

TO HELL WITH INTEGRITY:  
WHY MAJOR LEAGUE BASEBALL'S LACK OF SELF-  
REGULATION FORCED CONGRESS TO BECOME INVOLVED  
IN ITS DRUG TESTING POLICY

BY  
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*It's our game, that's the chief fact in connection with it: America's game. Baseball belongs as much to our institutions, fits into them as significantly, as our constitutions and laws: [it] is just as important in the sum total of our historic life.<sup>1</sup>*

*-Walt Whitman*

The game of baseball has always had a special yet intangible connection to the American public. It produces a feeling of nostalgia connecting the greats of today to those who have been setting records for over a century before. Baseball is the game that kept soldiers, sailors, and marines sane on the front lines in World War II. It is the game that fosters a unique bond when a father takes his kid to the ballpark for the first time. It is the game that lifted a city with one swing of the bat ten days after the tragic events of September 11<sup>th</sup>. It is, truly, the national pastime.

For all the benefit baseball has provided America, it has still faced its fair share of scandals. Most notably, Shoeless Joe Jackson and other members of his Black Sox team were paid to fix the 1919 World Series.<sup>2</sup> Yet not every scandal was a result of the desire for money; the unbridled drive to win has also caused ballplayers to forego their integrity and respect for the game. Gaylord Perry, while still managing to become enshrined in Cooperstown in the Baseball Hall of Fame, was known for throwing an illegal spitball. In 1986, National League (NL) Cy Young Award winner

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<sup>1</sup> Walt Whitman, quoted in Benjamin G. Rader, *Baseball: A History of America's Game* (Chicago: University of Illinois Press, 2008), xx.

<sup>2</sup> Rader, *Baseball*, 109.

and Astros ace, Mike Scott, scuffed up the ball before hurling it those sixty feet and six inches.<sup>3</sup>

However, none of these cheating scandals ever came to define an era. This all changed with the introduction of performance enhancing drugs (PEDs) to the game of baseball.<sup>4</sup> Prior to the Steroid Era, there was a prevailing belief that it was quickness, flexibility, and hand-eye coordination that made a great player, not muscle mass.<sup>5</sup> However, through experimental PED use by pioneer players such as Jose Canseco, it was found that these drugs could add muscle without eliminating the coveted quickness, flexibility, and hand-eye coordination. Furthermore, it also turned batted balls that, without the drug, would be ordinary fly-ball outs, into home runs. When the assumption about the drawbacks of increased muscle mass proved false, players flocked to the gyms, the local drug stores, and to trusted steroid dealers.<sup>6</sup>

PED use, disguised in the form of exciting baseball through increased power numbers, brought many fans back to the game after the bitter strike in 1994. From 1995 to 2003, players started posting stats and breaking records at a rate never seen before.<sup>7</sup> It was only then, in 2003, that baseball first implemented a drug testing policy. When this policy proved inadequate, Congress took an unprecedented step in 2005 and subpoenaed suspected players and league leaders and threatened government action if a more stringent policy was not implemented.<sup>8</sup> While the current drug testing

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<sup>3</sup> Mike Downey, "Catching Them Cheat Might Be Bigger Feat, but It Is Time to Try," *The Los Angeles Times*, July 31, 1989. For more details on cheating within the game of baseball, see Dan Gutman, *It Aint Cheating If You Don't Get Caught: Scuffing, Spitting, Corking, Gunking, Razzing, and Other Fundamentals of Our National Pastime* (New York: Penguin Books, 1995), or Derek Zumsteg, *The Cheater's Guide to Baseball* (New York: Houghton Books, 2007).

<sup>4</sup> The term "Steroid Era" for the use of this paper will begin with the start of the 1995 season (after the strike of 1994) and continue on to the present day. Jose Canseco takes credit for introducing players to steroid use in the late 1980s. However, steroids did not have a drastic impact on the game until the latter half of the 1990s. Additionally, many experts within the game of baseball, along with medical experts on steroid use, believe that PEDs will be around forever for a variety of reasons. Because of this, I briefly considered using the term "Steroid Revolution" beginning at the same start date. However, it is too early to tell if this will be an era or a revolution. Furthermore, anytime the word "revolution" is used in historical terms there are significant complexities that accompanies the term, none of which would get its due in the scope of this work.

<sup>5</sup> Fay Vincent, interview by author, February 23, 2012. Vincent was the commissioner of Major League Baseball from 1989-1992.

<sup>6</sup> Tom Verducci, "Totally Juiced," *Sports Illustrated*, June 3, 2002, <http://sportsillustrated.cnn.com/vault/article/magazine/MAG1025902/1/index.htm> (accessed April 8, 2012). In the article, an anonymous player compared the ease with which PEDs could be acquired to the ease of trying to find pot at a college fraternity party.

<sup>7</sup> Rader, *Baseball*, 272.

<sup>8</sup> What makes this action so unprecedented is that the three other major professional sports all had dealt with the PED issue much sooner and much more effectively. At a subsequent hearing in front of the Senate Committee on Commerce, Science, and Transportation in September 2005 with all four major sports commissioners and union heads present, Senator George Allen of Virginia confirmed this saying, "I want to

system has come a long way, it is still far from perfect, and players are still using PEDs.<sup>9</sup>

This work will explore reasons that baseball required Congressional intervention to make a serious effort at confronting PED use in the game. Baseball consists of many components, and each failed to police the game with regards to PED use. Ownership was making too much money off the increase in power, thus would not take measures that could hurt itself financially. The players belong to a fraternity too strong among themselves to turn one another in, fostering a climate where PED use was acceptable. The press did not have the time, resources, or will to fulfill its role as a watchdog for the public. The fans knew PED use existed, cared about what it was doing to the game, yet still flocked to the ballpark making the game as lucrative as ever. However, the most important obstacle to policing PED use in baseball was the venomous relationship between Major League Baseball (MLB) and the Major League Baseball Players' Association (MLBPA).

Historians and scholars have only recently begun to explore the topic of PED use in baseball and what that phenomena can tell us about American society and culture.<sup>10</sup> For example, in their book, *The Steroids Game: An Expert's Inside Look at Anabolic Steroid Use in Sports*, Dr. Charles Yesalis and Virginia Cowart argue that the fundamental problem associated with PED use in sports is that, while on one hand the American public has a desire for purity within the game, "Public sentiment for stopping the use of steroids and PEDs at the elite level is not particularly high . . . many Americans are entertained by watching bigger-than-life athletes perform

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commend the NBA and the NHL for your recent strong action against and putting in a program to combat drugs  
..... The model, if you look at past performance, is the National Football League."

<sup>9</sup> Dr. Charles Yesalis, interview by author, March 5, 2012. This was proven true with 2011 National League Most Valuable Player (MVP) Ryan Braun's positive test in October 2011 immediately after a playoff game. While Braun's appeal was recently upheld by arbitrator Shyam Das on a technicality, it is still widely accepted among the baseball community that Braun was using an illegal substance. Dr.

Yesalis was an epidemiologist at Penn State with a doctorate from Johns Hopkins. Howard Bryant claims Dr. Yesalis to be one of the three most respected steroids experts in the country, along with Dr. Gary Wadler of New York University and Don Catlin of the University of California at Los Angeles. Dr.

Yesalis has produced multiple books pertaining to PED use in sports.

<sup>10</sup> As mentioned, the timing of the Steroid Era is central to the lack of a historiography. The majority of published works are primary sources published by insiders. These will be addressed in future footnotes. For a general work on the history of performance enhancing drugs in sports, see Daniel Rosen, *Dope: A History of Performance Enhancement in Sports from the Nineteenth Century to Today* (Westport: Praeger Publishers, 2008). Rosen does an excellent job tracking not only the major doping incidents around the globe since 1865, but also when each of the major drugs became prominent within sports. Rosen argues that fans mistakenly see the issue of cheating through drugs as a more modern problem within the world of professional athletics. In contrast, Rosen states that the idea of using PEDs in an effort to get a leg up on the competition is nothing new to the world of sports. The only thing that has changed is the way that athletes go about this. He claims, "Illegal or unethical performance enhancement techniques in sports are likely to be around for some time to come. What may change, however, are the means, methods, and techniques in which some athletes will manipulate their bodies in their never-ending quest for perfection."

superhuman feats.”<sup>11</sup> Yesalis and Cowart assert that it will take a mass movement of the public, the players, and the sports’ governing bodies to commit to eradicating steroids before the problem will go away. They also highlight the politics that surround drug testing as far as who has the right to administer the tests, handle the samples, and know the test results.<sup>12</sup> An even more drastic problem is the accuracy of these tests. The testing policy for the Olympics has come under scrutiny because there are so many banned substances that “an athlete could get a positive test by taking a certain type of cold medicine.”<sup>13</sup> This leads to an increased number of false positive tests. On the opposite side, false negatives are just as much, if not more, a problem for drug testing. It is a constant game of chess between the rogue chemists and the scientists. Because of this, former MLB Commissioner Fay Vincent claimed simply, “I don’t think drug testing works.”<sup>14</sup> Yesalis and Cowart came to a similar conclusion, establishing their belief that drug testing alone is not enough to clean up professional sports.

While *The Steroids Game* provides important insight on the problems with drug testing and fan apathy, Howard Bryant’s *Juicing the Game: Drugs, Power, and the Fight for the Soul of Major League Baseball* connects the dysfunctional management-labor relationship with the rise of PED use in the MLB. Bryant asserts that because any sort of drug prevention program must be collectively bargained by the MLB and MLBPA, the caustic relationship between the two eliminated any hope of working together, thus allowing PED use to run rampant throughout the league.

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<sup>11</sup> Virginia S. Cowart and Charles E. Yesalis, *The Steroids Game: An Expert’s Inside Look at Anabolic Steroid Use in Sports* (Champaign, N.Y.: Human Kinetics, 1998), 69. This work was written in 1998 as anabolic steroid use in all sports, at all levels, started becoming a real problem. The three purposes of the book identified by the authors are: informing the readers about anabolic steroids, describing some of the problems encountered with the drugs, and covering prevention methods such as drug testing, laws, and alternatives. This book is particularly helpful in providing a basis for what exactly these PEDs are and how they work. The human body is a wonderfully complex system, and drugs at the level of anabolic steroids, human growth hormone (HGH), and erythropoietin (EPO) are fully understood only by medical experts, and often misunderstood by the general public. Anabolic steroids are designed specifically to increase muscle mass – to push the body past its natural limits. HGH is a drug that helps the body recover from injury at an incredibly rapid rate. EPO increases the amount of red blood cells in the body. This allows oxygen to be carried to various parts of the body at a much higher rate. Because of this, EPO is used more so for sports requiring extensive cardiovascular exercise such as long distance running or cycling.

<sup>12</sup> This problem is most evident in the recent ruling by MLB arbitrator Shyam Das upholding Ryan Braun’s appeal of his fifty game ban. Braun was suspended after an October 1, 2011 drug test showed elevated levels of testosterone in his body. However, Braun was ultimately vindicated, on the technicality that the collector did not ship the triple-sealed specimen that day, but rather kept it in his house for the weekend before shipping it Monday.

<sup>13</sup> Cowart and Yesalis, *The Steroids Game*, 173.

<sup>14</sup> Fay Vincent, interview.

In making this connection, Bryant fails to give adequate attention to the issue of collusion.<sup>15</sup> Collusion was an attempt by the owners to defeat the union under the table. In the late 1980s, the owners wanted a salary cap, but the union would not negotiate it. The owners, led by current commissioner Bud Selig, got together and agreed among themselves to set their own salary cap and not pay players over a certain amount. This went on undetected for roughly three years, costing the players an estimated \$300 million dollars. When the union got word of this, they immediately sued the ownership for bad business practice. More importantly, however, was the broken trust between the two organizations that still exists today. Former Commissioner Fay Vincent, having witnessed collusion first hand, claims, “You cannot overemphasize the affect of collusion on everything. . . . In my view, collusion was the single most important development in baseball in the past 30 or 40 years.”<sup>16</sup> So while Bryant importantly highlights the issue of labor relations in the broad context of the Steroid Era, he glosses over the most central event to why the relationship exists the way it does.

It is based off of this historiographical void that I plan to make this work’s contribution to this field of study. After half a decade of numbers grossly disproportionate to the previous 134 years of professional baseball, MLB finally produced a drug testing policy in 2003 – albeit a woefully ineffective one.<sup>17</sup> This, veteran investigative reporter Mark Fainaru-Wada notes, is a trend that the game has shown throughout the era: “Baseball has always been reactive instead of proactive on this issue.”<sup>18</sup> There were a variety of factors during this era that forced baseball’s hand to include tell- all books and articles made public, federal investigations, and threats from Congress. Unimpressed with the continued weak drug testing policies collectively bargained by the MLB and MLBPA, the House Committee on Government Reform in 2005 threatened to become involved in Major League Baseball’s drug testing policy because the game had proven that it could not police itself. The reasons for this include ownership turning a blind eye for financial gains, the tightness of the fraternity of players, the

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<sup>15</sup> Howard Bryant, *Juicing the Game: Drugs, Power, and the Fight for the Soul of Major League Baseball* (New York: Penguin Group, 2005), 42.

<sup>16</sup> Fay Vincent, interview.

<sup>17</sup> House Committee on Government Reform, *Restoring Faith in America’s Pastime: Evaluating Major League Baseball’s Efforts to Eradicate Steroid Use*, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., 2005, H. Doc. 109-8, 281. The first drug testing policy in 2003 was a survey program to determine how many players were using PEDs, and no penalties would be levied. If more than 5% of the league tested positive, MLB would look into a more stringent drug testing policy; if less than 5% tested positive, the issue would be dropped. It left many PEDs off the list of those being tested for, tested players only once, and did not include off season testing. Calling it a drug testing policy at all is a liberal use of the phrase.

<sup>18</sup> Mark Fainaru-Wada, interview by author, February 9, 2012. Fainaru-Wada is an investigative reporter who, along with fellow investigative reporter Lance Williams, blew the story off the BALCO story exposing many high-profile baseball players as PED users. He now works for ESPN as an investigative reporter covering stories related to this topic.

inability of the press to expose the issue, and fans' refusal to express their disgust with PED use by avoiding the ballpark. Most important and probably least understood of all reasons, however, is the ill-will and lack of trusting relationship between management and the players' union.

## Ownership

*Anyone in baseball who claimed not to know what was going on was either a liar or a moron.*

*-Dr. Charles Yesalis*

The CEO of a large corporation, the commander of a military unit, the local manager of a Wendy's restaurant, and the owner of a major league baseball team all share a common bond. Whether justified or not, they are the ones ultimately responsible for what goes on in their organization, good or bad. Because of this, it is impossible to absolve the owners of any blame in the emergence – and then explosion – of PED use in the MLB. To make matters worse, this did not go on behind their backs. Rather, they knew what was happening and chose to do nothing about it because, according to Dr. Yesalis, “they were making out like bandits.”<sup>19</sup> In fact, when asked about current MLB chief Bud Selig, former Commissioner Fay Vincent said, “I don't think the integrity of the game has ever been his highest concern.”<sup>20</sup> With so much money at stake, it is clear that ownership would not take part in policing themselves when that meant limiting profits.<sup>21</sup>

There is much merit to Dr. Yesalis' claim. From 1995 to 2007, attendance at an average MLB game went from 25,000 to 33,300.<sup>22</sup> Increasing at a fairly constant rate, this 33% surge is symbolic of the overall growing popularity during the Steroid Era. Nike developed a slogan that mirrored the trends of the game at the time: chicks dig the long ball.<sup>23</sup> According to baseball historian Benjamin Rader, “By 2006, millions of new dollars were flooding into the bank account of each major league franchise. The money came from record crowds, lucrative media contracts, and soaring revenues from the Internet and licensing.”<sup>24</sup> In fact, in 2005, MLB's official website – mlb.com – individually generated \$10.5 million in revenue for

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<sup>19</sup> Yesalis, interview by author.

<sup>20</sup> Fay Vincent, interview by author.

<sup>21</sup> It is important to define the term “ownership” for the purposes of this paper. Ownership refers to the actual owners of the franchises, the teams' front office (i.e. general manager), and the commissioner's office. It is the job of the commissioner to represent the owners in labor talks and promote the game.

<sup>22</sup> *Ballparks of Baseball*, “MLB Ballpark Attendance,” <http://www.ballparksofbaseball.com/attendance.htm> (accessed April 3, 2012).

<sup>23</sup> Rader, *Baseball*, 263.

<sup>24</sup> *Ibid.*, 261.

each major league team.<sup>25</sup> Former Commissioner Fay Vincent acknowledged that one of the primary functions of that office is to secure financial stability of the game. He described current Commissioner Bud Selig as “lucky” for holding the office during the time of this explosion in technology.<sup>26</sup> Whether luck, skill, or both, with numbers that staggering, it is tough to wonder why Selig has kept his post for nearly two decades.

More evidence that shows ownership had no true intent to rid the game of steroids can be seen by the league’s handling of androstenedione, a legal drug until 2004 with steroid-like affects.<sup>27</sup> In 1998, a bottle of “andro,” as it is called for short, was found in the locker of Cardinals slugger Mark McGwire.<sup>28</sup> At the time, andro had already been banned by the National Collegiate Athletic Association (NCAA), National Football League (NFL), and International Olympic Committee (IOC); yet baseball not only had no testing system for it, it was also completely legal within the game. The feel good story of the McGwire-Sosa home run race had captivated the nation, and no one, especially the commissioner, wanted the focus to shift away from that, let alone to the topic of PEDs.<sup>29</sup> Accordingly, Commissioner Selig embarked on a public relations ploy, funding Harvard scientists to conduct a study into the effects of andro. However, “the trainers and physicians [already] knew that andro was a steroid.”<sup>30</sup> Additionally, the test results were conveniently withheld until 2004 (the same year that the FDA banned its sale).<sup>31</sup> The handling of andro shows that ownership knew what was going on, but took no action to rid the game of PED use. Until Congress intervened in 2005, it is clear that management had no intentions of policing themselves or the game as a whole.

Another example of the ownership turning a blind eye to – if not condoning – PED use in baseball can be seen through the lexicon of people within the game at the time. Baseball has always had a language of its own with phrases like “hit-and-run,” “pinch hitter,” and “bullpen.” With PED use becoming prevalent in the game, teams had to indicate this type of information when scouting a player, or marketing a player on the trading block. Needless to say, “Player X’s recent use of anabolic steroids has increased his batting average, runs batted in, and home runs to nearly 25% of his career average, even though he is 37,” is not something that can be written on an official document, especially because that indicates criminal

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<sup>25</sup> Ibid., 265.

<sup>26</sup> Fay Vincent, interview by author.

<sup>27</sup> Andro is now commonly referred to as a steroid precursor.

<sup>28</sup> Rader, *Baseball*, 270.

<sup>29</sup> Bryant, *Juicing the Game*, 113.

<sup>30</sup> Ibid., 142.

<sup>31</sup> Rosen, 106.

activity.<sup>32</sup> To get around this, according to one baseball insider, “teams might indicate PED use . . . through other language. For example, a report on a player might be ‘This player altered his diet and gained 25 pounds’ or something to that nature. That was their way of saying, ‘Hey, this guy is juicing.’”<sup>33</sup> This again shows that the highest priority of the teams’ front office was to get the right players on their team, thus winning more games, drawing more fans out to the ballpark, and accordingly making more money. Integrity mattered but obviously not as much as profits.

Additional evidence implicating ownership can be seen in the testimony before the House Committee on Government Reform in March 2005. First, Commissioner Selig concluded his prepared opening statement with the following, “Baseball will not rest and will continue to be vigilant on the issue of performance enhancing substances as we move toward my stated goal of zero-tolerance.”<sup>34</sup> However, during the question and answer portion, Congressman Patrick McHenry of North Carolina asked Selig a question that seemed to be a fastball right down the middle: would he accept a zero-tolerance, one-and-done policy if presented to him? Selig answered, “I can’t answer yes or no. I want a zero tolerance policy. I want tougher things. Whether once and done is fair is something I would have to think about. . . . I think that what we have done so far will discourage it [PED use]. I am really optimistic about this program.”<sup>35</sup> In his statement he claimed to want zero-tolerance, yet when asked under oath, with the threat of perjury looming, Selig would not confirm whether or not he *really* wanted it. It is quite a stretch to believe that as commissioner, with PED use rising in the game for the past decade, he had not yet thought about whether a zero-tolerance policy would be fair.

Additionally, in early 2005, Congress asked to see the new drug testing policy that, when announced by Commissioner Selig that January, he claimed to be a “historic” day and said the plan would rid baseball completely of PEDs.<sup>36</sup> However, the MLB would not give it to them. A few days later, a written letter was sent requesting the drug policy. However, the MLB still refused. Finally, it took a congressional subpoena for the

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<sup>32</sup> While some PEDs were legal at times in the Steroid Era, possession, sale, or distribution of anabolic steroids had been against federal law since 1991.

<sup>33</sup> Sweeny Murti, interview by author, February 10, 2012. Sweeny is a beat reporter covering the New York Yankees for WFAN AM 660, the most prominent sports radio station for the tri-state area. He has held this position since the beginning of the 2001 season.

<sup>34</sup> House Committee on Government Reform, *Restoring Faith in America’s Pastime: Evaluating Major League Baseball’s Efforts to Eradicate Steroid Use*, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., 2005, H. Doc. 109-8, 286- 287.

<sup>35</sup> House Committee on Government Reform, *Restoring Faith in America’s Pastime*, 371.

<sup>36</sup> Mark Fainaru-Wada and Lance Williams, *Game of Shadows: Barry Bonds, BALCO, and the Steroid Scandal that Rocked Professional Sports* (New York: Penguin Group, 2006), 263.

members of the committee to see the new drug policy.<sup>37</sup> When asked why it took so much effort to produce the policy, baseball claimed that the policy had not been finished. However, Selig announced it in January, two months prior. Baseball's refusal to be policed by others was a strong indication that it could not police itself.

The final bit of evidence to show that ownership could not police itself additionally explains why they were so reluctant to produce their new drug policy to Congress: it was filled with loopholes. While appearing to establish a tough stance on PED use, the detailed language of this policy shows that this was actually far from the truth. It is more likely to have been a smokescreen to make outsiders believe that the problem was being addressed while in practice allowing PED use to continue. This evidence suggests not only that ownership was turning a blind eye, but that they may have even been trying to cover up PED use. The loopholes are as follows:

1. When tested, players must produce a certain amount of specimen; if that amount is not attained, the sample is thrown out. The subject may then leave for an hour unattended, after which they must come back and try again. In the Olympic testing, widely considered the gold standard for drug testing, the subject must be monitored at all times from when they are told they are being tested, until the sufficient specimen has been provided.<sup>38</sup> According to Dr. Charles Yesalis, there are "any number of ways" a player could use that one hour to beat the drug test.<sup>39</sup>
2. This policy was marketed by baseball as a test where the penalties for positive results are ten days for the first offense, thirty days for the second offense, sixty days for the third offense, one year for the fourth offense, and a life ban for the fifth offense (all suspensions without pay). Upon reading the fine print, however, for each respective offense the penalty also asserts: *or* up to a \$10,000 fine for the first offense, \$25,000, \$50,000, and \$100,000 respectively. Additionally, there was no clause stating that the player who tests positive *must* be named publicly. Therefore, a player's first positive test could result in

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<sup>37</sup> House Committee on Government Reform, *Restoring Faith in America's Pastime*, 336.

<sup>38</sup> House Committee on Government Reform, *Restoring Faith in America's Pastime*, 305.

<sup>39</sup> Dr. Charles Yesalis, interview by author, March 5, 2012. One example cited by Dr. Yesalis was the use of a contraption hidden on the body either in a sleeve or in the pants to hold another person's clean urine. In 2005, Minnesota Vikings running back Onterio Smith was found to have one of these at an airport security screening known as "The Original Whizzinator." For more examples of how to beat drug tests on the spot, see Kirk Radomski's *Bases Loaded: The Inside Story of the Steroid Era in Baseball by the Central Figure in the Mitchell Report*, (New York: Hudson Street Press, 2009). On pages 30-34 Radomski explains how he not only took, but also got away with, a drug test for Dwight Gooden multiple times when Gooden would have tested positive for cocaine.

- a ten day suspension (loss of \$160,000 for an average salary due to the suspension) and public notification as a PED user. Or, the player could be fined \$10,000, not miss a game, and never face the worst part of the punishment, public scrutiny.<sup>40</sup>
3. The list of banned drugs is exclusive. Drug testing is an everlasting battle between the rogue chemist and the scientist, and as one baseball insider believes, “Chemists are always going to be ahead of the tests.”<sup>41</sup> The Olympic drug testing policy combats this by including in their drug testing policy the language to account for drugs not yet known. Any substance “of similar chemical composition that has a similar biological effect on the person taking the chemical, that [substance] is also banned as well.”<sup>42</sup> Because baseball does not have this, by the time the league has a test for particular designer steroids and bans them, the players will be on to the newest designer steroids just similar enough to have the same effects, but just different enough to not technically be banned.
  4. The new Anti-Oversight Clause: “Major League Baseball policy provides that this new policy ‘will be suspended immediately’ if there is an independent government investigation into drug use in baseball.”<sup>43</sup> It is very difficult to believe that the game will be policing itself when, if the government steps in, baseball can essentially push a self-destruct button on this drug policy. This clause is very telling as far as baseball’s intentions with this new drug testing policy.

The evidence is overwhelming that ownership went beyond turning a blind eye to PED use in the game to actually playing an active role in covering it up. Steroids and PEDs brought far too much money to the game for the owners to have it any other way. Dr. Yesalis’ view of sports may be jaded, but baseball in this era seemed to prove him right: “One thing that you have to dispel from your mind is that baseball is a sport. It’s not. It’s a business. It’s a huge business.”<sup>44</sup> Kirk Radomski, a member of the New York Mets clubhouse for nearly two decades, starting in 1985, confirms this view: “There was absolutely no doubt in my mind that just about everybody in the game, from the [clubhouse workers] to the team owners, knew that players were using anabolic steroids, human growth hormones, and other

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<sup>40</sup> House Committee on Government Reform, *Restoring the Faith in America’s Pastime*, 299.

<sup>41</sup> Marc Malusis, interview by author, February 4, 2012. Malusis is a well-known sports talk radio show host for WFAN AM 660 in New York.

<sup>42</sup> House Committee on Government Reform, *Restoring the Faith in America’s Pastime*, 186.

<sup>43</sup> *Ibid.*, 298.

<sup>44</sup> Dr. Charles Yesalis, interview with author.

substances.”<sup>45</sup> These circumstances thus created a scenario where it was the “foxes guarding the hen house.”<sup>46</sup> How many people expect the foxes to police themselves?

## The Press

*This idea that the media turned an eye because they were there every day and didn't see anything? Well, it's not like these guys pull their pants down and stab each other in the ass right in front of us.*

*-Sweeny Murti*

One of the most fundamental functions of the media in the United States is to be a watchdog for the American people. Dating all the way back to yellow journalism in the late 1800s, the press has exposed scams, lies, scandals, and wrongdoing of all kinds. This idea was further embedded into American society with the Supreme Court's 1971 decision in *The New York Times v. United States* which allowed the paper to publish the leaked Pentagon Papers.<sup>47</sup> To anyone who has ever turned the TV channel to ESPN, or read the newspaper from the back to the front, to say that the media covers the MLB might be something of an understatement. With few exceptions, the beat writers and reporters that spent more time with their team than they did their own families over the summer were not the right people to expose the story of PED use in the MLB. It is not that they passed on their civic duty to be a watchdog. Rather, the media allowed baseball to go unpoliced because they simply lacked the access, time, and will to do it.

Sweeny Murti joined the New York Yankees in 2001 as the beat reporter for WFAN, the most prominent sports talk radio station in New York and the surrounding area. He arrived two seasons removed from the historic home run race between Mark McGwire and Sammy Sosa, yet still very much in the peak of the Steroid Era. He learned very quickly what all the other reporters were thinking: everyone suspected certain players used or were using steroids, but none had the time to pursue the suspicion. Plus, it was not worth the risk of writing or reporting about just suspicions. First of all, reporters really only spend a total of one hour per day in the clubhouse. Additionally, there are still areas of the clubhouse where reporters are not allowed.<sup>48</sup>

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<sup>45</sup> Kirk Radomski, *Bases Loaded*, 4.

<sup>46</sup> Dr. Charles Yesalis, interview with author.

<sup>47</sup> John M. Scheb, II and Otis H. Stephens, Jr, *American Constitutional Law: Sources of Power and Restraint*, 5<sup>th</sup> ed, (Boston: Wadsworth Cengage Learning, 2008), 187.

<sup>48</sup> Sweeny Murti, interview by author.

This is critically important as to why the media never got to reporting on steroids – they never saw anything. In his testimony before Congress in 2005, pitcher Curt Schilling made the comparison of player suspicions to “the discussion . . . you get on high school lunch breaks. You talk. You wonder. You speculate.”<sup>49</sup> If the players were speculating, it is logical to assume that the reporters were doing the same among themselves. Even Jose Canseco, the most forthcoming of all steroid users, would go into a bathroom stall when injecting himself or a teammate.<sup>50</sup> There had been plenty of newspaper articles written in the 1990s about suspected use, but none had any impact because there was no basis for the claims other than the author’s hunch. Furthermore, “the idea that a beat reporter could do extensive investigative reporting in the middle of the season is not realistic.”<sup>51</sup> Their work is extremely busy, and there is always a more pressing story to tell: a closer just blew a save, the clean-up hitter is slumping again, or the catcher has not caught a base stealer in over a week. In the process of doing their job, there was simply not the time to find the evidence and sources necessary to report a credible story regarding PED use.<sup>52</sup>

While time is one issue, maintaining relationships is an additional factor that inhibited the media from performing their watchdog duty. A beat writer’s livelihood is based on the relationships he or she has with the players on the team. It is walking enough of a fine line when he has to write negative comments about these players’ performance on the field, but throwing a player under the bus by accusing him of PED use will all but lose the reporter his or her job. This exact situation happened to Steve Wilstein, an Associated Press (AP) writer covering the St. Louis Cardinals in 1998, save for one glaring difference: he was right. He saw a bottle of andro in Mark McGwire’s locker, wrote about it, and *still* was banned from the locker room by manager Tony LaRussa and ostracized by his peers in the journalism industry.<sup>53</sup> If this can happen to a writer who had a basis for his claims, one can only wonder what would happen to a reporter who wrote a similar piece without evidence.

The first successful work of critical journalism on PED use in baseball was conducted when Mark Fainaru-Wada and Lance Williams of the *San Francisco Chronicle* broke the story about the Bay Area Laboratory Co- Operative (BALCO) which distributed undetectable designer drugs to many

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<sup>49</sup> House Committee on Government Reform, *Restoring the Faith in America’s Pastime*, 270.

<sup>50</sup> Jose Canseco, *Juiced: Wild Times, Rampant ‘Roids, Smash Hits, and how Baseball Got Big* (New York: HarperCollins Publishers, 2005), 8.

<sup>51</sup> Mark Fainaru-Wada, interview by author.

<sup>52</sup> *Ibid.*

<sup>53</sup> Rader, *Baseball*, 272.

high profile athletes. They were able to break this story because they were investigative reporters, not beat writers. This meant that they both had the time, and “[were] able to do their job and not care about what kind of access and relationship problems it created.”<sup>54</sup> Simply put, the media had the closest access to players who were using steroids. However, they still lacked access that could provide hard evidence to write a story. Additionally, they did not have sufficient time to search for such evidence, or the motivation to do so for fear of losing relationships with players; it was on these relationships which rested their primary responsibilities of reporting on baseball. Because of these reasons, the media could not perform its civic duty of exposing PED use in the game, thus another reason baseball went un-policed, forcing Congress to act.

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<sup>54</sup> Sweeny Murti, interview with author.

## The Fans

*If you walked up to a father walking his kid into a ballgame in PacBell Park and said 'Will you let your kid use steroids to perform in baseball?' the father of course is going to say no. But . . . you can be sure that when Bonds came to the plate and hit a ball 450 feet into the water, that guy and his kid were going crazy despite knowing what they know.*

*-Mark Fainaru-Wada*

The MLB fan has as storied a history as the game itself. In no other sport are fans as close to the game, or even so much a part of the game. Individuals in the crowd such as Steve Bartman and Jeffrey Maier have infamously reached into the field of play to alter not just a game, but a playoff series as well as the fortune of teams for a decade.<sup>55</sup> In Chicago and Baltimore respectively, their names provoke emotions paralleled only by the name Benedict Arnold in late 1780. Beyond the individual fan, it is the mass of the patrons who love, follow, study, and argue about the game. It is the fans who pay increasingly astronomical prices to support the teams they cherish at the ballpark. Many people wonder how firefighters, policemen, and teachers can make such low wages compared to the figures made by professional ballplayers. Yet the answer could not be simpler: ultimately, it is the fans who pay their salaries and the fans cannot stay away from the game. During the Steroid Era, fans knew that PED use was rampant by players in the game, cared about the effects of players using the drugs, and yet continued to turn out to ballparks in record-setting numbers. It is because the fans did not rebel against PED use by voting with their feet that they failed to police the game using their agency of attendance.

It is difficult to prove what millions of people knew or did not know. However, the evidence with regard to PED use in baseball is so strong that for even a casual fan to *not* know about the existence of drugs in the game, one must have lived in a cave to truthfully profess ignorance. The following timeline displays critical events that exposed PED use in baseball very publicly for fans to see:

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<sup>55</sup> Tom Jones, "Baseball's Most Famous Fan-Interference Plays: Jeffrey Maier and Steve Bartman," *Tampa Bay Times*, May 4, 2009, <http://www.tampabay.com/sports/baseball/rays/article998054.ece> (accessed April 8, 2012). In 2003, Steve Bartman interfered with a play that led to the Cubs losing what would have been a pennant-clinching game. They went on to lose the next two games, thus losing the series and squandering their chance to play in the World Series. Since that incident, the Cubs have been one of the worst teams in baseball, save for the 2007-2008 season, when they won the NL Central. In 1996, Jeffrey Maier interfered with a play that cost the Orioles a playoff game against the Yankees in Yankee Stadium. The Orioles also went on to lose that series, and have been to the playoffs only one time in the fifteen years since that occurrence.

Date	Event
August 1998	AP reporter Steve Wilstein produces article claiming that Cardinals slugger Mark McGwire had a bottle of androstenedione in his locker. The publicity of this event caused Cardinals manager Tony LaRussa to ban Wilstein from the locker room, and Commissioner Bud Selig to fund a Harvard study looking into the effects of andro. <sup>56</sup>
June 2002	<i>Sports Illustrated's</i> Tom Verducci writes a seven page article looking into the pervasiveness of PEDs in baseball. Included in this article is a confession by 1996 NL MVP Ken Caminiti that he used steroids during his MVP season. Furthermore Caminiti estimates that 50% of major league ballplayers use PEDs. <sup>57</sup>
December 2003	Big name players including Barry Bonds and Jason Giambi testify before a grand jury regarding their involvement in the BALCO scandal. It was later discovered through leaked testimony that both Giambi and Bonds had admitted to steroid use. Bonds, however, claimed that he did not know the substances were steroids when taking them. <sup>58</sup>
January 2004	President George W. Bush declares during his State of the Union Address that drugs in sports must be cleaned up to return integrity and fairness to the athletic fields. <sup>59</sup>
February 2005	Jose Canseco publishes tell-all book <i>Juiced!</i> in which he discusses his view on steroids, takes credit for introducing them to the game, and claims that everyone should take PEDs. In the book he estimates that 80% of MLB ballplayers use PEDs. The book creates a whirlwind of publicity. Because of its stunning accusations, many people in baseball trying to protect the game portray Canseco to be an unreliable, disgruntled former player looking to make money. Time has proven Canseco to be very credible on the issues in his book related to PED use.

These are just the most noteworthy of public events that informed the fan base as to the prevalence of PEDs in baseball, and they were very

<sup>56</sup> Rader, *Baseball*, 272.

<sup>57</sup> Verducci, "Totally Juiced." I have chosen to disregard any player's estimations of the percent of players using PEDs as evidence. First, it is hard to believe that memory is good enough to give an accurate estimate. Second, this is completely subjective, and there is no way to compare different estimates. What does that particular person consider a PED? Lastly, former Yankees pitcher David Wells once gave an estimate of around 50% of MLB players using PEDs. He was later "convinced" to change his estimate a few days later to around 20%. There is no way to control all the variables when evaluating this evidence, so for these reasons I will only report the numbers claimed by these players, not use the numbers themselves as evidence.

<sup>58</sup> Mark Fainaru-Wada and Lance Williams, "What Bonds Told BALCO Grand Jury," *San Francisco Chronicle*, December 3, 2004. <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2004/12/03/BALCO.TMP&ao=all> (accessed April 8, 2012).

<sup>59</sup> Bryant, *Juicing the Game*, 310.

effective in alerting the masses to the depth and breadth of the problem. For example, Linda Ruth Tosetti, the granddaughter of Babe Ruth, is a frequent patron at Yankee Stadium to watch baseball. As Barry Bonds closed in on her grandfather's career mark of 714 home runs, the San Francisco Giants organization repeatedly reached out, asking for her attendance at the Giants games to be on hand for the record-breaking home run. Yet she claimed, "My family and I believed that he used steroids, so we wouldn't go."<sup>60</sup> However, she still attended many other baseball games that year. This attitude is crucial in understanding how attendance numbers continued to rise regardless of fan knowledge about PED use: everyone knew it was going on but always assumed it was the players on the other teams.

Yet for all this evidence, the strongest of all is also the most difficult to quantify. Baseball, more so than any sport, is a numbers game. Fans of the game obsess over even the most detailed of statistics. It is quite common to find patrons at an MLB game putting down their peanuts and beer after every pitch to keep the scorecard of the game. Because of this obsession with statistics and how they compare to the past, it is simply not possible that the new power numbers being put up could be accepted as clean. Furthermore, the home run record was one of the most, if not *the* most, cherished records in the game. Roger Maris hit sixty-one home runs in 1961. It was not until 1998 that anyone reached sixty again; yet in three of the next four years, Cubs slugger Sammy Sosa hit a minimum of sixty-three home runs without leading the league in any of those years.<sup>61</sup> In 2001, Barry Bonds hit seventy-three home runs yet in no other year had he ever reached fifty.<sup>62</sup> Dr. Yesalis felt that anyone around the game during the Steroid Era who claimed not to know what was going on was a "moron."<sup>63</sup> With such knowledgeable and statistic-oriented fans, there is simply no way the fans were blind to PED use in baseball.

Further evidence to show that baseball fans knew about PED use in the game also proves the assumption that they cared about it as well. In 2004, a Harris poll of American adults showed that 84% of the respondents believed that players who were found to be using PEDs should be punished.<sup>64</sup> One year later, a *USA Today*/CNN/Gallup poll showed that 82%

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<sup>60</sup> Linda Ruth Tosetti, lecture to MA488 class, West Point, NY, February 10, 2012.

<sup>61</sup> *Baseball Reference*, "Sammy Sosa Statistics and History," <http://www.baseballreference.com/players/s/sosasa01.shtml> (accessed April 9, 2012). 1998: Mark McGwire hit 70 and Sosa hit 66. 1999: McGwire hit 65 and Sosa hit 63. 2001: Barry Bonds hit 73 and Sosa hit 64.

<sup>62</sup> *Baseball Reference*, "Barry Bonds Statistics and History," <http://www.baseballreference.com/players/b/bondsba01.shtml> (accessed April 9, 2012).

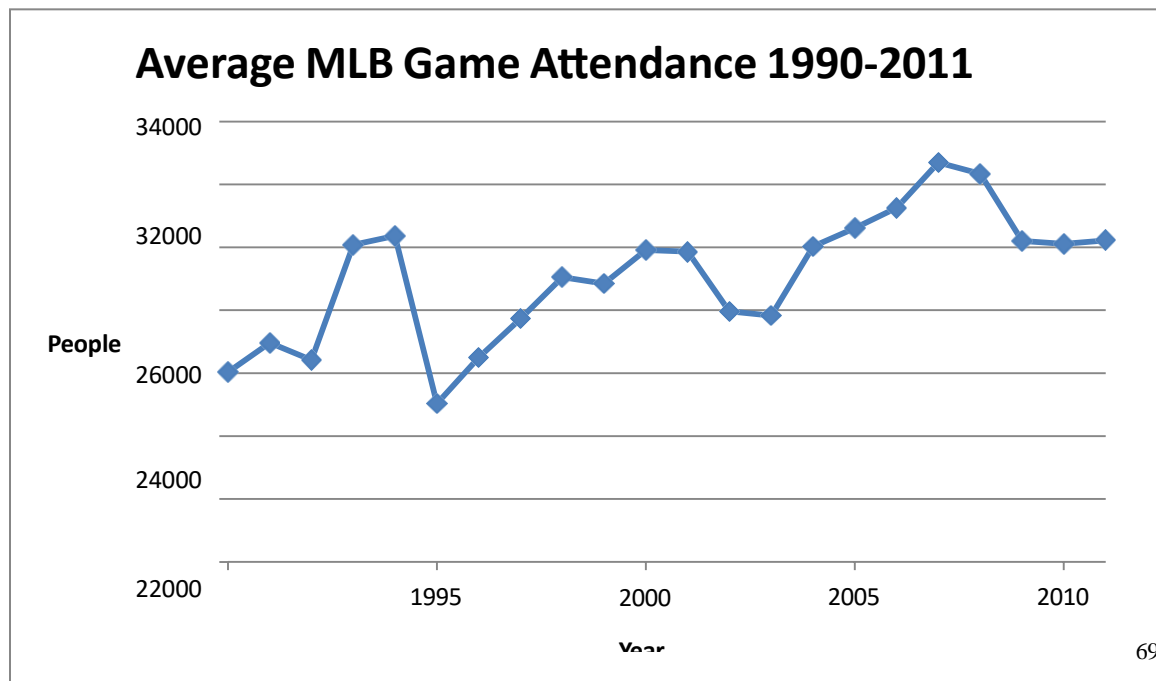
<sup>63</sup> Dr. Yesalis, interview with author.

<sup>64</sup> Rader, *Baseball*, 279.

of fans felt that any records set by players using PEDs should either be eliminated from the books or noted with an asterisk.<sup>65</sup>

Additional evidence that MLB fans cared about PED use in the game can be seen in the treatment of San Francisco Giants slugger Barry Bonds by opposing fans. The boos and jeers targeted at Bonds while playing road games reached decibel levels generally reserved by a NASA rocket launch. Fans got creative with signs such as: “RUTH DID IT ON HOT DOGS AND BEER. AARON DID IT WITH CLASS. HOW DID YOU DO IT?” and “BONDS, FIRST INTO THE HALL OF SHAME.” Others were less subtle: “BARRY IS A CHEATER” and “ASTERISK.”<sup>66</sup> In one instance, a fan at Petco Park in San Diego even threw a needleless syringe at the outfielder as he was running into the dugout between innings.<sup>67</sup> Dr. Yesalis claims that only “we old-timers” greater than fifty years of age care about PED use in the game.<sup>68</sup> Barry Bonds would likely disagree. The evidence shows that fans *did* care about rampant PED use in the game – apparently just not enough to stop showing up to the ballpark.

The agency of MLB fans is that they pay the salaries of the players. They were the reason that ownership had a financial incentive to turn a blind eye. This chart shows the attendance figures of an average MLB game from 1990 to 2011:



<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

<sup>67</sup> “Fan at Petco Tosses Syringe Near Bonds,” *NBCSports*, April 5, 2006, <http://nbcsports.msnbc.com/id/12141859/> (accessed April 22, 2012).

<sup>68</sup> Dr. Yesalis, interview with author.

<sup>69</sup> *Ballparks of Baseball*.

This graph is very telling about baseball fans during the Steroid Era. They knew what was going on, but as the graph shows, continued to flock to the ballpark at record rates. From the return after the strike in 1995 until the beginning of the economic depression in 2008, there is only one year with a significant dip in attendance. Even that could potentially be attributed to fans staying away from mass gatherings after the terrorist attacks of September 11, 2001.

Never has the quote from legendary Detroit Tigers manager Sparky Anderson been more true than regarding fan attendance of games during the Steroid Era, “We’ve tried and tried to ruin this game, and we just can’t do it.”<sup>70</sup> Accounts of PED use in baseball were rampant in the national media throughout the Steroid Era. Furthermore, the typical baseball fan is statistically-savvy, and the power numbers from this era could not be ignored or denied. Thus, not only did fans know about PED use in the game, but the treatment of suspected user Barry Bonds by opposing fans showed that it bothered them as well. Yet attendance figures at games show that fans did not rebel against PED use in the game; if anything it appears that they did the opposite. Because the fans would not police the game by avoiding the ballpark based on principle, Congress was forced to take action.

## The Players

*I’m not here to talk about the past.  
-Mark McGwire*

While ownership set the conditions for PED use to exist and flourish, the media was too handcuffed to do anything about it, and the fans condoned it with their attendance at games, ultimately it was the players themselves who made the decision to use PEDs. While the players’ decision to take these drugs may not have been ethical, they were in many ways logical. As Rico Brogna, a journeyman first baseman whose career spanned from 1992- 2001 put it, “the pressure to perform, it’s real. You’re competing not just for your position [on the team] but also with guys around the league.”<sup>71</sup> While baseball is a game many players love, it is a job for all of them. Regardless of what industry one works in, job security is essential, and anything that might help attain that is worth considering, if not trying. Furthermore, this is a job with so much on the line, “especially when you see the money at stake, [players] are always going to try.”<sup>72</sup> Regardless of why many players chose

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<sup>70</sup> Sparky Anderson, as quoted in Rader, *Baseball*, 280.

<sup>71</sup> Rico Brogna, interview by author, March 1, 2012.

<sup>72</sup> Sweeny Murti, interview by author.

to use PEDs, the strength of the baseball player fraternity is the ultimate reason that the players themselves failed to police the game.

The fraternity of the baseball clubhouse is something that few people get to experience, and even fewer can understand. While one can make assumptions about what this fraternity is like, Kirk Radomski experienced it. After being ostracized from baseball, he no longer had a reason to keep to himself, and his description from the perspective of a clubhouse worker speaks volumes about the culture: “While working there, I learned the only rules that mattered to clubbies: do whatever the players, managers, and coaches ask you to do. And keep your mouth shut about everything you do, you see, and you hear. What happens in the clubhouse is private. The first time you talk about it might well be your last time.”<sup>73</sup> This culture points to the trend that once you become part of the club, what you do stays within the club members even if it is wrong. Another example of the baseball fraternity can be seen in the reaction of Jason Giambi’s fellow Yankees after it was leaked that he had taken an undetectable designer steroid, THG. Giambi had cheated the game, the players who came before him, and the fans. Most of all, he cheated his fellow players. All players claim that they want a level playing field.<sup>74</sup> By using the drugs, he had put himself on a playing field that was not level. The Yankees players’ reaction? According to Sweeny Murti, “They rallied around him.”<sup>75</sup> How can it be expected that the players will police themselves, when even a member who has been caught cheating them is still rallied around because he is part of that fraternity?

This culture of protecting each other even when it means undermining the integrity of the game is not exclusive to the use of performance enhancing drugs. Jason Grimsley was a pitcher who had not just become a client of Kirk Radomski but a friend as well. In 1994, he was a member of the Cleveland Indians and a teammate of Albert Belle – a slugger known around the league for occasionally using a corked bat. After one at-bat, the home plate umpire, suspecting just that, confiscated Belle’s bat and had it locked in a storage room to be x-rayed the next day. According to Radomski, “To save his teammate from being suspended, Jason crawled

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<sup>73</sup> Radomski, 10. Kirk Radomski was running probably the most widespread steroid and other PED distribution ring in the MLB. On December 15, 2005, Federal Bureau of Investigation agent Jeff Novitzky and his team searched Radomski’s home, and his life as a felon began. Radomski was offered a plea deal that did not include jail time if he cooperated with federal agents in their attempts to catch the ball players with whom Radomski had dealt. In doing so, the once well-connected Radomski was ostracized by the baseball community for working with the federal agents and naming players. For example, the famous raid on pitcher Jason Grimsley’s house was a result of a sting step up using Radomski. Once good friends, Grimsley has never spoken to Radomski since.

<sup>74</sup> Rico Brogna, interview by author.

<sup>75</sup> Sweeny Murti, interview by author.

through the air-conditioning duct, dropped into the room, and replaced the corked bat with a regular one. Thanks to Jason, Belle's bat came up clean."<sup>76</sup>

This is extremely telling for two reasons. First, this is nothing short of a black and white issue. Cork is illegal in baseball, and anyone who is caught with it in their bat is universally considered cheating, no questions asked.<sup>77</sup> Because of this, there is no defense for Grimsley's actions other than he was looking after his teammate. He knew Belle cheated, but helping him not get suspended was not only more important, it was worth crawling through air conditioning ducts for. What makes this even stronger is the fact that Grimsley is a pitcher. If another batter had hit a home run off of him with a corked bat, he would want justice. However, this was one of his guys, so compromising the best interest of those at his own position was worth ensuring his teammate was not suspended. When teammates actively helped each other cheat, it certainly cannot be expected that they would police themselves with regards to performance enhancing drugs.

Another example of the baseball fraternity can be seen from the players' testimony before Congress in 2005. A portion of Mark McGwire's both written and verbal opening statements are as follows, "What I will not do, however, is participate in naming names and implicating my friends and teammates . . . I have always been a team player. I have never been a person who has spread rumors or said things about my teammates that could hurt them."<sup>78</sup> When asked later about their obligation to their team if they knew a fellow player was using steroids, the panel of players put on one of the most spectacular displays of question dodging that Congress has likely ever seen:

CONGRESSMAN SHAYS: I would like to know the obligation that each of you think you have for your team to make sure you don't have drugs being used by teammates. Let's start with you, Mr. Schilling.

CURT SCHILLING: Well, my obligation first is to the Lord and to my family, my family name, above any of my teammates that I have ever had.

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<sup>76</sup> Radomski, 155.

<sup>77</sup> There has been only one corked bat incident in the past decade. Ironically it was Chicago Cubs slugger and strongly suspected PED user Sammy Sosa, who, after an at-bat that also ended in a broken bat, had cork found in the bat. While many considered him a cheater to begin with, because of his suspected PED use, this only cemented his status as a cheater. His defense was that he accidentally had taken a bat used for batting practice to the plate. When the rest of his bats from the game were confiscated and x-rayed, none were found to have cork in them. However, as seen in the Grimsley evidence, it is difficult to believe that the bats actually scanned were the exact other bats that were his for the game. For a more in-depth discussion on corked bats and an example of a planned effort to not get caught with a corked bat, see Radomski, *Bases Loaded*, 12-13.

<sup>78</sup> House Committee on Government Reform, *Restoring the Faith in America's Pastime*, 223.

CONGRESSMAN SHAYS: Ok. What do you think the Lord would want you to do?

SCHILLING: To be as truthful and honest as you could be and had to be.

CONGRESSMAN SHAYS: Do you feel that means you should confront, even privately, your colleagues that are using them, drugs?

SCHILLING: I think that varies with different people.

RAFAEL PALMEIRO: I am not sure how I would handle that. I have never had that problem. You know, if it became a problem, I guess I would confront the player.

MARK MCGWIRE: I agree. I have never had that problem. And being retired and out of the game, I couldn't even think about that.

CONGRESSMAN SHAYS: Never had the problem of seeing your colleagues use drugs?

MCGWIRE: Pardon me?

CONGRESSMAN SHAYS: Never had a problem of seeing your colleagues use drugs, steroids; is that what you mean? I don't know what you mean by you never had that problem.

MCGWIRE: I am not going to get into the past.

CONGRESSMAN SHAYS: Ok, I'm not really asking about the past. Mr. Sosa, what obligation do you think that you have to your team if you are aware that someone is using drugs on your team?

SAMMY SOSA: I am a private person, I don't really go, you know, ask people whether they –

CONGRESSMAN SHAYS: I will just conclude by saying I think I know your answer, sir. It seems to me that one of the messages you may be telling young people is that a team player – it's an interesting concept of a team player, it seems to me [*sic*].<sup>79</sup>

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<sup>79</sup> Ibid., 266.

The tightness of the baseball fraternity can be seen in the words of the players, essentially telling Congress that, no, they would not do anything if they knew a teammate was cheating. However, this tightness goes beyond having each others' backs to the point of apathy. Says one current player of the PED users, "Personally, I could care less. They're the ones doing it and getting in trouble, that's their decision."<sup>80</sup> Rico Brogna echoed this sentiment that in the late 1990s, "everyone was doing something." In fact, it had been other players who introduced andro to him.<sup>81</sup> This is critical in understanding why the players themselves could not police the game of baseball. The fraternity is not just, "I got my guys' backs." It is more like, "I know this goes on in the game, and I just don't care. Even if I don't know them, I don't care and I won't do anything about it." Furthermore, Jose Canseco notes that he would have players he did not know come up to him and ask for help with steroids because they knew his reputation.<sup>82</sup> This was a culture where a player could go up to another player, one with whom he is not familiar at all, and freely discuss the topic of procuring illegal drugs and know that not only will he not get questioned, but that he will get what he needs. This speaks volumes to both the breadth and the depth of the fraternity of baseball players, and why that is the reason the players failed to police themselves.

## The Union

*You cannot defeat this union.*  
-Fay Vincent, former MLB Commissioner

The fraternity of baseball players was so strong that it extended beyond just the baseball field. The MLBPA might be the most powerful union in the world, regardless of nation, regardless of industry. Founder Marvin Miller had remarkable success building up this union from scratch. Accustomed to a baseball world pre-union where they had free range, the owners became more and more disgruntled with the pesky MLBPA. In 1985, ownership demanded a salary cap to the point where the players went on strike over it. Two days later, the owners broke, dropping their demands. Dismayed from yet another embarrassing loss to the union, the owners

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<sup>80</sup> Nick Markakis, interview by author, February 8, 2012. Markakis is currently the starting right fielder for the Baltimore Orioles.

<sup>81</sup> Rico Brogna, interview by author. There is an important note with this quote. When Rico says that everyone was doing "something," that does not mean that everyone was taking illegal drugs. He emphasizes that andro (which was legal at the time) was common, and that creatine (which is still legal) was in nearly every player's locker.

<sup>82</sup> Jose Canseco, *Vindicated: Big Names, Big Liars, and the Battle to Save Baseball* (New York: Simon Spotlight Entertainment, 2008), 2.

responded with collusion, an arbitrary salary cap under which they agreed not to pay players over a particular amount.<sup>83</sup> It was “the most egregious breaking of trust in baseball history . . . any chance of civility on the part of the players was destroyed.”<sup>84</sup> The union leader at the time was Donald Fehr, who remained the head during the Steroid Era. The owner who rallied the others to the call of collusion was then the owner of the Milwaukee Brewers, Alan “Bud” Selig, also the commissioner of baseball through the Steroid Era. The most important reason that baseball could not police itself during the Steroid Era was because of this union. The toxic relationship between the union and management, as a result of collusion, prevented any progress being made to clean up the sport.

Dr. Elliot Pellman was the medical advisor to Commissioner Selig in 2005. Prior to his work with MLB, Dr. Pellman spent nearly a decade with the NFL. He noted that the fundamental difference between the two organizations was the nature of the relationship between management and the union. The NFL and its union made up “truly a partnership between management and the Players’ Association . . . in terms of priorities.” Meanwhile, he used the phrase “wide, wide schism” when describing the relationship between baseball and its union. Dr. Pellman implied that the NFL did not have nearly as much of an issue with PEDs because the ownership-labor situation allowed the league to deal with PEDs swiftly when they first became a problem.<sup>85</sup> In MLB, this was not the case.

Commissioner Selig unilaterally implemented a drug testing program in 2001 for the minor leagues. He was able to do this because minor league baseball players do not fall under the jurisdiction of the MLBPA. While he wanted to apply it to the majors as well, the union used its leverage with other Collective Bargaining Agreement (CBA) issues to force Selig to drop the issue at the time.<sup>86</sup> The union fought to keep testing out of the majors for two main reasons (apart from the ever present reason to just stick it to the ownership). First, union leaders maintained that steroids simply were not much of an issue. In fact, they cited that cigarettes were far more harmful than were steroids.<sup>87</sup> Yet the biggest issue that the union clung to was that testing was a matter of privacy. If baseball had probable cause that a player was using PEDs, he could be tested. Otherwise, it was a violation of the player’s civil liberties and 4<sup>th</sup> Amendment right to privacy.<sup>88</sup> Furthermore,

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<sup>83</sup> Rader, *Baseball*, 216.

<sup>84</sup> Bryant, *Juicing the Game*, 42.

<sup>85</sup> House Committee on Government Reform, *Restoring the Faith in America’s Pastime*, 189-190.

<sup>86</sup> Senate Committee on Commerce, Science, and Transportation, S. 1114, *The Clean Sports Act of 2005*, and S. 1334, *The Professional Sports Integrity and Accountability Act*, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., 2005, H. Doc. 109-525, 54.

<sup>87</sup> Bryant, *Juicing the Game*, 264.

<sup>88</sup> *Ibid.*, 259.

random drug testing established a presumed guilt among the players. The MLBPA would not budge from these stances until pressured from Congress.

Because of this, Commissioner Selig sounded like a broken record in front of Congress. Every question posed to him as to why baseball did not act sooner or more effectively, his response was similar to, “That is the negotiated policy. That is the best we could do in collective bargaining. This is collective bargaining . . . the penalties would be much tougher if I had it my way.”<sup>89</sup> Earlier in the hearing, Congressman Henry Waxman of California posed the question to union leader Don Fehr that the commissioner wants a tougher drug policy, and many players have said they want a tougher drug policy, so would he support it? After dodging the question as the players had done so well before him, he added a quote that is very telling about the stance of the union at the time: “our job with violations of substance abuse is not to destroy careers.”<sup>90</sup> It is no wonder that former Commissioner Fay Vincent was adamant that “the MLBPA has no interest in the integrity of the game.”<sup>91</sup>

Rico Brogna points out that the union’s attempt to inhibit action by the owners is not unique to the steroid issue. Regardless of topic, the players would not budge an inch anywhere, because the effects of collusion were still being felt. There was a “feeling among players that we’re not going to give in . . . we’ve worked so hard for 30-40 years, with all the strikes, all the labor issues, anything the players have accomplished through negotiations, we’re going to keep.”<sup>92</sup> This sentiment showed itself when Fehr was asked if he would go back to the players following the hearing and ask for a stronger drug testing policy:

DONALD FEHR: As I indicated before, I will report fully the sentiments here today, both the testimony at the hearing and the comments that have come from the Members; and I want to consult with my membership.

CONGRESSMAN GUTKNECHT: That’s an interesting answer. The question is, will you go back to your members and ask for a new vote?

FEHR: I will go back to my members, and I will consult with them. That is the most I can do.<sup>93</sup>

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<sup>89</sup> House Committee on Government Reform, *Restoring the Faith in America’s Pastime*, 337.

<sup>90</sup> *Ibid.*, 335.

<sup>91</sup> Fay Vincent, interview by author.

<sup>92</sup> Rico Brogna, interview by author.

<sup>93</sup> House Committee on Government Reform, *Restoring the Faith in America’s Pastime*, 363.

To translate, Fehr is both avoiding perjury while saying, “no, I will not ask the union to concede anything to management.” Essentially as Rico Brogna puts it, “the players have come so far with this labor contract stuff that we can’t just give it back.”<sup>94</sup> There was truly no hope of baseball policing itself when there was such bitterness between the union and management.

The most egregious example of the union blocking attempts by the Commissioner to begin cleaning up the game can be seen through the handling of the drug ephedra. The timeline for ephedra is as follows:

<b>Date</b>	<b>Event</b>
1997	NCAA bans ephedra
May 2001	NFL bans ephedra, players who test positive will be suspended for four games.
February 17, 2003	Orioles pitcher Steve Bechler dies during spring training, ephedra is thought to be the cause.
February 22, 2003	Commissioner Bud Selig asks that ephedra be banned from baseball.
February 27, 2003	MLB announces that ephedra is banned in <i>minor league</i> baseball (where the MLBPA has no jurisdiction).
March 14, 2003	Toxicology reports confirm ephedra was a contributing factor to the death of Bechler.
March 29, 2003	MLBPA head Don Fehr is quoted in <i>The Los Angeles Times</i> , “We have a real hard time saying that if you can walk into a store and buy something . . . do I have the right to tell a 35-year-old guy he can’t? If a substance is so dangerous it ought not to be used by anyone, then it ought to be prohibited.”
February 11, 2004	FDA issues final ruling banning substances containing ephedra.
January 2005	After reopening the Collective Bargaining Agreement, MLB includes ephedra among banned substance for new drug testing policy.

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This timeline shows that the MLBPA blocked league attempts to ban the use of ephedra until it was found to be a banned substance by the government, even after one of their own players died from it. This shows that sticking it to the ownership was more important to the union than the safety of its constituents. Furthermore, Fehr’s argument that the substance was not

<sup>94</sup> Rico Brogna, interview by author.

<sup>95</sup> House Committee on Government Reform, *Restoring the Faith in America’s Pastime*, 341-342.

federally banned, so it should not be banned by baseball, is insulting in its weakness. As broadcaster Bob Costas properly pointed out, “Cork is not illegal, neither is saliva. But when used a certain way in the context of baseball, it absolutely is illegal.”<sup>96</sup> The refusal of the MLBPA to consider banning a substance while it was still federally legal – even though all other professional sports had – is very indicative of why baseball neglected to police itself, thus forcing Congress to intervene.<sup>97</sup>

The management-labor relationship is astoundingly deplorable and all thanks to collusion. Even after the congressional hearing in 2005, the standoff continued. Commissioner Selig authorized an intense investigation by former Senator George Mitchell into PED use in baseball. Included in the final report was this:

The Players Association was largely uncooperative. It rejected my requests for relevant documents . . . I sent a memorandum to every active player in MLB encouraging each player to contact me or my staff if he had any relevant information. The Players Association sent out a companion memorandum that effectively discouraged players from cooperating. Not one player contacted me in response to my memorandum.<sup>98</sup>

If there was any doubt as to the power of the MLBPA, this would put it to rest. According to Mark Fainaru-Wada, “The fact that baseball would launch an investigation into this era and that not a single player would cooperate with them . . . speaks volumes about everything you need to know”<sup>99</sup> regarding the management-labor relationship and the power of the union.

Perhaps the most damning evidence can be seen in comments given by then-MLBPA head Fehr in another Congressional hearing just six months after the March 2005 hearing. This hearing, held in front of the Senate Committee on Commerce, Science, and Transportation, was attended by the commissioners and union chiefs of all four major sports – MLB, NFL, NHL, and NBA – with the purpose to determine whether the government should

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<sup>96</sup> Bob Costas, quoted in *Juicing the Game*, 142.

<sup>97</sup> The MLBPA handled the steroid DHEA in very much the same fashion. At the time, it was considered an anabolic steroid by the World Anti-Doping Agency (WADA). Because of this, Rob Manfred explains that MLB actually lobbied to Congress to get it put on the list of banned substances under the Steroid Control Act. Only when this happened would the commissioner have the leverage to ban the drug from baseball. See House Committee on Government Reform, *Restoring the Faith in America's Pastime*, 366.

<sup>98</sup> House Committee on Oversight and Government Reform, *The Mitchell Report: The Illegal Use of Steroids in Major League Baseball*, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., 2008, H. Doc. 110-206, 37.

<sup>99</sup> Mark Fainaru-Wada, interview by author.

pass legislation to take over drug testing for all major sports.<sup>100</sup> At one point, Fehr responded to the charge that he was the only one standing in the way of fixing PED use and restoring integrity to baseball by saying, “My obligation as a representative of the players, both generally and under the National Labor Relations Act, is to negotiate on their behalf what they believe to be an appropriate and fair agreement under all circumstances.”<sup>101</sup> After briefly questioning Commissioner Selig, Senator Byron Dorgan of North Dakota turned back to Fehr:

SENATOR DORGAN: Mr. Upshaw (union leader for NFL players) made the point that I’d written down somewhere that the football players believe taking drugs is cheating and they want cheaters out of football. I would assume that baseball players would feel exactly the same way and if they don’t, I’m surprised. If they do feel the same way, it’s strange that we haven’t gotten to the point where this is solved, so that you don’t have to come to the Congress about it, or that we don’t have to call you in.

FEHR: Would you like me to respond? SENATOR

DORGAN: Yes I’d be happy to.

FEHR: Thank you, Senator . . . the players of course feel that way, they always have.<sup>102</sup>

It is difficult to overstate the gravity of the combination of these quotes. When analyzing both statements from Fehr, it is clear that he condemned himself, leaving no wonder that he tried to avoid giving a comment. He adamantly declared that his role was to represent the players for *what they believe*. He then went on to say that not only did all players believe PED users to be cheaters and that they wanted cheaters out of the game, he says that they *always did*. Yet still Fehr continued to be the primary obstacle to an effective drug testing policy, which would have gotten cheaters out of the game. Unless he is lying, the only possible explanation for Fehr to neglect

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<sup>100</sup> While all major sports were represented, this hearing was clearly focused towards baseball’s slow reaction to fixing the PED problem in their sport. The three other sports were publicly commended for their stance on PED use, seemingly to shame the MLB for its continued feet-dragging on the issue. In fact, at one instance in the hearing it was pointed out that, if the government applied their proposed testing policy across all sports (the one designed to significantly strengthen the MLB policy), it would actually weaken the current testing policy of the NFL.

<sup>101</sup> Senate Committee on Commerce, Science, and Transportation, S. 1114, *The Clean Sports Act of 2005*, and S. 1334, *The Professional Sports Integrity and Accountability Act*, 54.

<sup>102</sup> Senate Committee on Commerce, Science, and Transportation, S. 1114, *The Clean Sports Act of 2005*, and S. 1334, *The Professional Sports Integrity and Accountability Act*, 54-55.

his self-declared obligation to represent the players is that he would do anything to oppose efforts of Commissioner Selig due to their long-standing vile relationship. The collusion scandal in the late 1980s was the driving factor behind the cancerous relationship between the MLB and MLBPA. According to former MLB Commissioner Fay Vincent, “It drove a stake into any hope that there could be a relationship of trust between the owners and the union.”<sup>103</sup> PED use in baseball had proven to be a monumental infection within the game that Americans hold so dearly. Of all the avenues that baseball could have policed itself, none could have been more effective than an agreement between the players and the owners. However, because collusion resulted in a bitter lack of trust and borderline hatred between the two, baseball could not overcome the bad blood between management and the union.

## Conclusion

*You have told us baseball doesn't have a major problem, but Kevin Towers has made it clear there is a major problem... I think that whoever makes the decision for baseball [should] look at the situation we are in and see if it is time for new leadership, because I don't think baseball is doing what it should have been doing for all these years on the steroid problem.*

*-Congressman Henry A. Waxman*

Baseball holds a special place in American society. Even if football has taken over as the most popular sport in this country, baseball will always be the “national pastime.” Even since its beginning around the time of the Civil War, baseball has always been a microcosm of America, mirroring its every move. As leisure time became available in the “roaring twenties,” baseball played games specifically designed so that laborers who worked six days a week had access to a game. During the Second World War, baseball supported the war effort along with the rest of the nation by sending its own players to fight and by hosting all-star games with all proceeds going to fund the war. The game was slightly ahead of society as far as integrating blacks, with Jackie Robinson breaking the color barrier a few decades before the Civil Rights movement. As improvements in planes, trains, and cars made coast-to-coast movement possible, baseball did too as the Giants and Dodgers took root in California in the late 1950s.<sup>104</sup>

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<sup>103</sup> Fay Vincent, interview by author.

<sup>104</sup> *Cooperstown Symposium on Baseball and the American Culture, 2002*, William M. Simons, ed. (Jefferson: McFarland and Company, Inc., 2002), 174.

Maybe the most important parallel between baseball and American society is that baseball reflects the “American Dream” that, if you work hard, you can provide for your family. Baseball has always been a potential outlet for lower class Americans to provide a better life for their kids and future generations. Nowhere is this more evident than the legendary Babe Ruth who rose to stardom after humble beginnings in Baltimore being raised

by parents who were German immigrants.<sup>105</sup> Even today, some players grow up in poverty-stricken Latin American countries and, with one major league contract, can make a life for themselves and their families.

This is the real crime in the Steroid Era. It cuts at the most cherished aspect of the American national pastime, and everyone is to blame. Because of PEDs in baseball, no longer are the most talented and hardest working players the role models, but rather those who have the best chemists.<sup>106</sup> Furthermore, these substances erode the treasured connection to the past, specifically those who did it with hard work. Dr. Charles Yesalis looked up to Mickey Mantle as a hero in his childhood. It is his feeling that players who use PEDs cheat Mantle, and that enrages him the most.<sup>107</sup> In late 2007, the real home run king, Hank Aaron, was asked about his feelings towards Barry Bonds closing in on his all-time home run record of 755; his answer spoke volumes: “I’m making a comment by not making a comment.”<sup>108</sup>

There are so many aspects to the Steroid Era that it was difficult not to digress often. Fortunately, this leads to many other potential future studies. For example, this work was only able to gloss over the effectiveness of drug testing. This question of effectiveness could be an entire work on its own, with some people believing that drug testing is worthless, some believing that its use is in being a deterrent, and some believing that a drug test is an IQ test. Another future study could look further into the parallel of baseball’s increased steroid use with the increased use of steroids in American society. Others could look into when baseball “lost its innocence” with the American public. When did baseball players become professional athletes; was it when the union was created? Was it when free agency became legal? What effect did this “perform for money” change have on the game? Could that be the main catalyst in PED use? Lastly, collusion needs to be explored much further. If a former commissioner of the league

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<sup>105</sup> Linda Ruth Tosetti, lecture.

<sup>106</sup> I am not advocating that players today do not work hard, and I am also not advocating that players who work hard but do not take PEDs cannot make it into the major leagues. I am simply trying to emphasize the schism PEDs have cause in the parallel of baseball and American society with regards to the “Protestant work ethic.”

<sup>107</sup> Dr. Charles Yesalis, interview by author.

<sup>108</sup> Hank Aaron, quoted in Tim Dahlberg, “Life on Road Not Fun and Games for Bonds,” *NBCSports*, August 1, 2007, <http://nbcsports.msnbc.com/id/20062973/> (accessed April 8, 2012).

believes that it is the most important event in the past half-century of the game, it should certainly be better understood by baseball fans.

On March 17, 2005, the House Committee on Government Reform convened to review the MLB's efforts to eliminate PEDs from the game. Some people felt that Congress had better things to do than discuss baseball, but Congressional leaders justified the inquisition for two reasons. First, steroid use was having a terrible impact on the nation's youth with regards to drug abuse.<sup>109</sup> Second, the MLB is a multibillion dollar industry with teams spread all over the country, and Article I, Section 8 of the United States Constitution states explicitly that Congress has the right to regulate interstate commerce. Nevertheless, the fact remains: baseball let PED use get to the point where Congress *had to* intervene because the game refused to police itself. Since the owners were making money off of it, they would not police themselves. The press did not have the time, and it was not worth the risk of exposing the cheaters. The fans knew what was going on, yet they condoned it by continuing to flock to the ballparks. The fraternity of ballplayers was too strong; they would not police themselves either. And most importantly, because of collusion, the relationship between the MLB and MLBPA was so toxic that they would rather fight each other than fight for the integrity of the game.

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<sup>109</sup> House Committee on Government Reform, *Restoring the Faith in America's Pastime*, 9. At this hearing, two sets of parents testified regarding the loss of their sons due to steroid use. Additionally, statistical evidence was brought to show that up to 500,000 high school athletes may be using PEDs.