



CURRENT CHALLENGES AND ISSUES FOR ANTI-DOPING

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Thank you for the opportunity to address this important conference.

It creates an opportunity for WADA to share ideas of where the Agency is in the fight against doping in sport and where it might be going.

First, a view of where WADA is at the present:

Formed in 1999, WADA has grown into a well recognized international agency, responsible first for harmonizing all the many variegated rules and regulations from sport and countries into a global Code; second for uniting Sport (private) with Governments (public authorities) in a unique partnership; and third a hybrid body that uniquely has a high collection of annual dues from Governments (better than United Nations bodies).

The World Anti-Doping Code was initially drafted and unanimously accepted in 2003. It has been reviewed and revised in 2007, and will be subject to a further review process next year, culminating in the Fourth World Conference in Johannesburg in November 2013 where the revisions will be considered.

There are now more than 660 signatories to the Code from sport and countries.

The second compliance report on the Code and its adherence by our stakeholders was approved by our Foundation Board on 20 November. Our RADO (Regional Anti-Doping Organizations) Program now encompasses 118 countries that prior to WADA did not even know the words "anti-doping".

We have invested more than USD 50 million in scientific research, forged partnerships with Interpol, the International Federation of Pharmaceutical Manufacturers Associations and the Biotechnology Industry Organization, written models of best practice and appealed many cases to the Court of Arbitration for Sport (CAS). These advances continued earlier this

year, with our entering into a Memorandum of Understanding with the World Customs Organization.

So let's look more specifically at 2011 and where we are, before reflecting upon where we are going, or where we might go.

We all should know by now that the fight against doping in sport has reached the stage where science alone will not eradicate cheating or often even detect it. Sample collection and analysis is getting more expensive. The rules appear to some to be getting more complicated. Laboratory directors and scientists in general continue to be conservative.

Indeed, it may be suggested that some err in favor of not returning adverse results for fear of the legal process and the time required to give evidence under attack. Indeed, in general, scientists do not enjoy the adversarial approach of lawyers.

The clever cheating athlete on the other hand is becoming better at cheating, more sophisticated and funded extensively. That athlete might now be confidently of the view that he or she will avoid detection under the historical approach.

What has become more apparent now is that the mode of collection of evidence need not be simply nor solely through the means of testing. Already we have moved far from being reliant only on such processes, to the discomfort and concern of many, but to the developing success of gathering evidence against those who have cheated with impunity.

One only has to remind people that Marion Jones competed for 7 years, was tested on many many occasions, was never found to have an adverse analytical finding, but cheated throughout.

She insisted she was a clean athlete, "look at how many times I have been tested!!" – *"I have been tested more often than any other athlete and never been found positive. What does that mean?"* She even wrote it in her book and sued those who suggested otherwise. It was only during the investigation process that led to her lying to a grand jury and the eventual charge of perjury against her, that she confessed most and went to prison.

Investigations should now form an integral part of any effective and efficient anti-doping program. There are of course ways and means of obtaining evidence through such inquiries. It need not engage an anti-doping organization in its own investigation work.

There are many bodies, also funded by government, already in place, needing strong laws to act on. This country provides a good model.

WADA has published protocols for the sharing of evidence gathered in investigations. In considering these protocols, we were greatly aided by Interpol, the MLB and the DEA, all of whom willingly "loaned" us their experts and expertise to the process. The end result has been a new document which has been sent to all of the anti-doping organizations in the world, in other words, all the international sporting federations, the national anti-doping agencies, the regional anti-doping organizations and others. Within the document are good, practical, sensible suggestions on how to go about working together with law enforcement, customs, immigration and other officials in order to properly and appropriately share information. USADA of course provided a very good practical model in the way that evidence gathered during the Balco inquiry was appropriately shared, not only with USADA, but also with the IAAF and others.

It is pleasant to be able to compliment a government for being on the "cutting edge". I can do that in this instance because the U.S. has not only set a good example with the Balco inquiry, but also others including Operation Raw Deal, Gear Grinder, and others.

The Australian Sports Anti-Doping Agency has a strong legislative model allowing it to share information with other statutory bodies, but most importantly in that country, ensuring that police and customs will pass on information to them. There are other different models and hence the publication being "protocols" and not a model of best practice because it is simply just too difficult to write one model.

I turn now to some of the specific challenges we foresee or indeed are encountering now:

1. The continuing and increasing engagement of the underworld in providing prohibited substances through trafficking and distribution. The incentive to do so remains high as of course in many parts of the world this is legal activity and the returns on initial investment are vast. For one hundred dollars one might get a return of anything between one thousand and ten thousand dollars.

All governments might appropriately recognize this intrusion; it is a criminal matter if laws are in place and the police will act if there are compelling penalties (not a slap on the wrist with a wet bus ticket). The substances are from raw materials delivered from the East, and put together in “kitchen laboratories”, unregulated and non-sanitized. They do not just go to elite athletes or their entourage. They go to high school students who want to “look good”, to security agents, to armed forces. It is a matter of public health and should be of concern to governmental authorities.

The criminal underworld makes money out of this activity, but it is also engaged heavily in other aspects challenging the integrity of sport. WADA is well aware that the same people who engage in the distribution and trafficking of prohibited substances are involved in bribery, corruption, money laundering, betting and fraud.

It is not simply illegal betting which can be isolated from the rest of these activities. Indeed, even legal betting is subject to engagement by the underworld whether that simply be for money laundering purposes or otherwise. Already it is suggested that a large amount of world sport is “controlled” by the underworld. This is increasing, and we see the effects in anti-doping. We want Sport to benefit from our experience and approach.

2. The growing and encroaching black market for pharmaceutical products. While we have good and proper arrangements and agreements with the regulated pharmaceutical industry, part of the reason for that is to ensure that evidence of the black market supply is provided to the industry and to the regulators. At present it is estimated that at least 25% of the world’s pharmaceutical products emanate from the black market. They are non-sanitary and potentially dangerous. Moreover, some are readily available through the Internet; some are “stolen” during research and development stages of the regulated industry. This latter aspect is of intense concern to the industry as it is theft of intellectual property.
3. There continues to be the “dumb” doper who is regularly caught through standard testing protocols, with a large number still risking in-competition testing. This doper effectively catches him or herself. On the other hand, there is an increasing sophistication of cheating at the high end of sport. Some might say the sophistication has expanded since the advent of WADA. Some might say that it has advanced even further through the introduction of the biological passport. Whatever the genesis, the

fact of the increasing sophistication is undoubted. From micro dosing to manipulation, the clever doper, aided, abetted and considerably financed by clever entourage members, continues to evade detection through the analytical process. And we continue to be haunted by the impunity with which, for example, many treat human growth hormone.

4. The continuing vexed issue of costs (legal costs, testing costs, research costs, transport of samples costs and others) which does not need any further clarification or explanation. Any complaint about cost must be put into perspective. The sport industry is estimated now to be an \$800 billion a year business. Spending \$300 million to protect the integrity of such a business does not seem to be an awful amount of money. In fact, one could easily mount an argument that sport is not spending enough to defeat the biggest scourge it currently confronts.

Regrettably cost is being as an excuse by those responsible for anti-doping programs not to undertake the best possible approach. For example, not all samples are analyzed for EPO. With only 36 positive cases for EPO being found in 2010, from 258,000 samples surely indicates that.

5. What is the real prevalence of doping? Analytical findings suggest about 1-2% but recent studies suggest double digits. More work is being done in this area, including a project we engaged with the IAAF at their World Championships in Daegu last August, and will advance at the Pan Arab Games in Doha later this month.

Faced with these challenges we pursue our regular activities, but we have looked carefully as to how these might be progressed.

- A. **Biological Passport.** This project, which was of course piloted by UCI, has reached a situation where it must be advanced and enhanced. Our team is looking very closely at the experiences and information gained from the UCI program. There is more pressure from sport in particular to only include anti-doping activities if they are proven to be cost effective and efficient. Without dwelling on the economic situation, which as I have said already is of course obvious to everyone, it is also appropriate to look at the benefits of programs and rationalize from there the importance of such programs. The next months will be spent in looking at the passport and its advantages.

I must mention here the significant boost given to the Passport Project by recent decisions of the CAS in two UCI cases. Significantly the Court acknowledged the use of the Passport Program as being legally sustainable as proof of doping.

While on this topic, I should mention blood collection. We are quite disappointed at the scarcity of samples collected for the purpose of blood analysis. We are aware of the issues relating to collection and transport of blood. However, going forward we must look at ways and means of ensuring that there are a certain number of blood samples collected in any anti-doping program. Some of the prohibited substances and methods can only be detected by blood analysis; these are all serious substances and very serious methods. Blood doping has been around for decades. Are we stopping it? Certainly it does not help if we are not even collecting blood. Our Executive Committee has now recommended that best practice should be that 10% of samples collected by any anti-doping organization be blood.

- B. ADAMS.** This clearing house is a cornerstone of our work. It is one demanded of us by the Code and is one which requires the involvement of athletes. In brief, we now are continuing its development with the benefit of experience and input from stakeholders, so that it becomes the global system for all anti-doping organizations and all athletes. We are ensuring that the rules behind it observe privacy and data collection laws, although this remains an ongoing dialogue with European authorities.
- C.** Moving to something more controversial. How can the fight against doping in sport be enhanced? How can we provide incentives to anti-doping organizations? Independence of national anti-doping programs is important, and an aspect which is often rejected or under-estimated. Perhaps NADOs should be doing more in working with sports that want to retain their control of programs?
- D. Education.** Deterrence is one component of an anti-doping programs; prevention is a corner stone of any development of values among the youth of today. There are some who say all our education goes to those who wish to be educated. The bad guys just ignore it. Our education programs have won awards, and they are available free to all our stakeholders. Our Play True Generation and Athlete Outreach models are designed for all to use. The "Say No to Doping" campaign is being showcased by the NHL at its All Star game in January.

E. Legal challenges. Some of the current challenges include:

1. Different timings in hearings – delays/process elongated by lawyers.
2. The debate about data protection and the right of privacy that I mentioned earlier. Interesting to compare Facebook/Twitter “privacy” as practised by all, including athletes of the world.
3. The continuous battle to ensure there is a proper balance between the rights of the individual and the need to eliminate doping from sport. Proportionality is often used as the catch cry. Many of those who use it, however, are not aware of the very limited class of elite athletes to whom some of the rules apply. Proportionality prevails. I want in particular to highlight a decision rendered on 24 February 2011 by the French State Council (the supreme administrative court in France) in which The Council rejected a challenge from FIFPRO against the whereabouts rules. In this decision the Council stated that whereabouts are justified by the general interest of the fight against doping and are proportional to that goal.
4. Now as a result of an initiative primarily commenced by the USOC but agreed and contributed to by the IOC, we have a decision from CAS which states clearly that the IOC Rule whereby any athlete with an anti-doping suspension of more than six months would automatically be banned from the next Olympic Games following the end of the suspension is not in compliance with the World Anti-Doping Code. This is a significant step in the support of WADA, and the Code in particular, as the court reasoned that the IOC, as a signatory, has agreed to abide the Code and that this Rule 45 was essentially an extra sanction, outside the provisions of the Code.

From our perspective it indicates a clear and proper analysis of the responsibility of those who have essentially initiated and written the Code and agreed to abide by it. To try to indicate a “toughness” which is beyond the sanctions incorporated in the Code is to be non-compliant.

The BOA lifetime ban on selection for Games teams for athletes who test positive has been determined by our Board to be in the same category as an extra penalty to an athlete on top of the sanction imposed pursuant to the World Anti-Doping Code. The BOA has been held non-compliant to the Code.

5. There are some cases presently pending which will engage tribunals in considering or determining factual claims such as food contamination and the vexed issue on how appropriate sanctions can be handed down in cases involving specified substances. There are a number of recent cases involving the specified substance methylhexamine for example.
6. Finally, a word in relation to athletes and athlete groups. We are essentially a body looking after the clean athlete. Sport relies on athletes for its survival. These groups are most important in terms of representation of athletes. There are many areas in which appropriate representation can lead to proper voices for athletes. Sport must be very aware of its athletes and must take careful steps to ensure they are engaged. We were pleased to learn of the MLB Players Association decision to include hgH testing in the MLB program going forward. This is a good sign of proper player responsibility for the clean athlete.

F. Entourage. We must realize that, in most cases, it is not athletes acting alone who defeat everything for which they should stand. They are assisted, counselled, sometimes tricked and occasionally forced into the downward spiral of cheating. Coaches, trainers, medical doctors, scientists, sports administrators – even some misguided parents - all of whom ought to know better, make a mockery of their responsibilities and trivialize the years of training and dedication of the trusting athletes whom they betray.

One of our missions at WADA is to make sure that it is not only the athletes who are sanctioned for doping offences. Athletes are, of course, the instruments in which the doping occurs, but often they are less to blame than the coaches, doctors, lawyers, agents, trainers and others around them.

We still do not really have an appropriate and consistent way of ensuring that the athlete entourage, when responsible for aiding and abetting, persuading and supplying, can be sanctioned.

We must all work together to ensure that the entourage can be sanctioned. Sport may not always be able to do so, but governments can.

We must continue to search for ways and means of globally achieving this.

What have we all learned over the last 5 or 6 years? Have we developed or are we entrenched in ways that are historically cemented? Where is the lateral thinking? Where are the energetic leaders? Do we have a future based on leaders and thoughts?

Do people still want sport to be value-based? Does sport want to protect its values?

The protection of the integrity of sport is one of the chief foundations of our activities. It is quite obvious now that sport's integrity is being challenged in other areas. Illegal betting, bribery and corruption are the major challenges.

When one realizes that the money that is obtained by the underworld in trafficking prohibited substances is then "laundered" by the use in the illegal betting sphere, then the link between all is seen.

How sport and how governments react to these challenges remains to be seen. The IOC however has taken some initiative in convening a small group to discuss it. A follow up meeting is planned for February 2012. It may well be that WADA provides a model for expansion, enhancement or replication. Whatever occurs requires some thought. However, bribery of doping control officers is not unknown. Others have already attempted to corrupt individuals connected with the accredited laboratories.

So what is the future for anti-doping? There are two ways of looking at this question in view of the matters raised in this talk. The first is rather rudimentary and bureaucratic. The rules will continue to be reviewed and revised, the programs will be altered according to issues such as intelligence and finance. Sample collection will continue but blood sampling must increase. The Passport should be enhanced and more should be using it. We must have more information on the prevalence of doping and not simply rely on positive test results. That might simply be the tip of an iceberg.

The second is that we must confront complacency and ensure there is long-term commitment from all. The challenges that I have mentioned need to be confronted and

dealt with directly. A proper mix of prevention and deterrence, and a hopeful growth of the regard that our youth has to the values of sport, will result in a more level playing field. Let's not forget however the encroachment of the criminal underworld into sport itself.

The review of our Code and Standards will allow all to appropriately suggest changes that will advance the fight against doping and take account of the challenges I have mentioned today.

Thank you.