

COMMENTARY

War on Drugs Redux: Welcome to the War on Doping in Sports

Brian R. Alexander

I have covered the issue of doping and sports for awhile now. Lately I have become convinced that much of the antidoping zeal we are witnessing presents serious and growing risks to the human rights and civil liberties of athletes, and perhaps to the rest of us. My worry derives from my belief that the “war on doping,” as it is been called many times, has come to resemble the U.S. “War on Drugs.”

One could reasonably date the start of the War on Drugs to 1973 when U.S. president Richard Nixon created the Drug Enforcement Administration (DEA) and New York governor Nelson Rockefeller pushed harsh drug laws mandating long prison sentences. Or you could pick 1988 and the passage of the Drug Abuse Act that, among other things, produced the White House Office of National Drug Control Policy and the so-called drug czar. However, one dates it, though, it is clear the War on Drugs has been a boon to prison builders, and drug gangs and cartels, but not so much for stamping out drug abuse.

Now cut to 1999. That was the year the International Olympic Committee (IOC) founded the World Anti-Doping Agency (WADA), following a number of high-profile doping episodes in elite sports including the near-collapse of the 1998 Tour de France. WADA, whose ruling executive board is made up of representatives from the IOC and governments, was established to oversee rules and methods for detecting doping, and the adjudication of those rules. Sports federations that were part of the Olympics were forced to submit to WADA’s authority or face expulsion from the games. Each country—or region in the case of very small nations—was expected to establish a national level antidoping agency subservient to WADA’s code. In the United States, the United States Anti-Doping Agency (USADA), a private firm, but supported by taxpayer dollars, fills this role.

At the time, antidoping meant testing for drugs, mainly. The IOC had been testing since the 1970s, but typically only at events, which meant, for example, that East Germany could carry out a rather obvious national doping program as part of training but have its athletes go undetected. Post-WADA, a much stricter testing regime was implemented.

From the beginning, WADA and its code were influenced by old-style drug warriors. The United States, which supplied a significant portion of WADA’s budget, placed the performance-enhancing drugs (PEDs) issue under the purview of the “drug czar.” The U.S. representative to WADA’s executive board comes from this office. It was at the insistence of the office that marijuana, which has no performance-enhancing use, was listed, and is still listed, among banned drugs. (As of now, at over 400 sanctions, marijuana accounts for more athlete positive tests and punishments than any other single drug. By group, various steroids account for the most.)

Even before it found its feet, WADA faced a harsh realization when the BALCO (Bay Area Laboratory Cooperative) scandal broke in 2003. Eventually ensnaring some of the highest profile athletes in the United States, including Olympic medal winners and professional baseball players, BALCO revolved around the production of novel compounds—synthetic steroids—that could evade detection by the mass spectrometry machines programmed to look for known banned substances. There was one other twist: the involvement of a curious Internal Revenue Service agent named Jeff Novitzky who made it his mission to investigate BALCO.

Unlike USADA, as a federal agent, Novitzky could obtain search warrants and scare the bejesus out of anybody who refused to talk. So it was no wonder that, after BALCO, USADA, which had long dreamed of nailing Lance Armstrong, turned to Novitzky (who subsequently moved to the Food and Drug Administration).

The circumstances leading up to Armstrong’s televised confession to Oprah Winfrey are now well-known. But less appreciated is how a private body, USADA, worked hand-in-glove with federal agents, with their powers to threaten witnesses, obtain warrants, and compel testimony, to mount an international investigation of Armstrong’s U.S. Postal Service cycling team.

While the public at large did not fully appreciate this nuance, the antidoping movement did.

As expressed by Australian WADA representative Bill Rowe, in a 2012 meeting, WADA would “recognize investigations and intelligence-gathering as a contemporary and necessary legitimate tool. . . .”

To support this new focus on law-enforcement-style investigations, WADA made a number of changes. The agency hired a new “chief investigations officer,” a former DEA agent. (The United Kingdom’s anti-doping agency, UKAD, is now led by a former chief constable.) WADA forged links with Interpol. And the code now contains a new section called Testing and Investigations.

The WADA revised code which goes into effect in 2015 also makes a number of changes designed to facilitate intelligence gathering and investigations. For one, it claims immunity from any restrictions used by nations to regulate law enforcement activities or justice processes. According to the revised code: “these sport-specific rules and procedures aimed at enforcing antidoping rules in a global and harmonized way are distinct in nature from criminal and civil proceedings. They are not intended to be subject to or limited by any national requirements and legal standards applicable to such proceedings. . . .”

In other words, WADA argues that it is free to decide on its own whether something is doping related and then to engage in surveillance, search, interview, prosecute, and do all that free of any check by a nation’s laws.

While this claim has not yet been fully tested, it may hold up. Countries, in their hurry to jump aboard the anti-doping bandwagon, and under threat of never being able to host an Olympics, signed a treaty called The International Convention Against Doping in Sport. If you are an American, you may not have realized the United States signed this treaty and you could be forgiven for missing the news because the Senate held one cursory hearing at which no active athletes testified and nobody expressed opposition.

The treaty is partly responsible for a remarkable statement from a United States federal judge. Sprinter Justin Gatlin tried to appeal a doping-ban related to his use of prescribed Adderall for attention deficit disorder to a U.S. court by citing the Americans with Disabilities Act. The judge sided with Gatlin, saying his ban violated U.S. law, but stated that when it came to sports and doping “the United States Courts have no power to right the wrong perpetrated upon one of its citizens.”

Another code change involves the so-called Whereabouts Rule. A few years ago, WADA instituted a global find-an-athlete system that compelled athletes to report their whereabouts for every hour of every day of their lives in season, out of season, on vacations, whenever. This personal information was then shared with antidoping agencies around the world so athletes could be tested any place and any time with the exception of the hours of 11 PM to 6 AM local time. (This led to episodes like a cyclist being forced to provide a urine sample while at a mortuary planning his son’s funeral.) In most countries, no other group of people, except, perhaps, convicted felons, are subject to this level of intrusion. Now, under the revised code, no hours are off-limits. Antidoping agencies can demand a sample at 3 AM if they think they might catch an athlete.

Though WADA was created to monitor Olympic sports, it has aggrandized many other activities—everything from chess to darts to pro Australian Rules

Football—into its scope, and it is now reaching into the lives of noncompetitors, too. Under legislation passed in 2013,¹ the CEO of Australia’s anti-doping agency, ASADA, can demand that *any* Australian citizen, sportsman or not, provide testimony, and hand over documents or other material things, even if those things might implicate that person in a crime. (ASADA has previously obtained the private medical records of athletes as part of a fishing expedition looking for unusual drug prescribing.) WADA’s new code specifically states that national antidoping bodies are free to exert jurisdiction over recreational athletes and even people who are engaged in fitness activities. In Denmark, the antidoping agency there can enter gyms and demand biological samples from any person.

USADA cannot exert such powers over nonelite athletes, though it is also actively seeking to expand its purview, unless it can harness the power of the federal government. It has already shown in the Armstrong case that it can do just that. And, in an interview with me, USADA chief Travis Tygart said he wanted his own team of investigators.

The WADA code, never fair to athletes, now looks more like the Rockefeller drug laws. The standard competition ban has been raised to four years, up from two, a career ender for many athletes. The agency has made provisions for reduced bans for those who implicate others in doping. (Anonymous tip lines have been set up, too.) Conversely, the code makes it clear that anybody who fights charges can expect to serve longer bans. The code even limits freedom of association by constructing a blacklist of anybody—athlete, coach, agent, doctor, nonsporting private citizen—who has been implicated in any activity WADA deems related to doping. Governments are expected to forward the results of court and professional body proceedings to WADA who will use the information to construct the list. Associating with people on it can lead to a ban.

That rule caused some Orwellian discussion within WADA about what to do with an athlete who might be married to such a person, or be a parent. WADA eventually decided to demand athletes prove they “cannot reasonably avoid” such associations.

These extraordinary measures have been adopted with nary a word of caution or complaint even from western democracies who champion civil rights.

Why?

Antidoping agencies and the IOC regard sports as exceptional, outside the normal realms of business, civic,

¹Australian Sports Anti-Doping Authority Amendment Act 2013 amended the Australian Sports Anti-Doping Authority Act 2006. The purpose of this change was to strengthen the Australian Sports Anti-Doping Authority’s (ASADA) investigation functions and to enhance information sharing arrangements with other government agencies. In addition, the Bill clarifies certain definitions in the Act, clarifies conflict of interest provisions for members of antidoping bodies established under the Act and confirms the statutory period for commencing action against an athlete in relation to possible antidoping rule violations.

political life. Sports, they believe, are avatars for transcendent human ideals that serve as a guide to the rest of society and culture.

The antidoping movement reinforces this quasi-religious aura about sports with the language it uses. An athlete accused of using a banned substance or technique is “dirty.” The antidoping agencies identify themselves as the guardians of “clean” athletes. WADA’s official magazine is “Play True.” USADA has a youth program designed for coaches and schools called True Sport. Sin, confession, redemption are antidoping keystones.

The stench of hypocrisy hangs over this language. The IOC is not a “movement,” it is a multi-national entertainment franchise that uses athletes as fodder. And as a number of corruption scandals, and the IOC’s own blindness to human rights shows, it has no legitimate claim to stand for much of anything. Indeed, from 1980 to 2001, the IOC was headed by Juan Antonio Samaranch, an enthusiastic and unrepentant fascist supporter of dictator Francisco Franco.

Yet the IOC and the antidoping movement do not just want to prevent cheating in sports. Antidoping now sees itself as a global paladin defending social morality. In a remarkable statement during a September, 2012 meeting, WADA director general David Howman fretted about the influence of doping in leisure sports and gyms, then moved onto how “a competitor in an international Scrabble competition had been expelled for cheating. WADA was involved in these societal issues that it could not control, and he thought that WADA needed to take note of that, and he was not even getting into plagiarism, although he had been told the previous week that 10 percent of one class at Harvard had been picked up for plagiarism. It was an issue that was bothering WADA, and WADA’s values were being tested in ways and means by others in society. . . .”

Our political leaders, hardly exemplars of courage, are content to follow WADA’s lead. They cannot do enough to crack down on doping just as they could not get “tough” enough on drug crime during the 1970s, 1980s, and 1990s. In the United States, Congress has repeatedly passed laws to put performance-enhancing substances in the same class as some addictive drugs, meriting the same regulations and restrictions. The U.S. Congress—in the midst of multiple crises like real shooting wars and the worst recession since the 1930s—held highly publicized hearings about PEDs in baseball.

WADA supports this kind of decision-making by playing up the threat of organized crime, and the agency’s role as partner to government in fighting crime syndicates. In 2007, it issued a report by an Italian named Alessandro Donati which purports to detail the danger. In the introduction, WADA states “the report is indicative of the challenges facing the anti-doping movement—the lack of national laws in many countries and the failure to enforce existing laws in others The picture painted by this ambitious study should sound the alarm to the international community, and particularly to those governments

that have yet to commit to outlawing the manufacture, supply and possession of doping substances.”

BALCO was hardly a mafia operation. The drugs were made by one chemist, Patrick Arnold, and distributed to athletes by one man, BALCO owner Victor Conte. Armstrong’s doping was “organized,” but by the cycling team, not the mafia.

In fact, WADA may have created a self-fulfilling prophecy. In response to the legal crackdown on PEDs of all kinds, organized crime—particularly Chinese and eastern European—seems to have moved into the market. That’s exactly why some U.S. prosecutors with long drug war experience opposed the new laws. If there is one thing the U.S. experiment with Prohibition taught us, it is that outlawing something, increasing punishments, and using aggressive tactics to suppress it often succeeds in driving up the price enough to attract the real crooks just as drug gangs and cartels have made billions during the War on Drugs.

Only now, after 40 years of failure, is the United States undergoing a wholesale reassessment of its antidrug abuse policies. And therein lies the answer to a question you’d be perfectly right to ask: “If testing didn’t work, and you don’t approve of turning anti-doping into law enforcement, what do we do about doping in sports?” Well, just as the United States and some other countries are moving toward a healthcare model of drug abuse prevention, why not try it for antidoping?

I cannot take credit for this idea. It was first proposed to me by Dr. Don Catlin, founder of the UCLA Olympic Analytical Laboratory, in an article I wrote for *Outside* magazine (<http://www.outsideonline.com/fitness/nutrition/The-Awful-Truth-About-Drugs-in-Sports.html>). He called it the Volunteer Program.

Athletes would be offered a chance to enroll. Those who did would receive special recognition, those who did not would stay in a strict testing regimen. Sponsors and other funders would be likely to support those who joined, and look askance at those who didn’t, so there’d be pressure to sign up.

Program members would be subject to regular biological monitoring. Once each person’s baseline markers were established, doctors would periodically look for deviations. When one occurred, the athlete would not be punished but rather meet with a physician-administrator to discuss the results, and then be subject to more intense monitoring for some period. There’d be no middle-of-the-night testing, no whereabouts, no “intelligence gathering.”

WADA does use a Biological Passport program, but unlike Catlin’s idea, passports are mandatory and deviations can result in bans. That’s dangerous because human bodies do funny things. We all deviate. German speed skater Claudia Pechstein was banned for having unusual blood values. A hugely successful athlete, she was tested frequently but never came up positive and she insisted she didn’t dope. Experts like the head of Germany’s Society of Hematology and Oncology supported her arguments that

there was a natural explanation for her deviation (related to an inherited condition), but the Swiss-based Court of Arbitration for Sport, an arbitration panel bound by the WADA code, refused to lift her ban.

Some athletes might get away with doping under a plan like Catlin's just as some get away with it now, but it seems far more just, far better for the athletes' health, and possibly more effective, than recapitulating a failed law enforcement model like the War on Drugs.

Declaration of Interest

The author reports no conflict of interest. The author alone is responsible for the content and writing of the article.

THE AUTHOR



Brian Alexander is a writer and author based in California. A frequent contributor to NBCNews and Outside magazine, his work has appeared in The New York Times, The New York Times magazine, Wired, Esquire, The Los Angeles Times magazine, and many others. His most recent book is *The Chemistry Between Us: Love, Sex, and the Science of Attraction*,

written with neuroscientist Larry Young. Follow him on Twitter at @BrianRAlexander. His website is www.BrianRAlexander.com