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NOTES AND COMMENTS

PERFORMANCE ENHANCING DRUG USE IN OLYMPIC SPORT: A COMPARISON OF THE UNITED STATES AND AUSTRALIAN APPROACHES

I. INTRODUCTION

Performance Enhancing Drugs (PEDs) have been used throughout the history of the Olympics. During Greek times, popularity of the ancient Games gave rise to astronomical increases in the rewards to successful athletes.¹ Some athletes earned incomes of as much as half-a-million dollars by today's standards.² In the wake of this commercialism, athletes were "reputedly willing to ingest any substance that might enhance their performance."³ Ultimately, this evolution eroded respect for the rules and eventually contributed to the dissipation of the ancient Games.⁴

The downfall of the ancient Games foreshadowed the downfall of Greek and then Roman societies.⁵ Similarly, the Modern Games may mirror greater societal problems, albeit from the extreme perspective. Olympic athletes are not representative of the ordinary citizen. They are, however, very visible to the ordinary citizen. Olympic athletes are the role models and heroes for future generations. Like other public figures, they mirror the changes in our culture. While seemingly unimportant when compared with the world's problems, increasing PED use by athletes indicates changes in society at large. This highly visible

1. AUSTRALIAN SPORTS DRUG AGENCY, DRUGS IN SPORT, at <http://www.ausport.gov.au/asda/dishistory.html> (last visited Mar. 26, 2002) (on file with Loyola of Los Angeles International and Comparative Law Review) [hereinafter ASDA].

2. *Id.*

3. *Id.*

4. JAMES A. R. NAFZIGER, INTERNATIONAL SPORTS LAW 16 (Transnational Publishers 1988); ASDA, *supra* note 1.

5. See NAFZIGER, *supra* note 4, at 16-17; ASDA, *supra* note 1.

medium, the Olympic Games, disseminates hope and goodwill, or alternatively, highlights scandal and unfairness. The PED problem afflicts all society as much as it afflicts the Games. As Olympic history continues, PEDs use will also continue. But how the Olympic sporting organizations and their nations deal with the PED problem is visible to the world and can instill hope for a better tomorrow.

Since its inception, the modern Games have been afflicted with drug use.⁶ Yet, only recently have the organizers recognized PEDs as a systemic problem rather than as a few isolated occurrences.⁷ Today, the International Olympic Committee (IOC) and its participating nations generally agree that PEDs are inconsistent with the Olympic spirit and are dangerous to athletes.⁸ Consequently, most PEDs are banned or restricted.⁹

The PED restrictions, however, often are not enforced because participating nations lack the technology and resources necessary to adequately test athletes.¹⁰ Thus, some athletes escape rigorous testing and compete while using PEDs.¹¹ For example, twenty-seven athletes and thirteen coaches from one country withdrew¹² from the 2000 Games after a revolutionary drug testing method was approved for use at the Games.¹³ Without this testing, each of these athletes would have been able to compete while taking PEDs.¹⁴ Even with the new testing, athletes who have a history of positive drug tests are not barred from competition.¹⁵

By contrast, other athletes are punished for inadvertent use or have historic performances diminished by public suspicion of use.

6. ASDA, *supra* note 1.

7. The first recorded doping incident of the modern Games occurred when a cyclist died as the result of PEDs in 1884. Yet, the IOC did not begin testing for drugs until 1967 when another cyclist died during a televised race. ASDA, *supra* note 1.

8. See OLYMPIC CHARTER ch. 5, R. 48; INTERNATIONAL OLYMPIC COMMITTEE, OLYMPIC MOVEMENT ANTI-DOPING CODE 3 (Jan. 1, 2000).

9. See OLYMPIC MOVEMENT ANTI-DOPING CODE, *supra* note 8, at 3; OLYMPIC CHARTER ch. 5, R. 48; NAFZIGER, *supra* note 4, at 148.

10. See Glenn Zorpette, *The Chemical Games*, SCI. AM., Fall 2000, at 16-17.

11. See *id.*

12. Randy Harvey, *Not Every Fairy Tale Has Happy Ending*, L.A. TIMES, Sept. 12, 2000, at D1.

13. Jacquelin Magnay, *No, Minister, the Sydney Olympics Won't Be Drug-free*, SYDNEY MORNING HERALD, Aug. 15, 2000, at 12.

14. See Zorpette, *supra* note 10, at 16.

15. For example, shot putter, C. J. Hunter, tested positive four times prior to the 2000 Games, but was never expelled from competition. Alan Abrahamson, *Hunter Is Pleading Innocent*, L.A. TIMES, Sept. 26, 2000, at U1.

For instance, a sixteen year-old Romanian gymnast was stripped of her gold medal at the 2000 Games when she tested positive for PEDs after ingesting an over-the-counter cold medicine.¹⁶ The medicine was given to her by a team doctor who was either unaware the medication contained a banned substance or did not warn her that it would cause a positive drug test.¹⁷ Similarly, a swimmer, who won multiple medals at those Games became the media poster child for drug use although she never tested positive for PEDs.¹⁸ Fellow athletes and the media commented that her record setting performances must have occurred due to drug use, and thus devalued her amazing accomplishment based on suspicions and not proof.¹⁹

Enforcement problems and public suspicion aside, athletes who use PEDs risk their health and compromise their integrity in order to gain personal and financial success.²⁰ On the other hand, athletes who abide by the rules and abstain from PEDs jeopardize their chance to win because they cannot compete at the same level as athletes that use PEDs.²¹ In the end no one wins because an assumption of guilt attaches every time an athlete has an extraordinary performance or unexpectedly withdraws from competition.²² Furthermore, when an athlete tests positive for drugs the reputation of the entire sport and the competition is compromised.

As the organizer of the Games, the IOC is influential in the development of international sports law, especially in relation to

16. Lisa Dillman, *Romanian Gymnast Caught in the Middle*, L.A. TIMES, Sept. 29, 2000, at U6. Romanian Gymnast, Andrea Raducan, was stripped of her gold medal at the 2000 Games after testing positive for pseudoephedrine, which is an ingredient in common over the counter cold medications. A team doctor prescribed the medication to both Raducan and teammate, Simona Amanar. Presumably, the doctor made an error. Ironically, Amanar did not test positive for the substance and moved into the gold medal spot once Raducan was banned. The doctor confirmed that both athletes were given the same medication, but Amanar did not test positive because she weighed more. *Id.*

17. *Id.*

18. See Lisa Dillman, *Scrutiny of De Bruijn Familiar Story to the Irish*, L.A. TIMES, Sept. 19, 2000, at U9. Dutch swimmer, Inge de Bruijn, set the world record the 100-meter butterfly at the 2000 Games. Even though she never tested positive for drug, there was widespread speculation by the media and other swimmers that her performances were the result of drug use. *Id.*

19. *Id.*

20. See, e.g., David Lesser, *Playing Games with Cheats*, SYDNEY MORNING HERALD, July 7, 2000, at 36.

21. See, e.g., *id.*

22. See, e.g., Dillman, *supra* note 18.

PED use.²³ Unfortunately, while the IOC sets official policy for the Games, it is not capable of investing the money required to police athletes, coaches and sports administrations in all of its participating countries. Even if the organization was able to allocate sufficient resources, there is no guarantee that the participating nations would adopt the IOC drug policy. In practice, the IOC only coordinates and outlines Olympic policy. The implementation and ultimate success of the policy depends on the support of participating nations. Only individual nations and their sports governing bodies can regulate the day-to-day lives of the athletes and coaches. Thus, the IOC cannot have an effective drug policy until the participating countries, as a group, agree to enforce a uniform drug policy.²⁴

For this reason, an examination of two recent host countries, the United States and Australia, is useful to illuminate the challenges of effective PED policy implementation. This comment explores how Australia and the United States have implemented the IOC policy and concludes that the Australian policy has been more effective in curbing PED use.

Part II examines the dangers of PEDs. Part III explores the role of the IOC in relation to PED use. Part IV evaluates the differing legal approaches of the United States and Australia to PEDs. Part V discusses the role of the Australian and United States Olympic Committees. Finally, Part VI reviews the adjudication of PED disputes in both countries.

II. WHY PEDS ARE A PROBLEM

A. Dangers of PED Use to Athletes' and Public Health

The IOC, civil governments and the medical community consider PEDs to be dangerous to the health of athletes, the integrity of the Games and the spectators who idolize the athletes.²⁵ PED abuse can lead to long-term adverse health effects,

23. See NAFZIGER, *supra* note 4, at 2-4.

24. See discussion *infra* Part III.

25. See J. Cumiskey, *Medical Care of Athletes in the Era of Performance Enhancing Drugs of Sport (PEDOS) Syndrome*, 92 IRISH MED. J. 325, 326 (1999); *National Strategy to Help Fight Drug Use and Doping in Sport: Hearing on H.R. 4500 Before the Senate Comm. on Commerce, Sci. and Transp.*, 106th Cong. 1-3 (1999) (statement of Barry McCaffrey, Director, Office of National Drug Control Policy)

making the short-term performance benefits less appealing.²⁶ Side effects run the gamut from minor inconvenience to death.²⁷ In addition, medical authorities have indicated that PEDs can be psychologically addictive.²⁸

Although PED use most directly effects the athletes who take them, use also threatens public health.²⁹ The increased use of PEDs by elite athletes has been strongly linked to a subsequent rise in PED use by recreational exercisers and children.³⁰ This was exemplified by increased PED use following the summer Olympics in both Atlanta (hosted in 1996) and Sydney (hosted in 2000).³¹ The increases in PED use have also been linked to increases in the illicit drug trade.³²

B. Extent of PED Use

By some estimates, drug use to enhance performance is so pervasive that athletes not taking drugs are the minority. A 1990 study by an Australian commission asserted "that up to 60 per cent [sic] of Australia's elite athletes were using banned substances."³³ Similarly, a U.S. track coach testified at a Senate hearing that more than 40% of her Olympic athletes were using steroids during their preparation for the 1988 Games.³⁴ While the exact number of athletes using PEDs is unknown, "scattered evidence suggests troubling pervasiveness, at least in some sports and among certain teams."³⁵ Further complicating the issue, individual countries and

[hereinafter ONDCP Drugs in Sport]. For a discussion about particular drugs enhancing abilities and their detriments see Zorpette, *supra* note 10, at 19.

26. See Cummiskey, *supra* note 25, at 325; Zorpette, *supra* note 10, at 19.

27. See Cummiskey, *supra* note 25, at 325; Zorpette, *supra* note 10, at 19.

28. Cummiskey, *supra* note 25, at 326; CENTRE NATIONAL DE LA RECHERCHE SCIENTIFIQUE, SYNTHETIC REPORT: DOPING AND SPORTS COLLECTIVE EXPERT ASSESSMENT (1998), available at <http://www.cnrs.org> [hereinafter SYNTHETIC REPORT].

29. ONDCP Drugs in Sport, *supra* note 25, at 5, 6; SYNTHETIC REPORT, *supra* note 28.

30. ONDCP Drugs in Sport, *supra* note 25, at 5; SYNTHETIC REPORT, *supra* note 28.

31. Lesser, *supra* note 20; See also Mark Forbes, *The Scandal of Australian Sport: The Drug Games*, SYDNEY MORNING HERALD, Apr. 25, 2000 at 19.

32. See AUSTRALIAN CUSTOMS SERVICE, AT THE BORDER at <http://www.customes.gov.au/olympics/briefacts.htm> (last visited Sept. 5, 2000); ONDCP Drugs in Sport, *supra* note 25, at 6; Lesser, *supra* note 20; Forbes, *supra* note 31.

33. Lesser, *supra* note 20.

34. Zorpette, *supra* note 10, at 18 (quoting Pat Connolly, former U.S. Olympic women's track coach). Among popular PEDs are erythropoietin (EPO), human growth hormone (HGH), stimulants, anabolic steroids and masking agents. See *id.* at 19.

35. *Id.* at 17.

sports organizations can choose to regulate different drugs.³⁶ Indeed, PEDs are commonly found in legal over-the-counter and prescription drugs or food products.³⁷ Consequently, it is easy to ingest banned substances inadvertently.

C. Motivations for PED Use

“[Illegal] drug use by a small minority...undermine[s] the fundamental...[principles] of athletic competition, in which victory goes to the contestant who best combines such attributes as strength, coordination, endurance, discipline and cunning.”³⁸ PEDs enhance these abilities.³⁹ One source estimated that PED use can increase performance by up to fifteen percent.⁴⁰ Where the difference between making the Olympic team and winning a gold medal is measured in tenths of a second, this margin of improvement is significant.

Given the assumption that PEDs are effective, athletes are motivated to use them for a variety of reasons. Use can stem directly from a desire for increased performance, dissatisfaction with current performance or both.⁴¹ PED use can also be more psychological than physical; the athletes can develop a “psychological dependence” by using PEDs to “cope with anxiety or stress” or to bolster confidence.⁴² Moreover, PED use may even be unrelated to performance goals. For example, athletes who are searching for approval from family, friends or coaches,⁴³ and athletes who are motivated by prestige, fame or financial reward

36. Many professional athletes use PEDs legally in their countries but this use would violate Olympic rules thereby creating a different standard for Olympic and professional competition. See Tom Regan, *Rising Clash over Drugs in Sports*, CHRISTIAN SCI. MONITOR, Aug. 12, 1999, at 1.

37. See Zorpette, *supra* note 10, at 19. Dietary supplements have the added problem that the label does not always reflect all the ingredients in the product. Evidence suggests that athlete who take supplements may be ingesting banned substances unknowingly because the substance was not reflected on the label. The IOC and WADA take a strict liability approach; whether the athlete meant to take the drug is irrelevant to the infliction of punishment for the drugs presence in the athlete's body. See Peter Waldman, *The Olympic Doc Takes on a Hometown Power*, WALL ST. J., Feb. 19, 2002 at A8.

38. Zorpette, *supra* note 10, at 17.

39. See *id.* at 19.

40. Ashley Dunn, *Olympics Again Put Oft-Abused Amgen Drug Under Scrutiny*, L.A. TIMES, Sept. 18, 2000, at C1 (quoting Charles Yesalis of Penn State University and expert on the IOC's doping efforts).

41. ASDA, *supra* note 1; Lesser, *supra* note 20.

42. ASDA, *supra* note 1.

43. *Id.*

may use PEDs to achieve social status.⁴⁴ Finally, some PED use occurs simply because the athlete does not believe PED use is wrong.⁴⁵

PEDs may also be popular because athletes do not think they will get caught.⁴⁶ Since the IOC began "formal drug testing" at the Olympics in 1968,⁴⁷ they have been struggling to keep up with new methods of performance enhancement.⁴⁸ One commentator theorized that:

[I]t is a virtual certainty that a large number of cheating athletes will beat the tests. Many of them will use a drug that cannot now be detected in urine. Others will carefully schedule and limit their use of banned substances so that their biochemical indicators will be below the threshold that the International Olympic Committee (IOC) interprets as a damning result. . . . [S]ome athletes will even take drugs, be caught and then have their sanctions overturned by an arbitration process that tends to exonerate all but the most poorly informed and reckless cheaters.⁴⁹

As quickly as the technology for testing advances, so too does the masking techniques. Thus, PED use persists despite IOC efforts to prevent it.

III. IOC CANNOT SOLVE THE PROBLEM ALONE

The IOC is not the appropriate organization to assume the responsibility of PED eradication from the international sports world. First, the IOC has a small budget and a narrow mission to promote the celebration of the Olympic Games. Second, to fulfill its mission and ensure participation by diverse nations, the IOC must compromise among many different societal and cultural ideologies. Eradicating PED use often conflicts with these ideologies, and therefore causes the IOC to choose between eradicating drug use and ensuring the accomplishment of its mission.

44. *Id.*

45. *Id.*

46. *Id.*

47. Zorpette, *supra* note 10, at 17.

48. *See id.*

49. *Id.* at 16-17.

A. IOC has Limited Resources and a Narrow Mission.

According to official policy, the IOC only maintains seven percent of the revenue from any Olympic Games.⁵⁰ At the 2000 Olympics the IOC maintained \$91 million of the \$1.3 billion generated.⁵¹ Whether this is adequate income or not is arguable, however, the reality is that IOC only performs ten percent of the tests that would occur in one large country (e.g. the United States).⁵² Thus, the IOC, whether it has the money, has not allocated enough money to combat the PED problem.

The allocation may be due to the IOC's narrow mission. Its primary aim is to "ensure the regular celebration of the Olympic Games."⁵³ Beyond this, the IOC acts as an umbrella organization providing promotion and consultation for sports and sporting organizations around the world.⁵⁴ In fact, most of the responsibilities to oversee the athletes are left to the International Sports Federations (IFs) and the National Olympic Committees (NOCs).⁵⁵ Since they plan and implement all non-Olympic competitions and control the National Governing Bodies of Sports (NGBs), the IFs and NOCs are in a better position to influence the day-to-day PED testing of athletes.⁵⁶

B. Establishing and Enforcing Drug Policies Runs Contrary to the IOC Mission.

To ensure the Games continue, the IOC must capitulate to national governments so that the majority of the world's athletes will continue to participate in the Games.⁵⁷ Its role is often to reach a consensus on policy, facilitating compromise between

50. Michael McGuire, *All Rewards and No Risk Makes Loads for Non-Profit*, AUSTRALIAN, July 7, 2000, at 38.

51. *Id.*

52. Cummiskey, *supra* note 25, at 325; see also McGuire, *supra* note 50.

53. OLYMPIC CHARTER ch. 1, R. 2.

54. See *id.*

55. For an interesting opinion on why the IOC lacks power over the ultimate implementation of the Games see John Powers, *Salt Lake 2002 on the Olympics; IOC Becomes Lord of Five-Ring Circus*, BOSTON GLOBE, Feb. 24, 2002, at F2. The author asserts that as a result of the 2002 Salt Lake Games scandals, the IOC has been forced to distance itself from the oversight of many Olympic events including drug testing and organization of the Games. *Id.*

56. James B. Jacobs & Bruce Samuels, *The Drug Testing Project in International Sports: Dilemmas in an expanding Regulatory Regime*, 18 HASTINGS INT'L & COMP. L. REV. 557, 560 (1995) (citing LORD KILLANIN, *MY OLYMPIC YEARS* 155 (1983)).

57. See CHRISTOPHER R. HILL, *OLYMPIC POLITICS* 34-59 (2nd ed. 1996).

conflicting agendas.⁵⁸ Thus when political actions cause athletes to withdraw, the IOC does everything it can to bring those athletes back to the Games.⁵⁹ It needs to have flexible policies to quickly react to athletes and countries that threaten to leave because of a conflict with IOC policy. Since the IOC is primarily involved in international political actions, it cannot have PED control as a primary objective. A successful drug policy requires clear, enumerated and enforceable rules, which would hinder the IOC's ability to react to fluid international situations.

Additionally, it is not in the IOC's interests to require governments or the IFs to abide by its rules. The IFs have other sporting events that may have different PED regulations than the Olympics.⁶⁰ For example, the world soccer governing body (FIFA) believes the Olympic PED policy conflicts with its own interests in World Cup soccer.⁶¹ Thus, it has limited its participation in the Olympics to developing athletes.⁶² Even further, players skip the Games to participate in other income creating events either because they feel they need to use PEDs which are legal at the other events or because the Olympics conflicts directly with these events.⁶³ The IOC's desire to have "the best of the best"⁶⁴ and the large numbers of viewers that tune in for soccer prompted the IOC to consider changing its PED policy to keep FIFA involved in the Olympics.⁶⁵ This issue remains unresolved because FIFA, like other sports organizations, does not agree with the IOC's PED policy and FIFA is not dependent upon the IOC for its funding or existence.⁶⁶ In the words of one journalist, "the Games need soccer more than soccer needs [the Games]."⁶⁷

58. For example, the Games were threatened when Taiwan and China split, when the United States and then the Soviet Union withdrew from successive Games and when the Games were canceled due to World War I and II. *See id.*

59. *See id.*

60. NAFZIGER, *supra* note 4, at 151-152.

61. International Federations of Sport do not completely endorse the IOC policy. In the case of Soccer, only development athletes compete in the Olympics. Michael Cockerill, *Soccer is Bigger than the Games*, SYDNEY MORNING HERALD, at 9.

62. *Id.*

63. *See id.*

64. *Id.*

65. *See id.*

66. *See id.*

67. *Id.*

As a result, the IOC must often compromise with the IFs and national governments⁶⁸ to achieve its mission—to “lead the promotion of Olympianism.”⁶⁹ The IOC’s mission to promote the Olympics forces an irreconcilable conflict of interest with its anti-doping policy. To resolve this conflict, another organization must enforce the PED policy.

C. Creation of the World Anti-Doping Agency

Recently, the IOC created the World Anti-Doping Agency (WADA) “to coordinate a comprehensive anti-doping programme . . . laying down common, effective, minimum standards . . . and seeking equity for all athletes in all sports. . . and in all countries.”⁷⁰ Like the IOC, WADA’s mission is to coordinate other international anti-doping organizations.⁷¹ Its effectiveness depends on its ability to persuade the IFs and participating nations to implement uniform PED policy.⁷²

The appropriate role for both WADA and the IOC is to set policy and give guidance about the rules of sport. While the existence of WADA may lessen criticism about conflicts of interest in PED testing, WADA is still not the appropriate organization to implement PED policy. Rather, the nations themselves must provide implementation and funding to enforce the uniform PED policy set by WADA. So, what is the ideal organization and support for each nation to have? Examining the PED programs of Australia and the United States may be helpful in evaluating this question because they are well-developed models.

68. See NAFZIGER, *supra* note 4, at 139-155. One of the biggest compromises was to eliminate the rule against professional athletes. *Id.* The compromise included more athletes and ensured a high level of competition. *Id.* PED use in professional sport is common. See Regan, *supra* note 36.

69. OLYMPIC CHARTER ch. 1, R. 2.

70. WORLD ANTI-DOPING AGENCY, DRAFT MISSION STATEMENT art. 4.1 (Oct. 1, 1999), available at <http://www.wada-ama.org> [hereinafter WADA MISSION STATEMENT].

71. See *id.* art. 4.1.

72. See *id.* art. 4.4.

IV. NATIONAL LEGAL SOLUTIONS TO PED USE

A. *U.S. PED Policy: All Talk and No Laws*

The United States has an ambitious policy that actively seeks to reduce illegal drug use.⁷³ The federal government funds an entire office devoted to the elimination of drugs—the Office of National Drug Control Policy (ONDCP). The ONDCP has a “holistic view”⁷⁴ that includes domestic and international solutions, namely, the education of America’s youth about illegal drugs, the reduction of their use and the elimination of the supply of illegal drugs.⁷⁵ The policy espouses zero tolerance for drugs of any kind.

Similarly, the federal government is sensitive to the specific dangers of PED use to athletes. In 2000, President Clinton noted that steroid use among young people had risen by fifty percent.⁷⁶ President Clinton also recognized that “[t]he use of drugs in sport has reached a level that endangers not just the legitimacy of athletic competition but also the lives and health of athletes.”⁷⁷ In response, the Senate conducted hearings concerning doping in sports.⁷⁸

Unfortunately, although the United States has an ambitious national drug control plan on paper (or in theory),⁷⁹ no PED specific laws have passed.⁸⁰ Effectively, PEDs are only a trivial concern for the federal government in comparison to its other

73. See ONDCP *Drugs in Sport*, *supra* note 25; Office of National Drug Control Policy, *Position Paper: Recommendations of the White House Office of National Drug Control Policy to the International Olympic Committee Concerning Fighting Drug Use in Sports* (Nov. 17, 1998) [hereinafter ONDCP Position Paper]; *The Office of National Drug Control Policy’s Fiscal Year 2001 Budget: Hearing on H.R. 7090 Before the Subcomm. on Treasury, Postal Serv., and Gen. Gov’t, House Comm. on Appropriations*, 106th Cong. (2000) (statement of Barry McCaffrey, Director, Office of National Drug Control Policy) [hereinafter ONDCP Fiscal Policy].

74. ONDCP Fiscal Policy, *supra* note 73.

75. *Id.*

76. Associated Press, *White House Panel to Study Doping in Sports*, SALT LAKE TRIB., Aug. 10, 2000, at C2.

77. *Id.*

78. See ONDCP *Drugs in Sport*, *supra* note 25.

79. See ONDCP Fiscal Policy, *supra* note 73.

80. See 21 U.S.C.S. § 812 (Lexis 1998). Performance Enhancing Drugs are not listed in the statute. *Id.*

illicit drug problems.⁸¹ The White House through the ONDCP affords strong rhetoric against PEDs, but little specific legislative backing.⁸²

B. Australian Legislation Provides Guidance to PED Problems

Australia's approach is less severe when compared to the U.S. zero tolerance policy. Australian law is founded on the belief that drug crimes are not as serious as other crimes.⁸³ Consequently, Australian law often treats drug offenders as victims and prescribes both rehabilitation and punishment.⁸⁴ Laws pertaining to drug use are listed under health legislation rather than criminal legislation.⁸⁵ Unlike the U.S. where PED and illicit drug use are addressed under the same zero tolerance legal scheme, Australian laws treats PED and illicit drug use separately. This separation allows PEDs to gain legal importance without being overshadowed by or confused with other illicit drug issues.

The Australian government also provides specific criminal penalties for PED trafficking,⁸⁶ whereas the United States has no equivalent legislation. Specifically, Australian Customs bans the import of Erythropoietin (EPO), Human Growth Hormone (HGH), steroids and "narcotic and psychotropic drugs that can have auxiliary performance-enhancing effects" without a permit.⁸⁷ The policy provides for a penalty of up to a \$100,000 fine and a

81. See ONDCP Fiscal Policy, *supra* note 73. The Policy addresses every aspect of drug use in society, from drugs effects to their source, of which PEDs only seem to be an afterthought. See *id.* The schedule of illegal drugs does not mention PEDs in specificity nor does it include many on the drugs on the IOC's list of prohibited substances. See *id.*; See also 21 U.S.C.S. § 812.

82. Cf. ONDCP Fiscal Policy, *supra* note 73 (Only \$700,000 of the \$ 496.8 million ONDCP budget and of the 19.2 billion federal drug control budget is devoted to PED use in sports), with ONDCP Drugs in Sport, *supra* note 25 (Barry McCaffrey, Director of the ONDCP, acknowledges the problem of PEDs "U.S. laws provide inadequate regulation over a range of performance enhancing drugs. Domestic Sports, particularly professional sports, do not ban a number of substances that are banned in international competition. These conflicting regimes confuse athletes and the public and cause international concerns about U.S.-based anti-doping programs.").

83. 10 THE LAWS OF AUSTRALIA 9 (John A. Riordan et al. eds., 1996).

84. *Id.* at 11.

85. *Id.* at 9-10.

86. AUSTRALIAN CUSTOMS SERVICE, *supra* note 32.

87. *Id.*

criminal penalty of up to five years in prison.⁸⁸ The stiff fines and punishments provide a deterrent effect to PED traffickers.⁸⁹

Australian legislation, while not as aggressive in criminalizing all drug use as the United States, is effective, in part, because PEDs are addressed separately in legislation. Australian PED specific legislation reinforces the government's commitment to enforcing its anti-doping policy. By contrast, in the United States, where strong rhetoric exists without companion legislation, athletes are compelled to deny their use and traffickers are encouraged to deliver PEDs to athletes.

V. NATIONAL OLYMPIC ORGANIZATIONS AND THEIR IDEOLOGICAL APPROACHES TO THE IOC'S MEDICAL CODE

A. *The Conflict Between Recruiting the Best Athletes and Enforcing PED Policy*

While U.S. and Australian legislation vary greatly, the National Olympic Committees (NOCs) share some similarities. Both the United States Olympic Committee (USOC) and the Australian Olympic Committee (AOC) manage Olympic sports for their nations.⁹⁰ Similarly, both organizations operate independent of their respective national governments.⁹¹ Finally, both the USOC and the AOC are responsible for implementing their own testing, adjudication and discipline for their athletes.⁹²

In Australia, responsibilities for the country's Olympic efforts are divided between several organizations.⁹³ In 1990, the Australian government created the Australian Sports Drug Agency (ASDA) as an independent office to deter doping, promote the safety of competitors, encourage education about PEDs, advocate for the adoption of consistent and effective anti-doping programs and coordinate a national anti-drug program.⁹⁴

88. *Id.* See also Press Release Minister for Justice & Customs, Senator the Honorable Amanda Vanston, Tougher Penalties for Prohibited Imports of Sports Drugs (Oct. 1, 2000) (on file with author).

89. See Forbes, *supra* note 31.

90. OLYMPIC CHARTER ch. 4, R. 31, para. 1.

91. OLYMPIC CHARTER ch. 4, R. 31, para. 5.

92. See OLYMPIC CHARTER ch. 4, R. 31.

93. For more information on Australian Olympic sports organizations see <http://www.australian.olympic.org>.

94. See 32 THE LAWS OF AUSTRALIA 35 (John A. Riordan et al. eds., 1996) (citing Australian Sports Drug Agency Act 1990 (Cth), s 6).

The ASDA is important because it provides an entity that is distinct from sporting organizations and yet devoted to PED testing. The ASDA is not responsible for promoting a particular sport and thus has no ulterior motive. Its only function is to drug test, not to promote athletes.⁹⁵ Thus, the ASDA's independent existence safeguards against international criticism that it is interested in hiding positive tests. The AOC is able to zealously pursue the best athletes in the world while the ASDA vigorously enforces Australia's drug policy.

Until recently there was no formal organization in the United States to assist the USOC in the enforcement of the IOC's PED policy.⁹⁶ Thus, USOC was burdened with dual roles: one as public relations manager to sports and the other as the drug police. In an effort to alleviate this problem, the USOC transferred responsibility for PED testing to a new independent agency called the U.S. Anti-Doping Agency (USADA) in October 2000.⁹⁷ Presently, the USADA claims to be "transparent" meaning it allows IFs and WADA to freely audit its testing processes.⁹⁸ The creation of the USADA is further proof that National Organizing Committees recognize that they cannot police their own athletes, but should delegate PED testing to an independent third party. This point was given further recognition in 2002 when the United States passed legislation that officially recognizing the USADA as the official anti-doping agency in the United States.⁹⁹

B. Willingness to Sanction Athletes for PED Violations

In addition to the importance of independent and transparent drug testing agencies, the commitment to the IOC PED policy should also be measured by an NOC's willingness to sanction its athletes for violations. The AOC and the USOC both require their athletes to comply with the IOC medical code, which contains the

95. *Id.*

96. While the White House and the ONDCP conduct studies and issue suggestions, their policy does not amount to legislation. See Philip Milburn, *The Form and Substance of Independence: An Insider's View* (Jan. 16, 1999) (transcript available at <http://www.law.duke.edu>) (speech at Duke Conference on Doping in Sport).

97. Dick Patrick, *IOC's Most Trying Test*, USA TODAY, Aug. 2, 2001, at 3C; John Meyer, *News Show Misses Better Story*, DENVER POST, Apr. 15, 2001 at C-16.

98. Meyer, *supra* note 97.

99. Treasury and General Government Appropriations Act 2002, Pub. L. No. 107-67, 115 Stat. 514.

IOC's PED policy.¹⁰⁰ Their approaches to sanctions, however, differ greatly.

The AOC's policy is more restrictive than the IOC requires or what other nations would even consider.¹⁰¹ Namely, the AOC requires their athletes to sign an agreement to return all "prize money, sponsorship and grant funds if they are later found to have used drugs."¹⁰² The USOC, on the other hand, has up to this point been reluctant to do the same.¹⁰³ The U.S. athlete-representative to the IOC criticized the AOC agreement as "completely unrealistic."¹⁰⁴ There was concern that athletes with multi-million dollar endorsement contracts would withdraw from the Olympics rather than jeopardize their contracts.¹⁰⁵ Either the U.S. representative is insinuating that most professional athletes are on PEDs, or he is alluding to the fact that under the AOC agreement any positive test creates a strict liability offense.¹⁰⁶

In any case, the position is insupportable. First, if most professionals are on PEDs, they should not be able to compete in the Games. Until the IOC makes the decision to legalize some or all PEDs, all competitors must comply with the IOC medical code whether they are professional or amateur athletes.

Second, even though strict liability policy has been overturned in many Western courts stemming from due process and fundamental rights concerns,¹⁰⁷ the IOC must at the very least adhere to a modified strict liability approach in order to force athletes and their NOCs to take responsibility for PED control.

100. OLYMPIC CHARTER ch. 4, R. 31, para. 2; See INTERNATIONAL OLYMPIC COMMITTEE EXECUTIVE BOARD, EXPLANATORY MEMORANDUM CONCERNING THE APPLICATION OF THE OLYMPIC ANTI-DOPING CODE (Dec. 9, 1999), available at http://www.olympic.org/ioc/e/org/medcom/medcom_antidopage_e.html.

101. AAP, *Payback Proposal Fails to Get Support*, SYDNEY MORNING HERALD, Feb. 5, 1999, at 9.

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.* "There is no way an athlete will compete if they have a \$15-million or 20-million-dollar endorsement contract" (Scott Ctvrtlik—U.S. Volleyball/IOC Athletes' committee). *Id.*

106. See Tony Buti, *AOC Athletes' Agreement for Sydney 2000: The Implications for the Athletes*, 22 UNIV. NEW S. WALES L. J. 746, 755-759 (1999).

107. See *id.* Buti argues that strict liability cannot be upheld under Australian law. *Id.* His argument is equally applicable to U.S. law, where due process and the notion of moral innocent will prevent the application of strict liability without some intervening equity. See 1 AARON N. WISE & BRUCE S. MEYER, *INTERNATIONAL SPORTS LAW AND BUSINESS* 235-251 (1997).

Why? A PED policy that requires intent as a prerequisite for guilt allows the athlete, the NOC and the sponsor to justify a positive PED test as invalid or unfair based on the athlete's subjective intent. The strict liability approach, however, automatically eliminates most claims of unfairness by shifting the burden of responsibility to the athlete. A positive test, by definition is cheating. The sponsor, who wants their product associated with a model athlete not cheating, is thereby encouraged to take immediate action to distance itself from the athlete or to clear the matter up. The threat of losing contract dollars is a self-policing mechanism causing athletes and NOCs to take a proactive approach in evaluating what athletes are ingesting and educating athletes about PEDs. The AOC's strict liability policy sends the message: If you take PEDs, you will pay.

Given that many nations, like Australia and the United States, will not accept a strict liability approach,¹⁰⁸ a modified strict liability approach would be the optimum solution. A modified strict liability approach would be defined as creating the presumption of a valid test through the observance of well-defined testing and adjudication procedures.¹⁰⁹ A positive test is then presumed valid unless the athlete can prove it is invalid. This compromise protects the right of the athlete to fairness and the goals of the IOC's PED policy. Even further, clearly defined procedures, to which all participating nations and sports bodies adhere would avoid complicated litigation that moves between sports arbitration commissions and national courts in a time consuming manner.

C. Well-Defined Procedures and Full Disclosure

Both the United States and Australia have instituted well-defined, albeit slightly different, procedures that overcome due process objections. In Australia, the ASDA can only invalidate positive tests in three instances: (1) the testing procedures related to the sealing of the container were not followed, (2) an accredited lab did not test the sample or (3) someone tampered with the

108. See WISE & MEYER, *supra* note 107; Fiona Blair, *Procedural Fairness in Doping Disputes*, 22 U. NEW S. WALES L.J. 885 (1999).

109. For a complete discussion of procedural fairness and PED testing see Blair, *supra* note 108.

sample.¹¹⁰ Barring these concerns, the ASDA publishes all positive drug tests on an anonymous basis whether the athlete is exonerated or not.¹¹¹

Traditionally, the USOC has not published drug-testing results or statistical information claiming this information was confidential.¹¹² As the result of intense international criticism before the 2000 Olympics, the USADA adopted procedures similar to those in Australia. Namely, an USADA panel reviews all positive tests for procedural problems with medicine, science or chain of custody.¹¹³ Once the procedure has been determined valid and any adjudication has been completed, the ASDA publishes the offending athlete's name in a quarterly publication.¹¹⁴

1. An illustration of how disclosure can foster better PED policy

Prior to the 2000 Games, the USOC sustained severe criticism when Wade Exum, director of anti-doping programs for the USOC, alleged that the USOC was not sufficiently sanctioning athletes who were using PEDs.¹¹⁵ He revealed that out of 5,355 tests conducted in 1999, 207 were positive, and only ten athletes were sanctioned.¹¹⁶ This low number may be explained by the fact that some drugs are restricted, but not prohibited.¹¹⁷ At the time there was no public drug testing record; thus, there was no way to substantiate the USOC's denial of the allegations.

Reacting to international pressures the USOC removed itself from the drug testing process. The USADA as an independent third party took over drug testing, and subsequently began publishing the identity of athletes who were convicted of or

110. The Honorable Justice Tricia Kavanagh, *The Doping Cases and the Need for the International Court of Arbitration for Sport (CAS)*, 22 U. NEW S. WALES L.J. 721, 726 (1999).

111. THE LAWS OF AUSTRALIA, *supra* note 94, at 36 (citing Australian Sports Drug Agency Act 1990 (Cth)).

112. Alan Abrahamson, *USOC Official Made Big Demand*, L.A. TIMES, Sept. 30, 2000, at U1.

113. *See id.*

114. Meyer, *supra* note 98; *See also* Press Release, United States Anti-Doping Agency, Sanctions Issued by U.S. Anti-Doping Agency (Dec. 18, 2001), available at <http://www.usantidoping.org>.

115. Alan Abrahamson & David Wharton, *Exum: 50% Avoid USOC Sanction*, L.A. TIMES, June 22, 2000, at D3.

116. *Id.*

117. OLYMPIC MOVEMENT ANTI-DOPING CODE, *supra* note 8, at Appendix A.

conceded to a positive drug test.¹¹⁸ The USADA's goal is to make the PED testing process above reproach by having a process that is "transparent" for international review.¹¹⁹

Even the new USADA policy has insufficient disclosure rules to enforce the IOC's drug policy. The ASDA disclosures are better for two reasons: (1) it avoids the privacy concerns associated with disclosing the name of a particular athlete and (2) provides complete statistical data on all positive drug tests without the delay of pending adjudication. While the USADA policy demonstrates a strong stance against convicted PED abusers, it is incomplete because it does not provide the international community with the complete picture.

2. Disclosure collects data for PED research

Disclosure of statistical information regarding PED use, such as the ASDA's National Register, is more advantageous than the USADA's disclosures because it allows for the compilation of research data. Part of the problem with PEDs is, even though estimations of PED use can be high,¹²⁰ the actual demographics of use are unknown.¹²¹ If the international community cannot gather information about how many and what types of athletes use PEDs then it is difficult to discern how to effectively implement changes to rules and testing programs.

Lacking information, the international community cannot effectively discipline PED offenders. There is no clear indication of which kinds of athletes are using and what kinds of drugs are being used. If PED use is purely to cheat, the international community will certainly want to punish or expel offending athletes. Currently, the IOC and civil authorities take this disciplinary approach, which provides for prohibition, stiff penalties and, in some countries, criminalization.¹²²

On the other hand, if PED use is more akin to a disease as Australian law contemplates, the IOC may want to rehabilitate athletes with medicinal treatment.¹²³ Some empirical evidence

118. Meyer, *supra* note 98; Press Release, *supra* note 114.

119. See Meyer, *supra* note 98.

120. Lesser, *supra* note 20.

121. Zorpette, *supra* note 10, at 17.

122. OLYMPIC MOVEMENT ANTI-DOPING CODE, *supra* note 8, at ch. 2, art. 3.

123. Cumiskey, *supra* note 25.

supports this view.¹²⁴ If true, the goal of any PED program should be to rehabilitate the athlete and assure athletes that they can compete cleanly and fairly against others doing the same.¹²⁵

It has been suggested that the current criminalization approach of the IOC and national governments “creates an us against them atmosphere in which the civil governments dictate athlete behavior via the ‘pee-police.’”¹²⁶ Without more demographic information, it is impossible to evaluate whether the international sports community’s approach is appropriate.

Along with their disciplinary uses, information and statistics about the types of athletes taking PEDs and what types of drugs they tested positive for would allow the IOC and NOCs to create financially efficient PED programs. PED testing could then target specific sports or substances. As mentioned previously, some PEDs are restricted, but not prohibited such as stimulants used to treat asthma.¹²⁷ These drugs do enhance performance, but are allowable for some athletes when there is an extreme health need.¹²⁸ Statistical data will help the IOC clarify if use of restricted drugs is really medically necessary or being used to end-run the anti-doping regulations. For instance, it is estimated that Nordic skiers have asthma, or claim to have asthma, at six to seven times the rate of the general population; that is 40-50% of skiers are using restricted asthma medications.¹²⁹ Ultimately, information is the only way to efficiently direct PED efforts ensuring that the right athletes and the right drugs are being tested and regulated.

While the United States and Australia have both embraced the notion of international review of PED testing through third party testing organizations, the United States has not committed to the IOC medical code to the same extent as Australia. The USOC and AOC’s differing approaches to the IOC medical code reflect their differing ideological attempts to eradicate the PED problem. The AOC seems to be interested in sharing information and

124. *Id.* The study is based on a presentation to the IOC Committee of the Harmonization of Methods and Measurements in Doping in Sport of a database of anti-doping regulations in thirty-four countries. *Id.* The presentation was summarized and analyzed in an article by the medical officer of the Olympic Counsel of Ireland. *Id.*

125. *Id.*

126. *Id.*

127. OLYMPIC MOVEMENT ANTI-DOPING CODE, *supra* note 8, at Appendix A.

128. *Id.*

129. Benedict Carey, *Olympic Rule Puts Spotlight on Asthma and Exercise*, L.A. TIMES, Feb. 4, 2002, at S1.

solving the PED problem at the international level. By sharing statistics about their athletes' PED tests and causing extreme financial consequences for PED-abusing athletes, the AOC is adding to the international effort to ban PEDs. The USOC, on the other hand, has not until recently been willing to subject itself to the same level of international scrutiny. The USADA continues to be unwilling to share statistical information on the demographics of PED testing, instead hiding behind the guise of due process. Even further, they have been unwilling to involve themselves to the same extent to financially sanction offending athletes. These actions lead to a compromised enforcement of the IOC's medical code.

VI. DISPUTING POSITIVE PED TESTS THROUGH ARBITRATION

Once an athlete tests positive for PEDs the overriding concerns are the speed and manner in which any dispute over the result will be resolved. Currently, in both the United States and Australia,¹³⁰ positive tests are referred back to the National Governing Body of the particular sport (NGB) for further action.¹³¹ Following the IF's rules, the NGB will immediately suspend the athlete from competition pending a resolution and provide the opportunity for a hearing.¹³² After the NGB renders a decision, it may be appealed to arbitration in both countries for a final and binding decision.¹³³

In the United States, appeals go to the American Arbitration Association (AAA)¹³⁴ and in Australia, the appeals go to the National Sports Dispute Centre (NSDC).¹³⁵ In addition to these

130. Historically in Australia, sports were viewed as a game and not a business. Therefore, Australians were reluctant for the courts to become involved in sporting disputes. Similarly, "it is generally accepted that the nature of sport itself demands that any dispute be resolved quickly, cheaply and with a minimum of fuss. . . [F]urther, it is also recognized that such disputes are best handled by those who know and love the game, rather than by a body of persons who do not have a 'feel' for the game." See *THE LAWS OF AUSTRALIA*, *supra* note 94, at 7.

131. See *id* at 17-24; Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C.S. § 220505 (Lexis 1999).

132. Blair, *supra* note 108, at 887.

133. See 36 U.S.C.S. § 220522(a)(4)(B); *THE LAWS OF AUSTRALIA*, *supra* note 94, at 33, 38.

134. See 36 U.S.C.S. § 220522(a)(4)(B).

135. See *THE LAWS OF AUSTRALIA*, *supra* note 94, at 31-34.

bodies, NGBs can also place a clause in their by-laws to allow appeals to go to the Court of Arbitration for Sport (CAS).¹³⁶

A. *The Arbitration Process Can Be Slow*

While the systems in the United States and Australia are well defined, in practice the systems can be slow.¹³⁷ If an athlete is barred from participating in her sport until the dispute is completely resolved, competitions may be forfeited based on erroneous results. The motivation behind this harsh policy “is to make international sport’s governance uniform and to protect the integrity of the event. . . . While admirable, such an aim often conflicts with athletes’ rights, as individuals, and their access to fundamental principles of natural justice.”¹³⁸ While the immediate punitive action preserves the integrity of the immediate competition (e.g. banning the athlete from competition until the issue is adjudicated), this action can also undermine the fairness the sport was trying to protect if the athlete is later found to be innocent.¹³⁹

Due to this balancing between athletes’ rights and the integrity of sport, arbitration decisions are not always final and binding¹⁴⁰ and can be challenged in national courts further delaying the process.¹⁴¹ Likewise, IFs often apply strict liability to drug offenses,¹⁴² and thereby do not recognize the decisions of the national arbitrators. Instead, they institute their own hearings.¹⁴³ The athlete is then faced with the possibility of conflicting decisions when the two bodies arrive at different results.¹⁴⁴ The athlete is effectively banned from competition for months while the decision is pending.

136. See *id.*; Kavanagh, *supra* note 110, at 735-739. CAS is the International Court of Arbitration for Sport. CAS is an appeals court where athletes can appeal after they have exhausted all attempts outlined by their IFs and NGBs. See Kavanagh, *supra* note 110.

137. See, e.g., WISE & MEYER, *supra* note 107, at 235-239.

138. Kavanagh, *supra* note 110, at 723.

139. For an interesting discussion of athletes’ natural rights see Kavanagh, *supra* note 110, at 723 and Blair, *supra* note 108, at 887.

140. See Milburn, *supra* note 96.

141. See WISE & MEYER, *supra* note 107, at 235-239.

142. See *id.* at 235.

143. See *id.* at 235-239.

144. See *id.* For example, Jessica Foschi, a U.S. swimmer, was caught between a decision of the AAA and that of FINA (Swimming IF). *Id.* FINA held Foschi strictly liable for the positive drug test and banned her from competition, whereas the AAA found the positive test to be inadvertent. *Id.*

B. U.S. and Australia Should Use CAS

While the United States and Australia have embraced arbitration, they need to further embrace CAS. In theory, arbitration in both countries is final, subject to objections on procedural grounds for errors at law.¹⁴⁵ The disagreement between courts on sanctions, however, eliminates the finality of a decision to the detriment of the athlete, who unnecessarily misses competitions, and the parties who pay for the multiple hearings. The move toward CAS is preferable because it "blend[s] . . . national and international institution into a single process of justice that avoids complexity."¹⁴⁶ CAS can eliminate the athlete's dilemma between national laws and IF sanctions and promote efficient and inexpensive resolution to doping disputes.¹⁴⁷

C. The Need for an International Treaty on PED Policy

If CAS is adopted, all affected parties must submit to its jurisdiction and it must have uniform PED sanctions. Currently, there is no agreement regarding appropriate sanctions for different PED violations.¹⁴⁸ Different countries and different sports apply different PED schemes.¹⁴⁹ To effectuate change, some have suggested an "International Performance Enhancing Drug Elimination Treaty."¹⁵⁰ This type of consensus, supported by an independent body such as CAS would allay the fears of the IFs and national governments thereby removing athletes from the contentious war between them.

VII. CONCLUSION

PEDs pose a complex problem for the Olympic movement and the world. They threaten the existence of the Games, the health of athletes and even the health of civilians. The IOC has set a strict PED policy banning many PEDs completely. The IOC,

145. THE LAWS OF AUSTRALIA, *supra* note 94, at 18-19; See 36 U.S.C.S. § 220529(d). AAA must abide by rules of due process and fundamental fairness; WISE & MEYER, *supra* note 107, at 235.

146. Kavanagh, *supra* note 110, at 744 (citing J.A. Nafziger, *International Sports Law as a Process for Resolving Disputes*, SPORT & LAW 31 (1995)).

147. *Id.* (citing David Grace, in C. Laird, *A Sporting Chance: Defending Cathy Watt's Right to Ride*, 8 L. INST. J. 8, 9 (1996)).

148. Jacobs & Samuels, *supra* note 56, at 584.

149. *Id.*

150. *Id.*

recognize the problem, there is no incentive for their athletes to abide by the IOC's rules because there is no penalty for disobeying the rules.

Similarly, NOCs must be responsible for policing PEDs in their own athletes. Like the IOC, NOCs have a narrow focus of producing the best athletes for the Olympic Games. This goal conflicts with their ability to enforce PED policy. In Australia, the conflict of interest is virtually eliminated because the ASDA tests for PEDs and the AOC advocates for its athletes, independently of each other. The commitment to PED policy is also highlighted by the AOCs willingness to fine their athletes for PED infractions. The USOC, until recently, did not have an independent body to test for PEDs, thus its reputation in the international community has been marred by accusations of cheating, which could easily have been prevented.

In addition, information on demographics of PED use needs to be public information. Publishing all positive PED tests, such as in the Australian National Register, gives valuable information about the types of athletes who use PEDs and why they are using them. In turn, this information allows for an effectively tailored PED policy that efficiently uses finances, targets the right drugs and applies the proper sanctions or medical treatments as appropriate.

Finally, arbitration for PEDs needs to be streamlined by an international agreement explaining how disputed PED results will be settled and what the penalties will be. Australia and the United States have very similar systems of arbitration in place, however, the arbitration decisions are irrelevant to the IFs. This concurrent jurisdiction wastes needless time and money leaving athletes in limbo with no final and binding decision. In order to facilitate efficient arbitration, CAS should become the exclusive body to settle PED disputes. This should be implemented through an international treaty on PEDs negotiated among all nations and international sports bodies, and should enumerate arbitration procedures, sanctions and enforcement.

While the Australians appear to have implemented a more efficient system to resolve PED infraction disputes, the United States is not far behind in emulating it. The IOC, however, can only be ultimately successful if their participating national governments, IFs and NOCs are complicit in an international PED policy. The specific policy is less important than consistency throughout the world. This ensures fairness and equality among all

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