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*Arbitrating Sports: Reflections on USADA/
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Foreword

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PEPPERDINE DISPUTE RESOLUTION LAW JOURNAL

FOREWORD

The Symposium entitled *Arbitrating Sports: Reflections on USADA/Landis, the Olympic Games, and the Future of International Sports Dispute Resolution* was held at Pepperdine University School of Law on February 27, 2009, under the joint sponsorship of the Straus Institute for Dispute Resolution and the Pepperdine Dispute Resolution Law Journal. It brought together a distinguished panel of speakers, comprised of arbitrators, lawyers, scholars, and members of the press. Panelists included Jeffrey Benz, Chief Administrative Officer and General Counsel with the Association of Volleyball Professionals; David Brower, creator of the Trust But Verify blog; Michael Hiltzik of the Los Angeles Times; Howard Jacobs, former attorney for Floyd Landis from the Law Offices of Howard L. Jacobs; Michael Lenard, a member of the International Court of Arbitration for Sport; Richard McLaren from the University of Western Ontario School of Law; Matthew Mitten of Marquette University School of Law; Maidie Oliveau, an Arbitrator with the Court of Arbitration for Sport and founder of LawSports; John Ruger, an Ombudsman of the United States Olympic Committee; Michael Straubel of Valparaiso School of Law; Maurice Suh, former attorney for Floyd Landis from Gibson, Dunn & Crutcher; and Maureen Weston of Pepperdine University School of Law. This special symposium issue of the Journal is comprised of several papers and lectures presented at the event, which reflect important issues in sports arbitration.

In 2007, Pepperdine University School of Law hosted the unprecedented public arbitration of Floyd Landis as he fought against the United States Anti-Doping Agency (USADA) to keep his 2006 Tour de France title. USADA agreed, for the first time ever, to hold an arbitration hearing in a public setting after Landis tested positive for an elevated level of testosterone. This public arbitration was the start of Landis' battle against USADA, which resulted in losing his title and then ultimately taking the decision up on appeal. Maureen Weston's *Doping Control, Mandatory Arbitration, and Process Dangers for Accused Athletes in International Sports* illustrates the process of athlete arbitration and highlights the author's experience and involvement in the Landis arbitration proceedings.

An examination of the Court of Arbitration for Sport (CAS), a private international arbitral institution in Switzerland, provides guidance, influence, and precedent to elaborate on the established rules and principles of international sports law. In *Judicial Review of Olympic and International Sports Arbitration Awards: Trends and Observations*, Professor Matthew

Mitten, the Director of the National Sports Law Institute at Marquette University Law School as well as a Member of CAS, explores recent cases that affirm CAS's guarantee of impartiality and independence in disputes. The author further addresses the procedural guarantees, fair hearing requirement, principles of good faith and equal treatment, and compliance with the principle of proportionality. Mitten emphasizes that the merits of CAS awards should not be judicially reviewed on legal grounds other than those set forth in the New York Convention or the Swiss Federal Code on Private International Law. The governance of fair and equitable process requires these universally accepted legal rules and dispute resolution processes.

The Beijing Summer Olympic Games provided a platform for CAS's Ad-Hoc Division to ensure that fair play was a central component in the arbitration of Games-related disputes. The Ad-Hoc Division brought twelve arbitrators from around the world to hear disputes prior to, during, and after the period in which the division had jurisdiction during the games. Richard McLaren, who served as a CAS Arbitrator during the Beijing Olympic Games, illustrates the Ad-Hoc Divisions' decision-making influence during the pre-games, competition period, and after the games in his article, *The Beijing Summer Olympic Games: Decisions from the CAS and IOC*. McLaren suggests taking steps to minimize the impact of the law on the Games by dealing with disputes efficiently and discretely, striving to keep their undesirable aspects behind the scenes.

In the five year history of USADA, LaTasha Jenkins was the first athlete accused of doping to win her case and clear herself of charges. Michael Straubel explores Jenkins' struggle and career-ending experience with USADA in *Lessons from USADA v. Jenkins: You Can't Win When You Beat a Monopoly*. The author tells the story of LaTasha's lucky win against a multi-headed foe that makes all the rules and changes the rules when it loses. Through LaTasha's story, Straubel illustrates a system nearly incapable of addressing the inherent imbalance of power between athletes and their accusers. This article reveals the flaws of the Olympic movement anti-doping system and suggests the steps that must be taken to fix those flaws, keeping in mind that they will not be fixed unless the underlying imbalance of power is changed.

In addition to the publication of articles listed above, this special issue of the Journal also highlights the personal experiences of three of the symposium speakers. John Ruger discusses his experience as Ombudsman of the United States Olympic Committee in *From the Trenches: The Landscape of Sports Dispute Resolution and Athlete Representation*. Jeffrey Benz discusses his experience as a CAS Arbitrator and former USOC General Counsel in *Common Issues in International Sports Arbitration*.

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Finally, Michael Lenard, a member of the International Court of Arbitration for Sport, provides his outlook on where sports dispute resolution is headed in *The Future of Sports Dispute Resolution*.

The Dispute Resolution Law Journal would like to thank Professors Thomas Stipanowich and Peter Robinson, co-directors of the Straus Institute, as well as Professor Maureen Weston, the Faculty Advisor of the Journal, for their assistance in making this Second Annual Symposium a reality. We hope that it will serve as a model for future collaborative projects.

Carey J. Prill
Editor-in-Chief, Volume Nine
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