The Long Hard Fall from Mount Olympus: The 2002 Salt Lake City Olympic Games Bribery Scandal

Thomas A. Hamilton
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I. INTRODUCTION

When recollecting the XIX Winter Olympic Games at Salt Lake City, what first comes to mind? Is it Sarah Hughes’ gold medal winning figure skating routine, the Canadian men’s ice hockey team’s gold medal game victory over the United States, or Apolo Anton Ohno’s quest for five gold medals?\(^1\) Although these are all notable accomplishments, they are unlikely to be the first thought out of any Olympic enthusiast’s mind. Rather, it is likely that the first thought turns to one of the many scandals that scarred the games. From bribery to drugs, the Salt Lake City Winter Olympic Games had it all.

The first scandal hit before the games even started.\(^2\) The President and Vice President of the Salt Lake Bid Committee were caught offering bribes to members of the International Olympic Committee (IOC).\(^3\) Thomas Welch and David Johnson, the President and Vice President, respectively, have subsequently been indicted on fraud and bribery charges.\(^4\) Just when we thought all of the scandals were over, and we prepared for the games themselves, scandal once again hit the Salt Lake City Olympic Games. During the pairs’ figure skating competition, dual gold medals were eventually awarded as the result of French figuring skating judge Marie-Reine Le Gougne’s favorable score for the Russian pair of Elena Berezhnaya and Anton

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2. See generally United States v. Welch, 327 F.3d 1081 (10th Cir. 2003).

3. Id.

4. Id.
Sikharulidze to the disadvantage of the Canadian pair of Jamie Sale and David Pelletier, when it was discovered that there was a vote swapping agreement between the French and Russian skating federations.5 In November 2003, over a year and a half after the conclusion of the Games, the controversy surrounding the games lingered.6 This time, the scandal concerned allegations of doping.7 Although doping has been around almost as long as the games themselves, the IOC has made great efforts to ban doping in recent years, particularly through the creation of the World Anti-Doping Agency and Court of Arbitration for Sport. These agencies were created to control use of particular banned substances and to enforce the World Anti-Doping Code through arbitration. The discovery of THG was very troubling to the IOC because this newly discovered steroid was able to avoid discovery during any of the scientific tests performed at the Games, which were meant to quickly and accurately discover banned substances in Olympic competitors.8 Upon this discovery, the IOC immediately decided to retest over two hundred samples from the Salt Lake Games to determine whether any individuals used THG to enhance their performances.9

These three scandals highlight the bitter aftertaste the games left after the conclusion of formal competition, and unfortunately, in many ways, they have overshadowed the competitions and athletic accomplishments themselves. The focus of the remainder of this article surrounds the first scandal, which included the bribery of multiple IOC officials in securing the acceptance of Salt Lake City’s bid for the 2002 Winter Olympic Games.10 Although there have also been discussions of reform within the United States Olympic Committee (USOC) since the events in Salt Lake City, that discussion has been omitted in this article to focus on the reforms within the IOC.

Part II of this article discusses the facts surrounding the scandal. This is followed by Part III, which takes a concentrated look at the IOC’s response to the events in Salt Lake City, including the development of the IOC Ethics Commission. Part IV focuses on the United States government’s response to the events in Salt Lake City. This includes the criminal prosecution of the individuals within the Salt Lake Bid Committee who were found to have

7. Id.
8. Id.
9. Id.
10. See generally United States v. Welch, 327 F.3d 1081 (10th Cir. 2003).
bribed the various IOC officials and a congressional investigation into the IOC's site selection process. Part V examines the critiques made by various scholars, the United States government, and IOC members following the IOC’s reforms, which resulted from the events in Salt Lake City. This article then concludes with Parts VI and VII, which provide recommendations for further improvements that can still be made and the road ahead as the Olympic Movement progresses through the twenty-first century.

II. THE SCANDAL

The scandal that surrounds the IOC’s choice of Salt Lake City to host the XIX Winter Olympic Games is what some consider the biggest ethics scandal in the history of the Olympic Movement.\(^{11}\) The bid process is initiated when the organizing committee, here the Salt Lake Bid Committee, and the national governing body, here the USOC, file an Undertaking with the IOC.\(^{12}\) In this Undertaking, the two parties jointly agree to abide by the provisions in the IOC's Charter and to act within the IOC's instructions to candidate cities bidding on the Games.\(^{13}\) In 1994, the USOC and Salt Lake Bid Committee filed an Undertaking with the IOC to request consideration as a candidate city.\(^{14}\) Subsequently, the IOC distributed a series of instructions to all of the 2002 Winter Olympic Games candidate cities and IOC members involved in the bidding process.\(^{15}\) IOC members, who are also bound by the IOC Charter, must also take an oath to remain free from commercial influence.\(^{16}\) The instructions to candidate cities “limited certain expenditures by candidate cities, created rules concerning visits by IOC members to candidate cities, and placed limitations on the value of gifts and other benefits which could be given to IOC members by and on behalf of candidate cities.”\(^{17}\)

From February 1998 to July 1999, Thomas Welch, President of the Salt Lake Bid Committee, and David Johnson, Vice President of the Salt Lake Bid Committee, diverted the income of the bid committee by “giving . . . money and other material benefits to influence IOC members to vote for Salt Lake City to host the Olympic Winter Games[,]”\(^{18}\) Furthermore, it is alleged that


\(^{12}\) See Welch, 327 F.3d at 1085.

\(^{13}\) Id. at 1085.

\(^{14}\) Id.

\(^{15}\) Id.

\(^{16}\) Id.

\(^{17}\) Id.

\(^{18}\) Id. (quoting the indictment).
these two Salt Lake Bid Committee board members directed a Salt Lake Bid Committee sponsor to make a series of payments to the board members in cash, so that the payments would not appear on the Committee’s books and could be used for their “own personal purposes.”

According to the complaint, Thomas Welch and David Johnson

(1) made direct and indirect payments of money and other things of substantial value to IOC members; (2) paid for tuition, living expenses, and spending money for the children and relatives of IOC members; (3) paid for medical expenses of IOC members and their relatives; and (4) paid for personal and vacation travel expenses of IOC members and their relatives. Defendants also purportedly obtained lawful permanent resident alien status for an IOC member’s son through submission of false and misleading documents to immigration authorities. Defendants allegedly conferred valuable benefits upon amenable IOC members totaling approximately $1,000,000 in value.

More specifically, the alleged gifts to IOC members included:

$320,000 to Jean Claude Ganga of the Congo; (2) $91,000 to Bashir Attarabulsi of Libya; (3) $42,000 to Charles Mukora of Kenya; (4) $20,000 to Zen Gadir of the Sudan; (5) $78,000 to Un Yong Kim of South Korea; (6) $195,000 to Rene Essomba of Cameroon; (7) $3,000 to Austin Sealy of Barbados; (8) $30,000 to Augustin Arroyo of Ecuador; (9) $1,200 to Slobodan Filopovic of Yugoslavia; (10) $99,000 to David Sibandze of Swaziland; (11) $107,000 to Lamine Keita of Mali; (12) $33,750 to Pirjo Haggman of Finland; (13) $8,000 to Guirandou N’Daiye of the Ivory Coast; (14) $5,000 to Anton Geesink of the Netherlands; and (15) $20,000 to Sergio Santander-Fantini of Chile.

Thomas Welch and Robert Johnson are suspected to have concealed these gifts in a variety of ways. They allegedly

19. Id.
20. Id.
21. Id. at 1085-086 n.4.
(1) made payments to IOC members in cash; (2) created and funded a sham program known as the National Olympic Committee Program ostensibly to provide athletes in underprivileged countries with training and equipment; (3) entered into sham contracts and consulting agreements on behalf of the [Salt Lake Bid Committee]; (4) recorded payments and benefits which the [Salt Lake Bid Committee] provided to IOC members inaccurately in corporate books and records; (5) placed false, fraudulent, and misleading information in [Salt Lake Bid Committee] financial records and statements, and (6) failed to disclose material information in public documents.22

III. THE IOC REACTS

Following the discovery of these various “gifts” provided to various IOC members by the Salt Lake Bid Committee, the IOC launched its own internal investigations into the dealings in Salt Lake City.23 Juan Antonio Samaranch, IOC President at the time of the scandal, initiated this investigation by appointing Dick Pound, the then-IOC Vice President, to lead a committee to investigate any wrongdoing in the bidding process for the 2002 Winter Olympic Games.24 IOC President Samaranch also appointed Thomas Bach, a former Olympic fencer from Germany, Pal Schmitt, a former Hungarian fencer, Jacques Rogge, and Judge Mbaye to join Dick Pound on the investigative committee.25 It is important to note that every member appointed to this investigative committee was also a member of the IOC board.26

The goal of the investigative committee was to wipe out corruption within the IOC once and for all.27 The first action this committee took was to issue an apology “to the Olympic athletes who have inspired us through the years and whose lives so poignantly embody the Olympic ideals.”28 Dick Pound, head of the investigative committee, also attempted to deflect criticism of the IOC by stating that “the Sydney games will be one of the greatest ever . . . When this is all over, the IOC will emerge a much stronger and more effective

22. Id. at 1086.
23. JENNINGS, supra note 11, at 67.
24. Id.
25. Id.
26. Id. at 67-68.
27. Id. at 68.
28. Id. at 70.
organization."\(^{29}\)

In 1999, upon conclusion of the work by the investigative committee, Dick Pound stated, "The investigation has been an unflinching exercise in pursuing the truth and will be unflinching in its recommendations."\(^{30}\) In fact, three individuals resigned even before Pound’s determination was issued.\(^{31}\) These included Pirjo Haggman of Finland, Bashir Mohamed Attarabulsi of Libya, and David Sibandze of Swaziland.\(^{32}\) A few days later, in Lausanne, Switzerland, Dick Pound announced sanctions against fourteen members, including the suspension and eventual expulsion of six IOC board members.\(^{33}\) The six expelled board members were Augustin Arroyo of Ecuador, Jean Claude Ganga of the Congo, Zen Gadir of the Sudan, Lamine Keita of Mali, Charles Mukora of Kenya, and Sergio Santander of Chile.\(^{34}\) Holland’s Anton Geesink and ten others received warning letters, and with the death of the final member involved in the scandal, Dick Pound closed his investigation into wrongdoings by the IOC membership.\(^{35}\) But, Juan Antonio Samaranch was not completely satisfied. In February 1999, Samaranch sent letters to all of the cities that had applied for bids for the Olympics since 1996.\(^{36}\) Among the thirty-seven bidding cities encompassed in this group, none of them raised major allegations on IOC members not already under investigation.\(^{37}\)

Although there were no additional findings of major violations,\(^{38}\) the controversy did not end there. A letter from IOC member Mario Pescante revealed that some IOC members requested scholarships from the Rome Olympic Bid Committee, which was attempting to secure a bid to host the 2004 Summer Olympic Games.\(^{39}\) He also questioned why the IOC never performed a detailed investigation of the selected city, Athens, Greece.\(^{40}\) An official from Anchorage, Alaska also confirmed that IOC members, during Anchorage’s quest to host the 1992 and 1994 Winter Olympic Games,
solicited bribes.\textsuperscript{41} It is important to note that, although allegations of bribe solicitations arose during the bid solicitation process for games other than Salt Lake City, there is no evidence that any of these other bribery requests were ever fulfilled. \textsuperscript{42} After finding no evidence that any of these requests were ever fulfilled, the IOC concluded their investigation into specific acts of wrongdoing during the bid processes for hosting the Olympic Games.\textsuperscript{43}

Following the previously discussed investigation, the IOC developed an Ethics Commission, which began drafting a Code of Ethics on May 3, 1999.\textsuperscript{44} A mere three weeks later, on May 25, 1999, the IOC Ethics Commission finalized the Code of Ethics, which was later introduced at the 109th IOC Session in Seoul, Korea on June 16, 1999.\textsuperscript{45} The Preamble to the IOC Code of Ethics states that the “International Olympic Committee and each of its members, the cities wishing to organise [sic] the Olympic Games . . . and the National Olympic Committees . . . restate their commitment to the Olympic Charter and in particular its Fundamental Principles.”\textsuperscript{46} Although the Preamble seems to encompass all of those with a connection to the Olympic movement, the language that follows concentrates on the responsibilities of the candidate cities.\textsuperscript{47} For instance, Article 14, which focuses on the sanctions for violating the Code of Ethics, only speaks to the possible withdrawal of a city’s candidacy and possible sanctions against a National Olympic Committee by not allowing them to submit any future candidate cities.\textsuperscript{48} One of the few focuses on the IOC itself concerns language placing the selection of the host city under the control of the IOC Ethics Committee.\textsuperscript{49} On April 26, 2007, the IOC Code of Ethics underwent a subsequent revision at the IOC Executive Committee meeting in Beijing, China.\textsuperscript{50} With this revision, the IOC added a prohibition against betting on the Olympic Games,\textsuperscript{51} but more significantly, it removed the provision requiring the Ethics Commission to submit a report to

\textsuperscript{41} Id.
\textsuperscript{42} Id.
\textsuperscript{43} See IOC Crisis and Reform, supra note 35, at 2.
\textsuperscript{44} Id.
\textsuperscript{45} Id.
\textsuperscript{47} Id.
\textsuperscript{49} Id. at Art. 12.
\textsuperscript{50} IOC CODE OF ETHICS, supra note 46.
\textsuperscript{51} Id. at § A(5).
the IOC on the application of the Code and any breaches it has discovered.\textsuperscript{52} The removal of this provision from the IOC Code of Ethics creates an antithesis from how the IOC reacted to the events of the 2002 Olympics and the call for increased transparency that one normally finds within an organization after a scandal and crisis.\textsuperscript{53} For example, after the fiscal crisis in 2008 and 2009, central banks across the world called for increased transparency within their own organizations in an effort to prevent a similar crisis from occurring in the future.\textsuperscript{54}

The IOC Ethics Commission, in Article 9 of its Implementing Provision of the Code of Ethics relating to the “Rules of Conduct Applicable to All Cities Wishing to Organize the Olympic Games,” clearly bans candidate cities from giving gifts to IOC members.\textsuperscript{55} Prior to the enactment of these rules, giving gifts to IOC members by candidate cities was not clearly forbidden. These Rules of Conduct also regulate activity between candidate cities, outlawing collusion to influence decisions by the IOC members.\textsuperscript{56} Upon a proof of a breach of any rule in the Rules of Conduct, the Ethics Commission may issue a warning to the city.\textsuperscript{57} If the Ethics Commission finds a severe or repeated violation, it may propose to the IOC Executive Committee for the withdrawal of the city’s candidature.\textsuperscript{58} Following these reforms, the IOC has implemented these rules into the documents presented to potential candidate cities.\textsuperscript{59} Before any city can enter the initial stages of the bidding process for the Games, it must first sign that it has completely read and agrees to abide by the “Rules of Conduct Applicable to All Cities Wishing to Organise [sic] the Olympic Games.”\textsuperscript{60} Finally, it is important to note that all ethics violation referrals to the Ethics Commission are kept confidential within the IOC unless the IOC wishes to make it public, allowing the IOC to hide any allegations if it so chooses.\textsuperscript{61}

\textsuperscript{52} Id. at § G(4).


\textsuperscript{54} Id.

\textsuperscript{55} IOC RULES OF CONDUCT, supra note 48, at Art. 9.

\textsuperscript{56} Id. at Art. 13.

\textsuperscript{57} Id. at Art. 14.

\textsuperscript{58} See id.


\textsuperscript{60} Id.

\textsuperscript{61} IOC RULES OF CONDUCT, supra note 48, at Art. 14.
Although the IOC Code of Ethics does not focus on or reform the duties of IOC members, other documents produced concurrently by the IOC Ethics Commission focus on the behavior of IOC members. The first document establishes rules concerning conflicts of interest affecting the behavior of Olympic parties. This document applies to all Olympic parties, which the IOC Code of Ethics defines as “[t]he International Olympic Committee and each of its members, the cities wishing to organize the Olympic Games, the Organising Committees of the Olympic Games and the National Olympic Committees.” A conflict of interest is defined as including “personal and/or material involvement ... with suppliers of the Olympic party concerned; personal and/or material involvement with sponsors, broadcasters, various contracting parties; [and] personal and/or material involvement with an organization [sic] liable to benefit from the assistance of the Olympic party concerned.” Furthermore, Article 6 notes, “[a]ny case of conflict of interest is dealt with in accordance with the provisions of the Olympic Charter and the Rules of Procedures of the Ethics Commission.” The IOC Ethics Commission Rules of Procedure allow for the Commission, in investigating cases, including those concerning conflicts of interest, to appoint a rapporteur to study the case at issue and call upon the assistance of experts it appoints. Rule 23 of the Olympic Charter, in section 1.1, lists the punishment for IOC members; providing that violations of the Ethics Code can either result in a reprimand or a suspension, which is determined by the IOC Executive Board. Following the December 1999 revision of the Olympic Charter, a member can only be expelled upon a recommendation of the IOC Executive Board to the IOC General Session, which subsequently votes for the expulsion with a two-thirds majority in favor of removing the offending member required for expulsion.

63. IOC CODE OF ETHICS, supra note 46.
64. RULES CONCERNING CONFLICTS OF INTEREST, supra note 62.
65. Id.
Although this ends the IOC reform immediately following the Salt Lake Bidding Scandal, it does not complete the story. Another interested party was soon to get involved, the United States government.

IV. THE UNITED STATES GOVERNMENT REACTS

On October 14, 1999, the United States House of Representatives Subcommittee on Oversight and Investigations of the Committee on Commerce (Subcommittee) held a hearing on the need for reform in the IOC’s site selection process. Representative Upton, in opening the investigation, stated

[A] culture of corruption that exists within the bidding for the Olympic Games... encourages the practice of excessive lobbying of IOC members. This activity, this culture must stop. It is tarnishing the pride and prestige of the Olympic Games, and it is not fair to the athletes or the cities all over the world who are bidding for the honor of hosting the games.

The hearing consisted of hundreds of pages of rhetoric insisting that the IOC and the USOC reform their methods to prevent this type of corruption from ever tarnishing the games again. This hearing also outlined the responsibilities of interested parties within the United States during the bidding process under the law. They are outlined as follows:

The IOC Charter and the Ted Stevens Olympic and Amateur Sports Act set out the USOC’s responsibility for the selection of a United States city to hold the Olympic Games: 1. Interested cities go through a bidding process before the USOC to prove their capacity and abilities to seek the award of the Olympic Games from the IOC. 2. The USOC then selects one city to be its candidate to the IOC for the Olympic
Games. 3. If successful, that city forms a bidding committee comprised of individuals from the city which actively bids for the Games. 4. If the IOC awards the Games to that city, it must form an organizing committee comprised of individuals from the city, representatives of the USOC and the country’s IOC members as required by the Olympic and Amateur Sports Act and the IOC.

Although this hearing contained lots of rhetoric and advice to the IOC on how it should toughen its internal regulations, it is only a recommendation because United States law can merely regulate the actions of the USOC and candidate cities through provisions in the Ted Stevens Amateur Sports Act of 1978. The United States Congress could have gone as far as passing a law prohibiting the USOC from participating in any IOC sanctioned event, but there is no doubt that any such legislation would fail, as it would result in the absence of the United States in future Olympic Games.

At the conclusion of the hearing, the Subcommittee decided to wait for the end of the IOC’s internal investigation. The conclusions of the IOC’s internal investigation were outlined earlier and, therefore, warrant no further discussion at this time.

Although the United States Congress decided to wait for the IOC’s internal investigation to take its course, the United States Justice Department promptly acted in charging those involved in the bribery scandal. The United States charged Thomas Welch, President of the Salt Lake Bid Committee, and David Johnson, Vice President of the Salt Lake Bid Committee, with numerous bribery offenses, unlawful use of communications in interstate and foreign commerce, mail fraud, wire fraud, and conspiracy to perform each of these unlawful acts. On November 15, 2001, the United States District Court for the District of Utah dismissed all fifteen counts against Robert Welch and David Johnson. The United States quickly appealed the dismissal and won on appeal, and the case has been remanded back to the district court. Presently, the case is stalled at the district court level where the case is awaiting the extradition of John Kim, the son of Un

73. Id. (prepared statement of Robert H. Helmick).
75. Olympics Site Selection Process, supra note 69, at 135.
76. See generally United States v. Welch, 327 F.3d 1081 (10th Cir. 2003).
77. Id. at 1084-085.
79. Welch, 327 F.3d at 1109.
Yong Kim, who received extra benefits from the two defendants.  

Pending the outcome of United States v. Welch, the United States government has finished its criminal investigation into the Salt Lake Olympic Games bid bribery scandal without placing significant pressure on the IOC and without altering the statutory framework of the United States to prevent similar activities in the future. Presently, it appears that the United States Congress, by not altering United States law following the Salt Lake bid controversy, feels that the current status of United States bribery laws is sufficient in deterring future illegal acts. Of course, this is being severely tested in the Welch case. If Thomas Welch and David Johnson are eventually found innocent of all charges, or if the case continues to remain stalled due to the difficulty of extraditing John Kim, the sufficiency of United States law in the bribery of non-government foreign individuals may come under significant criticism.

V. CRITIQUING THE IOC RESPONSE

Although many see the IOC response to the Salt Lake City Olympic Games bid scandal as a step in the right direction, many still feel that it is insufficient in preventing future improprieties. As has been previously stated, the events surrounding the Salt Lake candidature are not exclusive to the bidding process for the 2002 Olympic Games. Allegations have arisen that the bidding process for the 1996 Summer Olympic Games, awarded to Atlanta, also involved the bribing of IOC officials.  

Representative Upton, Chairman of the Subcommittee, in his opening statement in the congressional investigation on the Salt Lake scandal, stated

We are hoping that Salt Lake City’s actions were an aberration, but sadly, as the Atlanta report so graphically confirmed, Salt Lake City was not an aberration. True, Atlanta’s experience does not rise to the same level as Salt Lake City, but it is also true that there is a system or, as I have identified, a culture of corruption that exists within the bidding for the Olympic Games that encourages the practice of excessive lobbying of IOC members.
There is absolutely no mention in any IOC documents available to the public concerning any wrongdoing during the bidding process for the 1996 Summer Games. The IOC report, following a letter of inquiry to thirty-seven prior bidding cities, also fails to report any allegations of wrongdoing in awarding the 1996 Summer Olympic Games.

While many individuals focused on the Salt Lake City scandal as a specific incident of misconduct, others chose to focus their criticism on the IOC’s internal culture. Andrew Thomson, a former Australian sports minister, felt that the IOC became too much of a political organization and that its present form is inherently flawed. Thomson also felt that the only way for the IOC to completely reform itself was to remove the present leadership, including President Juan Antonio Samaranch.

Senator Mitchell, who performed his own investigation into the Salt Lake dealings, which he subsequently presented to the United States Senate, stated

The activity in which the Salt Lake committees engaged was part of a broader culture of improper gift giving in which candidate cities provided things of value to IOC members in an effort to buy their votes... Salt Lake City... did not invent this culture; they joined one that was already flourishing.

The overwhelming amount of evidence found by those investigating the dealings in Salt Lake City has shown that it was not a one-time incident but rather part of a developed culture within the IOC. This culture was evident once again when the IOC experienced a crisis during the 2010 Winter Olympic Games in Vancouver. On the opening day of the games, Nodar Kumaritashvili (Nodar), a Georgian luger, died during a training run crash that caused “blunt force trauma” to his head when he flew off of the track. After a two month investigation, the International Luge Federation (FIL) concluded

83. IOC Crisis and Reform, supra note 35.
84. Id.
85. JENNINGS, supra note 11, at 75.
86. Id.
87. Id. at 77.
89. Id.
that a "series of interrelated events... led to this tragedy."\(^{90}\) The FIL also stated that it "does not foresee making any recommendations to the IOC for changes" and concentrated on split second mistakes made by the driver navigating the course, rather than the lack of safety barriers on the speedy track that led to the impact that directly resulted in Nodar’s death.\(^{91}\) Vancouver Olympic Committee Chief Executive, John Furlong, made the most compelling statement resonant of the IOC’s protectionist culture.\(^{92}\) Upon release of the report, he stated that he was “grateful for their affirmation of the safety measures at the (Whistler Sliding Center) that they took to protect all athletes and for their determination to learn from this tragedy.”\(^{93}\) Rather than indicating that it was a mistake to leave steel poles exposed next to the track immediately after one of the fastest and most dangerous turns of the course, the members of the Olympic movement once again focused on a denial of wrongdoing, rather than learning from scandal and tragedy to institute real reforms for the future.\(^{94}\) This shows that the culture of internal protectionism between the IOC and its sport governing body partnerships has not changed since the 2002 Salt Lake Olympic Games bribery scandal and brings to question whether the reforms the IOC instituted after the 2002 scandal were enough to eliminate the culture that led to scandal in Salt Lake City.

Although the majority of individuals believe that the newly enacted reforms are insufficient as presently written, there are a few who believe that the current reforms are too strict.\(^{95}\) Unfortunately, the one who has been most outspoken concerning the strictness of the reforms is, himself, a senior Olympic official.\(^{96}\) Denis Oswald (Oswald), head of the Association of Summer Olympic International Federations and an IOC member, believes that the new rules are too stringent in that they prevent cities that stage world championships from using those events to promote staging the Olympic Games.\(^{97}\) The current rules “prohibit candidate cities from promoting their Olympic bids while staging major international sports events.”\(^{98}\) He believes that the IOC has lost sight of the rules’ purpose and “that organizing the sports event is an unfair way to promote a candidature, and it cannot lead to bribery
or whatever."99 Furthermore, he believes that "the candidate cities will instead promote their bids in the media or elsewhere, diverting money from their events."100 Oswald believes that the IOC Ethics rules are too strict, but his criticism does not focus on the controlling aspect of the reform. Instead, he fears that the application of the reforms is incorrect.101 Allowing IOC members to visit a city during a major world championship competition does present a bias toward those cities that can be observed during those times when compared against those cities that do not have a world championship scheduled during the evaluation process.102 Although there may be no evidence that an IOC visit during that time is related to bribery, there are increased opportunities and temptations if a visit occurs during such an event. With a world championship comes increased visits from sponsors and wealthy individuals who have the means to create a temptation for impropriety.103 As we have seen through the experiences in Salt Lake City, IOC members are not immune from temptation, and any effort on behalf of the IOC to resist such temptation in the future is a step in the right direction.

VI. RECOMMENDATIONS OF THE UNITED STATES HOUSE OF REPRESENTATIVES

Upon conclusion of the IOC's investigation, the Subcommittee reconvened to discuss their views on the IOC's reforms.104 Although they believed that the IOC had taken adequate action initially, the Subcommittee unanimously agreed to the need for further action.105 In order to complete the reform effort, the Subcommittee felt additional steps needed to be taken.106

First, they argue that the IOC needs to make structural changes to establish the IOC's accountability to the Olympic Movement and to the general public.107 Second, the Subcommittee proposed that the IOC strengthen its bid procedure manual in governing the selection of host cities.108 The final, and most radical, reform proposal involved changing the status of the IOC.109

99. Id.
100. Id.
101. See id.
102. See id.
103. See id.
105. Id. at 451-570.
106. See id.
107. See id.
108. See id.
109. See id.
Subcommittee proposed that the IOC re-designate itself as a “public international organization” pursuant to the Organization for Economic Cooperation and Development’s Recommendation on Combating Bribery in International Transactions and pursuant to the Foreign Corrupt Practices Act.\textsuperscript{110}

The first proposal, which recommends making detailed structural changes to establish accountability to the Olympic movement and to the public, concentrates on the absence of accountability inherent in the IOC’s governing structure.\textsuperscript{111} Recommendations included changing the election procedure to establish a membership where a substantial majority of IOC members are elected by the National Olympic Organizations, the International Federations, and other organizations that are not directly connected to the IOC.\textsuperscript{112} Another method of enforcing accountability would be to establish term limits and subject IOC members to periodic reelection.\textsuperscript{113} The Subcommittee also felt that accountability would be increased by having public meetings, an annual audit that would be disclosed publicly, and a comprehensive conflict of interest policy that would be enforced.\textsuperscript{114} Finally, the Subcommittee argued that the IOC should create an office of compliance within the organization to govern the relationships between candidate cities and IOC members.\textsuperscript{115} This office of compliance should require all IOC members to disclose any gifts offered, whether accepted or declined by the individual member.\textsuperscript{116}

The Subcommittee did not end its recommendations there; it also gave suggestions on how the IOC should strengthen its Bid Procedures Manual, which governs the selection of host cities.\textsuperscript{117} The first suggestion by the House Subcommittee, which was enacted by the IOC as of the 2012 Summer Games selection process, is to make the rules it changed, by creating the Code of Ethics in 1999, contractually enforceable.\textsuperscript{118} Furthermore, the House Subcommittee recommended that the IOC permit visits to candidate cities only if all expenses are borne by the IOC or the members themselves, prohibit candidate cities from reimbursing travel expenses, establish a deposit system to cover any expenses incurred by the IOC, prohibit candidate cities from

\textsuperscript{110} See id.
\textsuperscript{111} See id.
\textsuperscript{112} See id.
\textsuperscript{113} Id.
\textsuperscript{114} See id.
\textsuperscript{115} Id.
\textsuperscript{116} Id.
\textsuperscript{117} See id.
\textsuperscript{118} IOC CANDIDATE ACCEPTANCE PROCEDURE, supra note 59.
giving gifts, and prohibit IOC members from participating in any scholarship or assistance programs during the site selection process.\textsuperscript{119} As of December 2003, the IOC banned the exchange of gifts, except those of nominal value in accordance with prevailing local customs as a mark of respect or friendship, between candidate cities and IOC members and regulates conflicts of interests among members and candidate cities.\textsuperscript{120}

Presently, the IOC Ethics Commission has been developed to regulate its members and the actions of candidate cities,\textsuperscript{121} but it does not have near the authority that the recommended Office of Compliance would have. It is also important to note that the IOC Executive Committee still has oversight authority of the Ethics Committee.\textsuperscript{122} This results in a body that has no autonomy and is completely dependent on the IOC Executive Committee to enforce any recommendation.\textsuperscript{123} The structure of the IOC Ethics Committee raises concerns about conflicts of interests within the organization and places doubt on the impartiality of any decisions that follow an IOC Ethics Commission investigation.

The lack of oversight over IOC actions led to the final, and most radical, part of the House Subcommittee’s recommendation in critiquing the IOC’s reform. This would place the IOC accountable under United States law.\textsuperscript{124} The applicable law is the Foreign Corrupt Practices Act (FCPA).\textsuperscript{125} The FCPA is used by law enforcement to combat official corruption in international business transactions.\textsuperscript{126} The FCPA applies both to foreign public officials and the individuals with whom they are transacting.\textsuperscript{127} If the IOC allows for itself to be held accountable under United States Law in the future, this allows for potential prosecution of both the individual providing the alleged inducement and the complicit IOC members under the FCPA if a similar scandal ever occurs in the future. As convictions for willful violations of the FCPA are subject to up to a five million dollar fine and up to twenty years in prison,\textsuperscript{128} this penalty can potentially provide a significant deterrent for offering and soliciting bribes in conjunction with site selection of future

\textsuperscript{119} Olympics Site Selection Process, supra note 69, at 451-570.
\textsuperscript{120} IOC RULES CONCERNING CONFLICTS OF INTEREST, supra note 62; IOC CODE OF ETHICS, supra note 46, at PREAMBLE.
\textsuperscript{121} IOC CODE OF ETHICS, supra note 46, at PREAMBLE.
\textsuperscript{122} Id.
\textsuperscript{123} Id.
\textsuperscript{124} Olympics Site Selection Process, supra note 69, at 451-570.
\textsuperscript{126} Id. at § 78dd-1
\textsuperscript{127} Id.
\textsuperscript{128} Id. at § 78ff(a).
international sporting events. But, the FCPA may not be applicable to the IOC, even if it allows for the organization and its membership to be held accountable under United States law. The Subcommittee, in concluding its investigation, stated that "in practically every instance, the IOC members were not acting in the role of a foreign official when they were offered or solicited things of value. Rather, they were acting in their capacities as members of the IOC, a private entity, albeit acting in a quasi-public capacity." If the evidence proved that this was in fact the case, the IOC members' conduct would fall outside the jurisdiction of the FCPA.

In 1994, the Organization for Economic Cooperation and Development adopted a Recommendation on Combating Bribery in International Business Transactions at the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention). Thirty-four nations, including the United States and Switzerland, have adopted this Convention, giving it the same effect as a statute under United States law. It is also important to note that, out of twenty-two nations that have ever hosted the Olympic Games, twenty are signatories of this Convention. The Convention, which entered into force on February 15, 1999, calls for the signatory to enact in their countries' anti-bribery laws a definition of "foreign public officials official" that includes "any official or agent of a public international organization." Presently, the Convention's provisions are enacted into the United States FCPA. The Subcommittee requested that the USOC request the issuance of an executive order designating the IOC as a "public international organization" under the FCPA. The effect of this executive order would make bribery of an IOC member a crime punishable under the FCPA and put United States citizens on notice that attempting to influence an IOC member during the selection process is a crime under the

129. Olympics Site Selection Process, supra note 69, at 451-570.
130. Id. at 479 (prepared statement of Juan Antonio Samaranch, President, IOC).
132. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, OECD.ORG, http://www.oecd.org/document/20/0,3343,en_2649_34859_2017813_1_1_1_1,00.html (last visited Nov. 23, 2010).
133. U.S. CONST. art. VI. § 2.
135. CONVENTION ON COMBATING BRIBERY, supra note 131, at 6.
137. See id. at 528-30.
FCPA. The Subcommittee also requests that the President of the United States persuade other countries to enact similar orders declaring the IOC as a public international organization. The Subcommittee hopes that the IOC will require all countries to enact this provision before being allowed to enter a bid to host the Olympic Games. The Subcommittee firmly feels that the effect of this recommendation would be limited to a defined subject that is exclusively international and applicable only in the limited context of competitions to host the Olympic Games.

Upon completing their critique of the IOC’s reforms, the United States Congress stated that more aggressive reform and acceptance of responsibility at every level of the Olympic Movement was necessary to restore integrity. Mere finger pointing at those who were responsible for the scandalous conduct will not resolve the lack of accountability within the Olympic Movement. The final words of the Subcommittee are the most telling concerning their opinion of the IOC’s reform: “[t]imely, aggressive reform goes hand-in-hand with acceptance of responsibility. It is the true measure of commitment. Each Olympic entity has pledged to reform. The seriousness of that commitment and the credibility of the Olympic Movement turn on the extent to which that reform is undertaken.”

VII. THE ROAD AHEAD

If the events that took place in the Salt Lake bid scandal took place within the statutory regime of United States administrative law rather than within the IOC, the results would have been drastically different. Although the National Collegiate Athletic Association and federal administrative agencies enjoy the comfort of the standard of review from *Chevron U.S.A. v. Natural Resources Defense Council, Inc.*, which upholds actions taken by a private or public agency so long as those actions are not arbitrary, capricious, or otherwise not in accordance with the law, the IOC enjoys even more limited legal review and has nearly complete autonomy in its decision-making capacity. Although

138. Id.
139. Id.
140. Id.
141. Id.
142. Id.
143. Id.
144. Id.
146. Id. at 844.
a Swiss Federal Tribunal is effective in reviewing judgments made by the Court of Arbitration for Sport, its slack business law is ineffective in monitoring the activities of the IOC as a corporation. The official legal status of the IOC is as an "international non-governmental not-for-profit organization . . . in the form of an association with the status of a legal person, recognised [sic] by the Swiss Federal Council."\textsuperscript{147} Proposed reforms in Swiss business law may have an effect on the IOC. For example, in 2001, the government of Switzerland created the Federal Office of Justice "Working Group on Corporate Governance" (Working Group).\textsuperscript{148}

The goal of the Working Group is to develop new laws that increase accountability at all levels for all types of corporations, even nonprofit, nongovernmental ones, like the IOC.\textsuperscript{149} The Working Group also intends to create an efficient system of "checks and balances" and to, thereby, guarantee a balanced distribution of power in a corporation.\textsuperscript{150} This is something definitely lacking in the present form of the IOC, where all aspects of the IOC, including the Ethics Committee, report to the IOC Executive Board. The goal of the Working Group further states that "[t]he interests of the Company, of the markets and of shareholders as well as of any involved third parties should be put in relationship to each other."\textsuperscript{151}

Included among the proposed reforms are holding a Board of Directors accountable to the government for the actions of the corporation as a whole.\textsuperscript{152} If these potential reforms are extended to include not-for-profit, nongovernmental organizations like the IOC, then we can expect a more radical reform effort in the IOC in an attempt to insulate the IOC Executive Board from being held accountable for wrongdoings performed by their members. But, until this time comes, we are unlikely to see the IOC Ethics Commission segregated from the Executive Board. An additional, and equally monumental, reform would be to change this legal status to that of a "public international corporation," so that those individuals who would attempt to bribe an IOC official could be prosecuted under that country's fraud and bribery laws. This would be effective in allowing stricter governmental prosecution than is what is currently available and would undoubtedly result in individuals second-guessing any attempt to bribe an IOC official, fearing

\textsuperscript{147} OLYMPIC CHARTER, supra note 67, at RULE 15, at 29.
\textsuperscript{149} Id.
\textsuperscript{150} Id.
\textsuperscript{151} Id.
\textsuperscript{152} Id.
criminal prosecution for such an act.

The events surrounding Salt Lake City’s candidacy for the 2002 Olympic Games displayed the need for such radical reform within the IOC more than ever before. As former IOC Vice President, Dick Pound, stated, “there is no room for cheaters in the Olympic Games.” 153 Although Dick Pound was discussing violations of the World Anti-Doping Agency’s Code by Olympic Participants, the IOC has not been as stringent in regulating cheaters within the Olympic Movement as it has among its key participants. Yes, it is true that ten IOC members were either expelled or resigned in the wake of the scandal, but not much has happened since then.

Nothing presents this more clearly than the IOC’s own Crisis and Reform Chronology, which abruptly ends with the reforms made to the Olympic Charter on December 12, 1999. 154 Instead, the IOC chose to view the occurrences at Salt Lake as a single failure by corrupt individuals, rather than a failure of the structure of the Olympic family. Juan Antonio Samaranch, IOC President at the time of the scandal, best embodies this view. He stated that the scandal had been “exaggerated” by reporters and that “I can’t accept that we are depicted as a gang of criminals or that the Salt Lake organizers were victims. They are as guilty as those who were corrupted. They were the corrupters.” 155

Like the creation of the Court of Arbitration for Sport and the World Anti-Doping Agency, the creation of the IOC Ethics Commission has been carefully constructed in such a manner that it is dependent upon the IOC Executive Committee for its authority. 156 The only way to remove any doubt of impropriety within the Olympic Movement is to separate these affiliate organizations and establish checks and balances within the organization.

Unfortunately, as long as the IOC remains resistant to independent oversight of their activities, scandals similar to those in Salt Lake City are inevitable. We are unlikely to see any additional reform in the upcoming years, which would likely prevent another scandal. The IOC has been stalwart in its resistance to reformation. Unless the structure of the Olympic family is changed, it is unlikely that we will ever see a change in the politicization of the IOC. Although, it is unlikely we will ever see a scandal containing the same factual matters as the Salt Lake City bid scandal, the IOC is still

153. Dick Pound, Address before the 9th International Association of Sports Law Congress (September 25, 2003).
154. IOC Crisis and Reform, supra note 35, at 4.
155. JENNINGS, supra note 11, at 77.
156. See generally IOC CODE OF ETHICS, supra note 46.
vulnerable to the whims of powerful individuals who feel that the top members of the IOC Executive Committee will insulate them from any legal prosecution for their actions. Although it is true that the IOC has reformed itself somewhat, it did the minimum required of it. It performed as much reform as necessary to protect itself and to prove to the international community that it was appalled by the dealings on the shores of the Great Salt Lake. It is time that the IOC, which can claim power equal to some small European countries, holds itself accountable for its actions, which have a worldwide effect. Only then can we hold accountable those who would otherwise violate international norms of fair play.

Creating a Compliance Division, separate of the IOC Executive Committee, would be a great first step in showing the world that the IOC is serious in making sure that the Olympics are fair for all participants. Although the IOC has concentrated on the fairness of competition in their events, it is now time to ensure fairness among those who wish to have the privilege of hosting the games. The Olympic Charter states in its Fundamental Principle that

Olympism is a philosophy of life, exalting and combining in a balanced whole the qualities of body, will and mind. Blending sport with culture and education, Olympism seeks to create a way of life based on the joy of effort, the educational value of good example and respect for universal fundamental ethical principles.\(^{157}\)

Recently, the IOC has failed in promoting this fundamental principle and fails to promote itself as the model for ethical principles. Although the recent reforms are an improvement, they are not nearly enough, and the IOC must hold itself more accountable, either by law or by incorporating an autonomous organization to oversee the activities of the organization. Only when it does this will the IOC revert back to concentrating on its founding principles, rather than being distracted by wealth and power, finally lifting the black cloud of corruption and allowing the Olympic flame to burn clean once again.

\(^{157}\) OLYMPIC CHARTER, supra note 67, at 11.