

THE DUKE CONFERENCE ON DOPING

**Duke Law
Center for Sports Law & Policy
May 7-8, 1999**

CONTENTS

Conference Concept

Preliminary Report of Task Force

Task Force and Committed Participants

Conference Program

Committed Participants and Working Groups

Working Group Agendas

Final Conference Report:

The Necessary Components of an Anti-Doping Agency or Program

CONFERENCE CONCEPT

There is growing and substantial evidence that individuals across the spectrum of athletic competition – including children, collegians, Olympic performers and traditional professionals – are using drugs to enhance their training potential and ultimately, their chance of achieving competitive and financial success. The recent, highly-publicized drug busts at the Tour de France, the suspensions of Olympians Michelle Smith de Bruin, Randy Barnes and Dennis Mitchell, Mark McGwire's use of androstenedione and reports that sales of that substance surged as a result of his achievements are but the prominent tip of the iceberg.

The issue of drug use by athletes thus transcends the relatively narrow interests of single organizations. For example, the IOC and its constituent organizations, including the USOC, primarily are concerned with defining what constitutes illegal drug use in Olympic competition, funding the programs necessary to implement their elite drug control programs, and the impact of their efforts on the image of the Olympic Movement and its fund-raising capabilities. On the other hand, the larger domestic and international society is concerned with the impact of drug use among elite athletes on its ability to protect the health, ethics and expectations of children, on the social significance and value of sport that is drug-ridden, and on assuring the protection of individual rights including the right to work, the right to due process of law, and the right to privacy.

The Duke University School of Law, in conjunction with its Center for Sports Law and Policy, will host a working conference in two parts, beginning on January 16, 1999, and reconvening on May 7-8, 1999, to address in an independent and comprehensive matter these broader societal concerns, and to provide an agenda for organizations that wish effectively to tackle the issue of drugs in sport. The conference will include individuals spanning a spectrum of society, including persons and groups interested by the issue of drugs in sport. Specifically, Duke will invite both independent experts in the relevant fields of law, ethics, sociology, education, medicine, and athletics, and members of the affected sports organizations, including athletes and officials, and their corporate sponsors, to participate in a focused discussion of the problem of doping in sport. Special emphasis will be placed on (1) independence and the structure that independent governance of drug testing programs might take; (2) the science of doping and doping control; and (3) the legal concerns of accused athletes and governing organizations in maintaining effective doping control. In the course of the deliberations, current proposals for action pending before the United States and International Olympic Committees will be discussed. Although the conference will be by invitation only, the complete work of the participants will be open to the press, and all reports and papers presented or developed at the conference will be available to the public.

PRELIMINARY REPORT OF TASK FORCE

On Saturday, January 16, 1999, a task force composed of Olympic Gold Medalists Edwin Moses and Donna de Varona, leaders of American and Canadian sport organizations, physicians, scientists, educators, and lawyers meeting under the auspices of the Duke University Law School's Center for Sports Law and Policy concluded that there is an urgent need for true independence in sports drug testing programs. The task force also concluded that credible drug testing programs must reflect the prevailing ethic that using performance enhancing drugs is cheating, and that such programs must be transparent, based in peer-reviewed science and properly recognize the athlete's right to due process.

The group was motivated by a shared concern that the use of performance enhancing drugs and the failure -- despite many positive efforts -- of international and national governing bodies to develop and enforce a comprehensive anti-doping policy threatens the credibility and future of sport. The task force hopes that its conclusions will influence the development and implementation of new doping control policies both domestic and international. In particular, the group hopes that its conclusions will be considered by participants and observers of the Anti-Doping Summit that is to be convened by the International Olympic Committee in early February in Lausanne, Switzerland.

The task force reached consensus on a number of important issues.

- The group concluded that doping is a significant problem that threatens to undermine the fundamental nature of sport and the ethical and physical well-being of children who may wish to participate in sport. In this latter regard, the group agreed that whether or not sport figures want to be role models, the publicity surrounding their behavior influences the choices and conduct of children; therefore, elite athletes have to be governed in fact, not just rhetorically, by the principles that underlie fair competition.
- The group concluded that for any solution to be effective, and so that all relevant procedures are uniform and harmonized, the problem of doping has to be dealt with comprehensively, on the national level for purely domestic sports, and on the international level for sports conducted in that arena. With regard to Olympic sports, the task force concluded that in the absence of effective international leadership, credible initiatives at the national level are to be applauded.
- The group concluded that doping must be defined to include substances and methods that permit an athlete to gain an unfair advantage in competition. A definition that is limited only to such substances and methods that are harmful to

the health of the athlete would be contrary to the spirit of sport and fair play and would render moot any legitimate effort to control doping.

- The group concluded that to be credible, an anti-doping program had to be truly independent of and external to the federations that govern international and national sports. In this respect, the group agreed that an independent and external anti-doping program would permit the sports governing organizations properly to return their energies and resources to the positive aspects of the development of their sports and athletes.
- The group concluded that an effective anti-doping effort had to be both ethically and scientifically based. The group concluded that a scientific basis for doping control is essential and requires validation by peer reviewed research. The science of doping is a moving target and a successful program must contemplate its evolution with careful research. The group also concluded that, apart from the question of scientific research, an effective and intelligent program must also ensure that existing means of doping control that have been shown to be effective are properly implemented.
- The group agreed that, in addition to an independent anti-doping effort, there also is substantial need for educational and other value-drive programs that emphasize the positive aspects of drug-free competition.

Much of the focus of the discussion this weekend concerned the overriding need for the creation of an anti-doping entity that is external to and independent of the authorities that govern sport. Many of these authorities have made substantial and good faith efforts to address the problem of doping, some of which have had relative success. However, the lack of adequate funding and inherent conflicts of interest that plague these authorities make it practically impossible for them to administer fair and effective drug control programs. It was emphasized that this externalization and independence must be real, not rhetorical. Indeed, the scope of the independence contemplated by the group was complete: The new entity should be charged with:

- determining what constitutes doping;
- overseeing and coordinating the objective and peer-reviewed scientific research necessary to establish and enforce anti-doping rules;
- and establishing an adjudicatory system that protects the rights of athletes as well as the public's interest in fair competition.

The consensus of the task force was that the establishment of such an independent authority is crucial to the survival and credibility of an international sporting community that has

failed adequately to come to terms with the doping problem. It was also the consensus of the task force that to succeed in the first instance, the new entity has to include among its founders representatives of the stakeholders in the enterprise, namely athletes, sponsors and constituent organizations that currently govern sport; however, the governance and decision-making authority of the entity must not be capable of being compromised in any respect by the participation of such representatives.

The participants also concluded that once this independent entity is established, it has to develop doping rules that are based on peer-reviewed science, rather than speculation and rumor, as well as uniform standards and procedures to protect athletes' rights and govern the adjudication of doping disputes.

With respect to the scientific issues implicated by doping, the task force discussed extensively the special problem of inappropriate use of normal bodily substances including rEPO and testosterone, and agreed on the need for peer-reviewed research that would identify those exogenous substances that should be considered doping, the circumstances in which those substances should be banned, and the relevant base lines for endogenous substances for male, female, older and adolescent athletes, where gender or age are scientifically relevant. The need to include scientific experts from a range of disciplines in the research effort, to make transparent the existing closed-society of doping experts, and to conduct research pertaining specifically to women and children was emphasized. There was consensus on the need for universally accepted, uniform standards for the appointment and review of independent laboratories used in the enforcement of anti-doping policies.

Finally, the task force concluded that governments and sponsors who financially support the anti-doping efforts of international and national sports need to ensure that their money is being used to fund such truly independent, credible, and publicly transparent programs. Likewise, the group agreed on the need for the pharmaceutical industry to assist in the international effort to prevent and detect the abuse of their products.

The task force will hold a two-day conference in May to discuss specific proposals for an independent anti-doping effort consistent with the consensus reached this weekend. The conference also will be sponsored by the Duke University Center for Sports Law and Policy.

Present at the task force meeting and subscribing to the consensus points set out in this release were two-time Olympic Gold Medalists Edwin Moses and Donna de Varona; Andrew Pipe, M.D., Director of the Canadian Centre for Ethics in Sport; Craig Masback, CEO of USA Track & Field; Philip Milburn, the COO of USA Cycling; Jill Pilgrim, Senior Counsel of USA Track & Field; Steve Roush from USA Swimming; Dr. Evie Dennis, former Superintendent of the Denver Public Schools and a Member of the USOC's Task Force on Doping; Jerry Diehl of

the National Federation of High School Athletic Associations; Gary Wadler, M.D. of the Women's Sports Foundation and NYU School of Medicine; Richard Clark, M.D. of GlaxoWellcome and the Duke University Medical Center; Professor John Hoberman of the University of Texas; the freelance journalist Jim Ferstle; Professor Jim Coleman and Doriane Lambelet Coleman of the Duke University School of Law; Professor Paul Haagen, Co-Director of the Center for Sports Law and Policy at Duke; and Bernhard Welten, an LLM Candidate at the Duke Law School and a Swiss lawyer specializing in international and Olympic sports law. Gene Cherry from Reuters and the Raleigh News and Observer was also present.

The DUKE UNIVERSITY SCHOOL OF LAW
in conjunction with its CENTER FOR SPORTS LAW AND POLICY presents the

Duke Conference on Drugs in Sport

January 16, 1999 – Task Force Meeting

May 7-8, 1999 – Plenary Session

Task Force and Committed Participants

Dr. Richard V. Clark is the current President of the American Society of Andrology, the Clinical and Medical Supervisor of the division of Metabolic and Urogenital Diseases at Glaxo Wellcome Research and Development, and an Associate Consulting Professor in the Divisions of Endocrinology, Metabolism and Nutrition and Reproductive Gynecology at the Duke University Medical Center. He has been on the Executive Council of the American Society of Andrology from 1995 to the present. Among many professional affiliations and responsibilities, Dr. Clark is a Member of the Women in clinical Trails Advisory Committee at Glaxo Wellcome Research & Development, as well as of the American College of Physicians, the American Federation for Clinical Research, the American Society for Reproductive Medicine, and the Endocrine Society. His principal teaching responsibilities have been in the area of endocrinology, and he has authored numerous studies in that field and in andrology, including particularly on the subjects of endogenous hormones in males and females. Dr. Clark also is an Ad Hoc Reviewer for numerous scientific journals, including the *American Journal of Medicine*, *Biology of Reproduction*, *Endocrinology*, *Fertility and Sterility*, *Journal of Andrology*, *Journal of Clinical Endocrinology and Metabolism*, and the *International Journal of Andrology*. Dr. Clark received his B.A. degree from Occidental College in 1967, his M.A. in 1970 from Duke University, and his M.D. and his Ph.D. from the University of Washington in 1977.

Doriane Lambelet Coleman teaches law at the Duke University School of Law in Durham, North Carolina. She competed both domestically and internationally in the sport of track and field throughout college and until 1992. In that period, she earned honors in the 800 meters as a national collegiate indoor champion (1982) and was a two-time Swiss national champion. As a practicing attorney at the Washington, D.C. law firm of Wilmer, Cutler & Pickering, she became legal counsel to the Athletes Advisory Committee of The Athletics Congress (now USA Track & Field). In that capacity, beginning in 1988, and together with Olympians Edwin Moses and Harvey Glance, Ms. Coleman helped to conceive the random, out-of-competition drug testing program for the sport. Together with her husband, Jim Coleman, she also authored the appellate procedures under which drug cases would be adjudicated at USA Track & Field. Following this effort, she became co-counsel in the federation's prosecution of world record holders Butch Reynolds and Randy Barnes, both of whom were accused of violating the drug rules. Ms. Coleman has commented on the international sports organizations' treatment of the drug issue in the *New York Times*, and has acted as consultant for AMGEN, the United States manufacturer of recombinant erythropoietin (EPO), on its Athlete Education Advisory Board. Currently she

serves as co-counsel to Mary Decker Slaney in her fight against charges by USA Track and Field and the International Amateur Athletic Federation that she used endogenous hormones to enhance her performance in 1996. She graduated with distinction from Cornell University in 1982, and from the Georgetown University School of Law in 1988. At Duke, Ms. Coleman teaches courses in Family and Children's Law, Torts, and International Sports Law. Her writing is principally in the areas of constitutional law and multiculturalism, with a special emphasis on how legal pluralism affects women and children.

Professor James E. Coleman, Jr. teaches law at the Duke University School of Law. He also is Chair-Elect of the American Bar Association's Section on Individual Rights and Responsibilities, and a Federal Mediator specializing in employment disputes, including employment discrimination. Prior to entering the academy, Professor Coleman was for many years a partner in the Washington, D.C. law firm of Wilmer, Cutler & Pickering, specializing in commercial litigation. In that capacity and together with his wife, Doriane Lambelet Coleman, he authored the appellate procedures under which drug cases would be adjudicated at USA Track & Field. Following this effort, Professor Coleman became co-counsel in the federation's prosecution of world record holders Butch Reynolds and Randy Barnes, both of whom were accused of violating the drug rules. Together with Doriane Coleman, he also has commented on the international sports organizations' treatment of the drug issue in the *New York Times*, and has represented athletes accused of violating the drug policies of the National Football League and the International Triathlon Federation. Currently he serves as co-counsel to Mary Decker Slaney in her fight against charges by USA Track and Field and the International Amateur Athletic Federation that she used endogenous hormones to enhance her performance in 1996. Professor Coleman graduated from Harvard College in 1970, where he was a high jumper, and from Columbia University Law School in 1974. At Duke, he teaches courses in Ethics, Criminal Law, Employment Discrimination, and a Seminar on the Death Penalty.

Dr. Evie G. Dennis, a specialist in childhood asthma and previously the Superintendent of the Denver Public Schools, currently serves on the United States Olympic Committee's Task Force on Doping. Her principal area of concern in this respect is the question of externalization: whether and how best to make independent and thus to lend the necessary integrity to the USOC's drug testing programs. Dr. Dennis also is a Member of the Board of Trustees for the U.S. Sports Academy and of USA Track and Field, Inc., and is a Delegate to the International Amateur Athletic Federation. Throughout Dr. Dennis's illustrious career as an educator, she has volunteered for numerous foundations, committees and associations since 1965, many of which relate to children and sports. She has been recognized and honored by numerous groups for her many contributions in these areas; among those awards were the International Olympic Committee's Olympic Order (1992) and the Congressional Gold Medal with the U.S. Olympic Team (1980). From 1959 until 1966, Dr. Dennis worked on asthma research at the Children's Asthma Research Institute and Hospital, Jewish National Home for Asthmatic Children in Denver. Dr. Dennis is the author of several papers and articles regarding public education and asthma. She received her Ed.D. from Nova University in 1976, her M.A. from University of Colorado in 1971 and her B.S. from St. Louis University in 1953.

Donna de Varona is a two-time Olympic Gold Medalist in swimming (400 meter-freestyle and 400-meter relay) and former multiple world record-holder. Perhaps the most widely-recognized swimmer in the United States, Ms. de Varona has focused her post-Olympic career in the areas of sports broadcasting and women's sport. Specifically with regard to the latter, Ms. de Varona was a Founder and the first President the Women's Sports Foundation, and currently serves as Trustee to that organization. She also currently serves as the Chair of the 1999 FIFA Women's World Cup Organizing Committee. A vocal and effective advocate for Title IX legislation, Ms. de Varona served on two Presidential Commissions related to women and sport: President Ford's Commission on Olympic Sport that led to the Amateur Sports Act, and President Carter's Women's Advisory Committee. She also has spent five terms on the President's Council on Physical Fitness and Sports. Ms. de Varona's athletic performances and her subsequent work have earned her numerous awards and accolades, including induction into the International Swimming Hall of Fame and the International Women's Sports Hall of Fame; she is also a three-time Sullivan Award nominee. Ms. de Varona's career in broadcasting has been equally illustrious: She began her work in this area in 1965, juggling roles as a studio host, reporter, co-host and analyst during many of ABC Sports' most significant events: In all, she has covered ten Olympic Games and received an Emmy Award for producing and covering the story of a Special Olympian during the 1991 Special Olympic Games. She is a graduate of UCLA with a degree in political science.

Jerry L. Diehl is Assistant Director of the Federation of State High School Associations (NFHS) and a Member of the Joint Commission on Sports Medicine and Science. Among his principal responsibilities at the NFHS include overseeing that organization's policies on drug use by athletes. In that capacity, among other things, Mr. Diehl serves as staff liaison to that organization's and the NCAA's rule-making committees for football, basketball and track and field. He is also the staff liaison to the NFHS Sports Medicine Advisory Committee, and serves on the NCAA's Committee on Competitive Safeguards and Medical Aspects of Sports. Prior to joining the NFHS, Mr. Diehl was the Associate Executive Director of the Missouri State High School Activities Association, where he worked closely with the NFHS, including on many rules committees including soccer, baseball and wrestling. He also was the Committee Chair for the National Interscholastic Athletic Administrators Association, which is part of the NFHS and the voice of high school athletic directors across the nation. Mr. Diehl's background also includes teaching, coaching and administrating at the high school level, as well as officiating in the sports of softball, baseball, basketball, wrestling and football at the high school and small college level.

Jim Ferstle is a freelance writer and consultant based in St. Paul, Minnesota. Ferstle's specialty areas include Olympic sports, sports medicine, drugs in sport, and education. He has been a freelance writer since 1979, after getting his start in journalism as sports editor for the *White Bear Press*, a Minnesota weekly newspaper, and as assistant editor for the *Physician and Sports Medicine*. His work has appeared in newspapers, magazines, radio, and television, including in the *London Sunday Times*, *New York Times*, CBS's *60-Minutes*, the BBC, and ESPN. He has written books on running; Dave Wottle, the 1972 Olympic 800-meter gold medalist; and a chapter in the text, *Anabolic Steroids in Sport and Exercise*, published by Human Kinetics.

Ferstle is also an on-line journalist, contributing regularly to *Runner's World* magazine's daily on-line site. Ferstle graduated in 1972 from Bowling Green State University with a BS in journalism. He also has a M.A. in Education from St. Thomas University in St. Paul.

Professor Paul H. Haagen teaches law and is the Co-Director of the Center for Sports Law and Policy at the Duke University School of Law. Since 1990, he has chaired the Student Athlete Counseling Committee at Duke; this committee is responsible for advising Duke athletes who are entering careers in professional sports. He has served as a consultant to athletes, athletic organizations and NCAA member institutions. His teaching, writing and research are principally in the areas of contract law, arbitration and legal history. Beginning in the academic year 1999-2000, he will also be teaching sports law. Professor Haagen has taught and lectured at Cambridge University, Escuela Libre de Derecho (Mexico City) and the Institute for Transnational Law (Brussels). He currently is serving as a member of the executive board of the Private Adjudication Center at Duke University. Prior to coming to Duke in 1985, Professor Haagen practiced law at Dechert Price & Rhoads in Philadelphia, Pennsylvania. Professor Haagen has a B.A. degree from Haverford College, where he played varsity lacrosse. He has B.A and M.A. degrees from Oxford University, where he studied as a Rhodes Scholar. He has a Ph.D. in history from Princeton University and a J.D. from Yale Law School.

Professor John M. Hoberman teaches at the University of Texas at Austin. Although he is a specialist in Germanic Languages and teaches in that area, his principal scholarly focus currently lies in the sports area, with a particular emphasis on doping and its sociological ramifications. He has been prolific in this regard, writing nearly one hundred articles and commentaries in these sports-related areas, many of which have been published both in American and foreign newspapers and magazines. Professor Hoberman also has authored several related books which have been translated into several languages, including the critically-acclaimed *Darwin's Athletes: How Sport has Damaged Black America and Preserved the Myth of Race*; *Sport and Political Ideology*; *The Olympic Crisis: Sport, Politics, Moral Order*; and *Mortal Engines: The Science of Performance and the Dehumanization of Sport*. And he has contributed numerous related chapters to books published by others including, for example, chapters entitled "Sport and the Technological Image of Man" in *Philosophic Inquiry in Sport*, and "Drug Abuse, the Student-Athlete, and High-Performance Sport" in *The Rules of the Game: Ethics in College Sport*. Finally, and in addition to these articles, chapters, and books, Dr. Hoberman also has more than ninety domestic and international conference papers and lectures to his credit including, for example, "The Sport Culture of East Germany", presented to the Department of History, University of Oklahoma, the Department of Government, St. Lawrence University, and at the Center for European Studies, Harvard University; "The Hidden Agenda of Scientific Sport", presented at the United States Olympic Committee's Sports Medicine Conference, University of North Carolina at Chapel Hill; "Doping and the Reunification of German Sports Medicine", presented at the University of Houston's conference on "Sport in the Global Village: Comparative Perspectives"; "The Concept of Doping and the Future of the Olympic Games", presented at the Annual Meeting of the Philosophic Society for the Study of Sport, The Free University, Berlin, Germany; and "Drugs in Sport: The Real Issues", presented at the Warwick

Centre for the Study of Sport in Society, University of Warwick, Great Britain. Dr. Hoberman received both his M.A. and his Ph.D. from the University of California at Berkeley.

Craig A. Masback is the chief executive officer of USA Track & Field, the national governing body for track and field, long distance running and race walking. Mr. Masback is responsible for overseeing programs ranging from youth track and field to selecting teams to represent the United States at the Olympic Games and World Championships to administering programs for masters runners. He also is responsible for securing corporate sponsors to underwrite track meets, championships and grass roots programs. Prior to becoming CEO of USA Track & Field, Mr. Masback was an associate at the Washington, D.C. law firm of Wilmer, Cutler & Pickering, where he specialized in communications and sports law. He also became known to millions of Americans in his role as track and field commentator for the Barcelona and Atlanta Olympic Games on NBC. Mr. Masback also provided network television commentary for countless other track and field events, as well as for publications including the New York Times and Runners' World magazine. From 1982 through 1984, Mr. Masback worked for the International Olympic Committee as an assistant to the Director of the Olympic Museum in Lausanne, Switzerland. Mr. Masback is the 1980 U.S. Indoor Mile Champion and former American Record Holder at 2,000 meters. His 1979 clocking of a 3:52.02 mile, one of his 30 sub-four-minute miles, ranked him as history's sixth fastest miler at that time. After an international running career that included a spot on the 1985 U.S. Team that won the World Cup Championship, Masback co-founded Inclyne Sports, a sports marketing company that created a variety of sporting events, sold sponsorships and produced television programs that aired on CBS, NBC, ABC and ESPN. Masback is a graduate of Princeton University and Yale Law School. He also attended Trinity College/Oxford University from 1977-1979 on a Keasby Foundation Fellowship, and was a recipient of an NCAA postgraduate scholarship.

Philip Milburn is the Chief Executive Officer of USA Cycling, the United States national governing body for the sport of cycling. In this capacity, he is responsible for all aspects of the administration and development of the sport in the United States, including the administration of its drug testing programs. As such, and because the problem of doping is at least perceived to be significant in cycling, Mr. Milburn is forced to address the complex issues raised by doping "on a daily basis." In addition to this aspect of his work with USA Cycling, Mr. Milburn is known for his initiative in developing new properties, and in planning and packaging all television programming related to the sport. For example, Mr. Milburn initiated an ESPN mountain bike racing television package and network packages and has been executive producer on more than 80 shows. He is also USA Cycling's chief fund raiser and oversees the communications and membership departments and business operations of the four USA Cycling associations. During his tenure at the federation, Mr. Milburn has engineered the acquisition and inclusion of the National Off-Road Bicycle Association (NORBA) and was instrumental in the organizational and governance restructuring of USA Cycling and unification of different branches of the sport. NORBA grew from 3,000 members in 1989 to more than 32,000 in 1997 under his leadership. In addition, sanctioned events grew to over 1,000 and mountain biking is thriving as one of the fastest growing competitive sports in the country. Mr. Milburn also has developed some of the

first major corporate sponsorships for mountain biking, which made its Olympic debut at the 1996 Summer Games in Atlanta. He has been associated with competitive cycling since 1982, first as a competitor, and then as a race organizer and club/team leader in Central Ohio. Mr. Milburn earned a B.S. in Business Administration-Finance from Ohio State University.

Edwin Moses is a two-time Olympic Gold Medalist (1976, 1984), two-time World Champion (1983, 1987), and former World Recordholder (47.02) in the 400 meters hurdles. He is currently a Financial Consultant with Solomon Smith Barney, specializing in investment management consulting and managed money. Mr. Moses currently also is the Vice-Chairman of the United States Olympic Foundation; President of the International Amateur Athletic Association; a Member of the Board of Trustees of the United States Olympic Foundation; and Member of the President's Commission on White House Fellowships. Among many other past professional activities and commitments, Mr. Moses has been a Member the U.S. - U.S.S.R. Anti-Doping Commission; the Chairman of USA Track & Field's Out-of-Competition Drug Testing Committee; a Member of the Executive Committee of the USOC, as well as of its Board of Directors, its Athletes Advisory Committee, and the Chairman of its Substance Abuse Committee. Mr. Moses also has been a Member of the International Olympic Committee's Athletes' Committee, its Eligibility Commission, its Medical Commission, and its Commission on Apartheid and Olympism; as well as of various committees of the International Amateur Athletic Federation and USA Track & Field. Mr. Moses has received numerous awards related to his performances on the track, including Sports Illustrated's Athlete of the Year (1984), the James L. Sullivan Award (1981), ABC Sports Athlete of the Year (1984), and the Jesse Owens International Award (1981). His accomplishments also have earned him membership in the prestigious Academie Francaise des Sport, and the honor of being the Speaker of the Athletes' Oath at the Games of the XXIII Olympiad at Los Angeles, California in 1984. Apart from his participation in track and field, Mr. Moses also has competed internationally in the bobsleigh, including as a Member of the United States World Championship Team in the two-man and four-man sleds in 1991; as a Member of the 1991 World Cup Bronze Medalist team in the two-man sled; and as a Member of the winning 1990 United States National Team at the International Push Competition in the two and four-man sleds. Mr. Moses received his bachelors of science degree in physics from Morehouse College in 1978, and his MBA from Pepperdine University in 1994.

Jill Pilgrim is the General Counsel and Director of Legal and Business Affairs at USA Track & Field. She also is the founder of The Center for the Protection of Athletes' Rights, Inc., a non-profit athlete advocacy organization. In her work for USA Track & Field, among other things, she oversees the federation's eligibility and grievance procedures, and interprets national and international Olympic sports rules and regulations. Prior to this, she was a practicing attorney in New York, where she gained extensive experience working in the areas of entertainment and sports law. Ms. Pilgrim also served as an arbitrator for the National Association of Securities Dealers, USA Track & Field's Doping Hearing Board, Doping Appeals board, and its National Athletics Board of Review. She has represented an athlete in arbitration proceedings before the Court of Arbitration for Sport during the 1996 Atlanta Centennial Olympic Games. Ms. Pilgrim

also has authored several published articles, including *Who's Protecting Athlete's Rights? The Tonya Harding Story*; *Attorneys, Athletes & Agents: Who's Responsible?*; *The Supreme Court's Assault on Athletes' Rights*; *What is Sports Law*; and *The Competition Behind the Scenes at the Atlanta Centennial Olympic Games*. She has also provided television commentary regarding sports, entertainment and other legal issues on the *MacNeil Lehrer News Hour*, *NBC Nightly News with Tom Brokaw*, Court TV, CNN, CNBC, BCAT and on Channel 13. Ms. Pilgrim is otherwise an avid sports enthusiast, having participated in field hockey, soccer, badminton, volleyball, basketball and track and field. She was a nationally ranked collegiate sprinter, competing for Princeton University where she received her degree in 1980. She graduated from Columbia University Law School in 1984.

Dr. Andrew Pipe is the current Chair of the Board of the Canadian Centre for Ethics in Sport, the first Canadian Recipient of the International Olympic Committee's Sport Medicine Award, as well as an Associate Professor at the University of Ottawa with appointments in the Department of Family Medicine and the Division of Cardiac Surgery. Dr. Pipe has been extensively involved in sport and sports medicine for many years. He currently is a Senior Associate Editor of the *Clinical Journal of Sport Medicine* and a Member of the Editorial Board of *The Physician and Sportsmedicine*. He served as the Chief Medical Officer to Canada's 1992 Summer Olympic Team in Barcelona and has been the Team Physician for Canada's National Men's Basketball Team for many years. A former President of the Canadian Academy of Sports Medicine, Dr. Pipe also is a Fellow of the American College of Sports Medicine. Following the Ben Johnson scandal in 1988 and the consequent report of the Dubin Commission, Dr. Pipe was asked to lead in the development of the Canadian Centre for Drug-free Sport and served as its first Chair; he continues to serve as the Chair of the Board of the newly expanded organization now known as the Canadian Centre for Ethics in Sport. Dr. Pipe is frequently quoted in the international press on the subject of drugs in sport, and is considered by his international audience to be a preeminent expert on the subject. As a member of the University of Ottawa Heart Institute, Dr. Pipe serves as Director of the Smoking Cessation Clinic and the Cardiac Surgery Artificial Valve Clinic. His research activity currently focuses on the factors involved in smoking cessation, the clinical performance of artificial heart valves, cardiovascular adaptations to exercise, and drug use in sport. Dr. Pipe has had extensive experience dealing with issues related to the prevention of cardiovascular disease and has a particular interest in both physical activity and tobacco addiction. He currently serves as Honourary Chairman of the Quality Daily Physical Education Committee of the Ontario Physical Health Association.

Steven M. Roush is the Assistant Executive Director for Sports Development at USA Swimming, the United States National Governing Body for the sport of swimming. He has served in this present position since 1994, and in this period he has directed the sports drug testing program, served as the staff liaison for all doping hearings and appeals, was the staff member directing the Jessica Foschi drug test case in 1995-96 and worked with FINA (the international federation for swimming) in developing its current "out-of-competition" drug testing program. Mr. Roush supervises the activities of the International Center of Aquatic Research, the sport science division of USA Swimming in Colorado Springs. Prior to his work

for USA Swimming, Mr. Roush served as the men's and women's swim coach at the University of Wisconsin (from 1983 until 1987) and at Northwestern University (from 1987 until 1988). Mr. Roush earned a B.S. Degree in Education and an MBA in Finance, Investment and Banking from The University of Wisconsin.

Dr. Gary I. Wadler is a Vice President and Trustee and a President's Prize winner of the Women's Sports Foundation and is a former Trustee of the American College of Sports Medicine, where he currently serves as Chairman of its Health and Science Committee and as a member of its Public Information Committee. He currently is Chairman and President of the Nassau County Sports Commission (New York). In 1993, he was the recipient of the International Olympic Committee's President's Prize (the Samaranch Award) for his work in the field of drugs and sports. Dr. Wadler is an Associate Professor of Clinical Medicine at NYU School of Medicine and a Senior Attending Physician at North Shore University in Manhasset, New York. Apart from his interest in the field of drugs and sports, Dr. Wadler has focused much of his attention on the sport of tennis, where, amongst other things, he was the Official Tournament Physician for the United States Open Tennis Championships for eleven years, and was a member of the U.S. Open Championships Tournament Committee. Aside from being a founding member of the USTA's Sports Sciences Committee, Dr. Wadler was also the founding Chairperson of the Health and Medical Committee of the Women's Tennis Association. Dr. Wadler's interest in the field of drugs dates back to 1970, when he led efforts to address the issue of drug abuse utilizing the medical model, publishing such articles as *Drug Abuse and Addiction and the Health Care System*, and *A Health-Hospital Approach to Drug Abuse Education and Prevention*. In the 1980s, Dr. Wadler's interest in the field of drug abuse shifted to the field of sports, and since that time he has lectured and published widely about the subject. In 1989, he was the lead author of the definitive and internationally acclaimed text in the field, Drugs and the Athlete. The topics of his lectures and articles have included, *Safe and Fair Play in Elite Sport; Drugs, Gender and Sport; Illegal Substances and Drug Testing; Scope of Doping Substances in Athletics - Risk and Consequences; Drug Testing in Women's Sports; "Sports Organizations" in The Handbook on Drug Abuse Prevention; The Coach and Athlete Drug Abuse; Scope of Doping Substances in Athletics - Risk and Consequences; Recreational Drugs*. He has written chapters about the subject in The Medical Clinics of North America, the ACSM Handbook for the Team Physician, the Manual of Sports Medicine. He has served in various editorial capacities including for the Clinical Journal of Sport Medicine, the Journal of Strength and Conditioning Research, and Your Patient and Fitness. Dr. Wadler was a member of AMGEN's Athlete Education Advisory Board, is a member of the Performance Enhancing Substance Abuse Committee for the National Strength and Conditioning Association, was a participant in NIDA Technical Review Panel on Anabolic Steroids, in the Department of Health and Human Services' Office of the Inspector General's Report on Adolescent Steroid Abuse, and in the Department of Justice's Conference on the Impact of National Steroid Control Legislation in the United States. Dr. Wadler represented the United States in two WHO international meetings addressing the subjects of research initiatives and education and prevention strategies in drugs and sports. Dr. Wadler has served as an expert on anabolic steroids for the Department of Justice in various successful federal steroid prosecutions. His opinions about the subject of drugs and sports, and

more recently about nutritional supplements, are widely sought out by the media. Dr. Wadler, a graduate of Brooklyn College in 1960, and Cornell University Medical College in 1964, is in the private practice of sports medicine and internal medicine in Manhasset, New York.

Berhard Welten is a lawyer in the Swiss firm of Hodler & Emmenegger and a 1999 LL.M. Candidate at the Duke University School of Law. A former Member of the Swiss University Ski Team, Mr. Welten is both an avid sports enthusiast and a practicing attorney with special expertise in the areas of sports business and law. This work has, of late, focused on the issue of doping, and it is in this among other respects that he works closely with Mr. Marc Hodler, a named partner in his law firm, and Vice President of the International Olympic Committee. Most recently, Mr. Welten accompanied Mr. Hodler to meetings with the Council of the European Union, which meetings culminated in the formal position of the EU Council's President with respect to doping. Mr. Welten also is a Member of the Managing Committee of the Swiss Sports Law Federation, and in this capacity has organized different conferences with international and Swiss experts in Sports Law. He is an honors graduate of the University of Bern School of Law.

GENERAL CONFERENCE PROGRAM

Friday, May 7, 1999

9:00-9:30 Welcome and Introduction (GlaxoWellcome Classroom)

Doriane Lambelet Coleman
Conference Director
Duke University School of Law

Jerry Diehl
National Federation of State High School Associations
The Significance of Leadership from Above

9:30-10:20 The Present and Future of Doping (GlaxoWellcome Classroom)

Gary I. Wadler, M.D.
Women's Sports Foundation
*Doping in Sport: From Strychnine to Genetic Enhancement,
It's a Moving Target*

Alberto Salazar
Marathoner and Coach
*Locating the Line between Acceptable Performance Enhancement
and Cheating*

10:30-11:20 The Debate about Independence (GlaxoWellcome Classroom)

Professor John Hoberman
The University of Texas at Austin
Learning from the Past: The Need for Independent Doping Control

Philip Milburn,
COO, USA Cycling, Inc., USOC Task Force on Doping
The Form and Substance of Independence: An Insider's View

11:30-12:20 Reconciling Science and Law (GlaxoWellcome Classroom)

Professor Donald Berry
Duke University, Department of Statistics
The Use and Misuse of Statistics in the Battle against Endogenous Substances

Jill Pilgrim
Senior Counsel, USA Track & Field
Fixing the Burden of Proof: Fighting Drugs and Protecting Rights

12:30-1:20 Lunch (The University Room in the Thomas Center)

Craig A. Masback
CEO/USA, Track & Field
Leadership from the Trenches

1:30-2:20 Have the Wheels Already Been Invented? (GlaxoWellcome Classroom)

Professor Paul H. Haagen
Duke University School of Law
The Court of Arbitration for Sport as a Model for Dispute Resolution

Andrew Pipe, M.D.
The Canadian Center for Ethics in Sport
The Canadian Model for Domestic and International Doping Control

2:30-5:00 Break-Out Sessions

Group 1: The Structure and Substance of Independence (Team Room #257)

Session Leaders: Philip Milburn
Professor John Hoberman

Group 2: Scientific Policy (Team Room #258)

Session Leaders: Dr. Andrew Pipe
Dr. Gary I. Wadler

Group 3: Legal Rights, Responsibilities, and Adjudication (Team Room #259)

Session Leaders: Peter C. Alkalay, Esq.

Professor James E. Coleman, Jr.,

6:00-9:00 Reception and Dinner The Washington Duke Inn

Edwin Moses
Olympic Gold Medalist
The Significance of Sport that is Drug-Ridden: A Few Personal Reflections

Keynote Address

Donna de Varona
Olympic Gold Medalist
The Erosion of the Olympic Ideal: Its Causes, Dangers and Solutions

Saturday, May 8, 1999

9:00-12:20 Return to Break-Out Sessions (Same Team Rooms)

12:30-1:20 Lunch (The Thomas Center Dining Room)

1:30-2:20 Back to Plenary Session: Report and Discussion (GlaxoWellcome Classroom)
Working Session on the *Structure and Substance of Independence*

2:30-3:20 Plenary Session Report and Discussion
Working Session on *Scientific Policy*

3:30-4:20 Plenary Session Report and Discussion
Working Session on *Legal Rights, Responsibilities, and Adjudication*

4:30-5:00 Concluding Remarks

COMMITTED PARTICIPANTS AND WORKING GROUPS

Group #1: The Structure and Substance of Independence

Professor John M. Hoberman, University of Texas, Co-Chair (Austin)
Philip Milburn, COO, USA Cycling, USOC Task Force on Doping, Co-Chair (Colorado Springs)
Donna de Varona, Women's Sports Foundation (New York)
Joseph de Pencier, Esq., Canadian Center for Ethics in Sport (Ottawa)
Jerry L. Diehl, National Federation of State High School Associations (Kansas City)
Professor Paul H. Haagen, Duke University School of Law (Durham)
Craig A. Masback, Esq., CEO, USA Track & Field (Indianapolis)
Edwin Moses, Olympic Gold Medalist (Atlanta)
Robert Houseman, White House, Office of National Drug Control Policy (Washington, D.C.)
Ann Peel, OATH (Toronto)

Group #2: Scientific Policy

Andrew Pipe, M.D., Canadian Centre for Ethics in Sport (Ottawa)
Gary I. Wadler, M.D., Women's Sports Foundation (New York)
Mimi Dane, Esq., Squire, Sanders & Dempsey (Columbus)
Richard Clark, M.D., GlaxoWellcome & Duke University (Durham)
Doriane Lambelet Coleman, Duke University School of Law (Durham)
Bernhard Welten, Esq., Duke Law School (Bern)
Alberto Salazar, Olympian, Marathoner, Coach (Portland)
Professor Donald Berry, Duke University Department of Statistics (Durham)
Dr. David Black, Aegis Laboratories (Nashville)

Group #3: Legal Rights, Responsibilities and Adjudication

Professor James E. Coleman, Jr., Duke University School of Law, Co-Chair (Durham)
Peter C. Alkalay, Esq.,* Co-Chair (New York)
Dr. Donald Catlin,* UCLA Olympic Analytical Laboratory (Los Angeles)
Jill Pilgrim, Esq., Senior Counsel, USA Track & Field (Indianapolis)
Jim Ferstle, Reporter (Minneapolis)
Mark Levinstein, Esq.,* Williams & Connolly (Washington, D.C.)
Breckenridge Grover, Esq., CAS (Denver)
Michael Dockterman, Esq., Wildman, Harrold, Allen & Dixon (Chicago)
Steven M. Roush, USA Swimming (Colorado Springs)
John Ruger, USOC Ombudsman for Athletes (Colorado Springs)

* Not in attendance during in-person sessions

THE DUKE CONFERENCE ON DOPING WORKING GROUP AGENDAS

GROUP #1: THE STRUCTURE AND SUBSTANCE OF INDEPENDENCE

1. What to Externalize?

- A. Selection of Athletes to be Tested
- B. Sample Collection
- C. Sample Analysis
- D. Reporting of Analytical Results
- E. Screening of Results and Reference (or not) to Adjudication
- F. Adjudication

2. What Does Externalization Mean in These Contexts?

- A. What if any representation do the stakeholders still have in the enterprise?
- B. How are the administrators, staff, decision-makers selected?
- C. How is the program funded?

3. How do the USOC and IOC Proposals Fare?

4. Is the Canadian Model Useful?

GROUP #2: SCIENTIFIC POLICY

1. What is the goal of doping control?
 - A. Ethical considerations
 - B. Medical considerations
 - C. Image considerations
 - D. (both of the enterprise and in terms of athletes as role models)
2. How should doping be defined to achieve that goal?
 - A. What should be on the "banned list"? And what (affirmatively) should not be on the list?
 - B. Should there be an "inadvertent use" exception?
 - C. Should there be a medical exception?
 - D. How should exceptions be administered?
 - E. The problem of the "moving target"
3. What kind of scientific support is needed to meet the objective? Or, how can we eliminate scientific issues from the litigation so that scientific positives not only survive adjudication process, but also are not central in that process? Or, reconciling the scientific and legal burdens of proof
 - A. Physical versus Social Science
 - B. In what areas is the research/science adequate?
 - C. In what areas are they lacking?
 - i. The special problem of endogenous substances
 - ii. Blood versus urine
 - D. Who should do the further research that is needed, in what manner, and how should it be funded?
 - E. Protocols for Chain of Custody and Analysis

GROUP #3: LEGAL RIGHTS, RESPONSIBILITIES AND ADJUDICATION

A. Identifying the elements of an adjudicatory process that is:

1. Fair
 - a. Consistent and accurate decisions
 1. Qualified decision makers
 2. An appellate process
 3. Confidential until liability is determined
 4. Speedy
 - b. Transparency
 - (1) Full accountability for all proceedings
2. Inexpensive
 - a. Simple procedures
 - (1) Clear rules
 - (2) Strict enforcement of protocols
 - (3) Full disclosure of evidence
 - b. Representation for all athletes
 - c. Access to experts
3. Focused on prohibited performance enhancement
 - a. Aim is to prevent cheating
 - b. Evidence of cheating ought to part of the proof
 - (1) May be presumed under some circumstances
 - E.g. a prohibited substance in fact found in the urine sample.

c. Evidentiary burdens that are appropriate

B. Unitary system

1. Eliminate concurrent jurisdiction within different federations.

2. Appeals process aimed at one standard internationally

a. Trial level at national level

b. Regional appeal

c. International final decision

C. Transition System

FINAL CONFERENCE REPORT

The Necessary Components of an Anti-Doping Agency or Program

On May 7 and 8, 1999, the Duke Center for Sports Law and Policy hosted the Duke Conference on Doping in Sport. The objectives of the conference included the gathering together of experts and leaders from the world of sport to discuss the principal problems implicated by doping, and to develop a summary of the necessary components of a proper anti-doping agency or program. The group met both in plenary and break-out sessions. The break-out sessions were specifically designed to facilitate discussion of such an agency or program's structural, scientific, and legal components. What follows is a summary description of those components.

I. The Necessary Structural Components of an Anti-Doping Agency or Program

- A. Externalization is necessary and should be put into effect immediately. Functions to externalize include:
 - 1. selection of athletes to be tested
 - 2. sample collection
 - 3. sample analysis
 - 4. reporting of analytical results
 - 5. screening of results and referral (or not) to adjudication
 - 6. adjudication
 - 7. possibility of externalization of sanctions should be studied. Sanctions should remain with the NGB, but a potential conflict of interest involves NGBs sanctioning their star athletes too lightly, in which case rectification by an independent agency might become necessary.
- B. The Canadian Model looks very good in the current international context and is a model to which future programs can aspire.

- C. Educational activities should remain with the USOC and the NGBs.
- D. Public health concerns should be a top priority, and all governments should do a better job in this area. Effective doping control requires public health education about doping in order to attract public support and funding.
- E. The USOC should recognize that it has an image and credibility problem in the international community and must make strenuous efforts to rectify the situation, by means of externalization, for the sake of the anti-doping effort and the integrity of Olympic and amateurs sports as a whole.
- F. The Court of Arbitration for Sport is still too entangled with the IOC and should be located somewhere other than Lausanne.
 - 1. It should be supported by truly independent funding.
 - 2. It should have a Charter of Principles to guide its adjudications.
 - 3. It should provide access to counsel for athletes.
 - 4. It should include people possessing relevant scientific expertise.
 - 5. All of its panels should adopt regularized procedures and report out both judgments and the reasons for those judgments.
- G. The independent international anti-doping agency or program should make research, standards, and models a top priority.
 - 1. It should develop minimum standards that are expressed in a protocol for determining which substances are placed on the banned substances list and for revising testing procedures.
 - 2. It should recognize different physiological standards for males and females.
 - 3. It should include a government liaison with an intelligence-gathering capacity for collecting information about doping practices, drug trafficking, and the behavior of coaches and others who have access to high-performance athletes.

II. *The Necessary Scientific Policy Components of an Anti-Doping Agency or Program*

- A. The objective of any anti-doping program should be to eradicate the use of drugs in sport.
 - 1. The use of drugs in sport is unethical.
 - 2. The use of drugs in sport in some instances is detrimental to the health and well being of the athlete.
- B. This objective must be approached from two perspectives.
 - 1. The society must subscribe to a program of prevention through values and health-based education.
 - 2. The society must subscribe to a program of deterrence and punishment through a strong drug testing program.
- C. The following are essential with respect to the program of prevention through values and health-based education.
 - 1. It should focus on the public health aspects of drug use, including both psychological/ethical and physical health.
 - 2. It should be built into the sports system at its origins. Understanding the importance of training and competing with integrity, and of long-term physical and ethical health cannot be accomplished with rhetoric and billboards directed at mature athletes.
 - 3. It should be designed to counteract the negative commercial messages that encourage athletes to do drugs. For example, it must counteract the message that sport supplements are not only acceptable but desirable; and the message that the only place that counts is first place.
 - 4. It is the responsibility of every adult who is involved with athletes, including parents, teachers, coaches, sports governing bodies, commercial enterprises that sponsor sporting events, and local and national government.
- D. The following are essential with respect to the drug testing program:

1. It must be comprehensive and national/international. Harmonized drug testing in all sports is essential. Children and athletes must not get mixed messages depending upon the sport about whether drugs are or are not acceptable.
2. It must be scientifically sound. Peer-reviewed research must exist to back-up the tests that are conducted. The tests must be designed to achieve a low-to-nonexistent rate of false positives.
3. Prosecutions must be brought only on strong evidence of guilt. They must be backed-up by peer-reviewed research, the sample's chain of custody must be intact and thoroughly documented, and the athlete must be presented with a complete packet of forensic information on the sample.
4. The laboratories/scientists that conduct the relevant research and the sample analyses must be independent of the sports governing bodies. The existing IOC laboratories are a good beginning, and the group supports their evolution toward independence; however, the following additional measures must be implemented:
 - a. The laboratories must become completely independent.
 - b. They must permit outside audits of all of their operations, including of the development of the underlying science, their relationships, and forensic toxicology.
 - c. All of their procedures must meet the standard established by the International Standards Organization (ISO), and with respect to the analytical work, the ISO standards should be forensic rather than clinical.
 - d. They must allow their research to be peer-reviewed, and because they continue to lack certain critical expertise, this research must be complemented by that of independent scientists in relevant fields.
5. There must be an independent oversight board charged with the supervision of the drug testing program, including of the laboratories and research, that is comprised of outside qualified experts in the fields of

science, law, and public policy.

6. The list of banned substances must be compiled based upon the reasons for doping control, i.e., protecting the public health and preventing unethical competition. The list should include endogenous substances that are proven in accordance with accepted procedures and protocols to be ergogenic aids and/or detrimental to the public health. However, cases must not be brought based on an endogenous substance unless there is a test for that substance that is scientifically sound and validated in accordance with accepted procedures and protocols.

III. The Necessary Legal Components of an Anti-Doping Agency or Program

- A. The adjudication process should be entirely independent of the governing bodies.
 1. The governing bodies should have an educational role, informing athletes of the dangers of doping and of the ethical foundation of sports.
 2. National governing bodies should not be placed in an adversarial role vis a vis their athletes in doping cases.
- B. The adjudicatory process must include the following safeguards:
 1. Prosecutions will be based on scientifically determined violations.
 2. All prohibited substances must be detectable in the athlete's urine or body fluids through a method that is scientifically valid.
 3. All prohibited substances must be banned on the basis of research that takes into consideration such relevant factors as ethnicity, age, gender, and medical history.
- C. The adjudicatory process should proceed in three distinct stages.
 1. Stage 1. There should be a preliminary review by a panel composed of relevant experts, including physicians, other scientists, and lawyers.
 - a. The purpose of this review is to determine if all procedures were followed for the collection, storage, transportation, and testing of

the athlete's sample **and** if, based on the laboratory report, the results of the analysis are sufficiently strong evidence of the athlete's guilt.

- b. During this preliminary stage of the proceedings, the identity of the athlete is held strictly confidential.
 - c. If the review panel finds that the published mandatory procedures for the collection, storage, transportation, and testing of the sample were not strictly followed, it must declare the sample invalid and end the process.
 - d. If the review panel determines that the collection, storage, transportation, and testing of the sample complied fully with the rules, and that the analysis provides sufficiently strong evidence of the athlete's guilt, it will forward the case for prosecution. At that point, there may be a rebuttable presumption of the athlete's guilt.
 - e. The independent anti-doping agency or program will be responsible for the prosecution of all doping cases.
 - f. The review panel will make periodic public reports of the number of cases dismissed in this manner, and the basis for each dismissal. The names of the athletes involved will not be disclosed.
2. Stage 2. The determination of whether a doping violation took place must be decided by qualified decision makers.
- There currently are two possible models, neither of which in its present form would satisfy the requirements for inclusion in the new process. Each model has advantages and disadvantages.
 - (1) The first is the American Arbitration Association (AAA).
 - ▶ One of the advantages of AAA is its familiarity and suitability for emergency disputes.
 - (2) The second is the International Court of Arbitration for Sport (CAS).

- ▶ One of the advantages of CAS is its potential international acceptance, and thus potential for finality.
- b. One of the most important criterion for the body ultimately selected to decide the merits of cases is the employment of adjudicators with experience deciding contested scientific disputes.
- c. There must be regularized procedures for all hearing panels.
 - (1) Panels must publish all decisions, and the bases for the decisions.
 - (2) If CAS is used, it would have to establish regional panels to streamline the process.
- d. There must be a process for providing counsel to athletes accused of a doping violation.
 - (1) This might be accomplished through a Judge Advocate General-type structure, which would provide both the prosecutors and the defense counsel, under the direction of an independent overseer.
 - (2) Another possibility is the reliance on pro bono counsel.
 - (3) A third possibility is the use of an approved list of counsel.
 - (4) In the end, some combination of these three might be employed.
- e. One issue left unresolved was at what point an athlete should be suspended.
 - (1) There was agreement that liability should not attach before a suspicious sample was confirmed by a second analysis of the sample.
 - (2) There was some support for this confirming analysis being

done by a different laboratory than the one that performed the initial analysis.

- (3) There also was support for the athlete's early involvement in the preliminary stage of the process, to raise limited compliance issues before the review panel. There was not agreement about whether this would constitute a hearing for purposes of the Amateur Sports Act, which bars a suspension prior to a hearing.
- f. There was agreement that an athlete's certification of the sample collection procedures could be used against him or her in a contested hearing, although the athlete still could challenge the collection.
 - (1) For this reason, one of the important functions of the national governing body would be the education of its athletes in the process and their rights under the program.
- 3. Stage 3. The final stage of the process involves proceedings in the athlete's national courts or before international federations.
 - a. There was agreement that a credible and bona fide arbitration process as outlined above would result in minimizing the role of civil courts.
 - (1) Either party court seek confirmation of the administrative decision, and thus largely protect the arbitration decision and the underlying dispute from further court scrutiny.
 - b. There was agreement on the need for harmonization among the rules of the various federations to which an athlete might be subject.
 - (2) Any obligation that a national governing body had for doping disputes under the rules of its international federation would have to be delegated to the independent doping agency.
 - Thus, a sample tested outside the United States

would be subject to the same preliminary compliance review that a sample generated in the United States would receive.

- ▶ And the failure to follow the requirements for the collection, storage, transportation, and testing of the sample by the foreign entity would result in the sample being declared invalid

