

THE COMMITTEE TO RESTORE INTEGRITY TO THE USOC
OUR RECOMMENDATIONS TO CREATE AN ATHLETES FIRST CULTURE
AT THE U.S. OLYMPIC MOVEMENT

JANUARY 21, 2019

Introduction

The Committee to Restore Integrity to the USOC appreciates that the CEO of the USOC, Sarah Hirshland, reached out and met with representatives of Team Integrity when she was in New York City on January 16, 2019. The Ropes & Gray and House Subcommittee Reports laid bare the USOC’s broken culture, one that put “money and medals” ahead of athlete safety and welfare, many of them children. The USOC has responded that it will reorient itself to put “Athletes First.”

Our aim with these suggestions is to assure that “Athletes First” is not just a public relations slogan, but that the necessary culture-shift is manifested by embedding it into the structure and governance of the organization. The departures of Scott Blackmun and Alan Ashley did not magically change the culture of the USOC. Other incremental changes are not appropriate with the momentous changes called for in the two Reports. What is needed now are concrete and demonstrable changes to the structure and governance of the USOC to send a clear message that the U.S. Olympic movement is no longer operating “business as usual.”

We discussed and now submit the following twelve proposals. They are designed to reorient the USOC down a new path, to empower athletes and to truly make the USOC an “Athletes First” organization.

Team Integrity is looking forward to a response regarding each proposal, and further discussions with the USOC on these and other recommendations.

1. THE OLYMPIC MOVEMENT CAN ONLY PROTECT ATHLETES BY SHIFTING POWER, REQUIRING THE FOLLOWING GOVERNANCE CHANGES:

a. PROVIDE FOR DIRECT ATHLETE REPRESENTATION ON THE USOC BOARD OF DIRECTORS.

Remarkably, the elected-athletes that make up the AAC do not have the right to appoint representatives to the USOC Board. Worse, there is no requirement that the USOC or NGBs listen to anything the AAC says or does. The USOC cannot become an athlete-centric organization without direct representation on the Board, chosen by the AAC.

Recommendation:

Revise the USOC Bylaws and the Sports Act to provide for direct representation of individuals to the USOC Board by the AAC. The Corporation should not choose who will represent the athletes.

b. DESIGNATE 50% OF THE USOC BOARD SEATS FOR ATHLETES

The Sports Act, written in 1978, represented a compromise between the power professional athletes enjoyed – 50% voting rights, labor law, union rights – as contrasted with NCAA athletes, who had zero voting rights. Olympic Athletes were supposed to get 20% voting power on Boards and Committees. Unfortunately, the USOC and NGBs diluted even this 20% power over time. Often the NGB picked the athletes for their Boards and Committees, rather than the AAC or the athletes voting from the sport. In addition, the 20% rule still allows the Corporation to ignore the athlete voice. The 20% figure is out of step with the change in athlete-status; Olympians have been professional athletes since at least 1992, but no changes were made to the Sports Act to reflect this new reality.

Recommendation: Olympics athletes, as professionals, should constitute 50% of the USOC and NGB Board and committees.

c. REMOVE THE TEN-YEAR RULE TO BE CONSIDERED AN “ATHLETE.”

The Sports Act specifies that an “Athlete”, eligible to serve on the AAC, is either actively engaged in amateur athletic competition, or has represented the United States in international amateur athletic competition within the preceding 10 years.

With these restrictions, USOC staff complain that it is hard to find athletes that will perform the required duties of AAC membership. Competing athletes often cannot meet the demands of being a world-class athlete and live up to the expectations of AAC membership. Athletes that have finished competing are typically behind the personal and professional curve as compared with their peers and are playing “catch-up” with new family and career demands.

The ten-year rule means the AAC members are inherently young as compared with executives they are negotiating against. Practically, most athletes have aged out of being able to represent their peers before their 35th birthday.

Some sports will get better, more sophisticated representation than others. Female gymnasts have the youngest average ages, and are therefore unlikely to rise to AAC leadership, while Equestrian, Shooting and Cycling could potentially have 60 year-old representatives.

Eliminating the 10-year rule will greatly expand the potential pool of candidates for AAC membership, will put all sports on an equal footing, will allow for more experienced and knowledgeable representation, and allow for equal bargaining between the USOC and athletes.

d. COMPENSATE ATHLETE REPRESENTATIVES

In addition to being young, AAC members are uncompensated, unlike the corporate employees. This puts athletes at an enormous bargaining disadvantage, in terms of preparation time and focus. USOC staff is well-compensated; athletes working for the movement should also be compensated.

e. ESTABLISH A 2-4 YEAR FIREWALL BETWEEN SERVING ON THE AAC AND EMPLOYMENT AT THE USOC, NGBs, AND THE U.S. CENTER FOR SAFESPORT

A recurring issue has been athletes that are angling to work for the USOC get their toe in the door via the AAC. These athletes have created, and continue to create, conflicts for the AAC, when they do not want to take positions that would not be well-received by the Corporation. If athletes are on the AAC as a doorway into working for the corporation, they are unable to be good advocates for athletes.

Recommendation: Athletes looking for long-term employment in the Corporation should either refrain from representing athletes on the AAC, or be required to refrain from corporate-employment for two-to-four years. The firewall should similarly apply to those corporate employees wishing to work for the U.S. Center for SafeSport.

f. PROVIDE THE AAC WITH PROFESSIONAL STAFF

The chair of the AAC has no lawyer, no advisors, no secretary, no research assistants to perform the duties of being the voice of America's Olympic and Paralympic athletes. Such assistance is warranted and should be provided.

2. ATHLETES MUST BE AFFORDED BETTER WHISTLEBLOWER AND RETALIATION PROTECTIONS.

The threat of retaliation is so strong that over 25 athletes have told us that they cannot publicly sign on to Team Integrity's petition, not because they are not fully in accord with our goals and strategies, but because of the backlash and retaliation that they've witnessed or experienced by the USOC and NGBs. A parent told us that when they participated in a formal complaint, they jeopardized their child's opportunity to participate in the Olympic Games. Some sports exploit subjective criteria for Team Selection procedures, making the athletes obedient and compliant, or else risk not making the Olympic Team. The AAC and its Chair, Han Xiao, have spoken with USOC leadership about the seriousness of this concern.

Recommendations: The USOC must adopt whistleblower protections against retribution and retaliation against athletes or their representatives who complain of unfair treatment by NGBs.

In addition, the USOC can be a leader in the Olympic movement in this area by making amends for the retaliation athletes and others suffered during the Blackmun era.

3. THE USOC MUST COMPEL NGBs TO COMPLY WITH THE SPORTS ACT AND USOC BYLAWS.

The USOC does not require its member NGBs to comply with the "mandatory requirements" of NGB membership set forth in the Sports Act and the requirements laid out by the USOC's own bylaws and policies. Scott Blackmun and the USOC failed and refused to bring "Section 8" enforcement proceedings against known non-compliant NGBs. Rather, the USOC required *athletes* and their parents / supporters to retain counsel to bring "Section 10" enforcement proceedings against their non-compliant NGBs. Although compliance with all the Sports Act/

USOC Bylaws/ Policies are important, many of them are specifically designed to protect athletes from abuse.

Recommendations: Reinstate the Membership and Credentials Committee, or the equivalent thereof, comprised of representatives from the NGBC and AAC, along with staffing from the USOC, including those from the Audit Division of the USOC, to review and compel NGB compliance.

When necessary, promptly commence enforcement proceedings under Section 8 of the USOC Bylaws if and when more informal processes are not successful in obtaining compliance.

4. THE USOC MUST PROVIDE ATHLETES WITH THE SAME DUE PROCESS REQUIREMENTS THAT IT MANDATES NGBs PROVIDE ATHLETES.

The Sports Act requires the USOC's member NGBs to provide "fair notice and opportunity for a hearing" *before* denying athletes the opportunity to participate in amateur athletic competition. However, the Sports Act presently does not impose those same due process requirements on the USOC itself; and the USOC has surprisingly taken the position that it is not itself required to provide the due process to athletes that it is obligated to mandate its member NGBs provide athletes.¹

Recommendations: Revise the Sports Act and USOC Bylaws to require the USOC to provide athletes the same due process requirements NGBs are required to follow in Section 220522(a)(8) of the Act.

Revise the Sports Act and USOC Bylaws Due Process requirements so that the provisions apply beyond the athlete's opportunity to compete; specifically, that Due Process applies to all athlete-abuse issues.

5. THE USOC MUST PROTECT AMERICAN ATHLETES' OPPORTUNITY TO COMPETE.

Section 9.1 of the USOC Bylaws reads, "[the USOC] shall, by all reasonable means, protect the opportunity of an amateur athlete to participate if selected (or to attempt to qualify for selection to participate) as an athlete representing the United States..." Under Scott Blackmun, the USOC refused to follow this corporate Bylaw. Instead, the USOC left it to the *athlete* to protect their rights under the Sports Act. Athletes alone had to file a Section 9 Complaint and proceed before the American Arbitration Association. The USOC gives the NGBs money for defense lawyers, but offers the athlete no legal counsel for these complicated hearings. Even if the athlete prevailed, the athlete could not recover attorneys' fees at the conclusion of the arbitration. The athlete would just get what they should have received initially, but they are now significantly poorer. Moreover, there was no protection from retaliation during the arbitration; (see #2 above.) America has lost some of its best talent to resolvable conflicts. This obligation to enforce its duties under Article 9.1 should also extend to the protection of all athlete-abuse issues (see #4 above).

Recommendation: The USOC must weigh in on the side of the athlete to protect their opportunity to compete and other rights, and comply with its own Bylaw 9.1. This is an

¹ For more on this topic, see our Legal Memo Team Integrity sent to the USOC, "New Power Plays Against U.S. Olympic Athletes" November 12, 2018, submitted again, simultaneously with these Recommendations.

“Athletes First” Bylaw, and is specifically intended to protect athletes from abuse and from arbitrary and wrongful actions of an NGB denying an athlete the opportunity to compete.

6. CREATE AN ATHLETE ADVOCATE POSITION, WITH STAFF.

Congress created the Athlete Ombudsman position in 1998 amendments to the Sports Act to provide independent advice on their rights. But the office has been coopted by the Corporation; it no longer serves to advocate for athletes. To our knowledge, the current Ombudsman’s office has not mediated any conflicts for athletes.

As described in #4 above, individual athletes do not have access to independent, professional USOC-paid attorneys that are available to advise and represent them when there is a conflict with the Corporation or their NGB.

To state the obvious, there are times when the interests of the Corporation and the athletes, as a group, diverge. The AAC also needs professional representation, on par with the representation that the Corporation receives.

Accordingly, the AAC and individual athletes should have access to a professional USOC-paid attorney available to advise and represent them, independent of the USOC and without a fee. This way, athletes will not be dependent on finding legal counsel willing to donate their services on a *pro bono* basis to represent them in matters against attorneys paid by USOC-financed NGBs.

Recommendation: The Sports Act should be revised to provide for a new position with staff, an Athlete Advocate office, to provide confidential legal advice to the AAC and to athletes, to advocate on their behalf and represent athletes when appropriate, including adversarial proceedings to protect the rights granted to them under the Sports Act and/ or the USOC Bylaws and policies.

7. ESTABLISH AN OFFICE OF INSPECTOR GENERAL.

Up until now, the USOC has largely been dependent on the direction it takes from the good judgment of its paid leadership and volunteer Board. That model failed under Scott Blackmun, as detailed by the two Reports. Blackmun convinced the Board that the USOC could not help athletes in conflict with their NGBs, an indefensible position that was *never* true. Just the opposite; Congress and the corporate Bylaws mandated that the USOC to protect athletes. In addition, the Board was not critical or independent enough in its own thinking to provide the necessary oversight of the CEO. Finally, the staff was either not willing or strong enough to stand up to the CEO. Sometimes this was true because the staff were the beneficiaries of the doubling and tripling of salaries, the largess that resulted from of the culture of using the five-rings for self-enrichment. Other times, staff learned not to oppose the CEO because the costs were too high; staff were retaliated against or marginalized for doing so.

Recommendation: Congress should provide for greater oversight through the creation of an Office of Inspector General for the USOC. The Integrity Committee endorses and advocates the creation of an Office of the Inspector General concept as set forth in the written testimony of

Han Xiao, the elected Chair of the AAC, in his submission of written testimony to the Senate Commerce Subcommittee on July 24, 2018.²

“...Congress should establish an autonomous authority to receive complaints confidentially, investigate facts, and report on necessary corrective action for the USOC, NGBs, and other actors within the Olympic and Paralympic movement, such as the U.S. Anti-Doping Agency (USADA) and the U.S. Center for SafeSport. The role of this authority would be like that of an Office of Inspector General that would oversee a federal or state agency. While the Inspector General would communicate with the USOC, ideally the position would report to the Senate Commerce Committee and the AAC, rather than directly to the USOC. Most of the same qualifications, authorities, and responsibilities outlined in the Inspector General Act of 1978 and subsequent amendments in 2008 should also apply to this new office. Congress may wish to further examine some of the key questions regarding who appoints the Inspector General, what authorities are given to this position, and the reporting mechanisms for the position. One potential model, for example, would have the Inspector General appointed and removed by the Chair of a separate Senate committee, most likely the Senate Judiciary Committee, and require the Inspector General to report on its operations to the Senate Commerce Committee on an annual basis. I would be happy to have follow-up conversations with appropriate members and staff to discuss these specifics.

The benefits of the establishment of an Inspector General’s Office would include, but not be limited to:

- Preserving the anonymity of athletes raising legitimate concerns about their NGBs and the USOC; thereby providing protection for whistleblowers;
- Allowing for the investigation of other issues that arise outside the protections afforded by the Sports Act;
- Assisting in proactively identifying issues within NGBs and the USOC, including possible corrective actions;
- Contributing to more routine and proactive oversight of the USOC and the entire Olympic and Paralympic system;
- Improving the athletes’ and the American public’s trust in USOC and NGB governance;
- Reducing legal costs for all parties due to the reduction in necessary Section 10 hearings and their binding arbitrations when the Inspector General intervenes.”³

AAC Chair Han Xiao then went on to highlight additional reasons why this office would be wise in other parts of his testimony.

² Han Xiao, Chair of the Athletes’ Advisory Council, Written Testimony before the Senate Commerce, Science and Transportation subcommittee on Consumer Protection, Product Safety, Insurance and Data Security, *Strengthening and Empowering U.S. Amateur Athletes: Moving Forward with Solutions*, Available at: <https://insurancenewsnet.com/oarticle/senate-commerce-subcommittee-issues-testimony-from-athletes-advisory-council#.XEEq4IVKipo>

³ Id., p. 5.

8. REVISE CURRENT AAA ARBITRATION PROCEDURES.

The AAA dispute resolution procedures called for in the original Amateur Sports Act of 1978 have been so eroded over the years that arbitration is no longer a reasonable recourse for athletes for a prompt, economical and just resolution of athlete disputes.

- Athletes can no longer file in any Regional Office of the AAA;
- AAA filing fee has been vastly increased;
- Arbitrators are now placed by the AAA in its pool of arbitrators who have zero experience, expertise and / or knowledge of the Sports Act and USOC Bylaws; and
- Arbitrators are now permitted to charge their regular hourly or daily rates, as opposed to receiving a modest honorarium for the honor and privilege of donating their services to a good cause.

Accordingly, arbitration costs are far beyond the means of the vast majority of American athletes. Repeated pleas to the USOC and to the AAA by outside lawyers, including us, to remove these barriers have gone unheeded.

Recommendations: The USOC must engage the AAA to roll back to the original agreement between the USOC and AAA whereby the AAA would provide its dispute resolution services in exchange for the AAA having the privilege to make known for its own advertising purposes its close association with the USOC.

- A modest filing fee for athletes;
- Arbitrators who are knowledgeable of the provisions of the Sports Act, the USOC bylaws and policies, who have had direct professional experience in working with the same,
- Arbitrators who can be trusted to apply the rules and law on an impartial basis; and
- Arbitrators who would be willing *to serve* as arbitrators, not for their normal hourly or daily fees, but rather for a modest honorarium for the honor and privilege of donating their services to a good cause.

The current AAA process no longer serves America's athletes. If these costs and expertise issues cannot be resolved with the AAA, another dispute resolution mechanism must be created.

9. CONSIDER ADDITIONAL BYLAW AMENDMENTS.

Separately, and as discussed at the meeting between representatives of the Integrity Committee and CEO Sarah Hirshland on January 16, 2019, the Integrity Committee will provide a number of proposed amendments to the USOC Bylaw for consideration, including proposed amendments which would, if adopted, improve the dispute resolution process and require enhanced financial and operational transparency by NGBs and the USOC.

Among the changes is the current Bylaw which provides that only a USOC Board member is permitted to even submit a proposed amendment to the USOC Bylaws.

Recommendation: The USOC Board of Directors should consider Bylaw amendments proposed by the Committee to Restore Integrity to the USOC.

10. THE USOC MUST CUT TIES WITH ANTI-ATHLETE LAW FIRMS, INCLUDING THOSE THAT PARTICIPATED IN THE NASSAR COVER UP.

The USOC hires law firms that have been consistently “Anti-Athlete;” firms that represent USOC-financed NGBs on a regular basis. These law firms have been paid hundreds of thousands of dollars, if not millions, to oppose athlete complaints and sexual abuse cases. As we discussed in our meeting with Sarah Hirshland, at best, these lawyers prolong and unnecessarily complicate fairly standard conflicts between athletes and their NGB. They charge millions of dollars to delay and obfuscate the conflict.

The law firms are economically incentivized to be anti-athlete, particularly in Section 9 and Section 10 complaints. Their clients – the NGBs and USOC – do not pay for the athlete’s attorney fees, they do not have to take their loss into account when coming up with remedies. These law firms therefore intentionally delay and extend procedures to deplete and exhaust athletes’ means, and patience. This tactic regularly results in athletes dropping out of the matter, and many times, also of the sport. America has lost many talented athletes because of NGBs’ and USOC’s legal representation strategies. In our meetings with Sarah Hirshland, we discussed how that in every other civil rights context, that the defendant pays if the victim “substantially prevails on the merits” and how fee-shifting can keep defense lawyers in check with resolving meritorious complaints quickly and reasonably.

The USOC sponsors Seminars that teach lawyers how to defeat an athlete’s Section 9 and Section 10 complaints. The seminar programming is one-way; the USOC does not invite the lawyers who regularly represent athletes Section 9 and Section 10 complaints. Moreover, athletes on the AAC believe the cost of putting on these seminars is charged as part of the “80% of funding goes to support athletes.”

Even worse, among the firms that the USOC invited to attend its most recent legal seminar in November 1-2, 2018, were lawyers from a law firm which was known by the USOC to have participated in the Nassar cover-up in July 2015.

Recommendations: In a new “Athletes First” USOC, the USOC must evaluate its legal posture towards athletes; the USOC must not associate with law firms that have an anti-athlete bias. The USOC must not retain or seek legal advice from law firms that are known to regularly represent NGBs in opposition to athlete Section 9 and 10 Complaints.

The USOC must cease sponsoring legal seminars that are not consistent with the USOC’s “Athletes First” mission.

The Integrity Committee will assist the CEO in identifying the applicable law firms.

Remove from the USOC website the names of lawyers and law firms listed as available to assist athletes in dispute resolution that are known to oppose athletes in Section 9 and 10 proceedings.

The USOC should pay for athletes’ attorney’s fees if the athlete “substantially prevails on the merits” – the legal standard for every other type of civil right.

11. THE USOC'S CURRENT STAFFING SIZE AND COMPENSATION LEVELS MUST BE CONSISTENT WITH OTHER NON-PROFITS.

The number of USOC staff and their pay scales are bloated and inconsistent with the Olympic movement, non-profits, and especially as compared to the amounts paid to athletes. Most of America's most elite athletes are paid less than a janitor working for the USOC. While all Olympic athletes not competing for the NCAA have been professional athletes since at least 1992, the USOC budgeting process did not significantly change to take into account the abandonment of the "amateur" status.

Most non-profits staffing levels and compensation are constrained by the watchful eye of its donors. But most of the USOC's money does not come from private donations; it is from television, licensing and sponsorships. So the normal brake on bloat and inflated salaries does not apply to the USOC. Further justifying an Inspector General position; the new money that has flowed into the USOC has gone to staff's pockets, rather than to athlete's, as set forth on the USOC's 990s.

The Olympics and the values they represent are some of the most prestigious world-wide; working for the USOC should be regarded as a privilege and honor, much the same way that working as the Secretary of a government Agency, as a Congressional staffer or as an Assistant United States Attorney. Team Integrity members work *pro bono* to assure that an abusive culture does not derail the ideals associated with the five-rings. Most athletes believe the sacrifices they make are worth it, in part, to be associated with these values. Non-profits and governmental entities, coupled with institutions of enormous stature, are typically not where people go to work to get rich.

Recommendation: The CEO must take a hard look at staffing levels as well as levels of compensation, especially at the senior staff level. The USOC, as a non-profit, cannot, and should not, be expected to compensate its employees at the levels in the private for-profit corporate sector. Moreover, any pay should be benchmarked against what the USOC is paying its athletes, who are also professionals.

12. THE CEO MUST CONSIDER PERSONNEL CHANGES.

Representatives of the Committee to Restore Integrity to the USOC met and spoke privately with CEO Sarah Hirshland at its January 16th meeting in New York City to discuss the immediate need to address staff members who have a demonstrable history of acting inconsistent with any "Athletes' First" cultural change. The CEO owes it to athletes to promptly dismiss those who participated and reinforced Blackmun's USOC failed culture. Others who are unwilling to demonstrate a firm commitment to an "Athletes' First" culture should also be dismissed. Any reluctance to take such actions on account of a possible short-term loss to the USOC of the institutional knowledge and expertise of these individuals does not, and will not, outweigh the continuing harm that will result to athletes and the USOC from their continued employment by the USOC. These athlete-antagonists on USOC/ NGB staff are well known to Team Integrity and, to some extent, are also identified in the Ropes & Gray Report. Simply put, there can be no USOC cultural turnaround with the continued employment of these individuals by the USOC, or a CEO who fails to act in such circumstances.

Thank you again for meeting with us and considering these ideas and proposals as a follow-up to that meeting. As discussed, we look forward to your response to each one either positively, negatively, or take the position that the USOC would remain neutral on that issue. Again, we sincerely hope that you will respond positively, and that in addition, you will take the opportunity to give us your vision of the new Olympic movement.

Respectfully submitted,

The COMMITTEE TO RESTORE INTEGRITY TO THE USOC

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