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Moston, Stephen, and Engelberg, Terry (2019) *And justice for all? How anti-doping responds to 'Innocent Mistakes'*. International Journal of Sport Policy and Politics, 11 (2) pp. 261-274.

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Please refer to the original source for the final version of this work:

<https://doi.org/10.1080/19406940.2018.1550799>

And Justice for All? How Anti-Doping Responds to ‘Innocent Mistakes’

Abstract

The WADA Strategic Plan 2015-19 includes as part of its Mission Statement, the aim to develop policies and procedures that reflect justice, equity and integrity. However, current policies and procedures for the sanctioning of athletes subvert legal maxims, such as the presumption of innocence, and punishment for all offenders, even in cases of accidental or inadvertent doping where there was neither intention, nor any performance enhancement. In this archival study, from an initial, broadly representative sample of 100 sanctions, 23 cases were identified in which sanctioned athletes either denied committing an anti-doping rule violation or denied intention to dope. Content analysis of the statements made by athletes showed that denial strategies fell into discrete categories, such as accidental doping through nutritional supplements, banned substances being present in medical treatments, accidental whereabouts violations, and accidental purchases. While some denials were credible, many were incredible, potentially reinforcing the general skepticism anti-doping authorities have towards protestations of innocence by athletes. Findings highlight the need to improve the education of athletes to prevent accidental violations. Findings highlight the need to improve the education of athletes to prevent accidental violations. It is suggested that the introduction of a ‘reasonable person’ standard might help to prevent the imposition of sanctions in cases where even anti-doping tribunals acknowledge that sanctions are harsh or unfair.

And Justice for All? How Anti-Doping Responds to ‘Innocent Mistakes’

In the keynote address delivered at the 14th Annual World Anti-Doping Agency (WADA) Symposium in Lausanne, Switzerland, WADA President Sir Craig Reedie said that he kept hearing and reading that commentators in the public domain thought that anti-doping was “not fit for purpose” and that “anti-doping is broken” (Reedie, 2018; p.1). During the address, Sir Craig did acknowledge that the system had some “weaknesses” (p.4) but did so largely in the context of calling for increased funding of WADA. Reedie said that there wasn’t much explanation for why negative beliefs had been declared, as “Just to be clear...the system works” (p.1).

Well, he would say that wouldn’t he?

The purpose of the current paper is to document one aspect of the current anti-doping system that may indeed be broken: how WADA’s strict liability rules punish athletes who have accidentally or inadvertently broken anti-doping rules. It focuses on showing how athletes try to establish their innocence, specifically, their *denial strategies*, and how the system responds to such claims. It will be argued that under the current system athletes who deny having committed an anti-doping rule violation (ADRV), have little to no possibility of proving innocence. It is after all, almost impossible to prove a negative (see Moston & Engelberg, 2015). Once an accusation has been made, the system effectively shuts off avenues of appeal, instead favouring pathways that will simply recycle the initial accusation and evidence. Furthermore, athletes who persist in denying doping will be openly ridiculed, since the only thing worse than a ‘doping cheat’, is a ‘lying doping cheat’ (Moston & Engelberg, 2017).

Lying Doping Cheats

According to Olson and Wells (2004), what distinguishes alibis (one form of denial) from one another is the extent to which evaluators will accept the statement as true. That is, the believability or credibility of the statement. They suggest that “Believability seems to be the basic psychological dimension along which all alibi evaluators, from detectives to prosecutors to judges to jurors, make their judgments about the alibi” (p.161). They also note that even when there is apparently overwhelming evidence of innocence, observers remain skeptical.

Olson and Wells (2004) go on to suggest that the labelling of a statement as being an alibi “evokes a sense of disbelief and challenges people to create imaginative scenarios worthy of a great crime novel as to how the person could nevertheless have committed the crime” (p. 174). In effect, observers are often pre-disposed to reject claims of innocence. This clearly has implications for anti-doping cases, where denials by athletes are inevitably seen as attempts by the guilty to either escape punishment or to minimise the severity of sanctions (Haigh, 2008). In many cases, denials are openly ridiculed and featured in ‘lists of best doping excuses’ (for examples see Vale, 2006; Wired, 2007). While it is perhaps understandable that the popular media makes light of doping denials, as we will see in the following section, it is altogether a different matter when the heads of anti-doping organisations engage in such conduct.

In 2003, when anti-doping control testing revealed that British Sprinter Dwain Chambers had the designer steroid *tetrahydrogestrinone* (THG) in his system, former WADA Chairman Dick Pound offered only one credible defence: “If Dwain Chambers had been captured by a squad of Nazi frogmen and held down and injected with this stuff, that would present an entirely different set of circumstances” (McRae, 2003; para 1).

Pound would offer the “Nazi frogmen” defence in several other cases, such as that of sprinters Tim Montgomery and Justin Gatlin (Pound, 2006), as well as cyclist Floyd Landis (Maloney, 2009). Pound’s ire for Landis was relentless, and in one interview with the *New York Times* (Sokolove, 2007; para 5), he suggested that Landis’s reported testosterone-to-epitestosterone ratio, was so high that “You’d think he’d be violating every virgin within 100 miles. How does he even get on his bicycle?”

Pound’s standard response to denials of anti-doping was often openly sarcastic, with statements such as “puh-leezzz!” and a slow robotic “give ... me ... a break!” (McRae, 2003), littering his public comments. Perhaps not surprisingly, in response to such attacks, Floyd Landis would make an ethical complaint against Pound, which was heard by the International Olympic Committee’s Ethics Commission (2008). The Ethics Commission would subsequently rule that it had no jurisdiction regarding the complaint, but nevertheless cautioned Pound against making public statements that could affect reputations, particularly when it had not yet been established that an ADRV had occurred.

Other anti-doping leaders have continued to emphasise that the possibility of a denial being accepted is highly unlikely. For example, in Australia in 2013, the former Chair of the Australian Sports Anti-Doping Authority (ASADA), Aurora Andruska suggested:

There are three defences against a doping charge: 'A doctor stuck a needle in me while I was having an operation', 'I was assured the product I was taking was not on the banned list' and the 'substantial assistance' option.

The only time a zero sanction has been given was when the athlete has been unconscious during surgery by a doctor. That is a very high bar. To get a zero sanction on the second defence, the bar is also very high. In my period at ASADA, I am yet to see that defence sustained (Masters, 2013; paras 2 & 3).

When questioned about the meaning of the third defence, Andruska said "It's not a case of the athlete saying, 'Yes, I did the wrong thing'... He has to give information on others that means other charges coming to light" (Masters, 2013; para 12). In effect, I doped and so did my teammate.

One of the reasons for a lack of consideration of intention in doping cases is that many guilty athletes accused of doping have falsely claimed that they were innocent (Anderson, 2011). Notable examples include Floyd Landis's "Wiki defence" (Hughes, 2007); Lance Armstrong's "I have never tested positive" (BBC News, 2004); and Tyler Hamilton's infamous "vanishing twin" (Hamilton & Coyle, 2012).

Rather than debate the merits of such dubious claims, anti-doping authorities have repeatedly emphasised that an athlete is responsible for everything that enters his or her body. As former WADA President John Fahey put it,

The simple fact is that anyone who has a prohibited substance in their system is a cheat. It is as simple as that. The only argument then comes as to what was the nature of how that prohibited substance got into the athlete's system. But

you're a cheat, effectively, the moment you've got that substance in there.

(Leicester, 2012; para 3)

Athletes who commit accidental doping breaches, which might logically have had little to no performance enhancing benefit, will typically be sanctioned as punitively as an athlete who systematically, and intentionally, doped (Reszel, 2012).

Pluim (2008) provides objective evidence to show that most tennis players identified as using prohibited substances, the supposed 'doping cheats', were guilty of little more than administrative errors. Pluim reviewed data on forty anti-doping cases involving tennis players taken from the 5-year period 2003-2007, finding that in only 13 of the 40 cases was a prohibited substance taken to enhance performance. In all the other cases (67.5%) it was accepted at the independent hearings that there was no intent to enhance performance (19 cases) or no (significant) fault or negligence (8 cases). Nevertheless, sanctions were applied, with significant negative impact for the players. Pluim was scathing of a system whereby athletes who are 'not guilty' of being performance enhanced and without direct intentionality could be punished: "It thus seems as if, in the name of the 'spirit of sport', the sports establishment considers it justified to sacrifice in principle innocent athletes" (p.549).

Similar examples are abundant within the literature (e.g., Amos, 2007; Reszel, 2012; Yonamine, Garcia, & de Moraes Moreau, 2004), each highlighting WADA's often-stated doctrine of *strict liability* (Reszel, 2012), a belief that all athletes found using banned substances are doping cheats, and that harsh sanctions should be enforced in almost all cases.

Clearly, the system in place provides insufficient opportunity for an athlete to prove their innocence. This is most candidly illustrated in WADA's decision to alter the definition of doping from the act of doping itself, to the violation of an anti-doping rule (Soek, 2006). This change of

definition, together with the strict liability policy, results in a scheme where even if an athlete can demonstrate that a substance was ingested inadvertently, and provided literally no performance enhancing effect, they are still guilty of doping.

The case of US sprinter Torri Edwards is illustrative. The sports arbitrators assessing the case against Edwards were highly complimentary about Edwards, who was described as “a diligent and hardworking athlete” who had “conducted herself with honesty, integrity and character” (Hiltzik, 2006; para 2). The arbitrators agreed that the breach of doping regulations was entirely unintentional, caused by a little-known additive inside glucose tablets taken at an exhibition race, and that Edwards had “not sought to gain any improper advantage or to 'cheat' in any way” (Hiltzik, 2006; para 4). Despite their “unease” over the “harshness” of the sanction, Edwards was nevertheless suspended for two years.

The disconnect between accepting that an athlete is not really a doping cheat, and yet they should still be punished is relatively common in anti-doping cases. For example, in 2017, after missing three out-of-competition drugs tests, US 100 metres hurdles champion Brianna Rollins was banned for a year by the United States Anti-Doping Agency (USADA). In the Arbitral Award, USADA said “This is a difficult case because it involves the imposition of a serious penalty on a brilliant athlete who is not charged or suspected of using banned substances of any kind” (USADA, 2017; p.22).

Quite how such punishments align with WADA’s stated aim, “We develop policies, procedures and practices that reflect justice, equity and integrity” (WADA, 2014; p.4), is at best, unclear.

The Present Study

Studies of claims of accidental or inadvertent ADRVs are relatively rare: there are only two notable examples, specifically a study of 40 tennis players (Pluim, 2008) and a study of 66 cyclists (Henning & Dimeo, 2014). In the Pluim study, about two-thirds of the cases featured claims of accidental or inadvertent doping. No frequency data are reported in the Henning and Dimeo study.

There is a lack of data on the frequency of claims of accidental/inadvertent doping amongst a broadly representative sample of sports. The current archival study aims to fill that gap through an analysis of 100 consecutive sanctioned ADRVs from a single country: Australia. In this analysis we adapted the methodological approaches of both Pluim (2008) and Henning and Dimeo (2014), combining an analysis of official reports of doping sanctions with publicly available data, primarily sourced from media interviews. We acknowledge at the outset that media data may be unreliable (distortions introduced by either the athlete or the media), but in the absence of a coordinated research program involving academia and NADOs, this is currently the only avenue open to investigate this issue. It should be noted that studies of doping featuring the combined efforts of NADOs and academics, are extremely scarce. The absence of such studies stands in stark contrast to studies of criminal investigations, where the direct cooperation of police officers and academics is commonplace.

Methodology

Under the ASADA Act and the National Anti-Doping scheme, ASADA is authorised to publish information (the 'Register of Findings'), once a decision has been handed down by the

relevant tribunal. Under the World Anti-Doping Code, ASADA is required to place sanction information on the website for at least one year.

Data were collected from the ASADA listing of Rules and Violations: Sanctions webpage (http://www.asada.gov.au/rules_and_violations/sanctions.html). The data on each recorded sanction was:

- Name of person sanctioned
- Sport
- ADRV
- Substance
- Sanction (length of sanction and applicable dates).

Data collection commenced in December 2014 and concluded in February 2015. During that period, there were 100 separate sanctions listed by ASADA. Additional data on each case were obtained through multiple online searches (e.g., “name of athlete” + ASADA; “name of athlete” + doping). Data on each case were then collated into separate files to identify verifiable quotes (e.g., statements made in hearings, or in press interviews).

Case by case analysis was then conducted to determine each athlete’s response (e.g., admission, denial) to the accusation against them. From this analysis, a total of 23 cases were identified in which a sanctioned athlete publicly claimed that their ADRV was either accidental (e.g., a banned supplement was not listed as present inside a sports supplement), or inadvertent (e.g., an explanation for missing a scheduled ‘whereabouts’ test).

Of the remaining 77 cases, our searches could only identify six cases in which athletes admitted to doping. In the remaining 71 cases there was no discernible public record as to the athletes' reactions to their sanctions.

Results

Content analysis of the statements made by the 23 athletes revealed seven different defence strategies. That is, the excuse or explanation the athlete offered to suggest that their ADRV was accidental or inadvertent. The numbers and percentages of each strategy use are shown in Table 1.

Table 1 shows that 10 of the cases (43.5%) featured claims that banned substances were present in nutritional supplements, often involving substances purchased over-the-counter. The next two most frequently identified strategies (four cases each) were that the banned substance was present in a medical treatment prescribed by a medical practitioner, or that the purchase of banned substances was accidental.

In the following section, where possible, we provide direct quotations from the athletes detailing their defence strategies. In cases where no direct quotations are provided, the choice of strategy was nevertheless detectable in media interviews, press releases, or records of anti-doping hearings. Cases are organised by each of the seven identified defence strategies.

Strategy #1: Inadvertent consumption in nutritional supplement.

- **Ahmed Saad (AFL)**

Claimed that he drank a protein/powder shake which contained a banned substance.

Referring to the team member who supplied him with the drink:

[It] was someone that was kind of like a mentor and a family member. I had that much trust with him, it was as if the coach had given me that product. I was taking it exactly as if the club had told me to." and "He actually didn't check if it was banned or not, and I didn't either because coming from him was like coming from the coach, so it was quite surprising for both of us.

(Connolly, 2013; para 6)

- **Benjamin Hill (cycling)**

Claimed that during a competition he was given a supplement by another cyclist who told him that it was legal.

At the end of the 2012 season at the Tour of Tasmania I was racing with an NRS team. I asked if anyone had any caffeine - some *No Doz*. A team-mate said that he had some caffeine powder, like 'Prerace', which is a legal supplement. But it was a bit more than just caffeine powder.

I got tested (after the stage), and after I came back from testing he said, 'that thing I gave you I think it might be dodgy.' We checked it and sure enough it was on the ASADA website as banned. It was not what he told me it was.

I called ASADA two days later. I put Prerace down when they asked you in the testing what you had, because that's what I thought I had. It took about three months before I got a call saying I had a positive result. I was a bit optimistic that it might have been okay. They back-dated my sentence to that phone call because I was practically confessing.

I freaked out as soon as my team-mate told me and I tried to do the best thing I could do. But it didn't really work out in the end because they still stung me for

the maximum time (two years), so I don't think it made much difference. (van Boheemen, 2015; paras 5, 6, 8 & 9)

- **Brendan Ellis (surf lifesaving)**

Claimed that he used a sports supplement on the morning of a competition. He reportedly researched the supplement with a chemist's assistance before use, and the banned substance was not listed as an ingredient in the Chinese made product.

It's crazy. I thought the boys in the crew were playing a prank on me when I was informed of the positive test.

Now I've been given a two-year ban, the same as someone who tested positive to steroids. I mean this stuff can be bought by kids over the counter at most health stores. It doesn't seem fair. (Hall, 2014; paras 7 & 8)

- **Calum Timms (swimming)**

Claimed he had used a sports supplement.

I was drug tested by the Australian Anti-Doping Governing Body and tested positive to a banned substance - in which I was unaware was present in the over the counter sports supplement. Having received the supplement from a reputable Australian sports store, I was baffled as to how I could have possibly produced a positive result. (Timms, 2016; para 7)

- **Matthew Brunoli (powerlifting)**

Claimed he had used a sports supplement.

A 15-year-old girl to a 70-year-old grandma can purchase it and a high majority of the boys would be familiar with it.

A supplement rep told me it would be fine (to take). (Hogarth, 2015; para 13 & 14)

- **Matthew Clark (AFL)**

Claimed he had drank an energy drink, *after* being notified that he was scheduled for anti-doping testing.

I had no idea. About 15 of my teammates were on the same drink in previous weeks and when someone hands you something people have taken the whole year you don't think about it.

My mate said it was like (energy drink) V with Powerade.

Obviously it's hard to look it up when there is a tub with more than 50 ingredients. It's pretty hard to look up 50 ingredients to find if one of them is illegal. (Ralph, 2013; paras 8, 9 & 11)

- **Matthew Davies (athletics)**

Claimed he had used a sports supplement. In this case the banned substance was not on the WADA list, but shared a similar chemical structure to a banned substance. Davies claimed he had searched the ASADA website and could find no banned substances in the supplements he was taking.

I believe I took every reasonable precaution to ensure I stayed a clean athlete, true to the message I promoted. (Stannard, 2014; para 6)

All of the products and supplements I used were available readily, locally and checked thoroughly before I even considered them. (Stannard, 2014; para 15)

Due to a very grey area of the WADA code, I have been sanctioned for a substance that I had not intentionally or consciously ingested, on the basis (as ASADA described it) of a 'possible anti-doping rule violation'. (Gleeson, 2013; para 4)

I did not misread a label. I did not 'import' illegal tablets with my credit card. I was not ignorant of the WADA code. I was aware of the strict liability principle and made sure I used numerous resources to ensure everything I ingested was safe. (Gleeson, 2013; para 5)

The chemicals highlighted were not in the WADA banned list, or ASADA's online resource for checking substances (and are still not present 18+ months after the sample). (Gleeson, 2013; para 13)

- **Matthew Middleton (powerlifting)**

Claimed he had used a sports supplement.

- **Steven Komene (rugby league)**

Claimed he had used a sports supplement.

- **Sarah Tatam (netball)**

Claimed she had used weight-loss pills. Netball Australia chief executive Kate

Palmer said:

Unfortunately, Sarah has fallen into the trap of ordering a supplement online.

This is a cautionary tale for all our athletes that taking supplements may create a significant risk to their sporting and personal integrity. (King, 2014; para 6)

Strategy #2: Banned substance contained in medical treatment.

- **Alex Overs (AFL)**

Claimed he had used a painkiller for a knee injury and was unaware it contained a banned substance.

- **Andrew Wilcox (athletics)**

Claimed he was given medication containing a banned substance during a period in hospital.

- **Jaclyn Wilson (BMX)**

Claimed that banned substances were present in medication for Ménière's disease and that she was unaware of this.

None of the medication was performance-enhancing.

I was taking medication for Ménière's, not for any other reason.

I had no idea the fluid tablets I was taking contained a banned substance.

(Dole, 2014; paras 4, 9 & 10)

- **Ryan Crowley (AFL)**

Claimed the drug was given to him as treatment for strong back pain by an allied health professional unrelated to the club, who didn't inform him it was methadone.

Strategy #3: Accidental purchase.

- **Brendan Bunyan (rugby union)**

Caught importing growth hormones. Claimed that he bought the drug when he was overseas and thought it was legal.

- **Jake Law (rugby league)**

Caught importing Clenbuterol. Claimed he didn't know it was illegal. He said that he went online to buy a fat burner and found the product, and Google searched to make sure it wasn't a steroid. Admitted he would have used it if it hadn't been seized by Customs. His defence was that he did not know that Clenbuterol was on the Prohibited List, and thereby did not know that he would be in breach of the Anti-Doping Policy in importing or using the product. Had he known that it was, he says, he would not have purchased the product.

- **Mitchell Spackman (rugby union)**

Caught importing peptides. Claimed he did not know the substance was banned in Australia and that he never actually used it.

My mate bought it and said he got it off a legitimate website in America. He thought it was legal and told me about it and I wanted to get it too.

I just tried to buy it and they banned me for two years for it. I didn't use it.

They didn't test me or anything. I'm pretty disappointed about it because I haven't even taken anything.

Why would I bother looking into seeing if it's illegal or whatever when the website was obviously legitimate? It's not like I'm a professional athlete.

That's probably the biggest thing, that I've never taken anything like that and I got banned for two years. It's just stupid really. (Keeble, 2012; paras 4, 6, 14 & 17)

- **Wade Lees (AFL)**

Caught importing a weight loss product which contained traces of a banned steroid. Claimed he was unaware that it contained any prohibited substances, and that the package was

intercepted by customs and he had not actually used it. He said: “They’re out to headhunt you and it doesn’t matter if you’re innocent or not, it’s there (*sic.*) job so they’re out to get anyone and everyone” (Landsberger, 2013; para 9)

Strategy #4: Accidental whereabouts violation.

- **Jarrold Bannister (athletics)**

Sanctioned for missing three testing sessions. He blamed poor communication as a factor behind the circumstances leading to a breach of the Athlete Whereabouts program. He denied intentionally missing the third testing session, but that as he was checked into the same room as a teammate the receptionist did not know where he was when ASADA testers asked for him at 6am.

- **Joshua Ross (athletics)**

Sanctioned for missing three drugs tests. claims at one of these was due to a misunderstanding between him and the testing official regarding his home address. Another was because he was flying to Europe for a competition and he forgot to inform ASADA of his whereabouts.

Strategy #5: Accidental consumption of banned substances used by a third party.

- **Troy Hearfield (soccer)**

Claimed that he had inadvertently consumed the drug after taking a sip from his sister's drink which, unbeknownst to him, she had laced with ecstasy. The tribunal found that “he had consumed too much alcohol to make a proper judgment”. (Smithies, 2013; para 9)

Strategy #6: Accidental over-consumption of prescribed medication.

- **Daniel Holmes (rugby league)**

Claimed that a failed test was due to him having taken 20 puffs of asthma medication Ventolin, when 16 is the maximum number allowed. He could have applied for a Therapeutic Use Exemption from ASADA but said he did not know he needed one.

Strategy #7: Accidental testing violation.

- **Daniela Roman (athletics)**

Sanctioned after failing to provide a urine sample to ASADA for testing. Claims that she had agreed to testing, but that she was too dehydrated to provide a sample. She also claims the ASADA testing officials did not adequately explain the consequences of not providing a sample.

I agreed to participate and, after drinking four bottles of water and waiting over 2½ hours, I still could not give a sample because I was severely dehydrated.

The main reason why I couldn't give a sample was because of ASADA's incompetence, lack of knowledge and reasoning at that particular moment.

They could not provide me with any information ... and were completely clueless and unprofessional about the whole situation. (Lane, 2014; paras 5 & 7)

Mean length of sanctions

The mean length of sanction for the 23 athletes claiming inadvertent ADRVs was 1.71 years (SD 0.38 years; range 9 months to 2 years). For the other 67 sanctioned athletes the mean length of sanction was 1.96 years (SD 0.81 years; range 3 months to 4 years). A *t-test* analysis was not significant.

Discussion

In the current study, from an initial sample of 100 consecutive sanctioned cases, 23 cases were found to feature claims by athletes that their ADRV was either accidental or inadvertent. Acknowledging that this is a likely to be a conservative estimate (see Study Limitations), the 23 cases suggest that a significant percentage of athletes accused of having committed ADRVs maintain that they did nothing wrong, thereby directly challenging the legitimacy of the anti-doping system.

The denial strategies employed by the 23 athletes differ markedly from the elaborate (and sometimes outrageous) strategies put forward by notable figures such as Floyd Landis, Lance Armstrong, and Tyler Hamilton. The most common strategy here (10 cases) was to claim that consumption was accidental, with banned substances being present in over-the-counter nutritional supplements. The widespread contamination of supplements to include substances that would trigger an adverse analytical finding is one of the reasons why the ASADA (2017) website contains a statement that no supplement is safe to use, and that using supplements presents a risk to an athlete's career.

It is notable that three of the athletes (Saad, Hill & Clark) trusted the advice of team members before using supplements, whilst another (Ellis) took advice from a pharmacist. Clearly these are areas where anti-doping education can be improved: athletes should not be taking advice from potentially unreliable sources. Similarly, the cases of the two athletes (Timms & Brunoli) who bought over-the-counter supplements, also suggests that education should be improved.

The case of Davies is perhaps the most curious of the 10 contaminated supplements cases. Davies maintains that he had checked the ingredients in the supplement with both the

WADA and ASADA lists, and that 18 months after his sanction the specific contaminants were still not listed. This case highlights an apparent weakness in the use of lists of prohibited substances. Athletes are (understandably) likely to take the absence of a substance from the official lists as evidence that it is permitted. It could be argued here that education needs to emphasise the ‘spirit of the prohibited list’, rather than an entirely literal interpretation. However, as the prohibited list (WADA, 2017) contains no such ‘spirit’ statement, a literal (and potentially problematic) reading is all that remains. Given that a majority of athletes use supplements (for a brief summary of studies, see Mottram, 2015), it seems likely that more such cases will occur in the future.

The next most frequently identified strategy (four cases) was that the banned substance was present in a medical treatment prescribed by a medical practitioner (or allied health professional). It is curious that the athletes (Overs, Wilcox, Wilson & Crowley) had not thought to obtain a therapeutic use exemption (WADA, 2015). Again, there are clear implications for education: the use of all medicines should be checked with anti-doping authorities, and appropriate action taken to prevent an unnecessary ADRV.

There were also four cases involving claims that banned substances had been purchased ‘accidentally’, the accident being that the athletes (Bunyan, Law, Spackman & Lees) were either unaware that the substances were banned, or that importing such products would constitute an ADRV. The defences offered by Spackman and Lees, that they were innocent as they hadn’t actually *used* the substances (not surprising as they were intercepted by customs), are interesting as both athletes publicly blamed anti-doping authorities for their misfortune. Only Law accepted that had his purchases been delivered to his home, that he would have used them (additionally claiming he would not have done so had he known they were banned).

The two cases of involving multiple whereabouts violations (Bannister & Ross) are of interest as both athletes maintained that they had valid reasons for missing at least one of the scheduled tests. For example, Bannister was present at the hotel where he had stated he would be, but due to an oversight at the check-in desk, his presence, staying in a room held in the name of another athlete, was not recorded. The testers were unable to locate Bannister and a whereabouts violation was duly recorded.

Credible or Incredible?

The 23 cases identified here vary markedly in terms of their believability (Olson & Wells, 2004) and therefore their apparent credibility. A hypothetical observer might view several of the denials as credible, whilst others would be less so. For example, Bannister's whereabouts hotel room violation appears to be an innocent mistake, and it would probably be seen as highly credible. Conversely, Spackman's denial strategy, accidentally purchasing peptides from overseas, would probably be seen as quite incredible.

At the moment, issues of credibility are largely irrelevant in anti-doping. This is an area where the anti-doping system could benefit from the adoption of procedures from the criminal justice system. For example, anti-doping systems could incorporate what is known as a *reasonable person* standard. The reasonable person standard is already present in definitions of hard-to-define legal issues such as sexual harassment (Fasting, Chroni, Hervik, & Knorre, 2011; International Olympic Committee, 2007), and has been previously offered as potential component of a definition of doping (see Browne, Lachance, & Pipe, 1999). In sexual harassment cases, the reasonable person standard was introduced to help prevent spurious, or otherwise unfair accusations from causing harm to the innocent. In brief, the standard requires that a reasonable person would agree an accusation has merit and is not otherwise petty or

malicious. The inclusion of such a standard would hopefully end scenarios whereby even anti-doping tribunals such as the CAS acknowledge that athletes have inadvertently doped and the level of doping would have offered no discernible performance enhancement (see Pluim, 2008; Yonamine et al., 2004). In such cases, charges could be dropped if it was felt that a reasonable person would see no offence as having been committed (e.g., because there was no possible performance enhancement effect).

Confession or Acquiescence

One of the intriguing aspects of conducting this study was that for most of the 100 ASADA sanctioned cases, we could find no public record of how the athletes had responded to their sanctions. Only a small number publicly admitted to doping, most appear to have made no public comment. It is spurious to infer anything from an absence of information, but setting aside such concerns, we can briefly speculate as to why this might be the case.

One hypothesis is that the athletes concerned were not famous enough to merit any coverage of their cases in local or national media. A second hypothesis is that the athletes concerned simply acquiesced with the doping charges and accepted their sanctions. Any public display of anger, or challenging of the sanction, would make the athlete a ‘lying doping cheat’, and as such, discretion, in the form of accepting the punishment, no matter whether it was fair, might be the safest and simplest option. Research evidence would support such a stance. A study of the public relations strategies adopted by three leading US baseball players accused of doping (Utsler & Epp, 2013) found that an “apologise and move on” strategy was more effective – eliciting support from teammates and fans - than a strategy of denial - negative responses from teammates and fans - as it provokes the media to seek out contradictions.

The current system of sanctions offers inconsistent and limited encouragement for denials. The current system encourages acquiescence, in that a confession is likely to be rewarded with a reduced sanction. Faced with an accusation of doping, even an innocent athlete, may be best advised to admit their offence. The current WADA Code explicitly encourages athletes to make admissions once they have been confronted with an anti-doping rule violation (Article 10.11.12) where a ‘timely admission’ (p. 73) may result in a reduced sanction. The Code also encourages athletes identified as doping to act as informants, for example, by identifying other doping athletes or suppliers. Article 10.6.1 defines the incentives for providing substantial assistance:

WADA may agree to suspensions of the period of Ineligibility and other Consequences for Substantial Assistance greater than those otherwise provided in this Article, or even no period of Ineligibility, and/or no return of prize money or payment of fines or costs (WADA, 2015; p.67).

The case of US sprinter Tyson Gay illustrates how this rule is already being used. Despite testing positive multiple times for anabolic steroid use, Gay’s sanction was reduced to one year after he provided information to the United States Anti-Doping Authority (Ingle, 2014). At about the same time, Jamaican sprinter Asafa Powell received an 18-month suspension for the accidental use of a stimulant inside a legal supplement. Commenting on this apparent inequity, Stuart McMillan, performance director/sprint coach at the World Athletics Center in Arizona, said: “No sane person can find justification in Powell receiving an 18-month ban for inadvertent stimulant use while Gay receives a 12-month ban for purposeful steroid use – cooperation or no cooperation” (Ingle, 2014; para 7). Despite such obvious flaws, this is the system that currently operates.

Study Limitations

Due to the limitations of publicly available data, it is possible that there may have been other cases of accidental/inadvertent doping in the sample. For example, it may be that even athletes who have accidentally committed an ADRV, chose to acquiesce and offer an admission of guilt to expedite the sanctioning process, and possibly to obtain a reduced sanction. Consequently, the accidental/inadvertent incidence rate reported here should be understood as possibly under-representing the true incidence of such cases.

An additional limitation is that an athlete's motive for denying an accusation cannot be determined from secondary sources. It may be that the athlete is innocent, and as such the denial is an honest reflection of their own perception. However, some athletes may have deliberately committed anti-doping offences and their denial is part of a public relations strategy (see Benoit, 1997) to minimise the consequences of such action.

Conclusion

If an athlete is found to have used a banned substance, then there appears to be limited value in denying the charge. Attempts at denial are likely to result in increasing the severity of social sanctions (e.g., the responses of teammates and fans), whereas acquiescence and an apology are effectively rewarded. The regulatory environment within which anti-doping is investigated and punished is closed. Cases cannot be trialled externally (e.g., in court) and the only arbiter, the CAS, does not protect athletes in the way that a court would. Furthermore, there is no appeal beyond that point. Smith (2013) says "This is violating a number of principles of criminal procedural law – and quite a few fundamental principles of civil procedural law as well" (p.276). If this is the *spirit of sport*, little wonder that some see anti-doping as "broken".

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