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## **DEFENSE NEVER RESTS IF JACOBS TAKES CASE** **Athletes want him when USADA calls**

By ELLIOTT ALMOND, Mercury News

On the eve of the Turin Games last February, lawyer Howard Jacobs lost two drug cases in 24 hours.

Arbitrators banned cyclist Tyler Hamilton for two years for performing an illegal blood transfusion and skeleton racer Zach Lund a year for taking a hair restoration product that contained a masking agent. "Why am I doing this?" Jacobs asked himself.

The one-time professional triathlete who attended William & Mary law school quickly had an answer: If he didn't defend the athletes, who would?

With a client list including Tour de France cyclist Floyd Landis and Olympic sprinters Marion Jones and Tim Montgomery, Jacobs, 40, has become an influential player in a misunderstood and highly charged facet of Olympic sports: drug testing.

Since 2002, Jacobs and Cameron Myler, a four-time Olympian in women's luge, have emerged as the principal U.S. lawyers representing athletes accused of using banned drugs. Jacobs, who has handled the majority of these cases, has been the most vocal in challenging the conventions of anti-doping.

In a bold move last week, he allowed Landis to post the bulk of his defense online at [www.Floydlandis.com](http://www.Floydlandis.com). The package included a PowerPoint presentation suggesting the positive test for artificial testosterone was the result of sloppiness at a French anti-doping laboratory.

French drug-testing officials declined to comment, but the president of the International Cycling Union dismissed the display as a "public relations effort."

While some might view Jacobs' tactics as theatrical, the Agoura Hills lawyer aggressively questions the science of drug testing or looks for flaws such as mishandled urine samples.

Jacobs submitted a novel defense for Hamilton: He blamed the test that showed someone else's blood in the cyclist's system on an unborn twin who had died in his mother's womb -- a so-called "vanishing twin."

Arbitrators rejected the theory. Since he began defending athletes four years ago, Jacobs has gotten only a few of his 30 cases dismissed.

His clients, however, have received reduced sentences about 75 percent of the time, Jacobs said. For example, Montgomery, the former world-record holder in the 100 meters, faced a lifetime ban last year but received two years after a hearing in San Francisco.

"You wonder if there is any possibility of winning under the system, but the system is not going away," said Jacobs, a former Florida State runner. "The best you can do is hope for change."

Jacobs fashioned himself as anti-doping's conscience in an effort to foster change.

"I've seen more cases than most people," he said. "Most are athletes that I think have been screwed by the system."

The remark is a veiled reference to the standard known as "strict liability," meaning athletes are accountable for anything found in their drug tests -- even contaminated supplements.

Travis Tygart, general counsel of the U.S. Anti-Doping Agency, said defense lawyers are "paid to whine that their clients are victims of the system -- even when it is proved that they are intentional cheaters. I guess it is fortunate for clean athletes that defense counsel are not the ones defending their right to clean sport."

Said Jacobs: "I get sick of USADA saying everything they do is to protect the rights of the clean athletes. They weren't protecting Kicker Vencill."

In 2003, Vencill, an elite swimmer, was banned for two years even though Jacobs proved his positive test for steroids was the result of a contaminated supplement. The Court of Arbitration for Sport, the Olympics'

ultimate arbitrator, accepted the contamination theory but rejected Vencill's claim that "he bears 'no significant fault of negligence' in the circumstance."

Said Vencill: "You have to pull 100 bunny rabbits out of your hat to prove someone is innocent."

Jacobs helped the swimmer win a \$500,000 civil suit against the maker of a nutritional supplement. Tygart, who has known Jacobs' family since childhood in Florida, testified for the plaintiffs in the civil case.

Jacobs' refusal to surrender meant everything to Vencill, who returned to competition this year. It's Jacobs' nature not to quit easily, his identical twin, Ron Jacobs, said.

"Everything we did was timed competition -- all of our chores," said Ron, a New York sociology professor.

Jacobs hasn't slowed down in his effort to defend athletes, who usually profess their innocence in their initial meetings with the lawyer.

Jacobs' involvement with drug cases began in 2002 with the controversial case of bobsledder Pavle Jovanovic, who missed the Salt Lake Olympics after testing positive for a steroid the athlete said came from a contaminated supplement.

His break came in the fall of 2003 when Jacobs represented track athletes John McEwen, Kevin Toth and Melissa Price, who tested positive for the Balco Laboratories steroid THG, also called "the clear." He handles about five drug cases a year now as well as general civil and business litigation and admiralty law.

As the work expanded, Jacobs built a digital library of sports case law that he said is one of the most complete in the world -- more complete, even, than the one kept by the Court of Arbitration for Sport.

Jacobs uses the library to demystify a legal system foreign to most athletes, who generally don't make enough to pay hundreds of thousands for protracted disputes. Jacobs doesn't work pro bono but is flexible with payment schedules.

"He is an advocate for the athlete not because that is where he gets his money from but because he cares," Vencill said.

And sometimes that's more important than winning a case.

### **The Howard Jacobs File**

Attended the Bolles Academy in Jacksonville, Fla., where he swam for Gregg Troy, now coach of Florida.

Ran track and cross-country at Florida State.

Graduated from William & Mary law school, then moved to Los Angeles in 1990.

Was a professional triathlete with identical twin, Ron, until his second year of law school.

Has handled some of the country's biggest doping cases, including those of cyclists Floyd Landis and Tyler Hamilton and sprinters Marion Jones and Tim Montgomery.

At 40, competes in masters triathlons.