

The IOC's proven lack of leadership with the corruption scandals and the on-going doping scandals indicates it is time to put the doping crises in the hands of those experts who care about preserving the Olympic Movement. Decisive action needs to be taken now on the doping front. We cannot afford to lose the public confidence in the Olympic Movement. Athletes care too much about the doping crises and athletes want something done about it immediately. Too much time has passed and too little has been done to address the issues. The IOC has had the benefit of 20 years and now doping is a massive crises threatening the on-going credibility of the Olympic Games.

The IOC has been gravely remiss in its endeavors. And, given the unaccountable, un-transparent, un-inclusive and undemocratic structure of the IOC this is not surprising. However, as a public trust the Olympic Movement deserves better. It behooves the stakeholders of this public trust not to work together and build a brighter future for the Olympic Movement and for tomorrow's young and aspiring Olympic Champions. It is time for an anti-doping agency that is accountable, transparent and independent. It is time to conduct out-of-competition, random, unannounced and year-round testing of athletes.

It is time for the IOC to work with the experts and stakeholders in setting up such an agency. It is time for a new beginning. It is time to set in motion the anti-doping agency which will provide a clean start to the 21st century.

The CHAIRMAN. Ms. Hogshead, you and Mr. Shorter have inspired not only athletes but a lot of public servants and a lot of Americans at—before I go to Mr. Shorter, I just want to ask you one question.

When you saw these athletes, you mentioned the anecdote concerning being in the dressing room, did that ever tempt you to take these drugs?

Ms. HOGSHEAD. Well, I think—Shirley Babashov was probably the fall person. She got dubbed as being Surly Shirley for being upset about the fact that she was getting silver medals next to people who now have been proven that they in fact were using anabolic steroids.

So at the time, the Olympic women's swimming team had felt like we had the moral high ground. You know, many times we got the gold medals. Sometimes we did not. But we knew that we were not taking drugs. I never had anybody offer me steroids. I never had them come up even as a possibility.

I was glad that there was never part of Olympic experience or part of my—but at the same time, I do have to say that I resented it when somebody would suggest that maybe I did take them, just because, well, you won a gold medal in the Olympics, and is that not what it takes? And I deeply resented that.

The CHAIRMAN. Thank you.

Mr. Shorter, welcome and thank you. I want to again thank both of you for being the motivating factor, you and several others brought the attention of this Committee and the Congress onto this issue. I thank you very much.

**STATEMENT OF FRANK SHORTER,
U.S. OLYMPIC GOLD MEDALIST**

Mr. SHORTER. Carpe diem, seize the day. I truly believe that this is for the future of the Olympic Games and for the future of our children who will participate in them.

Mr. Chairman, Senator Stevens, Senator Wyden in absentia because I truly enjoyed his remarks. I realize you are not allowed to clap and cheer in here, so I did not. Senator Hollings, who has also been instrumental here, and other distinguished members of the Committee in absentia on both sides of the aisle.

My name is Frank Shorter. I was a member of the 1972 and 1976 United States Olympic teams. I think the point to bring up is, Nancy and I have won medals, but a huge and maybe even the bigger part of this is actually participating in the Olympic Games themselves.

But I was fortunate enough to win a gold medal in the men's Olympic marathon in 1972 and a silver medal in the same event in 1976. It is an honor and a privilege to be here today before you to present as strongly as I can my carefully considered opinion with regard to illegal performance-enhancing drugs and state as strongly as I can that these drugs, based on my 30 years of experience as a self-coached athlete and commentator, are a true threat.

Now 2 years ago, I never would have dreamed that you would be hearing testimony from General McCaffrey, a member of President Clinton's cabinet, who knows not only how pervasive and serious the problem truly is, but also, like you, has the power to implement change. This is a bona fide plea on behalf of the world's athletes for help from the American government.

There have been questions here as to just how that might happen. But I think it is possible, and I certainly do hope that it happens. Because without major changes in the system that detects these drugs and imposes the penalty, they will continue, and I emphasize continue, to be the price of advancement for every young athlete who aspires to emulate a sports hero and pursue his or her own athletic career to the highest level.

There will continue to be no choice but to put yourself at risk, even if you are aware of the potential dangers and care about your health after your career is over. I think again what has not been brought here is a young athlete is a very athlete in one sense, but a very unaware and innocent and impressionable human being in another, more aware than their parents, but in that sense more vulnerable.

Two years ago I might have sounded extreme, but I do not think I sound extreme now. I would just like to give a brief outline of what I perceive to be the recent confluence of events that created this unique and historic opportunity. Because I think General McCaffrey alluded indirectly to the opportunity that is here.

During the 1978 Tour de France, drugs were seized by French customs officials from a car belonging to one of the participating teams. Included were human growth hormone, hGH, and erythropoietin, EPO, two drugs with which you are or will undoubtedly become familiar in the media buildup to the 2000 Games.

There were also news reports, and I think this is more significant in terms of children, there were also news reports that perfluorocarbon, PFC, which is an experimental, artificial blood, only legally available to medical research institutions, was discovered, virtually unattainable, experimental, artificial blood, possibly found in Tour de France team car on its way to the next stage of the tour.

Those of us close to international sport were not surprised. The elite athlete's grapevine—and I am certain you all familiar with grapevines here in Washington. The elite athlete's grapevine is very extensive and very thorough, as is the grapevine of teenage athletes. I think, again, that is a point that is not emphasized here.

Fortunately, we were very surprised and very pleased to see the level of public outrage amongst the French people. Finally, the parents of a nation were beginning to understand what was going on. Since then, the French government has given serious consideration to nationalizing all drug testing within its borders. Such an obvious threat to control prompted the International Olympic Committee to call for a worldwide drug summit to take place in Lausanne, Switzerland, in February 1999.

But between the time of this announcement and the summit, the Salt Lake City bid scandal broke, and suddenly it was more than a public relations problem for the IOC. This is because, as you saw with General McCaffrey being here, the United States, Canada, Australia, New Zealand and many members of the European Union sent cabinet-level delegations to the summit.

General McCaffrey more than ably represented the athletes. I had the privilege to advise him beforehand, to brief him and to work with him once we were there.

As an athlete and father, I was very pleased that we shared several views. But we both arrived in Lausanne having decided—and I think this is what is important with regard to parents—independently and unequivocally that our nation's children, as athletes, are currently at serious health risk.

I think we are all finally getting through the denial to which he alluded and that the level playing field of the Olympic Games has now been chemically skewed. And taking illegal drugs is now the price of entry into the competition.

Teenage athletes of the world, as I said, they have their grapevine, and they know this. And so they also know that they have no choice as to whether or not to take these drugs to ultimately reach the top.

At this conference, unfortunately—again, I keep alluding back to General McCaffrey because we are so independently in parallel in our evolution of thought here. The IOC unfortunately attempted to maintain the status quo and proposed a worldwide drug testing agency be established with Juan Antonio Samaranch as its head.

Here I would like to make an aside. Again, the general alluded to the process of the IOC, which is basically to do things by executive committee and then to present them to a body that is hand-picked by the president of the IOC to simply approve what is there. Well, that was the process that was going to take place in Lausanne, but the governmental entities in attendance decided that that was not for them and for the citizens of their country.

In his address at the conference, General McCaffrey articulated a position, which is now 6 months old, and, as Senator Wyden alluded, really perhaps has not really been addressed yet by the IOC. Perhaps we will have negotiations go on for several more years in that regard.

But as Nancy said, a truly independent, transparent, worldwide drug testing agency has to be established to oversee the testing. And so common sense tells you for this reason it cannot be based in Switzerland, and the IOC cannot be in control of the findings that are reported.

The testing has to be year-round, random and involve blood, as well as urine, which has not been brought up yet, but will be later,

because many performance-enhancing drugs produce long-term effects but will test positive for only a matter of days or weeks.

Currently only urine testing is used. The drugs of choice, human-growth hormone and EPO, are only detectable through blood testing.

Three, samples have to be saved for at least 10 years. I will get into that a little later. The disincentive to take illegal drugs has to be maximized, rather than minimized. And the point is right now the disincentive is not there. There should be no statute of limitations, and there should be ongoing advanced research funded and technically supported by both sports federations and government.

Now for my personal views. It is not just about catching cheaters. It is also about creating as strong an overall deterrent system as is humanly possible. That is what I believe the clean athletes of the world truly want, as well as most and many of those—and I would say most—who currently feel compelled to take these drugs and are indeed taking them.

So I want you to consider what I am going to say as an all-of-the-above approach, because that is what has to happen here. Yes, part of the program has to be physical and immediate. This is the testing and penalty side. But the athletes will tell you it also has to be mental.

This means making the process an ongoing, constantly evolving, psychological competition in which the cheater never feels secure in his achievement and always a bit behind whose mission it is to catch them.

You cannot simply be reactive. That is the history to which Senator Wyden was alluding. You have to be retroactive with regard to no statute of limitations. You have to be proactive.

With regard to the independent drug testing agency, everything possible should be done to avoid even the hint of a conflict of interest. This means no absolute IOC control. The current system is a textbook example of a conflict of interest.

Along with that goes an inherent disincentive to catch cheaters. It is not individuals who have the disincentive. It is that system as it exists that has a built-in disincentive to catch the cheaters.

This is where the IOC, I think, has not really be aware. The athletes are well aware of this disincentive. It is that much more motivation for them to find ways to stay ahead of the testing. In other words, the IOC is in a competition with the athletes who are cheating. But the IOC was not formed to compete with the athletes and try to detect these cheaters. So in a sense, the procedures they developed historically, and perhaps it is even in their genes as an organization, was to put on the Olympic Games. They did not evolve to catch cheaters.

With regard to any statute of limitations, it is intuitively obvious to me as an athlete that to be constantly in fear that even your grandchildren might have to give back your Olympic medals would be a huge deterrent. But believe it or not, those who cheated with drugs in the Atlanta Olympics are now home free under the 3-year statute of limitations just adopted by the IOC between their drug summit and now.

With regard to year-round testing and the saving of samples, cheaters should always live in fear. The United States Government's experience in drug testing would be invaluable to the new agency, so that procedures could be standardized and made less vulnerable to technical legal challenge.

I view the taking of performance-enhancing drugs as a fraud. And under international law there should be no statute of limitations on fraud.

With regard to ongoing research, it adds a sense of forever. Again, it is a competition. The pursuit should be methodical and relentless. The cheaters have to know that testers are committed morally and intellectually to catching them. And that the monetary and laboratory resources available to the agency, this independent agency, will be worldwide.

Now, all this having been said, I am very optimistic. Again, *carpe diem*. I think the time is right. My emersion and love for my sport tells me the time for a drastic change in Olympic drug policy has arrived. As the parent of a young runner with talent, I am optimistic that perhaps in 5 years he will not be faced with the option of having to take drugs.

This past summer he was an intern on a ship in the Bay of Fundi putting tracking collars on gray whales. I am much happier that he was there this summer than on the European track circuit.

Finally, I have no doubt the true Olympians present and future will be cheering the drug-free, level playing field louder than anyone. Thank you. And I would like this submitted for the record.

[The prepared statement of Mr. Shorter follows:]

PREPARED STATEMENT OF FRANK SHORTER, U.S. OLYMPIC GOLD MEDALIST

Carpe Diem-Seize the Day-For the Future of the Olympic Games and Our Children Who Are The Olympians of the Future

Mister Chairman and other distinguished members of the committee on both sides of the aisle. My name is Frank Shorter. I was a member of the 1972 and 1976 United States Olympic teams. In addition I was fortunate enough to win a Gold Medal in the men's Olympic marathon in 1972 and a silver medal in the same event in 1976. It is an honor and privilege to be able to appear before you today to state as strongly as I can my carefully considered opinion with regard to illegal performance enhancing drugs in sport. It is an opinion based on thirty years of experience as a self-coached athlete and commentator.

Two years ago, I would have never dreamed you would be hearing testimony from General McCaffrey, a member of President Clinton's Cabinet who not only knows how pervasive and serious the problem truly is, but also, like you, actually has the resources and power to implement change. This is a *bone fide* plea on behalf of the world's athletes for help from the American government.

Without major changes in the system that detects these drugs and imposes penalties, they will continue to be the price of advancement for every young athlete who aspires to emulate a sports hero and pursue his or her career to the highest possible level. There will continue to be no choice but to put yourself at risk, even if you aware of the potential dangers and care about your health after your career is over.

Two years ago I might have sounded extreme. I do not think I sound extreme now, and, would like to outline what I perceive to be the recent confluence of events that created this unique and historic opportunity for you to act.

During the 1998 Tour De France, drugs were seized by French customs officials from a car belonging to one of the participating teams. Included were human growth hormone (HGH) and erythropoetin (EPO) two drugs with which you are, or will undoubtedly become, very familiar during the media buildup to the 2000 Olympic

Games in Sydney. There were even news reports that perfluorocarbon (PFC), an experimental, artificial blood only legally available to medical research institutions was discovered. Virtually unattainable, experimental, artificial blood possibly found in a Tour De France team car on its way to the next stage of the Tour.

Those of us close to international sport were not surprised. The elite athletes' grapevine is very extensive, as is the grapevine of young athletes who are emulating their heroes and heroines. Fortunately, we were very surprised and very pleased to see the level of public outrage amongst the French people. Finally, the parents were starting to understand.

Since then, the French Government has given serious consideration to nationalizing all drug testing within its borders. Such an obvious threat to its control prompted the International Olympic Committee to call for a world wide Drug Summit to take place in Lausanne, Switzerland in February of 1999. Between the time of this announcement and the summit, the Salt Lake City Bid Scandal broke. Suddenly, it was more than a public relations problem for the IOC.

This was because the United States, Canada, Australia, New Zealand and many members of the European Union sent cabinet level delegations to the summit. We were more than ably represented by General McCaffrey, Director of the White House Office Of National Drug Policy And Control, whom I had the privilege to brief beforehand, accompany to the summit and advise once there.

As an athlete and father, I was very pleased several of my views were shared by the General, but, we both arrived in Lausanne having decided independently and unequivocally, that our nation's children, as athletes, are currently at serious health risk. The level playing field of the Olympic Games has been chemically skewed. Taking illegal drugs is now the price of entry into the competition, and, the teenage athletes of the world know this. They no longer have a choice of whether or not to take these drugs in order to ultimately reach the top.

The IOC, unfortunately, attempted to maintain the status quo and proposed that a world wide drug testing agency be established with Juan Antonio Samaranch at its head. This was viewed as unacceptable by the governmental ministries in attendance, because it would not be truly independent and transparent.

In his address to the conference General McCaffrey articulated a position with which I, as an athlete, totally concur:

1. A truly independent, transparent world wide drug testing agency has to be established to oversee all testing for illegal performance enhancing drugs and enforce the penalties imposed for their use. For this reason, it can not be based in Switzerland and the IOC can not be in control of the findings or the way in which these findings are reported.

2. The testing has to be year round, random and involve blood as well as urine tests. Many performance enhancing drugs produce long term effects but will test positive for only a matter of days or weeks. Currently, only urine testing is used and the drugs of choice are only detectable through blood testing.

3. Samples have to be saved for at least ten years. The disincentive to take illegal drugs has to be maximized not minimized.

4. There should be no statute of limitations.

5. There should be ongoing, advanced research funded and technically supported by both sports federations and governments.

Now for my personal views—It is not just about catching cheaters. It is also about creating as strong an overall deterrent system as humanly possible. I believe this is what the clean athletes of the world truly want, as well as most of those who currently feel compelled to take these drugs. Consider it an "all of the above" approach.

Yes, part of the program has to be physical and immediate. This is the testing and penalty side. But, the athletes will tell you it also has to be mental. This means making the process an ongoing, constantly evolving, psychological competition in which the cheater never feels secure in his achievement and always a bit behind those whose mission it is to catch him.

With regard to the independent drug testing agency: everything possible should be done to avoid even the hint of a conflict of interest. This obviously means no IOC control. The current system is a textbook example of a conflict of interest with an inherent disincentive to catch cheaters. The athletes are well aware of this disincentive, and, are that much more motivated to find ways to stay ahead of the testing technology.

With regard to year round testing and the saving of samples: the cheaters should always live in fear. United States governmental experience in drug testing would be invaluable to the new agency so that procedures could be standardized and made less vulnerable to technical, legal challenges.

With regard to any statute of limitations: it is intuitively obvious to me, as an athlete, that to be constantly be in fear that even your grandchildren might have to give back your Olympic medals would be a huge deterrent. Believe it or not, those who cheated with drugs in the Atlanta Olympics are now "home free" under the three year statute of limitations just adopted by the IOC.

I view the taking of performance enhancing drugs as perpetrating a fraud, and under international law, there is and should never be a statute of limitations for fraud. Medals, honors and money should be returned whenever it might be determined illegal performance enhancing drugs were used.

With regard to ongoing research: it adds a sense of "forever". The pursuit should be methodical and relentless. The cheaters have to know the testers are committed morally and intellectually to catching them and that the monetary and laboratory resources available to the agency will be world wide.

All this having been said, I am very optimistic. My immersion in and love for my sport tells me the time for a drastic change in Olympic drug policy has indeed arrived. As the parent of a young runner with talent, I am optimistic that perhaps in three years he will not be faced with the option of taking drugs because all our young athletes will be emulating drug free Olympians. Finally, I have no doubt the true Olympians, present and future, will be cheering the drug free level playing field louder than anyone.

So, I urge you: *Carpe Diem-Seize the Day*

The CHAIRMAN. Thank you. Without objection, your statement will be made part of the record.

I want to thank all three witnesses.

Ms. Hogshead, do you share Mr. Shorter's optimism that the time is right and that we can act and that the IOC is going to act in a manner which will resolve these problems?

Ms. HOGSHEAD. Do I think the IOC will act in a manner? I think that they need outside groups like OATH to get them to act, if they are going to. When I was swimming, I think that the United States Olympic Committee did an excellent job of testing us. We were tested year-round. And I am grateful that we had all those tests that went on.

I have talked to people who have taken—who told me at the time that they were taking steroids. They were not swimmers. They told me they were taking steroids. And to them steroids was like spinach. It was the same thing. It was one more thing that they did to help them do better.

It was like getting enough rest. It was like eating right. It was like training. Their attitude was, if I do not work hard when I take these steroids, they do not anything. So it is not the steroids. It is the fact that I am working so hard while I am doing all these other things.

That is what we need to attack. When Frank was talking about the—you know, what can we do to undermine or to change our attitude about—to help the young children today.

The CHAIRMAN. Mr. Shorter, General McCaffrey and others have commented on the positive influence of Dr. Kissinger in this process. Have you gotten the same impression?

Mr. SHORTER. I was just made aware of Dr. Kissinger's involvement the other day, but I took it as a very, very significant happening. Because I have been in my sport for 30 years, and I understand that I think there is probably no one better suited to approach the IOC than a true diplomat and someone with the capability to present another side and perhaps a bit of the reality of the situation.

Because you still have to think of the International Olympic Committee as an entity that has total discretion. And so you are

dealing with a body. At least the athletes' perception always was that they had total discretion.

Then I think what has been more important over the last 2 years is that it truly has come to the point where the world is starting to understand that the IOC does, as Nancy said, hold the Olympics in trust for the rest of the world and for the athletes of the world and the citizens. And that always means the children.

I think this obligation, they, as trustee, if you want to think of it this way, should take all the other help that they can possibly get. And perhaps Mr. Kissinger can convince Juan Antonio Samaranch that, as General McCaffrey said, we are all in this together. The only enemy is the drugs.

The CHAIRMAN. There is so much at stake here, which is the credibility of the transcendent event in sports in the world.

Senator Stevens.

Senator STEVENS. No, I do not have any questions. I have some problems, and I think we all ought to address them. Because I am reminded of the skating incident and the problem of how an organization that is putting on these games can protect itself from liability, if there is an error. We have some real extensive legislation to pursue here, if we are going to have this kind of—develop this kind of regime at the pace you want to go.

I am not disagreeing with the goal, but it is whether or not we have the framework that will permit these judgments to be made. Human beings are not perfect. And we are talking about testers that are going to make mistakes. And that is going to lead some real intensive litigation.

Nancy, you will be very busy.

But when you look at this, I think that it will be very timely for us to address this early next year and see if we cannot find some way to achieve some of the limitations on liability that are going to be required, if we are to go as fast as you want to go, Mr. Shorter.

Yes, Nancy?

Ms. HOGSHEAD. Yes. I just want to say that that is why I think it is key to involve the athletes in whatever drug testing process goes on and is ultimately adopted, that the athletes, through their representatives, agree that this is the best way, you know, obviously with input from experts, but the best way to do it.

My feeling is, in talking with the athletes—and Frank can talk about this as well—is that we would welcome blood testing. It is much more accurate. You know, whenever you have humans involved, there is always going to be some mistakes. But it is the most accurate way to go right now. And they simply will not adopt it without consulting the athletes.

What is your read on that, Frank?

Senator STEVENS. Well, that was the question I was going to ask Mr. Shorter. That would be my only question. I remember too well a time when I was in a rural part of my state, and I ate some seafood, shellfish. And I ended up with enormous balls on my feet and my hands, had to be Medivac'd.

When I got into the hospital, they gave me a substance that made them disappear. I later discovered that it was a steroid. Now

I am told that if I had a blood test today, that will show up. And I did not voluntarily take it even.

Now you have some areas here, in fairness to athletes, that we have to pursue to make sure that there is not a snap judgment made about the use of these substances. And that is I agree with you. We have to keep them for a period of time. There has to be a baseline to show what is in the athlete's system at the time we start testing.

It is going to be—it is a very difficult area of the law, as you know, for us to perfect a system that will use a test, blood test in particular, to disqualify an athlete who has spent a lifetime to participate. So it is not something that—in my mind, it is not something you make a snap judgment on.

But I think we ought to all work toward establishing a system that will be fair all around. That is going to be very difficult.

Mr. SHORTER. Senator, I think if you take the athlete's point of view, an athlete who starts out clean literally and figuratively, when faced with reality, I believe, in having to give a blood test, will not be worried. Because he or she as an athlete, they have a goal.

I feel those athletes will have no problem with that as the price of entry into the Olympic Games. Your concern is well justified. But from the perspective of the clean athletes of the world, I do believe they have no problem with this.

There is a move afoot amongst many athletes in conjunction with the Healthy Competition concept that Blue Cross and Blue Shield has come up with to perhaps have some symbol that they would wear at the games next year to say, I am a drug-free athlete. And not only that, test me with anything, all of the above. Do it.

I do not think you are going to have a problem from the athletes' perspective. I think it is more a reason, amongst a litany of reasons perhaps, that a federation might use not to have a certain type of test. But from the athletes' perspective, the athletes deal with what is there. That is why I made allusion again to it really is a competition between the IOC and the athletes.

Whatever the rules of that competition, whatever level of playing field the athletes perceive, they will then train and prepare physically and mentally for that field. And so I think if that process of truly testing is set up, most of the athletes, if not all, will have no problem with it, because that is not the way they think. They are only thinking about their competition.

Senator STEVENS. I do not disagree. I just still say there is a line there somewhere. People coming from parts of the Third World who get some medicines are going to suddenly discover that those medicines had a steroid in them. There has to be some level of fairness here in dealing with how that is treated when it shows up. But that is part of the whole system we will have to evolve.

Mr. SHORTER. I think the difference, Senator, is that you are talking about perhaps committing resources to make sure that that does not happen, rather than saying: For that reason, we cannot do it. I think that is the difference.

Senator STEVENS [presiding]. I am saying commit resources so that person knows in advance and does not get stopped at the edge of the final competition with some statement saying that that per-

son cannot participate because of the presence of something in their blood. This is a long-term concept to deal with. And I hope we can evolve on this all the way through.

We thank you all very much.

We are both supposed to be at a conference. I am going to stay. Senator McCain is gone, and I want to ask the next panel to present their statements. I apologize to you for the circumstances that there are not 15 of us up here.

Mr. Hybl, Mr. Pound, Dr. Wadler and Ms. Coleman.

[Pause.]

Senator STEVENS: I—I know you have all come a long way to present the testimony and there is nothing that I can do to change the circumstance that this committee has two conferences going on in the House right now, and we just cannot have other members here.

I—I would suggest to you that if you all have prepared statements, that we put—place them in the record in full as though you presented them and have you highlight for us what you want us to know. —and we will see if we can have a dialog after that.

My first one on the list is President of the United States Olympic Committee, Mr. Hybl. Bill.

STATEMENT OF WILLIAM HYBL, PRESIDENT, UNITED STATES OLYMPIC COMMITTEE

Mr. HYBL. Mr. Chairman, I would like to thank you and the committee for the opportunity to address you today, and would point out that I am accompanied by Rich Young, our Counsel on drug matters, who has probably prosecuted, defended and tried more drug cases than any individual in the world; Dr. David Joiner, the chair of our Sports Medicine Committee; Baaron Pittenger, who chairs our Anti-Doping Committee; and Frank Marshall, who was the chair of the USOC Drug Externalization Task Force, which I would like to discuss today.

We have talked about the Olympic scandal at some lengths today. But one of the greatest problems facing Olympic Movement throughout the world is drug abuse. And our interest lies, Mr. Chairman, with creating a level playing field for our athletes.

At present the USOC provides drug testing for United States athletes except during international competitions. An alternative concept would involve externalizing all of our drug testing and making it an autonomous activity of an independent organization completely separate from the United States Olympic Committee.

In June of this year, we created the USOC Task Force on Drug Externalization and charged it to take into consideration all of these concerns.

This committee reported back on September 30th and provided your staff and the members of this committee with a report, which we will be taking to the Executive Committee of the United States Olympic Committee and the USOC Board of Directors this coming Friday and Saturday.

We think the recommendations of the task force are very important. I would like to briefly highlight just a few of the recommendations in that report.

This independent organization should be created to conduct a comprehensive anti-doping program in the United States on behalf of the USOC.

This would alleviate the perception inherent in any system of self-regulation that the USOC is not doing everything within its power to eliminate doping by U.S. athletes.

Its responsibilities would include: testing for prohibited use of performance enhancing drugs; interfacing with all appropriate national and international sports bodies and anti-doping organizations; conducting research in the areas of doping, doping methods, and testing procedures and methods; the development of ethical principles in the area of drug use; the development and promotion of informational drug education for U.S. athletes; and the establishment of a fair, timely and impartial adjudication system.

Adjudication is one of the areas where we feel we are going to have to work very hard. Just as you alluded to, Mr. Chairman, it is important that we have standards. But these standards have to be fair and deal effectively with the athletes.

As we look at this independent organization, we have tried to address the very question that has been raised today: Would it be a non-profit, non-member organization? Would it be independent?

We are suggesting that the board of directors would be comprised of nine individuals: two athlete members under the current definition of the USOC; two national governing body members; and five members who have no association with the United States Olympic Committee to be drawn from the medical, the ethical and the sports communities to operate the organization, that does not report and respond automatically to anyone.

As proposed, the USOC would provide an initial capital contribution of \$24 million in a four-year period. This would be 2000 through 2004. This amount would nearly double the current funding of \$12.6 million.

Each year, \$2 million of the \$6 million would be earmarked for drug research. You have heard the evidence today of the necessity for that.

That would be an increase from the quarter of a million dollars a year, or \$1 million in the four-year period, that the U.S. Olympic Committee currently spends.

While this is a significant amount for research, we do not believe it will provide all the funds that are needed. As a result, the independent organization, in cooperation with the United States Olympic Committee, would pursue support from the Federal Government and sponsorship from the private sector/business community for funding.

The USOC would maintain a broadened, value-based drug education program. This is a program we have briefed the U.S. Government and General McCaffrey on. One that would be implemented, first, in cities where our Olympic development programs are operating.

The independent organization, in cooperation with the USOC, would make athletes aware of the resources that can assist them in dealing with the short and long term ill effects of doping or in overcoming any drug dependence.

There would be significant increases in no-advance-notice out-of-competition drug testing.

Currently, the United States Olympic Committee conducts nearly 5,000 of these tests annually.

The goal would be to increase this number to 7,000 with one half of these tests, being no-advance-notice.

The independent organization would conduct this testing program and the in-competition testing program. It would also have the authority to conduct tests in addition to those agreed upon by the USOC and each National Governing Body.

Our goal is to have the new independent organization in place and operating early enough in 2000 to provide independent drug testing at our Olympic Team Trials. Our goal is March 1, Mr. Chairman.

The report of the Select Task Force on Drug Externalization will be presented, as indicated, to the USOC's executive committee and the board this week. The officers have already approved the report, and we believe that the approval of the executive committee and the board of directors will be forthcoming.

I would note, however, this is like the Congress. It is a two step process. First, you have the authorization legislation, and then we have to go through the budgeting process. We anticipate that we will be able to substantially achieve all of these objectives.

We agree that a new anti-doping system should be implemented. To this end, the USOC is prepared, as indicated, to commit significant financial resources.

However, at the same time, the USOC needs your help. In order for a new independent organization to participate and contribute to international anti-doping activities, it will need an appropriate designation that can be granted only by the U.S. Government.

This is necessary so we are able to participate with other nations as the representative group from the United States.

Senator STEVENS. What are you going to call that organization?

The nine-person board, what—what—what is the name of that entity?

Mr. HYBL. The proposed name of the entity will be the Independent Drug Organization of the United States Olympic Committee, although we have not completely decided as of yet. This is one of the issues to come before the executive committee this Friday.

Senator STEVENS. Thank you.

Mr. HYBL. Thank you, Mr. Chairman.

Senator STEVENS. Thank you very much.

[The prepared statement of Mr. Hybl follows:]

PREPARED STATEMENT OF WILLIAM HYBL, PRESIDENT, UNITED STATES OLYMPIC COMMITTEE

Good morning, I am Bill Hybl, President of the United States Olympic Committee. I appreciate the opportunity to address you today.

I. Background

While the Olympic bid city scandal has captured the majority of recent public and media attention, it is drugs in sport that is one of the greatest problems affecting the Olympic Movement today. For the past 18 months, the United States Olympic Committee has been evaluating whether, and how, it should radically alter the

structure of its anti-doping program as one means to better addressing the many issues and complexities associated with ensuring drug-free competition and a fair and level playing field for our athletes. At present, the USOC provides drug testing for United States athletes, except during international competitions. An alternative concept involves "externalizing" all of our drug testing and making it an autonomous activity of an independent organization, completely separate from the USOC. At the outset, I would like to point out that a principal reason for considering changes to the USOC's drug testing and education program is the international view that drug testing of athletes should be done by independent and autonomous agencies. Some have argued that having the USOC test its "own" athletes compromises the entire anti-doping process. While the USOC does not hold completely with this view, we also appreciate that the impact of such a perception must be taken seriously.

Initially, good progress was made in defining key elements of what such an independent organization should look like, but legitimate concerns surrounding some very complicated issues, including governance, athletes' rights, testing protocols, adjudication and sanctions required the process to move slowly. In June of this year, I created the USOC Select Task Force on Drug Externalization and charged it to take all of these concerns into account and to make a recommendation with respect to externalization.

Members of the Select Task Force include: Frank Marshall, Chair and USOC Public Sector Board Member; Baaron Pittenger, Vice Chair and Chair of the USOC Anti-Doping Committee; Brian Derwin, President, USA Weightlifting; James M. Belts, M.D., Children's Hospital Oakland; Thomas H. Murray, Ph.D., President, The Hastings Center; Rachel Mayer Godino, USOC AAC Athlete Representative/Figure Skating; Mary McCagg, USOC AAC Representative/ Rowing; and Herman Frazier, USOC Vice President, and Evie Dennis, Ph.D., USOC Special Assistant to the President, both serving as liaisons to the USOC Executive Committee and the USOC President.

The Select Task Force met numerous times and reviewed information provided by the USOC staff, representatives of the two International Olympic Committee-approved United States drug testing labs, United States National Governing Bodies (NGBs), athletes, and United States government representatives. On September 30, 1999, the Task Force submitted its report on Drug Externalization, which has been provided to your staff. On October 4th, the Officers of the USOC approved the report for presentation to the Executive Committee and the Board of Directors of the USOC.

Completing this very complicated work within such a compressed time period was not easy, and I want to complement all the members of the Select Task Force on Drug Externalization for their conscientious approach to developing a program that, if adopted, can certainly have very positive and far-reaching effects on drug testing and education for this country's athletes.

II. Recommendations of the Select Task Force on Drug Externalization

I would like to briefly highlight some of the key recommendations of the report.

- An Independent Organization should be created to conduct a comprehensive anti-doping program in the United States on behalf of the USOC. This would alleviate the perception, inherent in any system of self-regulation, that the USOC is not doing everything within its power to eliminate doping by U.S. athletes.
- Responsibilities would include: testing for prohibited use of performance enhancing drugs; interfacing with all appropriate national and international sports bodies and anti-doping organizations; conducting research in the area of doping, doping methods, and testing procedures and methods; development of ethical principles in the area of drug use; development and promotion of informational drug education programs for U.S. athletes; establishment of a fair, timely and impartial adjudication system; imposition and communication of sanctions when warranted (of note: this would eliminate the current practice of NGBs prosecuting doping infraction cases, an unsatisfactory arrangement that puts NGBs in an adversarial role against their own athletes); and establishment of bilateral and multilateral agreements with other anti-doping agencies.
- The Independent Organization would be a non-profit, non-member corporation. Its Board of Directors would be comprised of nine individuals; two athlete members, two NGB members and five members who have no association with the USOC.
- As proposed, the USOC would provide an initial capital contribution of \$24 million (\$6 million per year for four years). This amount, if approved by the

USOC's Board of Directors, would nearly double the current \$12.6 million in funding. Each year, \$2 million of the \$6 million would be earmarked for drug research. While this is a significant amount for research, we do not believe it will provide all the funds needed. As a result, the Independent Organization, in cooperation with the USOC, would pursue federal and sponsorship funding to conduct additional research.

- The USOC would maintain a broadened, value-based Drug Education program aimed at elementary, junior high and high school age groups as a part of the USOC's general education programs. This effort would include general information on the dangers of drug use for performance enhancement, but would also have a strong ethical message emphasizing fair play and sportsmanship consistent with the ideals of the Olympic Movement.
- The Independent Organization, in cooperation with the USOC, would make athletes aware of resources that can assist them in dealing with the short and long term ill effects of doping or in overcoming any drug dependence.
- There would be significant increases in no-advance notice out-of-competition testing. Currently, 5,000 tests are conducted annually. The goal would be to increase this number to 7,000; half with no-advance notice. The Independent Organization would conduct this testing program and the in-competition testing program. It would also have the authority to conduct tests in addition to those agreed upon by the USOC and each NGB.

III. Implementation

Our goal is to have the new Independent Organization in place and operating early enough in 2000 to provide independent drug testing at our Olympic Team Trials. The Report of the Select Task Force on Drug Externalization will be presented to the Executive Committee two days from now, and to the USOC's Board of Directors in three days. Assuming approval by both bodies, implementation will begin immediately. The USOC will, however, fall back to the use of its existing anti-doping system if we cannot guarantee a seamless transition to the new Independent Organization in time to support our responsibilities for the 2000 Sydney Olympic Games.

Conclusion

I agree with the Select Task Force's finding that a new system needs to be implemented in order to enhance the credibility of United States efforts in the area of anti-doping and to resolve some inherent problems within existing programs. The USOC has committed significant financial and other resources to reach this point, and I believe this proposal goes a long way in providing solutions to the concerns expressed by those involved with the anti-doping effort, worldwide. At the same time, however, the USOC needs your help. In order for the new Independent Organization to productively participate and contribute to international anti-doping activities, it will need an appropriate designation that can only be granted by the United States government. This would provide the Independent Organization with the legitimacy and identity necessary to interact as an equal with other sanctioned national and international organizations.

Senator STEVENS. Mr. Pound, we welcome you, my southern neighbor. Always glad to have a Canadian here.

STATEMENT OF RICHARD W. POUND, FIRST VICE PRESIDENT, INTERNATIONAL OLYMPIC COMMITTEE

Mr. POUND. It—is nice to be here—It reminds me of Winston Churchill when he was here saying that—if only his mother had been British, and his father American, he might have got here on his own.

[Laughter.]

With me, it is my wife and myself, but—well, thank you for the opportunity, Senator, to be here today.

I—hope that I can help provide some information that will be helpful to you and your colleagues as you consider a very important problem in—sports today.

My name is Richard Pound. I am a lawyer in Montreal and the chancellor at McGill University.

Within the Olympic context, I am one of two Canadian members of the international Olympic Committee, having been co-opted in 1978.

I was secretary and then president of the Canadian Olympic Association between 1968 and 1982. The Canadian Olympic Association is—the counterpart to my friend Bill Hybl's organization, the USOC.

I have been elected on four separate occasions to 4-year terms on the IOC executive board, and I am presently the first vice president of the IOC.

As you pointed out, in accordance with the rules of the—commission, I have prepared and deposited written testimony, which I understand you will make part of the—record of the hearing.

Senator STEVENS. Yes.

Mr. POUND. Thank you. The—nature of the problem that we are here addressing is—quite simple and I think we are all agreed on it. There are, we believe, too many athletes using doping methods to improve their sport performance. In my books, one athlete doing it is too many.

It is a problem in sport, because it contravenes the fundamental ethical principles, upon which sport as a consensual activity is based. Because there is a genuine risk to the health of the athletes involved.

Our first efforts to fight against doping in sport were undertaken by the International Olympic Committee when its medical commission was established in 1967.

These included development of a list of prohibited substances and procedures, and testing for such substances and procedures on the occasion of the Olympic Games, the—event for which the IOC is responsible.

We have persuaded most, if not all, of the international Olympic sport federation to adopt the IOC medical code or at least an analogous provision within their own rules. And while this has been successful to some degree, it is quite clear from what we have heard today and elsewhere that the effort has not been sufficient to eradicate drug use in sport.

Most recently and—I should say that in the past 30 years, no initiative in the fight against drug use in sport has been taken by any other organization than the IOC or in which the IOC was a central participant.

But at the World Conference of Doping and Sport convened by the IOC in February of this year and to which we invited representatives of governments in order to—help them understand what we were doing and what the nature of the problem was, we agreed that the anti-doping code of the Olympic movement would form the basis of the fight against doping in sport.

In addition, it was agreed that we would establish what is now being called the World Anti-Doping Agency, the WADA, with a governance structure that would ensure that no constituency within the Olympic movement or outside the Olympic movement, would be in a position to control the WADA.

It is our plan to have the WADA in operation by the end of 1999. And in order to give the governmental authorities an opportunity to organize the financing because the—thought is that they will

contribute equally to this, we will carry all of the financial burden of the WADA for the first 2 years.

Following the world conference, there were several meetings of a working group consisting of officials as opposed to ministers, within the public authorities, mostly international governmental authorities, the identities of which are in my prepared testimony, and within the Olympic movement to work out what that governance structure ought to be and how the agency should operate.

Consensus was reached on a very broad basis as to how that should occur and what the mission statement of the—WADA ought to be.

A good deal of the discussion I—might say, Senator, because it is—of concern here in the United States in particular, was how best to—accommodate the interest of national governments in this international problem.

We did not invite any national governments to the—working group, because if we had invited one, we would have had to invite 199. That would have added to the—time delays in the problem.

But it is an issue that we do want to address, and there are many possible variations on the theme that we could—envision, such as, for example, having the—host countries of the next two or three Olympic games automatically included in the governance structure and perhaps the—host country of the—previous games.

There was some concern that I have—heard expressed as to whether the Olympic movement is concerned about the interest of—governmental authorities in this problem.

The answer to that, Senator, is a resounding no. We are delighted that the governmental authorities both and—if I use today's occasion as an example, both the Congress of the United States and the Administration of this government are interested, because in our respectful view, the—international solution to doping in sport is going to require the cooperation and the very close cooperation between the public authorities in all of the countries involved and the Olympic sports authorities.

I think that will do perhaps as—my initial statement. I would be happy to try and answer any questions that you have.

Senator STEVENS. Thank you very much.

[The prepared statement of Mr. Pound follows:]

PREPARED STATEMENT OF RICHARD W. POUND, FIRST VICE PRESIDENT,
INTERNATIONAL OLYMPIC COMMITTEE

Introduction

Sport is a consensual activity, entered into by individuals of their own free will, governed by agreed-upon rules. These rules relate to all aspects of the sporting activity, including the definition of the sport, its rules of play, the field of play, the nature of the equipment used, age and weight limits for certain sports and, generally all matters germane to the practice of the sport. Of particular interest to the Committee today is the sub-set of these rule that relate to doping in sport.

The focus of my testimony is the involvement of the International Olympic Committee ("IOC") in the evolution of these "anti-doping" rules and the procedures for their enforcement and the resolution of disputes arising out of their interpretation.

Sport occurs within society as a whole. In that respect, the laws of the land pertaining to certain substances or procedures that are regulated, civilly or criminally, necessarily have primacy over the privately agreed-upon rules of sport. No one would disagree with this characterization.

In the tradition of this and most other democratic countries, however, to the extent that there are no applicable public laws restricting the actions of individuals,

those individuals are free to act as they wish. They may also associate with others and agree to their respective conduct as between themselves, including the applicable sanctions in the event that the agreed-upon conduct is breached. They may form associations to organize their sport relationships, locally, nationally and internationally. That is how sport has been organized on a worldwide basis.

Doping in sport has become a serious problem. Sport, within the Olympic Movement, has recognized this and has taken steps to identify the problem, to define it and to fight against it. Because sport is now practiced on a worldwide basis, the fight against doping is an international problem and the solution to it must necessarily be international or the level playing field, which is fundamental to sport, cannot exist. There must be national building blocks in arriving at the solution, but, unless there is an international and coordinated approach to the question of doping in sport, however well-intentioned the disparate efforts may be, they will inevitably end in failure.

The International Olympic Committee

I am here today to represent the International Olympic Committee ("IOC") and to provide whatever assistance I can to your Committee in its appreciation of the issues involved in doping in sport, from the perspective of the Olympic Movement.

The IOC was established more than a century ago, in 1894, to renovate the Olympic Games conceived in ancient Greece. It has coordinated and supervised the Olympic Movement ever since and has stimulated the development of sport on an international basis, with the result that some 200 countries now participate in the Olympic Games. It has been a remarkable achievement and the Olympic Games have become the most important sports event in the world today.

The IOC itself is an organization consisting of approximately 100 members who act as trustees of the Olympic Movement on a voluntary basis. It is organized as an association having legal personality under Swiss law and is headquartered in Lausanne, Switzerland. It co-opts members selected for their personal qualities and their ability to help promote the Olympic Movement. Its activities and relationships are governed by the terms of the *Olympic Charter*. It has a permanent staff of slightly more than 100 employees. It acts as a non-governmental organization ("NGO").

It operates, in a manner akin to governments, by "recognition" of international sports federations ("IFs") that govern particular sports and of national Olympic committees ("NOCs") that agree to subscribe to and be bound by the provisions of the *Olympic Charter*. The responsibilities of NOCs are, *inter alia*, to promote the Olympic Movement within their respective territories and to select the athletes from those territories who will participate in the Olympic Games. The NOC recognized by the IOC in the United States is the United States Olympic Committee ("USOC"), to which the Congress has assigned additional responsibilities and in respect of which the Congress has assumed an oversight role, governed, as I understand it, by the 1978 *Amateur Sports Act*.

In addition to the matters for which it has direct responsibility (including the granting of recognition referred to above, the choice of Olympic sports on the Olympic program, choosing the sites of Olympic Games), the IOC exercises a coordinating role within the Olympic Movement. In that role, it deals regularly with IFs, NOCs and the Organizing Committees of each edition of the Olympic Games ("OCOGs"). Other than matters for which it has a clear constitutional responsibility, the IOC has no power to impose its will on any of the autonomous organizations within the Olympic Movement. There is a widespread misconception that the IOC is in a position to control organizations such as IFs and NOCs. It is not in such a position. The IOC depends on developing a consensus amongst them and using its moral suasion to bring about courses of conduct which it considers beneficial to the Olympic Movement and the development of sport.

Role of the IOC in Matters of Doping

There has, unfortunately, always been some element of cheating in sport. In that respect, sport is no different from other social activities in which rules of conduct or of law have been established. As in other elements of society, sport has adopted a combination of education and sanctions to promote compliance with its rules. There are penalties, suspensions, forfeitures of games and events and all the other sanctions with which we are familiar. In society at large, similar sanctions have been adopted for behaviour that does not comply with social norms. These sanctions, as is the case in sport, are graduated, depending upon the severity of the breach and the nature of the particular social rule.

Over the last few decades, concern for the health of athletes and the erosion of sporting ethical values has led the IOC into the field of doping in sport. The first

indications of systematic use of performance-enhancing drugs appeared in the late 1950s, when testosterone was discovered to assist in building bulk and strength for weight and field events and stimulants were used to increase performance in certain events, such as cycling. In 1960, a Danish cyclist in the Olympic Games collapsed and died following the use of stimulants.

This led to the formation of the IOC Medical Commission and the creation and publication of a list of substances that were prohibited on the occasion of the Olympic Games. There is little question that, in the initial years, the primary focus of the IOC Medical Commission was the health of the athletes, since it was unclear what all of the damaging side-effects of the substances used might be. The reliable scientific data available to researchers at the time were very limited. This lack of data has been a complicating factor in the work of the IOC Medical Commission ever since its inception, since, once the particular substances were declared prohibited, the use of them went "underground" and further data became even scarcer. The work of the IOC Medical Commission has been dominated by its focus on the scientific aspects of doping control. The sports-ethics aspect has been secondary.

Over time, the IOC developed the IOC Medical Code, which, in its earlier iterations, was a combination of prohibitions and of indications of what was allowable. It was, essentially, a medical document, rather than a legal document. Its application was, on the occasion of the Olympic Games, very much a matter of decision by the IOC Medical Commission, ratified almost as a matter of course by the IOC Executive Board, from whose decision there was no effective appeal.

During this same period, there were growing concerns that the sport system, especially the international sport system, did not have adequate safeguards to protect the rights of those affected by the decisions of sports organizations. This is referred to, as I understand it, in the United States as "due process" and in many other jurisdictions as the rules of "natural justice." Many national organizations built into their internal rules an appeal process to deal with cases in which the applicable rules (with which everyone agreed) were improperly applied and an injustice resulted. Prior to such developments, the only recourse of a person affected by such decisions was to the ordinary courts.

The IOC moved in the same direction. In 1983, it established the Court of Arbitration for Sport ("CAS") to deal with sports-related disputes. The CAS was organized and funded by the IOC and had arbitrators of international experience and reputation available for selection by the parties to any dispute. The roster of arbitrators was originally made up from nominations from the IOC, IFs and NOCs. It functioned in this manner and, in 1993, was judged by the Swiss Federal Tribunal (the country's supreme jurisdiction) to be a real arbitral tribunal offering sufficient guarantees of independence and objectivity for its awards to be final and enforceable. The same Tribunal suggested that the role of the CAS could be made even stronger, were it not seen to be an organization controlled by the IOC.

This led to the establishment on June 22, 1994 of the International Council of Arbitration for Sport ("ICAS"), a governance structure for the CAS consisting of an equal number of representatives of the IOC, the IFs, the NOCs and (particularly important) Olympic athletes.¹ Thus, no particular constituency is in a position to control the ICAS or the CAS and the independence of both has become a well-accepted matter of record. This is an important feature in relation to the problem of doping in sport, since the basic structure proposed for the World Anti-Doping Agency [see below] is modeled upon the structure developed for the ICAS. There has been no question of the complete independence and freedom of the ICAS and the CAS from the "control" of the IOC or any other constituent element. Even decisions of the IOC are capable of being arbitrated in the CAS.²

The only event that the IOC actually controls is the Olympic Games. All other sport events are organized under the auspices and control of the IFs (such as world championships or world cups), national federations ("NFs") (such as national championships) or NOCs (such as Olympic trials). Depending upon the particular sport system in a country, there might also be other sport organizations with authority over sport competitions, such as universities (e.g., the NCAA) or professional associations (e.g., NBA, NFL, NHL and MLB). The IOC has no power to impose its own views or rules on any such events.

¹ Concurrent with this development, athletes also became entitled to nominate arbitrators to the CAS roster. I have acted as an arbitrator in a dispute before the CAS in which one of the arbitrators was one nominated by athletes and found the ability and conduct of the particular individual to have been completely professional and impartial.

² This was demonstrated during the Olympic Games in Atlanta in 1996, when decisions of the IOC to disqualify certain athletes for the use of the drug Bromantan were overruled by the CAS and the athletes and their results reinstated.

Despite its limited jurisdiction, what the IOC has tried to do, in addition to testing for prohibited substances and prohibited methods at its own event,³ is to persuade the other elements within the Olympic Movement to adopt its rules in respect thereof, or, at the very least, analogous rules. The politics of organizational autonomy, however, make simple adoption of an IOC rule unattractive to such organizations. Attached as Exhibit "A" to this statement is a chronology of the actions initiated by the IOC to develop consensus on the matter of doping in sport.

There have been long periods of time during which the IOC has led the fight against doping in sport virtually alone. There are many reasons for the lack of what might appear to have been sufficiently aggressive initiatives on the part of the sport community as a whole, some of which include:

- Lack of specific knowledge of what substances and procedures were being used.
- Insufficient connection between the international organizations governing sport on a worldwide basis and the grassroots level of sport where the doping was actually occurring.
- Lack of financial resources necessary to conduct research and testing, especially out-of-competition testing.
- Possible desire for continued "progress" in the sport.
- "Underground" and clandestine use of drugs and methods.
- Participation by certain national governments and organizations in doping.
- Perceptions that any positive result in a test constituted a "failure" or an embarrassment to the sport or country involved, rather than a success for having helped to level the playing field.
- Difficulty in developing tests that could withstand expensive legal, scientific and procedural challenge.

As is the case with any scenario of "perpetrator" and "police," the perpetrators take the initiative and are always ahead of the police. The inevitable result is a constant situation of trying to catch-up, first by finding out what is happening and then devising a means of detecting the effects of the doping, so that sanctions can be applied with the confidence that the science is reliable.

The Overall Nature of the Doping Problem

The conclusion of the working group established to prepare for the World Conference on Doping in Sport, held in February, 1999, was that doping in sport is fundamentally an ethical problem, with important possible health risks, rather than a medical or scientific problem. It must be approached primarily from the perspective of ethics, while recognizing that, at the same time, there must be an ancillary function of testing and detecting.

In that respect, the model is not unlike society in general, in which there is an implicit understanding that the laws of the society reflect the shared values of that society. There must, nevertheless, be some element of policing such laws and values against those who might seek to gain some unfair advantage in relation to those who follow the rules. The IFs and NOCs are in the best position to promote the ethical principles involved and, at the same time, to identify those athletes who are at the highest risk (generally the best athletes) and who should be tested, particularly in the periods of preparation for sports competitions.

It is clear, however, that there is also a health concern involved and that this concern should not be minimized. Interestingly enough, there has been some criticism of the IOC in that regard, the suggestion being that such an approach is paternalistic and not within its mandate. The IOC has continued to reflect this concern despite such criticism, since the anecdotal, if not fully scientific, evidence is that there can be very serious side effects from the use of certain of the substances which are prohibited and other medical risks arising from some of the procedures. The IOC considers, notwithstanding the criticism (which is not universal), that it does have a role to be concerned about the health of athletes within the Olympic Movement.

Scientific research is expensive. The best researchers (and this is not a criticism of any career choices) follow the funding derived from granting agencies or go into the pharmaceutical industry where they may, some day, benefit from discoveries they make in the course of their research. There is not a great deal of funding available for research designed to detect the use of drugs amongst otherwise healthy ath-

³There are many, and obvious, frustrations implicit in such testing. While it is clear that so-called "race day" drugs will be detected during the competitions, others, which are used in the period of preparation for the Games, might no longer be present in the systems of the athletes at the time of the Games, but the athletes may nevertheless have benefited from having used them during the period of training.

letes, nor any particular glory, academic or otherwise, from devising tests for such purpose.

One of the challenges of the Olympic Movement will be to obtain access to more and better research if it is to have any realistic chance of keeping up with the development of new and increasingly sophisticated substances. The research is that much more complicated because it first has to be determined that a particular substance or method is being used and that it is either performance-enhancing or dangerous to the health of the athletes. Then a test must be developed to be able to identify the substance or method in the body of the athlete.

This leads to yet another problem, that is more complicated for the Olympic Movement than it is, for example, in normal medical practice. In the latter, physicians can operate on the basis of probabilities for purposes of practicing the art of healing. Within the Olympic Movement, however, the standards are much higher, because the results of a positive test for a prohibited substance or prohibited method mean disqualification and/or suspension of the athlete. Instead of tests that are reliable on a balance of probabilities, we need tests that are reliable virtually beyond a reasonable doubt. This is an additional burden that must be met. The legal exposure to sports organizations that act without such certainty is enormous, as many have found to their detriment.⁴ Even an entirely frivolous challenge can be ruinously expensive.

Already touched upon above is the lack of reliable data with which to work, both for purposes of assessing the health risks and for the development of more reliable tests. Data may vary, for example, by gender, by age, by the length of time during which the substance or method is used and, possibly, by race or continent. The clandestine use of prohibited substances impedes access to such data for control group purposes in the scientific process.

It is physically impossible for international sports organizations to have a "hands-on" involvement in the practice of sport in each country and in the implementation of out-of-competition tests. They are not, and can never be, equipped to do so. It is the sports organizations "on the ground" that have the ability to undertake the general supervisory and educational activities necessary to bring the phenomenon under control. Even they, however, need assistance to do so. Several countries have developed independent agencies that carry out testing procedures and this model has enjoyed a certain amount of success. Such models have been the genesis of the idea to create an independent international anti-doping agency that emerged from the World Conference on Doping in Sport.

Doping in sport is a domestic, but also international, issue. If any campaign against doping in sport is to be successful, it must be accepted by every country and the standards must be consistent: as to the prohibited substances and methods, the testing protocols, the exposure to out-of-competition testing, the laboratory analysis, the privacy concerns and the rights to appeal against findings. The matter of doping in sport cannot be resolved on the basis of inconsistent national programs, nor by *ad hoc* bilateral agreements. It is too pervasive a problem to be dealt with in such a manner.

One final aspect of the problem relates to the athletes affected by the anti-doping rules. I think it is fair to say that there has been no real "buy-in" from many athletes. Athletes perceive the system, rightly or wrongly, as one that is imposed upon them by the "suits" who administer sport organizations, that is wildly inconsistent and in which many of the major drug-users have access to products for which no reliable tests have yet been developed. They have also seen national governments involved in some of the worst excesses of doping in sport, implementing sophisticated doping programs, insisting upon drug use by their athletes as a condition of participation and routinely covering up such doping activities. Many athletes, in consequence, appear to have become convinced that they, too, must resort to drug use if they are to be competitive.

One of the reasons for insisting that athletes be involved in the new international agency is to provide them with input into the policies and their methods of implementation. If they can see a system that works and in which their interests have been protected, then they will develop confidence in it. If they know that drug users will be caught and sanctioned, they will know that it will no longer be necessary for them to sink to the lowest common denominator. The Olympic Movement has to win back the confidence of the athletes. But, at the same time, athletes must ac-

⁴The IOC is prepared, for example, to rely upon the results obtained from blood samples, but must be certain that the scientific results of such analysis can meet the standards of reliability required for purposes of imposing sanctions in the event of "positive" cases. There may be circumstances, or substances, in respect of which the traditional method of analyzing urine samples could be the most reliable technology.

cept their share of the responsibility, not only for the problem, but also for its solution.

Development of International Consensus

The solution to the problem of doping in sport must be international. It is not enough for some countries to have successful domestic programs, although such domestic programs are necessary components of the overall solution.

I believe that the events of the past couple of years have finally driven home to all sports organizations that there is a real threat to their continued existence if the solution is not found. The sight of police taking athletes and officials from competition sites or their hotels for investigation and/or prosecution has made it clear that there is a real possibility of sport becoming criminalized. This would lead to a state of affairs that strikes at the very foundation of what sport should represent as a humanistic social activity. The particular autonomies of sport organizations must perforce be subordinated to concerted action in the interests of sport in general.

It is this approach that has governed the efforts of the IOC to coordinate this struggle against doping in sport. It is in the common interest of all sport to put the collective house in order and to seek the assistance of the public authorities in those aspects in which the public authorities have jurisdiction. It brings to mind the famous words of your Benjamin Franklin at the signing of the Declaration of Independence on July 4, 1776, "We must all hang together, or assuredly we shall all hang separately." If sport is to remain independent, it must hang together. Our solution must be inclusionary, not exclusionary and not accusatory. No country is immune from doping in sport. We must convince, not force. A sanction of excluding a sport from the Olympic Movement must be the last, the final, resort and be recognized as the ultimate failure, not a victory, in the struggle.

World Anti-Doping Agency

In February of this year, the IOC convened a World Conference on Doping in Sport. Recognizing that the solution to the problem of doping in sport may not be solely within the control of the sports authorities, it invited representatives of governments (including the United States of America) and certain intergovernmental organizations to participate in the Conference, in addition to the so-called Olympic Family. The final conclusions of the Conference were contained in what is now referred to as the Lausanne Declaration, dated February 4, 1993.

The Lausanne Declaration consists of the following:

Considering that doping practices contravene sport and medical ethics, and that they constitute violations of the rules established by the Olympic Movement, and concerned by the threat that doping poses to the health of athletes and youth in general:

Recognizing that the fight against doping in sport is the concern of all: the Olympic Movement and other sports organizations, governments, inter-governmental and non-governmental organizations, sportsmen and sportswomen throughout the world, and their entourage;

The World Conference on Doping in Sport, with the participation of representatives of governments, of inter-governmental and non-governmental organizations, of the International Olympic Committee (IOC), the International sports Federations (IFs), the National Olympic Committees (NOCs), and of the athletes, declares:

1. Education, prevention and athletes' rights

The Olympic oath shall be extended to coaches and other officials, and shall include the respect of integrity, ethics and fair play in sport. Educational and preventive campaigns will be intensified, focusing principally on youth, and athletes and their entourage. Complete transparency shall be assured in all activities to fight doping, except for preserving the confidentiality necessary to protect the fundamental rights of athletes. Partnership with the media shall be sought in anti-doping campaigns.

2. Olympic Movement Anti-Doping Code

The Olympic Movement Anti-Doping Code is accepted as the basis for the fight against doping, which is defined as the use of an artifice, whether substance or method, potentially dangerous to athletes' health and/or capable of enhancing their performances, or the presence in the athlete's body of a substance, or the ascertainment of the use of a method on the list annexed to the Olympic Movement Anti-Doping Code. The Olympic Movement Anti-Doping Code applies to

all athletes, coaches, instructors, officials, and to all medical and paramedical staff working with athletes or treating athletes participating in or training for sports competitions organized within the framework of the Olympic Movement.

3. Sanctions

The sanctions which apply to doping violations will be imposed in the framework of controls both during and out of competition. In accordance with the wishes of the athletes, the NOCs and a large majority of the IFs, the minimum required sanction for major doping substances or prohibited methods shall be a suspension of the athlete from all competition for a period of two years, for a first offence. However, based on specific, exceptional circumstances to be evaluated in the first instance by the competent IF bodies, there may be a provision for a possible modification of the two-year sanction. Additional sanctions or measures may be applied. More severe sanctions shall apply to coaches and officials guilty of violations of the Olympic Movement Anti-Doping Code.

4. International Anti-Doping Agency

An independent International Anti-Doping Agency shall be established so as to be fully operational for the Games of the XXVII Olympiad in Sydney in 2000. This institution will have as its mandate, notably, to coordinate the various programmes necessary to realize the objectives that shall be defined jointly by all the parties concerned. Among these programmes, consideration should be given in particular to expanding out-of-competition testing, coordinating research, promoting preventive and educational actions and harmonizing scientific and technical standards and procedures for analyses and equipment. A working group representing the Olympic Movement, including the athletes, as well as the governments and inter-governmental organizations concerned, will meet, on the initiative of the IOC, within three months, to define the structure, mission and financing of the Agency. The Olympic Movement commits to allocate a capital of US \$25 million to the Agency.

5. Responsibilities of the IOC, the IFs, the NOCs and the CAS

The IOC, the IFs and the NOCs will maintain their respective competence and responsibility to apply doping rules in accordance with their own procedures, and in cooperation with the International Anti-Doping Agency. Consequently, decisions handed down in the first instance will be under the exclusive responsibility of the IFs, the NOCs or, during the Olympic Games, the IOC. With regard to last instance appeals, the IOC, the IFs and the NOCs recognize the authority of the Court of Arbitration for Sport (CAS), after their own procedures have been exhausted.

In order to protect athletes and their rights in the area of disciplinary procedure, the general principles of law, such as the right to a hearing, the right to legal assistance, and the right to present evidence and call witnesses, will be confirmed and incorporated into all applicable procedures.

6. Collaboration between the Olympic Movement and public authorities

The collaboration in the fight against doping between sports organizations and public authorities shall be reinforced according to the responsibilities of each party. Together, they will also take action in the areas of education, scientific research, social and health measures to protect athletes, and coordination of legislation relative to doping.

In pursuance of the Lausanne Declaration, and the timetable it contained, the IOC convened the meetings of a working group that has achieved a significant degree of consensus amongst the sports organizations and public authorities, particularly intergovernmental and international agencies.⁵

This work has led to the announcement of the formation of the World Anti-Doping Agency ("WADA"), which will come into existence effective as of the end of this month. I have attached, as Exhibit "B", for the information of the Committee, some of the related documents, including the draft constating document and proposed Mission Statement.

⁵The participants of the working group included the Arabic Confederation of Sports, the Association of the International Winter Sports Federations, the Association of National Olympic Committees, the Association of Summer Olympic International Federations, the Council of Europe and the Monitoring Group of the Anti-Doping Convention, the European Union, the International Criminal Police Organization, the International Olympic Committee, the IOC Athletes Commission, the United Nations International Drug Control Program and the World Health Organization.

The mandate of the WADA is quite clear. The fundamental changes in approach that are reflected in the establishment of the WADA include the following:

- No single organization (including the IOC) will be in a position to control the WADA.
- There will be, once the WADA is fully established, an equal representation of the Olympic Movement and the public authorities.
- Athletes will be equally represented in the governance of the WADA, along with the other constituent organizations.
- The approach to the problem of doping in sport will be international in scope and be designed to achieve uniformity both in the rules and their implementation.
- Its activities will include research,⁶ as well as education and prevention.

I should also mention the establishment of the Olympic Movement Anti-Doping Code. This is a Code that was accepted in the Lausanne Declaration as the basis for the fight against doping in sport. It will come into force as of January 1, 2000, applicable to the entire Olympic Movement. In its present format, the Code is essentially a generic version of the IOC Anti-Doping Code, written in language that seeks to make it applicable for the entire Olympic Movement. It is the starting point from which the WADA can work.

As you will note from paragraph 2 of the Lausanne Declaration, this Code applies, *inter alia*, to "all athletes ... participating in or training for sports competitions organized within the framework of the Olympic Movement." This is a big step forward, since it renders any athlete who may wish to participate in the Olympic Games liable, in addition to in-Games testing, to out-of-competition testing under the Code, even if such individual may normally be participating within an organization that does not have the same anti-doping rules as those applicable within the Olympic Movement. The mechanics of how and when such individuals may indicate that they wish to be considered for selection on Olympic teams, and thereby fall within the Olympic "system" will have to be determined. These could well vary from sport to sport and organization to organization. A significant portion of the WADA budget will be devoted to funding additional tests, some of which could be dedicated to such hybrid situations.

The Code is by no means perfect and I hope that when all the parties forming the WADA come together, we can develop significant improvements to it. The likelihood of success in that respect will be greatly improved by having everyone at the same table at the same time, so that, in the desire to have a comprehensive and integrated solution, the issues can be resolved by consensus.

The IOC, alone, cannot provide the solution to doping in sport. It does not assert any particular claim to control the process by which eventual success will be achieved. Nor has it ever acted in such a manner. The IOC can and does seek to lead by example and has encouraged a comprehensive effort by all the constituent elements of the Olympic Movement in the overall struggle. It will continue to do so, out of its conviction that the fundamental ethical values inherent in sport and the health of athletes must be protected.

The Role of Legislators

I do not presume to come before this Committee to lecture it on what should be the substance of any legislation or other action that you may consider. That is a mandate for which you have a sovereign responsibility. There are, however, some general considerations arising out of the testimony before you to which you may wish to direct your thoughts as you reflect upon the proper course to follow.

- What is the proper role of government in the practice of sport? Should sport generally be free to regulate itself or should sport only be possible by virtue of and pursuant to legislation?
- To what extent should government move in the direction of applying criminal sanctions to sport activities?
- Should government be legislating the ethical principles inherent in sport, or is that a social issue best left to sport?
- If a drug or a procedure, which may be prohibited within a sport system, presents no overriding danger within society as a whole, should government intervene with legislation or other regulatory actions?

⁶US\$2 million has already been earmarked for second phase research designed to develop controls for two elusive and potentially dangerous substances, erythropoietin (EPO) and human growth hormone (hGH).

- What, if any, is the philosophical difference to be applied in the consideration of doping in sport within the Olympic Movement and in sport outside the Olympic Movement, such as in the professional sport organizations or leagues?
- Can government assist sport organizations in their efforts to fight against doping by providing that disputes in such matters be definitively settled in accordance with the appeals processes properly applied by such organizations?
- Should government assist the fight against doping in sport by directing resources to research for the development of reliable scientific methods for detection of drug use and for educational programs?
- What is the best method for government to act in the interests of achieving international consensus between governments on the harmonization of the approach to such questions as trafficking, access to athletes for purposes of out-of-competition testing, protection of appropriate rights of privacy of athletes and the general approach to supporting sports organizations in their desire to achieve drug-free sport?

This, clearly, is not an exhaustive list of issues, but it may be helpful in the development of any matrix against which you might approach the subject matter.

Conclusion

As you already know, the questions that are raised in any consideration of doping in sport are complex and interrelated. They cannot be solved easily or in isolation. But I believe that they can be solved, if the sport and public authorities, together with the athletes, work together toward a common objective, each recognizing the value contributed to the overall solution by the others. If we can do this, and I pledge the continuing commitment of the IOC in this regard, then, in the words of Winston Churchill, while this may not be the end, nor even the beginning of the end, it will at least be the end of the beginning in this particular struggle.

Exhibit "A"

Brief history of the IOC's fight against doping

1960: IOC Session in San Francisco

President Brundage called the attention of the IOC members to the use being made of amphetamines in some sports.

1961: IOC Session in Athens

Creation of the Medical Commission

1963: Publication of a list of banned substances by the Council of Europe's Committee on Out-of-School Education.

1965: In the light of experiences at the Tokyo Games in 1964, Prince Alexandre de Merode presented a report which provided the starting point for future anti-doping efforts.

9th May 1967: The approach of the Mexico City Games brought the problem of doping into particularly sharp focus and prompted further debate at the highest level within the IOC. At the 66th IOC Session in Tehran, from 6th to 9th May 1967, the problems associated with drug testing, the list of products and methods used for doping and sex testing for the 1968 Games were expounded by the retiring Sir Arthur Porritt. Prince Alexandre de Merode (Belgium) was appointed Chairman of the IOC Medical Commission. The basic principles of the commission were set out by the chairman.

These are:

- protection of athletes' health
- defence of sports ethics
- equality for all participants at the moment of competition.

1968: The first tests were performed by the IOC at the Winter Games in Grenoble. At that time, the list of banned substances was revised and extended.

1968: Wide-ranging anti-doping tests were performed at the Games of the Olympiad in Mexico City, under the leadership of the IOC Medical Commission.

1981: Creation of the "Doping and Biochemistry of Sport" sub-commission within the IOC Medical Commission. At that time, the sub-commission's role was to prepare the list of banned substances and define the procedures to be applied when tests were performed. Outside sources from all parts of the sports world were asked

to make proposals regarding the list of banned substances. Careful study of which substances should be added to or withdrawn from the list allows it to cover substances which, when misused or abused, represent either a danger to the health of an athlete or an artificial increase in performance, or both. This list is published annually and is recognized by the whole of the sports world.

1981: The IAAF introduced a laboratory accreditation process. This procedure was deemed necessary to ensure a high level of testing and avoid any uncertainty concerning the results obtained.

After this procedure was put in place, the following laboratories were accredited during the next two years:

- Cologne, Germany
- Kreischa, ex GDR
- Leningrad, USSR
- London, United Kingdom
- Magglingen, Switzerland
- Montreal, Canada

The IOC "anti-doping" sub-commission recognized the laboratories accredited by the IAAF at the joint IAAF/IOC meeting on 23rd May 1981, and they were granted IOC accreditation.

This accreditation process is conducted by the "Doping and Biochemistry" sub-commission of the IOC Medical Commission. The Commission ratifies the decisions, and submits them to the IOC Executive Board for approval. Its secretariat is in Barcelona, and is run by Prof. Jordi SEGURA.

A reaccreditation procedure takes place every year, with aptitude checks every four months. This system of accreditation and permanent checks allows the IOC to guarantee athletes reliability of testing meaning that the same results should be obtained in any of the accredited laboratories.

This reliability is achieved through strict monitoring of the equipment and staff of these laboratories. Any change in staff, particularly among the senior staff in any laboratory must be reported to the IOC straightaway, whereupon a new accreditation procedure will be started.

There are two temporary suspension phases.

The growth in the number of laboratories is shown below:

1986	18
1987	21
1988	20
1989	20
1990	21
1991	21
1992	23
1993	23
1994	24
1995	24
1996	25

At present, there are 27 accredited laboratories across the five continents. The number of samples analysed by these laboratories in 1997 was 106,561.

1988: The idea and purpose of an International Charter Against Doping in Sport was mooted for the first time by Canada at the 5th Conference of European Ministers Responsible for Sport in September 1986. Subsequently, a working group co-chaired by Canada and the IOC, and including representatives of the Council of Europe, the European Sport Conference and the United States Olympic Committee (USOC), met several times to establish the framework and text of the initial Charter.

The International Olympic Charter Against Doping in Sport, prepared by the IOC, the Canadian government, Council of Europe, European Sports Conference and the USOC, was adopted by the IOC in September 1988 at the Olympic Games in Seoul.

26th—29th June 1988: First Permanent World Conference on Anti-doping in Sport co-chaired by the Canadian government and the IOC.

April 1989: Barcelona agreement between the IOC and ASOIF aimed at stepping up the fight against doping by increasing action in terms of prevention and education.

1989: Second Permanent World Conference on Anti-doping in Sport on the theme of *out-of-competition testing*.

November 1989: Presentation by the Prince de Merode to the IOC Executive Board of plans for an Olympic Movement anti-doping agency involving the IFs, NOCs and IOC. Governments and outside experts would also be included.

1991: Third Permanent World Conference on Anti-doping in Sport in Bergen, Norway, on the theme of *education and information for athletes*.

December 1991: Creation of the working group on out-of-competition testing by the IOC Medical Commission. The Commission members realized that the doping tests currently in place were not sufficient to detect the misuse of anabolic steroids, peptide hormones and related substances during training. To be truly effective, doping measures had to be employed during training periods. The out-of-competition tests should be performed without warning athletes beforehand and sufficiently often, in order to be effective.

Controls of this kind have been developed in recent years both nationally (USA, CAN, GER, GBR, FRA, URS, AUS, SUI, NOR, SWE, etc.) and through bilateral and multilateral agreements (RUS-USA, RUS-FIN, AUS-GBR-CAN, Nordic League, etc.). Some International Federations have set up their own programmes (IAAF, FISA, IWF). However, these isolated efforts are clearly inadequate. Effective coordination and harmonization between the various authorities responsible for these activities are indispensable; this should be undertaken by an ad hoc committee under the moral authority and guidance of the IOC.

June 1993: Lausanne agreement between the IOC and ASOIF on closer harmonization of rules and procedures for out-of-competition tests.

1993: Fourth Permanent World Conference on Anti-doping in Sport in London, on the theme *why do athletes dope?*

January 1994: Lausanne Declaration "Preventing and fighting against doping in sport" signed by the IOC, ASOIF, AIWF, ANOC and the athletes. It was agreed that the first stage in the fight against doping would be for the "voluntary" bodies to reach an agreement to enable them to negotiate with the governmental bodies, with a view to eliminating the existing contradictions between national legislation and the rules of the sports movement.

1994, 1995 and 1996: Meetings of the working group to follow up on the agreement of 13th January 1994, defining the harmonization of:

- sampling equipment
- out-of-competition testing procedures
- qualification of the officials responsible for sampling

June 1995: The IOC adopted the IOC Medical Code, drafted by the IOC's lawyers, which replaced the International Olympic Charter Against Doping in Sport.

1996: Signature of the Gh2000 agreement between the European Union and the IOC for a 1,800,000 ECU project over three years for research into detecting growth hormone.

1997: The Lausanne scientific days brought together international experts on detecting testosterone, EPO and human growth hormone. The purpose of this meeting was to provide an overview of what research was being carried out on detecting these three substances.

1998: Signature of an agreement between the IOC and the European Union (DG XII) on the harmonization of anti-doping methods and measures. The agreement included funding for a preliminary study.

The final project is scheduled to be presented in November 1999 to the European Union in Brussels.

1999: World Conference on Doping in Sport—Lausanne 2nd, 3rd, 4th February 1999.

After the events which shook the world of cycling in the summer of 1998, the IOC decided to convene a World Conference on Doping, bringing together everyone directly or indirectly involved in the fight against doping.

Exhibit "B"

Draft Mission Statement and Constatng Document

for

World Anti-Doping Agency

1. Draft Mission Statement

4.1 General Mission

The mission of the Agency shall be to promote and coordinate at international level the fight against doping in sport in all its forms; to this end, the Agency will cooperate with intergovernmental organisations, governments, public authorities and other public and private bodies fighting against doping in sport, inter alia, the International Olympic Committee (IOC), International Sports Federations (IF), National Olympic Committees (NOC) and the athletes;

The Agency's principal task will be to coordinate a comprehensive anti-doping programme at international level, laying down common, effective, minimum standards, compatible with those in internationally recognized quality standards for doping controls, particularly with regard to out-of-competition controls, and seeking equity for all athletes in all sports (including professional sports) and in all countries. Whereas priority will be given to high-level international competitive sport, the Agency will also take account of anti-doping programmes at all other levels of sport. For these purposes, the International Federations, while preserving their autonomy and their own authority, agree to cooperate with the Agency and coordinate their respective anti-doping programmes with it in order to ensure that duplication is avoided and that the same application is achieved worldwide. The Agency will encourage and support the IFs in this endeavour.

The tasks of the Agency will also have consequences for anti-doping work at national level. The Agency shall cooperate with, and have recourse to the capacities of, competent national anti-doping agencies and other organisations (such as national Olympic committees or national confederations of sport) in charge of and conducting national anti-doping work. The Agency will help countries or federations who at present do not have effective anti-doping programmes or agencies to develop them, or, following agreement, to act on their behalf with regard to the Objects of the Agency.

In order to carry out these tasks the Agency may execute agreements between itself, the international federations and the national anti-doping agencies or bodies, taking account of relevant international and national regulations and texts. On those occasions where there is a conflict of jurisdiction in anti-doping matters between an international and national body (or vice-versa), the Agency will use its good offices to seek a satisfactory solution.

The Agency will be entitled to make proposals to the Olympic Movement and to international sports organisations and to the public authorities on measures that could be taken to ensure further harmonisation and equity in anti-doping questions. The Agency will be entitled to give an opinion to the International Olympic Committee on the implementation by international federations of the Olympic Movement's Anti-Doping Code. The Agency shall monitor the application of the Agency's principles and work.

4.2 Reinforcement of ethical principles and protection of the health of athletes

The mission of the Agency shall be to reinforce at international level the ethical principles for the practice of doping-free sport and to help protect the health of athletes;

The Agency shall prepare materials, aimed at athletes, coaches and others in the athlete's entourage, for strengthening the ethical principles for the practice of doping-free sport. In order to help protect the health of athletes, the Agency shall prepare similar materials for doctors working with athletes, taking account also of medical ethics.

4.3 Lists of prohibited substances and methods

The mission of the Agency shall be to establish, adapt, modify and update for all the public and private bodies concerned, inter alia the IOC, the IFs

and NOCs, the list of substances and methods prohibited in the practice of sport; the Agency will publish such a list at least once a year, to come into force on 1st January each year; or at any other date fixed by the Agency if the list is modified during the course of the year;

The Agency will draw up a common list of prohibited classes of substances and prohibited methods for adoption by all sports and by all national anti-doping agencies. This list will be updated periodically, at least once a year, for entry into force as stipulated in the Statutes.

The Agency will establish a procedure for including a new prohibited substance or method when circumstances require outside the usual annual cycle (urgent procedure).

The list will be initially based on that prepared by the IOC's Medical Commission. This Commission will be entitled to provide inputs into the updating of the list, and for the identification of new doping practices and forms of use.

In order to facilitate its approval and application by national anti-doping agencies and other interested bodies, the list will be updated in consultation with appropriate international bodies including those responsible for the regulation of medicines.

The Agency will pay attention to the need to define clearly the legitimate use for genuine therapeutic purposes of substances or methods which could be in conflict with the list, and draw up guidelines for their use.

The Agency will disseminate the list as widely as possible by all available means.

4.4 Unannounced out-of-competition controls

The mission of the Agency shall be to encourage, support, coordinate, and when necessary undertake, in full agreement with the public and private bodies concerned, the organisation of unannounced out-of-competition testing;

The Agency will develop, on the basis of existing texts, common operating procedures with minimum, high quality standards for the conduct of unannounced out-of-competition controls.

The Agency, from the point of view of uniformity and equity in all sports and in all countries, will:

- determine annually the number of unannounced out-of-competition controls which it will finance;
- organise and conduct unannounced out-of-competition controls with the approval of and in liaison with International Federations, concentrating in the first instance on countries and sports where such controls are not at present carried out;
- coordinate and ensure harmony between such controls carried out internationally and those carried out nationally.

The focus of the controls, in the first instance, will be on those athletes eligible for, or striving to be eligible for, competition at international level.

The Agency may execute agreements (cf 4.1) for the performance of unannounced out-of-competition controls on a regular basis or for an ad hoc purpose. Such controls may be performed by the IF's themselves, by national federations, National Olympic Committees and/or national agencies or other specialized public or private entities.

4.5 Harmonisation and unification of the scientific, sampling and technical standards, development of a reference laboratory

The mission of the Agency shall be to develop, harmonise and unify scientific sampling and technical standards and procedures with regard to analyses and equipment, and to develop a reference laboratory;

These standards will include standards for doping control officers (sampling officers) carrying out these controls. The Agency will develop a sad certification procedure for such doping control officers, applicable to those working at international level, and, via the national agencies, to those conducting such controls at national level. To this end, the Agency may develop training programmes, validation procedures and standards, and re-training programmes.

The Agency will develop standards for sample collection and for sampling equipment.

The Agency will develop, on the basis of the existing systems approved by the IOC Medical Commission:

- a procedure, to be prepared in consultation with the appropriate international bodies, for the accreditation and the regular re-accreditation of anti-doping laboratories; this procedure will be based on the relevant international standards;

- protocols for the analysis of prohibited substances and methods; standards for laboratory equipment, techniques, methods and staff recruitment and training.

With regard to the reference laboratory, the Agency will develop the standards for and appoint in due course an independent reference laboratory, which should no longer be concerned with routine anti-doping analytical work, with the task of overseeing the above-mentioned protocols and standards, verifying new laboratory methods and techniques, developing common reference samples and substances, validating and certifying analytical work, and ensuring quality control and good laboratory practice. The reference laboratory will help and advise anti-doping laboratories seeking accreditation. It will act as a source of neutral expertise with regard to laboratory questions.

The Agency will produce annual statistics on the number of tests performed worldwide and their results.

The Agency will develop standards for the protection of privacy and personal data in anti-doping questions.

4.6 Harmonisation of rules, disciplinary procedures, sanctions and other means of combating doping in sport

The mission of the Agency shall be to promote harmonised rules, disciplinary procedures, sanctions and other means of combating doping in sport, and contribute to the unification thereof taking into account the rights of athletes;

The Agency, respecting the autonomy and authority of the International Federations, will:

- promote the development by international federations of harmonised disciplinary procedures, incorporating measures to protect the rights of athletes, in particular:
 - the reporting and disciplinary bodies to be distinct from one another
 - the rights to a fair hearing and to be assisted or represented
 - clear and enforceable provisions for appealing against any judgement made.⁷
- make proposals for a range (both in kind and in time) of adequate sporting sanctions, common to all sports, and appropriate to the offence. These sanctions, for implementation by the federations and by national anti-doping agencies or bodies will, in the case of the latter, bear in mind any specific relevant national legislation.

The Agency will monitor compliance with this Article by international and national bodies and make recommendations as appropriate.

The Agency will also develop means of bringing those responsible for anti-doping offences in the athlete's entourage within the scope of sporting anti-doping sanctions.

The Agency can make proposals to intergovernmental organisations for measures that could be taken to improve the fight against international trafficking and supply of doping substances in sport.

4.7 Anti-doping education and prevention programmes

The mission of the Agency shall be to devise and develop anti-doping education and prevention programmes at international level, aimed at promoting the practice of doping-free sport according to ethical principles.

The Agency will develop all appropriate measures to improve anti-doping information and education programmes and other preventative anti-doping work and campaigns. It will support exchange network, advise, and provide tools for international sports organisations and national anti-doping agencies and the various "health professionals" linked to sport on measures that could be taken in this field. The Agency will exploit the possibilities offered by existing dissemination channels as well as modern communication techniques and media. This part of the Agency's work should also take particular account of the positive role played by the mass-media and cooperate with them in informing the public of the nature of anti-doping work in international sport.

The Agency should also contribute to the dissemination of information on anti-doping questions generally. To this end, it may organise conferences, seminars or workshops.

4.8 Promotion and coordination of research in the fight against doping in sport

⁷ Article 7.2.d of the Anti-doping Convention of 16th November 1998.

The mission of the Agency shall be to promote and coordinate research in the fight against doping in sport;

The Agency will establish an inventory of anti-doping research carried out around the world. It will endeavour to coordinate such research, in order to avoid duplication and to promote complementary research, particularly with regard to research carried out by accredited laboratories. It will seek complementarity with relevant research programmes.

The Agency may undertake research itself within its scope and budget.

The Agency will stimulate, foster and seek proposals for new research into:

- (new) substances and methods being used (or thought to be so) by sports people and devising appropriate analytical techniques and reasons for adding or excluding them from the list of prohibited substances and methods;
- the psychological and sociological aspects of doping, with a view, inter alia, of helping to develop more effective anti-doping strategies.

The Agency will stimulate research into scientific training programmes respecting the integrity of the human body.

The Agency may create a Research Fund, to which the private sector would be encouraged to contribute. The Board will pay attention to any possible conflict of interest in this respect.

The Agency will be entitled to draw up plans and proposals for its conversion, as the need may arise, into a different structure, possibly one based on international public law.

The Agency will seek to build upon existing and relevant competences, structures, and networks, only creating new ones when necessary. The Agency may however set up working parties, commissions, or working groups, on a permanent or ad hoc basis, for the accomplishment of its tasks. It may hold consultations with other interested public or private organisations, whether involved in sport or not.

2. Draft Constatng Document

FOUNDATION

WORLD ANTI-DOPING AGENCY

- Statutes -

Article 1

Designation

Under the name World Anti-doping Agency hereinafter referred to as "the Foundation", a foundation governed by articles ... and by the present provisions is hereby constituted.

Article 2

Seat

The legal and statutory seat of the Foundation is inThe Foundation Board is entitled to transfer the seat of the Foundation to another place, in (country) or abroad.

Article 3

Duration

The duration of the Foundation is unlimited.

Article 4

Object

The object of the Foundation is:

4.1 to promote and coordinate at international level the fight against doping in sport in all its forms; to this end, the Agency will cooperate with intergovernmental organisations, governments, public authorities and other public and private bodies fighting against doping in sport, inter alia, the International Olympic Committee

(IOC), International Sports Federations (IF), National Olympic Committees (NOC) and the athletes;

4.2 to reinforce at international level the ethical principles for the practice of doping-free sport and to help protect the health of athletes;

4.3 to establish, adapt, modify and update for all the public and private bodies concerned, inter alia the IOC, the IFs and NOCs, the list of substances and methods prohibited in the practice of sport; the Agency will publish such a list at least once a year, to come into force on 1st January each year; or at any other date fixed by the Agency if the list is modified during the course of the year;

4.4 to encourage, support, coordinate, and when necessary undertake, in full agreement with the public and private bodies concerned, the organisation of unannounced out-of-competition testing;

4.5 The mission of the Agency shall be to develop, harmonise and unify scientific, sampling, and technical standards and procedures with regard to analyses and equipment, and to develop a reference laboratory;

4.6 to promote harmonised rules, disciplinary procedures, sanctions and other means of combating doping in sport, and contribute to the unification thereof taking into account the rights of athletes;

4.7 to devise and develop anti-doping education and prevention programmes at international level, aimed at promoting the practice of doping-free sport according to ethical principles;

4.8 to promote and coordinate research in the fight against doping in sport;

The Agency will be entitled to draw up plans and proposals for its conversion, as the need may arise, into a different structure, possibly one based on international public law.

The Agency will seek to build upon existing and relevant competences, structures and networks, only creating new ones when necessary. The Agency may however set up working parties, commissions, or working groups, on a permanent or ad hoc basis, for the accomplishment of its tasks. It may hold consultations with other interested public or private organisations, whether involved in sport or not.

In order to achieve its object, the Foundation has the right to conclude any contract, to acquire and transfer, free or against payment, all rights, all movables and any real estate of whatever nature, in any country. It may entrust the performance of all or part of its activities to third parties.

Article 5

Capital and Resources

The founders allocate to the Foundation an initial capital of ...

The other resources of the Foundation shall consist of any other contributions, donations, legacies and other forms of allowance or subsidy from all natural or legal persons and all intergovernmental organizations, governments, public authorities and other public and private bodies.

Article 6

Foundation Board

The Foundation Board shall initially be composed of not less than members; this number may be increased to a total of no more than 35 members. The members of the Foundation Board are personalities designated for a period of three years. They may be re-elected for two additional periods of three years. The first members of the Foundation Board shall be designated as follows:

6.1 members designated by the Olympic Movement, in accordance with the following distribution:

3 members designated by the IOC;

3 members designated by the IFs, of whom 2 members will be designated by the Association of Summer Olympic International Federations (ASOIF) and one by the Association of International Winter Sports Federations (AIWF);

1 member designated by the General Association of International Sports Federations (GAISF);

3 members designated by the Association of National Olympic Committees (ANOC);
3 athletes designated by the IOC Athletes' Commission.

6.2- ... members designated by the intergovernmental organizations, governments, public authorities or by other public bodies active in the fight against doping in sport (hereinafter "public authorities") in accordance with the following distribution:

6.3 The other members shall be designated, as the case may be, by the Foundation Board upon joint proposal by the Olympic Movement and the Public Authorities.

6.4 As a general rule, when it is renewed and added to, the Foundation Board will ensure that a balance is struck and maintained between, on one side, the members of the Foundation Board representing the Olympic Movement (viz. the IOC, ASOIF, AIWF, ANOC and the IOC Athletes' Commission), and, on the other side, those representing the public authorities. The provisions of paragraph 6.6 below are reserved.

6.5 The Board may also invite a limited number of intergovernmental or other international organizations to act in an advisory capacity to the Foundation. Such organizations, which will be invited on the basis of their legitimate interest in the work of the Foundation and their expertise in relevant fields, may participate in the discussions of the Board but may not vote on Foundation Board decisions.

6.6 To the extent that the annual allocations or contributions to the budget of the Foundation paid pursuant to article 13, paragraph 1 below, by the Olympic Movement on one side, and by the public authorities on the other side are equivalent, each of the two parties, namely the Olympic Movement on one side, and the public authorities on the other side, shall be entitled to designate an equal number of Foundation Board members.

Failing such equivalent annual allocations by each of the two above-mentioned parties, the party whose allocation actually paid is lower will be entitled to designate a number of members of the Board which shall be inferior by at least one to the number of members designated by the other party; this system will apply for as long as the annual allocations or contributions to the Foundation budget paid by the two above-mentioned parties are not equivalent.

6.7 The Foundation Board may depart from the provisions of paragraphs 6.1 to 6.6 above by a unanimous decision on the part of its members.

Article 7

Organization of the Foundation Board

The Foundation Board is self-organized. It designate a chairman, a vice-chairman and a secretary; the secretary may be chosen from outside the Foundation Board.

Article 8

Meetings and Decisions of the Foundation Board

The Foundation Board meets as often as is necessary, but at least once a year. The meetings of the Foundation Board are convened by the Chairman or by the secretary upon delegation of the Chairman. The Chairman is bound to convene a meeting at the written request of at least five members.

A set of minutes, signed by the Chairman and by the minute-taker, records the deliberations and decisions of the Foundation Board.

At meetings, the members of the Foundation Board have the right to ask the persons entrusted with running and representing the Foundation for information on the conduct of the activities of the Foundation and on specified questions.

The Foundation Board takes its decisions by an absolute majority of the votes of the members present, subject to the provisions of article 17, paragraph 2 of the present statutes. In the event of a tie, the Chairman has the casting vote. The decisions of the Foundation Board may be taken on the approval given in writing to a proposal, unless discussion thereof is required by any of the members; decisions shall be recorded in the minutes.

*Article 9****Attributions of the Foundation Board***

The powers of the Foundation Board are determined, with regard to the Foundation, by the law, the present statutes and all other regulations and decisions of the Foundation Board.

The Foundation Board has the inalienable right to:

- 9.1 Propose amendments to the present statutes.
- 9.2 Designate the auditing body of the Foundation.
- 9.3 Designate the Executive Committee provided for in the present statutes.
- 9.4 Designate if it deems it necessary to do so, other ad hoc or standing committees, *inter alia* a scientific committee, with the task of providing opinions or advising the Foundation on specific issues or in specific fields.
- 9.5 Take all decisions relating to the acquisition, against payment, or transfer, free or against payment, of all real estate.

*Article 10****Obligations of the Foundation Board***

The Foundation Board is obliged, in particular:

- 10.1 to ensure the independence of the Foundation and transparency in all its activities;
- 10.2 to supervise the committees or persons entrusted with the running and representation of the Foundation, in order to ensure that the activity of the Foundation is in accordance with the law, the present statutes and the regulations, and to keep itself informed about the conduct of the activities of the Foundation;
- 10.3 to designate the members of the Executive Committee and other committees as provided for in the present statutes;
- 10.4 to promulgate the regulations relating to the Foundation Board itself, the Executive Committee and other committees, together with all other regulations indispensable to the operation of the Foundation;
- 10.5 to see to it that the minutes of the Foundation Board and the necessary books are duly kept and that the management report, profit and loss account and balance sheet are established in conformity with the provisions of the law.
- 10.6 to publish each year in French and English a report on all its activities, its profit and loss account and statement in accordance with the applicable legal requirements.

*Article 11****Executive Committee***

The Foundation Board delegates to an Executive Committee of at least 5 members and a maximum of 9 members, the majority chosen from amongst the Board members, the actual management and running of the Foundation, the performance of all its activities and the actual administration of its assets.

- 11.2 The members of the Executive Committee are designated by the Foundation Board for periods of one year at a time. They may be re-elected.
- 11.3 Furthermore, in case of incapacity or death of a member of the Executive Committee, he will be replaced immediately, either by the Foundation Board or temporarily by the Executive Committee; such temporary appointment shall become final upon its ratification by the Foundation Board no later than during its next meeting.
- 11.4 The Chairman of the Executive Committee is designated by the Foundation Board; furthermore, the Executive Committee appoints, if necessary, a vice-chairman chosen from amongst its members. The Committee may also designate a secretary, who may be chosen from outside the Committee.
- 11.5 The Executive Committee is competent to take all decisions which are not reserved by the law or by the present statutes for the Foundation Board; its mission and organization will be specified in one or more sets of regulations which the Foundation Board will promulgate to this end.

*Article 12****Representation of the Foundation***

The Foundation is duly represented and bound vis-a-vis third parties by the collective signature of two of the persons designated by the Foundation Board as follows:

- (a) at least two members of the Executive Committee;
- (b) at least two members of the Foundation Board, one of whom must be one of the members designated by the Olympic Movement, and another must be one of the members designated by the public authorities.

*Article 13****Annual management report, balance sheet
and profit and loss account***

No later than November 30 of each year, the Foundation Board shall approve the budget for the following financial year; failing such approval, the budget of the current year shall apply to the next year. The annual allocations and other contributions shall be paid no later than December 31 of each year for the following year. Each year, the Foundation Board submits to the supervisory authority the management report, balance sheet and profit and loss account as approved by the Board. The financial year corresponds to the calendar year. The first financial year will thus end on 31 December 2000.

*Article 14****Auditing Body***

Each year, the Foundation Board designates a qualified and independent auditing body. Each year, the auditing body submits to the Foundation Board a report on the accounts of the Foundation; such report will be submitted to the supervisory authority.

*Article 15****Indemnities***

The members of the Foundation Board are not entitled to any indemnity for the performance of their functions; they are however entitled to reimbursement of their expenses subject to the conditions fixed by the Foundation Board.

For the performance of their functions, the members of the Executive Committee are entitled to an annual indemnity fixed by the Foundation Board, and to the reimbursement of their expenses.

The auditing body is entitled to fees in accordance with professional practice.

The staff employed by the Foundation is entitled to the remuneration fixed by the Executive Board which also decides on the other conditions of employment.

*Article 16****Modification of the statutes***

The Foundation Board may propose amendments to the present statutes to the supervisory authority.

Any proposed amendment must be approved by an absolute majority of all the members of the Foundation Board. In the event of a tie, the Chairman has the casting vote.

*Article 17****Dissolution***

The Foundation may be dissolved in the cases provided for by the law. The Foundation Board may designate one or more liquidators.

No winding up measure may be performed without the express agreement of the supervisory authority.
 Any surplus from winding up is given, with the agreement of the , to an institution pursuing the same or a similar object.

Article 18

Entry in the Trade Register

The Foundation will be entered in the ... Trade Register.

Article 19

Supervisory Authority

The Foundation will be placed under the supervisory authority of the , the competence whereof is hereby reserved.

Senator STEVENS. Dr. Wadler, Associate Professor of Clinical Medicine, New York University School of Medicine. Thank you.

STATEMENT OF GARY I. WADLER, M.D., ASSOCIATE PROFESSOR OF CLINICAL MEDICINE, NEW YORK UNIVERSITY SCHOOL OF MEDICINE

Dr. WADLER. Senator Stevens, members of the committee, it is indeed an honor for me to be here today.

I am a physician, a sports medicine physician. During the past 15 years, I have attempted to focus attention on the cascading problem of drugs in sports.

Drug testing is at a crossroads, the point where everyone agrees at last that something must be done. There are four elements to consider in your deliberations.

The first one is the why. With so many major public health crises, why should we care if a few elite athletes abuse their bodies? The answer is that the real abuse we are witnessing is that of the public trust.

At a time when role models are crumbling, the Olympics should be, can be, and must be one of the purest examples of human achievement. We cannot allow performance enhancing drugs to cloud this event. We cannot allow another generation of young people to approach adulthood believing in the power of chemical manipulation over the power of character.

The second element is the how. Since the 1950's, when anabolic steroids first appeared, the manipulators have consistently stayed a step ahead of the monitors.

In 1956, Olga Fikatovala Connolly bemoaned the fact that, "These awful drugs, anabolic steroids, have changed the complexion of track and field." Nearly, a half century later, that refrain is still accurate and still poignant.

There are two broad ways to deal with doping. The first is cultural. The second is methodological.

We must work to create a climate where the critical mass of public opinion turns against doping. We need that great movement of the national hinge, the way it swung in the cases of tobacco, drunk driving and seat belts.

We need consumers to put pressure on sponsors to assure that events are credibly drug tested. And only then will we witness a sea-change.