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ONE HUNDRED NINTH CONGRESS

# Congress of the United States

## House of Representatives

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### MEMORANDUM

March 16, 2005

**To: Democratic Members of the Committee on Government Reform**  
**Fr: Democratic Staff**  
**Re: Full Committee Hearing on Steroid Use in Baseball**

On Thursday, March 14, at 10:00 am, 2154 Rayburn House Office Building, the Government Reform Committee will hold a hearing to examine the use of anabolic steroids in Major League Baseball. This memo provides background information to assist members and staff in preparing for the hearing.

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### I. OVERVIEW

Major League Baseball is a multi-billion dollar industry that enjoys extensive public subsidies, tax breaks, and an exemption from antitrust laws. Over the last decade, credible allegations of widespread use of anabolic steroids by ballplayers have cast a cloud over the sport. The Committee's investigation aims to shed light on what happened and how it happened in order to assess the adequacy of federal laws on controlled substances, educate the public about the dangers to youth who may be tempted to use anabolic steroids, and ensure that adequate safeguards for the future are in place.

Anabolic steroids are testosterone-like substances that can increase strength at the cost of serious physical and psychiatric harm. Since 1991, many anabolic steroids have been illegal to possess or distribute in the United States without a valid medical prescription. Nonetheless, over the last decade, the number of high school students reporting illegal anabolic steroid use has nearly tripled to more than 500,000.

The rise of anabolic steroid use as a public health problem has coincided with numerous credible allegations of use in Major League Baseball. The evidence of steroid use in baseball dates back at least 30 years. Lengthy reports detailing widespread use of steroids in baseball have proliferated over the last decade. For example:

- In 1995, the *Los Angeles Times* reported that “[a]nabolic steroids . . . apparently have become the performance drugs of the '90s in major league baseball.” The paper quoted San Diego Padres general manager Randy Smith as stating that “We all know there’s steroid use, and it’s definitely become more prevalent...I think 10% to 20%.”
- In July 1997, the *Denver Post* reported that “some players are clearly willing to cross the line to gain a competitive edge.” The paper quoted a player for the Colorado Rockies as estimating that 20% of big-league ballplayers use steroids.
- In 2000, the *New York Times* quoted Brad Andress, the strength coach for the Colorado Rockies, as estimating that 30% of major league baseball players had used steroids at some point in their careers. One veteran all-star outfielder said he believed that “two-thirds of the top players in the National League are using some kind of steroid.”
- In 2002, *Sports Illustrated* reported that “the game has become a pharmacological trade show.” Outfielder Chad Curtis estimated that 40% to 50% of major league players use steroids.

In recent months, new evidence of significant anabolic steroid use in baseball has emerged. In December 2004, leaked testimony from a federal prosecution of a San Francisco laboratory implicated several baseball stars in anabolic steroid use. In February 2005, former star Jose Canseco published a book alleging that he personally injected numerous major leaguers with illegal steroids. And in the past week, a California man has claimed he sold illegal steroids to several players in the 1990s, and another former major leaguer (and brother to a current star) admitted using illegal steroids to seek a competitive advantage.

Reports of steroid use, however, were never investigated by Major League Baseball. In fact, for many years, the league denied having any steroid problem. For example:

- In 1995, Commissioner Bud Selig stated, “If baseball has a problem, I must say candidly that we were not aware of it.”
- In 1996, a league spokesman stated, “I don’t think the concern is there that it’s being used.”
- In 2000, after steroids were discovered in the car of a Red Sox infielder, the league responded that “in baseball, steroids have never been much of an issue.”

Baseball’s reluctance to address anabolic steroid use is also evident in its handling of androstenedione, a dietary supplement commonly known as “andro.” After a reporter discovered andro in the locker of baseball star Mark McGwire during the 1998 season, Major League Baseball defended Mr. McGwire, who set the single-season home run record that season. The league continued to condone use of andro until 2004, even in the face of mounting evidence of the substance’s harm. In contrast, the International Olympic Committee, the NBA, and federal agencies all took or recommended action against andro years before baseball.

Major League Baseball has justified its inaction on steroids by saying its hands were tied by the collective bargaining agreement with the players’ union. This claim is misleading. There is an important distinction between requiring across-the-board drug testing of all players and investigating allegations or evidence that specific players use steroids. While the league does appear to need the consent of the union in the collective bargaining agreement to institute random testing, baseball does not need union agreement to investigate specific evidence of illegal drug use. Yet baseball never conducted a thorough investigation of allegations of illegal steroid use, and according to Major League Baseball, throughout the 1990s, not a single player was apparently ever tested for anabolic steroids.

Baseball finally reached an agreement with the players union to initiate anonymous testing during the 2003 season. Under this policy, the testing did not occur during the off-season, when most steroid use is believed to occur, and did not include all anabolic steroids. According to information provided by Major League Baseball, 5% to 7% of players tested positive in 2003. In 2004, a similar testing program was administered confidentially, with the positive rate falling to 1-2%.

In January 2005, Commissioner Bud Selig announced a new testing policy that he claimed would “eradicate” steroid use. The effectiveness of this new initiative will be a significant focus of the hearing.

## **II. BACKGROUND**

### **A. Major League Baseball**

Since its creation in 1903, Major League Baseball has grown from a small collection of teams and players to one of the most prestigious sports organizations in the world. The league now includes 30 teams in U.S. cities and Toronto, Canada, and employs an estimated 900 players.

Each baseball season lasts from spring to fall. The regular season includes 162 games and is followed by a postseason culminating in the World Series. In 2004, 73 million baseball fans attended major league games.<sup>1</sup>

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<sup>1</sup> Major League Baseball, *MLBAM Announces Agreement to Acquire Tickets.com* (Feb. 15, 2005).

Major League Baseball is a significant industry. Team franchises are worth an average of \$295 million, and total annual revenues are estimated at \$3.9 billion. Collectively, major league players earn an estimated \$2 billion each year.<sup>2</sup>

In addition to ticket sales, sales of licensed equipment, vending sales, and the broadcasting of games, Major League Baseball has received significant direct subsidies from the public. Since 1990, almost \$3 billion in public money has been spent to build or renovate 16 different baseball stadiums, with at least another \$700 million worth of taxpayer-funded construction on the books.<sup>3</sup>

Congress has also provided significant benefits to Major League Baseball. In 2004, Congress changed an obscure tax law governing how sports franchises could depreciate salaries of players. This change is worth an estimated \$200 million in total for the 30 owners of Major League Baseball teams.<sup>4</sup>

In 1922, the Supreme Court ruled that baseball was not subject to antitrust laws.<sup>5</sup> The most important part of that exemption, which permits local monopolies for each major league team in its area, remains intact today. Recent decisions by the Supreme Court have indicated that Congress has the authority to revoke baseball's antitrust exemption.<sup>6</sup>

## **B. Anabolic Steroids**

Anabolic steroids are drugs related to male sex hormones, such as testosterone. These drugs can be taken orally, injected, or rubbed into the skin as a gel or cream. Acting like testosterone in the body, anabolic steroids increase protein synthesis, decrease muscle breakdown, and enhance the development of male sexual characteristics.

While patients can be prescribed anabolic steroids for legitimate medical purposes, including hormone replacement, recreational steroid users consume many times more than natural amounts of these drugs.

To build muscle mass, some take several different steroids together, a practice known as "stacking." Others take high doses for several weeks, followed by a period without drugs, a practice known as "cycling." When users gradually escalate the dose over a period of days and then gradually reduce the dose, this is called "pyramiding."

When used for performance enhancement, anabolic steroids have their desired effect well in advance of competition. As a result, according to a leading textbook in addiction medicine, steroid use "usually occurs

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<sup>2</sup> *The Business of Baseball*, Forbes (Apr. 2004).

<sup>3</sup> Munsey and Suppes, *Ballparks* (2005) (online at [www.ballparks.com](http://www.ballparks.com)).

<sup>4</sup> *Tax Bill Worth Millions to Pro Teams is Approved*, New York Times (Oct. 12, 2004).

<sup>5</sup> *Federal Baseball Club v. National League* (1922)

<sup>6</sup> *Flood v. Kuhn* (1972).

during training periods, which typically can begin week and even months before a competitive event or season.”<sup>7</sup>

Anabolic steroids cause serious health consequences.<sup>8</sup> The adverse effects of steroids include:

- **Early cardiovascular disease.** Anabolic steroids alter blood lipids and can lead to heart attacks before age 40.
- **Liver damage.** Anabolic steroids cause liver tumors and a rare hepatitis involving cysts in the liver that are filled with blood.
- **Infection.** Users who share needles when injecting can contract AIDS, Hepatitis B, Hepatitis C and other infections.
- **Changes to sexual characteristics.** Males can experience acne, breast development, shrinking testicles, and infertility. Females can experience acne and excessive body hair.
- **Psychiatric side effects.** Anabolic steroids can cause violent “Roid Rage,” and rapid withdrawal can lead to a devastating depression, which has been linked to suicide.<sup>9</sup>

### C. Use of Anabolic Steroids by Youth

Public health and medical experts are alarmed by rising rates of anabolic steroid use among teenagers.

According to a national survey sponsored by the Centers for Disease Control and Prevention, in 1993, 2.2% of high school students – or 1 in 45 – reported ever using illegal steroids. In 1999, 3.7% of high school students – or 1 in 27 – reported ever using illegal steroids. By 2003, 6.1% of high school students – or 1 in 16 – reported ever using illegal steroids.<sup>10</sup>

This is a nearly three-fold increase from 1993 to 2003. In total, experts believe that more than 500,000 high school students in the United States have used anabolic steroids.

Among specific groups, steroid use can be especially popular. A 2002 Minnesota study found increased steroid use among participants in sports that emphasize weight and shape.<sup>11</sup> Even young teens, including young

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<sup>7</sup> Scott E. Lukas, *Chapter 12: The Pharmacology of Steroids*, Principles of Addiction Medicine (2003).

<sup>8</sup> National Institute on Drug Abuse, *Anabolic Steroid Abuse* (Apr. 2000).

<sup>9</sup> Scott E. Lukas, *Chapter 12: The Pharmacology of Steroids*, Principles of Addiction Medicine (2003).

<sup>10</sup> Centers for Disease Control and Prevention, *National Youth Risk Behavior Survey 1991-2003: Trends in the Prevalence of Marijuana, Cocaine, and Other Illegal Drug Use* (2004).

<sup>11</sup> L. Irving, et. al., *Steroid Use Among Adolescents: Findings from Project EAT*, Journal of Adolescent Health, 243-52 (Apr. 2002).

girls, appear to using steroids. For example, a 1998 Massachusetts study found that 9% of gymnasts in the 5<sup>th</sup> grade, 6<sup>th</sup> grade, and 7<sup>th</sup> grade had used illegal steroids.<sup>12</sup>

Many youth report that anabolic steroids are easy to obtain. In a 2004 survey, the National Institutes on Drug Abuse found that 19.7% of eighth graders, 29.6% of tenth graders, and 42.6% of twelfth graders surveyed reported that steroids were “fairly easy” or “very easy” to obtain.<sup>13</sup>

Anabolic steroids pose special medical risks to youth. By interrupting normal hormone levels, these drugs can send a signal to the bones to stop growing, stunting growth, and lead to serious psychiatric disorders. Steroid use among teenagers is also associated with a range of other potentially dangerous behaviors, including risky sexual activities, carrying a weapon, and driving under the influence of alcohol.<sup>14</sup>

Anabolic steroids have allegedly led to suicides among teenagers. These cases include:

- Rob Garibaldi, who began to use anabolic steroids as an 18-years-old standout baseball player at Casa Grade High School in California. He later received a baseball scholarship to the University of Southern California and played in the College World Series. Steroid use, however, led to serious psychiatric problems, including personality changes, violent behavior, and deep depression. He eventually was kicked off of the baseball team and lost his college scholarship. When confronted about steroid use by his father, Rob responded: “I’m on steroids, what do you think? Who do you think I am? I’m a baseball player, baseball players take steroids. How do you think Bonds hits all his home runs? How do you think all these guys do all this stuff? You think they do it from just working out normal?” Several months later, Rob Garibaldi committed suicide.<sup>15</sup>
- Taylor Hooton, who began using steroids after a junior varsity baseball coach suggested that he “get bigger.” The drugs led to serious behavioral disturbances, including violent outbursts and stealing. Once popular and happy with many friends, Taylor’s life started to crumble. Taylor committed suicide in July 2003. On autopsy, the coroner found two anabolic steroids in his body. Dr. Larry W. Gibbons, president and medical director of the Cooper Aerobics Center, said: “It’s a pretty strong case that he was withdrawing from steroids and his suicide was directly related to that . . . . This is a kid who was well liked, had a lot good friends, no serious emotional problems. He had a bright future.”<sup>16</sup>

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<sup>12</sup> A. Faigenbaum, et. al, *Anabolic Steroid Use by Male and Female Middle School Students*, Pediatrics, e6 (1998).

<sup>13</sup> National Institute on Drug Abuse and University of Michigan, [Monitoring the Future 2004 Data from In-School Surveys of 8th-, 10th-, and 12th-Grade Students](#) (Dec. 2004).

<sup>14</sup> See, e.g., A. Middleman, R. DuRant, *Anabolic Steroid Use and Associated Health Risk Behaviors*, Sports Medicine, 251-5 (Apr. 1996).

<sup>15</sup> *Dreams, Steroids, Death—A Ballplayer’s Downfall*, San Francisco Chronicle (Dec. 19, 2004).

<sup>16</sup> *An Athlete’s Dangerous Experiment*, New York Times (Nov. 26, 2003).

#### **D. Federal Law and Anabolic Steroids**

Federal law and policy permit the use of certain anabolic steroids for legitimate medical purposes. However, the federal government has taken a series of steps to block the dangerous and illegitimate use of these drugs.

In 1990, Congress passed the Anabolic Steroid Enforcement Act, which added certain anabolic steroids to the list of Schedule III drugs. Individuals possessing Schedule III drugs without a valid prescription are subject to a misdemeanor charge. Persons convicted of distributing, dispensing, or selling these drugs are subject to a five-year felony for the first offense.

In addition to listing certain anabolic steroids, the Anabolic Steroid Enforcement Act also gave the Drug Enforcement Agency (DEA) the authority to schedule additional substances. To classify a drug as an anabolic steroid, DEA had to find that a drug was both (1) related to testosterone and (2) promoted muscle growth. This latter requirement led DEA to conduct lengthy tests to determine whether or not a particular substance did, in fact, promote muscle growth.

In 2004 amendments to the Controlled Substances Act, Congress eliminated the requirement that a drug had to promote muscle growth in order to be listed as a controlled substance. Now DEA only has to find that a drug is related to testosterone. In 2004, Congress also directly added additional drugs, including androstenedione and the novel steroid THG, to the list of scheduled steroids.

The Federal Food, Drug and Cosmetic Act (FDCA) also covers anabolic steroids. Under the FDCA, unapproved drugs -- including novel steroids that may not yet be scheduled -- may not be distributed in the United States. Possession of an unapproved drug for personal consumption is not a crime under the FDCA.

State laws on controlled substances may also apply to anabolic steroid use and distribution.

### **III. ILLEGAL STEROID USE IN MAJOR LEAGUE BASEBALL**

There have been reports linking steroid use in baseball for over 30 years ago. In 1973, Congressman Harley O. Staggers, the Chairman of the House Committee on Interstate and Foreign Commerce, conducted an investigation into the use of illegal and dangerous drugs in sports. He found that “in some instances, the degree of improper drug use — primarily amphetamines and steroids — can only be described as alarming.”<sup>17</sup> Staggers called for Major League Baseball to implement more stringent penalties for drug use and to consider random testing of players throughout the season.<sup>18</sup>

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<sup>17</sup> Office of Congressman Harley O. Staggers, Press Release (May 11, 1973).

<sup>18</sup> Letter from Rep. Staggers to Baseball Commissioner Bowie Kuhn (May 14, 1973).

Major League Baseball responded, by claiming that Stagers had “misled” fans, and that baseball's drug program had “incorporated substantially all the measures you suggested,” and that “there is no alarming problem in baseball . . . and our program has succeeded in its objectives.”<sup>19</sup>

Over the last decade, a series of reports have described significant use of illegal anabolic steroids among Major League ballplayers.

In July 1995, the *Los Angeles Times* published an investigative report on steroid use in baseball titled “Steroids Become an Issue.” The newspaper reported that “Anabolic steroids . . . apparently have become the performance drugs of the '90s in major league baseball.” The report quoted Randy Smith, the general manager of the San Diego Padres, as stating: “We all know there’s steroid use, and it’s definitely become more prevalent . . . I think 10% to 20%.” An American League general manager added: “I wouldn’t be surprised if it’s closer to 30% . . . We had one team in our league a few years ago that the entire lineup may have been on it.”<sup>20</sup>

In July 1997, the *Denver Post* reported that “some players are clearly willing to cross the line to gain a competitive edge.” The paper quoted one player for the Colorado Rockies as estimating that 20% of big-league ballplayers use illegal anabolic steroids.<sup>21</sup>

In July 2000, the police seized illegal steroids in the glove compartment of a car licensed to Manny Alexander, Boston Red Sox infielder.<sup>22</sup> In the wake of the discovery, Rick Reilly of *Sports Illustrated* estimated that up to 30% of players are on “illegal substances,” up to eight players per big league team are on steroids, and 20% to 25% of minor league players are on steroids.<sup>23</sup>

On October 6, 2000, the *South Florida Sun-Sentinel* published a major investigation entitled “Homer Binge a Really Juicy Subject.” The newspaper reported that the “whispers of steroid use in baseball surge in pace with the home-run binge on the field of play.” One major league scout stated, “I wish our industry would start testing for steroids . . . It has really become a joke. It’s such a standing, laughable joke.”<sup>24</sup>

On October 11, 2000, the *New York Times* published a front-page article titled “Guessing the Score.” The article stated that “[i]nterviews with more than 25 major league strength coaches, general managers, league officials and players indicated a general view that steroid abuse has become a problem in baseball, perhaps even widespread, and that the sport must address it.” Brad Andress, the strength coach for the Colorado Rockies,

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<sup>19</sup> Memo from Bowie Kuhn to Major League Baseball General Managers (May 18, 1973); Telegram from Major League Baseball Commissioner Bowie Kuhn to Rep. Stagers (May 17, 1973).

<sup>20</sup> *Steroids Become an Issue; Baseball: Many Fear Performance-Enhancing Drug is Becoming Prevalent and Believe Something Must Be Done*, *Los Angeles Times* (July 15, 1995).

<sup>21</sup> *Get a Load of This!* *Denver Post* (July 28, 1997).

<sup>22</sup> *Steroids Linked to Alexander*, *Hartford Courant* (July 26, 2000).

<sup>23</sup> *The ‘Roid’ to Ruin*, *Sports Illustrated* (Aug. 21, 2000).

<sup>24</sup> *Homer Binge a Really Juicy Subject: Whispers of Steroid Use in Baseball Surge in Pace with the Home-Run Binge of Play*, *The South Florida Sun-Sentinel* (Oct. 6, 2001).

estimated that 30% of major league baseball players had used steroids at some point in their careers. One veteran all-star outfielder said he believed that “two-thirds of the top players in the National League are using some kind of steroid.”<sup>25</sup>

On June 3, 2002, when *Sports Illustrated* published “Totally Juiced,” a cover story on performance-enhancing drugs in baseball.” The magazine reported that “the game has become a pharmacological trade show.” Former San Diego Padre Ken Caminiti admitted to using illegal steroids during the 1996 season, when he was voted the National League’s most valuable player. Outfielder Chad Curtis estimated that 40% to 50% of major league players use steroids.<sup>26</sup> Mr. Caminiti died on October 10, 2004 of a heart attack caused by cardiac hypertrophy, a dangerous condition linked to steroid use.

On November 13, 2003, Major League Baseball reported that 5% to 7% of players had tested positive for anabolic steroids in the league’s first year of testing.<sup>27</sup> This result almost certainly underestimated steroid use in baseball. As noted by *Sports Illustrated*: “Baseball did not test during the off season ... and it did not test for designer steroids.”<sup>28</sup>

Because the 2003 testing program was anonymous, these results did not disclose which baseball players had used steroids. In December 2004, the *San Francisco Chronicle* published excerpts of leaked grand jury testimony related to the investigation of the Bay Area Laboratory Co-Operative (BALCO).<sup>29</sup> BALCO was a San Francisco-based company that sold a novel steroid known as THG.

According to these excerpts, some of baseball’s most famous players were illegal steroid users. Former Most Valuable Player Jason Giambi reportedly testified he had used anabolic steroids since 2001, and New York Yankees slugger Gary Sheffield reportedly testified he had used illegal steroids for a limited period of time. San Francisco Giants star Barry Bonds reportedly testified that he used a clear substance and a cream supplied by BALCO, but never thought they were steroids.<sup>30</sup> The clear substance was apparently THG, and the cream included other anabolic steroids that on DEA’s schedule III.

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<sup>25</sup> *Guessing the Score: Open Secret; Steroid Suspicions Abound In Major League Dugouts*, New York Times (Oct. 11, 2000).

<sup>26</sup> *Totally Juiced; With the Use of Steroids and Other Performance Enhancers Rampant, According to a Former MVP and Other Sources, Baseball Players and Their Reliance on Drugs Have Grown to Alarming Proportions*, *Sports Illustrated* (June 3, 2003).

<sup>27</sup> *Baseball Set for Automatic Steroid Tests*, Washington Post (Nov. 14, 2003).

<sup>28</sup> *Five Strikes and You’re Out*, *Sports Illustrated*. (Nov. 24, 2003).

<sup>29</sup> *Giambi Admitted Taking Steroids*, *San Francisco Chronicle* (Dec. 2, 2004); *What Bonds Told the BALCO Grand Jury*, *San Francisco Chronicle* (Dec. 3, 2004); *Sheffield’s Side*, *San Francisco Chronicle* (Dec. 3, 2004).

<sup>30</sup> *What Bonds Told the BALCO Grand Jury*, *San Francisco Chronicle* (Dec. 3, 2004).

In February 2005, former baseball star Jose Canseco, who played for the Oakland Athletics and Texas Rangers (among other teams), released a book entitled *Wild Times, Rampant 'Roids, Smash Hits and How Baseball Got Big*. In the book, Mr. Canseco alleges that on numerous occasions in the 1990s, he personally injected other players with illegal steroids. He named numerous other baseball stars he believed take steroids.

Over the last month, there have been several additional reports of steroid use in baseball:

- On February 15, 2005, the *New York Daily News* reported that the Federal Bureau of Investigation had warned Major League Baseball that some of its stars were implicated in illegal steroid use, an account denied by the league.<sup>31</sup>
- On March 5, 2005, Commissioner Selig announced that less than 2% of players tested positive for illegal anabolic steroids in 2004.<sup>32</sup> However, the 2004 testing did not include the off-season, did not include androstenedione, and did not include designer steroids.
- On March 13, 2005, the *Daily News* reported that a California man had claimed to have provided illegal steroids to Mark McGwire in the 1990s,<sup>33</sup> and the *Kansas City Star* reported that former major league ballplayer Jeremy Giambi, brother of Jason Giambi, has admitted to using illegal steroids.<sup>34</sup>

#### **IV. BASEBALL'S RESPONSE TO ILLEGAL STEROID USE**

When reports reached baseball in 1989 that Pete Rose was suspected of gambling on baseball, Major League Baseball initiated its own investigation within a month, and within eight months, Mr. Rose was banned from baseball for life. This quick and decisive response contrasts sharply with Major League Baseball's slow reaction to repeated and credible allegations of widespread illegal steroid use.

For years, the league denied that any problem existed and refused to investigate reports of widespread steroid use. In 1994 the league proposed a drug testing program for numerous drugs, including steroids, but this proposal was dropped during negotiations with the union.<sup>35</sup> Only recently has any testing policy on steroids been put into place. Some observers have even alleged that baseball's failure to crack down on steroid use can be explained by the profits that resulted from steroid-fueled home runs.

In response to the 1995 *Los Angeles Times* report of widespread illegal steroid use, Commissioner Bud Selig stated: "If baseball has a problem, I must say candidly that we were not aware of it. But should we

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<sup>31</sup> *FBI Agent Hits MLB on 'Roids*, New York Daily News (Feb. 15, 2005).

<sup>32</sup> *Selig Vows to Purge Steroids from Baseball*, Chicago Tribune (Mar. 6, 2005).

<sup>33</sup> *Exclusive: FBI Sources Say McGwire Was Juiced*, New York Daily News (Mar. 13, 2005).

<sup>34</sup> *Ex-Royal: Using Steroids a Mistake*, Kansas City Star (Mar. 13, 2005).

<sup>35</sup> Major League Baseball, *Prevention of Drug Use and Distribution* (1994).

concern ourselves as an industry? I don't know."<sup>36</sup> In November 1996, Pat Courtney, a spokesperson for Major League Baseball, was asked about illegal steroids. He responded, "I don't think the concern is there that it's being used."<sup>37</sup>

As evidence mounted, Major League Baseball still denied that a problem could exist. In July 2000, after illegal anabolic steroids were discovered in the car of a Boston Red Sox player, Major League Baseball Spokesman Richard Levin stated he could not recall an instance when a player was tested for steroids. He said, "In baseball, steroids have never been much of an issue."<sup>38</sup>

In October 2000, after the *New York Times* published its exhaustive report revealing extensive steroid use in the game, baseball still failed to admit that a problem existed. Sandy Alderson, vice-president for baseball operation for Major League Baseball stated, "I think at this point it is safe to say Major League Baseball and the players' association are reviewing this situation."<sup>39</sup>

The league's public position began to change in 2002, after *Sports Illustrated* cover story revealing former Most Valuable Player Ken Caminiti's use of steroids. In August of that year, the league and the players' union agreed for the first time to a steroid testing regimen. The policy stated that if more than 5% of anonymously tested players test positive during the 2003 regular season, testing would expand. If fewer than 5% test positive, testing would be discontinued.<sup>40</sup>

Drug-testing experts considered the new policy to be very weak. One loophole was the absence of any testing in the off-season, when many players are believed to use steroids to prepare for the season. The initiative also ignored androstenedione, a known anabolic steroid marketed as a dietary supplement. Dr. Gary Wadler, an associate professor of medicine at New York University and a member of the health, medical and research committee of the World Anti-Doping Agency, called the new policy "beyond outrageous" because, "5 percent failed tests should be perceived more as a disaster than a threshold."<sup>41</sup>

A year later, after the results of initial testing revealed that the 5% to 7% of players tested positive for illegal anabolic steroids, Major League Baseball declared the results to be good news. Rob Manfred, baseball's

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<sup>36</sup> *Steroids Become an Issue; Baseball: Many Fear Performance-Enhancing Drug is Becoming Prevalent and Believe Something Must Be Done*, Los Angeles Times (July 15, 1005).

<sup>37</sup> *Radically Pumped: How Widespread a Problem is Steroid Use Among Professional Athletes?* Toronto Star (Nov. 3, 1996).

<sup>38</sup> *Alexander Reserves Comment on Discovery*, Boston Globe (July 26, 2000).

<sup>39</sup> *Guessing the Score: Open Secret; Steroid Suspicions Abound In Major League Dugouts*, New York Times (Oct. 11, 2000).

<sup>40</sup> *Steroids Could Be a Key Issue*, Los Angeles Times (Aug. 24, 2002)

<sup>41</sup> *Sports of the Times; Players' Steroid Proposal is Lacking Muscle*, New York Times (Aug. 11, 2002)

vice president for labor relations, stated, “A positive rate of 5 percent is hardly a sign that you have rampant use of anything.”<sup>42</sup>

Under the 2002 contract, the positive steroid rate triggered additional testing for 2004. In 2004, all players were tested once each season, but the penalties for positive tests were weak. The first positive test resulted only in treatment, with violations kept confidential. A second positive test resulted in a fifteen game suspension. Penalties increased with each successive positive test, resulting in a one-year suspension for a fifth positive. *Sports Illustrated* called the program “Five Strikes and You’re Out.”<sup>43</sup>

Baseball’s failure to investigate allegations of steroid use has continued into 2005. When asked about the allegations made by Jose Canseco, Sandy Alderson, the executive vice president of baseball operations, stated, “I’d be surprised if there was any significant follow-up.”<sup>44</sup>

Instead, baseball has declared the steroid problem largely resolved. In reporting the results of 2004 testing, Commissioner Selig stated, “We have a program that’s working. It’s no longer rampant at any level.”<sup>45</sup> This claim, however, ignored what critics have called significant loopholes in the testing, including that Major League Baseball did not assess for all anabolic steroids and did not test during the off-season.<sup>46</sup>

Baseball’s slow response to repeated, credible allegations of widespread steroid has been attributed by some observers to the profit motive. In 2001, Dr. Charles Yersalis, an expert on anabolic steroids in sports, asked “What pulled baseball out of its financial slump? More guys hitting home runs . . . You could argue these drugs have benefited the game financially.”<sup>47</sup> When *Sports Illustrated* asked a minor league player why baseball doesn’t crack down on steroid users, he replied, “I’ve got an easy answer for that. I’d say, You’ve set up a reward system where you’re paying people \$1 million to put the ball into the seats.”<sup>48</sup> And *New York Times* columnist Harvey Araton has written “the owners . . . have been complicit, content to watch balls fly out of the ballparks and make the cash registers ring.”<sup>49</sup>

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<sup>42</sup> *Baseball Set for Automatic Steroid Tests*, Washington Post (Nov.14, 2003).

<sup>43</sup> *Five Strikes and You’re Out*, Sports Illustrated (Nov. 24, 2003).

<sup>44</sup> *Commissioner’s Office Likely Will Not Pursue Canseco Allegations*, Associated Press (Feb. 11, 2005).

<sup>45</sup> *Positive Steroid Tests Decline*, Houston Chronicle (Mar. 6, 2005).

<sup>46</sup> See, e.g., Selena Roberts, *And So Begins Selig’s Long Trip to the Woodshed*, New York Times (Mar. 6, 2005).

<sup>47</sup> *Homer Binge a Really Juicy Subject: Whispers of Steroid Use in Baseball Surge in Pace with the Home-Run Binge of Play*, The South Florida Sun- Sentinel (Oct. 6, 2001).

<sup>48</sup> *Totally Juiced; With the Use of Steroids and Other Performance Enhancers Rampant, According to a Former MVP and Other Sources, Baseball Players and Their Reliance on Drugs Have Grown to Alarming Proportions*, Sports Illustrated (June 3, 2003).

<sup>49</sup> Harvey Araton, *Players’ Steroid Proposal is Lacking in Muscle*, New York Times (Aug. 11, 2002).

## V. BASEBALL'S AUTHORITY AND THE COLLECTIVE BARGAINING AGREEMENT

Major League Baseball has responded to allegations that it could have done more to combat illegal steroid use by citing its collective bargaining agreement. According to baseball, it would have cracked down on illegal steroid use years ago, but could not negotiate a collective bargaining agreement with the players.

To evaluate baseball's position and to understand the authorities the league possessed, it is important to distinguish between across-the-board testing of major league players and investigating allegations of specific abuses. Baseball appears to be largely correct that it could not initiate random drug testing of all players without the consent of the union. When some teams tried to initiate drug testing in the early 1980s, the union brought a grievance against the league for doing so.<sup>50</sup> The arbitrator in the case ruled that requiring "random testing" is a term and condition of employment that baseball management cannot unilaterally impose.<sup>51</sup>

The situation is quite different, however, with respect to investigating specific allegations of steroid use or conducting for-cause testing. The Major League Baseball Constitution provides the Commissioner with the authority to "investigate, either upon complaint or upon the Commissioner's own initiative, any act . . . alleged or suspected to be not in the best interests of the national game of Baseball," and "to determine, after investigation, what preventative, remedial, or punitive action is appropriate . . . and to take such action."<sup>52</sup>

Baseball's collective bargaining agreements have also recognized this authority, stating that the commissioner of baseball has authority to take actions "involving the preservation of the integrity of, or the maintenance of public confidence in the game of baseball"<sup>53</sup>

This authority would appear to encompass investigating allegations of illegal steroid use, requiring testing if required thresholds are met, and taking appropriate disciplinary action.

In fact, the league asserted this authority when the Commissioner unilaterally established a steroids policy in 1991. This policy banned the use, sale, or distribution of any illegal drug, controlled substance, or prescription drug for which the player did not have a valid prescription. It also provided that the league would conduct testing for steroids if a player has admitted to or been "detected" using steroids.<sup>54</sup>

Nothing in the collective bargaining agreement prevented the Commissioner from investigating general or specific reports of players using steroids or from strengthening the 1991 policy. The Commissioner,

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<sup>50</sup> Major League Baseball Arbitration Panel, *In the Matter of Arbitration Between Major League Baseball Player Relations Committee and Major League Baseball Players Association* (July 1986).

<sup>51</sup> *Id.*

<sup>52</sup> Major League Baseball, *Major League Baseball Constitution*, 2003

<sup>53</sup> Major League Baseball, 1997-2000 Basic Agreement (1996).

<sup>54</sup> Major League Baseball, *Commissioners' Memo on Baseball's Drug Policy and Prevention Programs* (1991)

however, never took these steps. As a result, it appears that, there was never an investigation of steroid use in baseball, and that no “for cause” testing for anabolic steroids was ever conducted. In 2000, a league spokesman stated he could not recall an instance when a player was tested for steroids.<sup>55</sup> During this time, baseball apparently never disciplined any player for anabolic steroid use.<sup>56</sup>

The collective bargaining agreement between Major League Baseball and the players union first addressed steroid use in 2002. This policy states that if there is “reasonable cause to believe that a player has, in the previous 12-month period, engaged in the use, possession, sale, or distribution of a prohibited substance ... the player will be subject to immediate testing.”<sup>57</sup>

It also, for the first time, began a program under which all Major League players were tested for steroids. Under the agreement, which was implemented in 2003, test results were anonymous and thus there were no penalties in place if a player tested positive. The agreement dictated that if more than 5% of players tested positive for steroids in 2003, a stricter regimen would begin in 2004.<sup>58</sup>

In 2003, approximately 5%-7% of major league players tested positive for steroids. As a result, in 2004, a new steroid policy automatically took effect.<sup>59</sup> All players were tested once each season, and the program called for penalties for players with positive test results. These penalties, however were extremely weak. The first positive test resulted only in treatment, with violations kept confidential. A second positive test resulted in a fifteen-game suspension. Penalties increased with each successive positive test, resulting in a one-year suspension for a fifth positive. Under the new program 1% to 2% of players tested positive for steroids in 2004. Because of the confidential nature of the program, it is unclear how penalties were assessed.

## VI. THE NEW BASEBALL POLICY ON STEROIDS

In January 2005, Major League Baseball and the players union announced a new policy on performance-enhancing drugs. The Committee obtained a copy of the new policy on Monday, March 14, and Committee staff is still analyzing its implications.

The strengths and weaknesses of the new policy are expected to be a major focus of the hearing. A subsequent staff memo will provide additional details about the new policy.

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<sup>55</sup> *Alexander Reserves Comment on Discovery*, Boston Globe (July 26, 2000).

<sup>56</sup> Major League Baseball, *Players Suspended by Major League Baseball for Drug-Related Offenses, 1990-Present* (2005).

<sup>57</sup> 2002 Collective Bargaining Agreement, *Major League Baseball's Joint Drug Prevention and Treatment Program* (2002).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

## VII. ANDROSTENEDIONE

In addition to the illegal use of anabolic steroids, Major League Baseball has also confronted allegations in recent years of widespread legal use of an anabolic steroid, androstenedione. Commonly known as “andro,” androstenedione was sold as a dietary supplement in the United States until 2004. In August 1998, an *Associated Press* reporter discovered a bottle of andro in the locker of baseball star Mark McGwire.<sup>60</sup> Mr. McGwire stated, “Everything I’ve done is natural. Everybody that I know in the game of baseball uses the same stuff I use.”<sup>61</sup>

At the time, rather than aggressively investigate andro’s use and dangers, Major League Baseball defended Mr. McGwire, who set the single-season home run record that season. The league continued for years to condone widespread use of andro even in the face of mounting evidence of the substance’s harm.

Soon after andro was found in Mr. McGwire’s locker, Major League Baseball and the players’ union announced that they would seek additional medical information about the substance. After the season, the medical advisor to the Commissioner’s office, Dr. Robert Millman stated: “I don’t think he was doing anything that was wrong, or that he knew was wrong, or that other people weren’t doing.”<sup>62</sup> Commissioner Selig stated, “I feel very comfortable with where we are in baseball with andro.”<sup>63</sup>

It soon became clear, however, that Major League Baseball’s comfort with andro was not shared by other sports organizations and medical experts:

- **International Olympic Committee.** In September 1998, the International Olympic Committee asked Major League Baseball to adopt the IOC’s list of banned substances, which included andro.<sup>64</sup>
- **White House Drug Czar.** In May 1999, the White House drug czar Gen. Barry McCaffrey called for andro to be reclassified and banned as a steroid.<sup>65</sup>
- **Federal Trade Commission.** In November 1999, two large sports nutrition companies, MET-Rx and AST Nutritional Concepts & Research Inc., agreed with the Federal Trade Commission to include safety warnings in their ads and on their labels for products that contain andro. The warning would state that
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<sup>60</sup> *‘Andro’ Pill OK in Baseball, Not in Other Sports*, Associated Press (Aug. 21, 1998).

<sup>61</sup> *McGwire Admits to Steroid Use: Substance Legal in Baseball, But Banned in Some Other Sports*, Ottawa Citizen (Aug. 22, 1998).

<sup>62</sup> *Baseball Players, Owners Delve Into Andro*, St. Louis Post-Dispatch. (Dec. 9, 1998).

<sup>63</sup> *Ibid.*

<sup>64</sup> *IOC to Ask Baseball to Join Ban on Andro*, Charlotte Observer (Sept. 15, 1998).

<sup>65</sup> *Baseball Whiffs on Andro Issue*, Daily News (Aug. 20, 1999).

- these products contain “steroid hormones that may cause breast enlargement, testicle shrinkage, and infertility in males.”<sup>66</sup>
- **Harvard Medical School.** In February 2000, Harvard researchers sponsored by Major League Baseball found that andro can raise testosterone by an average of 34% above normal levels, proving that it acts as an anabolic steroid.<sup>67</sup> One of the researchers stated, “I would caution against taking andro because we don’t know what the long-term effects are.”<sup>68</sup>
- **National Basketball Association.** In March 2000, the National Basketball Association announced it is adding androstenedione and eight other performance-enhancing substances to its list of banned substances.<sup>69</sup>

None of these developments significantly altered Major League Baseball’s position. In December 2000, Commissioner Selig stated: “we are trying to find out how we can solve that problem, if it’s a problem.”<sup>70</sup>

Major League Baseball did not prohibit andro use until 2004, when the Food and Drug Administration banned andro-containing dietary supplements, and Congress was already moving to add andro to the DEA’s Schedule III.

## VIII. WITNESSES

### Panel One

- The Honorable Jim Bunning, U.S. Senator

### Panel Two

- Dr. Nora Volkow, Director, National Institute on Drug Abuse, National Institutes of Health
- Dr. Gary I. Wadler, Associate Professor of Clinical Medicine, New York University School of Medicine
- Dr. Kirk Bower, Associate Professor of Psychiatry, University of Michigan Medical School
- Mr. Donald Hooton, Sr., Director, Chairman, and President of Taylor Hooton Foundation, father of high school baseball player Taylor Hooton, who committed suicide after steroid abuse
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<sup>66</sup> *‘Andro’ Makers Agree to Add Warnings*, Washington Post (Nov. 17, 1999).

<sup>67</sup> *Oral Androstenedione Administration and Serum Testosterone Concentrations in Young Men*, Journal of the American Medical Association (Feb. 9, 2000).

<sup>68</sup> *Baseball Will Allow Andro Supplement*, USA Today (Feb. 9, 2000).

<sup>69</sup> *NBA Says Andro Will be Banned*, Washington Post (Mar. 31, 2000).

<sup>70</sup> *Selig Digs in, Takes a Swing at a Variety of Uncertainties on Baseball’s Horizon*, The Dallas Morning News (Dec. 10, 2000).

- Mr. Ray and Mrs. Denise Garibaldi, parents of former U.S.C. baseball player Rob Garibaldi, who committed suicide after steroid abuse

### **Panel Three**

- Mr. Jose Canseco, former Major League baseball player
- Mr. Mark McGwire,
- Mr. Rafael Palmeiro, Baltimore Orioles
- Mr. Curt Schilling, Boston Red Sox
- Mr. Sammy Sosa, Baltimore Orioles
- Mr. Frank Thomas, Chicago Cubs

### **Panel Four**

- Mr. Allan H. Selig, Commissioner of Baseball
- Mr. Donald M. Fehr, Executive Director and General Counsel, Major League Baseball Players Association
- Mr. Robert D. Manfred, Jr., Executive Vice President, Major League Baseball
- Mr. Sandy Alderson, Executive Vice President of Baseball Operations, Major League Baseball
- Mr. Kevin Towers, General Manager, San Diego Padres

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