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ETHICAL STANDARDS

Doping and how we play the game

By Reuben Guttman

Now that Lance Armstrong has admitted that he doped, fans across the globe must be wondering what was he thinking? Perhaps he surmised that breaking anti-doping rules is just a part of the game.

One thing that Lance Armstrong probably did not anticipate was a federal statute known as the False Claims Act, which encourages private citizen whistle-blowers with monetary bounties when their efforts are successful. Undoubtedly, he also did not anticipate that his own teammate, Floyd Landis, would sue him under that statute, as we now know because a copy of that lawsuit, filed under court seal, has leaked out.

As to whether breaking the rules of a sport is part of the game, the truth is that youth in sports leagues across the United States are actually schooled on the calculus of breaking the rules. Young Squirt hockey players encased in equipment that makes them look like skating trolls are taught that it is OK to trip an opponent who is about to score a goal because the two-minute penalty is a reasonable cost to pay to keep a point off the board. Pint-size hoopsters learn that fouling an opponent is a reasonable part of a last-ditch strategy to get the ball back with moments left in a close game.

Off the field of play, our youth revel in stories about professional athletes who pushed the edge of the envelope, even crossing the line, during the course of their careers. Didn't Hall of Fame Pitcher Gaylord Perry write a book called "Me and the Spitter?" In the 1972 hockey series where Team Canada played the Soviets, a turning point came when Canadian center Bobbie Clarke swung his stick, breaking the ankle of Soviet star Valarie Kharlamov. Canada won the series 4-3 with one tie, and Clarke, who is actually a very nice guy, became a national hero and a member of the Hockey Hall of Fame.

Unfortunately, when our youth turn into adults and trade up their sports equipment for Neiman Marcus suits and their playing turf for corporate board rooms, they sometimes seem

to have remembered the economic calculus they learned at a young age. Will I be caught, and what is the penalty?

Why not fire the worker who complains of national origin discrimination when the worst-case scenario is a back pay award measured at \$11 an hour? Or why spend hundreds of thousands of dollars to make a workplace safe when most violations of the Occupational Safety and Health Act are never caught and OSHA fines rarely exceed five digits? Or better yet, why not overstate a company's earnings in order to inflate the stock price so executives can be paid large bonuses, when the worst-case scenario is that the corporation may be hit with a securities fraud class action that may be hard to prove and will be settled by the corporation anyway? Alright, no one ever said the calculus works all the time. Enron's Jeffrey Skilling, who no longer has the luxury to get in a car and stop by a news stand to buy this paper, probably could tell you that.

Americans love to talk about how team sports builds character. Perhaps for this reason our national obsession with the use of performance enhancing drugs is similarly bound up in the notion that fair play and sportsmanship is part of that character building thing. Several baseball players, whose careers were in some ways tied to steroids, were recently denied entrance into the Hall of Fame. Imagine placing these players in the same Hall with others who did not have such an unfair advantage.

Few noticed that at the same time, the gate to the Hall was opened for Jacob Ruppert, the one-time owner of the Yankees. Ruppert, like other owners of his era, ran a segregated baseball team enforcing rules which actually violated federal anti-discrimination laws enacted after the Civil War. He must have correctly assumed that no one in the 1920's would step forward and enforce, or at least successfully enforce, the Civil Rights Act of 1866. Yet, as to the notion of a level playing field, I wonder how many home runs Babe Ruth would have hit had he faced some of the elite black pitchers of his time.

For athletes like Armstrong and the baseball players who have been tainted by charges of doping, their predicaments must be extremely frustrating. How can breaking the rules of the game lead to so much trouble, particularly where some of the corporate sponsors knew or should have known that doping may have played a role in repeated Tour de France wins, or 70 home run years. No doubt those same sponsors, which made millions off the endorsements, did the calculus they too learned as squirts. Though they may complain now, did they really care if Armstrong was doping as long as consumers were buying Armstrong endorsed apparel?

Unfortunately, Armstrong may have broken more than just the rules of the game if he made false representations to the United States Postal Service in order to secure \$30 million in funding for his Postal Service Team. Prosecutors have no doubt combed through documents to determine whether compliance with the rules of the game, including refraining from performance-enhancing drugs, was a condition of funding. Did Armstrong make a false representation to the government either directly or indirectly to get funding? Did he cause a false representation to be made to get federal money?

For his part, Armstrong probably never calculated the possibility that a whistle-blower could step forward and initiate a lawsuit against him in the name of the government. The False Claims Act, which was passed by Congress in 1864, is at least one law of that era that is having an impact on sports. The act allows individuals with knowledge of activity which causes the wrongful expenditure of government dollars the standing to file a lawsuit in the name of the government. If the suit is successful, the whistle-blower, known as a relator, can be awarded up to 30 percent of the recovery. These types of lawsuits remain under seal while the Department of Justice conducts an investigation. For Armstrong, the stakes are high because the law requires the return of three times actual damages to the government which means a potential \$90 million price tag for Armstrong if he loses. Worse yet, these suits often trigger parallel criminal investigations for mail or wire fraud or false statements to federal agents. A previous Justice Department inquiry was dropped early last year.

Yet, at the end of the day, the big issue is what we do about the age-old calculus which has sent the message to our youth that it is OK to break the rules if the price is worth it and there is even the possibility of not being caught. Is it enough to say, as Lance Armstrong has learned, that sometimes it is not just about breaking the rules of the game — not to mention that even teammates can be whistle-blowers?

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