

CHEATING IN PROFESSIONAL SPORTS AND THE CRIMINAL JUSTICE SYSTEM

Matt Hlinak

I.	Introduction	19
II.	Prior Prosecutions for Professional Sports Cheating	20
III.	Ethical and Public Policy Issues.....	23
IV.	Articulating A Prosecutorial Standard	25
V.	Conclusion.....	26

I. Introduction

During a 2009 bass-fishing tournament on Lake Ray Hubbard in Texas, professional fisherman Bobby Ross turned in a remarkable fish. It was not remarkable for its size, as he'd hoped, but for the fact that it immediately sank to the bottom of the holding tank. After tournament officials noticed a suspicious bulge in the fish's belly, they called Ross over, who revealed a one-pound weight he'd inserted into the fish's mouth. He was promptly disqualified from the tournament, missing out on his opportunity to win a \$55,000 bass-fishing boat.¹

They take their bass-fishing seriously down in Texas. Following an investigation by the Texas Parks and Wildlife Department, Ross was charged with attempted theft,² under the theory that he'd tried to steal the prize boat from the rightful winner by cheating in the tournament. In the words of prosecutor Kenda Culpepper, "this case was about a \$55,000 bass boat not, not a ten-pound fish."³ Ross pleaded guilty in April of 2010 and received a sentence of fifteen days in jail, five years' probation and a five-year suspension of his fishing license.⁴

This case demonstrates a rare, but not novel,⁵ approach to dealing with cheating in professional sports. Professional athletes who cheat seek not only a competitive advantage, but a financial one as well.⁶ Compensation in professional sports is directly tied to performance, and those athletes who violate the rules to improve their performance attempt to increase their compensation at the expense of their rule-abiding competitors.

* Assistant Provost for Continuing Studies and Special Initiatives at Dominican University in River Forest, Illinois.

¹ Mike Cox, *Game Warden Probe Nets Guilty Plea in Bass Tourney Cheating Try*, San Angelo Standard-Times, (Apr. 10, 2010, 3:54 PM), available at <http://www.gosanangelo.com/news/2010/apr/14/game-warden-probe-nets-guilty-plea-bass-tourney-ch/>

² Tex. Penal Code Ann. § 15.01 (2011); Tex. Penal Code Ann. § 31.03(e)(5) (2011).

³ Cox, *supra* note 1.

⁴ *Id.*

⁵ See *infra* Part II.

⁶ Doriane Lambelet Coleman & James E. Coleman Jr., *The Problem of Doping*, 57 DUKE L.J. 1743, 1783 (2008).

But is the criminal justice system really the proper venue for policing the rules of professional sports? This paper will attempt to answer that question. Part I will begin with a look at relevant precedents. Part II will analyze the ethical and public policy concerns at issue. Part III will conclude with proposed guidelines for prosecutors dealing with cheating in professional sports.

II. PRIOR PROSECUTIONS FOR PROFESSIONAL SPORTS CHEATING

The use of the criminal justice system to enforce sports rules dates back to the ancient Olympic Games. Athletes who transgressed against the spirit of the Games were subject to flogging—a punishment normally reserved for slaves—and severe monetary fines.⁷ Modern prosecutors have pursued convictions against cheating in professional sports under a number of different statutes.

The most high-profile criminal investigation of the modern era centered on the Bay Area Laboratory Co-Operative (BALCO), a company alleged to have provided performance-enhancing drugs (PEDs) to a number of top athletes.⁸ Two BALCO executives were convicted of drug and money laundering charges,⁹ but the investigation expanded to include a number of famous athletes. Olympic track star Marion Jones pleaded guilty to obstruction of justice and received a six-month prison sentence for lying to investigators about her PED use.¹⁰ Barry Bonds, who holds the Major League Baseball single-season and career homerun records, was convicted of obstruction of justice for allegedly testifying falsely before a grand jury looking into the BALCO case.¹¹ In a similar case, pitcher Roger Clemens faces perjury charges for allegedly lying to Congress about his PED use.¹²

⁷ A. Jerome Dees, *Bring Back the Crowd? How Governing Bodies for Sports Should Provide Victims of Athletic Doping a Better Remedy*, 9 FL. COASTAL L. REV. 179, 181-82 (Winter 2008), citing Moses I. Finley & H.W. Pleket, *THE OLYMPIC GAMES: THE FIRST THOUSAND YEARS* (1976); Stephen G. Miller, *ARETE: GREEK SPORTS FROM ANCIENT SOURCES* (2d & expanded ed. 1991); Judith Swaddling, *THE ANCIENT OLYMPIC GAMES* (1st ed. 1999).

⁸ This case has received considerable attention from legal scholars. See, e.g., Coleman & Coleman, *supra* note 6; Dionne L. Koller, *From Medal to Morality: Sportive Nationalism and the Problem of Doping in Sports*, 19 MARQ. SPORTS L. REV. 91 (2008); Shayna M. Sigman, *Are We All Dopes? A Behavioral Law and Economics Approach to Legal Regulation of Doping in Sports*, 19 MARQ. SPORTS L. REV. 125 (2008); Joshua H. Whitman, Note, *Winning at All Costs: Using Law & Economics to Determine the Proper Role of Government in Regulating the Use of Performance-Enhancing Drugs in Professional Sports*, 2008 U. ILL. L. REV. 459; Darryl C. Wilson, “Let Them Do Drugs”—A Commentary on the Random Efforts at Shot Blocking in the Sports Drug Game, 8 FL. COASTAL REV. 53 (2006).

⁹ Associated Press, *BALCO Founder Come Released from Prison*, ESPN.com (Mar. 31, 2006, 3:54 PM), <http://sports.espn.go.com/espn/news/story?id=2389940>.

¹⁰ *Six-month Jail Sentence for Jones*, BBC NEWS (Jan. 11, 2008, 7:10 PM) <http://news.bbc.co.uk/2/hi/americas/7182969.stm>; see also Coleman & Coleman, *supra* note 6, at 1765; Koller, *supra* note 8, at 91-92.

¹¹ The jury failed to reach a verdict on three other counts. Associated Press, *Prosecutors Deciding Whether to Try Bonds Again*, SI.com (Apr. 14, 2011, 11:54 AM) <http://sportsillustrated.cnn.com/2011/baseball/mlb/04/14/feds.mull.next.move.bonds.ap/index.html>.

¹² Clemens first trial ended in a mistrial, but prosecutors plan to proceed again. Associated Press, *Clemens Likely to Go on Trial Again*, FOX SPORTS (Jul. 24, 2011, 9:29 PM) <http://msn.foxsports.com/mlb/story/Experts-says-Roger-Clemens-likely-to-face-trial-for-perjury-again-072411>, see also *Deposition of William Roger Clemens, The Mitchell Report: Hearings on the Illegal Use of Steroids in Major League Baseball Before the House Oversight and Government Reform Comm.*, 110th Cong. (Feb. 5, 2008, 9:34 AM) <http://graphics.nytimes.com/packages/pdf/sports/clemensdeposition.pdf>.

The key issue in these three cases is that prosecutors have gone after athletes for lying about cheating, not the cheating itself. Perjury¹³ and obstruction of justice¹⁴ have long been considered criminal acts. It breaks no new legal ground for the government to go after individuals alleged to have made false statements in connection with a criminal investigation or legislative hearings.

On the international level, a couple of law enforcement operations have made BALCO-scale headlines. During the 2006 Winter Olympics, Italian “paramilitary police” raided the hotels of members of the Austrian ski team based on rumors of doping.¹⁵ Although subsequent investigations revealed some incriminating evidence, no criminal charges were pursued.¹⁶ The interesting element of this case is that it involved police from one state investigating athletes visiting from another. Although there is no evidence of police misconduct, there is always the risk that a home country might use selective enforcement of drug laws to eliminate or distract its competition. A few months after the Winter Games, Spanish drug enforcement agents raided the homes of members of an alleged PED-peddling ring as part of *Operación Puerto*.¹⁷ Several professional cyclists, tennis players and soccer players were implicated in the scandal, although none were convicted.¹⁸

The great American sporting scandal of the last century was the “Black Sox” scandal, during which members of the Chicago White Sox baseball team were alleged to have thrown the 1919 World Series in exchange for bribes.¹⁹ Eight players were indicted, under the charge that they “did unlawfully, willfully, fraudulently, wickedly, corruptly, wrongfully and maliciously combine, conspire, confederate and agree together and with divers other persons ... with the fraudulent and malicious intent wrongfully and wickedly to obtain from diverse persons ... lawful money of the United States of America.”²⁰ One of the injured parties mentioned in the indictment was teammate John “Shano” Collins, who was out the additional \$1,784 in compensation he’d have received had the White Sox won the World Series.²¹ Despite confessions from three of the players,²² all eight were acquitted in a trial widely believed to have been as fixed as the 1919 World Series.²³ Kenesaw Mountain Landis, a former federal judge and the newly-anointed first commissioner of baseball, famously shrugged off the acquittals:

Regardless of the verdict of juries, no player who throws a ballgame, no player that undertakes or promises to throw a ballgame, no player that sits in conference with a bunch of crooked players

¹³ 79 U.S.C. § 1621 (2011). *See also* 2 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 99-103 (18th London ed. 1832).

¹⁴ 18 U.S.C. § 1503 (2011).

¹⁵ Wilson, *supra* note 8, at 81.

¹⁶ *Id.* at n131, citing Associated Press, *Officials Reveal More on Austrian Drug Scandal*, MSNBC.com (Feb. 21, 2006, 12:51PM) <http://nbcsports.msnbc.com/id/11471586/>.

¹⁷ Dees, *supra* note 8, at 194-95; Sigman, *supra* note 8, at 174-75.

¹⁸ Hedwig Kröner, *Operación Puerto: Case Closed*, CYCLING NEWS (Dec. 11, 2009, 1:42 PM) <http://www.cyclingnews.com/news/operacion-puerto-case-closed>.

¹⁹ *See* Eliot Asinof, EIGHT MEN OUT: THE BLACK SOX AND THE 1919 WORLD SERIES (1963); Eugene Carney, BURYING THE BLACK SOX (2007); Donald Gropman, SAY IT AIN’T SO, JOE!: THE TRUE STORY OF SHOELESS JOE JACKSON (1995); and Victor Luhrs, THE GREAT BASEBALL MYSTERY (1966).

²⁰ *Indictments in People of Illinois v Cicotte* (Mar. 1921)

<http://www.law.umkc.edu/faculty/projects/ftrials/blacksox/indictpartic.html>.

²¹ *Id.*

²² *See Grand Jury Testimony of Joe Jackson in the Matter of the Investigation of the Alleged Baseball Scandal* (Sep. 28, 1920) <http://www.law.umkc.edu/faculty/projects/ftrials/blacksox/shoelessjoe.pdf>.

²³ Asinof, *supra* note 19, at 289-91.

and gamblers where the ways and means of throwing a game are discussed and does not promptly tell his club about it, will ever play professional baseball.²⁴

All eight were banned for life.

The Black Sox scandal is interesting for two reasons. First, the accused players did not “cheat” in the conventional sense of trying to obtain an unfair advantage over their opponents. Quite the contrary, the Black Sox were accused of dishonestly conceding their advantage. In this way, the case is different from all of the others discussed in this article. The second interesting factor, however, is of particular relevance. The Black Sox indictment specifically referenced the financial injury caused to an innocent athlete, Shano Collins, by his teammates’ dishonesty. If criminal sanctions are to be an appropriate remedy for violating sports rules, the government needs to show that they amount to more than victimless crimes.

Another interesting line of cases deals with physical contact that exceeds levels permitted by the rules. Not surprisingly, these cases primarily involve ice hockey, a fast-paced contact sport that actually tolerates fighting to a certain extent and in which each player is armed with a stick.²⁵ In 1975, Dave Forbes was charged with aggravated assault by use of a dangerous weapon after he struck Henry Boucha in the eye with the butt of his stick and then repeatedly smashed Boucha’s face into the ice, causing permanent injuries.²⁶ Nine of twelve jurors voted to convict Forbes, but a mistrial was declared when the jury failed to reach a unanimous verdict; the charges were subsequently dropped.²⁷ The first National Hockey League player to be convicted for on-ice behavior was Dino Ciccarelli, who spent one day in a Toronto jail for twice clubbing Toronto Maple Leaf Luke Richardson in the head with his stick.²⁸ As with the Italian raid during the 2006 Olympics, the Ciccarelli case raised the possibility that a visiting athlete might be more likely to come under criminal investigation than a member of the home team.²⁹

A couple of commentators have also considered novel approaches to dealing with cheating in professional sports using the criminal justice system. Samuel Horowitz examined the possibility of using the Economic Espionage Act (EEA) of 1996,³⁰ which criminalizes theft of trade secrets, to punish the New England Patriots for videotaping the coaches of the New York Jets as they relayed play-calling signals in a 2007 game in violation of league rules.³¹ Horowitz argued that the actions taken by Patriots staff likely violated the provisions of the EEA, but concluded that the matter was better left to the National Football League than the criminal justice system.³² Sarah Heisler argues that professional sports

²⁴ *Statement of Commissioner Landis* (Aug. 4, 1921)

<http://www.law.umkc.edu/faculty/projects/ftrials/blacksox/commissionerdec.html>.

²⁵ See Diane V. White, *Sports Violence as Criminal Assault: Development of the Doctrine by Canadian Courts*, 1986 DUKE L.J. 1030 (1986).

²⁶ C. Antoinette Clarke, *Law and Order on the Courts: The Application of Criminal Liability for Intentional Fouls During Sporting Events*, 32 ARIZ. ST. L.J. 1149, 1179-80 (2000).

²⁷ *Id.*

²⁸ *Id.* Richardson was wearing a helmet and was uninjured. Austin Murphy, *North Star on Ice*, SPORTS ILLUSTRATED (Sept. 5, 1988)

<http://sportsillustrated.cnn.com/vault/article/magazine/MAG1067721/index.htm>.

²⁹ This concern was perhaps ameliorated by the fact that Ciccarelli was an Ontario native. See *Dino Ciccarelli*, NHL.com, at <http://www.nhl.com/ice/player.htm?id=8446063> (n.d.).

³⁰ 18 U.S.C. §§ 1831-39 (2011).

³¹ Samuel J. Horowitz, *If You Ain’t Cheating You Ain’t Trying: “Spygate” and the Legal Implications of Trying Too Hard*, 17 TEX. INTELL. PROP. L.J. 305 (2009).

³² *Id.* at 322-31.

leagues currently have insufficient incentives to lead the fight against doping.³³ She recommends instead a law mirrored on Sarbanes-Oxley,³⁴ which would hold team and league officials personally liable for PED abuse by their athletes.³⁵

III. ETHICAL AND PUBLIC POLICY ISSUES

The first question to ask is whether violations of sports rules are properly a matter of government concern,³⁶ particularly where criminal sanctions are being considered. Aside from the Black Sox prosecution, government officials showed little interest in sports cheating, especially doping, for most of the Twentieth Century.³⁷ Amphetamines have been deemed a controlled substance since 1970,³⁸ although this likely has more to do with their abuse by recreational users than by athletes. The first real sports-related federal criminal legislation was the Anabolic Steroid Control Act of 1990, which made the nonmedical possession and use of anabolic steroids illegal for the first time.³⁹ The definition of “steroid” was expanded in 2004 to include supplements like androstenedione (“Andro”).⁴⁰ Aside from the inclusion of PEDs in drug laws, however, the federal government has played at best a supporting role in combatting doping, particularly with respect to professional athletes.⁴¹

There are four main arguments in favor of an expanded role for the federal government in keeping sports clean: “the need to protect (1) teenagers and children, (2) athletes, (3) fans as consumers, and (4) the integrity of sports.”⁴² The first of these arguments focuses on the potential connection between doping by professional athletes and drug use by the young people who idolize them. The second argument holds that the competitive nature of professional sports causes “cognitive biases” that make athletes unable to properly consider their own best interest when it comes to doping.⁴³ Under the third argument, the key issue is whether sports fans expect to see fair competition, and are thereby cheated when athletes cheat.⁴⁴ The “integrity of sports” argument is based on the idea that “there is a need to protect sports as its own entity...as though it were a person itself.”⁴⁵ Shayna Sigman has rephrased this final argument in interesting

³³ Sarah R. Heisler, Note, *Steroid Regulation in Professional Sports: Sarbanes-Oxley as a Guide*, 27 CARDOZO ARTS & ENT. L.J. 199 (2009).

³⁴ Pub. L. No. 107-204, 116 Stat. 745 (codified in various sections of 15, 18, 28 and 29 U.S.C.)(2011).

³⁵ Heisler, *supra* note 33, at 223-30.

³⁶ See Coleman & Coleman, *supra* note 6, at 1746.

³⁷ See Koller, *supra* note 8, at 106-12.

³⁸ Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-513, 84 Stat. 1236 (codified as amended throughout 21 U.S.C.)(2011); Sigman, *supra* note 8, at 172.

³⁹ Pub. L. No. 101-647, 104 Stat. 4789 (codified as amended throughout 21 U.S.C.)(2011). See also Sigman, *supra* note 8, at 172-73; Wilson, *supra* note 8, at 68.

⁴⁰ Anabolic Steroid Control Act of 2004, Pub. L. No. 108-358, 118 Stat. 1661 (codified as amended at 21 U.S.C. §§ 801-02, 811 (2011)). See also Sigman, *supra* note 8, at 173; Wilson, *supra* note 8, at 65.

⁴¹ See Koller, *supra* note 8, at 99-112.

⁴² Sigman, *supra* note 8, at 178.

⁴³ *Id.* See also Lewis Kurlantzick, *Is There a Steroids Problem? The Problematic Character of the Case for Regulation*, 40 NEW ENG. L. REV. 789, 791-92 (2006); Whitman *supra* note 8, at 496-98.

⁴⁴ Sigman, *supra* note 8, at 180.

⁴⁵ *Id.*

philosophical terms: “our beliefs about what is humanly possible, expected and even desired for our athletic elite are now a tainted mess, and that this influences our appreciation for the human body and spirit, as well as how we view ourselves and our own relative performance.”⁴⁶

Another argument suggests that the immediate victims of sports cheating are not children, the cheaters, fans, or the sport itself, but rather the cheaters’ competitors. In the professional context in particular, athletes who cheat to win are taking money away from their opponents.⁴⁷ The harm or potential harm to other athletes was an explicit factor articulated by prosecutors in the Bobby Ross and Black Sox cases. When athletes are able to get away with cheating, their competitors are often faced with the choice of leveling the playing field by cheating themselves, or retiring from high-level competition.⁴⁸

Likewise there are four main arguments against government intervention into sports cheating, all of which are couched in libertarian⁴⁹ terms:

(1) adults should be free to ingest the substances they wish to ingest without government interference; (2) government involvement in drug testing violates privacy rights; (3) government interference usurps the existence and effectiveness of private ordering within groups; and (4) fans as consumers may prefer to see enhanced performances, even if they are drug-induced.⁵⁰

The first argument is a standard libertarian rejection of paternalistic government regulations designed to protect individuals from themselves. The second argument holds that drug testing, “an invasive process,” properly triggers Fourth Amendment protections when the government is involved.⁵¹ Some commentators have criticized the “quasi-governmental status” of the United States Anti-Doping Agency, which is a private agency that nevertheless works very closely with the federal government.⁵² Under the third argument, the question is whether sports leagues are not in a better position to police themselves than the government.⁵³ The final argument is that fans are more interested in seeing peak athletic performances than clean competition, which explains why there has been little market pressure applied to professional sports leagues to eliminate doping.⁵⁴ The classic example was the 1998 homerun race between Mark McGwire of the St. Louis Cardinals and Sammy Sosa of the Chicago Cubs, which resulted in both men

⁴⁶ *Id.* at 130. See also Michael J. Sandel, THE CASE AGAINST PERFECTION: ETHICS IN THE AGE OF GENETIC ENGINEERING 86 (2007); Coleman & Coleman, *supra* note 6, at 1780.

⁴⁷ Coleman & Coleman, *supra* note 6, at 1783.

⁴⁸ See Michael Shermer, *The Doping Dilemma: Game Theory Helps to Explain the Pervasive Abuse of Drugs in Cycling, Baseball and Other Sports*, SCI. AM. (Mar. 31, 2008) <http://www.scientificamerican.com/article.cfm?id=the-doping-dilemma>.

⁴⁹ But see Andrew M. Holowchak, “Artesim” and Pharmacological Ergogenic Aids in Sport: Taking a Shot at the Use of Steroids, 27 J. PHILO. SPORT 35 (2000) (arguing against doping on the libertarian grounds that PED use causes negative externalities to other athletes).

⁵⁰ Sigman, *supra* note 8, at 180.

⁵¹ *Id.* at 182. See Tiffany D. Lipscomb, *Can Congress Squeeze the “Juice” Out of Professional Sports? The Constitutionality of Congressional Intervention into Professional Sports’ Steroid Controversy*, 69 OHIO ST. L. J. 303 (2008).

⁵² Koller *supra* note 8, at 112-21; Sigman, *supra* note 8, at 182-83.

⁵³ See Horovitz, *supra* note 31, at 327-31.

⁵⁴ Wilson, *supra* note 8, at 55. “The world of competitive sports is built on fantasy and to believe in a level playing field is to believe the world is flat.”

shattering the 37-year-old single-season record held by Roger Maris. Fans were far more concerned with the number of homeruns hit than how these two men managed to hit so many.⁵⁵

Another important argument against criminal sanctions for sports cheaters is that certain types of cheating are so widespread as to make selective prosecution⁵⁶ fundamentally unfair.⁵⁷ For example, Michael Shermer has used game theory to show that doping is a rational response by athletes to the doping of their competitors.⁵⁸ A key insight made by Shermer is that the pressure to use PEDs is most keenly felt by athletes who are just trying to make the team, not necessarily the superstars chasing records. Individual athletes, under this view, cannot be expected to make the “right” choices because the system in which they are competing has been too thoroughly corrupted.⁵⁹

IV. ARTICULATING A PROSECUTORIAL STANDARD

As has been shown, prosecutors have gone after professional athletes in connection with cheating infrequently in the past. This should continue to be the case. Athletes who cheat face very real penalties from their sports’ governing bodies. Criminal prosecution should be reserved for truly exceptional situations. One such situation would be where a compelling interest outside of sports is implicated, such as the prosecutions of Barry Bonds, Roger Clemens and Marion Jones for their alleged false statements in connection with criminal and legislative investigations. Society has a sufficiently-compelling interest in the integrity of judicial and legislative fact-finding to justify the use of criminal sanctions against professional athletes accused of cheating.

Another appropriate use of the criminal justice system would include cases in which the conduct of the athlete goes well beyond the norms for the sport. The unsuccessful Dave Forbes prosecution would meet this standard because the level of brutality displayed and injuries received by the victim far exceeded what is customary in hockey. Bobby Ross’s use of a lead weight to beef up his bass similarly violates the norms of his sport. This raises the obvious question of whether doping truly falls outside the norms of professional sports. Sadly, the answer at present is “no.”

This does not mean that professional athletes should get a free exemption from federal drug laws, but rather that law enforcement should be hesitant to specifically target athletes under a misguided hope of cleaning up sports through the criminal justice system. Since PED use by professional athletes is so widespread, basic concepts of fairness should give prosecutors pause before pursuing individual athletes. The Italian police raid on the Austrian ski team at the 2006 Winter Olympics is a classic example of overzealous law enforcement activity and selective prosecution. Law enforcement should be particularly leery about investigating visiting athletes, which can create the impression of a “home-field advantage.”

The final factor that should be considered is the extent to which the cheating resulted in a legally-cognizable injury to a readily-identified victim. Children who idolize athletes and the “integrity of the game” do not meet this standard. In the criminal battery case against Dave Forbes, the victim was clearly Henry Boucha. In the Black Sox case, Shano Collins suffered an easily-calculated economic loss as a

⁵⁵ Richard A. Posner, *In Defense of Prometheus: Some Ethical, Economic, and Regulatory Issues of Sports Doping*, 57 DUKE L.J. 1725, 1734-35 (2008); Sigman, *supra* note 8, at 194-95.

⁵⁶ See Koller *supra* note 8, at 121-23. It has been argued that black athletes are more likely to face criminal charges than their white counterparts.

⁵⁷ Wilson, *supra* note 8, at 67.

⁵⁸ Shermer, *supra* note 48. See also Koller *supra* note 8, at 92-94; Posner, *supra* note 55, at 1736.

⁵⁹ Koller *supra* note 8, at 124. See also Clarke, *supra* note 26, at 1152 (“To premise criminal liability on behavior that is an accepted norm in the relevant society—the society of athletes and coaches—counters a fundamental precept of criminal law; only the blameworthy should be punished.”)

result of his teammates' dishonesty. In doping cases, however, it is more difficult to identify a victim, since it is likely that a number of the cheater's competitors are cheating themselves.

V. CONCLUSION

In conclusion, cheating is probably as old as competition, and governments have a long tradition of haphazardly interfering with the governing bodies of individual sports by means of the criminal justice system. In order to establish a more predictable and equitable standard for the criminalization of cheating in professional sports, law enforcement should follow some basic principles. First, the government should examine whether societal interests outside of sports are implicated in the case. Second, in the interest of fairness, the government should weigh the extent to which the cheater's behavior violates the norms of the sport, and exercise caution when considering charges against athletes representing foreign jurisdictions. Finally, the government should determine whether the cheating resulted in a real injury to a real person. Since these factors are unlikely to be met in the vast majority of cases, prosecutors should avoid taking it upon themselves to clean up professional sports.