

Independent Commission vs. Truth and Reconciliation Commission

The Union Cycliste International (UCI) recently announced a proposed agreement with the World Anti-Doping Agency (WADA) to convene an ‘independent commission’ that will investigate possible wrongdoing during the UCI’s previous administrations. While the two organizations have never meshed particularly well before, change in UCI executive leadership may finally bring harmony in the fight for fair play in professional cycling. It remains to be seen how the UCI and WADA will collaborate to stage an independent commission (IC); what lasting benefits may result from its discoveries; and whether it may eventually lead to a more comprehensive and transformative truth and reconciliation commission (TRC) process.

We believe that there are clear historical disadvantages to the IC model when held separately, or instead of a TRC process. In this brief article, we will compare and contrast independent commissions with TRCs, and demonstrate how the information that could be discovered and reported from an independent commission alone might be of less value than what could be exposed and resolved through a full TRC process. Furthermore, we argue that the proposed independent commission’s findings, no matter how damning, should be included in a broader TRC process in order to restore credibility and integrity to professional cycling. The UCI and WADA have a unique and exciting historical opportunity to stage the first proceeding of its kind in all of sport – to set a new standard, and to forever change ethics, responsibility, accountability, and forgiveness on the playing field.

Independent commissions are used to investigate specific conflicts within an organization or nation, while TRCs focus on larger restorative issues that center on the needs of victims and perpetrators within a society. There are many different examples of independent commissions in the modern era, covering everything from elections and police misconduct to financial transgressions and national accountability. (Links to summary reports of some examples of such commissions follow this article). For this discussion, we will discuss independent commissions in a general sense – as most such processes follow a similar formula, despite being held in wide range of contexts. There are several different TRC examples, but the best known and most successful model is the one which bridged South Africa from the era of apartheid to a free and democratic nation.

TRC and independent commission proceedings both start with closed-door investigations to lay out the alleged acts, identify perpetrators, and uncover evidence as thoroughly as possible. But that is pretty much where the similarities end. An independent commission has an agenda to report its findings and make recommendations, but TRC is a process to come to terms with past wrong-doings. While on the surface these might seem to be parallel paths to achieve an end result, nothing could be further from the truth. An independent commission can solicit testimony from perpetrators in exchange for leniency or immunity from sanctions, whereas a TRC requires testimony from participants to be complete and truthful – and to corroborate or be corroborated by the testimony of others, to even be considered for amnesty. And there are many other significant differences.

Independent commission activities most often, though not always, continue behind closed doors, with testimony taken in private. Participants called to an independent commission often have both the opportunity and the incentive to under-deliver because of this difference; this is a critical distinction between an IC and a TRC. Participants can be offered or request immunity from sanctions and any future repercussions as a pre-condition for giving testimony, often anonymously. Participants can then selectively tell the truth, give incomplete testimony – and confess to certain actions, but not necessarily all of their actions. Once the agreed-upon testimony is done, the matter may be closed.

In this light, independent commissions may allow perpetrators to accept a certain degree of guilt but

without making complete disclosure – and this might allow the participant to continue along as if nothing happened at all. Worse, it is possible to retain immunity even if facts to the contrary come to light in the future, as was the case in Argentina’s first attempt at a truth commission in the 1980s. In pro cycling today, this appears to be the general approach taken so far by Lance Armstrong and other prominent figures that were exposed in the U.S. Anti-Doping Agency report of October, 2012. As many have already noted, this is not creating a sense of truly “coming to terms with the past” that would occur in a full TRC process.

TRC processes elicit testimony in an open and dynamic forum. Participants in a TRC cannot receive amnesty until the testimony of all parties concerning past allegations are taken. In this process, the perpetrator’s testimony might come after victims or investigators deliver initial statements, and additional testimony by others could later be provided. All parties are motivated to tell the full truth because if their testimony is incomplete, or if other testimony contradicts their statements later during the process, amnesty will be less likely, or even impossible.

The current myth around this whole process with respect to pro cycling is that if no one is guaranteed amnesty, no one will show up to give testimony. After all, who in their right mind would agree to participate in a process if they weren’t compelled to, and if there was a possibility that their reputation might be tarnished no matter what? But as was shown in the South African TRC process, many perpetrators came forth to give full testimony before others could throw them under the bus with testimony of their own. This characteristic of a TRC provides a powerful incentive – with equal motivation – for both victims and perpetrators to give full accounts. This, in a nutshell, is why pro cycling must convene a full TRC process.

In essence, the TRC encourages perpetrators to come to agreement with the victims and the historical facts as to what happened, why it happened – and to accept some level of accountability if they wish to earn amnesty. A measure of the success of witness testimony is whether or not it influenced a perpetrator to make a full statement. In an independent commission, if someone wishes to provide testimony, they are less likely to appear if they believe that the entity they are testifying against might already have immunity, never tell the full story, or ever be held accountable. Worse, they may justifiably fear retaliation from those entities for testifying at all.

Finally, we revisit the independent commission’s typical agenda, which is to report its findings. The simple requirement to deliver a summary report, perhaps with recommendations for the future, reduces its effectiveness and severely limits its ability to help the participants or commission stakeholders come to terms with the past. There is no requirement or guarantee that whoever the independent commission hands the report over to – in this case, the UCI – will take appropriate actions based on the commission’s findings and recommendations. In the worst case, this can nullify the entire independent commission process. Cycling cannot afford to leave its past unresolved and must act appropriately on all the findings.

The transparency of TRC proceedings makes it far less likely that the ultimate outcome will be left in doubt. Amnesty or restorative or rehabilitative judgments for participants are withheld until all testimony is cataloged and the final report is ready to be published. In an independent commission, the full story may never be known; the final report may hold some people responsible but never accountable, and perpetrators could end up victimizing the victims in a perpetual cycle. But a TRC holds people accountable and responsible, while simultaneously finding the voice and means to apologize to the victims. The wisdom of Dr. Alex Boraine, Desmond Tutu, and Nelson Mandela cannot be overstated in making the truth and reconciliation procedure an inclusive, autonomous, complete, and forgiving process.

The UCI can deal with the shortcomings of an independent commission by (1) incorporating into an IC the most important elements of TRC, or better; (2) by using the findings of a prompt independent commission to inform and set the stage for a later and more comprehensive TRC proceeding. Of utmost importance: if the findings of the independent commission are to be useful to a future TRC – no immunities or favored

treatment must be offered in exchange for testimonies. All outcomes must be determined and imposed by the TRC.

Key questions which must be addressed if this path is to succeed include the following:

- ? How will the IC and TRC chairpersons be selected as to preserve independence and impartiality?
- ? What power will the independent commission and TRC have to force the UCI, WADA, and perhaps the International Olympic Committee to accept and adopt its recommendations?
- ? How far back in time will the independent commission be allowed to investigate the allegations?
- ? How will the TRC determine guilt and innocence, amnesty and sanctions, for the various participants that do decide to testify?
- ? What will the commissions do if laws have been broken, within statutes of limitation?

Some of these questions are explored in depth in our broader and more comprehensive report, “A Roadmap to Repair Pro Cycling.” Others will have to be answered through the hard work of the professionals selected to the IC and the TRC – particularly to establish legal agreements with international authorities. These agreements are critical in order to guide or limit any criminal prosecutions that might be indicated from discoveries.

There is really only one relevant and recent example of an independent commission in professional sports: the 2007 Mitchell Report on professional baseball. During the run-up to the September 2013 UCI Congress, many within and close to the sport cited this report on the use of steroids in baseball as a possible alternative to a TRC. Former U.S. Senator George Mitchell was selected by the Commissioner of Baseball, Bud Selig, to investigate, determine the scope of, and recommend solutions to the pervasiveness of performance enhancing drugs (PEDs) in the sport. While Mitchell admirably and thoroughly investigated this issue to rightful acclaim, there were also several shortcomings to the report he ultimately authored:

? The report’s charter was limited to define the scope of the PED problem in baseball and suggest how to fix it, but it had no provisions for the Commissioner or the report authors to adopt or enforce recommended policy changes.

? Mitchell was not seen as entirely impartial, despite his explanations afterwards. While the report was to cover all of baseball, there were two glaring omissions: Selig owned the Milwaukee Brewers and no Brewers were mentioned in the report despite (multiple) players being named from almost all other teams. In addition, Mitchell was at the time on the board of directors for the Boston Red Sox, which also had none of its players named.

? Most players contacted by Mitchell refused to speak with him. The commission was unable to work out issues of potential immunity, potential amnesty, or potential criminal implications; furthermore, neither Baseball nor Mitchell were empowered to assign punishment other than naming names despite the mountains of evidence (Roger Clemens was only later indicted for lying under oath to Congress, as offenses committed outside of the game were beyond Mitchell’s scope). Any commission to investigate pro cycling must have the power to compel targeted riders to come before it.

? No one in Baseball ever offered an apology to all of the players who were unable to earn a spot on a team’s roster because of the ‘juiced’ players’ unfair advantages, and who sacrificed economic well-being in a desire to play fair.

Baseball still suffers with the legacy of “what might have been” had it taken appropriate steps prior to, during, and after this report was delivered. Despite its intentions and damning content, the game’s struggle with PEDs was not resolved. Indeed, it may even have been exacerbated, given the current BioGenesis scandal.

The greatest drawback of the Mitchell Report model is the difficulty for a governing body to select a single person to tackle the issue with complete impartiality, given that the person will have the procedural powers of a prosecutor, jury, and judge rolled into one. The same can also be said of any independent commission, as most of the activities take place behind closed doors, and where the contribution of individual commission members to the final report is not clear. This weakness of the IC highlights the greatest strength of a TRC: the checks and balances of an open, multi-member, multi-disciplined tribunal process that focuses on coming to terms with, rather than burying, the past. Given the known – and perhaps unknown – scope of cycling’s problems, an independent commission may not be enough. Cycling has just one chance to implement this thorough cleansing process, and it should draw upon the broader scope and greater resolution capabilities of a TRC to make sure that it gets it right.

SUMMARY

Testimony is:

Independent Commission: Most often gathered behind closed doors via investigation methods

Truth and Reconciliation: Open tribunal hearings after initial evidentiary investigations

Independence or Autonomy from its governing body?

Independent Commission: Not in all cases, but must deliver final report to governing agency, which may or may not take recommended actions

Truth and Reconciliation: A TRC is chartered by its sponsoring agency to autonomously deliver judgments and take actions, even against members of the sponsoring body

Amnesty or Immunity Guarantees?

Independent Commission: Can be negotiated as a pre-condition for agreeing to testify

Truth and Reconciliation: Can only be awarded on case-by-case basis when testimony is complete for specific events in question

Judgments or Decisions:

Independent Commission: Can be delivered prior to final report

Truth and Reconciliation: Is not delivered until final report is delivered for public review

Final outcomes:

Independent Commission: Individual actions can be exposed, but individuals may not be held accountable for events

Truth and Reconciliation: People are held responsible and accountable, often through various punitive or restorative actions that seek to repair the damage (when deemed appropriate)

Possibility of having to re-open cases due to new evidence:

Independent Commission: High, due to incomplete or selective testimony

Truth and Reconciliation: Low, due to transparency and depth of testimony

DISCLAIMER: *As with all postings on theouterline.com, our goal is to spur debate about what constitutes real change in professional cycling. If you have an opinion about how to make an independent commission or truth and reconciliation process successful, please contact us, and make your ideas or opinions heard.*

by Joe Harris and Steve Maxwell, November 9, 2013

For further readings to compare independent commissions with truth and reconciliation, please link to:

? [Permanent web archive of the South Africa Truth and Reconciliation Commission, Read Volume 6 to understand the context and mechanisms of the TRC](#)

? [Full text of the Mitchell Report, The executive summary](#)

? [Example of an election commission, the Kriegler Commission on Kenya](#)

? [Example of a commission on a public body, the Independent Commission on Policing for Northern Ireland](#)

? [Example of a finance commission, many others can be found on Google and Wikipedia, UK Independent Commission on Banking](#)

? [Great example of a national commission: Bahrain Independent Commission of Inquiry](#)