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**CAN IT HAPPEN HERE? IT'S ALREADY
HAPPENED HERE**

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Can It Happen Here? It's Already Happened Here

Just think about the criticisms that baseball's policies on steroids engendered before the House Committee on Government Reform on March 17. The Committee – even accounting for its patent grandstanding – accused baseball of at least the following problems with its drug policies:

- 1.) The option of a fine -in lieu of a suspension – empowered the players to buy themselves out of violations.
- 2.) The penalties for first time violators were too minimal even when the penalty was a suspension and not a fine.
- 3.) The policies seemed to let individuals with a series of drug positives continue playing the game.
- 4.) The conflicts of interest inherent in self-regulation of baseball made it unlikely that the leadership would have a strong inclination to publicize and to take decisive action against drug violators.

As tough a time as the leadership of baseball got, it was a walk in the park as compared to what Congress could do to horse racing. Just look at what fun Congress could do to the lords of racing, especially as it might apply to human positives and the disciplining of riders and drivers. (This analysis doesn't even approach the enjoyment Congress could get from looking at the issue of anabolic steroids being administered to young horses.)

Fines v. suspensions. Illinois even had a formal policy allowing jockeys to buy back suspension days so that a wealthier jockey could simply pay \$500 per day to minimize a suspension. Thus, if you received a three day suspension, you could simply pay a \$1,500 fine and avoid a suspension.¹ Many other states combine fines with suspensions with the fines utilized in part to limit the length of the suspension.

First Time Violators. Racing has generally gone out of its way not to reveal the names and identities of riders and drivers who have tested positive for drugs. It has tended to treat drug problems as a disease rather than as an intentional attempt to circumvent the rules of the game. In general, racing's drug violators are not allowed to participate until they provide a negative test for drugs. The names of first time violators are not disclosed. If Congress thought a 10 game suspension in baseball for a first offense was equivalent to no punishment, what about racing's answer: a penalty with no days and no public disclosure of the names of violators?

Multiple Violations. Some people in Congress suggested that three violations was enough, and after a third strike, the player should be out of baseball. Racing's answers to

¹ Jim O'Donnell, "Sports: At the Races, Chicago Sun-Times, April 24, 2002 Pg.132.

that would be Pat Valenzuela, riding successfully in California with only 11 drug positives.² And there's more. How many times did Walter Case – the second winningest harness driver of all time - have for substance abuse or failure to take a drug test? What about the late Chris Antley and his substance abuse problems? Have stars in racing been allowed to participate forever, despite their multitudes of drug positives?

Conflicts of Interest – Take a look at California where for a period of years, penalties for the most major drug offenses were watered down to fines. “From 1995 through October 2001, 71 thoroughbreds tested positive for one of the three most serious classes of drug offenses. Trainers in 31 of those cases (44 percent) were suspended. Since September 2001, however, trainers of only two of the 25 thoroughbreds that tested positive for similar offenses received suspensions (8 percent). The rest drew fines.”³

Many of the racing commissioners in California own and/or breed horse, and there is the belief that they don't want to hurt the image of their own industry by coming down too hard on its participants. One former chairman of the commission, Roger Licht apparently used to vote on whether to license Pat Valenzuela, even though he formerly served as an attorney for Valenzuela.⁴ Many other states allow individuals with interests in racing to serve on racing commissions. It is certainly likely that people with a financial interest in racing will not want to come down hard on participants in a sport in which they hold investments.

Even racetracks that attempt to do something about violations in racing. Santa Anita has hired a practicing veterinarian to conduct its own milk shake testing during its current meet. That veterinarian also works for a number of trainers who run horses at the track. Isn't this a significant conflict of interest? Major racetracks often employ one or more of the stewards who are empowered to make rulings on licensees at the track. How likely is it that these stewards will want to investigate possible misconduct by their bosses?

Some will argue that steroids in baseball and the narcotic drugs associated with drug problems in jockeys and drivers in horse racing are not comparable. Even if this is a valid point, any comparison would tend to favor more decisive action against drug abuse in racing. Steroids clearly could improve athletic performance, but they don't harm the other participants in the game. Cocaine use by a jockey or driver, however, presents a clear danger to the safety of other participants and to the horses. Cocaine use is a depressant and not a stimulant. But in a sport with legalized wagering, use of a drug which potentially harms athletic performance is certainly as bad as use of a drug that improves performance.

² Gary West, “Jockey's Return Taking the Sport For a Ride,” Fort Worth Star Telegram, January 14, 2005 Pg 12D.

³ Brent Schrotenboer, “Many on Horse Racing Board Have Stake in Industry,” San Diego Union-Tribune, December 18, 2004, Pg. A-1

⁴ Id.

Moreover, in baseball, drug policy is a mandatory subject for negotiation with the player's union. In horse racing, there is no required negotiation. The racing commissions are free to set their own penalties on drug use. The racetracks – that can exclude participants – are also largely free to set their own policies on drugs. There is no union to negotiate with in racing. There is no excuse for inaction in horse racing. In short, the human drug problems in horse racing are on a par with baseball, and, unlike baseball, racing can't blame any union for its inaction.

For once, it may be a good thing that horse racing is a blip on the nation's sports scene. If it were popular, it would be easy pickings for a Congress that likes nothing better than to beat up on sitting ducks. It would be a virtual walkover if Congress decided to pick on horse racing.