

Lance Armstrong

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Date : January 21, 2013

Cyclist Lance Armstrong has recently confessed to using performance enhancing drugs during each of his seven Tour de France victories. Public discussion has focused on whether his apology, during an interview with Oprah Winfrey, was genuine or not. I want to consider whether his conduct was criminal. (By “conduct,” I mean the doping and related activity, not the interview!)

There’s a North Carolina connection. [This article observes](#) that at Beech Mountain, near Boone, you can ride “the route Lance Armstrong used to train for his final Tour De France.” And in one of his autobiographies, Armstrong recounts a North Carolina ride that renewed his faith in cycling. (I think it was his first book, [It’s Not About the Bike](#). As an aside, I think it’s a red flag when a person writes more than one autobiography.)

The full story of Armstrong’s systematic doping and his campaign to cover it up is told in [this report](#) from the United States Anti-Doping Agency, USADA. Briefly, the agency concludes that Armstrong masterminded “a massive team doping scheme, more extensive than any previously revealed in professional sports history” and engaged in a “fraudulent course of conduct that extended over a decade and leave no doubt that Mr. Armstrong’s career . . . was fueled from start to finish by doping.”

Obviously, Armstrong and his foundation have also done a great deal of good, and the purpose of this post isn’t to assess Armstrong’s legacy. My personal view is that the doping and the lying are pretty much par for the course in professional sports, but that Armstrong’s willingness to threaten, sue, slander, and destroy the livelihoods of those who told the truth about his drug use will forever disgrace him.

Anyhow, the basic criminal law issues are these:

Perjury. Armstrong has repeatedly denied, under oath, using performance enhancing drugs. Fox News reports [here](#) that “Armstrong, by the USADA’s count, has made seven statements under oath . . . that could lead to criminal charges.” The facts seem to be quite clear-cut, but Armstrong may have some defenses unrelated to factual guilt, as I discuss below.

Obstruction of Justice. In addition to lying about his doping, Armstrong attempted to prevent others from telling the truth about his conduct and the conduct of others. He [reportedly](#) told one cyclist who testified in a doping case, “[y]ou made a mistake when you testified . . . I can destroy you,” told another witness that he would make his life a “living . . . hell,” and successfully used his stature within cycling to have another witness fired from his job. This type of conduct would support charges of obstruction of justice or witness intimidation.

Fraud. Armstrong received sponsorship money, race appearance fees, and prize money, all based in part on his representations that he was clean. He is already facing multiple civil suits alleging fraud, and criminal fraud charges, state or federal, may also be possibilities.

Controlled substance charges. Among the drugs Armstrong admitted using as part of his doping regimen was testosterone. [Testosterone is a Schedule III controlled substance](#). Furthermore, it appears that Armstrong provided

drugs to other riders on his team and/or pressured them to use drugs, meaning that he may be guilty of drug distribution and conspiracy, not merely simple possession.

Possible defenses or bars to prosecution. Some commentators that have considered the possibility of criminal charges against Armstrong have concluded that the statute of limitations is likely to bar prosecution. (For example, [this Sports Illustrated article](#) suggests that the statute of limitations may preclude any perjury or drug charges.) But those articles have generally focused on federal law, which has defined limitations periods for almost all criminal offenses. State laws vary. As readers of this blog know, North Carolina has no statute of limitations for felonies, and other states may also have long or no limitations periods. Given the many jurisdictions across which Armstrong's conduct took place, including some foreign countries, it strikes me as likely that there are jurisdictions where prosecution remains possible. Furthermore, while it is true that the federal government not long ago publicly declined to prosecute Armstrong, that [doesn't pose a barrier to a new investigation](#). Jeopardy never attached, the government never entered into a non-prosecution agreement, and the available evidence now is very different. And of course, appropriate state or local authorities may also investigate.

To sum up, Armstrong's doping-related conduct likely violated multiple criminal laws. I disagree with the [comment](#) by prominent defense lawyer Mark Geragos that "I am sure Lance's lawyer has vetted [his confession to Oprah] and doesn't see any criminal exposure." It seems to me more likely that his legal team sees *considerable* potential criminal exposure, but simply concluded that confessing to Oprah wouldn't make the danger any greater. Whether prosecuting Armstrong is a good use of resources is a separate question, but the legal basis for possible prosecution appears quite sound.