

## **Sixth Annual Joint Meeting of HTA and TRA**

**Wednesday, February 20, 2008**

**9:00 a.m. – 10:00 a.m.**

### **Medication & Regulation: Can Research Succeed Without Stronger, Meaningful Support from Regulators, Including Prosecuting the Guilty while Protecting the Innocent**

- **Dennis Dowd, The Meadowlands**
- **Alan Foreman, Thoroughbred Horsemen's Association**
- **Dr. Scot Waterman, Racing Medication & Testing Consortium**
- **Ed Martin, Racing Commissioners International**
- **Ben Wallace, Past Trainer of the Year, Canada**

**Stan Bergstein:** I've introduced the panel from the floor because I'm going to ask a man who's uniquely qualified to do this to handle the panel. He's not only a lawyer, he's a former racing commissioner, he's previously been a racetrack general manager, he has approached this question from every aspect. I don't think the panel needs introduction but I will introduce them. Ed Martin, of course, is president of Racing Commissioners International. Dr. Scot Waterman is the driving force behind the Racing Medication & Testing Consortium. Ben Wallace is former trainer of the year in Canada and one of the really intellectual horsemen that I have encountered in the business, he also was a teacher of racing at Seneca College for 5 years in Ontario. And Alan Foreman who is one of the foremost racing lawyers in America and familiar with every aspect of the game. So Dennis I'm going to ask you to monitor the panel, and I'm going to ask you to start by discussing your own problem at the Meadowlands which I realize of course is a quasi-state agency and has limitations and restrictions. But the question goes beyond that. A few years ago, two days before the Hambletonian, a prominent trainer at the track announced that he would do anything he could to get an edge. He's not only still racing there, he is one of the leading trainers at the track, and my question is simply: Has there been an investigation? Has there been any undercover work? Has there been any effort made to find out what he is using and if he uses it? I'm not interested in the specifics of the case; I'm interested in the general implications of that kind of statement and whether it's followed up or not.

**Dennis Dowd:** It's a terrible thing when that type of statement is made public and it's actually a slap in the face of the bettors and all the horsemen who race honestly. Somebody will say "I will do what I have to do to beat any other horse regardless of the rules," and that's essentially what occurred. As you said earlier, the Sports Authority is a quasi-public agency and had I had the authority—actually I think Chris McErlean was there running things at the time, but I was still on board—had we had the power and the authority we would have exercised our right of exclusion if we were an independent racetrack but we were not in that position. That's not to say that that statement was uttered without any recrimination because we did step up our security, we did use security cameras, we did toss the trucks on the way in—as you know the Meadowlands is primarily a ship-in meet, most of the horses are not on the grounds—the racing commission was obviously informed. In New Jersey all of the farms that horses are stabled at are subject to racing commission control and I believe they were diligent. We've done what we can to keep the heat on but essentially haven't found anything and that proves out to a problem that Bennett Liebman just spoke about briefly: at the end it's the economics of this, in New Jersey the racetracks pay all of the expenses of the racing commission. As you add investigators, as you add levels of security, as you add levels of testing, you put a great economic strain on an industry that is suffering and somewhere you have to find that balance and it's not easy, but we certainly all have an obligation to do that. I'm a firm believer, and we're all in this game together. You alluded to some of the things I've done: I've been a trainer, I grew up on a farm, have my trainer's license; I've been a lawyer, representing horsemen; I've been a regulator with the racing commission and I wanted to be a veterinarian. So I have a rapport with all these people and I will see us at odds on any issue but occasionally there's a different perspective because of the chair one is sitting in at the time and, having sat in a number of chairs, I know that. When I sat in Alan's chair I was very concerned about the due process aspects of my clients. There is a cloud that racing, to some degree, has brought upon itself but as an attorney involved with horsemen's issues you want to make sure that your clients are being treated fairly. That's your obligation and I know there's been some talk on steroids and other issues and I'd love to see these guys go at it. So let's turn it over to Alan.

**Alan Foreman:** I'm not so sure I'm the one you want to start out with because I think that I probably have a different perspective than you all either agree with or want to hear.

Notwithstanding what Ben said about middle-aged men coming up here and bashing the

industry, I think essentially that's what the industry does, particularly with the medication issue. That is, it bashes itself. If I could just pontificate for one minute because I've kind of been on the soapbox for the last year, at the Jockey Club round table last year, after hearing what I felt was a very positive presentation from Rick Arthur about what the industry is doing in health of the animal and research and Scot, having given a very positive presentation about the work of the RMTC, we were then treated to a very negative video and a presentation that suggested that racing is a raging wildfire of drugging that is going to consume the industry if we don't do something about it. We were treated to a video about a laboratory that does no drug testing in the equine industry as if that was the standard and we're doing our drug testing in people's garages, that we're consumed with Barry Bonds and Michael Vick and the Tour de France, and I thought to myself, this is really unfair to the business. If your view is that the cup is always half full and that—regardless of what everybody says about medication—we are just a business consumed with cheaters, then obviously nothing I say is going to make a hill of beans difference to you, but there are some of us who believe that there is another side to this argument. There were, I believe, in 2007, over 135 thousand drug samples collected from horses in this country, subjected to the most rigorous screening of any sport, including the Tour de France. There were 60 some positives, I believe, for class 1, 2 and 3 drugs, of which none were class 1 or 2 drugs. In the Mid-Atlantic, from 1997 to 2004—those were the last statistics I had—we had 229 thousand drug tests of horses. 1,872, less than 1%, were positive and 95% of those were not steroidal anti-inflammatory drugs, and drugs that are not to be deemed serious in racing. The number of serious cases that we've had in racing, class 1 or 2 drugs, there have been a handful. I take that, quite frankly, as a positive. I know I'm on the horsemen's side, and we're the inmates in the asylum, but we don't promote the honesty of our business, we don't promote the transparency of our business, you're guilty in this business if you have a positive test. I have certain due process things that I do, but you're guilty in our business. The penalties are swift. Some people don't think they're serious enough. In the Mid-Atlantic, very rarely do you see someone come back with a second positive test. I just believe that, if we're to look forward in this business, if we're going to continue to promote the negative, then I don't see a great future. On the other hand, I thought, for example, last summer with Major League Baseball's problems, with football's problems, with the Tour de France's problems, we had a golden opportunity to separate ourselves from other sports by showing what we do, how rigorous we are in what we do, how we

root out cheaters—because we do have cheaters, we’re never going to be a perfect business—but if we continue to buy into the notion, and it happens with the steroid issue, but if we continue to reinforce the notion that our business is negative, that it is consumed with cheating, that drugging of horses is rampant, then I would suggest to you that our future is not particularly great.

**Dennis Dowd:** I don’t disagree with you Alan, I often engage in conversations with people who are totally unaware of the level of testing that we currently do. But we all, as operators and as industry people, know that there are those, and I quite frankly believe that they are a small group, who, no matter what we test for, are going to try to find something else that works. People parading that in front of the public is not good, but you also don’t want to hide it, you want to say “we are being vigilant and we will do what we can do.” I’d like to hear from Ben who I know, as a trainer and as trainer of the year, has great experience on your side of the table and has been subject to the testing and other issues. I’d love to hear your comments.

**Ben Wallace:** First of all, thank you for inviting me and I appreciate the opportunity. When I read the format and Stan’s topic for today, I’ll be honest with you, I did a lot of rethinking. It’s only been 2 weeks since I had the opportunity to think about it and I made some notes and you know what? I’m just going to go on passion because I echo Mr. Foreman’s sentiments. We’ve created a scenario where, when a trainer wins a horse race, he did it illegally. We’ve got the public thinking that way, we’ve got our owner’s group thinking that way, and I’m not being naïve, those statistics are flabbergasting. To think that we don’t advertise that, we tend to advertise the negative and that’s where I think we’re going wrong. The idea of: Can research succeed without proper help from regulators? One has to work with the other, and to be honest, research can be a dangerous tool in the hands of a regulator. I have been a witness to that and it must be properly handled and I think where we’re going wrong, in a lot of cases, is where regulators and commissions in some jurisdictions have become overzealous, they became pressurized, they do have some increased budgets, I know we do up home, and they have jumped the gun on occasion and what came out of that was a total negative publicity for our whole industry. We got more press up home for some of the positive tests—and I sincerely believe that everyone went into their situations in an honorable fashion—but it wasn’t properly handled, it was done in a hasty-type way and I think we’ve got to elaborate more on, what Mr. Foreman suggested, the positive aspects of this. As a trainer I’m really coming here wearing two hats, I’m trying to be a competitive trainer in the millennium here and I really cut my teeth in the 70s and

80s where pedigree and conditioning was the biggest influence that I had to use to try and win a horse race, and I think there's an inherent problem now in our trainers' colony, the young trainers now, because medication to race a horse—specifically an overnight—unmedicated is practically unheard of anymore. And therein lies an inherent problem and we are going to consistently have problems like this if we can't somewhat reeducate our young trainer base with the idea that the horse he's racing tonight, what conditioning did we do or didn't do. I was always of the impression, if I got beat I want to know what the other guy is doing that I didn't do. Hopefully legally, but in order to stay ahead of the game you have to think that way, you can't simply say what was right in the 70s is going to work in the millennia, but I really appreciate Mr. Foreman speaking first because a good trainer is not always a trainer that has done something wrong and that's the perception that's out there now. People who are winning races are not always guilty. People who are winning races are doing things, they're covering every single aspect, right down to how much grease is in the axles on that race bike. We tend to overlook that. If a horse runs off for a new trainer, it's because he has illegally medicated that horse and that's a fallacy. We've got an owner base right now that think because they're getting beat it's because they're getting beat by illegal medication and that is not always the case, as documented right here. I wish that thought process would go away because it's a cheap way out. They should be asking their trainers, "Are you treating your horse in a proper manner, are you upgrading your training regime, are you feeding properly, are you feeding four times a day, are you still throwing a can of grain over the stall, going for coffee, coming back, going four turns, going back to the track kitchen and talking about who won last night?" Because I think we've got to look inwardly as much as we've got to look outwardly to be progressive.

**Dennis Dowd:** Bennett Liebman suggested that maybe trainers, to some degree, be given the responsibility of assisting. If you know of something or suspect something, just like a jockey has to report a bribe, that maybe trainers should report it. I know that it's a bit of a code of the west and that nobody wants to report on that.

**Ben Wallace:** Tremendous in theory, it doesn't work. It's a joke to pretend it will work. The jockey, he mentioned, I'm sure as many times as he was questioned about or he was privy to something that may have been of an illegal nature, it wasn't discussed. It's very easy to sit here in our forum today and suggest that all participants are going to be on a crusade to clean the game up, but that just isn't the way it works.

**Dennis Dowd:** But there have been some. I know in Pennsylvania, I forget who it was, reported the milkshaking in harness racing, so it does happen and I think it's beneficial.

**Ben Wallace:** It's certainly going to happen. There's nobody who is going to sit here and argue that. We've got to be realistic here, we can't sugar-coat this and make it flowery because it's just not going to happen. There's a trainer colony at each racetrack, they bump heads every single night, and there is certainly a code that's out there and to think we can break it for the betterment of the game, I'd love to think that, but it's...

**Dennis Dowd:** But don't you think that the statistics that Alan just cited, that it's 1% that have been caught, isn't it the old adage that if you can see one rat in your shed row, there's a hundred in the wall? Don't you think that when you catch one, that there's more than one and they may be clever and to trumpet a 1% catch rate is not necessarily a good thing either.

**Ben Wallace:** Again, I get beat to death over this because I think our game gets kicked squarely in the groin over this and it is not totally the way the game is always played and we just manifest this so much about the negative impact of drugs in our game. We're fortunate, we've always confronted this. I feel as though our horse game has always confronted this. We can't stay ahead of it, but we've confronted it. Baseball, just now, is starting to dig out their demons and they knew what was happening. But we've battled consistently, and for some reason it's come back on us. Baseball is being heralded now as cleaning itself up, being proper and everyone's going to play straight up, that's not going to happen. But we, on the other hand, when we go and attempt to be progressive and be proactive it comes back on us. When a gambler loses his bet, he doesn't say "I bet a bad horse," he says "Somebody beat me illegally." And that's just an inherent mentality that has flourished over the last decade in our game to the point where the owners now feel as though when they get beat, they get beat illegally. You know what? Maybe you bought a bad horse.

**Alan Foreman:** You know, Dennis, the comment you made, that was the same argument that was made 8 or 10 years ago. The racing industry thought it was in trouble with drug testing and cheaters, so the NTRA commissioned a super-test. They went back and they grabbed samples from all over the country and subjected those samples to the most rigorous testing there is—which is typically done by our lab so it went even further—and the statistics from that are consistent. If you are of the notion that, well you only caught 1%, that means there's 60% of others out there you didn't catch and that's not good enough, the laws aren't good enough, the

numbers aren't going to matter, you're going to keep reinforcing this notion. It's time to start looking at what it is that we do from top to bottom. From a prosecution standpoint, from a penalty standpoint, from a testing standpoint, and I think we stack up favorably against any other sport and if we're bidding ourselves about where our sport is going in the future, this seems to be one area where we can separate ourselves if we want to try and look at it from the other side.

**Dennis Dowd:** But don't you think, Alan, that we have a higher obligation because of the gaming aspect of our sport? I'm not naïve enough to say they're not betting on baseball or anything else. We have a regulated gaming industry and I think, as was just said, it's the punter in the stand who to some degree says exactly what you said, "I'm a genius, so if I lost that bet it's because someone cheated me," and the finger is often pointed at the horsemen for no reason other than his horse won. I agree with that. But don't you think because of our interactive gaming nature and the regulated nature of the sport, our obligation is a little higher? Let me throw that question to somebody who has been deeply involved on the regulatory side.

**Ed Martin:** Well, we do have an obligation, and the obligation is to not only hold participants in the sport so that everybody is competing on an equal playing field, but to the general public. We are, collectively, our own worst enemies in the image we give the general public of the sport and that's where I do agree with Alan. I'm not naïve enough to believe that if we're catching 1% positives that we're catching everything that's going on because we don't test every horse. But I look at the topic here: Medication & Regulation: Can Research Succeed Without Stronger, Meaningful Support from Regulators, Including Prosecuting the Guilty while Protecting the Innocent, I thought this was the "When did you stop beating your wife" question. Being the only regulator on the panel I would have to deny that, but of course everybody would leave the room saying "I didn't know Ed beat his wife." We have a problem and that is a mentality that says that if you do get beat it was because of illegal medication, and sometimes that happens. I was talking to an owner-trainer the other night from Ontario who was talking about how the vet would pull up on the backstretch and you want to buy the Bob, \$200 for this shot, you say "what's in the Bob?" "Well I don't know, but it won't test." Now, is that something? Is it nothing? Is it a scam? Hey, if my competitors in the race are doing it then maybe I need to buy too. It's just a mentality that we can't compete on good, honest horsemanship anymore. When can we rely on the vets in the sport as much as we rely on them now? That has shifted, and it has shifted because of a perception in the minds of the horsemen on how to effectively compete. The

big thing that we're troubled with is the difference between perception versus reality. Probably one of the best things that can be done, if we had the focused research efforts, would be to focus our research efforts on how to test all the horses for all the substances we want to look at in plasma, not depend on urine to the degree that we have to depend on it because it is costly in terms of manpower and if you could put vet techs at the end of every race, draw a sample off every horse, even if you don't run the tests on every sample, you create a sense of deterrent. It's like when you drive down the highway and you turn a bend and you see the state trooper with the radar gun and you know he's there, what are you going to do? You're not going to go 10 miles over the speed limit. You're going to wonder, "If they're drawing samples from my horse are they going to check it if I'm doing something?" So we need to focus our research on: How can we test all the horses? We can't expend the money right now to do that, under the current system, and we are expending probably more on drug testing than any other major professional sport. Collectively, your state regulators are spending between \$30 and \$40 million on this. The whole purpose of it is to catch the cheaters. Now, who are we trying to catch? Are we trying to catch the horseman who screwed up or who has got a large stable and his assistant trainer screwed up? Ok, most of our positives are for screw-ups on "therapeutic" medications. If somebody's trying to cheat, they're not going to do it for the purse, they're going to try to fix a race, they're going to try to structure the wager so they can cash it in at the window. That's why I think this panel ought to be married to the previous panel on security in the wagering system, because it is interrelated.

**Dennis Dowd:** As you know, when there's a positive we do go back and check betting patterns and check where a wager is placed. The ironic thing is that—as you know and probably everyone at this panel knows—oftentimes you can't find it, it's done that well. And that's in a situation where it wasn't just a bute overage or something like that. I've worked in a shed row and if a guy doesn't wash the tub out right or something else, the testing is that sophisticated that it comes up positive. But let's talk to somebody who has been exclusively working on this for a while. Doctor, maybe you can tell us what kind of testing can we do, what we should do and where are we going with this?

**Dr. Scot Waterman:** I don't think we know the answer to that yet. I'll pick up on what Ed said, I think the ideal scenario would be to test every horse in every race, pre-race for as wide a variety of drugs as we possibly can. The problem with that is that we have a system in this country right

now where we've got states that are paying \$20 a sample to do their testing; are you going to tell me we're going to build a testing system that allows every horse in every race to be tested in plasma for a wide-variety of drugs for \$20 a sample? I don't think so. I don't think there's enough research in the world to get to a point where we can accommodate all the various spectrums of states and state racing commission budgets. I'll go back to a point Bennett made about how the government is imploring us to be clean and to detect all these drugs, yet the government doesn't give us enough money to do that job. I think that is a primary fault in the system right now, and that has to be addressed. Alan mentioned my round table remarks last year and Ed used a statistic that I used in that speech. We do spend \$30 million annually on drug testing in this country which blows any major league sport, any other racing country, out of the water in terms of how much money is spent on testing. But number 1, that figure hasn't budged in about 20 years. We were spending \$30 million in 1991, according to the McKenzie Report. So why has that not grown considering that technology has advanced, that equipment is more expensive? Yes, we can test down to lower concentrations of drugs, we can find things that we couldn't have found 15-20 years ago, but that requires money. That's heavy duty, six-figure equipment that you have to have in order to do that. So why have the testing dollars not grown and kept pace even with inflation? That's a problem. That \$30 million is not spent at one laboratory. It's not spent at 2 laboratories. It's not even spent at 3. Currently, it's spent at 18. So you've just taken that \$30 million and divvied it up quite a number of ways. So while we spend more money than any other major sport, it's split up in a way that's not efficient.

**Dennis Dowd:** You're picking up on some of the remarks that Bennett made earlier and some of my own thoughts, that one of our problems is divergent in the testing, the quality of the testing, the labs that are being used, what's a positive in one jurisdiction may not be a positive in another even though the rule in fact reads the same, because they're using a different lab. Wouldn't we be most served, and is this something that the Racing Medication & Testing Consortium is working on, getting to some sort of uniformity and thereby hopefully using fewer labs and pushing the cost down? Then if we continue to spend that same amount of money we can increase the quality of our testing and the number of samples by using fewer labs and having more uniformity. It's got to be awful tough to be a horseman racing in Pennsylvania and wondering, "If I ship to New Jersey and I put the horse in and he's tested, is he going to be the same?" I'm talking about the guy who's using some veterinary administered medication that is

absolutely in the best interest of the horse and with no intention of having anything in the horse on the day of the race, but because of the difference in the labs that are being used and the difference in the application or the problem. Couldn't we address both of those problems by using uniform labs; drive down the cost?

**Dr. Scot Waterman:** Absolutely, but let me throw a question back at you. How willing is New Jersey going to be to potentially send those dollars to a lab outside of the state instead of using the New Jersey State Police Laboratory?

**Dennis Dowd:** Not willing at all.

**Dr. Scot Waterman:** Right. Politically it's a very critical issue. Beyond that there are states, New York is a good example, where the laboratory is statutory. The testing dollars have to be spent according to state statute at a land-grant university in the state. I think everybody recognizes that we should be at 2 or 3 laboratories, it's getting there.

**Dennis Dowd:** If it's legislative we can change it. Jeff Gural's proving it. You can move the New York legislature in directions people never thought possible. So maybe we ought to enlist Jeff to try and get that changed and we can move forward with a more uniform drug policy.

**Ben Wallace:** So what about trying to accommodate some other country?

**Dennis Dowd:** Well I have a good friend who raced up in Canada, a trainer, and he had bute in his trailer, with the prescription from the veterinarian, kept in the trailer to administer to the horse after the race. Post-race, the horse stung, came back sore. That's against the rules in Canada, not in New Jersey. He shipped him from New Jersey and thought he was fully compliant with the rules, thought what he was doing was in the best interest of the animal, and shipped up and got suspended because of that. Then New Jersey, utilizing reciprocity, said, "well if he's suspended up there, he's suspended here," even though what he did up there wouldn't be a violation here. That does show some of the idiocy in our sport. We are now more international and inter-state in our movement of horses and I think the uniformity issue really is important.

**Ben Wallace:** That becomes a doping allegation. That's all they read.

**Alan Foreman:** I will say this about the Mid-Atlantic where I am based, we probably have the best laboratories in the country in the Mid-Atlantic. The labs in New York, Pennsylvania, New Jersey, Delaware and Maryland are among the top labs in the country. They're all testing, almost identically the same, and there is tremendous uniformity in that region. And the

horsemen are an advantage there; we've worked very hard to get that far. Conversely, the steroid issue is what highlights the problem from a testing perspective. Just in that region, where you have the best labs, is where you have a region that was the first to start dealing with the steroid problem and identify some of the issues that are causing some of the pushback in the implementation of a national program. They'll figure it out, they'll get it right and they'll move. There's a lot more going on than I think people realize and I've certainly noticed that it's benefited the horsemen, I think Ed, you would agree with that.

**Ed Martin:** I think, first of all, the concept of getting the various state legislatures to eliminate the "we'd like to keep our state money in our state," way of thinking, we could spend a lot of years trying to get to that. I had an interesting conversation with somebody about a week ago who floated the idea, maybe some of these states would be interested in forming a regional interstate compact in the United States to sort of pool their drug testing resources. The great challenge that any racing commission has, whether it's in Canada or the United States, obviously is the budget. In terms of the political pecking order it's, I think Ben Leibman said, the last state agency, governmentally, to receive any funding consideration and that explains why the drug testing budgets have not been increased with inflation over the years. What that does is it forces your drug testing to become more random and frankly a little bit more limited than anybody would like it to be. There's a couple of ways to attack that: possibly a multi-jurisdictional approach, then a regional approach, some type of private partnership with the industry, to pool resources. We all have limited resources, especially in an industry that is economically challenged, and we all have a commitment to integrity because the survival of the sport depends on it. How do we pool those resources and try to get to the end? So that's something we've got to start thinking, big picture, pull the camera back, and start looking at stuff like that. I would just throw something else on the table. Ben, you might have a handle on this. The increased use of medication, reliance on vets in the shed row, obviously most of these medications are for pain management. Why are our horses in so much pain? Are there things that can be done, other than medication, to reduce the pain on these horses?

**Ben Wallace:** I believe it's the way the game has gone. Early speed equates early money. Breeding farms want their mares with records early. We don't train horses for \$10 a day anymore; it's an expensive, high economic game. And I think that the millennium trainer of today is put into a position where there needs to be a result sooner rather than later, and that is

just a problem that has snowballed to the point where I think it's created horse shortages and obviously it's created racing horses that are competing with more pain, so more pain equates more, hopefully therapeutic, use of medications. Again, you hope to fill that card on the weekend and get those horses racing with that situation. I think basically it becomes an economic scenario right from the breeding farms to the racehorse shed row.

**Dennis Dowd:** It's start them too early and make them go too fast.

**Ben Wallace:** There's a mentality and, like I said, I came out of the 70s and that mentality was, boy, those trainers and drivers were available then. Those guys trained and drove those horses. They knew what kind of a week those horses had. They knew what kind of trip that horse would best benefit off. They knew that horse was going to be around next year. That mentality is gone. The advent of the catch-driver, the advent of \$75 a day training bills, let's giddy up and go. It's unfortunate, and this is the passion that I have because the young horse trainer, the pedigree, the maternal lines, the conditioning, that can all be done with a needle. Unfortunately, that's a scenario that is so rampant, and whether we can stop it or not, I don't know. As I suggested, research can be a dangerous tool. Research can develop scenarios where it will enhance a horse's ability synthetically and why not go ahead and do that because they haven't created a test for it yet. It's a cat and mouse game and it is here and I'm not being a nay sayer but as Mr. Foreman suggested, I wish the public was aware of how much effort we are putting into it. As this topic suggests, research is useless without proper regulation and regulation is useless without proper research.

**Dennis Dowd:** Doctor, you helped develop the uniform steroid rule which is becoming quite controversial, it was introduced in the racing commission in New Jersey, it will be advertised. The horsemen's groups have asked for some time to make comments which certainly they're entitled to, and I, as an operator, am going to be interested to hear their positions. What's your position on the uniform testing? There has been a lot of nastiness in the press, I don't think it's personal in any way, but I'd like to hear your opinion on that.

**Dr. Scot Waterman:** Well I think that the rule that we put out, and RCI passed, is a good rule. It has worked for 20-30 years in other countries and it has done the job in terms of regulating the judicious use of anabolic steroids. As a fact of the matter, it will probably eliminate the regular, regimented use of anabolic steroids in racing horses and we think that's a positive thing. Are there areas in which we can improve the rule and add to it? Absolutely. This was meant as a

starting point and it's meant to give those racing commissions that were desirous of a rule to begin implementing this year the opportunity to do it.

**Dennis Dowd:** As an operator, I'm quite frankly a little nervous that if Pennsylvania moves faster than Delaware, who moves faster than New York, who moves slower than New Jersey, you will end up with a year or some period of time where there are different rules in effect in different states that are regional. As Alan said, the Mid-Atlantic region has been an area—Maryland's obviously taken the position different than the other states—where there is ebb and flow where the horses are moving back and forth across borders, and that's kind of good for the industry in terms of, if you card a race or have a race in one state, your race office can draw horses from another state and that's going to be thrown into a serious problem. In New Jersey, it looks like our rule will be in effect in June, Delaware and Pennsylvania say theirs will be in effect in April—I'm opening Monmouth Park in May, where am I going to get the horses from?

**Stan Bergstein:** We're out of time Dennis. I think probably the folks in the audience must have some comments and questions. I'd like to start with one, if I may, a hypothetical question. I believe, Scot, that you have said in the past, been quoted at least, maybe misquoted, as saying that steroids are bad for a racehorse, they have no useful purpose in a racehorse, or something to that effect. If that premise is not correct, let me know because I won't go any further on that issue.

**Dr. Scot Waterman:** I think the long-term, regimented use of anabolic steroids is absolutely—

**Stan Bergstein:** Given that, and turning to Mr. Martin whose organization really is going to have to ultimately solve the problem, what if all the racing commissions in RCI made the statement that, on the basis of advice from veterinary leaders, knowing that use of anabolic steroids is bad for horses, what if you said steroids are illegal? Somewhere along the line between Abner Doubleday and Judge Landis they decided that 3 strikes in baseball were out, and what's happened in racing essentially is that Major League Baseball players could say we want 4 strikes instead of 3. I don't believe that the participants in the game can write the rules or regulate, and if the commissions don't exercise their right to do that, we're left in a void leading nowhere.

**Ed Martin:** I don't disagree with you Stan, in fact that's why we adopted the model rule. That's why you have a significant number of racing commissions in the process of promulgating that rule. That's why you also have other commissions who will interpret their existing rules as

being applicable to the anabolic steroids. So you've got commissions across the country who are moving to testing in this area. Some of them have already been doing monitoring testing and the use is everywhere. This is a hard term. There is a bit of a push back on the research and when we make a rule, we do it on the best research currently available and if new research comes out then we obviously revisit and modify the rule. There was a tremendous amount of credibility given to the process in the RMTC that came up with the proposed rule. We modified it slightly to give us some more time to get research on plasma, and that is in the works now. Those results should be coming from the RMTC within a matter of months. I think the hard part here is the term for the horsemen. We've told every racing commission that you need to, as you bring these rules in, give ample notice so that people who are used to using these steroids can wean their horses off of them. I totally understand Dennis's problem, it would be great if you could have a rule take effect in a uniform way all across the country. We don't have a federal agency that does that, nor do we advocate that. This medication rule is coming onto the books like every other medication rule has in this sport, and while it may present a short-term problem, in the long-term it will be good for everybody.

**Stan Bergstein:** Just one quick comment Ed, and then I'll turn it over to the audience.

Somewhere along the line, time must be of the essence. My irritation and my impatience that led to some imprudent remarks and possibly belittling Mr. Foreman, was my belief that—Ben's case with aminorex illustrated the problem: It took them five years to come up with a decision in a major drugging case in New York, and who knows how much it cost the defense. I believe the \$25 thousand or whatever the number in Ben's case may be, cost him not only that, but it kept him in public perception. His reputation, which in Canada has been extremely high, was questioned and somewhere along the line someone has to say "this is where it ends" and go from there. I'd like to hear from anybody here who wants to discuss this issue while we have the time. No one? Silence? I don't know what it indicates, here's someone right here who can do it.

**Art Gray:** One thing that we can do, that really sticks in my gut that the commissions can deal with is that there are trainers now—Ben, you can name five trainers right now that you've competed against at racetracks that you know should not be in the business—if an individual has, even if it's therapeutic errors, and they're constantly pushing the envelope, why shouldn't it be served with a sharp warning or why shouldn't his license be revoked? There's a trainer up north that had positives two days ago, all of his horses were scratched at the track two nights ago. This

individual probably has 8 positives in the last 5 years. There's no way that he should have the license, and this is something that the commissions can do. They can do it right now without \$30 million worth of testing or anything else.

**Ben Wallace:** Why are you asking me to do the commission's job?

**Art:** I didn't ask you to do anything Ben.

**Ben Wallace:** You just said you think I can name five trainers that I know for a fact are using illegal substances or push the envelope too far. I'm not going to say I can't.

**Art:** I'm not saying that, I'm saying, just in general, we both know guys that a lot of trainers don't want to compete against. Right now, for these five individuals, we come up with the same names, the commission should be serving them with a show cause, sort of why they should lose their right to participate in the sport. And that's something we can start doing tomorrow.

**Ben Wallace:** Absolutely, but as commissioners, as regulators, when you challenge that individual that it's not a botched investigation, that it's not a derelict scenario, that you're going to lose at a judicial level. That's where a lot of the problems have been created because the defense money now that's available, and rightly so, is out there to defend people who maybe have walked the line, maybe they have pushed the envelope, but it can be proven in court that, you know what? You people, the commissioners or the regulators didn't handle the investigation properly. I'm saying this is a growing problem. It's growing pains that this industry is going through because there's so much defense money out there now.

**Art Gray:** I agree with what you're saying for one or two cases, but someone who has two TCO2 positives, EPO and have Taminal, Clozapramine, someone who has 6 or 7 positives in 5 years, somebody in some commission somewhere, wherever, should be saying "well, maybe we should look at this individual and maybe he should not have the right to participate in this sport." I'm not talking one botched test, I'm referring to someone that is continually coming up positive.

**Ed Martin:** I don't want to talk about any individual case, but no racing commission brings a case unless they believe it's going to be held up on appeal in court. Sometimes that doesn't happen, and sometimes that doesn't happen for valid reasons. That's the process. That's due process. But it is incumbent on everybody to support the level of talent in your individual investigatory agencies and your individual commissions so that you absolutely have the best, so you don't have situations where a case is brought against somebody that is not valid, or is deemed not valid after the fact. That's the challenge we collectively have. But I'll tell you this,

it is in the interest of this sport to have talented and in-depth staff at the different racing commissions so that they can do the job that they're supposed to do.

**Alan Foreman:** You know, you're going to get examples here and there, it may take a case 5 years to wind through the courts, but I don't believe those cases affect the system overall. When you think about our scheme, not only does a regulator have the right in a case involving the integrity of the sport to suspend someone summarily—the Supreme Court has upheld that subject to a due process hearing—but tracks, with the exception of perhaps Dennis, have the right of exclusion, as a common law right. How often have you seen, over the years, the tracks exclude someone for an integrity violation? I've worked on probably the most publicized and serious integrity violation in the past year, the Patrick Biancone case. He was tried, convicted, it was almost—I have to be careful about the words I use because some got in trouble with the words—but it was not justice. He was tried and convicted in the press within 48 hours. The steward's hearing wasn't held until 2 to 3 months after the so-called search of his barn. But there was no summary suspension, if the case was such an astonishing assault on racing, there was no exclusion of any kind by any racetrack, and he was racing at a number of racetracks in the country. And what we did was spend 3 to 4 months trying to get the facts of the case, rather than all of the hyperbole in the press, and then we tried to get some justice out of it, which was almost impossible to do. There are two sides to this situation. The regulators certainly have the ability; the tracks have the ability, and just look and see how many times that right is exercised by either one.

**Stan Bergstein:** I've been a big bolster and a big believer and a big admirer of the Ontario Racing Commission because it's taken very hard stands. But I get their suspension list last week and there was one trainer that had 104 violations on his rap sheet, so somewhere there has to be closure on where you go and how far you allow it. The second question is Dennis, at the Meadowlands you had a trainer who had to sign a release to get stalls, but there were stated restrictions that if he had a positive test he was out, and he had a positive test and he is out, but he went to another jurisdiction and there was no reciprocal licensing because he wasn't suspended in New Jersey, but he went to Illinois and got a license in Illinois without any difficulty apparently, and raced there. What is wrong with the policy of, just as you did in that case, of requiring a trainer to sign a release if there's any malfeasance, he's out?

**Dennis Dowd:** We were on the line with that activity, and when I say we, I mean the Sports Authority, but it was an appropriate thing to do with that individual and occasionally other individuals, that isn't the only person who was forced to sign. Did we call that the McErlean letter or the Garland letter? I forget which one developed it, but that is, in some cases, clearly an appropriate thing to do. At the start of the meet if a trainer who we've had problems with in the past, but the racing commission has felt they should license him, if you're going to try to come here you're going to have a fight on your hands. If you want to not have the fight, sign an agreement, a binding contract that says if you have one of these problems, you're going to pack your tack and leave, and we've done that. Whether or not the track in Illinois lets that person on quite frankly, it is their decision. I agree with what Alan just said, that it's a decision that is not exercised that often. I was kind of surprised that particular individual showed up there, but Illinois did in fact license him and that racetrack had its own business judgment and based upon the business of that racetrack made a determination that that individual and his horses were going to add to the show. I don't know why they made that decision and quite frankly I don't think it was my position to ask. Phil Langley is standing up so...

**Phil Langley:** First of all, I'll protect our position a little bit, we didn't just let him in. He had been licensed in Illinois for years, as he was at the Meadowlands. He was caught with some medication violations in Illinois, the medication violations were brought before the racing board and they suspended him. When the racing board suspended him, his lawyer went to court, due process, and he got a stay and his stay specifically said that he could not be excluded by the track during the period his hearings and everything else took place. So just to clear that up, we didn't just let him in because we wanted to or anything else, it was because we were under court order. One time, 20 years ago, I went in and a judge threatened me with contempt of court because I wouldn't tell who had informed me of some stuff and I don't particularly want to go spend my time in jail.

**Stan Bergstein:** Is he still racing there?

**Phil Langley:** Yeah, he's still racing there, but the racing board is not taking action. Well the stay might be up now because he's racing in New Jersey, he's racing in Illinois, he's racing a couple places. But his attorney is the master of stays; in our case they had him up to 3 or 4 years. Courts aren't really excited about racing cases. I hate to say that, but we talk about being on the low side of the totem pole on a lot of things and courts just don't get excited and the judges don't

want to deprive a guy of anything, and I do agree with one thing that I think Art said. I said he should not be licensed in Illinois, I begged the racing board not to license him, but they said “His suspension is up, he served his time, what are we going to do?” And it’s a bad attitude, but that’s what they do.

**Stan Bergstein:** Thank you for the clarification, anyone else?

**Jeff Gural:** We’re at Tioga & Vernon and we do a lot of exclusions but I think, we don’t run into that issue because it’s not that important for a lot of people to race at Tioga & Vernon. I will tell you, just as an aside, that I’ve had a handful of trainers we excluded who called me asking why they were excluded and I’ll tell them and they’ll say “I don’t do that anymore.” So I’m just telling you, I have a problem as a racetrack owner. Marion Jones won umpteen Olympic gold medals, was tested to death, and she never tested positive for anything. I just don’t see how the fact that only 1% of horses come back positive has absolutely any relevance to anything. If they couldn’t catch Marion Jones, with an unlimited budget to catch her, it’s a problem. One thing that I don’t understand, and I understand Ben’s position, but the reality is that, if I was a horse trainer today, it’s your livelihood. I mean, I make money in real estate, I don’t care about this, it’s a fun thing for me. But the handle in Ontario is like this, and it certainly hasn’t been helped by bad publicity and you’re absolutely right, any trainer who’s successful, the perception is they’re dishonest. I don’t know why anyone would want to be a harness horse trainer because it’s the only industry I can think of where if you’re successful it’s a black mark on your name. Why don’t the trainers at least anonymously help the racetrack owners and tell us who’s cheating because we’re trying to catch them, but we don’t get any help, whatsoever, from the horse racing community. It’s really aggravating, and these young guys have no future because this game’s not going to be around very long unless we can solve this problem.

**Ben Wallace:** I’d like to touch on that. I’ll be honest. I don’t know that the guy next door to me is doing something illegal. I’m not privy to that. I’m not in some circle of ne’re-do-wells that we communicate like trading baseball cards, “what are you using here and what are you using there?” I’m not privy to that. I don’t have substantial evidence that I can phone and say “you know, Joe Blow down there, I just saw him sticking a tube in a horse’s throat.” I don’t know that. To me, I see blatant outlandish records of people still racing, and I’m supposed to pick the phone up and say “how can I race against this son of a gun? He’s got 3 TCOs, he’s got

an epogen, he's got this." I don't have privy that I can phone and tell a racetrack operator that this guy's a bandit and he shouldn't be raced. Anonymous or not.

**Lonny Powell:** I've been a track operator probably longer than in the regulatory end of things. Ben, just to your one point, and I understand where you're coming from, but I'll tell you as a track operator and from somebody on the regulatory side—I know most of these guys up there on the stage are running this same thing as well as people here in this room—there's been many a time when I'll be in the room and we'll be trying to get to the bottom of something, maybe medication, maybe something else, and the licensee will sit there and go "well there's guys doing this all over the place, it's just rampant, I know a whole bunch of them." We say "Ok, tell me who they are, or tell somebody who they are so we can get them." "No, that's not my job, that's you guys, you guys catch them." Well I think we've proven in racing by now that leaving it up to one individual group within the industry isn't going to work. Everybody's going to have to step up and do it together and take the heat. Track exclusions, in my opinion, are not the best way to handle something like medication. At racetracks, the reason I excluded people it was because of things like property damage, being abusive to people in the grandstand, not paying bills, but when it comes to integrity things like if they're abusing medication or they're fixing races, that's something that we really count on some help from the state. Oftentimes the state would like to say yes to it because we don't have to provide due process, but to me that's not the primary purpose of track exclusions. One other thing I'd like to say, and I love this industry, I've been in it all my life, and we have some warts. I think one of our biggest warts is, for years, for as long as I can remember, we haven't wanted the garbage in our back yard but we don't have a problem dumping it in the neighbor's back yard. It's almost one of racing's dirty little secrets: if you can't get after them and prosecute, if you're not going to sit and throw a rule at them, and stand up and show your cajones, or if you're not going to get together and say "this is not right," instead we say "hey, pack your tack and go into the next state." We're just dumping the garbage into the next state, we're prolonging the problem, more fans get deceived, and we're not solving the problem we're just making our own lives a little bit easier. I think those days are over, I think this medication issue is driving it as much as anything, but I just think that we've got to pull our heads out of the sand a little bit and we've got to step up and be accountable because all of us have a responsibility to protect the integrity of this sport and we all have to help each other out.

