



ALAN F. BALCH

THOMISM... AND RACING

Thomas Aquinas (1225-1274) understood education and persuasion as well as anyone else ever has. He once said that when you want to convert someone to your view, you go over to where he's standing, take him by the hand (mentally speaking), and guide him to where you want him to go.

What you don't do is stand across the room, or sit next to him, shouting at him. Or, possibly worse, whisper insults in his ear, after loudly accusing him of dishonesty. You don't call him names. And you don't order him to come over to where you are.

Instead, you start where he is, and work from that position. That's the way to achieve movement toward consensus.

In racing, and the larger world, we've lost sight of this elementary psychology. Everywhere we look these days, we see passionate, adversarial advocates who simply scream their own prejudices and beliefs, while excoriating their opponents. All this does is make people who agree feel better, make people who disagree stiffen their resistance, and make anyone in the middle feel uneasy and skeptical that either side is speaking the whole truth.

Almost every passionate and partisan argument overstates its own case and understates its opponent's case!

For the last several years in California, we've seen an evolution of this increasingly unproductive behavior when medication rules have been proposed and advanced by the Equine Medical Director of the California Horse Racing Board (CHRB).

Raise your hand if you favor cheating . . . hmmm, none to see? That's because nobody favors cheating except a cheater, and we believe there are very, very few of those. A cheater, by definition, does everything possible to avoid detection. In short, they don't raise their own hands; but they may point to others.

Our Equine Medical Director recently stated that he doubts he has gone a week in the decade-plus he has held that position when he hasn't had "an owner, trainer, or someone else in the industry complain that we weren't doing enough to control doping." He made that statement in the context of advocating elaborate new out-of-



competition equine testing rules without which, he said, racing "does not have a robust anti-doping program." He then pointed at both California Thoroughbred Trainers (CTT) and Thoroughbred Owners of California (TOC) as opponents of out-of-competition testing, whose opposition he called "bewildering."

Such "opposition" is even more bewildering to CTT and TOC, since it simply doesn't exist. To the contrary, both verbally and in writing, both organizations have repeatedly endorsed the desirability of expanded out-of-competition testing, and elaborated rules for its conduct, including in votes at the Racing Medication and Testing Consortium (RMTC) meetings.

As the Equine Medical Director himself proclaimed, California already does more such testing than other racing authorities in the United States, and pioneered it in 2007, with the ongoing support of both CTT and TOC.

Various versions of the latest RMTC proposal for expanding out-of-competition testing have been considered across the United States. Many states have differing rule-making procedures, and California's is among the most detailed and careful, subject to its Administrative Procedure Act and Office of Administrative Law regulations. Our Equine Medical Director has been constantly critical of California's rule-making process. But he avoids any discussion of the reasons it exists as it does, to protect the citizens of the State of California from unnecessary, unenforceable, duplicative, or arbitrary rules, including any which would conflict with other rules or statutes. In short, he

would apparently prefer a system where he alone could simply order obedience to him, no matter the disastrous consequences to individuals or the sport if his rules were imprecise, unfair, or unenforceable.

With only a modicum of success thus far – though noteworthy when achieved – CTT has advocated the use of informal working group meetings to achieve consensus on medication proposals prior to or during the formal rule-making process as outlined in California law. Such meetings can be scheduled when veterinary practitioners are available, as well as representatives of the regulator, and without the trappings of court reporters and public notice requirements. And without the unproductive posturing, by anyone, which becomes so tempting and destructive in a public setting. A working group simply works, in short, to achieve an agreed goal. Once a consensus develops, the formal process thereafter moves very quickly. If a complete consensus cannot be reached, at least differences are narrowed to a very few, and are understood by all, during the formal process. That's our preferred roadmap to expedited rule-making.

The present proposal was last formally considered by the CHRB in February 2017, over a year ago. Our reservations as to its details were waved aside, as is customary. The Board pointed out that we should instead use the required formal 45-day comment period prior to their consideration of its final adoption. In March 2018, a year later, that commentary was solicited for a May hearing. CTT and TOC then submitted their serious concerns, in writing, as required by law and as had been suggested by the Board itself a year earlier. CHRB then postponed its hearing until June. That's when the Equine Medical Director accused us of "last-minute road blocking" for suggesting the proposal needed additional consideration at the Committee level. He told the Commissioners they were "being played."

Who is playing whom? Why couldn't a working group have been convened during the entire year after the 2017 meetings, to expedite this "essential" rule? Our concerns have been voiced for well over a year, have been detailed in writing, and deserve sincere, thorough consideration. We want rules that are consistent with the law, that are fair, that can be enforced, that provide for proper therapy and the welfare of horses, and will at the same time achieve their stated goal of deterring dishonest behavior. **T**