both sides. I express my profound sadness and sincere condolences to the family of the victim" (The Independent of 12/11/2007, p. 23).

However, the police later stated that there was some uncertainty as to whether the fatal bullet had been fired by the police officer, and that forensic tests were being carried out. The Italian football authorities, anxious to restrict the risk of confrontations between fans and the police, acted swiftly and postponed the Lazio v Internazionale Milan game scheduled for the following day. They also ordered a ten-minute delay in all other afternoon games. Around the country, players and referees went onto the pitch wearing black armbands (*The Guardian of 12/11/2007, p. 19*). However, these measures were insufficient to prevent resentment against the police from boiling over again. At the Atalanta v. AC Milan fixture, played in Bergamo, fans threw stones at police outside the ground, whilst inside

the stadium a mass of ultras charged a plate glass barrier separating the two teams' supporters, cracking it in two places. Riot police fired tear gas in an attempt to bring the violence under control, but the referee decided to abandon the match after only seven minutes. Outside the San Siro stadium in Milan, several television journalists were attacked by marauding fans, with one being admitted to hospital after being kicked and beaten by hooligans (*The Independent of 12/11/2007, loc. cit.*).

As the inevitable inquest into affair got under way, the policeman in question was placed under formal investigation for manslaughter. In addition, the Italian Football federation met to discuss the disturbances and consider the proposal, made by sports minister Giovanna Melandri, that the entire championship be cancelled for the foreseeable future. Some emergency measures were taken, such as a ban on violent fans travelling to away matches, and the stationing of stewards in all grounds having a capacity of more than 7,500 (*The Independent of 13/11/2007, p. 19*). In the event, the Minister's proposal was, to all practical intents and purposes, rejected by the Federation. Matches for the Serie B and C (second and third division) were suspended for a week, but since the weekend in question was one that saw the international side in action, and no Serie A games were planned, this move appeared to amount to little more than a mild expression of regret. The Federation's response will have dismayed the Government and many within football, who lined up to condemn the hooliganism which had taken place in the wake of the shooting (*The Guardian of 13/11/2007, p. S4*).

There was more concern when it was learned that several hundred known ultras had booked flights to Glasgow, where the Italian national side were to play Scotland for a place in the Euro 2008 tournament finals. This was puzzling because the Italian national side does not have a strong following abroad. It was felt that this was part of a trial of strength with the Italian authorities in the wake of the Sandri affair, with concerns that the fans could have planned some action aimed at embarrassing the Government and football authorities. Another theory was that the Scotland fixture was really a pretext, and that fans intended to hold a "summit meeting" in Scotland away from domestic police interference. According to this view, the ultras were planning some form of disruption at Italy's match against the Faroe Islands the following Wednesday (*The Guardian of 17/11/2007, p. S9*). In the event, there was very little trouble at either of these two international fixtures.

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Roma/Manchester United disturbances continue

It will be recalled from a previous issue of this Journal ((2007) 1 *Sport and the Law Journal* p. 90) that the Champions' League fixture between AS Roma and Manchester United in early 2007 was marred by a good deal of violence, caused by both fans and the police. When the two teams were paired again in the same tournament for the 2007-8 season, this naturally sparked immediate fears of a repeat performance. Administrators of both clubs pledged to co-operate in order to avoid such an outcome. UEFA communications director William Galliard promised to liaise with both clubs and with the local authorities. He expressed the hope that the new training programme for club stewards in Italy would pay dividends in this regard, since the latter would be much more in evidence than riot police. However, there were to be no restrictions on fans travelling to see the matches (*The Daily Telegraph* of 31/8/2007, p. S4).

Nevertheless, this apparent good will and show of honourable intentions did not last long. Roma were the first to reopen the wounds of the earlier troublesome ties, when they accused Manchester United players of deliberately whipping up a hostile atmosphere ahead of the second leg of the ill-fated quarter-final match earlier that year (*Daily Mail* of 1/10/2007, p. 80). Regardless of whether this claim was true or false, it scarcely helped to set the right tone when the two sides met again, in Rome, shortly before Christmas. Once again, gratuitous violence was on display, mainly outside the stadium. The fighting left three United fans stabbed and seven – including a seven-year-old – in hospital. It appeared that the United supporters were ambushed by 50 Italians on the Duca d'Aosta bridge, which is a well-known gathering point of the Roma ultras, and which the British embassy had advised visiting fans to avoid. Two police charges were required to separate the fans after chairs, bottles and other missiles were thrown. Seven fans were arrested – six Britons and one Italian. Three of those taken to hospital were treated for stab wounds (*The Independent* of 13/12/2007, p. 70).

At first sight, therefore, it appeared that the violence had been started by the extremist wing of the local support. That was certainly the view expressed by the head of a prominent British police authority, who called upon Roma to be removed from European competition following the violence. David McLuckie, of the Cleveland authority, which had encountered Roma's Ultras when Middlesbrough fans were stabbed before their UEFA Cup tie with them the previous year, stated that it was time for the European governing body to act, stating:

"Roma should not be allowed to enter from the start because the authorities are not able to look after the people who come to their city to watch football. They should just be banned from European football. They should not be involved in the Champions League or in the UEFA Cup until they clean up their act" (The Independent of 14/12/2007, p. 75).

However, it was not to be; instead, it was four of the British fans arrested who were to face the wrath of the authorities. It appeared that their actions had been recorded on CCTV footage which covered the bridge where the violence took place (*The Daily Telegraph* of 19/12/2007, p. S8). Just a few days later, the four were jailed by an Italian court. Richard Wimmer and Kyle Dillon were both issued with sentences of two years and five months, whereas Nicholas Lucas and Michael Burk were sentenced to two years and four months. Judge Roberto Mendoza said that all four were guilty of resisting arrest and violent conduct. In addition, Messrs. Dillon and Wimmer were sentenced to an extra month in jail because they had also damaged property. A police spokesman had claimed that the British fans crossed the bridge and started fighting immediately, some throwing rocks and others casting bottles. He added that the group of hooligans appeared to be highly organised. Greater Manchester Police later confirmed that the four men were "known to them" (*The Daily Telegraph* of 22/12/2007, p. S6).

Anderlecht face disciplinary measures over hooligan attack on Spurs player (Belgium)

Very few Belgian followers of football have ever been known or feared for their behaviour during fixtures. However, it would appear that the cancer of hooliganism has eaten even into this relatively peaceful footballing environment. In mid-December 2007, there took place a match between top Brussels side Anderlecht and English Premier League team Tottenham Hotspur in the context of the UEFA Cup competition. During this encounter, Spurs midfielder Didier Zokora was hit with a lighter thrown from the crowd as the English side earned a hard-fought draw to secure their passage into the next round. In addition, goalkeeper Paul Robinson handed what looked like a metal bar to the fourth official (*Daily Mail* of 7/12/2007, p. 106). In fact, this was not the first occasion on which disturbances had taken place at Anderlecht in European competition, since an earlier tie with Turkish side Fenerbahce had also been accompanied by disturbances (*The Daily Telegraph* of 8/12/2007, p. S7).

The European governing body, UEFA, immediately commenced disciplinary proceedings against the

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Belgian side after receiving the referee's match report (*Associated Press, www.findlaw.com of 7/12/2007*). The outcome of these proceedings will be communicated to our readers in a forthcoming issue of this Journal.

Mali international manhandled and injured by crowd

Mamady Sidibe is one of the many African players displaying his talent in the English leagues – in his case, for the Championship side Stoke City. However unpleasant crowd behaviour can sometimes be in this country, Mr. Sidibe is unlikely to live through the same life-threatening experience that he knew when representing the country of his birth in Togo recently. Full-scale riots left a host of Mali fans with broken legs and gaping head wounds. Several members of the Mali side, including Mr. Sidibe and former Spurs striker Fredi Kanouté, required stitches after being beaten by locals at the Kegue Stadium in Lomé, the Togo capital. More particularly the Stoke City player was punched to the ground in a pitch invasion which followed the final whistle. After being carried to the dressing room, he regained consciousness just in time to be pushed through a window, severing two veins of his arm in the process. Even then, it took two hours to convey him to hospital. Here is Mr. Sidibe's full and horrifying account of what is, after all, supposed to be a sporting occasion:

"I thought I was going to die. I was sitting in an ambulance outside the stadium, feeling dizzy because I was losing so much blood. Outside, the fans were smashing all the windows so I couldn't be taken to hospital. The police moved me into an army ambulance but the crowd destroyed that as well. They took me back inside the stadium for my safety. It was two hours before I could get help. They told me I had been cut millimetres from my artery. I was that close to dying. It was a miracle nobody was killed. When I got back here and hugged my wife and baby, it was so emotional. I feel lucky to have survived. I have to think about whether I will play for my country again. I go to Africa to play football, not to put my life at risk" (Ibid).

Because the club which currently employs Mr. Sidibe stood to lose their key striker for a considerable period as he recovered from emergency surgery on his arm, Stoke Chief Executive Tony Scholes wrote to the English Football Association requesting an investigation, determined as he is to seek compensation for both Mr. Sidibe and his club.

Red Sox fans riot after World Series victory (US)

Another sport which very seldom makes the hooligan headlines is baseball, which normally enjoys a vociferous but generally law-abiding following. However, such standards of civility were not on display when the main Boston team, the Red Sox, won their second World Series victory in four years. As hundreds of the team's fans converged onto the city centre, the situation ran out of control when some of the less respectable fans threw rocks at police in riot gear, smashed windows and lit fires. Police had to move in on the crowd, about 2,000 strong, which had gathered at Boston's Fenway Park, where at least one vehicle was overturned. There were 37 arrests (*The Independent of 30/10/2007, p. 67*).

Junior teams strike because of "parent hooliganism" (Italy)

Fisticuffs amongst the fans, pitch invasions, insults hurled at match officials, and vitriolic hatred between rival camps are all features which have disfigured football over the past few decades. However, these excesses normally take place during fixtures involving adults, or at least teenagers. However, in the case of the measures described in this section, which have recently been taken in Italy against unruly spectators, the contests in question are between eight-year-olds, and the hooligans concerned are the little darlings' parents. The pitch side behaviour of these allegedly gown-up people has become so bad that teams at a club near the town of Empoli have indicated their disapproval by simply refusing to play. This took the form of a one-day strike one Sunday. According to Michele Mango, the club's director:

"We have had terrible language used against refs in front of the kids for penalties not awarded, we have had pitch invasions, and even a punch-up between a father and a referee after a game" (The Guardian of 17/12/2007, p. 14).

According to Gino Chiroazzeo, another club official, the mothers did not "joke around" either. So fearful had the boys in question become before the games started that they demanded action. Mr. Mango announced the strike at the Christmas dinner given for the boys' parents. In the stunned silence which followed, the youngsters filed onto a stage, holding aloft banners carrying messages such as "No to bad language, yes to kids having fun" and "Parents: don't argue, let us play". Mr. Mango placed the blame for at least some of the trouble on the televisual media's obsession with replaying errors perpetrated by referees. He added that he had received approval for the initiative from Italy's national football federation (*Ibid*).

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Football fans go on trial in Sweden on assault charges

Sweden is one of the many countries which have increasingly been required to cope with incidents of extreme hooliganism, and matters seem to have reached a climax in this regard with the news that, in mid-October 2007, 29 football "fans" appeared in a criminal court charged with what court officials described as the country's most significant hooligan trial ever. The defendants, all "supporters" of the Stockholm club AIK, stand accused of fighting in the stands during two matches in the Allsvenskan top league in 2004 and 2005. All have pleaded not guilty, but could face terms of imprisonment up to a maximum of four years.

Most of the charges relate to incidents during a match played in October 2004 during a fixture between AIK and local rivals Hammarby. This match was interrupted for 45 minutes after AIK fans clashed with police, who prevented them from encroaching on the field of play. Ten of the defendants were charged in connection with a brawl which took place during a 2005 fixture between AIK and GAIS in Gothenburg (*Associated Press, www.findlaw.com of 22/10/2007*)

Since the defendants went on trial shortly before this edition went to press, it is too early to report on its outcome.

Football club chairman's car assaulted after match suspended for hooliganism (Cyprus)

In late October 2007, hooligans attacked the car belonging to the chairman of a Cypriot football club, a day after the team's fixture was suspended because of violence by the spectators. The attackers smashed the windshield of the car owned by Frixos Savvides, chairman of Apollon Limassol. The club is facing punishment after a weekend match against arch-rivals Apoel Nicosia, which had to be suspended because of violence. Police reported that fans hurled "flares, pieces of plastic pipe and other objects including a pocket knife" before the game was interrupted.

Cyprus police chief Iakovos Papacostas pledged to introduce tougher policing at future league fixtures (*Associated Press, www.findlaw.com of 23/10/2007*).

Red Star fans attacked in Thessaloniki ahead of UEFA Cup match (Greece)

In early November 2007, three fans of Red Star Belgrade had to be taken to hospital with stab wounds following an attack by a group of 10 men at a cafeteria. Police reported that the three men were stabbed in the legs, but that their injuries were not life-threatening. The Serbian fans were in Greece for a UEFA Cup fixture against Aris Thessaloniki. They had been sitting at a sea-front cafeteria when 10 men in motorcycle helmets assaulted them with knives before running away. Earlier, a further two Red Star fans were taken to hospital after being beaten by unknown assailants (*Associated Press, www.findlaw.com of 8/11/2007*).

Travelling Bolton fans locked in "for their own safety" (Serbia)

It would seem that Red Star fans are not only the victims of hooliganism, but also frequently its perpetrators. When English Premier League side Bolton Wanderers were scheduled to play the Serbian club in early December, their travelling fans were subjected to the inconvenience of being held at the Hotel National on the outskirts of the capital, Belgrade, "for their own safety". This followed reports that Red Star fans were intent on causing trouble. The Lancashire club later apologised to their fans for this episode, and claimed that all their attempts to resolve the situation foundered on a blank wall of Belgrade bureaucracy (*The Independent of 7/12/2007, p. 77*).

"On-field" crime

"Spygate" scandal reaches conclusion (or does it?)

The story so far

The imbroglio which has caused uproar in the world of Formula One racing, which has involved two of its principal protagonists, Ferrari and McLaren, reached its culminating point during the period under review, and reached a conclusion which may – or may not – "draw a line" (to use the Blairite cliché par excellence) under the entire affair.

It will be recalled from a previous issue of this Journal (*[2007] 2 Sport and the Law Journal p. 53*) that, at the beginning of the year 2007, leading Ferrari engineer Nigel Stepney was accused by his employer of passing 780 pages of confidential information to Mike Coughlan, the chief designer at arch-rivals McLaren. As a result, Mr. Stepney was dismissed by the Italian car

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manufacturer in July. Ferrari also reported him for allegedly attempting to doctor the fuel in their cars by means of white powder prior to the Monaco Grand Prix. The spying scandal failed to move the world governing body, the FIA, to issue penalties against McLaren, on the grounds that there was insufficient evidence that the latter had benefited from the relevant Ferrari data. In addition, both the spying allegations and the claimed attempts at sabotaging Ferrari's cars, on the other hand, caused criminal proceedings to be initiated in Italy.

Italian criminal investigation gathers momentum... then stalls

There appeared to be a major breakthrough in the Italian investigation in early September, when the Italian examining judge inquiring into the espionage case claimed to have the "reasonable evidence" he required in order to continue the parallel sabotage investigation, and more particularly that he had evidence of Mr. Stepney's involvement in the affair. The judge in question, Giuseppe Tibis, attached to the court at Modena, stated that initial studies had been undertaken on a fuel tank and a pair of trousers abstracted from Stepney on which a powder was found, although Mr. Tibis refused to identify the substance, which had previously been identified in the Italian media as a detergent. Analysis of both the tank and the trousers were to form part of an initial hearing before the judge two weeks after the discovery. Stepney's lawyer, on the other hand, said that she would despatch two experts to attend the hearing in order to prove his innocence (*The Guardian of 5/9/2007, p. S10*). At the Italian Grand Prix event in Monza, held shortly afterwards, not only Stepney and Coughlan, but also three executives, who included the McLaren team principal Ron Dennis, were served with writs informing them that they were suspects in criminal investigations, which concerned alleged possession of industrial secrets, sporting fraud and sabotage, all of which would carry jail sentences (*The Sunday Telegraph of 9/9/2007, p. S1*).

To add to McLaren's woes, several days later it emerged that a report had been submitted to the Modena public prosecutor's department, which was compiled by the postal police in Rome, who had, since July 2007, been examining the contents of Mr. Stepney's impounded computers and mobile telephones. According to a source close to the investigation, the police had discovered that, between early March and mid-May, Stepney and Coughlan exchanged several hundred emails, text messages and telephone calls, and that these contacts, in particular the text messages, increased considerably before Grand Prix events. In addition, the two engineers were known to have had a meeting in Barcelona on 28 April – in addition, traces left by credit-card payments and

ATM cash machine withdrawals convinced Italy's "cyberdetectives" that the two men had in fact met on several occasions. Still following a trail of emails – many of them reconstructed after having been deleted – on the internet servers used by these two protagonists, the postal police were also said to have unearthed evidence of exchanges between other McLaren employees. One leading Italian newspaper reported that, during one of these contacts, McLaren's test driver, Pedro de la Rosa, was instructed to try out innovations reported to Coughlan by Stepney. On the occasion of another contact, the newspaper claimed that Mr. de la Rosa had informed top McLaren driver Fernando Alonso that he had learned details of Ferrari's brake-balancing mechanism and the way in which they used their tyres (*The Guardian of 13/9/2007, p. S10*).

Sergio Mariotti, the head of the Italian postal police investigation division, has since reassured the press that the "work was ongoing" (*The Guardian of 18/9/2007, p. S8*). The initial hearing was held on 27 September before Judge Barbara Malvasi, at which Ferrari and Stepney were represented by technical experts (*The Guardian of 18/9/2007, p. S8*). In the meantime, the only development of any note was the fact that top McLaren driver Fernando Alonso was interviewed by an Italian judge as part of the investigation (*The Daily Telegraph of 10/10/2007, p. S23*). However, since then there appear to have been no further developments as far as the Italian authorities are concerned – no doubt the next review period of this column will see the dénouement of their investigation.

Ferrari appeal replaced by new hearing

Meanwhile, the appeal lodged by Ferrari against the decision by the FIA not to penalise McLaren was looming ahead, scheduled as it was to take place on 13 September before the FIA'S World Motor Sports Council (WMSC). With a week to go before this date, the governing body announced that it had received "new evidence" relating to the controversy, and that therefore the appeal hearing would be replaced by a fresh investigation, to be heard at an emergency meeting of the WMSC which was intended to be held on the date originally scheduled for the appeal. It was unclear what this new evidence consisted in, since Formula One insiders thought it unlikely that this would involve any direct copying of design features on the Ferrari F2007, given that the McLaren MP4-22 was tested competitively in January, several months before there was any suggestion of foul play (*The Guardian of 6/9/2007, p. S9*). It later emerged that the McLaren drivers Hamilton, Alonso and Pedro de la Rosa had been "invited" by the FIA to proffer any technical

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information which might have been relevant to the performance of the team's MP4-22 challenger (*The Guardian of 7/9/2007, p. 31*).

This was confirmed a few days later when the full text of the letter was made available for publication. Whilst British driver Hamilton informed the investigators that he had nothing relevant to communicate, it emerged that both de la Rosa, a close friend of Mike Coughlan, and Alonso had engaged in email discussions about aspects such as weight distribution and tyre warming which had come from the documentation stolen from Ferrari and subsequently found in Coughlan's house earlier (*The Independent of 8/9/2007, p. 67*). In the meantime, there were suspicions – aired not only in the McLaren camp – that the whole issue had assumed the form of a vendetta against the McLaren team, which had its origins in the threat, made by McLaren boss Ron Dennis, to form a breakaway series. Whether there was any truth in these accusations or not, the FIA felt sufficiently stung by them to issue a statement officially denying them, in the following words:

“The suggestion that the FIA’s ongoing investigation is about anything other than the pursuit of sporting fairness demonstrates a blinding refusal to accept basic facts” (The Sunday Times of 9/9/2007, p. S13).

On the day of the emergency meeting, it was learned that part of the new evidence in question had been the report submitted to the Italian public prosecutor, referred to above, and which produced the various emails and text messages which had passed between the main protagonists in the affair (*The Guardian of 13/9/2007, p. S10*). At the hearing, evidence was heard from Mr. Dennis himself, as well as from McLaren's group managing director, Martin Whitmarsh, Jonathan Neale, the McLaren racing managing director; from technical director Paddy Lowe, and from Mr. de la Rosa. The Council also heard testimony from the former Ferrari technical director Ross Brawn, who made a surprise appearance on behalf of the Scuderia (*The Independent of 14/9/2007, p. 74*).

The meeting concluded with the announcement that McLaren were to be fined the unprecedented amount of \$100 million, and stripped of all their points in the 2007 World Championship for constructors. That meant that they would not be able to score any further points that season. Crucially, however, the decision did not prevent Hamilton and Alonso, who at the time were lying first and second on the thrilling race for the drivers' title, from retaining their points and from continuing their battle for the individual crown. The fine was higher than any penalty hitherto administered, the

most severe hitherto having been the \$5 million fine issued to the organisers of the Turkish Grand Prix following the untoward podium ceremony, reported in these columns at the time (*[2007] 1 Sport and the Law Journal p. 76*). Half of the monies would be supplied by McLaren's prize money won to date, which was considerable given the success of the team and the drivers. It was also decided at that meeting that McLaren's 2008 car would be “closely inspected” by the FIA's technical delegates before the next season (*Ibid*). In this regard, the onus will be on the McLaren team to prove that none of Ferrari's intellectual property has been used to benefit their 2008 championship challenger when the car is examined by FIA scrutineers (*The Guardian of 1/11/2007, p. S7*).

Although the British F1 team continued to protest their innocence, it emerged that the verdict could have been a great deal worse. This was confirmed the day after the hearing, when the Formula One “ringmaster”, Bernie Ecclestone, revealed that McLaren came “within minutes” of being excluded from the 2007 title race. There were also continued question marks over the manner in which the incriminating evidence came to the notice of the FIA. The suggestion had been made that it did not emanate exclusively from the Italian public prosecutor's findings as was previously thought, but that it resulted from a conversation between Alonso and his former employer Flavio Briatore of Renault, who then informed Mr. Ecclestone who, in turn, passed on the information to Max Mosley, the FIA President. Having effectively subpoenaed the McLaren drivers into revealing their email and SMS communications, as explained earlier, the FIA learned that, unequivocally, Alonso and de la Rosa received the confidential information via Coughlan, and that both knew its exact nature as well as the fact that it had been received by Coughlan from Stepney.

Although they could not prove that such information had actually been used to improve the McLaren vehicle, the Council took the view that de la Rosa's evidence made it clear there was no hesitation or reluctance about testing the Ferrari information. Other aspects discussed by the three included a flexible rear wing tried by Ferrari, their braking system, and the gas used to inflate their tyres (*The Independent of 15/9/2007, p. 77*). The fact that McLaren also knew that refuelling strategy being used by Kimi Raikkonen's winning Ferrari car during the season-opening Australian Grand Prix on 18 March also indicated that Nigel Stepney was leaking confidential information to Coughlan from the very start of the year (*The Guardian of 15/9/2007, p. S6*).

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Reactions

Did the punishment fit the crime? Opinions were divided. Some thought the penalty excessive, particularly in view of the suspicion, aired earlier, that it reflected the continuous warfare between McLaren and the FIA – more particularly a kind of “class struggle” between Ron Dennis (McLaren) and Max Mosley (FIA). The former had worked his way up from humble origins, and had started as a mechanic to the late Austrian racer Jochen Rindt, and ultimately succeeded in operating his own teams. The latter, being the son of controversial upper-class politician Oswald Mosley, started life as part of a family which owned a significant part of the city of Manchester (*The Independent of 14/9/2007, loc. cit.*). On the other hand, if McLaren were penalised for using the information secured by unwarranted means, it seemed somewhat illogical not to penalise its two leading drivers as well, since their cars benefited from the Ferrari technology (*Daily Mail of 17/9/2007, p. 69*).

Not unsurprisingly, the latter view was strongly espoused by Mosley himself. Several days after the hearing, he revealed that he had been in a minority at the meeting in question. He further revealed that it was only the immunity which he had granted the McLaren drivers in return for incriminating information which had prevented them from being excluded from the drivers’ championship after the team had been found guilty of using Ferrari data. He concluded that, should either Hamilton or Alonso win the title, a question mark would hang over their success (*The Guardian of 17/9/2007, p. S1*). He seemed to have a valid point where he stated:

“Very often (...) a car will be disqualified because it is a kilo overweight which will probably make no difference at all, but you have to have this principle. It’s the same as anywhere else, if you’re outside of the rules, you are not in the game” (*The Independent of 17/9/2007, p. 71*).

On the other hand, it was pointed out that the fine imposed on McLaren, although sizeable in real terms and reaching an unprecedented amount, would barely constitute a dent on the McLaren money-making machine. For a company with a turnover of almost £500 million per year, this amount does indeed seem eminently surmountable. The fact that part of the penalty was to come from the prize money that McLaren would forego as a result of being stripped of their title also lends a different perspective to the verdict (*The Daily Telegraph of 14/9/2007, p. S2*). In addition, it has been pointed out that the “Golden Boy” of F1 racing, Lewis Hamilton, has emerged from the scandal without a stain on his character, and that this can only work to the benefit of McLaren in the long term (*The Guardian of 15/9/2007, p. S6*).

Evidence that the penalty imposed had not damaged McLaren as much as might have been supposed came within the next few days, when Ron Dennis was offered the total support of the team’s engine partner. Daimler AG, the owner of Mercedes-Benz, as well as the holder of a 40 per cent stake in the British team, added their backing following the news of the verdict. This followed a formal statement by Mercedes expressing their disappointment that the FIA had failed to accept an invitation to verify the specifications of McLaren’s racing cars when the controversy erupted. The Mercedes endorsement is likely to be followed by other shareholders. The former reportedly paid approximately \$400 million for a 40 per cent stake in the McLaren group in 1999 and, whilst Dennis currently controls a mere 15 per cent of the equity, the TAG heir Mansour Ojeh generally votes with Mr. Dennis on all major issues. A further 40 per cent is owned by the Mumtalakat holding company, being a trading group wholly owned by the Bahrain government. (*The Guardian of 18/9/2007, p. S8*).

Unsurprisingly, the Ferrari camp continued to protest that McLaren should have paid the ultimate price in terms of forfeiture of drivers’ championship points. Luca di Montezemelo, the Italian team’s president. Even went so far as to declare that Lewis Hamilton would owe his success to Ferrari if he clinched the Formula One title (*The Guardian of 3/10/2007, p. S6*). He later described the 2007 Formula One series as the “championship of poisons” and attacked the manner in which the WMSC had handled the entire affair. He said:

“We saw people who lied, people who improved the performance of the car in a non-sporting fashion. [The McLaren fine] was an absurd sentence, which affirmed that there was treachery. The sentence was unacceptable” (*The Daily Telegraph of 25/10/2007, p. S18*).

He also likened the unpenalised run at the title enjoyed by Hamilton and Alonso as a jockey who races with a doped horse and wins in the end (*The Guardian of 25/10/2007, p. S8*). Although slightly intemperate in tone, Mr. de Montezemelo’s words would appear to have struck a chord – not only in Italy, but across the Mediterranean world as a whole. This subject will be returned to when discussing the aftermath (see below).

Further revelations come to light

The announcement, made exactly a week after the special WMSC meeting referred to above, that McLaren would not appeal against the latter’s verdict seemed to signal the end of the matter, and to enable Formula One racing to draw fresh breath (*The Daily Telegraph of 22/9/2007, p. S6*). However, this was not to be. Not only

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did further disturbing revelations about the entire sordid affair come to light, but subsequent developments would throw up yet another potential “spygate” scandal – as will be discussed below (p.52).

In the first instance, more details about the manner in which the Ferrari affair had been handled (or, in many insiders’ view, mishandled) came to light – and, once again, they did not reflect much glory on the world of F1 racing. It was disclosed shortly after the verdict that the FIA investigation had found that Fernando Alonso had informed the sport’s commercial rights holder, the aforementioned Bernie Ecclestone, about the presence of incriminating emails on his laptop computer. Mr. Ecclestone then passed this information onto FIA president Max Mosley, culminating in the latter’s missive to the McLaren drivers that led directly to the hearing which imposed the record fine described above (*The Guardian of 20/9/2007, p. S1*). Cross-examined during the hearing, McLaren team principal Ron Dennis had claimed he himself informed Mosley about the drivers’ email communications. However, the Ferrari lawyer, Nigel Tozzi, replied:

“That is not quite right. You know what Mr. Mosley said in his letter dated 6 September 2007. You know what the explanation is: Mr. Alonso apparently showed some information to someone else. If Alonso had not shown the documents to Mr. Ecclestone, and Mr. Ecclestone had not alerted Mr. Mosley, who then wrote to the drivers, we would not have found out about these emails. Is this not so?” (*Ibid*).

Dennis, for his part, claimed not to know how the information came into the public domain, alleging that “to this day” he did not know how they came to Ms. Mosley’s attention, apart from him telling the FIA chief (*Ibid*). In fact Mr. Mosley subsequently admitted that Bernie Ecclestone had originally alerted him to the significance of the email exchange between Alonso and de la Rosa (*The Guardian of 26/9/2007, p. S6*). The significance of these revelations resided in the fact that Mr. Alonso is alleged to have threatened to take the information gleaned from the emails exchanged with test driver Pedro de la Rosa to the FIA, unless McLaren gave him unconditional No 1 status within the team, or gave him an early release from his long-term contract. It became almost irresistible to draw the conclusion that Alonso may have blackmailed the team. When taxed about this allegation on the occasion of the Belgian Grand Prix at Francorchamps, Mr. Alonso simply refused to answer the question, curtly replying that he was “here to race” (*The Sunday Telegraph of 16/9/2007, p. S1*). To make matters more uncomfortable for Mr. Alonso, his integrity was called into question by Lewis Hamilton a few days later – admittedly we must

discount something for sporting rivalry – claiming that the Spaniard’s refusal to attend the FIA hearing in order to support the McLaren team indicated where his rival’s loyalties lay (*The Daily Telegraph of 28/9/2007, p. S1*).

Shortly afterwards, it was Ferrari’s turn to be at the centre of spying claims – although here again, these could be subject to qualification in the light of the person who made them. In early October, Nigel Stepney, the dismissed engineer at the centre of the imbroglio, claimed that his former employers were no strangers to the indicted practice themselves. Speaking to the grandprix.com website, the Brit alleged:

“I got the information about when they (McLaren) were stopping. I got weight distribution, I got other aspects of various parts of their car from him (Coughlin). Ferrari got off very lightly. I was their employee at the time” (*The Independent of 4/10/2007, p. 66*)

Mr. Stepney went on to claim that as a result, he became aware of some of McLaren’s insider secrets – including the fuel levels at which they were running. He also conceded that he “spoke to some people (at Ferrari) about it”, and that, in his view, Ferrari also gained an advantage over their rivals without being penalised for it (*Ibid*). Naturally, the source of these claims was not entirely impeccable or disinterested, and the FIA has, to date, not taken any action against the Italian team pursuant to these claims.

The same cannot be said of yet more allegations about F1 espionage which involved yet another top team into the fracas – as will be detailed below.

The Renault affair

Scarcely was the ink dry on the verdict which imposed the penalty on McLaren at the September FIA meeting than the atmosphere was once again thick with accusations – this time emanating from the penalised team itself. At first, it seemed as though this might amount to little more than a “tit-for-tat” reaction on the part of the British team. However, the fact that this could not necessarily be dismissed as such seemed to be conformed when Max Mosely – no bosom friend of the McLaren firm, as has been detailed above – seemed to take the allegation extremely seriously, and conformed that the world governing body would act against the French team if McLaren provided any evidence. The Renault team principal, Flavio Briatore, reacted immediately, claiming that this case was entirely different from the McLaren “spygate” scandal, and threatened court action against anyone who maintained otherwise (*The Independent of 18/9/2007, p. 77*).

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Several weeks later, the French team were summoned before the FIA World Council, charged with the possession and use of technical information belonging to another team. That other team, ironically enough was... McLaren. As with the previous scandal, it was being alleged that a former McLaren staff member took with him to Renault a raft of technical data which subsequently informed the development of the 2007 French cars. The information concerned included, inter alia, the layout and critical dimensions of the McLaren F1 car, as well as details of the McLaren fuelling system, gear assembly, oil cooling system, hydraulic control system and a novel suspension component used by the 2006 and 2007 McLaren vehicles. Whilst it is acceptable for engineers who change teams to take with them the accumulated wisdom drawn from the sum of their experience in F1, they are prohibited from taking detailed design elements relating to specific engineering projects on the cars left behind (*The Daily Telegraph of 9/11/2007, p. S10*).

Apparently McLaren discovered the alleged espionage whilst conducting an investigation of their own procedures during the case brought against them, as described above. They had been tipped off by a member of staff who had shortly beforehand joined them from Renault, and who told of a weighty package of information – amounting to many CDs – which was passed to engineers at the French squad (*Ibid*). In addition, according to insiders, an independent investigation at Renault which was instigated by McLaren had revealed information bearing McLaren logos on seven computer terminals in the design department, which was alleged to make the documents possessed by McLaren and emanating from Ferrari look very modest and innocuous by comparison (*The Independent of 9/11/2007, p. 64*). Renault, for their part, conceded that a certain engineer did bring with him several disks which included engineering drawings and technical spreadsheets from his former employers. However, they added that the disks had since been returned to McLaren and the information contained on them erased. The French team also acknowledged that the information was shared among some staff members, but deny that it was put to use by the team and insisted that the 2007 cars contained no intellectual property emanating from McLaren (*The Daily Telegraph of 10/11/2007, p. S24*).

However, matters assumed an entirely new dimension a few weeks later when McLaren were forced into an embarrassing climbdown for falsifying information. Their original claim was that their former employee Steve Mackereth took 780 technical drawings with him on

joining Renault. However, the British team later conceded that there were only 18 drawings, and that nine employees, rather than the implied 18, had admitted to seeing the sensitive data (*Daily Mail of 6/12/2007, p. 76*). The evening before the relevant hearing, the FIA obliged McLaren to clarify some of the information disseminated on their behalf (*The Independent of 7/12/2007, p. 74*).

Came the day of the fateful WMSC meeting on 6 December, and at its conclusion, Renault were definitely found guilty of breaching the International Sporting Code for being in possession of intellectual property belonging to McLaren. However, in yet another remarkable decision, the Council decided not to impose any penalty on the grounds that the French team had not used this information to benefit their 2007 car (*The Independent of 7/12/2007, p. 74*). The next day, it published an explanatory note to its decision. This stated that there was no evidence that images of a fuel system schematic, gear layout and mass damper influenced any Renault design. Renault only used the remaining drawing of the so-called J-damper in order to have the system which it thought McLaren was using declared illegal. This failed because Renault had certain fundamental misunderstandings about the operation of the J-damper system. This in turn suggested that Renault having sight of the damper in question drawing did not give Renault sufficient information to understand how it worked (*Associated Press, www.findlaw.com of 8/12/2007*).

The statement went on to proclaim that, although a number of very unsatisfactory elements were noted during the deliberations the WMSC had concluded there was insufficient evidence to establish that the information was used in such a way as to interfere with or have an impact on the championship. However, it served notice that in the event of new information coming to light which calls into question the WMSC's conclusions, this matter could be reopened before the FIA (*The Daily Telegraph of 8/12/2007, p. S21*). The statement concluded:

***“The McLaren confidential information brought to Renault was in the context of a formula one engineer changing teams. It was not “live” information in the sense that there is no evidence of a flow of current information between competing teams. After leaving McLaren, Mackereth had no further access to current or updated McLaren information. Nor is there any suggestion that Renault encouraged Mackereth in any way to bring the confidential information from McLaren (The Guardian of 8/12/2007, p. S12).*”**

The essential difference between the Renault and McLaren cases therefore appeared to be that there was no evidence that Renault actually applied the

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information, whilst the incriminating emails and text messages referred to above suggested that the Ferrari data had been used by the British team (*The Daily Telegraph of 8/12/2007, loc. cit.*).

McLaren apology pre-empts further hearing

The Renault decision reached in early December tended to overshadow the fact that, even though the 13 September decision had appeared to deliver a final verdict on the charges brought against them, McLaren themselves remained under the cloud of further possible penalties. On the same day as the Renault verdict, the WMSC made a decision which meant that the British team could face further penalties arising from their part in the "Spygate" affair. The Council deferred until 14/2/2008 a ruling on the question whether the McLaren 2008 car was untainted by the spying controversy. It was learned that independent inspectors had visited McLaren's headquarters in order to examine the designs for the following year's vehicle. If anything incriminating were to be found, the team stood to start the season with a points penalty (*The Daily Telegraph of 8/12/2007, p. S21*). McLaren responded by stating that they remained confident that no evidence of the use of Ferrari data would be discovered (*The Guardian of 8/12/2007, p. S12*).

However, McLaren must have realised that time was against them. The 14 February dateline meant that they would have to wait until barely four weeks prior to the start of the new season (the Australian Grand Prix in Melbourne on 16 March) before finding out whether or not their new design had been approved by the governing body. The in turn meant that it would be extremely difficult to incorporate any modifications required within a tight time schedule – possibly leading to technical compromises which could undermine the vehicle's competitiveness (*Ibid*). It therefore did not come as a complete surprise to learn that, in mid-December, McLaren offered a public and wide-ranging apology for their illegal use of Ferrari data the previous season. Following a detailed examination of their current and newly-designed 2008 vehicle, the MP4-23, the team acknowledged that the Ferrari information had obviously been disseminated more widely than had previously been made public. McLaren said that they "greatly regretted" that their own investigations failed to identify this material, and that they had issued a written apology to the WMSC (*The Independent of 14/12/2007, p. S10*). The British team also offered a set of detailed undertakings to the FIA which would impose a "moratorium on development in relation to three separate systems" (*Ibid*).

The FIA welcomed the apology, and immediately announced that this entailed the cancellation of the hearing planned for 14 February. It was quickly noted that, by any standards, this amounted to a grovelling apology from the British team which demonstrated how anxious they were to draw a line under this acutely embarrassing episode. The apology sent to the FIA by Martin Whitmarsh, the McLaren group's chief operating officer, expressed deep regret that it took an FIA investigation, rather than McLaren's internal inquiries, to uncover the information. McLaren also conceded that:

"the entire situation could have been avoided if we had informed Ferrari and the FIA about Nigel Stepney's first communication when it came to our attention. We are, of course, embarrassed by the successive disclosures and have apologised unreservedly to the FIA World Motor Sport Council" (*The Guardian of 14/12/2007, p. S10*).

In order to prevent the Ferrari information from influencing their performance during 2008, McLaren offered a set of detailed undertakings to the FIA which was to impose a moratorium on development in relation to certain technical systems on the car. Ferrari, for their part, pronounced themselves "happy" to bring this matter to a close, but added – somewhat inconsistently – that the team were still about to pursue the matter through the courts (*Ibid*). Regardless of the outcome of this judicial action – on which this writer pledges, as ever, to keep his readership informed as faithfully as possible – it must be admitted that, by revealing the full extent of the reliance on Ferrari information, not only on the car which won eight races in the course of 2007, but also the MP4-23, being the model under construction for 2008. Therefore, the integrity of a team which had previously prided itself on its immaculate and unimpeachable image had been ripped apart by the actions of engineers acting on information leaked by a disaffected Ferrari employee (*The Observer of 16/12/2007, p. S8*).

There was nevertheless a good deal of disquiet at the ease and speed with which this apology caused the cancellation of the FIA investigation, and left one wondering about the deeper politics of this decision. Although neither McLaren nor the FIA would admit as much, there may have occurred some kind of plea bargain, whereby the investigation was halted in return for the rapid departure of Ron Dennis from his position as McLaren team principal. The latter's position seemed to have become untenable, because either he knew about the Ferrari permeation within his company, or he was in ignorance of the corrosive actions committed by a handful of his employees. Probably the latter was the case, but, even so, it displayed serious deficiencies in his handling of the entire affair (*Ibid*).

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The aftermath

At the time of writing, it would seem that the desire, expressed by all the protagonists, to “draw a line” under this entire shabby affair is a triumph of hope over experience. Certainly this cannot be the case in sheer legal terms, since the Italian criminal authorities have yet to complete their investigations and, once the latter are concluded, are unlikely to leave the matter without at least a formal court procedure. In addition, Ferrari have confirmed that they intend to pursue Mike Coughlan and Nigel Stepney through the British and Italian courts (*The Independent of 19/12/2007, p. 49*). Secondly, the damage done to the entire image of the sport, although hard to assess in the short term, could be incalculable and take several years to overcome.

In the first instance, there is a nagging feeling that justice has not been done, and that considerations other than the purely legal have played a part. First of all, there was the sleight of hand by the FIA in fining McLaren and stripping it of its team points, but failing to impose a similar penalty on the drivers, in particular Lewis Hamilton and Fernando Alonso. It is true that, had this been done, the F1 season would have been ruined, but if it was indeed this consideration which informed the WMSC’s approach, this will merely confirm the widespread view that money dictates everything and overrides such trifling considerations as justice and morality.

The other area in which justice may have been frustrated is the manner in which Renault was able to elude any penalty for its misdemeanours, contrary to the fate which befell McLaren, which continues to trouble many insiders, however ingenuously the WMSC decision distinguished the McLaren precedent. If, as has been mentioned earlier, it was the personality conflict between Messrs. Mosley and Dennis which was at the root of this discrepancy, this can hardly enhance the image of the sport either. If, on the other hand, the FIA were swayed by the mendacity displayed by McLaren concerning the extent of the material obtained by Renault, such a reason would appear more justifiable, but not entirely so in strictly legal terms.

It is also a fact that, thus far, the FIA do not seem to have taken any steps to prevent similar scandals from erupting in the future. In order to do so, it will need to tackle head-on the issue which lay at the root of the imbroglio – i.e. that of employees moving from one team to another and taking valuable information with them. In earlier, technically less sophisticated times, such details may have been in the engineer’s head, but the substitution of computer disks or, in the case of

Ferrari and McLaren, a 780-page document, has changed the complexion entirely (*The Observer of 11/11/2007, p. S7*). It is surely time for the world governing body in the sport to lay down some ground rules, or at least tighten up the existing ones, in order to avoid a repeat of the scandals which have done so much to tarnish its image.

There is, however, one way in which fate may have delivered the most appropriate verdict. McLaren’s Lewis Hamilton did not, in the end, win the World Championship. He had started the last race of the season, to wit the Brazilian Grand Prix as title favourite but a poor start and car problems handed the championship to Kimi Raikkonen of Ferrari. The sense that justice had ultimately been done was by no means confined to the Italian team’s camp.

Police investigate sumo wrestler death – but fail to prosecute (Japan)

Another sport which has suffered a good deal of damage to its image lately is sumo wrestling. Thus far, however, this had been the result mainly of corruption scandals. In recent months matters have taken on an infinitely more serious turn, with the death of a young wrestler in Japan, allegedly at the hands of his stable master and four fellow-wrestlers.

The death of Takashi Saito, aged 17, in the city of Nagoya in late June 2007 was initially reported as an unfortunate result of a training accident. Fighting under the name Tokitaizan, he was admitted to hospital with severe bruising which an autopsy indicated were not the result of an accident. This matter naturally came to the attention of the police, who questioned the stable master, Tokitsukaze, and informed the media that the latter had admitted hitting his student with a beer bottle and compelling him to train so hard that he could hardly stand. Four other wrestlers were also reported to have admitted beating and kicking the young fighter, who had in fact told his parents earlier that he wished to leave sumo because he was frightened of the senior wrestlers. On the day prior to his death, Saito was caught attempting to flee (*The Daily Telegraph of 27/9/2007, p. 20*).

In spite of this, the police later concluded that the 17-year-old died from “heart disease”. However, they had reached this conclusion without even involving the attentions of a coroner for an official autopsy. According to the US newspaper, the Los Angeles Times:

“As is common in Japan, Aichi police reached their verdict on how Saito died without an autopsy. No need for a coroner, they said. No crime involved. Only 6.3 percent of

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the unnatural deaths in Aichi are investigated by a medical examiner, a minuscule rate even by nationwide standards in Japan, where an autopsy is performed in 11.2 percent of cases. (*The Los Angeles Times of 9/11/2007, p. 45*)

This affair has given rise to question marks, not only over the manner in which the sport is conducted, but also over the probity of the Japanese police. More particularly it has given rise to suspicions that Japan's much-vaunted low homicide rate may not be all that it seems.

Mafia claims in racing stable deaths (Italy)

In late December 2007, 20 horses were burned to death as a result of an arson attack on an Italian racing stable, which caused damage amounting to £1.5 million. Police believe that the Ajrale stables at Vigone, on the outskirts of Turin, were targeted by the mafia as part of a betting racket. The stables housed 200 horses used in trotting races (*The Daily Telegraph of 29/12/2007, p. 20*).

Italian traditional sporting events marred by violence

The Regata Storica is a time-honoured event in Venetian history which is staged in the late summer. Like some other Italian traditional festivals which have made these columns (notably the Palio horse race held in Siena) it has a darker side – in this case a competitive edge which sometimes spills over into downright violence. The 2007 event once again descended into such excesses and, as duelling gondoliers rammed each other in the day's top race, one disgruntled competitor hurled flags into the Grand Canal, and the mayor was escorted off the winning podium by police following a disturbance.

The event itself started in fine style, as an opening procession of antique vessels bearing locals decked out in traditional costume paraded before crowds of tourists and dignitaries, including the mayor, Massimo Cacciari. However, colourful pageantry soon turned to violence during the climactic race involving the "gondolini", being 10-metre long, slimmed-down gondolas propelled forward by two oarsmen, which speed past the Piazza San Marco and up the Grand Canale. The Vignotto cousins, Igor and Rudi, rapidly established a joint lead with Giampaolo D'Este and Ivo Redolfi Tezzat. All four have been fierce rivals for the past 15 years. Following a series of blocks, wildly swung oars and at least three collisions, Messrs. D'Este and Tezzat took a narrow lead to win – only for Igor Vignotto to storm up behind them onto the winners' podium, hurl the victors' flags into the water, and accuse the mayor of allowing D'Este to compete in spite of a

pending disqualification for ramming incurred during earlier regattas, against which D'Este has lodged an appeal (*The Guardian of 5/9/2007, p. 20*).

This accusation drew a swift and belligerent response from the dignitary in question, who not only protested his honour but, deciding that action spoke louder than words, squared up to Mr. Vignotto before city council staff and the police separated the two. However, this exhibition of thuggery failed to shock many onlookers, such as Silvio Testa, a Venetian writer and journalist who expressed his gratification at seeing sparks fly:

"It's not the violence that spoils the regatta, but the rules they have been adding for the past 30 years which set the gondoliers against each other. This is not Henley. Rivalry and physical contact have always been a part of it" (*Ibid*).

These goings-on marked the second occasion in 2007 on which violent rivalry has taken the spotlight at traditional pageantry-fuelled sporting events in Italy. Earlier that year, city officials in Florence issued a one-year ban to the Calcio Storico tournament, a blend of football and bare-knuckle fighting controlled by referees dressed in velvet jackets and pantaloons. Contested by neighbourhood teams in the Piazza Santa Croce for centuries, the event had to be suspended after a brawl which saw 50 players taken to court (*Ibid*).

Democratic ticket pricing – a recipe for World Cup racketeering? (South Africa)

The law of unintended consequences is a recurring theme in sport, and none more so when the root cause is shrouded in the most honourable of intentions. This is what threatens to happen in the context of the forthcoming World Cup, which will be hosted by South Africa in a few years' time. In order to ensure that spectators at the event are truly representative of the host nation's society, FIFA, the world governing body in football, announced in late November 2007 that the cheapest Category Four tickets would be available to South African residents only and sold for a mere \$20, equivalent to 140 rand. They will also issue 120,000 free tickets via sponsors and community schemes in order to help improve access to fixtures for the least wealthy sections of the population (*The Guardian of 29/11/2007, p. S2*).

However, this entirely honourable initiative presents a problem. As yet, no satisfactory system has been devised in order to prevent tickets being sold at a profit or falling into the hands of touts. With income for the lowest paid amounting to R50 per day, there is at least an expectation that many will be sold on to overseas

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fans desperate for admission. The Government had considered introducing legislation to make the resale of tickets an offence, but this has run into obloquy from the South African Police Service, which believes that such laws would be unenforceable. With security and crime as their main concern, the police have made it clear that they will be adequately employed ensuring the safety of spectators without the added responsibility of arresting touts (*Ibid*).

Coach of marathon boy arrested for abuse (India)

The fairytale story of Budhia Singh, the “miracle marathon boy”, has been featured in these columns before ([2006] 3 *Sport and the Law Journal* p. 89). In addition to the controversy surrounding the boy’s suitability to compete in such strenuous circumstances, a criminal aspect now threatens to tarnish this phenomenon. In mid-August 2007, it was learned that Mumbai police arrested the boy’s coach amid claims that he regularly tortured the child prodigy. Biranchi Das was detained on charges of routinely beating the boy, starving him, putting chilli in his eyes, branding him with a hot iron and hanging him upside down from a rotating ceiling fan. Police arrested Mr. Das after the boy’s mother discovered scars on his body (*The Times of 14/8/2007, p. 29*). No further details are available at the time of writing.

Four people shot at US school football game

In late October 2007, it was reported that a shooting which occurred near a middle school (American) football game had left a high-school student in critical condition and injured three other people. The pupil in question, a 16-year-old boy, was shot in the neck, whilst three other victims, being two adults and another high school student, were treated but later released. It was unclear whether the wounded 16-year-old had been targeted, but the three other victims were said to be bystanders walking away from the game. Around 100 people were watching the game when the gunfire erupted at half time. Players and spectators were moved towards the centre of the football field immediately after the incident. A 15-year-old was later questioned by police (Associated Press, www.findlaw.com of 25/10/2007). At the time of writing, it was not learned whether criminal charges had been brought.

“Off-field” crime

OJ Simpson on robbery charge (US)

The mercurial life of former US football star and actor O. J. Simpson assumed yet another dimension in mid-September 2007 when he was arrested by police in Las Vegas in connection with a break-in at a hotel. He was later released but named as a suspect in the theft of sports memorabilia at the Palace Station Casino. Mr. Simpson stated that he had mounted a “sting” operation by proceeding to the hotel room in order to recover memorabilia belonging to him. He was apparently accompanied in this eccentric act by several men whom he had met at a wedding he happened to be attending. The victim reported the incident as armed robbery, although Mr. Simpson immediately denied that any weapons were involved (*The Guardian of 15/9/2007, p. 27*).

Mr. Simpson claimed that the items, which included several sporting trophies and photographs taken by his former murdered wife, Nicole Brown, had been stolen from him. Police later said that at least one other person had been arrested in the case, and that as many as six remained under suspicion. In spite of his claims that no arms were involved, police later stated that they had recovered two firearms and other evidence at a private residence in Las Vegas. They also reported that the other man to be arrested, Walter Alexander of Arizona, was also charged on multiple counts of armed robbery and was said to be one of two men bearing a firearm (*The Independent of 17/9/2007, p. 30*). Mr. Simpson denied any wrongdoing, and described the incident as “somebody going to get his private belongings back”. He also denied that the men accompanying him were criminals, describing them as “golfers” (*The Guardian of 17/9/2007, p. 17*).

The following day, matters took a turn for the worse for Simpson – who, if found guilty of the charges, could face a 30-year jail sentence. TMZ.com, a celebrity news website, released an audiotape on which a man believed to be Simpson was heard shouting questions whilst other men yelled orders. The site also claimed that the tape recorded Simpson’s alleged stand-off with men whom he accused of stealing his memorabilia. It began with the former football star demanding “Don’t let nobody (sic) out of here. Think you can steal my (expletive) and sell it?” Later, the judge in charge of the case ordered Simpson to be held without bail (*The Guardian of 18/9/2007, p. 27*). The next day he was formally charged with kidnapping, conspiracy and robbery. Three co-defendants were also charged (The

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Independent of 19/9/2007, p. 55). He was subsequently released on bail, set at \$125,000 (*The Independent of 20/9/2007, p. 37*). Two months later, Simpson pleaded not guilty at his arraignment. A trial date was set for April 2008 (*The Guardian of 29/11/2007, p. 33*).

At first, it seemed that, in spite of the seriousness of the charges, Mr. Simpson had plenty of favourable aces to play in defending himself. In the first place, Bruce Fromong and Alfred Beardsley, the two dealers whom Simpson is alleged to have robbed, have given conflicting accounts of the alleged assault. In addition, Mr. Beardsley turned out to be wanted in California for parole violation following a stalking conviction. There are also questions about the motives of Tom Riccio, a friend of the x-footballer who arranged the meeting with the two dealers at which Simpson posed as a collector. Mr. Riccio, who also has a criminal record, accompanied Simpson to the meeting and taped the encounter (*The Sunday Times of 23/9/2007, p. 23*).

However, the case for Simpson suffered a blow in mid-October, when one of the alleged accomplices agreed to enter a guilty plea and to testify against the fallen star. The accused in question, Charles Cashmore, struck a deal with prosecutors under which he will plead guilty to being an accessory to robbery, and to testify that guns were used during the raid (*The Daily Telegraph of 16/10/2007, p. 19*). In addition, Bruce Fromong was allegedly reported to have helped Simpson in setting up off-shore accounts in order to prevent the relatives of Ron Goldman, for whose death Simpson had been ordered by a civil court to pay \$33.5 million, from accessing his assets (*The Daily Telegraph of 21/9/2007, p. 18*).

The present column will obviously report on further developments in this intriguing saga for the benefit of its readership.

[This episode is probably related to a separate legal development, in which Mr. Simpson was ordered to hand over a Rolex watch and sporting memorabilia to relatives of his alleged victim Ron Goldman, the friend of his ex-wife Nicole Brown. A Californian judge ruled that these assets – which include items allegedly stolen in Las Vegas as reported above – would assist in meeting a multi-million civil judgment which held the former football star liable for the deaths in 1994 of Ms. Brown and Mr. Goldman (*The Daily Telegraph of 4/10/2007, p. 14*).

Berbick killer convicted (Jamaica)

In the previous issue of this Journal (*[2007] 2 Sport and the Law Journal p. 39*) it was recorded that Trevor Berbick, the last boxer to face Muhammad Ali in the ring and briefly held the WBC heavyweight title, had been beaten to death, his body having been left in a church courtyard. In mid-December 2007, his nephew, Harold Berbick, was convicted of his murder by a court in Kingston, Jamaica. In addition, Kenton Gordon was found guilty of the boxer's manslaughter (*The Daily Telegraph of 22/12/2007, p. S23*). It is thought that Mr. Berbick and his nephew had been involved in a land dispute (*Ibid*).

College footballer shot dead in Memphis (US)

In early October 2007, the news broke that a 21-year-old US college footballer, Taylor Bradford, was shot near his apartment complex, then crashed a car which he was driving into a tree located a short distance away on the campus of the University of Memphis. Police were responding to the crash when they found Mr. Bradford slumped over in the car. Witnesses saw two unidentified men running from the area where it was believed that the shooting occurred. Other witnesses reported gunfire (*Associated Press, www.findlaw.com of 5/10/2007*).

It was later rumoured that Mr. Bradford had won more than \$3,000 at a nearby casino the night before the shooting – which opened the possibility that robbery had been the main motive. Four men were later arrested and charged (*Associated Press, www.findlaw.com of 9/10/2007*).

Washington Redskins footballer shot dead in Florida (US)

In late November 2007, it was learned that Sean Taylor, a prominent footballer with the Washington Redskins, was shot at his Florida home. Initially, it looked as though the unfortunate footballer might recover (*The Guardian of 27/11/2007, p. S5*). However, the 24-year-old had suffered a severed femoral artery and died the next day. It was also learned that eight days earlier, both Mr. Taylor and his girlfriend had reported an intruder at the home (*The Guardian of 28/11/2007, p. S4*). Four men, three of them teenagers, were later charged with unpremeditated murder. It would appear that this was a case of a burglary, in which the perpetrators had expected the occupants to be away (*Associated Press, www.findlaw.com of 2/12/2007*). No further details are available at the time of writing.

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Brother of Honduras international abducted

One of the more troubling developments in Latin American football, reported in previous editions of this Journal, has been the propensity for its top stars' relatives to be targeted by kidnapers eager for ransom money. The latest victim of this sordid practice is Edwin Palacios, brother of the Honduran international and Birmingham City midfielder Wilson Palacios (*The Independent of 1/11/2007, p. 67*). Shortly before going to press, a leading Honduran newspaper reported that the unfortunate Mr. Palacios remained unaccounted for (*El Heraldo of 7/1/2008, p. 1*). There were 33 kidnappings in Honduras in 2007. In December 2002, Henry Suazo, the brother of David Suazo, a striker playing for Inter Milan, was also abducted but released after two weeks (*The Times of 31/10/2007, p. 79*).

US football star Vick jailed for running dog fights

Dog fighting is a sordid practice which, although initially restricted to the rural Southern states of the US, has increased in popularity throughout the country. It is, however, illegal in the US. In mid-August 2007, it was revealed that Michael Vick, one of the biggest stars in American football, was facing criminal charges for participating in this practice. The operation was centred round the footballer's 15-acre property in Virginia. Prosecutors alleged that the hounds in question fought to the death in pits operated by a group called Bad Newz Kennels, and that some underperforming dogs had been shot, drowned, hanged, electrocuted or killed by being slammed to the ground. Mr. Vick and three other defendants initially pleaded not guilty when they appeared in Richmond, Virginia. However, shortly afterwards two of them (not including Vick) changed their plea to guilty (*The Guardian of 18/8/2007, p. 22*).

As more details of the operation leaked out, it appeared that more than 50 highly-trained and brutalised pit bulls were seized from the kennels, and that they had been entered in more than two dozen fights with bets which sometimes amounted to as much as \$13,000. The investigators also found training equipment and numerous dog carcasses. Typically, pit bulls are put through several weeks of cardiovascular training, some have their teeth sharpened by electric grinders while under sedation, and their jaw muscles strengthened with "bite and shake" exercises (*The Independent of 24/8/2007, p. 33*). Mr. Vick finally admitted to his involvement in the practice when his lawyers lodged papers with the court to that effect (*The Guardian of 25/8/2007, p. 25*). He conceded that he had taken part in the enterprise between 2001 and 2007, and that he

knew the dogs would be killed if they did not fight well (*The Guardian of 28/8/2007, p. S2*).

Three months later, Mr Vick was sentenced to a 23-month term of imprisonment for his part in the affair (*The Independent of 11/12/2007, p. 44*). Rules governing good behaviour could reduce the sentence by around three months. His co-defendants, Peace Phillips and Tony Taylor, were sentenced to 18 and 21 months respectively. Mr. Vick had already been suspended indefinitely by the NFL, and there are doubts whether this suspension will ever be lifted (*Associated Press, www.findlaw.com of 11/12/2007*).

Open verdict on Woolmer death (Jamaica)

The sad story of Bob Woolmer, the former Kent and England batsman who later became coach to the Pakistan national team and was found dead in his hotel following his side's early World Cup exit, has been extensively documented in the previous issue of this Journal (*[2007] 2 Sport and the Law Journal p. 67 et seq*). For a long time, the Jamaican police treated the affair as murder, before new medical evidence seemed to prove that Mr. Woolmer died from natural causes.

It was not until mid-October 2007 that the official inquest on the Woolmer death was opened in Kingston, the Jamaican capital. Proceedings opened with a statement by Dr. Nathaniel Carey, a British pathologist, that he had found no marks of strangulation on Mr. Woolmer's body (*The Daily Telegraph of 17/10/2007, p. 15*). Dr Carey also stated that it was ill-health which led to his death. From the photographs of the cricket coach's body, he would point to heart disease as the cause of death. An enlarged heart fluid in the lungs and blood on the pillow in the hotel room provided further evidence of this (*The Daily Telegraph of 19/10/2007, p. S18*). However, the atmosphere in the courtroom was far from serene during these revelations. The exchanges between Dr. Carey and Kent Pantry, the director of public prosecutions, were ill-tempered at times. Mr. Pantry asked at a certain point whether it was possible that Woolmer had been strangled with a pillow, a suggestion which the pathologist dismissed as "foolish" and impossible. This statement was described as discourteous by Mr. Pantry (*The Guardian of 18/10/2007, p. S10*).

The first witness, a hotel chambermaid, described finding the coach's body sprawled on a blood-spattered bathroom floor, with an overturned chair in the room and blood on a pillow on the unmade bed. She said that Woolmer's body was blocking the bathroom floor, one

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of his feet stretching up to the wash basin. She recalled a smell "like vomit and alcohol mixed together" and saw vomit on the bathroom floor (*Ibid*).

However, matters took a different turn when Dr. Ere Shesia, the pathologist who conducted the autopsy on Mr. Woolmer, took the witness stand. He unambiguously adhered to his original opinion that the Pakistan coach had been poisoned and then strangled, dying of "asphyxia due to manual strangulation associated with cypermethrinide poisoning". He explained that Cypermethrin is a pesticide used in countries which include the United Kingdom, China, Pakistan Indian and Bangladesh (*The Daily Telegraph of 26/10/2007, p. B19*). He added that when the murder investigation was abandoned on 12 June he had still not received the toxicology report. He continued:

"I received a faxed copy of the toxicology report on June 21, and the report concluded that a poisonous toxin was found in Mr. Woolmer's stomach. I stand by my findings that Mr. Woolmer was strangled and, based upon additional information which I received, he was also poisoned" (*Ibid*)

However, Dr. Shesia's technique has been criticised by international pathologists who have testified at the inquest. However, he remained defiant, claiming that he had applied the correct methods in performing the post-mortem. He also stated that at no time had he informed the police that the autopsy was "inconclusive" as had been claimed (*Ibid*). Later during the inquest, Fitzmore Coates, a senior officer at the Forensics Science Laboratory in Kingston, seemed to confirm Dr. Shesia's thesis when he claimed to have detected lethal amounts of cypermethrin in Mr. Woolmer's stomach, as well as finding the potentially deadly chemical in urine and blood samples taken from the coach (*Associated Press, www.findlaw.com of 9/11/2007*). Then again, another Jamaican specialist who performed additional tests on stomach samples from Mr. Woolmer claimed that he had found no traces of the pesticide. Dr. Das Gupta claimed that Dr. Coates's data were "puzzling" and that he analysis was "not proper" (*Associated Press, www.findlaw.com of 13/11/2007*).

In the light of all this conflicting evidence, it did not come as a complete surprise to learn that the 11-member jury finally delivered an open verdict on Mr. Woolmer's death. They stated that they had not seen enough evidence to decide whether the coach had been murdered or died from natural causes. Coroner Patrick Murphy, who presided over the inquiry, said that the cause of death would now have to be determined by the Jamaican public prosecutor (*The Daily Telegraph of 29/11/2007, p. S14*).

Tyson jailed for drugs offence (US)

Like the former footballer O J Simpson, whose latest trials and tribulations with the law are described above, the former heavyweight champion of the world seems unable to keep out of the headlines for the wrong reasons. In late September 2007, he was reported as pleading guilty to a charge of possessing cocaine and driving under the influence at a court in Maricopa. His plea arose from an arrest on 29 December the previous year, in which the authorities claimed that Mr. Tyson had admitted to the use of the illegal substance (*The Independent of 25/9/2007, p. 32*). Two months later, he was sentenced to a term of imprisonment of one day and to three years' probation. He had faced a possible four-year sentence, and prosecutor Shane Krauser had wanted him jailed for one year, on the basis that he had a record as a multiple offender and had previously been convicted of violent crime (*The Guardian of 20/11/2007, p. S9*).

Wales prop conditionally discharged following nightclub fracas (Italy)

In early December 2007, Rhys Thomas, the Wales prop (rugby), received a conditional discharge from a court in Treviso, Italy, after spending a day in jail following a disturbance outside a nightclub in the town. Mr. Thomas had been detained by police in Italy, along with the Newport Gwent Dragons centre Rhodri Gomer Davies, following the side's Heineken Cup win over Treviso (*The Guardian of 11/12/2007, p. S8*).

Top Russian tennis player robbed

In mid-December 2007, Anna Chakvetadze, the Russian player ranked No 6 in the world, was robbed of goods worth approximately £100,000 after being tied up by thieves who raided her holiday home in Moscow. The police said that three or four hooded robbers broke into the house and tied up the 20-year-old tennis ace, as well as her parents. The family were, however, unharmed in the incident (*The Daily Telegraph of 19/12/2007, p. S17*).

US university footballers reinstated as sexual assault charges dropped

In an incident which occurred in early September 2007, a 19-year-old Millersville University student, as well as several witnesses, claimed that a sexual assault had taken place during an off-campus party. Nine college footballers were thereupon suspended. However, these suspensions were lifted after the alleged victim informed the authorities she no longer wished to cooperate (*Associated Press, www.findlaw.com of 27/9/2007*).

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Romanian boxers banned for theft at World Championships

The World Boxing Championships took place in Chicago, US, in the course of 2007. Its proceedings attracted unwanted attention when it was learned that three Romanian competitors had been sent home after being caught repeatedly stealing from a department store. The three were immediately sent home, together with their coach, and the President of the Romanian Boxing Federation issued a public apology to world governing body ALBA, who were organising the event (*Associated Press, www.findlaw.com of 29/10/2007*).

Security issues

Asian troubles cause cricket tour concerns

Pakistan

The unstable political situation in Pakistan has already given rise to concern among touring parties from abroad. In late October these fears resurfaced, and the fifth one-day international between the home side and South Africa, scheduled for Karachi, had to be switched to Lahore because of security fears. Shafqat Naghmi, the Chief Executive of the Pakistan Cricket Board (PCB) announced that the tourists had refused to play in Karachi because of the previous week's bomb attacks on the former Prime Minister Benazir Bhutto's convoy which killed 139 people (*The Guardian of 25/10/2007, p. S2*).

However, the state of uncertainty in the country continued to prevail following this incident (and, as we all now know, ultimately claimed the life of the unfortunate Ms. Bhutto). At a certain point, during late November, the President, Pervez Musharraf, declared a state of emergency, which prompted Darren Lehmann, the President of the Australian Cricketers' Association, to announce that the intended tour by his side could be cancelled if a security delegation concluded that there was a safety risk. This brought a swift response from Mr. Naghmi, who diplomatically described Australians as "very reasonable people" and that the tour, which was scheduled to take place in March, was "a long way away". In the meantime, said Mr. Naghmi, elections would be held and the situation would become less volatile (*The Guardian of 27/11/2007, p. S5*).

Shortly afterwards there occurred the Bhutto assassination, which not unnaturally cast new doubts on the security surrounding the intended tour. Although Cricket Australia confirmed their commitment to the tour, some of the Australian players were less sure.

Thus all-rounder Andrew Symonds indicated serious doubts as to whether he would participate in the current conditions, stating that, although he loved playing for his country, he was not about to put himself "in a situation where I can be harmed" (*Daily Mail of 31/12/2007, p. 73*). As this issue went to press, the situation in Pakistan seemed to have stabilised somewhat, which may serve to allay Mr. Symonds's fears somewhat.

India

Whenever the two arch-rivals of the Asian continent, i.e. India and Pakistan, meet on the cricket field, the atmosphere can be quite volatile in view of the continuing political tensions between the two countries. It is now taken for granted that tours between the two nations are attended by presidential-level security in order to ensure that they proceed without incident. Naturally, when the Pakistani side was due to meet India in a Test series towards the end of 2007, security concerns were once again to the forefront of the organisers' minds.

The relevant safety measures surrounding the visiting side reached unprecedented levels after a threatening e-mail supposedly targeting the Pakistan side was sent to an Indian television channel just as the first test was getting underway. The authenticity and details of the email were nebulous, but the local media reported that the message had been sent from an Internet café in East Delhi, and that police were attempting to trace the origin of the sender, who apparently had set up a Yahoo account the same day. It was not clear whether the email was the work of "genuine" terrorists or hoaxers. However, judging by the safety directives issued to the tourists, the security forces were taking it extremely seriously (*The Daily Telegraph of 26/11/2007, p. 7*).

The Board of Control for Cricket in India (BCCI) immediately gave assurances that the players' safety would be guaranteed following a meeting with police officials. There was no question of the tour being in any doubt, and the touring side said that the series had been under greater threat after Pakistan had been placed on full alert as a result of the state of emergency reported in the previous section (*Ibid*).

Sri Lanka

Another nation in the Asian sub-continent to experience regular political and military upheavals is Sri Lanka, particularly in view of the age-old struggle between the main ethnic groups, the Tamils and the Sinhalese. As part of the violent incidents which regularly disrupt the country's society, there occurred two bombings in the

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capital Colombo as the England touring party were preparing for the First Test in Kandy. The visiting 16-man playing squad and support staff left their hotel less than one hour before the first explosion took place in the Southern suburbs of the city. An elderly woman had detonated a device outside the residence of the Sri Lankan Welfare Minister, Douglas Devananda killing the minister's secretary and injuring two security staff. A second bomb was detonated by remote control later that day, around 5 miles from where the England team had been staying prior to leaving for Kandy. There were multiple victims. The England security adviser, Reg Dickason, immediately consulted the British High Commission in Colombo after both incidents; however, this did not occasion any change in the tour itinerary (*The Guardian of 29/11/2007, p. S7*).

Both attacks were later attributed to the rebel Tamil Tigers group by the Sri Lankan Government (*Daily Mail of 30/11/2007, p. 78*).

Murder of Austrian footballer highlights World Cup security risk (South Africa)

In spite of its many virtues, the Republic of South Africa does not enjoy the reputation of being the country which can adequately protect the visitor's personal safety. It was therefore a somewhat bitter twist of fate that, just as the draw for the 2010 Football World Cup was being made in late November 2007, it emerged that a former Austrian goalkeeper and friend of Franz Beckenbauer had been shot dead on a golf course near Durban. Although Sepp Blatter the president of football's world governing body FIFA, dismissed any direct link with the draw for the tournament – the first major test for South Africa in the countdown to 2010 – the news that the former footballer in question, Pieter Burgstaller, had been murdered gave rise to fresh concerns over the country's worrying crime rate. Austrian and German Football Federation officials later confirmed that the 43-year-old Burgstaller, who had become an events manager, was on holiday in South Africa, but had been invited to attend the draw by Beckenbauer, the ex-German international who is currently the Vice-President of FIFA. He was found shot dead with a single bullet wound to the chest on a golf course in Pennington, an hour's drive from Durban. Police believe that the motive was robbery. In the course of his playing career, Mr. Burgstaller played in goal for SV Salzburg (*The Daily Telegraph of 26/11/2007, p. S3*).

Not unexpectedly, FIFA and South African organiser attempted to play down the significance of the shooting, insisting that the former goalkeeper was not

part of the official World Cup draw party. (The present author is still left wondering why this should allay fears over the seemingly random nature of murders in South Africa.) Mr. Blatter commented:

"To make parallels between FIFA's presence here and (Mr. Burgstaller's) death is a combination that does not reflect the actuality. We deplore that a tourist from Austria was shot dead yesterday on a golf course. We deplore that as we would deplore all death or casualties in any country. The tourist was not a member of the delegation coming for the draw. In a city of 3.5 million some crimes will happen as they would in many other countries. On Friday evening in a train station in Zurich a young girl of 16 years old was shot. Crime is everywhere and Zurich is 10 times smaller than Durban" (Ibid).

However, in a separate incident, Oliver Bierhoff, the German team manager, had his briefcase stolen on his way to breakfast at his Durban hotel. It contained his passport and two mobile telephones, as well as paperwork relating to the draw (*The Daily Telegraph of 26/11/2007, p. S3*). Obviously, in terms of crime statistics, this could rank as a relatively minor incident. The reader should, however, be reminded that Durban is regarded as one of the "safer" areas in South Africa. It would seem, therefore, that those who refuse to have their concerns about safety at the 2010 event may not be so deranged after all.

Other issues

Lyn Oslo director indicted for fraud (Norway)

The long-running transfer dispute between Chelsea, Manchester United and Norwegian club Lyn Oslo concerning the career of Nigerian prodigy John Obi Mikel has been adumbrated before in these columns, but has hitherto been confined to those areas which are governed by the private law. However, matters have taken a more serious turn for the former Lyn director Morgan Andersen, who now faces 10 years in prison after having been indicted for fraud and making false accusations in the contract dispute between Chelsea and Manchester United. Mr. Andersen denies interference with the contract of the 20-year-old midfielder, who ultimately signed for the London side (**Daily Mail of 22/9/2007, p. 87**).

Marseille embezzlement due have sentences reduced (France)

One of the major scandals recently to afflict French

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football concerned criminal charges laid against 10 people for embezzling a total of €22 million from the funds of leading side Marseille through alleged hidden bonuses in the transfer of 15 players between 1997 and 1999. In mid-October 2007, two of those indicted, former coach Rolland Courbis and Robert Louis-Dreyfus had their sentences revised. The former had his original sentence of 3 and half years reduced to two years, whereas the latter was given a 10-month suspended sentence after originally being issued with a three-year suspended sentence. They were also fined €200,000 each (*Associated Press, www.findlaw.com of 17/10/2007*).

3. Contracts

Media rights agreements

[None]

Legal issues arising from transfer deals

Seville threaten action over “illegal” approach to Ramos (Spain)

London club Tottenham Hotspur have been experiencing management problems of late, which culminated in the controversial dismissal of Dutch coach Maarten Jol. The man who replaced the latter was Juande Ramos from Spanish leading side Seville. However, the latter have made allegations against the London side of “tapping up”, and claim that Mr. Ramos was unlawfully approached without their permission having been requested. Seville president Maria del Nido accused them of acting “incorrectly” and threatened to report them to world governing body FIFA and its European counterpart UEFA. It also transpired that the Spanish side were seeking compensation to the tune of £3.3 million. Del Nido added that Mr. Ramos has caused “great damage” to the club by leaving in mid-season, and appeared to give their departing coach little more than a cold handshake as the two made their goodbyes at the Pizjuan Stadium (*The Independent of 29/10/2007, p. 68*).

No further details are available at the time of writing.

Employment law

Hair dismissal case reaches conclusion

The case of Darrell Hair, the Australian umpire involved in the infamous “ball-tampering Test” between England and Pakistan in the summer of 2006, has been documented extensively both in these columns and elsewhere. The outcome of this bizarre affair was the demotion of Mr. Hair from the list of international umpires. This prompted the Australian to initiate legal action against the International Cricket Council before an employment tribunal. He claimed, inter alia, that he had been the victim of racial discrimination.

The main plank in Mr. Hair’s argument was that, whilst he had his career curtailed as a result of this affair, his fellow-match official, Billy Doctrove, from the West Indies, had not suffered the same fate. His barrister, Robert Griffiths QC, related to the tribunal various details of the ICC executive board meeting which sealed Mr. Hair’s fate. According to the eminent lawyer, ICC President Percy

Sonn, who has since departed this life, deputed three members to discuss the matter over a private, non-minuted lunch to produce a recommendation. One of this, to the claimant’s consternation, was Pakistan Cricket Board chairman Nasim Ashraf, who had been among those intent on penalising Hair following the ball-tampering incident. The other two were the one white administrator who wanted action against the umpire – new Zealander Sir John Anderson – and Peter Chingoka of the Zimbabwe, whose government dismissed all their own white and Asian board members in the course of 2006 (*Daily Mail of 2/10/2007, p. 88*).

In other words, Mr. Hair argued that he was being made the scapegoat for the debacle of the Test, which was ultimately forfeited by the Pakistani team, and alleged that even the ICC had become alarmed at the adverse comments against Hair appearing in the world media after Pakistan had been cleared of ball-tampering. Michael Beloff, defending the ICC, argued that Mr. Hair’s argument was “cooked”, and that attaching a racial element to several ICC decisions amounted to “swinging about wildly trying to build a case built on suspicion” (*The Daily Telegraph of 3/10/2007, p. S19*). Later during the hearing, Mr. Hair was accused of “blackmailing” the ICC in the hope of reaching a financial settlement. He allegedly did so by causing maximum embarrassment to the governing body – for example by disclosing an alleged comment made by umpire Rudi Koertzen after Pakistan’s shock elimination from the 2007 World Cup, which had the latter saying “Those cheats can go home now” (*The Daily Telegraph of 4/10/2007, p. S20*).

The hearing took a surprising twist a few days later, when Ray Mali, the ICC president, informed the tribunal that demoting Hair from umpiring at Test level was only a “corrective measure”. It had long been assumed that Hair would never again umpire at the highest level, and that his contract, about to expire, would not be renewed. Mr. Mali even went on to describe Hair as “one of the best umpires in international cricket” (*The Independent of 6/10/2007, p. 73*). In the meantime, it had transpired that Hair’s co-umpire, the aforementioned Billy Doctrove, would not be giving evidence at the hearing (*The Guardian of 3/10/2007, p. S8*). This naturally gave rise to some suspicions that pressure to that effect had been brought to bear on the West Indian official, but this was firmly denied by Mr. Beloff (*The Independent of 6/10/2007, loc. cit.*).

In the event, the entire affair ended very tamely with Mr. Hair abandoning his case after agreeing to undergo a rehabilitation programme with a view to returning to top-level umpiring. No money had changed hands (*The*

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Guardian of 10/10/2007, p. S7). Although this looked like a straightforward victory for the administrators, neither side in truth emerged with their reputation enhanced. Certainly the ICC's handling of the affair was described by many commentators as amateurish. Hair was reinstated as an international umpire in March 2008, see 'Hair restored as ICC elite umpire' (*bbc.co.uk/news 18/03/2008*).

Renewed calls for compensation of injured players on international duty

The issue surrounding the loss suffered by football clubs as a result of their players' international duties has returned to the forefront. Whilst we continue to await the fateful decision in the action brought by Belgian club Charleroi against European governing body UEFA on this issue, the problem has been simmering away in other contexts. This was particularly the case following the round of international fixtures which took place in September 2007. This resulted on Barcelona being deprived of the services of Lionel Messi, who suffered a thigh injury during Argentina's defeat of Australia in Melbourne. Internazionale Milan, who were already missing the services of defenders Walter Samuel and Marco Materazzi, also had to dispense with the skills of Christian Chivu, who dislocated his shoulder whilst playing for his native Romania against Germany (*The Independent of 15/9/2007, p. 57*).

Naturally, these developments added weight to the calls made in recent years by these various top clubs for compensation from those who enjoy the services of these eminent players. Barcelona president Joan Laporta restated this cause where he declared:

"The clubs pay the players' salaries and they should receive compensation from either FIFA or from the national federation who call up the player. The clubs should receive a proportion of the players' wages... and part of the income generated from the games which they dispute, especially in friendlies" (*Ibid*).

Mr. Laporta, who is supported by the G14 group of top European sides, added that clubs had to start acting given that the international governing bodies were delaying on the issue. Obviously, the manner in which this entire issue will ultimately be solved – or remain unresolved – will depend on the outcome of the Charleroi litigation, which should have been decided by the time the next issue of this organ goes to press.

"Deliberate dismissal" claim by Diouf in contractual dispute with Senegal

Employment disputes have produced some convoluted and eccentric arguments in their time, but surely few as far-fetched as those of footballer El-Hadji Diouf, who has played for several English professional sides. Engaged in a pay dispute with his native Senegal, he has claimed that deliberately contrived his dismissal from the pitch in order to ensure that he could escape from his club and report for international duty (*Daily Mail of 16/10/2007, p. 76*). There remains some doubt as to whether Mr. Diouf's plea will succeed.

Former Duke Lacrosse coach brings court action against university (US)

The case of the Lacrosse players at an elite US university who were accused of sexually assaulting a stripper, but then acquitted, has been well documented in previous issues of this Journal. The case had produced consequences not restricted to the players in question, since the coach of the team for which they played was compelled to resign. The coach, Mike Pressler, now claims that the university has broken the terms of the financial settlement when University administrator John Burness made disparaging comments about him. He has accordingly initiated court action, requesting the court that it should void the settlement and pronounce itself on a claim of wrongful dismissal. (*Associated Press, www.findlaw.com of 14/10/2007*).

In a separate development, the three players involved have also brought a civil rights claim against Mike Nifong, the public prosecutor who initiated the criminal proceedings against them. After the case against the three had been dismissed, Mr. Nifong was disbarred for his handling of the case, and spent a night in jail after a judge held him in criminal contempt of court for his conduct during the case. Ominously for the former prosecutor, the North Carolina Attorney General's office have refused Mr. Nifong's request that the state should pay his legal fees and represent him in the course of these proceedings. He had cited his role as a constitutional officer in the state when making this request (*Associated Press, www.findlaw.com of 18/10/2007*).

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

Sporting agencies

[None]

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Sponsorship agreements

Dismissed FIFA official states his case

It will be recalled from a previous issue of this Journal (*[2007] 1 Sport and the Law Journal p. 67*) that, earlier in 2007, the sponsorship strategy of football world governing body FIFA was in disarray as a result of a New York court ruling. The judge found that its marketing director, Jérôme Valcke, had lied to two credit card groups, to wit MasterCard and Visa which were bidding for the rights to sponsor the 2010 and 2014 World Cups. This led his employer to part company with the Frenchman, on the grounds that its negotiations had “breached its business principles”, and that the organisation could not “possibly accept such conduct among its own employees”.

Amazingly, what would have sounded the death knell for the vast majority of executives caught in similar circumstances has failed to halt Mr. Valcke’s advance in the world of international football administration, to the point where he was recently appointed as the Secretary General of his original employer. During an interview with a leading British Sunday newspaper, Mr. Valcke has shed more light on the circumstances which surrounded his initial disgrace. Talking for the first time about this affair since it cast a shadow on FIFA’s business dealings, Mr. Valcke certainly admitted having made serious errors, stating:

“I made the biggest mistake of my life by saying that in business we don’t always say the truth and you could describe that as a commercial lie. Ant then I was dead. The day I [used the phrase] “commercial lie” I was out – completely destroyed by [MasterCard’s] lawyer (The Independent on Sunday of 28/10/2007, p. B8).

The New York court had ruled that the sponsorship deal eventually made between FIFA and Visa was invalid on the grounds that the former had breached its “obligation” to confer on MasterCard, a long-serving World Cup sponsor, the right of first refusal to acquire the next round of sponsorship. It described the world governing body’s conduct as “anything but fair play”. Yet Mr. Valcke continues to insist that there was nothing in the MasterCard agreement which prohibited FIFA from entering into negotiations with other companies. Describing himself as “clean”, the top football administrator explained that the objective as regards the sponsorship was to achieve the figure of \$180,000, and that they never used the competition to increase the price. In other words, there was no question of there having been an “auction” (*Ibid*).

Mr. Valcke’s fortunes began to change in May 2007 when an Appeals Court panel vacated the original court decision and remanded the case. Less than a month later, FIFA and MasterCard reached agreement to terminate legal proceedings at a cost to FIFA of \$90 million, including settlement of a separate marketing dispute. Within a week, Mr. Valcke was back – this time as the organisation’s General Secretary. The general impression is that the MasterCard affair was regarded at his organisation’s headquarters as a blip in an otherwise worthy career (*Ibid*).

Other issues

Seattle Sonics prevented from taking lease dispute to arbitration (US)

In late October 2007, a US federal judge ruled that the Seattle SuperSonics basketball team could not escape their lease at the Key Arena through arbitration, describing the latter’s interpretation of the contract as “errant”. The decision was a victory for the city, and entails that officials may continue to seek a court order compelling the Sonics to play their next three seasons at the smallest venue in the US national league.

This followed the attempts by the new Sonics chairman, Clay Bennett, to obtain public funding to construct a new arena. The previous month he had issued a demand for arbitration, in the hope that he could buy out the remainder of the lease unless a deal could be reached on a new facility by the end of October. The city authorities responded by bringing court action against the side in order to compel them to honour the terms of an agreement reached in the mid-1990s. In exchange for \$74 million in renovations for the old Seattle Coliseum, the team agreed to play all its home fixtures there until September 2010.

The judge in question, Ricardo S. Martinez, rejected arguments put forward by the club that the terms of the contract prevented the city from going to court, and that under the wording of another section the team should simply be held in default and compelled to pay the remaining rent if it stopped playing at the Key Arena, which has a capacity of 17,072 (*Associated Press, www.findlaw.com of 30/10/2007*).

4. Torts and Insurance

Sporting injuries

Court action against Utah ski resort revived (US)

Shortly before the year 2007 ended, the Utah Supreme Court held that skiers assume the potential for injury when they attempt to navigate a steep mountainside, but not all risks are inherent. This cleared the way for legal action to be taken against a resort. The case in question arose when William Rothstein suffered severe internal injuries when skiing into a wall at Snowbird in February 2003. He sued and claimed that the resort had been negligent. A lower court had ruled that Snowbird Corp. was protected against litigation because of two waivers signed by Mr. Rothstein when he obtained a season ticket at the popular resort near Salt Lake City. The High Court overturned that ruling, stating that the waivers in question contravene a state law designed to keep insurance rates affordable for resorts, but not shield them from all liability.

In court papers, the resort maintained that Mr. Rothstein had skied off a connecting trail onto an area which was marked off by rope. However, the rope presented a gap, which Rothstein mistook for an entrance to an open trail. He hit a wall made of railroad ties which was obscured by a light covering of snow. Snowbird had won the earlier ruling on the basis of the two waivers under which he assumed all risks, in particular for those which might arise from Snowbird's negligence. The Supreme Court ruling has restored Mr. Rothstein's lawsuit and clarified the applicable state law (*Associated Press, www.findlaw.com of 19/12/2007*).

Stadium operator cannot be held liable for non-patrons outside its premises. Important US court decision

The extent of the liability which sports grounds are likely to incur not only for activities occurring inside it, but also for events associated with it, is an area which has been in a state of flux for some time. In an important decision, the New York Court of Appeals has contributed towards clarifying the law on this point, at least in the US.

The case in question (New York Court of Appeals 2007 NY Int. 1 2007 NY Slip Op 09071 No. 151, decided on 20/11/2007, Joan Haymon, Individually and as Mother and Natural Guardian of L.H., an Infant v. Donald J. Pettit, et al., Defendants, and Auburn Community Non-Profit Baseball Association, Inc.) concerned the question whether a baseball park operator owed a duty to warn

or protect non-patron spectators who are injured while chasing foul balls which are hit out of the stadium. Under the circumstances presented, the New York Court of Appeals concluded that no duty exists.

The claimant's then 14-year-old son, Leonard, was injured when he was hit by a car driven by the defendant, Donald Pettit. He was hit whilst chasing a "foul ball" into traffic. While chasing the ball he was wearing headphones and failed to look both ways before crossing the street. Leonard apparently neither saw nor heard the oncoming vehicle. Mr. Pettit was driving his car with a blood alcohol level of .11%. At the time, Leonard had congregated with friends outside Falcon Park, a baseball stadium owned by the City of Auburn and operated by the defendant, being the Auburn Community Non-Profit Baseball Association, Inc. (Ball Club). Adjoining the stadium on the third base side is a two-way public street across from which is a parking lot owned by the City of Auburn and used by spectators during games. At the time of the incident, the Ball Club offered free baseball tickets to non-patrons outside the park who retrieved foul balls and returned them to the ticket window. Further, the record indicates that Leonard visited the stadium regularly to retrieve and collect foul balls hit out of the stadium.

It was Leonard's mother brought an action in negligence, both individually and on Leonard's behalf against defendants Ball Club, Donald Pettit and the City of Auburn, among others. The Ball Club requested a summary judgment dismissing the complaint on the ground that it owed no duty to claimant's son. The New York Supreme Court dismissed the motion, finding that the Ball Club owed a duty to its fans outside the stadium to prevent them from chasing foul balls into the nearby street, which it described as "a foreseeably dangerous condition it took part in creating." The Appellate Division reversed this ruling and dismissed the complaint against the Ball Club. The court held that the Ball Club, "as an adjoining landowner [of a public street], owed no legal duty to plaintiff's son under the circumstances" despite the foreseeability that someone might run into the street to chase a foul ball *Haymon v Pettit*, 37 AD3d 1194, 1195 [4th Dept 2007]) Two Justices dissented and voted to affirm on the ground that a duty existed due to the Ball Club's foul ball promotion, which "played a significant role in creating the danger" (*Ibid.*).

Before the Court of Appeals, the claimant argued that the Ball Club's "foul ball" promotion implied a duty to warn or protect its participants. More particularly, she claimed that a duty arose under these circumstances because the Ball Club provided an incentive to fans

4. Torts and Insurance

outside the stadium to retrieve errant foul balls, to wit the prospect of free tickets. In short, she argued that the foreseeability of children chasing balls into the street, coupled with defendant's incentive for them to do so, required the Ball Club to provide some measure of protection or warning.

The Court dismissed this argument. An owner or occupier of land generally owes no duty to warn or protect others from a dangerous condition on adjacent property unless the owner created or contributed to such a condition *Galindo v Town of Clarkstown*, 2 NY3d 633, 636 [2004].. The reason for this rule was clear: a person who lacks ownership or control of property cannot fairly be held accountable for injuries resulting from a hazard on neighbouring property. In reaching this conclusion, the Court took into account considerations such as the reasonable expectations of parties and society generally, the proliferation of claims, the likelihood of unlimited or insurer-like liability, disproportionate risk and reparation allocation.

The Court recalled that in *Akins v Glens Falls City School Dist.* (53 NY2d 325 [1981]) it had restricted the duty of a baseball field owner/operator to provide screening for errant baseballs around:

“the most dangerous section of the field — the area behind home plate — and the screening that is provided must be sufficient for those spectators who may be reasonably anticipated to desire protected seats on an ordinary occasion” (ibid. at 330; see also Davidoff v Metropolitan Baseball Club, 61 NY2d 996, 997-998 [1984]).

Although in *Akins* the injury occurred inside the baseball park, it was an instructive ruling nonetheless. It was premised on “the practical realities” of the game — namely, that errant balls of any sort are an inherent part of the sport and that a baseball stadium owner/operator “is not an insurer of the safety of its spectators” and could only be held to exercise reasonable care under the circumstances (*ibid.* at 330). Even inside the park, screening of the area behind home plate offered the maximum degree of protection which spectators could reasonably expect. The nature of the game — and the spectator's involvement in it — was such that absolute protection around the entire stadium would be impractical. Any other formulation would defy a reasonable point at which duty can be fixed (*Darby*, 96 NY2d at 349-350; *Pulka v Edelman*, 40 NY2d 781, 786 [1976]).

The Court ruled that the same considerations governed this case. Here, the claimant's theory rested upon the defendant's “foul ball return for tickets” promotion. The claimant insisted that this incentive foreseeably

exposed fans, mostly children, to the danger of chasing foul balls into the street. This argument, however, is one of foreseeability presupposing that a duty exists (*Hamilton*, 96 NY2d at 232). The hazards of crossing the street, and of individuals electing to cross it in pursuit of foul balls, existed regardless of the Ball Club's promotion. This, as well as the fact that the Ball Club could control neither the public street nor third persons who use it, strongly militated against a finding of duty.

The ruling in *Darby* was also instructive. In that case, an individual had drowned while swimming on a public beach in Brazil. At the time he was a guest at a hotel which was separated from the beach by a four-lane public highway. The hotel actively encouraged guests to use the beach, and even provided them with umbrellas, towels and a security escort service. The hotel did not, however, warn beachgoers about dangerous surf conditions. The claimant sued the hotel on behalf of deceased, alleging that it was negligent in failing to warn beachgoers of hazardous surfing conditions. Concluding that no duty existed, the Court had been unpersuaded by the argument that the hotel encouraged and facilitated use of the beach by providing certain related services. It therefore ruled that providing these services did not “make the hotel the insurer of its guests' safety at a locale over which it ha[d] no control” (*Darby*, 96 NY2d at 349). In the case before us, the Ball Club's promotion did no more to contribute to an inherent risk than did the Meridien Copacabana Hotel in *Darby*.

The Court was aware that, in this case — unlike *Darby* — the Ball Club rewarded participants of its promotion with tickets. Important to its conclusion, however, was that under the circumstances of this case, (and as in the *Darby* decision) there were inherent risks associated with crossing the street. Those risks are multiplied when doing so indiscriminately. Moreover, the Court did not view the Ball Club's promotion as contributing to a dangerous condition, for it merely rewarded the retrieval of “foul balls”. It had to be assumed that adults, and children of Leonard's age, would act prudently in doing so.

Even if it were assumed that the mere encouragement of retrieving foul balls suffices, under the circumstances, to create, or contribute to, a dangerous condition (*Griffin v 19-20 Industry City Assoc., LLC*, 37 AD3d 412 [2d Dept 2007]), a finding of duty would still be inappropriate. As in *Akins*, “the practical realities” of the game were not lost on the fact that players hit balls outside of the park. Foul balls were capable of landing on virtually any square foot of property surrounding a stadium, and to impose of a duty to warn or protect

4. Torts and Insurance

under such circumstances would be neither fair nor practical (Akins, 53 NY2d at 330; see also Stark v Town of Smithtown, 155 AD2d 526, 527 [2d Dept 1989]; Clark v Goshen Sunday Morning Softball League, 122 AD2d 769, 770 [2d Dept 1986]). Injury may befall someone, as was the case here, as a result of conduct of a third person on a public road, or a group of fans in a struggle for the ball. The possibilities for injury, and therefore for liability, were limitless, and the expectation that the stadium should control the conduct of third persons was unrealistic (Pulka, 40 NY2d at 785).

Under these circumstances, it was difficult to imagine what steps the stadium operator could have taken that would have sufficed to meet a duty. Thus, we are constrained from imposing a requirement that the stadium exercise control over non-patron, third persons outside its premises over whom it has no actual authority to do so. Accordingly, it was decided that the order of the Appellate Division should be confirmed.

Libel and defamation issues

Muralitharan threatens defamation action against former test spinner Bedi

The bowling action of Sri Lankan record-breaking spinner Muttiah Muralitharan, particularly when the latter sends down his famous “doosra”, has been the subject-matter of controversy and adverse comments for a number of years, even though said action has been officially cleared by the highest cricketing authorities. One of the Sri Lankan players’ sternest critics has been the former Indian test bowler Bishen Bedi. Asked whether he would congratulate Mr. Muralitharan if he took the seven wickets required in order to break Shane Warne’s record haul of 708, Mr Bedi reportedly replied:

“No, no, why should I? Murali will complete 1,000 Test wickets but they would count as run-outs in my eyes” (The Guardian of 16/8/2007, p. S2).

This was naturally not to the taste of the Sri Lankan, who was reported to be seeking damages to the tune of £3.4 million and to threaten court action if this demand was not met. Mr. Bedi has defended his comments on the basis that he had the right to express his opinion about the bowler’s action, and announced that he too would be consulting his lawyers (*Ibid*). At the time of writing, it was not yet clear whether the Sri Lankan spinner had formally initiated proceedings.

Insurance

Fatal baseball team bus crash gives rise to litigation (US)

In March 2007, there occurred a serious road accident in when a charter bus conveying a University baseball team to a spring training session in Florida plunged off an overpass in Atlanta (Georgia). Five students from Bluffton University (Ohio) as well as the bus driver and his wife were killed, and another 28 injured. Naturally, this case has given rise to compensation claims.

In late November of that year, it was learned that a lawsuit had been filed on behalf of the players and coaches affected in order to confirm that the bus driver and his company were covered by insurance for this accident. The claim, made before a US District Court, stated that the driver and the company were insured under three policies issued to the University, and that the victims were entitled to payment as a result of their injuries. According to the court paper filed, the insurance companies concerned have refused to acknowledge that the driver and the bus company were covered under the relevant policies, which total around \$21 million (*Associated Press, www.findlaw.com of 27/11/2007*).

This was in fact the second court action to be taken as a result of the crash. The mother of one of the players who lost their lives brought another action against the University, the company which produced the bus, the city of Atlanta and the company which provided the bus and driver (*Ibid*). We hope to have more details of both these actions in a forthcoming issue.

Other issues

Maradona notified of civil action involving car accident (Argentina)

The list of those sporting figures who have made these columns under various headings includes the brilliant but mercurial former Argentine international, Diego Maradona. His sorry tale of brushes with the law seemed to continue in mid-October 2007, when he was stopped by airport police after arriving in Buenos Aires on a flight from Italy. He was then taken before a judge and informed that he faced a civil action involving injuries sustained in a transit accident.

Airport police reported that Mr. Maradona had been sought after failing to heed earlier court summonses requiring him to testify about events involving a four-

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wheel drive vehicle which allegedly struck a telephone booth, leaving a married couple with minor injuries. Reports at the time said that it was unclear whether Mr. Maradona was driving the vehicle (*Associated Press, www.findlaw.com of 8/10/2007*). No further details are available at the time of writing.

Civil actions against Artest arising from Palace brawl dismissed (US)

The infamous brawl which occurred in November 2004 at a top basketball fixture played at the Palace of Auburn Hills has been extensively documented both in these columns and elsewhere. Among the legal repercussions of this affair were two civil actions brought by spectators against former Indiana Pacer Ron Artest. In the first claim, William Paulson claimed he had incurred concussion after Mr. Artest and former Indiana pacer Stephen Jackson fought with fans at the close of the game between the Pacers and the Detroit Pistons. In the other action, John Ackeman alleged that he too incurred concussion after having been punched by Pacer David Harrison. Mr. Ackeman blamed Ron Artest for having started the fight. Separate claims against Messrs. Jackson and Harrison were still pending at the time of writing. (*Associated Press, www.findlaw.com of 11/12/2007*).

Kiwi sailing chief demands compensation for losses (New Zealand/US)

The America's Cup is the most renowned international competition in the sport of sailing. In early July 2007, the Golden Gate Yacht Club of San Francisco, run by Larry Ellison, put in a challenge to hold the event. At the end of that month, the New Zealand Kiwis challenged for the honour of staging the race, and struck a "secondary deal" with the Swiss team Alinghi. The latter undertook to hold the Cup in 2009, to give the New Zealand team a payment holiday on their entry fee, and to offer them the right of first refusal on Ellison's team base. However, a stand-off developed between the Swiss team, led by Ernesto Bertarelli, and the Golden Gate Club, one of the implications of which was the likely postponement of the 2009 Cup. This dispute was settled in late November 2007 before Mr. Justice Herman Cahn, of the New York Supreme Court, who found for Mr. Ellison against the Swiss businessman.

Just 24 hours before this court decision, it was learned that Team New Zealand chief Grant Dalton issued a demand for compensation against Mr. Bertarelli for the postponement of the America's Cup in 2009. Mr Dalton estimated the loss to his Kiwi team at £12 million if the

race is postponed until 2010 and at £19 million if it is put back to 2011. This is a graphic illustration of the disastrous commercial complications resulting from the Bertarelli/Elison stand-off (which has already been featured in earlier editions of this Journal). At the time of writing, there remained a chance that the competition could go ahead in 2009, but because of the New York ruling this decision is now in the hands of Mr. Bertarelli. He has yet to confirm whether or not he wishes to appeal. If he does, the race would be delayed for a further year. If he does not, he could renegotiate a new protocol set of rules with Mr. Ellison's team which are vastly more equitable than the previous one, and agree to open the event to the nine declared and likely challengers. If no such mutual consent materialises, both teams are bound by the terms of the challenge made by Ellison in July (*The Daily Telegraph of 29/11/2007, p. S4*).

This set of terms, however, contains a default which is to be enacted if both teams fail to agree terms, i.e. an event between the Swiss and the Americans using catamarans, to be staged in 10 months' time. If the catamaran series goes ahead, it is far from clear whether the 10 months would start from the time of Golden Gate's challenge or from the Supreme Court decision. If the latter were the case, Valencia's America's Cup harbour would be taken over by the Formula One Grand Prix (*Ibid*). The issue had not yet been resolved at the time of writing.

5. Public Law

Sports policy, legislation and organisation

Beijing 2008: the usual problems continue

Background

It has been pointed out in previous issues of this organ that the pattern which has emerged from the run-up to the 2008 Olympics has been that of unbridled success in all aspects of its actual organisation, which contrasts sharply with some of the darker issues which are at all times hovering around the big event and even threaten to undermine its success.

Thus, on the one hand, the construction of the big stadium and other facilities has proceeded apace and will not provide the International Olympic Committee with the kind of palpitations which have been caused by the “last-minute culture” in evidence at some of the other games of not too distant memory. In addition, the organisers appear to be making every effort to welcome the thousands of foreign visitors who will descend on the historic city in a few months’ time in order to take part in this massive sporting jamboree. The authorities are persuading their citizens to abandon – or at least suspend – some of their less hygienic and unappealing habits, such as the ubiquitous spitting, and have cleaned up the city to a considerable extent – although not with an over-sensitive regard for some of their own citizens, particularly when it came to the construction programme. Thus the manner in which people have been compelled to leave their homes in traditional hutong laneways in order to make way for Olympic developments, often without receiving adequate compensation, has been the cause of much criticism directed against the powers-that-be. The same applies to the manner in which many in the historic Qianmen district of the capital have been evicted from their homes and businesses to make way for the Olympic marathon route (*The Independent of 13/8/2007, p. 21*).

The Chinese authorities have even succeeded in defying the vicissitudes of climate change in their determination to ensure that all the events go ahead according to plan. In mid-October 2007, it was learned that they have succeeded in diverting water from a willow-lined river to the North-East of the city to its dried-out Olympics rowing and canoeing venue. In so doing, the Government spent approximately £28 million. The main reason why they were compelled to do this was the fact that Beijing sits in the arid North China plain, where water tables are falling fast because of climate change, as well as rising consumption by farmers and booming cities (*The Guardian of 23/10/2007, p. 18*).

Nevertheless, the efficiency and style attending the organisation of the 2008 Games have evoked much admiration from sporting authorities and media commentators alike. The same cannot be said for some of the wider social and political issues which continue to cast a shadow over the entire exercise.

Stadium designer to boycott Games because of “disgusting” political propaganda

Ai Weiwei is perhaps the man who best symbolises the contradictory feelings aroused by the manner in which the Chinese authorities have set about their task. Although he is the artist behind the spectacular new Olympic stadium dubbed the “Bird’s Nest”, he has since declared that he wants nothing to do with the propaganda for which it will be used during the Olympics. In a virulent attack on the “disgusting” political conditions prevailing in the one-party state, he informed a leading British newspaper that he would not be attending the opening ceremony or allow himself to be associated with either the Government or the Games. He said:

“I would rather be disconnected or forgotten. I hate the kind of feeling stirred up by promotion or propaganda (...). It’s the kind of sentiment when you don’t stick to the facts, but try to make up something, to mislead people away from a true discussion. It is not good for anyone (The Guardian of 9/8/2007, p. 23).

More particularly he accused those in charge of choreographing the opening ceremony, including the film-makers Steven Spielberg and Zhang Yimou – of failing to meet their responsibilities as artists. It is true, however, that a Spielberg spokesman has hinted that the latter might relinquish his Olympic role unless China abandons its opposition at the United Nations to an increased peacekeeping force for the troubled African region of Darfur, and that a few days later a deal on the matter was announced in New York.

In view of his family history of persecution by the Communist government, Mr. Weiwei’s involvement in the Olympic project had raised eyebrows from the outset. The artist spent much of his childhood in remote Xinjiang after his father, one of China’s greatest modern poets, was exiled. Such persecution, along with the political murders which have undoubtedly occurred, remain taboo subjects in China, and Weiwei is one of the few prominent people to speak out. He has dismissed concerns about the repercussions which might flow from expressing his views, and stressed that he was concerned less with opposition to the State than with fighting for individualism and freedom of expression (*Ibid*).

5. Public Law

Can pollution problem be overcome?

Attention has already been drawn in these columns to the threat which the excessively polluted air which prevails in the Chinese capital might pose for the conduct of the Games. In fact, the issue has become so pressing that IOC president Jacques Rogge chose to focus on the problem at the ceremony which marked the one-year countdown to the big event, raising the possibility that some of the endurance sports could be affected. Certainly events such as the marathon could come under pressure, although it should be conceded that the Olympics have been held in other cities with air pollution problems, such as Athens and Los Angeles, without any of the events being adversely affected (*The Times of 9/8/2007, p. 75*).

However, the athletes themselves are only part of the human element to be taken into account. There are also the spectators to consider, and at a certain stage an expert from the World Health Organisation (WHO) voiced his concerns that high levels of air pollution could damage their health. Dr. Michal Krzyzanowski opined that the air quality in Beijing was so bad that those having a history of heart problems and people suffering from asthma should be made aware of this hazard. The warning came as city officials began a four-day scheme to ban half of Beijing's almost three million vehicles from the road in a bid to reduce pollution. Cars having registration plates ending in odd and even numbers were each to be banned from the road for two days. Over 6,000 police officers were drafted in to issue spot fines to anyone caught infringing the ban. However, although it visibly eased traffic congestion, the ban was unable to remove the layer of smog which hung over the capital throughout the day (*The Daily Telegraph of 18/8/2007, p. 18*).

In spite of this, the city's Olympic organisers declared the test to have been a success. Because there was no wind, they argued, pollution would have grown thicker without the special restrictions. It would appear, then, that prayers for strong winds could become a major component of Beijing's Olympic preparations, which will not be very comforting for the IOC (*The Guardian of 21/8/2007, p. 12*). In fact, the latter showed its lack of reassurance in late October by repeating their fear that some outdoor events may be postponed at the Games. This came hard on the heels of a report by the United Nations Environment Programme, which criticised the Chinese capital's progress in cleaning its atmosphere, which it described as "slow", and claimed some of the pollution recorded exceeded standards set by the World Health Organisation (WHO) (*The Guardian of 26/10/2007, p. 38*).

Nevertheless, the capital city held an Environment Forum aimed at reassuring the world of athletics that it had the air pollution problem under control. The impact of this event was somewhat marred by the fact that, the very next day, the city awoke engulfed by a thick "peas-souper". Visibility was reduced to fewer than 50 yards, flights were delayed, major roads to the city closed, and, most important of all, the smog was so serious that children and the elderly were instructed by the city's weather office to remain indoors – the rest being advised to wear a face mask if they did venture out. This can only have served to increase tensions between the IOC and the city authorities. In a telling insight into the sensitivity of the issue, remarks made by IOC President Rogge during the said Environmental Forum on the urgency of the problem were included in the printed version of his speech, but studiously omitted when he actually gave it in the presence of Chinese officials. The point was also made by Hein Verbruggen, head of the IOC Coordinating Commission for the Games – who previously had been most reluctant to criticise the hosts (*The Daily Telegraph of 27/10/2007, p. 17*).

Human rights concerns dismissed – both from inside and outside

China does not enjoy a favourable reputation for its respect of human rights, which was one of the reasons why a number of people had serious reservations about awarding the Games to this country under its current regime. These concerns have prompted human rights groups and some politicians to put pressure on competitors to join in political protest at the Games. To date, there seems little enthusiasm for this proposal – at least from the various sporting federations. Thus Simon Clegg, the Chief Executive of the British Olympic Association, has announced that any member of the UK team who made such a public protest in Beijing risked being removed from the squad during the event, on the basis that his was an "apolitical organisation" (*The Daily Telegraph of 11/8/2007, p. 16*).

The issue was highlighted on the occasion of the aforementioned celebrations to mark the start of the one-year countdown to the opening ceremony, which was punctuated by a series of protests on a range of issues, from China's support for the Sudan government, which is accused of genocide in Darfur, to its internal restrictions on freedom of speech. Eight Free Tibet Campaign protesters, including two Britons, were detained and subsequently deported after six of them had abseiled down the Great Wall carrying a protest banner. Other issues include the claim that between 50 and 100 people are still being held in prison because of activities during the Tiananmen Square protests of 1989,

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along with many other dissidents, and the continued detention of activists representing the rural and urban poor in legal battles against eviction from their homes for redevelopment, illegal enforcement of the one child policy, and corruption. In addition, there is the issue of Falun Gong, the religious movement banned as an “evil cult” in China, whose adherents have allegedly been jailed, tortured and even executed (*Ibid*).

To drive home the message that the Olympic should remain untainted by reminding the outside world of these human rights abuses, whether real or alleged, the Chinese authorities some time later warned that unauthorised protest would not be tolerated during the Games, raising the prospect of detentions for civil rights campaigners and religious activists during the event. The warning came as the United Nations General Assembly adopted the Olympic truce resolution for the 2008 Games despite opposition from activists campaigning for a free Tibet. The resolution in question calls for UN member states to “observe and promote peace” at the Beijing event. Certainly, with 30,000 or more foreign journalists expected, the one-party state will come under the global spotlight as never before. A wide range of civic groups, Tibet supporters, environmentalists and religious organisations have sensed an opportunity to highlight human rights abuses such as those described above. They are unlikely to be deterred by the warnings issued by the public authorities, as they will have taken heart from the moves made by China to ease the tension in Darfur (see above). Campaigners for other causes are hoping for similar compromises (*The Guardian of 2/11/2007, p. 24*).

However reluctant the IOC may have been to comment on these various human rights issues, they have served notice on the Chinese authorities that they expect the latter to give the media full freedom to report on the conduct of the Games. This followed complaints from the media rights groups Reporters Without Borders (RWB), which had criticised the IOC for remaining silent whilst China placed restrictions on reporters during preparations for the 2008 Games. Robert Menard, the Secretary-General of the group, said that it was “becoming clearer and clearer” that the organisers of the Beijing Olympics and the Chinese security apparatus had decided to control journalists very closely before and during the Games (*Associated Press, www.findlaw.com of 30/11/2007*). In an open letter to IOC president Jacques Rogge, RWB had cited “disturbing reports” about the manner in which the Chinese authorities were planning to deal with the many journalists expected at the event. The IOC responded by pointing out that the organisers had, from

the outset, pledged that there would be no restrictions on journalists reporting at the Games, and that Chinese officials had repeatedly reiterated assurances that the media would be free to work under the same conditions as at previous Olympics (*Ibid*). This could be interpreted as a “warning shot” that the IOC was keeping the situation under close scrutiny.

However, three weeks after these statements, it was reported that Chinese police had detained two writers in a bid to stifle dissent before the Olympics. Shanghai-based Li Jianhong was placed under house arrest in order to prevent her from receiving a writing award at a Beijing centre operated by the Independent Chinese Pen Centre. Liao Yiwu, who was due to receive the group’s Freedom to Write award, was also detained (*The Observer of 23/12/2007, p. 17*). This does obviously not augur well for the cause of journalistic freedom at the Olympics.

Health and safety concerns

Other than the pollution issue, extensively adumbrated above, there have been other concerns relating to health and safety arising directly or indirectly from the Beijing sportfest. Thus when a bridge collapsed, killing at least 29 people, this was attributed to China’s rushed building projects ahead of the Beijing games. The 140-ft bridge over the Tuo river in the southern tourist city of Fenghuang fell in the course of construction after workers removed a supportive frame (*The Independent of 15/8/2007, p. 27*). The concern must be that some of the Olympics infrastructure might suffer a similar fate once it is exposed to the full impact of major crowds.

Another health and safety concern, entirely different from that described above, relates to the hazards to which some Chinese citizens are exposing themselves and their siblings in the cause of athletic endurance. Thus in early October 2007, it was reported that a father bound his 10-year-old daughter and watched as she proceeded to a three-hour swim in a chilly river. With the country gripped by Olympic fever, stunning and often foolhardy new feats of athleticism are being reported almost on a daily basis. The father of Hung Li, the child in question, tied her hands with string and her feet together with cloth before easing her into the cold waters of the Xiang river, a tributary of the Yangtze in the southern province of Hunan. Although many admired her feat of endurance, there were naturally many concerns expressed about the effects this could have on the girl’s health – not to mention the risk of drowning as a result of muscle cramps (*The Independent of 5/10/1007, p. 45*).

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The previous month, an eight-year-old girl was reported to have completed a run of over 2,000 miles – almost the length of the entire country – in a series of marathons. The exploit achieved by Zhang Huimim, the child in question, rekindled the debate on the question whether such stunts were admirable feats of patriotism or simply amounted to child abuse. Zhang's father was forced to deny accusations of abuse made by the Chinese media, whilst certain medical experts averred that the exercise regime imposed on Zhang for this purpose would damage her body and affect her growth (*Ibid*).

Doubts continue over South African readiness for 2010 World Cup

This is not the first occasion on which this column has reflected the concern that the 2010 World Cup, to be staged in South Africa, might be beyond the hosts' capabilities to stage it. Not only outside media commentators, but also many of the country's inhabitants, regardless of ethnic origin, are increasingly worried that the country may have overreached itself.

In early November 2007, Eskom, South Africa's main electricity company, served notice that power cuts would continue to blight the country for years. It has embarked on a media blitz urging customers to conserve energy or risk blackouts. This naturally does not augur well for the infrastructure at the Cup. In addition, unions have warned that construction work at World Cup stadiums could be halted in a dispute over pay. Hundreds of workers have been on strike in Durban, demanding a minimum wage of about 80p an hour.

A strike would be timed to coincide with the preliminary draw for the World Cup, when about 3,000 Fifa delegates from 170 countries were to gather in Durban. This is naturally not the first occasion on which trade unions have sought to take advantage of a prestigious world-wide event to wring concessions from the organisers. However, we are dealing here with the first official event of the 2010 World Cup, and there were fears that South Africa's shortcomings as the continent's first nation to host the tournament would be exposed – for it may be the wealthiest country in Africa, but it is still a developing nation. Many would prefer to see the cash being spent on health, education and poor rural areas than flashy hotels and airports (*The Times of 16/11/2007, p. 47*).

Others have pointed to the country's erratic power supply, which already cannot cope with demand, poor public transport, shortage of hotel accommodation, overstretched telecoms networks and a total lack of police experience in dealing with large crowds. The

greatest concern, however, is crime. South Africa has the world's worst reported rates of murder, rape and violent robbery, and not unnaturally the prospect of shirtless, drunken, lost football fans sends shudders down many spines. Although Danny Jordaan, the head of the Local Organising Committee (LOC), had pledged that no harm would come to FIFA delegates in Durban during the week of the preliminary draw – and thousands of police were on hand to ensure his word was kept – there were bound to be many frantically bitten fingernails as the event approached. Even as Mr. Jordaan spoke, news broke that a US exchange student was raped in a woman's residence at the nearby University of KwaZulu-Natal, the type of accommodation likely to be used by young backpackers in 2010. In addition, there was the Pieter Burgstaller murder reported above (p.62), which, although the unfortunate Austrian was not part of the official FIFA visiting party, will once again have increased the pressure on the forces of law and order (*Ibid*).

However, the world governing body in the sport, FIFA, has had nothing but praise for South Africa's preparations, claiming they are farther advanced than Germany's were at the same stage before the 2006 event. The Government has announced that it is spending about £3 billion to improve infrastructure and argues that much of the upgrade, particularly of appalling transport facilities, was needed anyway and has created much-needed local employment. Soccer City, a huge oval bowl on the edge of Soweto, will host the opening and closing ceremonies and will seat almost 95,000. A record number of African countries – 6 out of the 32 finalists – will take part in 2010. Superintendent Vish Naidoo, responsible for ensuring security, says that he is confident it can be done. Police numbers are being increased substantially and about 30,000 will be assigned to World Cup duties alone. Another 100,000 reservists will also be on duty (*Ibid*).

French authorities evict homeless for Rugby World Cup

Perhaps Western Europeans should refrain from any complacency regarding far-away countries applying the unscrupulous power of the state in order to enhance their image at the major sporting jamborees which they host. Exactly this accusation has been leveled at France during their preparations for the Rugby World Cup, which took place in the autumn of 2007. On the eve of the first game, which pitted the hosts against Argentina, police evicted hundreds of homeless people and travellers from sites near the various stadiums earmarked for the fixtures. Campaigners claimed that this was done in

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order to prevent the visitor from witnessing any overt signs of poverty. The most sizeable operation took place near the Stade de France, being the main venue for the six-week tournament. Police closed a shanty town of 600 people which had formed on wasteland in the Saint Denis area (*The Times of 6/9/2007, p. 39*).

Campaign groups such as relief organisation Médecins du Monde condemned this action, accusing the French authorities "systematic evacuations" aimed at hiding the poverty of the Romany community. Spokesman Bernard Moriau, who worked with the people evicted, described the eviction as "very brutal". He reported that at least 400 of this displaced had disappeared and would probably resurface in other shanty towns North of Paris, without any electricity or water. His efforts to treat tuberculosis and diabetes, as well as vaccinating children, had been disrupted. He also recalled that when the renowned circus company Cirque du Soleil had performed in that area earlier in the year, the authorities had allowed the Romany camp to remain and even to share their water (*The Guardian of 7/9/2007, p. 8*).

These accusations were denied by state and local officials. They seemed to link the operation to the concerns of President Sarkozy, who won the election earlier that year largely on a "law and order" programme and had accordingly ordered a heavy security operation aimed at preventing trouble during the tournament. More particularly, the Government had expressed its concern that ethnic gangs in the Saint Denis area could disrupt the event. However relief groups said that the homeless clean-up operation extended beyond the stadium areas to the homeless in Paris and other cities hosting the competition (*The Times of 6/9/2007, loc. cit.*).

Bullfighting: the end in sight? (France – Spain)

For the benefit of the new reader – for any regular patron of this organ will have no lingering doubts on the matter – this column refuses to recognise bullfighting as a sport, and will only dwell on this barbarous pastime where measures are taken or contemplated to hasten its demise. From this point of view, the present author is pleased to report some progress during the period under review.

As regards France, the latest information available is that the nation's animal rights movement recently succeeded in planting a couple of sharp spears in the flanks of the once seemingly untouchable French bullfighting industry, and considerable public controversy has erupted on an issue which traditionally has attracted only marginal interest in France.

A television advertisement calling for a ban on bullfighting has been declared unacceptable – because it shows violent scenes at bullfights. This decision by France's advertising supervisory authority highlighted the bizarre – and, according to critics, hypocritical – legal status in France of "la corrida", the Spanish style of bullfighting to the death (of the bull). Bullfighting is banned in France but legally tolerated in those areas which can claim an unbroken local "tradition". In practice, French courts have allowed bullfighting to spread to towns in the south where no such tradition exists. Critics have legitimately asked the question why, if the practice of stabbing and slaughtering bulls in public is too violent for family viewing on prime-time television, children are allowed to attend bullfights in the country.

On one side of the ring are several celebrities, including the Belgian actor Jean-Claude Van Damme, the animal rights activists and retired actress Brigitte Bardot, the Franco-American ice-skater Surya Bonaly and Renaud, a lugubrious, ageing "protest" singer and sometimes described as France's answer to Bob Dylan. On the other side of the ring – so to speak – are the fans of bullfighting, who include the prime minister and several members of his Government, as well as the substantial economic interests which this practice enjoys in the deep south of France. The nation's new president, Nicolas Sarkozy, who normally does not shy away from controversy, has scuttled for cover. He has, however, promised to examine the arguments, on both sides, as part of a national conference on environmental issues this autumn.

Mid-August is a period for bullfighting festivals or "ferias" in the French south and south-west, particularly in Béziers, Dax and in the suburbs of Toulouse. The once weak, and much-splintered, anti-bullfighting movement in France held its usual demonstrations outside the arenas. It has also arranged for light aircraft to fly overhead dragging banners declaring bullfighting to be "barbarous". However, the three separate anti-bullfight associations, working together for the first time, scored their most successful victory in an apparent defeat. The Bureau de vérification de publicité (BVP) – the advertising watchdog – rejected a 46-second television commercial which called for a ban on bullfighting. The advertising watchdog justified its decision on the grounds that the bullfighting scenes shown in the ad were too gruesome for family viewing. And yet the scenes – rapidly inter-cut in black and white – are to be found in any corrida: the crippling of the bull with spears and then the slaughter (*The Independent of 17/8/2007, p. 27*).

The protest singer Renaud narrates a brief commentary on the prohibited advertisement, saying:

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“At the beginning of the third millennium, this is what some people still take pleasure in looking at. Torture and death offered as a spectacle. We can no longer accept this today. Join the fight for civilisation. (...) The BVP is treating us as imbeciles. If they really want to protect the young, they could start by banning people under 15 from the bullfighting arenas to spare them a spectacle of torture and sadism.”
(Ibid)

Shortly afterwards, leading newspaper Le Figaro joined the debate with a page of articles and an editorial defending bullfighting. La corrida was a “crime of passion” committed “live and in public”, Le Figaro said, but its “origins lay at the heart of human existence”. The editorial mocked the “sensitive celebrity souls” who complained that the world was being made too “uniform” but campaigned against “majestic” local and national traditions. However, the venerable newspaper failed to mention the true bullfighting tradition in France is not La Corrida, which arrived from Spain in the 1850s. The French tradition, in which the bull survives to fight again and again, is still to be found in the Camargue, in the Rhône delta, and in the Landes, south of Bordeaux. The bullfighter or bullfighters have to retrieve ribbons tied to the horns. The Spanish tradition of La Corrida has largely triumphed in southern France in the last 150 years. Under a law passed in 1976, the torture and deliberate mistreatment of animals is illegal. The law makes an exception for La Corrida but only in those areas where there is an “unbroken, local, tradition”. Courts in the south have interpreted the law as referring to almost anywhere south of the Loire (Ibid).

Perhaps significantly, however, no political figure in France was prepared to respond to Le Figaro’s attempts this week to canvass the opinions of bullfighting supporters.

However, in the very citadel of bullfighting which is Spain, it would appear that the proverbial lettering has also appeared on the wall. Over 50 years after TVE televised its first bullfight, the national broadcaster decided to abandon live coverage of this national pastime. It will continue to broadcast bullfighting highlights late at night but – in an uncanny echo of the restrictions announced by the French advertising authority in the previous section – it added that restrictions on that which is capable of being shown during children’s viewing time make it increasingly difficult to programme live fights. This move had predictably enraged traditionalists and aficionados whilst giving rise to satisfaction amongst a growing lobby who want the so-called “national fiesta” banned entirely (*The Guardian of 21/8/2007, p. 17*).

However, the disappearance of bullfighting from state television has not meant that it is no longer available on the country’s screens. Perversely, the recent proliferation of television channels means that there is probably more live coverage of bullfighting than ever. Rival broadcasters belonging to regional governments stuff their schedules with it. Critics have claimed that TVE’s defence – i.e. that it is applying a voluntary industrywide charter on children’s television viewing. The code does not actually refer to animals or bullfights, but calls on broadcasters to avoid showing children “behaviour that is dangerous to their health” and “explicitly violent scenes”. They also pointed out that the previous year’s reports on observance of the code upheld 31 complaints relating to infringements by Spanish television, though none concerned bullfighting. Certainly the Parliamentary Committee which oversees TVE had demanded that it should warn parents when bullfights were about to be broadcast and ensure that programmes for the under-13s are scheduled on its other channel (Ibid).

Bullfighting experienced another turn of the televisual screw a few months later, when TVE announced that it was to remove the national pastime from its advanced schedules, by refusing to include it in its budget for “obligatory programming”. Other broadcasters remain free to transmit bullfighting as described above. Animal rights campaigners once again lost no time in hailing this as the beginning of the end for this controversial “sport”. These sentiments have been echoed by animal welfare groups worldwide. Thus Justine Smith, of the World Society for the Protection of Animals commented:

“This decision is very positive news for our campaign to end bullfighting. It shows that the public TV station is reflecting public opinion – a recent poll showed that more than 70 per cent of Spanish people have no interest in bullfighting (The Independent of 6/12/2007, p. 23).

Naturally, the pro-bullfighting lobby took up the challenge, and claimed that, far from losing its appeal, the pastime was now gaining in popularity, given that viewers in China were now watching bullfighting by satellite television. However, the lobby in question – supported by peruvian author Mario Vargas Llosa – recently failed in a star-studded effort to obtain UNESCO World Heritage status for this activity. Opposition parties, in particular the conservative Popular Party, have also condemned this move (Ibid)

The present author pledged, as ever, to keep the readership informed of any further developments in this affair.

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Brazil awarded 2014 Football World Cup – amid widespread scepticism

It was only to be expected that, some day, the right once again to host the football World Cup would be awarded to Brazil, particularly in view of its long-standing success in the competition. This entirely predictable event was made reality in late October 2007, when world governing body FIFA decided that the South American state should host the 2014 tournament – for the first time since 1950. Not unexpectedly, the President of the Brazilian Football Confederation, Ricardo Teixeira, responded by saying that his country would do everything possible to show the world that it was capable of staging the event (*Associated Press, www.findlaw.com of 30/10/2007*).

But is it? Although the Brazilians may have defined the soul, and no one with a drop of romance in their veins can argue with the appeal of a World Cup in the land of the jogo bonito, the FIFA decision to award them the 2014 tournament is - like that which sent the 2010 jamboree to South Africa (see above and Journals passim!) something of a gamble. As is the case with the 2010 tournament, the political choice is also the popular one, but the challenges are immense. The area bordered by Porto Alegre, Recife and Manaus, all putative hosts, is larger than that marked by Oslo, Lisbon and Istanbul, and lacks Europe's generally adequate transportation infrastructure.

Then – once again in an uncanny echo of the 2010 World Cup - there is crime. Last year the Brazilian Ministry of Justice admitted to 150 murders per day (the figure in England and Wales in the comparable period averaged fewer than three). FIFA's inspection report, while recommending that Brazil be selected – it was the sole bid due to the now abandoned policy of rotating between regional confederations – is full of subtle, coded references to unfavourable aspects, but even this glossy document has to concede that "security is a concern". So are the transport infrastructure, stadiums (at present there is not a single venue close to meeting the required standard) and corruption. Even the national footballing legend Pele, who pointedly was not present in Zurich for the announcement of the winning bid, failed in a crusade to clean up the game's administration when serving as Brazil's sports minister (*The Independent of 31/10/2007, p. 61*).

All this explains the mixed reaction in Brazil to the announcement, made by the FIFA President himself. Certainly in Rio de Janeiro, giant Brazil shirts were unfurled by Sugar Loaf mountain and below the Christ the Redeemer statue that sits atop Corcovado

mountain. A banner saying the "The Cup is Ours" hung from a cable car. In Sao Paulo, thousands of balloons in the national colours of yellow, blue, white and green were released into the atmosphere from the pitch of Morumbi Stadium, home of the former world club champions Sao Paulo, watched by a crowd of schoolchildren. However, away from these organised celebrations were dissenting voices. These mixed emotions were articulated by the 1970 World Cup winner Tostao, now one of Brazil's most respected columnists, who wrote:

"The optimistic say the World Cup will increase the number of tourists, will bring huge benefits in infrastructure for the population and will improve football by improving and building stadiums. Others think that, because of the violence, the problems with air transport, the terrible highways, the absence of railways, the bad structural conditions of the cities and the areas around the stadiums, the enormous government spending, the political interests and the people who take advantage, that Brazil is not prepared for such a task" (Ibid)

An estimated £550m will be required for stadium reconstruction. That will be stretched even after the 18 bidding cities are reduced to a maximum of 10 stadiums. Four possible sites are only artists' impressions, the others will need extensive, and expensive, refurbishment. Some are not even equipped for television coverage. Rio's iconic Maracana, which is pencilled in to host the final, has been so badly neglected that there is no way it would receive a safety certificate in western Europe. The aforementioned football supremo, Mr. Teixeira, has said that private investment would meet the stadium bill but there were grave doubts in Brazil as to whether that would actually happen. The lack of football funding is such that nearly 1,000 players leave each year for better pay elsewhere and the national team rarely play at home outside of World Cup and Copa America qualifiers. England last toured Brazil in 1984.

In addition, no budget has been announced for non-sporting infrastructure and the fear is, as with the recent Pan-American Games, the budget for which overran ninefold to nearly £1bn, government will pick up the tab to avoid losing face, resulting in debts which will cripple the nation for years. Yet it is worth asking the following question: if the World Cup cannot be played in the world's fifth largest and fifth most populous country, the ninth largest economy in the world and, to boot, a country which has won the competition five times, more than any other, and is globally identified as possessing football's heartbeat, where can it be played? South America hosted the first World Cup, in 1930, but has not hosted since Argentina wowed, and conned,

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the world in 1978. Then the concern was a military junta that successfully used the competition to mask its evil. Brazil has its problems, many of them relating to the inequality of wealth division, but it is democratic and multicultural. FIFA intends to take over much of the running of the 2014 tournament, including ticketing, and will threaten to move it (probably to the US) if Brazil lags in its preparations. It could be a memorable World Cup, but the clock is ticking and those seven years will just fly by (*Ibid*).

The infrastructure problem has also exercised FIFA's minds. Its inspection committee noted several proposed venue cities would not be able to provide enough hotel rooms, and added there was an absence of viable rail transport, so an "airlift" of fans, administrators and media would be necessary for some matches. It then concluded that "Brazil's air infrastructure is a key and effective element of its bid". However, it only took a brief thunderstorm in Sao Paulo this month to knock Brazil's domestic air system out of kilter for the following day. The city's Congonhas airport was shut for 25 minutes and the closure, at a major domestic hub, had a domino effect. The incident increased concern over the country's air infrastructure following two major crashes in the past 13 months. In September last year, 155 people died when a Boeing 737-800 operated by domestic company Gol collided with an executive jet. In July, 187 people were killed when an Airbus A320 run by another domestic company, Tam, overshot the runway at Congonhas. In addition, travel by road is very difficult in Brazil. An overland journey from Rio de Janeiro to Manaus, for example, takes 60 hours on a bus to Belem, followed by several days on a boat down the Amazon river (*Ibid*).

(On the recent collapse of the Salvador stadium stand, which caused many fatalities, see below p.79)

Environmental issues

Winter Games planning "threatens environmental harm" (Russia)

In late December 2007, Russian environmentalists claimed that the Government had ignored their concerns in relation to planning for the 2014 Winter Games, to be held in Sochi, and that three construction projects would cause irreparable harm. Igor Chestin, the director of the World Wildlife Fund for Nature in Russia, said that plans for the bobsleigh and luge tracks would require the levelling of a swath of forest (*The Guardian of 27/12/2007, p. 31*).

Public health and safety issues

Several footballers die in action

The football authorities have recently had some cause for concern over the number of players who, very much in their prime, have died, or come close to dying, in action, either on the field of play or whilst training. Thus in late August 2007, Chaswe Nsofwa, a former Zambia international, collapsed and died of heart failure during a training session with his Israeli club side, Hapoel Beersheba. The tragedy came less than 24 hours after Clive Clarke, playing for English league side Leicester City whilst on loan from Sunderland, suffered a heart attack during a League Cup tie at Nottingham Forest. However, Mr. Clarke later recovered (*The Guardian of 30/8/2007, p. S1*).

Just days earlier, Spanish side Sevilla announced that their left-back, Antonio Puerta, had died after suffering "five cardio-respiratory stoppages". Little more than a week before that, Anton Reid, a player with English league side Walsall, inexplicably collapsed on the training ground and died. It is unprecedented that the sport should lose three players in such a short period and it prompted a demand that compulsory heart screening be introduced for all professional players. It later emerged that Mr. Nsofwa, a 27-year-old striker, had been training in temperatures approaching 40C when he collapsed. Rescue workers spent several minutes trying to restart his heart before paramedics arrived. Attempts to revive Nsofwa, including using an external pacemaker, proved unsuccessful and the player was pronounced dead when he arrived at Soroka hospital (*Ibid*).

This disquieting development continued in late December when Scottish football player Phil O'Donnell died after collapsing during a game in which his team Motherwell F.C., of which he was captain, were playing Dundee United in a Scottish Premier League match. Mr. O'Donnell collapsed as his substitution for Marc Fitzpatrick was being arranged. He received treatment for around five minutes before being stretchered off and transferred to a waiting ambulance. David Clarkson, O'Donnell's nephew, was also playing at the time and had scored twice but was taken off due to being visibly distressed by O'Donnell's collapse. Medical officers from both teams believed he had suffered a seizure. Attempts were made in the ambulance to revive him, but these failed and he was pronounced dead at 17.18 GMT, having been taken to Wishaw General Hospital (www.bbc.co.uk/news/29/12/2007).

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Jockey dies from injuries after race fall (Australia)

In early December 2007, it was learned that Daniel Baker, a 23-year-old jockey, died from head injuries sustained in a race fall which happened two days earlier at a track in northern New South Wales. Mr. Baker's horse had clipped another before he fell. The jockey sustained a serious head injury and never regained consciousness (*Associated Press, www.findlaw.com of 4/12/2007*).

Football spectators die as stand collapses (Brazil)

In late November 2007, eight people died after a stand collapsed at a football ground in North-Eastern Brazil. Television footage from Salvador, the capital of Bahia State, showed a hole in the floor of the upper tier and the bodies of several people who had apparently fallen onto the street below. The accident occurred towards the end of the fixture between Bahia and Villa Nova from Goiana (*The Guardian of 26/11/2007, p. 20*).

Later, the Brazilian supreme sporting court fined Bahia \$45,500 and suspended the club from playing at home for seven matches. Bahia state officials later announced that the stadium would be dismantled (*Associated Press, www.findlaw.com of 12/12/2007*).

This tragic event naturally contributed towards the anxieties expressed by those who had reservations about Brazil being selected as host nation for the 2014 World Cup (see above, p.78).

Equine flu takes its toll of Australian racing

Equine influenza (EI) is a disease affecting horses which is not usually fatal, but an infection which can affect a horse's performance for weeks or even months after the major symptoms have disappeared. The illness struck in Japan towards the middle of August 2007, and the authorities banned all racing across the country, as well as prohibiting all movements of horses, after 29 cases of EI were identified in the country. The Japan Racing Authority reported shortly afterwards that the country was clear of the infection, and immediately resumed racing activity. However, the disease had repercussions beyond the island nation's boundaries.

Australia's thoroughbred population, unlike that of Japan, is not widely vaccinated against the disease, and if the virus established a foothold in the country it could rapidly have swept through the country's equine population, and therefore its racehorses. As a result,

more than 70 horses who were thought to have been in contact with the disease were quarantined for 30 days, facing the country's racing industry with an anxious period during the run-up to its major event, the Melbourne Cup (*The Guardian of 24/8/2007, p. S11*). A week later, the racing authorities' worst fears were realised when it was confirmed that eight thoroughbreds were diagnosed with EI, forcing an unprecedented cancellation of the spring racing carnival at tracks across New South Wales. The disease had taken hold at the Randwick racecourse, where all 700 horses stabled were vulnerable to contracting the highly contagious illness. The racecourse was declared a quarantine zone for the foreseeable future. The outbreak also affected Queensland, where racing was also abandoned for a week (*The Independent of 31/8/2007, p. 32*).

The crisis assumed governmental dimensions as pressure was placed on the Prime Minister, John Howard, to conduct an inquiry into the source of the disease outbreak. Mr. Howard eventually yielded to the pressure, and an independent inquiry was established, to be chaired by a former High Court judge, Ian Callinan, who would determine whether quarantine procedures were breached when the virus entered the country. The inquiry was expected to focus on Eastern Creek, a government-operated facility on the western outskirts of Sydney, where stallions from Japan may hold the key. However, the Agriculture Minister, Peter McGauran, announced that a link had yet to be established with the facility, since there was no record of any horse having left its premises. Mr. Howard said that Mr. Callinan would be granted as much time as he required, and would be given sweeping powers to investigate every aspect of the crisis (*The Independent of 3/9/2007, p. 17*).

The inquiry started officially in early October (*The Times of 29/9/2007, p. 20*), and had not been completed at the time of writing. In the meantime, the nation's racing enthusiasts had to content themselves with camel races, even though betting on them was not allowed. This attracted the attention of animal liberation activists, who protested that racing was alien to the camel's easily frightened nature. Nevertheless, the sport was not unprecedented in the country, but had hitherto been confined to the "outback" (*The Independent of 13/10/2007, p. 37*).

5. Public Law

Nationality, visas, immigration and related issues

Blatter continues to push for foreign quotas in football

Most sports played on a professional basis have become increasingly international in recent decades, but none more so than the “beautiful game” itself – as the statistics on ratios of home grown v. foreign players in the English Premier Division amply demonstrate. Although this has in many respects produced an enriching influence on the game, there are those who fear that this aspect of top football is now out of control, and that measures should be taken in order to rein in its worst effects. This is certainly the view espoused by none other than Sepp Blatter, the President of the game’s world governing body FIFA. In early October, it was learned that he intended to lobby the European Union to ensure that clubs are not allowed to field more than a certain quota of foreign players. He argues that imposing a core of home-grown players would preserve the identities of clubs. Supporters of the idea also maintain that this type of quota could boost the development of local players and even help the team win the World Cup (*The Guardian of 6/10/2007, p. 14*).

The main legal problem in all this is that currently, EU law prevents such quotas under its rules on the free movement of workers, so this would require a special dispensation to be allowed by the Community authorities. Mr. Blatter believes this to be a “matter of principle” and that footballers cannot be placed on the same footing as workers (sic). His comments came as a British NOP survey of football fans revealed that 56 per cent of those asked favoured such a quota scheme (*The Independent of 6/10/2007, p. 91*). Naturally, this proposal would threaten certain vested interests, more particularly amongst Europe’s top sides, many of whom have a majority of foreign imports in their ranks. Arsène Wenger, the Arsenal manager, went so far as to predict that the Blatter proposal would “kill the (English) Premier League”, and that the emergence of players such as Steven Gerrard, Ashley Cole and Frank Lampard proved that England was capable of producing world-class players (*The Guardian of 6/10/2007, loc. cit.*).

It should be pointed out that the European governing body, UEFA, has already instituted a limited quota for the Champions’ League which is based on the promotion of the clubs’ youth players rather than on placing restrictions on foreigners. Some sides have been unable to meet even these minimal constraints and forced to leave very talented players on the sidelines (*The*

Independent of 6/10/2007, loc. cit.).

It remains to be seen whether Mr. Blatter will succeed in his endeavours.

(On the wider issue of the place of sport in EU law, see below under the section headed “EU Law”, p.85.)

Iraqi players seek asylum in Australia

In mid-November 2007, it was learned that three members of the Iraqi Olympic football squad, as well as their assistant coach, abandoned their team during a trip to Australia in order to request asylum. The four vanished at dawn from the homes of their Australian hosts and failed to materialise for their scheduled flight home. Tariq Ahmed, the Secretary-General of the Iraqi football federation, commented that the players had “defamed their country’s reputation” (*The Independent of 20/11/2007, p. 21*).

FIFA ruling causes Irish confusion

Football nationality has at times been an intriguing subject, since in some cases it does not correspond to “official” nationality. This is certainly the case with Irish football, the northern half of which has the right to field a separate national side in spite of its status as part of the United Kingdom. However, to make the picture even more complex, whereas people born in Northern Ireland are automatically regarded as Irish in the eyes of the Eire authorities, the same does not apply in footballing terms under the rules of the world governing body FIFA.

The Football Association of (Southern) Ireland (FAI) has recently been lobbying for a rule change, and the matter was to be considered at the December meeting of the FIFA Executive Meeting in Tokyo. However, the outcome of that meeting seemed as inconclusive as ever, given that officials on both sides of the Irish border insisted that the governing body had ruled in their favour. On the one hand, Northern Ireland officials and Unionist politicians claimed victory after learning that FIFA had decided against any change in the prevailing rules. However, the FAI insisted that FIFA sources had informed them that they could continue to field players from Northern Ireland (*The Independent of 17/12/2007, p. 51*).

The disagreement had been sparked off initially by the Republic of Ireland having selected Londonderry-born Darron Gibson, who plays for English league side Wolverhampton Wanderers, for a senior international fixture. FIFA did not clarify this matter, with only one

5. Public Law

sentence in the communication referring to the eligibility issue, which read:

“The Executive Committee decided to leave the current regulations regarding the eligibility of players to represent association teams unchanged” (Ibid).

Given that FIFA’s legal department had in the past refrained from blocking the fielding of Northern Ireland-born players by Eire, this statement was ambiguous to say the least. The confusion over the eligibility problem therefore looks likely to continue.

Berlin beware – Warne seeks to beat rules with German passport

Football is not the only professional sport whose authorities have been concerned at the influx of foreign players, as described above. The same issue has exercised the minds of the cricketing authorities, with the result that as from next season, English counties will be restricted to fielding one overseas player. One notable victim of this rule change could be the Australian test spinner Shane Warne, who has bolstered Hampshire’s playing fortunes for a number of years. However, Mr. Warne is now examining the question whether he qualifies for a German passport, on the basis that his mother held that nationality when she emigrated to Australia – albeit at a very tender age (*The Independent of 18/8/2007, p. 58*).

No further details are available at the time of writing.

IOC dismisses Tibet request for own team at 2008 Olympics

In mid-December 2007, it was learned that the International Olympic Committee (IOC) had rejected an attempt by Tibet to field its own team at the 2008 Beijing Olympics. More than 100 supporters of the application, including some Buddhist monks, waved banners and Tibetan flags outside the IOC headquarters as delegates from the unofficial Tibetan National Olympic Committee met the organisation’s officials to discuss this request.

Michel Filiau, a senior IOC official who participated in the meeting, explained that a rule change made in 1996 meant that only national committees from countries recognised by the international community could take part in the Olympics. A special exemption is granted for those territories whose national committees were recognised before 1996 – such as the Palestinian territories, Hong Kong and Taiwan (*Associated Press, www.findlaw.com of 10/12/2007*).

Sporting figures in politics

Imran Khan released after hunger strike

Following a brilliant Test playing career, former Pakistan all-round cricketer Imran Khan went into politics in his native land, establishing the “Movement for Justice” party in 1997. He initially supported the military coup which brought the current Pakistan leader Pervez Musharraf, to power, but later became a stern critic of the latter’s régime. He has also given vocal and active expression to this opposition, to the extent that the current rulers have seen fit to take extreme measures in order to contain him.

Thus in early November 2007, it was learned that he was placed under house arrest after policemen stormed his home in the immediate aftermath of the state of emergency declared by General Musharraf. A member of Mr. Khan’s entourage expressed the fear that the measures taken against him would not end there, and that he might be removed from his home to a location in the Punjab (*The Sunday Telegraph of 4/11/2007, p. 14*). Later, however, it was learned that Khan succeeded in escaping from his detention. He issued a statement through his ex-wife, Jemima, pledging to lead an underground movement against the state of emergency (*The Times of 7/11/2007, p. 13*). He emerged after two weeks of hiding at Punjab University. Amid cheering from a crowd numbering several hundred people, he was hoisted onto his supporters’ shoulders. Moments later, however, he was dragged into the physics building by activists from the student wing of Jamaat Islami, Pakistan’s largest Islamist party. A burly student held the former cricketer in a headlock. An hour later he was bundled into a white van and driven to the campus gates, where police took him into custody. He was charged under anti-terrorism legislation. Penalties under this law include life imprisonment and even death (*The Guardian of 15/11/2007, p. 14*).

Subsequently, the news emerged that Mr. Khan was being held in solitary confinement at Dera Ghazi Khan prison in southern Punjab (*The Independent of 20/1/2007, p. 21*). There, he announced that he was starting a hunger strike in protest at the state of emergency, and in support of his demand for the reinstatement of the Supreme Court judges who had been dismissed by General Musharraf. His gesture came as the General came closer to extending his tenure when his new, hand-picked Supreme Court dismissed a legal challenge against his re-election as President – thus opening the way for him to serve another five-year term (*The Daily Telegraph of 20/11/2007, p. 12*). Two days later, it was learned that

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Mr. Khan was among more than 3,000 political opponents of the military regime to be released (*The Independent of 22/11/2007, p. 31*).

Kasparov jailed following protest rally (Russia)

Another former sporting icon who has decided to oppose the powers-that-be in his native land is garru Kasparov, the former chess champion. As has been noted in previous issues of this Journal, he is a virulent opponent of the current Russian president Vladimir Putin. In late September 2007, he was selected by his opposition coalition to be its candidate in Russia's presidential election in March 2008, receiving 379 of 498 votes at the national conference of the "Other Russia" coalition (*The Independent of 1/10/2007, p. 21*).

Mr. Kasparov did not, however, restrict his campaigning to canvassing and speech-making. In late November, he was arrested and sentenced to five days' imprisonment for taking part in an anti-Kremlin protest rally in Moscow. He was charged more particularly with organising an unsanctioned protest of at least 1,500 people directed against the President, chanting anti-government slogans and resisting arrest. He was one of dozens of people arrested during the 3,000-strong demonstration called "the march of the dissenters". Police officers moved in when around 150 of the protesters broke through a cordon and attempted to march to the central election commission, which they accuse of having barred "Other Russia" candidates from contesting the parliamentary elections, which were due to take place on the following Sunday (*The Sunday Telegraph of 25/11/2007, p. 37*).

One of the protestors, Sergei Konstantinov, was beaten in the courthouse and carried out unconscious, according to the latter's wife Yekaterina. As for Kasparov, he described his sentence as "unfounded" and based on contradictory evidence. Two riot police officers testified in court that they had been given direct orders to arrest Mr. Kasparov prior to the rally. However, one of them acknowledged that he had submitted two conflicting reports (*Ibid*). The former chess Grand Master subsequently failed even to become a nominated candidate. He accused the authorities of preventing him from standing for the office of President by barring his supporters from meeting in order to nominate him. He claimed that the authorities had instructed venue owners not to rent premises to the "Other Russia" coalition. Under Russian law, independent candidates may only stand for president if at least 500 people meet formally to vote on the nomination (*The Guardian of 14/12/2007, p. 15*).

Other issues

Sydney golf greens ripped up after shooting of ducks (Australia)

In late November 2007, a note was left at a suburban Sydney golf club which was terse but to the point: "Warning: you bastards kill one bird and we will destroy all your greens at our leisure. We will be watching and waiting". The events which had prompted this extraordinary turn of events was the decision by Warringah Golf Club's decision to hire a marksman to shoot native wood ducks which have been ripping up its greens. Some local residents were unhappy, but the club management did not expect the retaliation which occurred at the weekend. After news of the shooting appeared in the local newspaper, intruders crept in overnight and dug up the greens. The menacing note, scrawled on a piece of cardboard, was planted in the earth. In addition, golf professional working in the pro shop attached to the club received a threatening phone call (*The Independent of 21/11/2007, p. 16*).

It appears that Warringah had obtained a three-month licence to hunt the ducks. The club's general manager, Brian Leggett, told *The Sydney Morning Herald* that the ducks dug up the greens as they foraged for food; then the process moved to the other end, as a result of which there were faeces all over the green. Less radical measures had been attempted, including placing cardboard cut-outs of cats and rubber snakes around the course, but without success – apparently the ducks merely became accustomed to them and returned. Mr Leggett said the shooter employed to cull the errant fowl used a silencer and he condemned the vandals, stating:

***"I can understand people being concerned and upset, but you don't then take things into your own hands. We don't like the fact of having to take the action of shooting some of the ducks, but it's really moved on from there when you start getting trespassing and criminal damage."* (Ibid)**

The incident is currently being investigated by the police. Four greens were extensively damaged, and three others had lumps of turf dug up with a spade. The club, which also employs a shooter to kill crows that steal golf balls, was given the duck licence by the National Parks and Wildlife Service, whose spokesman pronounced himself satisfied that the golf club tried everything they could do to prompt the ducks to go somewhere else. The spokesman added that the retaliatory tactics were "understandable" on the part of people concerned for duck welfare. The vigilante attacks appear to have worked, too. The cull has been

5. Public Law

halted, and the club will try again to find an alternative solution. It has sent an email to every golf club around the country, requesting help and advice (*Ibid*).

Pakistan state of emergency damages international squash tournament

The state of emergency recently declared in Pakistan (see above) has also produced a direct impact on the nation's sporting activity. The Pakistan Open squash tournament is an extremely prestigious event in the sport, and its title has been won by many of its greatest names, including the legendary Jansher and Jahangir Khan. However, shortly after the state of emergency was declared, the tournament's sanction was removed by the PSA, the men's tour governing body, which was concerned about competitor safety. This means that the tournament cannot count for world ranking points, which may affect the entry (*The Daily Telegraph of 12/11/2007, p. S7*).

6. Administrative Law

[None]

7. Property Law

Land law

[None]

Intellectual property law

OJ Simpson “If I Did It” book continues to cause grief – and court action

It will be recalled from a previous issue of this Journal (*[2007] 1 Sport and the Law Journal p. 78*) that, in November 2006, former American footballer OJ Simpson – of whom much has already been said in this volume (see above, p.57) and elsewhere – set off an outcry and a US publishing scandal by attempting to publish a book in which he comes as close as he could to confessing to the crimes of which he was acquitted over 10 years ago. The families of the victims, i.e. his ex-wife Nicole Brown and her lover Ron Goldman, accused Simpson of trading in blood money with the work, entitled *If I Did It*. They also alleged that he had found a way of profiting whilst shielding his considerable assets from the \$33.5 million financial settlement which he was ordered by a civil court to pay to them. As a result, HarperCollins, the publisher who had agreed to disseminate the work in question, decided to pulp the entire 400,000 copy print run, and apologised to the Brown and Goldman families.

Now, in yet another strange twist to this already bizarre story, Fred Goldman and his daughter Kim – the father and sister of Ronald respectively – have published the controversial work after all. Mr. Goldman acquired the rights to the book under the terms of the 1997 civil court decision which held Simpson liable for the killings, thus enabling him to publish it again. The book went on sale in mid-September 2007, with 100,000 copies having already been ordered. Although he did not change the content of the book, Mr. Goldman has had the “If” in the original title reduced to a tiny size so that the cover now appears to read “I Did It”. He also added an introduction, prologue and afterword written by himself and others, which recasts the book as both an indictment and a confession (*The Daily Telegraph of 14/9/2007, p. 18*). The proceeds should enable the Goldman family to recover at least some of the money still owed them by Simpson.

However, more court action has resulted from the controversial book. It will be recalled that, within weeks of the work being pulped as described above, the publisher’s editor, Judith Regan was dismissed for allegedly making anti-semitic comments to a company

lawyer by delivering herself of the opinion that a campaign against her within the firm was being staged by a “Jewish cabal”. Ms. Regan has now submitted a \$100m, 70-page lawsuit to the New York state supreme court in Manhattan, in which she argues that HarperCollins owner Rupert Murdoch signed off on the Simpson book over dinner in February last year, suggesting that Regan pay \$1m for the rights, although not directly to Simpson. When the furore broke over the title, Murdoch had said he thought its publication “ill-considered”. Ms. Regan, who is represented by the veteran Hollywood lawyer Bert Fields, alleges that HarperCollins and News Corp manufactured the false impression that Regan was a disgraceful and unethical publisher who deserved to be punished for the OJ controversy. The action also claims that HarperCollins’s chief executive, Jane Friedman, sought to protect her own reputation by remaining publicly silent about her own role in the OJ project, but surreptitiously defaming Regan (*The Guardian of 15/11/2007, p. 19*).

The combative Ms. Regan made her name at the publisher Simon & Schuster where she promoted bestsellers by personalities such as Howard Stern and Rush Limbaugh. When the ReganBooks imprint was launched, she followed a formula that mixed celebrity and controversy, publishing books by a porn star, Jenna Jameson, as well as the activist Michael Moore. She moved her imprint from the traditional publishing centre of New York to Los Angeles in a bid to develop film and television projects. In the lawsuit, she says the imprint generated more than \$1bn in sales. However, Regan gained notoriety for her abrasive personality and private life. The fallout from an affair she had with the then New York police commissioner Bernard Kerik in 2004 forms part of the lawsuit.

Kerik was appointed by the former New York mayor Rudy Giuliani, now the leading Republican presidential candidate. In 2004, Kerik, who had started his political career as Giuliani’s driver, was being considered by the White House for the position of homeland security secretary. But that was scuppered following revelations that he had employed an undocumented immigrant as a nanny. Last week he was indicted on federal tax fraud charges. In the lawsuit, Regan says News Corp executives told her to keep quiet about her relationship with Kerik in order not to harm Giuliani’s presidential campaign.

Other issues

[None]

8. Competition Law

[None]

9. EU Law

EU law (excluding competition law)

IOC President welcomes new EU Treaty as a legal breakthrough for sport

The Treaty of Lisbon, which was signed recently by the Heads of Government of the EU member states, has given rise to a good deal of controversy – not least because certain countries which pledged a referendum on the European Constitution, which this treaty replaces, now seem to be reneging on this pledge. However, there are those at the top level of sporting administration who take a less jaundiced view of the Treaty. Among them is the President of the International Olympic Committee, Jacques Rogge, who described the inclusion of a specific section on sport as a “historic move” which should give sporting federations more self-government.

On the occasion of the two-day summit in Portugal, the leaders of the 27 EU Member States agreed to recognise the “specific nature of sport” in the Reform Treaty. This appears to signal greater autonomy for sport and possibly even exemption from some of the EU’s competition rules. This was clearly what Dr. Rogge had in mind when he expressed the fear that the financial pyramid structure of those sports where cash trickles down from the top could be undermined by wealthy clubs organising breakaway leagues based merely on profit. Such clubs would have felt protected by EU law if there were no exemption for sport.

With the benefit of its special status, sporting bodies can now expect to redistribute revenues and impose specific measures aimed at combating doping, bribery and other forms of corruption. Outside the IOC, the debate on greater autonomy for sport has raged specifically within the world of football, where there exists a widening gap between the “grass roots” and the wealthiest clubs. The body which epitomises this status – i.e. the G14 Group of top European teams – made no secret that they supported the status quo, which effectively made sports accountable only to general principles of national and EU law. Echoing the statements made by Arsenal manager Arsène Wenger on the FIFA proposal to restrict numbers of foreign

players (see above, p.80), they argued that creating an exemption for sporting bodies would set a dangerous precedent. Accordingly, the G14 Group called upon the Member States governments to ignore a letter issued to them by the European governing body UEFA, in which the latter’s President, Michel Platini, called for football to be rescued from what he described as “the malign and ever-present influence of money” (*Associated Press, www.findlaw.com of 19/10/2007*).

Naturally, it is far too early to tell what precisely will be the effect of this “sporting provision” in the Reform Treaty (assuming that the latter is ratified by all member state, which at the time of writing is far from being a foregone conclusion). As is usually the case with EU law – in particular its generally-worded provision – much will depend on the manner in which the courts, and more particularly the European Court of Justice, will interpret them on the occasion of the disputes which are certain to be brought before them.

EU Council moves towards Europe-wide banning orders

Just before the year 2007 ended, it was learned that football banning orders of the type introduced into this country could become the norm across Europe in an attempt to prevent violent incidents occasioned by football fixtures. At a meeting of the European Union’s Justice and Home Affairs Council, ministers approved the introduction of a work programme based on the UK model in all member states of the European Union. Although there is not as yet any legislative requirement to adopt these banning orders, the European Commission has been called upon to “encourage and resource participation and to implement training measures” to this effect in all member states (*The Guardian of 14/12/2007, p. S2*).

10. Company Law

[None]

11. Procedural Law and Evidence

[None]

12. International Private Law

[None]

13. Fiscal Law

Fiscal law

Rossi investigated by Italian tax authorities

In early August 2007, it was learned that the Italian tax authority had launched an investigation into the affairs of former motorcycling world champion Valentino Rossi for suspected tax evasion. According to a spokesman, the authority in question was examining possible tax evasion or undeclared revenues to the tune of £41 million between 2000 and 2004. The investigation is linked to the decision by Mr. Rossi to take up residence in Britain in order to take advantage of more favourable fiscal conditions (*The Guardian of 9/8/2007, p. S2*). Mr. Rossi, who won the MotoGP title five times, protested his innocence, stating:

"I've been crucified and condemned even before any of the necessary checks have been carried out. It's clear to me I've been exploited, probably because Italian taxes don't work in the same way as taxes in other countries like England" (The Guardian of 16/8/2007, p. S2).

No further details are available at the time of writing.

"Magic Johnson" joins debate on US private equity tax

In early September 2007, it was learned that former basketball player Earvin "Magic" Johnson has emerged as one of the most unlikely players in the increasingly intense debate on the question whether to raise taxes for the US private equity industry. Mr Johnson, who led the US "Dream Team" to a gold medal at the 1992 Olympic Games, is a leading member of the Access to Capital Coalition, a new grouping made up of minority and women business leaders. The former NBA star, now a successful entrepreneur and supporter of Hillary Clinton's race for the White House, argues that new tax legislation would lead to less investment in areas that struggle to get funding.

His consortium joined the debate as private equity and hedge fund bosses warned politicians that raising taxes would weaken the global competitiveness of US financial markets. Congressman Charles Rangel has sponsored a bill, supported by 22 Democrats, which would raise taxes on carried interest – essentially the investment profits earned by private equity and hedge fund executives – from 15 per cent to as much as 35

13. Fiscal Law

per cent. A similar bill is under consideration in the Senate. Both are very similar to the debate that is already raging in the UK, where trade unions and Left-wing politicians are advocating higher taxes (*The Daily Telegraph of 7/9/2007, p. B3*).

However, private equity groups responded with equal vigour, Carlyle Group managing director Bruce Rosenblum claiming that higher taxes would drive "growth capital now invested to strengthen American companies" overseas. Congressman Thomas Reynolds, of New York, said the move would further undermine New York's position as the world's pre-eminent financial centre. Both gave written testimony to the House Ways and Means committee in a hearing on tax issues. In the Senate, politicians have considered the question whether boosting taxes could harm pension funds of public employees, many of whose funds are invested in private equity (*Ibid*).

No doubt the debate will continue to rage well into the future.

Stock-car racing team owner jailed for two years for tax fraud (US)

In mid-November 2007, it was reported that a NASCAR stock-car racing team owner was sentenced Monday to two years in federal prison after he pleaded guilty to defrauding the government of more than \$34 million in taxes. Gene Haas, the 54-year-old owner of Oxnard-based Haas Automation and NASCAR's Haas CNC Racing, was ordered to begin serving his term on 14/1/2008, according to the U.S. Attorney's office (*Associated Press, www.findlaw.com of 6/11/2007*).

Mr. Haas had pleaded guilty in August to a felony conspiracy charge for orchestrating a plan to list bogus expenses which could be written off as business costs and save Haas Automation considerable amounts in tax. The company makes computerised machine tools. As part of his plea agreement, Haas paid a \$5 million fine, plus more than \$70 million in back taxes and interests. In a statement, US Attorney Thomas P. O'Brien said:

"Mr. Haas has now paid the government more than twice the amount of taxes he attempted to avoid paying. This huge monetary penalty, as well as the two-year prison term, should reassure law-abiding citizens that tax evasion can and will be rooted out, and that there are significant ramifications for those who attempt to cheat the government."

No further details are available at the time of writing.

14. Human Rights/Civil liberties

Racism in sport

Umpire hair discontinues race bias action against ICC

(This issue has already been dealt with earlier under the item headed "Employment Law", above p.64)

Criticism on racism approach stings Australian cricket officialdom into action

Although it remains a comparatively rare complaint in this sport, racism has occasionally known to rear its ugly head at major cricket fixture, particularly internationals. Various sporting authorities deal with this problem in different ways, but Australian cricket officials have come in for some criticism for the manner in which they have handled the issue in the past. In a recent report by the Human Rights and Equal Opportunity Commission (HREOC), the authors highlighted the embarrassment experienced by Cricket Australia, the national governing body for the sport, by racist taunts aimed at South African players during the 2005-6 Test series, and by other comments directed at Sri Lankan players in Adelaide during a one-day international played in January 2006. The report also referred to an incident in which an official of the International Cricket Council (ICC), John Rhodes, was punched by drunken spectators on being identified as South African, also in the course of 2006.

Although it made no direct criticism of the manner in which the authorities had dealt with the problem hitherto, it strongly suggested that there was room for improvement in this department where it stated:

"New strategies are necessary and tough laws help but the attitudes that give rise to racist behaviour at sporting events do not seem to have shifted a great deal. Our sporting organisations need to ensure that their policies and programmes are focused making sport inclusive and fulfilling to those who take part" (Associated Press, www.findlaw.com of 16/10/2007).

The report also stated that Aboriginals and other ethnic groups in Australia were reluctant to become involved in organised sports because they feared racial abuse (*Ibid*).

No doubt these words have made a particularly firm impression on Cricket Australia, since several weeks later they announced a crackdown on racist behaviour. Jeering fans at the first Test against India could be banned from the Melbourne Cricket Ground for life if they were found to be using racial taunts. Any

spectators caught doing so by undercover officers would be ejected and face further action. Police would also carry out checks for any offensive or racist slogans on banners, whilst patrons would be encouraged to report any bad behaviour (*The Guardian of 24/12/2007, p. 25*).

Racial issues continue to impinge on South African Sport

Just as many Eastern European countries find it hard to shake off some of the habits and thought processes which they acquired during the decades which they spent under totalitarian rule, so South Africa has experienced problems in ridding itself of the legacy of the apartheid regime which prevailed there for most of the past century. This has obviously also left its mark in the field of sport, the more so because of the importance which this dimension has in the country at large. In previous issues of this Journal, this column has reported widely on some of the issues which have resulted from this state of affairs, from the thorny and divisive issue of race quotas to the refusal by many among the white population to accept the changes that the end of apartheid was always bound to produce.

No sport has felt the impact of this malaise more than rugby union, which seemed to bear all the hallmarks of the previous regime. Not only was its national team restricted to whites but, even amongst the latter, it was seen as epitomising the embodying the values of the most obdurate and socially conservative of its members, to wit the rural Afrikaners. This has always posed a problem for the countries mainly black, post-apartheid rulers: should they keep aloof from what they always regarded as an elite pastime which represented all that was worst about the previous system of governance, or should they adopt and even encourage a sport in which the country had undoubtedly proved itself as a leading force? This was very much the dilemma which faced the first president, Nelson Mandela, when his country won the World Cup in 1995, and did so on the first occasion of its participation in the tournament.

It will be recalled that Mr. Mandela adopted the latter course. Not only did he override the proposal made by his own party, the African national Congress (ANC) to remove the famous Springbok emblem; he fully embraced the national team, proudly wore the green-and-gold shirt and supported the team from the stands of Ellis Park, the archetypal home of the South African game. Readers with long(ish) memories will recall that, initially, the strategy was successful, and that for a short period in that heady year rugby united the new South Africa as no other development had been capable of

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doing. Even the Sowetan, the newspaper of that Johannesburg suburb which, by a neat contrast, seemed to the outside world to symbolise all the evils of apartheid and the effect it had on its majority black population, joined in the excitement, and on the eve of the final, against New Zealand, the headline read "All blacks want South Africa to win the World Cup" (history does not record whether the pun was intended or not).

Thus Mr. Mandela had selected the most treasured possession of the Afrikaners with which to make the grand gesture of reconciliation. However, as he reflected upon the aftermath of this show of largess on the eve of the 2007 World Cup final, which once again involved the Springboks, he may have had some cause privately to regret his magnanimity and hesitate as to which side he should support. All indeed is not well, racially speaking, in the South African world of rugby, with many critics claiming that Mr. Mandela's gesture has not been repaid. In a country which is 90 per cent non-white, the team remains unrepresentative, with only two black players gracing the turf of the Stade de France for the showdown against England in late October. However, discontent has arisen from other factors as well.

Less than a year after the South Africans lifted the Webb Ellis Trophy in 1995, Henry Tromp was given a place in the national team, even though he had killed a black farm labourer. Not long afterwards, a coach was heard to refer to administrators as "kaffirs", that dreaded insult by which the more retarded whites described those not of the Chosen Race. Then, as was reported in these columns at the time, George Cronje, an Afrikaner hero, was said to have refused to share a room with his black team-mate Quinton Davids. All this has prompted calls not only for the Springbok emblem to be discontinued but also for the profile of the team to be recast (The Observer of 21/10/2007). And it is precisely this element which seems fated to continue the jinx which the racial issue continues to hold over South African sport: the question of ethnic quotas.

It should be pointed out at this stage that, contrary to popular belief, rugby has just as long a history among black and coloured South Africans as it has among the white population. It is believed to have its origins in the 1890s, spreading with the migrant labour and reaching the mines surrounding Johannesburg. Many clubs had already seen the light of day, particularly in the Eastern Cape region, when the Nationalist government introduced apartheid in 1948. Those white rugby players who dissented from the regime distanced themselves from the white clubs and played the game in the townships of the Eastern Cape. These included

"Cheeky" Watson, who turned down selection for the Springboks, and became a key figure in the debate over ethnicity and rugby. His son Luke has found it hard to obtain a place in the South African side in spite of having twice been voted Player of the Year. This has been attributed mainly to the selection policy of Jake White, the coach who took South Africa to the world title in France. Mr. White, however, has countered any accusations of prejudice by pointing out that Luke Watson's misfortune was to come of age at the same time as an even better player, i.e. the brilliant Schalk Burger (*Ibid*). And it is precisely here where the big dilemma lies: should players be selected purely on merit, or should ethnicity play a part?

Opinion at the grass roots of the game seems to be a qualified "yes" to the former. Qasim Borat, a team doctor for the Soweto rugby club, articulated the feelings of many where he declared that he would not mind if the team was 100 per cent white, "just so long as it went hand-in-hand with development of younger players". Indeed, it is in the management of the game that critics see the true failings, more particularly at the level of ordinary club sides. Mr. Borat claims that white Springboks do not hold coaching sessions in Soweto, even though they are regulars in South Africa's top schools. He also claims that the money made available for development is derisory – whereas in 1994 there were 14 non-white teams in the province in question, currently there are only three-and-a-half. Therefore, if there is any racism it appears to reside in the management of provincial sides which ultimately guide South Africa's ruling body (*Ibid*).

This is why there are those, both in the game and in politics, who wish to see a more proactive policy prevail whereby the team can be made more ethnically representative. There was even a bizarre episode, six months before the World Cup was due to be played, when a prominent local politician called for the passports of the Springbok squad to be confiscated in order to prevent them from travelling to France. Butana Komphela, a voluble Member of Parliament and head of a Government committee which oversees South African sport, based this proposition on the argument that the Springboks failed to represent the country adequately since all but six of its members were white. Mr. Komphela was silenced only by a pledge from Oregon Hoskins, the black president of the South African Rugby Football union, that future teams would redress the balance (*The Guardian of 22/10/2007, p. S6*).

At one time it had been expected that, once the World Cup was over, coach Jake White would leave, and the

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team broken up to make way for as many as 10 black players. However, once again the sweet smell of success seems to have united the country and prompted a less radical and more conciliatory approach – the more so because the two black members of the victorious Springboks had repeatedly emphasised that they had been treated as any other member of the team. In fact Bryan Habana, one of the outstanding successes of the tournament, went so far as to say that he had yet to experience any racial element during his entire playing career:

“As a kid I had black friends, coloured friends, Indian friends, white friends and pink friends so I never had any problems with racism. I was lucky enough to go to the best schools and get the best opportunities in life. Colour has not been an issue in my life” (Ibid).

This change of mood was also reflected at the highest level of government. Two days after the national team had lifted the trophy, President Thabo Mbeki strongly suggested that Mr. White should be retained (the fact that Australia had expressed an interest in employing his services may also have played a part) (*The Guardian of 24/10/2007, p. S1*). In fact, the entire South African cabinet staged a show of support for the coach and his team by donning Springbok kit for their fortnightly meeting in Cape Town (*The Guardian of 26/10/2007, p. 32*). The next day, Mr. Mbeki gave a further indication of a rethink in the Government’s attitude towards making the team more ethnically representative. Speaking at an official reception for the squad in Johannesburg, he praised the Springboks for inspiring youngsters to take up the sport, and indicated that, rather than targeting the national side, the Government would be concentrating its efforts on developing rugby from the grass roots upwards. He said:

“I have no doubt about the commitment of the team to this (objective). We must put behind our backs the controversy about how representative our teams are and the way to ensure this is by ensuring we have the players. We need to build up sport and use this victory to accelerate the process of getting all our young people, black and white, involved in sport. One of the mistakes of government these last 13 years has been that we haven’t paid sufficient attention to the development of sport – we haven’t committed sufficient resources to it. Perhaps we have looked too exclusively at national teams, when we need to be building from below. We need to be ascertaining what is happening in our schools, what’s the state of sports infrastructure in Soweto. Do the players have the facilities to train and prepare properly?” (The Guardian of 27/10/2007, p. 32).

Interestingly, a similar trend seemed to have occurred in cricket. Although slightly less tainted by the spectre of

racial exclusiveness, this is also a sport at which South Africa has excelled at various times in the past. This column has also previously reported on efforts to make the national side more ethnically representative, and for some years now there has been a policy, albeit an unofficial one, that at least four of the players selected must be “players of colour”. The presence of role models in the side, such as fast bowler Makhaya Ntini, was regarded as the best way of inspiring young blacks to take up the sport. This has not quite worked out, as there do not appear too many Ntinis on the horizon at the present moment. This policy has also led to an exodus of frustrated white players who have sought their fortune elsewhere, mainly in Britain – there are currently over 30 South Africans playing in English county cricket (including Test batsman Kevin Pietersen).

Here too, however, there appears to have been a change of heart at the highest level. Those who, like Makhenkesi Stofile, the South African Minister of Sport once were supporters of the quota system now appear to be changing tack, recognising perhaps that, most of all, their citizens, black or white, wish to be associated with success and that, instead of imposing official quotas, it would be preferable to concentrate on improving facilities and opportunities within predominantly black schools. In other words, the tide seems to be turning in favour of a “bottom-up” approach. This was made quite clear when Mr. Stofile, on advising a parliamentary committee on the best way forward, described quotas as “mere window dressing” and on the way out (*The Sunday Telegraph of 11/11/2007, p. S7.*).

Spanish F1 chief plays race card against Hamilton

As the reader will know from an earlier chapter (above p.48), Formula One racing has recently experienced some dark undercurrents, as a result of, inter alia, the “spygate” controversy extensively covered elsewhere in these columns. Now it appears that a somewhat sinister racial element has entered the fray as well. In mid-October 2007, the Spanish Motorsport Federation president managed to play the race card in a suitably crass fashion yesterday, just days before he was to be the guest of the McLaren team at Interlagos, by telling the *Publico* newspaper how ironic he found it that a racist country such as Britain was relying on a black driver, Lewis Hamilton, to win the world championship. He delivered himself of the following thoughtful statement:

“It is perfectly normal for a British team and British fans wanting to succeed in formula one but it is ironic that the racists in England are having to rely on a coloured pilot” (The Guardian of 17/10/2007, p. S7).

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Mr. Gracia was to be a guest of McLaren at the final race in Brazil as the team attempts to quell rumours that it is interfering with Fernando Alonso's title campaign. The next day, it was learned that he was being placed under investigation by the world governing body in the sport, the FIA. It is understood that the newspaper which first published Mr. Gracia's words possessed a tape of the conversation to confirm their story. If this proves correct, Mr. Gracia could be penalised for bringing the sport into disrepute, which would be deeply embarrassing in view of the political storm which he had aroused shortly before this episode. Only the previous week he had requested that an independent FIA watchdog should oversee the action at the decisive Brazilian Grand Prix in order to guarantee that his compatriot Fernando Alonso be given a fair chance by the McLaren team. The Spanish driver was known to believe that the British team were favouring his team-mate Lewis Hamilton, who at the time was leading the Spaniard by four points in the drivers' championship. Mr. Hamilton refused to be provoked by Gracia's comments about his ethnic background, but merely emphasised that he viewed the latter in a "positive" manner (*Daily Mail of 18/10/2007, p. 86*).

UEFA to investigate racist chants aimed at Beasley

Some football grounds in Eastern Europe have become notorious for the racist abuse administered to ethnic minority players. This ugly aspect of the game seems to have been on display again in Montenegro, when Scottish side Glasgow Rangers played FK Zeta in a Champions league qualifying game in early August 2007. It appears that one of the visiting players, DaMarcus Beasley, was taunted by fans who made monkey chants after he had scored the first goal for his side (*The Independent of 9/8/2007, p. 54*).

No further details are available at the time of writing.

Human rights issues

Gary Player snubbed by Mandela over ties with Burma (South Africa)

Nelson Mandela is a politician who is, perhaps more than most, highly sensitive to human rights issues, and likely to take exception to any association with political regimes which err in this regard. It therefore did not come as a surprise to learn, in mid-October 2007, that he had withdrawn an invitation to Gary Player, the former Open champion golfer, to host a charity fundraising tournament in the name of the ex-South

African president because of his business ties to Burma. The Nelson Mandela Children's Fund said it had not been fully aware of the extent and nature of Mr Player's involvement in Burma when it made the invitation, "nor of the political impact of this involvement". It took note of the "international campaign in support of greater freedom in that country".

The move followed a call by Desmond Tutu, the former Anglican archbishop of Cape Town, for a boycott of Mr Player's company because the South African designed a golf course that is "a playground of the ruling junta in the murderous dictatorship of Burma". Mr Player responded that he was very disappointed that his integrity and support for human rights had been brought into question over Burma and that his company's involvement in the country was taken entirely out of context because it began five years ago when the military regime appeared to be relaxing its grip on power.

Mr Player and his company have designed hundreds of golf courses around the world including the 18-hole Pride of Myanmar frequented by Burma's military rulers. The former archbishop had backed a call by his fellow Nobel peace prize laureate, the Burmese opposition leader, Aung San Suu Kyi, for an international boycott of foreign companies doing business in Burma. Mr Tutu, patron of the Free Burma Campaign in South Africa, also drew attention to a column in a leading British newspaper which called for a boycott of Mr Player's company (*The Guardian of 10/10/2007, p. 18*).

Mr Mandela's spokeswoman, Zelda la Grange, initially rejected Mr Tutu's plea, saying the former president was not about to follow a particular line simply because it had been taken by other Nobel peace prize laureates. She described Nelson Mandela as a humanitarian who would always oppose any human rights violations, but questioned whether it was necessary for him to stand up every time they happen and make a statement – at the age of 89. She added that if Mr Mandela were to take a public position it could compromise efforts by South Africa's foreign ministry over Burma. South Africa has been widely condemned for failing to back UN Security Council motions criticising the junta's human rights violations.

However, under growing criticism, the Nelson Mandela Children's Fund said Mr Player's participation threatened to undermine the charity tournament, and issued the following statement:

"Mr Player shares with us a desire to protect Mr Mandela's good name and ensure that nothing be allowed to detract from the potential success of a prestigious event aimed at improving the lives of children in South Africa" (Ibid)

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Mr Player said his company's involvement with the design of the golf course occurred in 2002 when "the world's relations towards the regime in Burma had thawed"; Aung San Suu Kyi had been released from house arrest and it seemed as though real political change was in the air. He wished to "make it abundantly clear" that he decried, in the strongest possible terms, the recent events in Burma and wholeheartedly support Archbishop emeritus Desmond Tutu in his efforts to bring peace and transition to that country (*Ibid*).

Gender issues

Football sex deal attacked as "exploitation of women" (Italy)

In early October 2007, it was learned that an Italian football team, Trentino 1921, had signed a sponsorship deal worth £7,000 with an escort agency. This has angered politicians, who declared that sport should not profit from the exploitation of women (*The Daily Telegraph of 9/10/2007, p. 20*).

Wie opts out of men's events (US)

In mid-December 2007, Michelle Wie, who has aroused much controversy through accepting invitations to play on the men's PGA Tour (Journals passim) announced that she would not be playing in any men's events in the course of 2008. The only exception may come at the end of the season with an appearance in Asia. Wie, 18, explained her change of tack to her coach, David Leadbetter, during session at his Florida academy this week.

It may be recalled that, in 2004, Ms Wie at the age of 14 caused a sensation as she had rounds of 72 and 68 to miss the cut by just a single shot in the men's Sony Open in Hawaii. That, however, was arguably her best performance in the men's arena. By the end of last year, she had missed 11 men's event cuts out of 12, with her only success coming on the Asian tour a couple of seasons ago. This past year was an almost total disaster for Ms. Wie after she injured her wrist in a fall. After six top-five finishes in major tournaments between 2004 and 2006, she withdrew from the women's US Open and missed the cut in the Ricoh British Women's Open. As far as Mr. Leadbetter is concerned, she should not have been playing at all. He explained:

"Michelle kept thinking that the injury was about to get better, but it never did. She's full of the joys of spring and is back to full health. For the first time in 12 months, she is swinging well and feeling no pain." (*The Daily Telegraph of 20/12/2007, p. S5*)

One problem is the fact that LPGA rules do not allow Wie, who chose not to join the association, to be given an invitation to the 2008 Kraft Nabisco Championship, which could pose problems when it comes to the British Women's Open at Sunningdale on July 31-Aug 3. Susan Simpson from the Ladies' Golf Union (LGU) said that the latter would try to accommodate any request, but that they could not give any guarantees. She said that usually they keep in step with the other tours and that, "if the LPGA are knocking her back, it would look odd if we let her play". She did add that the LGU had always seen the upside of having Wie in the field, not least because of the enhanced publicity she brings to the women's game.

Other issues

Basketball player alleges discrimination by NBA and former team (US)

In late September 2007, it was learned that Roy Tarpley, the former Dallas Mavericks basketball player, had brought a court action claiming that the US national Basketball Association and his former team had infringed the Americans with Disabilities Act (ADA) by refusing to reinstate him in the League. Mr. Tarpley, who became permanently banned from the NBA in 1995, alleged in his lawsuit that the league and the Mavericks discriminated against him on the basis of his disability as a recovering drug and alcohol abuser. At one point, the statement of complaint reads:

"Tarpley is a qualified individual with a disability withing the meaning of the ADA, in that he has a disability in the form of past drug and alcohol abuse, which substantially limits at least one of his major life activities" (Associated Press, www.findlaw.com of 27/9/2007).

The ADA is a federal law which was intended to prohibit employers from discriminating against people on the basis of handicaps such as being wheelchair bound, and require them, as well as those in charge of public places such as restaurants, to make "reasonable accommodations" for them. In July 2006, Mr. Tarpley had filed a charge of discrimination against the NBA with the Equal Employment Opportunity Commission (EEOC), a federal government agency. Almost a year later, the EEOC found for the player and ruled that the NBA and the Mavericks had infringed the ADA by failing to reinstate him, the latter having passed all doping tests which he had taken during the previous four years (*Ibid*).

No further details are available at the time of writing.

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General, scientific and technological developments

Anti-doping head suspicious of “super mouse” research

In mid-November 2007, widespread fears that the spate of recent discoveries in genetics could be used by dopers in sport – even if the testing has been carried out only on rodents – were confirmed by the outgoing president of the World Anti-Doping Agency, Dick Pound. He stated:

“The group of genetic research scientists we work with studying increases in muscle mass say 50 per cent of their emails come from the world of sport – saying, ‘We’ll try out what you’re doing’. The scientists point out they’re working on rats, and the answers come back, ‘We don’t care’.” (*The Independent* of 15/11/2007, p. 59)

The previous week, it had been revealed in a leading British newspaper that research geneticists had developed a “super mouse” which could run up to six kilometres at 20 metres per minute. Mr Pound described these developments as “fabulous” and conceded that they could do much good therapeutically, but added that there was a risk that they would be misapplied. Mr. Pound was speaking at the opening of a three-day congress in Madrid, at which major revisions to the World Anti-Doping Code were approved. As from 1/1/2009, provisional penalties will be applied after positive “A” tests, and punishments for doping offences will be made much more flexible, replacing the current across-the-board two- year ban for first-timers.

The controversial Canadian WADA supremo, whose successor was to be chosen by the congress that week, insisted that “we pretty much have all the tools we need (to fight doping)”, but recognised there were cases that had slipped through the net, such as the disgraced American athlete Marion Jones, who took 160 tests and never failed one (*Ibid*).

(On further developments in the Marion Jones case, see below p.95).

Doping issues and measures – international bodies

New WADA chief elected – but not without difficulty

The World Anti-Doping Agency (WADA) is, perhaps by its very nature, a controversial body, and its leading officials do not have the most enviable of responsibilities. Even so, it is hard to understand why, as the term of office of its first President, the equally controversial Canadian QC Richard Pound, drew to a close, only one candidate had emerged, to wit the former Australian Finance Minister John Fahey. In fact, as the official date for Mr. Pound’s successor approached, some European ministers called for a postponement of the vote because of this sole candidacy. In fact, following a closed-doors meeting of the Council of Europe’s sports ministers, the latter announced that they would not support Mr. Fahey and would request a delay.

WADA rules specified that it was the turn of a government representative to take over the presidency for the following term, beginning 1/1/2008. The man who had been a favourite for the post for quite some time had been Jean-François Lamour, the former French sports minister, who was nominated by the Europeans. However, Mr. Fahey, who led Sydney’s successful bid for the 2000 Olympics, was nominated as a surprise late entry by several non-European countries. A resentful Mr. Lamour dropped out of the running, resigned as WADA Vice-President, and claimed that WADA had infringed its own election procedures by letting Mr. Fahey join the race (*Associated Press, www.findlaw.com of 16/11/2007*).

In spite of this threat, Mr. Fahey was elected at the meeting held in mid-November in Spain (*The Sunday Telegraph of 18/11/2007, p. S5*). During the same weekend, it was learned that the Canadian government had reached a deal to keep the headquarters of WADA in Montreal for a further 10 years (*Associated Press, www.findlaw.com of 16/11/2007*).

WADA officials call for co-operation with law enforcement in combating doping

At the aforesaid meeting in Spain at which the new WADA chief was appointed, the Agency discussed a number of other vital issues falling within its remit. One of these was increased collaboration with law-enforcement agencies as the best way forward in combating drug abuse in sport. WADA Director General David Howman pointed out that all major doping

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breakthroughs had come as a result of government investigations and inquiries; therefore fostering such links would provide a proper and fair way of obtaining the necessary evidence.

The notorious BALCO scandal (US) and Spain's operation Puerto – both of which have already been extensively covered in these columns – were cited as examples of the way in which governments and the police can go beyond the steps which the sports bodies can take. It will be recalled that police raids on Madrid laboratories in May 2006 yielded bags of blood along with blood-transfusion equipment, steroids, hormones, the endurance-enhancing substance EPO and documents matching over 50 riders and leading to five arrests (*Associated Press, www.findlaw.com of 15/11/2007*).

New rules on doping penalties adopted

Another issue to be decided at the Madrid meeting of WADA was the proposal for a new and tougher set of penalties for the use of illegal substances by sporting performers.

Among the most significant changes was the rule allowing for a four-year suspension rather than the standard two-year ban for a first doping offence in the event of "aggravating circumstances". That would include cases of athletes using or possessing multiple banned substances or being involved in a large doping scheme. It also deals with cases where the performance-enhancing effects remain in the body for more than two years, which could cover certain steroids. The new code also includes incentives to alert authorities to doping violations or to admit doping. A ban could be reduced by 75 per cent for any athlete who assists officials in finding other cheats, and admitting to drug use before testing positive would cut a potential ban up to 50 per cent. In addition, athletes will be considered guilty of a doping violation if they accumulate a combination of three missed tests or failure to provide information of their whereabouts within an 18-month period. Athletes can be suspended immediately after a positive A sample (*Associated Press, 17/11/2007*).

Following objections by several international sports federations, the WADA board made a few changes to the final document that was ratified. The IOC and other bodies were opposed to a provision that would bar any country which fails to adopt the UNESCO anti-doping convention from bidding to host world championships after 2010. Officials said that would penalize athletes for their governments' inaction. The rule was watered down to say sports bodies "will do everything possible" to award

championships to countries which have complied with the doping treaty. However, countries which fail to apply the rules will be barred from having representatives on the WADA board or executive committee. Also, following complaints from soccer governing body FIFA and other team sports, WADA withdrew a rule stating athletes serving doping bans should not be allowed to train with their teams. WADA said it will continue to study the issue (*Ibid*).

Beijing Olympics to be "cleanest" ever?

Given that the Olympics are supposed to represent all that is decent and wholesome about sport, its guardians are taking every possible precaution that the doping scandals which have disfigured various sports in recent years should no longer be a feature at the Games.

Thus in August 2007, it was announced that athletes who test positive for drugs during next year's Olympics in Beijing face being banned from London's Games four years later. Under tough new rules announced by International Olympic Committee (IOC) President Jacques Rogge, any competitor banned for a doping offence which carries a suspension of six months or more will have to wait eight years for another chance to enter the Games. It is understood that Dr. Rogge proposed the new penalty at a meeting of the IOC's executive board here yesterday in an effort to turn up the pressure on cheats after this summer's scandals in cycling's Tour de France (*The Daily Telegraph of 25/8/2007, p. S13*).

Describing the new ban as "a powerful deterrent", Rogge added the palliative that athletes might be able to overturn the ban if they blew the whistle on their suppliers or other athletes who were taking drugs, since there always has to be a "balance between the information you get for the future and the moral issue of having to penalise the athlete". Rogge added that the IOC supported the International Association of Athletics Federations (IAAF) in their campaign to persuade the World Anti-Doping Agency (WADA) to introduce four-year bans for serious doping offences at a meeting in Madrid in November. He said:

"There's still some reluctance in WADA to this issue. But we support the IAAF wholeheartedly. Just this week we had a meeting with WADA to urge them to accept this proposal" (Ibid)

The Olympic Chief also revealed yesterday that five cities – Algiers, Singapore, Moscow, Turin and Athens – had submitted bids to host the inaugural World Youth Olympics in 2010, a personal vindication for the IOC president, who has created the event to try and rekindle interest in the Games among younger generations (*Ibid*).

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This is just one of the reasons why media commentators and sporting administrators alike are increasingly confident in their expectation that the 2008 Olympics will be "cleanest" in many years. This was also the view espoused by the outgoing WADA chide, Dick Pound. He professed himself to have been impressed by the progress made by China in reining in its once-notorious doping practices since his initial visit the previous year. This, as well as the zero-tolerance approach described above and improved detection technology, would be the key to success. (*Associated Press, www.findlaw.com of 27/9/2007*).

Doping issues and measures – national bodies

BALCO scandal continues to make waves (US)

In mid-December 2007, it was learned that concerns that the BALCO doping scandal may yet implicate other athletes have persuaded the International Olympic Committee to delay its decision over reallocating the five medals won by Marion Jones at the 2000 Sydney Games. Disciplinary commission member, Denis Oswald, expressed the fear that some names of athletes might still appear. He was speaking on the first day of the IOC executive board meeting in Lausanne which is set to strip Ms. Jones, who in the meantime has confessed to doping before the Sydney Olympics (see below, p.99) of the three golds and two bronzes she won in the Telstra Stadium. Although he confirmed that the medals would be stripped from Jones this week, Mr. Oswald added that a decision on who might or might not inherit them would take "a matter of months" (*The Independent of 11/12/2007, p. 65*).

Among those standing to benefit from upgrading is the Greek sprinter Ekaterina Thanou, who won the 100m silver in 2000 but was suspended for two years in 2004 after avoiding a doping test on the eve of the Athens Olympics (and of whom more later – see p.99). A Greek prosecutor recently shelved an investigation into possible links between BALCO and Thanou, fellow sprinter Konstantinos Kederis and their former coach Christos Tzekos because of a lack of evidence. Mr Oswald said the IOC needed more information on the BALCO affair before upgrading athletes. Asked whether he was referring to Thanou, he replied "Yes". The IOC will also need more time to decide whether to strip the medals from the two relay teams in which Ms. Jones ran, to wit the 4x100 metres and the 4x400m (*Ibid*). No further details are available at the time of writing.

For all the impact the scandal produced on the world of sport, there may be, amazingly enough, a great deal more to reveal from the documents which led to, and accompanied, the court convictions of those penalised for their part in the affair. It will be recalled that record-breaking baseball player Barry Bonds's name has also been mooted as one of the athletes who may have benefited from the laboratory's dubious ministrations. Mr. Bonds has been indicted by federal prosecutors on charges of perjury and obstructing the course of justice in the affair. In late November 2007, it was learned that Bonds's personal trainer, Greg Anderson, was one of four men who requested the federal judge in charge of the case for permission to keep sealed sensitive documents on the BALCO issue. Mr. Bonds's Grand Jury testimony, which is at the heart of the perjury indictment, is one of the documents in question (*Associated Press, www.findlaw.com of 27/11/2007*).

Federal prosecutors had requested production of these documents on the basis that since the four people to whom they relate ultimately pleaded guilty, they no longer need the documents. The papers include not only other athletes' Grand Jury testimony, but also search warrants used to raid the BALCO premises and Mr. Anderson's house in 2003. Lawyers for the men in question, however, argue that many of the documents are beyond their control, having been leaked to the media or voluntarily turned over to federal lawmakers and Greek government officials conducting steroid investigations of their own. It should be recalled at this point that the 2006 book, "Game of Shadows", written by two San Francisco Chronicle reporters detailing Mr. Bonds's alleged steroid abuse, was based mostly on Grand Jury transcripts and other confidential court documents leaked by former attorney Troy Ellerman. The latter was subsequently sentenced to 2 1/2 years in prison after confessing that he was the authors' source. In the court papers seeking to place seals on the sensitive documents referred to above, the four BALCO figures involved claim that they fear prosecutions if the documents are leaked again (*Ibid*). The outcome of this case was not yet known at the time of writing.

Italian Olympic Committee imposes various doping bans

In mid-December 2007, it was learned that an Italian doctor accused of supplying doping substances to various athletes had been banned from all involvement in sport by the Italian Olympic Committee. Carlo Santucci, who has already served a five-year ban and whose son is a promising cyclist, was the subject of a police investigation in 2004. In addition, Danilo Di Luca,

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the winner of the 2007 Giro d'Italia, was issued with a three-month ban for his involvement with Dr. Santuccioni, although the cyclist has always denied taking illegal substances and is currently in the process of appealing to the Court of Arbitration for Sport (CAS). The former pole vault champion, Giuseppe Gibilisco, who was also banned – for two years – because of his links to Santuccioni, has announced that he too would submit his case to the CAS (*The Guardian of 18/12/2007, p. S5*).

Doping issues and measures – Cycling

New US team approach could save credibility of cycling

Professional cycling is, as the reader is certainly aware, currently dominated by dark clouds formed out of human growth hormone, EPO and a culture of chemical abuse which has embroiled its most high-profile participants and its greatest races. There are, however, certain teams which are making praiseworthy efforts to halt this descent into ignominy – one of the main players in this endeavour being Team Slipstream, a US outfit. Ian MacGregor and Tim Duggan, both 24 and part of the new generation, are determined to compete in next year's Tour de France. If they do, along with the 21 other riders from Team Slipstream, it could mark a watershed for a sport which has become untrustworthy to sports fans everywhere (*The Sunday Times of 12/8/2007, p. 18*). Mr. McGregor explains:

“Every week our blood sample is taken for analysis by the Agency for Cycling Ethics (ACE) (an independent agency established by Paul Scott, a former chemist and client director at the University of California, Los Angeles Olympic drug-testing laboratory) where they have created blood profiles for every member of our team. Even if some new, undetectable drug was developed tomorrow, they would know as soon as I put it in my body because there would be a change in my biological record. It's a pain to do (the blood and urine tests) every week. At training camp in January we had to do it every three days, so they could create profiles for us. But every member of Team Slipstream is willing to do it because of the state of cycling right now. If the entire peloton was willing to do this, everyone in the sport would have a much easier time convincing a disbelieving public. But there's a discrepancy within cycling and within teams as to the level of scrutiny among riders. This is why we need rules that are uniform. If you have a rider who is proven to have tested positive, he should be fired and no other team should be able to hire him” (Ibid)

He does not believe in a first-offence lifetime ban because “people make mistakes”, but in cases of

multiple infractions (multiple meaning two) a lifetime ban seems to him appropriate as being the only way in which the sport can be saved for future generations. What Slipstream is doing with the ACE programme is, in his view, something all teams and riders should press their management to participate in. It proves to the public, to sponsors and anybody who is willing to look and understand that the riders in this team are completely “clean”.

Jonathan Vaughters, the director of Team Slipstream, rode for the United States Postal Service team in the 1990s. When he retired from racing five years ago, his ambition was to build “a clean team which could be competitive”. With financial backing from Doug Ellis, a New York-based financial investor and cycling enthusiast, Mr. Vaughters established the TIAA- CREF team which evolved into Team Slipstream when TIAA-CREF finished its run as title sponsor last year. Alternative sponsorship proved difficult to attract which, as Mr. Ellis acknowledges, prompted them to find a way of giving sponsors confidence that the team would not become another disgraced outfit.

Thus in February 2007, Messrs. Vaughters and Ellis announced a partnership with Scott and his ACE project in which all 23 members of Team Slipstream are voluntary participants. The cost of testing each rider is \$20,000 annually – more than \$400,000 for the team – which Mr. Ellis will underwrite if increased funding for the programme is not forthcoming. It is customary for cyclists as well as other athletes to be tested for drugs when they win a race or finish in the top three or four places, and random testing has become an integral part of the crusade waged by WADA, the world anti-doping body, against drug abusers. What sets the Team Slipstream and ACE model apart is the frequency and range of its testing procedures. Mr. Ellis explains that they see it as their duty, as teams, to give potential sponsors confidence that if they make a commitment to us, they will not some day be featured on the front page of a newspaper in some scandal. MacGregor appreciates the scale of such a challenge. He cut short his studies for a degree in chemical engineering at the Colorado School of Mines in Golden to pursue a career as a professional cyclist (*Ibid*).

Every person who has the good of the sport at heart must surely welcome this team and its rigorous approach to the problem.

15. Drugs legislation & related issues

“Biological passports” and other measures aimed at solving doping problem

The initiative taken by the Slipstream team, referred to above, is no doubt extremely laudable, but cannot be a substitute for official action taken at the level of the sport’s authorities. This holds particularly true for the organisers of the Tour de France, which, as the flagship event on the professional cycling timetable, has a particular responsibility in this regard. Accordingly, at a two-day conference held in Paris in late October 2007, devoted exclusively to the issue of drugs in cycling, the announcement was made that all participants in future Tours would be required to present a clean “biological passport”. These are essentially a record of the baseline levels of a rider’s biological “markers”. Any rider whose passport displays values which are judged excessively erratic will not be allowed to take part. In other words, too great a change in the athlete’s physiological value, regardless of what has been consumed, will result in suspension (*The Independent of 26/10/2007, p. 73*).

According to the French Minister for Sport, Roselyne Bachelot, what makes these passports such a radical new step is the fact that it does not follow products, it follows the athlete. Such is the initial impact produced by this new initiative that even those who, like outgoing WADA chief Dick Pound, had virtually predicted the terminal decline of the sport, appear to have changed their mind as a result of this initiative. At the end of the conference, Mr. Pound even consented to a handshake and photo opportunity with not only Ms. Bachelot, but also Pat McQuaid, the President of the world governing body in cycling, the UCI, who had at one time accused the WADA chief of “trying to kill off the sport” (*Ibid*).

As the conference progressed, more details of the passport scheme emerged. Originally conceived after the 2006 Winter Olympics, biological passports are medical profiles of athletes, created via blood samples taken at different times during the season. In the case of cycling, six samples will be taken in the first half of the year, at least one being a random check. The governing body, UCI, already holds riders’ medical profiles and when combined with biological passports they will be able to determine any erratic changes from a rider’s average, which will result in suspension. At the insistence of the Tour de France, the tests will be carried out by an independent body, probably WADA. The cost of the program is estimated to be around £2.5m, much of which will be funded by the cycling teams. The French Ministry of Sport estimates between 500 and 700 passports will be completed in time for the Tour start on 5 July (*Ibid*).

Although reactions to this scheme have been overwhelmingly positive, not every national cycling authority has accepted its merits at face value. Particular reservations have been expressed by the competitors’ trade unions. Thus a few days after the conference referred to above, the Spanish cycling union announced that it would seek guarantees from the relevant authorities before accepting the creation of this individual medical profiling. In a statement, the Association of Professional Cyclists said:

“Before the implementation of a biological passport and whatever other new method used to detect (positive) tests, all legal and scientific guarantees must be demonstrated to the cycling community” (Associated Press, www.findlaw.com of 28/10/2007)

In addition to this passport initiative, the world governing body in the sport, the UCI, will increase the number of doping tests by more than 50 per cent in the course of 2008. Some 8,000 in-competition tests, and 7,000 out-of-competition probes, will be conducted during that year, according to the UCI anti-doping chief Anne Gripper. However, the WADA Chief Executive, David Howman, warned that increasing the number of tests, whilst welcome, would not be sufficient. He stressed the need for the assistance of experts “on a voluntary basis”. He pointed out that Marion Jones was tested 160 times, yet was never caught and has since admitted to having taken illegal substances for seven years (see below). He added that “more than weapon”, as well as the power of governments’ was needed to stop this pernicious practice (*The Daily Telegraph of 23/10/2007, p. S20*).

However, there have of late been certain warning signs that the initiatives described above might not produce all the results expected of it – as the contents of the next item will demonstrate.

Doping charter row overshadows world championships

As the world road race championships opened in Stuttgart in late September 2007, a storm was brewing around Paolo Bettini, the holder of the prestigious men’s elite title. The President of the International Cycling Union (UCI), Pat McQuaid, attacked the world champion Italian for his unwillingness to sign the anti-doping charter published just before the Tour de France by his organisation. All cyclists in this year’s Tour signed the letter. Mr. McQuaid commented:

“Bettini hasn’t signed and I’m very embarrassed and very angry. To be honest I’m just as angry at the Italian Cycling Federation, who said they would not ask their riders to sign, and with the Spaniards who have done the same” (The Guardian of 26/9/2007, p. S10)

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The UCI president added that Mr. Bettini had attempted to sign a modified version of the letter, which states the signatory is not involved in any ongoing doping inquiries, and that in the event of a positive drugs test he would surrender a year's salary to the UCI. Bettini is understood to be unhappy with the latter clause, as in his view it might penalise cyclists who fail a drugs test in a year when their salary is higher than usual (*Ibid*).

In the event, Mr. Bettini won a court injunction from a court in Stuttgart in order to be allowed to compete. He went on to win the race and thus retain the rainbow jersey which he had won the year before. The Italian rider ascribed his victory to an overwhelming sense of anger at the entire episode (*The Daily Telegraph of 1/10/2007, p. S23*). This entire affair naturally had the effect of seriously undermining the charter in question (*The Guardian of 1/10/2007, p. S15*).

Landis takes doping fight to Court of Arbitration

The reader will by now be familiar with the extraordinary story of Floyd Landis, the US cyclist who staged a remarkable win on the last-but-one stage of the 2006 Tour de France to win the event, only to have this victory called into question by a positive doping test. Mr. Landis subsequently challenged this finding before a US arbitration panel. However, in mid-September 2007, the latter upheld the results of the original test, which showed that the rider had used synthetic testosterone in order to fuel the spectacular breakaway which led to the crucial stage win in question. He was accordingly officially stripped of his 2006 title (*Daily Mail of 21/9/2007, p. 86*).

As a result, the Spanish rider Oscar Pereiro, who had originally finished second in the showpiece event, was officially awarded the winner's jersey at a ceremony in Madrid held shortly afterwards (*The Guardian of 10/10/2007, p. S2*). It was later learned that Mr. Landis intended to appeal to the Court of Arbitration for Sport in order to obtain reinstatement – which he formally did one month later (*The Times of 22/11/2007, p. 88*). The outcome of this case was not yet known at the time of writing.

However, in a further blow to the US rider, it was announced shortly before the year ended that, even if he had his two-year doping ban lifted by sport's highest court, Mr. Landis would not be allowed to compete in France until 2009. The French Anti-Doping Agency have imposed their own ban on Landis, preventing him from competing in next year's Tour de France whatever happens (*The Daily Telegraph of 20/12/2007, p. S18*).

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

Patrick Sinkewitz. In mid-November, it was learned that German public prosecutors abandoned the criminal investigation against the former T-Mobile rider Patrik Sinkewitz in return for the payment of a fine. Mr. Sinkewitz had admitted to doping practices and has since been co-operating with the authorities. The rider's revelations on doping in his T-Mobile team led the German federal police to search the homes and former offices of two doctors who were suspected of providing illegal substances to cyclists (*Associated Press, www.findlaw.com of 13/11/2007*).

Erik Zabel. Here too we are dealing with a German rider who confessed to having used doping products during his cycling career. Mr. Zabel was nevertheless included in a preliminary squad for the World Road Championships in September. This prompted the resignation of the Vice-President of the German Cycling Federation, Dieter Kuehnle (*The Daily Telegraph of 31/8/2007, p. S18*).

Alejandro Valverde. The Spanish rider was initially banned from the world championships in September because of his possible involvement in the Operation Puerto doping investigation, which has been covered extensively in previous issues of this Journal. The world governing body, the UCI, had stated that they wanted the Spanish Cycling Federation to initiate disciplinary proceedings against the rider, but added that such action would not imply any guilt on Mr. Valverde's part (*The Daily Telegraph of 30/8/2007, p. S19*). However, Mr. Valverde was subsequently cleared by the Court of Arbitration for Sport (CAS) to compete in the Championships. UCI president McQuaid said the governing body accepted the decision (*The Guardian of 27/9/2007, p. S2*).

Astana. In mid-August, it was learned that the Astana team had been banned from the Tour of Spain after failed doping tests by three of their most prominent riders, i.e. Matthias Kessler, Alexander Vinokourov and Andrey Kaleshkin (*The Daily Telegraph of 14/8/2007, p. B18*).

Cristian Moreni. The Italian rider was banned for two years following a failed doping test during the 2007 Tour de France (*The Daily Telegraph of 23/11/2007, p. S19*).

Marco Fertonani. This is another Italian cyclist who was banned for two years by his federation for failing a drugs test. He tested positive for testosterone at the Tour of the Mediterranean in February (*Daily Mail of 21/12/2007 p. 79*).

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Doping issues and measures – Athletics

Kenteris/Thanou perjury trial postponed (Greece)

In late September 2007, it was learned that the perjury trial of Greek athletes Costas Kenteris and Katerina Thanou was postponed for a second time until June 2008. It will be recalled from previous issues that the two sprinters face charges relating to an alleged motorcycle accident which they are suspected of having staged in order to avoid a drugs test on the eve of the 2004 Athens Olympics (*The Daily Telegraph of 25/9/2007, p. S4*).

Marion Jones tells the truth – at last (US)

Marion Jones, the sprinter who won five medals at the Sydney Olympics, is no stranger to these columns – but until recently it seemed that her presence there was more as a much-maligned victim than as a perpetrator. She had been frequently associated with the aforementioned BALCO scandal, but nothing has ever been proved against her – to the point where she has even initiated libel litigation in order to clear her name. However, her status changed rapidly at the beginning of October 2007, when she confessed to having consumed performance-enhancing drugs prior to the 2000 Olympics. According to the Washington Post, her confession was made in a note to friends. She also declared that she would plead guilty in New York on two counts of lying to federal agents concerning her doping practices (*Daily Mail of 5/10/2007, p. 95*). Once she had done the latter, she immediately announced her retirement from athletics (*The Independent of 6/10/2007, p. 70*).

At the time of writing, Ms Jones was still awaiting sentencing, which could see her spend up to six months in prison (*Daily Mail of 6/10/2007, p. 113*). Her admission also raised the imminent prospect of her being stripped of her Olympic medals, as well as the question as to whom should receive them in her place. Surprisingly, she had a supporter in Victor Conte, the former owner of the BALCO laboratory which gave rise to the biggest ever doping scandal in athletics, and in which Ms. Jones has now confessed her involvement. Mr. Conte considered that she should keep the medals on the disingenuous grounds that those against whom she competed were probably on drugs as well (*The Independent on Sunday p. 78*). Although this was something approaching a magnanimous gesture from the man whom Jones had sued for defamation when he suggested this involvement, this proposal was not taken too seriously by the authorities.

The question of whom should obtain the medals was also not free from embarrassment for the world of athletics, given that the athlete who finished second in the Olympic 100 metres final at Sydney was none other than Katerina Thanou, who herself had been banned for missing a drugs test and who, as is reported elsewhere in these columns (above, p.95) is currently facing perjury charges arising from this affair. The other thorny issue concerned the shared medals which Ms. Jones had won in relay events. Although the IOC Executive Board formally stripped Jones of her medals at their meeting in mid-December and banned her from even attending the 2008 Olympics as a visitor. However, a decision on who would receive the medals lost by Jones was postponed until April 2008 (*The Guardian of 13/12/2007, p. S8*).

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

Naman Keita. In mid-December, it was learned that the French 400 metres hurdles bronze medallist tested positive for testosterone during the World Championships in Osaka. The French federation also stated that Keita had blamed the positive test on a food supplement he had ordered online to help regenerate a sore stomach muscle (*The Daily Telegraph of 15/12/2007*).

Adil Kaouch. The Moroccan 1,500 metres runner tested positive for an unnamed substance on the eve of the World Championships in Japan (*The Times of 14/8/2007, p. 54*). No further details are available at the time of writing.

Jolanda Ceplak. In mid-August, it was reported that the Slovenian 800-metre runner had been suspended after testing positive for EPO in June (*The Times of 14/8/2007, p. 54*).

Doping issues and measures – Tennis

Hingis quits after testing positive for cocaine

In early November 2007, the world of tennis was rocked to its foundations when it was announced that Martina Hingis, the former Wimbledon champion, had tested positive for cocaine at Wimbledon the previous summer. She immediately announced her retirement from the game (*The Guardian of 2/11/2007, p. S1*).

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If the 27-year-old's decision to quit was of no great surprise – there had been growing speculation that a hip injury would force her into retirement. However, the news of her failed test is a major blow to a sport which, as is reported extensively above (p.35), has been dragged down in recent months by allegations of illegal betting and match-fixing. Hingis, who denies taking drugs, is the most famous player in the history of tennis to have tested positive for an illegal substance as well as being one of the sport's most glamorous figures.

The news of the positive test was given by Ms. Hingis herself at a press conference in Zurich, saying:

"I have tested positive but I have never taken drugs and I feel 100 per cent innocent. The reason I have come out with this is because I do not want to have a fight with [the] anti-doping authorities. Because of my age and my health problems I have also decided to retire from professional tennis" (The Independent of 2/11/2007, p. 72)

Ms. Hingis, who has been advised that it could take years to clear her name, said she had undergone a private hair test for cocaine, which proved negative, and had hired a lawyer, who had discovered "various inconsistencies" with the urine sample taken at Wimbledon. She added that he was also "convinced" that the doping officials mishandled the process and would not be able to prove that the urine that was tested for cocaine actually came from her. Mario Widmer, Hingis's manager, added the test was conducted on 29 June but that she heard about the positive result of the "A" sample in mid-September and the positive "B" sample two or three weeks later. While cocaine is generally regarded as a social rather than performance-enhancing drug, she is facing a ban of up to two years, even if her retirement would make the suspension academic. Other tennis players have failed drugs tests in the past but Hingis is the most high-profile. Mats Wilander and Karel Novacek were two who also tested positive for cocaine, at the 1995 French Open, and both were banned for three months (*Ibid*).

Nine years ago Petr Korda, who was then the Australian Open champion, tested positive for a banned steroid during Wimbledon and was suspended for a year. Mariano Puerta recently made a comeback after testing for a banned stimulant following his defeat in the final of the French Open two years ago, while his fellow Argentine, Guillermo Canas, the world No 14, returned to competition last year after serving a 15-month ban for taking a diuretic. Since the beginning of 2004 a total of 25 men and two women have failed drugs tests.

The Swiss player subsequently vowed to clear her name,

through the courts if necessary. She has in the meantime employed the services of the lawyer who assisted Diane Modahl in reversing a four-year doping ban a decade ago (*The Sunday Telegraph of 4/11/2007, p. S10*). No further details are available at the time of writing.

Doping issues and measures – Golf

In mid-August 2008, it was announced that the Ladies European Tour was to introduce drug testing next season. It will be recalled from a previous issue that the drugs issue caused a storm during the men's Open at Carnoustie last month, when Gary Player claimed 10 or more professionals were taking illegal performance-enhancing substances' However, Alexandra Armas, the executive director of the women's tour, said she did not believe it was a problem on her watch, saying

"We are not aware that any of our members have used drugs, but it is vital for the integrity of our sport that we implement this strategy in order to eliminate any temptation" (The Daily Telegraph of 10/8/2007, p. B21)

Michelle Verroken, who was in charge of UK Sport's anti-doping procedures until she was forced out in 2004, will manage the LET policy. It has been suggested that Ms. Verroken's calls for an independent testing agency angered her superiors at UK Sport. She now runs her own consultancy. Although the timing of yesterday's announcement seems to come hot on the heels of Gary Player's accusations, the anti-doping policy has been on the cards for some months. It is not yet clear how often players will be tested, but Ms. Verroken's company is also working with the men's European Tour (*Ibid*).

16. Family Law

Family Law

Norman accused by wife of “locking her out of the house” (US)

Greg Norman, the great Australian golfer of yesteryear, is currently involved in divorce proceedings which appeared at first to be based on an amicable settlement, but seems to have degenerated into a somewhat bitter legal battle. At a certain point, his estranged wife accused him of cutting off her access to money and changing the locks on their luxury Florida home. Laura Norman recently filed papers in the Florida courts accusing her ex-husband of attempting to force her into signing a divorce agreement on his terms by “starving her out”. Her lawyers now claim she has no means of supporting herself (*The Independent of 16/8/2007, p. 29*).

This has been firmly denied by Mr. Norman’s lawyers, who claim that in the course of the divorce battle Ms. Norman has been “exceedingly well-funded” and that she has not in any way been required to compromise her lifestyle (*Ibid*). The divorce had not yet been pronounced at the time of writing.

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Football

Champions League reformed

In late November 2007, the European governing body, Uefa, announced a series of reforms to the format of the European Champions League. The result is that, inter alia, only three English Premier League clubs will qualify automatically for the Champions League group phase from 2009. The fourth-placed Premier League team will face a much tougher task in reaching the group stage as they will have to play a qualifying round against another side from one of the leading leagues in Europe. Previously, the fourth-placed teams from England, Spain and Italy were almost assured of a place among the 32 Champions League clubs by being seeded against a side from a weaker European country in the final qualifying round.

Scotland's champions will also qualify automatically under the changes, which were originally put forward by the Uefa president, Michel Platini, with the Scottish runners-up likely to face two qualifying rounds. The final decision was taken by Uefa's executive committee meeting in Lucerne, Switzerland. The changes made will also see six group-stage spots reserved for the champions of the 40 lowest-ranked countries among Uefa's 53 members (*The Independent of 30/11/2007, p. 56*).

These reforms were naturally not to the taste of the sides affected. However, they can fairly be described as a compromise, since Mr. Platini's original plan had been to give an automatic place in the Champions League to national Cup winners. This proposal had been acclaimed by the smaller nations, but firmly opposed by the traditional "super powers". A compromise had been proposed by the French and Spanish teams, under which every country would have had the freedom to decide how the last place in the League would be allocated. However, this plan was ultimately not accepted (*The Daily Telegraph of 12/9/2007, p. S7*).

G14 to disband

In early December 2007, it was announced that the G14 group of powerful European clubs had confirmed that the organisation in its present form was to be disbanded. After talks in Brussels between the clubs and representatives of the sport's governing bodies, the organisation agreed to dissolve and be reformed as a larger, more representative body including a larger number of clubs from more European countries. In fact, the G14 had been under pressure to reform following moves by European governing body UEFA to engage

more actively with leading clubs through its European club forum, and with the major leagues which have seats on UEFA's strategy council, being the committee that formulated the revised Champions League format referred to in the previous section (*The Guardian of 4/12/2007, p. S6*).

Afterwards, G14's president, Jean-Michel Aulas, confirmed that a new organisation would eventually replace it, and at the same time fired a broadside at the various football authorities in their attitude displayed hitherto:

"By denying the clubs a proper involvement in the decision-taking process and by refusing to seek solutions to the wide range of problems including the organisation of players released by clubs to national teams and the harmonisation of the international calendar, the governing bodies were a causal factor in the creation of G14 in 2000. G14 will exist until appropriate solutions to these problems are found."

He added that the G14 President and Board members would continue to engage positively with UEFA knowing that the creation of the new organisation for clubs, coupled with UEFA's new, more inclusive approach, as championed by its new president Michel Platini, will give a fresh impetus to our discussions and which we hope will lead to a harmonious cooperation which benefits the whole of the football family (*Ibid*).

Rugby Union

Referees serve notice on dissent at World Cup

Referees at the Rugby World Cup have been ordered to crack down on dissent, foul play, crooked scrum feeds and players using illegal padding. The message was spelt out to all 20 coaches ahead of the tournament's opening game between France and Argentina in Paris. Paddy O'Brien, manager of the panel of international referees, said:

"We've made it very clear that when a referee makes a decision, rightly or wrongly, the players have to respect it. We don't want to go the way one or two other sports have gone. A captain may only seek interpretation when the ball is out of play. We may not want our refs to be liked, but we do want them to be respected. I also have concerns about the number of coaches running to the media to make complaints" (*The Daily Telegraph of 6/9/2007, p. S7*)

Mr. O'Brien did not attempt to pretend that officials were perfect, mindful that a good touch judge would have spotted the punch that floored Ireland captain

17. Issues specific to individual sports

Brian O'Driscoll three weeks before the World Cup started, in Bayonne. He said that this was "absolutely" the sort of thing referees wanted to get to grips with, and that this kind of display had no place in the game. "It's a real concern for me".

So, too, is the crooked feed. O'Brien said that the coaches were shown four video clips of ridiculous scrum feeds, then two further clips, which were much harder to find, of the ball down the middle to show that it can be done. The idea was "to put the heat on the scrum-half. Mr. O'Brien also said he wanted to see a contest at the breakdown. Sevens and sixes should be allowed to be sevens and sixes, he said, whereas "some refs are calling a ruck far too early".

Cricket

Indian Cricket League threatens to split game

Readers with long memories will recall the acrimony and controversy which surrounded the establishment of World Series Cricket, the independent "cricket circus" set up by Australian magnate Kerry Packer in 1977 and which threatened to split the game from top to bottom. Given that, in the final analysis, WSC was little more than a commercial move made in the context of a rather mundane battle over television media rights, it fizzled out as soon as the underlying dispute was solved. It did, however, leave a mark on the game in many respects – not least the need for the game to adopt a more commercial approach.

Will the same apply as regards the latest attempt to wrest the game at the top level away from the traditional sporting authorities – to wit, the recently announced establishment of the Indian Cricket league (ICL)? Certainly the initial reactions to the plan were reminiscent of the Packer era, in that certain national cricketing authorities made dire imprecations against any of their players who considered joining the new scheme. Thus in mid-August 2007, the Sri Lankan cricket authority announced that any player who signed for the rebel organisation would face bans from the international and domestic game (*The Daily Telegraph of 11/8/2007, p. B18*). The following week, it was announced that Kapil Dev, the former Indian test all-rounder, had been dismissed as Chairman of the national cricket academy by his national cricket authority for his part in establishing the Indian league. He had refused to give up his position, and paid the price when the Board of Control for Cricket in India (BCCI) issued

their dismissal in very hard-line terms, stipulating as they did that Mr. Dev had been "expelled" along with all players and officials involved in the initiative (*The Daily Telegraph of 22/8/2007, p. S6*). There was a certain desperation about this move, as if the official authority were attempting to halt an unstoppable tide.

Subsequently there appeared to be no let-up in the official hostility displayed by the cricket establishment towards the ICL. In early November, the BCCI and the International Cricket Council (ICC), the world governing body in the sport, agreed a "powder keg" regulation for the official Twenty20 tournament next autumn. Any team fielding a player who has taken part in the ICL would be barred from the tournament, which is one of the richest in the game, carrying as it does £2.5 million in prize money (*Daily Mail of 2/11/2007, p. 111*).

Indeed, the official cricket authorities had reason to feel reasonably optimistic when beholding the somewhat shambolic manner in which the rebel tournament was unfolding. As the launch of the league approached, it became increasingly clear that the entire exercise had been somewhat over-hyped. ICL's signings include some great has-beens such as Glenn McGrath, Brian Lara and Inzamam-ul-Haq, as well as three England internationals, Vikram Solanki, Paul Nixon and Darren Maddy. However, the majority are young Indian players whom nobody has heard of, and who have signed away their careers in official cricket after being promised £25,000 to £50,000 for a three-year contract. They have one ground to play on, at Panchkula outside Chandigarh. What the teams are, and when they will play, was not initially on display on the website of the Indian Cricket League. Only one thing is certain, i.e. the timing of this breakaway tournament was terrible. It came as India were playing Pakistan at home in a series of five one-day internationals, followed by three Tests. Then the Indian side were due to tour Australia for a four-Test series – in other words, this amounted to four months of the most important bilateral cricket that India can play (*The Sunday Telegraph of 11/11/2007, p. S8*).

The ICL was designed to cash in on the new popularity of 20-over matches. The Indian Zee television channel had failed to land any official cricket coverage so, like Packer's Channel Nine in Australia 30 years ago, they decided to create their own brand. ICL signed Tony Greig, a key figure in World Series Cricket, as an executive board member along with Kapil. There the parallels begin and probably end.

As has been mentioned earlier, players like Nixon have been informed that they could be banned from the

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official, semi-global and highly lucrative 20-over tournament confusingly called the Indian Premier League, which will be launched next October. There is even a suggestion their clubs might be banned from the tournament too. There appears to be no need for any threats by officialdom, however. By then the ICL will surely have been dismissed with hardly a run on the board (*Ibid*).

The ICL tournament finally got underway in early December, and the start was not very auspicious, with the paymasters of the breakaway league announcing that they expected to make a loss for the first two years of their £48 million innovation. However, they appeared more bullish when asked whether they would pull the plug on the enterprise if it should fail. Plans are already afoot for a second ICL tournament in March 2008, and it is proposed to extend it to eight teams and building grounds as well as the required infrastructure in all participating cities (*The Sunday Telegraph of 2/12/2007, p. S9*).

Boxing

Japanese boxer disciplined after brawl

In mid-October 2007, it was learned that disgraced Japanese boxer Daiki Kameda was banned for a year after his violent outburst during a world-title fight. His father, Shiro, also had his licence as a trainer suspended for abusing the referee during his son's unsuccessful challenge for the WBC flyweight title last Thursday. Mr. Daiki was docked three points after an astonishing meltdown in the final round of his fight against champion Daisuke Naito. Kameda was penalised by a point for punching Naito as the pair wrestled on the canvas and was penalised two more for slamming down Naito, who won on a unanimous points verdict (*The Daily Telegraph of 16/10/2007, p. S6*).

Bowls

Malaysia withdrawal imperils governing body

Just before the year 2007 ended, it appeared that the world of bowls is in disarray – so much so that the existence of the body that controls the indoor version world-wide appeared to be under threat. In other words, the World Indoor Bowls Council (WIBC) could be facing extinction. The WIBC used to number Australia, New Zealand, Canada, Hong Kong, Israel and the Netherlands among its members, but officials believe that those countries have been “nobbled” by World Bowls Ltd (WBL), which governs the outdoor game. The gradual withdrawal of those six has left the WIBC in a weak position, but the latest news could be a mortal blow. Malaysia, which has emerged as one of the leading countries, will resign from the WIBC when its membership expires at the end of April (*The Times of 24/12/2007, p. 56*).

Ramble Rice-Oxley, the secretary-general of the Malaysian Lawn Bowls Federation, hinted that WBL might have banned Malaysia from international events if it had maintained membership of the WIBC. He said:

“We were under pressure from World Bowls Ltd. WBL chief executive Gary Smith pointed out that the WBL constitution decrees that members of the WBL cannot affiliate to any other world body. We didn't want to take the risk of being banned from WBL events, so we spoke to WIBC officials and politely explained our position. They understood and reluctantly accepted that we would not be renewing our membership after the WIBC Championships in April.” (*Ibid*).

Mr. Smith countered by denying that his organisation issued any threat or applied any pressure. As was the case with the other countries, who clearly felt their future lay with the unified game, it was “entirely Malaysia's decision.”

In the light of so many previous resignations, Malaysia's continued membership gave the WIBC a last vestige of respectability - and an international dimension. Now the membership is restricted to England, Ireland, Scotland, Wales, the Channel Islands and the Isle of Man (*Ibid*).

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(2007) SLJR 5
Football matches – Implied contracts – Payment – Special police services

CHIEF CONSTABLE OF GREATER MANCHESTER V WIGAN ATHLETIC AFC LTD

High Court Chancery Division (Mr Justice Mann), (2007) EWHC 3095 (Ch), 21 December 2007. Reporter SG.

Facts

The claimant police force claimed sums from the defendant premier league football club (W) in respect of policing activities carried out by them at the stadium used by W for its football matches. W had for some years had an agreement with the police to provide special policing under the Police Act 1996 s.25 at its football matches and appropriate charges were made on an agreed scale. For the 2003/2004 football season, the police proposed an increase to the charging structure because it proposed an increase in the level of policing at fixtures. W did not accept that those increased charges could and should be made, but offered to pay at the current charging rates assuming the previous level of usage of police officers. The parties did not reach agreement and arrears accrued on the basis of the calculations and claims of the police, although special policing was provided throughout the season. That situation was repeated in the 2004/2005 season. Although the amount of the moneys in dispute was paid by W under protest, W sought their return. W contended that what the police had provided was not "special policing" because it had not been agreed or requested and it would be wrong to imply a request in the face of its express refusal to accept paid-for officers, and that the policing provided could not be "special policing" insofar as it contained services provided outside the stadium.

Held (Judgment for claimant)

The Judge stated:

- (1) Where an event was staged at which disorder was a possibility, the police could not be expected to police it as part of their normal duty, and their attendance was capable of amounting to special policing, with *Reading Festival Ltd v West Yorkshire Police Authority* [2006] EWCA Civ 524, [2006] 1 W.L.R. 2005 applied. Where special policing was required, the organiser of the relevant event had to pay for it whether he made a contract to pay or not: a promise to pay would be implied in those circumstances, *Glasbrook Bros Ltd v Glamorgan CC* [1925] A.C. 270 HL applied. In the instant case, the services of the police around the stadium had been in the nature of special policing rather than part of

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the police's normal duty to a citizen. The ability of the police to claim payment under s.25 of the Act was not, however, based on providing certain policing but on a relationship that was consequential upon a "request" by a citizen for policing. In the circumstances, although there had been no express agreement, a request for special policing would be implied, as W had needed the police to be able to stage its matches correctly and safely, and there had been no real complaint about police deployment in the disputed seasons, only as to how much W should pay.

- (2) The nature of the entitlement of the police to recover sums from W had in previous seasons been contractual, but in the disputed seasons arose under a right to a quantum meruit claim in restitution, as the police had provided services that both parties had expected them to be paid for, W had received the benefit of those services, and there was now a dispute about price. The police were, therefore, entitled to be paid a reasonable sum for the special policing that it had actually provided. In the circumstances, there was no dispute about the appropriate rates, but the amount of special policing provided had to be ascertained on a case by case basis. Taking into account the provision of travel and briefing, spotters and intelligence officers, radio operators and the policing provided over five individual sample matches, the sums payable by W were assessed accordingly.

Commentary

This decision clearly supports the previous case of *Harris v Sheffield United Football Club Ltd* [1988] Q.B. 77; where the Court of Appeal held that the provision of officers to attend regularly inside a club's grounds constituted the provision of "special police services". Neill LJ stated: "The club has responsibilities which are owed not only to its employees and the spectators who attend but also to the football authorities to take all reasonable steps to ensure that the game takes place in conditions which do not occasion danger to any person or property. The attendance of the police is necessary to assist the club in the fulfilment of this duty." The decision in *Chief Constable of Greater Manchester v Wigan Athletic AFC Ltd* suggests that services of the police around the stadium had also been in the nature of special policing and the football club could be expected to contribute to costs. Mr Justice Mann said each side must be flexible and there would have to be "give and take". He stated: "It is vital that the club and police get together before each season and reach an agreement as to how policing is to be paid for."

(2007) SLJR 6

Broadcasts – Copyright – Satellite television

MURPHY V MEDIA PROTECTION SERVICES LTD

Queen's Bench Division (Administrative Court) (Pumfrey, L.J.; Stanley Burnton, J.) [2007] EWHC 3091 (Admin), 21 December 2007. Reporter SG.

Facts

The appellant publican (M) appealed by way of case stated against a decision of the Crown Court to uphold her conviction for offences committed contrary to the Copyright, Designs and Patents Act 1988 s.297(1). M was the licensee of a pub in which she had screened live premier league football matches. The intellectual property rights in relation to the screening of such matches were vested in the Football Authority who, in turn, granted exclusive territorial licenses to broadcasters to screen matches in their respective territories. The matches were filmed by the licensed broadcaster (B) in the United Kingdom who sent the live feed to the FA via satellite. The FA then distributed the transmissions to various territorial licensees. A customer wishing to watch these matches had to pay a subscription charge to his relevant territorial broadcaster in return for a decoding card that enabled him to receive the programmes through a satellite dish. M subscribed to the Greek broadcaster (N) because it charged less than B.

The Crown Court upheld M's conviction under s.297(1) of the Act that she had dishonestly received a programme included in a broadcasting service provided from a place in the UK with intent to avoid payment of any charge applicable to the reception of the programme; and asked the High Court for its opinion as to whether

- (i) for the purposes of s.297(1) of the Act, the broadcasting service or broadcaster in question had to be based in the UK;
- (ii) the FA or B were broadcasters; or were providing a broadcasting service within the meaning of s.297(1) and s.6 of the Act;
- (iii) the live feed of sounds and pictures provided to N by the FA was a broadcast or a programme included in a broadcasting service within the meaning of the Act;
- (iv) the signal from B's cameras to the FA and from the FA to N and from N to M formed part of a continuous chain of communication;
- (v) the requisite intent to avoid any charge applicable to the reception of the programme within s.297(1)

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of the Act applied to circumstances where M had paid a charge to the Greek broadcaster but had not paid a subscription fee to B who was the domestic broadcaster.

M submitted that for the purposes of the offence under s.297(1) of the Act the place at which the broadcast was made was, pursuant to s.6(4) of the Act, the place at which the programme-carrying signals were introduced into an uninterrupted chain of communication. So far as N was concerned, that place was N's premises in Greece and accordingly the transmissions received by M had not been made from a place in the UK and the offence under s.297(1) of the Act was not made out.

Held (Appeal dismissed)

- (1) The question in every case was to identify the programme included in the broadcasting service, then determine where that broadcasting service was provided from. The place from which the broadcasting service was provided was the point at which the initial transmission of the programme for ultimate reception by the public took place. This, in the instant case, was the filming of the live match in the UK. The addition of a Greek commentary and logo did not change the identity of the programme as received by M.
- (2) So far as the transmitted matches were concerned, both B and the FA had the editorial responsibility for the composition and scheduling of the transmissions and were therefore broadcasters.
- (3) According to s.6 of the Act a broadcasting service was nothing more than a succession of electronic transmissions of visual images, sounds or other information. On that basis it was clear that the live feed of sounds and pictures provided to N were within the contemplation of the offence under the Act.
- (4) The definition of s.6 of the Act was unaffected by the manner of transmission between its origin and the public, providing the identity of the programme was not affected.
- (5) The requisite intent to avoid a charge applicable would be satisfied if the defendant knew that the broadcaster had an exclusive territorial right to broadcast programmes in his country and was entitled to charge customers a subscription fee to receive those programmes and that, nevertheless, that person arranged to receive those programmes without paying that fee. The evidence confirmed that M knew B was the exclusive provider of those programmes in the UK. It was clear that she also knew that B charged a subscription fee to its

customers and, regardless of that knowledge had arranged to receive those programmes without paying the requisite charge. Accordingly, the offence under s.297(1) of the Act was made out.

Commentary

It is clear, therefore, that, as long as a dishonest intention can be proved, a publican can be convicted for screening Premier League football matches other than through BSkyB even though he pays for the service. Applying the test in *R v Ghosh* (75 CrAppRep at 154) dishonesty is proved by demonstrating that not only would the relevant publican's behaviour be seen as dishonest by an honest and reasonable person but that the publican knew that it would be seen as dishonest by such a person. This was Murphy's second prosecution – the first one failed as the threshold of dishonesty had not been established. It seems, therefore, that an honest mistake might not lead to liability, (although proof of an honest mistake will be increasingly hard to demonstrate after this decision) and especially after the issue of illegality is brought to the attention of the publican.

Leave was given to appeal on the impact of the Single Market rules and EC competition law. Pumfrey LJ stated that the court: "did not hear argument upon the impact of the Single Market Rules (Arts. 28-30 and 49EC) or upon the suggestion that there is here a competition law issues in that the case is effectively founded on an agreement or a network of agreements imposing restrictions unlawful and void under article 81 EC"

(2007) SLJR 7

Football – Bad faith – Copyright – Goodwill – Ownership – Trade marks

JULES RIMET CUP LTD V FOOTBALL ASSOCIATION LTD

High Court (Chancery Division) (Mr Justice Wyand Q.C) [2007] EWHC 2376 (Ch 18 October 2007. Reporter SG.

Facts:

The court was required to determine a number of preliminary issues in an action arising out of a dispute concerning the ownership of rights in the trade mark 'World Cup Willie' and a device consisting of a cartoon type lion dressed in the England football strip. The claimant company (J) had applied to register the words 'World Cup Willie' on their own and the lion device together with the words 'World Cup Willie' as trade

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marks in respect of a range of goods. The defendant (F) indicated an intention to oppose them, as 'World Cup Willie' was the name of the cartoon lion mascot for the 1966 World Cup hosted in England by F. J issued proceedings seeking, amongst other things, declarations that its trade mark applications could not be successfully opposed on the grounds contended for by F. F counterclaimed alleging that it was the owner of copyright in a drawing of the original 'World Cup Willie' mascot and that J had infringed copyright in that drawing through use of the device mark. F also alleged that it owned the goodwill in the drawing of the 1966 mascot and in the name and that J had passed itself off as F or as a business connected with F, and that the trade mark applications should be refused on that ground under the Trade Marks Act 1994 s.5(4)(a), and also on the ground that the applications had been made in bad faith under s.3(6) of the Act.

The issues that fell to be determined included:

- (i) who owned the copyright in the original 'World Cup Willie' drawing; (ii) the effect of the Copyright, Designs and Patents Act 1988 s.52 ;
- (iii) whether the device mark had been copied from the original 'World Cup Willie' drawing and whether it was substantially similar to it such that J had infringed copyright;
- (iv) whether F owned any goodwill that accrued from use of the 'World Cup Willie' drawing in 1966/1970 and, if so, whether it had been abandoned since 1970;
- (v) whether any goodwill that remained and was owned by F was sufficient for a passing off action in 2005;
- (vi) whether the fair use of the device mark and the word mark across the specifications applied for would constitute passing off and whether J had carried out any other acts of passing off;
- (vii) whether the trade mark applications had been made by J in bad faith.

Held

- (1) F owned the copyright in the original 'World Cup Willie' drawing relied on, which could prevent registration of the device mark and entitle F to an injunction to prevent further infringement.
- (2) On the balance of probabilities the drawing was applied to articles which fell within s.52 of the 1988 Act. It would be an infringement of the copyright in the artistic work to reproduce it on paper or canvas. That was enough to prevent anyone but the copyright owner from applying to register a reproduction of the artistic work as a trade mark.
- (3) Although the designer who had created the device

mark had made genuine attempts to move away from the original 'World Cup Willie' design, he had still had the original image in mind and could not do a completely independent design. Any similarity between the device and the original 'World Cup Willie' image was due to sub-conscious copying on his part. The fact that there was copying did not of itself mean that there was copyright infringement, and in the circumstances, although there were similarities, J's device mark did not reproduce a substantial part of the original. J had not infringed copyright.

- (4) The undoubted goodwill in 'World Cup Willie' arising from its use in connection with the 1966 World Cup was F's goodwill, and taking all the evidence into consideration, F had not abandoned its goodwill since that time.
- (5) It was a question of fact as to whether goodwill survived a period of almost 40 years. All the available material established that there was residual goodwill in the name and character of 'World Cup Willie' in 2005 and that that would have been enough for F to have succeeded at that time in a passing off action. Documents showed that J and its licensee clearly believed that there was a residual value in 'World Cup Willie' from 1966 that would enable them to establish a strong brand very quickly. That residual value could only be a residual goodwill which belonged to F.
- (6) Fair use of the device mark and the word mark would encompass use of the marks in a merchandising campaign connected with a major footballing event such as a World Cup or European championship. That had clearly been envisaged by J's marketing documents. In that context, there was a clear likelihood of confusion, resulting in passing off. J had carried out no other act of passing off.
- (7) The test for bad faith contained both a subjective element, what the applicant had known, and an objective element, what the ordinary person adopting proper standards would think, *Harrison v Teton Valley Trading Co Ltd* [2004] EWCA Civ 1028, [2004] 1 W.L.R. 2577 applied. J's application for the trade mark registration, knowing that there was valuable residual goodwill in 'World Cup Willie' in the United Kingdom, amounted to bad faith.

Commentary

Essentially there were two grounds for the refusal of declarations in favour of the claimant company: first, under section 5(4) of the Trade Marks Act 1994 (TMA), because the mark and a similar cartoon-type lion had been used in merchandising under licence from the FA

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during the 1966 World Cup, J's use of them would amount to passing off. Second, under section 3(6) of the TMA because J knew that there was valuable residual goodwill in 'World Cup Willie', its applications were made in bad faith. The court also rejected the FA's counterclaim for infringement of copyright in the drawing of the lion cartoon, as J's device mark did not reproduce a substantial part of the original.

The case is notable in that the court was prepared to find that the FA's goodwill in the brand of 'World Cup Willie' which arose through merchandising activities in 1966 (when the public may have been less aware of merchandising) had survived for a 40-year period despite many years of non-commercial use. The case clarifies the position under s.52 CDPA in respect of those articles which are subject to the limited protection of 25 or 15 years (depending on the date on which the work was created) and those articles of a primarily artistic or literary nature which are not. It should perhaps be stressed that it will only however be in exceptional circumstances that such goodwill can still subsist in a brand after this period of time. **BASL**