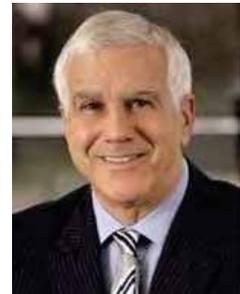


OPINION: 1,166 Pieces Of Evidence And No Due Process

By Ronald S. Katz, Manatt Phelps and Phillips LLP

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Judges are well known for admonishing lawyers not to try their cases in the press. And with good reason: the procedures worked out by courts and legislatures over the years are expressly designed to insure fairness. The second installment, issued Dec. 9, of the so-called McLaren Report on alleged state-sponsored Russian athlete doping is an excellent example of why these procedures — tedious and boring though they may seem to those who are not being accused of something — are important, notwithstanding the McLaren Report's unopposed submission of 1,166 pieces of evidence.



Ron Katz

Think, for example, of how the press would report a trial in a dictatorial country where 1,166 pieces of evidence were submitted for the prosecution and none for the defense. There is a phrase for that: "show trial."

That phrase is particularly apt regarding the McLaren Report because the author of the report is one, unchallengeable individual who is prosecutor, judge and jury and because some of the key evidence is questionable at best. The report depends in large part on an informant, who, like all informants, has conflicts of interest. The accused is not given a voice. The piece of evidence crucial to prove that the doping is state-sponsored — the ability, as yet publicly unduplicated, to tamper with tamper-proof bottles — is reported but not revealed "for reasons of security."

The most important point that comes out of the report, in my opinion, is one that is unspoken: WADA — the World Anti-Drug Agency — has not acted in a competent manner, not only with regard to the doping by Russian athletes but with regard to doping by athletes worldwide. In 2014, for example — the most recent reporting year — athletes from 109 countries in 83 sports committed 1,693 doping violations; only 148 of these violators were Russian athletes.

Furthermore, the U.S. is among the many countries that have had well-publicized doping problems, not only currently but also historically. For example, Olympic gold medalist Carl Lewis was quoted in 2003 as saying that in his era "there were hundreds of people getting off," including U.S. Olympic Committee executives overlooking his three failed drug tests in 1988.

Given the 1,693 doping cases mentioned above, the fact that, according to the McLaren Report, WADA did not detect problems with at least 1,000 Russian athletes at such high-profile events as the London Olympics demonstrates incompetence in the primary function of WADA: detecting drug cheats. But

there is no emphasis on that problem at all in the wake of the McLaren Report.

The reason that WADA's problems are being ignored is the distraction that the McLaren Report is providing. Focusing on one country rather than on a worldwide problem monitored by an incompetent organization is easier and more emotionally satisfying than actually solving the problem. WADA's commissioning of the McLaren Report was a strategy that has distracted attention from its own woeful track record.

What is worse, innocent people have been victimized by WADA's strategy. Some Russian athletes were banned from the Rio Olympics and the Paralympics despite having never failed a drug test. Rather than deal with its inability to detect drug cheats, WADA has recommended mass punishment, even though punishing the innocent simply cannot be condoned.

Instead of creating a scapegoat for what is an international problem, the McLaren Report should be leading to a thoroughgoing reform of WADA. Until there is an effective anti-doping agency, sporting events will be entertainment only, rather than a competition to determine the best athlete on a level playing field.

Ron Katz is a senior counsel at Manatt Phelps and Phillips LLP in Palo Alto, a Distinguished Careers Institute Fellow at Stanford University, and Chair Emeritus of the Institute of Sports Law and Ethics at University of the Pacific.

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