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## Doping in Cycling: Incentivizing the Reporting of UCI Anti-Doping Rules Violations Through Organizational Oversight and Accountability, 49 J. Marshall L. Rev. 625 (2015)

Tom Laser

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DOPING IN CYCLING: INCENTIVIZING  
THE REPORTING OF UCI ANTI-DOPING  
RULES VIOLATIONS THROUGH  
ORGANIZATIONAL OVERSIGHT AND  
ACCOUNTABILITY

TOM LASER\*

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## I. INTRODUCTION

“These are not racers, they are pedaling test tubes.”<sup>1</sup> This was the reaction of Daniel Delegove, the judge of the doping trial of French cyclist Richard Virenque, upon learning of how prevalent doping had become in the sport of cycling.<sup>2</sup> The practice of doping to achieve increased performance output in cycling is nothing new.<sup>3</sup> Nevertheless, the breaking of the sport’s historic “omerta”<sup>4</sup> has caused shockwaves among the athletic community, and has caused many to question the scientific and ethical implications of doping.<sup>5</sup>

Recently, the field of medicine has provided the world with some incredible contributions to the science of athletic performance and the human body.<sup>6</sup> The ability to improve athletic performance with the use of outside agents, both natural and synthetic, increased tenfold due to these medical advancements.<sup>7</sup> Steroid use and

\*J.D. Candidate 2016, The John Marshall Law School, Chicago, Illinois; B.A. in History, 2013, Indiana University, Bloomington, Indiana. I’d like to thank the Indiana University Student Foundation for introducing me to the sport I love. I would also like to thank Danielle Burkhardt and the staff at the *John Marshall Law Review* for their diligent work in helping construct this comment.

1. Charles E. Yesalis & Michael S. Bahrke, *History of Doping in Sport*, 24 INT’L SPORTS STUDIES 42, 52 (2002).

2. See *id.* (quoting Virenque after he had heard “compelling evidence of widespread doping”).

3. *Id.*

4. Omerta, OXFORD DICTIONARIES (Jan. 23, 2016), [www.oxforddictionaries.com/us/definition/american\\_english/omerta](http://www.oxforddictionaries.com/us/definition/american_english/omerta).

5. See Yesalis, *supra* note 1, at 52 (discussing the pervasiveness of performance-enhancing drugs and their repercussions in the sport of cycling); see also Jules A. A. C. Heuberger, Joost M. Cohen Tervaert, Femke M. L. Schepers, Adrian D. B. Vliegthart, Joris I. Rotmans, Johannes M. A. Daniels, Jacobus Burggraaf & Adam F. Cohen, *Erythropoietin doping in cycling: lack of evidence for efficacy and a negative risk-benefit*, 75 BRIT. J. OF CLINICAL PHARMACOLOGY 1406, 1406–07 (2013), <http://onlinelibrary.wiley.com/doi/10.1111/bcp.12034/epdf> (addressing cycling’s code of silence, known as the “omerta,” and its former role in safeguarding the doping practices of elite-level cyclists from the public). An example of one such “shockwave” through the athletic community has been the case of Lance Armstrong, the former cycling superstar who was suspended from all athletics after charges of using and trafficking illegal performance enhancing drugs. *Id.* at 1407.

6. See Lauren Cox, *The Top 10 Medical Advances of the Decade*, MEDPAGE TODAY (Dec. 17, 2009), [www.medpagetoday.com/InfectiousDisease/PublicHealth/17594](http://www.medpagetoday.com/InfectiousDisease/PublicHealth/17594) (listing some of the top medical advances of the 2000s, including discoveries involving the human genome, stem cell research, and new forms of cancer treatment with drug development).

7. See J. Savulescu, B. Foddy & M. Clayton, *Why We Should Allow Performance Enhancing Drugs in Sport*, 38 BRIT. J. OF SPORTS MED. 666, 666 (2004) (elaborating on the rise in effectiveness of performance-enhancing drugs in the last fifty years, despite the fact that the practice is nothing new); see also George Touliatos, *The Creation and Evolution of Performance Enhancing Drugs*, WILLIAM LEWELLYN’S ANABOLIC.ORG (Dec. 23, 2015), [www.anabolic.org/the-creation-and-evolution-of-performance-enhancing-drugs/](http://www.anabolic.org/the-creation-and-evolution-of-performance-enhancing-drugs/) (charting the

subsequent abuse are very prevalent in the sport of cycling, particularly in multi-day stage races at high altitude.<sup>8</sup> Given its grueling nature and reliance on cardiovascular perfection, the sport of cycling is a perfect target for drugs that increase athletic performance.<sup>9</sup> With an increase in the level of pervasiveness and effectiveness of doping, a swift and unforgiving reaction arose from the sport's governing body.<sup>10</sup>

These reactions by the sport's governing body have tainted careers and reputations, harmed riders' physical health, and stripped individuals of not only their ability to pursue their passions, but their livelihoods as well.<sup>11</sup> Did the cycling community react to the doping epidemic in the most effective way? Further, is there a better way for the sport's governing body to prevent the use of performance-enhancing drugs?

This comment aims to address these and other pressing questions regarding the use of performance-enhancing drugs in the sport of cycling. This comment will trace the development and use of performance-enhancing substances from the ancient Greek Olympics through present day. This background information will

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series of scientific breakthroughs during the 1900s, such as the creation of synthetic testosterone, which increased the potency and prevalence of performance enhancing drugs in sports).

8. See Benjamin D. Brewer, *Commercialization in Professional Cycling 1950–2001: Institutional Transformations and the Rationalization of “Doping,”* 19 SOC. OF SPORT J. 276, 284 (2002) (attributing the prevalence of doping in cycling to its demand of physical perfection on the elite-level participants, as well as the ever-rising advertising funds from eager sponsors).

9. See Brian Palmer, *Riding High: Why Is There So Much More Doping in Cycling Than in Other Sports?*, SLATE (June 15, 2012), [www.slate.com/articles/sports/explainer/2012/06/lance\\_armstrong\\_charged\\_why\\_is\\_there\\_so\\_much\\_doping\\_in\\_professional\\_cycling\\_.html](http://www.slate.com/articles/sports/explainer/2012/06/lance_armstrong_charged_why_is_there_so_much_doping_in_professional_cycling_.html) (stating that cycling is, indisputably, a uniquely grueling test of endurance). Unlike marathon runners or triathletes, cyclists compete nearly every day for weeks at a time. *Id.* During that period, their red-blood-cell counts and testosterone levels drop. *Id.* Doping can prevent that from happening, enabling racers to compete at a higher level in later stages of an event. *Id.*

10. See *id.* (explaining that “[p]art of the reason it seems like cyclists are always failing drug tests is that cyclists are always taking drug tests”); see also Trevor Connor, *An Analysis of the Long-Term Effects of Performance-Enhancing Drugs*, VELONEWS (Oct. 30, 2014), [http://velonews.competitor.com/2014/02/training-center/an-analysis-of-the-long-term-effects-of-performance-enhancing-drugs\\_317590](http://velonews.competitor.com/2014/02/training-center/an-analysis-of-the-long-term-effects-of-performance-enhancing-drugs_317590) (discussing how celebrities and athletes competing in other sports receive a chance to rectify their mistakes as compared to a cyclist's inability to rehabilitate his career following a doping charge).

11. See John Rivell & Vanessa O'Connell, *Armstrong is Stripped of Titles in Cycling*, THE WALL ST. J. (Oct. 22, 2012, 9:10 PM), <http://online.wsj.com/news/articles/SB10001424052970203406404578072251369738278> (discussing the international cycling union's decision to ban former Tour de France champion Lance Armstrong from the sport of cycling indefinitely and strip him of all seven of his tour victories because of the surfacing of uncontroverted evidence regarding his use of performance-enhancing drugs throughout his career).

illustrate just how commonplace and prevalent the use of performance-enhancing drugs has been in cycling since the inception of competitive racing. This comment will then analyze the various approaches and solutions to the use and abuse of performance-enhancing drugs in cycling, as well as the current regulations that have been put in place by the sport's governing body. Finally, this comment will propose a solution to the problem of performance-enhancing drugs that is structured around team accountability and reporting incentives.

## II. A DOPING-INFESTED CULTURE

The practice of doping to improve athletic performance is as old as sport itself.<sup>12</sup> Doping's development from ancient times through the mid-twentieth century was relatively gradual.<sup>13</sup> However, doping has recently exploded in sophistication and effect due to advances in modern science and the newfound lucrative nature of professional sports.<sup>14</sup>

### A. *History of Performance-Enhancing Drugs*

This section will provide a history of the use of performance-enhancing drugs in athletics. First, it will explore the beginnings of their use in ancient times. Next, it will delve into their development through the mid-nineteenth century. Finally, it will provide a detailed explanation of the use of performance-enhancing drugs in the modern era.

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12. See Yesalis, *supra* note 1, at 52 (summarizing the onset of the practice of using outside agents to create improvements in one's strength or endurance). "The use of drugs to enhance physical performance has been a feature of human competition since the beginning of recorded history." *Id.* at 44; see also Toulantos, *supra* note 7 (tracing the use of performance enhancing drugs in sports as far back as the ancient Olympics). "Athletes competing in pankration, a primitive form of wrestling mixed with boxing, consumed bull testicles in order to gain strength. This was thought, at the time, to increase testosterone levels." *Id.*

13. See Yesalis, *supra* note 1, at 44–45 (delving into the use of herbal and other Earth-based agents to increase physical capacity over centuries).

14. See Brewer, *supra* note 8, at 277 (articulating the magnitude at which advances in modern medicine and technology have contributed to increased revenues for cycling teams as well as a more competitive atmosphere, where athletes are more inclined to take greater risks in competition). "[C]hanges in team structure and organization [in cycling] were paralleled by shifts in team sponsorship, a process marked by deep commercialization and an increasingly sophisticated and instrumental approach to the undertaking." *Id.* at 291.

### 1. *Origins in the Ancient Times*

Superior athletic performance, with its close ties to masculinity and power, has been an intensely sought after quality since the dawn of man.<sup>15</sup> Athletic competition, in particular, has stood as a powerful mode to display dominance and superiority among societies throughout the world.<sup>16</sup> Throughout history, “[athletic competition] has been used as a method to channel group or national aggression into symbolic displays of individual and societal dominance.”<sup>17</sup> Athletic competition today is so closely tied to our values and ideals as Americans that it is now a major factor in the development of our youth.<sup>18</sup> Sports serve as a youth social activity and even influence our political movements.<sup>19</sup> In addition, they also stand as key indicators of our social, economic, and legal trends.<sup>20</sup> Some academics have theorized that “nations are dependent upon the international sports world to confirm their national structure,” and that “the establishment of an international athletic presence is not, therefore, a gratuitous matter for nations, but rather the path they must currently follow if they expect to be recognized and treated as a nation.”<sup>21</sup>

The practice of using chemical agents to boost physical and athletic performance dates back as far as 1400 BC to the Susruta people of India.<sup>22</sup> The Susruta advocated the ingestion of animal organs, particularly the testicles, in order to cure impotency and other physical infirmities.<sup>23</sup> In addition, ancient Greek athletes and

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15. See Yesalis, *supra* note 1, at 42 (recounting the close ties of athletic achievement to success in business, politics, and overall masculinity); see also Dionne L. Koller, *From Medals to Morality: Sportive Nationalism and the Problem of Doping in Sports*, 19 MARQ. SPORTS L. REV. 91, 96–97 (2008) (identifying athletic competition as a proponent of nationalism in several ways: “[f]irst, sport can be a powerful force for nationalism domestically[,] second, sport can be used to enhance a nation’s prestige and demonstrate supremacy in the international community[,]” and third, sports have often been used by political leaders to display the superiority of their political systems and further “national interests”).

16. Yesalis, *supra* note 1, at 42; see also Koller, *supra* note 15, at 96 (identifying sports as a key indicator of the superiority of nations, having influences on nationalistic sentiment both domestically and internationally).

17. Steven O. Ludd, *Athletics, Drug Testing and the Right to Privacy: A Question of Balance*, 34 HOW. L. J. 599, 599 (1991).

18. See *id.* (stating “[s]ports have been also used to socialize youth and inculcate the values of a group’s political, social, economic and legal systems.”).

19. *Id.*

20. *Id.*

21. William J. Morgan, *Sport and the Making of National Identities: A Moral View*, 24 J. PHIL. SPORT. 1, 3 (1997).

22. See Yesalis, *supra* note 1, at 44 (discussing the practice of organotherapy, the practice of eating the organs of animals and humans, to “improve vitality and other aspects of performance.”).

23. *Id.*

gladiators would experiment with the consumption of makeshift stimulants, all in hopes of increasing physical capacity.<sup>24</sup>

These makeshift stimulants included coca leaves, peyote (having strychnine effects), arsenic, and pituri plant.<sup>25</sup> These substances were used for both simple day-to-day health or in preparation for battle.<sup>26</sup> As athletics began to take on a more prevalent role in civilization, however, so too did the use of chemical agents to improve performance.<sup>27</sup> As the focus of athletics gradually shifted from survival to big entertainment, the methods of improving performance began to change as well.

## 2. *Development into the Modern Era: Medicine and the Idea of Sport as a Science*

The modern concept of “doping,” or using substances to improve athletic performance, originated in the 19th century.<sup>28</sup> Despite the practice’s more natural beginnings, doping has become much more mechanized and scientific since its origins in ancient times.<sup>29</sup> Substances such as cocaine, caffeine, strychnine, and alcohol were regularly combined to create an athlete’s personal performance-enhancing cocktail.<sup>30</sup> These early substances focused

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24. *See id.* at 45 (describing the ancient Greek’s use of brandy and wine concoctions, hallucinogenic mushrooms, sesame seeds, and other forms of unnamed stimulants to reduce fatigue and prevent bodily injury).

25. *See id.* (describing the stimulants used by ancient peoples, sometimes for athletic purposes, but more often for increased aggression and alertness during battles); *see also* Scott Huntington, *The History of Performance-Enhancing Drugs*, SPORTSTHENANDNOW.COM (Apr. 18, 2014), <http://sportsthenandnow.com/2014/04/18/the-history-of-performance-enhancing-drugs/> (describing how athletes during the ancient Olympics would use “plant seeds or extracts of mushrooms” to enhance their performance).

26. *See Yesalis, supra* note 1, at 44 (articulating how herbal remedies and other substances that *can* increase athletic performance were not originally used for such a purpose, but were rather used for purposes such as curing impotence, inspiring bravery, or increasing intelligence).

27. *See id.* (noting the onset of the practice of sophisticated medicine and its ties to athletes’ use of performance-enhancing drugs).

28. *See* Maxwell J. Mehlman, Elizabeth Banger & Matthew M. Wright, *Health Law Symposium: Doping in Sports and the Use of State Power*, 50 ST. LOUIS L. J. 15, 17 (2005) (recalling the consumption of herbal remedies in ancient times and the development of modern stimulants, as well as attributing the term “doping” to the 19th century Dutch word “dop,” which was the name of a potion that Zulu warriors consumed to help them defeat their foes).

29. *Compare* Yesalis, *supra* note 1, at 45 (discussing how many of the first stimulants used were plant-based), *with* Steven Mulvey, *Lance Armstrong: Tyler Hamilton on ‘how US Postal cheated,’* BBC NEWS (Oct. 12, 2012), [www.bbc.com/news/magazine-19912623](http://www.bbc.com/news/magazine-19912623) (recounting the story of Tyler Hamilton, former teammate of Lance Armstrong on the U.S. Postal Service Cycling Team, regarding the strict and scientific method that cyclists employed to take performance-enhancing drugs and dodge drug testers along the way).

30. Yesalis, *supra* note 1, at 44.

primarily on boosting the energy levels of the athlete.<sup>31</sup> They were also capable of delaying the onset of physical and mental fatigue to prolong the body's ability to operate at a high capacity.<sup>32</sup>

Further, these substances were also found in the gym bags of a variety of popular endurance athletes.<sup>33</sup> For instance, Thomas Hicks, winner of the 1904 Olympic marathon, revealed his recipe of French brandy, strychnine, and egg whites that contributed to his victory.<sup>34</sup> Additionally, "Tour de France winner Henri Pelissier showed the contents of his medicine bag to journalists: cocaine, chloroform, and various pills."<sup>35</sup> With the arrival of amphetamines later on in the mid-nineteenth century, doping became even more effective and common among elite cyclists.<sup>36</sup> Despite the negative connotations that began to surround the practice, riders religiously employed stimulants and other pain-relieving substances during rides to increase performance output.<sup>37</sup> As could be expected, the use of these substances while engaged in intense cardiovascular activity had extremely adverse side effects on many athletes who chose to use them.<sup>38</sup>

Nevertheless, cyclists continued to pursue optimal performance through doping, despite the possible negative consequences.<sup>39</sup> While amphetamines and other stimulants are

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31. *See id.* at 46 (delving into endurance sports and the unique advantage that stimulants could offer to athletes utilizing them).

32. *See id.* (describing the use of performance-enhancing drugs in old sports such as pedestrianism, whereby athletes would compete to see who could cover the most miles on foot over a six-day period).

33. *See* Mehlman, *supra* note 28, at 17–18 (noting several victorious endurance athletes and their publicized use of performance-enhancing drugs).

34. *Id.*

35. *Id.*

36. *See* Brewer, *supra* note 8, at 284 (discussing the onset of stimulant use among cyclists in order to boost energy levels).

37. *See id.* (quoting former racer from the 1960s, Manfred Donike saying that "from 1960 to 1967 no professional cyclist would take part in an important race without being doped."). French cyclist Jacques Anquetil also said, "[y]ou would be a fool to imagine that a professional cyclist who rides 235 days a year in all temperatures and conditions can hold up without a stimulant." *Id.* *See also* Johan Lindholm, *Does Legislating Against Doping in Sport Make Sense? Comparing Sweden and the United States Suggests Not*, 13 VA. SPORTS & ENT. L. J. 21, 24 (2013) (describing how it was not until the mid-twentieth century that the dangers of doping were brought to the public eye, and how the International Olympic Committee took its first hard stance against doping in 1968 when it introduced "rules banning doping and the accompanying list of banned substances at the 1968 Olympics.").

38. *See* Yesalis, *supra* note 1, at 51 (recounting the deaths of three cyclists during the 1960s as a direct result of amphetamine use during competition: the first was Knud Jensen during the 1960 Rome Olympic Games, the second was Tom Simpson during the 1967 Tour de France, and the third was Yves Mottin two days after winning a race).

39. *See id.* at 52 (identifying the use of amphetamines as still in existence during the 1970s despite the cycling community's knowledge of their adverse



extremely effective, their benefits were confined to sporadic, race-day-only use focused on increasing heart rate and enhancing competitive drive.<sup>40</sup> Substances such as steroids and testosterone, on the other hand, offered athletes a different opportunity.<sup>41</sup> These substances allow athletes to train at maximum capacity for a substantially longer amount of time over the course of a competitive season.<sup>42</sup> By promoting faster and more effective muscle recovery and growth, these effects lead to materially higher power output levels in competition.<sup>43</sup>

Despite their rapid spread through American athletics, the provenance of steroid use occurred abroad.<sup>44</sup> The original use of steroids and testosterone in the U.S. is rumored to have begun after American athletes heard of Soviets using testosterone to promote stronger weightlifters during the 1950s.<sup>45</sup> Such rumors prompted Dr. John Ziegler, the physician for the 1954 U.S. weightlifting team,<sup>46</sup> to begin experimenting with testosterone.<sup>47</sup> These experiments eventually lead to the production and distribution of Dianabol, the first steroid marketed in the U.S.<sup>48</sup> By 1968, the use of steroids, like Dianabol, became widespread in athletics.<sup>49</sup> A

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effects).

40. See Mehlman, *supra* note 28, at 22 (describing the use of amphetamines by swimmers in order to pep themselves up when trying to improve on their best personal marks).

41. See Yesalis, *supra* note 1, at 48 (summarizing the creation of synthetic testosterone, available as an oral supplement or injectable into the blood stream, and its ability to promote muscle recovery).

42. *Id.* at 49.

43. *Id.*

44. See Charles E. Yesalis, William A. Anderson, William E. Buckley, and James E. Wright, *Incidence of the Nonmedical Use of Anabolic-Androgenic Steroids*, in ANABOLIC STEROID ABUSE 97, 97 (Geraldine C. Lin & Lynda Erinoff ed., 1996) [https://books.google.com/books?id=DXTysiS5ndQC&pg=PA97&lpq=PA97&dq=john+ziegler+steroids&source=bl&ots=g0UpDbUY80&sig=w7YAfRm4KW\\_vkLypWfmuIokPAZs&hl=en&sa=X&ved=0ahUKEwio2tqvnIrMAhXpwYMKHeOMC\\_44FBDoAQg8MAc#v=onepage&q=john%20ziegler%20steroids&f=false](https://books.google.com/books?id=DXTysiS5ndQC&pg=PA97&lpq=PA97&dq=john+ziegler+steroids&source=bl&ots=g0UpDbUY80&sig=w7YAfRm4KW_vkLypWfmuIokPAZs&hl=en&sa=X&ved=0ahUKEwio2tqvnIrMAhXpwYMKHeOMC_44FBDoAQg8MAc#v=onepage&q=john%20ziegler%20steroids&f=false) (tracing American steroid use in sports to 1954 when American athletes heard rumors of Soviet athletes using testosterone).

45. See IVA WADDINGTON & ANDY SMITH, *SPORT, HEALTH, AND DRUGS: A CRITICAL SOCIOLOGICAL PERSPECTIVE* 144 (Routledge 2000) (highlighting the transition from stimulants to anabolics (steroids and testosterone) as the athlete's performance-enhancing drug of choice).

46. See Justin Peters, *The Man Behind the Juice*, SLATE.COM (Feb. 18, 2005, 6:14 PM), [www.slate.com/articles/sports/sports\\_nut/2005/02/the\\_man\\_behind\\_the\\_juice.html](http://www.slate.com/articles/sports/sports_nut/2005/02/the_man_behind_the_juice.html) (discussing the career of Dr. John Zeigler, often cited as the pioneer of steroid use in the U.S., and describing his experiments with testosterone on weightlifters at a gym in Pennsylvania during the 1950s).

47. See Mehlman, *supra* note 28, at 22 (citing Dr. John Ziegler's collaboration with the pharmaceutical company Ciba as the origin of the commercial production of Dianabol).

48. *Id.*

49. Waddington, *supra* note 45, at 152.

significant portion of the 1968 American track and field team is rumored to have used drugs like Dianabol to boost performance.<sup>50</sup> Anabolic steroids and similar drugs were even hailed publically as the “breakfast of champions” by those familiar with their effects.<sup>51</sup>

By 1980, performance-enhancing drugs, particularly steroids and testosterone, were often present in the bodies of winning athletes in a variety of sports.<sup>52</sup> Performance-enhancing drugs’ effectiveness proved critical even beyond the realm of endurance sports, showing beneficial results in contact sports such as football and baseball.<sup>53</sup> Both testosterone and amphetamine use are believed to have spurred a variety of professional football players to success during the 1960s.<sup>54</sup> Baseball was subject to a similar rate of use, as many with knowledge of the training practices of elite baseball players have attested.<sup>55</sup> In fact, Randy Smith, a general manager for the San Diego Padres, as well as “an anonymous American League general manager[,]” estimated that between ten and thirty percent of all professional baseball players during the 1980s and 1990s regularly used amphetamines or steroids.<sup>56</sup>

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50. *Id.*; see also Michael Kremenik, Sho Onodera, Mitsushiro Nagao, et al., *A Historical Timeline of Doping in Sports (Part I 1896-1968)*, 12 KAWASAKI J. OF MEDICAL WELFARE 19, 23 (2006) (citing 1968 Olympic shot put champion Randy Matson and 1968 Olympic decathlon champion Russ Hodge as users of Dianabol).

51. See Yesalis, *supra* note 1, at 54 (quoting then editor of the magazine *Track and Field News*, Jon Hendershott).

52. See *id.* (identifying the use of exogenous testosterone by as many as sixteen gold medalists at the 1980 Moscow Olympics); see also Joshua H. Whitman, Note, *Winning at all Costs: Using Law & Economics to Determine the Proper Role of Government in Regulating the Use of Performance-Enhancing Drugs in Professional Sports*, 2008 U. ILL. L. REV. ONLINE 459, 462 (citing Ben Johnson, who had the 100m gold medal stripped from him at the 1988 Olympic Games in Seoul, as well as Lyle Alzado, a football player who attributed his development of cancer to steroid use, as athletes during the 1970s and 1980s who used steroids).

53. See Yesalis, *supra* note 1, at 54 (recounting the use of stimulants, anabolic steroids, testosterone, and painkillers for decades in professional football); see also Mitchell Nathanson, *The Sovereign Nation of Baseball: Why Federal Law Does Not Apply to “America’s Game” and How It Got That Way*, 16 VILL. SPORTS & ENT. L. J. 49, 55–56 (2009) (recognizing how Major League Baseball turned a blind eye to steroid abuse throughout the 1980s and 1990s, even despite the passage of the Steroid Control Act).

54. See T.J. Quinn, *Pumped-up pioneers: the ‘63 Chargers*, ESPN (Feb. 1, 2009), <http://espn.go.com/espn/otl/news/story?id=3866837> (discussing the NFL’s 1963 San Diego Chargers and their experimentation with testosterone and amphetamine use throughout the 1960s).

55. See Yesalis, *supra* note 1, at 63 (quoting 1995 general manager of the San Diego Padres saying, “[w]e all know there’s steroid use, and it’s definitely become more prevalent.”).

56. *Id.*

### 3. 1980–Present Day: Sophistication and Mechanization at Its Finest

The 1980s and 1990s ushered in the sudden and immense commercialization of the sport of cycling.<sup>57</sup> Companies such as 7-Eleven<sup>58</sup> and Bic<sup>59</sup> began pouring advertising dollars into the hands of teams, and the world began to take note of cycling as a legitimate spectator sport.<sup>60</sup> With these newfound resources came a newfound, highly scientific and mechanized approach to training riders to compete.<sup>61</sup> The stakes were higher, and teams were not only able to utilize new technologies, but were more willing to assume certain risks on the path toward success.<sup>62</sup>

One particular proponent of these revolutionary and risky training methods was Dr. Michelle Ferrari.<sup>63</sup> Dr. Ferrari would later serve as the close training consultant and confidante for none other than Lance Armstrong and his notorious U.S. Postal Service team.<sup>64</sup> As the sport of cycling entered the 1990s, scientists like Dr. Ferrari began experimenting with a practice that would soon

57. See Brewer, *supra* note 8, at 285 (citing the year 1984 as the year of revolution in cycling in terms of team structure and rider preparation). In 1985, Greg LeMond signed a contract for \$1 million over three years, a lucrative sum at the time which “sent shockwaves” through the cycling community. *Id.* at 286; see also *Armstrong Bought “Million Dollar” Triple Crown Victory*, CYCLING NEWS (updated Oct. 23, 2015, 3:48 AM), [www.cyclingnews.com/news/armstrong-bought-million-dollar-triple-crown-victory-claims-gaggioli/](http://www.cyclingnews.com/news/armstrong-bought-million-dollar-triple-crown-victory-claims-gaggioli/) (telling the story of how Lance Armstrong allegedly paid \$100,000 to a rival team for them to let him win the third and last leg of the 1993 Thrift Drug Triple Crown, allowing Armstrong to win the coveted \$1 million prize).

58. See John Wilcockson, *Inside Cycling with John Wilcockson: The boys from 7-Eleven and the debut of American pro road racing*, VELONEWS (Feb. 3, 2006), [http://velonews.competitor.com/2006/02/news/inside-cycling-with-john-wilcockson-the-boys-from-7-eleven-and-the-debut-of-american-pro-road-racing\\_9452#KLhdfJWzDYuQGeRm.99](http://velonews.competitor.com/2006/02/news/inside-cycling-with-john-wilcockson-the-boys-from-7-eleven-and-the-debut-of-american-pro-road-racing_9452#KLhdfJWzDYuQGeRm.99) (telling the story of one of the first international cycling teams sponsored by an American company, 7-Eleven).

59. See *A Directory of Pro Cycling Teams, Old and New*, BIKERACEINFO.COM, [www.bikeraceinfo.com/riderhistories/sponsors-directory.html](http://www.bikeraceinfo.com/riderhistories/sponsors-directory.html) (last visited Apr. 11, 2016) (citing how Bic, maker of the well-known disposable lighters and pens, sponsored a cycling team during the 1960s and 1970s).

60. See Brewer, *supra* note 8, at 286 (identifying the 1980s as the first time in cycling’s history that the world took note of its existence; with America able to watch one of its own, Greg LeMond, the popularity of cycling as a sport began to explode).

61. See *id.* at 279 (stating “as commercialization deepens within the sport we can expect a greater emphasis placed on formal rationality or efficiency both at the institutional levels of the sport and at the unit level of individual teams and their riders.”).

62. See *id.* at 287 (tracking the production of newer, high-tech bike parts such as aerodynamic frames and disc wheels, as well as the use of heart rate monitors and other revolutionary new training methods).

63. TYLER HAMILTON & DANIEL COYLE, *THE SECRET RACE* 84 (Bantam Books 2012).

64. *Id.*

revolutionize endurance sports such as running, cycling, and triathlon.<sup>65</sup> This practice was known as “blood doping.”<sup>66</sup>

Stimulants and steroids generally target the central nervous system and muscle tissue.<sup>67</sup> The object of blood doping, on the other hand, is to increase the number of oxygen-carrying red blood cells in the body, thereby dramatically increasing cardiovascular capacity.<sup>68</sup> The two most common methods of blood doping are the use of a drug called erythropoietin (EPO) or through blood transfusions.<sup>69</sup>

EPO is a natural hormone found in the body that causes the production of red blood cells.<sup>70</sup> Cyclists found EPO to be most effective when taken regularly over long training periods, a technique known as periodization.<sup>71</sup> The benefit is derived from “allowing the body to compensate for anticipated future stresses with gains in strength and stamina.”<sup>72</sup> Blood transfusions, on the other hand, are intended to achieve the same result as EPO, but are

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65. See Brewer, *supra* note 8, at 294 (describing rider preparation strategies during the early 1990s and improvements in the blood as the new target for performance-enhancing drugs).

66. *Id.*

67. See generally 192 *Banned Performance Enhancing Drugs and Methods with Pros and Cons of Their Health Effects*, PROCON.ORG (Mar. 17, 2010, 2:17 PM), <http://sportsanddrugs.procon.org/view.resource.php?resourceID=002037> (elaborating on a wide array of substances and training methods banned by the World Anti-Doping Agency’s (WADA’s) 2013 prohibited substance list, as well as their primary and secondary side effects); see also Gareth Jones, *Caffeine and other sympathomimetic stimulants: modes of action and effects on sports performance*, 44 *ESSAYS IN BIOCHEMISTRY* 109, 110 (2008) (describing the effects that stimulants such as caffeine, amphetamines, and amphetamine derivatives can have on the nervous system); see also Terry Kodd, *Anabolic Steroids: The Gremlins of Sport*, 14 *J. OF SPORT HISTORY* 87, 89 (1987) (stating that steroids not only allow the body to produce more muscle, “but that, as central nervous system stimulants, they make the athlete more aggressive about training and competition.”); see also *The World Anti-Doping Code: The 2013 Prohibited List: International Standard*, WORLD ANTI-DOPING AGENCY 2–3, 7 (Sept. 10, 2012), <http://sportsanddrugs.procon.org/sourcefiles/WADA-Prohibited-List-2013.pdf> (listing WADA’s banned substances and practices for the year of 2013).

68. See Heuberger, *supra* note 5, at 1407 (describing the drug erythropoietin (EPO) and its ability to dramatically increase an athlete’s red blood cell count and therefore aerobic capacity).

69. See REED ALBERGOTTI & VANESSA O’CONNELL, *WHEELMEN* 135–37 (Gotham Books 2014) (explaining Lance Armstrong and the U.S. Postal Service Professional Cycling Team’s implementation of a highly mechanized doping regimen focusing on EPO and blood transfusion use).

70. See Nicholas Haily, Note, *A False Start in the Race Against Doping in Sport: Concern’s with Cycling’s Biological Passport*, 61 *DUKE L. J.* 393, 404–05 (2011) (describing some of the most common approaches by cyclists to increasing performance, such as “erythropoietin (EPO), a hormone that enhances endurance by increasing oxygen in the blood.”).

71. Brewer, *supra* note 8, at 294.

72. *Id.*

performed by extracting and freezing the athletes' blood.<sup>73</sup> This is often done weeks or months before competition.<sup>74</sup> The athletes allow their bodies to naturally create more blood, and then infuse the old blood back into their bodies before competition.<sup>75</sup> The process is extremely effective, and virtually undetectable to drug testers.<sup>76</sup> Effectiveness and safety, however, require the presence of a qualified physician in order to ensure that all procedures are conducted properly.<sup>77</sup> With the presence of rogue doctors<sup>78</sup> and other medical professionals, cycling continued on its slide away from sport, into a sort of "performance-enhancing pharmacology."<sup>79</sup>

### B. Controversies: The "Festina Affair" and the Story of the Texan

In the high-stakes world of international professional cycling, performance-enhancing drugs were very common in the 1990s and early 2000s.<sup>80</sup> All teams were willing to risk sanctions or even

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73. See Hamilton, *supra* note 63, at 121 (outlining the strategy involved in extracting an athlete's blood in order to conduct a blood transfusion to improve aerobic capacity).

74. *Id.*

75. *Id.*

76. *Id.*

77. See Waddington, *supra* note 45, at 141–42 (saying, "sports medicine has actually been one of the major contexts within which performance enhancing drugs have been developed and used.").

78. See Associated Press, *Tygart: Rogue docs the biggest threat*, ESPN (Nov. 10, 2009), <http://espn.go.com/figure-skating/news/story?id=4643347> (quoting Travis Tygart, Chief Executive Officer of the United States Anti-Doping Administration, saying "what you see now are rogue laboratories, rogue doctors that athletes are able to find and then pay to obtain things that they think will be undetectable.").

79. See Brewer, *supra* note 8, at 295 (describing the impact of the medical profession on the experimentation with, production of, and widespread distribution of performance-enhancing drugs to cyclists); see also Juliet Macur, *End of the Ride for Lance Armstrong*, N.Y. TIMES (Mar. 1, 2014), [www.nytimes.com/2014/03/02/sports/cycling/end-of-the-ride-for-lance-armstrong.html?\\_r=0](http://www.nytimes.com/2014/03/02/sports/cycling/end-of-the-ride-for-lance-armstrong.html?_r=0) (identifying one of Lance Armstrong's team doctors, John Hendershot, saying: "The mad scientist conjured up what he called 'weird concoctions' of substances like ephedrine, nicotine, highly concentrated caffeine, drugs that widen blood vessels, blood thinners and testosterone, often trying to find creative ways to give a rider an extra physical boost during a race.").

80. See John Hoberman, *How Drug Testing Fails: The Politics of Doping Control*, in *DOPING IN ELITE SPORT: THE POLITICS OF DRUGS IN THE OLYMPIC MOVEMENT* 241, 264 (Wayne Wilson & Edward Derse eds. 2001) (calling the sport of cycling "the most consistently drug-soaked sport of the twentieth century"); see also Cork Gaines, *Crazy Stat Shows Just How Common Doping Was In Cycling When Lance Armstrong Was Winning The Tour de France*, BUSINESS INSIDER (Jan. 2, 2015, 4:49 PM), [www.businessinsider.com/lance-armstrong-doping-tour-de-france-2015-1](http://www.businessinsider.com/lance-armstrong-doping-tour-de-france-2015-1) (citing statistics indicating that 12 out of the 16 Tour de France winners from 1998–2013 were eventually confirmed to

punishments as severe as major fines or suspensions in the pursuit of victory.<sup>81</sup> This comment will recount several of the cycling's most notorious doping controversies, illustrating how pervasive the practice of doping has remained in cycling throughout its evolution.

### 1. *The Festina Affair*

The 1998 Tour de France revealed the alarming transformation of the sport of cycling.<sup>82</sup> During a routine border check with the Festina team<sup>83</sup> at the border of Belgium and France, customs agents uncovered hundreds of doses of performance-enhancing drugs in the team's cargo.<sup>84</sup> Law enforcement officials uncovered testosterone, human growth hormone, and EPO in the car belonging to a team employee.<sup>85</sup> Upon questioning, team doctor Bruno Roussel and other team managers admitted that Festina had been operating a systematic doping operation throughout the racing season.<sup>86</sup> With the help of these drugs, team organizers sought to produce a highly competitive international team.<sup>87</sup> Suspicious that this was not an isolated incident, Tour organizers sought to investigate the contents of other teams' possessions with the expectation of uncovering similar banned substances.<sup>88</sup> Teams responded to this request with harsh opposition.<sup>89</sup> Unwilling to

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have doped); *see also citing* Teddy Cutler, SPORTINGINTELLIGENCE.COM (Dec. 31, 2014), [www.sportingintelligence.com/2014/12/31/cycling-in-the-epo-era-65-per-cent-dirty-and-probably-more-311201/](http://www.sportingintelligence.com/2014/12/31/cycling-in-the-epo-era-65-per-cent-dirty-and-probably-more-311201/) (finding that a very large portion of elite-level cyclists during the 1990s and early 2000s have since been confirmed to have used performance enhancing drugs). "In the 16 Tour de France races from 1998-2013 inclusive, the 160 top-10 place finishes were filled with 81 different riders, and 31 of them (or 38 per cent) are confirmed dopers who have already been officially sanctioned by some body or other for their doping." *Id.*

81. *Id.*

82. *See* Hamilton, *supra* note 63, at 72–73 (describing the crisis that would become known as the Festina Affair, wherein a professional cycling team was discovered to have attempted to transport to the 1998 Tour de France hundreds of doses of performance-enhancing drugs).

83. *See* Samuel Abt, *Top Team Expelled by Tour de France Over Drug Charges*, N.Y. TIMES (July 18, 1998), [www.nytimes.com/1998/07/18/sports/top-team-expelled-by-tour-de-france-over-drug-charges.html](http://www.nytimes.com/1998/07/18/sports/top-team-expelled-by-tour-de-france-over-drug-charges.html) (describing how Festina had been "the world's top team" before all nine members of its team were expelled from the Tour due to drug charges).

84. *See* Ian Landua, *The Biggest TdF Scandals*, OUTSIDE (July 15, 2013), [www.outsideonline.com/outdoor-adventure/biking/The-Worst-TdF-Scandals-1998-The-Festina-Affair.html](http://www.outsideonline.com/outdoor-adventure/biking/The-Worst-TdF-Scandals-1998-The-Festina-Affair.html) (describing eleven of the most shocking scandals that have occurred over the Tour de France's long history).

85. *Id.*

86. Hamilton, *supra* note 63, at 74.

87. *Id.*

88. *See* Landua, *supra* note 84 (recounting Tour organizers' desire to delve into the belongings of other teams in their search for banned substances).

89. *See id.* (recalling team organizers' refusal to turn over access to their buses and coolers to race organizers and their quest to find banned substances).

reveal their likely illegal cargo to race officials, riders organized a variety of protests.<sup>90</sup> In competition, riders rode leisurely rather than racing, walked across stage finish lines, or dropped out of competition altogether to display opposition to team searches.<sup>91</sup> “Of the 189 starters, just 96 finished in Paris on August 2.”<sup>92</sup>

Following the 1998 Tour, hoping to clear the sport’s name, race organizers dubbed the 1999 Tour de France, “the Tour of Renewal.”<sup>93</sup> It was that same year that the spotlight, and ultimately the yellow jersey, would fall on a cocky former triathlete from Texas.<sup>94</sup> He was a man who had recently overcome insurmountable odds battling against testicular cancer to return to the sport of professional cycling.<sup>95</sup> He would take the world by storm, riding victoriously into Paris and winning the Tour de France a record seven times in a row, and he would ultimately change the sport of cycling forever.<sup>96</sup> That man was Lance Armstrong.<sup>97</sup>

## 2. Lance Armstrong

From 1999 to 2005, Lance Armstrong was crowned champion of the Tour de France seven times, more than any other cyclist in history.<sup>98</sup> However, on October 10, 2012, his history of performance enhancing drug use was brought to light.<sup>99</sup> Travis Tygart, the CEO

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90. *Id.*

91. *See id.* (describing how the members of the “peloton,” or the group of riders, were diametrically opposed to contraband searches). “First, the peloton held a sit-down strike at the start of the stage. Once on the road riders agreed not to race and dawdled along at a slow tempo. Stopping again, riders threatened to withdraw from the race en masse. Finally, they walked across the finish line in Aix-les-Bains and the day’s stage was nullified. By day’s end, French national champion Laurent Jalabert and all of the race’s Spanish teams had quit.” *Id.*

92. *Id.*

93. *See* Peter Cossins, *Christophe Bassons: Riding the Tour of Renewal*, CYCLINGNEWS.COM (July 17, 2014, 3:40 AM), [www.cyclingnews.com/features/christophe-bassons-riding-the-tour-of-renewal](http://www.cyclingnews.com/features/christophe-bassons-riding-the-tour-of-renewal) (providing an excerpt from former cyclist Christophe Bassons’ book, “A Clean Break: My Story,” specifically an account of the 1999 Tour de France and the efforts by Tour organizers to vanquish the memory of the Festina Affair and other recent doping controversies in cycling).

94. *See generally* Albergotti, *supra* note 69 (describing Armstrong’s early career as a triathlete, his introduction into the sport of cycling, his diagnosis with testicular cancer, and his return to the sport of cycling).

95. *Id.*

96. *Id.*

97. *See* Hamilton, *supra* note 63, at 274–75 (recounting the extent to which Armstrong had bullied other cyclists, both on and off of the bike, on his way to becoming a recognizable global icon).

98. *See* Macur, *supra* note 79 (recounting the rise and fall of Lance Armstrong, from cancer survivor and Tour de France champion to world-renowned cheater and liar).

99. *See Statement from USADA CEO Travis T. Tygart Regarding the U.S.*

of the United States Anti-Doping Agency (USADA), issued a statement describing what he referred to as a “reasoned decision.”<sup>100</sup> The statement outlined research conducted by USADA and other investigators regarding the alleged doping practices of Lance Armstrong and his former U.S. Postal Service team.<sup>101</sup>

Tygart and USADA gathered testimony from 26 sworn witnesses, 15 of which were riders with intimate knowledge of the U.S. Postal Service team and their doping practices.<sup>102</sup> In addition, they researched direct documentary evidence from prior years, including “financial payments, emails, scientific data and laboratory tests” that rendered Armstrong’s doping history practically undeniable.<sup>103</sup> With this information, Tygart and USADA reached the decision that Armstrong and the U.S. Postal Service team had orchestrated the most sophisticated and elaborate doping organization in the history of sports.<sup>104</sup> It was not long until legal action ensued.<sup>105</sup> Despite years of responding to doping allegations made by journalists with lawsuits, Armstrong was now on the receiving end of a variety of lawsuits.<sup>106</sup>

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*Postal Service Pro Cycling Team Doping Controversy*, U.S. ANTI-DOPING AGENCY (Oct. 10, 2012, 9:30 AM), <http://cyclinginvestigation.usada.org/> (recounting the investigations conducted by USADA and other government officials regarding Armstrong and his doping practices over the years).

100. *Id.*

101. *Id.*

102. Brent Schrottenboer, *USADA Releases Massive Evidence vs. Lance Armstrong*, USA TODAY (Oct. 11, 2012, 12:05 AM), [www.usatoday.com/story/sports/cycling/2012/10/10/lance-armstrong-usada-reasoned-decision-teammates-doping/1624551/](http://www.usatoday.com/story/sports/cycling/2012/10/10/lance-armstrong-usada-reasoned-decision-teammates-doping/1624551/).

103. *Statement from USADA CEO Travis T. Tygart*, *supra* note 99; Schrottenboer, *supra* note 102; see *United States Anti-Doping Agency v. Lance Armstrong, Report on Proceedings Under the World Anti-Doping Code and the USADA Protocol: Reasoned Decision of the United States Anti-Doping Agency on Disqualification and Ineligibility*, THE UNITED STATES ANTI-DOPING AGENCY, 15–153, <https://d3epuodzu3wuis.cloudfront.net/ReasonedDecision.pdf> (last visited Apr. 23, 2016) (citing to a number of sworn affidavits submitted by former teammates and colleagues of Armstrong who directly witnessed his use of performance-enhancing drugs during his cycling career).

104. *Statement from USADA CEO Travis T. Tygart*, *supra* note 99.

105. See Macur, *supra* note 78 (estimating that if Armstrong were to lose every lawsuit that he is now a defendant in, he would owe \$135 million).

106. See *United States ex rel. Landis v. Tailwind Sports Corp.*, 2014 U.S. Dist. LEXIS 83313, at \*64–\*66 (D.D.C. June 19, 2014) (ruling on the litigation between former Armstrong teammate Floyd Landis, on behalf of the U.S., against Lance Armstrong and those around him for defrauding the U.S. government by using performance-enhancing drugs in violation of their contract); see also *Stutzman v. Armstrong*, No. 2:13-CV-00116-MCE-KJN, 2013 U.S. Dist. LEXIS 129204, at \*5–\*6 (E.D. Cal. 2013) (resolving litigation regarding Lance Armstrong’s many misrepresentations in his book, “It’s Not About the Bike: My Journey Back to Life,” among other published material).



### 3. Regulation Thus Far

In response to the immense rise in doping publicity over the past several decades, the managers of many athletic organizations have amended their own rules.<sup>107</sup> These amendments aim to identify and punish those who illegally use performance-enhancing drugs.<sup>108</sup> Regulations over the use of performance-enhancing drugs are said to have three goals in mind.<sup>109</sup> First, regulations serve the health and welfare of the athletes.<sup>110</sup> Second, the regulations are needed to maintain the integrity of the sport.<sup>111</sup> Finally, the regulations are necessary to protect the public's financial interest in some forms of sporting activities.<sup>112</sup>

Given these interests, the international cycling union, Union Cycliste Internationale (UCI), has been particularly harsh when punishing cyclists found to have used performance-enhancing drugs.<sup>113</sup> "A first offense of doping—what would amount to sitting on the bench for a few NFL games—often brings a two-year ban in cycling."<sup>114</sup> Cases such as Armstrong's make it clear that cycling has been much more responsive and inquisitive into doping allegations than other sports.<sup>115</sup> The question becomes, how are athletic

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107. See *NFL, union approve new PED policy*, ESPN.COM (Sept. 18, 2014), [http://espn.go.com/nfl/story/\\_id/11542076/nfl-union-ok-new-performance-enhancing-drug-policy-human-growth-hormone-testing](http://espn.go.com/nfl/story/_id/11542076/nfl-union-ok-new-performance-enhancing-drug-policy-human-growth-hormone-testing) (citing the recent revisions in the National Football League's drug testing policy, which is now going to include tests for human growth hormone); see also *A look at drug testing policies in NHL, other major sports*, L.A. TIMES (Sept. 29, 2015, 8:14 PM), [www.latimes.com/sports/kings/la-sp-with-nhl-drug-policy-20150929-story.html](http://www.latimes.com/sports/kings/la-sp-with-nhl-drug-policy-20150929-story.html) (comparing the testing policies for performance enhancing and recreational drugs in several major sports organizations, including the NBA, NFL, and NHL).

108. *NFL, union approve new PED policy*, *supra* note 107.

109. See Erin E. Floyd, Comment, *The Modern Athlete: Natural Athletic Ability or Technology at its Best?*, 9 VILL. SPORTS & ENT. L. J. 155, 155–56 (2002) (discussing the major technological advances in sports recently, both with regard to equipment and medicine, and their effects on the culture of sport).

110. *Id.* at 159.

111. *Id.*

112. *Id.*

113. Compare Trevor Connor, *An Analysis of the Long-Term Effects of Performance-Enhancing Drugs*, VELONEWS.COM (Oct. 30, 2014, 5:34 PM), [http://velonews.competitor.com/2014/02/training-center/an-analysis-of-the-long-term-effects-of-performance-enhancing-drugs\\_317590/3](http://velonews.competitor.com/2014/02/training-center/an-analysis-of-the-long-term-effects-of-performance-enhancing-drugs_317590/3) (identifying cycling's governing bodies as more strict when doling out punishments for those convicted of using banned substances) with Tom Pelissero, *3 things to know about the NFL's new drug policy*, USA TODAY (Sept. 13, 2014, 12:12 PM), [www.usatoday.com/story/sports/nfl/2014/09/13/nfl-new-drug-policy-three-things/15571205/](http://www.usatoday.com/story/sports/nfl/2014/09/13/nfl-new-drug-policy-three-things/15571205/) (citing the more forgiving penalties for an NFL player found to have violated the league's banned substance policy).

114. Connor, *supra* note 113.

115. *Id.*; see also *Official release: NBA, NBPA to add HGH into anti-drug program*, NBA.COM (Apr. 16, 2015, 3:40 PM) [www.nba.com/2015/news/04/16/nba-and-nbpa-to-introduce-hgh-blood-testing/](http://www.nba.com/2015/news/04/16/nba-and-nbpa-to-introduce-hgh-blood-testing/) (describing that in the NBA "[i]f

organizers to move forward with regulating the use of these substances?

### III. REGULATORY MECHANISMS INSIDE AND OUTSIDE OF CYCLING

The preeminent regulatory agency for the sport of cycling is the UCI.<sup>116</sup> Founded in 1900, the UCI is “the world governing body for the sport of cycling recognized by the International Olympic Committee (IOC).”<sup>117</sup> Therefore, to understand the current fight against doping in cycling, an analysis of the current UCI doping regulations is necessary.

#### A. UCI Anti-Doping Rules

Part 14 of the UCI rules and regulations book covers the anti-doping rules.<sup>118</sup> Given the strict testing standards and imposition of severe punishment for drug violations, these regulations represent a comprehensive and very detailed attempt to curb the spread of performance-enhancing drug use in cycling.<sup>119</sup> These rules were drafted in alignment with the World Anti-Doping Code (WADC), a code drafted by the World Anti-Doping Agency (WADA), which oversees doping control for international athletic federations such as the UCI.<sup>120</sup> Although the UCI is responsible for maintaining consistency in its doping rules and regulations with the WADC,<sup>121</sup> “athletes and other stakeholders in governments” are permitted to

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a player tests positive for HGH, he will be suspended 20 games for his first violation and 45 games for his second violation, and he will be dismissed and disqualified from the NBA for his third violation.”).

116. *History*, UNION CYCLISTE INTERNATIONALE, [www.uci.ch/inside-uci/about/history/](http://www.uci.ch/inside-uci/about/history/) (last visited Feb. 17, 2016).

117. *Id.*

118. *Part 14 Anti-Doping Rules*, UNION CYCLISTE INTERNATIONALE RULES AND REGULATIONS 5 (Jan. 1, 2015), [www.uci.ch/mm/Document/News/Rules/andregulation/16/85/60/20150923UCIADRPart14\\_English.pdf](http://www.uci.ch/mm/Document/News/Rules/andregulation/16/85/60/20150923UCIADRPart14_English.pdf).

119. *See id.* at 5 (stating, “[t]hese Anti-Doping Rules are adopted in accordance with the UCI’s responsibilities under the World-Anti Doping Code (the Code), and in furtherance of the UCI’s continuing efforts to eradicate doping in sport.”).

120. *Id.*; *see also World Anti-Doping Code 2015*, WORLD ANTI-DOPING AGENCY 11–15 (Jan. 1, 2015), <https://wada-main-prod.s3.amazonaws.com/resources/files/wada-2015-world-anti-doping-code.pdf> (describing the WADC’s purpose of “advanc[ing] the anti-doping effort through universal harmonization of core anti-doping elements.”).

121. *See id.* at 121 (discussing the implementation of the code and requiring all signatories of the code to comply with its prescribed regulations or face withdrawal).

recommend modifications, which WADA can then take into consideration.<sup>122</sup>

The UCI Anti-Doping Code is very broad in its application so as to apply to all those who may work with a UCI-monitored cycling team, rather than just the riders themselves.<sup>123</sup> It covers everything related to doping, including the prohibited substance list, testing and investigation, results management and investigation procedures, the hearing process, and much more.<sup>124</sup> In the Code's most recent amendment, effective January 1, 2015, several changes were made to affect harsher penalties on riders who violate the code by doping.<sup>125</sup> These changes reflect the Code's strict liability approach to the use of performance enhancing drugs. For example, for drug violations involving "serious doping substances such as steroids, growth hormone, EPO, and blood doping," bans from competition have been raised to four years in duration. Considering the generally short career length of cyclists, this is a very serious punishment.<sup>126</sup> Furthermore, the UCI has extended the statute of limitations on doping violations from eight to ten years.<sup>127</sup> "Now, an allegation of doping can be investigated up to 10 years after it has been committed. To facilitate this, the UCI will keep samples for 10 years, up from eight, in order to investigate old cases."<sup>128</sup> This revision gives the UCI a longer time period in which it can

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122. See *id.* at 125 (stipulating that "WADA shall be responsible for overseeing the evolution and improvement of the Code. Athletes and other stakeholders and governments shall be invited to participate in such process."). "Amendments to the Code shall, after appropriate consultation, be approved by a two-thirds majority of the WADA Foundation Board including a majority of both the public sector and Olympic Movement members casting votes. Amendments shall, unless provided otherwise, go into effect three months after such approval." *Id.*

123. See *Part 14 Anti-Doping Rules*, *supra* note 118, at 6 (applying the anti-doping rules to "any license-holder[.]" "any person who, without being a license-holder, participates in a cycling Event in any capacity whatsoever[.]" and "any person who, without being a license holder, participates, in the framework of a club, Team, National Federation or any other structure, in the preparation or support of Riders for cycling events.").

124. *Id.* at 1–4.

125. Laura Weislo, *UCI revamps anti-doping regulations for 2015*, CYCLINGNEWS.COM (Jan. 5, 2015, 7:17 PM), [www.cyclingnews.com/news/uci-revamps-anti-doping-regulations-for-2015/](http://www.cyclingnews.com/news/uci-revamps-anti-doping-regulations-for-2015/).

126. See William Fotheringham, *David Millar: "The irony is, I no longer fit in. Cycling has become robotic"*, THE GUARDIAN (Oct. 10, 2014, 6:48 PM), [www.theguardian.com/sport/2014/oct/10/david-millar-cycling](http://www.theguardian.com/sport/2014/oct/10/david-millar-cycling) (referencing the statistic that cycling careers were once estimated to average about two and a half years).

127. Spencer Powlison, *UCI announces stricter doping rules for 2015*, VELONEWS (Jan. 6, 2015), [http://velonews.competitor.com/2015/01/news/uci-announces-stricter-anti-doping-rules-2015\\_357367](http://velonews.competitor.com/2015/01/news/uci-announces-stricter-anti-doping-rules-2015_357367).

128. *Id.*

investigate riders for doping violations, allowing them to punish a potentially larger pool of riders.

In addition, the UCI modified Article 11 of the Anti-Doping Code, which stipulates the consequences to teams as a whole for doping violations.<sup>129</sup> The new rules make it so that “[i]f two riders within a team violate the rules, the team shall be suspended from participation in any international event for a period determined by the UCI Disciplinary Commission. The suspension will be from 15–45 days.”<sup>130</sup> Considering the intensive racing schedule followed by many teams during the racing season, this type of suspension could remove a team from competing at several events.<sup>131</sup> Compounding the punishment, the 2015 amendments “allow the UCI to fine a World Tour or Professional Continental team five per cent of their annual budget upon the second and the third confirmed doping sanctions levied within a 12-month period.”<sup>132</sup> These among other amendments to the Code seem to demonstrate the UCI’s attempt to stop doping through overall increases in punishment.<sup>133</sup>

However, despite attempts to enact stricter regulations and inflict harsher punishments, doping in elite cycling remains prevalent.<sup>134</sup> In fact, in the February 2015 Report to the President of the UCI, conducted by the Cycling Independent Reform Commission (CIRC), the CIRC indicated that many elite riders and teams still regularly dope today.<sup>135</sup> That being the case, it begs the

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129. *Part 14 Anti-Doping Rules*, *supra* note 118, at 45. See Powlison, *supra* note 126 (explaining the updates of the UCI Anti-Doping Code and how they affect cycling teams participating in team competition).

130. *Id.*

131. See *2016 Road Race Calendar*, UNION CYCLISTE INTERNATIONALE, [www.uci.ch/road/calendar/](http://www.uci.ch/road/calendar/) (last visited Apr. 19, 2016) (indicating the dozens of races that a team could be banned from participating in if suspended for a doping violation).

132. Weislo, *supra* note 125.

133. See *id.* (identifying other areas of the code where regulation was tightened and punishments were made more strict, including the provision on association with banned individuals and the use of witness testimony as evidence which can lead to a ban from the sport). Despite the overall trend of the amendments of creating a stricter code, the amendments did create a “therapeutic use exception” for riders using certain drugs out of medical necessity. *Id.*

134. See *Report to the President of the Union Cycliste Internationale*, CYCLING INDEPENDENT REFORM COMMISSION (Feb. 2015), 56 [www.uci.ch/mm/Document/News/CleanSport/16/87/99/CIRCReport2015\\_Neutral.pdf](http://www.uci.ch/mm/Document/News/CleanSport/16/87/99/CIRCReport2015_Neutral.pdf) (citing estimates of several anonymous respected cycling professionals, estimating that a large portion of today’s professional peloton still dopes); see also Tom Cary, *Cycling doping report explained: the key issues examined*, THE TELEGRAPH (Mar. 9, 2015, 6:00 AM), [www.telegraph.co.uk/sport/othersports/cycling/11458183/Cycling-doping-report-explained-the-key-issues-examined.html](http://www.telegraph.co.uk/sport/othersports/cycling/11458183/Cycling-doping-report-explained-the-key-issues-examined.html) (explaining, “The Cycling Independent Reform Commission was established in January 2014[.]”).

135. See *Report to the President of the Union Cycliste Internationale*, *supra* note 134, at 56 (pointing to the case of elite-level international cycling team Astana, and their receipt of five doping rules violations during the 2014 season).

question whether merely ramping up punishments for violations of the doping code is the best resolution, or if there is a potentially more effective approach to be taken. One avenue that may be productive is to examine other regulatory mechanisms outside of athletics to determine what methods have proven effective. Through analyzing certain provisions of the Internal Revenue Code (IRC) and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), the concept of a whistleblower provision reveals itself as a potential solution to cycling's current doping epidemic.

### *B. Regulation from Another Perspective: The Rise of Self-Regulation and Whistleblower Provisions in Corporate America*

A “whistleblower” has been defined as “an employee or other person in a contractual relationship with a company who reports misconduct to outside firms or institutions, which in turn have the authority to impose sanctions or take other corrective action against wrongdoers.”<sup>136</sup> While once considered the “tattletales” or “snitches” of the business world, the view of the whistleblower has undergone a great deal of change in recent years, as they are now often perceived as the “heroes possessing the courage to address corporate wrongdoing.”<sup>137</sup> The rise in the implementation of whistleblower provisions into corporate bylaws and U.S. law has arisen as a result of several government and business crises.<sup>138</sup> Their success in catching and preventing crime is a testament to the idea that individuals are more likely to come forward with information about wrongdoing when they receive some sort of an incentive, such as a monetary award or a reduction in punishment for their own wrongdoing.<sup>139</sup> This comment specifically addresses the whistleblower provisions contained in Dodd-Frank and the IRC.

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136. Jonathan Macey, *Getting the Word Out about Fraud: A Theoretical Analysis of Whistleblowing and Insider Trading*, 105 MICH. L. REV. 1899, 1903 (2007).

137. Jennifer M. Pacella, *Bounties for Bad Behavior: Rewarding Culpable Whistleblowers under the Dodd-Frank Act and Internal Revenue Code*, 17 U. PA. J. BUS. L. 345, 346 (2015).

138. See Macey, *supra* note 136, at 1901 (discussing Enron's misleading of investors through virtually fictitious balance sheets as well as the FBI's failure to detain a terrorist suspect before the attacks of September 11).

139. See Pacella, *supra* note 137, at 347 (indicating that “tips from whistleblowers account for over 40 percent of all reported occurrences of occupational fraud.”). “Reporting incentives for those in possession of information otherwise difficult to obtain have proven successful.” *Id.* at 354. “The policy rationale behind bounty rewards—even to those who are complicit—is to provide benefits to the whistleblower that outweigh the various costs of reporting information.” *Id.* at 367.

### 1. Whistleblower Provision in Dodd-Frank

Pursuant to Dodd-Frank, the Securities and Exchange Commission (SEC) may award whistleblowers who “voluntarily provide original information that leads to an SEC enforcement action [with] an amount between 10 and 30 per cent of the total monetary sanctions collected in that action.”<sup>140</sup> The SEC has discretion as to what percentage of the sanction a whistleblower who brings such information will receive, taking into account the extent to which the information aids the SEC in prosecuting those who engage in wrongdoing.<sup>141</sup> While enacted in 2012, Dodd-Frank’s whistleblower provision was drafted to supplement two federal laws with whistleblower provisions which came before it, the False Claims Act and the Sarbanes-Oxley Act of 2002.<sup>142</sup> Considering the fact that the False Claims Act originally went into effect in 1863, it is clear that the federal government aims to incentivize whistleblowing.<sup>143</sup>

Prior to Dodd-Frank, “whistleblower revelations had the potential to do a much better job than private securities litigation in bringing . . . fraud to the light[.]”<sup>144</sup> While Dodd-Frank has only been in effect for several years, it has been proven to be extremely effective.<sup>145</sup> Since its enactment, Dodd-Frank’s whistleblower provision has incentivized reporting fraud at a variety of high-profile companies, including Wall Street giants Knight Capital and Oppenheimer & Co.<sup>146</sup> In its 2014 Annual Report on the Dodd-Frank Whistleblower Program, the SEC reported that in fiscal year 2014

140. *Id.* at 349; *see also* 15 U.S.C. § 78u-6(b)(1) (2012) (providing the full text of Dodd-Frank’s whistleblower provision).

141. Pacella, *supra* note 137, at 356; *see also* Ben Kerschberg, *The Dodd-Frank Act’s Robust Whistleblowing Incentives*, FORBES (Apr. 14, 2011), [www.forbes.com/sites/benkerschberg/2011/04/14/the-dodd-frank-acts-robust-whistleblowing-incentives/#d78131011930](http://www.forbes.com/sites/benkerschberg/2011/04/14/the-dodd-frank-acts-robust-whistleblowing-incentives/#d78131011930) (breaking down the factors that the SEC considers in determining how large of a bounty to reward a whistleblower: “(i) the significance of the information; (ii) the degree of assistance provided by the whistleblower; and (iii) the extent to which the government wants to deter the violations in question.”).

142. *See id.* (providing some perspective on the whistleblower provision in Dodd-Frank by briefly explaining similar provisions of the False Claims Act and the Sarbanes-Oxley Act of 2002).

143. Act of Mar. 2, 1863, ch. 67, 12 Stat. 696 (amended and codified at 31 U.S.C. §§ 3279–3733 (1994)); *see also* 31 U.S.C. § 3729 (2016) (providing the most recently amended version of the False Claims Act).

144. Geoffrey Christopher Rapp, *Four Signal Moments in Whistleblower Law: 1983-2013*, 30 HOFSTRA LAB. & EMP. L. J. 389, 397 (2013).

145. Pacella, *supra* note 137, at 355.

146. *See* Ben Protess & Nathaniel Popper, *Hazy Future for Thriving S.E.C. Whistleblower Effort*, N.Y. TIMES (Apr. 23, 2013), [http://dealbook.nytimes.com/2013/04/23/hazy-future-for-s-e-c-s-whistle-blower-office/?\\_r=0](http://dealbook.nytimes.com/2013/04/23/hazy-future-for-s-e-c-s-whistle-blower-office/?_r=0) (describing how the whistleblower provision in Dodd-Frank helped spur the reporting of several instances of fraud at prominent Wall Street firms).

it received a total of 3,620 whistleblower tips.<sup>147</sup> This number increased to 3,923 in fiscal year 2015.<sup>148</sup> Considering the fact that the SEC received 3,001 such reports in 2012, and a mere 334 in 2011, it is clear that this provision has had tremendous impact on those who observe securities laws violations.<sup>149</sup>

Despite its success in dramatically ramping up the number of whistleblower tips received, Dodd-Frank's whistleblower provision has also generated its share of criticism as well. In response to the reporting of incidents of corporate wrongdoing to the SEC, "[s]ome Wall Street firms are urging employees to report wrongdoing internally before running to the government[.]"<sup>150</sup> It is understandable that even despite the potential to receive a bounty award, employees may opt to utilize internal compliance mechanisms in order to protect their employers.<sup>151</sup> In addition, there is no guarantee that such reports taken to regulators will be taken seriously and properly investigated.<sup>152</sup> These type of practices, in addition to the possibility of an individual being labeled a "snitch," could hinder the provision's enforcement efforts greatly.<sup>153</sup>

## 2. Whistleblower Provision in the IRC

Similar to Dodd-Frank, the IRC, enforced by the Internal Revenue Service (IRS), also contains a provision to benefit whistleblowers.<sup>154</sup> In fact, the legislative history behind the whistleblower provision of Dodd-Frank indicates that it was modeled after the whistleblower provision contained in the 2006 amendments to the IRC.<sup>155</sup> The IRC provision states:

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147. 2014 Annual Report on the Dodd-Frank Whistleblower Program, U.S. SECURITIES & EXCHANGE COMMISSION, 20 [www.sec.gov/about/offices/owb/annual-report-2014.pdf](http://www.sec.gov/about/offices/owb/annual-report-2014.pdf) (last visited Apr. 23, 2016).

148. 2015 Annual Report on the Dodd-Frank Whistleblower Program, U.S. SECURITIES & EXCHANGE COMMISSION, 21 [www.sec.gov/whistleblower/reports/pubs/annual-reports/owb-annual-report-2015.pdf](http://www.sec.gov/whistleblower/reports/pubs/annual-reports/owb-annual-report-2015.pdf) (last visited Apr. 23, 2016).

149. *Id.*; see also 2014 Annual Report on the Dodd-Frank Whistleblower Program, *supra* note 150, at 20 (showing the annual increase in whistleblower tips received by the SEC since fiscal year 2011).

150. Proress, *supra* note 146.

151. See Rapp, *supra* note 144, at 398–99 (arguing that even despite the incentives created by Dodd-Frank to report wrongdoing to the government, there is no direct indication that employees will entirely abandon internal whistleblowing programs).

152. See Macey, *supra* note 136, at 1917–18 (describing an incident that occurred in 1973 when employees at the company Equity Funding attempted to report its corporate wrongdoing to the SEC, only to be overlooked and brushed aside without inquiry).

153. Proress, *supra* note 146; see also Pacella, *supra* note 137, at 346 (citing some of the negative stigmas that can be associated with a whistleblower).

154. I.R.C. § 7623(b)(1).

155. See Pacella, *supra* note 137, at 357 (discussing how "[i]n a Senate Report examining Dodd-Frank, the Senate Committee on Banking, Housing,

If the Secretary proceeds with any administrative or judicial action described in subsection (a) based on information brought to the Secretary's attention by an individual, such individual shall . . . receive as an award at least 15 percent but not more than 30 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action. The determination of the amount of such award by the Whistleblower Office shall depend upon the extent to which the individual substantially contributed to such action.<sup>156</sup>

The IRC also provides for a reduced award in cases where the whistleblower provides a lesser degree of contribution.<sup>157</sup> This provision was implemented to supplement the IRS's current method of detecting violations through auditing, which involves random selection of tax returns, document matching, and further examination and scrutiny.<sup>158</sup>

Much like the whistleblower provision in Dodd-Frank, this section has proven to be very effective in detecting instances of tax noncompliance.<sup>159</sup> "In a June 2006 report, the U.S. Treasury expressed that investigations based on the IRS whistleblower program were more effective and efficient in detecting tax noncompliance than" the original method of picking certain returns to subject to heightened scrutiny.<sup>160</sup> In fiscal year 2013, the IRS paid a total of \$53 million to tax whistleblowers.<sup>161</sup> This number was a decrease from the 2012 award amount of \$125 million, but the majority of that figure was paid to one individual whistleblower.<sup>162</sup> Although there can be delays in investigating these tips, it is clear

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and Urban Affairs recognized the invaluable contributions that whistleblower tips provide.”).

156. I.R.C. § 7623(b)(1).

157. I.R.C. § 7623(b)(2).

158. See *IRS Audits*, INTERNAL REVENUE SERVICE (Jan. 12, 2016), [www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/IRS-Audits](http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/IRS-Audits) (defining an IRS audit as “a review/examination of an organization's or individual's accounts and financial information to ensure information is being reported correctly, according to the tax laws, to verify the amount of tax reported is substantially correct.”). The audit selection process typically has three steps: first is “random selection and screening”; second is “document matching”; and third is “related examinations.” *Id.*

159. See Pacella, *supra* note 137, at 354–55 (explaining how the IRC's 2006 amendment including the whistleblower provision generated more reports of tax law violations than previous methods).

160. *Id.*

161. Laura Saunders, *IRS Pays Awards to Whistleblowers*, THE WALL ST. J. (Apr. 18, 2014, 7:26 PM), [www.wsj.com/articles/SB10001424052702304626304579507501731992142](http://www.wsj.com/articles/SB10001424052702304626304579507501731992142).

162. See *id.* (pointing to the high 2012 whistleblower award amount as a result of the \$104 million payment to Bradley Birkenfeld, who disclosed information about banking goliath UBS which led to their conviction of several securities violations).



that the IRS's method of incentivizing the reporting of wrongdoing by offering awards to those who come forward with information has been successful.<sup>163</sup>

#### IV. INCORPORATING A WHISTLEBLOWER PROVISION INTO THE UCI ANTI-DOPING RULES

While the UCI does mandate that riders and team personnel report violations of its anti-doping rules directly to the UCI, the anti-doping rules provide no incentive for riders to come forward with this information.<sup>164</sup> The UCI's testing procedures as they stand could be likened to the IRS's method of selecting tax returns for auditing.<sup>165</sup> The method involves testing samples for potential violations rather than gathering specific information on individuals for whom violations are probable.<sup>166</sup> The WADA is currently considering the implementation of a whistleblower program, but so far no provisions have been enacted.<sup>167</sup> Such a provision could help curb the use of performance-enhancing drugs in sports such as cycling.

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163. *See id.* (discussing how IRS whistleblower claims may take years to process and investigate, but that this is the result of their receiving so many tips from whistleblowers).

164. *See Part 14 Anti-Doping Rules, supra* note 118, at 57–58 (requiring riders and team personnel “To report to Anti-Doping Organizations any circumstances they become aware of that may constitute an anti-doping rule violation.”).

165. *Compare id.* at 18–22 (describing the drug testing procedures used by the UCI, which include both in and out of competition testing procedures, as well as procedures regarding “investigations and intelligence gathering”), *with IRS Audits, supra* note 158 (stipulating the IRS's procedures for conducting tax audits, whereby they sample a random pool of tax returns and check for noncompliance).

166. *IRS Audits, supra* note 158.

167. *See Foundation Board Media Release: WADA Strengthens Anti-Doping Worldwide*, WORLD ANTI-DOPING AGENCY (Nov. 18, 2015), [www.wada-ama.org/en/media/news/2015-11/foundation-board-media-release-wada-strengthens-anti-doping-worldwide](http://www.wada-ama.org/en/media/news/2015-11/foundation-board-media-release-wada-strengthens-anti-doping-worldwide) (briefly discussing WADA's potential incorporation of a whistleblower incentive provision into the WADC, which would then be required to be included in the UCI Anti-Doping Code, as the UCI is a WADA member organization).

The problem of doping in cycling may never be fully resolved.<sup>168</sup> Cyclists continue to find new and improved ways to illegally enhance their performance.<sup>169</sup> As the lucrative nature of cycling continues to grow, it can only be assumed that riders will pursue whatever route necessary to achieve fame and success.<sup>170</sup> Nevertheless, there are steps that the UCI can take to better deter riders from the use of performance enhancing drugs.

Alleviating the potential harm that doping can cause to cyclists and cycling itself starts with the organizers.<sup>171</sup> Cycling's governing body needs to recognize that with the current regulations in place, riders are likely going to continue using performance-enhancing drugs.<sup>172</sup> The gains to be derived from the practice are too large and too tempting to expect the practice to cease simply by implementing harsher punishments.<sup>173</sup> Organizers should seek to deter performance-enhancing drug use through incentivizing oversight and accountability by team members and managers. This could be done through rewarding riders and team personnel who report the doping violations of teammates with reduced penalties for their own

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168. See Yesalis, *supra* note 1, at 42–43 (identifying the use of performance-enhancing drugs to increase athletic ability as originating as early as ancient times, and unlikely to disappear in the near future); see also Richard Williams, *EPO Is Old Hat for Cycling's New Generation of Doping Cheats*, THE GUARDIAN (May 31, 2013, 5:00 PM), [www.theguardian.com/sport/blog/2013/may/31/e-po-cycling-generation-doping-cheats](http://www.theguardian.com/sport/blog/2013/may/31/e-po-cycling-generation-doping-cheats) (elaborating on one of the primary issues with performance-enhancing drugs, the fact that new substances are constantly being produced, and at a rate faster than that at which testing organizations can keep up); Savulescu, *supra* note 7, at 666 (recounting the first uses of performance-enhancing drugs in the Olympic Games as originating as early as the third Olympiad).

169. *Id.*

170. See Lia Hervey, *Cycling salaries: how much do professional cyclists earn?*, SKY SPORTS (Nov. 12, 2015, 9:26 AM), [www.skysports.com/cycling/news/21683/9914043/just-how-much-do-chris-froome-and-the-rest-of-the-peloton-earn](http://www.skysports.com/cycling/news/21683/9914043/just-how-much-do-chris-froome-and-the-rest-of-the-peloton-earn) (citing the 2015 salaries of some of cycling's highest paid riders, including Sky Cycling's Chris Froome at £3 million, Tinkoff Saxo's Alberto Contado around £3 million as well, and Astana's Vincenzo Nibali at close to £2.5 million).

171. See Albergotti, *supra* note 69, at 141–42 (describing the power that cycling's governing body, the UCI, has over the lives of its riders). In fact, the UCI had once backed Lance Armstrong and the U.S. Postal Service Team's credibility, in spite of several French reporters' investigations indicating a high likelihood that Armstrong and the team had used performance-enhancing drugs during the Tour de France. *Id.* at 139.

172. See Williams, *supra* note 168 (describing the problem with doping in cycling as never ending, where some riders work tirelessly to restore the sports reputation while others continue to dope and bring down the reputation of the sport itself).

173. See Brian Palmer, *Lance Armstrong Case Prompts Question: Why Is There So Much Doping in Cycling?*, THE WASH. POST (Jan. 21, 2013), [www.washingtonpost.com/national/health-science/lance-armstrong-case-prompts-question-why-is-there-so-much-doping-in-cycling/2013/01/18/32cd089a-5e61-11e2-a389-ee565c81c565\\_story.html](http://www.washingtonpost.com/national/health-science/lance-armstrong-case-prompts-question-why-is-there-so-much-doping-in-cycling/2013/01/18/32cd089a-5e61-11e2-a389-ee565c81c565_story.html) (describing how performance-enhancing drugs have the ability to greatly increase a cyclist's performance).

violations, or through providing a monetary reward. Such a program could be put in place through the addition of a whistleblower protection provision to the UCI Anti-Doping Rules.

*A. The UCI's Anti-Doping Rules Need to Provide  
Greater Incentive for Riders and Team Managers to  
Hold Each Other Accountable to Follow the  
Anti-Doping Rules*

As it stands, the current UCI Anti-Doping Rules require all riders and all rider support personnel “[t]o report to Anti-Doping Organizations any circumstance they become aware of that may constitute an anti-doping rule violation.”<sup>174</sup> Furthermore, the rules permit the UCI to punish any rider or rider support personnel who is found to have not complied with the above requirement.<sup>175</sup> Considering the close group dynamics among professional cycling teams, as well as how much time they spend together, holding those who are truly closest to the riders responsible seems like a logical method to prevent performance-enhancing drug use.<sup>176</sup> However, given the bond that comes from training and racing with one another in such close proximity, many cyclists over the years have become hesitant to expose the doping violations of their teammates.<sup>177</sup> What is clearly needed is further incentive for riders to report to the UCI and other anti-doping organizations the Anti-Doping Rules violations of their teammates. If the UCI included some kind of a financial reward or reduction in team punishment for those who blow the whistle, riders and other team personnel

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174. See *Part 14 Anti-Doping Rules*, *supra* note 118, at 57 (stipulating that in Article 21, §§ 21.7.7 & 21.2.7, which provide that riders and other team officials must report any anti-doping rules violations that they witness). The term “Rider” is defined as “Any person subject to these Anti-Doping Rules who competes in the sport of cycling, whether at the international level as defined by the UCI in the Introduction to these Anti-Doping Rules (International-Level Rider), at the national level (National-Level Rider) as defined by each National Anti-Doping Organization, or otherwise. *Id.* at Appendix 1, pg. 66. Furthermore, the term “Rider Support Personnel” is defined as “[a]ny coach, trainer, manager, agent, Team staff, official, medical, paramedical personnel, parent or any other Person working with, treating or assisting a Rider participating in or preparing for sports Competition.” *Id.*

175. *Id.* at 58.

176. See *A day in the life of a pro cyclist Matt Bremmeier writes for RCUK*, ROAD CYCLING UK (Dec. 19, 2011), <https://roadcyclinguk.com/blogs/guest-blog/a-day-in-the-life-of-a-pro-cyclist-matt-brammeier-rcuk.html#g0f83baOvfdteJ9L.97> (describing how closely riders, team managers, and other support personnel work together during the professional cycling training season).

177. See Hamilton, *supra* note 62, at 250–52 (discussing how Tyler Hamilton, former teammate of Lance Armstrong, wrestled with his loyalty to Lance Armstrong before deciding to come forward with information about he and Lance’s use of performance-enhancing drugs during their careers).

might feel more inclined to come forward. Although cycling has a strong history of remaining silent about performance-enhancing drug use, such incentives could begin to break the silence and spur the sport toward a clean future.<sup>178</sup>

Whistleblower protection policies have been initiated to combat rule violations in many areas outside of sports.<sup>179</sup> Over the past several decades, they have been enacted to protect employees working in the financial industry<sup>180</sup> as well as those who report others for federal tax law violations.<sup>181</sup> The premise is simple, those who observe violations of applicable law can report those violations to regulators in order to receive a percentage of the money that the regulating agency recovers. For example, Dodd-Frank provides that

the Commission . . . shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to the Commission that led to the successful enforcement of the covered judicial or administrative action [shall receive between 10 and 30 percent] of what has been collected of the monetary sanctions imposed in the action or related actions.<sup>182</sup>

As previously discussed, the IRC contains its own whistleblower provision, which allows those who report violations to receive a financial reward.<sup>183</sup> The applicable section provides that when the Secretary proceeds against an individual for a violation of the IRC, the whistleblower shall receive at least 15%, but not more than 30%, of the proceeds from the action or from settling the action.<sup>184</sup> Statutes such as this have been very effective at uncovering fraud and other legal violations in the corporate arena.<sup>185</sup> By analogy, incorporating a whistleblower provision into the UCI Anti-Doping Rules could prove just as effective if drafted properly and with the right incentives. Cycling today is a multi-

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178. *Id.* at 5. Despite years of training and competing with Lance Armstrong, both Tyler Hamilton and Floyd Landis came forward with evidence of Armstrong's drug use throughout his career. *Id.* at 242-43.

179. See 15 U.S.C. § 78u-6(b)(1) (2012) (providing the whistleblower provision of Dodd-Frank); see also I.R.C. § 7623(b) (covering the whistleblower provision contained in the IRC for those that report others for federal tax law violations).

180. 15 U.S.C. § 78u(b)(1).

181. I.R.C. § 7623(b).

182. § 78u-6(b)(1).

183. I.R.C. § 7623(b).

184. *Id.*

185. See *Proven Effectiveness of Whistleblowers*, NATIONAL WHISTLEBLOWER CENTER, 1-2, [http://lib.ohchr.org/HRBodies/UPR/Documents/session9/US/NWC\\_NationalWhistleblowersCenter\\_Annex2.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/session9/US/NWC_NationalWhistleblowersCenter_Annex2.pdf) (last visited Apr. 20, 2016) (citing three studies conducted by PricewaterhouseCoopers, the Association of Certified Fraud Examiners, and the Ethics Resource Center which indicate that "whistleblowers are the most effective at detecting fraud"). "There is no doubt that whistleblowers objectively help the corporations and the government agencies for which they work." *Id.*

million dollar business, with team budgets in excess of \$20 million.<sup>186</sup> Despite the mafia-esque “omerta” culture that has developed in cycling over the past several decades, a substantial financial reward similar to that contained in the IRC could provide a rider with enough incentive to come forward about the doping violations of a teammate.<sup>187</sup>

### *B. Incorporation of Whistleblower Provision into the UCI Anti-Doping Rules*

Article 11 of the UCI Ant-Doping Rules presents itself as an area in which a whistleblower program could be applied. Currently, Article 11.3 reads:

In addition to the suspension provided for in Article 7.12.1, an UCI WorldTeam or Professional Continental Team shall pay a fine to the UCI if two riders and/or other persons are sanctioned for anti-doping rule violations that took place within a twelve-month period. The fine is due when the second Rider or other Person’s sanction becomes final. The amount of the fine shall be 5% of the annual Team budget based on which the Team license was granted for the year during which the second sanction becomes final.

Including a whistleblower provision for riders or other team personnel who report another person’s violations of the code could cause more people to come forward with evidence of doping, not unlike the effect of whistleblower provisions in corporate America.<sup>188</sup> Reducing the applicable suspension or the requisite monetary fine could provide enough incentive for riders to expose the wrongdoing of those cyclists who violate the rules. Rather than await the possibility of a teammate being tested positive for a banned substance, a clean rider could come forward with information about that teammate themselves in order to prevent the risk of being suspended from competition or having the team budget garnished. A revised Article 11.3 could include the following language:

However, the UCI may take into account a person’s reporting of their own or another member of their organization’s violation of these Anti-Doping Rules as mitigating circumstances, and may use that finding to reduce the sanctions placed on the team or individual.

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186. *The Finances of Team Sky*, THE INNER RING (July 1, 2015), <http://inrng.com/2015/07/team-sky-budget-finances/> (listing the 2014 team budget for Team Sky as €24 million, or the equivalent of roughly \$38 million).

187. See Hamilton, *supra* note 63, at 5 (citing the omerta, or the code silence about doping in cycling, as the reason for why the practice of doping persisted out of the public eye for so long).

188. *Proven Effectiveness of Whistleblowers*, *supra* note 185, at 1–2.

This is merely one example. If the UCI opted to model its whistleblower protection policy after the one contained in Dodd-Frank, it could read as follows:

The UCI may as an award or awards to 1 or more whistleblowers who voluntarily provided original information to the UCI that led to the successful enforcement of the covered judicial or administrative action may, if applicable, reduce the suspension and monetary fine for said whistleblower or whistleblowers by at least 20% and at most 50%.

Through introducing the possibility of shorter suspensions for individuals or lower monetary fines for teams, riders will be further incentivized to comply with the current version of the code. In terms of providing whistleblowers themselves with a financial reward, the UCI could amend § 10.10 of its Anti-Doping Rules, which provides for fines to be issued to riders or team personnel who intentionally violate the Code.<sup>189</sup> The amount of this fine is stipulated to be the net income that the rider or other individual was entitled to earn for the year in which the Code violation occurred.<sup>190</sup> To mirror the whistleblower provisions of Dodd-Frank and the IRC, the UCI could provide the following to supplement § 10.10:

the UCI . . . shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to the UCI that led to the successful enforcement of the covered judicial or administrative action [shall receive between 10 and 30 percent] of what has been collected of the monetary sanctions imposed in the action or related actions pursuant to § 10.10 of this Code.<sup>191</sup>

While maintaining the strict liability but incentivizing the reporting of violations and providing protection for those riders who come forward, the sport of cycling can continue to improve upon its reputation within the global athletic community. No matter the language that is used, the inclusion of a whistleblower provision in the UCI Anti-Doping Rules could be an effective tool to control the spread of doping in the sport of cycling. Once final language is settled upon, the UCI can recommend its implementation into the WADC, where it can have effects on sports beyond the realm of cycling.<sup>192</sup>

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189. *Part 14 Anti-Doping Rules*, *supra* note 118, at 40–41.

190. *Id.* “The amount of the fine shall be equal to the net annual income from cycling that the Rider or other Person was entitled to for the whole year in which the anti-doping violation occurred.” *Id.* at 40.

191. *See* § 78u-6(b)(1) (providing the whistleblower provision in Dodd-Frank).

192. *See World Anti-Doping Code 2015*, *supra* note 120, at 15 (describing the process by which national federations can recommend modifications to WADA for implementation into the WADC).

## V. CONCLUSION

Doping has been a prevalent part of the sport of cycling for the last century, and regulators have had a difficult time curbing its spread. The sport's governing body has continued to inflict harsher and harsher punishments on anti-doping code violators, in hopes that this will deter riders from engaging in the practice. However, it may be more beneficial for the UCI to instead focus on ways to incentivize riders and team personnel to report the wrongdoing of members of their organization. Such an initiative could deter riders from doping as well as improve the sport's reputation among the athletic community.