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Author

Moston, Stephen, Engelberg, Associate Professor Terry, Skinner, James

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Investigative Interviewing and Anti-Doping Developments in Australia

Stephen Moston^{1,2*}, E. Terry Engelberg¹, and James Skinner¹

University of Canberra, Australia¹
Griffith University, Australia²

Abstract

Doping in sport is banned under a series of international and national rules. The detection of doping has traditionally been conducted through the analysis of urine and blood samples. This strategy is now widely recognised as having failed, with many doping athletes successfully evading detection. In early 2013 the Australian Crime Commission released a report (*Organised Crime and Drugs in Sport*) which highlighted the growing links between organised crime and sport. The immediate response from the Australian Government has been to introduce new investigative powers (including coerced testimony) that put sports doping into the serious crime category. This paper explores the opportunities for investigative interviewers to contribute to anti-doping efforts. It reviews some of the recent national and international legislation that govern anti-doping, highlighting the ways in which investigative interviewing has come to assume a key role in anti-doping efforts.

Keywords: *investigative interviewing; doping; anti-doping; drugs.*

Introduction

In Australia, sport is officially recognised as having an important social function and as a powerful cultural force (Australian Sports Commission, 2011) and protecting the integrity of sport is a national priority. Doping by athletes (defined below) is identified as a direct threat to the integrity of sport, and the Australian Sports Anti-Doping Authority (ASADA) is the national body that has been charged with preserving and protecting sport's value, 'not only for athletes, support persons and sporting organisations – but for all Australians' (ASADA, 2011).

The release of the Australian Crime Commission (ACC; 2013) report, *Organised Crime and*

***All correspondence to:**

Stephen Moston

University of Canberra

Australia

Email: stephen.moston@canberra.edu.au

Drugs in Sport, has highlighted the damage done by doping, and more importantly, the growing links between organised crime and sport:

The ACC has found, on the basis of a limited and focused examination of one component of the PIEDs [Performance and Image Enhancing Drugs] market, that the market has evolved significantly in recent years to include peptides and hormones. These substances, which are WADA [World Anti-Doping Agency]-prohibited, are being used by professional athletes in a number of sports in Australia, with widespread use Identified or suspected in a number of professional sporting codes. Organised crime has been found to have a tangible and expanding footprint in this market, and their activity is being facilitated by some coaches and support staff of elite athletes, who have orchestrated and/or condoned the use of prohibited substances and/or methods of administration (p. 36).

Australia is not alone in confronting such problems. Doping is a global activity. For example, the recent investigation of cyclist Lance Armstrong found that doping was common amongst most of the world's top cycling teams (United States Anti-Doping Agency, 2012).

What is Doping?

Doping is the occurrence of one or more of the eight anti-doping rule violations specified in World Anti-Doping Agency's (WADA) Code (WADA, 2009). This includes violations such as the presence of a prohibited substance or its metabolites or markers in an athlete's bodily specimen; and refusing, or failing without compelling justification, to submit to sample collection after notification; possession of prohibited substances and methods. Doping is not restricted to the use of performance enhancing drugs, it now includes other illicit ('recreational') drugs that are generally not performance enhancing (except in very specific circumstances) but are potentially a threat to health, or are seen as contrary to sporting values.

As set out in the Code, 'facts related to anti-doping rule violations may be established by any reliable means, including admissions' (WADA, 2009, p. 26). In practice, however, the detection of doping has primarily been carried out through analysis of athlete's urine or blood samples.

How Prevalent is Doping?

While the focus of anti-doping legislation and practice is the individual athlete, it is invariably the case that coaches, trainers, doctors and other 'athlete support personnel' are often involved in the instigation and maintenance of such behaviour. Support personnel can be sanctioned under WADA rules, but the focus for anti-doping legislation is almost totally focused on the athlete (for example, under current rules, if a doctor gives an athlete a banned substance, the athlete is still responsible for the offence of doping). A similar form of tunnel vision applies to detection, where the focus is the analysis of athletes' biological samples. This is clearly a short sighted strategy and may explain why anti-doping 'investigations' rarely ever detect doping. This problem can be illustrated by reference to WADA's official testing statistics.

In 2011, WADA laboratories analysed 243,193 samples (WADA, 2012). In 2,885 cases (1.2%) there were adverse analytical findings. Cases with adverse analytical findings are not to be confused with confirmed rule violations, since some athletes may have had therapeutic use exemptions. In addition, some rule violations are detected through other means. For example, in 2011 the sport with the largest number (108) of adverse analytical findings was football (soccer).

However, the total number of anti-doping rule violations for football during that period was 117 cases.

During the 2012 London Olympics, former WADA President Dick Pound acknowledged that the small number of athletes who are caught doping (which is typically less than 2% of all athletes), was an underestimation (Sports Illustrated, 2012). Asked to estimate the true incidence of doping, Pound said: "It's north of 10 and short of 90 [%], but it's more than people expect".

The CSI effect

One of the biggest criticisms of ASADA, and WADA, is that they have consistently failed to detect doping. This failure then means that anti-doping efforts have also failed to deter doping. There is certainly a considerable body of evidence to support such accusations: many doping athletes have successfully evaded detection for years, and in some cases, entire careers (Lance Armstrong, Marion Jones, etc.); and the numbers of doping athletes seems to be increasing rather than decreasing (note: this is a somewhat contentious point as it is very hard to measure the extent of doping).

One of the main reasons that anti-doping agencies have failed to detect doping is because they have not employed the full armoury of forensic investigative procedures. Instead, sports bodies have adopted an almost exclusively scientific (biological) approach to drug detection. This self-imposed restriction inevitably hinders the investigation of the true extent of drug use in sport.

It is a popular fallacy, known as the "CSI effect" (Goodman-Delahunty & Verbrugge, 2010) that most criminal investigations are solved through the use of scientifically verifiable evidence (such as fingerprints or DNA). In fact, the majority of cases are solved through evidence obtained during interviews with witnesses, or from suspects (confessions).

Competing solutions

There are currently two schools of thought on how to best deal with doping. The first solution is that we do away with the problem of doping by legalising it! This suggestion is driven by the apparent failures of anti-doping schemes, with advocates of legalisation essentially arguing that as doping cannot be stopped, then why bother trying? Allowing doping, it is argued, will 'level the playing field' and improve sporting contests by making athletes increasingly stronger and faster. Legalisation is typically couched in terms of a 'harm reduction' scheme, although the rationale for such a scheme is usually poorly articulated. For example, it is not entirely clear what 'harm' would be reduced by legalisation (Moston, Engelberg & Skinner, 2013). Given the widespread international commitment to anti-doping by most governments and international sporting bodies, such a proposal is highly unlikely to gain any credence beyond a small but vocal minority.

A second solution is that the world's anti-doping agencies should adopt broader investigative frameworks, drawing on the capabilities and skills of agencies such as police forces. This school of thought has already largely won the argument and governments and anti-doping agencies are now increasingly turning their attention to the possibilities of investigating doping through 'new' (to the agencies) methods. Consequently, there now exist considerable opportunities for investigative interviewers to aid in anti-doping efforts.

The new legislation

In Australia, anti-doping legislation is structured around the *Australian Sports Anti-Doping Authority Act 2006* (ASADA Act) and *Australian Sports Anti-Doping Regulations 2006* (ASADA

Regulations). According to the ACC (2013), doping in sport has now reached such endemic levels that in order to significantly address the problem, new extreme measures are now required. The new 'Australian Sports Anti-Doping Authority Amendment Bill 2013' was accompanied by an Explanatory Memorandum (Parliament of the Commonwealth of Australia, Senate, 2013; p.2), which states:

The changes introduced by the Bill will provide additional capabilities to ensure ASADA can meet the contemporary challenges faced in a changing anti-doping environment where analytical testing of athlete urine and blood samples is not exclusive in detecting the most sophisticated doping cases. Only through the application of investigative techniques and intelligence gathering, combined with an effective drug testing program, can an anti-doping agency hope to identify those athletes and athlete support personnel who choose to use prohibited performance enhancing substances and methods.

The new powers proposed in the Bill include specified persons being required to attend interviews with ASADA investigators. During the interview, the person being questioned will be required to cooperate, for example, by answering all questions. In short, they do not have a right to silence. In Australia police investigating *major crimes* may make use of such powers, but only in specific circumstances and with considerable administrative oversight (Maguire, 2009). Such steps are broadly in line with international trends, reflected in the WADA (2011) guidelines concerning the coordination of investigations between anti-doping agencies and other public agencies, most significantly, police forces. The guidelines state:

These new partnerships will allow Anti-Doping Organizations to take advantage of the investigative powers of those public authorities, including search and seizure, surveillance, and compulsion of witness testimony under penalties of perjury.... This means new investigative methods and techniques have to be deployed, and new partnerships have to be forged, particularly between the sports movement and public authorities engaged in the broader fight against doping in society. In many seminal anti-doping cases, very serious anti-doping rule violations were only uncovered because of the use of such powers by the public authorities. (WADA, 2011; p.1)

The guidelines then go on to argue that "cases based on longitudinal studies developed as part of an Athlete Biological Passport program – may be supplemented with non-analytical evidence" (p.6). The guidelines also state:

.... the sports movement must remain assiduous in developing further tools and mechanisms for investigating doping violations beyond the traditional drug-testing model. Just as is the case with the enforcement of most disciplinary rules and prohibitions outside the field of doping, so in the field of 'non-analytical violations' sports bodies must develop their own powers of inquiry and investigation, training their personnel in investigative techniques, in order to facilitate the gathering of information and evidence beyond the sample collection process itself.

Déjà vu (*all over again*)

The sporting world is thus about to undergo a series of significant changes. There will undoubtedly be heated debates about individual rights, the commercialisation of sport and the

role of sport in modern society. From the perspective of investigative interviewing, it is apparent that an entirely new field of opportunity has just opened up. Some of the investigative interviewing issues involved in anti-doping will have an extremely familiar sound: legislative powers to coerce testimony are of little use if the investigators do not ask the right questions (Dixon, 2009); investigators are frequently confident in their abilities to detect deception, but that confidence does not equate to competence (Yarmey, 2009); and investigators are prone to self-deception and without appropriate training, errors are easily made. These include false negatives, where guilty suspects fail to confess, and false positives, where innocent suspects confess (Gudjonsson & Pearse, 2011).

The scope for innovation in this new field can be illustrated by the work of the authors to develop the Forensic Anti-Doping Interview (FADI). The FADI draws on several models of interviewing, including the controversial Reid technique (see Adcock, 2011; Eastwood, 2011). Responses to a set of standardised questions are compared to normative data obtained from several thousand elite athletes (both doping and non-doping) and an assessment is made as to the likelihood of a person engaging in doping. The preliminary results suggest this tool can be an effective aid to anti-doping investigations.

Conclusion

While existing models of interviewing and operational practices may offer useful starting points, a word of caution should be added. The world of sport is quite unlike most other areas in which investigations are conducted: sporting clubs and the public are often willing to accept criminal behaviour by sports stars. Sporting clubs cocoon their star players from the consequences of their misconduct and when the problem caused by an athlete reaches an unacceptable level, there is invariably another club willing to take on the 'troubled' player, often at higher wages (Benedict, 2004). A further problem is that the solutions that are proposed to problems in sport are frequently narrowly focused and often quite naïve. Sports administrators are used to celebrating human achievements, and thereby rarely good at recognising and dealing with illegal or immoral conduct. Conversely, when a crisis arises solutions are sometimes extreme, ill-considered and done with public relations issues in mind, rather than investigative concerns.

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