

Confessions and Denials by Athletes in Anti-Doping Investigations

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Abstract

It is a popular maxim in anti-doping that the 'cheats are ahead of the testers'. Anti-doping authorities have attempted to strengthen their investigative frameworks through the introduction of coordinated investigations, typically involving the involvement of police investigators, or the use of police-like powers. Anti-doping investigations are thus increasingly coming to resemble police investigations, where issues such as intention and admissions are important aspects in the development of a case against an athlete and the extent of any sanctions. The present study examines the confession and denial rates amongst a sample of 78 Australian-based athletes accused of committing anti-doping rule violations. Almost two-thirds of the athletes confessed, but a third did not (despite the strong case against them). Confessions were most likely to occur when the discovery of doping followed detection by either police or customs officers, and was lowest when doping was identified by control testing. Confessions were also more common by male athletes, but did not differ by offence type (notably, performance enhancing vs. recreational drug use). Despite its apparent inevitability, coordinated investigations are unlikely to be the panacea that anti-doping authorities are expecting. There is thus an urgent need for sport managers to understand the implications of police involvement in anti-doping, so that many of the problems seen in police investigations, such as false confessions, can be avoided in the sporting world.

Keywords: Anti-doping, Australia, drugs, performance enhancing, deterrence

Confessions and Denials by Athletes in Anti-Doping Investigations

Until recently, the predominant method for detecting anti-doping rule violations by athletes had been through doping control testing, which typically consists of a biological analysis of an athlete's urine. These tests are most commonly conducted by national anti-doping organisations, such as the Australian Sports Anti-Doping Authority (ASADA), under rules set out by the World Anti-Doping Agency (WADA).

The longstanding reliance on such testing is now widely acknowledged to have failed (Pound, Ayotte, Parkinson, Pengilly, & Ryan, 2013). This failure, as both a strategy of detection (e.g., Badoud et al., 2011; Breyman, 2000) and deterrence (e.g., Bloodworth & McNamee, 2010; Moston, Engelberg, & Skinner, 2014; Overbye, Knudsen, & Pfister, 2013), has led to numerous calls for anti-doping legislation to be either relaxed, or abandoned altogether (e.g., Kayser & Broers, 2012; Kayser & Smith, 2008).

However, rather than heeding such advice and abandoning the 'war on doping', anti-doping investigations have instead moved away from a reliance on biological testing to the adoption of investigative procedures that involve the involvement of investigative bodies such as customs and police agencies (WADA, 2011). The actual degree of involvement varies considerably across countries. In some (e.g., Italy, Belgium), doping has been criminalised, with investigations conducted by police agencies. In France, criminal laws concerned with the trafficking of drugs can be used in anti-doping cases, and in Australia, legislation has been introduced to support anti-doping efforts that falls short of criminalisation, but grants police-like powers to anti-doping authorities.

It is this last development, the co-opting of police powers into anti-doping investigations, that provides the context for the current research. Anti-doping is entering a new phase where the powers of bodies such as the police are seen as necessary to breaking

CONFESSIONS AND DENIALS:

the eternal impasse, whereby the cheats are (always) ahead of the testers. However, as all moviegoers know, 'with great power, comes great responsibility'. The powers coveted by anti-doping authorities have a long history of misuse, and ironically, the *spirit of sport* (WADA, 2013) may be further corrupted by these new powers.

Anti-doping legislation in Australia

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 Australian Crime Commission (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 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).

CONFESSIONS AND DENIALS:

Such investigative innovations 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 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. (Appendix A2-4)

Training in investigative techniques

Anti-doping investigations are thus set to change considerably in the coming years.

While police investigative powers may appear to be a panacea for the current ailing investigative framework, few have actually considered the implications of such changes. Most obviously, how will the new investigative procedures avoid the numerous pitfalls that have plagued police investigations in the last few decades?

It is now widely recognised that police interviewing techniques have resulted in hundreds (Kassin et al., 2010), or more probably thousands (Huff, 2002), of cases in which innocent people have falsely confessed to having committed criminal offences. Many of these

CONFESSIONS AND DENIALS:

false confessions resulted in long custodial sentences, and in some cases executions (Radelet, Bedau, & Putnam, 1992).

While many false confessions are elicited through violent coercion, others have been elicited through subtler (and thus harder to detect) forms of psychological coercion. This includes a range of interviewing tactics and ploys designed to convince a suspect that their only logical course of action is to confess. For example, in the USA police are allowed to (falsely) tell a suspect they have been identified by witnesses, that their fingerprints have located at the scene of a crime, that material evidence (e.g., firearm) has been found, and that an accomplice has confessed (Leo, 2008).

Such deceptions are tolerated because of a widespread belief that an innocent person would not be affected by false evidence, and that judges and juries would be able to spot a false confession (Kassin, 2004). One of the reasons why observers generally fail to understand the impact of such ploys is that they place themselves in the shoes of the person under suspicion. The stress and sense of shock that might follow a false accusation are all too easily discounted ('I know I wouldn't confess'). In addition, deceptive ploys work most effectively when they are targeted on individuals with low intelligence, mental illness, or simply those whose memory might be unclear (perhaps because of alcohol or illicit drug use).

In many (mainly European) countries a growing realisation that such deceptions elicit false confessions, and that such confessions cannot be readily identified, has prompted major reforms to police training and investigative procedures (Bull & Milne, 2004; Milne, Shaw, & Bull, 2008). In such countries, gathering evidence to establish truth, now takes precedence over eliciting confessions (Williamson, Milne, & Savage, 2009). Police in Australia are beginning to implement such approaches, but the degree of implementation varies

CONFESSIONS AND DENIALS:

considerably by state, and many officers are yet to receive even basic training in interviewing skills (Hill & Moston, 2011).

Why do suspects confess?

In the United Kingdom, where by far the largest number of studies on confessions have been conducted, studies show that the percentage of suspects who confess during police interviews ranges from a low of 55% (Moston, Stephenson, & Williamson, 1992; Phillips & Brown, 1998) to a high of 62% (Baldwin, 1993).

The suspect's decision to confess during questioning by police is influenced by a range of factors, including the characteristics of the suspect (e.g., age, previous criminal history), the offence (e.g., type of offence, severity), and contextual factors (e.g., provision of legal advice, presence of support person). While each of these factors may have a bearing on whether or not a suspect confesses, by far the strongest single predictor of a confession is the strength of evidence against the suspect (a contextual factor). Moston et al. (1992) collected data on 1067 interviews with suspects conducted by Metropolitan Police officers, finding that when evidence against a suspect was classified as 'weak', confessions were made in only about 10% of cases, with 'moderately strong' evidence 36% confessed, and with 'strong' evidence 67% made confessions. Moston and Stephenson (1993) subsequently showed that direct physical evidence (e.g., being found in possession of stolen goods) against a suspect was the single most powerful form of evidence. When there was direct physical evidence, 75 per cent of suspects confessed.

Moston et al. (1992) suggested that the objective amount of evidence against a suspect is possibly of less importance than the suspect's perception of that evidence. If we adapt this principle to doping cases, this would mean that, if evidence is strong (such as a video recording of an athlete doping) but the athlete believes that it is weak (the athlete believes

CONFESSIONS AND DENIALS:

they had not been seen), a confession is probably unlikely. Conversely, if the evidence is weak but the athlete perceives it as strong, then a confession may be more likely. In sport, most confessions to doping are made either following detection, or after the athlete has retired and has an autobiography to sell (Thing & Ronglan, 2014).

Denials

Obviously not all police interviews with suspects end with a confession. Many suspects, some truthfully, some dishonestly, deny having committed an offence. The denial rate, which is not simply the inverse of the confession rate (since many suspects decline to respond to the accusation), is typically in the range of 35 to 42% (Moston & Stephenson, 2009). Denials can take many forms, but these can normally be classified into one of two broad typologies: passive and active (Moston & Stephenson, 2009). A passive denial is one in which the suspect denies the accusation but does not provide any exculpatory detail. An active denial does include exculpatory detail.

Passive denials, in the doping context, can take many forms, including: *Simple denial of charge* (e.g., 'No, I didn't take steroids'); *Denial of knowledge* (e.g., 'I don't know how that got in my sample'); and *Denial of motivation* (e.g., 'Golf is a skill sport, no drug will help you putt straight').

Active denials can also take many forms, including: *Denial of offence*, where the suspect actively argues that no offence was actually committed (e.g., 'I did not take the test because I felt unwell'); *Denial of interpretation*, where the suspect might claim that an innocent behaviour has been misinterpreted as a doping behaviour (e.g., 'I used some pharmacy cold and flu tablets'); and *Denial of causation*, where the suspect attempts to shift the blame onto another person (e.g., 'I accidentally drank a spiked soda').

CONFESSIONS AND DENIALS:

One of the reasons for a lack of consideration of intention in doping cases is that many guilty athletes accused of doping have falsely claimed that they were innocent (Anderson, 2011). Many of the excuses for doping detection verge on the comical, ranging from simple accidents through to elaborate conspiracies (the internet is a good source of the 'best doping excuses'). Rather than debate the merits of such dubious claims, authorities have repeatedly emphasised that an athlete is responsible for everything that enters his or her body (WADA, 2013). As WADA President John Fahey put it,

The simple fact is that anyone who has a prohibited substance in their system is a cheat. It is as simple as that. The only argument then comes as to what was the nature of how that prohibited substance got into the athlete's system. But you're a cheat, effectively, the moment you've got that substance in there. (Leicester, 2012)

This assumption creates one of the most contentious aspects of the current anti-doping framework: once a doping athlete has been identified, sanctions will be imposed, regardless of the athlete's motives (Reszel, 2012; Saoul, 2013). Athletes who commit accidental doping breaches, which might logically have had little to no performance enhancing benefit, will typically be sanctioned, in many cases as punitively as an athlete who systematically, and intentionally, doped (Reszel, 2012).

Such a stance differs quite markedly from criminal cases, where the issue of motive or intention (*mens rea*) is often central to determining whether an offence actually occurred, and also sentencing (Goldstein, Morse, & Packer, 2013; Zapf, Golding, & Roesch, 2006). Not surprisingly then, there is a growing body of anecdotal evidence to suggest that the both governments (Robertson, 2012) and the sporting community (Goold, 2013) are uncomfortable with a system that ignores intention.

CONFESSIONS AND DENIALS:

The present study

While the academic literature on anti-doping has expanded considerably in the last decade, there have been few attempts to consider how athletes are detected and their reactions to the resulting accusations. Furthermore, the few studies that do exist are largely framed in terms of the public relations strategies to either minimise reputational harm, or to restore a positive public image (e.g., Glantz, 2010; Haigh, 2008; Walsh & McAllister-Spooner, 2011).

To date, there have been few attempts to consider anti-doping as a forensic problem (e.g., Marclay, Mangin, Margot, & Saugy, 2013; Zurloni et al., 2014). In part, this may be because doping is a regulatory breach, rather than a criminal offence (barring the exceptions noted earlier in this paper). The purpose of this paper is to explore the reactions of athletes accused of doping as a forensic issue. Specifically, it presents the first ever attempt to quantify those reactions and to compare them to the response patterns of suspects in criminal investigations.

Method

Design

The current study examines the confession and denial strategies adopted by athletes accused of doping. All of the cases occurred in Australia, with the majority of those accused being Australian. Data is drawn from a variety of public sources, including the ASADA list of sanctioned athletes (ASADA, 2014) and media reports.

Under the WADA Code (2009; 2013), ASADA is required to publish details of sanctioned athletes (e.g., name, sport, type of anti-doping rule violation, and sanction) on its website for at least one year. Supplementary data on each sanctioned athlete was obtained from internet based searches. Supplementary data included response to the accusation (e.g.,

CONFESSIONS AND DENIALS:

confession, denial), additional details of the rule violation, and any verbatim comments attributed directly to the athletes (e.g., media releases, media interviews).

Sample

The sample included 78 cases in which Australian athletes were accused of doping. The majority (91%) were males. The main sports represented included rugby league, cycling, bodybuilding, weightlifting, Australian Football League, and boxing (see Table 1).

DRAFT

CONFESSIONS AND DENIALS:

Table 1: Offender demographics

	N	Percentage
Gender		
Male	71	91.0
Female	7	9.0
Sport		
AFL	6	7.7
Baseball	4	5.1
Basketball	2	2.6
Bodybuilding	9	11.5
Boxing	3	3.8
Cricket	1	1.3
Cycling	9	11.5
Equestrian	2	2.6
Kayaking	1	1.3
Motor sport	3	3.8
Muay Thai	1	1.3
Netball	1	1.3
Rugby league	16	20.5
Rugby Union	1	1.3
Shooting	1	1.3
Surf lifesaving	4	5.1
Soccer	2	2.6
Swimming	3	3.8
Triathlon	1	1.3
Weightlifting	7	9.0
Yachting	1	1.3

CONFESSIONS AND DENIALS:

Offences (anti-doping rule violations)

The majority of cases (almost three quarters) featured the use of banned performance enhancements, with almost a quarter involving the use of other illicit drugs. Most rule violations (83.3%) were detected by anti-doping testing, with customs officers (9.0%) and police officers (3.8%) also detecting some of the cases. Two rule violations involved a refusal to comply with testing (2.6%), and in one case an anti-doping investigation (conducted by ASADA) identified a violation (see Table 2).

Reactions

Almost two-thirds (64.1%) of the athletes made admissions, and a just over a third (35.9%) denied the accusation (see Table 2).

Table 2: Offence characteristics

	N	Percentage
Type of anti-doping rule violation		
Performance enhancement	56	71.8
Illicit drugs	19	24.4
Both performance enhancement and illicit drugs	1	1.3
Refusal to comply with testing	2	2.6
Method of discovery of doping violation		
Anti-doping testing	65	83.3
Customs officers	7	9.0
Police officers	3	3.8
Refusal to comply with testing	2	2.6
Anti-doping investigation	1	1.3
Reaction of athlete		
Admission	50	64.1
Denial	28	35.9

CONFESSIONS AND DENIALS:

Results

Reaction by gender

Males confessed in 67.6% of cases and denied in 32.4%. Confessions by females were less common, with only 28.6% confessing and 71.4% denying (see Table 3).

Reaction by sport

The small sample sizes for most sports make comparisons across sports difficult. However, there were some notable findings. The confession rates for the two sports with the largest numbers of athletes (rugby league and bodybuilding) were very high (91.8 and 88.9% respectively).

Reaction by offence type

The confession rates for accusations of using illicit drugs (68.4%) was slightly higher than for banned performance enhancements (64.3%) (see Table 3).

Reaction by method of discovery

The confession rates for the different methods of discovery showed some marked variations. The confession rate following discovery of an anti-doping rule violation through anti-doping testing (60.0%) was considerably lower than that for offences discovered by both customs officers (85.7% confessions) and police officers (100.0% confessions).

CONFESSIONS AND DENIALS:

Table 3: Reaction of athlete by gender, offence type and method of discovery

	Admission		Denial	
	N	%	N	%
Gender				
Male	48	67.6	23	32.4
Female	2	28.6	5	71.4
Offence type				
Banned performance enhancement	36	64.3	20	35.7
Illicit drugs	13	68.4	6	31.6
Both banned performance enhancement and illicit drugs	0	-	1	100.0
Refusal to comply with testing	1	50.0	1	50.0
Method of discovery of anti-doping rule violation				
Anti-doping testing	39	60.0	26	40.0
Customs officers	6	85.7	1	14.3
Police officers	3	100.0	0	-
Refusal to comply with testing	1	50.0	1	50.0
Anti-doping investigation	1	100.0	0	-

CONFESSIONS AND DENIALS:

The language of confessions

In some of the cases featured in the study the athletes offered detailed reactions to the accusation of doping. Many of these admissions contained explanations that were not obviously pre-scripted public relations statements. For example, weightlifter Christopher Rae described how his offence was detected.

I got home, and my Olympic campaign was over... I was devastated... sacrifices are easy to make when it all works out, when it doesn't.... I was lost... I didn't train, I drank alot, and smoked a LOT of weed. Cannabis is a banned substance, it isn't performance enhancing, but athletes are held to a higher degree than others. I had no intention of competing at the trials, why waste my time, and smoking weed helped me to let go of how angry I was... Two weeks from the trials, my coach wanted me to compete, I said 'NO' flat out, but not long after that, my parents also wanted me to compete. I told myself that it wasn't going to happen. Then came the pressure from SASI [South Australia Sports Institute], my friends, it was coming from everywhere. I agreed to compete, just to shut everyone up, but didn't change my routine. I thought the worst that could happen had already happened. I was wrong.... Of course at a comp of that nature, almost EVERYONE gets tested, and I was no exception. I tested positive for cannabis. I think it was almost 3 months before I got the letter with the results. I remember being shocked, looking back, I don't know why I was shocked...

Motorbike rider Anthony Gobert offered a similar admission, whereby his doping behaviour was triggered by a specific (negative) event.

When I got the sack from Erion Honda (US superbike team) for driving under the influence, I went back to Australia and I just partied pretty hard for about six to eight months. I hated the world, hated everybody, and I hated myself the most... It's a constant battle, and at the end of the day, I am only human, with normal human problems just like anybody else.

CONFESSIONS AND DENIALS:

Other athletes described how they had been using drugs over long periods of time. In such cases, factors such as the stress associated with being an elite athlete, or the need to disguise a psychological problem were cited as causative factors. Australian football league (AFL) player Ben Cousins said:

There would be a time and a place for speed, there would be a time and a place for ecstasy, cocaine was my drug of choice, no question, but Valium played a huge part in that and Xanax played a huge part in that.... I would train and f***ing train and obsess and play good footy and the thing that would get me through those tough moments, those tough days, ... was I knew at the end ... I was going to absolutely annihilate and launch into as much drugs as I could.... The unique thing about my situation was that I was applying that same obsession to football as I was with drugs. I loved to train, I loved everything about preparing to play footy. I wouldn't have butter on my toast, let alone have a beer (but) I would take drugs.

National rugby league (NRL) player Andrew Johns also made several statements about his own drug taking, which came to light after he was found by police to be carrying an ecstasy tablet. Following his admission to a long-time drug addiction, Johns was scathing of current anti-doping sanctions, and also the media who were complicit in keeping news of his drug taking a secret.

There is no doubt now that there is a culture of drug-taking in all football codes. Players have been protected, drug intelligence ignored, a winning culture thought to be more worthy than a drug-free one. The media that says it is forensic in its scrutiny of rugby league did not report that Johns, the game's greatest player, was either drunk or drugged most of his playing career. Wink, wink, nudge, nudge journalism. Time now to abandon these soft drug policies. Three strikes in the AFL is three too many. It is absurd that clubs do the testing in the NRL. Who will they target test in the finals? Over the past two years the AFL had 25 players test positive. All of them have been cuddled and pampered. Had all 25 players been suspended for 12 matches there might be no drug problem at all now.... West Coast preferred the 2006 flag to cracking down on drug use.

Other athletes simply accepted their detection and made public apologies. In such cases the ulterior motive may be genuine remorse, but is quite possibly also a pragmatic realisation that an apology is a safe public relations strategy that might pave the way to a later resumption of a playing career. For example, swimmer Andrew Burn said:

CONFESSIONS AND DENIALS:

I would like to say that I received a fair hearing by Australian Swimming and I accept the sanction that has been handed down. I just want the next two months to go as quickly as possible so I can rejoin the sport I love so much and I want to apologise to my family and friends and the swimming community in general for any embarrassment I have caused them.

AFL player Dean Cadawallader also offered a similar apology, coupled with an appeal to be allowed to return to playing at the end of his suspension.

I would like to acknowledge my actions and express my regret for the disappointment I've caused to a lot of people, I'd like to apologise to my family, my teammates, the East Perth Football Club and its staff, its members and our supporters. There is no excuse. I've made a huge mistake and I'm going to pay a heavy price for that mistake. I only hope that I can come back to the game in the future and make a positive contribution. I'd like to thank the club and my family for their support and once again apologise for the hurt that I have caused them.

The language of denials

Many of the athletes denied doping. Whilst even doping athletes are surprised to be accused of doping (e.g., weightlifter Christopher Rae), the reaction of athletes who deny doping reveals a profound sense of shock, often involving detailed descriptions of physical reactions. For example, swimmer Ian Thorpe offered a 'denial of knowledge' when he said:

I have never cheated and I pride myself on my record. I have complete confidence that all the medical and scientific evidence will establish that I am innocent. I was physically shaking in my room when I heard the news, it is gut wrenching, it really is. I believe there will be an innocent explanation for it all. My doctor is preparing a list of all the medicines I might have taken at that time. That's one of the saddest things, that my accomplishments in the sport are being questioned.

In a similar vein, triathlete Rebekah Keat described her emotional and physical reactions to being accused of doping, although Keat's denial strategy ('denial of interpretation') differed from that of Thorpe.

I was devastated, completely gutted. I dropped the phone and had to get my flat mate to take the call as I collapsed on the floor. I'd been tested 12 times before over the years and every time my results had come back negative. I knew I hadn't consciously done anything wrong. I didn't even know what nandrolone was I knew that the only thing I'd changed on race day in Busselton was the introduction of salt tablets called Endurolytes on recommendation from my sponsor, Hammer

CONFESSIONS AND DENIALS:

Nutrition, to ensure I didn't cramp during the event. I was really annoyed. I'd pretty much been labelled a drug cheat no different to anyone who knowingly injects steroids into themselves. Not only that, because I'd contested the matter unsuccessfully, I had costs of tens of thousands of dollars awarded against me. This whole thing destroyed me, emotionally and financially.

Overall, the testimony of athletes accused of doping suggests that there are potential trigger points (such as an unexpectedly poor performance, or being fired) for short-term doping. Long-term doping may be best explained by deeper psychological problems that are probably apparent to many of those who are in contact with the athlete, but are ignored as long as they do not impact on competitive performances. The denials also suggest the desperation, and futility, of contesting an accusation.

Discussion

The current study shows that almost two-thirds of athletes accused of doping offences admitted their offences. Confessions varied by gender, males were more likely to confess than females. They also varied by method of discovery, whereby confessions were more common when accusations were made by customs officers and police officers. Confessions following discovery by anti-doping testing were made in 60% of cases. There were some variations by sport, but small sample sizes made comparisons problematic. There was only a limited effect of offence type on confessions, with 64.3% confessions to accusations of banned performance enhancement use, and 68.4% for illicit drug use.

The overall confession rate of 64.1% is slightly higher than that seen in studies of police interviews, but this is not surprising given that most of the doping cases featured in this study would logically be classified as having 'strong evidence'. In such cases a confession rate of approximately two-thirds is to be expected (Moston & Engelberg, 2011).

Denials were also seen at a rate that was comparable to police interviews with

CONFESSIONS AND DENIALS:

criminal suspects. Given that in each of these cases there was 'strong' evidence against the suspect (typically an adverse biological test result), it is possible that some of these denials were false. While some of the accused athletes may have been innocent of intentionally doping, the current system of sanctions offers inconsistent and limited encouragement for denials. In a system that barely tolerates excuses and rewards admissions, the high denial rate is clearly a concern. It may be that athletes are either not receiving adequate legal representation, or that the system simply does not comprehend or acknowledge the possibility of actual innocence. The current encourages acquiescence, in that a confession (even in the absence of intention) is likely to be rewarded with a reduced sanction. Faced with an accusation of doping, even an innocent athlete, may be best advised to admit their offence.

The value of confessions

Confession evidence, however it is obtained, is widely recognised as a prosecutor's most potent weapon, so much so that its introduction makes other aspects of a criminal trial superfluous (McCormick, 1972). This is explicitly recognised in the WADA Code where it is stated that 'Facts related to anti-doping rule violations may be established by any reliable means, including admissions' (WADA, 2013; p.25). The Code further states (Article 10.6.2) that if admissions are made in the absence of any other evidence (e.g., prior to anti-doping control testing), then sanctions may be reduced. This rule is explained in a Comment in the Code (WADA, 2013; p.68),

This Article is intended to apply when an Athlete or other Person comes forward and admits to an anti-doping rule violation in circumstances where no Anti-Doping Organization is aware that an anti-doping rule violation might have been committed. It is not intended to apply to circumstances where the admission occurs after the Athlete or other Person believes he or she is about to be caught. The amount by which Ineligibility is reduced should be based on the likelihood that the Athlete or other Person would have been caught had he or she not come forward voluntarily.

CONFESSIONS AND DENIALS:

The new Code explicitly encourages athletes to make admissions once they have been confronted with an anti-doping rule violation (Article 10.11.12) where a ‘timely admission’ (p. 73) may result in a reduced sanction. The new Code also encourages athletes identified as doping to act as informants, for example, by identifying other doping athletes or suppliers.

Article 10.6.1 defines the incentives for providing substantial assistance:

WADA may agree to suspensions of the period of Ineligibility and other Consequences for Substantial Assistance greater than those otherwise provided in this Article, or even no period of Ineligibility, and/or no return of prize money or payment of fines or costs (WADA, 2013; p.67).

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

From 2015, under the new Code, doping athletes may be even able to evade sanctions entirely, if they provide ‘substantial assistance’. This reinforces the significance of the changes to anti-doping investigations, where admissions and testimony will become increasingly common tools. Anti-doping will thus move even closer to a police investigative framework. 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

CONFESSIONS AND DENIALS:

are solved through evidence obtained during interviews with witnesses, or from suspects in the form of confessions (Horvath & Meesig, 1996).

Given the inevitability of coordinated anti-doping investigations and the increased involvement of police officers, there is likely to be a need to develop policy concerning which police powers are acceptable in anti-doping cases. This is likely to be a highly contentious process as police investigative procedures vary considerably by country, and in some countries, also by state. Consider for example, the possibility of a typical US state where the recording of interviews with suspects is not required (Kassin et al., 2010), and the use of deception is permitted. In a doping investigation an athlete suspected of doping might be falsely told that:

1. A coach has testified that they saw the athlete doping,
2. The athlete's fingerprints have been found on a bottle containing a banned substance,
3. Doping substances have been found in the athlete's locker, and
4. The athlete's teammate has confessed to doping.

During such an interview, an athlete who vaguely recalls having been given 'headache pills' by a colleague, may start to suspect that the pills could have been banned drugs, and thus voluntarily confess to an offence that never actually occurred. While such a scenario might seem far-fetched to members of the sporting community, the forensic literature contains several hundred documented cases of such events, typically involving extremely serious criminal acts where the consequences of confession were catastrophic (Gudjonsson, 2003; Kassin, 2008).

Implications for anti-doping management and policy

Current anti-doping policy encourages admissions. A prompt admission following detection, a behaviour that does not suggest remorse, will typically result in a reduced

CONFESSIONS AND DENIALS:

sanction. A denial, no matter how credible, will still leave the athlete labelled a cheat, and probably sanctioned as punitively as if they had deliberately doped. Reszel (2012; p.808) provocatively described the situation as 'guilty until proven innocent, and then still guilty'. Such a system will inevitably result in the coercion of false admissions to doping and will ultimately prove to be highly damaging to the integrity of sport. Furthermore, this system is not aligned with the policing and criminal justice systems in most countries, and is clearly not aligned with a sense of natural justice. Investigative procedures have been co-opted with little regard for their actual application in doping investigations. A desire to be seen as being tough on doping dominates policy development.

Despite the strong incentives to make admissions, and the limited potential reward for adopting a denial strategy, a large number of athletes do not admit their involvement in doping. Current policy fails to recognise innocence, a situation which will inevitably present long term problems for both anti-doping and sport itself. As the number of genuinely accidental doping cases increases, punishments are likely to become increasingly severe, ostensibly to deter such accidents from happening. Increasing the severity of deterrents is not an effective strategy. An extensive body of criminological research, including studies of the impact of the death penalty (Chan & Oxley, 2004), have overwhelmingly concluded that deterrents are largely ineffective (Pratt, Cullen, Blevins, Daigle, & Madensen, 2006).

While the current system is in place, a series of procedural changes might alleviate some of the psychological problems faced by athletes who have accidentally doped. One step might be to change the way in which athletes are notified of violations. Following accusations of doping, both Ian Thorpe and Rebekah Keat were at home when they found out about the accusations against them and both experienced great distress. Some athletes involved in doping cases have committed suicide, and there are known links between steroid

CONFESSIONS AND DENIALS:

use and suicidal behaviours (Hoff, 2012). A simple procedural change whereby athletes are informed of violations in a sporting environment (e.g., the home of their sporting organisation, or team), might reduce the impact of the accusation through the provision of expert legal advice, or even counselling.

It is often assumed (though rarely proven) that athletes are more prone to criminality than non-athletes and as such, following an accusation of doping, there is likely to be a presumption of guilt rather than innocence. In the absence of any consideration of intention (or innocence), all violations are to be punished as a deterrent to other potential offenders. Such a strategy clearly does not work. Furthermore, given that the rationale for anti-doping is to protect the spirit of sport, the impact of adopting an anti-doping strategy that is so at odds with the principles of most criminal justice systems (e.g., innocent until proven guilty), stands little chance of winning genuine support. Clearly, the current policy is not sustainable and despite some short term victories, in the form of detecting new doping cases, the long term prospects are not encouraging. Anti-doping authorities would be advised to examine the mission statements of the police services that they wish to co-opt, where a search for the truth and justice is typically valued more highly than a closed case. Sports managers will also need to prepare for the inevitability of false accusations against their players, and a strategy to address the apparent impossibility of defending an innocent athlete.

Conclusion

Doping by athletes has been identified as one of the most significant threats to the integrity of sport. The failure of control testing to deter and detect doping has prompted a series of sweeping changes to anti-doping policy, much of which owes more to political expediency rather than empirical evidence, or expert opinion. For example, there were

CONFESSIONS AND DENIALS:

(almost literally) last minute changes to the 2015 edition of the Code concerning increased punishments for non-recreational drug use, when expert opinion had suggested increased leniency. The anti-doping world is thus undergoing a series of significant changes. These changes are likely to be unwanted, and resistance is inevitable. For example, in the United States the Baseball Players' Union has requested that anti-doping investigations consider the issue of intent, so that accidental users might be treated more leniently than intentional users (Goold, 2013). In Australia, prior to interviews with ASADA investigators, players from Essendon Australian Football Club (Warner, 2013) were given what can best be described as counter-interrogation training (Shepherd, 2007).

A number of other problems are to be anticipated: 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 (Kassin, Dror, & Kukucka, 2013). Such problems have the capacity to cause significant damage, including *miscarriages of justice* (Kassin et al., 2010), a term which is highly likely to feature in future anti-doping investigations.

In short, coordinated investigations are unlikely to be the solution that anti-doping authorities are hoping for. The potential scope for error, and thereby damage, is considerable. The almost reckless speed and draconian steps taken against doping may inadvertently bolster the calls to abolish anti-doping controls, rather than ending them.

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