

# Who's Protecting Athletes' Rights? The Tonya Harding Story

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Of the many tragedies that evolved from the vicious attack on Nancy Kerrigan, in an attempt to eliminate her as an Olympic contender, was the confusion the incident caused among the sports governing bodies charged with regulating U.S. Olympic athletes. Did the "system" adequately protect Nancy Kerrigan's rights? Was the "system" protecting Tonya Harding's rights? Do these athletes have "rights" worthy of protection? Who's in charge anyway?

As a former elite amateur athlete<sup>1</sup> and now practicing attorney, I was disappointed and surprised that the United States Olympic Committee (USOC) appeared more concerned with keeping Tonya Harding out of the Olympics than fulfilling its mandate of protecting her right to compete in the Games.

The USOC shall, by all lawful means at its disposal, protect the right of an amateur athlete to participate if selected (or to attempt to qualify for selection) as an athlete representing the United States in [the Olympic Games].<sup>2</sup>

The USOC's dilemma in the Tonya Harding case was what to do when the protection of one athlete's (Kerrigan) right to participate conflicts with the USOC's role in protecting the athlete (Harding) whose actions are alleged to have violated the first athlete's rights.

## Who's in Charge?

The current USOC derives its power from the Amateur

Sports Act of 1978 (the "Act")<sup>3</sup> which Congress passed to remedy infighting among amateur sports organizations (ASOs). The poor showings by United States athletes in the Munich (1972) and Montreal (1976) Olympic Games were deemed, in part, due to the disorganization and disruptive fighting among ASOs.<sup>4</sup>

The Act charges the USOC with (i) coordinating and developing amateur athletics in the U.S. by fostering productive working relationships among ASOs; (ii) having exclusive jurisdiction, directly or through its member ASOs, over all matters pertaining to the participation of the U.S. in the Olympic Games; and (iii) providing swift resolution of conflicts and disputes involving amateur athletes, National Governing Bodies (NGBs), and ASOs, as well as protecting the opportunity of amateur athletes to participate in amateur athletic competitions.<sup>5</sup>

## Fighting Among Sports Governing Bodies

Much of the fighting that the Act sought to remedy was between ASOs conducting "restricted" competitions and those conducting "unrestricted" competitions. Restricted competitions are those for which non-athletic criteria determine whether an athlete can participate. Most restricted competitions are interscholastic competitions governed by the National Federation of State High School Associations (NFSHSA) and the National Collegiate Athletic Association (NCAA). These scholastically connected ASOs place academic qualifying standards on their athletes' participation. Unrestricted competitions do not have non-athletic selec-

tion criteria.<sup>6</sup>

In 1972, the NCAA withdrew from the USOC because it did not accept the Amateur Athletic Union (AAU)<sup>7</sup> as a legitimate NGB<sup>8</sup> for sports in which the NCAA believed their programs were superior. As a result of the ongoing dispute between these two ASOs, amateur athletes often had to choose between an opportunity to compete internationally or with an interscholastic sports team.<sup>9</sup> Athletes found it virtually impossible to do both because the AAU would banish from international competition any athlete who participated in a non AAU sanctioned event. At the same time, an NCAA athlete who participated in an event that was approved by the AAU, but not the NCAA, risked being declared ineligible from further NCAA competitions and/or scholarships.<sup>10</sup> As NCAA programs were deemed superior, many of the best athletes participated in NCAA programs and declined opportunities to participate in international AAU sponsored events.

A 1973 case illustrates one of the conflicts athletes often encountered. The AAU refused to apply to the NCAA for certification of an AAU sponsored track meet between the United States and the Soviet Union. As a result of this refusal, six NCAA athletes declined to participate in the meet for fear of ineligibility or suspension by the NCAA. Two athletes who did compete in the uncertified meet were declared ineligible by the NCAA.<sup>11</sup>

Thus, when crafting the Amateur Sports Act, Congress sought to foster a working relationship among the different ASOs and NGBs. Congress' ultimate object was to ensure competent representation of the United States in international competitions and to protect, in part, the rights of athletes to participate in these competitions without jeopardizing their opportunities in other organizations.<sup>12</sup>

### USOC Organizational Structure is Improved

The USOC's poor organizational structure was another source of conflict among the ASOs.<sup>13</sup> "The USOC, a nongovernmental, national organ of the International Olympic Committee was chartered by Congress in 1950 with the responsibility for U.S. participation in the Olympics and Pan-American Games."<sup>14</sup> The USOC is the United States' representative to the International Olympic Committee (IOC) and has the power to recognize and regulate NGBs for each sport. The Act was designed to facilitate the relationships of the athletes with ASOs and NGBs as well as those between and among the ASOs and NGBs. To achieve this goal, Congress simplified the membership structure of the USOC.

Prior to the passage of the Act, the USOC had a very complicated and unequally balanced membership structure.<sup>15</sup> There were nine (9) levels of membership. The largest group, Group A, consisted of the NGBs. Group A controlled two thirds of all USOC votes, but even within this group the votes were not equally distributed. The more popular or more successful sports got most of the votes.<sup>16</sup> Meanwhile in the other membership groups, all the mem-

bers got the same number of votes.<sup>17</sup> In addition, none of the nine membership groups directly represented currently competing athletes.

Under the Act, membership is now divided into five groups, the largest of which contains the NGB for each sport. Another membership group includes those organizations, like the NCAA and the NFSHSA, which conduct national athletic programs in two or more Olympic sports. While the NGBs still have more power than these other organizations, each NGB must have a place on its board of directors for any such organization which has a national program in the sport that it governs. Therefore, an organization, like the NCAA, which has programs in a number of Olympic sports, will have a stronger voice in USOC decisions even though the NGBs still technically have more power.<sup>18</sup> In addition, at least 20 percent of the delegates from each NGB must be athletes who are currently competing, or who have competed in the last 10 years.<sup>19</sup>

The Act sets out specific procedures for selecting NGBs in each sport and provides that each sport should have an NGB which meets specific eligibility requirements.<sup>20</sup> Among these requirements are provisions governing an athlete's right to participate.

No amateur sports organization is eligible to continue to be recognized as a national governing body unless it —

(3) agrees to submit . . . to binding arbitration . . . in any controversy involving its recognition as a national governing body, . . . or involving the opportunity of any amateur athlete . . . to participate in amateur athletic competition;

(6) provides an equal opportunity to amateur athletes . . . to participate in amateur athletic competition without discrimination on the basis of race, color, religion, age, sex, or national origin, and with fair notice and opportunity for a hearing to any amateur athlete. . . before declaring such individual ineligible to participate.<sup>21</sup> (Emphasis added).

The Act also provides that if an NGB does not meet these eligibility requirements, it can be compelled to meet them, or can be replaced as the NGB for that sport.<sup>22</sup> Thus, the USOC can monitor the actions of the NGBs.

### Nancy Kerrigan is Attacked

On January 6, 1994, Nancy Kerrigan — the skater favored to win the U.S. Figure Skating Championships and lead the U.S. Women's Figure Skating team to a medal at the 1994 Winter Olympic Games in Norway — was clubbed by a then unknown assailant after a practice session. As a result of the clubbing, Ms. Kerrigan could not compete in the National Championships — one of the designated selection competitions for the Olympic team. In her absence, Tonya Harding won the Championship. Six days later, a shocked world learned that Tonya Harding's body

guard and ex-husband may have conspired to harm Ms. Kerrigan, so that Ms. Harding could be guaranteed a spot on the Olympic team. Thereafter, all hell broke loose. Tonya Harding was suspected of being involved in the alleged plot, and the media frenzy began. On January 27, 1994, Ms. Harding admitted to having learned of her ex-husband's involvement in the attack, after the fact. The public cry went out to take Ms. Harding off the Olympic Figure Skating team.



### The United States Figure Skating Association and the USOC

An analysis of the Act, the USOC Constitution and By-Laws, and the United States Figure Skating Association (USFSA) by-laws indicates that, despite the uniqueness of the Kerrigan-Harding situation, procedures and precedent existed for the resolution of this controversy within well established guidelines.<sup>23</sup>

As the recognized NGB for figure skating, the USFSA was delegated the authority to select those athletes that would represent the U.S. in the Olympics<sup>24</sup> and assumed the obligation to convene a hearing "with fair notice" before declaring any athlete ineligible to participate in athletic competitions.<sup>25</sup> The USFSA has its own hearing procedures which are set forth in its by-laws.

The USFSA disciplinary proceedings are set forth in Article XXVII Section 3(c) of its by-laws. They provide that a hearing panel of five (5) people should be convened to determine if there are reasonable grounds to hold a disciplinary proceeding. If such grounds are found, the panel prepares a written statement of charges which the member under investigation has thirty (30) days to respond to in writing. Upon receipt of the reply, the hearing panel sets a time and place for the hearing which is convenient for both parties. At the hearing, each party, and the hearing panel, are entitled to call witnesses, produce evidence and submit memoranda. Upon the evidence presented, the hearing panel is charged with making written "Findings of Fact" and a "Decision" which are both final. The "Decision" includes the grounds upon which the hearing panel reached its conclusions.<sup>26</sup>

It was not until January 27th, twenty-one (21) days after the attack on Ms. Kerrigan — the same day that Ms. Harding admitted that she had learned about her "colleagues'" involvement in the attack after it occurred — that the USFSA invoked its procedures and announced that it would convene a hearing panel to determine, among other facts, whether Ms. Harding had engaged in conduct "detrimental to the welfare of figure skating."<sup>27</sup> Harding had thirty (30) days to respond after being given notice, in compliance with the USFSA by-laws. Thereafter, a "mutually" convenient hearing date would be set.<sup>28</sup> The women's figure skating competition was set to begin in Norway on February 23. Thus, the hearing would not, and could not, interrupt Ms. Harding's position on the Olympic team. This being the case, it appears that the USOC felt the necessity of getting involved.

On January 31, 1994 — five (5) days after Ms. Harding admitted knowing of her colleagues' involvement in the attack, after the fact — the USOC named Tonya Harding to the 1994 U.S. Winter Olympic Team. On February 8, the USOC announced that it would convene "Games Administrative Board"<sup>29</sup> in Norway, on February 15. The Board would determine if Ms. Harding had violated the By-Laws of the USOC, the IOC and the USFSA. These rules require that an athlete uphold the traditional principles of good sportsmanship, fair play and ethical behavior. The Board also had to determine if Harding had violated the 1994 Olympic Winter Games Code of Conduct which she signed on January 9, 1994. In signing this code she promised to conduct herself in a manner which conforms with traditional Olympic principles and that would bring honor to her, her teammates, her NGB, the USOC and the United States. Tonya Harding also signed the USFSA Team Agreement which stated that she would avoid any behavior that disrupts the U.S. Figure Skating Team or interferes with international competition.<sup>30</sup>

On February 9, 1994, Ms. Harding filed suit in the Circuit Court of Clackamas County, seeking a temporary restraining order to prevent the USOC's Administrative Board hearing scheduled to be held in Norway on February 15, 1994. She also filed a separate suit accusing the USOC of seeking to interfere with her participation in 1994 Winter Olympic Games. This latter action sought \$25 million in damages.

### Whose Side is the USOC On?

In light of the USOC's role as the peacemaker among ASOs, with the ultimate objective of ensuring that the United States fields the most talented Olympic teams, how did the USOC become involved in this controversy? Why did the USOC first name Tonya Harding to the Olympic team and then seek to bend and twist its rules to call her before a USOC Games Administrative Board?

The easy answer is that the USOC was motivated by a sense of obligation and moral outrage. They, as many other

observers, felt that if the allegations against Ms. Harding were true, it would be "wrong" to allow her to skate on the U.S. Olympic team. However, the USOC is supposed to be a group of professional sports administrators who operate by virtue of legal authority and within a legal frame work of written rules. We expect these professionals to be men and women of balanced judgment and fairness. We do not expect them to be susceptible to public hysteria and criminal prosecutorial maneuvering. The USOC was supposed to protect Tonya Harding from the lynch mob until such time as (i) a proper investigation had been conducted, (ii) all the facts were known and (iii) "a fair hearing had been held." The USOC's behavior in this matter requires careful scrutiny.

The USOC named Ms. Harding to the Olympic team because, pursuant to all applicable rules, she had qualified for the team. At this point, the USFSA properly invoked its rules, albeit 21 days late, and called a hearing to investigate the alleged involvement of Tonya Harding in the attack on Nancy Kerrigan.<sup>31</sup> There was no assertion that the USFSA hearing was unfair (in a legal sense) to Ms. Harding, or anyone else. Thus, pursuant to the established "rules," Tonya Harding would skate in the Olympics and a USFSA hearing would be held after the Olympics.

Rather than using "all lawful means at its disposal to protect"<sup>32</sup> Ms. Harding's right to participate on the Olympic team, the USOC sought to bend or circumvent the rules by calling Ms. Harding to appear before an USOC hearing in Norway to defend her place on the team.<sup>33</sup> This action was taken despite the fact that the USOC's disciplinary authority was exercisable "at the site of the Games" with respect to unresolved matters of team selection. Ms. Harding had not reached the site of the Olympics when she was called to the hearing, nor was her selection to the Olympic team an unresolved issue. Ms. Harding competed in the USFSA's designated selection competitions and earned her place on the Olympic team. Furthermore, while upholding the requirement that the NGBs give "fair notice and opportunity for a hearing... before declaring [any amateur athlete] ineligible to participate,"<sup>34</sup> the USOC was itself seeking to violate these requirements by calling Ms. Harding to a hearing in Norway, within seven days, to answer charges about an event involving all U.S. citizens, which occurred in the United States and involved the eligibility of an American athlete. Even taking into account the USOC's offer to pay to have Ms. Harding, her lawyer and her coach flown to Norway and lodged during the hearing, the irony of the USOC's actions is inescapable. A "fair" hearing could not be held in this case within seven days in a foreign country.

The USOC should have remained neutral while it balanced the competing concerns for the rights of both Nancy Kerrigan and Tonya Harding. After all, Ms. Kerrigan was not kept off the Olympic team by her injuries.<sup>35</sup> Even if she had, that fact should not cause a departure from the established rules. The USOC should have protected Ms. Harding because she had not been found guilty of violating

any rules and was entitled to the presumption of innocence, until such time as she had fair notice and an opportunity to defend herself at a hearing. An athlete such as Ms. Harding should enjoy the same rights generally available to all citizens and should not be held to a higher standard than other citizens. The notion that the Olympics are some kind of sacred event that entitle sports officials to arbitrarily change the rules, when "special" circumstance arises, is precisely the evil that the Act, with its hearing provisions to protect athletes, was enacted to prevent. The situation is grave indeed for athletes when they cannot trust the sports organization set up as their watchdog to defend them or, at least, remain neutral in a time of crisis. Perhaps the problem is that athletes are viewed as expendable commodities with no discernable rights needing protection?

### Do Athletes Have Rights?

The Act has been criticized for its failure to protect athletes' rights, particularly because it does not contain an "Amateur Athletes' Bill of Rights."<sup>36</sup> Such a "Bill of Rights" was proposed in Congress when the Act was under consideration, but strong objections by the high school and college organizations caused the effort to be abandoned. A compromise was reached that provided for provisions on athletes' rights in the Constitution and By-Laws of the USOC.

In its constitution and By-Laws, the [USOC] shall establish and maintain provisions for the swift and equitable resolution of disputes involving any of its members and relating to the opportunity of an amateur athlete . . . to participate in the Olympic Games, the Pan-American Games, World championship competition, or other such protected competition . . .<sup>37</sup>

However, athletes have not been particularly successful at invoking the protection that these USOC provisions portend. The main reason being that the "Amateur Athletes' Bill of Rights" included in the original draft was not included in the Act.

### Athletes in Court

Most attempts by athletes to invoke the Act's protection of their right to compete in court have been unsuccessful. The defeats have been predicated on the finding that there is no private cause of action created by the Act. The decisions emphasize the importance of Congressional intent and the small number of situations where the intent of Congress is as clear as it is in this case. The fact that Congress considered, and then rejected an Amateur Athletes' Bill of Rights, which contained a private cause of action, is deemed dispositive of the issue. This view does not, however, take into account the "political" realities.

The seminal case on this issue was *DeFrantz v. United States Olympic Committee*.<sup>38</sup>

## DeFranz and Its Progeny

In *DeFranz*, a group of amateur athletes<sup>39</sup> who wanted to participate in the 1980 Olympic Games in Moscow brought suit against the USOC for denying them the opportunity to compete in the Moscow Olympics by reason of President Carter's decision to boycott the Games. The primary focus of the case was whether the USOC had the power to boycott the Olympic Games for non-athletic (i.e. political) reasons. However, the court held that there was no implied private cause of action regarding the right to participate in the Olympic Games and that the purpose of the Amateur Sports Act was to protect the rights of athletes to participate only in the context of administrative bickering. The Act allows the athletes to make their own choices about what is best for their careers rather than having their career paths dictated by arbitrary decisions fueled by bickering between amateur athletic organizations. The court in *DeFranz* also held that the actions of the USOC are not state actions and are not, therefore, subject to the Due Process protection provided by the Fourteenth and Fifth Amendments to the U.S. Constitution. Several court of appeals decisions have followed *DeFranz*.

In *Michels v. United States Olympic Committee*,<sup>40</sup> a weightlifter who was suspended from international competition by the International Weightlifting Federation (IWF) for failing a test which determined that he had ingested testosterone, alleged that the USOC had violated the Act. The USOC convened a special panel which heard Michels' claim and ruled against him. The district court granted Michels a preliminary injunction ordering the USOC and the United States Weightlifting Federation (USWF) to name Michels to the Olympic team pending a determination of his case by the International Olympic Committee (IOC). The USOC requested a stay of the injunction which was denied, but on appeal, the court relied on the reasoning of *DeFranz* — that there is no private right of action regarding the right of an athlete to participate in the Olympic Games — to overturn the district court's preliminary injunction. In a concurring opinion, Judge Posner agreed that allowing a private cause of action would defeat the purpose of the compromise reached by the Senate in passing the Act. In addition, he observed that it was the IWF, not the USWF, who had denied Michels his right to participate. The USOC does not have any control over the IWF because it is an international organization, not an NGB and, therefore, not a member of the USOC. Thus, even if a private cause of action did exist, Michels could not have prevailed.

The reasoning followed in *DeFranz* and *Michels* was again upheld by the Court of Appeals in *Oldfield v. The Athletic Congress*.<sup>41</sup> In *Oldfield*, a shot put athlete sought to reestablish his standing as an amateur after competing under a professional contract with the International Track Association (ITA). The Athletic Congress (TAC), the NGB governing track and field, excluded Oldfield from participating in the 1980 U.S. Olympic trials because he could not

play in the Games under IOC rules. However, he was ultimately allowed to compete in the 1980 trials, presumably because no team was being sent to the Olympic Games. In 1984, TAC again told Oldfield that he was ineligible to compete in the Olympic tryouts, and Oldfield argued that he was arbitrarily being denied his opportunity to participate in violation of the Act. The court rejected this argument, as well as the argument that the Amateur Athletes' Bill of Rights was abandoned because of pressure from the high school and college organizations, thus, a private right of action was only intended to be eliminated in those restricted areas. In rejecting this argument, the court reasoned that the Senate had included a private right of action in areas of the Act protecting Olympic-related trademarks and emblems, and, therefore, it knew how to do so and would have done so with respect to athletes' rights if it had so intended.

The results of these court decisions raise the disturbing question: If athletes cannot assert their rights in court and the USOC fails to do so, who is protecting athletes' rights?

## Tonya Harding in Court

Tonya Harding was perceived as "winning" the first round of her court battles against the USOC because she reached a settlement that enabled her to compete in the Olympics and prevented the USOC Administrative Game Board hearing in Norway. The tragedy is that she should not have had to expend her energy and money fighting the USOC — the entity charged with safeguarding her right to compete — in court. In reality, the settlement<sup>42</sup> enabled both sides to call a truce so that each could focus on the business at hand — participating in the Olympic Games. The final result ultimately benefitted the USOC in that it was able to obtain a promise from Ms. Harding not to pursue her lawsuit against it for failing to protect her right to compete in the Olympics. Clearly, the USOC did not want such a suit to deplete its coffers, provide media scrutiny of its procedures, rules and operations and create a precedent for other athletes to follow. Ms. Harding benefitted,<sup>43</sup> in that she lived her life long dream of competing for the United States in the Olympic Games. Her troubles were not over, however.

Upon returning to the United States, Harding sued the USFSA in Oregon District Court, alleging that they breached their contract with her, as embodied in their by-laws, by unilaterally setting a date for a hearing on disciplinary charges filed against her.<sup>44</sup> Harding requested that the hearing be moved, and the USFSA refused. Harding exhausted all of her internal remedies with respect to having the hearing moved. Harding asserted that the premature hearing would have harmed her irreparably by unfairly denying her the opportunity to participate in the World Championships. The court agreed that the USFSA had breached its own rules and that the date set for the hearing was not "mutually" convenient for all parties, as required in

(Continued on page 36)

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the USFSA By-Laws, because it did not give Harding ample time to prepare a defense. The court granted the injunction.<sup>45</sup> However, the injunction was later overturned and Harding's suit dismissed as moot, because of her resignation from the USFSA as part of a plea bargain in the criminal case against her.

### Conclusions

The USOC's power to protect the rights of athletes to participate in athletic competitions is derived from its power to resolve disputes involving amateur athletes, NGBs and other ASOs,<sup>46</sup> as well as its power to compel NGBs and ASOs to treat athletes fairly.<sup>47</sup> When an NGB has fulfilled all the eligibility requirements, and has complied with its own rules, the USOC has fulfilled its obligation to monitor the NGB pursuant to Sections 374 and 395 of the Act and has no further role in the matter.<sup>48</sup> Therefore, as long as the USFSA did not breach its own rules in its treatment of Tonya Harding, the USOC had no reason to get involved.

Pursuant to Section 391 (b)(6) of the Act, Tonya Harding was entitled to a hearing by the USFSA before being declared ineligible to participate<sup>49</sup> in the Olympic Games for any reason. When the USFSA requested Ms. Harding's appearance before a hearing panel to answer charges surrounding the attack on Nancy Kerrigan, they did so in full compliance with their rules. The consequence

of compliance with the USFSA's rules was that the hearing would not be held until after the 1994 Winter Olympics. At this point, the USOC had no further reason to be involved in the matter. No rules had been violated by either party. However, rather than acting as watchdog to protect Ms. Harding from unfair treatment resulting from public pressure, the USOC succumbed to such pressure and sought to keep her out of the Olympic Games, in clear violation of its Congressional mandate.

The fact that the Olympics were only two weeks away when the USFSA first took action and that it was a case which received a great deal of media attention and public commentary, were undoubtedly factors that influenced the actions of the USOC and resulted in unnecessary and costly delay and controversy. The end result being almost the same as if the USOC had not gotten involved in the first instance: The USOC's ultimate decision to allow Tonya Harding to remain on the U.S. Olympic Figure Skating Team was a good one. Unfortunately, this decision was motivated by self interest — public image and fear of Ms. Harding's lawsuit — rather than in fulfillment of its mandate to safeguard the rights of amateur athletes.

The Kerrigan-Harding incident raises unsettling questions for amateur athletes. What is the USOC's role in protecting an athlete's right to compete? If the USOC is not protecting athletes' rights, who is?

### CHECKLIST FOR REPRESENTING "AMATEUR" ATHLETES

1. Obtain Copy of Amateur Sports Act of 1978.
2. Obtain Club or Team Rules, Regulations, and By-Laws, if any.
3. Obtain applicable League and/or Conference Competition Rules, Regulations and By-Laws.
4. Obtain current National Collegiate Athletic Association Manual containing Constitution, By-Laws etc., or National Governing Body (for Applicable Sport) By-Laws, Rules, and Regulations.
5. Obtain USOC Constitution and By-Laws.
6. Obtain applicable International Sports Federation Rules and Regulations.
7. Obtain International Olympic Committee Charter.
8. Maintain list of contact persons for each of the above sports organizations to assist if a controversy or problem arises. Record number for USOC Drug Hotline 800/233-0393.
9. Review all of the above materials as they relate to your athlete(s) and his or her sport.
10. Educate and inform your athlete(s) about the most important rules and regulations that affect them.
11. Attend annual meetings and conventions of above sports organizations to insure that you are up to date on new developments, as well as new rules and regulations.

Special Note: When compiling your library, make sure that you obtain the most recent materials. Many sports organizations change their rules at regular intervals.

## Endnotes

- 1 Throughout the article the term "amateur" athlete is used to denote an athlete competing in an Olympic sport who is not earning a salary or fixed compensation that is paid regardless of his or her athletic performance. It, therefore, does not include athletes under contract to major league teams (Baseball, Basketball, Hockey, etc.) or professional tennis players. The Amateur Sports Act of 1978 36 U.S.C.A. §§ 371-396 (the "Act") defines the amateur athlete as one who meets the eligibility standards established by the National Governing Body (NGB) for the sport in question. The Act § 373(1). However, the continued use of the term "amateur" is a misnomer, as most Olympic sports now allow "professional" athletes to compete.
- 2 U.S.O.C. Const., Art. IX. (Last Amended October 11, 1992).
- 3 The Act §§ 371-396. See Heading "USOC Organizational Structure is Improved" for history of USOC.
- 4 Nafzinger, "The Amateur Sports Act of 1978," 1983 *B. Y. U. L. Rev.* 49 (1983).
- 5 The Act, *id.* § 374(2),(3),(8). There are other USOC purposes and objectives which are not pertinent to the subject of this article.
- 6 Comment, "Administration of Amateur Athletics: The Time For An Amateur Athlete's Bill of Rights Has Arrived," 48 *Fordham L. Rev.* 54, 55 (1979) [hereinafter cited as "Amateur Athletics"].
- 7 The AAU was formed in 1888 to regulate amateur athletics. It had programs in several sports, and acted as a national governing body (NGB) in eight of them. In developing eligibility rules for competitions in these sports, the AAU simply made one set of rules governing all sports. This resulted in overly general rules which, it was believed, often arbitrarily infringed upon the rights of athletes to participate. However, very few athletes had the time or money to challenge an arbitrary ruling by the AAU. Amateur Athletics, *supra* note 6 at 57.
- 8 National governing bodies will be discussed in greater detail later.
- 9 Amateur Athletics, *supra* note 6, at 60, 61; *see also* Nafzinger, *supra* note 4, at 49.
- 10 *Id.* at 65; *see also* Nafzinger, *supra* note 4, at 49.
- 11 *Samara v. NCAA*, 1973-1 Trade Cas. (CCH) ¶74,536 (E.D. Va. 1973) (cited in Amateur Athletics, *supra* note 6, at 61).
- 12 The Act § 374(2),(3),(4),(8).
- 13 Nafzinger, *supra* note 4, at 48.
- 14 20 U.S.C. § 373(3)(1950). The USOC was originally founded in 1896 to serve as the U.S. representative to the International Olympic Committee. *See* S. Rep No. 770, 95th Cong., 2d Sess. 2(1978).
- 15 Nafzinger, *supra* note 4, at 57.
- 16 Aquatics and track and field had twice the representation of all the other sports combined. *Id.*
- 17 This too created a problem because a small group like the Catholic Youth Organization (CYO) had the same number of votes as the National Federation of State High School Associations (NFSHSA), which is considerably larger. *Id.* at 58.
- 18 *Id.* at 59.
- 19 *Id.* at 58.
- 20 The Act § 391(b).
- 21 *Id.* at § 391(b)(3)(6).
- 22 *Id.* at § 395.
- 23 Following these established procedures and guidelines, with their built-in time frames, guaranteed that Ms. Harding would remain on the Olympic team.
- 24 The Act § 393(6).
- 25 *Id.* at § 391(6).
- 26 USFSA By-Laws, Article XXVII, § 3(c)(i-iv). The By-Laws also provide procedures for appealing the decision of the hearing board by any of the parties involved.
- 27 *United States Figure Skating Association Rulebook*, General Rule 1.02 § .021.
- 28 USFSA By-Laws, Article XXVII, § 3(c)(i-iv).
- 29 Chapter XXXIX § 1 of the USOC By-Laws provides for an Administrative Board of the USOC that will have final authority, at the site of the Games, over matters such as discipline. The Board is also authorized to function as an appeal board on matters involving team

- selection that are not finally resolved prior to the departure of the team for the site of the Games.
- 30 Charges presented by the USOC Games Administrative Board.
- 31 It should be kept in mind that Ms. Harding's accuser was an admitted co-conspirator in the attack.
- 32 USOC Const., Art. IX.
- 33 The USOC's action was predicated on the USFSA's finding that grounds existed to hold a hearing pursuant to its rules.
- 34 The Act § 391(b)(6).
- 35 An analysis of the USFSA's rules of competition are beyond the scope of this article.
- 36 Amateur Athletics, *supra* note 6 at 69.
- 37 The Act § 382(b). Article IX of the USOC Constitution, *supra*. p.1, establishes the right of an athlete to participate.
- 38 492 F. Supp. 1181 (D.D.C. 1980).
- 39 The plaintiffs were 25 athletes, only one had already been selected as a member of the 1980 Olympic Team. The others all stood an "excellent chance" of selection based on trials which were to be held in the Spring. *Id.* at note 1.
- 40 741 F.2d 155 (7th Cir. 1984).
- 41 779 F.2d 505 (9th Cir. 1985).
- 42 The author has not read the settlement papers and bases her analysis on media reports and legal experience.
- 43 It is not clear to the author that competing under such circumstances was the "Olympic experience" that Ms. Harding had aspired to. Harding ultimately placed 8th overall in the 1994 Winter Olympic Women's Figure Skating Competition.
- 44 The USFSA wanted to hold the hearing as soon as possible so that Ms. Harding's status would be determined before the scheduled Figure Skating World Championships. 1994 U.S. Dist. LEXIS 5789, \*4 (D.C. Or. May 2, 1994).
- 45 Harding, 1994 U.S. Dist. LEXIS 5789 at \*7.
- 46 The Act § 374(8).
- 47 The Act § 391(b)(3),(6).
- 48 In compliance with IOC rules, the USOC has exclusive jurisdiction to enter competitors who will represent the US in the Olympics, provided that the competitors meet the applicable NGB's definition of eligible athlete. USOC Const. Art, III, § 1(Q). The USOC delegates its exclusive authority to the NGB for each sport, to select the U.S. athletes who will compete in the Olympics. *Id.* Art VII, § 3(F).
- 49 The Act § 391(b)(3),(6).

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