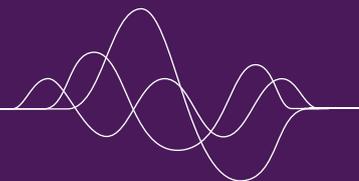


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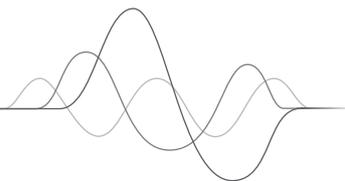


# Sport and the Law Journal



# BASL

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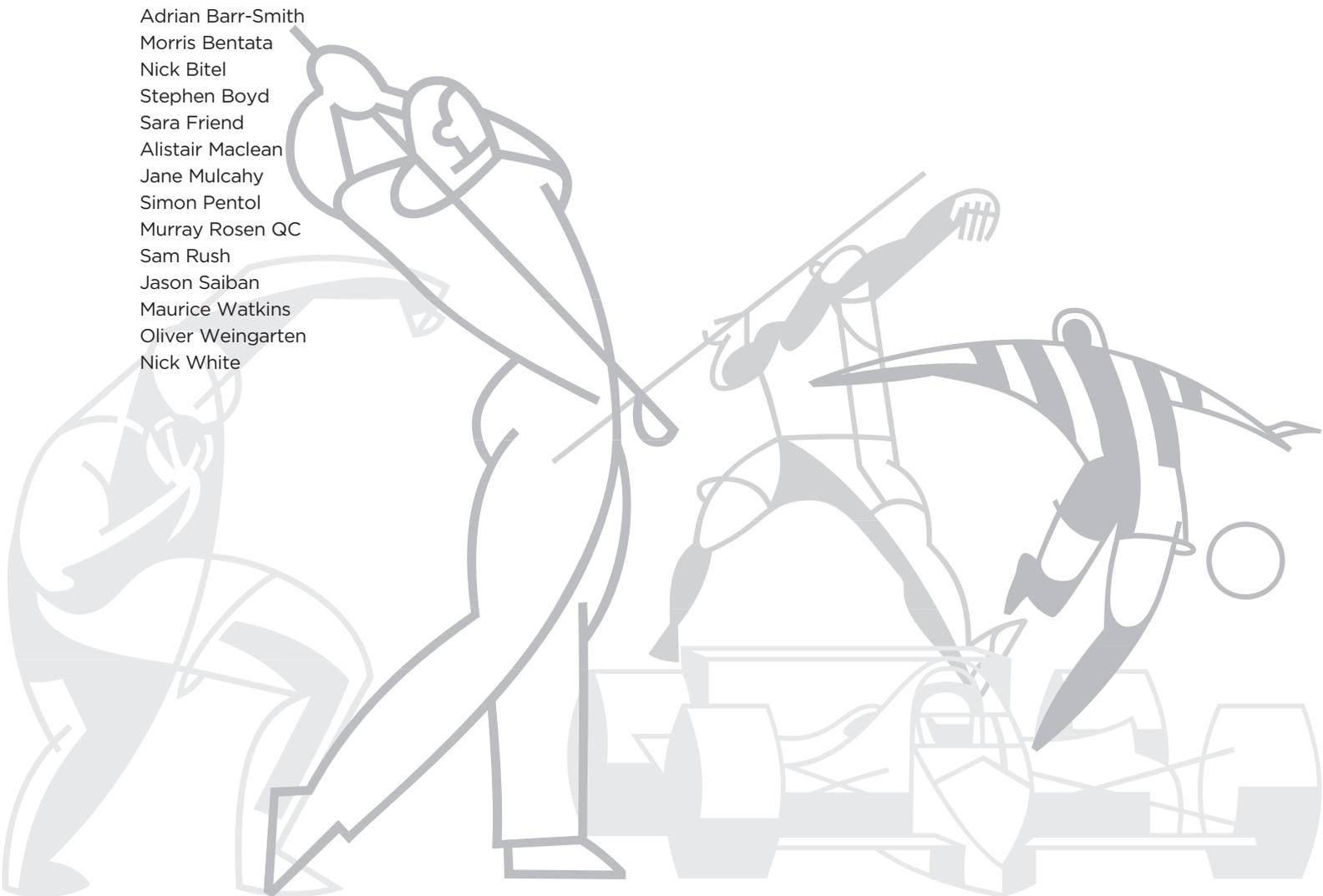
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# Editorial

**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 comment on two topical issues. Firstly, Adrian Barr-Smith and Alex Haffner's 'He's got 'em on the list and they'll none of 'em be missed', focuses on the recent Davies Report on reform of the protected 'Listed Events' on British TV. Secondly, Alistair Ruxton's 'How do participants attend major events in the UK?' examines the issue of work permits for international athletes competing in the UK. Lastly, Liz Ellen's 'Sponsoring the London 2012 Olympics' concerns protection of sponsorship investment in London 2012.

Additionally the regular Sports Law Foreign Update by Walter Cairns can be found.

Just before the World Cup swung into action, FIFA announced that it will scrap plans first mooted in 2006 that a team in each match would need to field at least 6 players who are eligible to play for the national team of the country of the club.

In the last few years, a number of sports including handball and volleyball and in particular football, have moved to re-introduce player quotas. In April 2005, UEFA introduced its 'home grown players' rule for European cup competitions and recommended that national associations adopt similar rules for their own domestic leagues. The perceived legitimacy of this policy has led to a number of domestic leagues introducing similar restrictions to their playing squads. In England, the Football League introduced restrictions, which started in the 2009-2010 season, which require four players in match day squad to have been registered by a domestic club for three years before their 21st birthday. In fact, for most Football League clubs this will merely be reflecting the status quo that has existed for many years with clubs already complying with this requirement. The Premier League has indicated that, in principle, it will move to impose similar restrictions in season 2010-2011

So why have FIFA pulled back from implementing its own proposal? Although there was some support within the football family for the idea, and some questionable academic support from a FIFA commissioned report by the Institute for European Affairs, the overwhelming academic view has been that the FIFA proposals would clearly infringe Article 39EC as a form of direct discrimination in terms of nationality and contrary to the *Bosman* decision. In comparison UEFA's policy, which does not focus directly on nationality has generally been accepted as a proportionate response to the perceived problem within football. The following can be identified as the *perceived* problems that European law has created for football.

First, aggregation of playing talent within a small elite of clubs in European football, notably those who have been able to qualify for participation in the UEFA Champions League on a regular basis, has led to real challenge to the crucial sporting characteristic of unpredictability of outcome as a distortion of sporting competition and dominance of these clubs due to their control of the top playing talent whose nationality is largely irrelevant.

Secondly, the freedom of movement provisions have led to the top talent from EU Member States moving to the economically powerful leagues in European football, notably England's Premier League, Spain's La Liga and Italy's Serie A. This influx into the economically powerful leagues has resulted in diminished opportunities for young emerging indigenous talent within those Member States. This can be supported by research that demonstrates that foreign players made up 42.4% of all players employed by English, Spanish, Italian, German and French clubs during the 2007-08 season – a 3.5% increase over the previous season. In the English Premier League, the number of foreign players reached 59.5%.

## Editorial

Thirdly, this migration has been at the expense of young domestic talent. Contrary to the view expressed by Attorney General Lenz in *Bosman*, that it was unlikely that the migration of foreign players would increase to the extent that the chances of domestic players would be seriously diminished, it is argued that, in fact, this is just what has occurred. It is also argued that young domestic players have also been unable or unwilling to move to other Member States in meaningful numbers as a balancing tendency to differing degrees in different countries.

Fourthly, this migration has manifested itself in a smaller pool of eligible-players to pick for the national teams of Member States. Consequently national teams throughout Europe have been weakened. This is a widely held belief. However, one research study suggests that over a 30-year period from 1977 to 2007, the performance of the England national team has improved in the post-*Bosman* years.

Lastly, Member States from which playing talent has migrated are increasingly impoverished in terms of the performance of their club teams. Beyond the new dynamic that has emerged since *Bosman* within the EU, the *Kolpak* and *Simutenkov* cases have applied non-discrimination provisions to a wider range of countries beyond the EU's borders. Moreover, Europe, as the powerhouse of world football, has also become a focus for migration patterns of player talent into Europe from around the world. Subject to any quota system operated by a particular football association and national immigration rules, significant foreign non-EU national players have been able to secure employment within European football leagues. This has both caused impoverishment in national leagues world-wide and impacted adversely upon national sides. It has also created exploitation and the trafficking of playing talent away from many, mainly developing, countries.

So with FIFA's policy withdrawn, might UEFA's policy be challenged in the future? Any policy or rule that is intrinsically liable to affect migrant workers more than national workers and thus impede access to the labour market and freedom of movement constitutes indirect discrimination. It is clear that UEFA's rule falls into this category but, as such, will be lawful if it can be justified. Justification of the UEFA rule requires it to be established that the rule does further the objective needs of football and meets the criterion of proportionality. For this to be the case the objectives secured by rule must not be outweighed by the discriminatory impact of it and there must be no other means by which these objectives can be met just as effectively. There are clearly alternative policies that could engage with the perceived problems listed above which focus on the supply of economic resources rather than labour such as salary caps, transfer caps and greater financial restrictions, and these could meet the test above if reviewed in litigation.

**Finally, 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



# “He’s got ‘em on the list and they’ll none of ‘em be missed”<sup>1</sup>

BY ADRIAN BARR-SMITH AND ALEX HAFFNER, DENTON WILDE SAPTE LLP

## History

Sport is understood to play a central role in framing national identity. Whilst the history of sports coverage on television began only 60 years after the Lord High Executioner compiled his list, it is only in recent years that such coverage has expanded to current levels on both pay/subscription and free-to-air (FTA) channels. From the outset, however, legal regulation of sports broadcasting has been deemed necessary by policy makers, ostensibly to protect the “national interest” through universal access.

The initial legislative effort was that contained in the Broadcasting Act 1954<sup>2</sup>, which empowered the Postmaster-General (as then was) to make regulations with a view to preventing the “making of an exclusive arrangement for the broadcasting to a restricted audience of sporting or other events of national interest”. However, no attempt was made to define the “national interest”. The Act resulted in voluntary arrangements between the BBC and the Independent Broadcasting Authority (IBA) (the body overseeing ITV at the time) by which each party agreed not to seek exclusive broadcast rights for certain major sporting events.

The concept of a “list” of protected events (to be drawn up by the Secretary of State) was first introduced in the Cable and Broadcasting Act 1984<sup>3</sup>. The list was of events of “national importance and significance”. These listed events were restricted from being shown on a pay-per-view (PPV) basis unless rights had also been offered to the FTA broadcasters, the BBC and the IBA, on comparable terms<sup>4</sup>.

Although, this restriction was re-enacted in the Broadcasting Act 1990<sup>5</sup>, it was re-configured by the Broadcasting Act 1996 (1996 Act), as amended by the Communications Act 2003 (2003 Act)<sup>6</sup>. The restriction on PPV coverage was replaced by the current distinction between “qualifying” FTA channels (currently, BBC1 and 2, ITV, Channel 4 and Five) and

those regarded as “non-qualifying channels” (in effect, pay channels). In order to “qualify”, a channel must be one for which no payment needs to be made for reception other than the TV licence fee and whose broadcasts are capable of being received by at least 95% of the UK population<sup>7</sup>.

## Broadcasting Act 1996

The list was divided by the 1996 Act into two parts; Group A events whose live broadcast rights are protected and Group B events whose highlights rights are protected<sup>8</sup>. Live broadcast rights of a Group A event must be marketed on a non-exclusive basis so as to provide a genuine opportunity for at least one qualifying channel and one non-qualifying channel to acquire those rights on fair and reasonable terms. As a matter of practice, this has meant that the live broadcast rights to Group A events have been purchased on an exclusive basis by FTA broadcasters (with Ofcom’s consent – see below) given that a pay-TV broadcaster is generally unwilling, otherwise than in exceptional cases, to “simulcast” live coverage of a sports event at the same time as coverage on an FTA channel.

Correspondingly, live broadcast rights for Group B events can be marketed on an exclusive basis, and acquired by either qualifying or non-qualifying broadcasters, provided that adequate provision has been made for deferred (highlights) coverage by a broadcaster in the other category. So, for instance, the live rights to a Group B event can be sold exclusively to a pay-TV operator provided that highlights rights have been acquired by a FTA broadcaster.

Partly in response to this division of the list, the Central Council for Physical Recreation (CCPR) devised a voluntary code of conduct for sports rights owners. The signatories to this code, which include all significant UK governing bodies of sport (other than

“He’s got ‘em on the list and they’ll none of ‘em be missed”

the Rugby Football Union), undertake to ensure that televised coverage of their events is available FTA in the UK through live or secondary (delayed or highlights) coverage<sup>9</sup>.

### European dimension

UK law on listed events also has to be read in line with the way in which the concept of listing has been introduced into European law through the 1989 Television Without Frontiers Directive<sup>10</sup>. This Directive has since been replaced by the AudioVisual Media Services (AVMS) Directive<sup>11</sup> (the Directive) which includes identical provisions on the prospect of national listing legislation to those already described.

The Directive provides for national legislation to be drawn up for the establishment and maintenance of a list of events considered to be of “major importance for society” and which should be made available on FTA television as widely as possible.

There is no obligation on Member States to take such measures: Member States merely have the option to do so. Where this discretion is exercised by a Member State, the Directive requires that they notify the European Commission (Commission), whose role is to verify compliance of the measures with EU law. Before reaching its decision, the Commission is required to seek the opinion of a Committee comprised of representatives of the competent authorities of the Member States. The Commission’s decision to approve the existing constituents of the UK list (i.e. as formulated following the last listed events review) is currently under appeal by UEFA and FIFA in the General Court of the EU (see below).

### Role of Ofcom

Once approved, the Commission will publish the measures in the Official Journal. Such publication serves as a means of making the regulatory authorities in all Member States aware of the measures adopted elsewhere in the EU. In accordance with the principle of mutual recognition, Member States are under a duty to ensure that broadcasters under their jurisdiction respect the lists of other Member States notified to the Commission (i.e. so that they cannot circumvent a list operating in one Member State by being registered in another).

Ofcom is the regulator appointed to supervise the operation of the UK regulatory regime. Where a

channel has acquired exclusive rights to a Group A event, it must apply to Ofcom for consent. Ofcom must satisfy itself that the sale process has satisfied the conditions set out above.<sup>12</sup> Where a channel has acquired exclusive live or highlights rights to a Group B event, Ofcom’s consent is again required.

A specific Code on listed events (Ofcom Code)<sup>13</sup> sets out the factors which Ofcom will take into account in determining whether to grant such consent. Amongst other things, it will need to be satisfied that:

- i packages for highlights, as-live or delayed transmission rights etc. have been marketed separately;
- ii any proposed conditions should be non-discriminatory as between qualifying and non-qualifying channels;
- iii the price sought must be fair and reasonable, and
- iv broadcasters must be given a reasonable opportunity to respond. The Ofcom Code has been instrumental in persuading many rights holders to institute a formal tender process for their broadcast rights.

Whereas Ofcom routinely publishes for comment any applications received for consent under this regime, the notice placed on its website will contain little, if any, detail as to the terms on which the broadcaster has agreed to acquire broadcast rights to a listed event. This is especially relevant given that, as set out above, one of the factors which is relevant to Ofcom’s final determination is that the price sought (and paid) for the rights is fair, reasonable and non-discriminatory. The Code suggests that here Ofcom will act as a “market expert”, looking at whether the price measures up against the value (in its estimation) of the rights concerned.

In reality, based at least on applicable judicial interpretation of this part of the process, Ofcom appears to have considerable latitude. This was made clear by the decision of the House of Lords in the TV Danmark case<sup>14</sup> where their Lordships held that an FTA broadcaster should be given an opportunity to purchase the rights to a listed event at a price “which they could reasonably be expected to pay”. Such price would not have to equate to the market value. On the contrary, it represented only the price the FTA broadcaster might realistically wish to pay in the distorted market within which they were able to bid for the rights.

“He’s got ‘em on the list and they’ll none of ‘em be missed”

The effect of the listed events regime is that the market for the broadcast rights of each Group A or B event is distorted. No exclusivity premium will be payable if only non-exclusive rights are available. Their Lordships in the TV Danmark case recognised that depressing the value of the broadcast rights was a “consequence which inevitably followed” the protection which listing intended to confer on certain sporting events.

### **Current review**

The current review of the UK listed events regime, initiated by the Department of Culture Media and Sport (DCMS) in December 2008, was undoubtedly long overdue. The most recent review before the current one was chaired by Lord Gordon of Strathblane who reported in 1998. His principal innovations were the introduction of transparent and published criteria for selecting an event for listing and the division of the list into Groups A and B. Both innovations were welcomed by rights holders and accepted by the decision-maker, the Secretary of State. The list approved by the Secretary of State and currently in force includes 10 Group A events and 9 Group B events. These cover both individual “stand-alone” events (e.g. the Grand National, the FA Cup Final), and entire tournaments/championships or at least a series of matches within a tournament (e.g. the World Cup football finals, the men’s and women’s finals at the Wimbledon tennis championships).

This time around, to assist in its deliberations, the DCMS appointed an “independent” Advisory Panel (the Panel) chaired by the former executive director of the Football Association and broadcasting consultant, David Davies, and comprising luminaries from the worlds of sport, broadcasting and academia.

The consultation period administered by the Panel ran from 8 April 2009 until 20 July 2009 during which it received responses from a wide range of sporting, media and other affected organisations. The Panel held hearings at which many of those organisations were given the opportunity to present their views orally and also attended sessions convened at the Scottish Parliament and Welsh Assembly and by the All Party Media and Sports Group at Westminster.

The Panel’s findings were set out in a report dated 11 November 2009 (Davies Report), which triggered a welter of comment and further debate. The Panel did not commission any independent expert to carry out a detailed analysis as to the economic impact on the rights holders concerned of any proposed changes to the list.<sup>15</sup>

### **Report of Davies Panel**

In sum, the Davies Report concluded:

- a The principle of listing, which the Panel described by reference to the wording of the Directive in terms of the protection of events for a TV audience of “major importance to society”, remained relevant. Notwithstanding evidence of changes to the media landscape and viewer consumption patterns (e.g. the move away from the TV as the means by which to watch/follow sporting action), the Panel believed the public “understood instinctively and supported the concept”.
- b The criteria previously established by Lord Gordon to determine those events which should be considered for listing by the Secretary of State should be simplified, in particular by removing the existing requirement that an event should “unite the nation” and be a “shared point on the national calendar” (which the Panel felt to be too aspirational). An existing requirement that an event had a “history” of being broadcast live on a FTA basis was also seen by the Panel as unnecessary given the need to keep the list relevant and up to date.
- c In framing their recommendations as to the future constituents of the list, the Panel should not (or could not) include aspects of the criteria which required political judgments, most notably as to the economic impact on a particular sport of being included in the list – this being a matter for consideration by the Secretary of State.
- d The Group B list of events should be abolished: highlights/delayed coverage were an insufficient substitute for the live event and, with the proliferation of channels and increase in broadcast capacity through “red button” coverage, scheduling issues which had previously been used to justify events being placed on the Group B (as opposed to Group A) list were no longer relevant.
- e Various changes were needed to the Group A list of events in its current format with the removal (de-listing) of certain events (e.g. Winter Olympics) and addition (e.g. Home Ashes Test Match cricket series between England and Australia) or re-classification (6 Nations Rugby Matches to be listed only in respect of coverage in Wales of matches involving the national team in that tournament).

“He’s got ‘em on the list and they’ll none of ‘em be missed”

The Secretary of State issued a consultation document on 7 December 2009 in which he stated he was “minded” to accept the recommendations put forward by the Panel and which granted interested parties an opportunity to present their views. Responses to that consultation were due by 19 March 2010. The Secretary of State had hoped to be in a position to announce his findings prior to the dissolution of Parliament, but the process was subsequently put on hold pending the outcome of the general election.

The incoming coalition now faces a difficult decision whether or not to take this Review forward, or to await the outcome of digital switchover.

### Achieving a balance

In particular, it will be necessary for the new Secretary of State to justify his conclusions as being properly in the public interest, particularly when balanced against the obvious impact which listing an event has on the finances of the sports rights holder concerned and the knock-on effects on broadcasters and the wider broadcasting market.

In the TV Danmark case, the House of Lords (Lord Hoffman giving the lead judgment) held that the Television Without Frontiers Directive imposed a “clear” obligation on Member States to protect designated events for the benefit of the viewing public. Moreover, that obligation was not to be qualified by “considerations of competition, free market economics, sanctity of contract and so forth”. However, their Lordships also recognised that the Commission had to approve any national measures as being compatible with European law such that:

*“the balance between the interests of sports organisers and pay-TV broadcasters in maintaining a free market and the perceived interest of the citizen in being able to watch important sporting events has already been struck...”*<sup>16</sup>

This balancing act was, apparently, not properly considered by the Panel as a consequence of its refusal to consider the financial impact which any listing proposals would have on the sports rights holders concerned. To redress this obvious gap in the analysis, the Secretary of State in his consultation on the Davies Report specifically asked those affected by the proposals to put in detailed evidence as to financial impact, albeit there has been no confirmation as to whether consultees will have an opportunity to review the Secretary of State’s own economic impact assessment.

Lawyers will be interested how the Secretary of State will deal with arguments put forward by several of the sports affected by the proposals in the Davies Report that, irrespective of whether their events meet the requirement of being of “major importance for society”, the proposals put forward by the Panel are disproportionate and therefore contravene EU law. Whereas the Panel looked at the evolving media landscape and concluded that, for the foreseeable future, most people’s first choice of how to view sporting events would be via their TV sets, it is not easy to reconcile a system which reduces choice with an environment in which the consumer increasingly wishes to be able to decide precisely when and how to access content.

Correspondingly, there is a question as to whether listing is necessary to ensure any public interest is properly protected. Sports governing bodies (who tend also to be the owners of the rights affected by listing, or at least to exercise some control over the exploitation of those rights) need to have regard, in the exercise of their duties, to a wide range of considerations. Generating sufficient income is, of course, one such consideration, but balanced against this will be the needs to seek quality of coverage and widespread exposure for their sport. For these same reasons, rights holders will generally ensure that, when tendering their broadcast rights, they are under no obligation to accept the highest monetary offer made for any broadcast rights package.

Assuming a sports rights holder complies with its obligation under the competition law rules to conduct open and non-discriminatory tender processes, the removal of the listing legislation would not prevent any broadcaster from participating. In particular no FTA broadcaster would be excluded from acquiring rights to an event which they properly considered to be of particular relevance to their audience and/or the public. Presumably, it is for these reasons that the overwhelming majority of EU Member States have exercised their discretion not to put in place any listing measures.<sup>17</sup>

Once the Secretary of State has navigated his way through these issues, he will also need to look in further detail at arguments put forward by rights holders to events of more than a few hours duration as to whether a blanket decision to list the entire event (and protect its coverage on FTA television) can be justified. For example, an Ashes Test cricket series comprises up to 175 hours of sporting action across a two month period, much of which takes place during

“He’s got ‘em on the list and they’ll none of ‘em be missed”

the working day. Can every minute of that series properly be regarded as being of such public importance that it needs to be protected for live FTA coverage? The Gordon Committee did not think so and recommended that Test Match cricket occupy its current berth as a Group B event. The Panel’s response to this conundrum appeared to be that there was sufficient merit in an entire series being guaranteed for FTA coverage and that concerns as to scheduling availability on FTA channels were no longer relevant given that digital switchover (and the opening up of more spectrum capacity) was likely to lead to a proliferation of qualifying FTA channels on which to broadcast. The Panel largely ignored the question whether coverage on a non-destination channel, which viewers have to trawl down their EPG to find (e.g. ITV4), could be regarded as protecting the public interest of access to an event.

These same points cut across the main arguments in the UEFA and FIFA appeals being heard in the European courts; both organisations contend that listing the entire European Championship/World Cup finals tournaments in the UK (and Belgium) cannot be proportionate when so doing includes games either not involving the national team and/or of insufficient public interest.

The Mikado concludes with pardons to all for their transgressions and their removal from the dreaded “list”. The prospect that the same eventuality will transpire once the listed events review has reached its conclusion is a remote one. ■ **BASL**

- 1 *The Mikado, or The town of Titipu by Gilbert and Sullivan*
- 2 *Section 7, Broadcasting Act 1954*
- 3 *Section 14, Cable and Broadcasting Act 1984*
- 4 *Section 14, Cable and Broadcasting Act 1984*
- 5 *Section 182, Broadcasting Act 1990*
- 6 *The amendments in the Communications Act 2003 are designed in particular to deal with the distinction between Group A and B events which was made following the last review of the listed events regime in 1998 (see above). In fact, these amending provisions of the Communications Act have yet to be brought into force, albeit that the listed events regime operates in practice as if they have.*
- 7 *Section 98, Broadcasting Act 1996*
- 8 *Section 97, Broadcasting Act 1996*
- 9 *In addition, signatories undertake that a minimum of 5% of the respective rights fees will be re-invested in the grassroots development of their sports.*
- 10 *Directive 89/552/EEC.*
- 11 *Directive 2007/65 EEC.*
- 12 *Section 99, Broadcasting Act 1996*
- 13 *Ofcom Code on Listed and Designated Events.*
- 14 *R v Independent Television Commission ex parte TV Danmark 1 [2001] All ER (D) 344, at paragraph 37.*
- 15 *Whereas the Panel did appoint Frontier Economics to produce a report for its consideration as to ‘The Impact of Listed Events on the Viewing and Funding of Sports’, that was described as being no more than a “desktop study”.*
- 16 *TV Danmark case (see note 14 above), at paragraph 33.*
- 17 *At present, only 8 out of 27 EU Member States (including the UK) have chosen to exercise their prerogative to introduce listing measures. One, Denmark, withdrew listing measures which had previously been introduced, ostensibly because the Danish government considered the arrangements to be incompatible with principles of free competition.*

# How do participants attend major events in the UK?

BY ALASTAIR RUXTON, LOCOG

**An organiser of a major event (including the 2012 Olympic and Paralympic Games) will at some point be asked a simple question by the international participants – “Do I need a visa to come to the UK to take part in your event?”. The answer is not always straightforward as many organisers will testify.**

## Who needs a visa?

The world in UK immigration terms splits into three groups - (a) European Economic Area (EEA) (all 27 EU countries, plus Norway, Liechtenstein and Iceland) and Swiss nationals, (b) visa nationals and (c) non-EEA non-visa nationals.

EEA and Swiss nationals are not subject to UK immigration controls. This flows from the doctrine of free movement of people, goods and services within the EU. This means that nationals from any of these countries will not need a visa or work permit to come to the UK to visit or work. They will simply have to produce a valid passport or identity card when they come through the UK border.

Visa nationals on the other hand will always need a visa to visit the UK. (If they are coming to work in the UK, they will also need to fit within the UK’s five tier “points based system” (PBS). Modelled on the Australian system, this is the UK’s attempt only to allow migration in certain key employment areas where there is a shortage of skills.)<sup>1</sup> Assuming, however that the visa national is only coming to visit the UK and not to work, he/she will need to obtain a visa before making the trip. There are about 110 visa national countries, which in the case of the 2012 Games is the majority of participating nations (albeit the size of most of these nations’ teams will be small with the exception of countries like China and Russia).

Non-EEA non-visa nationals are also a large group of 2012 Games participants. Many of the bigger teams will

be in this category – the USA, Canada, Australia, Japan, Brazil etc. As long as nationals from these countries are not intending to base themselves in the UK (which broadly means they are not being employed or paid by a UK body) for longer than six months, they will not need a visa to visit the UK. However, if they are intending to work in the UK, they will be subject to the PBS system however long they stay in the UK. It is therefore crucial to establish the purpose of the national’s visit to the UK before their arrival in the UK.

## What type of visa do you apply for?

A person can apply for different types of visit visas. The ones which will be most relevant to the 2012 Games are the business visitor visa, the sports visitor visa and the general visitor visa.

The business visitor visa allows people to make trips to the UK for business meetings, training, conferences etc. It does not allow the holder to work in the UK – i.e. essentially to be employed or paid in the UK by a UK body. This type of visa will be very relevant to sports administrators (IOC, IPC, NOC, NPC and IF administrators), broadcasters, sponsors and press visiting for meetings prior to the 2012 Games (eg Sport Accord in April 2011, the Chef de Mission Seminars in August 2011, the World and Press Broadcaster Briefings in 2010 and 2011, and ad hoc fact finding visits to The London Organising Committee of the Olympic Games and Paralympic Games Limited (LOCOG)).

The sports visitor visa will allow athletes, coaches, officials and sports specific volunteers to attend sports events in the UK prior to the 2012 Games. In particular, athletes will use this visa route to train in the UK prior to the Games and attend the 40 test events which LOCOG will hold or be involved with from August 2011 to May 2012. (These will be a range of events in each Olympic and Paralympic sport – some will be IF world championships, others will be more low-key invitational

## How do participants attend major events in the UK?

events. In each case, they will be used to test the operational readiness of the Games venues and staff.) This type of visa allows its holder to receive prize money and reasonable expenses from the UK event organiser, but not to receive a fee for his/her attendance.

Visa national spectators will need to apply for a general visit visa. Like all UK visit visas, this will only be granted if the applicant can demonstrate he is over 18 (if not, he will need to apply for a child visitor visa), has enough funds to support himself while in the UK without working or having recourse to public funds, and does not intend to stay in the UK beyond the period of his visit.

All UK visit visas allow its holder multiple entries into the UK while the visa is valid. The minimum validity period for a UK visa is 6 months. It currently costs £68. However, an applicant in any of the visitor visa categories can also apply for a long-term visa which extends the period of validity (1 or 2 (£230), 5 (£420) or 10 years (£610)). This could be very helpful if the person knows they are likely to make several visits to the UK over a period of time. In each case, the visit to the UK can be for no longer than 6 months.

The main issues arise for applicants in evidencing their intentions when they apply for a visa and in the distinction between visiting and working (i.e. when the visitor or PBS rules apply). Suffice to say, the earlier the applicant makes his application (at least two months before their visit is recommended) and the more evidence and information he can supply, the smoother the process.

And one final note on visa eligibility – the UK is not a member of the Schengen group of European countries. This means that if a visa national is travelling to the UK from Europe, the fact that he holds a Schengen visa (which allows him to travel on one visa between all the European countries who have signed up to the 1985 Schengen Agreement) will not negate his need also to obtain a UK visa for entry into the UK.

### **How do I apply for a visa?**

The UK has an extensive network of visa application centres (VACs) around the world. Historically these were always at visa sections in British embassies, high commission and consulates. Increasingly this is not the case, as the UK Government has outsourced the initial collection of visa applicants' data to its commercial partners who have separate offices.

Although most applicants are encouraged to make their initial application online via UKBA's website, everyone applying for a visa will at some point have to make an appointment to attend a VAC in person to give their biometric data (fingerprints and digital photo). This is the last step in the application process and the applicant will need to plan well in advance to book an appointment. In particular, not every country has a VAC; in some of the bigger countries (e.g. India, China) there is more than one VAC, but this is the exception as most countries will only have one, meaning the applicant may have to travel within his own country to get there; equally, some visa nationals have to travel to another country (which may in turn mean they have to apply for a visa to get to that third country) to make their application for a UK visa.

Collection of biometric data will increasingly become the norm worldwide – within a few years, other countries in the EU will all require this as part of the visa process. Governments see biometrics as a key security measure, allowing them to weed out applications made under false identities. However, the roll-out is expensive so it remains to be seen how quickly it will be adopted elsewhere. But as it does, event organisers will have to understand the process, send clear messages early on to participants about how the system works and liaise closely with the relevant Government department to resolve any issues for legitimate travellers.

### **The 2012 Olympic and Paralympic Games**

The Olympic Games and Paralympic Games are by definition world events. That means the world will be coming to the UK in 2012. The numbers involved underline the formidable scale.

205 National Olympic Committees (NOCs) made up of 10,500 Olympic athletes and 7,000 team officials. 166 National Paralympic Committees (NPCs) with 4,000 athletes and 2,000 team officials (Chefs de Mission, medical staff, coaches, sparring partners). 3,000 Olympic and 1,200 Paralympic technical officials (judges, umpires and International Federation (IF) administrators). 5,000 accredited press and 15,000 accredited broadcasters. Hundreds of Heads of State and their entourage. International artists and performers. Sponsors and their guests from 70 companies. 70,000 volunteers and 125,000 contractors. And of course spectators. There will also of course be some spectators coming from visa national countries, albeit the expectation is that the majority of the 10 million tickets will be sold to UK fans.

## How do participants attend major events in the UK?

Although many people coming to the UK on 2012 Games business in the next two years will be following the normal visa procedures set out above, certain accredited participants at the time of the 2012 Games will follow a different process.

Rule 53 of the Olympic Charter requires a host country of the Olympic Games to allow the Olympic Identity and Accreditation Card (OIAC) (together with a valid passport or other official travel document) to authorise entry into the host country for its holder. Equally, it entitles its holder: “to stay and perform his Olympic function for the duration of the Olympic Games, including a period not exceeding one month before and one month after the Olympic Games”. This is a requirement that the IOC insists the host city and country sign up to at each stage of a country’s bid, where the bidding host country’s premier and the relevant Government Minister (in the UK’s case, the Prime Minister and the Home Secretary) must sign a guarantee to recognise the card’s status as an entry clearance document. (Similar principles apply for the Paralympic Games and the Paralympic Identity and Accreditation Card (PIAC), referenced in the IPC’s constitution, the IPC Handbook.)

The rationale behind this requirement is that nationality should not in any way hinder participation in the Olympic Games. According to the Olympic Charter’s “Fundamental Principles”, the Olympic Games is “the bringing together of the world’s athletes” and “Any form of discrimination with regard to a country or a person on grounds of race, religion, politics, gender or otherwise is incompatible with belonging to the Olympic Movement”.

Needless to say, this obligation can present concerns to officials from every host country – what about people who are banned from coming to the host country? how do we know this will not be abused? is this a carte blanche? The simple answers are: the card will be secure, all the normal background (security, visa, etc.) checks will take place, not everyone who holds it will be entitled to use it as a visa waiver (eg LOCOG’s workforce and volunteers) and in any event, as outlined above, the vast majority of the participants in the 2012 Games will not need a visa to come to the UK whether or not they also hold the OIAC or PIAC. Yes, the UK will be welcoming the world to the 2012 Games, but at the same time the security of our borders will remain paramount.

### Conclusion

An event organiser of a major international event has to spend time getting to grips with immigration requirements. It is a complex area and requires much collaboration between the key stakeholders – the organiser, the Government and the participants. Time spent on policy and communications early on should pay dividends later when the practical reality of ensuring legitimate participants can get to the event kicks in. <sup>1</sup> **BSL**

<sup>1</sup> The most relevant tiers to sport are likely to be Tier 1 for highly skilled individuals, Tier 2 for skilled workers with a job offer to fill gaps in the UK workforce and Tier 5 for temporary workers in the creative and sporting categories. For more information, see [www.ukba.homeoffice.gov.uk/managingborders/managingmigration/apointsbasedsystem/howitworks](http://www.ukba.homeoffice.gov.uk/managingborders/managingmigration/apointsbasedsystem/howitworks).

# Sponsoring the London 2012 Olympics

**BY LIZ ELLEN, SOLICITOR & LICENSED FOOTBALL AGENT  
SPORTS GROUP, MISHCON DE REYA**

In 2012, London hosts one of sports mega-events, the Olympic and Paralympic Games. With a projected cost of over £9.3 billion<sup>1</sup>, the London Olympics will become one of the most expensive sporting events in history. Only the Olympic Games in Beijing 2008 with a reported outlay of £25 billion<sup>2</sup>, and the Games in Athens 2004 at an estimated £10 billion<sup>3</sup> will have cost more.

## **The importance of sponsorship at Olympic Events**

When considering the figures involved in staging the Olympics, the importance of securing a large proportion of the funding through sponsorship is clear. However, it was not until the 1984 Los Angeles Games that the International Olympic Committee (“the IOC”) came to realise the true potential of strategic sponsorship. Rather than allowing ever increasing numbers of sponsors, a limited number of sponsors would be willing to pay more for the privilege of being the event’s exclusive sponsor in its industry sector<sup>4</sup>. The 1984 Los Angeles Games were a financial success, in part because of this new approach to sponsors. It helped the IOC to overcome the stigma of debt-ridden events such as the 1976 Montreal Games<sup>5</sup>.

Companies may align themselves with the London 2012 Games in one of two ways. The first option is open to multi-national corporations seeking exclusive global marketing rights through the IOC’s Olympic Partner Programme (“TOP”). The IOC is predicted to make £2.7 billion from the sale of London 2012 broadcasting and sponsorship rights<sup>6</sup>, of which TOP sponsors are likely to contribute 40%. The other option is through agreements with the London Organising Committee of the Olympic Games (“LOCOG”). This is a lucrative means of income for LOCOG, which is reported to have obtained £500 million in sponsorship deals to date<sup>7</sup>.

## **The need to maintain sponsorship value**

Although there has been a massive increase in sponsorship revenue over the past 20 years (TOP sponsors paid \$95 million in 1988, rising to \$866 million in 2008<sup>8</sup>), this has to be considered in the context of the growing costs of hosting the event over the same period (with estimates that Seoul 1988 cost \$4 billion, to Beijing 2008’s \$40 billion<sup>9</sup>). Whilst modern Olympic Games can be profitable, this would not be feasible without the increasing sponsorship revenues. As such, the IOC is understandably anxious to protect what has become a valuable asset.

Unlike any other large-scale sporting event, the Olympic Games operate a ‘clean venue’ policy. This means that the Games, when broadcast around the world, will show events taking place in venues that are free of any advertising. Consequently, sponsors of the Olympic Games will not receive television exposure in the same way as sponsors of the football World Cup, who benefit from advertising hoardings inside the stadia. The purpose of the ‘clean venue’ is “to keep the focus on the sport”<sup>10</sup>, but it increases pressure on the IOC to ensure that its sponsors can get maximum value for their investment. In particular, it means that the IOC must deal with the threat of ambush marketing.

## **Ambush Marketing**

Ambush marketing is a highly contentious topic, and a difficult term to define without bias. Even the terms with which such marketing is associated – ‘ambush’, ‘guerrilla’, ‘parasitic’, ‘coattail’ – give the concept a negative undertone from the outset. For the purposes of this essay, ambush marketing can be neutrally defined as the marketing activity of a brand that suggests an association with a sports event (within legal boundaries), when the brand does not have official sponsor status.

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### Differing perspectives

To some, ambush marketing is unethical to the point of theft – “What impacts on sponsorship is when you don’t get value. That happens when ambush marketing is allowed to occur. Let’s get this straight. Ambush marketing is not clever marketing. It is stealing, it is thievery. Michael Payne [Marketing Director] of the IOC got it right when he called it ‘parasite marketing’. You know what parasite means. It is when one organism lives off another with no benefit to the host.”<sup>11</sup> These were the comments of Norman Mandel, Marketing Counsel at The Coca-Cola Company. As Coca-Cola is a regular sponsor of the Olympics and other major sporting events, it is unsurprising that Mandel’s stance is so strongly opposed to the practice of ambush marketing.

A common champion or villain of ambush marketing (depending on your point of view) is sports brand, Nike. Their brand manager, Simon Pestridge, offers a different perspective – “We play inside the rules and we bring a different point of view that’s true and authentic to sport.”<sup>12</sup> Nike has been behind some of the most successful and high profile ambush marketing strategies in recent years, and even if you disagree with the ethics, there is no doubting the creativity and ingenuity behind their campaigns, and those of fellow ambushers.

### Ambushing the Olympics

Here are some examples of the ways in which non-sponsor brands have created an association with past Olympics<sup>13</sup>:

- 1984 Los Angeles – Fujifilm was the Olympics’ official sponsor, but Kodak sponsored the television broadcasts, leading to confusion as to who was sponsoring the event;
- 1988 Seoul – in a role reversal of the 1984 Games, Kodak was the official sponsor, but Fujifilm ambushed the event by sponsoring the broadcasts;
- 1992 Barcelona – Nike were sponsors of one of the world’s biggest sporting stars, Michael Jordan, and took full advantage of this alliance by sponsoring press conferences with the victorious gold medal-winning USA basketball team, despite Team USA’s official Olympic sponsor being rival brand Reebok;

- 1996 Atlanta – official Olympic sponsors, Reebok, were again ‘victims’ of the actions of a Nike ambush, when Nike advertising dominated the billboards around the Olympic city in one of the most blatant ambushing campaigns ever seen. In a further blow to Reebok, Linford Christie gave his own sponsors, Puma, huge publicity by wearing contact lenses embossed with their logo at a pre-100 metre final press conference;
- 2000 Sydney – the Games’ slogan, ‘Share the Spirit’, was confusingly similar to the slogan used by Qantas Airlines, ‘Spirit of Australia’, much to the annoyance of official sponsor, Ansett Air;
- 2008 Beijing – Adidas were the official sponsors of the Games, where the symbolic torch-lighting during the Opening Ceremony was carried out by Chinese athlete, Li Ning, whose ‘Li Ning’ sports brand is one of the biggest rivals to Adidas in China.

### IOC action against Ambushing

The IOC’s Olympic Marks and Imagery Usage Handbook defines ambush marketing as “a planned attempt by a third party to associate itself directly or indirectly with the Olympic Games to gain the recognition and benefits associated with being an Olympic Partner”. It is something that the IOC rightly takes seriously given the need to maintain value through exclusivity in exchange for the multi-million pound sponsorship investments. It has responded to the threat in a number of ways.

### Public awareness campaigns

Dalton Odendaal, senior manager of sponsorship for London 2012 explained, “We want to get across that ambush marketing is harming the event and the public, the taxpayer, if the money to run the games cannot be run from the sponsorship deals... Between now and 2012 we will be endeavouring to impress the public that ambush marketing is bad. I think it will come down to how effective we are in our education programme and educating the consumer<sup>14</sup>”.

During the 2006 Turin Winter Olympics, an ‘anti-ambush kit’ was launched by the IOC<sup>15</sup>. This was part of a new campaign by the IOC to raise awareness of the contribution of Olympic sponsors, and the negative impact of ambush marketing. The kit was distributed to National Olympic Committees (“NOC”) for

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implementation nationally prior to the 2006 event, and also for the Beijing Games in 2008<sup>16</sup>.

Key results of the Turin 2006 anti-ambush campaign were reported to include exposure of up to 73% of the population in certain countries, unprecedented interest in the media of ambush-related matters, and growing interest in the NOC community for brand protection matters<sup>17</sup>.

The underlying purpose of the campaign was to try and put moral pressure on non-sponsors, in order to shame them out of making ambushing attempts. 'Naming and shaming' can be an effective deterrent if the public perception is that ambush marketing is damaging and unethical. One of the major problems with restricting ambush marketing is that brands act within the boundaries of the law, so legal action is rarely an option. In any event, the publicity of a court case risks giving positive exposure to the non-sponsor.

### Host city compliance

In addition to NOC obligations to raise awareness of ambush marketing, the IOC has also put pressure on host cities to deal with the threat. In order to host an Olympic event, the host city is required to meet the demands of the IOC's host city contract, which includes measures to control ambush marketing.

The Olympic Charter states<sup>18</sup>:

"Bye-law to Rules 7-14, 1. Legal Protection:

- 1.1 The IOC may take all appropriate steps to obtain the legal protection for itself, on both a national and international basis, of the rights over the Olympic Games and over any Olympic property.
- 1.2 Each NOC is responsible to the IOC for the observance, in its country... It shall take steps to prohibit any use of any Olympic properties which would be contrary to such Rules or their Bye-laws. It shall also endeavour to obtain, for the benefit of the IOC, protection of the Olympic properties of the IOC."

During the bidding process for the 2012 Games, the Queen's Speech promised new legislation in line with the Olympic Charter:

*"If London is selected to host the 2012 Olympic Games, legislation will be introduced as soon as possible to establish the necessary powers to ensure the delivery of the Games, and that the*

*requirements of the International Olympic Committee are met"*<sup>19</sup>.

### The London Olympic Games and Paralympic Games Act 2006

London was awarded the 2012 Olympic Games on 6 July 2005, and less than two weeks later, the London Olympics Bill was given First Reading. According to the Department for Culture, Media and Sport, immediate legislation was needed "to create a public sector body that can facilitate the staging of the Games", and also to "meet the commitments given in London's bid about how the Games, and the Olympic environment, will be managed – particularly in relation to advertising and marketing"<sup>20</sup>. It was further noted that the Government would introduce legislation necessary to prevent ambush marketing and to control advertising and air space during the period of the Games.

### Unique protection

It was on the back of these pledges that the London Olympic Games and Paralympic Games Act 2006 ("the Act") came into force. The Act provides special statutory marketing rights that go far beyond the protection afforded by pre-existing legislation and common law rules relating to intellectual property. Whereas most brands must seek to protect their intellectual property rights through the limited auspices of registered trademarks, design rights, or copyright and passing off claims, the Act gives unprecedented powers to LOCOG to prevent ambush marketing at the 2012 Games.

The Act, at Schedule 4 'London Olympics Association Right' states<sup>21</sup>:

"1 (1) There shall be a right, to be known as the London Olympics association right, which shall confer exclusive rights in relation to the use of any representation (of any kind) in a manner likely to suggest to the public that there is an association between the London Olympics and:

(a) goods or services, or

(b) a person who provides goods or services.

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3 (1) For the purpose of considering whether a person has infringed the London Olympics association right a court may, in particular, take account of his use of a combination of expressions....”

It is the breadth of the expressions referred to at section 3(1) of Schedule 4 that gives most cause for concern. The legislation acts so as to restrict use of any two expressions from list A, or any expression from list A with one or more word from list B, in a context that could suggest an association with the London Olympics:

List A	List B
(a) “games”	(a) gold (e) medals
(b) “Two Thousand and Twelve”	(b) silver (f) sponsor
(c) “2012”	(c) bronze (g) summer
(d) “twenty twelve”	(d) London

Furthermore, the lists are not exhaustive, but only an indication of expressions that the Court would take into particular account when considering whether there has been any breach of the legislation. Other expressions that create the same sort of representation would also be prohibited. Therefore, prior to 31 December 2012 (the date on which Schedule 4 ceases to have effect), any use of phrases such as “London Games”, “Golden Games”, “Golden Summer 2012”, or “London 2012” in a sporting or commercial context could well fall foul of the legislation. Breaching the Act can result in a criminal conviction and a fine of up to £20,000 for lesser breaches, or unlimited fines for more serious infringements. The enforcement provisions under the legislation are extensive, allowing raids on premises where it is reasonably believed that infringement of the advertising regulations of the Act is taking place<sup>22</sup>.

### An unfair advantage

Given that other sporting events are not afforded the same special treatment, it could be said that the IOC is obtaining an unfair advantage. The Act has been criticised by Marina Palomba, legal director of the Institute of Practitioners in Advertising, who says that the legislation may be going too far:

*“Sponsors need protection but it is a question of balance... We are concerned about an overreaction to the problem and, of course, the bill favours the multinational companies with deep pockets.”<sup>23</sup>*

*“Blatant ambush marketing has to be prevented but there are already laws in existence to prevent that. This is new legislation which gives the event holder unparalleled power. Why should the IOC have the monopoly on the terms London, 2012, summer, gold, silver and bronze?”<sup>24</sup>*

There is also a counter-argument to the assumption that sponsorship value needs to be protected in the first place. It can be argued that the ‘protection’ actually pushes up the price of sponsorship. That is not an issue that the powerful and political IOC is likely to raise, given its vested interest in maintaining a high sponsorship price.

### Protecting sponsors At London 2012

Whilst the Act should ensure that blatant attempts at ambush marketing are discouraged and restricted, it would not have been able to prevent any of the Olympic ambushes referred to earlier above. Therefore, it is interesting to consider what additional steps the IOC and LOCOG have taken to protect against similar actions.

### Learning from experience

#### a) Athletes

Athletes are a difficult group to manage, particularly because high-profile stars may be under instructions to promote their own sponsor where the opportunity arises. Puma secured a priceless marketing coup following the 100 metre final in Beijing 2008, when Usain Bolt held up his winning gold Puma spikes in an iconic image that was seen around the world<sup>25</sup>.

Olympic athletes are therefore required to enter into Team Member Agreements (“TMA”) prior to the Games, as a condition of selection and participation at the event. A TMA incorporates elements of the Olympic Charter, and sets down rules about the

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athlete's behaviour, including respect for official sponsors, such as:

*"Athletes may not wear, have tattooed, branded, painted, shaved, cut, pierced, applied or affixed to, into or onto their body (including...spectacles or contact lenses [as with the Linford Christie example]) any name, logo or design of any commercial or political entity.*

*"The BOA will consent to competitors allowing their image to be used for advertising only if the advertiser is an Official Olympic Partner [which would restrict the Michael Jordan and Nike example].*

*"Athletes agree to assist and co-operate with the BOA, LOCOG and the Olympic Partners and comply with all reasonable requests of the BOA in assisting the BOA/LOCOG and the Olympic Partners to enable the Olympic Partners to maximise the promotional benefits from their sponsorship..."<sup>26</sup>*

### **b) Billboards**

LOCOG have taken heed of the 1996 Nike ambush, and have already taken an option on 99% of advertising space around the Olympic venues. Official sponsors will have the right of first refusal in respect of this, and Mr Odendaal (senior manager of sponsorship for London 2012) believes that the sponsors will make the most of this in order to ensure that competitors do not have easy marketing accessibility to those attending the events<sup>27</sup>.

### **c) Broadcasting**

The potential issue of official sponsors' competitors being able to sponsor television broadcasts of the Olympic Games (as with Fujifilm and Kodak in 1984 and 1988) is usually dealt with in the event's contract with the broadcasting company. Restrictions will be in place to ensure that competitors will not be permitted to sponsor the screening of the event. The additional risk of non-sponsors seeking an association through advertising during breaks in the broadcast will be dealt with in a similar way to the billboard advertising referred to above. Options will be taken over advertising slots, which official sponsors can then choose to purchase.

### **d) The last line of defence**

In order to 'police' the outdoor advertising around the event that may result in breaches of the Act, it is expected that LOCOG will engage a Brand Protection Task Force, comprising police, trading standards officials, Customs and Excise officers, and LOCOG's own experienced staff<sup>28</sup>.

Terms and conditions of tickets will provide further restriction on what visitors can wear, eat and drink at Olympic venues. With wording that epitomises the extremes of sponsorship protection, Mr Odendaal speaks of the last line of defence – the team of sponsorship watchdogs who will monitor what is taken into the London 2012 venues by the public: "We will have people circulating in the stadiums to make sure people are not taking in the wrong soft drinks, when there is a sponsor in that category<sup>29</sup>."

### Conclusion

A Canadian journalist, Maurice Cardinal, writing ahead of the 2010 Vancouver Winter Olympics, refers to ambush marketing as 'leveraging Olympic momentum'<sup>30</sup>. It is a valid turn of phrase. After all, you cannot realistically expect large non-sponsoring brands to stop marketing for the duration of the Olympics. The Olympics are meant to create a sense of pride and achievement, and a company would arguably be failing its investors if it did not try and capitalise on the mood of an inspired public simply because it was not an official sponsor of the event. The obligations of the company behind the brand are, first and foremost, to its shareholders. Similarly, the IOC has obligations towards its sponsors and wider stakeholders, both present and future. A responsibility therefore rests with the IOC to foresee ambush threats, and deal with them accordingly to ensure that the goodwill of the Olympic Games is not diminished.

Whilst it is certainly not the desired effect of ambush marketing, one of the side effects is that it forces rights holders (such as the IOC) and sponsors to better protect and utilise their assets. Sponsors should not be intimidated by the prospect of ambush marketing, as the ball is firmly in their court. Only official sponsors have access to the marketing rights and opportunities afforded by the sponsorship deals, so the focus should be on maximising their own brand's potential – after all that is the opportunity for which they have paid so many millions of pounds in sponsorship. Ambush marketers can only take advantage when gaps are left for them to move into, and given the opportunity, they

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will do this with creativity and initiative. Conversely, if sponsors are proactive and inspired in the same way that so many of the leading ambush marketers have been in the past, the prospective ambush marketers would have to step back and admire their rivals' efforts.

The IOC and LOCOG believe they have done as much as they can to protect the official sponsors from ambush marketing, learning from past experiences and pushing through unprecedented legislative rights. However, it will still not be enough. Inventive and resourceful marketing campaigns will no doubt be in evidence during London 2012, run by non-sponsors who will want to make the most of the feel-good factor of a successful mega-event, and who will relish the new challenge they face.

George Orwell once said that "Sport is war minus the shooting". It is clear that this extends to the battle of the brands. **PAW**

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# Sports Law Foreign Update

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

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CONFERENCES, MEETINGS, LECTURES, COURSES, ETC

**[None]**

OBITUARIES

## Steve McNair

One of the most powerful quarterbacks ever to compete in American football, Mr. McNair – as was reported in the previous issue of this Journal (*[2008] 3 Sport and the Law Journal p. 23*) – met his untimely end when shot in the course of a murder/suicide by a waitress with whom the footballer, although married with four children, was having an affair. He had been shot four times, whereas she had a single bullet wound to the side of her head (*The Guardian of 28/9/2009, p. 36*).

## Robert-Louis Dreyfus

The Franco-Swiss billionaire businessman, who has died aged 62, had a wide range of interests, which included several sporting ventures. Thus he was Chairman of the international sports marketing company, Infront Sports & Media, which administered the media rights to the 2006 football World Cup, and was able to rescue the German sportswear maker Adidas in the mid-1990s. However, his most controversial tenure as majority shareholder in top French football club Olympique Marseille. It should be stressed, however, that Mr. Dreyfus had any connection with the imbroglio which rocked not only the club in question, but the entire fabric of French football. This happened under the controversial politician-cum-businessman Bernard Tapie and involved a match-fixing scandal in a French League game four days prior to the European Cup final against AC Milan in May 1993. As a result, the club were stripped of their league title and demoted to the second Division.

It was precisely following this scandal that Marseille mayor Claude Gaudin requested Mr. Dreyfus to lend his business acumen to the cause of rescuing the club. This he succeeded in doing, mainly by arranging for Adidas and the telecommunications company Neuf (which he had helped to establish) to sponsor the team, which resulted in rocketing sales of clubs shirts, and increased success on the field of play, earning them a host of trophies. However, he too ultimately fell prey to the “Marseille disease” and was investigated for £22 million worth of illegal payments, made between 1997 and 1999,

on the occasion of the transfer of players such as Laurent Blanc, Ibrahima Bakayoko, Claude Makelele and Fabrizio Ravanelli. For these misdemeanours he was issued with a suspended prison sentence of three years and a fine of €375,000 – reduced to 10 months and €200,000 on appeal (*The Independent of 17/7/2009, p. 37*).

## Eunice Shriver

The famous Kennedy dynasty has produced many renowned figures in the world of US politics, but hardly any of them displayed an abiding interest in sport and its administration. One of the major exceptions was Eunice Kennedy Shriver, who has died at the age of 88. Her greatest accomplishment was undoubtedly the founding of the Special Olympics for the intellectually disabled. This act of public service was inspired by the plight of her elder sister Rosemary, who suffered from a slight mental handicap from birth and became completely incapacitated by an attempted lobotomy, sought by her father in order to control her mood swings. The Special Olympics began life in 1962. Ms. Shriver invited 35 mentally disabled boys and girls from her home in Maryland to participate in sports and other physical activities. The first official Special Games took place in 1968 in Chicago, and were attended by athletes from 26 US states as well as from Canada (*The Independent of 12/8/2009, p. 16*).

## Jack Kramer

The former Wimbledon men’s singles title holder, who has died aged 88, left his mark on the sport of tennis in a much more significant manner. Having won the Wimbledon title in 1947, he immediately became a professional and conclusively dominated the various tours which this entailed. However, the most important impact on the game in which he made his name came once his playing days were over. In 1952, when arthritic pain in his back was already starting to cause him physical difficulties, he became the promoter of the professional tour. In taking on this role, he realised full well that, of the game was to prosper in the long term, the principle of “open” tennis would have to be accepted. Accordingly, he devised the format on which much of the present-day men’s tour is based.

To this end, he designed the Grand Prix format, i.e. a series of major men’s tournaments leading to a Masters’ Championship for the leading eight players in the points table as they appeared at the end of the year. Also, at the request of several US players, he was instrumental in the formation of the Association of Tennis Professionals – which did, however, lead him to

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a less happy stage in his career. When the International Tennis Federation, in 1973, decided to ban Nikki Pilic from Wimbledon for allegedly refusing to play for his native Yugoslavia after supposedly having pledged to do so, the ATP met in order to decide whether or not to boycott the tournament. Kramer's vote was decisive in committing the ATP to the boycott. This caused outrage in British tennis circles, and Kramer was compelled to abandon his position as leading BBC commentator on the tournament. He remained on the ATP Board until 1975, and for two years served as a member of the Men's Professional Tennis Council (*The Daily Telegraph of 15/9/2009, p. 35*).

## **Frank Vandebroucke**

One of the more talented cyclists of his generation, the Belgian competitor, who has died aged 34, nevertheless displayed several personal characteristics which ultimately caused him to become an outcast from the sport following a series of doping scandals, attempted suicides, relationship breakdowns, drink-driving prosecutions and serious disagreements with the various teams which employed his services. In his prime, he was a redoubtable performer, carrying off over 50 trophies as a professional. However, his personal life seemed to develop in inverse proportion to his sporting success, and deteriorated to the point where he had several unfortunate encounters with the criminal law. In 2002 he was prosecuted for drink-driving, and later that year police found doping substances during a raid on his home. He was unsuccessful in a suicide attempt in 1974, but eventually died in Senegal, reportedly of pulmonary oedema which followed a drinking spree (*The Daily Telegraph of 14/10/2009, p. 31*).

## **Raj Singh Dungarpur**

The death of this able administrator, at the age of 72, marks the end of an epoch in Indian cricket. He held a number of senior positions, including Chair of the selectors, manager of the Indian national team and President of the powerful Board of Control for Cricket in India (BCCI) (*The Guardian of 22/9/2009, p. 34*).

## **Jack Poole**

The Chairman of the 2010 Vancouver Olympics Organising Committee has died at the age of 76. He spearheaded his city's bid to hold the winter Olympics, and died just a few weeks before the Olympic flame was lit in Vancouver (*Associated Press, www.findlaw.com of 23/10/2009*).

## **Myles Brand**

Mr. Brand, who was the first university president to lead the largest governing body in US college sport, has died at the age of 67. He made the headlines in May 2000, when he announced the imposition of a zero-tolerance policy on his university's athletics coach, Bob Knight, following an investigation into allegations that the coach had choked a former player during practice. When a similar allegation resurfaced a few months later, Mr. Brand dismissed the coach (*Associated Press, www.findlaw.com of 17/9/2009*).

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## LAWYERS IN SPORT

**[None]**

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## DIGEST OF OTHER SPORTS LAW JOURNALS

### **Latest issue of Tijdschrift voor Sport & Recht**

The latest issue of this recently-established Dutch journal starts with an article which examines the curious Rochus/Darcis affair. The latter are among the best Belgian tennis players who were not originally selected to represent their country for the 2008 Olympics, but who took to the law courts in order to compel the Belgian Olympic authorities to select them. They had done so on the basis that they had thus been deprived of the opportunity to improve their official rankings by acquiring a few points at the Beijing Games. Their challenge was successful, and raised the question whether the Belgian selection procedures in question were tainted with unlawfulness, particularly from the point of view of EU law. The author, Stefaan Van Den Bogaert, concludes that this is not the case. As long as the criteria for selection applied by the relevant national authorities have been fixed in advance and in objective terms, as well as being fully understandable to the athletes and failing to discriminate between them, there would appear to be no objection based on EU law to such procedures. Messrs. Rochus and Darcis appear to have profited from certain procedural irregularities and imperfections in the Belgian Olympic Committee's selection system in order to win their challenge, rather than from any fundamental infringement of EU law.

The next paper examines the legal problems which marred the recent Dutch national squash championships, in which top performer Melissa Meulenbelt was deprived

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of a “bye” to the next round in spite of the fact that her first-round opponent withdrew from the tournament on grounds of injury. Instead, the match schedule was completely rearranged, as a result of which Ms. Meulenbelt found herself confronted with a highly-placed opponent. Her protestations against this course of events were dismissed by the tournament leaders. The player then took the matter to the Appeals Committee (Beroepscommissie) which also dismissed the complaint. It ruled that the tournament regulations stipulated that, where circumstances arise which are not covered by the regulations, it is the tournament leadership which will take the relevant decision. This prevented the possibility of subjecting any decision by the latter to any review – except in the case of a “manifest error” (kennelijke misslag), as a result of which a decision could not be upheld on grounds of reasonableness and fairness. This was not the case here, according to the Commission. The author, Michiel van Dijk, criticises this ruling from several points of view – one of which being whether the grounds of reasonableness and fairness are an adequate basis for assessing whether or not such a manifest error had been committed.

The remainder of this issue concerns itself with the recent changes in the arbitration regulations applied by the Netherlands Football Association (KNVB) and a special feature of the Royal Netherlands Hockey Federation. It concludes with a review of the sports-related case law.

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## SPORT AND INTERNATIONAL RELATIONS

### **Platini meets Israel President**

Although the actions on the field of play sometimes produce a contrary impression, many in the world of football believe that the sport is capable of improving international relations, even in areas where the most sophisticated diplomatic tactics have failed to produce a satisfactory outcome. One prominent personality who apparently holds this view is Michel Platini, the current president of the European controlling body in football, UEFA. During a recent visit to the Israel capital of Jerusalem, where he met the Israel President Shimon Peres – himself an avid sports fan. Mr. Platini claimed that football promoted “peace, tolerance and friendship”. He recalled a meeting with Mr. Peres, held in 2006, at which the two men helped to assemble a team of Israeli and Palestinian players for an exhibition match against a Spanish team (*Associated Press, www.findlaw.com of 6/10/2009*).

### **Football brings old foes Turkey and Armenia together**

As if to emphasise the point made in the previous section, two Middle East countries with a long and blood-stained history of confrontation and warfare, i.e. Turkey and Armenia, have also sought to heal the wounds of history through a sporting fixture. The opportunity to do so presented itself when the two nations were placed in the same qualifying group for the 2010 Football World Cup. Ahead of the second leg of the tie, played in Bursa, the presidents of Turkey and Armenia exchanged a warm handshake – a gesture unthinkable only a few years ago for two peoples divided over a century by rancour rooted in the First World War killings of Armenians, who accuse the Turks of genocide. The latter, for their part, admit that many thousands of Armenians were killed but insist that Ottoman Turks also died in large numbers in fierce fighting.

The attendance of the Turkish President Abdullah Gul and the Armenian leader, Serzh Sarksyan, at the fixture represented a show of unity which was intended to help defuse opposition to a deal re-opening their border and restoring relations. Mr Gul had visited Yerevan last year for the first leg of what has been called “football diplomacy” and the countries signed a peace accord that same weekend. The deal could assist with the process of stabilising the south Caucasus with its energy corridor, as well as easing Armenia’s geographical isolation. It is, however, resisted by nationalists in both countries as well as by Azerbaijan, a Turkish ally and oil and gas producer. Both parliaments must approve it. Nationalists in Bursa protesting against the peace accord held a banner reading: “the protocol of betrayal is unacceptable” and chanted “we did not commit genocide, we defended the homeland” and “the people of Azerbaijan are not alone” (*The Independent of 15/10/2009, p. 27*).

The unprecedented security observed at the 18,600-capacity stadium underlined what was at stake. Neither side wants to give ammunition to the opponents of Armenian-Turkish normalisation. Attendance at the match was by invitation only. Many of the spectators were police academy students. Play began after Turkish fans booed as an announcer read out the Armenian line-up. Some fans released white doves in a gesture of peace that drew applause. However, a bus conveying Armenian journalists to the stadium had earlier been pelted with stones by Turkish fans.

The game in Bursa presented both countries’ leaders with an opportunity to discuss some of the thornier

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issues and potential pitfalls surrounding the protocols, including lands disputed by Azerbaijan and Armenia, as well as popular opinion which is polarised on the genocide accusations. Mr Sarkisyan finds himself under pressure from nationalists at home, more particularly from the powerful Armenian diaspora, not to deal with Turkey unless they acknowledge the Armenian genocide. Endorsing the agreement will ease Armenia's economic difficulties and may strengthen Turkey's bid to join the EU. It may also help to achieve an opening of Turkey's eastern borders extending to Syria, Iran and Iraq (*ibid*).

## 2. Criminal law

### CORRUPTION IN SPORT

#### The Renault “crashgate” scandal and its aftermath

##### Background

It has almost become a cliché for sports commentators blithely to assume that the notions of cheating and top sporting activity have virtually become interchangeable. It is indeed interesting to note that the term “gamesmanship” – a controversial notion for many decades after the term was coined by the late Stephen Potter – has virtually disappeared from the columns of the sporting press, suggesting that the moral compass which prevails in competitive sport has moved to the point where sport accepts virtually anything short of the most flagrant breach of the rules, and even then only if the perpetrator is caught. Even allowing for this relentless – some would say inevitable – advance of moral relativism, it is surely legitimate to raise more than the quizzical eyebrow at the repercussions and possible long-term implications of the “crashgate” affair, which has called into question the moral integrity not only of F1 racing, but also of commercial sport in general.

As a result of the “spygate” scandal in F1 racing, adequately documented in previous editions of this Journal, the French racing team Renault seemed to be cast in the role of victim rather than perpetrator, and appears to have enjoyed a good deal of sympathy and indulgence over the past 12 months as a consequence. This may have been one of the circumstances which led them to believe that they had free rein to engage in various unsavoury practices without fear of retribution on the part of the sporting authorities. There was already a hint of this attitude in the atmosphere at the Hungarian Grand Prix in late July 2009. The Renault team had been suspended after they were deemed by the race stewards to have knowingly released top star Fernando Alonso’s vehicle from a pit stop without one of the wheelnut retaining devices having been secured. (It should be noted, as will be highlighted elsewhere in this Journal (below, p. 000), that only the previous week the young driver Henry Surtees had been killed at Brands Hatch by an errant wheel.) However, the Court of Appeal of the FIA (the world governing body in the sport) reversed the suspension and substituted a £30,600 fine. Few people saw anything remotely suspicious in this development. However, it was to take on a new significance in the light of what many regard as the most serious scandal ever to affect the sport – or indeed any sport – which erupted barely a few weeks after this FIA decision (*The Independent of 18/8/2009, p. 44*).

##### The investigation

Following the Belgian Grand Prix in Spa, held in late August 2009, it emerged that the FIA was about to initiate an investigation into certain developments at the previous year’s Singapore Grand Prix, in which Mr. Alonso had claimed victory with the assistance of a crash incurred by his team-mate, the Brazilian Nelson Piquet Jr. This accident had triggered off the “safety car” procedure. In this particular sport, a safety car or pace car is one which limits the speed of competing cars on a racetrack in the event of a caution period such as an obstruction on the track. During a caution period the safety car enters the track ahead of the leader. With few exceptions, competitors are not allowed to pass the safety car or other competitors during a caution period, and the safety car leads the field at a pre-determined safe speed, which may vary by series and circuit. At the end of the caution period, the safety car leaves the track and the competitors may resume racing.

In the case of the Singapore GP, the operation of the safety car device proved greatly beneficial to the driver eventually declared the winner, who was, once again, Fernando Alonso, who had “pitted” during the early stages of the race just before the accident occurred. Almost immediately, conspiracy theories emerged which alleged that Mr. Piquet had been ordered by his team bosses to cause the accident in order to assist Renault in its bid to carry off its first victory of the year. Mr. Piquet, for his part, insisted that the incident had occurred because of his honest efforts. He said:

***“It was my mistake. We tried two extreme strategies, with Fernando quite short and me quite long, in the hope of getting a safety car. If I hadn’t crashed I would have been lucky with the safety car later in the race because I was very happy”***  
(*The Daily Telegraph of 31/8/2009, p. S14*)

However, the rumour mill started buzzing, particularly after the Brazilian television station O Globo claimed to have evidence of foul play. There were also signs that Piquet himself would have more damaging facts to divulge, especially after being dropped by the Renault team. Finally, the FIA issued a statement that an investigation was under way into the circumstances surrounding the crash (*ibid*). Several days later, the world governing body issued a statement to the effect that its investigation was to be referred to the World Motor Sport Council (WMSC), the most senior authority in all motor sports, which has wide-ranging disciplinary powers at its disposal. More particularly Renault were accused of breaching Article 151c of the International

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Sporting Code, which relates to bringing the sport into disrepute (*Daily Mail of 5/9/2009, p. 109*).

The scandal intensified the following week when a dossier, purporting to be a copy of the testimony given by Mr. Piquet Jr., to the FIA the previous month, was leaked on a number of motor sport websites. In it, the Brazilian, who was seeking to renew his contract at the time, alleged that he was asked to effect the crash and agreed to comply in order to protect his career prospects. He also claimed that he was told to crash "at a specific location of the track" which would not have cranes enabling a damaged car to be swiftly removed from the track and thus necessitate the immediate deployment of the safety car. Other leaked reports suggested Renault had denied the driver's allegations. Meanwhile Mr. Alonso, who in another dossier was exempted from all blame, did his utmost to distance himself from the affair. When asked whether he was aware of Renault's alleged plans for the Singapore race, his answer was very much in the negative (*The Daily Telegraph of 11/9/2009, p. S20*).

The Renault team, for its part, and more particularly its flamboyant Italian team principal, Flavio Briatore, reacted furiously to these leaks, and was reportedly threatening to take legal action against Piquet, whose allegations were dismissed as "outrageous lies" and "blackmail". According to the website Autosport.com, Briatore submitted a letter to the FIA, by way of evidence, which was addressed to Mr. Piquet's father, himself a champion F1 driver in his day, who had confirmed his son's claims that the crash had been ordered. In this letter, Mr. Briatore proclaimed himself "outraged" at the suggestion that any member of the Renault team could have entertained such a strategy, which could constitute a criminal offence. The letter also stated that Briatore regarded Piquet Jr.'s statements as attempted blackmail - with the implicit threat of initiating criminal proceedings on this ground (*Associated Press, www.findlaw.com of 11/9/2009*). In fact, Mr. Briatore later confirmed to the press that he was taking court action in France against the Piquets (*The Times of 12/9/2009, p. S13*). Another interesting fact to emerge was that Mr. Piquet Jr. appeared to have staged a dress rehearsal of the crash when he spun under strange circumstances whilst on his way to the starting grid - an incident which was dismissed at the time as merely another indiscretion by the struggling Brazilian driver (*The Observer of 13/9/2009, p. S15*). It was also revealed that Pat Symonds, the Renault team's executive director of engineering, had been offered immunity in return for full disclosure (*The Daily Telegraph of 17/9/2009, p. S10*).

### **The WMSC hearing, the outcome and initial reactions**

As the day of the WMSC meeting approached, speculation mounted as to what kind of defence would be put forward by the Renault F1 team and its paymasters. In the event, it was announced that the team would not contest the charges brought against them. The French manufacturers had been conducting their own internal investigation into the affair ever since the allegations were made, and obviously decided to limit the damage. In the wake of this decision, both Briatore and Symonds left their posts with immediate effect ahead of the WMSC meeting (*The Guardian of 17/9/2009, p. S1*). However, the meeting in question still took place, albeit under a cloud of uncertainty as reporters thronged outside the FIA headquarters in Place de la Concorde, Paris. Late invitations had been issued for Messrs. Briatore and Symonds to attend the hearing - although ultimately neither of them accepted - whilst Fernando Alonso had been ordered to appear at the last minute by Renault, who were obviously anxious to appear open and transparent in the hope of escaping with a light sentence (*The Daily Telegraph of 22/9/2009, p. S10*). They had also made every possible effort to pin the blame firmly on Messrs. Briatore and Symonds, stressing that they did not want "a fault by two people to reflect upon the whole company and the entire F1 team" (*The Guardian of 18/9/2009, p. S9*) These tactics appears to have paid off handsomely.

The Council's ultimate decision was that Renault should meet the payment of all the relevant legal expenses incurred in the course of the investigation, as well as making a "significant" donation towards safety work, and that this constituted suitable punishment for the French team's involvement in the race-fixing incident. The Council also ruled that the team would be permanently banned if, between now and the end of the 2011 season, Renault committed an act of similar seriousness. In relation to Briatore, the Council decided that they would refuse to sanction any series or race in which he was involved; nor would they licence any team or driver associated with him. This means an effective ban on managing anyone involved in the sport, including Alonso and fellow-F1 drivers Mark Webber, Heikki Kovalainen and Romain Grosjean. As for Mr. Symonds, he was banned from all FIA motor racing for five years - a limited period which took into account his admission of guilt and expression of "eternal regret and shame". As regards Piquet Jr., the FIA stated that he would be exempted from any penalty because of his belated confession (*Daily Mail 22/9/2009, p. 77*).

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The Council had doubtless anticipated that its ruling would be regarded by at least some observers as too lenient by adding the following explanation:

“Renault’s breaches (were of) unparalleled severity (sic). Renault’s breaches compromised not only the integrity of the sport but also (sic) endangered the lives of spectators, officials, other competitors and Nelson Piquet himself. The WMSC considers that offences of this severity (sic) merit permanent disqualification from the F1 championship. However, having regard to the points in mitigation and, in particular, the steps taken by Renault to identify and address failings within their team and condemn the actions of the individuals involved, the WMSC have decided to suspend Renault’s disqualification until the end of the 2011 season” (*ibid*).

This explanation failed to head off the many criticisms made of the relatively soft nature of the decision. Observers were quick to point out that, as has been related in earlier editions of this Journal and elsewhere, the McLaren team were ordered to pay \$100 million in 2007 – still the largest fine in sporting history – for their part in obtaining confidential data from Ferrari. Although McLaren did themselves no favours in relation to this incident by continuing to deny the charges in the face of overwhelming evidence, their offence had at least not caused any lives to be endangered (*The Daily Telegraph of 22/9/2009, loc. cit.*). Equally hard to understand were many of the reactions to the verdict by those most closely involved in the sport, who either failed to condemn the leniency of the outcome or even qualified it as overly harsh. Former F1 ace Eddie Irvine described Renault’s actions as “slightly on the wrong side of the cheating thing” (sic), adding that in days past every team had done whatever they could to win. Another former champion, Damon Hill, also appeared to praise Renault’s actions with faint damns where he described the matter as “not a very good episode”. He admitted that there the sport had a great deal of soul-searching to do, but added that “sometimes controversies add to the interest” although he did concede that this had to be “for the right reasons” (*The Independent of 22/9/2009, p. 46*).

One of the competitors who stood to be affected by the lifetime ban on Mr. Briatore was undoubtedly Red Bull driver Mark Webber, who had been represented by the Italian throughout his F1 career. Even though one can understand his disappointment at being deprived of Briatore’s services for ever, it is hard to forgive the Australian driver’s description of him as being “a very good character for the sport”. Bernie

Ecclestone, the Formula 1 supremo, also raised a few eyebrows by stating his opinion that the Briatore lifetime ban was too harsh and urging the Italian to appeal (even though he conceded that the latter had “handled the whole thing badly”). Not unexpectedly, Ecclestone’s remarks were strongly criticised by many. Sir Martin Sorrell, who is on the board of CVC, the firm which owns the commercial rights to Formula 1, gave clear expression to his dissatisfaction with these sentiments, suggesting that Mr. Ecclestone was “totally out of touch with reality” (*The Guardian of 26/9/2009, p. S17*). However, it appeared that the latter was far from alone in holding the opinion that Briatore was treated unfairly. The Ferrari President, Luca di Montezemolo, also described the lifetime ban as excessive, and expressed the hope that the sentence would soon be reduced.

### The Briatore appeal

In the event, Mr. Briatore proceeded to take judicial action in order to have the lifetime ban lifted. He chose to use the French civil courts – more particularly the Tribunal de grande instance – rather than appeal to the FIA, as had been counselled by Bernie Ecclestone (*Associated Press, www.findlaw.com of 24/9/2009*). In his statement of claim before the court, which was leaked to the press, the Italian claimed that the WMSC had been “clearly blinded by an excessive desire for personal revenge” and requested not only the repeal of the lifetime ban, but also the sum of £900,000 by way of compensation for the damage allegedly caused to his reputation. He claims that many of the procedures which attended the original investigation infringed both the FIA’s International Sporting Code and the laws of France, where the federation has its seat. He also alleges that the obligation to boycott his services, which is the form taken by the FIA lifetime ban, was not among the penalties authorised by the Sporting Code. According to Prof. Didier Poracchia, a French specialist in sports law, the most serious penalty available to the Council was disqualification, involving the withdrawal of the offending party’s licence. Also, by failing to separate their prosecuting, investigating and adjudicating roles, the FIA allegedly broke Article 6 of the European Convention on Human Rights relating to fair court proceedings (*The Guardian of 12/11/2009, p. S1*).

The FIA responded by condemning the “selective leaking of documents” ahead of the court hearing. It also dismissed the allegations made in these leaked documents, adding that the verdict had been reached “by an overwhelming majority” of the WMSC members in attendance (*The Daily Telegraph of 13/11/2009, p.*

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S17). It was also learned that Mr. Symonds had decided to join Briatore's appeal and sought to overturn his five-year ban on the grounds that the WMSC had conducted the hearings in an improper manner (*Ibid*).

### The unanswered questions

The various verdicts may by now have been delivered, but the "crashgate" affair has left many questions unanswered and a number of issues left in limbo. First of all, what was the motivation behind the relatively benign sentence visited upon the Renault team? It is perhaps a little too easy to dismiss the verdict as a somewhat comical departure from reality and a symptom of the misguided sense of camaraderie which prevails in the top sporting circles. However, the perceptive sports columnist James Lawton holds out the possibility that an even less honourable reason may have been at the root of the verdict. He writes:

***"You could read it as a veiled admission that F1 is no more equipped to make the moral stance of ejecting a financially powerful team than a drowning man to push away a piece of flotsam. F1 clearly believes it needs Renault, even while its name represents the absolute nadir of the sporting instinct, far more than the kudos that might come with the idea that after all the years of drift – of (Michael) Schumacher's ruthless, unpunished cynicism, the refusal to penalise McLaren drivers Lewis Hamilton and Fernando Alonso when they benefited from the McLaren team's proven spying – they had finally seen the public relations value of clearing up their house"*** (*The Independent of 22/9/2009, p. 46*).

Speaking of Mr. Alonso, the question may also be legitimately be asked whether the Spanish driver actually was the haplessly involuntary participant in the affair which he has been portrayed as. The Spanish driver has consistently denied any advance knowledge of the now-infamous manoeuvre. However, as the investigation into the matter gathered momentum, Nelson Piquet Snr entered the fray by claiming that the double world champion "knew everything" about the "crashgate" plan. He homed in on the fact that Alonso had started the Singapore race in 15th place on the grid, from which he proceeded to a very unlikely win thanks to the introduction of the safety car procedure. In the light of this, Mr. Piquet made the following comments:

***"If you are 15th on the grid at a street circuit, there is no point going out with no fuel. At most you will pass three cars and after your last stop you stay where you are. It's a senseless strategy"*** (*The Daily Telegraph of 18/9/2009, p. S7*).

Mr. Piquet subsequently qualified these remarks, although he continued to maintain that he considered it unlikely that the Spaniard would have been totally in the dark about the plan. He took the view that an intelligent driver such as Alonso would ask questions if his team instructed him to come in to pit after 12 laps from being 15th on the grid. Mr. Piquet added that, as a driver, he would have suspected something, which caused him to doubt that Mr. Alonso knew nothing about the scheme (*Ibid*). It is true that the FIA has emphatically dismissed Mr. Alonso's potential involvement; however, it appears to the present author that the elder Piquet's remarks cannot entirely be discounted for paternal pride and protectiveness.

Another question which has remained unanswered at the time of going to press concerned the identity of the Renault "whistleblower" – the "witness X" who brought the entire nefarious plan to light. Speculation has ranged from a senior official within the Renault organisation to Fernando Alonso himself (on the somewhat slender basis that, in the audio transcript of the WMSC hearing, the FIA lawyer Paul Harris, in a slip of the tongue, referred to Witness X as Witness A at one point). The question has implications beyond mere curiosity, because the sudden emergence of a whistle-blower within Renault who knew of the French team's plan may have uncomfortable implications for one man, to wit Nelson Piquet Jnr. Whilst Witness X was mainly useful to the FIA in corroborating Piquet Jnr's assertion that Briatore, knew of the plan to bring out a safety car – and was thus instrumental in the governing body handing the Italian a lifetime ban from motorsport – his or her testimony also sheds intriguing new light on the identity of the person who first raised the idea of engineering the crash. Piquet Jnr, has always claimed that the first he knew of the plan to crash was on the Sunday morning of the race, when he was told to do so by Briatore and Pat Symonds.

The latter, by contrast, has always alleged that it was Piquet Jnr who first approached him with the idea. He said as much to FIA investigators when first questioned on the subject in Spa in late August, and repeated that assertion in a heartfelt letter to the FIA, which was included in the 91 pages of evidence published on Tuesday. It contained the following significant passage:

***"The idea for this incident was entirely conceived by Nelson Piquet Jnr. At the time I naively believed that it was something he wanted to do for the good of the team. I was not aware of the position of his contract negotiations although with the benefit of hindsight I now consider that he believed that his actions would have a favourable effect on these negotiations."*** (*The Daily Telegraph of 24/9/2009, p. S20*).

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Renault's own evidence, submitted by its lawyer, Ali Malek QC, states that Witness X:

***“made the following allegations: a) Nelson Piquet Jnr had approached Pat Symonds after qualifying (Saturday, 27/9/2009) and suggested the idea of a deliberate crash to atone for his poor performance in qualifying; b) Mr Symonds mentioned the idea to Mr Briatore.”***

It is understood that Witness X heard of Piquet Jnr's suggestion only on a second-hand basis from Mr. Symonds. But why would the latter lie that evening – unless he is far more calculating than most insiders give him credit for and was already covering his tracks? Either way, the FIA appears happy to believe Piquet Jnr's version. However, it must be borne in mind that it granted the Brazilian immunity from prosecution so it would not be in its interests now to reopen the issue (*Ibid*).

It may also be legitimately wondered why this case has thus far failed to produce any criminal proceedings against the perpetrators. According to a leading British newspaper, Singapore could request extradition from a Commonwealth country for someone charged for offences which are deemed “extradition crimes”. Part One of the First Schedule of the Singapore Extradition Act lists “acts done with the intention of endangering vehicles, vessels or aircraft” as an extraditable crime. “Malicious or wilful damage to property” also features on the list (*The Daily Telegraph of 17/9/2009, p. S10*). However, the cynical mind might conclude that the Singapore government may be loath to jeopardise its chances of hosting future grands prix by dragging Formula One's name through the mire.

However, Renault potentially faces a glut of other legal repercussions as a result of Briatore's and Symonds's alleged actions. There remains the possibility of court action by rival team Ferrari, and its top driver, the Brazilian Felipe Massa against Renault. Nelson Piquet's compatriot, who had been leading in Singapore until Piquet's crash, finished 13th in the race and finished by losing the championship to Lewis Hamilton by a single point. Both he and the team's loss of earnings could be significant. Stephen Hornsby, a specialist sports lawyer for top law firm Davenport Lyons, believes they could potentially have a stronger case than English football league club Sheffield United, who won £30 million in damages from West Ham over the Carlos Tévez affair earlier this year after being relegated from the Premier League in 2007 (*Ibid*).

Finally, there is the question of Bernie Ecclestone's

involvement in the affair – and the present author is not merely referring to the comments the ageing F1 supremo made in Briatore's defence, as detailed above. It has now transpired that he was in attendance at a WMSC meeting at which Briatore's punishment was to be discussed. At this point, it should be pointed out that Mr. Ecclestone, like Mr. Briatore, is a partner in English football league club Queen's Park Rangers. The ban visited on the Italian could lead to the latter being ousted from the club board under the League's “fit and proper” rules (*The Guardian of 26/9/2009*). Whichever way Mr. Ecclestone voted, did his participation in that meeting not constitute a conflict of interest affecting Ecclestone's financial interest outside motor sport? It would seem appropriate for the FIA to tighten its procedures in this respect.

### **Tennis corruption scandal – an update**

The corrupt activities engaged in by a minority of people involved in the top echelons of the sport have been adequately documented in previous issues of this Journal. These concerned mainly the wagering on internet betting sites, which can move and evolve very rapidly as a match progresses. Initially, it seemed that, as a result of various measures adopted by the tennis authorities, both national and international, much of the potential for match-fixing had been removed. However, there have been some worrying signs that these practices have resurfaced in the game, as witness a number of incidents which have occurred during the period under review.

July is always a special month in tennis, mainly because it is the period in which the Wimbledon tournament is decided. On at least three occasions during that month, unusual and extreme betting patterns were noticed. These reached a culminating point when a flood of “unusual” money was placed on Spanish player Oscar Hernandez, the world No 56, to beat Serbia's Janko Tipsarevic, the world No 79, in straight sets in the first round of the Mercedes Cup in Stuttgart on 14 July. High street firms including William Hill suspended betting, while internet betting site Betfair reported “extreme movements” as abnormal amounts were being placed on Hernandez. The Spaniard won 6-4, 6-4. This fixture was then referred to the Gambling Commission (GC) and to the Tennis Integrity Unit (TIU) for investigation. That case was at least the sixth in men's tennis in 2009 to be referred to the GC, the TIU or both.

The final occasion was a first-round Wimbledon match between US player Wayne Odesnik and German Jürgen Melzer, which the latter won in straight sets

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after hundreds of thousands of pounds had been placed on such a scoreline. The week before, the TIU had opened an investigation into a match at the Ordina Open in the Netherlands, where “unusual” bets on Hernandez to beat Austrian Daniel Koellerer led to the suspension of betting. That match was won by Hernandez. Two matches earlier in the year featuring losses for different Argentinian players are also understood to have been identified as being “of concern”, while investigations are continuing into a first-round match in April at the Monte Carlo Masters, where France’s Jean-René Lisnard beat Belgian Christophe Rochus, 6-2, 6-2, after “substantial and unusual” bets had been placed on such an outcome (*The Independent of 17/7/2009, p. 50*).

The authorities’ first line of inquiry in such cases is to discover whether “insider information” has allowed someone close to a player to profit from such knowledge – e.g. concerning an injury sustained by one of the contestants. However, no player has been accused of breaking the rules of tennis as this issue went to press. Trade in such information is banned in tennis, but bookmakers seem to be more “relaxed” about it. It has been sometimes alleged that certain bookmakers will not even report “unusual” betting where an injury offers an explanation. In other cases, bookmakers have tended to withhold payment on bets while the authorities try to rule out the possibility of premeditated fixing. For example, a spokesman for William Hill said shortly after the investigation commenced that they would not “pay out on Lisnard v Rochus until the Gambling Commission has cleared it” (*ibid*).

Later in the year, another suspicious pattern in betting attracted the interest of the tennis authorities when Caroline Wozniacki, the women’s world No 6, came under investigation by the tennis authorities after controversially withdrawing from her first-round match in the Luxembourg Open. Wozniacki’s withdrawal from her match against Anne Kremer, ostensibly through injury, prompted complaints and allegations on internet betting forums. The Danish No 1 seed, who won the first set 7-5 and was on the brink of victory despite clearly suffering from a leg injury, withdrew after apparently being instructed by her coach and father Piotr Wozniacki, to quit when the score had reached 5-0 or 4-1 in the final set.

Later, Ms. Wozniacki claimed that she withdrew to allow Kremer to play in the second round, offering the explanation that she thought it unlikely that she could play the second round, so she “chose the sporting option, to let her proceed, she is playing at home” as

she informed the Danish newspaper Ekstra Bladet. Piotr Wozniacki issued his instruction after arriving onto the court with his daughter leading 3-0 in the second set. As is common in WTA tournaments, he was wearing a microphone and his instruction, issued in his native Polish, was heard by gamblers watching a live internet stream of the match. He is understood to have told his daughter that as her injury would prevent her playing in the next round, she should withdraw, but only after playing more games. His instruction was translated on one website forum as: “You know you can’t play in the next round with that injury so when you get one game off winning just quit. Just give the crowd a bit more joy first”.

With Wozniacki 100-1 on to win the match on betting exchange Betfair, a number of gamblers immediately “laid” her to lose or backed Kremer at 40-1. The Women’s Tennis Association later confirmed that it was investigating the circumstances surrounding the match and that the matter could be passed to the tennis Anti-Corruption Unit if there are any suspicious circumstances. Betfair, for its part, is understood to have examined the circumstances surrounding the match, but is not thought to have entertained any serious concerns. Ms. Wozniacki has rejected any suggestion of a link to gambling, and said that her intention had been to allow her opponent to contest the second-round match rather than proceed herself only to default (*The Daily Telegraph of 13/11/2009, p. S17*).

However, at the time of writing Ms. Wozniacki could still face severe sanctions under the sport’s anti-corruption code. While there is no suggestion that she was attempting to manipulate the result for corrupt purposes, the decision apparently to continue playing while intending to withdraw could fall foul of anti-corruption regulations. If found guilty, she could face penalties ranging from a fine of up to \$250,000 to a ban from the sport. She could also be fined under the WTA’s code of conduct for failing to use “best efforts” in a match, or for bringing the tour into disrepute (*ibid*).

### **Cricket corruption scandal – an update**

Ever since the first symptoms of corruption on a large scale were noticed in the game, around the turn of the last century, the cricketing authorities have, arguably more rigorously than their tennis counterparts, made every effort to stamp out such nefarious practices. The establishment of the Anti-Corruption and Security Unit (ACSU) under the auspices of the International Cricket Council (ICC) has at least ensured not only that suspicious activities, particularly as regards betting, are

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more likely to be detected, but also that the players are as far removed as possible from the temptation to engage in any match-fixing. However, the amount of to-class cricket played around the world has increased significantly even since those days, particularly since the advent of the popular Twenty20 format, which seems to have increased the risks of betting-inspired distortions of fixtures – particularly since some of these competitions elude the vigilance of the ACSU.

This was certainly the fear which surfaced in mid-August 2009, when it was alleged by a senior source in the ICC that players were approached by bookmakers during the World Twenty20 tournament, held in England in June. He said:

***“We are aware of a number of approaches that were made to key players during the tournament, and they were reported to the Anti-Corruption and Security Unit. We were provided with very helpful information”***  
(*The Daily Telegraph of 16/8/2009, p. S1*).

The source did emphasise, however, that none of the ICC Twenty20 fixtures had been distorted. He expressed the fear that the threat of match-fixing may have spread to England from the second Indian Premier League tournament, held in South Africa in April and May 2009, which was not covered by the ACSU. The IPL organisers initially refused to pay the \$1.2 million which the appropriate security measures would have cost, and by the time agreement was actually reached it was too late for the ACSU to install them. The source continued to claim that “disturbing rumours had emerged from the second IPL” and that the relevant authorities in the ICC understood that twenty20 cricket had the “danger of going back to the bad old days” (*Ibid*).

That this was no facile scaremongering had already been demonstrated by earlier statements made by Lord Condon, the head of the ACSU. Speaking at the ICC Board meetings in April and July, he had warned that cricket was under the gravest threat since the Sharjah crisis in the 1990s. He stated that, although the Unit had not covered the second IPL tournament, the volume of rumours and noises “raised concerns about its integrity”. One of the most significant rumours, according to Lord Condon, was that a bookmaker seemed to have a surprising level of access to the players. He added that the second IPL should have been covered properly, and that, accordingly, “cricket has paid a price”. He described this as a “wake-up call” to which the game has taken too long to respond. However, it has been learned since then that the Board of Control for Cricket in India (BCCI) has accepted that the ACSU should be present at future IPL tournaments (*Ibid*).

It seems, however, that limited-overs cricket is not the only format of the game which is vulnerable to a revival of betting-inspired corruption. As the Ashes series in England was reaching its climax in mid-August, it emerged that one of the touring Australian had been approached after the Second Test at Lord’s the previous month by a man suspected of having links to illegal bookmaking. The unnamed player immediately reported the approach, which occurred in the bar of the team’s London hotel, to the management of the touring side, which in turn alerted the ACSU (*The Guardian of 19/8/2009, p. S1*). Whilst this incident naturally raised fears that the Ashes series had been targeted by people intent on match-fixing, it is understood that the conversation between the suspect individual and the Australian player contained nothing so direct as an offer of cash. It was only afterwards that the player concerned started to wonder about the motives underlying this approach (*The Daily Telegraph of 20/8/2009, p. S7*).

The ICC complimented the Australian team for the prompt manner in which they handled the hotel bar incident. Nevertheless, it was learned later that Steve Bernard, the Australian team manager, reported not one, but two suspect approaches to the ACSU. The other occurred during the World Twenty20 competition in June, and was the first to arouse the team’s suspicions (*Ibid*). Coming on top of the suspicions about the IPL featured above, as well as the Indian Cricket League controversy involving Chris Cairns and Dinesh Mongia, as reported in the previous issue of this Journal ([2008] 3 Sport and the Law Journal p. 51) this indicated that there can be no room for complacency. Any such remaining illusions were brutally shattered with the Pakistan match-fixing allegations, which surfaced three months after the alleged incidents described above – an incident which was the more worrying because it surfaced at the highest level of the country’s national politics.

In early October 2009, a Pakistani parliamentarian caused a sensation when he accused the national cricket team of deliberately losing matches in the Champions Trophy tournament, which was being played that month, and demanded an explanation from its coach, captain and the Chairman of the Pakistan Cricket Board (PCB). Jamshed Dasti, the Chair of the Standing Committee on Sports in the Pakistan Lower House, announced forthwith that he would be meeting the said personalities soon. This news followed the defeat of Pakistan by Australian in the final group match before losing to New Zealand in the semi-finals. Mr. Dasti contended that the Pakistan team lost to

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Australia in order to keep India out of the tournament. Australia might not have qualified or the semi-final had Pakistan won against the defending champion, and India could have advanced had they defeated the West Indies by a large margin (*Associated Press, www.findlaw.com of 6/10/2009*).

The meeting in question duly took place, and at its conclusion the Pakistan team captain, Younus Khan, announced his resignation to the PCB Chairman, Ejaz Butt. He seemed to go to great pains to stress that this did not constitute any admission of guilt, saying

***“Yes, I have submitted my resignation because I am disgusted by these match-fixing allegations made against me and the team. I have told the chairman to go through my resignation and read my point of view.”*** (*The Independent of 14/10/2009, p. 57*).

Sources close to Younus maintained that his letter indicated his desire to take a break from cricket, and that he would not be available for the forthcoming series against New Zealand and Australia. Mr. Butt told reporters after the hearing that he had asked Younus to withdraw his resignation. The PCB chairman added that he had informed the members of the NA committee that such serious allegations of match-fixing were enough to demoralise any team and such statements should be avoided without having substantial evidence. Butt added that Dasti had also made it clear that his statement had been misunderstood in the media and he never made any direct match-fixing allegations.

Dasti said the committee never intended to make match-fixing allegations against the players and had only called the hearing to clear the air because of media reports that the team had underperformed deliberately. He described himself as “totally satisfied with the explanation of the team management and board”, adding that the Committee were satisfied that “no match-fixing took place” (*Ibid*). Nevertheless, the entire episode has a large cloud of uncertainty over it which bodes ill for the future integrity of the game.

### **UEFA investigates fixtures allegedly tainted by match-fixing**

For a sport which attracts millions of spectators, and whose annual turnover is calculated in trillions rather than billions, the “beautiful game” has hitherto remained relatively free from corruption (give or take the odd Italian refereeing scandal). However, there have been increasing concerns that the increasing impact of the betting market may have produced some adverse effects on the game in recent times – to

the point where the major governing bodies in the sport have decided to conduct a thorough investigation into this aspect of the sport.

This matter had received relatively little attention until late September 2009, when it was learned that an amazing 40 cases of suspected match-fixing were being investigated by the European governing body for the sport, UEFA. The head of the organisation’s disciplinary body, Peter Limacher, announced that his department was investigating early qualifying fixtures which had taken place during the four previous years. UEFA opened the inquiry after it was alerted to suspicious betting patterns. Mr. Limacher added that his department was investigating early qualifying matches from the previous four years involving teams “mainly from Eastern Europe” which had modest prospects of progressing in the relevant European competitions and, instead, were intent on financial gain (*Daily Mail of 26/9/2009, p. 20*). He continued:

***“In the cases we have seen it’s really the deliberate planned fix of the games, the whole games. First the result at half time, then after 90 minutes. It might take some time (to convict) but, in cases where we can work together with the police, that might be possible”*** (*The Guardian of 26/9/2009, p. S8*).

One club which was believed to be under investigation was Rabotnicki of Macedonia, who lost 2-1 on aggregate to English side Bolton Wanderers in the first round of the UEFA Cup in 2007 (*Daily Mail, loc. cit*). Another match arousing suspicion appears to have been Milan’s 12-2 aggregate defeat of Slaven Kopriivnik (Croatia) in the second qualifying round of the Europa League in 2009 (*The Guardian loc. cit*).

UEFA were alerted to the possibility of corruption when bookmakers reported suspicious betting patterns. William Galliard, senior adviser to the organisation’s president, Michel Platini, asserted that most cases involved clubs where players did not earn a great deal and were tempted to fix results. Earlier, UEFA had already announced that it was organising a major clampdown on corrupt practices. It pledged to work with national associations in order to finance a monitoring programme across 29,000 fixtures in the top two divisions of all 53 member states, as well as its own competitions. In fact, Mr. Platini has made the fight against corruption a key theme of his presidency. Its new Betting Fraud Detection System (BFDS), a sophisticated monitoring software programme operated by a team of anti-corruption officers, has been in operation since the start of the 2009/2010 season. As is the case in cricket in the wake of the

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high-profile match-fixing scandals of the 1990s (see above), the governing body also resolved to advise young players how they should handle any approaches by fixers or middle men (*Ibid*).

More results of UEFA's corruption monitoring came a few weeks later, when it was reported to have informed Russian officials of its suspicions that several domestic league matches had been affected by match-fixing during the current season. The Russian daily newspaper Vremya Novostei cited a letter which it claimed to have been sent by UEFA to the Russian Football Union (RFU) alleging suspicious betting patterns on six fixtures. The clubs involved were said to include Krylya Sovietov, Terek Grozny, Spartak Nalchik, Tom Tomsok and Amkar Perm from the Premier League, as well as four clubs playing in the First Division. However, RFU executive Alexei Sorokin sounded a note of caution, describing the correspondence as a routine affair which noted that the suspect betting patterns were determined through an automatic analysis mechanism and therefore vulnerable to error. He added that an investigation was under way – the results of which were not yet available at the time of writing (*Associated Press, www.findlaw.com of 21/10.2009*).

The following month brought further developments, with UEFA pledging to take stiff action against anyone found guilty of match-fixing after naming five clubs involved in suspect fixtures. Europe's governing body met representatives from nine national football associations – Austria, Belgium, Bosnia, Croatia, Germany, Hungary, Slovenia, Switzerland and Turkey – to discuss the investigation into both domestic and European fixtures being undertaken by authorities in Germany. According to its General Secretary, Gianni Infantino:

***“At the start people were certainly shocked about the magnitude [of the scandal]. At the end of the meeting there was much more reassurance because we are working together.”*** (*The Daily Telegraph of 26/11/2009, p. S6*).

The case involved more than 200 matches, and Uefa launched its own inquiry into one Champions League and six Europa League qualifiers, played between 16 July and 6 August. Those matches involve five clubs, named as KF Tirana and KS Vllaznia of Albania, FC Dinaburg of Latvia, NK IB Ljubljana of Slovenia and Budapest Honved of Hungary. Mr. Infantino added that Uefa had opened its own investigation into the activities of three referees and one official connected to Uefa. He added that no member of Uefa's administrative staff was under suspicion.

It emerged that UEFA was co-operating with the Bochum Public Prosecutor's Office (Staatsanwaltschaft), which has targeted domestic league matches across nine countries. German-based betting syndicates are suspected of bribing players, coaches, referees and other officials to fix games and the alleged leaders are believed to have made at least 10 million (£9 million). Police had arrested 15 people in Germany the previous week, while another man was arrested in Croatia. UEFA will request access to the criminal case files and agreed with its nine national members not to disclose details of matches and people under suspicion. The European governing body promised strong action against any player, referee or club official implicated, pledging that any such person would be “out of football, this is very, very clear”. SC Verl, a fourth-tier German team, said later that they had suspended two players suspected in manipulating two games. The players have not admitted to any wrongdoing. A third player suspected is no longer with the club. Swiss second division clubs Grossau and FC Thun have both suspended a player questioned by police (*Ibid*).

There will obviously be further developments in this saga, which the present writer pledges to follow up for the benefit of this Journal.

### **Tanzanian football referees banned for corruption**

In late October 2009, it was learned that the Tanzanian Football Federation had banned four referees for life for fixing matches, although the latter have denied any wrongdoing. The referees in question are alleged to have received approximately \$200 each to fix a match in the domestic league between Maji Maji and Mtibwa Sugar. The former won 1-0 and has been fined \$10,000 for its part in the affair. An investigative commission also decided to ban the Secretary General of regional referees for a period of five years (*Associated Press, www.findlaw.com of 22/10/2009*).

### **Disgraced former basketball referee jailed for “federal rule violation” (US)**

In the course of 2008, Tim Donaghy, a referee in the National Basketball League, was given a 15-month sentence after he admitted taking thousands of dollars from a professional gambler in exchange for inside information on forthcoming matches – including games in which he was to officiate. He pleaded guilty to conspiracy to engage in wire fraud and transmitting betting information through inter-state commerce. He was moved to a “halfway house” after serving part of

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his sentence in a federal prison camp. He was scheduled for release in October 2009, but prior to this he was incarcerated again for a “federal rule violation” – the details of which were not available at the time of writing (*Associated Press, www.findlaw.com of 25/8/2009*).

### **International bowls rocked by match-fixing claim**

One of the activities one would have thought the least likely to find its way in these columns under this heading is the somewhat placid sport of bowls. However, its genteel world was rocked to its foundations in mid-September 2009, when it was claimed that the New Zealand team deliberately lost a match against Thailand. The allegation, which has been firmly denied by the team, has plunged the normally civilised game into turmoil (*Daily Mail of 19/9/2009, p. 105*).

Bowls New Zealand, the national federation governing the sport, immediately announced that it would be holding a misconduct hearing on the basis of allegations made by Canada that a men’s four, led by Gary Lawson, twice world champion – had lost to Thailand in order to gain a more favourable quarter-final draw at the world championships, for which they had already qualified. The team has been removed from the New Zealand squad pending the outcome of the hearing, which was not yet known at the time of writing. Mr. Lawson, for his part, has angrily dismissed the allegation and refused to represent his country again, claiming that he and his team had been “found guilty and now we have to prove our innocence” (*The Daily Telegraph of 19/9/2009, p. 18*).

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## HOOLIGANISM AND RELATED ISSUES

### **African World Cup qualifier leads to riots (Algeria/Egypt)**

The passions aroused by sporting rivalry between nations, particularly where the sport in question is football, have given rise to various aphorisms – “war without the shooting”, etc. – and it has become almost obligatory to invoke the example of la guerra del futbol, i.e. the brief war between El Salvador and Honduras which was allegedly sparked off by a World Cup qualifying match between the two countries. However, even the most hackneyed of clichés can sometimes ring true, and in the case under review it was precisely a qualifying fixture for the 2010 world football tournament which led to one of the most serious sport-related rioting in history.

The fixture in question was between Algeria and Egypt in Group C of the African division, and having these two nations competing in the same group was always likely to prove troublesome. After all, there was already a history of brutal sporting rivalry between the two countries, as witness the events of 1989, when the final qualifying game for the Italia '90 tournament pitched them together in what turned out to be a veritable orgy of violence, both on and off the pitch. Egypt needed to win the match, played in Cairo, whereas Algeria merely needed a draw. Egypt won 1-0, but the euphoria on the pitch and in the stands was ruined by bloody riots and fighting on the terraces, in the streets, in the players’ tunnel and even at the post-match reception, at which the Egyptian team doctor lost an eye after being assaulted with a broken bottle. One of the visiting side’s best players, Lakhdar Belloumi, was later convicted in absentia for that attack, and Interpol issued an arrest warrant. The player at all times maintained his innocence, but the warrant was only rescinded, and Mr. Belloumi cleared, after another individual was named as the assailant (*The Independent of 11/11/2009, p. 56*).

Given this background, one might have expected some of the leading personalities involved to adopt a more responsible attitude ahead of the game than was in evidence during the heady build-up. The captain of the Egyptian team, Ahmed Hassan, nevertheless saw fit to intensify the already heated atmosphere by stating

“The stadium might accommodate only 80,000 spectators, but I would like to tell the Algerian players that the 80 million Egyptians will be present. The venue will turn into a stadium of horror” (*Ibid*).

Sadly, Mr. Hassan’s prediction came only too true – although in fairness it has to be admitted that the worst incident came outside the ground, the match having been preceded by an attack on the Algerian team bus by Egyptian youths in which three players suffered facial cuts. The world governing body, FIFA, had to appeal for calm, whilst the Egyptian football federation claimed that the incident had been staged by the Algerians (*The Independent of 16/11/2009, p. 51*). After the match, which the home side won 2-0, around 20 Algerians were reported to have been injured in clashes taking place in the Egyptian capital (*The Guardian of 17/11/2009, p. S4*). Visiting midfielder Khaled Lemmouchia claimed that the match should have been abandoned by FIFA after the team bus attack, describing the governing body as “reckless” for failing to do so (*The Independent of 17/11/2009*). There were also riots in Algeria, where thousands of irate

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locals burned down the compound of the Egyptian telecom giant Orascom and stole or destroyed equipment worth \$5 million. EgyptAir's country headquarters were ransacked twice, and looters chanted slogans at the firemen who arrived to extinguish the blaze. The Algerian ambassador to Cairo was later summoned to the Egyptian foreign ministry for stern words (*The Independent of 18/11/2009, p. 55*). However, much worse was to come as a result of the freak outcome produced in Group C by Egypt's win.

The goal scored with merely seconds to go in stoppage time did more than keep his side's hopes of qualifying alive – it resulted in complete deadlock within their group, the two sides being level both on points and on goal difference. This meant that the only way to separate the two sides was to stage a play-off. Almost inevitably, both sides failed to agree on a neutral venue for the match, so each placed a name in a hat and Egypt's preferred choice of Sudan was drawn. This meant that the teams would meet at the 40,000 seater Al Merreikh Stadium in Omdurman, in another potentially troublesome clash (*Daily Mail of 17/11/2009, p. 74*). The omens were not good, as thousands of fans gathered at the stadium several hours before kick-off. Almost all the seats allocated to the Sudanese appeared to have been taken by fans decked out in Algerian green, white and red colours, or other wearing the Egyptian flag colours. The local authorities, however, did their utmost to ensure tight security, with some 15,000 police officers in attendance. The game itself was relatively trouble-free, with Algeria winning by the narrowest of margins thanks to a goal by defender Antar Yahia (*The Guardian of 19/11/2009, p. S4*).

With sad predictability, disappointment in Cairo at the result soon turned to violence – in fact, so serious was the rioting that parts of the capital had to be placed under police lockdown. Over 1,000 security staff deployed in order to protect the Algerian embassy and other key locations came under attack from angry protesters following the fixture. Egypt recalled its envoy to Algiers and condemned the Algerian government for failing to prevent the destruction of Egyptian premises referred to earlier. The Secretary-General of the Arab league, Amur Moussa, even had to appeal for calm on both sides. According to various reports, 39 policemen were injured in fighting which left shop fronts smashed in the wealthy neighbourhood of Zamalek, an island in the Nile which is home to expatriates, wealthy Egyptians and foreign embassies. This counsel seems to have gone unheeded by Alaa Mubarak, the son of the Egyptian president, Hosni

Mubarak, who demanded that Egypt should take a “tough stance” with Algeria, adding the ominous words “when you insult my dignity (...) I will beat you on the head” (*The Guardian of 21/11/2009, p. 27*).

Temperatures were further stoked up when the diplomatic spat intensified. Reference has already been made to the summoning of the Algerian ambassador to the Egyptian foreign ministry the previous week. This had been caused not only by the destruction wrought by Algerian “fans” on Egyptian property in the capital, but also by the fact that an Egyptian aeroplane sent to rescue citizens trapped in Algeria was refused permission to land, and the Algerian authorities imposed a \$600 million tax bill on the Egyptian telecommunications firm Orascom, which operates there. (*Ibid*). Relations between the two countries deteriorated even further when Egypt decided to recall its ambassador from Algiers. Furthermore, the Egyptian football federation threatened to withdraw from international football for two years as a result of the violence allegedly visited on Egyptian fans as they left the stadium in Sudan, having allegedly come under threat from “weapons, knives, swords and flares” (*The Independent of 21/11/2009, p. 35*).

The next day, the Egyptian President himself ratcheted up the diplomatic tension, informing cheering Members of Parliament that his country would not be lax with “those who harm the dignity of its sons”. However, there were signs that the Egyptian authorities' apparent attempt to make political capital out of this situation was not entirely successful, and that their handling of the whole affair was causing a public backlash. This was no doubt inspired by the various human rights abuses which the Egyptian authorities are alleged to have indulged in for some time. According to Hossain el-Hamalawy, a journalist and opposition activist, the president's “thugs” had “beaten and killed more Egyptians than any hooligans” (*The Observer of 22/11/2009, p. 37*).

### **French football fan attacked by Serb hooligans dies (Serbia)**

Football hooliganism in Eastern European countries is, unfortunately, not a new phenomenon, and it assumed a tragic dimension in late September 2009, when a French fan who was brutally assaulted in Belgrade earlier that month had died in hospital. The incident had occurred ahead of the Europa League fixture between Partizan Belgrade and Toulouse (*Associated Press, www.findlaw.com of 29/9/2009*). The Serb capital observed a day of mourning several days later,

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with thousands of people lining the streets, lit candles and laid flowers in memory of Brice Taton, the victim of the attack (*Associated Press, www.findlaw.com of 30/9/2009*). Police subsequently arrested ten people believed to have been involved in the fracas, although at the time of writing no judicial proceedings had as yet been initiated (*Associated Press, www.findlaw.com of 1/10/2009*).

The public prosecutor's office also submitted a motion to the nation's Constitutional Court requesting that three football fan groups affiliated not only to Partizan, but also to Red Star and Rad, be formally banned (*ibid*). There were also repercussions of the World Cup qualifying game between Serbia and France, played the previous month, at which various incidents, involving the use of firecrackers and torches were used. For these unruly scenes the Serbian football federation was fined by world governing body FIFA (*Associated Press, www.findlaw.com of 8/10/2009*).

### **Fans' protests over start of season postponement get out of hand (Argentina)**

In early August 2009, the Argentinian football authorities announced that they were indefinitely postponing the start to the new football season because a financial crisis had paralysed clubs. The season was due to start on 14 August, but this was put back because, according to the Argentinian Football Association, some clubs were unable to pay their players. This gave rise to furious, and even violent, protests from the fans. Dozens of them smashed windows and spraypainted the walls of the Association's headquarters in Buenos Aires following the announcement. Police in riot gear dispersed the crowds, but made no arrests.

Clubs have been squeezed by the global economic recession as well as the relatively parsimonious transfer revenues from Europe, particularly the English Premier League – which used to pay large amounts for South American talent. It is a source of national pride that the Argentinian league is considered to be one of the world's strongest. Estudiantes recently won the Copa Libertadores, the continent's equivalent of the European Champions' League. However, tumbling revenues have affected big and small clubs alike. The previous week, the Second Division season was postponed because of a debt crisis (*The Guardian of 6/8/2009, p. 14*).

### **Rangers fined over riots in Romania**

Although their reputation is sometimes worse than their actual deeds, travelling supporters of the Glasgow Rangers club have sometimes been known to be involved in the odd spat of hooligan behaviour (indeed, some sources trace the beginnings of "serious" hooliganism in football to their infamous pitch invasion during the European Cup-Winners' Cup Final in 1972). This appears to have been very much the case in early November 2009, on the occasion of a fixture played in Bucharest, where the Scottish club were attempting to further their European Champions League campaign against local side Unirea Urziceni. There were a number of clashes between visiting fans and local stewards, and naturally the matter came to the attention of European governing body UEFA, which imposed a fine of £18,000 on the Glaswegian side. Because the trouble was also in part attributed to poor organisation at the stadium, the home club were also fined, to the tune of £7,195 (*Daily Express of 13/11/2009, p. 83*).

The fine imposed on Rangers was considered by some observers to be relatively mild, particularly in view of the fact that the Glaswegian club had twice been fined by UEFA since 2006 because of the behaviour of their "fans". This has given rise to fear at Ibrox Park that they could be penalised by a partial or full ground closure for European matches – even the manager, Walter Smith, had admitted the previous week that he feared a European ban. Following the UEFA decision, Rangers Chief Executive Martin Bain issued his latest warning to the troublemakers amongst the club's travelling support, adding his view that the club's efforts in ensuring supporter safety was being "undermined" by these unruly elements. Mr. Bain also said that the fine imposed on the Romanians in no way excused the violent behaviour of some spectators. The club has in the past considered refusing tickets for away matches during their European campaigns, and Mr. Bain's words seem to indicate that such a scenario has not yet been ruled out (*The Guardian of 13/11/2009, p. S4*).

### **American Football hooligans face breath tests (US)**

Ever since crowd misbehaviour started seriously to engage minds of the public authorities, various methods have been developed in order to reduce the incidence of such unruly behaviour. However, the University of Minnesota (US) appears to have broken new ground when it was announced that students who are expelled from its games for drunken rowdiness will not be readmitted at future fixtures unless they pass an

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alcohol breath test at the gate — one of the most extreme attempts yet by colleges to curb misbehaviour in the stands.

The new Check BAC policy applies to the 10,000 student season-ticket holders and has been modelled on a programme initiated five years previously at the University of Wisconsin. It is aimed primarily at fans who become inebriated at “tailgate parties” before entering the “Golden Gophers” new TCF Bank Stadium. The sale and possession of alcohol are banned at the 50,000-seat stadium, unlike the policy at the team’s former home, the Metrodome, which was off campus and not owned by the school. The University’s Vice-Provost for Student Affairs, Jerry Reinhart, commented:

***“If people come in with a buzz on — there will be tailgating — that’s fine as long as their behaviour doesn’t interfere with those around them, then there will be trouble.”*** (*Associated Press, www.findlaw.com of 18/9/2009*).

The policy has thus far given rise to few complaints from fans. Nine people were ejected during the first game of the 2009/10 season, and one drunken spectator was taken from a tailgating lot for detoxification purposes. Seven of those 10 were students who must now pass a breath test to attend future games. The number of students removed from the stadium for that game was about the same as usual, according to the university police department (*Ibid*).

Minnesota drew up its policy following disturbances at other college stadiums and a few riots which erupted on its own campus after the “Gophers” won the national ice hockey championships in 2002 and 2003. The latter riot caused more than \$150,000 worth of damage. Student season-ticket holders who are ejected from one game and wish to attend another must proceed through a special gate where a breath test is administered. If they enter through a regular gate, they will be caught afterwards when officials compare the database of used tickets to that of Check BAC students. (BAC stands for “blood-alcohol content”).

Students under the drinking age of 21 must test totally “clean” in order to be allowed admission to the stadium. Students aged 21 or older must have a level below 0.08 per cent, the legal limit for driving in Minnesota. The decision to “go dry” at the new stadium is expected to cost the university about \$1 million this year in lost revenue from the sale of suites and other premium seats, along with other costs, according to its officials. The US university sports’ governing body, the

NCAA, does not monitor how many schools require breath tests after a drinking offence. However, Ervin Cox, Assistant Dean of Students at the University of Wisconsin, said he believes his school and Minnesota are the only ones to apply such a policy. Wisconsin officials said the “Show and Blow” program has improved the atmosphere at Camp Randall Stadium, which is also “dry”. A total of 135 Wisconsin students fell foul of the policy last year (*Ibid*).

The relevant statistics about the havoc wrought on the academic community by drink abuse are quite terrifying. About 1,700 students die in alcohol-related accidents every year, and nearly 600,000 are injured, according to the US National Institutes of Health. Toben Nelson, a University of Minnesota professor who has researched college drinking for more than a decade, maintains that student sports fans are much more likely to binge drink than non-fans. US universities have attempted all manner of strategies for curbing drunkenness. Some have banned the sale of alcohol at their stadiums and put security guards at gates to ensure fans do not bring in their own drink. Some, like Minnesota, have corralled tailgaters into parking lots patrolled by police.

Stadiums which sell beer are in the minority, but some of those which do so turn off the taps at certain times during games (*Ibid*).

### **Ukraine fined following crowd disturbances at World Cup qualifier**

Another instance of East European hooliganism was sadly in evidence in mid-October 2009 on the occasion of the Ukraine’s football World Cup qualifying fixture with England.

The English Football Association (FA) lodged a complaint with the sport’s world governing body, FIFA, for the behaviour of fans who attacked England goalkeepers Robert Green and David James with a barrage of flares. The FA had already made their anger clear to the FIFA delegate at the game in the Dnipro Arena, a venue infamous for hostile fans. The game had to be stopped twice so stewards and firemen could remove the smoking missiles from the pitch. Mr. Green was forced from his goal in the first minute when 15 flares were thrown from behind his goal. When Mr. James came on after Green received a red card, his arrival triggered another cascade from Ukraine fans who seemed to have experienced no problem smuggling the objects in due to slack security. One flare struck James, who remained remarkably calm

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about the entire episode. The visiting manager, Fabio Capello, commented:

***“FIFA have to decide something about this. It’s no good to keep starting the game again. It is difficult for the concentration”*** (*Daily Mail of 12/10/2009, p. 79*)

This episode, however, had ramifications beyond any immediate penalties which the world governing body may decide. Ukraine are co-hosting Euro 2012 with Poland but are in danger of losing venues to their neighbours. The tournament was to be played at eight grounds – four cities in each country – but Kiev is the only Ukrainian venue which thus far has been passed fit. Three others – Kharkiv, Lviv and Donetsk – have only a limited time to prove they can handle the event, and the disturbances at the England game are unlikely to work in their favour (*Ibid*).

Visiting substitute Carlton Cole also claimed England’s black players were subjected to racist chanting by Ukraine fans. European governing body UEFA had confirmed prior to the game that they would be monitoring the Ukraine supporters as England striker Emile Heskey had endured monkey chants in the old Eastern Bloc before, most notably, in Slovakia in 2002 and Croatia a few years later (*Ibid*). In the event, FIFA decided to fine the Ukrainian Football Federation (FFU) the sum of 50,000 over the behaviour of their fans during the World Cup qualifier. FFU First Vice President Serhiy Storozhenko ominously commented that “sanctions will be stiffer next time.” It was later confirmed that police officers arrested five fans who threw flares onto the pitch during the match ([www.kiyvpost.com/news/3/12/2009](http://www.kiyvpost.com/news/3/12/2009)).

### **Water cannons used to quell German football riot**

In early November 2009, it was learned that German police were forced to use a water cannon in order to subdue rioting football spectators following a Second Division fixture match. Twenty-seven officers sustained slight injuries. The police had reacted when around 500 violent “fans” of North German side Hansa Rostock, who have been involved in several incidents before, attempted to breach a police barrier and threw bottles and firecrackers after their side had lost 2-0 to the visiting team, Hamburg side St Pauli. Some 1,500 police officers were in attendance for the match between clubs whose supporters have a history of mutual animosity (*Associated Press, www.findlaw.com of 3/11/2009*).

### **Criminal convictions follow rioting at Davis Cup match**

Tennis hooliganism, however uneasily it trips off the tongue, is a phenomenon which unfortunately has reared its unattractive head at several major venues (see, for example, the unpleasantness at recent Australian Open championships, (*[2008] 2 Sport and the Law Journal p. 87*). In the case under review, however, there was an additional dimension in evidence, in the shape of the political context which attended it. The fixture in question was the Davis Cup match between Sweden and Israel in March 2009, and ten people were arrested after protesting against Israel’s offensive against the Gaza territory. The matches were played without spectators after officials claimed that they could not guarantee security (See *[2008] 3 Sport and the Law Journal p. 56*).

However, these measures could not prevent rioting outside the stadium, which is why the arrests referred to above resulted in convictions. Two of the accused were sentenced to nine and 15 months’ imprisonment respectively by the Malmö District Court. In addition, three teenagers were sentenced to community service for juveniles; two of them were also ordered to pay \$19,020 for sabotaging a police vehicle (*Associated Press, www.findlaw.com of 10/9/2009*).

### **Hooligans cause abandonment of Romanian Europa League fixture**

It looks as though the most recent European club competition to see the light of day will not be spared the ungentle attention of the less respectable spectators. The serious riot which led to the loss of a French spectator’s life at a match in Serbia has already been documented earlier (see above). During this the first season of the competition there occurred also a serious disturbance – albeit without fatal consequences – during the match between Dinamo Bucharest and Slovan Liberec. The Romanian side trailed 2-0 at home to the Czech side when certain spectators attempted to invade the field of play in the 88th minute. Police and security staff succeeded in preventing the rioters from encroaching beyond the confines of the athletics track circling the pitch. Nevertheless, Austrian referee Thomas Einwaller abandoned the match as he feared for the players’ safety (*Associated Press, www.findlaw.com of 21/8/2009*).

Later, UEFA’s disciplinary panel imposed a 3-0 loss to Dinamo Bucharest after rioting fans forced a Europa League match to be abandoned. The UEFA panel ruled that the Romanian club must play its next two home

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matches in European competition in an empty stadium. UEFA, the governing body of European soccer, also fined Dinamo \$72,000. A third closed-door match may be ordered if crowd problems occur in the next two years (*www.washingtonexaminer.com of 25/8/2009*).

### **Criminal charges follow fatal beating outside Phillies match (US)**

Another incident of hooliganism which had fatal consequences played itself out in Philadelphia, US, in late July 2009. According to Assistant District Attorney Richard Sax, two groups who were expelled from an American Football stadium bar following an argument coincidentally parked in the same area and ended up tangling once again – this time with fatal consequences. Mr. Sax described as a “horrendous” coincidence that the groups parked in the same section of the same parking lot outside Citizens Bank Park. It was originally alleged that Charles Bowers, 35, Jim Groves, 45, and Francis Kirchner, 28, all of Philadelphia, repeatedly beat and kicked David Sale. The vicious beating left Mr. Sale with a partly severed ear and severe head and internal injuries, as a result of which he died. According to authorities, the three originally accused arrived at the Philadelphia Phillies game on a bus outing, sponsored by Moe’s Tavern in Philadelphia. Mr. Sale and three friends were celebrating a bachelor’s party at McFadden’s, a bar attached to the stadium, when the two groups began fighting. McFadden’s sent Sale’s group on its way but held the larger Moe’s group back for a few minutes. Prosecutor Sax stated that the two groups then met up and argued on their way to the parking lot. One witness said Kirchner kicked Sale in the head “as if he was a football” (*Associated Press, www.findlaw.com of 5/8/2009*).

However, it was announced later that a Philadelphia judge had ruled that two of the three men arrested would not face trial on first-degree murder charges. Common Pleas Court Judge Benjamin Lerner said there was not enough evidence that the blows thrown by James Groves and Charles Bowers would alone have caused the death of Mr. Sale. However, the judge refused to dismiss the first-degree murder charge against the third man, Mr. Kirchner who, according to witnesses, delivered the fatal kick to Mr. Sale’s head after the latter was prone to the ground. Mr. Lerner’s ruling means that only Kirchner, 28, of Fishtown, faces possible life in prison without parole if a jury finds him guilty of first-degree murder. The jury could also find him guilty of the lesser charges of third-degree murder or voluntary manslaughter (*www.philly.com of 15/10/2009*).

Similarly, Groves and Bowers could face 20- to 40-year prison terms if found guilty of third-degree murder. All three men also face trial on a conspiracy charge. Mr. Lerner made it clear to the packed courtroom that he considered the assault on Sale “savage and cowardly”. He said the ruling was based on the transcript of the testimony – particularly evidence from the autopsy – of the Aug. 5 preliminary hearing in the Municipal Court. However, Mr. Lerner denied the motion by the defence to prohibit any charge but voluntary manslaughter from going to the jury. Mr. Sax said afterward that he was disappointed with the ruling but that he understood Lerner’s reasoning (*Ibid*).

### **Two killed and 16 injured as football fans clash (Honduras)**

In late July 2009, a fight between fans at a Honduran football game left two people dead, including a 12-year-old boy. Fire department chief Carlos Cordero said fans of the Olimpia and Motagua teams fought each other “with everything they had in their hands”. The rioters also battled police who tried to restore order. Gunfire rang out, killing the boy and a 35-year-old man. Sixteen people were injured, including six who were shot. It was unclear what provoked the rioting on Sunday night. The violence erupted amid tension over the military ousting, the previous month, of President Manuel Zelaya (*The Guardian of 28/7/2009, p. 14*).

### **Anti-hooliganism measures taken ahead of Roma v Fulham clash (Italy)**

In early November 2009, it was learned that the 2,000 travelling supporters of English Premier League side Fulham (football) were to be conveyed by shuttle buses to and from the Italian capital’s Olympic Stadium in an attempt to prevent the kind of hooliganism which has disfigured previous ties involving English fans in Rome. The London side were due to face AS Roma in the Europa League, and their fans had been given warnings about where, and where not, to visit. In addition, they have been ordered to use official shuttle buses being provided by the Rome police. There will also be a seven-hour ban on the sale of alcohol in Rome, beginning three hours before kick-off and continuing for two hours after the game (*The Daily Telegraph of 4/11/2009, p. S8*).

It will not have escaped the reader’s attention that Roma’s infamous “ultras” have been involved in a series of violent incidents in recent years. In 2006, three Middlesbrough fans were stabbed the night before the UEFA Cup quarter-final when around 200 visiting

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supporters came under attack from an apparently organised group. In April 2007, 11 Manchester United fans were taken to hospital following violence both inside and outside the stadium. Eight months later five United supporters were stabbed before their team's 1-1 Champions League group draw with Roma. More recently, in March, two Arsenal fans were injured when the coach taking them to the stadium were injured.

### **Stadium ban based on suspicion is lawful. German Supreme Court decision**

The mere suspicion of engaging in violent behaviour is sufficient to ban a spectator from a sporting stadium. This is what the German Supreme Court decided, on the basis of "house protection" legislation. In so deciding, the Court dismissed the application made by a fan and season-ticket holder of top German football side Bayern Munich. The latter had allegedly become involved in a scuffle between members of a Bayern fan club and some local supporters following an away game against MSV Duisburg. Although he denied any participation in the violence, he was issued with a stadium ban for more than two years. Following his arrest as a result of the incident, the Public Prosecutor's Office (Staatsanwaltschaft) commenced a criminal investigation for breach of the peace (Landfriedensbruch), which brought into effect the policy applied by the Duisburg club, under which it is entitled to issue a nationwide stadium ban against anyone who is under investigation by the criminal authorities. This was in spite of the fact that the investigation had been discontinued on the grounds that it concerned a minor incident. The ban was the subject of the court application brought by the Bayern fan, which reached the German Supreme Court (Bundesgerichtshof).

The latter decided that the ban was justified, and was covered by legislation guaranteeing the right of any owner or occupant of premises to undisturbed possession (Hausrecht). Accordingly, football clubs were entitled to refuse admittance to a stadium where there were sufficient objective grounds for such a ban. The Chairman of the Court, Wolfgang Krüger, emphasised that clubs have a duty to guarantee, in the interest of all spectators, that matches are completed in a trouble-free manner. Even though the investigation had been discontinued, the applicant had not become involved with the misbehaving group by pure chance, but was in fact an active member. It ruled:

***"Membership of this group, amongst whom the applicant found himself when he was arrested, justifies the assumption that he is in the habit of***

***moving in circles which have a tendency towards violence at football fixtures" (Spiegel Online of 30/10/2009 – translation by the author).***

When announcing the decision, Mr Krüger pointed out that this was not a matter governed by the criminal law, but a case of banning potential troublemakers. He also emphasised that the clubs were not entirely free in the manner in which they exercised this power, since any arbitrary ban would be unlawful. The hurdles which need to be overcome in order to issue stadium bans should not therefore be too high, since it is necessary to protect the other spectators against trouble – in fact, the clubs had a duty of care in this respect, given that football fixtures often give rise to violent excesses. Because of the large number of spectators and the often emotionally charged atmosphere which prevails between groups of rival supporters, it was appropriate for the clubs to ban potential troublemakers as a precaution.

According to guidelines supplied by the German Football League (DFB), a stadium ban should be issued against those under investigation by the police for violent behaviour. Where such investigations are later discontinued because of lack of evidence, the ban should be lifted. Where they are discontinued in grounds of insignificance, Section 6 of the guidelines merely states that the ban should be re-examined once. The German Football League currently presides over 2900-3000 stadium banning orders.

The Supreme Court decision received mixed reactions. The German Active Football Supporters Union (Bündnis Aktiver Fußball-Fans – BAFF) reacted with a mixture of incomprehension and criticism. BAFF President Wilko Zicht described stadium bans as such as "unjust and injurious to the relationship between fans, the clubs and the police" and predicted that the Court's decision would increase rifts between these groups. The German Football League, on the other hand, welcomed the decision, as they considered it to represent confirmation of the Association's justified use of banning orders to protect peaceful fans against the violent excesses of spectators who were prepared to use violence (*Ibid*).

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### “ON-FIELD” CRIME

#### **Ohio pitcher jailed for assault on fan (US)**

In early August 2009, a judge in Ohio convicted a pitcher in the minor baseball league of the US of injuring a fan when he threw a ball during an on-field melee in Dayton. The player in question, Julio Castillo, was found guilty of felonious assault causing serious physical injury. The player was pitching for the Peoria Chiefs against the Dayton Dragons when the brawl took place. Mr. Castillo threw a ball which hit a fan on the head and caused him concussion. The player had claimed during the trial that he threw the ball downward towards a dugout in an attempt to keep opposing players from rushing onto the field, and that it was not aimed at anyone (*Associated Press, www.findlaw.com of 4/8/2009*). However, the judge ordered Mr. Castillo go serve 30 days in jail and to three years' probation. The maximum sentence he could have incurred was eight years (*Associated Press, www.findlaw.com of 6/8/2009*).

#### **Skiers penalised for causing an avalanche (France)**

Under Article 223(1) of the French Criminal Code, it is a Category 2 offence (délit) to place the lives of other at risk through one's actions. This was the basis for prosecuting three skiers who, mounted on skis and snowboards, had proceeded onto a slope which was situated away from the piste, starting from the top of a skilift track. The three in question had gone round a yellow panel which prohibited any use of a non-piste area because of the high avalanche risk, linked to other stanchions by a rope under which it was easy to pass. The three accused had thus set off an avalanche which crossed a piste where a skier was proceeding, who was jolted by the impact without being injured by it. The Court ruled that the three accused were aware that they were putting the safety of others at risk, and therefore issued an order prohibiting them from skiing for a period of 12 months [Decision of the District Criminal Court (Tribunal correctionnel) of Bonneville of 8/11/2007].

#### **American football coach investigated concerning on-field fight (US)**

In mid-August 2009, a report was filed with the police department of Napa, California, that an unnamed assistant coach to an American football team was being treated at the Queen of the Valley Hospital for a jaw injury, which the victim alleged had been caused

by an unidentified member of the coaching staff of the team in question. It later transpired that the alleged victim was Oakland Rangers assistant coach Randy Hanson, and that the person against whom the accusation was made was its head coach, Tom Cable. If true, this would be the second incident in fewer than 13 months involving Mr. Hanson and a Raiders head coach. In 2008, the former was suspended after he was critical of the team's effort in a season-opening loss to rivals Denver. Later, the Raiders owner Al Davis had intervened on Hanson's behalf and dismissed the then head coach, Lane Kiffin (*Associated Press, www.findlaw.com of 18/8/2009*).

However, District Attorney Gary Lieberstein later announced that Mr. Cable would not face charges of assault, following after a two-week investigation which included interviews with the alleged victim and other witnesses, including three current members of the Raiders' coaching staff (*www.articles.sfgate.com of 23/10/2009*).

#### **Ball-collecting diver arrested for “stealing” (South Korea)**

In mid-November 2009, a man who dived into water hazards at night at various South Korean golf courses in order to collect balls was arrested for theft. The former golf club employee was accused of stealing approximately 26,000 balls (*The Daily Telegraph of 14/11/2009, p. 34*). No further details are available at the time of writing.

#### **Gym killer driven by his hatred of women (US)**

On New Year's Eve 2008, George Sodini recorded in his online journal that since he had started going to the gym, his “anger and rage” was largely gone. However, over half a year later, that claim proved to be incorrect. Just after 8pm, Mr. Sodini, a 48-year-old computer programmer from suburban Pittsburgh, entered a dance class at his fitness club, took out two guns from his duffel bag and shot three women dead before turning the guns on himself. According to this blog, in which the killer emerges as a troubled, lonely misogynist gripped by an abiding rage towards his family, Sodini had already desisted from his long-planned indiscriminate shootings on two occasions. As matters turned out, the 5,300-resident town of Bridgeville, where the shooting spree took place, was stunned by the news that he had finally done the deed, in which another nine people were injured, at least three of them seriously.

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Stacey Falk, a member of the women-only dance class which Sodini picked for his murderous final act, described the confusion that reigned in the gymnasium after the killer, wearing workout gear, walked in. Apparently, after he had stood still for about a minute, he switched off the lights, and started firing. She described the scene whereby the women present “were just ducking behind each other”. One of those shot was the class instructor, Mary Primas, who was 10 weeks pregnant and giving her last class before taking maternity leave. She told a local television station:

***“We turned around to put the lights back on and that’s when I heard bullets. I felt the first bullet on my left shoulder and then about 30 seconds later I felt the second in my back. I remember thinking I wanted to hold my breath because if he saw that I was breathing he would shoot again”***  
(*The Independent of 6/8/2009, p. 20*).

The shootings took only a few minutes and by the time the police were alerted, the perpetrator was already dead. There were some reports, unconfirmed by police, that the killings had been intended as revenge on a former girlfriend. The women who died were named as Heidi Overmier, 46, Elizabeth Gannon, 49, and Jodi Billingsley, 38. Ms Overmier was a single mother who worked at a theme park. Ms Gannon was a radiology technologist and Ms Billingsley, a saleswoman. The existence of Mr. Sodini’s blog only emerged after the attack. The 4,600-word screed begins with the gunman’s personal details, including the accurately predicted date of his death and the pointed observation that he was “never married”.

The first dated entry, made on 5 November, states that he had planned to carry out such an assault the previous summer. He wrote again towards the end of December, bemoaning his loneliness at Christmas, and lamenting the fact that he had not had a girlfriend since 1984. He then sets a firm date, 6 January, for his attack, and mentions a sense of powerlessness over his life. Following a bitter attack against his father, a “useless sperm donor”, he writes again on the earmarked day: “Leaving work today, I felt like a zombie... my mind is screwed up.” Later, however, he returns online, having apparently gone to the gym but refrained from carrying out his plan at the last minute (*ibid*).

Between January and the beginning of the fateful week, Sodini geared himself up once more. After an unsuccessful date, he writes that there are 30 million desirable women in the US... “and I cannot find one.” He refers to women as “little hoes” and keeps a list of reasons for carrying out his planned attack. On his final

day, Sodini speculates that he will soon face God.

Later, the impact of his actions had cast a pall over his hometown. “He did what he set out to do,” the local police superintendent, Charles Moffatt, said. “I don’t think anyone could have stopped him” (*ibid*).

### **Investigators re-open probe into Cherepanov death (Russia/US)**

It will be recalled from a previous issue of this Journal ([2009] *1 Sport and the Law Journal p. 66*) that a young Russian ice hockey player, Alexia Cherepanov, collapsed and died during a Continental Hockey League match in October 2008 whilst playing for the New York Rangers. Later, the Russian Federal Prosecutor’s Investigative Committee ruled that team doctors were not to blame for the player’s death and would not face any criminal charges. The investigators stated that doctors with the host club, Siberian team Avangard Omsk had no reason to suspect that the 19-year-old suffered from a chronic heart problem and therefore did not prescribe the medication he was taking at the time. However, the Committee later reopened the case and ordered that new medical tests be performed in a federal centre for forensic medicine (*Associated Press, www.findlaw.com of 10/8/2009*).

The investigators’ initial conclusion appeared to place more blame on Mr. Cherepanov than on any other party. They concluded that the most likely hypothesis was that the player felt unwell but hid his condition from the team doctor for fear of being removed from the team. However, Mr. Cherepanov’s mother, Margarita, dismissed these conclusions and insisted that her son was in good health. In December 2008, the Investigative Committee announced that medical experts had concluded from an analysis of blood and urine samples that the player had “engaged in doping” for several months prior to his death. However, in their eventual ruling, issued in July 2009, the investigators concluded that he had been taking cordiaminum, which apparently stimulates the circulation and breathing as well as the central nervous system, which suggests that he may have been taking this medication in order to treat his condition. The Avangard President, general manager and a team doctor were suspended indefinitely from their positions in the League. Another Avangard doctor was suspended for two years. The president of the host club, Vityaz, was also suspended indefinitely amid complaints concerning the medical services available at the arena (*ibid*).

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

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### Former coach charged in American footballer's death (US)

In January 2009, James Stinson, the former coach attached to the Louisville high school American football team, was charged with reckless homicide following the death of Max Gilpin, a player who collapsed at practice and died three days after his body temperature had reached the level of 107 degrees. He was later also charged with first-degree wanton endangerment. Both charges carry maximum terms of imprisonment of five years (Associated Press, www.findlaw.com of 11/8/2009). No further details are available at the time of writing.

### Croatia coach alleges conspiracy in England to hurt his footballers

In late August 2009, the president of the Croatian Football Federation launched what appeared to be a bizarre attack on English football by claiming players in the Premier League are deliberately targeting his country's leading internationals. Vlatko Markovic believes there is a conspiracy against Croatia after Luka Modric, who plays for top Premiership side Tottenham Hotspur, broke a leg in a Premier League match against Birmingham City last Saturday, thus ruling him out of World Cup qualifier against England at Wembley the following week.

Apparently there also remains some ill-feeling that the Arsenal and Croatia striker Eduardo da Silva missed out on the European Championship last year after he broke his leg, also against Birmingham, in February 2008. Mr. Markovic is now claiming that the two incidents are related and are part of a plan to injure his nation's best players. He said:

*"It is terrible what has happened to us. Maybe someone has something against us and our national team. In the past year, they [English footballers] have injured Eduardo and now the same has happened to Luka Modric. I can only ask whether someone did it deliberately on the eve of the game with England. I can only ask myself whether it is a coincidence or not." (The Guardian of 1/9/2009, p. S2).*

Mr Markovic added that the Spurs playmaker was as important to Croatia as Andrés Iniesta is to Barcelona. The player fractured his right fibula after going in for a challenge with Birmingham's Lee Bowyer. A foul was given against the Spurs midfielder and it is generally accepted by commentators that Mr. Bowyer was not at fault. Eduardo da Silva, for his part, has only recently returned to the Arsenal first team after suffering a horrific injury following a clash with Martin Taylor. The

Birmingham defender was sent off and Eduardo endured a compound fracture of his left fibula and an open dislocation of his ankle.

The 72-year-old Markovic has been a vocal critic of England and English football before. Following the defeat inflicted by Fabio Capello's side on Croatia in a Group Six World Cup qualifier in Zagreb – a game missed by Eduardo – he maintained that there was a "dirty tricks campaign" aimed at unsettling the Croatia coach, Slaven Bilic, by linking him with the then-vacant managerial position at his former club West Ham United. Croatia trail England by seven points in their qualifying group.

The Birmingham chairman, David Gold, strongly rejected Mr. Markovic's claims, stating:

*"He needs to go and have a lie down," he said. "His comments are absolutely idiotic. They are ridiculous and insulting. To say such things is little short of incredible. For a man of such stature and position in the game to come out with such rubbish is pathetic. His remarks border on paranoia and I struggle not to take it personally when they two incidents he talks about involve my club. To lay such stuff at Birmingham's door is appalling. It's emotive and doesn't stand up to close scrutiny" (Ibid).*

If true, the allegations made by the Croatian coach would undoubtedly attract the interest of the British criminal authorities.

### Prosecution of "Saviour of cricket" Stanford continues (US/Caribbean)

Previous issues of this Journal have already amply charted developments in one of the most bizarre – not to mention embarrassing – episodes in the noble sport of cricket, i.e. the scheme dreamed up by Texan oil billionaire Sir Allen Stanford to finance a Twenty/20 cricket extravaganza in the West Indian island of Antigua in November 2008. This proved to be a short-lived experiment as a result of the American's collapsed banking empire. More particularly he was accused of orchestrating an \$8 billion "Ponzi scheme" by the US Securities and Exchange Commission (SEC). In the process, US regulators closed down Sir Allen's Houston offices in the Galleria area shopping complex, administering a serious shock to investors across the US and Latin America, who had in some cases entrusted their life's savings to the Stanford Financial Group. More particularly a criminal indictment accused Stanford and several of his associates of operating a \$7 billion investment scheme to defraud investors with the

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assistance of a Caribbean financial regulator. He allegedly made payments of over \$100,000 to Leroy King, the former Chief Executive of Antigua's Financial Services Regulatory Commission, to perform fake audits of Stanford International Bank, the offshore lender at the centre of the alleged fraud, and help it to avoid scrutiny from both US and Antiguan regulators (*Financial Times of 26/6/2009, p. 20*).

Nor was this all for the now-impoverished Texan. In early September, it was learned that a Las Vegas casino had filed proceedings in Nevada's Clark County district court accusing him of incurring gambling losses in January 2009, barely a month before the US authorities raided his Houston offices in the manner described above. Details of the suit, according to the Las Vegas Sun, reveal that Stanford signed for 14 gambling markers, which are cheque-like instruments allowing regular customers to open up a temporary line of credit with a casino. The latter, which is owned by MGM Mirage, presented them for payment at a Miami bank on 19 February, just as Stanford's business empire was beginning to collapse, but all 14 of the markers were not redeemed. Bellagio, the establishment in question, seeks payment of the alleged debt plus interest, as well as compensation for legal costs (*The Guardian of 3/9/2009, p. 24*).

Regardless of the outcome, the case against Stanford seems to have given rise to some difficult questions of cross-border jurisdiction and international co-operation. This became clear when, in a further twist to this complex case, the Montreal Superior Court has decided to bestow control of the Stanford company's Canadian assets to a receiver appointed by a US court. In any other case, this ruling might have been merely procedural, given that the primary responsibility of the US receiver, Ralph Janvey, is to marshal the Stanford assets. However, the decision to award control of the assets to Mr Janvey came amid vociferous protests from Vantis, a UK-based firm appointed by the Antiguan government to administer and liquidate the local and international assets of the myriad Stanford companies.

As was mentioned earlier, Sir Allen had a significant personal and commercial presence in Antigua; he was the island's largest private employer, and the institution at the heart of the alleged Ponzi scheme – Stanford International Bank – was domiciled in the capital of St John's. In February 2009, after US regulators accused him and two deputies of defrauding investors via high-yielding certificates of deposit issued by the Antiguan bank, the island's government reacted first with silence, and then by closing ranks. Its appointment of Nigel

Hamilton-Smith, a client partner at Vantis, to attempt to recover the assets of the Stanford empire – which stretched from North America to Venezuela – reflected a determination to keep this an exclusively national affair. Antiguan government and regulatory officials told leading business newspaper Financial Times that they were "miffed" at what they saw as the high-handedness of their US counterparts (*Financial Times of 16/9/2009, p. 28*).

During the months which followed the initial allegations, officials from the Securities and Exchange Commission (SEC) would assert that they had, in fact, tried to co-operate with their Antiguan counterparts in investigating Sir Allen. These efforts, according to the SEC, had been undermined by the close relationship between the financier and the aforementioned Leroy King, former head of the island's top regulatory body. In the meantime, the US Department of Justice had accused Mr King of accepting thousands of dollars in bribes from Sir Allen, and of participating in a "blood oath" in which he swore allegiance to the Texan businessman, whom he called "big brother". Andrew Behrman, an attorney at Lovells specialising in complex inter-national litigation, said the conflict between Mr Janvey and Mr Hamilton-Smith partly reflected the murkiness of the law governing conflicting jurisdictions (*Ibid*).

It will naturally take a good deal of time before the final outcome of this affair is known. However, Sir Allen did receive some good news a month after the Canadian imbroglio, when it was learned that he had obtained a court ruling that he had the right to use the proceeds of a corporate insurance policy to pay his defence lawyers. The ruling, by US District Judge David Godbey, will also benefit Sir Allen's co-accused, Laura Prendergast-Holt and James Davis. However, there is no guarantee that Lloyds, the insurers in question, will release the funds, since, in a recent court document, it had stated that it would exclude claims resulting from "money laundering and from dishonest, fraudulent or criminal acts" (*Financial Times of 12/10/2009, p. 14*).

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### SECURITY ISSUES

#### **Security fears prompt travel firms to offer tours accompanied by armed guards (South Africa/United Kingdom)**

The forthcoming football World Cup in South Africa has already produced many controversies, mainly related to the question whether the nation is actually ready to stage the event. However, as the date for the kick-off

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approaches, another concern has, predictably, raised its head, i.e. the personal security of those involved, either as direct participants or as spectators. This issue came forcefully to public attention when it was learned, in early December 2009, that England fans who can afford it will be offered armed guards to escort them as they travel hundreds of miles between fixtures.

The opening game against the United States on June 12 will be at the Royal Bfokeng Stadium, near Rustenburg, north of Johannesburg. Supporters then face a 861-mile trip to the Green Point Stadium in Cape Town for the second match against Algeria. The English Football Association (FA) has come under pressure to request world governing body FIFA to change the location of at least one of the group stage matches in order to reduce travel for supporters. It is an unfortunate but well-known fact that extreme violence is a frequent occurrence in South Africa, where 50 people are murdered every day. Most crimes are committed against South Africans in townships and other poor settlements, but security specialists have cautioned foreign visitors that they could become targets. One British tour operator is offering a “fully armed security service” as part of its package for corporate groups, whilst another will send trained escorts with prominent customers (*The Times of 5/12/2009, p. 4*).

The Red24 group, which provided crisis management services to clients in the Mumbai terrorist attacks last year (as reported in this Journal), described the threat to fans as “credible”. Neil Thompson, the operations director, added:

***“The vast majority of people will have a good time but there is a serious crime epidemic that the police and security companies cannot cope with. Supporters cannot just drink a few pints of lager and walk along the street. It’s dangerous. Tourists are perceived as rich and a camera could represent someone’s next meal. They’ll take it without a second thought.”*** (*Ibid*).

It also emerged that some of the British-owned company’s chaperones will be armed. One particular type of incident which frequently occurs to foreigners who fail to be vigilant is theft at cash machines or at traffic lights. There were 15,000 recorded incidents of carjacking last year. Most tour operators are using gated hotel complexes near Johannesburg and taking clients to and from matches by bus. It is expected that hardly any of their guests, paying upwards of £4,000 per person for a tour taking in England’s three group matches, will be wandering the streets. However, Andy

Vinsen, commercial director of Keith Prowse, the tour operator that will take about 500 clients, believes that armed guards are an over-reaction. Meanwhile, the South African Government has announced a dedicated force of 41,000 police officers, after a recruitment drive to increase the total to 190,000 by the end of this year. A further 86,000 private security guards will work around the stadiums, official hotels, fan parks, restaurants and bars to cope with an influx of nearly 500,000 overseas visitors including up to 50,000 England fans (*Ibid*). Any criminal charges involving foreigners will be given priority during the tournament with more than 50 courts operating for 15 hours a day to try, sentence and imprison offenders on the day they are caught.

One area of criminality that could be reduced from previous World Cups is ticket touting after FIFA took tighter control of distribution following various problems which had occurred previously in this regard (*Journals passim*). Three million tickets (one third for South African fans, one third for international fans and one third for sponsors, teams and the FIFA guests) are available. Recipients will receive their tickets only once they arrive in South Africa and will be limited to seven per person. Despite tougher anti-touting legislation, which gives police the right to confiscate touted tickets, there is still expected to be a sizeable black market because of the high demand (*Ibid*).

Another factor which has to be taken into account in the current political climate is the possibility of terrorist activity. Concerns about such a possibility were heightened in early December 2009 when South African police announced that a man had been arrested after having made two hoax telephone calls stating that a bomb had been planted at Cape Town airport amid tight security for the World Cup draw, which was to take place a few days later. Superintendent Vish Naidoo said that police working with other law-enforcement agencies were quickly able to establish that the bomb threat was a hoax and tracked down the alleged perpetrator to a suburb of the city. In another security threat, sniffer dogs and a bomb disposal unit were brought to Cape Town International Convention Centre and the entrances sealed off, although the police gave no indication as to the precise nature of the threat (*Associated Press, www.findlaw.com of 4/12/2009*).

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### **Terrorist threats continue to affect Indian sport**

The increasingly volatile relations between the various nations and ethnic groups in the Indian subcontinent have already taken their toll in terms of human life, and, as has been reported in earlier issues of this Journal and elsewhere, sport has not been able to elude the violent manifestations of this strife. Fears of player safety came back into focus in mid-August 2009, when the England team withdrew from the badminton world championships in Hyderabad, India, pleading “non-existent measures” to protect players. The eight-strong team pulled out of the tournament after they had read leaked newspaper reports of a “specific terrorist threat” from Lashkar-e-Taiba, a Pakistan-based organisation fighting Indian control of the Kashmir region. Security was immediately increased, with armed guards patrolling the championship venue, but this came too late in the day as far as England were concerned. Adrian Christy, the Chief Executive of Badminton England, explained that the threat had also indicated the targeting of “top badminton stars”, and that security arrangements had fallen short of what the team were led to expect (*The Daily Telegraph of 10/8/2009, p. B16*).

However, it is safe to state that it is mainly cricket which is affected by this new climate of fear, which is not entirely surprising in view of the high profile which the sport enjoys in the subcontinent. The attack on the Sri Lankan team which took place in Lahore, reported extensively in earlier issues of this Journal, remains all too fresh in the sport’s memory, and the spectre of fear returned to haunt the sport in mid-October 2009 when the Champions League fixture between Victoria and the Caoe Cobras was delayed because of a bomb scare. Terrorist attacks in Pakistan shortly before this event had already put India on high alert, and police in Bangalore later arrested a 22-year-old cricketer from Kashmir suspected of bringing explosives into the Chinnaswamy Stadium. He was later released without charge, but the match had to start nearly two hours late (*The Sunday Telegraph of 18/10/2009, p. S11*).

### **US sports officials “confident” that stadium security is adequate**

The US were the target of perhaps the most serious terrorist incident of them all with the 9/11 attacks on the World Trade Centre buildings. Ever since, security has been a major issue at all levels of US society, including the world of sport. Sports officials are confident that adequate security measures are in place to thwart any potential terrorist attacks on stadiums around the country. Responding in a low-key manner to security

warnings that terrorists would like to attack stadiums, several sports officials announced in late September 2009 that they had already boosted precautionary measures to such an extent that the latest alerts would not make much difference. Earlier, federal bulletins sent to police departments and obtained by the press had stated that officials knew of no specific plots against stadiums and other entertainment venues, but cautioned officers and private companies to be vigilant. According to Greg Aiello, spokesman for the National Football League (NFL):

***“We are aware of the memos from the federal government, including that there is no information specific to any sports stadium. This underscores the high levels of stadium security that are maintained and will continue to be maintained at every NFL game for the safety of our fans and teams.”***

*(Associated Press, www.findlaw.com of 23/9/2009)*

Similar alerts are frequently issued – a recent one focused on the vulnerabilities of mass transit systems. However, they have received increased attention in the last week against the backdrop of continued terrorist investigations in New York City and Denver. Other top pro leagues also said security receives constant attention, and fans had become fairly blasé. For its part, the National (Ice) Hockey League (NHL), through its spokesman Frank Brown said security was a collaborative effort for the League, adding

***“We work closely with our arenas and local law enforcement agencies to create a safe, secure environment for our fans at all times. We work with our partners continually to update and apply appropriate security measures to address security concerns.”*** (*Ibid*)

### **Similar views were expressed by the national basketball Association (NBA).**

The aforementioned bulletin on stadiums had stated that an al-Qaida training manual specifically lists “blasting and destroying the places of amusement, immorality, and sin ... and attacking vital economic centres” as desired targets of the global terror network. A joint statement from the Department of Homeland Security and FBI said while the agencies had “no information regarding the timing, location or target of any planned attack” they believed it to be prudent to raise the security awareness of its local law enforcement partners regarding the targets and tactics of previous terrorist activity. Warnings were issued 10 days before the International Olympic Committee picks a 2016 host city, Chicago having been a finalist along with Tokyo, Madrid and the eventual winners Rio de Janeiro.

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Regular spectator Andy Gill, a 37-year-old salesman from Chattanooga, Tennessee thought Knoxville's Neyland Stadium would make an attractive target to terrorists because of its size (it holds more than 102,000 fans). In addition, James A. McGee, an instructor at the University of Southern Mississippi's National Centre for Spectator Sports Safety and Security, warned sports venues could be a "very, very, very likely target" for terrorists at some point. Mr. McGee, a former FBI special agent, said

*"As more time separates us from 9-11-2001, there is a tendency to become more lackadaisical. If you couple that with the economic situation right now, many times - and it's always been the case - decisions are made to save money and many times the way they save that money is they may lessen security" (Ibid).*

### **Bomb targets Greek football team fan club - no injuries**

In mid-November 2010, Greek police announced that a small bomb had exploded outside a fan club of leading football side Panathinaikos in Athens, causing minor damage but no injuries. According to a police statement, the blast damaged the club entrance in the Southern suburb of Aghios Dimitrios and shattered windows in nearby flats. The club was unoccupied at the time of the explosion. There was no claim of responsibility. The previous month, a small bomb made of camping gas canisters had exploded outside a fan club of Panathinaikos rivals Olympiakos, also causing damage but not resulting in any injuries (*Associated Press, www.findlaw.com of 12/11/2009*).

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### "OFF-FIELD" CRIME

#### **Steelers player cited for public drunkenness (US)**

In mid-October 2009, it was learned that the Pittsburgh Steelers kicker (American football) Jeff Reed had been cited by the police for public intoxication and disorderly conduct outside a bar located a few blocks away from the ground where the team had beaten the Cleveland Browns a few hours earlier (*Associated Press, www.findlaw.com of 19/10/2009*). Mr. Reed's agent later denied having attempted to fight with police, in response to the claims made by the latter that Reed adopted a "fighting stance" when officers arrived to cite teammate Matt Spaeth for allegedly urinating in public and became unruly when police tried to restrain him. Mr.

Reed was later charged with simple assault, resisting arrest, disorderly conduct and public drunkenness (*Associated Press, www.findlaw.com of 20/10/2009*). The outcome of this case was not yet known at the time of writing.

This was Mr. Reed's second brush with the law in the course of 2009. He paid \$543 in fines as well as compensation after pleading guilty to disorderly conduct and criminal mischief for damaging a paper towel dispenser in a convenience store bathroom in New Alexandria in February (*Ibid*).

#### **Gatti death "suicide" according to Brazilian police... but is this the end of the matter?**

It will be recalled from a previous issue of this Journal (*[2009] 1 Sport and the Law Journal p. 62*) that the Canadian boxer Arturo Gatti had been found dead in a seaside resort in Northern Brazil, and that his wife, Amanda Rodriguez, had been accused by police of strangling him with her purse strap as he slept. However, the investigator in charge of the case, Paulo Alberees, announced in July 2009 that the boxer killed himself. State court judge Ildete Verissimo de Lima accordingly ordered the immediate release of Ms. Rodriguez (*Associated Press, www.findlaw.com of 30/7/2009*).

However, this conclusion does not appear to have entirely satisfied the Canadian authorities, since the coronor's office in Quebec later announced that it wanted the Brazilian authorities to share their files concerning the initial autopsy and the police investigation into his death. This followed the doubts expressed by Mr. Gatti's friends and relatives on the outcome of the Brazilian authorities' investigation, and the completion of a second autopsy on Gatti's body by the Quebec authorities (*Associated Press, www.findlaw.com of 3/8/2009*).

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

#### **Top US basketball coach involved in extortion/abortion accusations**

The world of top professional sport often throws up, if the reader will excuse the mixed metaphor, a number of unsavoury incidents and developments involving leading performers and those closely involved with them. An extraordinarily tawdry example of this syndrome in action appears to be developing in Louisville, Kentucky, in connection with a coach serving a top US basketball team.

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In mid-August 2009, it was reported that Rick Pitino, the coach in question, informed the police that he had sex in a restaurant six years previously with a woman currently accused of attempting to extort a large sum of money from him – and that, on informing the coach that she was pregnant, the former gave her \$3,000 for her to perform an abortion. The coach in question denied the woman's allegations that he raped her, first after the restaurant closed, then on a second occasion somewhere else. The woman in question, Karen Sypher, had reported the allegations of rape to the police the previous month, but a Kentucky prosecutor later announced that the complaint would not be investigated on the grounds that it lacked supporting evidence. In the meantime, Ms. Sypher had pleaded not guilty to federal charges of lying to the authorities and attempting to extort \$10 million from Mr. Pitino.

Two weeks after meeting Ms Sypher at the restaurant, Pitino informed the police that she had called, told him that she was pregnant and that he had to be the father. He further alleged that the woman told him that she was about to have an abortion but was not covered by health insurance, as a consequence of which he gave her \$3,000 for the termination, which was carried out in Cincinnati (according to the report). The commander in charge, Andy Abbott, asked Ms Sypher during one interview why she had only made the rape accusation after she was indicted. According to the relevant transcripts she provided varying answers – at one stage alleging that she wanted to “forget about it”, that Pitino had threatened her, and, finally, that “they kept throwing crumbs to keep me happy”. It was suggested to her that her tardy allegation of rape could be interpreted as retaliation, to which she responded “I know it does” (*Associated Press, www.findlaw.com of 12/8/2009*).

The case had become public in April 2009, when Mr. Pitino announced that someone had attempted to extort money from him. He claimed to have reported it to the Federal Bureau of Investigation (FBI), and Ms Sypher surrendered to the authorities a few days later when she was named in a criminal complaint. At the time, various media outlets refused to broadcast interviews with Ms Sypher concerning allegations made against Pitino, claiming that these were personal and unsubstantiated. She alleged that she had met Mr. Pitino at the restaurant and requested him to speak to her sons by telephone, which he did. She also claimed that the restaurant owner gave Pitino the keys to the establishment at the end of the night, and that he asked him to lock up when he left. She claimed that Mr. Pitino then forced himself on her. The criminal

complaint submitted claims that Ms. Sypher's husband, Tim, who is also the team's equipment manager, presented Mr. Pitino with a written list of demands from his wife, including college tuition for her children, two cars, cash in order to complete payments for the house, as well as \$3,000 per month. The complaint also stated that the list of demands subsequently increased. Mr. Sypher himself was not charged (*Ibid*).

Mr. Pitino later admitted that a sexual encounter had taken place, and issued a public apology. Ms. Sypher then made further allegations, claiming that Mr. Pitino orchestrated a plot to keep her silent, which included paying her husband to marry her. She also claimed that “the feds bugged my house and put surveillance everywhere” with the help of Mr. Sypher (*Associated Press, www.findlaw.com of 14/8/2009*). The outcome of the criminal charges was not yet known at the time of writing.

### **Thieves take advantage of football fever to strike (Brazil)**

When the Brazilian football season reaches its climax in early December, the country becomes virtually paralysed. This fact was not lost on a gang of thieves, who spent months tunnelling from a rented house to the safe of an armoured car company and to make off with a haul of nearly \$6 million that very weekend. The robbery was discovered on the Sunday night, hours after the vital promotion and relegation matches had ended. A loud noise was heard by a security guard, but the latter thought that this emanated from fireworks set off by celebrating fans (*The Guardian of 9/12/2009, p. 12*). Police later arrested six suspects (*The Daily Telegraph of 9/12/2009, p. 7*).

### **Baltimore footballer arrested (US)**

In late August 2009, it was learned that Tony Fein, a linebacker who plays for Baltimore Ravens, was arrested and charged with assaulting a police officer at a restaurant. He was apparently eating dinner when a security officer believed that he saw him pass a handgun to one of his friends – however, this turned out to be a cell phone. When police questioned Mr. Fein, the latter is said to have become belligerent and pushed the officer, who thereby sustained an injured elbow. Misdemeanour charges were later brought against him (*Associated Press, www.findlaw.com of 24/8/2009*). Mr. Fein's agent later claimed that the arrest was the result of police profiling. He also alleged that, far from his client pushing the officer, it was the latter who became aggressive (*Ibid*).

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### **“Sex for tickets” woman arrested (US)**

In late October 2009, it emerged that a female baseball fan had been arrested and charged with offering sex for tickets which would enable her to watch her favoured team compete in the US World Series. Susan Finkelstein, a married mother of two, was arrested by an undercover police officer who replied to her internet advertisement for tickets to the Philadelphia Phillies' seven-match series against the New York Yankees for the sport's top prize. She is alleged to have worded the advertisement thus:

*“Diehard Phillies fan – gorgeous tall buxom blonde – in desperate need of two World Series tickets. Price negotiable – I’m the creative type! Maybe we can help each other” (The Times of 30/10/2009, p. 14).*

Police scouring the relevant Internet small advertisements site for unlawful activity noticed the announcement and mounted a covert operation. An undercover agent arranged a meeting with Ms. Finkelstein at a bar in a suburb of Philadelphia. Over drinks, she is alleged to have informed the officer that she required two tickets – one for herself and one for her husband. Seats for the event sold for an average of \$650 on internet sites, whilst prime seats can command as much as \$9,999. The officer then told her that he and his brother owned a ticket, to which Ms Finkelstein allegedly responded by offering to have sex with both of them. She was later charged with a misdemeanour count of prostitution. The lady, for her part, insists that she hoped only to flirt in order to find cheap tickets (*Ibid*). She had yet to appear in court at the time of writing.

### **Jayson Williams stands trial amid racial bias claims (US)**

Yet another top US sporting performer to find himself in trouble with the law is Jayson Williams, the former basketball star who played nine seasons with the Philadelphia 76ers and the New Jersey Nets. He was acquitted in 2004 of the aggravated manslaughter of Costas Christofi, a hired driver. The latter had driven Williams and several of the basketball player's friends to Mr. Williams's Hunterdon County mansion after taking them to a local restaurant. Witnesses testified that while showing off a shotgun in his bedroom, Williams snapped the weapon shut and it fired one shot that struck Christofi in the chest, killing him.

Mr. Williams was, however, convicted of attempting to cover up the crime. Later, he was charged once again over the incident – this time on a count of reckless manslaughter. Before this trial commenced, Mr. Williams's lawyers appealed against the conviction

referred to above by attempting to show that the law enforcement in their client's case was racially biased, and called the relevant prosecutors, Steven Lember and Katherine Errickson, to the witness stand for this purpose. At the heart of the appeal was a racial slur allegedly uttered by an investigator about Williams (*Associated Press, www.findlaw.com of 30/9/2009*).

However, State Superior Court Judge Edward Coleman upheld the conviction and rejected attempts to dismiss a retrial, due at the beginning of 2010, on the manslaughter charge. The racial slur referred to above, made by former Capt. William Hunt, was made at a meeting of investigators but was not disclosed to the defence until 2007. However, in a strongly worded opinion, Mr. Coleman said the claim made by the defence that knowledge of the slur would have changed their trial strategy “frankly, rings hollow”. He added:

*“There is no evidence that this racial comment was adopted by anyone else in the room at the time or by anyone else in the prosecutor's office. There is no evidence that any racial bias affected the investigation. There is nothing to indicate he did not receive a fair trial.” (The Seattle Times of 16/10/2009)*

Shortly before this edition went to press, it was reported that Mr. Williams was expected to plead guilty to aggravated assault in the retrial (*Associated Press, www.findlaw.com of 20/11/2009*). Details of the retrial and its outcome will be reported in the next issue of this Journal.

### **Damir Dokic sentence confirmed, but further appeal possible (Serbia)**

It will be recalled from a previous issue of this Journal (*[2009] 1 Sport and the Law Journal p. 55*) that the man sometimes described as the original “tennis father from Hell” had been found guilty of endangering the security of the Australian ambassador to Serbia in Belgrade, and of the unlawful possession of weapons, including a hand grenade, which were impounded during a police search of his home.. However, this incident became the subject of a retrial because the ambassador in question, Claire Birgin, did not testify in person during the original hearing. The reconvened hearing resulted in the court confirming the 15-month prison sentence issued against Mr. Dokic; however, Ms Birgin was once again represented by her lawyer. As a result, the colourful Serb's lawyer, Bosiljka Djukic, pronounced the ruling “illegal ... according to the same scenario” and announced a further appeal (*Associated Press, www.findlaw.com of 24/9/2009*).

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It subsequently transpired that Mr. Dokic found another outlet for his protestations at what he considers to have been a miscarriage of justice, when it was learned that he had launched a hunger strike in protest at the sentence. Ms. Djukic announced that she was informed by Mr. Dokic's wife that he was no longer taking food or water (*Associated Press, www.findlaw.com of 8/10/2009*). No further details are available at the time of writing.

It will be recalled from a previous issue of this Journal ([2009] 1 Sport and the Law Journal p. 65) that top American footballer Steve McNair became a murder victim in July 2009, from gunshot wounds inflicted by Sahel Kazemi, his mistress, who then turned the gun on herself. Investigations into the case are continuing and have given rise to some disturbing developments. First, it was learned that a convicted murderer had pleaded not guilty in Tennessee to selling a gun which was used to kill the former quarterback. Adrian Gilliam was convicted in 1993 on charges of murder and attempted armed robbery. After being charged with being a convicted felon in possession of a firearm, he is reported, according to the relevant court documents, to have admitted to selling a loaded 9mm pistol for \$100 to Ms. Kamezi. The trial had not yet been held at the time of writing (*Associated Press, www.findlaw.com of 21/8/2009*).

Several months later, it was claimed that text messages between the former NFL quarterback and his killer, which were made in the hours before police say she shot him to death and turned the gun on herself, support the authorities' contention that she was spiralling out of control. Nashville police released the 50 text messages as part of a case summary and detailed the exchanges between the two hours before the July 4 murder-suicide. These reveal that Ms. Kazemi texted Mr. McNair on 3/7/2009 to inform him that she was so stressed she might have a breakdown. She also requested \$2,000 to pay bills. One text said she might need to go to a hospital because she could hardly breathe. The police claim that these texts show McNair arranged for someone to transfer the money. They also apparently also show Kazemi meeting McNair at the Nashville condominium where he was shot, and that the latter asked her to leave the front door open for him (*Associated Press, www.findlaw.com of 20/10/2009*).

Spokesman Don Aaron said he has been working to summarize the case for weeks and denied it was a response to a two-part report on CBS's "The Early Show" which questioned the original investigation. Mr. Aaron commented:

***"If anyone has information that needs to come to the attention of the police department, we'll be happy to receive it as part of this investigation. But at this juncture, there has been nothing uncovered that suggests this is not a murder-suicide."*** (*Ibid*)

The summary also details the manner in which police checked video footage from businesses in the area and found a law firm camera catching the back side of the condominium where the bodies were found. The footage did not reveal any suspicious activity or departure in the early hours of that morning (*Ibid*).

### **Former American football star jailed for gun possession (US)**

In late September 2009, it was learned that the former Super Bowl star Plaxico Burress had been sentenced to two-year term of imprisonment for having possessed a gun in a nightclub. This had come to light after he accidentally shot himself in the thigh. He had pleaded guilty on being indicted on two counts of weapon possession and one count of reckless endangerment. He was faced with a minimum sentence of three-and-a-half years if convicted at trial, but pleaded to the lesser charges and agreed to the two-year term. With a sentence reduction for good behaviour he could serve 20 months (*The Independent of 23/9/2009, p. 53*). Nevertheless, defence lawyer Benjamin Brafman pronounced the two-year sentence as "very severe punishment" given that this was not "an intentional criminal act" (*Associated Press, www.findlaw.com of 22/9/2009*).

### **Fallout from Michael Vick conviction continues (US)**

The sad story of the former star quarterback of the national Football league (NFL), who played for the prestigious Atlanta Falcons under a ten-year contract which amounted to a massive \$130 million deal, has become all too familiar – and not only to the faithful reader of this column. It will be recalled from many a previous issue of this Journal that this particular sporting icon fell spectacularly from grace in the spring of 2007, when he was exposed as the owner of the infamous Bad Newz Kennels in southern Virginia, and the prime mover in a multi-state dog-fighting operation. For this misdemeanour the famous footballer was jailed, and subsequently dismissed by his club, the Atlanta Falcons, with which he had the richest contract in American football (\$130 million over 10 years). As a result, he was compelled to declare personal bankruptcy.

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However, by the summer of 2009 it seemed that a new and, one hopes, happier stage in the footballer's career had been embarked upon. His debt to society paid, Mr. Vick was formally reinstated in the National Football League (NFL) by NFL Commissioner Roger Goodell. This redemption did, however, come with conditions attached. As a free agent, he was allowed to join any NFL team, and fully take part in pre-season training and exhibitions. However, he had to remain on the sidelines during the first month of the season, which begins in mid-September (*The Independent of 3/8/2009, p. 54*). It soon appeared that there was a great deal of interest among some clubs to employ Mr. Vick's services, and it was the Philadelphia Eagles, keen to add a new dimension to their attack, who gave the disgraced quarterback a one-year contract with an option for a second. The news was so unexpected that even the team's public relations staff seemed surprised when the announcement was made during the first half of the Eagles' pre-season opening fixture with the New England Patriots (*Associated Press, www.findlaw.com of 14/8/2009*).

The Philadelphia team had, not unnaturally, been prepared for a backlash after signing the convicted player, but his addition to the team did not appear to have endangered the side's corporate support. None of the 50-odd sponsors had withdrawn their backing when the announcement was made - the only complaint from approximately half their number being that they would have appreciated being given advance notice of the move (*Associated Press, www.findlaw.com of 20/8/2009*). There was more good news for Mr. Vick when Commissioner Goodell held that he would be eligible to play in the third game of the season, instead of having to wait until the sixth match. It was also learned that animal rights activists in Philadelphia had opted not to protest against Vick's signing, but to use it in order to highlight their work and inviting the Eagles to support them (*Associated Press, www.findlaw.com of 4/9/2009*). The team responded positively, and unveiled a programme called TAWK (Treating Animals with Kindness). The initiative is aimed at reducing animal abuse (*Associated Press, www.findlaw.com of 13/10/2009*).

Mr. Vick's run of good fortune continued in November, when it was learned that a federal appeals court upheld the decision of a judge who had ruled against the NFL and allowed the player to keep more than \$16 million in roster bonuses earned when he was playing for the Atlanta Falcons. The 8th US Circuit Court of Appeals confirmed the order made by Judge David Doty which stated that the footballer had already

earned the bonuses before his dog-fighting conviction, which meant that the money was not subject to forfeiture. Mr. Doty has for a long time handled matters arising from the NFL's collective bargaining agreement. After his ruling in the Vick case, the NFL accused him of bias and sought to end his management of its contract with the players' union. However, the appeals court ruled that the contract should remain under Mr. Doty's stewardship (*Associated Press, www.findlaw.com of 10/11/2009*).

### **Tyson arrested after airport scuffle (US)**

The legal travails of former world heavyweight boxing champion Mike Tyson continue. In early November 2009, he was involved in an incident after an alleged altercation with a photographer at Los Angeles Airport. According to the boxer's spokesman, Mr. Tyson was travelling with his wife and 10-month-old child and had acted in self-defence after having been attacked by an excessively aggressive paparazzo. However, a policeman involved in the cases stated that the photographer in question, Tony Echevarria, has accused Tyson of hitting him (*The Daily Telegraph of 3/11/2009, p. 12*). At the time of writing, both men stated their intention of pressing charges against each other (*The Guardian of 13/11/2009*). No further details are available at the time of writing.

### **Murderer of lesbian footballer jailed for life (South Africa)**

In late September 2009, an unemployed man, Themba Mvubu, was jailed for life for the murder and gang rape of lesbian South African international footballer Eudy Simelane. This followed a spate of murders and "corrective rape" committed against lesbians in South African townships. Ms. Simelane was one of the first women to live openly as a lesbian in the township of KwaThema, near Johannesburg. Having been a keen footballer since childhood, she turned out for the South African national women's team, as well as working as a coach and a referee. She had hoped to serve as a line official in the forthcoming men's World Cup later this year. However, in April 2008 she was accosted after leaving a pub and robbed of her mobile phone, trainers and money. She died from injuries to the abdomen after being gang-raped and stabbed 12 times. Her naked body was dragged towards a stream and dumped (*The Guardian of 23/9/2009, p. 18*).

Activists present at the criminal court in Delmas, Mpumalanga Province, hailed the decision as "extremely important" in drawing attention to the

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trend in “corrective rape” committed by men allegedly to “cure” lesbian women of their sexual orientation. There have been over 30 reported murders of lesbians in the past decade; however, the Simelane trial was the first to produce a conviction (*Ibid*). It is estimated that as many as 150 women are raped every day in the country, and a survey conducted last year showed that one in four men admitted to having committed rape (*The Daily Telegraph of 23/9/2009, p. 26*).

### **Tiger Woods get citation for careless driving (US)**

By the time this issue reaches the reader, the latter will have been served ad nauseam with all the reports, both fictional and real, pictures and gossip surrounding the various alleged extramarital dalliances engaged in over the years by one of the most accomplished golfers of all time. However, this affair has also had implications at the level of the criminal law. According to a patrol accident report, Mr. Woods crashed his vehicle into a fire hydrant and a tree at 2 25 am on Friday, 27/11/2009. The airbags failed to be operate and Mr. Woods’s wife Elin informed the police that she had used a golf club in order to smash the back window in order to help him leave the car. This has earned him a careless driving citation and a relatively modest fine. The police stated that this would be the only legal repercussion from this matter, and that it would pursue any criminal charges (*Associated Press, www.findlaw.com of 1/12/2009*).

### **Prosecutor: No charges in alleged Arkansas University rape case**

In mid-September 2009, it was learned that three University of Arkansas basketball players who had been investigated after a female student claimed that she was raped at a fraternity party would not face charges, according to the prosecutor dealing with the case. The female student’s complaint had been made after a party at the Phi Gamma Delta house during the first week of classes at the Fayetteville school. However, prosecutor John Threet said that witness interviews and statements from the woman failed to show her lack of awareness that a sex act occurred or her inability to say no, being circumstances which could lead to sexual assault charges. He added:

*“There’s a misconception with some people that if somebody’s been drinking and someone has sex with them, there’s a rape. That’s not the law. The law makes you actually go further than that ... and based on the statements of the people that were there, and some people who had contact later, there was*

*just insufficient evidence.”* (*Associated Press, www.findlaw.com of 10/9/2009*).

John Bass, a Springdale lawyer representing the female student, said her family would “continue to explore all options” until this matter was resolved. University police officer Gary Crain informed the media that the female student had made a complaint saying she had been raped on 27 August at the Phi Gamma Delta house. Mr. Crain added that the student claimed the attack happened between 1.30 and 2 a.m. at the house, which is a short distance away from Bud Walton Arena where the basketball team plays. It was apparently “an acquaintance-type situation” which involved alcohol. The campus police agency declined to file charges after its own investigation.

Deputy Prosecutor Dustin Roberts said the woman and the three basketball players began dancing provocatively and others left them alone in an upstairs bedroom at the house that night. He added that, 15 minutes later, the fraternity member who lived in the room unlocked the door and found the woman engaged in sex acts with two of the men. Fraternity members ordered the woman and the players to leave the house. She remained lucid and talked with a friend on her way home (*Ibid*).

News of the investigation broke when television station KHOG broadcast an interview with Mr. Roberts about the case. The station reported that Roberts said charges could be filed as early as the next day, a statement from which Mr. Threet distanced himself, indicating that he was assuming “somebody got something confused or something”. The University’s athletic director, Jeff Long, later issued a statement stating that sports officials would review what happened and decide whether the athletes should face any disciplinary action. There could be academic repercussions for those involved in the complaint. University spokesman Steve Voorhies said the school’s code of conduct covers circumstances in which allegations don’t rise to criminal charges. Such disciplinary panels could suspend or even expel students.

It should be pointed out that the “Razorbacks” basketball team has had its share of off-field problems. Coach John Pelphrey has disciplined players several times in his two seasons as coach, more particularly at the end of the last season when he suspended Jason Henry days before the Southeastern Conference tournament for an unspecified violation of team rules. Mr. Henry is no longer with the team. In addition, after

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leaving Arkansas in August 2008, guard Patrick Beverley claimed that someone wrote a paper for him while he was with the Razorbacks. Earlier this year, the programme was put on notice by the US universities' sports supervisory body, NCAA, about its low academic-progress rate (*Ibid*).

### **Connecticut University footballer killed; man arrested (US)**

In late October 2009, it was learned that Jasper Howard, an American footballer, as well as another male student, were stabbed after a false fire alarm forced an evacuation during a dance organized by the University of Connecticut, for which the former turned out. Mr Howard later died from his wounds, whereas the other stabbed student was later released from hospital. This followed a fight between two groups which included students and non-students. The violence came barely 12 hours after the University team's 38-25 victory over rivals Louisville (*Associated Press at www.findlaw.com of 20/10/2009*). As the hunt for the perpetrator proceeded, there were disturbing reports that witnesses to the killing were being threatened with violence if they came forward with evidence. A 21-year-old man had been arrested in connection with the altercation, but was not charged with the killing (*Associated Press at www.findlaw.com of 23/10/2009*).

Later, another 21-year-old, John William Lomax, was arrested and charged with murdering Mr. Howard. His lawyer claimed that Mr. Lomax was trying to break up the fight and was not involved in the stabbing. Several others were arrested and had charges made against them arising from the incident (*Associated Press at www.findlaw.com of 28/10/2009*). No further details were available at the time of writing.

### **Football star blackmailer jailed (Italy)**

The wealth enjoyed by many top sporting performers can also have a downside in the shape of the unwanted attention which it attracts from the criminal fraternity. One such unsavoury character has proved to be a notorious Italian photographer, who was recently jailed for three years and eight months after attempting to extort thousands of euros from celebrities in return for not selling embarrassing photos of them to gossip magazines. The man dubbed "King of the paparazzi", Fabrizio Corona, was found guilty of blackmailing sports stars, who included the Brazilian footballer Adriano, from whom he demanded €40,000 (£36,000) not to publish pictures taken at a private

party where the former Inter Milan star was entertaining several female guests (*The Guardian of 11/12/2009, p. 30*).

The unscrupulous photographer's other victims were former AC Milan footballer Francesco Coco, who was photographed shirtless at a Milan disco, and motor cycling ace Marco Melandri, photographed at a nightclub standing next to a porn star. However, the Milan court acquitted Corona of attempting to extort €200,000 from Lapo Elkann, a member of the Fiat-owning Agnelli family, and of trying to blackmail another Italian footballer, Alberto Gilardino. After his jail sentence was read out, Mr. Corona pronounced himself ashamed to be Italian. He called his sentence "an embarrassment" and delivered himself of the opinion that, in order to be consistent, the authorities "should condemn all the photo agencies in Italy, who do exactly the same as I do". He added that he would appeal against the decision. None of Mr. Corona's victims turned up at the trial.

Corona has always claimed he was doing the celebrities a favour by offering them the photos at the same rates he would have required from the gossip magazines, claiming that he "could have earned a lot more". He was supported earlier in the trial last year when a lawyer representing Barbara Berlusconi, the Italian Prime Minister's daughter, claimed that a €20,000 deal to buy photos showing her client leaving a nightclub looking the worse for wear was not blackmail but "almost a courtesy". The convicted photographer has become a celebrity in his own right since the blackmail plot first hit the headlines in 2006, dating Argentinian model Belen Rodriguez and making regular television appearances, which almost inevitably included a stint on a "reality" show, *The Farm*, where he was voted off by the public during the third episode. Even during a two-month stay in jail while awaiting trial Corona managed to generate media interest, taking photos of himself showing off his muscles in his cell and throwing pairs of his underpants at female admirers from his balcony after he was released. He was once caught by a police phone tap informing his former wife, the Croatian model Nina Moric, that he was a "piece of shit" who "ruined lives" but that he no longer felt any guilt (*Ibid*).

Later this year a court will decide whether Mr. Corona should stand trial in Potenza for trying to extort money from a host of other top Italian names in show business.

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### **New Zealand rugby star charged with drink-driving (France)**

In mid-October 2009, it was learned that Byron Kelleher, the former All Black scrum-half, was charged with drink-driving and affray. He had been partying in the early hours when he “rear-ended” a Porsche and received bruising to an eye socket and a shoulder in an ensuing altercation (*The Independent on Sunday of 11/10/2009, p. 21*). The outcome of this charge was not known at the time of writing.

### **Jamaican international footballer killed**

In mid-October 2009 it emerged that Orane Simpson, an international defender who represented Jamaica, was killed after being stabbed in a violence-racked quarter of the nation’s capital, Kingston. At the time of writing, no arrests had been made (*Associated Press at www.findlaw.com of 14/10/2009*).

### **Charges dropped against Tennessee footballer (US)**

In late November 2009, it was learned that prosecutors had decided to withdraw charges of attempted aggravated robbery against Janzen Jackson, an American footballer playing for Tennessee. Charges were also dropped against Marie Montmarquet, who had been accused of driving the getaway car. However, at the time of writign charges were still pending against Mr. Jackson’s former team mates, Nu’Keese Richardson and Mike Edwards, who were accused of holding up two men at a convenience store (*Associated Press at www.findlaw.com of 23/11/2009*).

### **Pistorius arrested for assault (South Africa)**

Double amputee Oscar Pistorius is world famous for his victories in the Beijing “Paralympics” and for the controversy which surrounded his eligibility for such events (*Journals passim*). Mr. Pistorius, however, became involved in an entirely different type of controversy in September 2009 when he was arrested in Johannesburg for assault. It emerged that he spent the night in a cell after slamming a door at a woman who had been at a party held at his home (*The Daily Telegraph of 14/9/2009, p. 19*). No further details are available at the time of writing.

### **Plea agreement for Louisville players in police officer altercation (US)**

In mid-October 2009, two Louisville basketball players reached a plea agreement with prosecutors in the state of Indiana following an altercation with off-duty police officers at a restaurant earlier that month – during which one of the players had to be stunned with a Taser. Jerry Smith and Terrence Jennings each pleaded guilty to one count of resisting law enforcement and have been placed on probation for one year. In addition, they are required to complete 40 hours’ community service and pay fines amounting to approximately \$ 500 (*Associated Press at www.findlaw.com of 19/10/2009*).

### **Ex-NHL player Mike Danton granted full parole; reveals true target of murder plot (US/Canada)**

In mid-September 2009, former National Hockey League (NHL) player Mike Danton admitted that it was his father, not his agent, who was the intended victim of a failed murder-for-hire plot which sent him to gaol five years ago. He made the admission as he was granted full parole by the National Parole Board.

The native of Brampton, Ontario, in 2004 pleaded guilty in the United States to a plot which prosecutors had claimed targeted David Frost, Danton’s former junior coach who went on to become his mentor and agent. He was sentenced to 7½ years in prison in the United States and was transferred to a Kingston-area (Canada) facility in March, when he reached full parole eligibility.

In oral reasons for the decision, the board said whilst this was a very serious offence, Mr. Danton has benefited from therapy and would be a low risk. During the parole hearing, Danton said Mr. Frost became the would-be victim through a mix-up. He explained that after canvassing a St. Louis club he frequented trying to recruit a hit man, he called a girl he had been dating and she put him in touch with someone. The agreement was apparently that \$10,000 would be paid in order to have the person Danton believed was coming to kill him “taken care of”. He added that paranoia had gripped him, which he blamed partly on the use of stimulants and sleeping pills, and he believed someone was going to his apartment to murder him. He claimed that, over the years, there had been “conversations that pointed to someone who would have interest in ending my life and ending (Frost’s) life,” adding that he received “verbal confirmation” from a family member (*Associated Press, www.findlaw.com of 11/9/2009*).

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He then told the hit man to kill someone who would be in his apartment over two days, and Crowley noted Frost was there at the time. However, Danton said Frost was not the person he believed was coming to kill him. When parole board member Michael Crowley put it to him that it was clear that Danton “thought it was your father who would do you harm” the convicted sportsman replied in the affirmative. Mr. Danton added that his childhood was dysfunctional and his relationship with his parents, Steve and Sue Jefferson, became so strained that he changed his last name from Jefferson, has not spoken to his father since he was about 15, and admitted to tearing up and sending back the letters they wrote to him in prison.

When Mr. Frost became his coach at age 11, Danton is said to have clung to him as a father figure. He said Frost has been unfairly portrayed in court testimony and in the media as a violent, controlling, all-encompassing presence in his players’ lives. Mr. Frost was acquitted last year of four counts of sexual exploitation relating to his tenure as coach of the Junior A Quinte Hawks team in eastern Ontario in 1996 and 1997, a team that Danton played for (*Ibid*).

Conditions of his release specify that Danton is to have no direct or indirect contact with his father and no face-to-face contact with Frost, unless pre-approved by his parole officer.

### **Former Caribbean sprinter charged with sex assault (Bahamas)**

In mid-September 2009, it was learned that former sprint champion Andrew Tynes, of the Bahamas, was charged with sexually assaulting a 16-year-old boy who was a pupil at a school where he taught. He denied any wrongdoing and was released on bail. No trial date had yet been set at the time of writing (*Associated Press at www.findlaw.com of 17/9/2009*).

### **Brazilian footballer threatened after lost game**

In late August 2009, the manager of a second division football club in Brazil claimed that armed men threatened players in the locker room following a lost match. Four men bearing guns are said to have confronted the players after the Portuguesa team lost to Vila Nova. The club stated later that those who had made the threats were security guards accompanying a club member who had access to his facilities. Some players also claimed that they had been subjected to threats for some time because of the team’s string of poor results (*Associated Press at www.findlaw.com of 26/8/2009*).

### **Other US cases (all dates mentioned refer to 2009 unless stated otherwise)**

**Slidell, Louisiana.** In mid-October, former Seattle Seahawks footballer Terreal Bierria was arrested in connection with the killing of a Louisiana man, and charged on one count of first-degree murder. The authorities announced that the victim in question was Soron Salter, aged 29, who was found on the floor of a home with injuries indicating a violent struggle. They added that Mr. Bierria’s car was seen at the house and that he had admitted himself to hospital for cuts to his hands and arms (*Associated Press at www.findlaw.com of 20/10/2009*). No further details were available at the time of writing.

**Philadelphia.** In late October, Philadelphia police announced that former Temple University basketball star Dionte Christmas had been arrested on firearms charges. He was apparently stopped by Highway Patrol officers for erratic driving. Closer investigation seems to have revealed that he was found to be driving without a licence, and that the vehicle had a semi-automatic weapon under the driver’s seat. He was later charged with felony firearms offences (*Associated Press at www.findlaw.com of 23/10/2009*).

**Philadelphia.** Still in the Pennsylvania city, in late September a former police officer was found guilty of obstruction and lying to the authorities for having alerted former basketball player Jerome Richardson to an imminent drugs raid. A jury convicted Rickie Durham of warning the player about the raid, which occurred in August 2005, by means of an early-morning telephone call. Mr. Durham belonged to a drugs task force (*Associated Press at www.findlaw.com of 24/9/2009*).

**Troy, New York.** In late September, New York police charged Binghamton University basketball player Emanuel Mayben with the possession and sale of cocaine. Police announced that Mr. Mayben had 3.4 grammes of the drug on his person when he was arrested in his home town. He was charged in an indictment with selling the substance (*Associated Press at www.findlaw.com of 24/9/2009*).

**Houston, Texas.** In mid-September, Jacoby Jones, the Houston Texans footballer, pleaded guilty to driving whilst intoxicated in connection with a traffic incident which occurred in 2008. The court ordered him to spend one year in a new diversion programme for first-time drink-driving offenders (*Associated Press, www.findlaw.com of 23/9/2009*).

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**Upper Marlboro, Maryland.** In mid-September, local police announced that Cleveland Cavaliers basketball player Delonte West had been arrested after officers stopped him for speeding on a motor cycle whilst carrying two handguns and a shotgun in a guitar case (*Associated Press at www.findlaw.com of 18/9/2009*). No further details were available at the time of writing.

**Lowell, Massachussets.** In mid-September, former boxer Micky Ward was acquitted of punching his wife's stepfather in the face. His defence lawyer had claimed that Mr. Ward had acted in self-defence, whereas the recipient of the attack claimed that the puncg was unprovoked (*Associated Press at www.findlaw.com of 16/9/2009*).

**San Francisco.** In early September, a federal judge sentenced a Silicon Valley financier to more than 8 years' imprisonment for deceiving banks and investors into parting with millions of dollars in an attempt to purchase a professional ice hockey team as well as financing a lavish lifestyle. William Del Baggio III, the convict in question, had pleaded guilty to a felony charge of forging financial documents in order to obtain \$ 110 million in loans from several banks and two National Hockey League (NHL) owners. He used this cash in order to buy an interest in the Nashville Predators and to pay personal expenses which included \$4 million in gambling debts. the judge also ordered Del Baggio to pay over \$67 million by way of restitution. His interest in the team is to be sold and the proceeds distributed to his victims (*Associated Press at www.findlaw.com of 8/9/2009*).

**Tuscaloosa, Alabama.** In early September, University of Alabama footballer Brandon Deaderick had to be taken to hospital after having been shot in the arm during an apparent robbery attempt. The player was in the parking lot of block of flats when he was approached by a man wearing dark clothes, a dark cap and a blue bandanna over his features, according to police. When Mr; Deaderick refused to obey an order to "give it up", the assailant fired a gun, striking the footballer in the arm (*Associated Press at www.findlaw.com of 1/9/2009*). No further detqils are available at the time of writing.

**Columbia, South Carolina.** In late August, the South Carolina footballer Clifton Geathers was arrested for fighting outside a nightclub. He was charged with public drunkenness, resisting arrest and disorderly conduct (*Associated Press, www.findlaw.com of 24/8/2009*). No further details are available at the time of writing.

**Greeley, Colorado.** In early October, former major league pitcher (baseball) Shawn Chacon was arrested at a Colorado bowling alley on charges relating to unpaid gambling markers in Nevada. Earlier, a local newspaper had reported that Mr. Chacon faced a felony charge on connection with three cheques issued for \$50,000 (*Associated Press, www.findlaw.com of 6/10/2009*). No further details are available at the time of writing.

**Litchfield, Connecticut.** In early October, it was announced that Connecticut prosecutors had dropped charges against for assault and breach of the peace against Maryland basketball player Jordan Williams and four other teenagers. Earlier, an arrest warrant had stated that Mr. Williams had been accused of throwing an under-age girl to the ground in order to sop her fighting with his girlfriend in his home town of Torrington. Prosecutor Devin Stilson later stated that the charges had been dropped because that was the wish of everyone involved in the case (*Associated Press, www.findlaw.com of 6/10/2009*).

**Milwaukee.** In mid-August, Milwaukee police announced that European league basketball player Lavelle Felton had died from a gunshot wound which he had incurred whilst leaving a petrol station. He had apparently been shot in the head (*Associated Press, www.findlaw.com of 14/8/2009*). There were no details as yet of any arrests in connection with the shooting.

**Tallahassee, Florida.** In late July, it was learned that a prosecutor had dropped a felony charge against a Florida State (American) football player who had been accused of throwing a chair at a woman during an altercation in the school's student union building. Richard Goodman, the player in question, had earlier been charged with aggravated battery. He was charged six months after the fight when another participant in the brawl accused him of throwing the chair and seriously injuring a female student. However, Assistant State Attorney Jon Fuchs later lodged a court document stating that witnesses to the incident had named at least four other people as the chair-thrower, and that no-one had identified Mr. Goodman (*Associated Press, www.findlaw.com of 30/7/2009*).

**Bridgeport, Connecticut.** In late November, it emerged that three players on Sacred Heart University's lacrosse team had been charged with sexually assaulting an 18-year-old female student. According to a local newspaper, one of the players was having consensual sex with the woman in question, when he suddenly called the other two men to the room. It is alleged that

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these two then assaulted the woman whilst the other held her down (*Associated Press, www.findlaw.com of 24/11/2009*), No further details are available at the time of writing.

**Lawrenceville, Georgia.** In mid-November, it was announced that Atlanta Falcons defensive tackle (American football) Jonathan Babineaux had been arrested and charged with the possession of marijuana. More particularly it was alleged that the player had nearly 1.5 oz. of the substance on his person with intent to distribute. He also faced charges of having expired his car registration and driving without a licence (*Associated Press, www.findlaw.com of 12/11/2009*). No further details are available at the time of writing.

**Mooreville, North Carolina.** In late October, it was learned that racing driver A J Allmendinger had been arrested on a charge of drunken driving, having failed a sobriety test after being pulled over (*Associated Press, www.findlaw.com of 29/10/2009*).

**Miami, Florida.** In early November, former American footballer Lawrence Taylor was arrested as a result of a traffic accident. He was charged with leaving the scene of the accident with property damage, which is a second-degree misdemeanour. He was later released on a \$500 bond (*Associated Press, www.findlaw.com of 9/11/2009*).

# 3. Contracts

## MEDIA RIGHTS AGREEMENTS

### **New Olympic rights deals take shape**

During the period under review, there have occurred a number of changes in the contractual aspects of broadcasting future Olympic Games over the airwaves. Last year, the International Olympic Committee (IOC), which directs the biennial sportfest, broke off its long-standing arrangement with the European Broadcasting Union (EBU), which is an umbrella organisation of public broadcasters which had held the rights to Olympic broadcasting for over 50 years, and embarked on negotiations aimed at securing a new set of deals. In February 2009, the IOC awarded European rights for the 2014 and 2016 Games to the Sportfive marketing agency, in a deal worth \$342 million. This arrangement covers 40 European nations. Separate deals made with Sky Italia and FOX Turkey raised an additional \$250 million. Then, in early September of the same year, Spanish broadcaster RTVE acquired national broadcasting rights for the 2014 and 2016 events in a deal valued at \$100 million. These rights were awarded across all platforms, including free-to-air television, subscription TV, radio, the internet and mobile telephones (*Associated Press, at www.findlaw.com of 4/9/2009*).

At the time of writing, the IOC was still negotiating individual rights contracts in three sizeable markets, to wit, Britain, Germany and France. Just before going to press, the news broke that the IOC awarded the Brazilian rights for the 2014 and 2016 Olympics to TV Globo, as well as two other companies, in a deal worth \$210 million (*ibid*).

## SPONSORSHIP DEALS

### **Aeroflot to sponsor 2014 Olympics (Russia)**

The cash is also flowing into the Olympic organisers' bank accounts in terms of sponsorship money. In mid-August 2009 it was learned that Russian airline Aeroflot had agreed to act as domestic sponsor of the 2014 Winter Olympics, to be held in Sochi, in a deal worth over \$100 million. Thus the carrier became the fifth top sponsor of the games – along with telecommunications firms Rostelecom and Megafon, oil and gas company Rosneft and lender Sberbank. This brought the total amount raised by way of sponsorship to \$650 million, no mean feat in the current economic downturn (*Associated Press, at www.findlaw.com of 19/8/2009*).

### **Formula One sponsor suffers High Court setback**

Following the success of the Abu Dhabi Motor Racing Grand Prix in the autumn of 2009, the race's title sponsor, Etihad Airways, suffered an embarrassing defeat in the English High Court over a previous Formula One sponsorship deal. Etihad, which is the United Arab Emirates' airline, withdrew from a five-month-old arrangement with Spyker after Vijay Mallya took over the team and renamed them Force India in October 2007. Mr. Mallya also owns the rival airline Kingfisher, and had challenged Etihad's withdrawal through the courts. As a result, Force India were awarded £7.4 million by way of damages (*The Guardian of 5/11/2009, p. S2*). No further details were available at the time of writing.

## SPORTING AGENCIES

### **FIFA set to abandon attempts at regulating footballers' agents**

In mid-November 2009, it was learned that the world governing body in football, FIFA, was set to abandon all rules relating to player's agents – a move which could transform the global transfer market into a free-for-all. This was the portent of a circular distributed to all its 208 national associations which sought the latter's opinions on the proposed move, which amounts to FIFA withdrawing from its role as regulator of the international transfer market. This has prompted comments that "football is heading back to the wild west" (*The Guardian of 13/11/2009, p. S1*).

At a time when criminal investigations are in progress in various parts of Europe (including Britain) over allegedly unlawful goings-on in the football transfer market, the proposal has already prompted much adverse comment – notably in France. In the latter, the statutory authorities regulate sporting agents under national legislation. The legal director of the French Football Association, Jean Lapeyre, announced in no uncertain terms his organisation's intention to oppose this move. On the other hand, it has to be conceded that FIFA's stance probably reflects stark reality, since it has discovered that only 20 per cent of all transfers throughout the world are conducted by a licensed agent, and under its one-member, one-vote policy this move, which will eliminate a good deal of costly red tape, is likely to garner a good deal of support among the ranks (*ibid*).

### 3. Contracts

At present, the administrative burden of regulating agents rests upon the national associations. Even the tiny island of Sao Tome and Principe, off the West coast of central Africa, has three licensed agents operating from its shores. For major footballing nations, this presents no problem, and they might fear that the progress they have made in issuing strict licensing requirements could be undermined by this FIFA proposal. Indeed, at the time of writing there is even speculation that the world governing body might even prohibit national associations from having any involvement in regulating the activities of agents (*ibid*).

#### Major European Commission report on football agents

This issue is dealt with below under Item 9 (EU Law).

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#### LEGAL ISSUES ARISING FROM TRANSFER DEALS

##### More problems involving teenage signings

Quite a few past issues of this Journal has reported on the dubious practices employed by many a leading football club in order to acquire the services of young and vulnerable players from less wealthy countries or clubs, sometimes with dramatically adverse consequences for the player in question. We have also through these columns reported on both the disquiet felt in the top echelons of the game's governance at this state of affairs, and their intention to act in order to remedy its worst effects. Particularly the statement of intent emanating from Michel Platini, the President of European governing body UEFA, has been significant in this regard.

However, it was the world governing body FIFA which appeared to take the lead in giving practical effect to these statements of intent. In early September, it issued a statement that it had banned English Premier League side Chelsea from signing any players for the next 12 months on the grounds that it encouraged a French player to break his contract and join the club. The governing body's Dispute Resolution Chamber made this ruling after the club concerned, Lens, accused the London club of inducing Gael Kakuta into breaking his contract with the club and moving him to England. The panel also banned Mr. Kakuta from playing for four months, and ordered both Kakuta and Chelsea to pay Lens both compensation and a training fee (*Associated Press at www.findlaw.com of 3/9/2009*). At the time of writing, Chelsea were appealing against this decision

before the Court of Arbitration for Sport (CAS). They insisted that the signing in question was not "child trafficking", adding, somewhat disingenuously, that this was "something that happened two years ago" (*The Independent of 9/9/2009, p. 46*).

As matters turned out, however, this was not the only "under-age signing" controversy in which the West London club became enmeshed. Within two days of the FIFA ruling, another allegation of this nature surfaced, this time from an amateur French sports club, ASPTT Marseille, who started to investigate the legal implications of a move to Stamford Bridge involving Jérémy Boga, a promising 11-year-old. Robert Caturegli, the chairman of the club's football division, claimed that Chelsea pushed through the transfer by arranging accommodation and a car for the player's parents. He also claimed that French sides Lyon, Marseille and Bordeaux had taken an interest in the youngster's development, but that the latter's father, who had previously become separated from his wife and moved to London, contacted the English side about a possible transfer. In Chelsea's defence, it was claimed that they had been informed that the young player had already intended to join his father in London, where the latter lived within Chelsea's catchment area. Moreover, the club did not consider it had broken any international rules - Boga being under the age of 12. There was no requirement for Chelsea to seek international clearance (*The Guardian of 5/9/2010, p. S1*).

Nevertheless, the ASPTT club proceeded to investigate whether the circumstances of this move constituted an infringement of Article 19, being FIFA's edict on the international transfers involving minors. However, having taken legal advice on the matter, ASPTT ultimately chose not to pursue the matter with FIFA, stating that this decision was taken "for the good of the player" (*The Guardian of 10/9/2009, p. S2*). Technically, it was also possible to argue that, ASPTT were a sports club and not a football club, and therefore were not subject to FIFA or UEFA rules (*The Daily Telegraph of 10/9/2009, p. S15*). It was also pointed out that, amid all the accusatory finger-pointing at the English Premier League, the French sporting authorities were not exactly innocents abroad in such matters. During a debate in the French Parliament on the subject, Yannick Bodin, an opposition senator and secretary of the commission on culture, education and communication, chided the Secretary of State for Sport, former French rugby coach Baernard Laporte, for overlooking in his evidence those young African players who "slip through the net" in the French football academy

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system. According to Mr. Bodin, players “recruited” from Africa who fail to make the grade are “expelled” from academies and can find themselves in a situation where they could be regarded as illegal immigrants (*The Guardian of 10/9/2009, loc. cit.*).

It will not come as a surprise to learn that accusations of this nature were also swirling around other leading English sides. In mid-August 2009, Manchester United had to face up to an official complaint made to UEFA from the Italian First Division (Serie A) club Fiorentina, following their latest move to sign young Italian talent – on this occasion the national under-16 captain Michele Fornasier, who made his debut for the Mancunians during the Milk Cup tournament in Northern Ireland. United then offered a contract to the youngster, much to the displeasure of the Italian side who, under Italian rules, are unable to sign players until their 16th birthday. It may be recalled from earlier editions of this Journal that this was the same loophole which enabled the Manchester side to acquire the services of Federico Macheda, from Lazio, two years previously (*The Independent of 14/8/2009, p. 53*). The world governing body, however, indicated that action against the English club was inappropriate on the basis of the documentation provided by Fiorentina (*The Independent of 22/9/2009, p. 48*). The matter was formally settled a few weeks later, when FIFA gave the young Italian defender clearance to represent United’s under-18s (*The Guardian of 6/10/2009, p. 74*).

Further controversy surrounded Manchester United over their signing of French youth player Paul Pogba. In September 2009, the club from which the player had been lured away, Le Havre, announced that its lawyers were examining closely the details of the signing. This announcement was sufficiently serious to cause the transfer to hang in the balance, since the French Football Federation (FFF) refused to release the relevant documentation in order to ensure international clearance. In fact, at one point United threatened the French authorities with a complaint to FIFA over the delay thus incurred (*The Guardian of 9/9/2009, p. S2*). In the event, Le Havre made an official complaint to the world governing body.

However, this appeal to FIFA proved fruitless, as the latter approved Pogba’s transfer to the Premier League champions after a judge appointed by FIFA to rule on the case upheld United’s claim that Pogba could not have been offered financial inducements to break a contract for the simple reason that he did not have one. In their submissions, Le Havre had claimed that inducements had been offered to break a contract,

something United immediately denied, with manager Sir Alex Ferguson insisting it has never been club’s policy to pay the parents of players, as had been alleged. In fact, the argument never even got that far as the judge decided Pogba was still an amateur because he had never received anything beyond normal expenses to play for the club. Also, because of his age, Le Havre could not have obtained clearance for him to sign a professional contract anyway. In delivering his judgment, the judge wholly accepted Manchester United’s argument as to why international transfer clearance should be issued immediately, dismissing all Le Havre’s submissions (*The Guardian of 8/10/2009, p. S3*).

However, on learning the news, the French side vowed to carry on the fight with United, with a spokesman saying:

***“FIFA have not “validated” the transfer of Paul Pogba but have, as they always do in these situations, issued a provisional international certificate. The decision of the international body is therefore a non-event and is normal procedure.”***  
(*Daily Mail of 9/10/2009, p. 76*).

It was unclear at the time of writing whether Le Havre had made any move in order to obtain satisfaction. Nevertheless, United’s troubles in this field seemed to continue when it emerged that FIFA was also examining United’s approach for the Empoli youngster Alberto Massacci (*The Independent of 9/8/2009, p. 46*). No further details are available at the time of writing.

Then it was the turn of United’s neighbours, Manchester City, to become embroiled in a controversy of this nature, when it emerged that FIFA were investigating the Eastlands club over claims by French club Rennes that it had unlawfully “poached” a teenage player. 17-year-old defender Jeremy Helan was signed in February 2009 after an allegedly illegal approach, according to Rennes, although City insisted that it has acted within the rules and had not induced Mr. Helan into breach of contract. The French side maintained that it had a strong case against City, which is one of the world’s richest clubs since being bought a year ago by Abu Dhabi’s Sheikh Mansour, stating:

***“Manchester City must now realize the consequences of their attitude in the Helan case as it is even more illegal than Kakuta. In the week after the FIFA declaration on Chelsea, I would hope that it will be the same thing for Manchester City. Kakuta signed up for just a possibility of a full contract. For Helan there was definitely one there, under the terms of the pre-contract agreement, because he had played for his country. Manchester United said it***

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*was not possible to negotiate with us but for City now this is dangerous, though we are not expecting a decision from FIFA for perhaps several years.”* (Associated Press, [www.findlaw.com](http://www.findlaw.com) of 8/9/2009).

City responded with a statement to the effect that the dispute was between Rennes and Helan, who was originally targeted by rival Manchester United. They pronounced themselves “aware of the ongoing contractual dispute” in the French industrial courts between Mr. Helan and Stade Rennais, and that the “dispute between the player and the club” predated any interest from Manchester City (*Ibid*).

Within days of City making this statement, however, it appeared that they had been informed of the teenage defender’s contractual obligations towards the French club Rennes a month before dismissing the claims and signing him for their academy. In fact Rennes had a file on the case which includes the letter they wrote to City’s solicitor George Davies on 27/1/2009 and another to executive chairman, Garry Cook, and chairman, Khaldoon al Mubarak, a day later, reminding them of the player’s contractual obligations to them. Davies replied to say that City did not consider Hélan to be tied to the French side.

Nevertheless, City remained confident that they had acted entirely within the bounds of football law in the new case, details of which were revealed by a leading British newspaper. Legal advice was sought on the validity of the original contract, which Hélan signed at the age of 13 before heading for the French Football Federation’s (FFF) famed Clairefontaine academy, and the response is understood to include the conclusion that it was void on at least three grounds. Rennes, for their part, insisted that the contract to which Hélan was tied was binding enough to make Manchester United abandon their pursuit of the same player, having offered Rennes a fee for his services. The Rennes technical director, Pierre Dreossi, informed the same British newspaper that his club had held discussions with United about Hélan after the defender decided he wanted to play at Old Trafford instead of joining them after Clairefontaine. He claimed:

*“We had a meeting with Manchester United and they made us an offer about this player. We discussed the offer once but United [realised the position] and said: ‘It is not possible to make a deal with you as you do not want to sell.’ They said, ‘fair play,’ and it was closed but the player went in secret to Manchester City. Our letters to City said it was not possible to sign him as he was our player. City have played him anyway but they can’t. It’s forbidden. He has a contract with us and can’t have*

*a contract with two clubs. We told them that.”* (*The Independent* of 9/9/2009, p. 46)

The loss of Mr. Hélan from the national youth system has been a source of more indignation in France than the case of Kakuta over the previous 18 months. United’s initial approach prompted a robust response from French sporting newspaper L’Equipe, including the headline “Manchester pillerait Clairefontaine?” (“Is Manchester pillaging Clairefontaine?”). That was in May 2008 when Old Trafford, rather than Eastlands, appeared to be the player’s destination. Reports on the case at that time suggested that he was also attracting the interest of Milan, Newcastle United and Everton. Ironically, Rennes are known in France as the club which provides the greatest incentives to buy young players from smaller clubs. However, Mr. Hélan was theirs from an early age and they have certainly been supported within the country on this case. It is understood that the French football league, the Ligue de Football Professionnel (LFP), intervened on their behalf when United had made their move.

Certainly it is clear that the French federation blundered initially when a secretary sent the player’s International Transfer Certificate (ITC), clearing his move to Manchester City, to the Football Association by mistake. However, Mr. Dreossi said that the federation had realised its error and, within the next seven days, had contacted the FA to point it out. This whole scenario is complicated by the fact that Mr. Hélan was attempting to establish in the French courts that his contract was void. This case has now reached a French employment court, after the French League commissions and the French Olympic Committee rejected his case. Rennes, for their part, insist the case is actually more clear-cut than that of Kakuta, (whose move to Chelsea and the west London club’s subsequent transfer window ban, as reported above, prompted the current examination of the signing of teenage players). Whereas Mr. Kakuta’s pre-contract agreement offered the possibility of a proper contract, Hélan’s agreement guaranteed a two-year deal if he represented the France while at Clairefontaine. Hélan, now 17, was France’s Under-16 captain, a year before Kakuta. FIFA later confirmed that the Hélan case had been referred to it (*Ibid*).

The controversy on this subject has not, however, been a European monopoly. Some disquiet was uttered when the news broke that a 12-year-old Bolivian boy had been hailed as the world’s youngest professional footballer after making his debut in a first division match in La Paz. Mauricio Baldivieso appeared for the

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final nine minutes in a game between La Paz FC and Aurora, where his father is coach. Aurora were losing 1-0 and a hefty tackle left the youth bruised and briefly close to tears but he ended the match on Sunday as a celebrity. In record book terms he beat South America's previous youngest professional, Fernando García, who made his debut in Peru in 2001 aged 13. According to FIFA records, Souleymane Mamam of Togo became the youngest player to take part in a World Cup qualifying match in 2001, at the age of 13. He may have played professionally when he was 12 but there are no records (*The Guardian of 24/7/2009, p. 7*).

Baldivieso's passion for the game is not in question; however, as regards his father, Julio César Baldivieso, who is Aurora's player-coach, accusations of nepotism tinged the precocious debut. The former international, who played in the 1994 World Cup, hopes Bolivia will produce global stars. He had originally hoped to introduce Mauricio when Aurora were leading but sent him in when the team were a goal down to La Paz FC. A defender showed the debutant no mercy and brought him down with a foul. The 12-year-old was distraught and had to be treated by medical staff, but returned to the fray for the final four minutes, earning a standing ovation. Some doctors said pitting Mauricio against adults exposed him to potentially permanent injury because his bones were not yet fully grown. On the other hand, Julio César Baldivieso said his son engaged in karate and could handle the demands of professional football. The debut was not a stunt, he said, adding that he would turn out this year to play alongside his son (*ibid*).

Meanwhile, in Europe the litany of claims against the big clubs was obviously gathering pace. As Rennes cried foul against Manchester City, a club which has always symbolised the grow-your-own philosophy, Liverpool FC were digesting a domestic version of the Gaël Kakuta saga – suggestions from Crewe Alexandra that their approach for their 15-year-old Matt Clayton, one of the latest in the long production line of youth talent at Gresty Road, had been unlawful. There has been no official complaint to the Football Association or Premier League but, at the time of writing, the case was likely to be settled financially between the clubs. Amid the welter of negativity towards football's elite, it is useful to pause and consider what Everton are paying in this case, i.e. £1m for a player utterly unproven at senior level, being well off first-team standard and destined to fight to progress at Everton's Academy (*The Independent of 8/9/2009, p. 48*). It may cause little wonder that clubs are seeking alternative ways to scout and buy, given the current

demands of the top Leagues. The establishment of feeder clubs in overseas countries has become an increasingly integral part of the system, offering resources to overseas clubs who might otherwise take nothing for losing their players and a place to develop individuals who cannot get British visas until they become internationals. Belgium is a popular partner. For Liverpool, the Hungarians Krisztian Nemeth and Andras Simon have emerged from the feeder club MTK Hungaria. Further afield, Manchester United have announced a link with Desportivo Brasil, whilst Chelsea have gone a step further, seconding their performance director Mike Ford to head a South American scouting operation (*ibid*).

Where does all this leave UEFA's president, Michel Platini, and his much-publicised desire to ban the transfer of under-18 players? As the controversy over the transfer of young players to England, described above, gathered momentum, it transpired that this ambition cherished by Europe's governing body could be realised along the same legal lines as the home grown-players rule it has successfully introduced, and which has been reported in earlier issues of this Journal. Although such restrictions on the free movement of footballers would seem to be a prima facie restraint of trade under European employment law, the European Commission interprets them merely as "indirect discrimination" (although in some other contexts the European Court of Justice has deemed this to be unlawful also). This means the door is ajar for Mr. Platini's radical plan, since UEFA has successfully persuaded the European authorities to agree to the rule that insists on a quota of home-grown players. A spokesperson for the European employment Commissioner, Vladimir Spidla, said:

***"A proposal banning transfers of under-18-year-old players might constitute indirect discrimination in the field of free movement of workers. There is well-established case law that provides that indirect discriminations in the field of free movement of workers can be justified. But only if general interest objectives are being pursued and that the differential action is legitimate, proportionate and necessary to reach the objectives pursued."*** (*The Guardian of 8/9/2009, p. S2*)

An alternative route would be for all national governments to bring their employment law into line with that which applies in England and Germany, where footballers may sign full professional contracts aged 16. But if Mr. Platini can persuade the Commission that his objectives are for the game's social and educational benefit rather than being a means of straitjacketing English clubs, the ban will be approved (*ibid*).

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#### EMPLOYMENT LAW

##### **Will French salary cap put an end to “Channel hopping” in rugby?**

At a meeting in Paris in mid-December 2009, a vote was taken which has major implications for players, clubs and unions across the rugby map. The annual assembly of the board of the Ligue Nationale de Rugby (LNR), which governs France’s two leading domestic divisions, formally agreed to adopt a salary cap from the start of next season. Henceforth, clubs across the Channel will be restricted to an annual budget of 8million (£7.5m). It could be observed that this is a considerable sum to work with, especially compared to the limit of £4.4m imposed on the (English) Guinness Premiership teams. However, it is expected to make a tremendous difference to some of the Gallic big-spenders. In the course of 2008, leading side Stade Français’s spending topped the 20 million mark, so the Parisian club will need to reduce their gravity-defying signings. The same could apply to Toulouse, Toulon, Clermont Auvergne and Perpignan (*Daily Mail of 16/12/2009, p. 99*).

In addition to voting for the salary cap, the LNR decided to institute a quota system from next season, with 40 per cent of players at a club having come through French academies, rising to 50 per cent the following season and 60 per cent the next. The impact of these measures will be considerable, and it could be said that the “rugby gold rush” will soon be a thing of the past. French clubs have enjoyed dominance in the world transfer market for the last few years, but both the salary cap and the quotas are expected to redress that balance immensely. At the English Rugby Union headquarters in Twickenham, there will be sighs of relief, echoed in union headquarters throughout the southern hemisphere. England’s doomsday scenario of a mass player exodus across the Channel, following the likes of James Haskell, is now unlikely to materialise. It is also likely that the news will be welcomed in Australia, New Zealand and South Africa. For years, these countries have struggled to keep a hold on their top players, particularly after the French clubs began throwing euros around like confetti. Deals such as that which Dan Carter signed with Perpignan, reportedly worth £35,000 per game, are unlikely to be repeated (*Ibid*).

There are ramifications for Argentina too. If they are to be accepted into an expanded Four Nations tournament from 2012, one of the stipulations is that the bulk of their players should be based in the southern hemisphere. With such tempting wealth

available in France, that scenario appeared fanciful; however, the developments described above make it look more feasible. However, the countries concerned may have one slight reservation, in that France’s renewed emphasis on youth development will assist the future prospects of its national team (*Ibid*).

##### **Employment issues continue to beset West Indies team (cricket)**

From previous issues of this Journal, it will have been noted that, during the past few years, contractual disputes have caused disunity and strife within the West Indies cricket team, to the point where it may well have affected standards on the field of play. The affair seemed to have reached an impasse in August 2009, when officials announced that the dispute had not been resolved, in spite of the intervention by a regional statesman. The Caribbean Community, a trading block of 15 nations, had appointed Shridat Ramphal, once a Commonwealth Secretary-General, to oversee a three-week round of talks with the striking players, but this exercise finished without agreement (*The Times of 11/8/2009, p. 59*).

Concern at this state of affairs has not been restricted to those involved in the game at the Caribbean level. In early October, the West Indies Cricket Board (WICB) was issued with a warning that they should settle the dispute, which had led to the absence of their leading players from the Champions Trophy, or face severe consequences. During the build-up to a crucial meeting of the International Cricket Council (ICC), the world governing body in the sport, some member states made it clear that they favoured moving the 2010 World Twenty20 championship away from the West Indies. This possibility was avoided following a teleconference between representatives of the ICC and the WICB, given the shortage of time and the fact that there were few alternative host nations available (*The Daily Telegraph of 5/10/2009, p. S18*).

However, the ICC did send a shot across the West Indies’ bows by making it clear that they may under no circumstances send an inferior team on their tour of Australia later that year. The broadcasters employed by the ICC, i.e. ESPN, are contractually entitled to expect each member country to send its strongest side to a global tournament. In theory, they could attempt to claim damages for the non-attendance of such stars as Chris Gayle and Shiv Chanderpaul at the Champions Trophy. Furthermore, if the West Indies failed to produce a first team for its own competition in May 2010, this would count as an unmitigated disaster. On

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the other hand, the ICC was fully aware of the need to support the West Indies as the latter suffered a series of internal ructions, caused not only by the industrial strife referred to above, but also by the threat that Trinidad and Tobago might try to compete as a separate nation (*Ibid*).

#### **ICL faces legal action over allegations of unpaid wages (India)**

The West Indies are not the only nation where the top echelons of cricket have experienced industrial problems. In early December 2009, former England international Paul Nixon confirmed that he was one of several international players awaiting payment from the Indian Cricket League, one of the recently-formed competitions attracting top performers from around the globe, more than one year after its last tournament. This news came as the lawyers representing the ICL set in motion a “restraint of trade” action against the cricket establishment. However, the allegation of unpaid wages meant that, in all probability, the ICL will soon be fighting two legal cases simultaneously, after the Federation of International Cricket Associations (FICA) announced that it would be taking action of its own against the ICL for non-payment of “millions of dollars” to players, match officials and support staff. One leading agent claimed that his players had contracted an annual salary of \$250,000, payable in four tranches, of which the final quarter had failed to materialise (*The Daily Telegraph of 2/12/2009, p. S17*). Tim May, the former Australian test spinner, now the Chief Executive of FICA, commented:

***“The players are sick and tired of the broken commitments from ICL and the evasiveness of various ICL officials. Now, after exhausting all reasonable efforts to settle the issue amicably, they have no other option but to contemplate legal action against the ICL” (Ibid).***

At the time of writing, the legal action contemplated had not yet been initiated.

#### **Will Wenger legal action change the face of football?**

“Club v country” is an issue that regularly surfaces in these columns, and the chances are that it will be revisited quite frequently in the near future. If, as was announced in mid-December, English Premier League side Arsenal proceed with their threat to take legal action against the Netherlands Football Federation (KNVB) for damages over the injury incurred by striker Robin Van Persie whilst he was on international duty,

the face of international football could be changed for ever. Having damaged ankle ligaments during a friendly fixture with Italy, the star forward was set to miss most of the domestic season (although he was expected to be fit for World Cup duty). More particularly the London club’s manager, Arsène Wenger, considers that clubs are being treated disdainfully by international federations, as the former are often faced with sizeable wage bills when their employees are put out of action when representing their country. He said:

***“We are working on this with our lawyers and we are definitely going for it. I expect financial compensation for the damage it can make to the championship and the salary involved. It is especially frustrating to lose your players for the rest of the season in a friendly game” (The Observer of 13/12/2009, p. S1).***

Mr. Wenger was not impressed by the medical treatment which the Dutch player received from his national association, and alleges that the injury was misdiagnosed. He claimed that, initially, the KNVB described it as a “small problem”, and that the player consulted a Serbian doctor. However, it was only when Van Persie returned that, apparently, the Arsenal authorities discovered that there was in fact a great deal more damage. Mr. Wenger attributed this to the fact that, in Holland, there was a fight “between the national doctor and the guy that did the surgery”. The Arsenal manager, however, wants to force the issue for a wider purpose, i.e. to effect an overhaul in the balance of power which he believes favours international federations over clubs. He pointed to the anomaly of players being paid by the clubs and then incurring injuries when playing for another team, describing this situation as indicating “something completely wrong with the system” (*Ibid*).

It will be recalled that the issue of compensation has given rise to court litigation before, more particularly in a long-running dispute between Sporting Charleroi and FIFA, in which the Belgian club, supported by Europe’s top teams in the shape of the now-defunct G14, sought damages from the world governing body for an injury suffered by Abdelmajid Oulmers whilst playing for Morocco in a friendly match against Burkina Faso in 2004. The case was abandoned in early 2008 when the European Club Association was formed to replace the G14 group. Under an agreement made with European governing body UEFA and FIFA, clubs were to be handsomely compensated for players taking part in the European Championship and the World Cup. However, there is no compensation available for players participating in qualifying games, friendly

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fixtures or continental championships outside Europe. This could change if Arsenal are successful in their legal challenge. This may result in poorer federations not longer being able to employ the services of their best players for fear of having to pay enormous amounts by way of compensation in the event of injury. For the latter, Wenger suggests that FIFA should foot the bill (*Ibid*).

This column will naturally follow this saga with the keenest of interest.

#### **Court denies bid for reinstatement by former LA Dodgers Chief Executive (US)**

From time to time, a divorce action has implications for employment law, and this was certainly the case with Jamie McCourt, former Chief Executive of American football side Los Angeles Dodgers. She was dismissed by her husband Frank, who owns the Dodgers, for allegedly having an extramarital affair with her bodyguard and performing poorly in her managing role. Divorce proceedings were set in motion, during which Superior Court Commissioner Scott Gordon ruled that, in Los Angeles, there was no state law which is appropriate to support Ms. McCourt's bid for reinstatement. She had argued that she should recover her employment on the grounds that she is the joint owner of the team. She also demanded over \$300,000 by way of spousal support and perquisites such as travel by private jet if she was reinstated (*Associated Press, www.findlaw.com of 5/11/2009*).

#### **NFL commissioner seeks change in employment law (US)**

Frustrated by court decisions which have prevented the suspension of two (American) footballers who tested positive for banned substances, NFL commissioner Roger Goodell is asking Congress (the US Parliament) for assistance. In a testimony prepared for a House Energy and Commerce Subcommittee hearing held in early November 2009, he stated:

***"We believe that a specific and tailored amendment to the Labor Management Relations Act is appropriate and necessary to protect collectively bargained steroid policies from attack under state law. Recent court decisions call into question the continued viability of the steroid policies of the NFL and other national sports organizations"*** (*Associated Press, www.findlaw.com of 3/11/2009*)

A copy of his testimony was obtained by The Associated Press news agency.

The National Football league (NFL) had attempted to suspend Minnesota Vikings Pat Williams and Kevin Williams for four games, but the players took legal action against the League in a state court, arguing that the league's testing practices infringed Minnesota laws. The case was moved to federal court, and the NFL players union brought a similar action on behalf of the Williamses as well as those New Orleans Saints players who were also suspended. In May 2009, a federal judge dismissed the union's suit, as well as several claims, in the Williamses' case, but referred two claims involving Minnesota workplace legislation back to state court. There, a judge issued an injunction prohibiting the NFL from suspending the players and has scheduled the trial for mid-2010. The previous September, a federal appeals court panel agreed with those decisions, essentially allowing the Williamses, who are not related, to continue playing while the case proceeds in a state court.

The Vikings players tested positive in 2008 for the diuretic bumetanide, which is prohibited by the NFL because it can mask the presence of steroids. The players acknowledged taking the over-the-counter weight loss supplement StarCaps, which did not state on the label that it contained bumetanide. Neither player is accused of taking steroids (*Ibid*).

The court ruling referred to above led the NFL to allow New Orleans defensive ends Charles Grant and Will Smith, who had also been issued four-game suspensions, to continue playing. Both players tested positive after using StarCaps. DeMaurice Smith, executive director of the NFL players union, claimed that this case differs from others. He said Dr. John Lombardo, who oversees the league's steroid policy, learned that StarCaps contained bumetanide but failed to inform the players. In his prepared testimony, Mr. Smith said:

***"Frankly, the fundamental failure of that doctor to ensure immediate disclosure of the fact that StarCaps included bumetanide violated his paramount duty as a doctor - to protect patients, in this case, our players"*** (*Ibid*)

Mr. Smith called for changes to the league-union steroid policy that would mandate the NFL notify players where it learns that a product contains a banned substance.

Rob Manfred, Major League Baseball's executive vice president of labour relations, also discussed a legislative remedy in his testimony, claiming that a narrowly drafted statute "could solve the problem

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faced by professional sports” whilst preserving the role of collective bargaining in drug programmes without interfering with the various states’ prerogatives.

However, Michael Weiner, general counsel at the Major League Baseball Players Association, said that legislation is unnecessary. A bill to pre-empt state law, he argued, would stand for the unusual proposition that parties to a collective bargaining agreement “can contract for that which is illegal under state law.”

#### **NBA locks out Referees, later settles dispute (US)**

It is a sad fact that labour relations in professional sports can be notoriously contentious. Players strike, owners lock out players, referees strike, owners lock out referees – it has happened quite a few times, particularly in North American sports. Employment disputes in professional sports almost always revolve around the periodic renewal of collective bargaining agreements (CBAs), being contracts between leagues and unionized employees which specify all the details of the employer-employee relationship and usually apply for five years, or thereabouts.

The latest chapter in this sad saga has pitted the NBA against referees. Negotiations between the body governing basketball, the NBA, and the National Basketball Referees association (NBRA), the union which represents NBA referees, broke down in late September 2009 and appeared to be stalled. The points of contention were the “usual suspects”: salaries, travelling expenses, and retirement benefits. The NBA wants to scale back pension benefits and peg salaries at a certain level over the life of the CBA, citing the effects of the economic recession on the teams’ earnings. The referees, on the other hand, want this CBA to run only two years, instead of the usual five, so that they can re-negotiate in an improved economic climate in the future and, of course, requires salary increases (<http://thesportseconomist.com> of 29/9/2009).

One unusual feature of this particular labour dispute was that the NBA released information about their offer to the press, probably in an attempt to coerce the NBRA into striking a deal. These details are seldom made public, and the NBRA was “crying foul” (so to speak). The NBA claimed that “entry level” referees earn \$150,000 per annum, whereas experienced referees make upwards of \$550,000. The union claims that entry level salaries are \$91,000 and experienced referees make less than \$400,000. The severance package paid to retiring referees, reported to be

\$575,000 by the NBA, was also under negotiation and a matter of dispute (*ibid*).

Thus it was that the NBA opened the season with non-union referees, drawn from the WNBA, the NBA development league, and other places. The same sequence of events occurred in 1995, this being the last occasion on which the NBA and the NBRA failed to reach agreement on a new CBA. Because reasonable substitutes for NBA referees exist, it seemed unlikely that the NBRA could hold out for too long. Referees do not as a rule have as much bargaining power as players in labour negotiations.

The NBA accordingly felt sufficiently confident in its roster of replacement referees – even the two it had previously dismissed. It began pre-season play with 62 referees, of whom it was claimed that more than half had officiated in the NBA Development League, and all but five have worked the summer league. The NBA also claimed that the two referees with league experience, Michael Henderson and Robbie Robinson, were some of the best replacements available. Realizing the scrutiny under which the replacements would inevitably come, the league reminded teams about its rules against publicly criticizing the officials. However, senior vice president of referee operations Ron Johnson expressed the belief that the teams would not have much to complain about. Thus Denver opened the preseason schedule at Utah, and the refereeing team of Tre Maddox, Deldre Carr and CJ Washington had an uneventful game. They called 69 fouls and only a handful drew a noticeable reaction. Players mostly shook their heads and smiled after the whistle until the third quarter, when Utah coach Jerry Sloan had a mini-outburst after Paul Millsap was called for fouling Carmelo Anthony. Mr. Sloan leaped out of his seat, barked a few statements at Carr and resumed his seat. The replacements were to be paid around \$1,100 per game, the same rate as that enjoyed by a first-year official and more than they were paid in the D-League or WNBA (*Associated Press, www.findlaw.com* of 2/10/2009)

The League had the replacements in training camp the next weekend, but thought it would not need them. The NBA said the referees union had agreed in principle on a new contract the previous Friday, but had backed out of the deal two days later. The league then told teams it was going ahead with the reserve referees. In spite of the reassurances given, Joel Litvin, President of League and Basketball Operations said he expected some players to vent their spleen about the quality of those officiating, as a result of which the

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League sent a memo to the teams warning them of the penalties for comments about the referees in hopes of preventing the frequent complaints that were heard during the last lockout in 1995.

The NBA expected the standard of refereeing to be stronger on this occasion because it is relying on replacements from within its own system. While the 1995 backups were mostly from the Continental Basketball Association, this time 50 are from the D-League, WNBA or NCAA Division I. Mr. Litvin commented:

***"When you work in an NBA summer league, or work in the D-League, you are essentially working for our referee operations staff. Applying our rules, the NBA rules, our call interpretations, our mechanics, and these are all people who have officiated NBA players before."*** (Associated Press, [www.findlaw.com](http://www.findlaw.com) of 1/10/2009)

Only Messrs. Henderson and Robinson had officiated in NBA games, but had been dismissed afterwards. Their reemployment came as a disappointment to the union. Johnson said while they were dismissed because their performance failed to measure up to the standard of regular referees, it was good enough for the replacement group. Senior Vice President of Referee Operations Ron Johnson commented:

***"People don't just get fired because they're incompetent, they get fired because relative to the performance of the staff standard. I was not here when they were released. We know why they were released. Indeed, they've gotten some experience, they've stayed in the community of practice. I think they're ready to go"*** (*ibid*)

However, as has been noted earlier, the referees were always in a precarious position, and, with the lock-out just one month old, the union and the NBA agreed on a two-year contract, ending a lockout. The officials voted to ratify the deal that was reached earlier that week. No details of the vote were provided, nor were the terms of the agreement ([www.nba.com](http://www.nba.com) of 23/10/2009).

#### OTHER ISSUES

##### **America's Cup in rough waters with New York judge and feuding billionaires**

The legal wrangles surrounding the most coveted award in the world of international sailing have adorned the pages of these journals before. However, the legal repercussions of the latest dispute have shaken the tournament to its foundations, to the point of seriously calling its future seriously into question.

Several years ago a Maori protester walked into the Royal New Zealand Yacht Squadron and battered the America's Cup with a sledgehammer. The damage done on that occasion to the oldest international sporting trophy was nothing compared to the blow inflicted on its reputation this week by a combination of a New York judge, a 19th-century contract, two feuding billionaires, Iranian militants and a sex scandal involving a sheikh. In late October 2009, the New York Supreme Court ruled that the next sailing regatta for the America's Cup, first contested in 1851, cannot take place in the United Arab Emirates, as requested by Alinghi, the holders, who are owned by Ernesto Bertarelli, a Swiss pharmaceuticals tycoon. This leaves the competition, which legally has to be held by February, without a venue and with little chance of Mr Bertarelli reaching an agreement on its future with Larry Ellison, the American computer magnate who owns BMW Oracle, the official challenger (*The Times of 29/10/2009, p. 67*).

The ruling referred to above was the eighth legal judgment to be made in the increasingly bitter dispute between the men, who are worth a combined £20 billion. Lawyers for Alinghi claimed that the ruling was cataclysmic and would cause "colossal harm to the sport". Oracle retorted with a claim that Alinghi tried to fix the rules. Justice Shirley Kornreich agreed with Oracle that under the original deed of gift governing the cup, a regatta could not be held in the northern hemisphere during winter. Alinghi said that the requirement had been overturned in a ruling last year. The judge rejected the claim by Oracle that the little-known Gulf emirate of Ras al-Khaimah was unsafe. Oracle had asked the US State Department to assess security in the emirate, fearing a terrorist attack on an American team competing so close to Iran (*ibid*).

Alinghi wanted the regatta to take place in the Gulf because the flat water and gentle winds would suit its 90ft (27m) catamaran. While Alinghi could choose any southern hemisphere venue, Oracle pointed to a

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separate rule by which it must have six months' notice. That leaves Valencia in Spain as the last resort. The sides agreed last year that it was acceptable, but that was before a judge ruled that the regatta had to be in February. Oracle has a heavier trimaran that will perform better in the Mediterranean conditions in February.

The dispute has involved a good deal of muck-raking. A report appeared three weeks ago on an American news website owned by Ted Turner, a former America's Cup-winning sailor and a friend of Mr Ellison. It claimed that the Crown Prince of Ras al-Khaimah had been arrested in 2005 and accused of sexually assaulting a housekeeper in Minnesota. The case was abandoned through lack of probable cause. Meanwhile, would-be contenders for the cup, including a British entry called Team Origin, skippered by Ben Ainslie, the triple Olympic gold medal-winner, have been banned from competing in the next cup by an earlier court ruling between Mr Bertarelli and Mr Ellison. Sir Keith Mills, the head of Team Origin, expressed relief that the judge had not changed the date of the next cup, but added:

***"There is a real groundswell of opinion that the governance around the cup has to change for future regattas. The sooner we get this one out of the way, we can get on with a proper America's Cup."*** (*Ibid*)

Russell Coutts, the Oracle skipper, said that he accepted that the America's Cup has always been hard to win, but added that "you shouldn't have rules that make it impossible for the defender to lose." For his part, Brad Butterworth, the skipper for Alinghi, commented that great sportsmen sought victory on the field of play (or, in this sport, on the high seas), and that "a sportsman seeking to win through the courts only taints any victory."

More legal battles are in the offing. Oracle began a suit this week to remove Société Nautique de Genève, the Swiss club backing Alinghi, from its position as trustee of the cup. If that is upheld, a third party would arrange the regatta.

#### **Talks could settle lawsuits against Miami Heat star Wade (US)**

The forays made by some sporting stars into the world of business can backfire spectacularly on them, particularly if, as seems to be the case here, they suffer from a sad lack of guidance. Thus it came to pass that the legal team behind Dwyane Wade, one of the star performers for leading basketball side Miami Heat, invested their hopes in the contingency that negotiations would assist him in him resolving legal

disputes which could otherwise be an off-court distraction if they carried on into the playing season. The mediation session could ultimately result in settlement of several lawsuits claiming that he unlawfully walked away from outside business ventures. Without a quick resolution to the legal proceedings – or their postponement until after the season – the team employing him rightly feared that Mr. Wade could be risking injury by focusing on them instead of training (*Associated Press, www.findlaw.com of 15/9/2009*).

At the time of writing, Mr. Wade and his lawyers were set to begin talks with former partners who are taking legal action against him over a failed chain of sports memorabilia restaurants and a charter school operation for inner-city youngsters which opened successfully in spite of Mr. Wade's absence. The lawsuits claim combined maximum damages against Wade of a sum approximating \$150 million.

With the NBA season around the corner at the time of the legal dispute, it was clear that his team wanted to avoid legal distractions for Wade, their franchise player and the previous year's leading NBA scorer. In the aforementioned schools case, the Heat club averred that Wade would not be able to stay in shape if he was continually involved in legal proceedings for weeks during the season. According to his lawyer, Alan Fein:

***"Robbing Dwayne (sic) Wade of rest time, utilizing every waking moment between games, practices and arbitration hearing, and long travel in between, would severely compromise his physical capacity, and subject him to an increased risk of serious injury. There is no compelling need to subject Dwayne Wade to these risks."*** (*Ibid*)

Another basketball star has faced a similar juggling act, albeit for different reasons. As was reported in previous issues of this Journal, during the 2003 season, the Los Angeles Lakers' Kobe Bryant was embroiled in a rape case that sometimes required him to appear in court during the day and then fly to a game that night, even during the playoffs. That case was eventually dropped. The Heat want an arbitrator in the charter schools case to wait until the NBA season ends – as late as next summer if the Heat do well in the playoffs – rather than going forward as scheduled in late November.

That might not matter if the broader mediation session which had started at the time of writing brings most of Mr. Wade's legal troubles to a close. It is as yet unclear how long the talks could last. Wade attorney Michael Kreitzer claimed that the Heat star wants all issues to be tabled during the negotiations. The mediation

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session was ordered by a federal judge in an antitrust case accusing Wade of seeking a South Florida monopoly on his sports memorabilia, the sales of which were to be a cornerstone of the failed D. Wade's Place restaurant chain. Wade also was sued by his former partners, Mark Rodberg and Richard von Houtman, for breach of contract in the restaurant venture. A similar case brought by Rodberg accuses Wade of walking away from obligations to the charter schools, now known as Mavericks in Education Florida LLC. Wade has accused von Houtman of defaming him in e-mails to Heat president Pat Riley, and von Houtman has filed a countersuit to that.

Without a deal, Wade could find himself in courtrooms and law offices for months instead of focusing on the Heat season which was due to start with training camp in late September 2009. The antitrust case also has turned into a major problem for Mr. Riley, who has refused to give a deposition despite a subpoena. Alan Fein, the Heat lawyer, has called the lawsuit frivolous and insisted in a court documents that Riley doesn't know enough about the value of Wade's memorabilia to provide any insights.

This has prompted the restaurant investors to require U.S. District Judge Kenneth Marra to order that Riley should appear for his deposition. He added:

*"The Miami Heat had a clear incentive to conspire with Wade to destroy (the restaurant partnership) because the latter was a competitor in the retail sale of personalized Wade sports memorabilia and in demands on Wade's advertising availability and time. Wade may have informed Riley of why he was abandoning the venture" (Ibid).*

No further details are available at the time of writing.

#### **Indian cricket faces crisis over contract cancellation**

It has been clear for some time now that, for all the hype and cash, the newly-formed Indian cricket leagues are not a problem-free area from the legal point of view, the employment difficulties related above being only one recent example. Further difficulties emerged in late August 2009, when the Board of Control for Cricket in India (BCCI) was facing a rebellion by owners of the Indian Premier League (IPL) teams over its decision to cancel a 10-year contract with event management company IMG. The BCCI decided to dispense with the firm's services despite an agreement for the latter to manage the day-to-day affairs of the IPL in consideration for 10 per cent

of the gross income. Several IPL franchise owners reacted by writing to the Board in order to complain about this decision. This move on the part of the Board is seen as part of a political battle to reduce the influence wielded by Lalit Modi, the Commissioner of the IPL, but thus far he has retained the support of powerful franchise owners (*The Daily Telegraph of 1/9/2009, p. S5*). It was not clear at the time of writing whether any court action would be taken over this matter.

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## SPORTING INJURY

### **Montana jury awards damages in aluminium bat action (US)**

In late October 2010, it was learned that a jury in the state of Montana had ruled that the producer of Louisville Slugger baseball bats failed to give adequate warning about the dangers which this implement could cause, awarding a family the sum of \$850,000 for the death, in 2003, of their son during a baseball game. Nevertheless, the jury found that the product was not defective. The family of the deceased, Brandon Patch, had argued that aluminium baseball bats are dangerous on the grounds that they cause the ball to travel at a greater speed. They contended that their 18-year-old son did not have sufficient time to react to the ball being struck before it hit him on the head whilst he was pitching in an American Legion baseball game in Helena (*Associated Press, www.findlaw.com of 28/10/2009*).

### **Top baseball team sued for man's death in wall collapse (US)**

In mid-August 2009, it was learned that lawyers had initiated court action against leading baseball side Chicago Cubs on behalf of the mother of a 21-year-old man who died after a wall close to the team's ground collapsed on him during a storm which occurred in 2007. The lawsuit claims that the Cubs owned the structure in question, situated in the vicinity of their stadium, Wrigley Field, and that the wall was earmarked for demolition, but the club failed to cordon off the area. The victim, Alec Drews, took shelter by the wall after a powerful storm struck. Workers encountered a badly injured man whilst clearing the rubble. Mr. Drews died a week later from head and neck injuries (*Associated Press, www.findlaw.com of 21/8/2009*).

### **West Virginia race track settles dispute with paralysed jockey (US)**

In early October 2009, it emerged that a West Virginia race track had settled a legal dispute with a jockey who was paralysed from the chest down during a racing accident. Gary Brizer sued the MTR Gaming Group Inc. and Mountaineer Casino, Racetrack & resort in Chester, W.Va. The claimant alleges that the race track operators failed to repair soft spots and holes, and allowed an unhealthy horse to run. Mr. Brizer was riding Lil Bit of Rouge in July 2004 when the thoroughbred went down. He was thrown head first

into the dirt track at 40 mph. He and his wife had sued for more than \$12 million by way of compensation, including medical expenses and lost income. However, a settlement was reached whereby the insurers paid an unspecified amount (*Associated Press, www.findlaw.com of 6/10/2009*).

## **French skiing accidents round-up**

### **Court of Appeal of Grenoble, decision dated 21/10/2008**

In this case, the claimant was taking part in a collective ski training course for beginners when she was the victim of a fall which caused a fracture and dislocation of the right elbow. She accordingly sued the skiing instructor, claiming that he was responsible for the accident because he had failed in his duty of care and due diligence which was incumbent on him as a skiing instructor who was in charge of a group consisting of beginners. His first error was alleged to have been to take the group onto the pistes in spite of adverse weather conditions. His second error was said to have been allowing the victim to use a piste which she considered to be less dangerous than that taken by the remainder of the group in order to gain rapid access to the skilift, bearing in mind that she was not familiar with this piste and was experiencing a good deal of stress as she had become separated from the group.

The Court, however, dismissed these arguments. As regards the prevailing weather conditions, it found that, when the session started at 3 pm, these were not in any way unsuitable. In a mountainous area there can be frequent and sudden changes in the weather; in fact, as soon as the instructor concluded that the weather conditions no longer allowed the session to proceed safely, he prudently organised the group's return without any undue sense of urgency or haste. In relation to the claimant's travails on the piste which she chose in order to reach the skilift, the Court stated that the claimant failed to demonstrate exactly how the choice of the piste which the claimant had refused to use was inappropriate, in terms of either the skiing ability achieved by the group or the prevailing weather conditions. There was nothing to indicate that the claimant's ability was any less than the other members of the group, and, amongst the latter, no-one else had expressed any disquiet about the piste chosen. There was therefore no valid reason for her to detach herself from the group.

Moreover, the piste which she chose to reach the teleski did not itself present any particular difficulty,

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being a “blue colour” piste normally used by skiers of low ability. The Court also found that there was nothing to link the the circumstances of the fall (avoidance of another skier, slippage on an icy patch) to any particular difficulties encountered by a skier of low ability proceeding on a piste and worried that she would not be able to rejoin the group, and that the risk of a fall is an integral part of alpine skiing, even for skilled skiers on pistes considered to be easy.

The Court therefore dismissed the appeal and confirmed the decision reached at first instance.

### **Decision of the Administrative Court of Appeal of Marseille dated 14/5/2007**

In this case, the claimant had been impaled on a metal post from which hung a protective net intended to protect skiers against a copse located on the borders of a piste, and claimed damages from the local municipality on the basis that the Mayor had failed to place adequate signs warning of the danger presented by this post. However, the Court confirmed the case law of the Supreme Administrative Court (Conseil d’Etat) which holds that skiing pistes cannot constitute public utilities, and are therefore not bound by the rules of normal maintenance (entretien normal), which is a rule of tort liability in respect of presumed negligence which favours members of the public.

One of the key provisions in this case was the Local Authorities Code (Code général des collectivités locales), more particularly the provisions thereof which govern the duty to signpost potential hazards. On skiing areas, this obligation is confined to those hazards which exceed those against which skiers need to safeguard themselves personally by acting prudently. In the case under review, the Court held that the piste used by the victim was not such as to be unsuitable for skiing beginners on the basis of its classification. Therefore, by omitting to affix specific signs the mayor had not committed any error in the performance of his policing powers. The appellant’s action was, therefore, dismissed.

### **Decision of the Court of Appeal of Chambéry dated 11/9/2007**

In this case, a skiing instructor was proceeding, along with his pupils, on a skiing piste when he collided with an uphill skier, and was injured. The court found that the uphill skier was at fault for failing to ensure that he could take a bend without endangering others. At all events, since it was the skis which were the

instruments causing the damage, Article 1384(1) of the Civil Code ensured that the victim was entitled to compensation without having to prove negligence on the part of the person with whom he collided. The latter would only be exempted from liability where he could prove the existence of force majeure or a factor beyond his control.

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## DEFAMATION ISSUES

### **Lacrosse coach allowed to proceed with slander action (US)**

In early September 2009 it was learned that a North Carolina appeals court had ruled that Michael Pressler, former lacrosse coach at Duke University, could proceed with his action against the college and its former spokesman. The University’s legal team had maintained that the coach, who had been dismissed as a result of a sex scandal reported extensively in earlier editions of this Journal, should be required to settle his claims through arbitration. However, the former coach’s lawyers argued that arbitration could limit the amount which Mr. Pressler could obtain by way of damages (*Associated Press, www.findlaw.com of 1/9/2009*).

Mr. Pressler had arrived at a financial settlement with the University after being dismissed following a stripper’s false accusations that she was raped at a team party. However, the former coach maintains that Duke infringed the agreement when a former spokesman made disparaging comments about Mr. Pressler to the media (*Ibid*).

Naturally, the present author pledges to follow further developments in this legal saga with the keenest of interest.

### **Olympic medal winner drops case against newspaper (Australia/France)**

In late September 2009, Ian Thorpe, the Australian five-times swimming champion, abandoned a defamation action against French sporting newspaper L’équipe and a journalist concerning allegations of doping because neither of the defendants responded to the claims. Mr. Thorpe originally brought the action before an Australian court over an article published in March 2007 during the World Championships in Melbourne. The newspaper alleged that the swimmer provided a urine sample in May 2006 which revealed abnormal levels of testosterone. Tony O’Reilly, Mr.

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Thorpe's solicitor, announced that, despite having been served with the relevant court papers on several occasions, counsel for the newspaper and the journalist, Damien Ressiot, failed to appear in the Supreme Court of New South Wales. In these circumstances, said Mr. O'Reilly, his client had decided not to continue the action, since he saw little point in obtaining a verdict against the defendants in absentia (*The Guardian of 29/9/2009, p. S7*).

It will be recalled that Mr. Thorpe was cleared of doping allegations by the Australian anti-doping agency in August 2007.

### **Richard Gasquet affair may give rise to defamation payout**

(This issue is dealt with in full elsewhere in this Journal, see below under Section 15).

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### OTHER ISSUES

#### **O J Simpson sued by robbery victim (US)**

In mid-September 2009, it emerged that a memorabilia dealer who suffered several heart attacks after being robbed at gunpoint by the former American football star was taking court action against the latter, as well as five men who accompanied him, seeking unspecified damages. The claimant's lawyers will attempt to prove that their client suffered "great bodily injury" and emotional distress because of the now-famous confrontation in a Las Vegas casino hotel room, which took place in September 2007. However, Mr. Simpson's lawyer has described the action as "frivolous" and served notice of his client's intention to fight it "tooth and nail" (*Associated Press, www.findlaw.com of 14/9/2009*). No further details are available at the time of writing.

# 5. Public law

## SPORTING POLICY, LEGISLATION AND ORGANISATION

### Rio wins bidding war for 2016 Games

As its regular readers will know, this column is no admirer of the Olympic bidding process because of its vastly exaggerated importance, the vainglorious posturing and often vicious polemics which normally accompany it, and the faint whiff of corruption which, although officially prohibited and fervently denied, never quite succeeds in vanishing completely. Although the process of competing for the honour of hosting the 2016 Games did not quite reach the levels of absurdity which were in evidence during the bidding war for the 2012 Olympics, it has nevertheless once again degenerated into a circus consuming vast amounts of time and money as well as a forum for grandstanding and prestige-seeking by politicians eager to use what should normally be a process involving top figures from the sporting world as an opportunity to divert attention away from the more pressing problems besetting their electorates.

It will be recalled that, earlier last year, four candidate cities had been shortlisted to take part in the final round, to wit Chicago, Madrid, Rio de Janeiro and Tokyo. In early September, the evaluation commission of the International Olympic Committee, the Games' governing body, which visited each of the bidding cities in turn in order to rate their relative merits, produced a report setting out the pros and cons of each candidate. Chicago was the early favourite because of the predicted "Obama effect" and the obvious commercial benefits of siting the event in the largest market for sponsorship and television rights (*The Guardian of 3/9/2009, p. 17*). However, the other three cities remained very much in the running – particularly Rio. In the case of the latter, however, it was unclear to what extent the fact that Brazil had already been awarded the 2014 football World Cup would influence the selectors.

It also became evident that the charisma surrounding the newly-elected US President and his consort had limitations when it came to the bid. This was not for want of trying on the couple's part; in mid-September they even attempted to inject momentum into the campaign by organising an event for athletes at the White House. However, other factors were at work to damage the Chicago bid, such as doubts surrounding the financial guarantees provided and disagreements between US Olympic officials and the IOC. Later that month, the concerns of a less sporting kind were taking

pride of place in the President's agenda, more particularly his proposed healthcare reform legislation which proved even more controversial and bitterly contested by his opponents than had been anticipated originally. There was even doubt as to whether Mr. Obama would be able to make it to the Copenhagen for the final vote on 2 October. Since, rightly or wrongly, the presence of national political leaders at the vote is a commitment which the IOC members have come to expect, this was another blow to the bid made by the "windy city". This was particularly the case as the Madrid and Tokyo bid teams had already made it clear that they would arrive in the Danish capital with their Heads of State in tow, with Yukio Hatoyama, Japan's newly-elected Prime Minister, being expected to make the trip on Tokyo's behalf (*Financial Times of 17/9/2009, p. 11*).

Not unexpectedly, the war of words between the contending parties intensified considerably during the week leading up to the vote, with each side burnishing its credentials and declaring itself the Almighty's gift to sporting organisation. Predictably, the Brazilians played the "underdog card", with President Lula da Silva claiming that his country was the only one among the world's 10 largest economies never to have hosted the Games (*The Independent of 23/9/2009, p. 53*). The country's iconic football legend Pele also enthusiastically supported the city's application, stressing that sport had "changed his life" and the award of the Games would help to transform the prospects for young people across South America (*Associated Press, www.findlaw.com of 30/9/2009*). Tokyo appeared to stress its environmental credentials, with its organisers indicating that their plan for a compact site in which to stage the event showed that even the world's largest cities could make environmental sustainability a reality. Its "green" credentials were also boosted by the putative hosts' intention to re-use several of the sites which had served the 1964 Games – which at the same time sent out the subliminal message of long-standing experience in these matters (*Associated Press, www.findlaw.com of 29/9/2009*).

Meanwhile, the Chicago bid was experiencing mixed fortunes. There was an initial boost to its chances when it was learned that President Obama had made an unconditional commitment to attending the final vote, as bookmakers made it the narrow favourite to emerge victorious from the fray. (Lately the story had been circulating in the city that IOC had come to stand for If Obama Comes.) To its credit, the IOC reduced the time available for last-minute lobbying ahead of the crucial

## 5. Public law

vote, in a bid (so to speak) to prevent an “arms race” and therefore prevent leading political figures from hijacking the occasion (*The Daily Telegraph of 29/9/2009, p. S17*). It was also learned that, initially, the President’s intention was to let his wife, Michelle, represent the US at the meeting, but, as has been stated earlier, the presence of a Head of State now seems to be as indispensable at an Olympic bid vote as an IOC member’s expenses claim, which is why the most powerful man in the world saw himself obliged to relegate such trifling matters as healthcare and the Middle East crisis to the margins of presidential concern. However, the Chicago bid was far from flourishing, for a number of varied reasons detailed below.

First of all, there arose a dispute between the IOC and the US Olympic Committee concerning revenues from television rights, as well as the latter’s plan to launch its own televised Olympic network, even though the IOC president, Jacques Rogge, had insisted that this disagreement would not have any bearing on the final decision (*The Guardian of 29/9/2009, p. S7*). Then it emerged that the good burghers of Chicago were far from unanimous in their view the acquisition of the Olympics as an unalloyed blessing. In a city all too familiar with reports of public corruption and problems as regards public services, serious concerns began to arise that the Games could mean more troubles – not to mention bills – for residents. With barely a week to go before the Copenhagen vote, there was a demonstration outside City Hall, with protesters insisting that, regardless of the organisers’ claims, the Olympics would push people from their homes, trigger more corruption and cause taxes to rise. At least one person was arrested for attempting to interfere with workers erecting Olympic symbols in a suburban plaza (*Associated Press, www.findlaw.com of 30/9/2009*).

Doubts about the desirability of hosting the Games increased as the implications of the possibility of defeat became alarmingly clear. The economic recession was taking its toll on the “can do” attitude of President Obama’s native city. Both its daily newspapers have filed for bankruptcy protection, and the Chicago Spire, heralded as the tallest residential building in the world and a symbol of the city’s confidence in the future, had for some months been no more than a hole in the ground. A \$2.5 million deal aimed at privatising the city’s Midway airport had to be abandoned a few months earlier. All these issues, and many more, had raised the stakes for the Chicago Olympic bid. Securing the Games would confirm its status as a global city. It had pledged to use the opportunity to improve its creaking transport

infrastructure and regenerate some of its most disadvantaged neighbourhoods. One of the plans was, for example, that the main athletics stadium would be situated in Washington Park, a neglected and largely African-American area on the city’s South Side. It would also provide a much-needed boost for Richard Daley, the long-serving Chicago mayor, whose approval rating was at an all-time low of 35 per cent, according to a poll published by the Chicago Tribune (*Financial Times of 29/9/2009, p. 13*).

Conversely, expectations of victory were pitched at such a high level in the city that losing the bid risked leaving it with a sense of deflation and anger. Deprived of an investment plan based on hosting the Games, the Washington Park project was in danger of being relegated to the proverbial nether burner. Also, in terms of its image, a failed bid would leave the city to its long-term struggle to shake off its reputation as an industrial crime-infested Midwestern urban area. Even if it won, controversy would not be far behind – even during the run-up to the vote the city authorities were already engaged in a heated debate as to whom would cover any losses from the games, which were estimated to cost \$4.8 million. It should be borne in mind that US law prohibits the federal authorities in Washington from bestowing any financial support to the Games. Under pressure from the IOC, Mr. Daley, as well as the city council, had agreed to underwrite an unlimited financial guarantee. It is true that the city had contracted insurance, but the scope of the latter did not cover budget overruns or the cost of any corruption. Previous US summer Olympics had proved to be successful, but a city-wide survey showed that 84 per cent of respondents opposed the use of public funds to cover any shortfall in the Olympics budget, whereas those who supported the bid narrowly outnumbered those opposed – bearing in mind that, at one point, there had been twice as many citizens who were in favour as there were opponents (*Ibid*). The latter even formed their own lobby group called No Games Chicago, whose leader, Bob Quellos, predicted that if his city emerged triumphant this would be a guaranteed recipe for corruption, cronyism and displacement of home owners (*The Times of 2/10/2009, p. 34*).

As the contest entered its final straight in the shape of the lobby-intensive final 48 hours, and it became clear that this was now a two-horse race – pray forgive the succession of mixed metaphors – even though Tokyo and Madrid had not in any way given up. No doubt mindful of the manner in which that arch-lobbyist, Tony Blair, had probably swayed the vote London’s way through his tactics at the 2005 vote, the

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personalities supporting their favoured city went into overdrive. (In fact, Obama's team of advisors even went so far as to solicit Mr. Blair's advice on the matter – (*Associated Press, www.findlaw.com of 30/9/2009.*) Seldom can the Danish capital have witnessed such a frantic bout of favour-carrying, with IOC members being subjected to as much hand-pumping as their shoulders could stand without incurring dislocation. The personalities involved were naturally not restricted to the politicians – there were even some figures from the sporting world in attendance. Rio had the reassuring backing of football legend Edson Arantes do Nascimento – known to grateful commentators as Pele – whereas Madrid was boosted by the venerable presence of former IOC President Juan Antonio Samaranch, at 89 still the shrewd operator he proved to be during his long term of office (*Daily Mail of 1/10/2009, p. 79*). Chicago certainly seemed to have the more glamorous entourage, with not only the US President and his celebrated consort, but also talk-show host Oprah Winfrey, who was described as Michelle Obama's "chit chat buddy" during the 48 hours of IOC lobbying (*The Times of 2/10/2009, loc. cit.*).

Came the fateful day of the vote, and, as we all well aware, it was the bustling Brazilian city of beaches, mountains and sambas which carried the day. However, the surprise lay not so much in the winning bid, given that Rio was one of the favourites, but in the fact that, in a day of high drama, Chicago had been eliminated in the first round – one of the most devastating defeats ever recorded in the annals of IOC voting. In the event, the final round of voting was between the Spanish and Brazilian capitals. Even Tokyo, which had trailed throughout the race, did better than the US city, as it was only knocked out in the second round. It appears that the Rio bid spoke to the IOC members' consciences, given that South America had never hosted the Games, whereas Europe, Asia and North America had done so repeatedly.

The surprising fact that Madrid had reached the final round – all the more arresting in view of the relative modesty of its pre-Copenhagen campaigning – came after the wily Samaranch, using all his experience, charisma and "senior citizen" appeal, had made an unusual pitch for his nation's capital, pointing out that, at his ripe age, he was "very near the end" of his time. Another element in Chicago's poor showing may have been the somewhat perfunctory nature of President Obama's appearance, described by a former IOC member as "too business like" and suggestive of a lack of respect. In addition, Australian IOC member Kevan Gosper speculated that Asian votes may have

combined in support of Tokyo during the first round at Chicago's expense. Mr. Gosper expressed his concern that the US city's shock exit could cause "untold damage" to the already strained relations between the IOC and the US Olympic Committee, particularly given the disagreements over broadcasting rights referred to above (*Associated Press, www.findlaw.com of 2/10/2009*).

In fact, it may well be the case that the relationship between the IOC and the US was another decisive factor in Rio's successful bid and proved to be beyond the powers of even the freshly elected US President and his wife – who could be said to have eclipsed her husband with a deeply personal speech. Mr. Obama himself had pledged to use a successful Chicago bid to restore his country's reputation for tolerance and diversity. With US corporations and broadcast networks still providing most of the IOC's commercial income, Mr. Obama and the US Olympic Committee were effectively daring the IOC to turn down the Chicago bid. In a remarkable show of independence the IOC appears to have done just that, choosing instead to subscribe to the agenda laid down by President Lula, who urged the IOC to honour its oft-stated values and take the Olympics into uncharted territory. Following the vote, Mr. Lula appeared overwhelmed, weeping as he sat alongside IOC president Jacques Rogge. Once recovered, he delighted in his victory over the US President. Although one must discount something for the natural exuberance which was bound to follow such a triumph, and allowing for the "underdog factor" already referred to earlier, the present writer cannot be the only commentator to experience a feeling of unease at the sheer lack of grace which characterised the Brazilian President's comments following his win (*The Daily Telegraph of 3/10/2009, p. B20*). Indeed, Mr. Lula's observations were not the only post-election comments to give rise to controversy. Members of the Rio team claimed that the statement made by Tokyo governor Shintaro Ishihara which blamed his city's defeat on internal dealing and "invisible dynamics" infringed the rules laid down by the IOC (*Associated Press, www.findlaw.com of 6/10/2009*).

As is usual in the wake of successful bids for the world's major sportfests, the sheer enormity of the task ahead was brought home to the organisers once they and their minds had returned to Planet Earth. In Rio's case, reality hit home barely two weeks after its Copenhagen triumph, when an intense battle erupted on one of the city's notorious suburbs (favelas) in the course of which a police helicopter was shot down,

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killing two officers. The violence, intensive even by the standards of Brazil's second-largest city, started in the Morro dos Macacos, a hillside area located in northern Rio. The shanty town, controlled by the drug gang known as Amigos dos Amigos (Friends' Friends, one of three heavily-armed cocaine factions which control many of the city's slums) had reportedly been invaded by members of a rival gang, i.e. the Red Command. Police reported that traffickers from the Red Command were attempting to gain control of the local cocaine trade. Audible volumes of machine gun fire were captured on amateur video footage which had been filmed from blocks of flats surrounding the area. One local newspaper described it as the "war in Rio" on its website. This latest round of violence merely underlined the challenges faced by the relevant local authorities as they attempted to enhance security before the city hosted not only the Olympics, but, on a shorter time-scale, the 2014 World Cup (*The Observer of 18/10/2009, p. 36*).

Naturally, the city's authorities attempted to put a brave face on these developments, the timing of which could not have been more unfortunate for the victorious conurbation. The city's mayor, Eduardo Paes, himself a member of the victorious bidding team, pledged that security would not be a major issue during the Olympics. He said:

***"For the Games, we're not worried about security. We know we can deliver a safe Games, we've done it many times (when? Ed.) and we'll do it again. We are worried for our everyday life and for our everyday citizens and visitors. That is our challenge. We never hid that during our Olympic bid. The evaluation commission noted that things are changing and getting better. They are not perfect, there are a lot of problems - we saw that this weekend"*** (*The Guardian of 20/10/2009, p. S10*).

It has to be admitted that, during its presentation which assisted it in securing the all-important vote, the Rio team pledged to pour a good deal of cash into ensuring security. Sir Craig Reedie, a member of the influential IOC Executive Board, stated that the significance of gang violence should not be over-emphasised, pointing out that Rio was a large city adding –somewhat disingenuously – that the events of that weekend "paled into insignificance" compared to the events which followed the successful 2005 bid by London (*The Guardian of 20/10/2009, p. S7*).

The present writer faithfully pledges to maintain an independent frame of mind on this issue until such time as the event has happened...

### OTHER BIDS FOR MAJOR SPORTING EVENTS

#### 2018 Winter Games

Even before the final stages of the bidding for the 2016 Summer Games had started in earnest, as described above, the International Olympic Committee (IOC), which is the body governing the Games, had already launched the search to find a host for the 2018 Winter Games. The winning bid will be selected on 6/7/2011 by IOC members assembling in Durban, South Africa, in accordance with a timetable published in late July 2009. Bid teams are bound to observe the Vancouver Winter Games in February 2010 as observers before being able formally to apply two weeks later. A short list will be published in June 2010 (*Associated Press, www.findlaw.com of 31/7/2009*).

However, one country which will definitely not be joining the bidding process is China. In mid-October 2009, its state media announced that both Harbin and Changchun, located in the North East of the country, had been ruled out as possible candidates. According to the official Xinhua news agency, Harbin – which placed a bid for the 2010 Winter Games but failed to make it to the short list – lacked the required infrastructure compared to other bidders. In addition, the Beijing Legal Evening News reported that the State Sports Administration had also refused a bid proposal from Changchun, which hosted the Asian Winter Games in 2007. No reason was given (*Associated Press, www.findlaw.com of 14/10/2009*).

#### 2020 Summer Olympics

(See below, under heading "South Africa banking on World Cup to boost Olympic chances")

#### Various Rugby World Cups

It has been an extremely busy time for adjudicating world tournaments, for both formats of the game. In late July 2009, the International Rugby Union (IRB), meeting at its headquarters in Dublin, awarded the 2015 World Cup to England and its 2019 successor to Japan. Although there were some fears that the Rugby World Cup organisation's recommendation for the 2015 event to the IRB would not be accepted by the 26-strong council, England won the day 16-10, with South Africa and Italy the unsuccessful bidders. It has to be said that there was a major financial incentive for the Board so to do. The 2011 tournament in New Zealand is expected to land it with a £20-30 million

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deficit. The 2015 World Cup, on the other hand, is projected to benefit the IRB some £220 million in broadcasting rights, sponsorship money and income from hospitality and merchandising, which was 20 per cent higher than for any other bidder (*The Independent of 29/7/2009, p. 54*).

As for the decision to hold the subsequent tournament in Japan, this naturally provoked unrestrained joy in East Asia, and was hailed by the country's organising committee as "a step towards the globalisation of rugby". Having been overlooked for the 2011 World Cup, Japan will become the first Asian nation to host the event. By taking this decision, the IRB clearly hoped to help the game expand in the Far East. Bernard Lapasset, the IRB Chairman, commented that Japan represented a great platform for the promotion of rugby in that continent, and to keep expanding the audience and financial clout of a tournament which, it should be recalled, was first staged a mere 22 years ago. Japan also hopes to stage pool matches in Hong Kong and Singapore, although this is yet to be debated by the IRB (*The Daily Telegraph of 29/7/2009, p. S4*). One of the principal reasons why the IRB chose to name the two host venues simultaneously was to avoid the "old boy network" accusations which marred the decision not to award Japan the tournament in 2003 (*The Independent of 29/7/2009, loc. cit.*).

The previous day, it had also been announced that the 2013 Rugby League World Cup was also to take place in Britain. The Rugby League International Federation (RLIF) announced the host country for their flagship tournament following a two-day meeting in Singapore. The event was last held in this country in 2000, but, beset by extremely bad weather, proved to be a financial disaster and left the English governing body with debts of £700,000. This caused the tournament to be mothballed for 8 years (*The Daily Telegraph of 29/7/2009, p. S5*).

### 2010 Commonwealth Games in turmoil (India)

When it was decided that the 2010 Commonwealth Games should be hosted by India, no-one expected both the preparations for the event to be entirely problem-free (one of the reasons being the ever-present risk of terrorism which has already sought to target sport in the subcontinent). However, few could have hazarded the guess that concerns over the actual organisation of the event would grow to such a pitch as to cast doubt on the feasibility of the entire event. But that is exactly how matters have developed during the period under review. More particularly in mid-

September 2009, there appeared a real danger that the Games could collapse unless the Indian Government intervened to dismiss incompetent managers. In a letter to the Delhi 2010 Executive Committee. Michael Fennell, the President of the Commonwealth Games Federation, warned that preparations were so alarmingly behind schedule that the event was at serious risk, cautioning that the very image of the Games was at stake. A report published earlier that summer found that only six of the 19 venues were on schedule to be completed by the opening ceremony in October 2010 (*The Daily Telegraph of 15/9/2009, p. 18*). He wrote:

***"With only a year to run until the Games, I feel I must personally brief the prime Minister of India on the lack of preparations and to seek his input. The preparations for the games are significantly behind, so much so that the CGF is extremely worried about the organising committee's ability to deliver the Games to any comparable standard to that of the last two editions (Manchester and Melbourne) (Ibid)".***

Naturally, this stark warning caused a good deal of alarm among Indian ministers, who regard the Delhi Games as a "coming of age" event to herald the arrival of their country as a major power on the global stage, thus transforming the image of a country associated with chronic poverty and backwardness. Its failure would be considered a national humiliation. However, it is a fact that preparations had been beset by serious delays in construction (*Ibid*). Apart from the actual venues, there were also delays in providing the required infrastructure, more particularly a series of flyovers and an underground metro system. In fact, the concerns felt by the CGF led them to demand the appointment of an international committee aimed at overseeing the remainder of the preparations - a move which was angrily rebuffed by the Delhi officials responsible (*The Daily Telegraph of 22/10/2009, p. S12*).

However, these are not the only problems besetting this year's Games. As was hinted above, security will also be a major challenge. In late October, the Chief of Delhi police set out his strategy for keeping the 8,000 athletes expected safe. Snipers, machine guns, bomb disposal units and the use of some 7,000 CCTV cameras will be the main tools. The other is appealing to the citizens of Delhi to help. In a country where scant respect is shown for road traffic regulation, the Government has secured the adoption of a Commonwealth Games Act making it an offence to use lanes set aside for official buses and motorcades. Yet however serious the authorities' intent may be, there is

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a real fear that at least some athletes will be deterred from taking part. India is indeed a country on high alert. As visiting English officials were dining at their Delhi hotel, the Indian Prime Minister was warning that a terrorist attack was imminent. It should be recalled that, as was reported in this Journal, last year, an English badminton team pulled out of an event in Hyderabad after reading graphic warnings of terrorist action (*Ibid*).

The other problem facing the organisers has been the one which, rightly or wrongly, has almost defined India's image in the public mind – i.e. poverty. As has been mentioned earlier, hosting the Games was supposed to be the country's opportunity to show off its rapidly rising wealth and banish memories of a nation once synonymous with chronic destitution. With 12 months to go before the event (hopefully!) commences, officials concluded that, if they were to succeed in this endeavour, they would have to avert the eyes of the watching world away from New Delhi's millions of poor living in squalid shanty towns by hiding them behind a series of bamboo "curtains". Vast amounts of bamboo poles have been ordered from the jungle states of Mizoram and Assam in order to keep the destitute out of sight during the event. The capital is littered with slums housing the millions of migrants who pour into the city looking for work and escape the poverty of rural life in Bihar, Uttar Pradesh and Rajasthan. Their residents are often seen naked at the road sides, washing at standpipes or defecating in open sewers (*The Daily Telegraph of 18/8/2009, p. S12*).

Officials had originally planned to move these settlements to the outskirts so that the television viewer would only see the capital's gleaming new Metro system and airport, as well as its smart new roads, pavements and street lights. Rakesh Mehta, the city's Chief Secretary, insisted that the screens would be restricted to areas where the inhabitants could not be relocated in time (*Ibid*). However, the next month fresh evidence seemed to be available of the authorities' ruthless desire to present a misleading image of the country when it was learned that draconian orders had been issued to clear the streets of beggars. Teams of police, backed by mobile courtrooms, are reported to be roaming the city, dispensing summary justice to those whose faces will not fit. There are an estimated 60,000 beggars on the capital's streets (although some would maintain that the figure is considerably higher) and tens of thousands more people living rough on roadside scraps of land. The Bombay Prevention of begging Act 1959, which entered into force in Delhi later, gives the police plenty of scope for arresting people. As defined

by the Act, begging can include "singing, dancing, fortune telling, performing or offering any article for sale, as well as "exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease whether of a human being or animal". With brutal candour, the city's Minister for Social welfare, Mangat Ram Singhal, announced at the launch of the initiative that, before the 2010 Games, the authorities wasted to "finish the problem of beggary" in the capital. It is tempting to arrive at the conclusion that it is image, rather than genuine social concern, which has inspired this scheme.

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### SPORTS BETTING LAW NEWS

#### **Delaware sports betting limited to NFL "parlays", rules court (US).**

In late August 2009, a federal appeals court administered another blow to the state of Delaware's plans for a new sports betting lottery, by disposing that this must restrict itself to "parlay betting" on professional (American) football matches. (A parlay or accumulator is a single bet which links together two or more individual wagers and is dependent on all of those wagers winning together). This news came as yet a further disappointment for state officials, who appeared to accept that single-game wagering was disallowed, but were hoping that betting would not be restricted to professional (American) football

A three-judge panel of the 3rd US Circuit Court of Appeals held that the state's betting plan, which included single-game bets as well as wagering on a variety of professional and collegiate sports, infringed federal law – without expressly stating the reason why. The court did, however, specify that it interpreted language which exempted Delaware from a federal ban on sports betting – a 1992 law known as the Professional and Amateur Sports Protection Act (PASPA) – as precluding any type of betting beyond that which it had offered in a failed National Football Lottery in 1976. That lottery allowed only parlay bets, which meant that punters had to select the winners of at least three separate National Football League (NFL) games in a single bet. Therefore, stipulated the court, ***"any effort by Delaware to allow wagering on athletic contests involving sports beyond the NFL would violate PASPA. It is also undisputed that no single-game betting was 'conducted' by Delaware in 1976, or at any other time during the time period (sic) that triggers the PASPA exception"*** (*Associated Press, www.findlaw.com of 31/8/2009*).

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Lawyers on both sides had focused on the passage in the 1992 federal law which exempted Delaware and three other states which had previously offered sports betting. One provision in the law allows the states to offer sports wagering but only “to the extent that the scheme was conducted by that state”. Lawyers representing Delaware had argued that the word “scheme” did not refer specifically to the 1976 parlay betting, or even the NFL, but to any sports lottery under state control. They further maintained that, as long as sports betting in general was allowed, even if some games were not specifically “conducted” before the ban, the state was free to expand beyond NFL parlays into single and other sports. The Court dismissed this argument, holding in a footnote that Delaware’s lawyers had “cherry-picked” certain statements in the legislative history of the 1992 federal law in order to boost their case. Judge Thomas Hardiman went so far as to describe this case as a perfect illustration of the well-known principle that “what individual legislators say a statute will do, and what the language of the statute provides” may be far apart indeed. The law was that which Congress enacted, not what its members said on the floor (*Ibid*).

At the time of writing, it was unclear whether Delaware State officials intended to appeal against this decision.

### **French government bans Betfair**

In early October 2009, it was learned that the French authorities have effectively outlawed the online betting exchange Betfair after adopting an amendment to recently-enacted gambling legislation. These are being closely monitored by sports bodies in other countries (including the UK) which are lobbying their government to bring in similar regulations. Under a surprise last-minute amendment, betting exchanges such as Betfair which allow punters to lay as well as place bets were excluded from the legislation in a move described by the company as “discriminatory”. As has been regularly reported in these columns, Betfair has, since its launch in 2000, grown to become by far the largest online betting exchange, attracting more than two million customers. France’s new legislation has opened up the betting market for the first time, but also embodied the principle that any bookmaker must apply for a licence and agree to pay a proportion of its income to sport. Online betting exchanges will not be able to apply for one of the new licences after it was ruled that allowing bettors to “lay” wagers contradicted this principle.

Adopting the amendment, the French parliament also referred to a 2007 report from the British Gambling

Commission (BGC) which stated that 9.8 per cent of punters using betting exchanges developed gambling addictions, compared to a rate of between one and three per cent among the general gambling community. Mark Davies, Betfair’s managing director, commented:

***“We will consider our position. It is fairly clearly discriminatory against the biggest and most competitive online operator in Europe. It is a slap in the face for the consumer.”*** (*The Guardian of 9/10/2009, p. S10*).

The company also disputes the figures in the 2007 BGC report, which it said were based on such a small sample that they were close to meaningless. The French legislation has been closely watched by a coalition of British sports governing bodies which hope to persuade the government to introduce a similar system here. They argue that bookmakers should be forced to pay a levy to offer odds on their sport, a proportion of which would then be spent on fighting corruption. However, bookmakers aver that corruption would exist regardless of such measures and believe that they assist in bringing potential cases of match-fixing to light, as well as investing in sport through sponsorship and betting partnerships. Initially, there had been doubts about whether this French legislation was consistent with European law, but the European Commission appeared to signal its cautious approval earlier that year. However, bookmakers are expected to challenge the new rules, which require them to pay 1.8 per cent of their revenues to the French sports commission and negotiate separate licences with each sport on which they wish to offer bets (*Ibid*).

In Britain, sports administrators, including the England and Wales Cricket Board’s chief executive, David Collier, and his counterpart at the British Horseracing Authority, Nic Coward, met the sports minister, Gerry Sutcliffe, in September 2009 to advance their case. Two parallel government reviews are both expected to report before the end of the year. The former Liverpool chief executive Rick Parry is chairing a panel of senior industry figures looking at issues of sporting integrity in the wake of several high profile match-fixing cases in snooker, tennis and football. Meanwhile a separate review is looking into whether overseas bookmakers can be forced to contribute towards the fight against corruption, issues surrounding the horse racing levy and problem gambling.

The stakes have also been raised (so to speak) by the recent decisions by the two largest high street bookmakers, William Hill and Ladbrokes, to move their online operations offshore for tax reasons (*Ibid*).

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### **World Cup 2010 will stay in South Africa - but many problems remain**

#### **Introduction**

Much space has already been devoted in this Journal to the decision to award the 2010 football World Cup to South Africa, the first occasion on which this continent has had this honour bestowed on it. Doubts as to the feasibility of this four-yearly extravaganza have arisen on many fronts – some of them being so serious as to raise the question whether the country would be able to stage the event at all, and whether emergency plans would need to be drawn up in the event that the difficulties attending preparations for the tournament proved insuperable. Initially, these doubts centred on the question whether the actual infrastructure for the event, relating not only to the stadiums, but also to the means whereby spectators could reach them, would be satisfactorily put into place within the timetable set by the game's world authorities. However, other issues were also leading the latter to question the wisdom of their decision, ranging from the question whether the safety of players and spectators could be guaranteed to the industrial unrest which seems to have intensified over the past few years and threatened to derail various aspects of World Cup organisation.

As the date of the event looms increasingly large, however, one thing is certain – for good or for ill, the tournament must go ahead in its originally scheduled location, since the time factor now precludes any alternative solution. This does not, however, mean that all doubts have been removed from the manner in which preparations the 2010 World Cup are proceeding. Although the stadiums are on schedule for the tournament, infrastructure concerns remain, as will be discussed further below. These issues are exacerbated by the strikes which have arisen from a major pay dispute surrounding the infrastructure projects for the tournament. Safety concerns arise not only from the country's notoriously high crime rate, but also from the possibility of hooliganism and terrorism. The environmental aspect of the event has also raised serious concerns, given that this year's tournament is likely to set a new record in CO2 emissions. And, almost inevitably in his country, race issues have also surfaced to add yet another difficulty facing the organisers. Each of these aspects will be dealt with in greater detail below.

#### **Infrastructure issues**

First of all, problems subsist as regards the infrastructure. It now seems certain that the high-speed train linking Johannesburg with Pretoria will not be completed in time, with only the section between Sandton and Oliver Tambo Airport outside Johannesburg ready for the tournament. However, a new airport is scheduled to open in Durban by June 2010 and upgrades are being made to Oliver Tambo and Cape Town International Airport. The Chief Executive Officer of the World Cup Organising Committee, Danny Jordaan, has also pledged that 1,000 additional buses and 200 more aeroplanes will be added to the transportation system, and that police stations with holding cells will be established on the last car of each train. He has admitted that there are no hotel rooms in some of the cities to accommodate spectators, mentioning Nelspruit and Polokwane. Because of that, fans will have to travel in and out for some matches. Mr. Jordaan added that accommodation had been set aside in neighbouring countries within driving distance, including Botswana, Lesotho, Mozambique, Namibia, Swaziland and Zimbabwe (*Associated Press, www.findlaw.com of 22/10/1009*).

Another problem is that, even with half a year to go before the event, most of the host cities are riddled with roadworks. Beside each of the new stadiums, rail terminals are being built as South Africa attempts to piece together a patchy public transport system with park-and-ride schemes as well as shuttle buses. It is expected that many fans will base themselves in Johannesburg and drive to the six stadiums within three and a half hours. This is where the infrastructure question is closely connected to the safety issue, since carjacking is a serious problem, with 15,000 recorded incidents in the course of last year. The system of roads connecting major cities is well developed, but long-distance rail travel is less highly regarded. Most fans, particularly those on official packages, will fly in and out for the fixtures, some from as far as Mauritius (*The Guardian of 18/11/2009, p. S7*).

There is even a question mark over the completion of the stadiums themselves, particularly in view of the fact that the country was facing its most serious industrial unrest since Jacob Zuma became the nation's President. In early July, at least 10,000 workers downed tools at five of the stadium sites. The dispute, which also affects a number of other high-profile infrastructure projects, concerns a 13 per cent wage demand involving as many as 80,000 workers. Such was the militant mood at the site of Soccer City, the

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elegant, but only three-quarter finished, stadium expected to host the final, that a long strike looked likely. One of the main arguments used in support of the claim is the fact that those who build the stadium will have insufficient money to buy any tickets (the average wage for those working at these sites appears to be in the region of £170 for a 50-hour week). The employers were only prepared to offer 10.4 per cent, arguing that the relevant trade union's demands would increase overall labour costs by more than 60 per cent. Workers' expectations had been raised by the electoral triumph of the radical Mr. Zuma (*Financial Times* of 9/7/2009, p. 23).

As is usually the case with such large-scale sporting tournaments, the thorny question as to what would happen to these facilities once the event had finished has also given rise to controversy. One stadium which had been completed at the time of writing was the 68,000-seat Cape Town ground, of which a jubilant city officially took delivery in mid-December 2009. Elsewhere in the country, however, officials were subjected to claims that the nation had wasted £370 million worth of resources on state-of-the-art sporting facilities which would become "white elephants" once the final whistle has been blown – particularly since the project ran over budget to the tune of £120 million. However, Cape Town's director of communications, Pieter Cronjé, denied that the stadium would fall into disuse. He admitted that, after the tournament, there would be ten "hungry stadiums" in the country, but pointed out that this was a "world-class multi-purpose" stadium in a city which was very attractive to international stars. Be that as it may, there was concern that this project, Cape Town's most expensive building ever, was one more indication that, in a nation where half the population survives on an average of £130 per month, had mortgaged itself to the hilt to host a football spectacular which would bring little benefit to its people (*The Independent* of 15/12/2009, p. 24).

This accusation was also given some weight when it was learned that, in a major blow to national pride, the stadiums hosting the top fixtures had been instructed to abandon their African kikuyu pitches and switch instead to tender European ryegrass. This decision came amid rising accusations that the month-long tournament would become a mere "playground for Europeans" providing little long-term benefit for a largely impoverished nation. This accusation was given all the more force when it was learned from local specialists that ryegrass, being a cold season variety suitable for Europe, would fail to stand the test of time and will need to be replaced following the World Cup.

In the words of Julian Visser, the grass subcontractor operating at the stadium:

***"The ryegrass requires more water, fertiliser and maintenance than kikuyu. There is a lot of talk of the World Cup's legacy to South Africa but in reality the priority is the matches next June and July. The switch from kikuyu will be a disadvantage to the African teams who are used to its bounce"*** (*The Observer* of 15/11/2009, p. 39).

Sowetan columnist Andile Mngxitama commented that the decision to plant European grass was clear evidence that the tournament offered "nil legacy" for the host nation. He described it as a "jamboree which will make money for a few South Africans who are rich already" (*ibid*).

### Crime and safety

It would be patently incorrect and unjust to maintain that the decision to allocate football's showcase tournament to South Africa had been taken in total ignorance and disregard of the many problems which the nation faces in the general area of law and order. However, it is equally true to state that, whereas the initial concerns in this field related mainly to the problems of hooliganism and the high native crime rate – or even a lethal mixture of the two – yet another aspect has been added to the mix – i.e. the fear of terrorism. Yet it is a fact that the authorities overseeing the 2010 World Cup will simultaneously need to take account of all three factors in their mission to ensure the safety of players, officials and spectators.

Concern about this aspect rose considerably in mid-September 2009, when evidence was coming through that crime rates in the country were inexorably on the rise. In spite of a 3 per cent reduction in the murder rate, police statistics showed an increase in sex offences, including rape, as well as a dramatic rise in burglaries. In Rustenburg – where the England squad was widely expected to establish its base – cases of sex crime, assault, robbery with aggravating circumstances and kidnapping all increased in relation to the previous year. Reported sex crimes also increased in the police precincts of Cape Town Central, Durban Central, Johannesburg Central, Nelspruit, Polokwane and Pretoria Central, which are all expected to host football supporters from all over the globe. Worryingly, there were also reports of foreign visitors being followed from Johannesburg Airport, then robbed, frequently at gunpoint. Dianne Kohler Barnard, the Shadow Police Minister and an opposition Democratic Alliance MP, urged that, with the Big Event

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fast approaching, what was needed was action rather than “the usual rhetoric and empty promises” (*The Guardian of 23/9/2009, p. 18*)

Mr. Jordaan has, however downplayed concerns about crime, saying:

**“We have crime in our country, but if you ask, ‘Do we have ability to safeguard everyone coming to the event?’ I must say to you: without doubt, if I have information as to when you’re going to arrive in our country, where you’re going to stay, how you’re going to move and so on, information that event organizers will have, I can tell you we will safeguard you in our country. It’s not a problem. There is not in my view a one-on-relationship between unemployment and crime. In fact, some of the richest people in the world are the criminals.”**  
(*Associated Press, www.findlaw.com of 22/10/2009*).

Police chiefs also sought to reassure the many fans expected to make it for the tournament, pointing to a huge deployment of police and security officers, with 41,000 staff being destined to policing the World Cup alone, which would make the country much safer during the championship. They also insisted that the vast majority of crimes are accounted for by cases where the victim knows the perpetrator (*The Guardian of 18/11/2009, p. 12*). Such was the seriousness of intent on display on the part of the police authorities that they were widely reported to have plans for a “zero-tolerance” strategy which could include a “shoot to kill” policy – in effect a return to apartheid-era policing tactics. The nation’s new Police Commissioner, Bheki Cele, who had won the Government’s support for the scheme, said that police should be allowed to open fire without “fear of what happens after that”. Nathi Mthethwa, the Police Minister, has supported the Commissioner in an attempt to reassure the multitude of World Cup visitors (*The Daily Telegraph of 18/9/2009, p. 18*). Not all officers, however, were convinced of the merits of such a policy, on the grounds that this ran the risk of undermining the trust felt by the public in the police (*The Times of 23/10/2009, p. 54*).

There was every indication that the authorities were also taking the threat of hooliganism extremely seriously, as they revealed plans to attach mobile police stations to the back of long-distance trains carrying fans. The coaches would be fitted with two holding cells, an office where offenders could be charged, a safe for locking up firearms, a community service centre and sleeping compartments for officers. These measures mean that misbehaving visitors could

be caught, locked up and charged before they reached their destination, without police officers having to halt the train or seek assistance at the next station. The special “jail coach” is expected to cost £200,000 and will be attached to trains travelling from Johannesburg to Cape Town, Port Elizabeth and Durban. With fixtures at 10 venues in none cities, many of the fans at the tournament will be using these trains. South Africa expects 450,000 visitors for the tournament (*Daily Mail of 6/11/2009, p. 89*).

In spite of all these precautions and reassuring noises, a number of football associations from around the world continued to harbour doubts about security and expressed the fear that there could be “gaps in the coverage” provided by the organisers. This was particularly the case because certain lapses in security arrangements were allegedly noted during the previous year’s Confederations Cup, in effect a small-scale test for the 2010 tournament. As has been mentioned before, concerns about terrorism must also now inhabit the minds of the associations responsible for the national teams. This is why many of them intend to use private security firms – including warzone specialists who operate in Iraq and Afghanistan – in order to protect their players and officials. These companies will provide round-the-clock armed bodyguards, bullet-proof vehicles, hijack prevention and “crisis management” squads capable of handling kidnaps and their attendant problems. Kidnap insurance is also offered by some agencies, but by its nature is ultra secretive, since public knowledge that a specific party is insured typically means that the policy becomes nullified (*The Independent of 3/12/2009, p. 22*).

### **Environmental concerns**

Almost any large-scale human enterprise, whether sporting or not, is currently expected to make an effort at environmental sustainability, and from this point of view the South Africa World Cup will almost certainly be found to be wanting. In late November 2009, it emerged that the tournament was expected to generate 2.75 million tonnes of carbon emissions – one of the most sizeable environmental impacts of any sporting event in history, according to a major study. In fact, the tournament was expected to have a carbon footprint eight times that of the 2006 event in Germany – even before long-haul international travel is taken into account. The main reasons for this are the vast distances between the nation’s host cities and the lack of a “green” transport infrastructure. According to the optimistically entitled Feasibility Study for a Carbon Neutral 2010 FIFA World Cup, commissioned on a joint basis by the South

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African and Norwegian Governments, the estimated output from the event is 896,661 tonnes of carbon dioxide. A further 1,856,589 tonnes will result from supporters travelling from around the world, making the World Cup's footprint the biggest of any event aiming to be "climate neutral", according to the report (*The Guardian of 28/11/2009, p. 15*).

The geography of the country was always going to play a major part in any environmental assessment, with South Africa being five times the size of the United Kingdom, and the venues being spread over much of its surface area. Thus the distance between Cape Town and Johannesburg is 880 miles. In addition, the lack of high-speed rail links means that most fans will use air travel between the venues, leading to much higher transport emissions. Furthermore, within the cities they would use hired cars or buses because there is no underground or light railway alternative. The tournament's organising committee responded with a "green goal" initiative. It claimed that the construction of Soccer City stadium, the venue for the most important games, re-used thousands of tonnes of builders' rubble from parts of the old FNB stadium. Waterless urinals will be used in the stadium, and the pitch will be irrigated exclusively with non-drinkable water, according to the committee. Waste reduction would also be practised, with re-usable cups and limited use of food containers (*Ibid*).

### Race issues

As was almost inevitable, the tournament also aroused tensions around one of the main dividing lines in South African society, which has defined it as a nation in both positive and negative terms, i.e. race and ethnicity. In mid-November 2009, an ugly confrontation along those lines left the country's leading energy company leaderless and threatened to turn out the lights during the run-up to, and even during, the World Cup. Bobby Godsell, the chairman of Eskom, which generates 95 per cent of electricity in sub-Saharan Africa's largest economy, resigned after being accused of attempting to remove his black Chief Executive. The power struggle (in every sense of the word) came as experts warned that the country faced another season of blackouts which have prompted national emergencies in the past two years. It also highlighted the crisis of leadership in President Zuma's new government, accused of appeasing "racial populists" as it sought to contain strongly divergent voices within the ruling ANC party (*The Independent of 11/11/2009, p. 23*).

This was potentially a disaster area for the tournament

organisers, as well as world governing body FIFA, which responded by demanding the provision of an army of back-up generators in order to avoid the possibility of the lights going out during the various fixtures. The affair apparently had its origins in a power struggle between Mr. Godsell and Chief Executive Jacob Maroga, who had competing visions for the state-owned power generator. The company's Board sided with Mr. Godsell, which in turn prompted the Chief Executive's resignation. The whole affair exploded into a major race row as the outspoken ANC youth wing leader Julius Malema accused Eskom of pushing out Mr. Maroga on account of the colour of his skin. The Black Management Forum, a national lobby group, then issued an incendiary statement to the effect that state-owned corporations were becoming a "slaughterhouse" for black professionals. This caused Mr. Maroga to rescind his resignation and Mr. Godsell to tender his, leaving the company without a chairman (*Ibid*).

The issue had not yet been settled at the time of writing.

### Can the World Cup 2010 act as a springboard for a successful Olympic bid?

Thus far, no Olympics have ever been awarded to an African country. However, this could well change as regards the 2020 event, with the head of South African organising body preparing for the 2010 World Cup, stating the belief that a successful tournament could make the first African Games a distinct possibility. Danny Jordaan, Chief Executive Officer of the World Cup organising committee, said:

***"The IOC decided to give South America its first Olympics, so the only continent now without an Olympics is the African continent, and therefore I think it's something that the IOC certainly will have to begin to think about."*** (*Associated Press, www.findlaw.com of 22/10/1009*)

Speaking after a meeting with U.N. Secretary-General Ban Ki-moon, Mr. Jordaan said he could envisage Johannesburg, Cape Town or Durban bidding along with Egypt for the 2020 event. The IOC's 2011 session will be held in Durban, and it is believed that those meetings could serve as a springboard. It should be recalled that, since the end of apartheid and the first elections based on universal suffrage in 1994, South Africa has hosted the Rugby World Cup in 1995 and soccer's African Cup of Nations the following year, as well as co-hosting the Cricket World Cup in 2003. Next year's World Cup will also be the first such occasion to take place in Africa.

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FIFA is projecting record revenue for the 2010 World Cup, with Mr. Jordaan saying commercial partners will generate \$3.2 billion. Hitherto, he added, the argument was that any World Cup on the African continent would cause enormous financial losses, and that, therefore, Africa had to wait. However, because of television, this event had become “without boundaries and without borders”. This enables the organisers to return the value of the investment, regardless of whether this involves New York, Miami and London and Paris, and all over the world. If this argument was dismissed for the World Cup, it should also be dismissed in relation the Olympics (*Ibid*).

### **Catalonia set to ban bullfighting - as another major accident occurs in neighbouring France**

STATUTORY WARNING: This column refuses to recognise bullfighting as a sport, but will report on any development and measure which, actually or potentially, signals an end to this barbarous practice.

Just before this issue went to press, bullfighting looked set to be banned in a major Spanish region as the Catalan parliament prepares to prohibit one of the country's most emblematic, and bloodiest, traditions. In a move that campaigners hope will mark the beginning of the end for bullfighting in the country that invented it, a petition with 127,000 signatures was delivered to the region's parliament in mid-December 2009. Under local laws, the parliament must first vote on the question whether to accept the petition and then draw up a law, which would be subject to a second, definitive vote in several months' time. The next day, the Parliament voted to introduce a Bill to this effect, with minority separatist and far-left parties in the region committed to supporting the ban, while the major parties allow their deputies to vote freely (*The Daily Telegraph of 19/12/2009, p. 20*). Separatists claim bullfighting is not a Catalan tradition.

However, delegates to the Parliament have made it clear that, while they may ban bullfights, they will not prohibit Catalan fiestas in which bulls are chased through the streets and tormented, sometimes with balls of fire attached to their horns. The petition called for a change in Catalonia's animal cruelty law that would see fighting bulls, which are currently excluded, protected from any kind of torture. Pressure on the MPs to vote in favour of the petition was added by the Catalan Animal Rights association, whose spokesperson, Manuel cases, said:

*“If the deputies are going to behave like proper*

*representatives of the people, then they must accept the ban. Seventy percent of Catalans are against bullfighting.” (The Guardian of 18/12/2009, p. 28)*

The move has set off an impassioned debate in a country where matadors are big stars. Bullfighting is referred to as “the national fiesta” and reviews are published in the arts, rather than the sports, pages of newspapers. Among those battling for bullfighting to continue are a group of local artists and writers, including artist Miquel Barceló and theatre director Calixto Bieito. In a manifesto published during the run-up to the vote. They stated that banning bullfighting meant “banning part of our liberty”. They are backed by a group of left-wing Spanish intellectuals who are unconditional supporters of celebrity matador José Tomás. Mr. Tomás has done much recently to revive enthusiasm for bullfighting in Barcelona and other parts of Catalonia after years of decline. Campaigners hope, however, that if the ban goes ahead other Spanish regions will follow suit (*Ibid*).

This hope was boosted considerably by yet another serious accident to take place in one of the bullrings. Interestingly, this did not take place in Spain but just across the border in Carcassonne, France. In a freak accident, witnessed by more than 10,000 people, the large grey bull penetrated the callejon, or fenced-off area between the arena and the stands. Christian Baile, 55, the ceremonial umpire or alguazil of the Carcassonne bullfighting association, was gored in the thigh. As officials tried to pull him away, the bull smashed into the protected zone a second time, goring the prostrate Mr Baile in the chest and abdomen. The umpire, a well-known local horse-breeder and former rugby league player, was later left on life support last night at the Carcassonne hospital. The bull which attacked him was slaughtered in the ring after the incident. After some heated debate, it was decided that the rest of the feria, or bullfight, should go ahead (*The Independent of 26/8/2009, p. 18*).

Although injuries to matadors in the ring are relatively common, it is rare for a bull to force its way into the protected corridor where bullfighters, officials and press photographers shelter from the action. Questions were being asked yesterday about the safety precautions at the French venue. The man ultimately responsible for ensuring the application of bullfighting rules - including safety regulations - was Mr Baile himself as the local alguazil. Three quarters of an hour before the accident, he had started the proceedings by riding into the ring wearing a black uniform and plumed black hat.

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One local bull-fighting official said that such accidents, although rare, were not unknown. "It is part of the risks of the sport," he said. "The alguazil is a professional who knows the danger that he is exposed to inside the callejon." The grey Spanish bull, said to weigh almost half a ton, had just entered the ring for the second contest of the last night of the annual Carcassonne bull-fighting festival. In other words, the animal had not yet been crippled and weakened by having spears thrust into its neck and shoulders by picadors, the horse-borne bull-fighters. Witnesses said that there was panic when the bull charged into the protected corridor for the first time, slightly injuring Mr Baile. Someone had the presence of mind to open a gate in order to allow the bull to escape back into the ring. But before anyone could stop it, the animal forced its way back into the protected perimeter of the ring, goring Mr Baile severely as he lay on the floor (*Ibid*).

Bullfighting in the Spanish style, to the death of the bull (La Corrida) is technically illegal in France but permitted in areas which have an "unbroken" local tradition. This exception to the law has been interpreted broadly by French courts which have allowed bullfighting to be reintroduced to several towns in the south west in the last two decades. One of these towns is Carcassonne, where Mr Baile was one of the leading figures in the revival of bullfighting 10 years ago.

### **Chavez closes "bourgeois golf courses" (Venezuela)**

One of the more colourful characters on the South American political scene is Hugo Chavez, the radical Socialist president of Venezuela and vociferous critic of US foreign policy. In addition to a number of major economic and social reforms, Mr. Chavez now proposes to turn his reforming zeal on some of the nation's golf courses. In one of his lengthy Sunday television addresses in mid-August 2008, he launched an impassioned tirade against this "bourgeois" sport, in which he mocked the use of golf carts, claiming that they represented the slothfulness of those who played the game. However, Mr. Chavez's government has not restricted itself to rhetoric in this matter, since it has moved to close two of the country's best-known courses, according to a leading US newspaper (*The Daily Telegraph of 13/8/2009, p. 16*).

If the closures go ahead, the number of courses shut in the past three years will amount to nine, according to Julio Torres, of the Venezuelan Golf Federation. Most of the closures have taken place in the oil-producing

regions, where courses were built for US citizens who worked in the industry. Nevertheless, the Venezuelan President insisted that he had no plans to make the sport illegal (*Ibid*).

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## ENVIRONMENTAL ISSUES

### **Chinese clean-up money "squandered on golf courses"**

In mid-November 2009, it was reported that nearly half the amount of cash budgeted in order to protect the environment in China was being wasted by civil servants on vanity projects such as golf courses, according to a senior Government official. The nation has poured billions into cleaning up its often toxic landscape and is set to invest 1.4 trillion yuan (£140 billion) on environmental protection. However, Wang Yinnan, the Deputy Director of the Academy for Environmental Planning, has claimed that over 40 per cent of this cash will be squandered on such extravagances as golf courses alongside polluted rivers (*The Daily Telegraph of 16/11/2009, p. 21*).

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## PUBLIC HEALTH AND SAFETY ISSUES

### **"Freak" accidents raise renewed safety concerns in motor sport (Hungary/ UK)**

If ever there was a sport where the risk of death, or at least serious injury, is ever present it is motor sport at the top level, as witness the untimely demise of such eminent drivers as Jochen Rindt, Jim Clark and Ayrton Senna. In late July 2009, two accidents occurred within a week of each other, one of which had fatal consequences. The first occurred at Brands Hatch (UK) and resulted in the death of Henry Surtees, who was hit on the head by a loose wheel from another car which bounced across the track during a Formula Two race. He was killed instantly by the blow, his car driving straight through the next corner before colliding with the barriers. The accident was witnessed by his parents, one of whom, John, was a famous driver of the 1950s and 1960s (*The Daily Telegraph of 21/7/009, p. S20*).

Barely a week later, Ferrari driver Felipe Massa was hit on the helmet by a metal spring which had fallen off Rubens Barrichello's Brawn GP vehicle during the Hungarian Grand Prix qualifying event. The Brazilian was immediately airlifted to hospital where he underwent emergency surgery and was placed in an

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induced coma, before recovering later. The world governing body in the sport, FIA, announced that an inquiry would be held into the causes of the accident and whether any changes are required in order to improve safety with regard to exposed heads. Bernie Ecclestone, the Chief Executive of the Formula One group, also announced that he had instructed Professor Sid Watkins, formerly the FIA's Formula One Safety and Medical Delegate, to examine the issue (*The Daily Telegraph* of 27/7/2009, p. B19).

### **NFL in head injuries controversy (US)**

For some time now, concern has been rising at the attitude adopted by the National Football League towards the relatively high number of concussions suffered by those who take part in the competition. It is a fact that, for too long, they went unreported and untreated, with too many players merely writing them off as occupational hazards. Even among doctors and researchers, there is only so much agreement about the long-term effects. In the meantime, the "hits" which produce them remain prominent in the highlight reels. Cases of concussion only seem to make the headlines on those rare occasions when they compel stars such as Troy Aikman and Steve Young to the sidelines – or when former players such as Andre Waters and Justin Strzelczyk die violently just a few years after leaving the sport bouts of depression which autopsies suggest resulted from repeated blows to the head.

Recently, however, the issue returned to prominence in a less dramatic but much more positive fashion, in the sense that Mark Birk, Lofa Tatupu and Sean Morey became the first players to announce that they would donate their brains and spinal cord tissue to a Boston University medical school programme in order to further studies on sporting injuries of the brain. The league assesses its concussion rates at roughly one every other game, which means between 100 and 150 players per season. Using brain tissue culled posthumously from retired NFL athletes, researchers have identified six cases of chronic traumatic encephalopathy (CTE), a disease previously restricted in medical literature almost exclusively to boxers. Initially, the NFL was slow to react to anecdotal reports, but has now begun to make up for lost time. It convened its first conference on the issue in 2007, bringing together experts from outside the League, introducing mandatory brain baseline testing for each NFL player, standardising concussion reporting and even announcing a "whistleblower" hot line enabling players to report anonymously whenever they feel under pressure to return to the field. In addition, four

rules have also been changed this season in order to reduce collisions on kick off and outlaw blows to the head, neck and shoulders (*Associated Press*, *www.findlaw.com* of 16/9/2009).

Concern at the incidence of serious head injuries in the sport has grown to such a pitch that the Judiciary Committee of US Congress convened a series of hearings on the subject, to which various leading figures from the sport's administration were summoned. Prominent among these was NFL Commissioner Roger Goodell, where he was challenged by lawmakers to acknowledge a connection between head injuries on the football field and subsequent brain diseases, he declined to do so and appeared to take the evasive route. When Committee Chairman John Conyers asked Mr. Goodell whether he thought such a link existed, the Commissioner replied that the NFL was not waiting for that debate to play out and was taking steps to make the sport safer. On being asked actually to answer the question, he responded with the statement that a medical expert could provide a better answer than he could. However, some House of Representatives members complained that Dr. Ira Casson, Chairman of the NFL Committee on Concussions, had not testified.

Representative Linda Sanchez gave Dr Casson some exposure anyway, playing a clip from a television interview in which he denied evidence of a link between multiple head injuries in NFL players with brain disorders such as dementia and Alzheimer's. She added that this reminded her of tobacco companies denying a link between smoking and health damage in the 1990s. However, both Mr. Goodell and DeMaurice Smith, the new NFL Players Association leader, agreed to turn over players' medical records to the Committee. In addition, Mr. Conyers has called for information on head injuries from University sports governing body NCAA, high schools and medical researchers in order to understand better the health risks associated with the sport. However, several Republican representatives questioned the point of the hearings, complaining that involvement by Congress in American football would mean the end of the sport (*Associated Press*, *www.findlaw.com* of 29/10/2009).

Several retired players testified at the hearing, including former full back Merrill Hige, who claimed that a series of concussions cost him his career. Following his first concussion, he alleged, he never saw a neurological doctor and was declared fit to play five days later. Gay Culverhouse, a former president of the Tampa Bay Buccaneers, said that NFL team doctors

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are not advocates for the players, and called for an independent neurologist to be in attendance at games. Dr. Robert Canty, joint director of Boston University's Centre for the Study of Traumatic Encephalopathy, said that there was "growing and convincing evidence" that repetitive concussive and subconcussive hits to the head in NFL players led to a degenerative brain disease known as chronic traumatic encephalopathy, as mentioned earlier. His colleague at the centre, Dr. Ann McKee, showed the Committee pictures of brains taken from deceased footballers with CTE (*Ibid*).

Meanwhile, the "whistleblowing hotline" scheme referred to above was not being met with universal acclaim amongst the game's practitioners. More particularly the Players Association came out in opposition to the plan. George Atallah, Assistant Executive Director to the Association explained that this would be a good idea only if every player were a medical doctor capable of recognising symptoms of concussion. This followed closely on a survey of 160 NFL players conducted by The Associated Press (AP), 30 of whom replied that they had hidden or played down the effects of a concussion, and half averring that they had suffered at least one concussion playing football. Informed of those findings, NFL spokesman Greg Aiello sent an email to AP stating that Mr. Goodell had spoken to DeMaurice Smith, referred to above, about the importance of players reporting head injuries "no matter how minor they believed they might be".

When a handful of players were asked to comment on Mr. Goodell's "whistleblower" proposal, reactions were mixed. Whilst New England Patriots running back Kevin Faulk praised the idea, Mike Sellers, of the Washington Redskins, curtly commented that "we ain't no snitches over here - that is not happening". Equally assertive in his opposition was Pro Football Hall of Fame member Gary Zimmerman, who considered this to a matter of "your personal responsibility and your decision". Other current players, such as Minnesota Vikings running back Adrian Peterson, Denver Broncos cornerback Champ Bailey and New York Jets offensive lineman Damien Woody, said players already kept an eye on team mates, citing the danger that some players are so eager to compete in spite of injury that they "might just be in denial". Dr. Joseph Maroon, Pittsburgh's team doctor and a member of the NFL Committee on Concussions, said that members of his team often pointed out team mates to him, urging him to "look at him", conscious of the fact that an individual "who's not processing information properly isn't going to benefit the team" (*Associated Press, www.findlaw.com of 20/11/2009*).

There was further controversy on the subject when it was learned that the NFL Players Association (NFLPA) wanted the League to remove the co-chairman of its committee on concussions because the union believed he is biased.

Dr. Ira Casson, already referred to above, has criticized independent and league-sponsored studies linking NFL careers with heightened risk for dementia and cognitive decline, saying more research is needed. According to NFLPA assistant executive director George Atallah:

***"We've expressed some serious concern about his ability to continue in his role, because of the historic comments that he's made with respect to discrediting independent research on the subject of concussions and the long-term impact of football on players."*** (*Associated Press, www.findlaw.com of 10/12/2009*).

The NFLPA's stance was first reported by The New York Times. NFL spokesman Greg Aiello responded by stating that neither the union head DeMaurice Smith nor anyone else at the NFLPA had initiated a discussion about Dr. Casson with Commissioner Goodell, but that the League had informed Mr. Smith of a number of steps it are considering relating to player health and safety, including the work and structure of our committee on brain injuries.

Dr. Casson has served on the committee since it was formed in 1994 and became co-chairman in 2007. He has been conducting a study of retired players he said will provide reliable evidence on brain injuries in the sport. According to the newspaper, that study has been criticized by several outside experts in epidemiology and dementia research who say the 120 test subjects are too few to find any substantial link between football and brain injuries, and that Dr. Casson's role in conducting all neurological exams in the study was improper. Atallah informed the media that the union was upset that, as was reported earlier, Casson failed to appear at the previous month's congressional hearing about football head injuries. Some House members also complained that day that Casson did not testify. It will also be recalled that, during the hearing, Representative Linda Sanchez had played a clip of a TV interview in which Casson denied evidence of a link between multiple head injuries in NFL players with brain disorders such as dementia and Alzheimer's, commenting that this reminded her of tobacco companies denying a link between smoking and disease.

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However, there was better news when it was learned that the NFL and the players' union had approved independent doctors to evaluate head injuries for about half of the League's 32 teams as part of a new program. The NFL Players Association medical director, Dr. Thom Mayer, told The Associated Press in a telephone interview Monday that "the quality of people brought forward has been first rate" and none of the doctors proposed by teams has been rejected so far. The NFL had already announced that it was requiring teams to find outside experts in neurology to aid their medical staffs when players sustain concussions. Mayer and the NFL's medical adviser are vetting the doctors jointly, a process that began a few weeks beforehand, according to Dr. Mayer. According to Mr. Aiello,

***"The plan is simply to ensure that every team has a highly qualified neurologist or neurosurgeon working with its medical staff. We are working with the union to identify and mutually approve those specialists for each team."*** (Associated Press, [www.findlaw.com](http://www.findlaw.com) of 24/11/2009).

Some details of the programme remain to be completed, according to Dr. Mayer, such as who will pay the independent doctors, whether the doctors will be on the sidelines at games, and, if so, whether there would be one expert present per team or one per game. These newly appointed neurologists would be independent of the teams themselves, and "they're rendering an opinion that is guided by expertise in concussions," Mayer continued. They are not part of the club medical staff, so they are an independent voice with regard to whether the player is ready to return or not.

However, the very next day after this announcement was made, Commissioner Goodell issued a statement to the effect that that Dr. Casson and Dr. David Viano, who have led the league committee on concussions since 2007, had resigned from those positions. He added that he wished to bring in new members who would bring to the committee "independent sources of expertise and experience in the field of head injuries." Goodell also said that he had met competition committee co-chair Rich McKay to review specific types of plays with an eye to evaluating possible rules changes "to reduce head impacts and related injuries in a game setting."

Other points broached in the statement, which was addressed to chief executives, club presidents, general managers, head coaches, team physicians and head athletic trainers, included the following:

***the NFL will continue to invest in research designed***

***to improve equipment safety, and we will urge players to make informed choices regarding the use of the most technologically advanced helmets;***

***former NFL coach and TV analyst John Madden is leading a panel of coaches looking into reducing concussion risk outside of games. Among the possibilities under discussion: reducing off-season work, limiting helmet use and contact in practice, mini-camps and training camps***

***The League will hold a conference on concussions in Washington in June; team medical personnel "will be required to attend."***

It was also learned that NFL teams would henceforth have new, stricter instructions for when players should be allowed to return to games or practices after head injuries, guidelines that have since come into effect. In the latest step by the League to address this issue, commissioner Roger Goodell sent a memo to the 32 clubs saying that a player who suffers a concussion should not return to action on the same day if he shows certain signs or symptoms. Those include an inability to remember assignments or plays, a gap in memory, persistent dizziness and persistent headaches. The previous standard, established in 2007, said a player should not be allowed to return to the same game if he lost consciousness. The memo also urged players to be candid with team medical staffs and "fully disclose any signs or symptoms that may be associated with a concussion". The League said its concussion committee, team doctors, outside medical experts and the NFL Players Association developed the new standards. George Atallah said the players' union was "encouraged by this new policy." He added that the NFLPA would continue to examine these issues independently to recommend the best possible policies and procedures.

The new policy states, in part:

***"Once removed for the duration of a practice or game, the player should not be considered for return-to-football activities until he is fully asymptomatic, both at rest and after exertion, has a normal neurological examination, normal neuropsychological testing and has been cleared to return by both his team physician(s) and the independent neurological consultant."*** (Associated Press, [www.findlaw.com](http://www.findlaw.com) of 14/12/2009)

Mr. Goodell added that the evidence demonstrated that team medical staffs have been addressing concussions in an increasingly cautious and

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conservative way, and that this new return-to-play statement reinforces the Laague's commitment to advancing player safety. Along with improved equipment, better education, and rules changes designed to reduce impacts to the head, it will, according to the Commissioner, make our game safer for the men who play it, and set an important example for players at all levels of play (*Ibid*).

### Swine flu affects sporting activity

Whereas head injuries sustained in contact sports are a time-honoured hazard, the same cannot be said of the disease which made its appearance in the summer of 2009, to wit H1N1, known more popularly as "swine flu". Although subsequent events have shown that the effects of this disease have been far less dramatic than was predicted at a certain point, it was almost inevitable that sporting activity would experience its impact in some form or other. It started as early as August 2009, when US soccer star Landon Donovan, who plays for Los Angeles Galaxy, treated positive for the illness. He was believed to have contracted the virus from two Galaxy staff members who had been stricken with it during a fixture with New England Revolution in Foxborough, Mass. However, this proved to be a mild strain of the disease, caught at its tail end (*Associated Press, www.findlaw.com of 14/8/2009*).

Barely a few days later it was learned that all staff and players of the Nippon Ham Fighters baseball team (Japan) were to be tested for the disease after two players and a coach contracted the virus. Former US Major League outfielder Termel Sledge, pitcher Naoki Miyanishi and head coach Junichi Fukura were confirmed to have incurred the virus when 27 people connected with the side were tested (*Associated Press, www.findlaw.com of 19/8/2009*). Then it was the turn of the China national football team to feel the impact, when it was reported that 11 players tested positive. This led to fears that their flagship competition, the Super League, might have to be suspended, but ultimately these fears proved to be groundless (*Associated Press, www.findlaw.com of 9/11/2009*).

This seemed to set the pattern for several other sports: a flurry of hasty measures as soon as a few cases were diagnosed, but with very little actual harm being caused in the end. Thus in American Football, whose governing body, the aforementioned NFL put into effect an emergency plan as soon as it was learned that a dozen Cleveland Browns missed practice with flu-like symptoms, which was more than 25 per cent of the squad allowed for each game. This plan made

provision for granting exemptions to this limit if sufficient numbers of players contracted the disease (*Associated Press, www.findlaw.com of 22/10/2009*). In the event, this did not prove necessary. Then again, other US sports seemed relatively unconcerned by the outbreak of the disease, with the National Basketball association (NBA), National Hockey league (NHL) and Major League baseball admitting to an absence of any contingency planning to address the possibility of a team being badly affected by the disease (*Ibid*). Even with the benefit of hindsight, it therefore seems a little on the panicky side for players from the French football club Nancy to have cancelled their pre-season tour of England because of their fears of contracting the disease (*Daily Mail of 20/7/2009, p. 71*).

### Tour de France death and injuries raise safety concerns

Risk to one's safety has always been a factor constantly hovering in the background of road cycling, and nowhere is this truer than in France during the sport's showpiece event which takes place each year at the height of summer. Official precautionary measures may have increased dramatically over the past few years along the route of the Tour, but lapses continue to occur on a regular basis. In most cases these have no serious consequences, but the 2009 event took on a more dramatic turn, both by accident and design. It is one thing for riders to be accompanied by fans running alongside them; quite another for two competitors - Julian dean of New Zealand and Oscar Freire of Spain - to be hit by pellets from an air gun as they climbed the arduous Col de Bannstein, near the end of Stage 13 from Vittel to Colmar. Worse was to follow the next day when a spectator was killed in a collision with a police motorcyclist - the victim being a 61-year-old woman crossing the road who was hit by a cycle ridden by a member of the Garde Républicaine (*The Observer of 19/7/2009, p. S14*).

Although some commentators expressed the view that the real surprise of these incidents was that they did not occur more often, it is expected that this turn of events will lead to an overhaul of security arrangements at next year's event.

### Safe or fast? World ski circuit faces a dilemma

As the Xmas holiday season got under way, the World Cup ski circuit was facing a significant dilemma in terms of the well-being of its competitors. A spate of serious injuries to skiers has caused rounds of discussions about

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how to make the sport safer, yet those involved, especially the “downhillers, do not want the excitement level, or the fans’ “wow” factor, to diminish.

Thus Scott Macartney, the veteran American speed specialist who suffered severe head trauma in a serious crash on Kitzbuehel’s famed Streif course two years ago. He was one of six athletes invited to a safety discussion with International Ski Federation race director Guenther Hujara in mid-December 2009. He commented:

*“We talked about how you can make it as safe as possible while maintaining the part of the sport that everyone loves – the excitement. You can’t remove all the danger from it. That’s part of the deal. (...) It definitely has come to light with the recent injuries. It’s hard to say whether that’s a bit of an anomaly. When you look back at the courses so far, they’ve been prepped really well. There hasn’t been one spot that seemed exceptionally dangerous to me. But with high speed and downhill – I mean we’re not playing ping pong, we’re running downhill – it’s dangerous”* (Associated Press, [www.findlaw.com](http://www.findlaw.com) of 18/12/2009).

At the time of writing, downhill world champion John Kucera, World Cup slalom champion Jean-Baptiste Grange and former women’s overall World Cup winner Nicole Hosp were among a number of racers already ruled out of the Vancouver Winter Games. Prominent skiers Peter Fill, Pierre-Emmanuel Dalcin, TJ Lanning, Lara Gut and Resi Stiegler are also out long-term and there has been a widespread call for changes in safety procedures. Another veteran downhiller, 38-year-old Marco Buechel of Liechtenstein, was also in on the meeting, which he described as “very constructive”, with Mr. Hujara being very attentive to the observations made by those present. He himself had made several suggestions as to how the airborne portions of races could be made more secure. He added:

*“It’s not about shaving off jumps. We want to fly far, we like that – it’s just we don’t like to fly into the flats. Second, high speed sections when you reach (80-90 mph) need to be smooth. Third, prior to big jumps the snow must be clean, no bumpy rides 20 metres before a jump, to ensure that every racer has a stable position over the jump”* (Ibid)

With the current safety worries in mind, the jumps on the Saslong course, scene of a major World Cup event, are the smallest anyone can remember, yet the skiers still enjoy it. The crashes suffered by Messrs. Lanning and Dalcin were caused in part by contact with gates which failed to break apart, and FIS, the world governing body, is already in contact with its

manufacturer to produce a new material for gates. Mr. Lanning fractured a vertebra in his neck and shredded his left knee in his crash in Lake Louise, Alberta, last month. He hit a small mound of snow, sending him careening at nearly 75 mph into a gate. Nevertheless he was on his way to staving off the fall when the flag from the gate wrapped around his right ski for an instant, sending him off balance and somersaulting through the air. The FIS clearly needs to find a solution that will not result in broken gates every time a skier hits a gate, which would slow down races and bring more people onto the course to fix them, creating more danger. In the long term, virtually everyone in the sport agrees there should be changes in equipment. Several athletes, such as Grange and Denise Karbon of Italy, have been injured without even falling, with critics blaming overly flexible skis that turn virtually on their own (Ibid)

### Rare athlete deaths prompt sickle cell testing (US)

In early August 2009, it emerged that thousands of families carry the gene that causes sickle cell disease and are unaware of this – even though almost every newborn today is tested for what’s called “sickle cell trait,” and, as from this year, more college athletes are being tested also. Prompted in part by rare but tragic collapses of athletes from overexertion, research is increasingly finding families missed by newborn screening or who failed to understand that sickle cell trait has ramifications. Apart from sports safety considerations, if both parents carry the gene they could have a baby with full-fledged sickle cell disease, which is a devastating blood disorder. In late June, the US college sports governing body, NCAA recommended that colleges and universities test student athletes, many of whom were born before widespread newborn screening. This move helped to settle a court action from the family of a 19-year-old freshman football player at Rice University, Dale Lloyd II, who died from sickle cell trait complications during a conditioning workout in September 2006 (Associated Press, [www.findlaw.com](http://www.findlaw.com) of 4/8/2009).

According to Dr. Lakshmanan Krishnamurti, of the Children’s Hospital in Pittsburgh, not only athletes, but everyone else should be tested. His sickle cell programme, prompted by recommendations from NCAA, is preparing to offer testing to anyone in that city’s schools, both high school and college. He regretted the lack of awareness all round of this disease, and is currently spearheading a separate effort to improve notification to new parents, which at present he describes as “quite a travesty”.

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However, a distinction must be drawn between sickle cell disease and sickle cell trait. The former demands immediate treatment for babies, and public testing programmes make tracking down such families a priority. Approximately 80,000 US citizens have contracted this disease, in which oxygen-carrying haemoglobin clumps inside red blood cells, transforming them into a sickle shape which cannot squeeze through any tiny blood vessels. This causes pain, infections, and eventually life-threatening organ damage. Sickle cell trait, on the other hand, is different. Over 2,5 million US citizens are beset by it, which means that they carry one copy of the abnormal haemoglobin gene, rather than the two required in order to cause the full disease. Only occasionally do trait carriers experience health problems, such as blood in the urine, some blood clumping at high altitudes and the athlete's risk, under which intense exercise can cause blood cells to sickle sufficiently to block blood flow to the muscles, which rapidly break down. The US National Athletic Trainers Association (NATA), which also recommends the testing of athletes, has counted a dozen sports-related deaths since 2000 from such "exertional sickling", most of them affecting college footballers during training – but also two 12-year-olds. However, testing is only half the story, cautions NATA official Scott Anderson, the chief athletic trainer at the University of Oklahoma. You can be a star athlete with sickle cell trait, but you and your coaches must be alert to the symptoms, such as cramp, and obtain rapid treatment (*Ibid*).

Sickle cell conditions are most likely to occur amongst black Americans (around 10 per cent have the trait) as well as amongst people of Mediterranean, Middle Eastern and Latin American ancestry. In short, almost anyone can have it – hence new born screening, which many states offered in 1998 and covered all newborns by 2006.

However, screening is only aimed at finding disease, not generally healthy gene carriers, and specialists maintain that there is a wide variation as to how aggressively the state programmes notify parents about the sickle trait. Dr Krishnamurti's programme has recently improved newborn notification so that the worst affected families in western Pennsylvania receive genetic counselling by telephone, and 20 per cent seek testing of family members, up from 2 per cent in 2002. Andrea Williams, whose family were affected by the imponderables in the testing programme, has started the Children's Sickle Cell Foundation, in order to educate teenagers about sickle trait and have them tested before they start having children (*Ibid*).

### **Chewing gum when playing football can be a hazard (Brazil)**

Ever since the game began, spectators have become accustomed to the systematic mastication of chewing gum by its regular practitioners. However, this habit can be a health hazard, as Aloisio, a striker playing for Brazilian side Vasco de Gama, experienced to his cost in late August 2009. The player ended in hospital after colliding with an opponent and choking on his gum during a match. He was later released from hospital and escaped serious injury. Doctors reported that he had injured his head and momentarily stopped breathing. Fortunately they identified the problem rapidly and removed the gum in order to allow him to breathe again. The player had been struck hard in the head whilst challenging for a high ball in midfield during the second half. He thereupon collapsed and lost consciousness for a few moments (*Associated Press, www.findlaw.com of 26/8/2009*).

### **Extra protection for baseball players' heads (US)**

As from next season, the top exponents in the sport will enjoy enhanced protection. In late August 2009, Minor League Baseball announced that a new helmet, produced by St Louis-based company at \$100 apiece, would be required for its players as from the coming season. Six of the sturdy helmets have also been sent to every major league team so that its players can test them for the remainder of the year. The helmet in question is designed to resist a pitch at 100 mph. However, some players in the major leagues have qualified it as being too bulky and uncomfortable (*Associated Press, www.findlaw.com of 31/8/2009*). Naturally, at the time of writing it was too early to assess whether this measure had produced the desired effect.

### **Horse sense? Safety rules seek to reduce Palio risk**

Believed to date from the 13th century, the traditional Palio race in the ancient Italian town of Siena is held twice per year – once in July and once in August. The race itself lasts but a few minutes, consisting as it does of a mere three laps round the city's Piazza del Campo, but is preceded by hours of processions and rituals. The horses participate, each representing one of the 17 city districts. This column has already had occasion to report and comment on some of the less admirable aspects of this annual contest. It now appears that the concerns expressed on these occasions have not gone unnoticed, judging by the news that the annual contest will soon be governed by strict new rules – including

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breath tests – in an attempt to arrest the tide of injuries incurred by both the riders and their mounts. Major changes have been introduced. Thus there will be a ban on the use of horsewhips which, traditionally, were let loose on horses – and even riders – in the “no holds barred” competition. In addition, horses under the age of four will not be allowed to compete, and strict new anti-doping rules will be applied. Riders may also be tested in order to ensure that they have adhered to the alcohol ban. In fact, the new rules will apply to the various other historic horse races taking place in Italy (*The Independent of 28/7/2009, p. 25*).

Francesca Martini, the Minister of Welfare, explained that the new regulations had been designed to strike a balance between respect for local cultural traditions and protecting the animals and riders, adding that the “horrifying images a horseman killed” during last year’s race must not be repeated. The incident in question was one in which 44-year-old Roberto Pisanu lost his life in a Sardinian town’s annual race. The rider in question suffered a fractured skull when he fell from his horse shortly after the start. Three other riders fell, one of whom was treated for a spinal injury. In spite of this, Francesco Putzolu, the Mayor of Sedilo (the town in question) gave but a cool reception to the new rules, pleading the fact that the race expresses the “true Sardinian identity”. On the other hand, Murizio Cenni, the Mayor of Siena, which hosts the Palio, welcomed the rules, saying that they could only enhance such precautions as had already been adopted by the city authorities. Nevertheless, animal activists are continuing their efforts to have the races banned. They stress the alleged cruelty of the event and claim that it has little to do with sporting skill, whilst also pointing out the dangers to both horse jockeys and spectators (*Ibid*).

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### NATIONALITY, VISAS AND IMMIGRATION ISSUES

#### **“Beastgate”? South African prop may not be eligible**

The build-up to the South African rugby union team’s opening November 2009 Test Match against France was marred by an extraordinary eligibility controversy concerning the prop Tendai Mtawarira, a.k.a. “The Beast”, who played such a prominent role in their Test series win over the Lions the previous summer. The Springboks woke up to learn that a strongly worded statement had been issued overnight by their own South African Sports Ministry, which insisted that the Zimbabwean-born

Mtawarira was not a South African passport holder, nor could he be considered a South African citizen. The Ministry also disputed whether Mr. Mtawarira possessed a permanent residence permit, or even a valid work permit, to play professional rugby in South Africa.

Mtawarira, aged 24, had already won 15 Springbok caps, but was born and raised in Harare and educated at the renowned rugby nursery, Peterhouse College, from where he won Zimbabwe Under-19 honours. Having been spotted by the Natal Sharks he moved to Durban, initially playing as a flanker before switching with great success to prop. He won his first cap for South Africa against Italy the previous summer and, along with Bryan Habana, is viewed as role model for black rugby players in South Africa. In its statement, the Ministry continued:

*“We must state up front our admiration for the gifted Zimbabwean prop forward. He is a live wire on the rugby field. But just like he must obey the rules of rugby on the field, he must comply with the laws of South Africa in life here on our land, like all of us. According to the President, as well as the CEO of the SARU, ‘The Beast’ is not a citizen of South Africa. He does not even have a permit for permanent residence in South Africa. The CEO of the Sharks corroborates these facts and makes the interesting remarks: ‘There has never been any issue about his nationality’. The issue here is not his nationality. It is his citizenship. He has never applied for a South African citizenship or passport. Of course he would not get a passport if he was not our citizen. This is the law that all citizens in all countries respect. What is wrong with some of our compatriots? No sport can be bigger than South Africa! Sports leaders should be the first to understand why national teams cannot play foreigners, no matter how outstanding they may be. Morne Steyn cannot represent New Zealand, Dan Carter cannot represent Wales, Wayne Rooney cannot play for Bafana Bafana. The list goes on. To simply rely on slipping through the legal framework (as the CEO of the Sharks seems to be doing) is very dangerous and negligent. Let us take our country more seriously.”* (*The Daily Telegraph of 14/11/2009, p. S19*).

In the event, Mr. Mtawarira did take the field for the France Test. It would seem that the South African Rugby Union (SARU) has always understood that Mtawarira was qualified to play to the International Rugby Board’s satisfaction under the three-year residency rule. In fact, when a journalist employed by a leading British newspaper checked the matter with the International Rugby Board (IRB), the player appeared

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to have comfortably met their criteria of 36 months' residence in an adopted country, having not played senior rugby at full Test level for another country. These are the same criteria, for example, which enabled Riki Flutey to play for England. There was therefore a suspicion that the issue was political, the South African government wanting to make a point with South Africa Rugby Union on the immigration issue and the need to treat everybody equally.

So the question could legitimately be asked as to what exactly had been achieved by this episode. Mr. Mtawarira had already spilt blood and sweated buckets to demonstrate his pride in South Africa and, as is noted above, had become an admirable black role model. Some would even argue that he was probably the first black forward to be worth his place in a full strength South African pack. So the question must be asked why this issue could not this have been settled "in-house". It should be recalled, for example, that New Zealand quietly produced a passport for national hero Jonah Lomu in the week of the 1995 World Cup final after it was discovered that, technically, his Tongan parents were still illegal immigrants living in Auckland (*The Daily Telegraph of 17/11/2009, p. S12*).

### **Australian Rugby League players face deportation from Britain**

In mid-August 2009, the latest attempt to establish a professional Rugby League team in Wales suffered a humiliating blow when six Australian players employed by the Celtic Crusaders were ordered to leave the country because of serious visa offences. The UK Border Agency found that the six, who include the club captain, Jace van Dijk, and their record try-scorer, Tony Duggan, played illegally under working holiday or student visas at various stages between 2006 and 2008 when the Crusaders were building towards last year's successful application for a Super League licence. They were served with papers ordering them to leave the country within the next three weeks and will not be allowed to return for 10 years, with no right of appeal until they have left. This meant that the Crusaders would be six players short for the remaining three matches of their unsatisfactory first season in the Super League; however, the long-term implications could be even more serious as the latest embarrassment must place in further jeopardy their hopes of extending their existing permit beyond 2011.

At the time when the controversy erupted, they had won only three of their 24 matches during the current season and were experiencing damaging publicity over

financial problems. Their problems could worsen, since the club remains the subject of investigation by the Border Agency which has already concluded that deception was used in bringing the players into the country. The mood among those lower-league clubs who were overtaken by the Crusaders in the battle for Super League licences over the last three years was already hostile, and could now be febrile as it emerges that the Welsh newcomers secured promotion from the Second to the First Division of the National League in 2007 – which was necessary for them to apply for their licence – with a team including six Australians who were in the country illegally (*The Guardian of 19/8/2009, p. S10*).

In addition to Van Dijk, Duggan and Damien Quinn, a stand-off who also joined the club from its inception in 2006, Mark Dalle-Cort and the former Brisbane Broncos forward Darren Mapp also played key roles in that 2007 promotion campaign, while Josh Hannay, a centre who had made State of Origin appearances for Queensland, was signed for the big matches late in the season. Coincidentally, those Championship clubs who intend to apply for a Super League licence when they are next available from 2012 will meet officials of the Rugby Football League (RFL), and the latest Crusaders controversy will now be high on their agenda. The RFL is awaiting reports from the Crusaders and the Border Agency before making any public comment.

Mike Turner, who joined the club as chief executive just before the start of the Super League season and therefore had no involvement in the visa applications, commented:

***"Celtic Crusaders have co-operated fully with the UK Border Agency's investigation and we will abide by their findings. We are sorry to be losing players who have made a big contribution in making Celtic Crusaders a Super League club."*** (*Ibid*).

At the time of writing, it was learned that the six players in question intended to appeal against this decision. No further details are available at the time of writing.

### **Ethiopian athletes go missing in Scotland**

In late August 2009, it was learned that two runners and two hurdlers from Ethiopia were reported missing after leaving their hotel prior to a track and field event in Scotland. Scottish Athletics chief executive Geoff Wightman reported their disappearance to the police. The athletes in question were to have appeared in the Falkirk Cup, an event which also featured competitors from England, Ireland and Scotland. One of the

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Ethiopians' management team, Dagmawit Amare, is reported to have attempted to restrain the athletes. No further details are available at the time of writing. (*Associated Press, www.findlaw.com of 25/8/2009*).

### **Eritrean football team vanishes from Kenya**

In mid-December 2009, it emerged that the entire Eritrean national football team disappeared after failing to board a return flight following a fixture in Kenya. The only members of the delegation to return to Eritrea were the team coach and one other official. The 12 players were believed to be in hiding somewhere in the Kenyan capital Nairobi, where tens of thousands of refugees have fled Eritrea's repressive regime and poverty (*The Daily Telegraph of 16/12/2009, p. 19*).

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## SPORTING FIGURES IN POLITICS

### **Boxing ace Pacquiao re-enters political ring (Philippines)**

In early December 2009, it was learned that Manny Pacquiao, the newly crowned world welterweight boxing champion, was to enter the tumultuous world of politics after officially launching his candidacy for a seat in the lower house of the Philippines Parliament. The boxer, who is the only one to hold seven titles in as many weight divisions, is hoping to avoid a repetition of his unsuccessful bid for a seat in 2007. Having attended Mass at a local church, he led a convoy of vehicles to the election office in Alabel, a town located in the southern island of Mindanao, where he registered himself as a candidate for the People's Champ Movement (*The Guardian of 2/12/2009, p. 21*).

### **French rugby star condemns former Cabinet colleagues**

Bernard Laporte, the French rugby legend turned sports minister has launched an excoriating assault on his former cabinet colleagues, branding them condescending "cowards" who treated him like a dozy "country bumpkin". The 45-year-old former scrum-half said he was bitter and angry at being "spoken to like a dog", according to his new memoirs entitled *Un Bleu en Politique*. Mr Laporte, who twice coached France to the Grand Slam, was appointed junior minister by President Nicolas Sarkozy before being unceremoniously ejected in a government reshuffle. In an excoriating assault on his cabinet colleagues, the 45-year-old former scrum-half said he was bitter and angry at this treatment. Mr Laporte, a flamboyant fast-

talker with a flourishing business empire said he was shown no respect during his stint in Mr Sarkozy's government minister between October 2007 and June this year. In extracts quoted by the newspaper *Le Parisien*, Mr Laporte singles out Bernard Kouchner, the Foreign Minister, for never deigning to "shake my hand or say hello".

Mr Laporte won four Six Nations championships and two Grand Slams in his eight-year spate as national coach. He was initially hailed as one of the high-profile stars of Mr Sarkozy's "dream team", alongside Left-wingers and ethnic minority figures including Rachida Dati, the former Justice Minister. However, according to Mr Laporte, colleagues and opposition rivals "**look down on me like they look down on the average Frenchman. I'm not in my place. I have neither their codes nor their diplomas. In their eyes I've been parachuted there, a guy who's been co-opted with no merit.**" (*The Daily Telegraph of 12/11/2009, p. S7*).

Miss Dati is also criticised in the book. At first, the pair struck up an "instinctive" friendship. But he claims that she froze Mr Laporte out after he cracked a now notorious joke, saying "I'm not the father" during the peak of speculation over her then child-to-be, Zohra. On primetime TV news, Miss Dati, 41, who has never revealed the father's identity, said his remark merited no comment. Mr Laporte, for his part, said that, whilst he had invariably taken her defence, he was disappointed, adding that his denial was in no way thoughtless, but "I had to defend my honour". As for France's lower house of parliament, he wrote that it bore more resemblance to a "circus" than a rugby pitch, being replete with "mooring" MPs jostling to deliver "stinking and nauseating low blows".

The nomination of Mr Laporte, who runs dozens of businesses including two casinos, was lambasted at the time by the Socialist opposition, who said he had "no place in government" given that he created "confusion between sport, business and politics". However, he has only good words to say about Mr Sarkozy, whom he backed for president and describes as "likeable, passionate, committed...This guy's a leader, I want to follow him". Mr Laporte also describes Bernard-Henri Lévy, France's celebrity-philosopher, as "someone who I hope never to cross paths with again". Mr Lévy had appeared on French television to castigate "this band of little males and pigs lining up" to deny being the father of Miss Dati's child. Furious, Mr Laporte telephoned the philosopher who, he said was meekly apologetic, and claimed his comments were aimed at

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José Maria Aznar, the former Spanish prime minister, who has also denied being the father.

Despite the tone of disillusionment evident in the book, Mr Laporte told leading newspaper *Le Parisien* he was considering a return to politics by running in regional elections in Paris next year (*Ibid*).

### **San Diego Chargers ace to try for Congress in New Jersey (US)**

In late November 2009, it was learned that, shortly after signing with the San Diego Chargers (American Football), Jon Runyan announced that he was to retire from the game at the end of this season and attempt to gain a seat in the US Congress representing New Jersey. He had apparently already informed Republican officials in Burlington County of his decision to challenge Democratic representative John Adler in New Jersey's Third District. Prior to this, the seat had been held by the Republicans for more than two decades (*Associated Press, www.findlaw.com of 25/11/2009*).

broadcast then returned to a studio presenter who announced that problems had arisen because IRIB had only sent one camera to the stadium. In the event, the match was screened nearly one hour late, without sound and with close-ups focusing exclusively on the pitch, editing out the 70,000 spectators (*The Observer of 20/9/2009, p. 35*).

### **Banned Jewish athlete honoured (Germany)**

In late November 2009, Germany honoured a high jumper who was excluded from the national team by the Nazis one month before the 1936 Olympics in Berlin because she was Jewish. Gretel Bergmann equalled a German record of 5ft 3in in Stuttgart, but two weeks later her feat was struck out of the record books and she was removed from the team. The German authorities are now attempting to make amends to the former athlete, now aged 95 and living in the US, announcing that this was an "act of justice and a symbolic gesture" (*The Guardian of 25/11/2009, p. 24*).

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## OTHER ISSUES

### **Political protests edited out of Iranian football coverage**

The link between sport and politics (if it ever needed demonstrating) has been made all too evident recently in the Middle East. In mid-September 2009, it was claimed that live television coverage of an Iranian football fixture was blacked out on account of the circumstance that certain sections of the crowd were wearing green emblems in support of the nation's opposition. The Premier League fixture between Esteghlal and Steel Azin took place at the Azadi stadium in Tehran, just hours after tens of thousands of green-clad protestors used the state-organised Quds day anti-Israeli demonstration in order to voice their opposition to the policies of president Mahmoud Ahmedinejad, who has been accused of distorting the general election which took place a few months before. The broadcast of the match was reported to have been disrupted after leaders of the state broadcaster, IRIB, learned of the presence of protestors inside the stadium.

According to certain Iranian websites, the game was initially broadcast for a few minutes in black-and-white, with the sound switched off, ostensible to indicate that the station was experiencing technical difficulties. The

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## PLANNING LAW

### **49ers sued over proposed stadium (US)**

The Santa Clara 49ers are a renowned American football team in search of a new stadium. However, their plans received a severe setback in mid-October 2009 when it was learned that the owners of a theme park adjacent to the proposed ground were taking legal action against the city authorities, alleging that the agreement they made with the club is unlawful. The action was lodged by Cedar Fair Entertainment, which owns the Great American Theme Park, and claims that the city should have endorsed and environmental impact report for the stadium prior to reaching an agreement with the team. The city council later approved the environmental report and took a number of measures designed to gain voter support for the project (*Associated Press, www.findlaw.com of 12/10/2009*).

No further details are available at the time of writing.

### **China cracks down on illegal golf courses**

The sport of golf seems to have assumed an increasingly political dimension. Not only are there the imprecations by Venezuela's president against this "bourgeois" pastime (see above) but the Chinese authorities appear also have caught this particular disease. In early December 2009, it was learned that the Chinese authorities intend to come down hard on unlawful golf courses, threatening stiff penalties for developers catering for "the rich man's game" at the expense of much-needed farmland. Officials hope that a satellite system will assist them in identifying unapproved venues. Dong Zuoji, the Head of Land Planning at the relevant Ministry, said that the culprits would face "harsh penalties". He added that each course requires 3,000 cubic metres of water, which is a particular issue in the North, where there is already a dire shortage (*The Guardian of 2/12/2009, p. 21*).

### **State governor approves LA football stadium waiver (US)**

In late October 2009, it was learned that Governor Arnold Schwarzenegger had signed a bill allowing the construction of a 75,000-seat stadium which developers hope will lure a team in the National Football League (NFL) to the Los Angeles area. The Governor announced the signing of the environmental exemption bill in Industry, California, where the stadium would be built around 15 miles east of Los

Angeles. Officials claim that the stadium would create more than 18,000 jobs and over \$762 million in economic output (*Associated Press, www.findlaw.com of 22/10/2009*).

### **Planning dispute threatens relocation of French open (tennis)**

In early November 2009, it was learned that the French tennis federation (FFT) was considering whether to move the French Open from its traditional home in Roland Garros if an extension project at the venue is not approved within one year. The extension was agreed earlier that year, and an architect appointed. However, the Paris city council have apparently developed second thoughts, according to FFT director Gilbert Ysern. He added:

*"It seems that the mayor's entourage has become more hostile to our project – which was not the case when we launched it. Add to that the residents' opposition and we are now forced to look for other options, including that of leaving the premises"* (*The Independent of 4/11/2009, p. 54*)

The previous May, tennis officials had announced that a new Centre Court equipped with a retractable roof would be in use at the stadium for the French Open of 2013 or 2014. Of the Grand Slam events, the Australian Open had two courts with roofs, whilst Wimbledon's Centre Court unveiled its translucent retractable roof last year. The Paris City Council and the French Government were set to invest €20million each in a project estimated to cost €120 million (*Ibid*).

## JUDICIAL REVIEW

### **Women ski jumpers in court action against IOC (Canada)**

At present, the Winter Olympics merely allow ski jump events for male competitors. This prompted a group of female ski jumpers to go to the Supreme Court of Canada in a bid to have the female event included in the next Winter Games, to take place in the course of 2010 (*Associated Press, www.findlaw.com of 1/12/2009*). This followed a decision by the Court of Appeal of British Columbia to dismiss their action in mid-November 2009. They had argued that the men-only rule infringed human rights legislation. The organisers had argued that this legislation did not apply to this decision, which had been taken in 2006 by the International Olympic Committee (IOC) on the grounds that the female sport was not sufficiently

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developed and did not meet the criteria for participation in the Olympics (*Le Nouvel Observateur* of 15/11/2009). The outcome of this case was not yet known at the time of writing.

### US judge allows use of engines to trim sails in Americas Cup

In late July 2009, it was learned that a New York judge had ruled that it is permissible for America's Cup boats to trim sails and move water ballast. The ruling represents a victory for defending champion team Alinghi of Switzerland in its bitter dispute with US challenger BMW Oracle racing. Justice Shirley Kornreich also scheduled a hearing for next August to discuss Alinghi's demand that BMW Oracle turn over a measurement certificate for its 90-ft trimaran. This recent round of court action started after Alinghi placed an engine on its 90-foot catamaran for trimming sails and moving water ballast from one hull to another (*Associated Press*, [www.findlaw.com](http://www.findlaw.com) of 30/7/2009).

### New York University records protected in Binghamton probe (US)

In mid-October 2009, the Chancellor of the State University of New York ordered that all records be protected against destruction in the investigation of the athletics programme at Binghamton University. Chancellor Nancy Zimpher issued the order as part of an investigation headed by former state Chief Judge Judith Kaye, who had been given broad powers. The chain of events which sparked off the probe began in February 2009 after a newspaper report raised questions about the character of players whom coach Kevin Broadus had recruited to the basketball team. Chancellor Zimpher has robustly defended her University's record, stating:

*"Going forward (sic), the State University of New York stands for the highest degree of integrity in its collegiate athletic programme. We underscore that we refer to athletes as student athletes for a good reason. They are in academic study doing academic work and providing great leadership opportunities and entertainment and intercollegiate athletics as well, but we must bring both together at the highest level and I just wanted to pledge my commitment to providing that leadership"* (*Associated Press*, [www.findlaw.com](http://www.findlaw.com) of 20/10/2009).

Ms. Zimpher was appointed earlier that year after serving as president of the University of Cincinnati. She gained national attention when she compelled

Cincinnati basketball coach Bob Huggins to resign in 2005, after the team had a history of low graduation rates, suspensions and arrests of Huggins's players over the years. He also incurred a drunk driving conviction in 2004 (*Ibid*).

### Florida State University compelled by court to release NCAA documents (US)

In the course of 2007, various students at Florida State University incurred penalties for academic cheating, making them ineligible for college sports overseen by governing body NCAA. Because of this, the University's American football team were stripped of a number of wins. Florida State appealed against this decision, and demanded that NCAA release various documents pertaining to this case. In late August 2009, Circuit Judge John Cooper ruled that such documents were public records. However, the documents could not be released immediately because the judge still had to consider whether opening the records would infringe constitutional rights (*Associated Press*, [www.findlaw.com](http://www.findlaw.com) of 20/8/2009). This argument was later dismissed by the court, thus upholding the decision reached by a lower court (*Associated Press*, [www.findlaw.com](http://www.findlaw.com) of 1/10/2009).

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## OTHER ISSUES

**[None]**

## 7. Property law

### LAND LAW

#### **Court allows state to seize property for basketball arena (US)**

In mid-November 2009, the New York Court of Appeals ruled that the state could use eminent domain to compel home owners and businesses to sell their properties for a massive development in Brooklyn which includes a new arena for the New Jersey Nets. In a 6-1 ruling, the court stated that the Empire State Development Corporation's finding that the area was blighted was enough to justify appropriating the land. A group of tenants and owners had claimed that the seizure was unconstitutional. They alleged that developer Bruce Ratner's proposed Atlantic Yards project mainly enriched private interests, whereas the State Constitution requires public use for the taking of land (*Associated Press, www.findlaw.com of 24/11/2009*).

### INTELLECTUAL PROPERTY LAW

#### **Joe Frazier cannot sue American Indian tribe (US)**

In 2002, former heavyweight boxing champion Joe Frazier sued the Oneida Indian Nation tribe for using his picture without permission in order to promote a boxing match between his daughter and Muhammad Ali's daughter. The judge had ruled that Mr. Frazier had no right to sue the tribe in a federal court because of its sovereign status. The Appeals Court agreed with this decision (*Associated Press, www.findlaw.com of 8/10/2009*).

## 8. Competition law

### NATIONAL COMPETITION LAW

#### **French Court ruling on use of Olympic symbols by publisher**

In this case, the French national Olympic committee (CNOSF) had brought an action against a publisher who had used the Olympic rings symbol in a magazine in order to publicise the "sex Olympics", on grounds of, inter alia, unfair competition and infringement of intellectual property rights. The Court of Appeal had found against the Olympic Committee on all counts, and the matter landed before the Supreme Court (Cour de Cassation). The latter annulled the decision on intellectual property grounds, but not on those of unfair competition. The Committee had claimed that the words LES JEUX OLYMPIQUES DU SEXE had been printed in colours which they alleged were those of the homosexual community, i.e. the "rainbow flag". The Court dismissed this argument. However, it annulled the Court of Appeal's decision because the emblem in question had been used without the authorisation of the Committee (*Decision of 15/9/2009, No. 08-15.418*).

# 9. EU law

## EU COMPETITION LAW

[None]

## EU LAW

### Portuguese legislation on sports betting complies with EU law. ECJ decision

In *Liga Portuguesa de Futebol Profissional (CA/LPFP) and Bwin International Limited v Departamento de Jogos da Santa Casa da Misericórdia de Lisboa* (Case 42/07), the European Court of Justice has endorsed the prohibition which Portuguese legislation imposes on operators such as Bwin. They ruled that the prohibition on operators of games of chance via the Internet did amount to a restriction on the freedom to provide services but that it was justified by overriding factors relating to the public interest. In particular, in the light of the specific features associated with the offering of games of chance via the Internet, such legislation may be justified by the objective of combating fraud and crime (See EU Press Release No. 70/90).

The background to this case is as follows. In order to prevent the operation of games of chance via the Internet for fraudulent or criminal purposes, Portuguese legislation confers on the Santa Casa da Misericórdia de Lisboa, a centuries-old non-profit-making organisation operating under the strict control of the Portuguese Government, the exclusive right to organise and operate lotteries, lotto games and sporting bets via the internet. That legislation also lays down penalties in the form of fines which may be imposed on those who organise such games in contravention of that exclusive right and who advertise those games.

Bwin, a private on-line gaming undertaking established in Gibraltar, and the Liga Portuguesa de Futebol Profissional had been fined 74,500 and 75,000 respectively for offering games of chance via the Internet and for advertising those games. The Tribunal de Pequena Instância Criminal do Porto (Local Criminal Court, Oporto), before which Bwin and the Liga challenged those fines, considered the question whether the Portuguese legislation is compatible with freedom of establishment, the free movement of capital and the free movement of services and requested a preliminary ruling on this issue from the ECJ.

In its decision, the ECJ took the view that freedom of establishment and the free movement of capital do not apply to the dispute in question. The Court goes on to examine whether the freedom to provide services precludes the Portuguese legislation, to the extent that it prohibits operators such as Bwin, established in other Member States where they lawfully provide similar services, from offering games of chance via the Internet in Portugal. In the context of that analysis, the ECJ did indeed find that the Portuguese legislation constituted a restriction on the freedom to provide services.

The Court pointed out, however, that restrictions on the freedom to provide services may be justified by overriding reasons which relate to the public interest. In the absence of EU-wide harmonisation in the area of games of chance, Member States are free to set the objectives of their policy in that area and, where appropriate, to define in detail the level of protection sought. However, the ECJ noted that the restrictive measures that Member States may impose must satisfy certain conditions: they must be suitable for achieving the objective or objectives invoked by the Member State concerned, and they must not go beyond what is necessary in order to achieve those objectives. Lastly, in any event, those restrictions must be applied without discrimination.

Regarding the justification proffered by the Portuguese authorities for the legislation, the Court recalled that the objective of the campaign against crime relied on by Portugal may constitute an overriding reason relating to the public interest that is capable of justifying restrictions in respect of operators authorised to offer services in the sector concerning games of chance. Games of chance involve a high risk of criminal activity or fraud, in view of the scale of the earnings and the potential winnings on offer to players.

Concerning the suitability of the legislation in question for achieving that objective, the Court expresses the view that the grant of exclusive rights to operate games of chance via the Internet to an operator such as Santa Casa, which is subject to strict control by the public authorities, may confine the operation of gambling within controlled channels and be regarded as appropriate for the purpose of protecting consumers against fraud on the part of operators.

As to whether the system in dispute is necessary, the Court found that a Member State is entitled to take the view that the mere fact that a private operator such as Bwin lawfully offers services in that sector via the

## 9. EU law

Internet in another Member State, in which it is established and where it is in principle already subject to statutory conditions and controls, cannot be regarded as amounting to a sufficient assurance that national consumers will be protected against the risks of fraud and crime. In such a context, indeed, difficulties are liable to be encountered by the authorities of the Member State of establishment in assessing the professional qualities and integrity of operators.

In addition, because of the lack of direct contact between consumer and operator, the Court considers that games of chance accessible via the Internet involve different and more substantial risks of fraud compared with the traditional markets for such games. The Court also considers it possible that an operator which sponsors some of the sporting competitions on which it accepts bets and some of the teams taking part in those competitions may be in a position to influence the outcome directly or indirectly and thus increase its profits.

### **Advocate-General issues opinion in sports betting case**

The aim of the Netherlands Law on games of chance is to protect the consumer against addiction to gambling and to combat crime. It stipulates (a) that it is prohibited to organise or promote gambling without having obtained a licence for that purpose and (b) that only one provider for each category of game may receive a licence. The licence for the organisation of sports bets, the lottery and number games was awarded to the foundation Stichting de Nationale Sporttotalisator ('De Lotto'). The licence for the organisation of a totalisator on horse races was granted to Scientific Games Racing B.V. ('SGR'). The company The Sporting Exchange Ltd., trading under the name Betfair, which has its seat in Britain, facilitates the mutual negotiation and placing, directly or via the internet, of bets on sports events, more specifically horse races. The Netherlands Supreme Court (Hoge Raad) requested the European Court of Justice (ECJ) to give a preliminary ruling in two cases relating to this legislation.

The first (C-203/08) has its origins in a dispute between Betfair and the Netherlands Minister of Justice concerning the rejection of the company's applications for a licence for the organisation of gambling in the Netherlands and its actions against the decisions to extend the licences of De Lotto and SGR (EU Press Release of 17/12/2009). The second (C-

258/08) arose from actions brought against two companies by De Lotto, seeking to prohibit them from offering on their internet site to persons residing in the Netherlands forms of gambling for which they hold no licence. The companies in question, Ladbrokes Betting & Gaming Ltd and Ladbrokes International Ltd., established in the United Kingdom, organise betting on sports events, especially fixed-odds betting. In both cases, the question to be settled was whether the relevant Netherlands legislation complied with EU law.

In the first instance, the Advocate General stated that it is indeed in the light of the provisions governing the freedom to provide services that the conformity of the Netherlands legislation must be examined. In that context, it was common ground that that legislation is a restriction of that freedom of movement. He recalled that the Court had consistently held that the Member States may restrict the organisation and exploitation of gaming in their territory in order to protect consumers from excessive expenditure on gaming and to preserve public order by reason of the risk of fraud created by the considerable amounts yielded by gaming. The Court had also held that a Member State may legitimately grant a single operator the right to operate betting and gaming. In the light of this, the Advocate General took the view, first, that the fact that the holders of exclusive rights to operate gaming in the Netherlands are authorised to make their offers attractive by creating new games and advertising is not, as such, inconsistent with the aims of the Netherlands legislation taken as a whole because that standpoint contributes perfectly to the prevention of fraud.

However, to the extent that the Netherlands legislation also aims to protect consumers against an addiction to gaming, the creation of new games and advertising must be strictly controlled by the Member State and limited so that they are also compatible with the pursuit of that aim. Accordingly the reconciliation of the two aims pursued by the Netherlands legislation requires the services offered by the holders of exclusive rights and advertising for authorised games to be sufficient to induce consumers to remain within the legal system without constituting an inducement to excessive gaming, which would lead consumers, or at least, the weaker among them, to spend more than the portion of their income available for leisure pursuits. It was for the national court to assess whether that legislation, in the light of its content and how it is applied, actually contributes to the attainment of those two objectives.

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Secondly, the Advocate General was of the opinion that the national court, after finding that the legislation was compatible with Community law, was not required to determine, on every occasion on which that legislation is applied, whether a measure intended to ensure compliance with that legislation, such as an injunction to an economic operator to make its internet site offering gaming inaccessible to persons residing in national territory, is suitable for attaining the aims of that legislation and is proportionate, provided that that enforcement measure is strictly limited to securing compliance with that legislation.

Thirdly, concerning the question whether The Netherlands, by virtue of the principle of mutual recognition stipulated by the case law of the Court, should have recognised the licences issued to Betfair by other Member States, the Advocate General recalled that by virtue of the *Liga Portuguesa* case (C-42/07) reported above, the principle of mutual recognition does not apply to a licence to offer games on the internet.

Fourthly, the Advocate General proposed that, in a licensing system which is limited to a single operator in the gambling sector, the principle of equal treatment and the obligation of transparency precluded the extension of a licence without competitive tendering unless the omission of a call for tenders is validly justified. In this context, it was for the national court to determine whether such an extension without competitive tendering addresses an essential interest, such as reasons of public order, or an overriding requirement relating to the general interest as laid down in the case law, such as the protection of consumers from the risks of excessive expenditure on gaming and addiction to it and the prevention of fraud, and whether it conforms to the principle of proportionality.

### **Advocate-General considers French law on football training contracts infringes EU law**

The background to this case was as follows. In 1997 Olivier Bernard signed a three-year training contract as a *joueur espoir* with leading French football club Olympique Lyonnais. At the end of the contract, he decided not to take up the offer of a professional contract with the French club but instead signed a contract with English club Newcastle United.

At the time, the French Professional Football Charter required *joueurs espoir*, i.e. promising players between the ages of 16 and 22 given training contracts with professional clubs, to sign with the club which trained

them if they were offered a contract at the end of their training. If they chose not to take up that offer they could not sign with another French club for three years without the consent of the club which had trained them. Olympique Lyonnais brought an action against Mr Bernard and Newcastle United in the French courts for 53 357.16, i.e. a sum equivalent to the salary that Mr Bernard would have received over one year had he signed with Olympique Lyonnais.

At first instance, Olympique Lyonnais was awarded half the amount requested, with Mr Bernard and Newcastle United held jointly liable. Following a successful appeal by the player and Newcastle United, Olympique Lyonnais appealed to the French Supreme Court (*Cour de Cassation*). This court requested from the ECJ a ruling on the question whether a provision which may require a trainee who signs a professional contract with a club in another Member State to pay damages is a restriction on freedom of movement for workers, a principle enshrined in the EC Treaty, and, if so, whether it can be justified by the need to encourage recruitment and training of young professional players.

In the opinion of Advocate General Eleanor Sharpston, it is clear that such a rule, pursuant to which a “*joueur espoir*” who at the end of his training period signs a professional contract with a club in another Member State of the EU may be ordered to pay damages, is a restriction on freedom of movement for workers. She noted that sport is subject to Community law to the extent that it constitutes an economic activity. Paid employment of professional footballers is such an activity. Moreover, the prohibition on restrictions on freedom of movement for workers extended to rules aimed at collective regulation of employment, including football association rules. Finally, the Advocate General recalled, rules may inhibit freedom of movement even if they apply without regard to nationality, and rules which require payment of a transfer, training or development fee between clubs on the transfer of a professional footballer are in principle an obstacle to freedom of movement for workers.

As to the potential justification for this restriction, the Advocate General noted that such rules ensure that clubs are not discouraged from recruitment and training by the prospect of seeing their investment applied to the benefit of some other club, with no compensation for themselves. Taking into account the social importance of football and the broad public consensus that the training and recruitment of young players should be encouraged, Ms Sharpston considered that it is plausible that rules compensating

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clubs for their investment in training young players could be justified in the public interest.

However, she considered that the French rule in question went beyond that which is necessary to achieve that aim as regards the damages awarded. Only a measure which compensates clubs in a manner commensurate with their actual training costs could be appropriate and proportionate. Consequently, compensation based on the player's prospective earnings or on the club's prospective loss of profits would not be acceptable, neither factor having any relevance to the aim of encouraging the recruitment or training of young players.

Expanding on this, Ms Sharpston considered that, since only a small proportion of trainee players would continue to have successful professional careers, it would be appropriate for compensation to be calculated as a proportion of the club's overall training costs rather than the actual costs of training that specific player. Furthermore, where a particular player has been trained by more than one club, any compensation ought to be shared appropriately among the clubs in question. Finally, the Advocate General found it not unreasonable that, in certain circumstances, the trainee could be liable to pay some of the compensation himself, provided that – in that event – such compensation was calculated on the basis of the individual cost of training him and not the overall costs of training incurred by the club.

### **European Commission study on sporting agents in the European Union**

Some time ago, a study on sports agents was commissioned by the Directorate-General for Education and Culture of the European Commission, and carried out by a consortium consisting of KEA European Affairs, EOSE and CDES in November 2009. What follows is a summary of its main points (from europa.eu website).

In March 2007, the European Parliament had invited the European Commission to assist football bodies and organisations in improving the regulations governing sports agents<sup>1</sup>. In July 2007, the European Commission indicated in its White Paper on Sport<sup>2</sup> that it would “carry out an impact assessment to provide a clear overview of the activities of players' agents in the EU and an evaluation of whether action at EU level is necessary, which will also analyse the different possible options”. The European Commission's terms of reference for this study confirm that the European Commission “wants to have an analysis of the situation

regarding sports agents in all the sports they deal with”. The aim of the study is therefore to examine the situation of sports agents in the European Union and to identify, analyse and describe the questions that their activities give rise to as well as the solutions that have already been provided by public and/or private actors, thus enabling the European Commission to assess – on the basis of the data collected, the problems identified and the analyses carried out – whether intervention is required and, if so, at what level and in what form.

The study develops, for the first time, a European outlook on the issue of sports agents. It covers the 27 Member States of the European Union and all the sports in which agents are currently active, while taking due account of the predominance of football. It is divided into four parts:

- (a) Sporting agents;
- (b) The regulation of sportong agents' activities;
- (c) Is there a need for a European regulatory framework?
- (d) Summary and recommendations.

### **Sporting agents**

Sporting agents act, first and foremost, as intermediaries between sportspersons and sports clubs/organisers of sporting events with a view to employing or hiring an athlete or sportsperson. They bring together the parties interested in concluding an agreement concerning the practice of a sport as a remunerated activity. Finding employment for a sportsperson is the central and specific role of sports agents. Sporting agents may, however, engage in a broader range of activities, including the conclusion of different kinds of contracts on behalf of the sportsperson (image rights contracts, sponsoring contracts, advertising contracts, etc.) or managing the assets of the sportsperson. Sports agents have thus become essential partners of sportspersons and clubs/organisers of sporting events, acting as an intermediary and advisor for either side. The sports agent's profession is inherent to the existing system for the employment and transfer of sportspersons, particularly in the case of team sports. Agents facilitate transactions between sports clubs/organisers of sports events and sportspersons. They are an integral part of the market: they enter into the equation of commercial success and of investments capable of leading to convincing results in sport.

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The activities of sports agents are international, as regards both individual and team sports. This situation is strengthened by the internationalisation of professional sport, which has led to an increasing involvement of intermediaries, including foreign sporting agents, in the recruitment of sportspersons. The study has identified 32 sports disciplines in which sports agents are active. These are mainly disciplines with strong economic potential. Sports agents are active in at least 10 different sports in France, Germany, Italy, Spain, Sweden and the United Kingdom. As far as football is concerned, sports agents are active in all 27 Member States of the European Union.

From the data collected, it appears that there are currently between 5,695 and 6,140 sporting agents – including both official and unofficial agents in all the various sports disciplines considered in the study – operating on the territory of the European Union. France, Germany, Italy, Spain and the United Kingdom account alone for close to 75 per cent of the 3,600 officially listed agents in the EU. Football is by far the sport with the largest number of official sports agents, followed by rugby, basketball and athletics. These four account for 95 per cent of the total number of official sports agents in Europe. Furthermore, the number of candidates taking examinations to qualify as sports agents has generally increased in most sports where such examinations have been introduced.

Depending on the sport and the EU Member State concerned, the examination pass rate among candidates for a sports agent licence ranges from 10 per cent to 50 per cent. Sporting agents are influential economic actors. The commissions earned by them on transfers of players in European football are estimated at 200 million per year. In general terms, it can be said that there are few representative bodies of sports agents and, furthermore, their degree of representativity varies widely.

### **The regulation of sports agents' activities**

Considering the overall picture, there are few legal provisions designed specifically to regulate the activities of sports agents. Five EU countries (Bulgaria, France, Greece, Hungary and Portugal) and four international federations (FIBA, FIFA, IAAF and IRB) as well as a number of national federations have developed specific regulations for sports agents. The scope of these specific regulations varies considerably from one case to another.

On the other hand, most European countries have general regulations on private job placements, and

these regulations also apply – in theory at least – to the placement of professional sportspersons or remunerated athletes and hence to the activities of sports agents. In most cases, these regulations provide for registration, licensing or authorisation procedures in order to be able to provide private placement services. Certain general trends as well as differences can be discerned in the various regulations and types of regulation that govern the activities of sports agents (specific regulations, regulations on private placements, ordinary law, sports regulations).

For example:

- While under certain regulations some form of permit is required to carry out sports placement activities (e.g. a licence, official recognition or simply registration), under other regulations such activities are not subject to any kind of permit. Furthermore, where a licence is required, exemptions are sometimes provided for.
- The requirements that must be fulfilled to obtain a permit (if needed) also vary considerably, ranging from simple registration to passing a licensing examination.
- The licence or permit is sometimes issued exclusively to natural persons and sometimes to legal persons as well as natural persons.
- The duration of the validity of the licence or permit also varies from one set of regulations to another, ranging from one year to an unlimited period of time.
- While most regulations stipulate that an agent may only act on behalf of one party to a transaction (prohibition against dual agency), they diverge with respect to assigning responsibility for paying the agent's commission.

Implementing any rules governing the activities of sporting agents is a difficult proposition, not least because of the international nature of these activities, the diversity of national sporting and legislative cultures, the multiplicity of rules that may or may not apply, and the existence of different long-standing practices. Moreover, in the context of cross-border employment placement activities, sanctions are difficult or even impossible to monitor and enforce. The activities of sporting agents are therefore liable to give rise to ethical issues – or to find themselves at the centre of mechanisms that give rise to such issues. For example:

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- Dual-agency or conflict-of-interests situations;
- The payment of secret commissions in connection with transfer deals;
- The economic exploitation of young footballers from third countries;
- Unregulated headhunting/recruitment among training clubs;
- Lack of transparency vis-à-vis the sportsperson during the negotiations between the sports agent and the club or the organiser of a sporting event.

### **Is there a need for a European regulatory framework?**

The activities of sporting agents are subject to the rules of the Treaty establishing the European Community (particularly as regards the freedom to provide services, the freedom of establishment, and competition) as well as to secondary legislation (including, in particular, the Directives on services and recognition of professional qualifications), especially where an agent wishes to work occasionally or establish himself or herself in a Member State other than that of which he or she is a national. As far as the international and Community dimension of sports agents' activities is concerned, a question arises as to whether or not the regulations applicable to sports agents constitute an obstacle to the exercise of their activities, particularly in their cross-border dimension.

In practice, the recognition of professional qualifications is not a decisive or problematic criterion for exercising the activities of a sporting agent. In the field of contract law, while it may be difficult to determine the legislation applicable to a sporting agency contract when the contract includes "foreign origin elements", the laws of Member States and in some cases the Code of Sports-Related Arbitration will be sufficient to deal satisfactorily with the matters at issue. In the field of competition, the Community judiciary has ruled that the existence of private rules establishing the requirement of a licence to work as a sporting agent may be compatible, under certain conditions, with the rules of Community competition law. Questions remain however concerning the extent to which sports federations are legitimately entitled to regulate sports agents' activities in the absence of any instrument of empowerment or mandate granted by a public authority.

As regards the freedom to provide services and freedom of establishment of sports agents in the EU, as well as the freedom of movement of sports agents with employee status, it is apparent that national regulations requiring foreign sports agents to obtain a national licence do not constitute, in practice, an obstacle to the exercise of the profession in any of the countries concerned.

Main findings:

- There are significant differences between the regulations applicable to sporting agents. On the other hand, however, it appears that exercising the profession does not entail any proven problems in terms of Community law.
- Steps should be taken to ensure that sports governance rules comply with competition law and are compatible with the freedom of establishment and the freedom to provide services.
- The absence of exemplary governance measures is a threat to the ethics and the reputation of sport.
- The sporting movement, which has important self-regulatory powers, must establish credible and effective governance rules to protect fairness in sport, sportspersons and the ethics of sport.
- Any intervention aimed at regulating the activities of sporting agents – and sports placement mechanisms in general – should be based on the following principles:
  - Complementarity (between the rules of sports federations and public policies);
  - Transparency (of financial flows in professional sport);
  - Simplicity (of the measures adopted);
  - Adaptability (to the peculiarities of each sporting discipline);
  - Trust (in sports agents and actors of the sporting movement).

### **Principal recommendations**

The rules adopted by sports federations are undoubtedly those which can best reflect the specificities of each sport, unlike government or Community regulations, which are necessarily more general in nature. The sporting movement must continue to play the leading role in implementing the applicable regulations. It must, however, be supported in this role by public authorities, given the ethical and legal problems to which sports placement activities

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can give rise, particularly in their cross-border dimension. The European Union has a key role to play in changing behaviours, harmonising existing practices, promoting the best of them – and introducing regulations, if and when appropriate.

### 1. The role of governments: maintaining public order

Sports federations are not adequately equipped to combat and punish offences against public order. Therefore, governments must play a complementary role by supervising the measures implemented by national federations and imposing criminal penalties for offences against public order. This involves, for example, intensifying the audits and checks performed by tax, social welfare and labour inspectors in such areas as financial flows, work permits, social security registration, undeclared labour, working conditions, housing, etc.

### 2. The role of European institutions: structuring dialogue and coordinating action

The European Union has an important role to play in countering harmful trends, assisting and supporting actors in sport in their efforts to eradicate reprehensible practices, protecting sportspersons as well as sports events and competitions, ensuring fairness in sport, and preventing sport from losing its values and its social dimension.

European institutions can be instrumental in facilitating dialogue, for example by organising exchanges between national federations at the European level, notably to promote the dissemination of good practices. European institutions have a major role to play as coordinators and promoters, vis-à-vis the public authorities, the sport movement and sports agents, with a view to developing common standards and principles that can serve as a basis for the adoption of at least a minimum set of rules by sports federations and countries throughout Europe.

### 3. The role of actors of the sport movement: organising sports placement activities

In Europe, the regulation and organisation of sport is mainly left to the various sports federations. The European Council has recognised the role of sports bodies in organising and promoting their respective disciplines. This role is protected by all European Union institutions. The rules adopted by sports federations are no doubt those which can best take account of the specificities of each sport. The sport movement must continue to play the leading role in implementing regulations.

This study advocates a voluntary licensing system to join the profession, with an examination designed to ensure that successful candidates have the necessary knowledge of the legal, economic and social environment and the minimum qualifications required to practise the profession, provided that such a system does not hinder the free movement of sports agents within the European Union. Such a licensing system has the advantage that it creates a link between the bodies responsible for the organisation of sport at national level and the agents active in the sports concerned. It will institutionalise dialogue in this area.

Actors in sport at national, European and international levels have an essential role to play in organising sports placement activities in terms of dialogue, education and training, information, mutual help, establishment of ethical principles and control/enforcement of sanctions. To this end, actors in sport may, for example:

- Associate sports agents in drawing up the regulations governing their activities;
- Inform and advise sportspersons on the role of sports agents;
- Report any abuses and unlawful practices (as well as any sanctions imposed by sports bodies or public authorities) involving sportspersons, agents, clubs, organisers of sports events or federations;
- Establish binding codes of conduct drawn up jointly by sports agents, federations, clubs and sportsmen, particularly with the aim of preventing conflicts of interests;
- Establish a centralised financial system or “clearing house” for transfer deals (involving financial rewards or compensation) between two clubs or teams.

### Study on Money Laundering through the Football Sector

The Financial Action Task Force (FATF) of the EU has published a study examining what makes the football sector attractive to criminals. The report warns that football is at risk from criminals buying clubs, transferring players, and betting on the sport. The study has relied on the experience and support of the Member States of the FATF, the European Commission and the private sector. The report is a contribution to the implementation of the White Paper on Sport in the

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area of the fight against corruption and money laundering (see eu.europa website).

The FATF report examines the football sector in economic and social terms and provides case examples identifying areas that could be exploited by those who want to invest illegal money into football. Vulnerable areas relate to ownership of football clubs or players, the transfer market, betting activities, image rights and sponsoring and advertising arrangements. The object of the report is to draw attention to some of the risks facing the football sector in particular (and the sport sector in general) regarding misuse by criminals, so that Government policy makers, law enforcement bodies, the financial sector and sports regulatory authorities can better understand and deal with this problem. The report presents some policy recommendations, including the need to raise awareness.

The European Commission has welcomed the report. In its 2007 White Paper on Sport, it indicated that corruption, money laundering and other forms of financial crime should be tackled ("Pierre de Coubertin" Action Plan, actions nos. 44 and 45):

(44) The Commission will support public-private partnerships representative of sports interests and anti-corruption authorities, which would identify vulnerabilities to corruption in the sport sector and assist in the development of effective preventive and repressive strategies to counter such corruption.

(45) The Commission will continue to monitor the implementation of EU anti-money laundering legislation in the Member States with regard to the sport sector.

The Financial Action Task Force (FATF) is an inter-governmental body whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering and terrorist financing.

### **Lisbon Treaty provisions on sport enter into force**

With the entry into effect of the Lisbon Treaty on 1 December 2009, EU-level cooperation and dialogue in the field of sport have entered a new era. Article 165 of the Treaty on the Functioning of the European Union (TFEU) provides the EU with a new competence aimed at developing the European dimension in sport.

The text of the Treaty calls on the EU to promote European sporting issues, notably by taking account of sport's specific nature, its structures based on voluntary activity and its social and educational functions. The Treaty allows for the adoption of incentive measures and of Council recommendations. The European Commission will present its ideas and make proposals for the implementation of the new provisions in the course of 2010. In the framework of this process, the Commission will ensure broad consultation of concerned stakeholders (see europa.eu website).

# 10. Company law

## BANKRUPTCY (ACTUAL OR THREATENED) OF SPORTING CLUBS AND BODIES

### **Bankruptcy judge dismisses bids to buy Phoenix Coyotes (US)**

In mid-October 2009, it was learned that a federal Arizona judge had rejected competing bids by the National Hockey League and BlackBerry magnate Jim Balsillie to buy the Phoenix Coyotes franchise from its bankrupt owner. The NHL had won a partial victory a few weeks before when US Bankruptcy Judge Redfield Baum, rejecting Mr. Balsillie's bid, ruled that the League had rights to decide who controls its teams and where those teams play. Mr. Balsillie had sought to move the team to Canada without the League's consent. The NHL had dismissed the billionaire's ownership application on the grounds that he lacked the "character and integrity" required by the League's bylaws, citing, inter alia, his conduct regarding previous unsuccessful bids to purchase the Pittsburgh Penguins and the Nashville Predators. Judge Baum also rejected the NHL's \$140 million bid for the Coyotes, alleging that the offer failed to treat the creditors equally because it excludes any claims by the team's current owner, Jerry Moyes, and its recently resigned coach, Wayne Gretzky. Both these men had averred that they invested millions of dollars into the Coyotes franchise (*Associated Press, www.findlaw.com of 12/10/2009*).

While Judge Baum effectively put an end to Balsillie's bid, he left the NHL the opportunity to amend its proposal to treat Messrs. Moyes and Gretzky more fairly. Mr. Moyes owns the Coyotes through Dewey Ranch Hockey LLC and several subsidiaries. Dewey Ranch and its affiliates submitted a "Chapter 11 petition" in the US Bankruptcy Court for the district of Arizona. (It should be explained at this point that Chapter 11 is a chapter of the United States Bankruptcy Code, which permits reorganization under the bankruptcy laws of the United States. Chapter 11 bankruptcy is available to any business, whether organized as a corporation or as a sole proprietorship, and to individuals, although it is most frequently used by corporate entities). Immediately after this submission, Mr. Moyes sought approval of his assets sale agreement with a group led by Mr. Balsillie, the joint Chief Executive officer of Research in Motion, the BlackBerry mobile communications maker. The proposed sale was contingent upon the relocation of the team to Hamilton, Ontario. The bankruptcy and proposed sale caused uproar, while the NHL and the city of Glendale, where the Coyotes compete, raised strong objections to the

Balsillie deal.

Eventually, with no other bidders coming forward, the NHL proposed its own competing offer to buy the Coyotes franchise, retaining it in Glendale. Judge Baum admitted that the various parties "inundated" the Court with numerous motions, lengthy briefs and expert opinions on anti-trust and other legal issues. The judge noted that this offer allowed the League to choose which unsecured creditors would be paid in full. The League selected all the unsecured creditors with the exception of Messrs. Moyes and Gretzky, or any entity affiliated with them. However, the judge found that there had been no determination that Moyes and Gretzky were not "legitimate creditors". He added that it would be "inherently unjust" for him to deprive these creditors of their possible rightful share in any proceeds without first providing all involved with a fair trial as regards their claims (*Ibid*).

### **Chicago Cubs sale approved by bankruptcy judge (US)**

In late September 2009, a federal bankruptcy judge in Delaware (US) approved the Tribune Co.'s sale of the Chicago Cubs baseball team. The judge in question authorised Tribune to enter into transactions to sell the team to the family of billionaire Joe Ricketts, founder of TD Ameritrade. The family agreed to purchase a 95 per cent stake in the team and its home at Wrigley Field for the sum of \$845 million. As matters stand, however, the arrangement still requires approval from Major League Baseball (MLB). The Tribune plan calls for a separate bankruptcy submission by Chicago National League Ball Club, being an affiliate which is not involved in the company's Chapter 11 case (for an explanation of "Chapter 11", see above) (*Associated Press, www.findlaw.com of 24/9/2009*).

## OTHER ISSUES

**[None]**

# 11. Procedural law

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PROCEDURAL LAW AND EVIDENCE

[None]

# 12. International private law

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INTERNATIONAL PRIVATE LAW

[None]

# 13. Fiscal law

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FISCAL LAW

## **Former cyclist Bettini's tax returns under investigation (Italy)**

In early December 2009, it was learned that Olympic cycling gold medallist Paolo Bettini had been placed under investigation for alleged tax evasion in Italy. Ernesto Ceccarelli, an official representing the fiscal police in Livorno, Tuscany, announced that the now-retired Mr. Bettini was suspected of evading taxation to the tune of almost \$16.6 million. Investigators believe that the ex-cyclist fictitiously transferred his residence to Monte Carlo in order to avoid tax, even though he continues to reside in Italy (*Associated Press, www.findlaw.com of 4/12/2009*).

No further details are available at the time of writing.

## **Former American football star "owes \$631,000 in taxation" (US)**

In early September 2009, it was learned that the US tax authorities alleged that a Pittsburgh Steelers Hall of Fame footballer (American) owed it the sum of \$631,000 in outstanding income tax. The department in question, the Internal Revenue Service (IRS) brought a civil action against the former star for the recovery of

this sum (*Associated Press, www.findlaw.com of 1/9/2009*). Court proceedings had yet to start at the time of writing.

## **Capello "will not face criminal charges" over tax (Italy)**

It will be recalled from a previous issue of this Journal that England manager Fabio Capello had faced accusations of fiscal impropriety in his native Italy. In mid-December 2009 his lawyers were informed that he and his family would not in fact face criminal charges. Prosecutors in Turin have spent 18 months looking into Mr. Capello's finances and in his family's trust (*Daily Mail of 12/9/2009, p. 123*).

## **Former baseball player jailed over unpaid taxes (US)**

In early September 2009, a federal US judge sentenced former major league pitcher Jerry Koosman to six months imprisonment for failing to pay his taxes. Prosecutors say Koosman, a former All-Star who helped the New York Mets win the 1969 World Series, did not pay federal income taxes for 2002, 2003 and 2004. He had pleaded guilty in May 2009 to willfully failing to file taxes for 2002, a misdemeanour, in a deal with prosecutors. U.S. District Judge Barbara Crabb

## 13. Fiscal law

found that Koosman cost the government as much as \$80,000. She could have sentenced him to a full year in prison but chose to reduce this half and add a year of supervised release, during which probation agents will closely monitor his finances. Prosecutors say Koosman has filed returns for the missing years but still owes the government about \$65,000.

The judge scolded Koosman for taking advantage of all the opportunities the United States offered him, including the chance to play major league baseball and win a World Series, then walking away without paying, calling it a “serious blemish on an otherwise outstanding life”. Mr. Koosman told IRS agents in 2006 that he had researched federal tax laws and concluded they applied only to federal employees, corporate workers and District of Columbia residents. During a May hearing, he told Crabb he was naive and fell in with the anti-tax movement. His lawyer, Robert Bernhoft, argued that Koosman deserved probation, pointing to letters to the judge that described him as an honest, reliable, naive farm boy. Koosman put his professional baseball career on hold to serve in the military, has performed too many charitable acts to list and never looked down on people of “lower station” even though professional athletes often act aloof and arrogant, Bernhoft added. He also claimed his client “has a reputation for being too trusting and naïve”.

Mr. Koosman read a statement apologizing for his actions, stating that he “shouldn’t have listened to those people about tax returns”. Assistant U.S. Attorney John Vaudreuil countered that the case was not about Koosman being a bad person but about sending a message to the anti-tax community. Judge Crabb told Koosman she could not believe that even a naive person would think he did not have to pay taxes (*Associated Press, www.findlaw.com of 3/9/2009*).

# 14. Human rights/Civil liberties

## RACISM IN SPORT

### Rehabilitation of black US boxer may be under way

He was called the Galveston Giant even before he became the first black world heavyweight boxing champion in 1908. Yet Jack Johnson has never had the place he surely deserved in the history books because of what happened five years later. White America put him on trial, for the crime of romancing white women. The boxer was convicted under the Mann Act of transporting women across state lines for sex, and eventually put behind bars. His life was ruined, and so was his legacy. But that, at last, may be about to change. In President Barack Obama's in-tray is a resolution finally adopted by both sides of the United States Congress requesting that he give a posthumous pardon to Jack Johnson, the proud boxer whose only sin was disregard for prejudice and ignorance.

The President thus far has failed to comment on the resolution which had among its prime supporters Senator John McCain, his opponent in last year's election, and New York Representative Peter King. Both men happen to be Republicans as well as ardent boxing fans. Oddly, he may not welcome it – only days before, the President was hosting Henry Louis Gates, the black professor from Harvard, and the white policeman who arrested him for allegedly breaking into a house that turned out to be his own. Mr Obama has often said he wants to transcend race himself. Yet he cannot run away from discussion of it. It is unthinkable for the President not to sign such a pardon for Johnson, whose baleful story – and its place in the tortured odyssey this country has taken from slavery to true racial integration – is too compelling to ignore. He secured the world title precisely 100 years before Mr Obama won election as America's first black President (*The Independent of 31/7/2009, p. 33*).

It has been four years since the film-maker Ken Burns advertised the case in his documentary *Unforgivable Blackness*. Yet without McCain and King, Congress would probably not have taken up the cause. There was trouble even at the end. The resolution was passed first by the Senate but got stuck in the House of Representatives when, after the death of Michael Jackson, Mr King went on television to say he had been a child molester, angering the black caucus. But on Wednesday, the caucus relented and the resolution went through unanimously. According to Mr. King:

***“Johnson is a trailblazer and a legend, whose boxing career was cut short due to unjust laws and racial***

***persecution. I urge the President to do the right thing and take the final step and grant his pardon.”(Ibid)***

That Johnson refused to bend to the bigotry of his time no one disputes. On the contrary, he is remembered, aside from his athletic prowess, for his defiance, using his growing fortune to drive the cars and live in the homes that white folk considered to be theirs and beyond the descendants of slaves. He dated white women and made no attempt to hide it. When he died in a car crash in 1946 aged 68, he had had three wives, all white. However, Mr. Johnson's greatest sin was his talent in the ring. His success was an affront to white America. Instantly after he became world champion, a search was launched for a white man who could take the title back. The “Great White Hope”, as the sports writers called him, was James Jeffries, a former champion himself who found himself dragged out of retirement to meet Johnson. The two men met in a makeshift ring in Reno, Nevada, with the nearly all-white crowd booing Johnson and singing along when the ring-side band played “All Coons Look Alike to Me”. Johnson was declared the winner after 15 rounds. Rioting broke out all across America.

It was in 1913 that the authorities, angered by his defiance and success, went after Mr. Johnson, charging him with violating the Mann Act, which still exists but has been heavily amended, that forbids the transport of women over state borders in the pursuit of sex. The Act was ostensibly meant to curb prostitution, a purpose it came closer to fulfilling nearly 100 years later when its provisions were used in the investigation of a prostitution ring that included then-New York governor Eliot Spitzer among its clients. But in Johnson's case, the authorities made no secret of the fact that he was being punished for sleeping with the wrong race. At first, the boxer fled, living for seven years in an assortment of cities in Europe and South America. Eventually, he came home, and served 10 months in jail. He tried to renew his career in boxing after prison but was never able to regain his title. The resolution approved by Congress says that Johnson should receive a posthumous pardon for the racially motivated conviction in 1913 that diminished the athletic, cultural, and historic significance of Jack Johnson and unduly tarnished his reputation. It says a pardon would “expunge a racially motivated abuse of the prosecutorial authority of the federal government” (*Ibid*).

Some may once have argued that with his bluster and disregard for racial sensitivities, Johnson was guilty at least of setting back the cause of integration in

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America. When Joe Louis began his ascent towards winning the world championship two decades later, his trainer Jack Blackburn had a word of warning.

*"You know, boy, the heavyweight division for a Negro is hardly likely. The white man ain't too keen on it. If you really ain't gonna be another Jack Johnson, you got some hope. White man hasn't forgotten that fool nigger with his white women, acting like he owned the world."* (*Ibid*).

Fool or no fool, Johnson was wronged by his own country for daring to ignore and to shatter social barriers created by ignorance. Mr Obama will surely sign his pardon because he knows a bit about this himself.

### **New Jersey prosecutors under racial investigation over Williams case (US)**

In late September 2009, the news broke that current and former employees of a New Jersey prosecutor's office will be asked whether the manslaughter case brought against former basketball star Jayson Williams, who is black, was racially biased. This investigation was prompted by the news that an investigator with the Hunterdon County prosecutor's office used a racial slur to describe Mr. Williams after a hired driver was fatally shot at his mansion in 2002. The former NBA star was acquitted two years later of aggravated manslaughter in the death of Costas "Gus" Christofori. He was convicted of attempting to cover up his crime and currently faces retrial on a reckless manslaughter count (*Associated Press, at www.findlaw.com of 28/9/2009*).

### **American Indians ask Supreme Court of "Redskins" is offensive (US)**

In mid-September 2009, it was learned that a group of American Indians, who find the name of the Washington Redskins football team offensive, had requested the US Supreme Court to take up the matter. In particular they asked the Court to review a decision by a lower court which favoured the NFL team on a legal technicality. The seven native Americans have, since 1992, been addressing the courts in order to have the Redskins trade marks declared invalid. In 1999, a US Patent and Trademark Office panel ruled in their favour. However, they have suffered a series of defeats at the hands of judges who have ruled that the claimants waited too long to bring their action in the first place (*Associated Press, at www.findlaw.com of 15/9/2009*). No further details were available at the time of writing.

## HUMAN RIGHTS ISSUES

### **French football team claim "homophobia" on the part of Muslim side**

In early October, a French gay football team alleged that its members were victims of homophobia when a team of Muslim footballers refused to play against them. The Paris Foot Gay team claimed to have received an email from the Creteil Bebel club cancelling a fixture scheduled for the previous week. It said that, because of the "principles of our team, which is a team of devout Muslims" they could not play against the gay team. In a statement released later, the club said that it had requested the amateur league to penalise the Creteil Bebel club. A spokesman for the latter later apologised if "anyone felt upset or hurt" (*Associated Press, at www.findlaw.com of 6/10/2009*).

### **Legal action threatened over "burkini" swimming pool ban (France)**

In mid-August 2009, a 35-year-old French convert to Islam threatened legal action after she was evicted from a public pool for wearing a "burkini" – a veil, trouser and tunic covering which, she claimed, allowed her to swim while preserving her modesty. This case, which revolves around a pool east of Paris has reopened France's bitter row about the way in which Muslim women can dress. Carole, who would not give her surname, purchased the suit while on holiday in Dubai and wore it swimming with her children once at a local pool in Emerainville. The second time she wore it, she was banned. She told a leading French newspaper that what annoyed her most of all was that she had been "made to believe this is a political problem". Carole, who converted to Islam at the age of 17, said she would seek advice from anti-discrimination groups. The local authorities in Emerainville, for their part, claimed that the case had nothing to do with Islam, but that regulations stated that garments bigger than standard swimsuits, including men's board-shorts, could not be worn in pools for reasons of hygiene (*The Guardian of 13/8/2009, p. S13*).

In recent years, local politicians in some areas have protested at proposed women-only swimming hours as an affront to the French Republic, where everyone is equal. When a town in Rhône-Alpes ran a trial women-only swimming session at a public pool last year, a local councillor from President Sarkozy's ruling centre-right UMP party denounced it as the takeover of a secular, republican public space for religious reasons. A parliamentary committee is currently considering

## 14. Human rights/Civil liberties

whether to introduce a law to ban women in France from wearing full Islamic veils in public places after a petition from 50 MPs calling for restrictions on veils with face coverings. The communist MP André Gerin, who heads the parliamentary committee, said the woman's burkini swimsuit was "ridiculous" and "clearly a militant provocation". He said a political agenda was behind such clothing and his committee would consider "fundamentalist pressures" encroaching on sporting dress codes in France.

Critics have warned that focusing on niqabs, or full veils, is a marginal issue in France. A recent security services survey estimated that around 300 women wore them. In 2004, France banned standard headscarves and all conspicuous religious symbols from state schools (*ibid*).

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### GENDER ISSUES

#### **The Caster Semenya affair (South Africa)**

When the athletes lined up for the women's 800m final at the World Athletics Championships in Berlin, held in August 2009, they little suspected that the result itself would be entirely eclipsed by an interminable dispute over the gender of the eventual winner, Caster Semenya of South Africa, who won gold in a blistering 1 min 55.45 sec. Her huge winning margin fuelled existing speculation which had already been rampant in terms of whispers and innuendo about her allegedly masculine shape and facial features. The issue was so sensitive that the International Association of Athletics Federations (IAFF), the world governing body in the sport, prevented the media from interviewing the athlete after the race, although it had itself already added to the controversy by admitting that it had requested Athletics South Africa (ASA) to carry out a "gender verification test" on the winner. Spokesman Nick Davies said that doctors in South Africa had already started testing Semenya but, because of the complexity of the process, it would be some time before the results would be available (*The Daily Telegraph of 20/8/2009, p. S1*).

In fact, the next day it was learned that the athlete was due to face a panel of experts convened by the IAAF to adjudicate in the matter. This panel consisted of a gynaecologist, an endocrinologist, a psychologist, an expert in internal medicine and another expert on "gender/transgender issues". The importance of gender verification in sport comes down to the perceived advantage of being a man. Males have

between 40 and 60 times the amount of testosterone than females, and testosterone, the male sex hormone, is critical to building up muscle bulk and so providing the physical strength that can determine the outcome of a competitive event. It is perhaps useful at this stage to examine the testing procedures, and how these have evolved in the course of athletic history.

In the early 1960s, when the first regular gender verification was introduced in international sporting events by the IAAF, women were subjected to rather crude physical examinations of their private parts, a humiliating procedure that female athletes understandably resented. Later, during the Mexico City Olympic Games in 1968, the sporting bodies introduced a genetic test based on a smear taken from the mouth. The cells in the smear were analysed using a "sex chromatin" test to determine whether the person has the two XX chromosomes of a female, or the XY chromosomes of a male.

In addition to being less demeaning to women, it was also meant to deal with cases of ambiguous external genitalia. In some rare instances, men and women can suffer from a congenital condition that interferes with the normal development of their external sex organs. The test, however, quickly fell out of favour, partly because of a shortage of labs that could carry it out properly. The test was also dogged by false positive and false negatives – in other words results that turned out to be wrong. An even bigger problem was the issue of women who were genetically male, having the XY chromosomes, but were in every other respects female because their bodies lacked a key protein that was able to recognise testosterone. These women produce large amounts of testosterone, but the hormone simply does not work.

The condition is known as "androgen insensitivity syndrome" and very often these women are unaware of it until they try to have children. About 1 in 20,000 women suffer from it, and although they look, feel and behave like women, a chromosome test alone would reveal that they are genetically male. Sex determination in humans begins in the womb at an early stage of embryonic development. An egg normally carries one X chromosome while sperm carry either one X or one Y chromosome. When sperm and egg fuse, they form XX and XY embryos in a roughly 50:50 ratio.

During the first weeks of development, the male and female embryos are anatomically indistinguishable with primitive gonads – the male and female organs –

## 14. Human rights/Civil liberties

beginning to develop in the sixth week of gestation. At this point they are considered to be “bipotential”, in other words they can go on to become either female ovaries or male testes. What determines the eventual developmental path is the presence of the sex-determining gene on the male chromosome, called SRY. When this gene is present, the embryo becomes male, when it is not, it becomes female. In a way all embryos are by default female, and it is only when the SRY gene kicks in that a “female” embryo actually becomes male (*The Independent of 21/8/2009, p. 67*).

Part of the battery of laboratory tests that Semenya will have had to undertake was very probably a test for the presence of the SRY gene. Her blood will also be tested for testosterone and her cells analysed for whether she bears the usual pattern of XX chromosomes for a woman. However, the IAAF said that gender verification will not be done solely on such laboratory-based tests. A psychological profile is also likely to be done to determine whether she “feels” herself in her own mind to be a woman. The IAAF’s policy on gender verification also states that there are medical conditions where people should be allowed to compete even when there are questions about their gender. Conditions such as androgen insensitivity syndrome and gonadal dysgenesis – when the gonads fail to develop or are surgically removed – are allowed because they confer no advantage over other female competitors. Even sex-change men who become women can compete provided a period of time has elapsed since the operation, especially if carried out before puberty. It is all part of the realisation that being a man or a woman is not always clear cut (*Ibid*).

Naturally, this entire episode took its toll of the athlete, who a few days later declared that the affair had made her so miserable that she had to be persuaded not to boycott the medal ceremony (*The Times of 22/8/2009, p. S19*). Nevertheless, her position was not one of total isolation, particularly when various athletes rallied to her support – notably Jenny Meadows, the British athlete who finished third (in contrast to Italy’s Elisa Piccione, who finished 6th and opined that “for me, she is not a woman”) (*The Guardian of 21/8/2009, p. S9*). There also arose a bitter dispute between the IAAF and ASA, sparked off by allegations by the latter that the IAAF verification process, which the world governing body had claimed to be well under way, had not even started. Phiwe Tsholetsane, the team manager, claimed more particularly that the allegations made by the IAAF that she had undergone hospital tests after her arrival were untrue. The IAAF, for its part, named the doctor in charge of the verification, i.e.

Harold Adams – himself a South African who sits on the IAAF’s medical commission (*The Times of 22/8/2009, loc. cit.*).

Several days later, it emerged that preliminary tests on the athlete showed elevated levels of testosterone, as a source close to the investigation into the 800 metres gold medallist confirmed that tests carried out before the start of the World Championships indicated that the runner had three times the normal female level of testosterone in her body. It was also revealed that the head coach of the South African team is Dr Ekkart Arbeit, the former East German coach who was accused by a female athlete of giving her so many anabolic steroids that she was forced to undergo a sex-change operation and live the rest of her life as a man. Although it is unclear how closely Arbeit has been working with Semenya, news of his position will raise concerns with the IAAF. The analysis on Semenya’s testosterone levels was carried out in South Africa and it is understood this information contributed to the IAAF’s decision to request the South African federation carry out a detailed “gender verification” test on the athlete.

Dr. Arbeit, who was named as a key figure in the East German doping machine in a German parliamentary inquiry headed by Professor Werner Franke, has admitted his involvement in the drug programme and has expressed his regret for the part he played in East Germany’s tainted successes of the 1970s and 1980s. But he has also insisted that, since the fall of the Berlin Wall in 1989, he has had no involvement with performance-enhancing drugs and that his coaching methods are now clean. Heidi Krieger, who underwent surgery in 1997 and now lives in Germany as Andreas Krieger, has always blamed Arbeit for the role he played in supervising her drug regime under East Germany’s state-sponsored doping programme. It will, however, be recalled from a previous issue of this Journal that Dr. Arbeit was considered trustworthy enough to be invited by Frank Dick, a former head coach of British Athletics, to work with Denise Lewis, the 2000 heptathlon Olympic champion. Arbeit coached Lewis for several months in 2003 before they parted ways after the World Championships in Paris (*Ibid*).

However, a few weeks later it was alleged that Semenya had been duped into undergoing a gender test without giving her consent, according to her former coach. Wilfred Daniels, who had resigned his position over his part in the deception, said the teenager was tested in Pretoria prior to her departure

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for the World Championships in Berlin, where she won the gold medal in the 800 metres. He added that the athlete believed she was simply undergoing a routine drug test and that neither he nor other officials from Athletics South Africa told her that the true purpose was “some sort of gender verification test”. Daniels’s admission contradicts the ASA president, Leonard Chuene, who has insisted that no gender tests were carried out on Semenya prior to Berlin.

Daniels added to the criticism of the country’s athletics officials by claiming that they had let Semenya down by not briefing her on what was happening when the story first broke on the day of her 800m final. He said:

***“We did not handle Caster properly. The handling of the issue was atrocious. I am not happy. I’m not pointing fingers at anybody because I am part of the collective responsibility and blame.”*** (*The Daily Telegraph of 8/9/2009, p. S17*)

Asked about Daniels’ claim that Semenya had been tricked into a gender test, Mr. Chuene called on the former coach to prove his claims. Until then, Chuene said, “wild allegations will remain wild allegations” (*Ibid*).

The next few days brought mixed news for Ms Semenya. She received a boost when the IAAF announced that the results of the tests would not affect the result of the race won by the 18-year-old. Spokesman Nick Davies said that, since the investigation in question did not concern a doping case, there would not occur any retroactive stripping of medals (*The Guardian of 9/9/2009, p. S8*). In the meantime, the IAAF tests had been completed; however, it raised sufficient doubts over the gender question that the results were to be given to an independent committee of experts (*The Daily Telegraph of 9/9/2009, p. S17*). The results themselves were not made public because, unlike doping cases, this was a medical matter requiring confidentiality. However, according to the Australian media, the test had revealed Semanya to be a hermaphrodite, which would represent a serious threat to her future in athletics. More particularly it was claimed that the medical tests established that she has no ovaries, and that she also underwent internal testes – the male sexual organ responsible for producing testosterone (*The Daily Telegraph of 11/9/2009, p. S17*).

The institutional consequences of the affair were also rumbling on. Exactly one month after the controversial race which sparked off the crisis, South African officials were accused of staging a cover-up over the gender

tests conducted on Semenya prior to the World Championships. The national governing body ASA had always denied authorising tests on the athlete before she left for Berlin, insisting that it had no reason to consider withdrawing her. However one of the country’s leading newspapers, Mail & Guardian, claimed to have received an exchange of emails which exposed this as an untruth. More particularly it alleged that Ms Semenya had been tested at the Medforum Mediclinic in Pretoria the previous month. The newspaper published an email which it said had been sent to Dr. Harold Adams, the South African team doctor (see above) to the ASA General Manager, Molatelo Malehopo, and copied to its President, the aforementioned Leonard Chuene, on 5 August. The championships commenced ten days later. The email read as follows:

***“After thinking about the current confidential matter, I would suggest that we make the following decisions: 1: We get a gynae opinion and take it to Berlin. 2: We do nothing and I will handle these issues if they come up in Berlin. Please think and get back to me ASAP”*** (*The Guardian of 19/9/2009, p. S2*).

A response, also by email, from Mr. Malehopo to Dr Adams read: “I will suggest that you go ahead with the necessary tests that the IAAF might need”. This flies in the face of the continued claims made by Mr. Chuene that no tests were ever conducted in South Africa before the event, and that ASA authorised and financed these tests. Furthermore, on the day when the story broke, there were further damaging allegations from the coach-turned-whistleblower Wilfred Daniels that Dr Adams has asked Mr. Chuene to withdraw the athlete from the team, but that he refused to comply with this request (*Ibid*). This piled additional pressure on the beleaguered chief, who two days later finally admitted that he had lied over the issue. This naturally led to calls for his resignation, which he resisted, claiming that he was merely attempting to protect the athlete’s privacy. Amongst others, Gert Oosthuizen, the nation’s Deputy Sports Minister, expressed frustration that even the government had been kept in the dark, and demanded that Mr. Chuene resign (*The Guardian of 21/9/2009, p. 24*). Later, Mr. Chuene was suspended by the country’s Olympic governing body pending a disciplinary investigation into the matter. This announcement came just hours after the ASA had issued an unreserved apology to Ms Semenya over the manner in which it had handled the whole affair (*The Daily Telegraph of 6/11/2009, p. S20*).

Meanwhile, of course, the fate of Semanya’s career lay very much in the balance. She faced further uncertainty over her fate when the IAAF announced

## 14. Human rights/Civil liberties

that no decision would be made on her future in the sport at its November Council meeting. The reason for this was, as the organisation admitted, the fact that, unbelievably, the medical tests had yet to be completed (*The Guardian of 19/11/2009, p. S7*). Even more controversial was the news that the IAAF was forced to deny that it had made a deal with the South African Government to allow Semenya to retain her gold medal. This news came courtesy of the Government itself, which claimed that both it and the IAAF were “in total agreement” on the issue. However, the world governing body insisted that this statement was premature and that discussions were continuing in order to resolve the teenager’s future in the sport (*The Daily Telegraph of 20/11/2009, p. S3*). A few days later, the sports ministry of South Africa confirmed that the results of the IAAF tests would remain private (*Daily Mail of 23/11/2009, p. 67*).

Just before this issue went to press, it was learned that the IAAF had offered to finance Semenya’s expenses should she require gender surgery or other treatment in order to enable her to continue to compete as a woman. This was in anticipation of the world governing body’s test results which were expected, in spite of the increasing probability that the leaked reports indicating her hermaphrodite status appeared to be true. If this is confirmed, the panel of experts in question will need to determine whether the athlete’s increased testosterone levels give her an unfair advantage over her rivals – a situation which would require remedial treatment if she were to continue in her desire to compete in women’s events. However, there was also concern expressed for Ms. Semenya’s health, since internal testes carry an increased risk of testicular cancer (*The Daily Telegraph of 12/12/2009, p. S7*).

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### ANIMAL RIGHTS

**[None]**

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### OTHER ISSUES

**[None]**

# 15. Drugs legislation and related issues

## GENERAL, SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS

### IOC to consider tougher anti-doping requirements

In early October 2009, it was learned that countries could be barred from hosting the Olympics, starting with the 2018 games, if they failed to apply laws which empower police to raid and investigate those suspected of helping athletes use performance-enhancing drugs. The value of such police powers was driven home to the International Olympic Committee (IOC) by the 2006 Turin Games. It will be recalled from previous issues of this Journal that Italian police, acting on information from the IOC, raided the Austrian cross-country and biathlon team lodgings and seized a large amount of doping products and equipment. According to Jacques Rogge, the President of the IOC:

*"If we don't have the help of the police, we'll never be able to search a room, to search luggage, because we cannot issue a warrant, police can. We cannot touch mobile phones that are very useful in these kinds of issues. What we want is that police could help us in cracking down on doping rings and networks"* (Associated Press, at [www.findlaw.com](http://www.findlaw.com) of 5/10/2009)

Dr. Rogge has asked Arne Ljungqvist, chairman of the IOC's medical commission, to prepare a formal proposal that would make such laws a requirement for bid cities. In an interview with The Associated Press, Mr. Ljungqvist said that for the Turin Olympics, the IOC received intelligence "that something suspicious might be going on" with the Austrians but couldn't act on it because the Committee had no authority to make a raid.

Accordingly, it passed the information to Italian police, who agreed to conduct a raid on the premises. Drug tests on the athletes came back negative, but the raid netted what Ljungqvist called "a hematological laboratory, more or less, with all sorts of equipment and substances." (*Ibid*). He described this as "a very significant experience", adding that the entire story would have remained unknown to everyone had the Italian law not been in place and had the latter and the IOC not co-operated closely on this matter.

## DOPING ISSUES AND MEASURES - INTERNATIONAL BODIES

### WADA celebrates its first decade, but "fight must go on"

It can never be described as the easiest of births. When government ministers, sports officials, athletes and scientists gathered at the Palais de Beaulieu in Lausanne, Switzerland, in 1999 to thrash out the terms of a new, global anti-doping organisation, there was little evidence of the harmony and cooperation that now exists in the fight against drug cheats. The mood in the hall was fractious as speakers questioned the commitment of the International Olympic Committee (IOC) to ridding sport of drugs while delegates clashed over the question who would control the new agency and who would pay for it. Britain's sports minister, the late Tony Banks, was typically forthright, stating that he could not "at present accept the composition of the proposed new agency" (*The Daily Telegraph of 10/11/2009, p. S16*).

However, there was one thing that concentrated minds and led, after two days of hard negotiation, to the creation of the independent World Anti-Doping Agency (WADA) which celebrates its 10th birthday in mid-November 2009. This was the stark fact that the status quo was not an option. Drug-taking had become so rife and brazen that international sport could no longer muddle through with its haphazard, half-baked testing programmes. The distressing sight of the entire Festina cycling team being expelled from the previous year's Tour de France after the discovery of syringes and illegal drugs in the team masseur's car had been the final straw. If the cheats were getting organised, the anti-doping authorities needed to do the same.

While it would be fanciful to suggest, 10 years on, that the war against doping is close to being won, the perpetrators at present face a tougher, more coordinated and better-funded enemy. Before the 1999 World Conference on Doping in Sport, just 10 of the 34 Olympic sports had year-round out-of-competition drug-testing programmes and, even if they were fortunate enough to catch a cheat, punishments varied widely. There was even disagreement about what substances should be considered performance-enhancing. Against this chaotic backdrop, the harmony that now exists between international federations and governments towards anti-doping policy represents a relative success story.

## 15. Drugs legislation and related issues

The World Anti-Doping Code, the document that underpins the worldwide fight against doping by laying down strict rules on procedures and punishments, is now accepted by 630 sports organisations and 130 countries. Ninety per cent of the world's population is governed by its regulations. Funded jointly by the IOC and national governments, WADA has also been able to co-ordinate the search for new methods of drug detection, having spent about £30 million on research projects since 2001. New tests for human growth hormone and various forms of EPO have been among the results, while work is being funded to deal with the potential scourge of gene doping.

However, it would be useless to claim it has not all been quite straightforward. High-profile drug cases have continued to dominate the headlines and, although there is an argument that every positive test is proof that the anti-doping system is working, the limitations of simply turning up and taking urine or blood samples have also been exposed. Thus US American athlete Marion Jones tested negative more than 150 times before her courtroom confession that she had taken a cocktail of drugs before the Sydney Olympics. Victor Conte, the man behind the BALCO conspiracy in San Francisco which revealed the sophisticated and organised nature of modern-day cheating, remains scornful of the drug-testing programme and says far more off-season tests should be carried out.

The issue of drug-test evasion has been partly addressed by the introduction this year of tough new rules requiring athletes to provide constantly updated information about their whereabouts, despite protests from some that they infringe civil liberties (see the protestations by, amongst others, tennis star Andy Murray, below). The BALCO scandal, copiously reported in the columns of this Journal and elsewhere, has also opened up a new front against the dope-takers by showing the value of investigative techniques to complement old-fashioned testing, with evidence gathered by federal officers being used to prove doping infringements by athletes such as Michelle Collins and Tim Montgomery. A move to a more investigative approach has produced outstanding results in Australia, where 38 per cent of doping bans handed out last year were the result of intelligence work, and Britain, encouraged by WADA, will follow suit when the new UK Anti-Doping UKAD agency commences operations. The country's law-enforcement agencies have agreed to work in partnership and are primed to pass on any relevant information (see above, p. 000). Such co-operation

between sport and government would have been unthinkable before 1999 and represents possibly the greatest achievement of WADA's first decade.

### Olympic athletes to face doping raids on their rooms

In mid-October 2009, it emerged that athletes competing at the London Olympics will have to agree to their rooms being raided at any time by anti-doping officials as a condition of taking part, under new plans being considered by the UK government and organisers. Having announced that the new UK Anti-Doping (UKAD) body would be in operation before the end of the year, the British sports minister, Gerry Sutcliffe, said he had proposed to the International Olympic Committee (IOC) and London 2012 organisers that athletes should agree to be searched at any time. He added:

***"We don't want to criminalise athletes, but I think it would be fair if it was a condition of entry. In countries where the use of some performance enhancing drugs is illegal, such as Italy, police are able to raid premises if they suspect an athlete of cheating"*** (*The Guardian of 11/10/2009, p. S1*).

This would be the first occasion on which Olympic anti-doping officials had been given the right to arrive unannounced in the athletes' village and search rooms on suspicion of doping. The rules, would apply to all those competing in the games – whether they stayed within the athletes' village or not. However, athlete representatives said it would be hard to convince athletes to sign up to this pledge. A spokesman for British Athletics, the national governing body for the sport in the UK, said that he understood the rationale behind the move, which was to tackle blood doping, which is hard to prove unless one finds evidence on the premises. However, he added that this "only affects a minority of sports and getting all athletes to sign up to this will be close to impossible" (*Ibid*).

A spokesperson for the British Olympic Association (BOA) stated that the issue should be regarded as part of a wider debate about moves to criminalise the supply of performance enhancing drugs, as proposed by its chairman (and former Sports Minister) Lord Moynihan. He revealed that the noble Lord was proposing to introduce a Bill into the House of Lords to consider all relevant aspects associated with drug abuse in sport, and that "the issue raised by the minister of sport today will rightly be considered by parliament".

## 15. Drugs legislation and related issues

The IOC is likely to back the plan. It wrote to the UK government in the wake of raids by Italian police on Austrian skiers at the Turin Winter Olympics to ask it to consider similar measures. A spokeswoman for the London Organising Committee for the Olympic games (LOCOG) commented that conditions of entry to the Olympic Games ultimately fell under the responsibility of the IOC – should there be any suspicion of doping in the Olympic Village, the IOC would “work with the local authorities to ensure that the appropriate measures are taken” (*Ibid*).

UKAD, an organisation modelled on the Australian anti-doping body, will be chaired by the former chief constable of North Yorkshire David Kenworthy. The current head of drug-free sport at UK Sport, Andy Parkinson, has been named as chief executive. Announcing an anonymous hotline to encourage whistleblowers from within sport and among the public, Mr. Kenworthy said key priorities would be working more closely with law enforcement agencies and changing the culture of secrecy among athletes via education programmes. Mr. Kenworthy said that the key difference for the new agency, which will have a staff of 50 and cost £7m, would be a closer working relationship with the police and UK Border Agency than in the past. He said that his overall aim was that the UK will be a world leader in anti-doping, adding that he wanted “people to be beating a path to our door to see how we do it”.

Mr. Parkinson, for his part, said UKAD did not want to be seen as a “police force” but would balance a commitment to enforcement with education programmes aimed at changing the culture within sport. He added:

***“One of the things we see within sport is an unwillingness to share information with us about potential dopers. We hear a lot of rumours, largely in the press. But what we want to do is start to build up our credibility so that clean athletes can come to us in an anonymous way and be convinced that we will use that information in an intelligent way and not misuse that information.”*** (*Ibid*)

He also announced a new athletes committee and did not rule out asking former cheats to be involved. He added that what was wanted was not a cosmetic athlete committee but a robust, meaningful one that can protect the athletes coming through who will be inspired by London 2012, Glasgow in 2014 and the decade of sport. In other words, he wanted a “broad understanding of the pressures on athletes. That may come from athletes who have doped and it may not”.

UKAD will also hire a head of science and medicine, who will work with global anti-drugs body WADA to help “assess future threats” (*Ibid*).

### **Andy Murray frustrated at ‘intrusive’ tennis dope-testing protocol**

Anti-doping controls were very much on the agenda during the latest US Open at Flushing Meadows. And this is not just because Richard Gasquet, at his first grand slam since his cocaine controversy for which he was cleared (albeit controversially – Journals passim!), was to face Rafael Nadal in the opening round of the US Open. Though Murray is adamant that “no one wants cheats in the sport”, he has become ever more exasperated with having to let the World Anti-Doping Agency know where he will be for an hour of every day of the year. That very week, testers visited Murray’s Manhattan hotel room at 7.15am, waking him up on a day off. “I just think it’s a little bit in your face the whole thing,” said Murray, who disclosed that, three days before this summer’s Wimbledon, an anti-doping official came to his house in Surrey after 9pm, even though the Scot had put down 7am to 8am as his one-hour slot for that day. On that occasion, the official told Murray that he was doing an “out-of-hours” test (*The Daily Telegraph of 29/8/2009, p. S24*).

“They can actually come whenever they want to your address” added Mr. Murray, the runner-up to Roger Federer on the New York cement last summer, and the second seed at the 2009 US Open. Mr. Murray, who estimated that he is tested out of competition about once a month, was also irked with an anti-doping official who demanded an in-competition test two minutes after a defeat to America’s Andy Roddick in the Wimbledon semi-finals. He commented:

***“After I lost at Wimbledon I was obviously disappointed because it’s a grand slam, and within two minutes of getting off the court the guy was right there, standing next to me. And I just very politely said to him, ‘Can you give me a little bit of space please? I’d like to be on my own for five minutes’. And he’s like (sic), ‘Yeah, yeah, sure’, and takes one step back. So when he did that, I said, ‘Right I’m going to go do my test right now’, and I went downstairs, did my urine sample, took five or 10 minutes, and then they said that I had to go and do a blood test as well. I was like, ‘Right, that’s fine, let’s do it’. And they said, ‘Sorry, you can’t do the blood test now, as you’ve got to wait until 45 minutes, an hour, after your match before you do it’. So there are so many rules and things so if you do everything right, they will still keep you waiting.”*** (*Ibid*)

## 15. Drugs legislation and related issues

Stepping back from the famous tennis player's infelicity of expression for one moment, we have to admit that he may have a point. For example, in New York for the US Open, Murray had been planning to sleep in on Monday. He claimed that the dope testers called him in the room. "I was a bit out of it. It was just annoying," said Murray, who opened the tournament with a match against Latvia's Ernests Gulbis. They claimed to be there in order to perform the dope test so could he open the door when they knock. This annoyed Mr. Murray intensely because it was the first time he had had a day off for some considerable time, and he wanted to have a "lie-in" as well because much of the time when he was playing in Cincinnati the previous week, he was playing early matches and when one is woken up at 7.15am on the day after a tournament finishes, this may be "a bit of a drag" (*Ibid*).

The aforementioned incident before Wimbledon appears to have grated. Three days before Wimbledon started, the organisers had someone turn up at Mr. Murray's house after 9pm. Apparently this was not the hour which he gave them that they could come. Mr. Murray takes up the story:

"And I said, 'What are you doing? I said you could come between seven and eight in the morning', and they said, 'Yeah, it's an out-of-hours test', so it's like you have to fill these forms out but they can actually come whenever they want to your address. So it's completely pointless. I'd just finished dinner, I'd just gone to the toilet and you're not going to force yourself to drink two litres of water just so that you can go to the toilet. You want the guy out of your house at that time. The guy's just sitting there and you're just waiting to go to the toilet" (*Ibid*).

When Mr. Murray decided to travel by road between tournaments in North America this summer, he had to keep thinking about the "whereabouts" rule when he made his arrangements. He described this as "such a hassle" adding that "a little bit more space would be nice" (*Ibid*).

### **Austrian laboratory in doping investigation**

In mid-August 2009, it emerged that staff at a laboratory in Austria had been investigated by police over the supply of banned substances to athletes. Officials said that the laboratory, located near Vienna, was one of 35 laboratories worldwide accredited by the World Anti-Doping Agency (WADA). Günter Greiner, who heads the laboratory, declared himself "most interested in clearing up possible allegations

against employees and former employees". The investigation was prompted by Stefan Matschiner, the former manager of cyclist Bernard Kohl, who was arrested in March 2009 in a nationwide doping scandal. Dr. Matschiner was named by Kohl and retired triathlete Lisa Huethaler as their supplier of performance-enhancing drugs. He has since been released but is likely to face charges (*Associated Press, www.findlaw.com of 20/8/2009*).

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### DOPING ISSUES AND MEASURES - NATIONAL BODIES

#### **Canadian doctor investigated in doping probe**

In mid-December 2009, a Canadian doctor who has treated golfer Tiger Woods, swimmer Dara Torres and NFL players is suspected of providing athletes with performance-enhancing drugs, according to a newspaper report. Human growth hormone and Actovegin, a drug extracted from calf's blood, in Dr. Anthony Galea's bag at the U.S.-Canada border in late September, *The New York Times* reported. He was arrested in Toronto by Canadian police. Using, selling or importing Actovegin is illegal in the United States. The FBI has opened an investigation which is based in part on medical records found on Galea's computer relating to several professional athletes, people briefed on the inquiry told the leading US newspaper on condition of anonymity because they did not wish to be identified discussing a continuing investigation. The anonymous sources omitted to disclose the names of the athletes, and Galea told the newspaper "it would be impossible" for investigators to have found material linking his athletes to performance-enhancing drugs.

According to the newspaper, Galea has developed a blood-spinning technique - platelet-rich plasma therapy - to assist in speeding up post-surgery recovery. Dr. Galea visited Mr. Woods's home in Florida at least four times in February and March 2009, the newspaper reported, to provide that platelet therapy after his agents were concerned by his slow recovery from June 2008 knee surgery. Asked about the golfer's involvement with Galea, agent Mark Steinberg told the newspaper in a terse email that "if Tiger is NOT implicated, and won't be, let's please give the kid a break." According to the report, Galea said Woods was referred to him by the golfer's agents at International Management Group. However, Steinberg sent an e-mail to the Associated Press agency which stated:

## 15. Drugs legislation and related issues

***“No one at IMG has ever met or recommended Dr. Galea, nor were we worried about the progress of Tiger’s recovery, as the Times falsely reported. The treatment Tiger received is a widely accepted therapy and to suggest some connection with illegality is recklessly irresponsible.”*** (*Associated Press, www.findlaw.com of 15/12/2009*)

Ms. Torres, for her part, told the newspaper that Dr. Galea found a previously undiagnosed tear in her quad tendon. Apart from draining her knee, he had never treated her but, she did visit his chiropractor who did soft-tissue work on her leg, and that “that was the extent of my visit with him.”

Brian H. Greenspan, the controversial doctor’s criminal defence attorney, said an investigation will vindicate his client. He maintained that Dr. Galea was never engaged in any wrongdoing or any impropriety – not only did he have a reputation which is impeccable, he was a “person at the very top of his profession”. Dr Galea, for his part, whilst acknowledging that he used HGH himself for 10 years, Galea told the newspaper he never gave any athletes the substance, which is banned by the World Anti-Doping Agency (WADA). He added that he has never combined HGH or Actovegin with his platelet treatments, and that athletes did not have to come to him to obtain HGH and steroids – “you can walk into your local gym in New York and get HGH.” Prescribing HGH is legal in Canada; it can be used in the United States but only in a few instances which do not include hastening recovery from surgery.

The Royal Canadian Mounted Police said no charges have been filed yet against Galea. RCMP spokesman Sgt. Marc LaPorte said Galea was arrested after a search warrant was executed Oct. 15 on the Institute of Sports Medicine Health and Wellness Centre on Brown’s Line near Toronto (*Ibid*).

### **Spain changes doping legislation ahead of Olympic vote**

Madrid’s fate in the bid to stage the 2016 Olympics had been fully documented earlier (above, unit 5 “Public Law”). However, its bid did have a spin-off effect in terms of its legislation on doping, which it changed to comply with international rules and boost its chances of winning. In line with governing body WADA rules, its legislation will permit drug-testing of athletes between 6 am and 11pm, whereas previously it had only allowed testing between 8 am and 11 pm. Doubts over Spain’s full compliance with WADA’s out-of-competition

testing rules was one of the issues raised by an International Olympic Committee (IOC) evaluation panel after it had visited Madrid with a view to inspecting its 2016 bid preparations. However, the Government of Spain did point out that, even though the IOC had raised the issue, WADA had already listed Spain amongst the countries which fully complied with the anti-doping code and among the few which applied out-of-competition controls (*Associated Press, at www.findlaw.com of 18/9/2009*).

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### DOPING ISSUES AND MEASURES – CYCLING

#### **Tour de France: hopes of clean sheet fade after initial euphoria**

Over the past few years, Tour de France doping scandals have almost become as much a part of the traditions surrounding the event as the leader’s yellow jersey and the breathless post-race interviews. However, as the starting pistol sounded for the 2009 event, hopes were high that a line could be drawn under the drug-ridden history of this major showpiece for the sport. This positive view continued even as the last competitor crossed the finishing line in Paris. There had only been two brief moments when the fight against doping had made the headlines. The first came when a doping inspector from the world governing body, the UCI, was accused of spending too long drinking coffee with the Astana team management rather than perform his tests. (These claims were later refuted.) The second occurred when Alberto Contador, the eventual winner, was asked about certain scientific theories which called into question his prodigious climbing ability. He had refused to reply point blank, a reaction which had more than a hint of the traditional *omertà* among the riders when asked about banned substances (*The Independent of 27/7/2009, p. 44*).

The well-being felt after the event had been completed persisted even though, the following week, it was learned that Mikel Astarioza, who finished 11th, had tested positive as a result of a test – admittedly one taken one week before the race commenced – and had been suspended (*Daily Mail of 5/8/2009, p. 71*). Given that this was the only doping case to tarnish the 2009 race, this was dismissed as a mere blip. However, the euphoria came to a sudden halt nearly three months after the race had finished as prosecutors in France opened an investigation into several Tour teams after “suspicious medical equipment”, including used syringes and drips discarded during the event, were

## 15. Drugs legislation and related issues

recovered. Initial suspicions centred on the Astana team, which featured both the winner and Lance Armstrong, the previous multiple winner of the event making a comeback that year. The case carried echoes of the French authorities' investigation into Mr. Armstrong's US Postal team, which had been accused of disposing of suspicious medical products during the 2000 Tour (*The Guardian of 14/10/2009, p. S7*). The case against the team was dismissed in 2002, but the Texan rider has always come under some degree of suspicion over the use of banned substances, although nothing has ever been proved against him. At the time of writing, no formal prosecution had been launched.

The previous week, there was further disturbing news for the Tour in the shape of an allegation made by the French Anti-Doping Agency (AFLD) that two new, undetectable products were used during the 2009 event. One of the new substances, according to the leading French newspaper *Le Monde*, was hematide, which is a form of EPO which maintains stable haemoglobin levels – fluctuating haemoglobin readings being one indicator of doping in an athlete. The other product allegedly used is Aicar, which enhances muscle tissue whilst burning fat. The head of the AFLD, Pierre Bordry, told the newspaper of his disquiet at the thinness of some of the riders in the 2009 event. The possible use of Hematide by cyclists in turn carries echoes of the Cera cases during the 2008 Tour, when a test for the substance in question – a so-called Third Generation EPO – was developed secretly in collaboration with the manufacturers of the product, and used on riders' samples. At the time of writing, Hematide is still undergoing clinical tests, and it could be a further two years before it is approved to treat anaemic patients – which. Like other forms of EPO, this is its intended medical use. The French anti-doping authority will probably carry out retrospective tests on stored samples from the 2008 and 2009 races.

Bordry said he believes illegal blood transfusions – for which there is a test – were still in use at this year's Tour, and he claimed that his agency had found evidence of "hardcore medicines" in rubbish bins during the Tour, including "a substance for producing insulin that is normally used by diabetics."

It has been a busy week for Bordry and the AFLD, who today are expected to announce the results of the latest batch of re-testing on samples from the 2008 Tour. They have not said what the new tests are for, though it has been claimed that they have targeted riders who finished in the top 20. Other reports have said that up to 40 riders were identified as suspicious,

while the Italian sports daily *Gazzetta dello Sport* alleged that samples from 15 of the race's top 20 finishers have been re-tested (*The Guardian of 7/10/2009, p. S7*).

No further details are available at the time of writing.

### **Spanish doctor suspended in Portuguese doping affair**

In mid-October 2009, the Portuguese cycling federation suspended a Spanish doctor for 10 years. Having found him guilty of providing illegal substances to riders, the Federation stated that Marcos Marino Maynar supplied banned substances, including performance-enhancing drugs and materials aimed at masking control samples, to members of the LA-MSS team during the 2008 season. The Federation's disciplinary committee also suspended three LA-MSS riders for up to two years for doping and tampering with samples. The team's sports director, Manuel Zeferino, was fined \$4,200 for failing to ensure the proper conduct of his riders. The ruling has been communicated to the International Cycling Union, which may add international bans (*Associated Press, www.findlaw.com of 22/10/2009*).

### **Aurélien Duval suspended (France)**

Also in mid-October 2009, the International Cycling Union (UCI) provisionally suspended French competitor Aurélien Duval for doping using a banned stimulant. He had apparently tested positive for norfenfluramine during the Circuit Franco-Belge race. It was not yet known at the time of writing whether this provisional suspension had been confirmed (*Associated Press, www.findlaw.com of 23/10/2009*).

### **Anti-doping lessons initiative for cyclists launched**

In late September 2009, it was learned that, henceforth, all professional cyclists will need to complete a new anti-doping education programme, or lose their right to race. The world governing body, UCI, launched the "True Champion or Cheat?" project to complement extensive testing conducted on more than 1,000 registered riders across all disciplines. Riders have until 30/6/2010 (i.e. one week ahead of the Tour de France) to complete the course or lose their official registration. The programme, provided on DVD or online in five languages initially, will explain testing procedures and list substances banned by the World Anti-Doping Agency (WADA). They will also be

## 15. Drugs legislation and related issues

taught how to apply for lawful medication, inform testing teams where they are training, and the potential dangers of using dietary supplements. The project was revealed at the Annual Congress of the UCI to the national associations, who will share responsibility with teams to ensure compliance with the relevant time limit (*Associated Press, www.findlaw.com of 25/9/2009*).

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### DOPING ISSUES AND MEASURES – ATHLETICS

#### **Thanou fails in bid for Jones medal, but intends to appeal (Greece/US)**

It will be recalled from many a previous issue of this Journal – and elsewhere – that one of the more prominent doping scandals of the past decade concerned the double gold-medal winner Marion Jones, who was stripped of her two medals in the long jump and 100m events, obtained at the 2000 Olympics in Sydney. The question naturally arose as to whom, if anyone, would inherit the titles. As regards the sprint medal, the medal would, under the International Olympic Committee (IOC)'s rules, be awarded to the second-placed athlete – who in this case happened to be Greek athlete Katerina Thanou. However, this gave rise to a problem. It will also be recalled that both the latter and fellow-sprinter Kostas Kenteris missed a doping test on the eve of the Athens Olympics in 2004, alleging that they had been involved in a motor cycle accident. This was the third occasion on which they had failed to attend a test, and it led to a two year ban (*The Daily Telegraph of 9/12/2009, p. S19*). This is why the Executive Board of the IOC decided not to award the medal to the Greek sprinter – even though there was no evidence that Thanou had used illegal substances at the 2000 Olympics.

However, Ms. Thanou did not accept this decision and has appealed to the IOC's own Ethics Committee in a bid to overturn this decision. Her legal team sent a letter to the Committee calling for an investigation into the Board's decision. It is understood that this letter contains a list of 10 allegations against the IOC, including discrimination, abuse of power, and infringement of human rights. This is likely to be but the first step in a multi-pronged legal battle by the Greek sprinter. One option would undoubtedly be an appeal to the Court of Arbitration for Sport, whilst her lawyer, Gregory Ioannidis, has indicated that she might bring an action in damages against the IOC (*The Daily Telegraph of 16/12/2009, p. S6*).

The present author will naturally continue to follow this saga with keen interest.

#### **Jamaica shaken by positive doping tests**

The Caribbean island has been renowned for its sprinting talent for many years, and most recently crowned its success by obtaining six gold medals at the Beijing Olympics in 2008. Almost a year later, however, the nation was rocked to its foundations by the news that five of its leading sprinters had allegedly tested positive for a banned substance. The IAAF, which is the world governing body in the sport, announced that four males and one woman had failed drug tests performed at the Jamaican Championships held in the capital Kingston the previous month. It was, however, revealed that none of the athletes in question were Olympic medallists, and that two of them were members of the newly-formed Racers Track Club, for which leading sprinter Usain Bolt also competes (*The Daily Telegraph of 25/7/2009, p. B20*).

However, matters did not appear to be as dramatic as was feared at the outset, with the news that the substances for which the athletes had tested positive were a minor stimulant which might be contained in over-the-counter cough mixture rather than hard-core anabolic steroid. This led to the expectation that any penalties inflicted on them would be on the low side (*The Independent of 27/7/2009, p. 41*). In the event, four of the five have been suspended for three months after admitting taking a banned substance. The four in question were Yohan Blake, Marvin Anderson, Allodin Fothergill and Lansford Spence. Commonwealth 100m champion Sheri-Ann Brooks also tested positive but this was thrown out because her B sample was tested without her knowledge.

Doctor Patrece Charles-Freeman, executive director of the Jamaica Anti-Doping Commission (Jadco), accepted the ruling issued by Ransford Langrin J, who chaired the Jamaica Anti-Doping Appeal Tribunal. Relay runners Blake, Fothergill, Spence and Anderson as well as Brooks had been withdrawn by Jamaica from the World Championships in Berlin the previous. Initially they had cleared by a disciplinary panel on the basis the substance was not on the World Anti-Doping Agency (Wada) banned list. But Jadco then appealed against the verdict, claiming the substance had a similar structure to tuaminoheptane, a banned stimulant according to WADA (*see www.bbc.co.uk/sport of 14/9/2009*).

## 15. Drugs legislation and related issues

### Turkish athlete receives life ban

In mid-November 2009, it was learned that Turkish athlete Sureyya Ayhan had been suspended for life by the Court of Arbitration for Sport (CAS). Ms. Ayhan, previously the European champion over 1500m, had on two occasions infringed anti-doping rules. She had tested positive for anabolic steroids in the US, which came shortly after she had emerged from a two-year suspension for doping incurred at the 2004 Athens Olympics. Initially, the Turkish authorities had merely banned her for four years, but Ms. Ayhan had appealed to the CAS hoping for a lighter sentence. In the event, far from reducing the ban, the CAS increased its duration to a lifetime suspension (*De Gentenaar of 13/11/2009, p. 34*).

### DOPING ISSUES AND MEASURES – TENNIS

#### André Agassi confession leads to calls for investigation

Over the past five years, concern has been mounting over the rise in doping cases in the world of tennis. Nevertheless, it seemed that, thus far, such cases as were brought to light were dealt with by the relevant authorities with all the severity that the relevant rules permitted. However, in late October 2009 the former Wimbledon champion, André Agassi, cast doubt even on this aspect of the sport's relationship with banned substances when he revealed, to a leading British newspaper, how he had deliberately snorted crystal meth, subsequently failed a drugs test but escaped a ban by falsely infirming the Association of Tennis Professionals (ATP) that he had ingested the drug by accident. The confession was made in the former player's autobiography *Open*, which was being serialised by *The Times*. The silence on the part of the tennis authorities which greeted these revelations did little to allay fears that other players may have avoided punishment after failing drug tests (*The Times of 29/10/2009, p. 56*).

In the wake of these revelations, the World Anti-Doping Agency (WADA), as well as the International tennis Federation, the world governing body in the sport, expressed their "disappointment" at the ex-champion's admission. However, there was little that could be done to penalise him, since WADA operates an eight-year statute of limitations. The revelations were all the more damaging since Mr. Agassi had declared in an advertising campaign for Canon that "image is everything", which seemed to portray the player as someone who, underneath the rebellious exterior, was at least honest and trustworthy. Such illusions had been

well and truly shattered by the autobiographical revelations (*The Daily Telegraph of 29/10/2009, p. S10*). In fact, leading sponsorship experts claimed that Mr. Agassi would have become a pariah in his own sport if his drug-taking exploits had been made public. Moreover, they believe that he would have been banned and rejected by every sponsor whom he had succeeded in attracting. It should be remembered that the former Wimbledon ace had become one of the most sought-after sporting performers in the world, accumulating over £100 million in endorsements in the course of his career. However, his new status as a revered philanthropist would protect him against rejection by sponsors who now support his charitable causes (*The Independent of 29/10/2009, p. 106*).

Inevitably, the entire affaire raised a number of wider issues – not only the extent of the drugs problem in the sport and the manner in which the relevant authorities should deal with them, but also the manner in which tennis was being regulated more generally. It has been noted before in these columns that the organisational structure of the game as it stands at present, with its unclear lines of responsibility between governing bodies and players' associations, leaves a great deal to be desired, and not only in relation to doping (see also the corruption scandals which have racked the sport in recent years). The Richard Gasquet affair (extensively covered in the previous and present issue of this Journal) is typical of the inadequacies of the present system – after all, in what other sport would kissing a waitress be accepted as an explanation for ingesting cocaine? Tennis continues to give the impression that it wishes its problems to go away rather than confronting them (*Mail on Sunday of 11/11/2009, p. 102*).

However, the sport, already mired in doping-related controversy, was to receive a further setback when Agassi's memoirs had more to reveal. In a subsequent instalment of the ex-champion's reminiscences, it emerged that his father Mike Agassi asked him to take the drug speed before a tournament, and that he took it. The tennis player has said that his father used to give him drugs to take before matches, including pills that were high in caffeine, and possibly even the illegal amphetamine speed. The suggestion that Agassi may have taken the drug, which has not been made public in this country until now, was obviously likely to damage his image further after his disclosures the previous week. In a separate development, David Howman, the Director-General of Wada, informed a leading British newspaper that he would be writing to the tennis authorities to ask them to investigate "the possibility of perjury" or "a breach of the law" following the aforementioned

## 15. Drugs legislation and related issues

admission that he explained his positive test result for crystal meth in 1997 by sending the ATP a signed letter claiming he had “unwittingly” taken the drug in a “spiked soda”. In spite of WADA’s aforementioned eight-year statute of limitations, and the low likelihood that they could punish the former Wimbledon champion, Mr. Howman indicated that he did not consider “this to be a dead issue”, and hoped that the ATP and the International Tennis Federation would act “responsibly” (*The Daily Telegraph of 19/11/2009, p. 23*).

### Gasquet “Pamelagate” saga continues...

It will be recalled from a previous issue of this Journal that French tennis ace Richard Gasquet had escaped with a 2 month suspension after an International Tennis Federation panel had accepted his explanation that he had ingested the drug through “French kisses” with 29-year-old “Pamela” at a nightclub in Miami, Florida, the previous March. However, the woman in question has since vehemently denied taking drugs, and announced that she was about to take legal action against the French star. As was recorded in this Journal at the time, Mr. Gasquet escaped with a 2 month suspension after an ITF tribunal accepted his allegation that he had ingested the drug through “French kisses” with “Pamela”. Her lawyers argue that, even though she was not identified at the hearing, Mr. Gasquet’s evidence provided sufficient detail for her to be recognised (*The Sunday Times of 26/7/2009, p. 24*). Not only did “Pamela” claim that she did not ingest cocaine, but added that, when negative tests were returned from the laboratory, she reserved the right to pursue the world governing body in the sport, the ITF, for what she perceives to be complicity in the alleged defamation (*The Guardian of 5/8/2009, p. S2*).

Shortly afterwards, it was learned that the ITF had appealed to the Court of Arbitration for Sport (CAS) to increase the severity of the ban in question. The ITF had sought throughout a two-year suspension (*The Times of 8/8/2009, p. S17*). The supreme sporting court, however, announced that the Frenchman was cleared of any doping offence, and accepted the story that he had inadvertently ingested the substance during the “meeting of minds” referred to above. The relevant CAS panel ruled that the presence of a small amount of cocaine metabolite in Mr. Gasquet’s urine sample was:

**“not the result of a fault or negligence by the player, even when exercising the utmost caution, to know that in kissing a woman who (sic) he had met in a totally unsuspecting environment (sic), he could be contaminated with cocaine”** (*The Daily Telegraph of 18/12/2009, p. S7*).

Obviously the panel found that the amount of cocaine metabolite was so small that it must have reflected incidental exposure. The panel also established that Mr. Gasquet was clearly not a regular cocaine user, even in very small amounts. As a result, the probability of contamination became the most plausible explanation justifying the presence of the drug (*ibid*).

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### DOPING ISSUES AND MEASURES - BASEBALL

#### Court rules investigators were wrong to seize MLB drug test list (US)

The sport of baseball has taken longer than most to acknowledge that it has a doping problem and that measures have to be taken to halt it. However, in 2003 the game’s authorities took the initiative to test over 100 Major League players in order to determine whether it was necessary to impose mandatory dope testing across the major leagues. As part of the investigation in the notorious BALCO affair, federal agents seized the results. The players’ union maintained that this search was illegal, and took court action. The Federal Appeals court decided, in late August 2009, that indeed the investigators were wrong to seize this list. It ruled that they only had this right in respect of the results for the 10 players listed on their search warrant (*Associated Press, www.findlaw.com of 26/8/2009*).

However, the federal authorities have failed to accept this verdict, and Solicitor General Elena Kagan has requested an unprecedented reconsideration of the ruling (*Associated Press, www.findlaw.com of 25/11/2009*). It was not known at the time of writing whether this application has succeeded.

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### DOPING ISSUES AND MEASURES - FOOTBALL

#### Cannevaro cleared of doping (Italy)

The captain of the Italian national team, who played a key part in his country’s World Cup triumph four years ago, faced allegations of doping when he failed a test in September 2009. However, the following month he was cleared of this accusation. He had received emergency treatment for a bee sting involving cortisone, and took the test two days later (*The Independent of 13/10/2009, p. 44*).

# 16. Family law

## FAMILY LAW

### **Divorce and employment law come together in LA Dodgers Chief Executive case (US)**

(This issue has been dealt with under the heading “Employment Law” above.)

# 17. Issues specific to individual sports

## FOOTBALL

### **“La main de Dieu” – will Henry affair change refereeing rules and practices?**

Few personalities in the “beautiful game” have presented as wholesome an outward image as the former Arsenal player, now with Barcelona, Thierry Henry. However, this positive profile came under serious threat in mid-November 2009, on the occasion of the crucial World Cup qualifying match between his country and Ireland in Paris. As seen clearly by the television cameras, the striker controlled a free kick launched into the Ireland penalty area twice with his hand and cut it back to William Gallas for the decisive equaliser which made the aggregate score 2-1 to the home side. This meant that France qualified for the final stages of the tournament in South Africa. Ireland defender Richard Dunne later said that Henry actually admitted to the handball immediately after the game, but that it was an unintentional one. Ireland’s assistant manager, Liam Brady – coincidentally also a former Arsenal forward – even suggested there might be hint of conspiracy involved. Commenting on the lack of seeding in the qualifying groups, thus avoiding clashes between the “major” teams, he said that with the draw “they were wanting Portugal and France to go through and they did!” (*The Independent of 19/11/2009, p. 47*).

The next day, the Football Association of Ireland (FAI) made a formal complaint about the incident to world governing body FIFA, and wrote to the French football federation (FFF) urging them to apply for the game to be replayed. John Delaney, the FAI Chief Executive, suggested that there was a precedent for such action,

citing the case of English side Arsenal who, in 1999, successfully persuaded the authorities to sanction a replay of the FA Cup fifth round tie with Sheffield United after the latter had scored a winning goal which was against the spirit of the game (*The Guardian of 20/11/2009, p. S1*). In fact, Thierry Henry himself came out in support of this suggestion a few days later – but only after FIFA had ruled out the possibility of a rematch. The world governing body did agree to discuss the incident at an extraordinary meeting held before the World Cup draw in South Africa, but at which the question of a replay would not be revisited (*The Guardian of 24/11/2009, p. S2*). It did, however, confirm that the Frenchman could face a World Cup ban if its disciplinary panel found him guilty of “unsporting behaviour” if he was thereby deemed to have deliberately cheated (*The Daily Telegraph of 22/11/2009, p. S10*).

Naturally, the incident once again prompted demands for changes in the way in which the game was overseen and refereed. In fact, by the time this issue of the Journal appears, it might well be that a plan to have five officials in charge of major fixtures could be in place in time for the World Cup. This is the method proposed by Michel Platini – himself a former French international and currently President of the European controlling body UEFA – in preference to video technology. Supporters of this proposal pointed out that a fifth referee would have been positioned within a few feet of Henry at the moment of the controversial incident. In fact, Mr. Platini is already committed to introducing the system for next season’s Champions League, provided that it obtains the approval of the International Football Association Board (IFAB). Such

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approval cannot be taken for granted, however, in view of the fact that several unions represented on the Board are thought to prefer video technology (*The Guardian of 21/11/2009, p. S7*).

### **Two-month ban for Maradona over outburst (Argentina)**

Another world-famous striker involved in a hand ball controversy was undoubtedly Diego Maradona, who famously described the goal which he thus scored against England as resulting from “the hand of God”. However, it was a controversy of a different nature in which he became embroiled – coincidentally just before the Thierry Henry incident discussed in the previous section. After the national Argentinian side, of which he is the manager, qualified for the World Cup finals by beating Uruguay 1-0, he told journalists they “take it up the a\*\*e”, grabbed his crotch and insisted that the world’s media should “suck it and keep on sucking”. As a result, world governing body FIFA issued him with a ban from football for two months. He was also fined £15,000. FIFA was able to do so under Article 57 of its constitution, which penalises “offensive gestures or language” (*The Guardian of 16/11/2009, p. S1*).

### **Football finance once more under scrutiny by the game’s authorities**

Although it takes more than a fat banking account to produce a good team, there can be no doubt that the wealth of the leading clubs considerably increases their chances of attracting the top talent – to the extent where serious fears have been expressed as to the effect all this has on the health of the game. Indeed, Arsène Wenger, the manager of leading English Premiership side Arsenal, has gone so far as to describe the spending strategies of some of the club’s chief rivals as “financial doping”. This came in the wake of the news that rivals Manchester City had spent almost £100 million on players prior to the commencement of the 2009-10 season – even though the Mancunians were being positively spendthrift compared to Real Madrid, who lavished more than £200 million on their galactico policy (*The Daily Telegraph of 7/8/2009, p. S9*). This has also been one of the major preoccupations of Michel Platini, the president of European governing body UEFA, who, as reported frequently in these columns, has been considering and mooted various ways of bringing some of the wilder aspects of football finance under greater control. His sense of urgency is all the greater when it is considered that, in many cases, the money spent on acquiring players represents, more often than not, debt rather than credit.

Accordingly, Mr. Platini has embarked on a campaign aimed at making clubs break even by a certain date or face penalties, thus reducing considerably the inflation in transfer fees and salaries held responsible for increasing debts. The fact that some of the worst offenders in this regard are clubs in the English Premier League has inevitable renewed accusations against the UEFA supremo that he is engaged on a crusade against English football. Mr. Platini flatly denies this, claiming that his duty was to “do what is best for the 53 countries” which make up the European association. In fact, he cited the Chelsea owner, Roman Abramovich, as well as Italy’s Prime Minister Silvio Berlusconi, as being among his supporters for his cause. The details of his proposals have not as yet been finalised, but their essence is that clubs will be expected to break even on their football budgets. In other words, they will have to spend on transfers and salaries only as much as they bring in through ticket sales, sponsorship and prize money. Losses will be tolerated only on long-term investments such as stadium reconstruction and youth development (*The Times of 28/8/2009, p. 93*).

Penalties for infringements will be drawn up in conjunction with an independent panel and are intended to be proportionate. Thus a club which was in debt to the tune of £1 million would be treated with greater leniency than one which was £50 million in arrears. A scale of fines could be imposed, and other penalties could even reach the stage of suspensions from European competitions. Thus a side such as Manchester City, spending far in excess of income, would be expelled from the Champions League – always assuming they were good enough to make it to that stage (*Ibid*). In this respect, a club such as Arsenal is seen as the ideal model (thus dismissing any suspicions of anti English mischief-making on the part of Mr. Platini). During the entire period of Mr. Wenger’s stewardship, they have more than balanced their books on their football account, whereas their debts, though not inconsiderable, are due mainly to the building of the Emirates Stadium and would therefore be excusable (*Ibid*).

Later, it was learned that UEFA had appointed the former Belgian Prime Minister, Jean-Luc Dehaene, to lead its campaign aimed at controlling excessive spending by the major football clubs in Europe. The relevant panel will monitor the accounts of clubs which compete in the Champions’ League and the new Europa League. In addition, it will have the power to recommend disciplinary cases which could result in clubs being banned from the various competitions (*Associated Press, www.findlaw.com of 15/9/2009*).

## 17. Issues specific to individual sports

### TENNIS

#### **Serena Williams “penalised” for foul-mouthed outburst (US)**

Women’s tennis, which has suffered a downturn in public interest during the last few years, has suddenly caught the public imagination again – for various reasons. Most of these are perfectly legitimate, such as Kim Clijsters’s extraordinary return to the game after prolonged absence. Less honourable, however, is the reason why the ladies’ event at the US Open claimed attention, to wit, the extraordinary departure from the tournament when she was penalised on match point to Kim Clijsters in her semi-final when she confronted a line judge a threatened to “take this ball and shove it down your throat”. Having already committed a previous code violation for smashing her racket at the end of the first set, Williams was given a second and an automatic one-point deduction, handing victory to her opponent. Brian Earley, the tournament referee, subsequently announced that he had fined Ms. Williams the sum of \$10,000 – with the prospect of an investigation which might result in further penalties (*The Independent of 14/9/2009, p. S12*).

As a result of the subsequent inquiry, the world No. 1 was given a suspended two-year ban from the tournament and a record fine of £100,000 for having committed a “grand slam major offence of aggravated behaviour”. This means that she will have to serve the suspension if she commits another major offence before the end of 2011. It was felt by many that the player could consider herself fortunate for not having incurred a heavier penalty for her outburst. Indeed, she is only on probation at the Grand Slam tournaments, which means that any misbehaviour at lesser events would not be taken into consideration. In addition, the fine, although the largest in tennis history, will hardly dent the bank balance of a player who, in the course of 2009, won £4 million in prize money alone (*The Daily Telegraph of 1/12/2009, p. S17*).

### SWIMMING

#### **First steps towards banning controversial swimwear taken**

From previous issues of this Journal, it has been apparent that all is not well in the world of swimming, particularly in relation to the new range of swimsuits which have caused a good deal of controversy. In late July 2009, however, the sport took its first step

towards banning the “supersuits” which have sent dozens of world records tumbling with a landmark ruling by the sport’s governing body, FINA. Its technical congress passed a simple amendment which may begin the process of giving swimming back to the swimmers and end the debate over the advances in swimsuit technology that have led to 108 world records being set last year and nearly 30 so far this year. The congress, meeting at the world championships in Rome, voted to add the words “or swimsuit” to rule SW10.7, so that it now reads: “No swimmer shall be permitted to use or wear any device or swimsuit that may aid his speed, buoyancy or endurance during a competition.” The omission of these words from the original rule had allowed the manufacturers to produce costumes which clearly aided buoyancy and made the swimmers go faster.

David Sparkes, the chief executive of British Swimming and Britain’s representative on the technical congress, commented:

*“I think it was just common sense. It clarifies the situation. There’s still a bit of detail to be sorted out, but it was passed nem con [no votes against, but one abstention from the 103 delegates].”* (*The Guardian of 24/7/2009, p. S1*)

The Speedo LZR, worn by Britain’s double Olympic gold medallist Rebecca Adlington, was the suit which set the ball rolling and was responsible for the vast majority of the world records set in 2008. The Speedo suit, which was part-textile, allowed a certain degree of permeability, but the “second-generation” suits which have followed, such as the Jaked 01, are all polyurethane and impermeable, trapping air and increasing buoyancy. FINA appeared to have addressed the situation when they banned all non-textile suits only for the ban to be rescinded in mid-June when it was challenged by the manufacturers. The previous month the British national coach, Dennis Pursley, said of the impending world championships that they would amount to “a circus” with a “zoo atmosphere”.

It remains for the full FINA congress to endorse technical committee’s decision, which cannot be guaranteed. It is true that the outgoing president, Mustapha Larfaoui, and the executive director, Cornel Marculescu, are well-known supporters of the second-generation swimsuits. However, the former has now been replaced by Julio Maglione from Uruguay, whose views on the technology are unknown. USA Swimming, which made the proposal to rein in technology adopted by FINA, wants to take the rule-changing a

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step further and, with Australia's backing, has put before the congress a resolution to limit swimsuits coverage to beyond the shoulders and above the knees. That proposal has gained plenty of support also.

The record-breaking looks certain to stop soon, but there will be a price, as the 135 records set in the last 18 months seem set to stay. Mr. Sparks reminded is that "we've been here before, as when the East Germans were doping, and you just have to live with it" (*Ibid*).

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### RUGBY UNION

#### **Eye-gouging problem persists**

From previous issues of this Journal and elsewhere, it has become clear that one of the main disciplinary problems that this most physical of sports has had to contend with is that of eye-gouging, highlighted particularly by the various unsavoury incidents which punctuated the British Lions' tour of South African in the summer of 2009. The problem resurfaced in all its unsavoury degradation in mid-December when two French players from top side Stade Français, Julien Dupuy and David Attoub, were cited for gouging Ulster player Stephen Ferris – once more amid calls for more severe penalties in order to eradicate this practice (*Daily Mail of 15/12/2009, p. 69*). The affair took a bizarre turn a few days later, when the French club accused the photographer who took the damning picture of tampering with it. In an unprecedented move, the man in question, Oliver McVeigh, was summoned to appear at the relevant disciplinary hearing. Mr. McVeigh hotly denied the accusation (*The Daily Telegraph of 18/12/2009, p. S14*).

As a result of the hearing, Mr. Dupuy was banned for six months, whilst team-mate Attoub was issued with an interim ban pending verification of the authenticity of the McVeigh photograph. Counsel for the French side, Patricia Moyersoan, had repeated the allegation, claiming that the photograph had been digitally tampered with and could not therefore be relied upon. The results of this investigation were not yet known at the time of writing. Dupuy was spared a 40-week ban by virtue of his previous good behaviour, his guilty plea and his show of contrition. This did not prevent the verdict from being attacked by Max Guazzini, the owner of the Paris club, who described it as "excessive, very political and anti-French" (*The Daily Telegraph of 19/12/2009, p. S17*). Both sides have a right of appeal, but at the time of writing it was not known whether this option would be taken up. **BAL**