

**ACCEPTING A DOUBLE-FAULT:  
HOW ADR MIGHT SAVE MEN’S  
PROFESSIONAL TENNIS**

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### INTRODUCTION

On the eve of the 2012 Australian Open—the first of the year’s “Grand Slam” professional tennis events—players representing a majority of the men’s tour gathered.<sup>1</sup> The topic of conversation: a potential strike and mass refusal to participate in the tournament.<sup>2</sup> The drastic action, many players urged, was a last resort in the long-standing battle with the Association of Tennis Professionals (“ATP”) and the International Tennis Federation (“ITF”), the organizations that jointly govern and control men’s professional tennis.<sup>3</sup>

Fortunately—for the players, the Australian Open tournament, tennis fans around the world, and the sport itself—the proposed strike never materialized and the event went ahead as planned, culminating in a near six-hour epic final between the world’s top two players.<sup>4</sup> Nevertheless, the seriousness surrounding the possibility of a players strike in men’s professional tennis is real. The mere fact that the players felt compelled to contemplate striking is sufficient to warrant a closer look at the grievances that nearly led the players to such dramatic recourse.

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<sup>1</sup> See Robbie Salaman, *Labor War Looms Large Over Tennis*, THE LEGAL BLITZ (Feb. 1, 2012), <http://thelegalblitz.com/blog/2012/02/01/labor-war-looms-large-over-tennis/>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> The Australian Open final featured two of the modern game’s most dominant players; world number one, Novak Djokovic, battled second ranked Rafael Nadal in the five hour, fifty-three minute final. Djokovic eventually won 5-7, 6-4, 6-2, 6-7, 7-5, marking, at the time, his fifth Grand Slam title. Alix Ramsay, *Djokovic Claims Longest Final*, AUSTRALIAN OPEN (Jan. 29, 2012), <http://archive.is/sCVz>.

Since its inception in the early 1970s, the ATP has grown from a players' association into a predominant force in men's professional tennis. Together with the ITF, the ATP rules over the sport with little opposition.<sup>5</sup> Recently, however, both the ATP and ITF have come under siege by player complaints, ranging from prize money distribution and scheduling issues to doping rules and lack of player representation in tour management.<sup>6</sup>

While men's professional tennis is in the midst of perhaps the greatest competitive era in its illustrious history, incidents like the threatened players strike at the Australian Open cast a dark shadow of uncertainty over the sport's future.<sup>7</sup> Ultimately, men's professional tennis has reached a crossroads and a host of questions must be asked. Is the prize money distribution

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<sup>5</sup> See Salaman, *supra* note 1. While the ITF remains responsible for the four annual Grand Slams and national team tennis competitions, the ATP "owns and runs all of the events outside of the four Grand Slam tournaments." *Id.* Together, the two organizations form the dominant heart of men's professional tennis.

<sup>6</sup> See *infra* Part III (discussing current player complaints in greater detail).

<sup>7</sup> The last decade has been dominated by what many consider the greatest rivalry in the sport's history between all time Grand Slam record holder Roger Federer and his arch-rival—and perhaps the greatest clay court player of all time—Rafael Nadal. In the 2008 Wimbledon finals, Nadal outlasted Federer in almost five hours; winning in the waning light after a five set epic that commentator John McEnroe, and most of the world's press, proclaimed the "greatest match ever played." See Richard Alleyne, *Wimbledon 2008: John McEnroe Hails Rafael Nadal Victory as Greatest Final Ever*, THE TELEGRAPH (July 7, 2008, 7:30 AM), <http://www.telegraph.co.uk/sport/tennis/wimbledon/2305019/Wimbledon-2008-John-McEnroe-hails-Rafael-Nadal-victory-as-greatest-final-ever.html>. Just one year later, Federer recaptured the Wimbledon crown, defeating long-time rival American Andy Roddick 16-14 in the fifth set. See Mark Hodgkinson, *Wimbledon 2009: Roger Federer Defeats Andy Roddick to Win Men's Single Title*, THE TELEGRAPH (JULY 5, 2009, 9:49 PM), <http://www.telegraph.co.uk/sport/tennis/wimbledon/5751328/Wimbledon-2009-Roger-Federer-defeats-Andy-Roddick-to-win-mens-singles-title.html>. The seventy-seven total games made the match the longest Wimbledon final ever played. *Id.* The intense drama of these men's Wimbledon finals was overshadowed the following year when American John Isner and Frenchman Nicolas Mahut played the longest match in tennis history, battling in the first round for a staggering eleven hours and five minutes over three consecutive days. See Bruce Jenkins, *Isner, Mahut Staging Most Amazing First-Rounder in Grand Slam History*, SPORTS ILLUSTRATED (June 23, 2010, 5:40 PM), [http://sportsillustrated.cnn.com/2010/writers/bruce\\_jenkins/06/23/isner.mahut.react/index.html](http://sportsillustrated.cnn.com/2010/writers/bruce_jenkins/06/23/isner.mahut.react/index.html). The final set alone lasted over eight hours and finally ended with a score of 70-68. *Id.* These instances of drama, coupled with the quality of the player's in today's game, is strong evidence that men's tennis may be in the midst of its most exciting era yet.

acceptable? Is the schedule too demanding on top players? Is the established anti-doping program excessive and unrealistic? Is there a player representation crisis the current system cannot solve? People need to be asking these questions now in order to secure the future of the sport.

In order to guarantee the future of men's professional tennis, all parties involved—the players, the ATP, and the ITF—need to set aside their differing perspectives for the good of the sport. Parts I and II of this article explain the history and complex governance structure of men's professional tennis in the modern era. Part III investigates the major issues currently threatening the sport. Part IV looks at the existing mechanisms for dealing with these issues, and Part V, finding these mechanisms inadequate, proposes that a new system, rooted in alternative dispute resolution methodology, should emerge. Part VI looks at recent developments regarding player compensation at the Grand Slams and the new ATP schedule. Finally, Part VII stresses the critical importance of joint responsibility for solving the problems currently facing the modern game, and reiterates the need for immediate action to prevent potentially irreversible damage to the future of the sport.

## I. HISTORY AND STRUCTURE OF MEN'S PROFESSIONAL TENNIS TODAY

### A. *The Association of Tennis Professionals (ATP)*

In 1972, the ATP formed in a “secluded stairwell at the US Open” when a group of the sports' leading athletes met to discuss the overwhelming need for some form of a players' association.<sup>8</sup> Four years prior, professional tennis was a severely limited notion. Until 1968, all Grand Slam tournaments (the four most prestigious tournaments of the year)<sup>9</sup> and all national

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<sup>8</sup> See *History: How It All Began*, ATP WORLD TOUR, <http://www.atpworldtour.com/Corporate/History.aspx> (last visited Feb. 10, 2014).

<sup>9</sup> See *About The ITF: Overview*, ITFTENNIS.com, <http://www.itftennis.com/about/grand-slam%C2%AE/overview.aspx> (last visited May 27, 2014). The four Grand Slams are, in order of annual occurrence, the Australian Open (January-February), the French Open (May-June), the Championships at Wimbledon (June-July), and the United States Open (August-September). *Id.*

championships were restricted to amateur-only players.<sup>10</sup> The unification of the Grand Slam and national tournaments—combined with the simultaneous move to permit the participation of professional players—was the catalyst for the creation of the ATP.<sup>11</sup>

Executive Director Jack Kramer<sup>12</sup> and President Cliff Drysdale<sup>13</sup> led the ATP, which served as a players' association to protect the rights and interests of the competitors.<sup>14</sup> In 1973, the ATP made its first significant contribution to the development of men's professional tennis when it introduced a computer rankings system to "provide[] fair analysis of a player's performance as well as an objective means to determine entries into tournaments."<sup>15</sup> To this day, the ATP Rankings remain the official ranking system

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<sup>10</sup> See *History*, *supra* note 8.

<sup>11</sup> *Id.*

<sup>12</sup> Jack Kramer passed away in 2009 but the tennis world fondly remembered him as "the most influential person in the game in the last 60 years." Bill Dwyre, *Jack Kramer Dies at 88; Champion Ushered in Era of Pro Tennis*, LA TIMES OBITUARIES (Sept. 14, 2009), <http://www.latimes.com/news/obituaries/la-me-jack-kramer14-2009sep14,0,2060439.column#axzz2sa8uXtUq>. As a player, Kramer won several Grand Slam titles but was best known for his work to expand the rights of professional tennis players. *Id.* Tennis Hall of Fame journalist and historian Bud Collins called Kramer "the most important figure in the history of the game." *Id.*

<sup>13</sup> Cliff Drysdale is best known as a preeminent tennis announcer; he serves as a popular broadcaster on ABC Sports and ESPN, and is a contributing writer for Tennis Magazine. See *ATP Players, ATP WORLD TOUR*, <http://www.atpworldtour.com/Tennis/Players/Dr/C/Cliff-C-Drysdale.aspx> (last visited Feb. 10, 2014). Drysdale also enjoyed a very successful playing career, acquiring almost 60 singles and doubles titles and making the finals of the U.S. Championships in 1965. *Id.*

<sup>14</sup> *Id.* For a number of years—from 1974-89—the professional men's tennis circuit was organized and managed by the "Men's Tennis Council." *Id.* This group, comprised of representatives from the ATP, ITF, and tournament directors from all around the world, served to define the contours of the sport while also maintaining relations between the bodies responsible for the organized professional game. The ATP was a powerful representative of the player's interests in these early years. In 1973, after Yugoslavian player Niki Pilic missed a Davis Cup match, the ITF suspended him from competing in any of the Grand Slam events. See Frank Keating, *When SW19 Turned to the Picket Line*, THE GUARDIAN (June 22, 2003), <http://www.guardian.co.uk/sport/2003/jun/23/tennis.wimbledon200311>. In response, the ATP players' council met and voted to boycott Wimbledon. See also ROD LAVER & BUD COLLINS, *THE EDUCATION OF A TENNIS PLAYER* 236-41 (2009) (tennis legend Rod Laver, who was recently voted the second greatest tennis player of all time in a Tennis Channel TV special, gives a wonderfully detailed and personal account of his experiences in the 1973 Wimbledon boycott over what he calls the "Pilic Affair").

<sup>15</sup> See *History*, *supra* note 8.

used to determine both tournament seeding and the honor of the year-end number one worldwide ranking.<sup>16</sup>

For nearly two decades, the ATP served as the players' connection to the bodies governing international tennis competition.<sup>17</sup> As professional tennis continued to grow and expand, the players felt they "should have a greater voice in their sport" and by the late 1980s, players "realized the time had come for them to take more control over the game."<sup>18</sup> Thus, during the 1988 US Open, then-ATP CEO Hamilton Jordan held what was later famously dubbed the "press conference in the parking lot."<sup>19</sup> Surrounded by many of the sports top players, the ATP publicly released an outline of problems and issues, as well as potential solutions, facing professional tennis.<sup>20</sup> This public literature, named "Tennis at the Crossroads," listed as "one of the options available to the ATP . . . the formation of a new [tennis] circuit, the ATP Tour."<sup>21</sup>

The new ATP Tour was quickly endorsed by many of the sports elite stars: eighty five of the top one hundred ATP ranked players signed a letter in support of the new circuit and by the Fall of 1988, "[t]wenty-four players, including eight of the top ten, signed contracts to play the ATP Tour in 1990."<sup>22</sup> Furthermore, the tournament directors of most of the world's leading events supported the ATP Tour.<sup>23</sup> In 1990, the ATP Tour promised to "become a partnership unique in professional sports, with an equal voice in how the circuit [was] run."<sup>24</sup>

With the emergence of the ATP Tour, the ATP ceased to function as a players' union and instead became the primary governing body responsible for the annual tournament calendar and event scheduling in men's professional tennis.<sup>25</sup> Although the ATP Tour was well received by the vast majority of players, its

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

emergence was not without some consternation. Most notably, the ITF—which remained responsible for the four prestigious Grand Slam tournaments—took exception to the formation of the ATP Tour and, viewing the “breakaway [as] denoting a form of civil war in tennis,” decided to form its own year-ending championships independent of the ATP Tour year-end finals.<sup>26</sup>

The inaugural 1990 season of the ATP Tour was a massive success: all of the top fifty ranked players in the world contractually agreed to play on the new circuit, a new eight-week off season was established, and after securing IBM as the ATP Tour’s primary corporate sponsor, the season launched into action with seventy six tournaments in twenty eight nations.<sup>27</sup> The ATP Tour era began, significantly, “with an equal partnership between players and tournaments” and saw the average tournament prize money pool increase by nearly fifty percent.<sup>28</sup>

By 1993, the ATP Tour extended its “global reach, adding Arabian Gulf tournaments in Doha and Dubai,” continued to increase prize money, and agreed to the “first television package for men’s tennis [to] broadcast 19 tournaments to a worldwide audience.”<sup>29</sup> Seven years later, the ATP Tour launched a website, signed a partnership with Mercedes-Benz, sanctioned the creation of an ATP Senior Tour of Champions, and expanded their global broadcasts to more than two hundred countries.<sup>30</sup> Additionally, the ATP Tour was renamed ATP, complete with a new logo, website, and publication of an official magazine entitled DUECE.<sup>31</sup>

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<sup>26</sup> See *20th Century - Open Era of Tennis History*, TENNIS THEME, [www.tennistheme.com/tennishistory/tennishistory03.html](http://www.tennistheme.com/tennishistory/tennishistory03.html) (last visited Feb. 10, 2014). Consequently, for a number of years there were actually two year-end events—the ATP World Cup Championships and the ITF Grand Slam Cup. See *History of the Barclays ATP World Tour Finals*, BARCLAY’S ATP WORLD TOUR FINALS, <http://www.barclaysatpworldtourfinals.com/en/heritage> (last visited Feb. 10, 2014). These competing year-end finals would endure until 1999, when the ATP and ITF announced that a new, jointly owned year-end tournament—the Tennis Master’s Cup—would replace the two prior events. *Id.* In 2009, the event was reborn as the Barclay’s ATP World Tour Finals at the O2 Arena in London. *Id.*

<sup>27</sup> See *History*, *supra* note 8.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

The ATP underwent its most recent alterations in 2008-09 when it unveiled the ATP World Tour as “a simplified tour structure that brings a rationalized, healthier player schedule, a \$1 billion investment in infrastructure and facility upgrades and a 33% increase in player compensation.”<sup>32</sup> The ATP World Tour included a new ranking system, sponsored by South African Airways, and the introduction of the current tournament demarcations by ranking point values.<sup>33</sup> Additionally, the year-end championships—featuring the world’s top eight singles players and top eight doubles teams—were moved to London and renamed the Barclay’s ATP World Tour Finals.<sup>34</sup> Ultimately, the ATP remains a key part of modern men’s tennis and is presently one of the most powerful governing bodies in all of professional sports.

### *B. International Tennis Federation (ITF)*

The ATP is only one of two primary governing bodies in men’s professional tennis; the other, the ITF, originally formed in 1913 as the International Lawn Tennis Federation (ILTF).<sup>35</sup> Thirteen inaugural members founded the ILTF in Paris as a response to the universal growth and popularity of lawn tennis and the desire of national tennis associations to unite and form uniform structures and rules.<sup>36</sup> Although ILTF membership fell to ten nations following World War I, its work continued and in 1923, the organization adopted the ILTF “Rules of Tennis,” as the first official codification of the sport’s rules and requirements on an international scale.<sup>37</sup> In addition, the ILTF created a new category of official championship events—now known as the Grand Slams—to take place yearly in the United Kingdom, United States, France, and Australia.<sup>38</sup>

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> See *20th Century - Open Era of Tennis History*, *supra* note 26.

<sup>35</sup> *History*, ITF TENNIS, <http://www.itftennis.com/about/organisation/history.aspx> (last visited Feb. 10, 2014).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

By the late 1940s, the ILTF “became the officially recognized organization with authority to control lawn tennis throughout the world.”<sup>39</sup> The number of affiliate member nations rose to nearly sixty, and the ILTF established a worldwide standardization of tennis balls for use in ILTF events.<sup>40</sup> During World War II, officials transferred ILTF funds to the United Kingdom, and at the conclusion of the War, relocated the headquarters to London.<sup>41</sup>

In 1968, forty-seven ILTF member nations agreed to “Open Era” tennis and the ILTF officially began allowing professional players access to their tournaments and events.<sup>42</sup> Although the subsequent formation of a new professional tennis tour—World Championship Tennis—threatened to jeopardize the influence of the ILTF, the two entities eventually united as a single and unified professional tennis circuit in 1972.<sup>43</sup>

The 1970s was a decade of massive growth and change in the ILTF. In 1972, the ILTF approved the use of yellow tennis balls (white was previously the required color).<sup>44</sup> In 1975, the ILTF introduced “The Code of Conduct [as] a method for controlling bad behavior in the men’s game.”<sup>45</sup> Then in 1977, the ILTF became the ITF and began monitoring technological developments in tennis equipment after some players complained about double strung rackets.<sup>46</sup> Finally, in 1979, the ITF assumed full responsibility for organizing and running the Davis Cup competition—an international team tournament between nations.<sup>47</sup>

Currently, the ITF remains vitally involved in men’s professional tennis. Not only is the ITF the official governing body of the Grand Slams, the most prestigious tennis tournaments in the world, but it is also responsible for the Futures Tour.<sup>48</sup>

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* The Futures Tour, managed and run as part of the ITF Professional Circuit, serves as “the entry level of Professional Tournaments enabling players to eventually reach the higher level tournaments on the ATP Tour.” *About Pro Circuit*, ITF TENNIS, [www.itftennis.com/procircuit/about-pro-circuit/overview.aspx](http://www.itftennis.com/procircuit/about-pro-circuit/overview.aspx) (last visited Feb. 10,

Additionally, the ITF handles representation of tennis in the Olympic Games.<sup>49</sup> Finally, the ITF remains “the world governing body of [professional] tennis” and oversees fundamental aspects of the sport, including administration and regulation, organizing international competition, and structuring, developing, and promoting the game on an international level.<sup>50</sup>

## II. PRESENT GOVERNANCE STRUCTURE

Currently, the ATP and the ITF jointly govern professional tennis. Although these two bodies work together in many areas,<sup>51</sup> they are separately responsible for varying aspects of the sport’s structure and events. Ultimately, becoming a professional tennis player normally requires participation in events sanctioned, organized, and managed by both the ATP and the ITF.<sup>52</sup>

Young players seeking to join the professional ranks typically begin their journey in ITF Men’s Circuit, or “Futures,” tournaments.<sup>53</sup> These weeklong ITF Futures events began in 1998 as a replacement for ITF Satellite Circuit tournaments and served to provide young players with more opportunities to earn ranking points and prize money.<sup>54</sup> The ITF Futures tournaments were the starting point for almost every ATP Tour ranked player today.<sup>55</sup>

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2014). The Futures Tour is comprised of one-week tournaments offering either \$10,000 or \$15,000 in prize money and helps younger players break into the professional ranks. *Id.*

<sup>49</sup> See *History*, *supra* note 35.

<sup>50</sup> *Id.*

<sup>51</sup> The most important area where the ATP and ITF generally share competence and autonomy is regarding issues involving player-doping violations; they often jointly present their cases to the Court of Arbitration for Sport in instances of appeals dealing with such concerns. See *infra* Part IV(b) and (c).

<sup>52</sup> See Salaman, *supra* note 1. Although the ATP controls most of the professional events played throughout the year, the most prestigious yearly events, the Grand Slam tournaments, and the Futures tour are controlled by the ITF, not the ATP.

<sup>53</sup> See Jeff Cooper, *The Structure of Men’s Professional Tennis Competition*, ABOUT.COM TENNIS, [http://tennis.about.com/od/tournaments/a/structure\\_mens\\_professional\\_tennis.htm](http://tennis.about.com/od/tournaments/a/structure_mens_professional_tennis.htm) (last visited Feb. 10, 2014) (“Typically, after a successful junior or college career, players enter professional competition at the Futures level, governed by the ITF, where each ITF Men’s Circuit tournament offers prize money of either \$10,000 or \$15,000.”).

<sup>54</sup> See *About Pro Circuit*, *supra* note 48.

<sup>55</sup> *Men’s History: About Pro Circuit*, ITF TENNIS, <http://www.itftennis.com/procircuit/about-pro-circuit/men’s-history.aspx> (last visited Feb. 10, 2014). Incredibly, the final 2011 ATP Tour rankings “revealed that every

The Futures Circuit originally had 212 tournaments and has consistently grown over the years to over five hundred events worldwide today.<sup>56</sup>

After players accumulate a sufficient amount of ATP ranking points on the ITF Futures tour, they qualify to play in ATP Challenger events.<sup>57</sup> The Challenger level is governed by the ATP and “generally feature[s] players ranked between 71 and 400 vying for a share of \$50,000-\$100,000 per tournament.”<sup>58</sup> In Challenger events, the main draw—the list of players automatically entered to compete in the tournament—is set at thirty-two players.<sup>59</sup> The Challenger tour functions as a kind of minor leagues in professional tennis; they remain “one step below ATP Tour events [and] many pros play in both.”<sup>60</sup> The ATP Challenger tour awards ATP rankings points, which players can eventually use to gain direct entry into ATP Tour level events.<sup>61</sup>

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player . . . listed with an ATP Singles Entry Ranking has competed on the ITF Pro Circuit (Satellite Circuits and/or Futures Tournaments) at some point during their career!”

<sup>56</sup> See *About Pro Circuit*, *supra* note 48.

<sup>57</sup> See *About the Challenger Circuit*, ATP WORLD TOUR, [www.atpworldtour.com/Tournaments/Challenger/ABOUT.aspx](http://www.atpworldtour.com/Tournaments/Challenger/ABOUT.aspx) (last visited Feb. 23, 2014).

<sup>58</sup> See Cooper, *supra* note 53.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* For several players, the Challenger Tour has proven to be an invaluable way to gain confidence after time away or personal problems and has been the catalyst for career resurgence. For instance, in 1997, tennis legend Andre Agassi went through a horrendous eighteen-month stretch, became involved in drugs, and dropped to number 141 in the ATP rankings. See RANDY WALKER, ON THIS DAY IN TENNIS HISTORY: A DAY-BY-DAY ANTHOLOGY OF ANECDOTES AND HISTORICAL HAPPENINGS, 18-22 (2008). From this lowest point in both his professional playing career and his personal life, Agassi began regaining his form on the Challenger Tour. *Id.* By 1999, Agassi had risen back to top of the men’s game, winning Grand Slam events at both the French Open and the U.S. Open. *Id.* Agassi would finish his storied career with sixty-eight singles titles, eight Grand Slams, and an Olympic Gold medal. *Id.* Other players, including former world number four James Blake and current world number forty-nine Sam Querrey, have used the Challenger. See *ATP Challenger Tour Short on Prize Money, Long on Skill and Chock Full of – Yep - Challenges* [hereafter *ATP Challenger Tour Prize Money*], ESPN (Aug. 26, 2011, 3:53 PM), <http://sports.espn.go.com/espn/wire?section=tennis&id=6899219>.

<sup>61</sup> See *About the Challenger Circuit*, *supra* note 57; see also Walker, *supra* note 60; see also *ATP Challenger Tour Prize Money*, *supra* note 60.

As of 2008, there were 177 Challenger level tournaments in over forty nations, with prize money totaling over \$10 million.<sup>62</sup>

The actual ATP World Tour—the primary circuit of tournaments and events comprising professional tennis today—is broken into three distinct categories of tournaments based on the number of ATP ranking points available to the winner of that specific event.<sup>63</sup> First, the ATP World Tour 250 tournaments award 250 ATP rankings points to the winner.<sup>64</sup> There are currently forty ATP World Tour 250 events, with total prize money ranging from \$416,000 to \$1.024 million.<sup>65</sup> Second, the ATP World Tour 500 events award five hundred ATP rankings points to the winner. There are eleven ATP World Tour 500 tournaments, with total prize money up to \$2.1 million.<sup>66</sup> The third level of events, the ATP World Tour Masters 1000, offer 1000 ATP rankings points to the winner and attracts the best players in the world. There are nine ATP World Tour 1000 events, with total prize money of \$2.45 to \$3.64 million.<sup>67</sup> In addition, the ATP holds a year-ending championship in London called the ATP World Tour Finals.<sup>68</sup> London's O2 Arena currently hosts this annual tournament featuring only the top eight singles players (and top eight doubles teams), as determined by the ATP ranking system.<sup>69</sup> The ATP World Tour Finals feature round robin group play, followed by semi-final and final rounds; the total ATP ranking points available can be as great as 1500<sup>70</sup> and the total prize money pool is \$4.45 million.<sup>71</sup>

The ATP, however, does not control the four most prestigious and renowned professional tennis tournaments. The “Grand Slams” of tennis—the Australian Open, French Open, Wimbledon, and United States Open—are the most important tournaments of the year in professional tennis and are governed exclusively by the

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<sup>62</sup> *Id.*

<sup>63</sup> *See History, supra* note 8.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *See History of the Barclays ATP World Tour Finals, supra* note 26.

<sup>69</sup> *Id.*

<sup>70</sup> Any player who goes the entire event—round robin and the elimination matches—undefeated acquires 1500 ATP ranking points. *Id.*

<sup>71</sup> *See History of the Barclays ATP World Tour Finals, supra* note 26.

ITF in collaboration with ITF National Associations.<sup>72</sup> These four events are widely considered the most important in professional tennis because of the history and tradition each tournament carries.<sup>73</sup> Additionally, the Grand Slam tournaments attract the most public and media attention,<sup>74</sup> offer the highest ATP ranking points to the event champion,<sup>75</sup> have the largest and strongest player fields,<sup>76</sup> and boast the largest prize money pools in the sport.<sup>77</sup> Ultimately, the Grand Slam tournaments constitute the “landmark events” in professional tennis and “the careers of great players are usually remembered almost entirely for their Grand Slam records.”<sup>78</sup>

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<sup>72</sup> These National Associations—Tennis Australia, the French Federation of Tennis, the United States Tennis Association, and Wimbledon’s joint committee of The All England Lawn Tennis & Croquet Club and Lawn Tennis Association—work as affiliates of the ITF in managing and owning the Grand Slam events. *See Grand Slams: Overview*, ITF TENNIS, <http://www.itftennis.com/about/grandslam%C2%AE/overview.aspx> (last visited Feb. 10, 2014).

<sup>73</sup> *See generally* Reference Book, *Grand Slam History*, GRANDSLAMHISTORY, [www.grandslamhistory.com/index.php?menu=history](http://www.grandslamhistory.com/index.php?menu=history) (last visited Feb. 10, 2014).

<sup>74</sup> *Id.*

<sup>75</sup> *See* Cooper, *supra* note 53. The winner of a Grand Slam event earns 2000 ATP ranking points. *Id.*

<sup>76</sup> *See ATP Challenger Tour Prize Money*, *supra* note 60 (observing that 2010 Wimbledon finalist Tomas Berdych was beaten in the first round of the French Open by a qualifying player ranked outside the top 100, two-time French Open finalist Robin Soderling was beaten at Wimbledon by a young Australian qualifier, and concluding that such upsets “showcase the depth of [Grand Slam] fields”). Further, the structure of the Grand Slams make them the most brutal and demanding events of the year; the draw is the largest of all the annual tournaments (128 players), each match is the best of five sets, and the events span two full weeks. *See* Cooper, *supra* note 53.

<sup>77</sup> *See* Cooper, *supra* note 53 (noting that the average prize pool of the Grand Slam events is over \$20 million apiece).

<sup>78</sup> *Id.* (adding, the Grand Slam tournaments remain the premier events for most tennis fans; they “stand apart, and millions of fans who barely pay attention to the rest of the tennis calendar eagerly await these landmark events.”).

### III. MODERN DIFFICULTIES & ISSUES IN MEN'S PROFESSIONAL TENNIS

#### A. *Player Dissatisfaction*

##### 1. Prize Money

Despite the fact that player compensation has been steadily rising since the “Open” era of tennis began in 1968,<sup>79</sup> many current players continue to maintain that they should be getting a bigger piece of the pie.<sup>80</sup> In 2009, the ATP World Tour announced that prize money on the men’s professional circuit would increase to \$82.3 million, an annual jump of almost thirty three percent from 2006<sup>81</sup> despite struggling economies across the globe. Then, in 2011, the ATP again announced prize money increases that raised total player winnings in excess of \$90 million for the first time in the history of the sport.<sup>82</sup>

Yet, despite these increases, there was still tension at the beginning of the 2012 Australian Open. Several ATP players considered boycotting the year’s first Grand Slam tournament a week before the event to protest the present prize money allocation.<sup>83</sup> Although the players and the ATP were able to avoid

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<sup>79</sup> *History, supra* note 35 (explaining that amateurs were only allowed to collect some expenses and there was no real prize money compensation).

<sup>80</sup> See Salaman, *supra* note 1 (noting player dissatisfaction with prize money, especially at the Grand Slam events); *ATP Plans to Address Player Complaints*, ESPN (Jan. 18, 2012, 1:22 AM), [http://espn.go.com/tennis/story/\\_/id/7473893/new-atp-president-says-sympathizes-player-complaints-tour-conditions](http://espn.go.com/tennis/story/_/id/7473893/new-atp-president-says-sympathizes-player-complaints-tour-conditions) (observing that “the main issues apparently revolve around an overcrowded schedule and prize money at Grand Slams.”).

<sup>81</sup> Kamakshi Tandon, *ATP Prize Money More Equitable*, ESPN (Feb. 17, 2009), <http://espn.go.com/espn/print?id=3911481&type=story>.

<sup>82</sup> See Street & Smith, *ATP Increasing Tour Prize Money; Will Reach Record \$90M* *By '14*, SPORTSBUSINESSDAILY (July 6, 2011), <http://www.sportsbusinessdaily.com/Daily/Issues/2011/07/06/Leagues-and-Governing-Bodies/Tennis.aspx>; *ATP Announces Prize Money Increases*, TENNIS INDUSTRY (July 6, 2011), [http://www.tennisindustrymag.com/news/2011/07/atp\\_announces\\_significant\\_priz.html](http://www.tennisindustrymag.com/news/2011/07/atp_announces_significant_priz.html).

<sup>83</sup> See Ian Ransom, *Prize Money Battle a High Stakes Game for Fringe Players*, REUTERS (Jan. 21, 2012), <http://www.reuters.com/article/2012/01/21/us-tennis-open-money-idUSTRE80K09S20120121>.

a boycott, the threat of a player strike seems more real than ever before.<sup>84</sup>

Players' primary complaints are focused not on the ATP Tour, but rather on the Grand Slam tournaments.<sup>85</sup> While the four Grand Slams are the most popular events in professional tennis, the ITF and Grand Slam Committee control the tournaments,<sup>86</sup> not the ATP.<sup>87</sup> Further, the Grand Slam tournaments, each two-weeks long, remain by far the most profitable events in professional tennis.<sup>88</sup> On average, the Grand Slams generate roughly \$200 million apiece, from which players receive only ten to twelve percent of that total revenue via prize money.<sup>89</sup> For example, in the 2012 Australian Open, the total tournament prize money was around \$26 million and the total revenue was "expected north of \$250 million."<sup>90</sup>

Meanwhile, the players would like to see the Grand Slam prize money pool rise to around twenty to thirty percent of the total tournament revenues.<sup>91</sup> Even a thirty percent player's share of the tournament revenues would be paltry when compared to most major American sports.<sup>92</sup> Perhaps the most controversial

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<sup>84</sup> See Salaman, *supra* note 1 (according to some reports, at the player's pre-tournament meeting, a majority of players actually may have been in favor of a strike and boycott of the year's first major tournament).

<sup>85</sup> Jon Wertheim, *Challenges Await New ATP Leader*, SI (Dec. 22, 2011, 6:11 PM), [http://sportsillustrated.cnn.com/2011/writers/jon\\_wertheim/12/22/drewett.atp/index.html](http://sportsillustrated.cnn.com/2011/writers/jon_wertheim/12/22/drewett.atp/index.html) ("The [Grand] Slams are terrifically profitable and allocate a scandalously low percentage of their revenue to the players as prize money. On the other hand, the players don't have much leverage [at those events].").

<sup>86</sup> The Grand Slam Committee, formed in 1989, as the allied representative of all four Grand Slam tournaments, who, in conjunction with the ITF and the ITF national governing tennis associations, is responsible for administering Grand Slam events and rules. See *The Grand Slam Board*, WIMBLEDON, [http://www.wimbledon.com/en\\_GB/about\\_aeltc/201306061370508048439.html](http://www.wimbledon.com/en_GB/about_aeltc/201306061370508048439.html) (last visited May 24, 2014).

<sup>87</sup> See *History*, *supra* note 35.

<sup>88</sup> See Salaman, *supra* note 1.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* (observing the recent NBA collective bargaining agreement that resulted in a total revenue split where the players receive fifty-one percent of those proceeds). Other major American sports also reflect this significantly larger proportion of revenues going to the players; in the NHL players receive a fifty-seven percent share under their current collective bargaining agreement, while the NFL CBA allots its players forty-seven percent of total revenue, including fifty-five percent of media related revenues.

issue related to prize money distribution in professional tennis is one that remains unseen and unconsidered by the average tennis fan: the issue of prize money allocation amongst the players themselves.<sup>93</sup>

In 2012, then number two in the world Rafael Nadal won his sixth French Open title and claimed roughly \$1.7 million in champion's winnings.<sup>94</sup> A few weeks later, Nadal was at the All England Club—the Wimbledon venue—and was down 4-2 in the opening set of his first round match against American Michael Russell.<sup>95</sup> Nadal recovered from his slow start to win the match in straight sets,<sup>96</sup> however, as the match commentators observed, Nadal's single tournament winnings at the French Open were more than Michael Russell had made in his entire fourteen-year professional tennis career.<sup>97</sup>

Russell, a previously number-one ranked U.S. Boys 18-Under and recipient of the NCAA Rookie of the Year award, reached a career high ATP Tour rank of sixty in 2007.<sup>98</sup> Yet, Russell freely admits, playing tennis on the professional tour is often a battle of the will: only a week after his first round loss to Nadal at Wimbledon, Russell was practicing on a 3/4 size court, partially covered with bleachers, back in Chicago.<sup>99</sup> He was preparing for an ATP Challenger Tour event, “where players ranked around 100 toil in an attempt to make it onto the main circuit.”<sup>100</sup> While top players enjoy luxurious accommodations and constant medical attention from personal trainers, players like Russell “must budget their earnings wisely.”<sup>101</sup> In Russell's case, this means that

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See Nicholas J. Cotsonika, *CBA Sticking Points: The Players' Cut & Team-by-Team Revenues*, YAHOO SPORTS (Feb. 2, 2012), <http://sports.yahoo.com/news/cba-sticking-points-players-cut-224800965-nhl.html>.

<sup>93</sup> Tandon, *supra* note 81.

<sup>94</sup> *ATP Challenger Tour Prize Money*, *supra* note 60.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* “Straight sets” means that a player wins in the minimum amount of sets need for the victory; in the Grand Slams, where matches are the best of five sets, this means that a player wins the first three sets of the match. *Id.*

<sup>97</sup> *Id.*; see also *ATP Tennis Players*, ATP WORLD TOUR, <http://www.atpworldtour.com/Tennis/Players/Ru/M/Michael-Russell.aspx> (last visited Feb. 23, 2014) (listing Michael Russell's reported career earnings at \$1,644,217).

<sup>98</sup> *ATP Challenger Tour Prize Money*, *supra* note 60.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

he handles his own travel arrangements and relies on his wife, a fitness competitor, for injury treatments.<sup>102</sup>

Many others in the game have reiterated Russell's experiences regarding the difficulties of making it on tour as a mid-level player. James Blake, an American who attended Harvard and was ranked as high as number four in the world,<sup>103</sup> had to return to the Challenger level after he was injured and saw his ranking plummet outside the top one hundred.<sup>104</sup> Commenting on the realities of professional tennis for most players, Blake stated "it's a tough sport . . . it's not like a lot of the other sports where you get a guaranteed contract early on and you're just sort of coasting. You've got to earn your keep out here every week. If you don't do well, you're going home early."<sup>105</sup>

The fact remains that professional tennis traditionally is a top-heavy sport when it comes to prize money distribution.<sup>106</sup> At the end of 2011, players in the top ten of the ATP Tour Rankings all had career prize-money earnings of at least \$4.5 million<sup>107</sup> and most of those players are young enough that they are likely to play for several more years.<sup>108</sup> It is undeniable that the top names in

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<sup>102</sup> *Id.*

<sup>103</sup> James Blake reached this career-high ranking in November of 2006 after making the quarterfinals of the U.S. Open and finals of the year-end Tennis Masters Cup. See *ATP Tennis Players*, *supra* note 97.

<sup>104</sup> See James Buddell, *The Last Time . . . With James Blake*, DEUCE MAGAZINE (May, 25 2009) <http://www.blacktennispros.com/2009/05/deuce-magazine-last-time-with-james.html>. After a successful 2003 season that saw Blake rise to number thirty-seven in the ATP Tour rankings, he would suffer serious setbacks in 2004 and would fall outside the top 200 by April 2005. While practicing with friend and fellow American Robby Ginepri for the master's tournament in Rome, Blake slipped on the clay court and slammed into the net post, breaking his neck. Shortly thereafter, Blake's father would pass away from stomach cancer and Blake developed a stress-related illness that paralyzed half his face and blurred his vision. His subsequent return to form is one of the great comeback stories in recent tennis memory.

<sup>105</sup> *ATP Challenger Tour Prize Money*, *supra* note 60.

<sup>106</sup> *Id.*

<sup>107</sup> See *ATP Tennis Players*, *supra* note 97 (according to ATP Tour public records, the career earnings for the top ten ranked male singles players at the end of 2011 were as follows: (1) Novak Djokovic, \$33,091,625; (2) Rafael Nadal, \$43,468,919; (3) Roger Federer, \$64,661,910; (4) Andy Murray, \$18,630,365; (5) David Ferrer, \$12,948,576; (6) Jo-Wilfried Tsonga, \$8,114,313; (7) Tomas Berdych, \$10,111,412; (8) Mardy Fish, \$6,024,497; (9) Janko Tipsarevic, \$4,483,108; and (10) Nicolas Almagro, \$5,913,214).

<sup>108</sup> *Id.* Of the top-ten ranked men at the end of 2011, only three players are beyond their 20's (Federer, Ferrer, and Fish are each thirty years old), and the rest were twenty-seven or younger.

men's professional tennis—Novak Djokovic, Rafael Nadal, Andy Murray, and Roger Federer—drive the popularity of the sport globally.<sup>109</sup> These top players have dominated the Grand Slams over the past decade<sup>110</sup> and their status as international sports icons cause smaller tournaments to pay massive appearance fees to entice those top players to participate in their events.<sup>111</sup>

Still, one should not lose sight of the fact that without the lower ranked players, the sport of tennis would be unsustainable. The top players need to compete against someone in the first and second rounds, and upsets are one of the most exciting parts of any tournament.<sup>112</sup> In fact, the prospect of appearing in a Grand Slam event against one of the top players in the world often motivates lower ranked players to continue toughing it out on the Challenger and Futures tours, where prize money and amenities are far less generous than the ATP World Tour and Grand

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<sup>109</sup> See e.g., Tandon, *supra* note 81. Former top American and world number eight Mardy Fish openly stated that he was in favor of the top players getting the “lion’s share” of any increases in prize money; after all, Fish argued “[t]he reason people buy tickets to Grand Slams and stuff is to watch the top guys. I think it’s important to realize that if you’re ranked 60 to 80 in the world—the only reason they have a job is because of those [top] guys.” *Id.*

<sup>110</sup> From 2006-2012, Roger Federer, Rafael Nadal, and Novak Djokovic—consistently top ranked ATP singles players—have won an astounding twenty-four of twenty-five Grand Slam titles. See ESPN SPORTS ALMANAC 814-15 (2006). The lone exception was when Juan Martin del Potro defeated Federer in the 2009 U.S. Open finals. *Id.*

<sup>111</sup> It was reported, for instance, that a tournament in Rotterdam paid Roger Federer a \$1 million, tax-free appearance fee just for playing in the event. See Simon Cambers, *Tenni\$\$\$: Rafa and Roger’s Appearance Fees*, THE TENNIS SPACE (Feb. 23, 2012), <http://www.thetennisspace.com/opinion/champion-rafa-and-rogers-appearance-fees/>. It was subsequently reported that Rafael Nadal was paid \$2 million Euros over two years by Spain’s premier television station in exchange for guaranteed interviews at the end of all of his matches. *Id.*

<sup>112</sup> Further, upsets often thrust a player into the limelight, possibly making their career or allowing them to use it as a catalyst for better play thereafter. Consider, for example, current world number ten, Frenchman Jo-Wilfried Tsonga. See *Tsonga Advances to Australian Open Final in Stunning Fashion*, ESPN (Jan. 24, 2008, 6:18 PM), <http://sports.espn.go.com/sports/tennis/aus08/news/story?id=3210247>. In 2008, Tsonga started the season as a relative unknown, entering the Australian Open ranked outside the top forty; but after a miraculous run to the final—where he finally fell to Novak Djokovic in four tight sets—Tsonga would go on to finish the year in the top ten and has become a mainstay amongst the ATP Tour elite. *Id.*

Slams.<sup>113</sup> The prospect of upsetting top seeds and becoming a Cinderella story in the tennis world became a reality in 2009 for American Jessie Witten at the US Open.<sup>114</sup> Ranked 163rd at the time, Witten won three matches in the qualifying draw to enter the main US Open tournament. Witten then upset twenty ninth seed, Igor Andreev, in the first round and eventually advanced to the third round of the tournament, where he won the first set before falling to then world number four Novak Djokovic.<sup>115</sup>

The fact remains that prize money pools in men's professional tennis, while on the rise on the ATP World Tour, continue to remain static as far as the lower-level Challenger events are concerned.<sup>116</sup> Furthermore, even the increases in prize money at the ATP level have been overwhelmingly top heavy.<sup>117</sup> For example, in 2011, Indian Wells—an ATP Masters 1000 tournament—planned to drastically increase their prize money distributions;<sup>118</sup> however, the original proposal for the new prize money allocation was immediately met with harsh criticism, requiring excessive revision before being officially implemented.<sup>119</sup> The primary concern with the original change was that the predominant portion of the increase in overall prize money would go to the semi-finalists, finalist, and tournament champion.<sup>120</sup> Those players exiting the event in the early rounds would see almost no increase in their tournament winnings.<sup>121</sup> While recent events have led to large pay increases and more reasonable prize money allocation amongst players at the Grand Slam events, significant obstacles and debate on this issue persist.<sup>122</sup>

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<sup>113</sup> See Tandon, *supra* note 81 (noting that while the Grand Slams and ATP events often pay for players accommodations, the lower level events and qualifying tournaments require the players to pay all their expenses out of pocket).

<sup>114</sup> *ATP Challenger Tour Prize Money*, *supra* note 60.

<sup>115</sup> *Id.*

<sup>116</sup> Tandon, *supra* note 81 (“Prize money at the minor league challenger and futures events . . . has stayed static for over a decade”).

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.* (“almost all of the [prize money] increase was originally allocated to tournament winners and finalists, and those losing early on were in some cases actually scheduled to receive less than last season”).

<sup>122</sup> See *infra* section VI(b).

## 2. Scheduling

Another common complaint amongst many of today's tennis elites revolves around the professional tournament schedule.<sup>123</sup> The men's professional tennis annual schedule is comprised of sixty-seven tour-level events, played in thirty-two countries on six different continents.<sup>124</sup> Specifically, there are sixty-three ATP World Tour events, the four Grand Slam tournaments, and the Davis Cup competition, which only adds to the tour-level events.<sup>125</sup> Players are truly forced to compete in a variety of events if they want to retain a high ATP ranking because under the ATP rules, a player's world ranking is determined by their performance in these events over the past fifty-two-week period.<sup>126</sup>

In addition to the plethora of tour-level events, players are required under ATP rules to participate in the four Grand Slams, nine ATP Masters 1000 events, and, for those who qualify, the year-ending ATP Finals.<sup>127</sup> Failure to meet these requirements can lead to fines and the loss of valuable ranking points.<sup>128</sup>

Ultimately, the men's professional tennis schedule is grueling for players, especially the most successful players who are consistently playing into the later rounds of nearly every tournament they attend.<sup>129</sup> Players are on the courts competing almost weekly throughout the eleven-month season, which lasts from January to November each year.<sup>130</sup> While some feel the scheduling complaints and concern over the amount of mandatory

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<sup>123</sup> See Krystle Lee, *Does the ATP Calendar Need to Support the Players More?*, TENNIS BRAIN (Oct. 3, 2009), <http://www.tennis-brain.com/2009/10/does-atp-calendar-need-to-support.html> (noting that "ATP players have long spoken about the need for a longer off season . . . [and that] it's time to evaluate the ATP calendar again.").

<sup>124</sup> *The Fall Frenzy, An in Depth Look at the Schedule Issues and ATP World Tour Finals*, TENNIS ON TENNIS (Sept. 28, 2011), <http://tennisontennis.com/2011/09/28/tennis-on-tennis-the-fall-frenzy-an-in-depth-look-at-the-schedule-issues-and-atp-world-tour-finals/>.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> Salaman, *supra* note 1.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* (observing that while lower ranked players might not mind the crowded schedule because it gives them more opportunities for points and prize money, they often lose in the opening rounds and thus play far less actual tennis than the top players, despite playing in a greater number of events).

<sup>130</sup> *Id.*

events are severely overstated,<sup>131</sup> few other professions require such intensive physical exertions on a continual basis.

Indeed, recent events evidence the physical toll that the cramped schedule is having on the top players and the viability of the game itself.<sup>132</sup> At the 2009 U.S. Open—one of the later events of the year and the final Grand Slam—there were an “alarmingly high” number of players suffering from knee injuries.<sup>133</sup> Just two years later, again at the U.S. Open, by the fourth day of tournament play there were fourteen retirements from the men’s draw, eleven of those as a direct result of “musco-skeletal problems.”<sup>134</sup> Additional evidence of the effect of the long schedule on player health came just following the 2011 U.S. Open; only one week after a four-hour marathon final between Spain’s Rafael Nadal and Serbia’s Novak Djokovic, both men were back on the court, playing for their respective nations in the semi-finals of the Davis Cup competition.<sup>135</sup> The result: Djokovic was forced to retire from his opening match with a back injury and Serbia would lose the tie to rival Argentina by just a single point.<sup>136</sup> Although Nadal was more fortunate—winning both matches he played—he commented afterwards that the ATP schedule remains dangerously overcrowded and in severe need of change.<sup>137</sup>

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<sup>131</sup> See *My Take on the ATP Scheduling Issues*, ANY GIVEN SURFACE (Oct. 27, 2009), <http://anygivensurface.wordpress.com/2009/10/27/my-take-on-the-atp-scheduling-issues/>.

<sup>132</sup> See e.g., Michael Pettifer, *Tennis ATP World Tour Schedule Must Change for the Good of the Sport*, BLEACHER REPORT: MEN’S TENNIS (Sept. 18, 2011), <http://bleacherreport.com/articles/855032-atp-tour-schedule-must-change-for-the-good-of-the-sport>; *ATP Players Strike Needs to Happen*, ATP TENNIS WORLD, <http://www.atptennisworld.co.uk/tennis-blog/atp-players-strike-needs-to-happen/> (arguing that a strike might be the only solution to ensure the safety and fitness of ATP players).

<sup>133</sup> See Lee, *supra* note 123.

<sup>134</sup> See Pettifer, *supra* note 132. *But see*, *The Fall Frenzy*, *supra* note 124 (noting that, throughout the course of the 2011 season, retirements were actually down overall; however, the statistics cited also evidence the fact that over the past several years there have been a very high number of annual injury retirements, regardless of the 2011 season-specific numbers).

<sup>135</sup> *The Fall Frenzy*, *supra* note 124.

<sup>136</sup> *Id.* The Davis Cup is comprised of a number of “ties” scattered throughout the year; each tie is comprised of four singles matches and a doubles match each worth one point. *Id.* The winner of the tie is the first to three points. *Id.*

<sup>137</sup> See Pettifer, *supra* note 132. Nadal commented “they [the ATP] don’t want to change anything . . . You can’t always just think about the personal benefit. It seems as

The ATP schedule is long, crowded, and affecting the health of many of the game's top players due to the limited offseason for recovery.<sup>138</sup> Additional events, such as the Davis Cup competition and the Olympics, further intensify the schedule of many players.<sup>139</sup> As top players continue to commit to massive amounts of competitive tennis each year,<sup>140</sup> concerns over injuries and the overall health of those who are the face of tennis internationally will continue to be an area of intense debate and concern.

Recently, the ATP's new administration gave clear indications that it understands the players concerns over scheduling and intends to address those concerns directly in the near future.<sup>141</sup> Despite these promises, many of the sport's top players continue to question both the current schedule and the sincerity of those promises.<sup>142</sup> Thus, the problems associated with the current schedule are a hotly debated issue that all levels of the game's governance must face.<sup>143</sup>

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though those in charge aren't aware." *Id.* Nadal's Davis Cup teammate and then world number five David Ferrer agreed, stating "[w]e're not machines, we're at the limits of our physical ability . . . No doubt something has to change." *Id.*

<sup>138</sup> The only real off-season for the players is the eight weeks between the end of Davis Cup in mid-November and the start of the new ATP season on January 1st; this off season is even less for those players who are competing in the Davis Cup finals or in the smaller Australian Open warm-up events. *The Fall Frenzy*, *supra* note 124.

<sup>139</sup> Riven, *Rafael Nadal to Lead Tennis Players Strike?*, SPORTIGE (Sept. 16, 2011), <http://sportige.com/rafael-nadal-atp-schedule-strike/>.

<sup>140</sup> *The Fall Frenzy*, *supra* note 124. Since 2005, Andy Murray has averaged just fewer than fifty-nine matches each year. However, Rafael Nadal, Novak Djokovic, and Roger Federer have all averaged over seventy, with Nadal and Federer pushing the eighty mark almost every single season. *Id.*

<sup>141</sup> *ATP Plans to Address Player Complaints*, *supra* note 80; *see also infra* Section VI(a), Recent Developments, Scheduling Alterations (discussing the 2014 ATP schedule changes that were made in an attempt to address some of these player concerns).

<sup>142</sup> *See Tennis Ace Nadal Slams ATP for Tough Hard-court Tournament Schedule*, THE SYDNEY MORNING HERLAND (Aug. 1, 2008), <http://news.smh.com.au/world/tennis-ace-nadal-slams-atp-for-tough-hardcourt-tournament-schedule-20080801-3o4f.html>.

World number one Rafael Nadal, commenting on the increase of hard-court events on the ATP schedule, has said "[t]hat's a big mistake, in my opinion, for the tour . . . if you saw the players, the number of injuries the players have in the last months . . . you have to consider if we [the ATP Tour] is going in the good way, in a good direction or not." *Id.* Nadal further felt that the ATP leadership was actually in favor of such events: "[t]he top management of ATP are always thinking about playing more and more tournaments on this kind of surface. I think it's not a good way." *Id.*

<sup>143</sup> *See Pettifer*, *supra* note 132. The fact is that the scheduling problems involve both the ATP and ITF because they jointly run and schedule the events in men's professional tennis; as such, they will need to work together to formulate a solution to

### B. Match-Fixing

Another major problem in men's professional tennis is match fixing.<sup>144</sup> Match fixing—where a player intentionally loses a match in order to satisfy gambling bets previously made and determined by the outcome of the match—has been a problem in many sports.<sup>145</sup> The first time the possibility that players might be involved in fixing the results of their matches in advance arose on in professional tennis was in the early 2000s.<sup>146</sup>

Match fixing became a major focus in the men's game in the late 2000s. In 2007, Nikolay Davydenko, then ranked number four in the world, lost a match to eight-seventh ranked Martin Vassallo Arguello at an ATP Tour event in Poland.<sup>147</sup> After easily winning the first set, Davydenko, a huge favorite, lost the second and retired in the final set with a foot injury.<sup>148</sup> The odd circumstance

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this area of player concern. *Id.* (“The ITF are responsible for the scheduling of the Davis Cup Tournament, with the ATP responsible for the rest of the season’s calendar. It would seem that the two organizations will need to come together sooner or later to discuss the problem.”). *Id.*

<sup>144</sup> See Miguel A. Ramos, *Game, Set, Match-Fixing: Will the International Anti-Doping Initiatives Pave the Way for Similar Reform for Corrupt Betting in Tennis*, 32 HOUS. J. INT’L L. 201, 202-03 (2009). Betting in tennis is not just a major concern in the modern game, it is also big business: “[t]ennis betting currently ranks third in betting volume on one of the world’s largest betting exchanges, trailing behind only horse racing and soccer.” *Id.*

<sup>145</sup> Richard H. McLaren, *Is Sports Losing Its Integrity?*, 21 MARQ. SPORTS L. REV. 551, 563 (2011).

<sup>146</sup> See Richard H. McLaren, *Corruption: Its Impact on Fair Play*, 19 MARQ. SPORTS L. REV. 15, 17-18 (2008). In 2003, bookmakers suspended betting after there was a large amount of money placed on Spanish player Fernando Vicente, who had not won a match in several months and was playing the much higher ranked Russian Yevgeny Kafelnikov. *Id.* After Vicente won in a massive upset, the ATP determined there was no evidence of wrongdoing by either player and no investigation ensued. *Id.* Then, in 2006, a first round match at Wimbledon, the British Grand Slam and considered by many the most prestigious tournament in all of professional tennis, also raised eyebrows. *Id.* The match, between Carlos Berlocq and British wildcard Richard Bloomfield, was another big upset: Bloomfield, despite being ranked 170 spots below Berlocq, won the match easily in straight sets. *Id.* Because so many bets were placed on Bloomfield, Internet betting site Betfair informed the ITF of the irregular betting. *Id.* Although the ITF investigated the matter, they found no wrongdoing and no sanctions were imposed. *Id.*

<sup>147</sup> Ramos, *supra* note 144, at 204-05; see also John Barr & William Weinbaum, *Evidence Shows Something Terribly Corrupt in Infamous Match*, ESPN (Feb. 7, 2008), <http://sports.espn.go.com/sports/tennis/news/story?id=3235411>.

<sup>148</sup> *Id.* Davydenko would lose the match by the official score-line of 6-2, 3-6, 1-2 (retired). See *ATP Tennis Players*, *supra* note 97.

causing concern—and leading some to refer to the match as the “most notorious match in tennis history”—was that after Davydenko won the opening set six-two, there was a massive influx of bets *against* Davydenko.<sup>149</sup> Pursuant to an agreement regarding odd betting patterns, Betfair.com, one of the largest gambling sites in the world, reported to the ATP that several Russian accounts stood to win over \$1.5 million if Davydenko lost the match.<sup>150</sup> Ultimately, Betfair.com voided all bets made on the suspicious match and confirmed that over \$7 million dollars in bets were placed against Davydenko.<sup>151</sup>

The fallout from the Davydenko match was immediate and intense. The resulting ATP investigation into both players lasted for over a year, involved court subpoenas against the families and friends of the players, and brought match fixing to the forefront of the professional tennis world.<sup>152</sup> The ATP ultimately cleared both players of any wrongdoing, but the incident led a number of other professional tennis players to come forward with stories of match-fixing offers.<sup>153</sup>

Another match-fixing issue faced by the ATP involves players betting on sports online.<sup>154</sup> In 2007, Alessio Di Mauro became the first professional tennis player sanctioned for betting after the ATP found out Di Mauro made online bets involving nearly 350 ATP matches.<sup>155</sup> Then, in 2010, Austrian Daniel Koellerer was fined 15,000 euros and banned for three months by the ATP for listing his matches’ betting odds on his personal website.<sup>156</sup> In the end, the ATP took the stance that players cannot bet on tennis, period. Consequently, there have been numerous instances of ATP

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<sup>149</sup> See ATP Tennis Players, *supra* note 97; see also Barr & Weinbaum, *supra* note 147.

<sup>150</sup> Ramos, *supra* note 144, at 204-05.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.* In 2005, Belgian Gilles Elseneer reported an offer of \$100,000 to throw a match at Wimbledon; likewise, two Czech players reported having received anonymous calls offering to pay them to fix their matches at Russian tournaments. *Id.*

<sup>154</sup> See McLaren, *supra* note 145, at 564-66.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.* Koellerer’s manager received an even harsher penalty; he was suspended by the ATP and lost all ATP credentials for an entire year. *Id.*

actions against players for betting, whether or not the betting involved match fixing or even their own matches.<sup>157</sup>

### C. Doping

Finally, the third major area of concern in modern professional tennis is the influx of accusations and evidence of doping.<sup>158</sup> While doping and performance enhancing drugs (“PEDS”) have made major headlines in other sports, notably major league baseball and international cycling, it has also become an increasingly problematic issue in tennis.<sup>159</sup>

Since the early 2000s, the ATP and ITF have levied numerous suspensions for doping offenses. In the 2005-06 season, the ATP suspended several relatively high ranked players:

- Guillermo Canas (then ranked eighth in the world) was suspended for two years;<sup>160</sup>
- Stephan Koubek (then ranked eighty-ninth in the world) was suspended for three months and forfeited his tournament winnings for accidentally ingesting a banned substance;<sup>161</sup>
- Mariano Hood (then ranked thirty-third in the world doubles rankings) was suspended and lost his event winnings after testing positive for a banned substance he claimed to be using to treat hair loss.<sup>162</sup>

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<sup>157</sup> *Id.* at n. 58 (in 2007, Potito Starace was suspended for six weeks and fined \$30,000 for betting on matches he wasn't involved in and Daniele Bracciali was suspended three months and fined \$20,000 for betting on other matches; in 2008, Mathieu Montcourt was suspended two months and fined \$12,000 for betting on tennis and Italian professional Federico Luzzi was found to have bet on over 800 matches, including his own and was accordingly fined \$50,000 and suspended 200 days).

<sup>158</sup> See McLaren, *supra* note 145, at 554-58.

<sup>159</sup> *Id.* at 551-52.

<sup>160</sup> Bonnie DeSimone, *Canas Keeps the Ball in Court in Doping Case*, ESPN (Apr. 5, 2007, 11:35 AM), <http://sports.espn.go.com/sports/tennis/news/story?id=2819004>. Canas' suspension was reduced to fifteen months and he would return to great success, rising as high as number twelve in the world in 2007 and remaining consistently in the top-100 until his retirement in 2010. *Id.*

<sup>161</sup> See Ryan M. Rodenberg & Katie A. Featherston, *ADR and Drug Testing in Professional Tennis: An Effective Doubles Team?*, 16 MARQ. SPORTS L. REV. 31, 38-40 (2005).

<sup>162</sup> *ITF Suspends Argentina's Mariano Hood for Doping*, SINAENGLISH (Feb. 8, 2006, 8:28 PM), <http://english.sina.com/sports/1/2006/0208/64721.html>.

In addition to the initial punishment for doping violations, the ATP and ITF has made it clear that repeat offenses will receive even harsher treatment. In 2004, the ATP suspended Argentine player Mariano Puerta for doping. Two years later, Puerta made a surprise run to the French Open final, losing to future world number one Rafael Nadal. Only a few months after French Open, Puerta, then ranked twelfth in the world, tested positive for a banned substance for the second time, resulting in an eight-year suspension.<sup>163</sup>

More recently, the ITF suspended top French star Richard Gasquet from competing in the 2009 French Open after he tested positive for trace amounts of cocaine.<sup>164</sup> Following a hearing on the matter, Gasquet was eventually cleared of any wrongdoing and the tribunal concluded that the positive test results were caused by kissing a woman at a nightclub that had likely used the drug herself.<sup>165</sup> Then, in 2010, the ATP suspended Americans Wayne Odesnik and Robert Kendrick for one and two years, respectively, after each tested positive for banned substances.<sup>166</sup>

Thus, while doping in men's professional tennis has become increasingly problematic, the ATP and ITF have responded accordingly and levied penalties against those violating their established anti-doping policies. Many players in the sport do not agree with the current approach by the ATP and ITF and feel that they should address the situation differently.<sup>167</sup> Interestingly, the criticisms of the current doping regulations have come from both sides—some players have advocated more stringent restrictions and harsher penalties, while others contend that the existing rules are overly oppressive and unrealistic.<sup>168</sup>

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<sup>163</sup> *Puerta Is Facing the Longest Ban in Tennis History*, NY TIMES (Dec. 22, 2005), <http://www.nytimes.com/2005/12/22/sports/tennis/22tennis.html>.

<sup>164</sup> *Banned Gasquet out of French Open*, Associated Press, ESPN (May 11, 2009, 3:56 PM), <http://sports.espn.go.com/sports/tennis/news/story?id=4157477>.

<sup>165</sup> *Gasquet Cleared to Resume Playing*, Associated Press, ESPN (July 15, 2009, 4:01 PM), <http://sports.espn.go.com/sports/tennis/news/story?id=4329491>.

<sup>166</sup> *Players Rally Around Banned American Kendrick*, TENNIS (Aug. 2, 2011), <http://www.tennis.com/pro-game/2011/08/players-rally-around-banned-american-kendrick/31126/#.UwbBu3lyFg0>; Tom Gainey, *Wayne Odesnik Suspended Two Years From Tennis for Doping*, TENNISX (May 19, 2010), <http://www.tennis-x.com/xblog/2010-05-19/4203.php>.

<sup>167</sup> See *infra* note 222.

<sup>168</sup> See *infra* notes 222-223 and accompanying text.

## IV. PRESENT SOLUTIONS

## A. ATP Players' Council

The ATP Players' Council is a twelve-person committee that serves to represent the ATP players in their relations with the ATP and ITF. The council is comprised of four representatives of players ranked one to fifty in singles, two representatives of players ranked fifty one to one hundred in singles, two representatives of players ranked one to one hundred in doubles, two at large representatives, and one representative a piece for ATP coaches and alumni.<sup>169</sup>

Generally, the council serves to consider player grievances on tour and recently enjoyed the participation of many of the game's top players.<sup>170</sup> Roger Federer and Rafael Nadal have served as the President and Vice-President of the council since 2008. Anticipation grew that the players, supported by these top superstars, would facilitate a more unified reform regarding major issues in the sport.<sup>171</sup>

The ATP Players' Council, while noble in conception, has not proved to be effective in practice. Not only does the councils' advisory body lack any actual powers, but also that the recent dissention amongst ATP players is reflected in the composition of the council itself.<sup>172</sup> Notably, the council has remained split at the top of its hierarchical representation over the past few years.<sup>173</sup>

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<sup>169</sup> *Structure*, ATP WORLD TOUR, <http://www.atpworldtour.com/Corporate/Structure.aspx> (last visited Feb. 24, 2014).

<sup>170</sup> ATP Staff, *Federer, Nadal Re-elected to ATP Player Council*, ATP WORLD TOUR (June 20, 2010) <http://www.atpworldtour.com/News/Tennis/2010/06/Other/ATP-Player-Council.aspx>.

<sup>171</sup> *Id.*; see also *infra* notes 287-289 and accompanying text (discussing the invaluable role that unification had in allowing players to negotiate the recent and major prize money increases at the Grand Slam events).

<sup>172</sup> *Rafael Nadal Resigns from Council*, ESPN (Mar. 27, 2012, 3:36 PM), [http://espn.go.com/tennis/story/\\_id/7743721/rafael-nadal-resigns-atp-player-council-vice-president](http://espn.go.com/tennis/story/_id/7743721/rafael-nadal-resigns-atp-player-council-vice-president); Simon Briggs, *Rafael Nadal Resigns as ATP Players' Body Vice-President After Lack of Movement on Changes to Ranking System*, THE TELEGRAPH (Mar. 26, 2012, 8:16 PM), <http://www.telegraph.co.uk/sport/tennis/9168264/Rafael-Nadal-resigns-as-ATP-players-body-vice-president-after-lack-of-movement-on-changes-to-ranking-system.html>.

<sup>173</sup> See *Nadal Quits Post from ATP Player Council*, GULF NEWS REPORT (Mar. 28, 2012), <http://gulfnnews.com/sport/tennis/nadal-quits-post-from-atp-player-council-1.1000689>. For the past several years, Rafael Nadal has pushed for a two-year ranking

Further complicating the struggles within the Players' Council is the recent resignation of now world number one, Rafael Nadal, from his position as the council's vice-president in 2012.<sup>174</sup> Although Nadal officially commented that his decision was due to fatigue and lack of time to fulfill his duties, many believe that the real reason he left was frustration and tension over many of the current issues plaguing ATP players.<sup>175</sup>

### *B. Court of Arbitration for Sport (CAS)*

CAS, originally created in the early 1980s after the International Olympic Committee meeting in Rome, decided to develop a sports-specific arbitral venue for dealing with international athletics disputes.<sup>176</sup> In 1981, IOC member Keba Mbaye, then a judge at the International Court of Justice, prepared the foundation for what would soon emerge as the Court of Arbitration for Sport.<sup>177</sup> The IOC officially ratified the CAS statutes in 1983 and in the following year, CAS began operating as a voluntary alternative dispute resolution option for international-sporting organizations around the world.<sup>178</sup>

In 1992, the International Equestrian Federation (FEI) fined and suspended professional horse rider Elmar Gundel for a doping offense.<sup>179</sup> Under FEI procedures, which had incorporated CAS as their appellate jurisdiction, Gundel challenged the fine and suspension.<sup>180</sup> CAS reduced the suspension length but Gundel,

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system, arguing that such a mechanism could help lengthen players' careers and health by allowing them to withdraw from tournaments when injured and not having to worry about defending their ranking points every year. *Id.* However, council President Roger Federer was openly opposed to such a system, feeling it would make things boring on tour and harder for players to break into the highest-ranking spots. *Id.* Further, Nadal and Federer notoriously disagreed over the appointment of ATP chief executive Brad Drewett; while Federer supported Drewett as a business savvy candidate, Nadal had pushed for former Wimbledon finalist Richard Krajicek, believing that a former player would prove more sympathetic to player concerns. *Id.* See also Briggs, *supra* note 172.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> See History of the CAS: The 1994 Reform, TAS/CAS, available at <http://www.tas-cas.org/history> (last visited May 25, 2104) [hereinafter CAS (History)].

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

displeased with the ruling, filed a public appeal with the Swiss Federal Tribunal. Gundel argued that CAS lacked legitimate independence and is therefore not a true arbitration court.<sup>181</sup> The Swiss court determined that CAS was not a branch of the FEI nor funded by the FEI, and thus “retained sufficient personal autonomy with regard to it.”<sup>182</sup>

However, the ruling of the Swiss Tribunal in the Gundel appeal gave rise to concerns of the very close relationship between CAS and the IOC—who were still responsible for funding CAS, had control over the statutes establishing its jurisdictional reach, and had significant influence over the appointment of CAS arbitrators.<sup>183</sup> The Swiss court clearly implied that:

such links would have been sufficient to seriously call into question the independence of the CAS in the event of the IOC’s being a party to proceedings before it . . . The [Swiss court’s] message was thus perfectly clear: the CAS had to be made more independent of the IOC both organizationally and financially.<sup>184</sup>

Consequently, the structure of CAS changed significantly in the following years and CAS codified three reforms in a new code of sport-related arbitration: 1) an independent council (ICAS) to operate and finance CAS; 2) an appeals division; and 3) an ordinary arbitration division<sup>185</sup>

In 2003, after CAS upheld an IOC disqualification of two Russian cross-country skiers, the Swiss Federal Tribunal declared the newly reformed CAS was independent of the IOC and remained fully capable of passing enforceable arbitration decisions in sports-related cases.<sup>186</sup>

The ATP and the ITF expressly provide for issues related to their governance of professional tennis, including disputes with players regarding doping and match-fixing violations, to be

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<sup>181</sup> *Id.*

<sup>182</sup> *See* CAS (History), *supra* note 176.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

appealed to CAS.<sup>187</sup> Accordingly, players take most major issues relating to doping and match fixing to CAS for consideration. The ATP and ITF present their side of the case and are bound by any decision CAS renders.<sup>188</sup> Thus, there have been numerous instances of players taking their concerns to CAS and seeking reversal of ATP and ITF decisions regarding violations of institutional rules and the resulting lack of eligibility to play in ITF and ATP sponsored events.

CAS has heard a number of tennis related disputes and appeals and they have not hesitated to overturn what they deem unfair or excessive ATP and ITF penalties, even completely vindicating players in certain instances. This was the case in the recent 2009 doping scandal involving Richard Gasquet, one of France's top players.<sup>189</sup> After testing positive for cocaine at the March ATP Masters tournament in Miami, Gasquet was immediately suspended and an anti-doping tribunal was quickly assembled to hear his case and decide the fate of his career.<sup>190</sup> This tribunal determined that the evidence was insufficient to sustain the two-year ban sought by the ITF and ATP and consequently reduced the punishment to a retroactive two and a half month suspension.<sup>191</sup>

The ITF and ATP appealed the tribunal's decision to CAS and sought reinstatement of their proposed two-year suspension.<sup>192</sup> After agreeing to hear the appeal, CAS determined that there was insufficient evidence to suspend Gasquet for a two-year period and exonerated him of intentional drug use.<sup>193</sup> While the CAS panel did not officially annul Gasquet's suspension, they

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<sup>187</sup> See *The 2014 ATP Official Rulebook*, 282-83 (Exhibit R), available at <http://www.atpworldtour.com/Corporate/Rulebook.aspx> (last visited May 25, 2014).

<sup>188</sup> *Id.* ("The decision of CAS in that arbitration shall be final, non-reviewable, non-appealable and enforceable.")

<sup>189</sup> See *Richard Gasquet Suspended After Positive Drug Test*, THE TELEGRAPH (May 11, 2009, 1:44 PM), <http://www.telegraph.co.uk/sport/tennis/5308029/Richard-Gasquet-suspended-after-positive-drugs-test.html>.

<sup>190</sup> *Id.*

<sup>191</sup> *Gasquet Cleared to Resume Playing*, ESPN (July 15, 2009), <http://sports.espn.go.com/sports/tennis/news/story?id=4329491>.

<sup>192</sup> *Id.*

<sup>193</sup> See Sachin Nakrani, *Richard Gasquet Escapes Ban After CAS Clears Him Over Positive Cocaine Test*, THE GUARDIAN (Dec. 17, 2009), <http://www.guardian.co.uk/sport/2009/dec/17/richard-gasquet-cocaine-cas-ban>.

did further decree that the ITF and ATP could not consider the two and a half month suspension to constitute Gasquet's first doping offense.<sup>194</sup> This aspect of the CAS ruling was particularly important because a lifetime ban is currently the automatic punishment for a second doping violation.<sup>195</sup>

However, CAS has also remained willing to uphold even the most severe of ATP and ITF decisions in certain situations. In March 2012, CAS upheld the decision to permanently ban Austrian player Daniel Koellerer.<sup>196</sup> After attempting to fix matches during the 2009 and 2010 seasons—in which Koellerer supposedly approached at least five players in an attempt to fix matches—the ATP and ITF jointly created the Tennis Integrity Unit to investigate the allegations.<sup>197</sup> After finding credible evidence to determine that Koellerer was guilty of attempted match fixing, the ATP and ITF imposed a lifetime ban.<sup>198</sup> Koellerer immediately appealed the permanent suspension—the most severe ever imposed by tennis' governing organizations against a player—to CAS.<sup>199</sup> In upholding the decision, the tribunal determined that “the tennis governing bodies had met their burden of proof” and “the sanction was sufficiently high enough to reflect the seriousness of the corruption offences.”<sup>200</sup> Accordingly, the final decision of CAS bound both sides and Koellerer remains permanently banned from participation in all ATP and ITF events.

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<sup>194</sup> *Id.* The CAS panel statement noted “[t]he CAS did not formally annul the decision of the anti-doping tribunal considering that Richard Gasquet did not file an appeal himself against the two-and-a-half-month ban . . . . However, the CAS has specified in its award that, in case of any subsequent doping infraction, the present case should not be counted as a first doping offense.” *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> See *Daniel Koellerer Loses Appeal of Ban*, ESPN (Mar. 23, 2012, 12:24 PM), [http://espn.go.com/tennis/story/\\_id/7727747/daniel-koellerer-austria-loses-appeal-lifetime-ban-match-fixing](http://espn.go.com/tennis/story/_id/7727747/daniel-koellerer-austria-loses-appeal-lifetime-ban-match-fixing).

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> *Id.* The CAS tribunal did, however, reverse the \$100,000 fine that the ATP and ITF had also levied on Koellerer, finding that the fine was not appropriate since Koellerer failed to actually realize any financial gains from his attempted match fixing. *Id.*

*C. ATP & ITF Anti-Doping Program*

In 1993, the ATP and ITF jointly created what they described as a “comprehensive and internationally recognized drug testing program.”<sup>201</sup> This detailed system of rules and procedures address anti-doping in professional tennis in accord with the World Anti-Doping Association (“WADA”) guidelines. Additionally, this system uniformly tests all players for substances banned under the established WADA Code.<sup>202</sup> Substances completely banned under the WADA Code—and hence concurrently banned by the ATP/ITF anti-doping program—include anabolic agents, hormones and all related substances, beta-2 agonists, agents having anti-estrogenic results, and diuretics or other masking chemicals.<sup>203</sup> The WADA Code bans other substances only during actual competition, including stimulants, narcotics, cannabinoids, and glucocorticosteroids.<sup>204</sup> Further, the program prohibits all use of artificial oxygen enhancements, manipulation of urine test samples, and gene-based doping.<sup>205</sup> The exception to the program is that it permits players to seek permission to use banned substances for particular, documented medical purposes.<sup>206</sup>

The ATP and ITF fully disclose the extensive anti-doping program to all players, who must sign a consent form, binding them to the anti-doping code and established procedures for appeals and decisions on all doping issues.<sup>207</sup> Under the anti-doping program, the ATP and ITF presume players are innocent and generally permit the athletes to continue playing on tour until they reach a decision on their case.<sup>208</sup>

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<sup>201</sup> See Ryan M. Rodenberg & Katie Tennis A Featherston, *ADR & Drug Testing in Professional Tennis: An Effective Doubles Team*, 16 MARQ. SPORTS L. REV. 31, 32 (citing Anti-Doping Program 2005, Information Sheet (2005)).

<sup>202</sup> See Rodenberg & Featherston, *supra* note 161, at 31-33; see also Darryl C. Wilson, *Let Them Do Drugs—A Commentary on Random Efforts at Shot Blocking in the Sports Drug Game*, 8 FLA. COASTAL L. REV. 53, 78 (2006).

<sup>203</sup> See VII: The Code, Section 7.06 Tennis Anti-Doping Program 2005, located in the ATP Official Rulebook, 167-70 (2005), available at <http://web.archive.org/web/20050504123318/http://www.atptennis.com/en/common/TrackIt.asp?file=/en/antidoping/rules.pdf>.

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> *Id.* at § 7.06(E).

<sup>207</sup> Rodenberg & Featherston, *supra* note 161, at 33.

<sup>208</sup> *Id.*

The ATP and ITF clearly define the appeals process for any doping offense. After the reporting of an offense, the appropriate governing body appoints an “Anti-Doping Tribunal” to consider the evidence in the case. Then, the player under investigation receives a notice, and unless the player seeks to dispute the offense, the ATP and ITF punish the player according to the recommendations of the Tribunal.<sup>209</sup> If, at any time, a player elects to confess to the offense, the ATP or ITF may make suggestions to the Tribunal regarding an appropriate sanction taking into account the player’s honesty.<sup>210</sup> Players electing to challenge the charge to the Tribunal may know the identities of the Tribunal members and express any concerns over particular selections.<sup>211</sup> The actual hearing—conducted in English and only transcribed at the request of the ATP or ITF—is conducted according to procedures established by the Tribunal Chairman and must allow both parties to present their arguments, including calling and questioning witnesses.<sup>212</sup> Ultimately, the standard of proof is whether the governing tennis body involved in the case (the ATP or ITF) “has established the commission of the alleged Doping Offense to the comfortable satisfaction of the Anti-Doping Tribunal . . . .”<sup>213</sup> Following the Tribunal’s final determinations, if the player remains dissatisfied, he may take an ultimate appeal to CAS within twenty-one days of the Tribunal’s decision.<sup>214</sup> CAS may decline to hear the appeal or agree to a *de novo* review of the case; in either situation, the decision by CAS is the final step in the appeals process and their decision is unreviewable.<sup>215</sup>

This appeals process is efficient and has proven effective. In 2002, Czech player Bohdan Ulihrach tested positive for a banned substance during the ATP Kremlin Cup in Moscow.<sup>216</sup> Ulihrach appealed the matter before the ATP Anti-Doping Tribunal, arguing that he unknowingly took the substance and hence the strict liability standard in doping offense cases should not apply.

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<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> *Id.* at 34-35.

<sup>212</sup> *Id.* at 35.

<sup>213</sup> Rodenberg & Featherston, *supra* note 161.

<sup>214</sup> *Id.* at 36.

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

Instead, he contended that the Tribunal should consider his lack of intent to cheat in determining the sanctions.<sup>217</sup> The Tribunal rejected both arguments and suspended Ulihrach from professional tennis competition for two years. Furthermore, the Tribunal decreed that Ulihrach must forfeit all prize money and ranking points acquired after the offense occurred.<sup>218</sup> Following the Tribunal's determinations and penalties, Ulihrach took his final appeal to CAS.<sup>219</sup> Before Ulihrach's CAS hearing, the ATP Anti-Doping Tribunal received new evidence that ATP trainers had actually been distributing a tainted product<sup>220</sup> and elected to reopen his case—finally exonerating him and dropping all penalties.<sup>221</sup>

Despite this success story, many ATP players continue to complain about the Anti-Doping program. Some players feel the program is too lenient,<sup>222</sup> while others argue it is an undue burden and improper intrusion into their personal lives.<sup>223</sup> Regardless of

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<sup>217</sup> *Id.* at 37.

<sup>218</sup> *Id.* at 37.

<sup>219</sup> *Id.*

<sup>220</sup> *Id.* at 38. The electrolyte substance being used by ATP trainers was actually 700% stronger than the pharmaceutical labels listed and would likely result in positive drug tests like the one Ulihrach was suspended for. *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *See, e.g., Roddick Slams Odesnik as Ban Looms*, TENNISHEAD, [http://www.tennishead.net/On\\_Tour/Features/450987/roddick\\_slams\\_odesnik\\_as\\_ban\\_looms.html](http://www.tennishead.net/On_Tour/Features/450987/roddick_slams_odesnik_as_ban_looms.html) (last visited Feb. 25, 2014). Former American superstar Andy Roddick was infuriated when fellow American Wayne Odesnik was caught transporting human growth hormones into a small Australian tournament; he commented “[t]hat’s just plain cheating and they should throw him out of tennis . . . We don’t need stories like that . . . I have zero sympathy.” *Id.* Roddick continued, saying “I take a lot of pride in what we have to do on a daily basis and how responsible we have to be for one . . . jackass to ruin it for the rest of us.” *Id.* American James Blake was equally unsympathetic towards the ban Odesnik faced: “[p]eople look for a way to get ahead, and that’s unfortunate. It’s something that’s frustrating. You want to feel like you’re playing on a fair playing field. I’m glad they caught him.” *Id.* In 2007, Ivan Ljubicic publicly stated that he didn’t believe any players returning from doping bans should be given wild card entries into ATP events; Ljubicic stated in a Miami press conference that giving wild cards to formerly suspended players is “[l]ike a guy coming out of prison, and you’re just giving him a gun straight away.” *See* Paul Fein, *Kings of Clay Interviews*, TENNIS DISCUSSIONS ARCHIVE (Apr. 10, 2007, 2:30 PM), <http://kingsofclay.proboards.com/index.cgi?board=discussions&action=print&thread=1258>.

<sup>223</sup> Many players complain that the drug testing by the ATP and ITF is too stringent and intrusive. *See e.g., Murray Upset with Late-Night Drug Testing*, USA TODAY SPORTS (Jan. 27, 2012, 2:25 PM),

such criticisms, the fact remains that the ATP and ITF anti-doping code indicate the commitment of men's tennis to prevent doping in the sport. Furthermore, the anti-doping program demonstrates the ability of the organizations governing professional tennis—namely, the ATP and ITF—to work cohesively together for the betterment of the sport as a whole. Such unified efforts will be essential to finding effective solutions to the major problems threatening the game today.

## V. WHY MED-ARB ADR IS THE SOLUTION

### A. “Med-Arb”

Mediation-Arbitration, or Med-Arb as it is more commonly known, is a hybrid alternative dispute resolution (ADR) method that combines elements of mediation and arbitration.<sup>224</sup> Essentially, Med-Arb is a two-step process where “a neutral, impartial third party (the mediator) facilitates communication between negotiating parties which and failing settlement, receives

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<http://usatoday30.usatoday.com/sports/tennis/story/2012-01-27/australian-open-notes-andy-murry-late-night-drug-test/52820214/1>. Then world number four Andy Murray complained when he was drug tested after his long semi-final loss to Novak Djokovic and commented that “I just think it’s a little bit in your face, the whole thing.” *Id.* Accusations of doping in tennis recently reached the point of legal involvement when a French comedy TV station aired a skit depicting Rafael Nadal signing papers with a syringe and filling his gas tank with his own urine—clearly insinuating that the muscular Spanish player takes performance enhancing drugs; Nadal voiced his disappointment at the classless portrayal on Twitter. See Romana Cvitkovic, *ATP Tidbits: Nadal’s Anti-Doping, Djokovic Waxing and Winning, and Davis Cup Outtakes*, TENNIS GRANDSTAND (Feb. 11, 2012), [http://www.yardbarker.com/tennis/articles/atp\\_tidbits\\_nadals\\_anti\\_doping\\_djokovic\\_waxing\\_and\\_winning\\_and\\_davis\\_cup\\_outtakes/9878272](http://www.yardbarker.com/tennis/articles/atp_tidbits_nadals_anti_doping_djokovic_waxing_and_winning_and_davis_cup_outtakes/9878272). Nadal’s frustrations over the French TV show came shortly after former French player Yannick Noah commented that French athletes could no longer compete with Spanish players because of the Spaniards’ “magic potions” and even suggested that the French Tennis Federation relax their anti-doping rules to allow French players to better compete with their alleged artificially assisted Spanish rivals. See *Rafael Nadal Upset at Yannick Noah*, ESPN (Nov. 20, 2011, 10:18 PM), [http://espn.go.com/tennis/story/\\_/id/7263074/rafael-nadal-angered-yannick-noah-comments-doping](http://espn.go.com/tennis/story/_/id/7263074/rafael-nadal-angered-yannick-noah-comments-doping); but see , *Does Tennis Have A Doping Problem?*, PERFECT TENNIS (Jan. 29, 2013), <http://www.perfect-tennis.co.uk/does-tennis-have-a-doping-problem/> (arguing that the ATP and ITF anti-drug program is actually severely under-funded and does not do enough to control the ever-present threat of doping throughout the sport).

<sup>224</sup> See Yolanda Vorys, *The Best of Both Worlds: The Use of Med-Arb for Resolving Will Disputes*, 22 OHIO ST. J. ON DISP. RESOL. 871, 885 (2007).

evidence and testimony provided by the parties and issues a binding decision.”<sup>225</sup> Thus, parties involved in this dispute resolution method agree to first mediate their concerns with the other side and use a binding arbitration as a backdrop.<sup>226</sup> Generally, the same third-party neutral serves both the mediator and arbitrator.<sup>227</sup>

### *B. Advantages of Med-Arb*

The Med-Arb method of dispute resolution has a variety of advantages, which emerge from the blend of mediation and arbitration processes.<sup>228</sup> The combination of mediation and arbitration into a single methodology—with a lone med-arbiter serving to manage both the mediation and arbitration—makes Med-Arb a time and cost efficient way to resolve disputes.<sup>229</sup> Since the same person serves first as the mediator and then “changes hats” to serve as the arbitrator, the parties involved save valuable time in the event of a mediation failure because they are already fully informed of the dispute.<sup>230</sup> Additionally, the parties save time and money because there is no need to find and hire two separate people to serve as mediator and arbitrator.<sup>231</sup>

Another benefit of Med-Arb is that it allows for a streamlined dispute resolution procedure. Not only are the parties more likely to mediate in good faith and with greater effort, but if they fail to

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<sup>225</sup> Richard Fullerton, *Med-Arb and Its Variants: Ethical Issues for Parties and Neutrals*, 65 DISP. RESOL. J. 52, 54 (2010) (citing the definition of Med-Arb provided by the Colorado State Bar Association and noting that although other Med-Arb definitions can be found, “most are similar to [the Colorado state bar definition].”).

<sup>226</sup> See Thomas V. Hildner & Lisa J. Trembly, *Arbitration: Take Charge by Understanding and Designing the Process*, 272 N.J. LAW 14, 17 (2011).

<sup>227</sup> *Id.* See also Sherry Landry, *Med-Arb: Mediation with a Bite and an Effective ADR Model*, 63 DEF. COUNS. J. 263, 264 (1996) (noting that this person is generally known as a “med-arbiter” and the use of the same persona as both mediator and arbitrator is considered the “purest” form of Med-Arb).

<sup>228</sup> Vorys, *supra* note 224, at 885 (“Med-Arb capitalizes on the advantages of both mediation and arbitration, while eliminating many of their disadvantages.”).

<sup>229</sup> See generally Robert L. Ebe, *A Different Approach to Conducting Med-Arb in Complex Commercial Litigation Matters*, 29 ALTERNATIVES TO HIGH COST LITIG. 65, 70 (2011).

<sup>230</sup> Carlos de Vera, *Arbitrating Harmony: ‘Med-Arb’ and the Confluence of Culture and Rule of Law in the Resolution of International Commercial Disputes in China*, 18 COLUM. J. ASIAN L. 149, 156 (2004).

<sup>231</sup> *Id.*

do so, their insincerity may also be a factor that the med-arbiter considers in the subsequent binding arbitration.<sup>232</sup> Further, knowing that a binding arbitration follows the initial mediation gives both parties more incentive to settle at that initial stage and allows the med-arbiter to build a greater understanding of the relationship between the parties during the mediation phase before potentially rendering a final award in arbitration.<sup>233</sup> Finally, national courts often treat agreements in the Med-Arb mediation stage as more legitimate, making their enforcement easier and more certain.<sup>234</sup>

### C. Disadvantages of Med-Arb

Despite these advantages, Med-Arb remains a controversial ADR method.<sup>235</sup> Many critics of Med-Arb argue that it has a “chilling” effect on the parties and they are less forthcoming and honest about their case, concerns, and weaknesses in their arguments because they know that the mediator may subsequently serve as arbitrator.<sup>236</sup> Other skeptics contend that Med-Arb unfairly coerces the parties to settle their disputes at the mediation phase.<sup>237</sup> Consequently, the parties do not feel as though they have actually consented to the Med-Arb settlement and are thus less satisfied and committed to honoring and

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<sup>232</sup> David J. McLean & Sean-Patrick Wilson, *Compelling Mediation in the Context of Med-Arb Agreements*, 63 DISP. RESOL. J. 28, 30 (2008). (noting that while mediation can often be undercut by a party who is not truly dedicated to the resolution of the dispute, “Med-Arb eliminates that possibility . . . [because] a binding arbitration decision will follow if the parties are unable to reach a settlement agreement.”).

<sup>233</sup> *See id.*

<sup>234</sup> *See id.* at 30, n. 6 (“A settlement agreement resulting from a ‘pure’ mediation is generally enforceable as a contract but courts are unlikely to give that agreement the same deference as an arbitral award. Mediated settlements in the context of Med-Arb are different, however, since the mediation and arbitration processes are intertwined, and the mediated settlement can be recorded in the arbitral award and become binding and enforceable.”).

<sup>235</sup> *See Ebe, supra* note 229, at 70.

<sup>236</sup> *See Vera, supra* note 230, at 157-58.

<sup>237</sup> *Id.* at 159-60; *see also* Gerald F. Phillips, *The Survey Says: Practitioners Cautiously Move Toward Accepting Same-Neutral Med-Arb, but Party Sophistication is Mandatory*, 26 ALT. TO HIGH COST LITIG. 101, 102 (2008) (noting that some practitioners currently describe same-neutral Med-Arb as “contrary to accepted practice [and a] conflict of interest problem.”).

enforcing that settlement.<sup>238</sup> Further, parties may continue to manipulate the resolution process and simply refuse to mediate the dispute in good faith because of the guarantee that arbitration will result regardless of their commitment to the preliminary mediation.<sup>239</sup>

The biggest criticism of Med-Arb is that the intermixing of the mediation and arbitration dispute resolution processes causes irreconcilable ethical problems.<sup>240</sup> An inevitable result of one person serving as both mediator and arbitrator is that they become privy to confidential information from both sides.<sup>241</sup> Consequently, a med-arbiter may be more likely to develop a bias or preference towards one of the parties.<sup>242</sup> While mediator bias for one party may not be a serious problem—since the mediator is merely acting as an intermediary—such partiality could become a major concern if the med-arbiter is then required to make discretionary choices and rulings as arbitrator.<sup>243</sup>

Even absent clear bias, critics argue that serving as both mediator and arbitrator is impermissible on purely ethical grounds.<sup>244</sup> Ultimately, the purpose of mediation is to help the parties understand what they want from the resolution process and what areas they remain willing to compromise on; arbitration, conversely, is primarily concerned with using an impartial body to hear each party's arguments, the relevant evidence, and then make a reasoned determination on the basis of those facts and theories.<sup>245</sup>

Accordingly, mediation ethics—established by the Model Standards of Conduct for Mediators—are generally concerned with issues of self-determination, impartiality, and

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<sup>238</sup> See Vera, *supra* note 230, at 157-58.

<sup>239</sup> See Ebe, *supra* note 229, at 70.

<sup>240</sup> See *id.* at 68-70. See, e.g., Landry, *supra* note 227, at 265-66. See Vera, *supra* note 230, at 158-60.

<sup>241</sup> Vera, *supra* note 230, at 158.

<sup>242</sup> *Id.* at 159-60.

<sup>243</sup> *Id.* at 159.

<sup>244</sup> See e.g., Richard Fullerton, *Alternative Dispute Resolution: The Ethics of Mediation-Arbitration*, 38 COLO. LAWYER 52, 55 (2010) [hereinafter, "ADR ETHICS"] (observing that "[b]y conducting both the mediation and arbitration under one neutral, the core principles of each may be compromised . . .").

<sup>245</sup> See Vorys, *supra* note 224, AT 880-86.

confidentiality.<sup>246</sup> These ethical codes focus on the voluntary nature of the parties' involvement in the mediation, the ability of the mediator to meet separately with each party in an effort to promote candid discussion of the disputed issues, and maintaining the confidentiality of information acquired from either party.<sup>247</sup> On the other hand, arbitrator ethics are guided by the Code of Ethics for Arbitrators in Commercial Disputes, focusing on avoiding the appearance of impropriety, fairness of the proceedings, independence, and preserving the trust and confidence of the parties.<sup>248</sup>

The divergent nature of these ethical concerns raised by Med-Arb is simply irreconcilable for many commentators.<sup>249</sup> First, the parties in Med-Arb are involuntarily involved in the mediation insofar as they cannot simply refuse to mediate and walk away due to the requirement of submitting to binding arbitration in the event of a failed mediation.<sup>250</sup> Second, while a mediator needs to freely converse with each party independently, an arbitrator has an ethical duty to remain independent from the parties.<sup>251</sup> Third, there is no true sense of confidentiality between the mediator and parties, while arbitration requires strict confidentiality to prevent one side from being unfairly prejudiced.<sup>252</sup> Finally, parties may manipulate the Med-Arb process by intentionally misleading or even lying during the mediation stage in order to gain leverage or preference in the subsequent binding arbitration.<sup>253</sup>

#### *D. Med-Arb and Men's Professional Tennis*

Despite the concerns associated with Med-Arb—which many consider overstated or curable<sup>254</sup>—the process continues to gain

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<sup>246</sup> See ADR ETHICS, *supra* note 244, at 54-55.

<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

<sup>249</sup> See Phillips, *supra* note 237, at 102.

<sup>250</sup> See ADR ETHICS, *supra* note 244, at 56.

<sup>251</sup> *Id.* at 55.

<sup>252</sup> *Id.*

<sup>253</sup> *Id.* at 57.

<sup>254</sup> See *id.* (observing that some commentators argue “[c]oncerns about the possible contamination of the neutral by receiving arguments or information in private meetings are overstated. Judges regularly rule on the admissibility of evidence and if that evidence is rejected the judge disregards the information that has been tendered.”).

popularity in the context of resolving international disputes between sophisticated parties.<sup>255</sup> Given the issues currently facing men's professional tennis, Med-Arb remains an advisable dispute resolution method for several reasons.

First, a key to resolving the disputes hampering men's professional tennis is that both the governing bodies (ATP & ITF) and their players must assume joint responsibility for the problems that have arisen. By first requiring the parties to mediate and then engage in binding arbitration, the Med-Arb process forces both parties to come to the bargaining table on more equal terms, promoting an environment where the ATP, ITF and the players can candidly consider the strengths, weaknesses, and implications of their respective positions.

Second, the fact that Med-Arb combines two ADR methods will help to ensure that the ATP, ITF, and players reach the best possible agreement. Several complex issues are involved in the present professional tennis crisis and "Med-Arb is the perfect ADR blend for complex disputes involving multiple issues, because the unresolved issues not resolved in mediation can then be resolved through arbitration."<sup>256</sup>

Third, the time and money saved by the Med-Arb process would be invaluable because current tennis issues need to be quickly and efficiently resolved. Tennis players involved in these disputes are aware of their limited professional careers and naturally more inclined to seek immediate gains. Conversely, the ATP and ITF are more likely to be concerned with the implications of any resolution on the indefinite future of the sport generally. Med-Arb allows the consideration of these divergent interests in a single effort. This is because mediation attempts to form long-term solutions and the potential for binding arbitration ensures that major issues are resolved presently.

Fourth, the flexibility of Med-Arb allows for the integration of a variety of social, cultural, and legal backgrounds into the resolution process.<sup>257</sup> Professional tennis has global reach across

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<sup>255</sup> See Phillips, *supra* note 237, at 103-04.

<sup>256</sup> Gil Fried & Michael Hiller, *ADR In Youth and Intercollegiate Athletics*, 1997 B.Y.U. L. REV. 631, 641 (1997).

<sup>257</sup> See Vera, *supra* note 230, at 154.

many nations<sup>258</sup> and its leadership comes from a variety of backgrounds,<sup>259</sup> therefore the ability to account for cultural differences remains instrumental in reaching a mutually agreeable resolution.

Finally, current disputes between players and the ATP and ITF should use Med-Arb because it allows one neutral party to deal with the problems existing between the parties. In jointly selecting a med-arbiter, the players, the ATP, and the ITF can guarantee selection of someone they are *all* comfortable with and who understands the intricacies of professional tennis. Consequently, the parties would be better able to present their respective cases and more willing to focus on the most important issues to them, while conceding on lesser concerns.

## VI. RECENT DEVELOPMENTS

### A. *Scheduling Alterations*

The 2014 ATP schedule, released this past January, incorporated a series of changes to address and alleviate player concerns and displayed a willingness to consider player input when determining official ATP policies.<sup>260</sup> The schedule remains incredibly diverse in its internationality, featuring sixty-one tournaments in thirty-one different countries and spanning six continents.<sup>261</sup>

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<sup>258</sup> *ATP World Rankings*, ATP WORLD TOUR, <http://www.atpworldtour.com/Rankings/Singles.aspx?d=26.12.2011&r=1&c=#> (last visited Feb. 25, 2014) (noting that the top twenty-five ranked men's singles players at the end of the 2011 season represented thirteen different nations—Serbia, Spain, Switzerland, Great Britain, France, the Czech Republic, the United States, Argentina, Sweden, Ukraine, Croatia, Germany, and Japan).

<sup>259</sup> *Brad Drewett Leaves Lasting Legacy*, ATP WORLD TOUR (May 3, 2013), <http://www.atpworldtour.com/News/Tennis/2013/04/18/Brad-Drewett-Passes-Away.aspx> (noting that former ATP Tour President and Chief Executive, Brad Drewett, was Australian (the new ATP President, Chris Kermode, who will take office on January 1, 2014 is British); ITF President Francesco Ricci Bitti is Italian and Executive Vice-President Juan Margets is Spanish); *See generally Ricci Bitti Re-Elected ITF President*, ITFTENNIS (Sep. 23, 2011), <http://www.itftennis.com/about/news/articles/ricci-bitti-re-elected-itf-president.aspx>.

<sup>260</sup> ATP Announces 2014 ATP World Tour *Calendar*, ATP WORLD TOUR (Jan. 21, 2013), <http://www.atpworldtour.com/News/Tennis/2013/01/Features/ATP-Announces-2014-Calendar.aspx>.

<sup>261</sup> *Id.*

The primary schedule changes are headlined by the addition of a month-long South American tournament segment in February, including a new World Tour 500 event in Rio de Janeiro, Brazil.<sup>262</sup> Although former ATP Executive Chairman and President Brad Drewett<sup>263</sup> noted that the new South American swing would exploit general tennis growth and development opportunities throughout the region, none of the tournaments are mandatory and, thus, player scheduling obligations are not affected by the change.<sup>264</sup>

Additionally, the 2014 ATP calendar will once again provide for a one-week break between the BNP Paribas Paris Masters 1000 tournament and the year-end championships held in London's O2 Arena.<sup>265</sup> This alteration to the ATP schedule is

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<sup>262</sup> *Id.*

<sup>263</sup> Drewett began serving as ATP Executive Chairman and President in January 2012 but was subsequently diagnosed with ALS and passed away in May of 2013. *Brad Drewett Leaves Lasting Legacy*, ATP WORLD TOUR (May 3, 2013), <http://www.atpworldtour.com/News/Tennis/2013/04/18/Brad-Drewett-Passes-Away.aspx>.

<sup>264</sup> *ATP Announces 2014 ATP World Tour Calendar*, ATP WORLD TOUR (Jan. 21, 2013), <http://www.atpworldtour.com/News/Tennis/2013/01/Features/ATP-Announces-2014-Calendar.aspx>. All of the tournaments in this "South American swing" are ATP World Tour 250 and 500 events. *Id.* Technically, no 250 level tournament is mandatory for any player to attend and the current mandatory schedule requirements for ATP World Tour 500 events are as follows: all top 30 ranked players (as determined by the previous year end ranking points) must play a minimum of four 500 level tournaments during the calendar year. *Frequently Asked Questions, Section 5*, ATP WORLD TOUR, <http://www.atpworldtour.com/Rankings/Rankings-FAQ.aspx> (last visited Feb. 25, 2014). Further, at least one of the four required 500 events must occur after the US Open tournament is held. *Id.* Players failing to meet this participation requirement, to play one 500 event after the US Open, or who withdraw from any 500 level event after the acceptance list is released, receive zero points for each event under required four-tournament minimum. *Id.* Any such zero point penalties may be appealed and subsequently reviewed; however, no suspensions or fines may be levied as penalties against players who fail to meet the tour level 500 event mandatory participation requirements. *Id.*

<sup>265</sup> *Id.* See *2011 ATP Results Archive*, ATP WORLD TOUR, <http://www.atpworldtour.com/Scores/Archive-Event-Calendar.aspx?t=2&y=2011> (last visited Feb. 25, 2014) (noting that the one-week period between the Paris Masters 1000 event and the year-end championships is actually a return to a previous scheduling format; the ATP World Tour included a week break between the two events as recent as 2011). In 2012 and 2013 the schedule was amended so as to eliminate this extra week and the Paris Masters event was followed directly by the ATP World Tour Finals in London. *Id.*

indicative of a willingness to heed the wishes of the players. Former ATP Chairman Drewett stated:

Following careful consideration and feedback from our tournament and player members, the prevailing consensus for the benefit of our key stakeholders was to reinstate a week's break in between the ATP World Tour Masters 1000 event in Paris and our season-ending event in London.<sup>266</sup>

While the 2014 ATP schedule incorporates some changes meant to address and alleviate player concerns, it remains to be seen what effect these changes will actually have. The new schedule does not alter the mandatory tournaments that top players are required to participate in, does not reduce the amount of tournaments overall, and actually reduces the off-season for players qualifying for the year-ending ATP World Tour Finals.<sup>267</sup> Additionally, despite player concerns regarding the number of tournaments played on hard court surfaces<sup>268</sup>—generally considered the most physically demanding and damaging to a player's body—the new ATP schedule actually increases the number of hard court events.<sup>269</sup> Finally, it remains unclear how many of the scheduling changes are actually the result of the ATP's desire to expand the sport's global influence, exploit new

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<sup>266</sup> *ATP Announces 2014 ATP World Tour Calendar*, ATP WORLD TOUR (Jan. 21, 2013), <http://www.atpworldtour.com/News/Tennis/2013/01/Features/ATP-Announces-2014-Calendar.aspx>.

<sup>267</sup> Assuming the Australian Open, the first Grand Slam event annually, continues to occur the second week of January, players qualifying for the year-ending championships in 2014 will have less than two months between the end of that competition and the 2015 season's premier major event. Players wanting to play in a warm up tournament will have even less of an off-season; the year's first events—held at Brisbane, Doha, and Chennai—begin December 30. Given player concerns regarding the lack of sufficient time between annual tennis seasons, the extra week between the year's final masters 1000 event and the year-ending championships actually works to shorten an already minimal period between tennis seasons for the game's top players.

<sup>268</sup> Ben Rothernberg, *Nadal Renews Criticism of Hardcourt Schedule*, N.Y. TIMES (Mar. 13, 2013), available at <http://www.nytimes.com/2013/03/14/sports/tennis/nadal-renews-criticism-of-hardcourt-schedule.html> (discussing the concerns of players, and especially of Spanish superstar Rafael Nadal, regarding the number of ATP events played on hard-court surfaces).

<sup>269</sup> *ATP Announces 2014 ATP World Tour Calendar*, ATP WORLD TOUR (Jan. 21, 2013), <http://www.atpworldtour.com/News/Tennis/2013/01/Features/ATP-Announces-2014-Calendar.aspx>. Specifically, the ATP schedule for 2014 includes changing the ATP 500 event held in Acapulco, Mexico from a clay court surface to a hard court. *Id.*

markets, and appease concerns of tournament cities and sponsors.<sup>270</sup>

### *B. Grand Slams Increasing Prize Money*

Over the past year there have been substantial steps taken in terms of prize money awarded by each of the Grand Slam events. This recent trend began in November 2012 when the Australian Open announced it would be increasing the players' prize money for the 2013 tournament by \$3.7 million dollars.<sup>271</sup>

Less than a month after the Australian Open's decision, the US Open followed suit, announcing in December 2012 that the tournament prize money would increase \$4 million.<sup>272</sup> Then, in an even more dramatic move, the USTA unveiled in March 2013 a restructuring of US Open prize money distribution, adding an additional \$4.1 million to the 2013 player compensation and aiming for a total prize money pool of \$50 million by 2017.<sup>273</sup> Together, these changes raised the prize money for the 2014 US Open to \$33.6 million, an \$8.1 million increase from 2012.<sup>274</sup>

The French Open and Wimbledon rapidly emulated the increases in tournament prize money in line with the Australian Open and US Open. In mid-April 2013, the French Open committed to increasing their overall prize money by \$4.1 million, with player compensation totaling \$28.7 million in 2013.<sup>275</sup>

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<sup>270</sup> See *id.* Commenting on the 2014 ATP calendar's new month-long South American tour, Brad Drewett said "[t]he four-week South American swing including a new event in Rio de Janeiro is an exciting development for the sport. There are significant opportunities for growth in South America, a region that has become a key focus for us as we look to grow and develop the sport in that territory." See also Andre Chris Smith, *ATP Feature Story: Growth of Tennis in Japan*, 10 NINS 4 ALL, <http://10nis4all.wordpress.com/welcome-to-10-nis-4-all/atp-feature-story/> (last visited May 25, 2014) (discussing ATP tennis expansion and influence in Japan and Asia).

<sup>271</sup> *Aussie Open Increases Prize Money*, ESPN (Oct. 2, 2013, 12:02 AM), [http://espn.go.com/tennis/story/\\_id/9756996/australian-open-announces-increase-prize-money](http://espn.go.com/tennis/story/_id/9756996/australian-open-announces-increase-prize-money).

<sup>272</sup> *US Open Prize Money to Reach \$50M*, ATP WORLD TOUR (Mar. 20, 2013), <http://www.atpworldtour.com/News/Tennis/2013/03/12/US-Open-Prizemoney.aspx>.

<sup>273</sup> *Id.*

<sup>274</sup> *Id.* Perhaps even more amazingly, the USTA plans to further increase US Open prize money to \$50 million by 2017 meaning that the player prize pool would nearly double in only five years.

<sup>275</sup> Douglas Robson, *French Open Increases Prize Money More than \$4M in 2013*, USA TODAY SPORTS (Apr. 15, 2013, 10:35 AM),

Although the winners of the tournament saw a hefty increase in earnings,<sup>276</sup> the players eliminated in the opening three rounds actually received the greatest increase in pay at twenty-five percent more than in 2012.<sup>277</sup> In addition, the French Tennis Federation indicated that it intends to further increase prize money an additional \$13.08 million by 2016.<sup>278</sup> Just over a week later, Wimbledon gave the players the largest prize money increase in the history of professional tennis.<sup>279</sup> In total, the All England Lawn Tennis Club elected to raise the overall prize money by nearly \$10 million, increasing the Wimbledon championships player compensation to a hefty \$34.4 million<sup>280</sup>. This prize money increase is a staggering forty percent over the 2012 total prize pool.<sup>281</sup> Importantly, the major increase in player compensation at Wimbledon remains with the early round losers and was intended to “increase the pool of players able to make a viable living from the sport.”<sup>282</sup>

Most recently, in September 2013, the Australian Open instituted an additional \$2.8 million in prize money for the 2014 tournament. Taken with its prior unprecedented increase in 2012,<sup>283</sup> Australian Open prize money has now increased by almost \$7 million in the past two years.<sup>284</sup>

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<http://www.usatoday.com/story/sports/tennis/2013/04/15/roland-garros-increases-prize-money-2013/2083515/>.

<sup>276</sup> *Id.*

<sup>277</sup> *Id.*

<sup>278</sup> *Id.* (noting that despite the success regarding player compensation at the French Open, the ATP players have continued to express serious concerns regarding the fifteen-day schedule (Grand Slams are normally two-week events) of the tournament, which has begun on Sunday since 2006 in order to allow tournament sponsors and organizers to benefit from better television ratings and attendance on the weekend).

<sup>279</sup> Christopher Clarey, *Wimbledon Joins In by Hiking Its Prize Money*, N.Y. TIMES (Apr. 23, 2013), <http://www.nytimes.com/2013/04/24/sports/tennis/24iht-tennis24.html>.

<sup>280</sup> *Id.*

<sup>281</sup> *Id.*

<sup>282</sup> *Id.* All England Lawn Tennis Club chairman Philip Brook noted that the tournament prize money increase was intended to help players who lose in earlier rounds; ultimately, the new prize money increase means that players losing in the first three tournament rounds enjoy at least a 62 percent pay increase over 2012. *Id.*

<sup>283</sup> *Aussie Open Increases Prize Money*, ESPN (Oct. 2, 2013, 12:02 AM), [http://espn.go.com/tennis/story/\\_/id/9756996/australian-open-announces-increase-prize-money](http://espn.go.com/tennis/story/_/id/9756996/australian-open-announces-increase-prize-money).

<sup>284</sup> *Id.*

In all, the past few years have seen the Grand Slam tournaments of professional tennis take immense steps towards increasing their player prize money pools.<sup>285</sup> Further, these increases are, in large part, intended to provide sufficient compensation to players losing earlier in the tournaments in order to ensure the ability of lower ranked players to earn a legitimate living in the sport.<sup>286</sup>

Most importantly, these changes are the result of player unification and willingness to push for such change. Ultimately, the initial impetus for the discussions between players and the Grand Slam organizers that led to the Australian Open's increase in prize money was the threat of a large-scale player strike prior to the 2012 tournament.<sup>287</sup> Craig Tiley, tournament director of the Australian Open, openly acknowledged that the unity and determination of the players was a major factor in facilitating a legitimate discussion on the issue of prize money. Tiley stated "[w]e took the threat [of player boycott or labor action] seriously and started talking to the playing group right away."<sup>288</sup> Tiley further believes that these changes may be just the beginning of major advances for the sport, all originating from the players' realization that they possess great collective power over the professional tennis world.<sup>289</sup>

However, these increases in Grand Slam prize money are only a promising start towards addressing player concerns and tennis cannot view it as a complete solution to the general dissatisfaction that served as the catalyst for such changes.

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<sup>285</sup> See Clarey, *supra* note 279. Assuming no additional changes, the final Grand Slam tournament prize money pools, in order of overall compensation provided, are presently as follows: French Open at \$28.7 million (sixteen percent increase from 2012), Australian Open at \$31 million (fifteen percent increase from 2012), US Open at \$33.6 million (thirty-one percent increase over 2012), and Wimbledon at \$34.4 million (forty percent increase from 2012).

<sup>286</sup> See *supra* notes 282, 285 and accompanying text.

<sup>287</sup> See Clarey, *supra* note 279 (observing that "it has been, above all, the players' greater engagement that has been the difference in this bid for a much bigger chunk of Grand Slam revenue. Their unity made the possibility of a potential boycott or other labor action much more credible.").

<sup>288</sup> *Id.*

<sup>289</sup> See *id.* Tiley commented that "I think this is a great turning point; I think the sleeping giant has been awoken. I think the playing group have realized the potential for their united ability, and I believe that's healthy."

Although substantial, the prize money increases at the Grand Slams are still well short of the initial goals and demands of the players.<sup>290</sup> Additionally, as top British star Andy Murray observed, the willingness of the Grand Slam tournaments to increase player prize money must be followed by the main ATP tournaments in order to truly achieve lasting change in the sport. Murray proclaimed:

[t]he Grand Slams aren't where a guy ranked between 50 and 100 necessarily makes the majority of their money for the year. That's in the ATP tournaments. So we can't look at the Grand Slams and blame them if a guy ranked 100 in the world isn't making as much as we would like . . . it's tournaments throughout the year where that needs to improve.<sup>291</sup>

Nevertheless, these recent developments have provided an invaluable step towards unifying the ranks of men's professional tennis and demonstrating the ability of the players, the governing bodies, and tournament organizers to put aside their differences for the good of the sport as a whole.<sup>292</sup>

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<sup>290</sup> *Id.* (discussing the fact that although these recent changes in prize money are “unprecedented in size and scope, the raises do not match what players were initially requesting . . . [p]layers wanted 25 percent of total revenue and have not yet achieved that at any Grand Slam tournament.”. The closest Grand Slam, the Australian Open, now provides combined prize money for men and women totaling around 23 percent of the tournament's total revenues. *Id.*

<sup>291</sup> See Paul Newman, *Tennis Prize-Money Increase Quells Player Strike Threat*, THE INDEPENDENT (Oct. 11, 2012), <http://www.independent.co.uk/sport/tennis/tennis-prizemoney-increase-quells-player-strike-threat-8205938.html>. Murray has expressed further concern that the prize money issue in tennis goes “a lot deeper than the ATP Tour;” specifically, Murray argues that greater prize money at the “minor leagues” of professional tennis must also address the prize money issue. *Players welcome Aussie Open Prize Money Increase*, TENNIS (Jan. 14, 2013), <http://www.tennis.com/program/2013/01/players-welcome-aussie-open-prize-money-increase/45991/#.UqdhNY1Q3Rc>. He recently observed that, “[th]e Challenger Tour prize money hasn't changed in years. Futures tournaments, I don't think their prize money has changed in the last 20 to 30 years.” *Id.* Murray fears that the inability of younger players to earn a legitimate living and finance their growth and development onto the professional tour is thus severely restricted and the sport suffers as a whole. *Id.* He notes, “[t]hat's what is stopping guys playing tennis early rather than the guys that are on the main tour stopping early. So the problem is not so much with the main tour. It's the smaller events.” *Id.*

<sup>292</sup> See Clarey, *supra* note 279. (noting that Australian Open tournament director Craig Tiley advocated such a belief when, after announcing the increase in prize money

## CONCLUSION

There are many problems and issues currently facing men's professional tennis. Players and the international bodies governing the sport—the ATP and ITF—have come into conflict over a number of issues. Player concerns over prize money and scheduling have led to dissatisfaction and even talk of a strike. Meanwhile, the ATP and ITF continue to try to find ways to work with the players on addressing other issues—most notably match fixing and doping—that continue to cause controversy. These problems have reached a boiling point and the parties involved must address them now because they are concerns that permeate the very heart of the sport and the relations between tennis' governing bodies and its players.<sup>293</sup>

Med-Arb, while somewhat controversial, is nonetheless an emerging ADR method that may prove highly effective in resolving the current issues plaguing tennis. The ability of the Med-Arb process to integrate two ADR methods—mediation and arbitration—into a single process not only saves time and costs, but it allows the parties greater involvement and comfort in the resolution process while concurrently providing the assurance that a final and binding decision will result if they are otherwise unable to settle the dispute.<sup>294</sup> Considering the diversity of problems presently facing men's professional tennis, Med-Arb can

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at the Australian Open, he noted “I think the sport's a winner . . . For our sport to be a truly global sport, it needs to be a wealthy sport and the players need to be wealthy playing it, not just those administering it.”).

<sup>293</sup> There are some signs that the pressure of the player's—particularly the active voice of the game's top stars—calls for more prize money from the Grand Slam events is being addressed. See e.g., Peter Bodo, *The Enlightened Professionals*, TENNIS WORLD (Apr. 24, 2012), <http://blogs.tennis.com/tennisworld/2012/04/cha-ching.html>. The Grand Slams have specifically heeded player concerns regarding prize money, as recent unprecedented increases in the prize money pool at these events evidence. See *supra* Section VI(b).

<sup>294</sup> One major issue, critical to overcoming the problems facing men's professional tennis, is that the players, while “united” in their push for resolution of many of the issues discussed, nonetheless lack an actual unifying body, such as a union, capable of bargaining on their behalf, in Med-Arb or otherwise. This is a major topic that would almost certainly need to be considered by the players before officially seeking any ADR procedures with the ATP and ITF. Although the ATP Players' Council might provide a vehicle through which players could currently initiate dispute resolution with the ATP and ITF, it seems likely that, in the long-term, a far more permanent solution would need to emerge.

potentially provide invaluable benefits and represent the best dispute resolution method for the ATP, ITF, and players.<sup>295</sup>

Despite recent progress in addressing player concerns regarding scheduling and prize money at the Grand Slam events, there is still a great deal of work to be done. As long as these additional issues remain unattended, men's professional tennis will exist under a cloud of uncertainty and precarious doubt. The possibility of a player strike prior to every event will be in the minds of the players, ATP, ITF, individual tournament directors, and most importantly, the fans of the sport. The players currently involved in these disputes want to get back to the game they love, and the bodies governing professional tennis want to preserve the integrity of the game while ensuring its future. The need for an efficient, effective, and agreeable solution to this dispute is apparent and dire. For the good of the game, the ATP, ITF, and players must come together to admit that they all bear responsibility for the emergence of these issues, and commit to resolving these problems now.

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<sup>295</sup> As one Med-Arb commentator put it, "Med-Arb is a good dispute resolution mechanism for disputes lacking a 'perfect answer.'" Kristen M. Blankley, *Keeping A Secret from Yourself? Confidentiality, When the Same Neutral Serves Both as Mediator and as Arbitrator in the Same Case*, 63 BALYOR L. REV. 317, 331 (2011). Certainly, there is no perfect answer to the issues facing the ATP, the ITF, and their players; however, solutions, however imperfect, must be pursued.

