

## **ACKNOWLEDGEMENTS UPDATE**

A belated thank-you to Dr. Steven Ungerleider, who graciously allowed me to use passages from his book *Faust's Gold: Inside the East German Doping Machine*.

## **INTRODUCTION**

As I write this, *Dope: A History of Performance Enhancement in Sports from the Nineteenth Century to Today* is in production. Doping continues to be an issue in sports, with stories ranging from baseball players doping to Greek weightlifters facing bans, from competition in the Beijing Olympics to various doping-related cases being appealed to the Court of Arbitration for Sport and on and on and on. What follows is a summary of the stories that have occurred since the manuscript for *Dope* went to press. Over time, additional stories will be added to this Afterword, in the hopes of keeping the book as up to date as possible. For the latest updates to this Afterword, go to [http://rant-your-head-off.com/WordPress/?page\\_id=613](http://rant-your-head-off.com/WordPress/?page_id=613).

## **FALLOUT FROM THE MITCHELL REPORT**

When former Senator George Mitchell released the report of his investigation into the use of steroids in baseball in mid-December 2007, it touched off a firestorm of stories and commentary in the mainstream media. Whether or not his report would lead to any meaningful change in the sport remains to be seen. A number of big-name athletes have come under scrutiny because of allegations in the report. Of the athletes mentioned in Mitchell's report, Roger Clemens' name stands out. Clemens name appears in Mitchell's report in part due to testimony given to the former senator and his investigators by Brian McNamee. McNamee served as Clemens' trainer during the time he was a pitcher for the Boston Red Sox and later when Clemens pitched for the New York Yankees.

McNamee claims that he injected Clemens with Winstrol (also known as stanozolol) in 1998 and provided the pitcher with various performance-enhancing drugs into the early 2000s. The Clemens/McNamee story has been full of interesting twists and turns. In late December and early January, for instance, Brian McNamee's attorney threatened to sue Roger Clemens for defamation if Clemens contradicted McNamee's testimony.

Clemens did not respond publicly to the Mitchell Report when it first came out. Instead, he waited two weeks before commenting on the allegations contained within. When he first spoke to the press, it was during an interview with Mike Wallace for the CBS News program "60 Minutes." During the interview, Clemens vehemently denied using steroids.

"I'm angry that that what I've done for the game of baseball and the personal, in my private life, what I've done, that I don't get the benefit of the doubt," Clemens said. "The stuff that's being said, it's ridiculous."

"It's hogwash for people to even assume this," Clemens continued.

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“Twenty-four, twenty-five years Mike. You’d think I’d get an inch of respect. An inch,” he added. “How can you prove your innocence?”

“Apparently you haven't done it yet,” Mike Wallace replied. “People I talk to say, ‘Come on. 45 years old? How does he still throw a ball and compete’ and so forth? Impossible.”

“Not impossible,” Clemens responded. “You do it with hard work. Ask any of my teammates. Ask anybody that's come here and done the work with me.”

The next day, Clemens and his attorney Rusty Hardin, held a press conference where the pitcher spoke out against the accusations being leveled in his direction. During the press conference, Clemens played a tape-recorded conversation between himself and McNamee in which McNamee never contradicted Clemens’ statements that he had never used steroids. The phone call between the pitcher and his former trainer occurred two days before the 60 Minutes broadcast. During the 17-minute conversation, McNamee asked Clemens to tell him what to do. McNamee even offered to go to jail for Clemens, who he said treated him “like family.”

“You just need to come out and tell the truth,” Clemens can be heard telling McNamee during their phone call.

“For the life of me,” he continued, “I’m trying to understand, why you would tell guys that I used steroids.” McNamee never contradicted Clemens’ statement. According to the *New York Daily News*, “Clemens stormed off the stage after an expletive-laced diatribe that he doesn’t give a ‘rat’s a—’ about getting into the Baseball Hall of Fame.”

“I don't need the Hall of Fame to justify that I put my butt on the line and I worked my tail off,” Clemens told reporters, “and I defy anybody to say I did it by cheating or taking any shortcuts.” To Brian McNamee’s attorney, the press conference and the release of the tape recording were a declaration of war.<sup>1</sup> Not long after, Roger Clemens filed a defamation lawsuit against McNamee.

In February, Washington politicians got into the act, holding hearings in which Clemens, his former teammate Andy Petite (also mentioned in the Mitchell Report) and others testified before the House Committee on Oversight and Government Reform, which was looking into the Mitchell Report and its conclusions. Some members of the committee holding the hearings, such as chairman Henry Waxman (D-California), did not believe Clemens’ testimony. Waxman cited an affidavit by Laura Petite, Andy Petite’s wife, which backed up her husband’s testimony that the two pitchers had discussed the use of human growth hormone.

One representative, Elijah Cummings (D-Maryland), went so far as to tell Clemens, “Mr. Clemens, once again I remind you, you are under oath.” Clemens, in response to Cummings’ questions about what the two pitchers discussed, stated, “I think he misremembers our conversation.” Later in the hearings, Cummings said to Clemens, “It’s

hard to believe you, sir. I hate to say that. You're one of my heroes, but it's hard to believe you."

During the same hearings, Brian McNamee also came under fire. McNamee claimed to have kept syringes and gauze pads that could prove he injected Clemens and other players with steroids and other performance-enhancing substances. During a particularly testy exchange between Representative Dan Burton, an Indiana Republican, McNamee admitted that he had withheld information about the syringes and gauze pads from the Mitchell investigators.

Burton pressed McNamee on why he had withheld the information, to which McNamee replied that it was because he was afraid that Roger Clemens might later turn on him. Burton continued to press McNamee. "Why did you keep those needles and gauze pads?" Burton asked.

"I have done things for other people and been hurt by it so I held on to it," McNamee replied.

"Why didn't you give them to the Mitchell report?" Congressman Burton inquired.

"I felt horrible to be in the position I was in," McNamee responded.

At that point the Indiana congressman lost his cool. "Gee wiz, are you kidding me!?" he said to McNamee. "I know the one thing I don't believe, that's you!"<sup>2</sup>

In the aftermath of the Congressional hearings, Waxman and the ranking Republican on the committee asked the FBI to open an investigation into whether Clemens lied under oath during his testimony. A day later, the agency announced that it would look into the matter. This development did not come as a surprise to Clemens' lawyer.

"We've always expected they would open an investigation," Rusty Hardin told reporters. "They attended the congressional hearing. So, what's new?" Hardin also commented that, "The fact that he chose to testify twice under oath while knowing the short-term consequences is clear proof of how strongly he believes he has done nothing wrong."

"Roger will continue to fight these false allegations with every ounce of strength he has."<sup>3</sup>

Over the next couple of months, the FBI investigation moved ahead slowly, while Clemens' lawsuit against Brian McNamee also went forward. In early May, McNamee's attorney asked that Rusty Hardin, Clemens' attorney, be removed from the case. That request was denied. Also in May, revelations surfaced that Clemens had at one time been involved with country singer Mindy McCready, who he met when she was 15 and he was 28. In late May, government officials questioned McCready as part of their investigation into whether Clemens perjured himself during his Congressional testimony. McCready may also play a part in the lawsuit between the pitcher and his former trainer.

“She’s relevant because she spent 15 years in a relationship with Roger Clemens and probably knows a lot about Roger’s associates and activities. She may have leads to people Roger associated with that the FBI wants to follow. She could lead to a lot of probative information,” McNamee attorney Richard Emery said.

Emery told *The New York Daily News* in April that he would attempt to question McCready because a habit of infidelity would negate Clemens’ claims to having an unblemished reputation.

"He brought it on by putting his reputation at issue," Emery told reporters for the *Daily News*. "He can't cabin off his reputation with respect to the use of steroids from the rest of his reputation."

According to the *Daily News*, the FBI has been inquiring about other women that Clemens may have had relationships with, and they have spoken with several people who might be able to provide information about Clemens’ activities, including Kelly Blair (a trainer), Shaun Kelley (owner of a Houston-area gym) and admitted steroid user Jose Canseco.<sup>4</sup>

“The whole thing is they’re trying to find someone who supplied Roger Clemens,” Blair told *The New York Times*. “This has nothing to do with Andy Pettitte. They were questioning me about Roger. I’ve never met the dude. It was a waste of their time, basically. They were bothering a guy that had nothing to do with it.”

Kelley spoke to federal investigators at the end of April, when he took a polygraph test. According to the *Times*, Kelley told the investigators that he never supplied Clemens with steroids. Kelley felt confident that he passed the lie detector test.<sup>5</sup>

As of this writing, Clemens has not been charged with any crimes connected to his testimony to the Congressional committee earlier this year. His defamation suit against Brian McNamee has yet to conclude, as well.

### **PRO CYCLING SEASON OFF TO A “ROCK”Y START**

Although the first few months of the 2008 professional cycling season passed without a new doping scandal rearing its ugly head, two organizations took unusual measures in an effort to keep new scandals at bay. Early on, the promoters of the Tour of California asked teams to sign an agreement that would bar riders connected in any way to an ongoing doping investigation from participating in the event. To ensure that no riders under investigation or suspicion of doping would participate, the promoters required teams to submit a list of riders on their proposed roster for the event.

Working with USA Cycling, AEG (the promoters of the Tour of California) screened the lists of competitors. One day before the race began, the Rock Racing Team was informed that three of their riders – Tyler Hamilton, Oscar Sevilla and Santiago Botero – would not be allowed to start the race. The exclusion of the three riders left the team one rider short

of the minimum six-man squad. It was only after some last-minute negotiations that the Rock Racing Team were allowed to participate in the Tour of California.

In at least one case, AEG received a letter from the UCI confirming that a particular rider was free to race under the federation's rules. In a letter to an official at the Spanish cycling federation that was forwarded to AEG, the UCI's Pat McQuaid said, "Many organizers have taken the position that they do not want riders implicated in Puerto in their races. The UCI, as the governing body of cycling, cannot support this position from a legal standpoint even if the UCI agrees with it from a moral point of view. However, the UCI has to follow its rules and relevant legislation and Mr. Sevilla is innocent until proven guilty. There is no current anti-doping rule or other legal impediment to Mr. Sevilla taking part in races. However, the UCI respects the organizers' right to select the teams and riders it considers best reflect the Tour of California's position on sporting ethics."

AEG Sports president Andrew Messick countered, "What is important to understand about that letter is that it is absolutely irrelevant. Whether an athlete is eligible to ride in the UCI races has no bearing on what all 17 teams agreed to about the eligibility of riders for this race. Every team agreed that no riders who are under an open investigation would participate. Every team agreed that USA Cycling and UCI would tell us about any riders who are currently under investigation and that is the criteria. That is the basis. That is the rule."

Messick went on to say, "While we are not unsympathetic to the individuals involved, our rules are absolutely clear and designed for the betterment of our sport. For this or any other sport to be fair, everyone must follow the same rules."

Michael Ball, the owner of the Rock Racing Team, reluctantly agreed to withdraw the three riders from the race. "This is not a decision governed by the agreement," Ball told reporters. "There is no open investigation. AEG is acting irrationally, to the detriment of the sport."<sup>6</sup>

At about the same time as things were heating up in California, the Astana Cycling Team received some bad news from the promoters of the Tour de France and the Giro d'Italia. The Kazakh-sponsored cycling team would not be allowed to race in any events promoted by either organization. This included the two Grand Tours, mentioned above, as well as a number of other famous races. While the promoters of the Giro d'Italia left open the possibility that they could change their minds and allow Astana into their race, the organizers of the Tour de France have been consistent in saying that Astana will not be allowed to participate in any of their races.

Astana went on to have a very good spring campaign, winning virtually every race they entered. A week before the Giro d'Italia, Astana received a surprise invitation to participate in the Giro.

“I knew for awhile that the Giro was an option. They never made any statements that it was absolutely against the team. The Tour did, so we’ll have to live with that,” Johan Bruyneel told Andrew Hood of *VeloNews*. “We’re not thinking about the Tour, but then again, we weren’t thinking about the Giro either.”

With such short notice, the team was not able to do the more focused training that might have occurred had they planned on participating at the Giro. By the time the 2008 Giro ended in Milan, Alberto Contador was standing on top of the podium, having won his second Grand Tour in as many starts. Contador, in an interview shortly afterwards appeared to be happy with the way his year has been working out.

“I’m super-content that the Tour didn’t invite me this year because now I have a Giro on my palmares and now I am going to race the Vuelta with the intention of winning,” Contador said during an interview with Eurosport. “The Giro, particularly, is a race I probably wouldn’t have raced for many years, because July is always the main focus of the season.”

Still, with a win at the Giro, might the ASO change course and invite Astana to participate? Johan Bruyneel thinks not. “The Tour has been pretty clear,” Bruyneel said. “Straight after the Giro, they said that they are remaining with their initial decision. We’re definitely not counting on it.”<sup>7</sup>

### **THE SPORT OF KINGS MOVES TOWARDS BANNING STEROIDS**

Doping and horse racing have gone hand in hand for well over a century. In fact, in the early days of modern performance enhancement efforts, those who doped human athletes were likely to have learned the doping arts either in a stable, or from someone who had.

At present, almost three-quarters of the states that allow horse racing also allow trainers to treat their equine charges with steroids and other drugs. Over the last six months, a growing movement has sought to ban the use of steroids on thoroughbred racehorses. In February, the California Horse Racing Board determined that steroids have a performance-enhancing effect, and took steps to ban the use of steroids in that state – sort of. Their first step was to consider a rule that would ban treating horses with steroids in the 30 days leading up to a race.

“We want a sport where what you see is what you get,” Dr. Rick Arthur, the equine medical director for the California board, told *The New York Times*. “I think that’s what the public wants. People say steroids don’t make horses run faster. I’m not convinced of that, and I don’t think the public is convinced of that.”

Arthur, however, is not certain that steroids actually have a performance-enhancing effect. He also told the *Times*, “There is a psychogenic aspect to this. You’ve heard the expression ‘steroid rage.’ What they do is they make the athlete, whether it is a human or a horse, act more aggressively. There may be very little scientific evidence that anabolic steroids improve performance. But go back and look at the case of Ben Johnson. He said

the steroids may not make me run faster, but they certainly make me think I can run faster. That's the sort of thing trainers are seeing."

There are those who believe that steroid use leads to injuries. And injuries can be devastating, frequently requiring that the animal be euthanized. Barbaro, winner of the 2006 Kentucky Derby, was put down in early 2007, following eight months of treatment for various complications from injuries suffered while he was racing the 2006 Preakness Stakes. Even the best medical care was not enough to save the animal's life.

According to John Kimmel, a veterinarian who also trains horses, "You can create bigger, stronger horses with steroids, but the downside of that is that they are bigger, stronger horses that break down more frequently. That's why I don't advocate their use. It's been proven in humans that they lead to soft-tissue injuries. You can have big, strong horses with muscular skeletal systems that can't handle the load."

Currently, the Food and Drug Administration allows the use of four steroids on racehorses -- Durabolin, Equipose, testosterone and Winstrol. These drugs are some of the same steroids used and abused by humans seeking a performance edge. Arthur believes that perhaps half of the horses racing in California have been treated with steroids at one time or another.

Efforts are under way to ban the use of these drugs, and to test the animals to see if they have been treated with performance-enhancing medications. One organization, the Racing Medication and Testing Consortium is advocating that horses be tested for the FDA-approved drugs. But, while these drugs could be detected, there are those who see potential problems with such a regimen.

"The bottom line is you can regulate the four," Dr. George Maylin, who heads the New York State Racing and Wagering Board's drug testing program told *The New York Times*. "But what about the rest of them? That's the biggest problem. It's not that you can't test for other steroids, but it will be very expensive. What happens if they use something else? There's a good chance they won't be detected."<sup>8</sup>

Banning the drugs could well lead to a BALCO-like situation, where someone finds new drugs that can't yet be detected and then markets those drugs to unscrupulous trainers. Still, the Racing Medication and Testing Consortium's efforts have begun to pay off. Before 2008, Iowa was the only state that banned the use of steroids. Now, a total of 10 states ban their use. And, it's possible that by 2009, none of the Triple Crown races will allow the participating horses to be treated with steroids.

Arthur told a reporter for *Newsday* that the movement to ban steroids in horse racing is gaining momentum. He believes that it is possible that new rules will be in place before the Breeder's Cup takes place this autumn. In a related development, the UC Congress will be holding hearings in June 2008 to look at steroid use and other horseracing safety issues.<sup>9</sup>

### **MARION JONES GOES TO JAIL, FORMER TEAMMATES FIGHT TO RETAIN MEDALS**

In early March 2008, Marion Jones reported to the Federal Medical Center Carswell in Fort Worth, Texas to begin serving a six-month jail term. Jones' sentence came from her involvement in a check fraud scam conducted by her former boyfriend, Tim Montgomery, as well as for lying to federal investigators about her use of performance-enhancing drugs during her track and field career.<sup>10</sup>

About one month later, the International Olympic Committee ruled that Marion Jones' relay teammates from the 2000 Olympics would also have to forfeit the medals they won in Sydney. Jones returned her medals from the 2000 games in late 2007, after she admitted to using banned substances that she received from Victor Conte's Bay Area Laboratory Co-operative (BALCO). The athletes affected by the IOC's ruling are: Andrea Anderson, LaTasha Colander-Clark, Torri Edwards, Chryste Gaines, Monique Hennagan, Jearl Miles-Clark and Passion Richardson.

On April 23, Monique Hennagan said in a statement, "The rules are clear that the IOC cannot take our medals. However, the cost of fighting the IOC with all of its resources and paying for the legal proceedings before the court in Switzerland is more than our combined resources. We are asking our friends and families and those in the public to help us defend not only our medals, but the rights of all athletes who share the Olympic dream."

According to Jones' former teammates, the IOC made its decision without holding a hearing, despite rules in the Olympic Charter that requires a fair hearing be held before they can disqualify the remaining athletes or strip them of their medals.

"We understand they were embarrassed and did not want to let people see what they were doing, but it is unbelievable that the IOC decided to take medals from innocent athletes without any hearing or any of the protections afforded to athletes who have committed an offense," Pamela Richardson told a reporter for Bloomberg.com.<sup>11</sup>

Mark Levinstein, an attorney representing the Jones' former teammates, helped them set up The Innocent Olympic Athletes Legal Defense Fund in order to fund the fight to retain their medals. In addition, Darryl Seibel, a representative of the United States Olympic Committee (USOC), told the Associated Press that the USOC would pay for the athletes' legal fees if they chose one of three lawyers approved by the committee to represent them. Of the three attorneys offered to the seven Olympians, only one has been identified. Maurice Suh, who worked as part of the legal team representing Floyd Landis in his quest to clear his name.<sup>12</sup>

On May 1<sup>st</sup>, Marion Jones' former teammates filed their appeal of the IOC's ruling with the Court of Arbitration for Sport.

"The IOC disqualified these athletes and revoked their medals without allowing the athletes to attend the proceeding and without allowing them to review or respond to the



evidence or charges against them,” their attorney told reporters after the appeal was announced.<sup>13</sup>

Levinstein told The Associated Press, “These young women athletes have done nothing wrong and any attempt to alter their results or revoke their medals violates the Olympic Charter and all the rules that were in effect in 2000, as well as all internationally accepted concepts of due process and natural justice.”

The women turned down the USOC’s offer of legal assistance, according to Levinstein, because the offer prohibited them from making any critical statements about the USOC during the appeal. Levinstein estimates that legal expenses may approach \$200,000 as the athletes try to hold on to their Olympic medals.<sup>14</sup>

No hearing date has been announced at this time.

### **RESEARCHERS DISCOVER FLAW IN TESTOSTERONE SCREENING TEST**

In March, researchers from the Karolinska Institute in Stockholm, Sweden dropped a bombshell. According to studies carried out on a group of athletes, Swedish scientists and medical professionals determined that a simple genetic variation may be responsible for whether or not an athlete tests positive on the testosterone/epitestosterone screening test used as a first line of defense in the testing of athletes for steroid abuse. For some individuals, their genetic makeup is such that even after taking a large dose of testosterone, they will not produce a T/E ratio that would trigger additional testing. For others, a simple genetic variation means they could test positive even when not using synthetic testosterone.

Over the next couple of months, various articles appeared in the media about the results of the Karolinska study. While most were correct in noting that there are athletes who, based on their genetics, may be able to “beat” the T/E screening test, few articles mentioned athletes who, because of genetics alone, could test positive. In their conclusions, researchers noted that the rate of false positives for the current screening test was nine percent – or almost one out of every ten tests administered.<sup>15</sup> The rate of false negatives – those who would not test positive – is higher still, making the T/E ratio questionable in its ability to effectively predict who is or isn’t cheating.

As the authors of the study note, “ False positive results are not only of concern for the legal rights of the sportsman; they also yield extra workload for the doping laboratories.” The researchers’ paper concludes by noting that each individual’s genetic makeup needs to be taken into account when using the T/E ratio to determine the use of synthetic steroids, whether for research or anti-doping purposes.<sup>16</sup>

### **WADA ANNOUNCES TEST FOR HUMAN GROWTH HORMONE**

In early April, the World Anti-Doping Agency (WADA) announced that a test for human growth hormone (HGH) was being mass produced, and that testing of athletes for the use of human growth hormone would become a part of routine drug screenings several weeks later.

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According to WADA's announcement, a test for HGH has been around since 2004, but the agency had difficulty finding a company to produce the test kit in large quantities. Only a few hundred athletes were tested at the 2004 Summer Games held in Athens, Greece, and at the 2006 Winter Games held in Torino, Italy. A few out-of-competition tests may have been conducted on athletes suspected of using HGH, but it is unclear whether any athletes have faced anti-doping prosecutions or have been sanctioned as a result.

David Howman, WADA's general director, told *The New York Times* in a telephone interview, "We are pleased that the test will be in place for Beijing. The test has been around for a while; it was a matter of finding the manufacturer." Lab personnel and officials at WADA-certified anti-doping labs around the world will be trained in the use of the test kits, each of which can be used to conduct 10 to 15 tests. WADA did not identify the company that will be producing the test kits, except to say that it is located in Europe.

WADA spent several months working with the company ensure the test's reliability. "At least we can now proceed," he said, "but [the test] had to go through the scientific process to make sure the kits were reliable."

Travis Tygart, USADA's chief executive, was excited to hear that the HGH test would be available soon. "This is something we have been anxiously awaiting for some time. We are thrilled to hear the time is now and will immediately take the steps to put the testing into place."

The test enables labs to analyze blood samples taken from athletes to see if there is evidence that they have used HGH. It can be used on new samples, or on samples taken several years ago, assuming those samples have been carefully stored and preserved. The agency has been careful not to say exactly how far back this test can go in terms of catching an athlete who is using the drug. Howman explained that the reason WADA hasn't disclosed the test's capability in this regard is that, "we don't want athletes to think if they use it one day, they are going to be O.K."<sup>17</sup>

Peter Sonsken, a professor of endocrinology at St. Thomas' Hospital and at King's College in London, England, notes that this test is only capable of detecting the use of synthetic HGH within 48 hours after the most recent injection.<sup>18</sup>

Gary Wadler, a physician who is also a member of WADA, told *The New York Times* that although the test can't detect the use of HGH many days later, having the test in use would act as a deterrent. According to Wadler, athletes need to use HGH daily for it to be most effective. HGH has been popular among athletes who dope, because, up to now, its use has been undetectable, unlike many steroids and other performance-enhancing drugs.<sup>19</sup>

HGH produced by the human body comes in three different structures, known as “isoforms.” Each of these structures has a specific weight, and the proportion of each is known to fall into a certain range. Synthetic HGH, on the other hand, is mostly comprised of only one of the three isoforms. A person using HGH will thus have a higher percentage of that isoform than expected. If a sample shows too much of that particular isoform, anti-doping authorities could declare a positive test result, which could then lead to a ban from competition for the accused athlete.<sup>20</sup>

Now, a new twist may stymie the efforts of anti-doping agencies to catch athletes using HGH. A different type of drug, known as a pharmaceutical HGH releaser, stimulates the body’s production of HGH. The drug has been cloned by Chinese labs and is sold as an anti-aging product. While the new test that WADA is implementing can detect the use of synthetic HGH, it cannot detect the use of this new drug. Additionally, the HGH produced by this drug would have all the same characteristics as HGH produced by any human being.

So far, there is no proof that athletes have used HGH releasers, but the prospect that athletes will do so troubles anti-doping experts, as well as government drug enforcement officials. The impact of the drug is well known, but federal regulations do not yet cover this class of drugs, and no test currently exists for the presence of HGH releasers.

Although HGH and HGH releasers both require a prescription, the use of HGH is more strictly regulated. Since 1990, it has been against the US federal law to prescribe HGH unless it’s being used to treat a specific disease or medical condition. The different regulations for the two drugs can be frustrating for federal enforcement officials, as Joseph Rannazzisi, deputy assistant administrator for the DEA, told *USAToday*, “we have no statutory authority (concerning its misuse), and that’s frustrating sometimes. You see drugs out there that are being misused, and there’s not a lot we can do about it.”<sup>21</sup>

Just how effective HGH releasers would be for athletes is far from clear. Karlis Ullis, an associate professor of sports medicine and rehabilitation at UCLA, told *USAToday*, “You’re not going to get the huge effects like growth hormone [injections]. These drugs are intended for older people, not the super athlete who is already producing enough HGH. It could augment what they’re already making and could have a modest to moderate effect.”<sup>22</sup>

### **FIRST BALCO TRIAL RESULTS IN CONVICTION OF TAMMY THOMAS**

Although a number of people – including Victor Conte, the mastermind behind the BALCO scheme, as well as James Valente, Remy Korchemny, Patrick Arnold, and others – have been convicted of various crimes related to the BALCO scandal, until April none of those convictions were delivered by a jury. That all changed in early April 2008 when Tammy Thomas, a former champion track cyclist, was convicted of perjury.

On April 4<sup>th</sup>, a federal jury convicted Thomas of three counts of perjury and one count of obstructing justice for misleading statements she made to a grand jury investigating the BALCO scandal in 2003. Among other things, Thomas was accused of lying to the grand

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jury about receiving steroids and other banned performance-enhancing substance from Patrick Arnold, the chemist who developed THG (also known as “the clear”). Arnold was a central figure in the BALCO case who pleaded guilty to charges stemming from the investigation in 2006.

Lawyers for Barry Bonds attended Thomas’ trial. Like Thomas, Bonds faces perjury charges stemming from his answers to questions he answered in front of a grand jury investigating Victor Conte and the BALCO.

Unlike Bonds, Thomas had already served a suspension from her sport (cycling) after she tested positive for banned substances. In the anti-doping case that led up to her ban from competition, Thomas tested positive for steroids. Bonds, however, has never tested positive in screening tests for steroids.<sup>23</sup>

During the trial, prosecutors painted a picture of Tammy Thomas as being a “hard core” user of steroids during her cycling career. Thomas, who won a silver medal racing on the track at cycling’s world championships in 2001, was described by a Colorado endocrinologist during her trial as suffering from “severe virilization” during that time period, including a deepened voice and facial hair. At the zenith of her cycling career, according to some witnesses, she was “husky” – about 50 pounds heavier than she is today.

At issue was the veracity of Thomas’ testimony to a grand jury investigating the BALCO scandal was true. According to prosecutors, Tammy Thomas knowingly provided false statements five times during her testimony. Thomas’ attorney, Ethan Balogh, however, said that Thomas’ answers to the government’s questions were literally true. The questions prosecutors investigating the BALCO case asked Thomas in front of the grand jury were poorly worded, Balogh contended. While his client answered the questions put to her, if prosecutors didn’t get the answers they wanted, it was because they didn’t ask the right questions.

During her grand jury testimony, Thomas denied ever receiving drugs from Patrick Arnold, and she denied using any substances from Arnold. She also denied ever using steroids. At the time, Balogh told the jury, the drugs Thomas was using – norbolethone and THG – had not been classified as steroids nor had they been specifically banned for use in competition.<sup>24</sup> Thomas testified that she received the packages of drugs from Arnold’s girlfriend. According to the prosecution’s case, Arnold sent packages directly to Thomas on several occasions.

When the jury’s verdict was read, Thomas lashed out. The former cyclist shouted at the jury, “Look me in the eye and tell me you meant what you did.” As her attorney tried to restrain her, she continued, “I already had one career taken away! Look me in the eye. You can’t do it.”

Moments later she confronted assistant United States attorney Matt Parrella. “You’re out to destroy lives, you like to destroy lives,” she told Parrella. As the U.S. attorney started to say something to Thomas, her attorney pulled her away.<sup>25</sup>

At this time, Thomas’ legal team has not announced whether or not they will appeal the verdict. Sentencing has been scheduled for July 21<sup>st</sup>. If her conviction for perjury stands, Tammy Thomas, who has been studying law at the University of Oklahoma for the last several years, may never be able to practice as an attorney.<sup>26</sup>

### **BARRY BONDS RE-INDICTED**

In February 2008, Barry Bonds’ lawyers filed a motion to dismiss the case against their client. United States District Judge Susan Ilston, in ruling on that motion, instructed prosecutors to either narrow the charges against the baseball player, or to bring new charges if they wanted to proceed with their case. If prosecutors didn’t make the changes, the case against professional baseball’s home run king would come to an end.

Federal prosecutors responded by re-indicting Bonds, this time on 14 counts of making false statements under oath and one count of obstruction of justice related to Bonds’ testimony before a grand jury investigating the BALCO scandal. In his testimony, Bonds claimed that he had never knowingly used performance-enhancing drugs.

The original case brought against the slugger consisted of four counts of perjury and one count of obstruction of justice related to the same testimony. While Bonds faces even more charges than he did in the original indictment, *The New York Times* reported that both the original indictment and the revised indictment cover the same testimony Bonds gave before the BALCO grand jury.

This new twist suggests that Barry Bonds is perhaps at greater risk of being convicted of wrongdoing than he was before.

Daniel C. Richman, a law professor at Columbia University who is also a former federal prosecutor, told the *Times*, “All the government wanted to do here was cure the indictment to make sure the case could move forward. Ironically, the government’s response was to give the jury more choices on what they can convict him on.”<sup>27</sup>

In early June 2008, Bonds appeared in court and pleaded not guilty to the fifteen charges against him. Bonds’ trial is scheduled to begin on March 2, 2009. His next court date will be a pretrial hearing on February 17, 2009. If he’s convicted, Bonds faces a maximum of five years in prison and up to a \$250,000 fine for each of the 14 counts of making false statements. He also faces a maximum of 10 years in prison for the obstruction of justice charge, and a fine of up to \$250,000.<sup>28</sup> Bonds’ trial is now set to begin on March 2, 2009.<sup>29</sup>

### **GREEK WEIGHTLIFTERS TEST POSITIVE FOR STEROIDS**

The sport of weightlifting has long been associated with steroids. From the early days of the Cold War, when the USSR and other East Bloc countries first started experimenting

with testosterone, to the introduction of steroids to American athletes in the mid- to late-1950s, to the use of steroids during the early 1970s, and on up to the present, the drugs' presence has been felt.

And yet, with all the attention being paid to doping and all the anti-doping tests being conducted, it is still surprising when a large group of athletes test positive for steroids or other performance-enhancing drugs. In early May, stories surfaced about eleven Greek weightlifters testing positive for banned substances. The positive test results first occurred in early April, affecting the vast majority of the country's men's and women's weightlifting teams. Follow-up tests, conducted at the WADA-accredited antidoping laboratory in Cologne, Germany, confirmed the initial results.

After the original results were announced in April, the Greek Olympic Committee suspended coach Christos Iacovou. Subsequently, the 60-year-old Iacovou resigned his post, and said that he would leave the world of weightlifting. Iacovou blamed the results on a contaminated batch of dietary supplements that came from Auspure Biotechnology, a Chinese manufacturer of such products.

Of the eleven athletes involved, ten supported their coach, telling a Greek Weightlifting Federation panel looking into the scandal that all they took the supplements without knowing that the pills contained banned substances. The other athlete, Vassiliki Kasapi, is suing the weightlifting federation, claiming that she was unknowingly placed at risk by taking the nutritional supplements.

Under the antidoping rules of the International Weightlifting Federation (IWF), entire teams can be banned from competition for up to two years if three or more of their athletes fail drug screenings during the course of the year. The IWF has handed out such bans in the past, but they are often reduced or eliminated after the affected team pays a substantial fine – frequently running about \$50,000 for each athlete who tests positive. In one instance, this amounted to a \$450,000 fine. If the same holds true for the Greek athletes, their federation may be looking at an overall fine of more than half a million dollars.

Despite testing regimes put into place by WADA and the IWF, the sport of weightlifting is still haunted by performance-enhancing drugs. According to the IWF's own web site, 42 athletes were suspended for using such drugs during 2007.<sup>30</sup>

### **THE “UN-DIRTY” DOZEN – USADA’S NEW APPROACH TO PROMOTING DRUG-FREE SPORTS**

In the first half of 2008, the US Anti-Doping Agency embarked on a new program, similar to the biological passport program being developed by the UCI, and to testing programs developed by the Agency for Cycling Ethics in the United States and Rasmus Damsgaard in Europe.

The project, known as “Project Believe” (or alternately the “Un-Dirty Dozen”) is a pilot program where 12 athletes will undergo longitudinal testing – both blood testing and

urine testing – to develop profiles that can then be used to chart variations in hormone levels, blood levels and other potential indicators of doping. News of the program came out in late April, although the exact start date is not clear.

During a press conference in April, track and field athletes Bryan Clay and Allyson Felix confirmed that they were part of the program. Cyclist Kristin Armstrong had mentioned to an Associated Press reporter earlier in the year that she was part of a USADA pilot program, but didn't explain what the pilot program entailed.

At the press conference, Clay, an Olympic hopeful decathlete, explained his reasoning for being involved in USADA's program. "I know for me, anytime I get an opportunity to let someone know I'm clean, I take it," he told reporters. "USADA picked a few athletes that they're going to test a whole lot. The goal is to prove we're clean instead of dirty, and we want to be part of that."

Clay continued, saying, "I'm anxious to let people know 'Hey, look, I'm clean. I'm the athlete you should be behind. I'm going to do it right so these things don't happen."

Felix added, "Whatever I can do to prove that I'm clean, I'll do it, no matter what time I have to wake up, where I have to drive."

At the time of Clay and Felix's press conference, USADA had not publicly announced their program, but not long afterward they issued a press release confirming that the program exists, and is part of an effort to develop new strategies to combat the problem of doping in sports.

Don Catlin, who headed the UCLA anti-doping laboratory from its inception until 2007, said of the that the idea of longitudinal profiling is a "much more powerful technique than simply taking one slice in time."

"It's no surprise that good athletes, clean athletes, will jump up and down for this thing," Catlin added. "That's great. It's about time they started doing something. So now, it's 'OK, it's here, it's now.' And I'm sure there are going to be issues about how to get on the program."<sup>31</sup>

According to Travis Tygart, USADA's chief executive, "The ultimate goal is to advance the science. We'll see how it evolves. It's too early to say."

Tygart added, "Learning the lessons we did in BALCO, the extent athletes will go to circumvent traditional testing methods ... the purpose of the program is to test the effectiveness of a new scientific technique. We're careful as to who has access to what we're even looking at ... so the evil chemists out there can't undermine our purpose in administering this program."

The program will test athletes for the presence of anabolic steroids, masking agents, stimulants (such as amphetamines), EPO and other blood-boosting techniques, and will

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include testing for human growth hormone. Tygart added that not only will the Un-Dirty Dozen be tested for HGH, but also all athletes representing the US at the Beijing Olympics will be tested for the drug. The USADA chief noted that this additional testing will be a “significant deterrent.”

In addition to Clay, Felix and Armstrong, the other members of the Un-Dirty Dozen are track athletes Tyson Gay, Dee Dee Trotter and Lauryn Williams; swimmers Natalie Coughlin, Michael Phelps and Dara Torres; and cyclists Sarah Hammer, Jeremiah Bishop and Christine Thorburn.<sup>32</sup>

Details about how long the pilot program will last and how the program may develop after the pilot program has completed have not been released at this time.

### **MICHELLE COLLINS' SUSPENSION LIFTED**

After serving most of her four-year suspension, Michelle Collins was reinstated by the International Association of Athletics Federations (IAAF) on May 14<sup>th</sup>. The IAAF decided to reduce Collins' punishment in recognition of the help she's provided to both the USADA and federal agents in their investigation into the BALCO scandal. The sprinter is believed to be the first person the IAAF has reinstated early. This change was due to Collins' cooperation with investigators looking into the BALCO case, as well as due to her outreach efforts to young athletes warning them of the dangers and harm that the use of performance-enhancing drugs can cause.

Collins, who is now 37 years old, will be eligible to compete for a spot at the U.S. Olympic Trials that begin in late June. The American sprinter said in a statement through the Valparaiso University Sports Law Center, “All I want to do now is return to the sport I love. I look forward to competing again.”

Although Collins was originally suspended for eight years after being the first person found guilty of doping because of a “non-analytical positive” related to her involvement in the BALCO scandal, the sprinter's suspension was later reduced to four years, originally set to end on July 17, 2008.

In a telephone interview, USADA CEO Travis Tygart told the Associated Press, “We certainly support and have supported Michelle Collins' reinstatement once she came forward and rightfully assisted USADA in our efforts to rid the sport of doping.”

“We are pleased that the IAAF gave full consideration to her case and in our mind made an appropriate decision, based on her willingness to provide truthful cooperation and assistance,” Tygart continued.<sup>33</sup>

### **WADA DROPS APPEAL OF LATASHA JENKINS DECISION, AFTER SEEING “NEW EVIDENCE”**

When LaTasha Jenkins was cleared of doping charges by an arbitration panel in December 2007, she became the first athlete ever to win a case prosecuted by USADA. In part, Jenkins won due to procedural errors made by the anti-doping lab that reported



her positive drug test. As with several other high-profile cases, the Jenkins case turned on the question of whether or not the same lab technician was involved in the analysis of both her original sample and the back-up sample tested to confirm the lab's initial adverse analytical findings.

The World Anti-Doping Agency, however, did not agree with the original panel's decision. In February 2008, WADA filed an appeal of the case to the Court of Arbitration for Sport. About two months later, WADA dropped their appeal, telling the CAS in a letter, "Having carefully reviewed the scientific data of this case, which includes material not available [...] from the initial hearing, WADA has reached the conclusion that the adverse analytical findings cannot lead to a sanction (against Jenkins)."<sup>34</sup>

Jenkins said in a press release, "I am happy and relieved that this process of a year and nine months is over. I intend to resume my athletic career when circumstances permit. I'm confident my reputation has been restored and I want to move on with my life."<sup>35</sup>

The original decision acquitting Jenkins found that the same laboratory technician being involved in both the initial testing of her A sample, and the follow-up testing of her B-sample, which is a violation of international standards. Jenkins' story is all the more unusual, because her A and B samples were tested at different labs. To date, no public explanation has been made for how such an event could have occurred.

Law professor Michael Straubel of the Valparaiso University Sports Law Clinic in Valparaiso, Indiana, headed up Jenkins' defense team. Four third-year law students working at the clinic during the 2007 – 2008 academic year assisted Straubel. Since WADA wrote the CAS saying that they wished to drop the Jenkins case, the agency has not made any statements about what additional information they reviewed in deciding to drop their appeal.

### **TECHNOLOGICAL DOPING?**

In late April 2008, the issue of whether equipment can confer an unfair advantage surfaced in the world of competitive swimming. The Italian swimming federation launched a research program to determine if Speedo's LZR Racer suit, designed with the help of NASA, might be illegally buoyant. Alberto Castagnetti, coach of the Italian swim team, called the use of the Speedo suits "technological doping." Earlier in April, the International Swimming Federation (FINA) ruled that the LZR Racer suits conform to FINA's regulations and can be used during competition.

The Italian team, sponsored by rival manufacturer Arena, expressed concerns about the suit in part because numerous world records have been set by swimmers using the Speedo LZR Racer during the course of 2008 – in both long course (50-meter pools) and short course (25-meter pools) events.<sup>36</sup>

The next month, in early June, FINA announced that it was approving new high-tech bodysuits developed by Adidas, Arena and Mizuno for use in competition. Controversy over the Speedo suit, however, continues. In May rival US manufacturer TYR filed an

anti-trust lawsuit against Speedo, saying that the company conspired with USA Swimming and head coach Mark Schubert to stifle competition and to lure swimmers away from TYR and other manufacturers of swimsuits. The lawsuit has not yet been resolved. FINA's announcement will not be the last chance for new suits to be approved before the Beijing Olympics. Other companies, such as Japanese manufacturers Asics and Descente and TYR, will have one more chance on June 30<sup>th</sup>.<sup>37</sup>

### **BIOLOGICAL PASSPORTS BEGIN**

At the beginning of 2008 the International Cycling Union (UCI) started an ambitious program that will gather a large amount of biological data from professional cyclists over time. Using blood values and hormone levels gathered through multiple tests, the program strives to determine each athlete's normal values for the various parameters being measured. The idea is that such data, known as longitudinal data, gives a clearer picture of what is normal for each athlete, as well as what is out of the ordinary. In theory, unexpected or abnormal test results could indicate that something is amiss. The reason for an abnormal result could be as simple as an athlete coming down with an illness, or it could be that the athlete is doping. Longitudinal testing is thought to be more capable of catching athletes who use EPO, or who engage in blood doping. Its proponents also claim that it is capable of determining whether an athlete is using testosterone or other banned steroids.

Whatever the case, significant variations in a rider's test results will trigger further investigation, and if necessary, could lead to anti-doping proceedings against a cyclist. By early May, the UCI believed that they had collected enough data to announce that a "top cyclist" was likely to be suspended from competition based on data gathered as part of the biological passport program. This rider was among 23 professional cyclists whose test results merited further examination. Four other riders, the UCI said, were facing potential bans.

In order for the testing program to be successful, the UCI needs to carry out a large number of tests throughout the year. "Last year we completed just over 9,000 tests: this year we will be doing just over 18,500," Anne Gripper, the UCI's anti-doping manager, told the Associated Press. She expects the volume of testing to decrease, however, once solid baseline values are established for all the riders being tested. "This is the peak year of testing. Once we have strong profiles we won't need the same volume of testing." Gripper continued, "Given the enormity of what we are doing it has been going well. We are getting the full support of the riders and teams."

UCI chief Pat McQuaid is optimistic about the biological passport program. "We are seeing a major change at the top level of the sport," McQuaid told CyclingNews.com. "We all are aware that cycling has a doping problem and for 40 years has been dealing with a doping problem. We needed to go at it with a huge campaign in which we bombarded athletes with tests and the biological passport program gave us that opportunity."

When the UCI made its announcement in May, fewer than 2200 tests had been performed on 854 cyclists across all of the major disciplines in the sport. At that pace, the organization will conduct approximately 6600 tests during the course of 2008, or 2200 less than were conducted during the previous year.<sup>38</sup>

There are also obstacles to the long-term viability of the UCI's biological passport. The program is caught in the middle of a long-standing feud between the UCI and the World Anti-Doping Agency. At the end of March 2008, WADA announced that it was withdrawing its support for the UCI's biological passport program. The anti-doping agency's action came after the UCI filed a lawsuit against former Dick Pound. During his tenure as the head of WADA, Pound was frequently critical of cycling's governing body, and former UCI chief Hein Verbruggen in particular.

John Fahey, WADA's current president, told reporters, "In light of the UCI's attack on WADA, we now find a partnership with the UCI untenable and will therefore initiate dialogue with other sports in order to advance the Athlete's Passport project."

"It is very surprising from our point of view that they should take this view," Pat McQuaid told CyclingNews.com. "We haven't done anything against WADA, we have no case against WADA. This is against Dick Pound. We are protecting the position of the UCI against any future liability should his claims be accepted, that the UCI did nothing or did very little in the fight against doping."

"From our point of view, we are still committed to the biological passport," he continued. "This is a knee-jerk reaction from WADA and I hope that in the coming days with some consideration they might take a slightly different view."

"It may take us a bit longer to introduce it now if they are not going to be actively involved in it, but we will press ahead."

In addition to the squabble with WADA, the UCI has run into financial challenges. Various organizations failed to provide money that they promised in order to help get the biological passport program off the ground.<sup>39</sup>

In early June, the UCI announced that it was amending the biological passport program so that any rider whose test results showed abnormal values would be required to sit out of competition for 15 days. In a related case, cyclist Igor Astarloa was released from the Milram cycling team after he returned some unusual test results. It is not clear, however, whether those test results came from an internal program at the cycling team, or whether the results came from the UCI's testing.<sup>40</sup>

#### **SKIER AND SUPPLEMENT MAKER SETTLE THEIR FEUD**

Hans Knauss, an Austrian downhill skier who missed the 2006 Winter Olympics due to a doping sanction, reached a settlement with an American nutritional supplement maker whose product, Knauss claimed, was contaminated with banned performance-enhancing

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substances. Knauss tested positive in 2004, after using a supplement made by Ultimate Nutrition Inc. of Farmington, Connecticut that was contaminated with banned steroids.

According to an article in *The New York Daily News*, Knauss' case was settled shortly before it was scheduled to go on trial. The exact terms of the settlement have not been made public. However, Knauss' attorney told the *Daily News*, "I can tell you that Hans was very happy with the terms of the settlement, and he's looking forward to the next thing."

During his career, Knauss won seven World Cup races. His professional skiing days came to an end when he tested positive for steroids after a race in 2004. Knauss, damaged by the allegations, retired from the sport and launched his lawsuit against the supplement maker. In an interview at about the time Knauss retired from ski racing, he admitted that he was naïve in purchasing the supplements from a friend, who was one of the company's Austrian distributors of the product.

Knauss was not the first athlete to test positive after using products made or distributed by Ultimate Nutrition. In 2003, American swimmer Kicker Vencil missed the Athens Olympics as a result of his testing positive for banned substances. Vencil sued Ultimate Nutrition and won \$500,000 when he was able to prove the link between his positive anti-doping test and his use of Ultimate Nutrition products.

Howard Jacobs, who represents Hans Knauss in the United States, commented, "That's one of the things that doesn't get talked about. A lot of the athletes have positives not because they're trying to cheat. It's because of inadvertent things."

### **THE ANONYMOUS TESTS THAT WEREN'T**

Back in 2003, Major League Baseball started to address the problem of performance-enhancing drugs in the sport. At the time many people had reason to believe that the use of steroids and other PEDs was rampant in baseball. But no one was certain just how many players were using.

Major league officials and the Major League Players Union crafted a creative agreement in an attempt to deal with the problem. During the 2003 season, players would be tested anonymously and on a random basis for PEDs. If more than five percent of the players tested returned positive test results, the leagues would implement a testing program in 2004 that would include penalties for the use of banned substances.

When all was said and done, the results for 2003 showed that more than five percent of athletes tested were positive for one or more banned drugs. So in 2004, MLB officials instituted a program aimed at catching and punishing drug cheats. Some of the players who were taking steroids in the late 1990s and early 2000s were getting their drugs directly or indirectly from a California nutritional supplement company that was making news at the end of the 2003 baseball season. BALCO. And some of the players connected to BALCO may have been those who tested positive for banned drugs during the 2003 season.

In 2004, the federal government convened a grand jury to look into the scandal. Among the athletes called by prosecutors to testify in front of the grand jury were ten major league baseball players. After all of the testimony had been taken, prosecutors set out to determine whether their witnesses answered the questions posed to them truthfully or not. If they had, then the athletes would be safe from prosecution for any misdeeds they admitted to. If not, they could face perjury charges.

To determine whether the athletes told the truth about their drug use (or lack of drug use), government attorneys wanted to get copies of the test results for the athletes tested under MLB's program. In 2004, government prosecutors sought to get all of the results for all the athletes tested by subpoenaing the records from the companies involved in the testing program – Quest Diagnostics and Comprehensive Drug Testing. The government was forced to back off when both companies refused to hand over the records and indicated that they would fight the government's efforts all the way to the Supreme Court.

In response, the U.S. Attorney's office narrowed their request to only records for the 10 baseball players who testified before the BALCO grand jury. Just two days before the companies were to hand over the records, Gene Orza, the chief operating officer of the Major League Players Union announced that his organization would be going to court in an effort to quash the subpoena and block the release of the records.

The following day, the government obtained search warrants and started conducting raids of two businesses with the goal of acquiring the players' test results. It was not an easy task. The players' samples were being stored at one facility, in bottles that only had coded identification numbers. The records that matched the identification codes to player identities were at a different facility owned by a different company.

Court documents revealed that federal agents strong-armed Comprehensive Drug Testing during their search of CDT's facilities, at one point threatening to take all of the computers and hold them for 60 days. By the time their search of CDT was over, federal agents had not only a list with the reference information for the 10 players whose records they were seeking, they also had the entire reference list for every player tested.

Using the information acquired during the search of both companies, the government could determine who tested positive for what drugs. To determine whether or not the major league players committed perjury, they could match this list of athletes who tested positive with testimony of the various athletes in front of the BALCO grand jury.

Under the agreement between the players' union and MLB, the union had the right to ask that the 2003 tests be destroyed. It is unclear why the player's union did not choose to do so. Currently, the union is barred by a court order from commenting on the issue.

According to legal experts, the union is waging an uphill battle that it may well lose. In January, the United States Court of Appeals for the Ninth Circuit ruled that the government could keep the test results. Their ruling is similar to a 2006 ruling by the

same court that found the seizure of the records from the two drug testing companies was legal.

The Appeals Court is currently weighing whether they will hear another appeal from the players' union. If not, the union's only recourse would be to appeal to the Supreme Court. One legal expert, Mathew Rosengart, an adjunct professor at Pepperdine University School of Law in Malibu, California, recently told *The New York Times* that it would be very unusual for the Appeals Court to hear the union's case for a third time.

In addition, Rosengart said, the union would have a difficult time convincing the Supreme Court to hear the case. But if the case were to progress that far, and the Supreme Court refuses to hear the case, then federal prosecutors may soon be free to use the tests. In that event, there are just over 100 current and former professional baseball players who could soon be getting requests or even subpoenas to speak to federal investigators.<sup>41</sup>

### **TREVOR GRAHAM TRIAL**

One of the biggest ironies of the entire BALCO case involves track coach Trevor Graham, whose clients included a number of athletes connected to BALCO. Graham is the coach who anonymously mailed a syringe that contained residue of "the clear" to USADA in 2003, shortly before the entire BALCO case erupted.

Despite being the person who provided anti-doping officials with the resource to identify and devise tests for "the clear," Graham was recently put on trial for three counts of lying to federal agents investigating the BALCO case. At issue were statements Graham made to IRS agent Jeff Novitzky and others about Graham's dealings with Angel "Memo" Herédia, a former Mexican discus champion who now lives in Laredo, Texas. Herédia is said to have purchased various banned substances in Mexico, brought them across the border, and then shipped the drugs to various clients in the United States and around the world.

During meetings with federal agents in 2004, Graham denied meeting Herédia in person, denied talking to Herédia on the phone after 1997. He also denied distributing drugs Herédia supplied, and denied referring athletes to Herédia so that they could obtain various banned substances.<sup>42</sup>

Over the period of about a week in late May 2008, Judge Susan Ilston presided over Graham's trial. During the trial, Herédia testified about his dealings with Graham. A number of Graham's former clients, including Olympic gold medalists Dennis Mitchell, Antonio Pettigrew, and Jerome Young, testified about Graham's ties to Herédia. The athletes also said that Graham believed the only way to win was through the use of performance-enhancing drugs.

On May 29<sup>th</sup>, the jury deciding Graham's fate reached a unanimous verdict on only one of the three counts against the track coach. On the other two counts, the jury was deadlocked. Graham was convicted of lying about the contact he had with Herédia after 1997. Telephone records and other testimony presented at the trial convinced the jury that

Graham did have contact with the admitted steroids dealer, and that Graham was not honest in answering questions from federal agents about his contacts with Herédia.<sup>43</sup>

After the verdict was announced, Travis Tygart, USADA's CEO, told a reporter the result was an important reminder to athletes to be honest in their dealings with federal investigators. "It's a good message that athletes and coaches and others need to constantly be reminded of," Tygart said in a telephone interview.<sup>44</sup>

Jury foreman Frank Stapleton, speaking only for himself, had harsh words for the prosecution. After the jury was dismissed Stapleton gave a statement to reporters, saying, "The government was bound and determined to make an example of the defendant."

"To achieve their goal," Stapleton continued, "they felt it necessary to do a deal with a true devil, an untruthful drug dealer and illegal immigrant who is walking the streets of America, free and presumably still plying his trade with impunity. I hope this verdict satisfies the Justice Department's lust for blood in this matter and that there will be no retrial."

In speaking with reporters, Stapleton made it clear that other jurors disagreed with his opinion of the government's behavior in the case. He criticized the conduct of lead investigator Jeff Novitzky, saying that he was troubled by the fact that Novitzky and a fellow investigator did not tape record their original interview with Graham. Stapleton said that he was disturbed that Novitzky and his colleague wrote up their notes of the conversation nine days after it had occurred.<sup>45</sup>

Another juror, Meg McNiece, told *The New York Times*, "We all asked ourselves, why are they going after this man when they have an admitted drug dealer on the witness stand?"

In the end, however, she said the jurors put their own feelings aside and focused on the specific issues to be decided: "Was Graham lying? Was it material and was it done willfully and deliberately?" On one charge, they were able to unanimously agree.<sup>46</sup>

Despite Stapleton's comments about Herédia being an illegal immigrant, it turns out that Herédia has a visa that allows him to live and work in the United States. After the trial, Herédia told reporters that he no longer distributes performance-enhancing drugs to athletes. He also said that he decided to "do the right thing" by cooperating with government investigators and testifying at Graham's trial, and that he would cooperate with USADA in any doping investigations arising from testimony given during the trial. According to news reports, Herédia does not have immunity from prosecution. The admitted steroids dealer told reporters shortly after Graham was convicted that he did not know whether the government would bring charges against him.<sup>47</sup>

Graham's attorney, William Keane, told reporters that he might file a motion for acquittal based on the jury being deadlocked on two of the three charges against his client.<sup>48</sup> Keane said, "We are obviously very disappointed in the verdict. The jury obviously had

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problems with the government's case on the other two counts.”<sup>49</sup> In July 2008, despite Keane’s efforts to convince the judge to throw out Graham’s conviction, Judge Susan Ilston refused to do so. Trevor Graham will be sentenced on October 15<sup>th</sup>.<sup>50</sup> He faces a maximum sentence of five years in prison, along with a \$250,000 fine.

Also in July 2008, Graham was handed a lifetime ban by USADA for providing performance-enhancing drugs to athletes caught up in the BALCO scandal. He will not be allowed to participate in any events organized by the USOC, USA Track and Field, the IAAF or any events run by groups that are affiliated with WADA.

The fight against doping in sports is now extending beyond just the athletes – it now includes coaches, agents, or anyone else who might be involved in helping athletes use banned substances, USOC spokesman Darryl Seibel told the Associated Press. “For athletes, this announcement underscores the importance of making good decisions in choosing who to associate with,” Seibel said.

USADA CEO Travis Tygart agrees. “There has been a belief out there that coaches, doctors and other people who support athletes were somehow outside the long arm of the rules,” Tygart told Associated Press reporter Eddie Pells in a phone interview. “This is a strong reminder that they're not, and that we'll use our authority to hold coaches accountable if they assist and aid athletes in doping.”<sup>51</sup>

Although Graham’s lawyer sought to have his client’s conviction thrown out, the Judge Susan Ilston declined to do so. On October 21<sup>st</sup>, 2008, Graham was sentenced to a year of home confinement. “We’re obviously pleased that the judge sentenced Mr. Graham to probation,” Keane told Bloomberg News. Although Keane and his client were pleased with the outcome, at least one person – BALCO mastermind Victor Conte – wasn’t. Conte was disappointed with Judge Ilston’s leniency in the matter. Graham is being punished for lying to federal agents, but not for actually giving drugs to his athletes.

“I gave the drugs to him hand-to-hand on numerous occasions to give to athletes,” Conte told *The New York Daily News*. “My understanding is if he has home confinement, he gets to go to work, to church, to the barbershop. One of the things you don't get to do when you go to a prison camp is you can't work. I think Trevor got off easy.”

In March 2009, the same prosecutors will again appear before Judge Ilston, this time for the trial of Barry Bonds, who is charged with committing perjury during testimony in front of a federal grand jury investigating the BALCO case.

According to Graham’s attorney, the disgraced track coach has been working as a school bus driver since he was convicted in May. Trevor Graham will most likely be able to continue working while serving home confinement for the next year.<sup>52</sup>

### **JEFF ADAMS VINDICATED**

On the same day that the Court of Arbitration for Sport ruled that Oscar Pistorius (nicknamed “Blade Runner” for the type of prosthetics he uses on the track) would be



allowed to compete against able-bodied athletes, another decision was quietly published on the CAS web site. The unheralded ruling also dealt with a case involving a disabled athlete, only in this case it was Jeff Adams, the Canadian paralympic athlete who allegedly tested positive for cocaine use on May 28, 2006 at the ING Ottawa Marathon in Ottawa, Ontario.

The ruling by the panel deciding Adams' case was, in essence, a split decision. On the most important point – whether or not any cocaine or cocaine metabolites were present in Adams' system that day – the panel accepted Adams' explanation, overturning that portion of the original decision by arbitrator Richard McLaren from June 2007. The CAS panel found that the reason a cocaine metabolite showed up in Adams' sample was that he had used a contaminated catheter when giving a urine sample at doping control following the Ottawa race.

For the full story of how Adams' catheter became contaminated, see pages 169 and 170 of *Dope: A History of Performance Enhancement in Sports from the Nineteenth Century to Today*. In short, Adams was assaulted by a woman who forced cocaine into his mouth while he was at Vatikán, a Toronto goth bar. The catheter he used about an hour after the assault wound up being the same catheter he used to when asked to provide a urine sample after the Ottawa race. Although Adams had witnesses who corroborated his story, and the Canadian Centre for Ethics in Sport (CCES, Canada's anti-doping agency) were unable to refute his story during the original hearings in 2007, Richard McLaren decided that Adams' testimony was not credible and ruled that an doping violation had occurred. McLaren's judgment banned Adams from competition for two years, running from mid-August 2006 through mid-August 2008.

The CAS panel, however, disagreed with McLaren's assessment, ruling in Adams' favor on this point. In their written opinion, the panel noted:

“The learned Arbitrator of the Doping Tribunal came to the conclusion that the Appellant's testimony regarding the Vatikán bar incident, on balance, was not entirely credible; we, with the greatest respect, do not share this conclusion on the evidence available. We find that the Appellant's version of the facts was never contradicted and was fully corroborated by two reputable witnesses. We further find that the lack of physical evidence surrounding the incident and the fact that the police reports were never filed do not, in our view, weigh greatly against the veracity of the Appellant's unshaken testimony. Thus, we accept his testimony of the events at the Vatikán bar. Additionally, we find, as did the Doping Tribunal, that the scientific evidence is inconclusive as to whether urine remaining in the Vatikán Catheter could have caused the AAF. When the entire circumstances and known facts are viewed in light of the Appellant's uncontroverted testimony and high character, we find that the AAF was the result of the contamination of the Vatikán Catheter.”<sup>53</sup>

In accepting Adams' explanation of how his sample became contaminated, the CAS panel determined that under the circumstances, the two-year ban imposed by Richard McLaren should be immediately lifted. In an odd twist, the panel also ruled that due to

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WADA's strict liability standard, and because a cocaine metabolite was present in his sample, that Adams was guilty of a doping violation. In their decision, they determined that voiding Adams' result from the ING Ottawa Marathon was sufficient punishment for such an infraction.

Part of Adams' case rested on the fact that Canadian anti-doping officials are required to provide disabled athletes with the necessary equipment to ensure that urine samples aren't contaminated. If they could prove to the panel that the positive test was a result of anti-doping officials failure to follow policy, strict liability would have been thrown out the window. The arbitrators, however, ruled that the anti-doping officials were not required to either provide clean catheters or to inspect the catheters that Adams would use.

The Canadian Anti-Doping Program rules on this point are very explicit:

“6C.5 The *DCO* [doping control officer] shall ensure that the *Athlete* is offered a choice of appropriate equipment for collecting the *Sample*. If the nature of an *Athlete's* disability requires that he/she must use additional or other equipment as provided for in Annex 6B: Modifications for Athletes with Disabilities, the *DCO* shall inspect that equipment to ensure that it will not affect the identity or integrity of the *Sample*.”

Had the panel applied this rule to Adams' case, responsibility for his sample being contaminated would rest on the anti-doping authorities. A couple of days after the CAS issued its ruling, Adams and his attorney held a press conference during which Adams laid out his plans for the near term.

“I've got two huge goals for the very near future. The first one is to get back on the track and qualify for Beijing to represent my country. I'm incredibly grateful to the CAS panel for clearing my name and letting me get back to doing what I do best — going around in circles fast.”

Despite his high spirits, the past two years have not been easy.

“There have been so many moments during this process where I wanted to quit, but knowing that there's a barrier in front of you and knowing it's the courage to confront those barriers that makes you into the person you need to be has kept me fighting this fight,” he said. “That's what helped to convince me to fight for a spot on the team to Beijing.

Getting a spot on the team will take some hard work. And Adams has roughly 6 weeks to qualify for the Beijing Games.

“ [I]t's no secret that there are some enormous barriers in front of me and I'm facing some very serious obstacles,” Jeff Adams told reporters. “One of the realities of being under suspension is that you are completely taken out of the system. So I had zero access to funding, I had zero access to training with other athletes and I had zero access to coaching. And that alone is an enormous, enormous barrier.”

During the time that he's had to sit out competition, Adams has been able to train with a number of cyclists, including two elite Canadian riders, in order to keep himself close to race shape. He will need to post some very good times in competition over the coming weeks in order to qualify for the Canadian Paralympic team. Fortunately, the times he needs to beat are times that he's posted more than a half dozen times before during competition. With some hard training and a few good races, Adams should be able to qualify for the Paralympic Games in Beijing later this year.

The cost of vindication has been high. From a financial point of view, Jeff Adams has had to spend more than \$700,000 to clear his name. To help with the high cost of the case, Tim Danson, Adams' lawyer, has offered some incentives that would reduce his client's legal fees if he makes the Canadian team, and further incentives if he brings home a medal from Beijing. But even if Jeff Adams wins a gold medal, he will be left with legal bills of around a half million dollars.

Beyond all that, however, Adams has another goal. "The second goal that I have is to be a champion for change within the sports system," he told reporters at the May press conference. "We really need to acknowledge the way the system engages against athletes, and we need to change that because that's not how we do things as Canadians. I hope I can be a catalyst for change in that way. And this whole process has helped to reinforce, to myself, that is that I work hard, I stand up for what I believe in and I finish what I start."

To that end, Adams and his lawyers will be pushing Canadian authorities to set up an ombudsman position so that athletes who cannot afford legal assistance in challenging anti-doping cases will be able to do so.

In June, Adams competed in the US National Championships in Tempe, Arizona, and again in an event that he arranged in Atlanta, Georgia. Adams won the race in Arizona, but didn't get a time fast enough to qualify for a spot on the Canadian Paralympic team. In Atlanta, on June 25<sup>th</sup>, Adams qualified, just five days before the deadline to do so.

"It was totally the eleventh hour, but I was able to do an elite time and an 'A' standard time, which puts me in great shape. The first race of the night I went 3:00.27, which is the third fastest time in the world this year. We might have been a bit too enthusiastic, because on the next attempt, I was only able to go 3:03.98, which is only .02 seconds under what I needed to do," Adams said.

Adams arranged and sanctioned the event himself, with the help of Scot Hollonbeck, someone who Adams had raced against in the past. Also assisting the Canadian were Ernst VanDyk, of South Africa, and Josh Cassidy, of Canada. VanDyk and Cassidy helped set the pace so that Adams could establish the times he needed in order to make the Canadian team.

“It was a really amazing night for a lot of reasons. Scot and I have had some epic battles over the years, the best one right here in Atlanta at the Paralympics in 1996, and we warmed up on this very track. To come back here and work together to try to get me on the team was really rewarding,” Adams said. “The fact that Ernst and Josh came down to help pace me really shows how the athletes are reacting to the stuff I’ve been going through over the last two years. For competitors of mine to help me makes an enormous statement about their character, and is an amazing comment about the way Paralympic athletes see competition. Neither Ernst or Josh wanted to try to win a medal without all of the best athletes there.”<sup>54</sup>

### **FLOYD LANDIS LOSES CAS APPEAL, FILES LAWSUIT TO THROW OUT PANEL’S DECISION**

As well publicized as Floyd Landis’ case was prior to the original arbitration hearings in May 2007, the months leading up to Landis’ CAS appeal of the original panel’s judgment were quiet. Until the CAS decision was announced at the end of June 2008, not much was known about how the case was presented by either side during the hearings conducted in New York City three and a half months before. Following the hearings, attorneys for both sides were required to submit their final written arguments by April 18<sup>th</sup>.

On June 30<sup>th</sup>, the Court of Arbitration for Sport denied Landis’ appeal, upheld his two-year ban, and imposed a \$100,000 (US) penalty, to be paid to USADA for expenses incurred by the anti-doping agency. The penalty was assessed, according to the panel’s written decision, because Landis’ attorneys had requested that various USADA witnesses be present for questioning during the March hearings. A number of those witnesses were never called to testify, and USADA attorneys, in their final arguments USADA submitted to the panel, asked for compensation to cover the expense of bringing those witnesses to New York.

In rendering their decision in the Landis case, the CAS panel rejected virtually all of the arguments and evidence introduced by his attorneys. And they went further, by chiding Landis and his defense team for the manner in which they presented their case. According to the panel’s written decision, Landis’ lawyers were guilty of being overly vigorous in how they presented his case. They also noted that the Landis team had presented much of the same arguments on issues discussed in the previous arbitration, held at Pepperdine University’s School of Law in May 2007. (Interestingly, the panel also reminded USADA’s lawyers that the CAS arbitration was, in essence, an entirely new case, which contradicts their complaint about Landis’ team mining much of the same territory as before.)

In addition, the panel felt that some of the scientific witnesses appearing on Landis’ behalf crossed a line from presenting scientific evidence in an unbiased way to advocating Landis’ innocence. The depth of the criticism of Landis’ defense was unprecedented; as if the CAS panel were so angry at the manner in which Landis’

lawyers presented their case that the panel did not even bother to consider their arguments.

In late September 2008, after almost three months of considering their client's legal options, lawyers representing Floyd Landis filed a lawsuit in the US District Court in Los Angeles, California seeking to invalidate the CAS panel's ruling and to rescind the \$100,000 fine.

Documents filed by Landis' legal team allege that a number of issues prevented their client from receiving a fair hearing in front of the panel. Among the reasons cited was the failure of the arbitrators to disclose potential conflicts of interest, such as working in a different capacity with the same panel members in a different anti-doping case. Landis told ESPN.com's Bonnie D. Ford that his immediate goal in filing the lawsuit is to have the \$100,000 fine overturned. He also said that if he prevails in the lawsuit, "I think I'd have some sense of exoneration -- maybe not what I had hoped for."<sup>55</sup>

In early December 2008, the Landis case was dismissed "with prejudice," meaning that Landis cannot re-file the lawsuit in the US District Court at a later date. No public announcement has been made regarding a settlement, or the terms of such a settlement, which is not unusual. However, because no information has been released, it's not clear whether Landis was successful in getting USADA to drop the \$100,000 fine imposed by the CAS panel in their ruling on his appeal. The legal papers seeking the dismissal were signed by attorneys representing both Landis and USADA, which suggests that the case was ended by the agreement of both sides.<sup>56</sup>

The ruling clears the way for Floyd Landis to begin competing as a part of the OUCH professional cycling team once his suspension ends on January 29<sup>th</sup>, 2009. Landis' first race in his comeback as a professional cyclist will likely be the Tour of California, where he will be competing against a number of top riders, including former teammate and seven-time Tour de France champion Lance Armstrong. Armstrong, too, is staging a comeback during the 2009 season, after three and a half years away from the sport. Armstrong, in announcing his return, said that he is racing again in order to raise cancer awareness around the globe.

### **NEW RULES FOR ANTI-DOPING TESTING IN BEIJING AND BEYOND**

In late May, the International Olympic Committee announced new anti-doping rules for the Beijing Olympics to be held August 8 – August 24, 2008. Starting with the Beijing Games, athletes will be subject to unannounced testing, at any time and any location. In doing so, the IOC said, "The tougher rules serve as a clear demonstration of the IOC's commitment to ensuring that athletes play fair."

Unannounced testing began on July 27, when the Olympic Village opened. During the Olympics, anti-doping authorities expected to conduct approximately 4,500 tests, 900 more than were conducted in Athens during the 2004 Summer Games. Of these, approximately 700 to 800 would be urine tests for erythropoietin (EPO), as well as 900 blood tests looking for signs of EPO use and/or signs of blood doping.

Under the new program, athletes participating in Olympic competition can be tested more than once a day. Any athlete who misses two tests during the Olympic Games, or who misses one test during the games and two others during the previous 18 months, will be considered guilty of a doping violation and risk expulsion from the Beijing Games.

Also starting with the Beijing Olympics, each national Olympic committee is now responsible for notifying the IOC of each athlete's whereabouts, so that the athletes can be located for testing.<sup>57</sup>

### **DRUG TESTING SLATED TO BEGIN FOR PROFESSIONAL GOLFERS**

Sometime in July, the first anti-doping tests will occur at a major golf tournament in Europe. Which tournament it will be isn't certain.

"We are almost certain to start the week of the European Open [at the London Club from July 3-6] or maybe it will be the Scottish Open [at Loch Lomond a week later]," European Tour chief executive George O'Grady told reporters on May 25<sup>th</sup> at the PGA Championship at Wentworth, UK.

O'Grady also told reporters that he anticipates that the first major tournament where drug testing will occur will be at the US PGA championship tournament in Michigan the following month. "I see they [the PGA of America] are going to do it at the U.S. PGA Championship, the first major to do testing using the PGA Tour's policy," O'Grady said, adding, "They will also have the anti-doping unit on site for the Ryder Cup [in Kentucky in September]."<sup>58</sup>

Although many people believe that golf is not affected by the use of performance-enhancing drugs, the sports governing bodies have been under pressure to implement an anti-doping program. This pressure stems, in part, from efforts to bring golf into the Olympics in time for the 2016 Summer Games. In order for a sport to be included, its governing federation must implement an anti-doping program modeled on the World Anti-Doping Agency's World Anti-Doping Code.

Not all of the details of the program have become public. But some aspects related to testing for testosterone and anabolic steroids have come to light. In March, a reporter for *Golfweek* revealed some of the details surrounding this particular test. Rex Hoggard, writing on the magazine's web site, told the story of Shaun Micheel, a professional golfer whose doctor placed him on artificial testosterone therapy to counter Micheel's naturally low levels of the hormone.

According to Hoggard's story, Micheel was granted a therapeutic use exemption (or TUE) to use the drug, but only for 2008 and only after he tries to go without the medication for a period of six weeks.

“[The Tour] saw my initial diagnoses and agreed that treatment is warranted, but let’s just say I do have anxiety about coming off my medication,” Micheel told Hoggard. “I know how I felt then, and it wasn’t good.”

Before he was diagnosed and treated, Micheel’s condition made him feel lethargic and had a negative impact on his motivation to practice or play, he said. Its worst impact, however, was on his home life. “I was angry all the time. I had to think what kind of father was I becoming?” the golfer said.

Micheel’s situation raises the question: What, exactly, is a normal testosterone level? While different sources give differing opinions, a quick search of the Internet suggests that a normal reading falls somewhere between 200 and 1000 nanograms/milliliter (ng/ml). One endocrinologist that Hoggard quoted, Dr. Adrian Dobs, puts the normal range at 300 to 800 ng/ml. (Dobs also happens to be the Tour-approved doctor who treated Micheel for his condition.)

Micheel’s testosterone level, at the time he was diagnosed, was 279. Since he started using artificial testosterone, his level rose to roughly 500. One recent test pegged his level at 537. According to Dobs’ definition of normal, Micheel wouldn’t have a problem under the new testing regime.

Unfortunately, the threshold limit established by Colorado attorney Richard Young, who drafted the PGA Tour’s new program, is a value of 250. Young also drafted the original World Anti-Doping Code. “If people are sick, they deserve to get the medications they need,” he told *Golfweek*. “You don’t get in the door unless you need something. But if a doctor says this is good for you, you don’t necessarily get a [therapeutic-use exemption].”

While Micheel may avoid any prosecution for doping during 2008, his future is far from clear. “I’m a guinea pig,” Micheel told *Golfweek*’s Hoggard. “I don’t want to be. I don’t want to be adversarial with the Tour at all.” He went on to say, “There is no one fighting for me. I’m fighting for myself. I’m fighting for my livelihood.”

As time goes on, more details of golf’s new anti-doping program are likely to emerge. For Micheel, at least, there is one important person on his side. Earlier this year, Micheel had a conversation with Tiger Woods following the Arnold Palmer pro-am golf tournament. During their talk, Woods offered Micheel his support.

“He told me if I needed any help to let him know. Tiger Woods doesn’t make policy and this isn’t about him, but that was very nice,” Micheel said.<sup>59</sup>

### **WILL JUSTIN GATLIN’S SUSPENSION BE REDUCED OR WILL IT BECOME A LIFETIME BAN? THE CAS DECIDES ... BUT WILL THEY HAVE THE LAST WORD?**

At the end of May, Justin Gatlin – once the fastest man in the world – found himself in New York City at a Court of Arbitration for Sport hearing, fighting for his athletic future. Gatlin was appealing the four-year ban he received after testing positive for testosterone

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at the Kansas Relays in 2006, trying to get the ban reduced to two years. Lawyers for the IAAF were arguing, however, that not only should Gatlin's ban not be reduced, it should be extended into a life ban.

On Gatlin's side, the contention was that the result at the Kansas Relays should be considered a first offense, for which WADA rules require a two-year suspension. Gatlin, who also cooperated with federal prosecutors during the BALCO investigation, wanted the ban lifted so that he could compete at the US Olympic Trials at the end of June, with an eye towards earning a spot on the 2008 US Olympic track squad.

The IAAF argued, however, that because Gatlin tested positive for Ritalin during his college days, his 2006 case should be considered a second offense, resulting in a permanent ban from competition. That case, which occurred during 2001, was set aside, due to the fact that the positive test was for Adderall, a medication prescribed to Gatlin to treat attention deficit disorder (ADD). But when it was, the IAAF warned Gatlin that it could still be held against him during the future. At the time Gatlin tested positive for Ritalin, however, WADA anti-doping rules had not come into force.

In early June, the CAS issued a press release announcing their ruling. Gatlin's ban would not be reduced to two years, and thus he will not be able to enter the qualifying races for the US Olympic team. In their ruling, the panel kept the four-year ban handed down to the American sprinter at the end of December 2007.

In doing so, they rebuffed the efforts of the IAAF to extend Gatlin's suspension to eight years, which would have been effectively a lifetime ban. However, the CAS decided that the starting date for Gatlin's ban would change to July 25<sup>th</sup>, 2006, the date on which Gatlin accepted a provisional suspension. The original panel had pegged the start of the sprinter's suspension to May 25<sup>th</sup>, 2006. Should Gatlin wish to make a comeback, he will be able to compete again on July 25<sup>th</sup>, 2010.

In a statement released after the decision was announced, Gatlin said he was pleased CAS didn't increase his ban. However, he said, he was disappointed by the ruling and would keep his legal options open. In fact, Gatlin's legal options are rather limited. His only recourse would be to challenge the ruling in the Swiss courts (because the CAS is incorporated under Swiss law). Only one athlete has ever successfully done so – Guillermo Cañas, the Argentine tennis player challenging a ban for the use of diuretics. In Cañas' case, the Swiss courts ordered the CAS to reconsider their decision. Ultimately, it didn't matter. After going over the Cañas case again, the CAS panel came to the same conclusion as before.<sup>60</sup>

In early June, Gatlin's attorneys decided to pursue another avenue of recourse. They filed a lawsuit in U.S. District Court in Pensacola, Florida seeking to void Gatlin's first positive test from 2001 and to also allow the sprinter to take part in the U.S. Olympic Trials to be held in Eugene, Oregon, on June 27<sup>th</sup>. In the lawsuit, Gatlin's attorneys argue that the 2001 decision to ban Gatlin for two years (reduced to one year on appeal)



violated the Americans with Disabilities Act. In 2001, when he tested positive at the Junior Nationals, Gatlin was being treated for ADD.

Arbitrator Christopher Campbell is credited with being the first to observe that Gatlin's initial doping positive may have violated the Americans with Disabilities Act. In his dissent from the January decision that set the sprinter's ban at four years instead of the requested eight year ban, Campbell called the situation "blatant discrimination." The U.S. Anti-Doping Agency, USA Track and Field, the U.S. Olympic Committee and the International Association of Athletics Federations have all been named as defendants in the lawsuit.

Joe Zarzaur, an attorney representing Gatlin, told the Associated Press that they were asking the district court to issue an injunction that would enable his client to compete at the Olympic Trials.<sup>61</sup> On June 20<sup>th</sup>, Judge Lacey Collier issued a temporary restraining order banning USA Track and Field, the US Olympic Committee, the IAAF and the IOC from enforcing the current suspension against Justin Gatlin. The judge's ruling will enable Gatlin to participate in the US Olympic Trials that begin on June 27<sup>th</sup> in Eugene, Oregon and will be where members of the 2008 US Olympic Track and Field team will be determined.

"In a nutshell," Judge Collier wrote, "[the] plaintiff's first violation occurred despite the fact that the substance found in plaintiff's system was and is clearly recognized as proper for his diagnosed condition, Attention Deficit Disorder, and that by all accounts, it is undisputed that plaintiff completely followed the protocol established at the time for managing his intake of medication before competing."

"There is little to perceive in the way of harm to defendants should plaintiff be allowed to participate in the trials.

"The country, indeed the world, would be wrongfully excluded from watching one of its great athletes perform."

In announcing the ruling, the judge also noted that a separate hearing to determine whether or not the first violation, and its use in imposing a longer suspension on Gatlin, were violations of the Americans with Disabilities Act would be held the following Monday.<sup>62</sup>

While Judge Collier held the hearing on June 23<sup>rd</sup>, the IOC, who are not named in Gatlin's lawsuit, announced that they would not allow Gatlin to compete in Beijing, regardless of the US District Court's decision. Howard Stupp, the IOC's director of legal affairs, sent a letter to the court stating, "Should [Gatlin] wish to appeal this CAS decision, he must do so before the Swiss Federal Court."

Joe Zarzaur, the sprinter's attorney, questioned the idea of fighting a case based on a US law in a Swiss court. "The idea that the result will be any different with a Swiss court trying to interpret American law under the ADA act seems a little problematic." At the

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same time, Zarzaur didn't completely rule out such an appeal, saying, "But certainly that's something Justin should consider."

Judge Collier, in comments directed at attorneys for USADA, USATF, the USOC and the IAAF, was clear as to where he felt the blame for Gatlin's current legal situation lies. "You ought to be embarrassed by what you've done in this case up to this point," the judge said.<sup>63</sup>

The following day, the USOC filed an appeal in a US Federal Court in Atlanta, Georgia, in an attempt to overturn Judge Collier's temporary restraining order.<sup>64</sup> This action was taken before the judge announced a ruling on the testimony and motions filed at the hearings. By the end of the day, the USOC's action would turn out to be unnecessary, as Judge Collier reversed his decision and cancelled the temporary restraining order. In lifting the temporary restraining order, Judge Collier wrote that determining who would represent the US at the Olympics was the "exclusive jurisdiction" of the USOC. The judge also wrote that Gatlin had been wronged by the process, but that he was unable to do anything to right the wrong.

"As courts have indeed held, issues regarding whether an athlete is eligible to participate in the Olympic Games or any of its qualifying events are reserved solely for the USOC," the judge wrote. "[A]nd the courts have no jurisdiction to entertain a private right of action that might impinge upon an eligibility determination."

"Mr Gatlin is being wronged," Judge Collier added, "and the United States Courts have no power to right the wrong perpetrated upon one of its citizens."

"It is beyond dispute that the plaintiff properly challenged his suspension on grounds that the defendants' actions violated his rights under the Americans with Disabilities Act and the Rehabilitation Act of 1973, the very grounds he raises in this motion."

However, he found that the wrongs being perpetrated on Gatlin did not "rise to the level of moral repugnance as is required under the law for the court to consider piercing the view of the jurisdictional issue."<sup>65</sup>

Gatlin's lawyer told The Press Association that he intends to file an appeal of Judge Collier's decision. "It's kind of a mixed bag," Zarzaur told the news agency. "We're encouraged and not encouraged."<sup>66</sup> Late in the day on June 26th, the 11<sup>th</sup> Circuit Court's decision on Gatlin's appeal hit the news. In a briefly worded decision, court ruled that Gatlin's legal team did not show that his case meets the "applicable standard for such an injunction [to block enforcement of the sprinter's current suspension]."

"Arbitration is a fraud," Gatlin's attorney told Eddie Pells of the Associated Press after the announcement. "It is not fair, and that's what Justin lost to today, arbitration."<sup>67</sup>

According to Zarzaur, Gatlin will now focus on a lawsuit seeking monetary damages, rather than appealing to the Supreme Court. "Justin was disappointed, but he felt relieved

in a way, because the court had finally acknowledged the fact he had a disability,” Zarzaur told CNN. “The judge made it very clear that they [the various athletic and anti-doping organizations] were the party at fault, not him.”<sup>68</sup>

### **CAN A VITAMIN B1 INFUSION REALLY BE A DOPING VIOLATION?**

In April 2007, Japanese professional soccer player Kazuki Ganaha was suffering from a cold, diarrhea, and feeling sluggish on the eve of a match between his club, Kawasaki Frontale and the Urawa Red Diamonds. He saw a team doctor, Dr. Goto, who prescribed a two-day dose of a popular Japanese cold medication. The next day, Ganaha played in the match and scored his first goal of the season, despite the fact that he was still feeling run down.

Over the coming days, his condition worsened. The player went back to Dr. Goto and reported that he was having difficulty drinking liquids, and was becoming dehydrated. Dr. Goto gave Ganaha an infusion comprised of saline solution and vitamin B1. After about 30 minutes of treatment, Ganaha felt significantly better and was able to leave the doctor’s office.

Because of new anti-doping rules barring unnecessary infusions, the doctor consulted with Japan Professional Football League (J League) officials on how to properly fill out a therapeutic use exemption form so that a retroactive TUE could be issued for his treatment of Ganaha.

After filling out the paperwork, and getting the player’s signature, the doctor asked team officials to fax a copy of the TUE form to the J League’s offices. A short while later, J League officials asked Dr. Goto to provide a medical certificate, which he did, noting that he had treated Ganaha for symptoms of a common cold and diarrhea. He neglected to mention dehydration in the medical certificate, which turned out to be a costly error. Not long afterwards, the doctor was asked to provide further information to the J League’s doctor, Dr. Aoki.

The following day, a newspaper article appeared suggesting that Ganaha had received treatment not for medical reasons, but in order to be able to handle the stresses of playing several games over a short period of time. The newspaper article quoted Ganaha as saying, “We will be having several matches in a row, so using it [a garlic shot said to be effective in relieving fatigue], I wouldn’t lose anything. You’d better not come too close to me because it stinks.” Ganaha denied saying anything of the sort to the newspaper reporter, but his team asked him not to appear the next day’s game.

Dr. Aoki, the chairman of the J League’s Doping Control Committee, informed Kawasaki Frontale that using an infusion for anything other than legitimate medical treatment was banned. He also asked the team to provide a response to the newspaper’s story. The team declined to comment on the article until they heard from both the player and the doctor.

Several days later, Ganaha, Dr. Goto and officials from the Kawasaki Frontale soccer team appeared before a meeting of the Doping Control Committee. During the meeting,

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the committee questioned whether or not it was really necessary to treat the player's condition with an intravenous infusion of vitamin B1. After the meeting, the committee decided that the treatment wasn't for an acute medical condition, nor was it a legitimate medical treatment.

In mid-May 2007, the J League's Doping Control Committee decided that in the case of Kazuki Ganaha, an doping violation had occurred because the infusion was, by their reckoning, an unnecessary treatment, and therefore banned under WADA's code. They fined Ganaha and his team 10,000,000 yen (just under \$100,000) and suspended him for six games.

After the decision was rendered, Ganaha appealed to Japan's Anti-Doping Agency. In August 2007, that agency upheld the J League's ruling. Ganaha and his lawyers then filed an appeal with the Court of Arbitration for Sport. In December 2007, shortly after his appeal to the CAS was filed, Ganaha said, "I haven't done anything against the spirit of soccer. I want to prove what the truth is so I can continue with my career proudly in front of my family and supporters."<sup>69</sup>

At the end of May 2008, just over one year after the Ganaha case began, the CAS released its verdict. In reviewing the original case, they found that the 2007 rule was vaguely worded and didn't specifically ban the treatment that Dr. Goto had given to Ganaha. They also found that the treatment provided to the player would not have enhanced his performance – a fact that both sides agreed upon. Therefore, the panel determined, no attempt at doping had occurred.<sup>70</sup>

The CAS panel also determined that the burden of proof that an doping violation occurred was on the J League's Doping Control Committee, and that they had not done so. In addition, the panel's ruling noted that "[Ganaha's] conduct is not deserving of any sanction because the player had done nothing wrong." In the end, the panel overturned the original verdict, cancelled the six game suspension and ordered that the J League pay \$20,000 towards the player's defense expenses.

Following the ruling, the J League chairman issued an apology for the penalties the league imposed on Ganaha. "We sincerely accept the ruling. We caused him hardship for a year. There are things we have to reflect upon," Kenji Onitake, the J League's chairman, said at a press conference in Tokyo. The J League is wiping Ganaha's suspension off of the player's record and is considering whether they will compensate him for income lost during his suspension.

Ganaha expressed satisfaction with the CAS decision. "It was good that I persisted in my belief. I'm happy with the best result," he told reporters. "I want to do well on the pitch for the people who supported me in this process."<sup>71</sup>

Just a few days later, in a game against Consadole Sapporo, Ganaha scored his first goal since April 2007.

“I was really up for today’s game,” he told a reporter for the *Daily Yomiuri*. “I wanted to make a difference today, and I couldn't be happier that it turned out that way.”

“The fans were calling my name even [during] warmups. My teammates knew how important this game was to me. It’s been tough for the last year or so, but I'm at peace now.”

“The support I’ve been receiving has come from all places. It’s transcended the boundaries of this team, and this game. I owe so much to everyone.”<sup>72</sup>

For 2008, WADA’s rules on intravenous infusions have been changed again. WADA modified the wording in the prohibited list to make it clear that except for acute medical needs, all intravenous infusions are banned. And in the case where an infusion is needed, a retroactive TUE will be required. So, while Ganaha’s 2007 case was overturned, in 2008 and beyond, such treatment will be banned, unless it’s for a serious medical condition and a retroactive TUE is granted.<sup>73</sup>

### **NFL STEROIDS INFORMANT COMMITS SUICIDE**

In early June, David Jacobs, a steroids dealer who was arrested and convicted as a result of the Operation Raw Deal investigation, was found dead, along with his on-again, off-again girlfriend, Amanda Jo Earhart-Savell. Police discovered the bodies of Jacobs and Earhart-Savell after her relatives filed a missing persons report. The woman’s relatives told Plano, Texas, police that they had not heard from her, and that she might be at Jacobs’ house. At first, police were hesitant to say whether or not the deaths were due to foul play, but within days they determined that the deaths were a murder-suicide.

Before he was arrested, Jacobs operated a makeshift steroids lab out of his kitchen, creating steroids from ingredients he purchased from Chinese suppliers that he purchased over the Internet. On May 1<sup>st</sup>, Jacobs was convicted of delivering steroids and sentenced to three years’ probation. In addition, he was fined \$25,000. One of the conditions of his probation was that he work with NFL investigators seeking information about players he’d supplied.<sup>74</sup> On the same day that he was sentenced to probation for his connection to the case, Jacobs publicly offered to assist the National Football League with any investigations into steroid use by professional football players. On May 21<sup>st</sup>, Jacobs and his attorney presented documents and other evidence to NFL investigators, naming a number of players that he’d supplied steroids to.<sup>75</sup> In the weeks that followed, revelations about who Jacobs supplied with steroids reverberated throughout the world of professional football. The NFL continues its investigation into steroids use by professional football players, including various players who Jacobs claimed were his customers.

According to news reports, no suicide note was found, leaving the reason he took his own life and the life of his girlfriend a mystery.

### **BIG BROWN GOES OFF THE JUICE AND LOSES THE TRIPLE CROWN**

Going into the Belmont Stakes, the third race in horseracing's fabled Triple Crown, the horse Big Brown was favored to win. Big Brown's trainer, Rick Dutrow, Jr., a controversial figure in the world of horseracing who's not afraid to ruffle a few feathers, is unapologetic for using steroids, noting that since the drugs aren't banned in competition, there is no reason he shouldn't treat his horses with these drugs.

In the case of Big Brown, however, Dutrow spoke openly about his decision to withhold the horse's May steroid treatment. Dutrow told *The New York Times* just days before the Belmont Stakes that he didn't give the animal any steroids in May because, "[t]he horse had been doing so good, and is doing so good, I don't want to screw things up."<sup>76</sup>

In what will surely fuel discussions about the effectiveness of the drugs, Big Brown not only didn't win at Belmont, he came in dead last. Whether or not the decision to withhold the steroids had any impact on the Belmont results will be debated for some time to come.<sup>77</sup>

Several days after the Belmont Stakes, race stewards sat down with Ken Desormeaux, the jockey who rode Big Brown, to discuss what happened. Such interviews are common when a horse favored to do well performs poorly. "As Mr. Desormeaux described, at about the five-eighths pole he attempted to get the horse to make a better run but it was apparent to him that the horse was not responding appropriately, and when they came to the turn it was felt by the jockey that the horse was simply running out of gas," Daniel Toomey, a spokesman for the New York State Racing and Wagering Board told the *Thoroughbred Times*. "Rather than push the horse even harder, Mr. Desormeaux felt the safest thing to do was to pull up. The stewards did not make [an inquiry] at the completion of that race and after talking with Mr. Desormeaux further they are satisfied with his explanation. For the time being, they consider the matter closed."<sup>78</sup>

The same day that race stewards met with Desormeaux to discuss how poorly the horse fared at the Belmont, Dutrow (Big Brown's trainer) announced that the horse will be going back on steroids. Dutrow noted, however, that he doesn't believe steroids have an impact on how well a horse races.<sup>79</sup>

Several politicians in Washington will be holding hearings into safety and other issues related to thoroughbred horse racing. Among those who will testify will be Rick Dutrow. Dutrow told *The New York Times*, "I care about horses and I'm going to show up. They said they wanted to ask me about steroids, and I'll answer those questions. And it'll mean maybe me bringing my veterinarian so I answer them fully and informed."

Dutrow continued, "I'm coming here in good faith. And if they want to kill me, I'm going to try to be prepared for that."<sup>80</sup>

At the hearings, members of the Congressional subcommittee took turns warning the owners, trainers and veterinarians who testified that if they didn't clean up horse racing, Congress would step in and do it for them. Among the measures they would take would

be to revise the laws that enable interstate betting on horseracing. Such gambling accounted for approximately 90 percent of the \$15 billion wagered on thoroughbred horse races in 2007.

Just days after the Congressional hearing took place, International Equine Acquisitions Holdings (IEAH), the owners of Big Brown, announced that they would take all of their racehorses (approximately 50 horses) off steroids by October 1, 2008. The company also said it would pay for testing of their horses before each race to prove that the horses were racing clean.

Michael Iavarone, a co-president of IEAH, in announcing the company's decision said, "I know Big Brown or any of our horses do not need this stuff to win. I'm not worried about an uneven playing field, either. The cost of the drug tests are a small price to pay for the integrity of the sport. I'm urging other owners to join us, and let's turn the game around." "I was moved by the hearing and I saw one witness after another say they wanted zero tolerance on drugs. Someone has to take the first step," he continued. "We want other owners to join us immediately. Racing can't wait for state laws or house rules or Congress. What we have to get this done is the integrity of the people involved in the sport."

In a reversal of what he'd said just twelve days before, Big Brown's trainer, Rick Dutrow, supported the owners' decision. While IEAH horses will be steroid free, they will be given Lasix, an anti-bleeding medication that is not banned in racing, whenever circumstances warrant.<sup>81</sup>

### **TOM BOONEN'S FAST LIFE CRASHES TO A HALT**

Cycling is to Belgium what professional football, baseball and basketball are to the United States. It is, in some ways, a national obsession. Cyclists who do well become superstars. Like Eddy Merckx in the late 1960s and 1970s, Tom Boonen is the superstar of Belgian cycling in the 2000s. Boonen, a 27-year-old cyclist with Hollywood good looks, has made a name for himself as a star sprinter on the Quick Step professional cycling team.

But 2008 has been a tough year for the cyclist. Early on, he was accused by a friend, cyclocross cyclist Tom Vanoppen, of being his cocaine connection when Vanoppen was arrested for possession. A subsequent search of Boonen's and his parent's homes turned up no evidence, however. In the springtime, Boonen ran into more trouble. He was stopped for speeding twice, and on one of the stops his blood alcohol level registered over the legal limit. In both instances, his driver's license was suspended.

With respect to cycling, the biggest problem that Boonen has to face is a positive test for cocaine from an out-of-competition drug test carried out in May 2008. As a result of the test, Boonen has been barred from participating in the Tour de Suisse and the Tour de France. Quick Step, his employer, is standing by the cyclist. While both Boonen and his team have chosen not to fight the decision by the Tour de Suisse to ban Boonen from starting, at this point no decision has been made or announced as to whether they will

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challenge the Tour de France's decision to ban the cyclist from the race. However, Quick Step's sponsors are said to want Boonen to race in the Tour de France, and team management is trying to arrange a meeting to find a way for Boonen to race.

"I don't have any illusions about it, but our sponsors insist that we try," Quick Step directeur sportif (manager) Patrick Lefèvre said. "The sponsors want to see Tom in the Tour de France."<sup>82</sup>

The decision by both racing organizations, due to the publicity around Boonen's positive test for cocaine, sits in stark contrast to the anti-doping rules of both the UCI and WADA. Under the rules of both organizations, the use of cocaine is prohibited only during competition. So, while Boonen tested positive for cocaine in an out-of-competition test, he will not face any disciplinary proceedings by either agency. That means Boonen is free to race. Whether race organizers have a right to ban cyclists based on the use of recreational drugs out of competition, despite no sanctions being imposed on those athletes, may be decided in the future if Boonen's case winds up in front of the Court of Arbitration for Sport.

Boonen is paying a steep price for testing positive. As a result of the scandal, Bouygues Telecom team decided to discontinue contract talks for the 2009 racing season and beyond with the sprinter. Team manager Jean-René Bernaudeau told CyclingNews.com, "Red card, end of the negotiations. We have a very strict policy in our team. Anybody who's got problems with drugs isn't welcome in our team. If the news regarding Boonen is confirmed, there's no way he can join us."

Following the publication of news that Boonen tested positive for cocaine, the Belgian rider held a press conference during which he apologized for his actions and asked his fans for their understanding and support. At the press conference, Patrick Lefèvre voiced the team's support for their rider, and announced that the title sponsor would remain for an additional three years. In addition, Boonen will remain a part of the Quick Step squad until the end of the 2011 season.

Several days later, Boonen's story appeared to change. During questioning by police the day before his press conference, Boonen apparently told law enforcement officials that someone had spiked his drink the night before his positive cocaine test. Boonen claimed that while he and his girlfriend were sitting on a terrace having drinks at a bar in his hometown, he became ill and had to leave.

Boonen, after being questioned again by police following the press conference, said that his attorney wrote the statement to the media, and that he just read what had been written for him. Meanwhile, team management and officials from Quick Step are trying to convince the organizers of the Tour de France to let Boonen race. Quick Step, the company, apparently has a large advertising and marketing effort planned in France during the Tour, and their plans are dependent on the Belgian star participating.<sup>83</sup>



Whether or not he races the Tour de France, Boonen may still face the possibility of criminal prosecution for cocaine use or cocaine possession. If he were found guilty, he could face prison time and a fine of up to 100,000 euros (\$155,000).

### **WADA HOLDS THIRD GENE DOPING SYMPOSIUM**

In early June, the World Anti-Doping Agency held their third anti-doping symposium in St. Petersburg, Russia. The conference brought together research scientists, anti-doping officials and representatives of various sports and government agencies to discuss genetic therapy, with an eye towards developing methods to catch and punish athletes who would use gene doping to gain an unfair advantage over their rivals. Those in attendance learned about the latest advancements in genetic therapy techniques, as well as ideas and methods for detecting the use of genetic therapy to enhance athletic performance. Other topics of discussion included the line between legitimate medical therapy and illegal performance enhancement, as well as legal issues involved in the detection and enforcement of anti-doping rules against gene doping.

Although some in the anti-doping community have speculated about when gene doping might first make an appearance in the world of athletics, the general consensus among anti-doping experts is that genetic therapies have not been used to enhance sports performance – yet.

According to Dr. Arne Ljungqvist, a WADA vice president, “Most experts do not think that gene transfer is being misused by athletes yet, but we know that there is a growing level of interest in the sports world in the potential for gene doping, and that scientists working on potential genetic cures for muscle diseases or blood disorders are being approached by sports figures to inquire about the use of genes to enhance performance in sport.”

“We need to make sure that athletes know the dangers associated with these technologies, and, for those who may choose to ignore them and cheat, that they will be caught,” Ljungqvist continued.

One emerging technology that may have doping applications is a class of compounds known as “hypoxia-inducible factor (HIF) stabilizers.” HIF works in the body to increase the production of erythropoietin (EPO) when the body is exposed to low-oxygen environments, such as going from sea level to high altitude. The increased amount of EPO then stimulates the body to make more red blood cells, so that the body can transport more oxygen to hard-working muscles. Under normal circumstances, when a person returns to sea level, the body would produce less HIF, which would result in the body re-adapting to an environment richer in oxygen.

With HIF stabilizers, the body could be tricked into making more red blood cells, even when it’s not necessary. At present, the use of the drugs would be undetectable. It would be a new form of blood doping, albeit in pill form. But such a technique may be fraught with dangers.

“Clinical studies carried out last year had to be abandoned prematurely, as the patients showed unacceptable side-effects,” gene doping expert Patrick Diel of the Centre for Preventive Doping Research in Cologne, Germany, told CyclingNews.com. Diel noted that other drug companies are working on similar types of drugs and techniques. He expressed concern about what lies ahead. “Now that the drug has already been tested on humans, we don't know if it is already circulating in the sports world.” One group of athletes that might be interested in such drugs are those in endurance sports, such as cycling, track and field, and cross-country skiing.

While Diel worries that HIF stabilizers have already made their way into the sporting world, another WADA official is confident that researchers will be able to develop tests to detect gene doping in athletes. Theodore Friedman, who heads up the agency's gene doping panel, said, “While detection methods are early in their development, I have no doubt that the ongoing work will catalyze public discussion and awareness in this field. WADA will continue to be the leading agency in the application of modern molecular genetics and DNA technology to the development of improved methods for detection.”<sup>84</sup>

#### **THE AGENCY FOR CYCLING ETHICS COMBINES FORCES WITH THE ANTI-DOPING SCIENCES INSTITUTE, BUT FOLDS ONLY FOUR MONTHS LATER**

After more than 24 years as the founder and director of UCLA's Olympic Analytical Laboratory, Dr. Don Catlin retired in order to pursue new techniques for detecting doping among athletes and new ways to improve current methods for detecting such practices. To do so, he founded a company called Anti-Doping Sciences Institute, Inc. ADSI is, according to a press release, a company dedicated to applying their knowledge and scientific abilities to creating customized anti-doping programs for today's rapidly changing sports environment. They specialize in providing drug testing services and other types of analytical work, and provide consulting services which include the design of anti-doping programs.

In early June 2008, ADSI and the Agency for Sports Ethics, which owns the Agency for Cycling Ethics, entered into an agreement where ADSI will assist ASE and ACE in program design, review and interpretation of laboratory results of tests on athletes being monitored by ASE's and ACE's programs.

Both agencies are excited about the prospect of developing programs that will offer an additional layer of scrutiny and protection for teams, sponsors and sports leagues.

“Philosophically, both ADSI and ASE are on the same page” said Dr. Catlin. “ASE has developed a base, upon which ADSI can add tremendous value, resulting in an effective new program that will be attractive to a wide spectrum of sports.”

“After providing anti-doping services for the past year and a half, the time is right to team-up with a company that can provide ASE with the depth of technical resources and know-how to grow the company to the next level. We are delighted that we now have

access to the best and brightest in the business,” said Dr. Paul Strauss, Chief Operating Officer of ASE. “The reputation of Dr. Catlin and the ADSI team is second to none.”<sup>85</sup>

In October 2008, ACE and its parent organization ASE ceased operations. Exactly what caused the company to shut down is unclear, but it leaves the teams served by the ACE program looking for a new partner to conduct their internal anti-doping tests. In early December 2008, Team Columbia and the Garmin-Chipotle cycling team announced that they hired ADSI to manage their internal testing programs. Team BMC, the other professional cycling team that had contracted with ACE has not yet announced who their internal testing partner will be during the 2009 season.<sup>86</sup>

### **IS IT ALL IN THE MIND?**

Sometimes, people get a benefit from a drug, treatment or therapy not because that drug, treatment or therapy actually works, but because they believe it works. This phenomenon is known as the “placebo effect.” A recent study by Australian researchers suggests that – at least for some athletes – the benefits of using human growth hormone (HGH) can be attributed to the placebo effect rather than actual physiological effects of the medication.

The study’s lead author, Jennifer Hansen, a nurse researcher who works at the Garvan Institute of Medical Research in Sydney, Australia, also noted that for HGH, the placebo effect appears to be stronger in men than in women.

“Athletes are doping with growth hormone to improve sporting performance despite any evidence it actually improves performance. Therefore, we wanted to know if any improvement in performance is due just to the athletes’ belief that they are taking an agent that enhances performance, rather than to the agent itself,” Hansen told *Medical News Today*.

To find out, she and her colleagues conducted a double-blind study of 64 recreational athletes, where neither those administering the drugs nor those receiving the drugs knew whether the participant was being given HGH or a placebo. At the end of the eight-week study, researchers asked the athletes to guess whether or not they had received HGH. Men were more likely than women to guess that they had received HGH, and those who believed they had felt that the drug had improved their athletic performance overall. However, only jump height (a test of power) showed significant improvements for the athletes given placebo.

“The results of this study suggest that the placebo effect may be responsible, at least in part, for the perceived athletic benefit of doping with growth hormone for some people,” Hansen said. Hansen presented her findings at the Endocrine Society’s 90<sup>th</sup> Annual Meeting, held in San Francisco, California.<sup>87</sup>

### **BUT THEY WEREN’T “THOSE” KIND OF STEROIDS...**

Former Pittsburgh Steelers quarterback Terry Bradshaw cause a brief kerfuffle in the media recently, when he admitted to using steroids during his playing days in the 1970s.

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Bradshaw, while being interviewed on The Dan Patrick Show, said, “We did steroids to get away the aches and the speed of healing.”

“My use of steroids from a doctor was to speed up (healing after) injury, and thought nothing of it,” he told the show’s host. “It was to speed up the healing process, that was it. It wasn’t to get bigger and stronger and faster.”

While media reports of the interview mentioned that Bradshaw had admitted to using steroids, it wasn’t clear what kind of steroids the Hall-of-Fame quarterback meant. At a press conference several days later, Bradshaw clarified his comments. The steroids he was using were corticosteroids, not anabolic steroids. The National Football League recently banned the use of anabolic steroids. Corticosteroids, however, are still legal.

Joking about the confusion his comments caused, Bradshaw told reporters, “I’m not bodybuilding here. They were not those kind of steroids. They were anti-inflammatories.”<sup>88</sup>

### **COMING HOME TO ROOST**

In 2007, just days before he would have won the Tour de France, Michael Rasmussen was sent home by his team. Rabobank, Rasmussen’s employers, claimed that he had been dishonest with them about where he was training in the run-up to the Tour. The Danish climbing specialist, who was leading the Tour, had become the subject of controversy over a period of days after Davide Cassani, an Italian journalist and former professional cyclist, reported seeing Rasmussen training in the Dolomites at a time when he’d told the UCI that he would be training in Mexico. Cassani’s story, ironically, was not meant to expose Rasmussen’s being in the wrong place. Instead, Cassani had written a piece extolling the dedication of certain athletes as they prepared for the Tour. In his piece, the Italian journalist told of coming across Rasmussen during a driving rainstorm, while the latter was training in preparation for the biggest event in cycling.

Prior to the Tour, Rasmussen missed several out-of-competition antidoping tests. The last test that he supposedly missed was on June 29, 2007, just days before the Tour de France was scheduled to begin. Under WADA anti-doping rules, if a rider misses three or more antidoping tests during an 18 month period, he or she can be declared guilty of a doping violation and suspended for two years.

After Rasmussen’s forced withdrawal and ultimate dismissal from the Rabobank team, his case took a number of curious turns. Rasmussen claimed that while he didn’t provide the UCI with his actual whereabouts information, his team knew where he was training, and that he had, in fact met with Erik Breukink, the team’s director in Europe, during the time he had told the UCI he was in Mexico. In addition, Rasmussen claimed that the team made travel arrangements for him to train with another rider in the later part of June 2007. Most curious of all, however, was the issue of who was responsible for Rasmussen’s missed test at the end of June. The Danish cyclist provided Berlingske Tidende, a Danish newspaper, with a copy of his whereabouts form filed with the UCI in late June 2007 via fax.<sup>89</sup> On the form, he listed the actual, correct location where he

would be over the days leading up to the 2007 Tour. It turns out, however, that Rasmussen sent the form in two days after he'd actually arrived in the Pyrenees for his final training preparations in advance of the Tour. Rasmussen's documentation raised the issue of whether he was at fault, or whether the UCI had made the error when trying to track him down for an out-of-competition test.

After his dismissal from the Tour and subsequent firing by Rabobank, Rasmussen filed a lawsuit against his former team, claiming that he had been wrongfully terminated. Rabobank, the team's sponsor, investigated the circumstances surrounding the whole affair and released a report in November 2007 placing most of the blame on the Danish rider, while putting some of the blame on the Theo de Rooij, the team's former manager. De Rooij stepped down from his position as team manager shortly after the whole Rasmussen affair began. The report found that the cycling team's management was correct in the actions they took against Rasmussen.

Though Rasmussen is Danish, for the last couple of years he has held a professional racing license issued by the Monaco Cycling Federation (MCF). Thus, it was the MCF's responsibility to look into the allegations against Rasmussen and determine what, if any punishment should be assessed. In early July 2008, the federation suspended Rasmussen for two years due to his missed out-of-competition tests prior to the 2007 Tour de France. He will be able to return to competition at the end of July 2009.

The day after Rasmussen's suspension was announced, a Dutch court issued its ruling in the Danish rider's lawsuit against his former employers. The court found that, while the team had reason to terminate the cyclist's employment, they bore some responsibility for the whole affair. In addition, the court ruled that Rasmussen was owed two months' salary, as well as the bonus he would have been paid had he won the Tour. All told, that Rabobank was ordered to pay their former rider €665,000 (approximately \$1 million USD). Rasmussen had asked for €5.4 million (approximately \$8.5 million), however. A spokesman for Rabobank expressed satisfaction with the outcome of the case, saying that a number of points in the ruling reinforced the findings by the bank's investigation into the scandal.<sup>90</sup>

Michael Rasmussen's story is not finished, however. A few days after the Monaco Cycling Federation suspended the Dane, he announced plans to appeal the decision to the Court of Arbitration for Sport.

"The court ruling still gives me a positive turning point in my case," Rasmussen told the Belgian web site *Sporza*. "I am more convinced than ever that CAS will reduce my suspension and I can start to compete again in 2009."<sup>91</sup>

Rasmussen is said to be seeking to reduce the sanction handed down by the Monaco federation. As of this writing, no hearing date has been scheduled.

### **CHAMBERS SEEKS TO OVERTURN LIFE BAN**

One of the athletes caught up in the BALCO scandal in 2003 was British sprinter Dwain Chambers, whose specialty is the 100 meter dash. After he tested positive for THG, also known as “The Clear,” Chambers served a two-year suspension from competition. Having served his suspension, he now competes in IAAF-sanctioned track meets, including a meet in Sofia, Bulgaria on June 30<sup>th</sup>, 2008 where he ran the 100 in 10.05 seconds. His time is fast enough to qualify for a berth on the British Olympic team.

But there’s one problem. Although IAAF rules allow an athlete who has served a suspension for a doping violation to return to competition once the suspension has expired, a British Olympic Association bylaw bars any athlete who has served a doping suspension from representing Great Britain in Olympic competition. The ban is, effectively, a lifetime ban from the Olympics.

Chambers, whose ban has ended, is seeking to overturn so that he can take part in the British Olympic trials which begin on July 11<sup>th</sup>. In order to do so, his attorneys will need to convince a court that the regulation is unlawful and cannot be enforced.

According to a statement released by Chambers’ attorneys on July 3<sup>rd</sup>, “Mr Chambers will seek, from the court, a declaration that the bylaw is unenforceable; a declaration that he is eligible for inclusion in Team GB for Beijing 2008; and an order that, subject to his achieving first or second place at the UK trials, he be included in Team GB.”

According to BBC Sport, there have been successful appeals of the lifetime ban, but no athlete has actually challenged the rule’s legality before. The last successful appeal was by Christine Ohuruogu, a world champion in the 400-meter event. Former WADA president Dick Pound told BBC Sport that he doubted the rule would stand up to a legal challenge.

The BOA is standing firm and will defend the 16-year-old rule. In a statement, the organization said, “In the interests of the British Olympic Movement and the athletes who aspire to line up at an Olympic Games and our youngsters looking for Olympic glory in London, the BOA confirms that it will vigorously and unequivocally defend its lifetime ban on drug cheats who have brought themselves and their sports into disrepute.”

Sebastian Coe, a gold medalist in the 1500-meter event at both the 1980 and 1984 Olympics who is also the chairman of the organizing committee for the 2012 Olympics in London, supports the BOA’s rule.

“I am clear cut on the Chambers case,” Coe told BBC Sport. “I don’t think there is room for drugs cheats in sport.”

“I do not think there is any lack of clarity about what the rules are - if you do that and you get caught, you get kicked out of the sport.”

“I would rather Dwain wasn't doing this, I don't think there is a great deal of principle about it.”

“Our responsibility as a federation is to protect the 99% of athletes who choose to do it the right way and for the right reasons. The good athletes and the young athletes and the novice athletes that are clean need protection.”

About 100 British athletes have signed a petition put forward by the British Athletes' Commission opposing the removal of the rule banning athletes who have tested positive for drugs from representing the UK at the Olympics. Steve Redgrave, who has won five Olympic gold medals in rowing, said, “Every athlete that competes for Britain knows the rules. If an athlete takes the risk of cheating they have to accept the penalties that go with this.”<sup>92</sup>

Chambers' ultimately fell on deaf ears. On July 18<sup>th</sup>, a High Court judge ruled against Chambers' request to lift his life ban from Olympic Competition. In challenging the ban, Chambers and his attorneys argued that the ban amounted to an unfair restraint of trade. In his ruling, the judge stated that the athlete's right to work was not a good enough reason to issue a temporary injunction lifting the BOA's lifetime ban on Chambers barring him from representing the UK in Olympic Competition.

The judge also criticized Chambers for not filing his appeal earlier. The judge noted that an earlier appeal would have given more time to study the evidence in the case. He also expressed concerns that “the harmony and management of the British team” would be adversely affected if Chambers were allowed to compete.<sup>93</sup>

A full hearing on Chambers' appeal is scheduled for March 2009, which will not address Chambers' chances to compete in Beijing. The London 2012 Olympics, however, is another matter. The London-born sprinter told Britain's ITV News that he would like an opportunity to race in London. “Participation first and foremost is a key thing for me,” Chambers told the network. “And then if I get a medal out of it, that'll be great. Then I'll be done.”

“I just want to compete. I'm a born runner, I'm here to run and I just want to do the best I can and show what I really can do as a clean athlete.” If Chambers does get to compete in London, he will racing at the relatively advanced age of 34.<sup>94</sup>

The sprinter may yet get his wish. After the Beijing Olympics conclude, BOA officials will canvass British athletes about whether the lifetime ban should be changed. One British athlete has already taken a public stance on the issue.

“I'm a great supporter of the bylaw as I believe there has to be a lifetime ban for anyone who takes drugs,” Olympic gold medalist Sally Gunnell to The Press Association. “It's great that we have such a strong stance and I wish that other countries would follow suit.”

“Britain should be very proud of the way we have tackled the issue,” Gunnell added. “Our stance shows that cheats don't get away with it in this country.”

“Not many nations share our hardline stance. It's a fantastic sport and we need to get the right message across.” Currently, only Norway and China impose similar bans from Olympic competition for those who've been found guilty of a doping violation – even once the athlete's suspension is complete.<sup>95</sup>

### **MORGAN HAMM GETS A WARNING**

In early July, Morgan Hamm, the twin brother of Olympic gymnastics champion Paul Hamm, received a public warning over a positive test for a banned anti-inflammatory medication he used prior to the U.S. men's gymnastics championships in May 2008.

Hamm, who received a shot of the glucocorticosteroid triamcinolone acetonide after injuring his left ankle in early May, tested positive for the drug later that month at the men's championships. The use of the drug would not have caused a stir, had Hamm filed the paperwork for a therapeutic use exemption prior to the competition. Had that been the case, no positive drug test would have been declared.

“He's never tested positive for anything, so this came as quite a shock,” said Miles Avery, Hamm's coach. “I don't think this will affect his standing on the Olympic team at all because it was just an honest mistake.”

Because of the positive test results, the gymnast's results from the US men's championships were nullified. In addition, his status as a member of the 2008 Olympic gymnastics team is under review by USA Gymnastics, the sport's governing body in the United States.

The particular drug that Hamm had been given falls into a category of drugs that are “particularly susceptible to unintentional anti-doping rule violations because of their general availability in medicinal products” according to WADA's rules. Because of that, anti-doping agencies like USADA are granted greater flexibility in what punishment an athlete will receive for the use of such drugs.

After being informed that he'd tested positive for a banned substance, Hamm forwarded medical records to USADA. Those records showed that the use of the anti-inflammatory drug was for a documented medical condition. Based on the medical information Hamm provided to USADA, the agency elected to give the gymnast a public warning, rather than a two-year suspension from competition.

“There was proof that it was for legitimate medical reasons and he had a doctor's prescription,” Travis T. Tygart, USADA's chief executive told *The New York Times*. “We were more than comfortable with giving just a public warning.”<sup>96</sup>



### **LE TOUR DE EPO (AND OTHER DRUGS, TOO)**

The 2008 edition of the Tour de France was controversial even before the professional cyclists showed up in Brittany for the beginning of cycling's biggest event – a three-week “happening,” actually. Long before the race started, the warfare between the Amaury Sports Organization (promoters of the Tour) and the UCI (cycling's governing body) went from a cold war to a very public and very acrimonious dispute. Tour organizers, frustrated with the many doping cases in previous editions and determined to do something about it, decided to forgo the usual UCI race sanction, and instead ran the event under the auspices of the French Cycling Federation.

Tough anti-doping measures were implemented, including a greater amount of testing during the Tour. Teams had to agree to a contract that specified any rider caught doping would be subject to a €100,000 (approximately \$148,000 US at the current exchange rate<sup>97</sup>) fine. And, teams of cyclists who tested positive would be forced to withdraw, according to the new rules.

Having to pay race organizers such a large sum of money would seem like a powerful disincentive. And yet, by the time the Tour ended in Paris, four riders would test positive for banned substances. Ironically, despite the tough measures instituted by the Tour's organizers, more cyclists tested positive during the 2008 edition than in any recent edition. Three of the four riders would test positive for EPO, or a new version of the drug, known as continuous erythropoiesis receptor activator (CERA).

Despite the tensions that existed in the months prior, the 2008 Tour de France got off to a promising start, rolling through scenic French countryside during the first week without a single doping incident to be seen. Reporters for many media outlets expressed hope that the sport of cycling had finally turned a corner. On the seventh day of the Tour, however, the first of what would ultimately be five doping scandals struck. Manuel “Triki” Beltrán, a rider for the Italian Liquigas team, came up positive for EPO on the A portion of a sample taken after the very first stage of cycling's biggest event. Beltrán, a 37-year-old domestique who has labored for a number of professional cycling squads over the years protested his innocence. But, according to the rules set down by the Amaury Sports Organization (the organizers of the Tour de France) that the teams all agreed to, Beltrán was immediately withdrawn from the race and released by his team.

Up to the point of Beltrán's positive test, news coverage of the Tour had noted the lack of any doping scandals during the first week. That perception came to an end with the first positive test result. At least a few commentators expressed surprise and outrage at Beltrán's test results. Scottish cyclist David Millar, who served his own suspension for doping from 2004 to 2006, and who has become one of the sport's most outspoken critics of doping, had a different take.

“It makes me pissed off that anyone's surprised we've had a positive test,” David Millar told *The Observer*. Patrice Clerc, who was the president of the Tour's parent company, had a similarly circumspect point of view. “We have to stay calm. It is ordinary that,

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with 180 riders at the start, there is a positive test. I'm always surprised when, in big sporting events, no one gets caught."<sup>98</sup>

Beltrán's case, however, didn't cause too many waves in the media. Within 24 to 48 hours after the news broke, his story was already fading into the background. Writing on ESPN.com, Bonnie Ford observed, "The line between dopers and non-dopers is not entirely generational. But without smearing specific teams, it's fair to say that Beltran, who rode for Spanish powerhouses Mapei and Banesto in the mid-to-late '90s before he became one of Lance Armstrong's faceless foot soldiers from 2003 to 2005, came of age at a time when support riders earned their slots by whatever means necessary. Domestiques are a dime a dozen in Europe, and we now know from anecdotal and hard evidence that many have crossed the line to keep their jobs."<sup>99</sup>

Although the scandal did not cause the kind of ruckus that would have occurred in previous years, a few officials did chime in with their opinions of the situation. Among those doing so was Pat McQuaid, head of the UCI, who told a reporter for The Associated Press, "When are these idiots going to learn that it's over. They continue to think that they can beat the system. They're wrong. The system is catching up all the time."

"It is very damaging to the sport," McQuaid added. "Once more, the sport suffers."<sup>100</sup>

Reports in various publications noted that with the increased testing imposed by the ASO and the French Cycling Federation (FFC), anyone who was still cheating was more likely to be caught. Beltrán's positive served to illustrate that idea. Only a few days after the Beltrán story broke, another rider, Moises Nevado Dueñas of the Barloworld squad, became the second rider to test positive for a banned substance. Like Beltrán, Dueñas tested positive for EPO. And like Beltrán, Dueñas is a Spanish cyclist who has worked as a domestique on a number of teams throughout his career.

Dueñas' positive test result came after the fourth stage of the 2008 Tour, but it took about a week before the results became public knowledge. As Liquigas did to Beltrán, Barloworld did to Dueñas. Barloworld fired Dueñas shortly after his positive test result became news. Not long afterwards, Barloworld (the company) decided to withdraw its sponsorship of the professional cycling team effective with the end of the Tour de France.<sup>101</sup> However, the cycling team is still racing under the Team Barloworld name, while team officials attempt to secure sponsorship for the 2009 season and beyond.<sup>102</sup>

Both Spanish riders requested that their B samples be analyzed, a standard request allowed to athletes. Should the B samples results fail to confirm the initial findings, the case against an athlete is normally dropped. This practice has offered athletes some limited protection against the possibility of false positive results damaging their reputations and their careers.

After Dueñas tested positive, French gendarmes conducted a search of his hotel room. According to news reports, investigators found “syringes, needles and blood bags,” along with other medical materials.

He has been charged with the “use and possession of plants and poisonous substances.” On that count, he faces up to two years in prison and a 3,750-euro fine. Dueñas has also been charged with importing banned goods. If he is found guilty, the Spanish rider faces a three-year jail term.<sup>103</sup>

A week after the Dueñas story surfaced, the cyclist issued a statement to the Spanish media saying, “At no time have I ever declared or admitted that I took drugs, as some media have stated, and neither have I said or admitted that I bought banned substances for doping.”

According to the public prosecutor in the southwestern French town of Tarbes, Dueñas “admitted having bought and used products that improve performances, at the instigation of doctors on his team.”

Dueñas claimed to be unaware of the ingredients of the medications and products he was instructed to purchase; the prosecutor went on to say.<sup>104</sup>

Neither Beltrán nor Dueñas is a star in the sport, so neither story attracted the kind of continuing attention that would occur if a big name rider tested positive for a banned substance. It wouldn't be long, however, before a rising star in the sport would gain the spotlight for the wrong reasons.

During the mountain stages, the young Italian rider Riccardo Riccò rode extraordinarily well. While other riders suffered up the climbs, Riccò stayed strong, going on to win two mountain stages while sitting in ninth place in the Tour's all-important general classification. Riccò's teammate Leonardo Piepoli, managed to win the 10th stage into Hautacam as the 2008 Tour passed through the Pyrenees. Riccò, was in trouble, even if he didn't show it on the road. During the course of the 2008 Tour, a number of riders were targeted for testing based either on suspicions that they were doping or based on anomalous test results from earlier in the race. Riccò may have been one of those riders.

Whatever the case, after the fourth stage of the 2008 edition of the Grand Boucle, as the race is affectionately known in its home country, Riccò attempted to evade the doping control officers assigned to bring him in for testing. Eventually, he was cornered and had to submit to the test. But his attempt to avoid the testing led to greater scrutiny, which in turn led to the test for which his A sample came up positive for – EPO. Ironically, the location of the 2008 Tour's fourth stage – Cholet – was where the Festina scandal at the 1998 Tour began to really unravel. On July 15<sup>th</sup>, 1998, Festina's directeur sportif Bruno Roussel, along with team doctor Eric Rijkaert were arrested. Later that same day, investigators searched the team's hotel rooms. On July 16<sup>th</sup>, 1998 the entire Festina squad was ejected from the Tour de France.<sup>105</sup>

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With Riccò's positive test result and arrest, his team withdrew from the Tour. "It's our decision to leave the race," Saunier Duval team director Joxean Fernandez told reporters. "Riccò wasn't just any rider. He was our leader and we cannot carry on as if nothing had happened." "We just found out 10 minutes ago," he added, "so we need to take a cold, hard look at the facts to understand what has happened."<sup>106</sup>

Later that same day, the team's bus was stopped while they were traveling towards Spain and searched by French police. The following day, Saunier Duval sacked both Riccò and Piepoli. In a statement, team manager Mauro Giannetti said, "I carried out my own inquiries, which have led me to a loss of confidence not only in Riccò but also in Piepoli — both of whom have violated the team's anti-doping code."<sup>107</sup>

In Riccò's case, he was caught using the new form of EPO called CERA, short for continuous erythropoietin receptor activator. The drug is a so-called "third generation" EPO product designed to be effective for a longer period of time than EPO. What it does is causes the body to make more natural EPO, which in turn causes the body to make more red blood cells, the cells that transport oxygen, the all-important fuel for our muscles. More fuel equals greater endurance for a longer period of time.

CERA is a drug that has only recently come on the market. Until early 2008, it was undetectable. The drug's manufacturer assisted WADA in developing a test to detect the drug's use by athletes. With a head start, a WADA-affiliated lab (believed to be the lab in Châtenay-Malabry) developed the new test. The test was quickly implemented at various anti-doping laboratories, including the French national anti-doping laboratory in Châtenay-Malabry, a suburb of Paris. Like Beltrán and Dueñas, Riccò was kicked out of the Tour. And like the other two riders, he spent some time in police custody. He also protested his innocence, at first. After the Tour de France concluded, Italy's Olympic Committee (CONI), who also have jurisdiction in anti-doping cases, summoned both Riccò and Piepoli to answer questions.

Riccò had a change of heart by the time he appeared before CONI's investigators. "Speaking to the anti-doping prosecutor, I took full responsibility for my actions," Riccò told the Italian news agency ANSA. "Prior to the Tour, I made a mistake; I took a product that everyone was talking about."

"It was my error alone and because of this I refused the option to have my B sample tested." Riccò went on to say, "My thoughts are with my team because of me some could have lost their jobs. I'm thinking also of my teammates who, because of me, could not continue their adventure in the Tour de France."

"I've come before the anti-doping prosecutor to lift a weight off my shoulders because I feel guilty and I need to apologize to my fans," he added. Riccò went on to criticize the tests, noting that all of his test results should have come out positive, not just the tests taken after the time trial in Cholet.<sup>108</sup>

In the fallout of Riccò's positive test result and subsequent events, Saunier Duval decided to withdraw their sponsorship of the professional cycling squad. Scott Bicycles stepped up to become the team's title sponsor for the rest of 2008. No title sponsor for 2009 and beyond has been announced at this point. Whether the Scott cycling team will be able to continue in the coming years is still an open question.

After Riccardo Riccò's positive test and the withdrawal of the Saunier Duval team, the 2008 edition of the Tour de France rolled along without incident. Until the final day, that is. After the largely ceremonial final stage ended, word filtered out that Kazakh rider Dimitry Fofonov, of the Crédit Agricole team, had tested positive for the banned stimulant heptaminol. Fofonov tested positive for heptaminol in a sample he gave after the Tour's 18<sup>th</sup> stage, just two days before the Tour's end. The Kazakh finished the Tour in 19<sup>th</sup> place overall as cycling's biggest event came to a close.

"[Fofonov] said he bought something on the Internet and that he did not tell the team's doctor. It is a serious offence, he is obviously fired from the team," Crédit Agricole team manager Roger Legeay told Reuters.<sup>109</sup>

The Kazakh rider had purchased the product over the Internet to help relieve muscle cramps but had failed to inform his team's doctors. Legeay told a reporter for Agence France-Presse, "He [Fofonov] has failed to respect our basic team rules."

"No products can be taken by any riders unless they have prior authorization from the team doctor.

"He has made a mistake, which can happen, but it's not good news for us or for him."<sup>110</sup>

While Fofonov was stripped of his placing at the Tour de France, and lost his spot on the Crédit Agricole team, the suspension he received for his doping infraction was relatively light. He received a three-month suspension, and will be able to begin racing professionally again in 2009, assuming he finds a team he can race on.<sup>111</sup>

Fofonov's positive test result would not be the last to come from the 2008 Tour. Two weeks after the race ended, French cyclist Jimmy Caspar became the fifth competitor to test positive. Caspar, who is an asthmatic, has a therapeutic use exemption (TUE) for his asthma medication. However, the TUE is specific to a certain medication. In a paperwork error, the positive result was said to be due to a change in the medication Caspar was using to treat his condition.

"I am asthmatic. I did not take it as a performance boost, but for treatment," Casper told Agence France Presse.

"For the twelve years I've raced, I've had a TUE for the (asthma drug) Syndicort. My previous TUE, which expired on May 29, covered the drug. On the new one there's another product, Becotide. This product caused the positive control. I do not know who has been negligent, if the error came from me or the (team) doctor."<sup>112</sup>

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Casper is currently suspended by the Agritubel professional cycling team, pending the outcome of his case. While team officials have expressed their confidence that Casper did not intend to cheat, they said that if the French Cycling Federation decides to suspend Caspar, UCI ProTour rules will require them to fire him.<sup>113</sup>

While the increased testing implemented at the 2008 Tour made it more likely that those who doped would be caught, the 2008 edition of cycling's biggest race also had the largest number of positive drug tests in the event's recent history.

Following CONI's investigation into Riccò's case, he was initially suspended from competition for 20 months, a slightly shorter suspension than normal for a first time offense. Riccò's ban was subsequently increased to two years, the standard suspension for a first doping conviction. In November, he filed an appeal with the Court of Arbitration for Sport seeking to reduce his ban, on the grounds that his cooperation with authorities merited a reduction in the amount of time he should be barred from competition.<sup>114</sup>

In September 2008, slightly more than six weeks after the 2008 Tour came to an end, AFLD head Pierre Bordry announced that a number of blood samples from various riders who competed in the 2008 Tour would be retested for EPO. Bordry said that the riders whose samples were being retested were individuals whose urine tests during the Tour gave results that suggested EPO use, but weren't conclusive. In particular, the anti-doping agency focused on the use of CERA.

"I have decided that we will retest -- with blood testing -- all those who showed up as suspicious during the urine samples," Bordry said in a telephone interview with The Associated Press. "When we did the urine samples of those athletes, we had a serious suspicion that there was CERA. The laboratory could not say definitively. The same analysis will be done, but in the blood samples."<sup>115</sup>

Then, in early October 2008, news reports said that both Leonardo Piepoli and Stefan Schumacher, who rode for the German Gerolsteiner team, had tested positive for doping with CERA at the Tour. According to CONI, Piepoli tested positive on July 4<sup>th</sup>, the day before the three-week race began, and again on July 15<sup>th</sup>, the day he won the 10<sup>th</sup> stage into Hautacam.<sup>116</sup> Four weeks after the announcement of his positive tests at the Tour de France, Piepoli demanded that his B samples be tested.<sup>117</sup> In mid-December 2008, CONI requested a two-year ban following a short meeting in Rome between the Italian cyclist and Italian anti-doping authorities.<sup>118</sup>

Several weeks later, during an interview with the Italian newspaper *La Gazzetta dello Sport*, Leonardo Piepoli expressed regret about his decision to use CERA in preparation for the 2008 Tour de France. "It was a moment of weakness, folly, recklessness. The justification: I was trying to fill a hole in my preparation. What I have done, at 37, with a wife and kid, is unconscionable."

According to Piepoli, his road to ruin began after he suffered four broken ribs as a result of a crash during the 2008 Giro d'Italia. Instead of taking time to recover from his injuries and then begin training for the Vuelta a España, Piepoli's teammate Riccardo Riccò talked him into racing at the Tour de France. To get into form for the Tour, Piepoli succumbed to temptation and wound up using the blood-boosting drug CERA. The drug worked better than expected, and Piepoli wound up attacking and winning the stage to Hautacam. But afterwards, he felt bad about how he had won.

"I said to myself, 'I stole it. I tried to defend it; one time in a career full of sacrifices,'" he told the Italian newspaper. But he found it difficult to own up to what he had done, even after it became clear that he would be sanctioned. With the decision to dope, the 37-year-old cyclist's world came crashing down.

"I had raced since I was nine. I raced not for money, or glory, but for the passion of cycling. I lived the religion of cycling, the cult of suffering and sacrifice," he said. "When I was starting my career and someone offered me a caffeine pill, I asked my director about it, he said, no, don't take it, because if you take this, you will take other things. ... But I cannot ask to be believed, and that is what depresses me more. After the Giro in 2007, people see us in the supermarket and say, 'He is the one who is filling the TV newscasts.' Now I am terribly sorry."

Worse than the two-year ban, however, is the knowledge that he is unlikely to be able to come back and compete again. And he will have a hard time becoming a coach, too.<sup>119</sup>

On the other hand, Stefan Schumacher denies that he doped, telling Eurosport, "I am hearing it from you for the first time. I can only say that I have not doped: this is complete nonsense."<sup>120</sup> The German cyclist was slated to join the Quick Step team for the 2009 season. However, once his positive test result was announced, Quick Step directeur sportif Patrick Lefevere said that because of the doping case against Schumacher, their contract for 2009 was null and void.

Schumacher continues to say he is innocent, and he also insists that his contract with Quick Step is valid. "This is a cumbersome matter for me," Lefevere told Sporza, a Belgian sports publication. "Schumacher does not have a contract with me."

"I will not pay a rider whom I do not want on general principles on my team," he added. "I am not crazy." Disciplinary action against the German cyclist has been started by the AFLD in France. If he is suspended, both the German cycling federation (BDR) and the UCI will accept the results, "if the conditions of the UCI rules are met."

Schumacher's attorney, Michael Lehner, claims that the retesting of the rider's samples by the AFLD wasn't valid. A spokesman for the international cycling federation disagrees. "The doping controls at the Tour have been conducted in accordance with the AFLD rules, which are recognised by our organization," Enrico Carpani, a spokesman for the UCI, told *Cyclingnews*.<sup>121</sup> Schumacher's return to professional cycling depends on how the case against him is eventually determined.

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Not long after news of Piepoli's and Schumacher's positive results for CERA was announced, it was yet another cyclist's turn in the spotlight. In mid-October, the AFLD confirmed that Bernhard Kohl had tested positive for the newest version of EPO in blood samples that were taken on July 3<sup>rd</sup>, before the Tour began, and again on July 15<sup>th</sup>.<sup>122</sup>

"On one hand I am very disappointed that he tested positive, because of his fantastic performance at the Tour de France," Andreas Schwab, of Austria's national anti-doping agency told the Deutsche Presse Agentur news agency. "On the other hand, I am happy one can detect more than was expected."<sup>123</sup> Schwab also noted that Kohl should be considered innocent until proven guilty.

Kohl initially denied that he had used the drug. Two days later, however, he had a change of heart. At a press conference, he told reporters that he took responsibility for a "bad decision" he made out of fear that he would not land a new contract at the end of the season, when the Gerolsteiner team was slated to fold.

Kohl said that he decided to use the new form of EPO after crashing in the 2008 Dauphiné Libéré. The Austrian, who suffered a large amount of road rash in the crash, and who was unable to train for the Tour de France, felt that a mediocre result at the Tour would endanger his chances to race in 2009.

"The pressure was overwhelming. I was looking ahead to the Tour and realized I was not in the kind of condition I had hoped to be," Kohl said. "I am just a man and a man who made a decision at a moment of weakness. I made a bad decision and I have to pay for that."

He told reporters that the pressure he felt did not come from his teammates or from team management. "No, there was no systematic doping," Kohl said. "[Gerolsteiner directeur sportif Hans Michael] Holzer knew of nothing. Holzer has always stood against doping. I think the worst part is that I disappointed him."

Kohl's third place finish and his victory in the king of the mountains competition at the Tour netted him a lucrative contract for 2009 with the Silence-Lotto team. That contract was short-lived. With his admission, the Silence-Lotto team dropped the Austrian rider.

Kohl announced that he would not ask for testing of his B samples. "With this press conference today, I would like to begin to make a clean sweep of things." He went on to say that he hoped that some day his fans would once again see "the Bernie Kohl they knew – or thought they knew – when they supported me."<sup>124</sup>

With his talk of a new beginning, some had hoped Kohl's appearance before the Austrian anti-doping agency would lead to a tell-all, with answers about who supplied the cyclist with the banned medication. That, however, was not to be.



“[Kohl] was asked where he got the substance (CERA) and who helped him but would not give any answers,” Schwab said after the cyclist’s hearing was over. The five-man panel deciding Kohl’s fate apparently didn’t need much time to make a decision. One news report said that they deliberated for only 30 minutes before announcing their verdict.<sup>125</sup>

Bernhard Kohl was banned from competitive cycling for two years. The cyclist said that he found the news “disappointing,” but wouldn’t comment further until he received written confirmation of the agency’s decision.<sup>126</sup>

However, not long after his ban from competition was announced, Kohl issued a statement contradicting reports that he’d been uncooperative during the hearing in front of a panel from Austria’s anti-doping agency.

“Since yesterday the impression has been given that I did not tell the truth before the legal commission. That is by no means so,” Kohl told reports. “I very definitely named names, I disclosed how I got the doping.”

Kohl also clarified his reasons for asking for a reduced suspension. He said that he wasn’t looking to reduce his ban in order to “make my early return to cycling possible [but rather] in recognition of my confession.’ Kohl then went on to question whether other athletes would confess to doping, given the suspension handed to him after he had confessed to using a banned substance.<sup>127</sup>

The day after Kohl’s ban was announced in Austria, France’s AFLD announced that Manuel Beltrán, the first rider to test positive at the 2008 Tour de France, was banned from competition in France for two years. Because the Tour was not conducted under a UCI sanction, it’s unclear whether he will be banned from competition in all countries, or whether the ban will only apply to races held on French soil.<sup>128</sup>

For Bernhard Kohl and Manuel Beltrán, their stories are not yet over. Liquigas, Beltrán’s former team, is suing the Spaniard for damages, based on anti-doping wording in the contract they had with Beltrán. That isn’t the only potential problem Manuel Beltrán faces.

Pierre Bordry, the head of France’s anti-doping agency, said not long after the AFLD’s decision in Beltrán’s case was announced that the agency has informed both Beltrán and the UCI of the rider’s two-year ban from competition in France. Bordry expects that the UCI will enforce the ban in competitions by applying WADA’s World Anti-Doping Code.<sup>129</sup> Because the 2008 Tour de France was held outside of UCI authority, it’s not clear whether the sport’s governing body will have the legal authority to enforce such a ban.

Bernhard Kohl’s troubles are also far from over. Like Beltrán, Kohl faces a possible lawsuit by the Gerolsteiner cycling team seeking damages for the repercussions of Kohl’s positive anti-doping test. “It is difficult to figure out a demand for damages,” former

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Gerolsteiner manager Hans-Michael Holczer told CyclingNews.com. “My attorney is working on it.”

That may be the least of the Austrian cyclist’s worries, however. Although he’s been banned by Austria’s anti-doping agency from competing as a cyclist for two years, Kohl still faces a disciplinary hearing in front of the AFLD in France during the early part of 2009.

Having confessed to using an illegal substance during the Tour, the Austrian may also face criminal charges in France, due to the country’s strict anti-doping laws.<sup>130</sup> The other cyclists involved in the various doping cases from the 2008 Tour de France may also face charges, should they be banned from competition.

Meanwhile, Stefan Schumacher has threatened to sue the French anti-doping agency AFLD over their accusations that he tested positive for CERA during the Tour.

Writing on his web site, Schumacher said, “I have been judged and pilloried. My conscience is clear.” Schumacher continues to deny that he doped at the 2008 Tour de France.

“I don’t want to stop here and I will not stop here,” he added. “The people who have always believed in me and continue to do so and don’t deserve this.”<sup>131</sup> News reports in mid-December 2008 confirmed that Schumacher was, indeed, suing AFLD for defamation.<sup>132</sup>

It remains to be seen how the cases against Stefan Schumacher and the others, as yet undecided, will turn out. For the time being, no additional testing is anticipated on samples taken from the 2008 Tour. But under WADA’s current rules, the AFLD has up to eight years to conduct any further studies. Should new anti-doping tests come along, it may well be that other anti-doping cases related to the 2008 event could occur.

### **BEIJING SURPRISE**

The big surprise at the 2008 Beijing Olympics wasn’t how many athletes tested positive for banned substances. The real surprise was how few actually did. As the Beijing Olympics began, IOC chief Jacques Rogge told reporters that he expected to between 30 and 40 doping cases to occur during the Summer Olympics.<sup>133</sup> While Rogge expected a larger number, Dr. Arne Ljungqvist, who heads up the IOC’s medical commission, expected the number to be smaller. “I’ve not expected that many cases to occur during the Olympic Games,” Ljungqvist told a news conference, “We usually have 12 cases or so. But this time many federations have conducted intensive out of competition testing before the Games and we have seen the consequences of.”<sup>134</sup>

By the time all was said and done, Dr. Ljungqvist’s expectations were close to the mark. Less than a dozen athletes would turn up positive for banned substances. And as it turned out, not only were human athletes being doped, a few equine athletes were, too. In the

case of the horses, they tested positive to what amounts to a hot-pepper rub. The athletes who tested positive at the Beijing Olympics were:

Maria Isabel Moreno was the first person ejected from the Olympics (although she left Beijing before the games began, and even before her test results were announced, due to “anxiety”). Spanish police questioned Moreno about her positive EPO test shortly after her return from Beijing. In October 2008, the results of her B sample counter analysis confirmed the initial results. Moreno released a statement afterwards, saying she is grateful for the support “of a huge number of people” while at the same time not addressing the B sample results or where the case goes from here. Meanwhile, the Spanish cycling federation has opened a doping case against Moreno, but a final decision in her case has not yet been reached.<sup>135</sup>

Chang Tai-shan, a baseball player from Taiwan, tested positive for something, although news stories haven’t specified exactly what. According to statements made to the press, one explanation for what happened is that Chang has been taking an unidentified “cold medication” which is legal for use in Taiwan, but outlawed for use by athletes in sporting competitions.<sup>136</sup>

Kim Jong Su, the North Korean who won a medal in air-pistol shooting, tested positive for the beta-blocker propranolol, and became the first participant in Beijing to have his medal revoked.<sup>137</sup> Kim claims that he tested positive after using a heart medication he received from a team doctor.<sup>138</sup>

Do Thi Ngan Thuong, a Vietnamese athlete competing in women’s gymnastics (she placed 59th in her event), tested positive for furosemide. Dr. Ljungqvist opined that her positive test was probably an unintentional violation. Ljungqvist attributed Thuong’s case to “poor information,” adding that she was not well informed about what medications she could and couldn’t take.<sup>139</sup>

Fani Halkia, a Greek hurdler, tested positive for the steroid methyltrienolone, on both her A and B samples. According to a Reuters report, Halkia tested positive on August 10, 2008, while she was in Japan preparing for the Beijing games with other members of the Greek Olympic team. News reports at the time noted that she was the 15th Greek athlete to test positive for the drug this year.<sup>140</sup>

On October 31, 2008, Greek prosecutors charged Halkia with steroid use without a prescription, a crime that carries a two-year jail term. The Greek sprinter claims that her positive test result was the result of “malicious act” by an unknown person. Halkia’s coach, George Panagiotopoulos, was charged that same day with administering banned substances. He faces a three-year jail sentence, and a €20,000 (approximately \$26,100) fine if he is convicted.<sup>141</sup>

Daniela Yordanova, a Bulgarian middle distance runner who competes in the 1500-meter event, tested positive for testosterone during a pre-Olympic test in June. Her positive result was announced on August 16<sup>th</sup>, just before she was scheduled to fly to Beijing to

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race in her event.<sup>142</sup> On October 9<sup>th</sup>, the Bulgarian athletics federation banned Yordanova for two years.

“I’m really sorry that it’s happening with Yordanova,” Bulgarian federation president Dobri Karamarinov told the Reuters news service. “I hope that she will be morally and physically strong enough to return to the track after the end of her ban.”

Yordanova’s coach, Dimitar Vasilev, said that the middle-distance runner’s positive test was caused by contaminated food supplements. Vasilev took responsibility for her failed drug test.<sup>143</sup>

Five other athletes tested positive in Beijing. Lyudmilla Blonska, a Ukrainian heptathlete, tested positive for methyltestosterone. In October, Blonska blamed her positive test result on her husband and coach, Sergei Blonskyi, telling IOC authorities that Blonskyi was responsible for her training and diet, and that the couple had been having “relational difficulties.”<sup>144</sup> As a result of her positive test, Blonska was stripped of her silver medal in the women’s heptathlon. Because this was Blonska’s second offense (she tested positive for the anabolic steroid stanozolol in 2003 and sat out of competition for two years as a result), the Ukrainian has also been handed a life ban from competition.

Among the others, fellow Ukrainian weightlifter Igor Razoronov tested positive for nandrolone. Vadim Devyatrovskiy and Ivan Tsikhan, from Belarus, both tested positive for testosterone; and Adam Seroczynski, a Polish canoeist, tested positive for clenbuterol.<sup>145</sup>

Doping at the Beijing Olympics didn’t just include humans, however. A total of five horses competing in various equestrian events tested positive for banned substances. Four of the horses tested positive for capsaicin, the active ingredient in various hot sauces used in certain styles of cooking. Capsaicin, when applied to a horse’s skin makes it more sensitive to touch. It is used by some as a form of negative reinforcement when training horses to jump obstacles on a course.

The riders whose horses tested positive for capsaicin were:

- Bernardo Alves, of Brazil
- Christian Ahlmann, of Germany
- Denis Lynch, of Ireland
- Tony Andre Hansen, of Norway

In addition, a horse ridden by Courtney King, of the United States, tested positive for Felbinac, a pain reliever that is part of the same class of drugs as aspirin. Felbinac is applied topically to relieve pain and inflammation.<sup>146</sup>

In all, sixteen cases of doping or alleged doping occurred at the Beijing Olympics, 11 involving human athletes and five involving horses. This is well short of the prediction made by Jacques Rogge, and more in line with Dr. Arne Ljungqvist's expectations.

One possible explanation for the relatively few doping cases in Beijing were the number of athletes who tested positive, or were caught doping by other means, during the run-up to the games. Among those were eleven members of the Greek weightlifting team, who tested positive for steroids. Upon investigation, Chinese officials determined that medical supplies sold illegally by the company Auspure Greek officials were the building blocks for a "doping formula." That formula, in turn, contributes to the Greek weightlifters' positive test results that led to their ban from participating at the Beijing Games.

Also, seven Russian athletes were caught using an old technique to beat the anti-doping tests. The athletes used catheters to place urine from clean specimens into their bladders before competition, ensuring that they would not test positive for any banned substances. However, with the advent of DNA testing, the anti-doping authorities were able to prove that the urine did not come from the athletes being tested. Among the Russian athletes caught up in the scandal were Yelena Soboleva and Tatyana Tomashova. Soboleva, at the time, was the fastest woman in the world in the 800- and 1500-meter events, and Tomashova was the 2004 silver medalist in the 1500.

As early as 2006, IAAF officials became suspicious that a number of out-of-competition tests conducted by Russian anti-doping authorities were too uniformly negative. The federation began stockpiling samples given by Russian athletes in competition starting the following year. One IAAF official, speaking anonymously to *The New York Times*, said that the Russian athletes' test results were "almost too good to be true." Using DNA analysis techniques, the stockpiled samples were compared to samples taken during competition in 2008. According to the IAAF official, the athletes "were obviously giving someone else's samples."

Other Russian Olympians barred from competing at the Beijing Olympics included hammer thrower Gulfiya Khanafeyeva, discus thrower Darya Pishchalnikova, and Yulia Fomenko, who also competes in the 1500 meter event.<sup>147</sup> In November 2008, the IAAF filed an appeal with the Court of Arbitration for Sport over the suspensions handed out by the Russian Athletic Federation officials to the seven athletes. In filing their appeal, the IAAF said they believe that "the offence committed justifies a heavier sanction [than the two year suspensions issued by the Russian federation]." As a result, they asked the CAS panel to impose a four-year ban on the athletes involved in the case.<sup>148</sup>

In October 2008, a report issued by the IOC noted that 300 of more than 4,700 samples taken during the Olympics had disappeared. The disappearance came to light as the result of a report issued by a group of independent observers who monitored drug testing in Beijing. Shortly after the report was released, an IOC spokesperson said that the missing tests had been traced, and that all of those tests had come out negative. While the results were traced, the story came at a time when the IOC was beginning to retest a number of samples to determine whether any athletes had used CERA, a new generation of the

blood-boosting drug EPO that became available only recently. As noted earlier in this Afterword, the first testing for CERA was performed earlier in the summer on samples taken from cyclists participating in the 2008 Tour de France. The independent observers noted that EPO positive test results at the 2008 Olympic Games “were relatively low, notably in the sports where the use of EPO has been detected.”<sup>149</sup>

No matter what the outcome of the IOC’s additional testing for CERA, the results will likely not be the last word on doping at the 2008 Summer Olympics. That’s because samples taken for anti-doping tests are stored for as long as eight years, which means the anti-doping agencies will be able to test samples from the Beijing Games for currently undetectable drugs anytime from now until the year 2016. If there are any new doping cases that come from such testing, the history of the 2008 Summer Olympics may be rewritten sometime during the next eight years.

### **THE RETURN OF LANCE ARMSTRONG**

After more than three years of retirement, the cyclist who’s won more Tour de France crowns than anyone else is returning to the sport. This time, Armstrong says, he’s looking to promote cancer awareness. But at the same time, he is also looking to put old stories about how he managed to win seven straight Tours de France to rest.

Lance Armstrong’s comeback is not really a story about doping in cycling. Except for one small detail. During Armstrong’s heyday, stories would surface from time to time about just how the Tour’s most dominant rider managed to maintain his hegemony. Some authors, like David Walsh, suggested in articles and books that Armstrong won by using sophisticated doping techniques and evading positive tests.

Armstrong, on the other hand, has consistently maintained that he won cleanly and the old-fashioned way. By training longer and harder, and by having a tougher mental attitude than his closest rivals. “I’m going to do everything I can to prove that it’s talent and hard work, like I’ve done for the last 17 years,” Armstrong told ESPN.com’s Bonnie D. Ford. “I’m not a donkey that turned into a thoroughbred.”<sup>150</sup>

Armstrong is currently preparing for his first race back as a professional cyclist, the Tour Down Under. Exactly how well he will do in the rough-and-tumble world of professional cycling after a long layoff is yet to be seen. But by all accounts, Armstrong’s preparations are going well and he is in good form going into his first campaign of the 2009 cycling season. Whatever happens, Lance Armstrong will accomplish at least one of his goals in the coming year: Drawing attention to the need for more cancer research and better cancer treatments.

“Carrying this Livestrong message around the world on bicycle or through the media is the No. 1 goal,” Armstrong told reporters as he announced his return to professional cycling. But couldn’t he be more effective raising money in other ways? “It is undeniable an athlete in his prime or near his prime can have more of an impact than a retired athlete,” Armstrong responded. “I don’t think we would go somewhere [to race] if they

weren't actively engaged in trying to make a difference in their country with regards to this disease."<sup>151</sup>

### **WITH THIS KIND OF LUCK, SOMEONE SHOULD BUY THE GUY A LOTTO TICKET**

Rugby player Scott MacLeod tested positive not once, but twice for banned substances during 2008. Due to the nature of both results, MacLeod was not punished for either offense, other than the time he had to sit out of competition while his cases were being resolved.

The first time, in January 2008, MacLeod tested positive for the asthma medication terbuteline. At the time, he had a TUE to use another asthma medication, salbutamol, and claimed that the result was due to a mistake he made in not filing the proper paperwork after receiving a new prescription. MacLeod said he thought the new prescription medication was already covered under his existing TUE, however, it turns out the new medication wasn't covered. The panel looking into the rugby player's case found that his explanation was plausible, and they did not punish him for the offense. MacLeod's only punishment was to sit out competition for a brief period of time in January 2008, while his case was being decided.

Then, in October, news broke that MacLeod again had tested positive for a banned substance. This time, it turned out to be testosterone. MacLeod's case is an interesting one, as far as the testosterone doping charge goes. Testing done in March 2006 determined that the Scottish rugby player had a naturally high level of testosterone, according to recent news reports.

A test taken after a training session in January 2008 indicated that the player's testosterone/epitestosterone level exceeded the current 4:1 threshold, and prompted for further testing of his sample. Follow-up testing conducted in March and April 2008, led UK Sport to open an anti-doping case against MacLeod. From the beginning of the case, MacLeod maintained that alcohol he consumed while celebrating news that his wife was pregnant with their first child caused his positive test result. As *The Telegraph* reported, alcohol is known to cause spikes in testosterone levels, but anti-doping tests do not routinely look for the presence of alcohol in an athlete's system.

In late October 2008, testing was finally conducted on MacLeod's B sample, which confirmed the original result, but also showed that he had, indeed, drank a large amount of alcohol prior about 16 hours prior to when his sample was drawn. UK Sport officials felt that, although WADA rules regarding the testing for alcohol in suspected testosterone doping cases are not clearly spelled out, they could not continue their case against MacLeod.

“It is more than likely that the cause of the elevated T/E [testosterone/epitestosterone] was the player's acute alcohol ingestion in the period eight to 15.5 hours before the same was collected,” said UK Sport’s letter to the Scottish Rugby Union explaining why the case was dropped. “It would be inappropriate to proceed any further with the case against the player.”

MacLeod, in a statement after the announcement, expressed both relief and frustration with the process. “I am glad that this ordeal is finally over and look forward to resuming my playing career,” *The Telegraph* reported. “I never thought that an impromptu night out to celebrate the news that I was going to become a dad for the first time would lead to all this.”

“Nevertheless, I feel very frustrated that my sample was not tested for alcohol at an earlier stage of these proceedings,” MacLeod continued. “Given the severity of the charge that I was facing, I would have expected that the alcohol test should have been performed as a matter of routine. Had that been the case, I would have been able to establish my innocence at a much earlier stage, I would not have been suspended and the details of this case would not have become public.”

Following the news that the case against MacLeod had ended, officials of both MacLeod’s club (Scarlets) and the Scottish Rugby Union called for changes to the normal protocols for handling cases involving the suspected use of testosterone.

Scarlets chief executive Stuart Gallacher told reporters, “It has been a most disappointing and frustrating episode which has put into question the reputation of one of our players.” “We never doubted [Scott MacLeod’s] innocence during this inquiry and have fully supported him throughout,” Gallacher added.<sup>152</sup>

Just two days after MacLeod’s case was dropped, WADA asked the Scottish Rugby Union and UK Sport to provide a copy of the decision, to determine whether the testing and the decision in the case comply with the World Anti-Doping Code. If the agency believes that the testing and decision don’t conform to WADA’s rules, they may appeal the case to the Court of Arbitration for Sport. At the same time, a WADA spokesman told Sky Sports that the agency is aware that alcohol consumption can lead to elevated T/E levels, and that anti-doping officials are allowed to take this information into account when deciding whether to pursue an anti-doping case or not.<sup>153</sup>

### **TIM MONTGOMERY ADMITS DOPING WHILE PREPARING FOR THE 2000 SYDNEY OLYMPICS**

Tim Montgomery has not had the best of years in 2008. In May, he was sentenced to 46 months in prison for his role in a check-kiting scheme that also brought the downfall of his former girlfriend and fellow Olympian, Marion Jones. Montgomery pleaded guilty to the charges in 2007. The former sprinter, along with Jones and two others have been convicted for the parts they played in the check fraud and money laundering scheme, in which Montgomery was the central player.<sup>154</sup>



But that was not all. In early July, Montgomery pleaded guilty to a charge of distributing heroin, in an unrelated case. Four months later, he was sentenced to five years in prison for “conspiracy to possess, with intent to distribute, and distribution of more than 100 grams of heroin. He received the minimum sentence for the crimes.”<sup>155</sup>

At his sentencing, Montgomery told U.S. District Judge Jerome B. Friedman, “I was blind. I never had a job in my life. I did the wrong thing.” The government’s case against the sprinter alleged that he had been distributing heroin in Virginia after he had already pleaded guilty to the check kiting charges.

The fallen track star’s sentence on the heroin charge will not run concurrently with his current jail sentence, meaning that he now may be in prison for the better part of nine years.<sup>156</sup>

Even that was not the end of news about Tim Montgomery, however. Speaking in an interview with Bryant Gumbel for the HBO show “Real Sports” that was broadcast the evening before the Thanksgiving holiday in the United States, Montgomery finally admitted what many had suspected for a number of years: That he used illegal, performance-enhancing drugs during the 2000 Olympic Games in Sydney, Australia.

Montgomery told Bryant that although Victor Conte never told him that the supplements he was receiving from BALCO contained banned substances, “I knew. I’m not going to lie. I knew.” The jailed track star said that he was using testosterone and human growth hormone during his preparations for the 2000 Olympics, where he was a member of the gold-medal-winning men’s 4x100-meter relay team.

“I have a gold medal that I’m sitting on that I didn’t get with my own ability,” Montgomery told Gumbel, while also adding an apology to his teammates for the possible loss of their gold medals as a result of his confession.<sup>157</sup>

“I’m not here to take away from anybody else’s accomplishments, only my own. And I must say, I apologize to the other people that was on the relay team if that was to happen.”<sup>158</sup>

“If Tim Montgomery cheated at the games, then he should step forward and voluntarily return his medal, just as others from the 2000 team have done,” Darryl Seibel, spokesman for the U.S. Olympic Committee, told The Associated Press. “By using a banned substance, any result he achieved is tainted.”

“He has a responsibility to his sport, to the athletes against whom he competed in Sydney and also to the new generation of track athletes who are doing their best to compete the right way and put problems like this in the past.”<sup>159</sup>

“Why did it take this [the convictions and jail sentences prior to admitting the use of performance enhancing drugs]?” Montgomery told Bryant Gumbel. “That’s the question I wake up to every day and go to sleep to.”

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